

Choosing your Trustee



Choosing the right successor trustee can have a major impact on the long-term viability of your trust. When making the selection, you should consider a variety of factors, including whether you have a short-term or long-term distribution plan or if you are dealing with traditional or non-traditional assets.

Many people who establish a revocable living trust choose to name themselves as trustee so they retain the ability to manage their own financial affairs. However, it is inevitable that at some point in time, another individual will need to take over the management of your trust. This individual is known as a “successor trustee.” They can step in when you no longer have the capacity to manage the trust, or after you pass away. Selecting the right successor trustee is extremely important because they play an influential role in the effective and efficient execution of your estate plan.



What exactly is a successor trustee?

When a revocable living trust is formed, one of the components is the appointment of a successor trustee. When you create the trust, you can serve as both the grantor (creator) and the trustee while you are alive. As the grantor and trustee, you have the right to move assets in and out of the trust, modify the terms of the trust and change beneficiaries. You also retain the right to remove people as beneficiaries.

When you pass on, or become incapacitated, your successor trustee will assume control over the trust and the responsibilities of trustee. These responsibilities typically include:

- Investing trust assets wisely until the time comes to transfer the assets to the beneficiaries.
- Handling the transfer of assets to your beneficiaries.
- Ensuring the terms of the trust are respected and followed.

Having a living trust in place is a great benefit to you and your loved ones since it enables you to avoid dealing with the costs and inefficiencies associated with the probate court system. Your successor trustee will be empowered to manage the trust without having to obtain authorization from the court or report every action to a court.

How is a successor trustee different from a personal representative?

Many people, quite understandably, get confused about the role of a personal representative and the role of a successor trustee. They are wholly different and distinct roles and have different responsibilities when it comes to administering an estate.

One of the biggest differences between a personal representative and a successor trustee is the duration of the role. A personal representative is empowered to handle the probate process immediately after you pass away. The personal representative will locate and collect your assets, as well as pay any outstanding debts and taxes. A personal representative is also obligated to report to the probate court and distribute your assets after your passing. A successor trustee is not under the supervision of a probate judge, so they need to be carefully selected.

On the other hand, with a successor trustee, they can serve in the role for months, years or even decades. For example, if you want to leave your granddaughter an inheritance but don't want her to receive it until she graduates from college, you can specify this requirement in your trust, and the successor trustee will be empowered to oversee and manage the trust until the granddaughter meets your established prerequisite. If your granddaughter is only 10 years old, this means your successor trustee will have that position for likely more than a decade.

Administrators of Estate Plans	Obligated to Submit Numerous Records and Information to Probate Court
Personal Representative Named in Last Will & Testament	Yes
Trustee Named in Revocable Living Trust	No
Trustee Named in Testamentary Trust	Yes



What is my successor trustee allowed to do?

Generally, your successor trustee will be able to do anything you could with your trust assets, as long as it does not conflict with the instructions in your trust document and does not breach fiduciary duty, which requires that all financial decisions are made in your best interests.

If you become incapacitated, your successor trustee has the right to step in and take full control of the trust immediately. A guardian, on the other hand, is not authorized to act until appointed by a court. A delay that can be problematic when care is needed. The successor trustee will make all financial decisions involving trust assets (including selling or refinancing assets, if necessary). Since your trust can only directly control assets that it owns, it is extremely important that you fully fund your trust and title your assets properly.

After you pass away, your successor trustee will take an inventory of your assets, pay any final bills, sell assets if necessary, prepare final tax returns and distribute your assets according to the instructions in your trust.

Who can serve as a successor trustee?

The selection of a successor trustee is an inherently personal decision, and you have a tremendous amount of flexibility in naming a successor trustee. In fact, you can name virtually anyone, including an adult child, another relative or loved one or a trusted friend. Or, you can select a professional or corporate trustee.

Please note that if you choose an individual, like a family member or trusted friend, it is strongly recommended that you name more than one successor trustee, just in case your first choice is unable to act or predeceases you.

The most common types of successor trustees include:

- Family member (spouse, adult child, sibling)
- Friend
- Professional (attorney, CPA)
- Bank
- Trust company

It is natural that the person you trust the most is a family member, such as a spouse, adult child or sibling. However, serving as a trustee can be demanding and require a significant dedication of time and attention to detail. A family member — even a dedicated adult child — who devotes the time necessary to serve as trustee can soon become resentful of the burden and decide to charge a reasonable fee. At this, other family members or beneficiaries can become resentful or suspicious that another relative is receiving money from the trust. Often, this can create a “no-win” situation.

What are the qualities to look for in a successor trustee?

Your decision to designate a trustee is one of the most important decisions you will make when executing a trust. **That's why it's important to choose a trustee with the following qualities:**

- Willingness to serve
- Competence
- Loyalty
- Impartiality
- Prudence
- Objectivity
- Responsibility
- Financial astuteness
- Patience
- Transparency

Few people possess all of these characteristics, but if you can designate a trustee who exemplifies most or even some of these qualities, this is likely a trustee you can trust.

