

Investment Management **Does it Really Matter?**

Contact:

Atlanta Office

Galleria Centre
400 Galleria Parkway, Suite 1820
Atlanta, GA 30339
P 770.226.5333
F 770.955.5754
Toll Free 877.955.8266

Memphis Office

6075 Poplar Avenue
Memphis, TN 38119
P 901.761.7979
F 901.761.7970
Toll Free 800.264.7498

Nashville Office

One American Center
3100 West End Avenue, Suite 200
Nashville, TN 37203
P 615.386.7302
F 615.386.3738
Toll Free 877.386.7332

You may have heard the familiar saying, "What does it profit a man to gain all of the possessions of this world, but lose his own soul?" The issues within that question are well beyond the scope of this newsletter, but we would pose another similarly worded question, "What good is it to gain the possessions of this world, only to place them under the control of a person or an organization who does not carry out your wishes?" All too often, well-designed estate plans fail to meet their objectives due to poor and sometimes negligent execution of those plans by the people or institutions charged with this responsibility. So what issues should be considered?

What Are The Options?

While the specific activities of an executor of an estate certainly differ from that of a trustee of trusts established during your lifetime or through your will, the qualifications for each of these fiduciary capacities are very similar. Two schools of thought prevail concerning the selection criteria for both executors and trustees. One side believes that an estate plan should be executed by corporate professionals who are focused exclusively on trust and estate administration. The other suggests that dependable family members or close friends will be more effective and attentive in executing these duties and responsibilities. We believe both options have genuine merit, while at the same time possessing not so obvious pitfalls. Our objective with clients when considering these two options is to simply ensure all relevant issues have been discussed. Let's examine the good and the bad of both options and then we will highlight a third option that we believe can combine the best of both.

The Friends and Family Choice

There are several good reasons for involving a spouse, capable children, and/or a trusted family friend in the management of your estate plan. Many times, the trustee or executor role is performed quite well by a trusted individual using the careful assistance of competent legal and tax counsel. Another reason often cited is that this option is ostensibly more cost effective than employing a professional trustee or executor. However, the most compelling reason for choosing a friend or family member to serve as fiduciary is to ensure someone familiar with the family will be in control of future decisions, and most likely will act in the best interests

DIVERSIFIED TRUST

COMPREHENSIVE WEALTH MANAGEMENT

of the beneficiaries in a timely fashion.

There have been innumerable examples of problems within large organizations that provide trust services, including inattentiveness, high turnover of personnel, inadequate investment management, and excessive charges. It is not surprising that many people are unwilling to name a “corporate” trustee and choose an individual instead. But before deciding on an individual to serve as fiduciary, there are also some important issues to consider:

- Trustees and executors have overall responsibility for asset management, fiduciary accounting, tax filings, and income and principal disbursement decisions. Inexperience or benign neglect in these areas can create numerous problems. Using specialists such as investment managers, accountants, and attorneys is almost always a prerequisite to ensuring proper administration. However, these advisors are simply “agents,” which means the ultimate responsibility still resides with the individual serving in the fiduciary capacity.
- While hard to foresee, it may be difficult for an individual (particularly a family member) to remain objective when potentially contentious decisions must be made. Numerous examples exist which illustrate how family harmony can quickly dissipate after the death of a patriarch or matriarch.
- Individual trustees serve without regulatory or other oversight, so there are few controls to make sure fiduciary duties are administered correctly. In addition, an individual is usually not required to be insured or bonded, and the assets of a trust could be lost if the trustee makes bad investment decisions or commits fraud.
- An individual may be held personally liable to all beneficiaries for mismanagement of an estate or a trust. Beneficiaries can sue trustees, and personal assets of an individual trustee could be at risk.
- An individual trustee may die, become disabled, or simply resign before the trust ends. Consequently, the assumption of duties by a successor trustee must be anticipated.

Appointing an individual to serve as your fiduciary certainly has its benefits. To ensure this role is carried out successfully, it is critical to have adequate communication. If an individual is selected to serve as your executor or

trustee, you should set the precedent for good communication by making sure beforehand that they are up to the task. Some may respectfully decline after understanding the full scope of their duties.

