



# ASPEN FAMILY BUSINESS GROUP, LLC

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## Selection of a Trustee....A Search for Wisdom

by Aspen Family Business Group, LLC

We have seen in 30+ years of our practice, clients struggle with the selection of a trustee and successor trustees to oversee the trusts they are creating under their will and trust documents. Do they select individuals or corporate trustees? Should they use their local bank trust department as the trustee? If selecting individuals, should it be a family member or a trusted friend? If using an individual, who will be a back up or successor trustee, should the individual not be able to continue to serve? Should the successor be a trust department of a bank, or a trust company? What financial parameters should the selection have to qualify?

Further complicating this decision is a growth in litigation cases between beneficiaries and trustees, making the selection of trustees and the acceptance by the trustee even more thought provoking.

In considering the selection of a trustee, many people turn to family members. This may be appropriate for a number of reasons, the knowledge of the family by the trustee and the awareness of the assets owned by the family; both are advantages in selecting a family member. However, on the other side of the ledger is the potential for family conflict (and possible litigation) because a family member is "in control" of the distributions to other family members.

Since this is often a difficult decision, we thought it would be helpful to think about a checklist of characteristics to consider in your selection.

1. An early consideration is the amount of time required to handle the duties of the trustee, filing annual tax returns, making sure the records are kept up to date and following the requirements for distributions to beneficiaries as set forth in the trust document.
2. What remuneration is appropriate for the trustee?

3. Expertise – Often individual trustees lean on the family lawyer for the expertise to handle basic administration of the trust. If that is not available, will the individual trustee have the skills to handle the basic administrative items?
4. Wisdom – Does the selected trustee(s) have the wisdom to follow the trust provisions, as well as making wise investment decisions with the assets of the trust? Will the trust assets include stock of the family business? Does the trustee have the skills and wisdom to make decisions regarding the business?
5. Knowledge – Closely aligned with wisdom, does the trustee have the pertinent knowledge to manage the assets in the trust? Will they make the necessary effort to acquaint themselves with the uniqueness of the trust assets, or to acquire the appropriate advisor(s) to assist them?
6. Integrity – Trustees are sometimes in a position that can be abused by an unscrupulous investment advisor, a self-centered beneficiary, or the beneficiary's spouse. Selecting a person or a corporate trustee who you trust to maintain the integrity of your wishes and direction in the trust is vitally important.
7. Successor Trustees – Clients often have not put as much thought into the selection of a successor trustee as with the selected trustee. Obviously a successor trustee may be put in the same position if the original trustee dies, becomes disabled or is incompetent to serve. You will want to consider this as you design your trustee arrangement and consult your attorney regarding their recommendation. Often attorneys will suggest a corporate trustee to back up an individual trustee.

The selection of a trustee is often difficult and requires a great deal of thought. A poor choice could have significant impact on your beneficiaries. A discussion with your attorney and other estate planning advisors will help guide you to a wise decision.