What questions should I ask about my successor trustee?

A grantor typically chooses a family member, loved one or friend who possesses the skills necessary to administer and maintain a trust. **In considering the qualities to look for in a successor trustee, ask yourself the following questions:**

- Does this person have experience as a trustee?
- Is this person trustworthy?
- Is this person organized?
- Is this person good at recordkeeping?
- Is this person financially responsible?
- Does this person understand financial investing?
- Does this person understand the fiduciary duties of a trustee?
- Is this person willing and able to assume liability for a possible breach of fiduciary duty, even if by another trustee?
- Does this person understand me, my family and my goals?
- Does this person have a bias for or against me or any specific family members?

In answering these questions, it is important to remember that although appointing a trustee is a very personal matter, this is a business decision and must be based on business considerations. Although your child, sibling, loved one or dear friend may be the person you trust most completely, if they do not possess the skills and time necessary to effectively administer your trust, then they may not be the appropriate person for the job, or at least their duties as trustee should be expressly limited to the personal, rather than the financial, decision-making aspects of the trust.



Does the type of trust affect my choice of trustee?

The nature and complexity of your trust may dictate your decision whether to serve as the trustee during life, to appoint a family member or friend or to appoint a corporate trustee. For simple trusts or small estates involving the direct distribution of estate property upon death, an expensive corporate trustee may not be necessary.

Consider using a corporate trustee for trusts involving assets that may be difficult to manage, such as:

- Residential rental properties
- Family-owned businesses
- Real estate located out-of-state
- Art or other collectibles



However, a corporate trustee may not offer the personal involvement or insights that may be necessary to make decisions about a disabled uncle, the educational needs of a child or the drug-addiction manifested by a spouse or sibling. When such personal issues are involved, the services offered by a corporate trustee may not be necessary or valuable. Remember, a corporate trustee usually is paid by the trust based on the value of its assets.

The purpose and beneficiaries of a trust have an impact on who would make a good trustee. For irrevocable asset protection trusts, grantors should not appoint themselves as trustee. For this type of trust, you will want to pick a third party as trustee in order to achieve the trust's goals. For example, a common choice is one of the grantor's adult children. If the purpose of the irrevocable trust is to preserve assets from Medicaid eligibility or Medicaid spend down, then the grantor cannot be the trustee.

In the end, there is no magic formula to identify the appropriate person to appoint as trustee. A trust that includes a multimillion-dollar stock portfolio derived from family-owned businesses is going to require different management skills than trust property that includes 200 acres of farmland. A trust designed to provide for a child's future education or special needs usually requires the personal involvement of a family member. The nature and complexity of the trust to be administered often will dictate the trustee you appoint.



How do I create an estate plan?

There are numerous options and scenarios to consider when developing an estate plan that protects your legacy and achieves your objectives, and important decisions should be made with the advice of qualified lawyers and financial experts. Membership with Legacy Assurance Plan provides members with valuable resources and guidance to develop comprehensive estate plans that take life's contingencies into consideration and leave a positive impact for generations to come. Legacy Assurance Plan members also receive peace of mind that a team of trusted, experienced professionals will assist them in developing legal, financial and tax strategies that will meet their needs today and for years to come through periodic reviews.

We thank you for taking time to review this booklet and look forward to helping you resolve your estate planning concerns. To find out more about Legacy Assurance Plan, please visit our website at legacyassuranceplan.com or visit us on Facebook at facebook.com/legacyassuranceplan.

The screenshot shows the Legacy Assurance Plan website. At the top, there is a navigation bar with the company logo and links for 'Home', 'Our Services', 'Resources', and 'Contact Us'. The main heading reads 'Estate planning is important. For everyone.' Below this, there is a paragraph explaining the ease of the process and a 'Get Your Personalized Guide' button. A photograph of a child sitting on a bed with a dog is featured on the right side of the page. The lower section is titled 'Benefits and Services' and is divided into three columns: 'LIFETIME BENEFITS' (including consultation with a qualified estate planner, estate planning documents, delivery, funding and beneficiary review, and ongoing lifetime services), 'OPTIONAL BENEFITS' (including business planning and formation, assumed care), and 'OUR PROCESS' (including member services coordination, attorney assignment, drafting your plan, and plan delivery). Each column has a 'Learn More...' button at the bottom.

The screenshot shows the Legacy Assurance Plan Facebook page. The profile picture is a shield with a blue wave. The cover photo shows a couple standing together. The page has a 4.9 star rating based on 8 reviews. A recent post from 'Don Hill' recommends the service, stating that the staff was great to work with and they have taken very good care of all of their needs. Another post from 'Jameson Kari' also recommends the service, mentioning that the staff was able to help with a complex estate plan and that the experience was wonderful. The page includes a 'Contact Us' button and a 'Reviews' section.



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