The Professional Route

Not too long ago, prior to the plethora of bank mergers and the creation of long-distance bureaucracies, it was customary to name the local bank trust department to serve as a trustee or as your executor. The professionals within these local institutions were often family friends and were focused on trust and estate administration. Other advantages with this option still exist today. Corporate fiduciaries are in the business of providing professional services to trusts and estates. In addition, these institutions are regulated by state and federal authorities, and are required to have independent audits performed on their operations at least annually. Corporate trustees are also required to maintain fiduciary insurance coverages to protect against fraud, theft, misconduct, as well as errors and omissions. There is also the obvious advantage that a corporate trustee will not unexpectedly die or become disabled. Possibly, the primary benefit of choosing the right corporate trustee is having an organization held accountable for overseeing your assets on a daily basis, not an individual serving on a part-time, volunteer basis.

If a Bank or Trust Company is an option you would like to consider, we believe the following checklist of questions may be helpful in finding an institution that best fits your needs:

- Who are the professionals that you and your family will be working with and what are their respective duties and experience? How long have they been with the company, and what are their incentives to remain?
- How does the company manage trust assets? Do they manage assets “in house” or do they use independent money managers or mutual funds? What are the issues they consider when constructing investment portfolios, and what is their performance record?
- Are trust and investment services offered together or through separate “departments?” How will you work with these two areas, and how do they coordinate with one another?
- Are they qualified to help with investment, estate, tax,

- business, and other wealth management planning?
- Who owns the company and what happens to you and your family if the company is bought or merges with another company?
 - What are the fees and what services do they cover? Are you paying for trust and asset management separately or together? What about custody and transaction costs? Does the company have added incentives to use products such as life insurance or annuities as fiduciary solutions?

Whether you are creating a trust during your lifetime, selecting an executor as the personal representative of your estate, or establishing trusts through your will, the most important factor in making your fiduciary choice between “Friends and Family” or “The Professional Route” is simply peace of mind. After getting comfortable with the answers received to the above issues, as well as any others more particular to your unique situation, you should be able to determine what works for you. You may ask, “Isn’t it possible to gain the advantages of both the individual and corporate trustee while avoiding their respective drawbacks?”

Best of Both Worlds?

The following considerations illustrate how one might combine the attractive characteristics of both the individual and the corporate trustee or executor without undermining the integrity of the administration process:

- Consider the merits of naming an individual and a corporate trustee as co-trustees. The individual could be the primary resource for family related issues, while the corporate trustee could be dedicated to daily administration issues such as prudent investing, and tax and accounting compliance. The individual trustee can also be given the authority to replace the corporate trustee in certain circumstances.
- Alternatively, consider utilizing a corporate trustee along with a relatively new concept called “Trust Advisor.” The Trust Advisor is an individual independent of the beneficiaries who is charged with ensuring the trustee is responsive and accountable to the beneficiaries. This Trust Advisor is authorized to replace the trustee if deemed prudent.

- Regardless, make sure your document gives the beneficiaries the right to replace the trustee if certain undesirable events occur. As an example, such events may be the turnover of key personnel, an acquisition by another organization, servicing location change, unacceptable investment performance and unreasonable fee increases. “Portability” and “accountability” clauses can permit beneficiaries to replace an ineffective trustee under certain circumstances and may help avoid a potentially adversarial situation between your beneficiaries and the trustee.

Many attorneys are now drafting wills and trust instruments to combine the benefits of both individual and professional trustees. Although it does not work in every case, this concept may be a viable alternative in situations where both competent individual and corporate trustees are available to work together to carry out their fiduciary responsibilities, fulfill your wishes for the trust assets, and communicate appropriately with your beneficiaries.

Our Approach

Diversified Trust was founded by a group of professionals who wanted to offer an alternative to the traditional bank and brokerage company options. As an independently owned, private trust company, we are able to avoid many of the inherent conflicts of interest which often exist in this industry. Providing investment management, fiduciary and wealth management services is our only business. In addition, our principals are experienced trust and investment professionals who own a significant stake in our company, further ensuring that our clients and their families will not be subject to revolving door servicing. Today we manage over \$80 million of personal assets for our founders and principals and stand ready to serve the broader fiduciary needs of our own families when it becomes necessary. We believe keeping our incentives aligned with our clients’ best interest has been and will always be a formula for success. In conclusion, we understand that making the right choice for one’s trustee and executor involves different issues for everyone, and we do not recommend a “one size fits all” approach. We are available to meet to discuss this important process, to detail our services, and to provide any assistance which will help meet the needs of your unique situation.

Diversified Trust Company