

Trustee Basics: What is a Trustee? Who can serve as Trustee? Who selects the Trustee?

What is a trust?

- A trust is a structure in which a person – called the donor – sets aside money or other property for the benefit of an individual or group – called the beneficiaries. The donor sets forth the rules for how the assets should be managed in a document called a trust instrument. The trust property is held by the trustee, who manages the trust property for the benefit of the beneficiaries in accordance with the terms of the trust instrument.
- This structure creates a fiduciary relationship between the trustee and the beneficiaries, which gives rise to numerous duties and obligations.
- A trust can either be revocable or irrevocable.
- If a trust is revocable, the donor has the power to change the terms of the trust, retains control over the trust assets, and may be a beneficiary and/or trustee. A revocable trust becomes irrevocable upon the death of the donor.
- A trust can also be intentionally irrevocable from the outset. Often this is done for tax planning purposes (to use the donor's gift tax exemption, for example).
- Generally speaking, once a trust becomes irrevocable, the trustee is entirely in control of the trust assets and the donor has no further rights to the assets and may not be a beneficiary or serve as a trustee.

Who can serve as trustee?

- A trustee can be an individual, such as a family member, friend, or trusted advisor (e.g., lawyer or accountant) or an institution, such as a bank or trust company.
- Each type of trustee has strengths and weaknesses which should be carefully weighed by the donor (see below).

Who selects the initial trustee?

- The initial trustee is selected by the donor and named in the trust instrument.

Who selects the successor trustees?

- Because trusts are often set up to last for multiple generations, it is important that the trust instrument include language to address trustee succession.
- The donor may name specific successor trustees in the trust instrument, may retain the power to hire and fire trustees, and may give someone else (often the trustees or beneficiaries) the power to hire and fire trustees.
- If the donor or a beneficiary is given the power to hire and fire trustees, those powers are subject to certain tax rules that require the replacement trustee to be independent (i.e., not a close relative or employee).

	Pros	Cons
Non-professional Trustee	<ul style="list-style-type: none"> • A family member or friend is generally familiar with the motivations, goals and wishes of the donor, and for that reason is often particularly well equipped to interpret how the donor would have wanted the trust to be administered for the beneficiaries. • A family member or friend often has a close relationship with the beneficiaries and is aware of their specific needs and circumstances. • A non-professional trustee is also less likely to charge a fee for serving as trustee. 	<ul style="list-style-type: none"> • One potential challenge for a family member or friend serving as trustee is that trustees must administer the trust impartially, meaning that they cannot favor one beneficiary or class of beneficiaries over another. This can be difficult in both appearance and practice when the trustee is a close relative or family friend. • A non-professional trustee may also have personal and professional obligations of his or her own that limit the time and attention he or she has available to devote to trust administration. • A non-professional trustee may not be familiar with all of the legal requirements and administrative obligations associated with managing a trust. If a trustee does not fully understand his or her obligations under the trust instrument and the law, and doesn't properly follow the trust instrument or properly exercise his or her fiduciary duties, the trustee can be sued by the beneficiaries. • To mitigate the legal risk of having a non-professional family member or friend serving as trustee, many donors often pair a family trustee with a professional trustee. This arrangement combines the strong personal connections of a family member or friend with the legal and administrative expertise of a professional.
Professional Trustee	<ul style="list-style-type: none"> • Banks, trust companies, and individual professionals (e.g., attorneys and accountants) frequently serve as trustees and are chosen because of their expertise with respect to trust administration and knowledge about the rules governing trusts and trustees. • Professional trustees are typically covered by liability insurance with respect to their service as trustees, which can provide peace of mind to the donor and beneficiaries. 	<ul style="list-style-type: none"> • A professional trustee charges a fee, which is typically calculated as a percentage of the trust assets, for serving as trustee.
Bank/Trust Company	<ul style="list-style-type: none"> • Although underlying employees will change, an institution serving as trustee can continue to do so for the entire lifespan of the trust. 	<ul style="list-style-type: none"> • Banks and trust companies generally make distribution and investment decisions through a committee. The committee process often requires the beneficiaries to provide detailed financial information so that the committee can evaluate whether or not to make a particular requested distribution or investment. A common critique of this process is that it can feel impersonal and bureaucratic. • Although an institution serving as trustee may continue indefinitely, there is still potential for turnover due to mergers or restructurings of the entity, and personnel changes with the employees providing trust services to the trust, which can result in a lack of personal connection with the beneficiaries.
Individual Professional Trustee	<ul style="list-style-type: none"> • Individual professional trustees often make distribution and investment decisions in direct consultation with one or more of the beneficiaries, rather than through a committee. Direct interaction of an individual trustee can help bring about stronger personal relationships, which enables the trustee to make more expedient investment and distribution decisions based on the trustee's personal judgment and knowledge of the circumstances. • Professional individual trustees also often provide more comprehensive services than institutions, including estate planning advice and drafting, review of tax returns, and legal advice with respect to business and charitable objectives. 	<ul style="list-style-type: none"> • Similar to family members and friends, the service of a professional individual trustee is finite and must be transitioned to a new trustee when the individual retires or passes away.