



Your Trusted Counselor

DID YOU CHOOSE MORE THAN ONE SUCCESSOR TRUSTEE?

When selecting a successor trustee for a trust, it is common for the individual who creates the trust (the trustmaker) to choose one person to serve as a successor trustee at a time. Some attorneys routinely recommend that only a single successor trustee be appointed to avoid the potential for conflicts between co-trustees during trust administration. This can be a prudent approach and works well in many situations. This is particularly true when the appointed trustee diligently keeps the beneficiaries of the trust informed about the trust administration and carefully fulfills the trustee's responsibilities under both the law and the provisions of the trust document.

However, many trustmakers are reluctant to place the entire responsibility for trust administration on only one person. As a result, it is increasingly common for a trustmaker to nominate two or more family members or friends to serve as successor co-trustees. In some cases, it may even be beneficial to divide the trustee responsibilities between a professional trustee and a family member trustee. For example, a professional trustee might be given the responsibility for trust investments or accounting and tax matters, and the family member trustee may be asked to handle certain distribution responsibilities, such as the timing and amount of distributions to a minor beneficiary. While this co-trustee approach can have some drawbacks, it also has benefits that may be worth considering.

Advantages and Disadvantages of a Co-trustee Approach

Choosing multiple individuals to serve as co-trustees offers the following advantages:

- Co-trustees can provide checks and balances to guard against potential abuses of authority.
- Sharing or separating the responsibilities of trust administration among co-trustees can expedite the efficient administration of a trust.
- Depending on the terms of the trust, a particular co-trustee may be able to respond quickly to an emergency situation if no other co-trustees are available.
- Trust beneficiaries may be more likely to accept the actions and decisions of unified co-trustees as opposed to the decisions of a single trustee.
- Administrative responsibilities can be allocated among the co-trustees based on each co-trustee's unique strengths and skills or in a fair and equitable manner.

However, there are also disadvantages to consider:

- Disagreements between co-trustees can lead to conflicts or stalemates.
- Delays can result if the trust requires that all co-trustees be present and act together to conduct trust business.
- Financial institutions, individuals, and businesses may be reluctant to take direction from fewer than all co-trustees, even if the trust document authorizes a single co-trustee to act.
- Compensating multiple co-trustees for their time spent handling trust business can result in potentially higher costs.

What Is the Right Approach for You?

Before you decide whom to name as a successor trustee, you should discuss these advantages and disadvantages with your attorney and other professional advisors well before there is a health event that could lead to your incapacity (the inability to make your own decisions) or death. Doing so will help you identify some of the potential pitfalls and complications that can arise with regard to your successor trustee choice. These discussions may also help you realize that you need to make changes to your estate planning documents, either to add another family member or a professional fiduciary as successor co-trustee or to remove certain individuals listed as a co-trustee because of the potential for conflicts. Of course, we welcome the opportunity to meet with you to discuss ideas and make any necessary updates to your estate documents so that they better match your intent.

As you prepare for these discussions with your attorney and other professional advisors, it may be helpful for you to consider some of the following questions before ultimately deciding whom to name as your successor trustee:

How well does the individual I want to name as trustee work with others?

Does your potential successor trustee have the temperament to delicately handle requests, questions, and perhaps even emotional outbursts from the trust beneficiaries while administering the trust? Do they handle conflict well, or do they have a tendency to escalate conflict when they encounter it? How might serving with a co-trustee mitigate or exacerbate this temperament?

Does the person you plan to name as trustee have sufficient time and flexibility for their duties?

Being a trustee requires a certain level of flexibility and availability. If your chosen trustee is a busy professional or a busy parent with little extra time to spend handling the trustee's many tasks, would it make sense to nominate multiple co-trustees to share those responsibilities? On the other hand, would naming multiple trustees create frustration if the co-trustees are all required to be present to handle certain financial or administrative tasks? Sometimes, the need for flexibility calls for fewer, not additional, trustees.

If co-trustees are named, should they have authority to act independently?

While having multiple co-trustees can provide important checks and balances, should they nevertheless be given independent authority to act on behalf of the trust? Granting such authority may decrease the hassle of needing to have all co-trustees present but still provide the ability to spread responsibilities among the various co-trustees, thereby decreasing the workload of each co-trustee.

If multiple co-trustees are chosen, what method might be used to resolve a stalemate in trustee decisions?

Even co-trustees who normally get along can sometimes disagree so strongly that a stalemate occurs. In such a case, what might be an appropriate way to resolve the impasse? Should another family member be named to break the tie? What about a trusted professional advisor, a mediator, or a trust protector? Or should differences like these only be resolved by a court? Often, leaving such decisions to a court can encourage disagreeing co-trustees to resolve the dispute on their own in an effort to avoid the expense and delay of going to court.

You might also request that your attorney include language in your trust that permits a dissenting co-trustee to abstain from participating in a decision, thereby limiting the dissenting co-trustee's liability for any harm that might result from the other co-trustees' decision. This approach allows the business of the trust to move forward, even over the objection of a co-trustee. However, the dissenting co-trustee would have the comfort of knowing that the overruling co-trustees would ultimately be the only ones responsible for those particular actions.

Conclusion

Whether you nominate a single successor trustee or multiple co-trustees, carefully considering the pros and cons of each approach can help ensure that your wishes for the handling of your estate and trust will be honored. Contact us today so we can review your current successor trustee selections or create an estate plan with the right people in charge to assist you when needed.

WHAT KIND OF LEGACY ARE YOU LEAVING YOUR LOVED ONES?

Your family will be dealing with a lot of concerns if you become incapacitated or when you pass away. Don't add extra stress by failing to prepare for them! O'Connor Law Offices can provide you with peace of mind by drafting your Will, developing a full estate plan or assisting you with all of your wealth transfer needs. Call us today to schedule an appointment with Mona O'Connor to learn more.

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