Wealth Planning Essentials
CHAPTER FOUR
How Should I Provide for My Heirs?

CHAPTER FIVE
Who Should Be in Charge?

CONCLUSION
What Are My Next Steps?
Your Plan, Your Legacy

Let’s face it: The estate planning process for most people is challenging at best. It involves working with lawyers and accountants, grappling with mortality issues, trying to remember arcane terms and concepts, and — perhaps most challenging — addressing sensitive family issues. It’s a small wonder that so few people have an up-to-date estate plan.

One of the reasons the process is so challenging is that most people view estate planning in isolation. That is, they think of it as only involving things that happen when they’ve died. Viewed more comprehensively, however, estate planning is really just one component of a properly structured overall financial plan.
Most people think of estate planning as the process of arranging their affairs in anticipation of death. And that obviously is the main focus of estate planning. But, done properly, estate planning can help increase our own happiness.
We all want to be happy. That seems to be why we do everything, isn’t it? It’s especially true with respect to our financial lives. And yet, some of us can’t figure out how to get there. There have been many books published on the science of happiness, particularly in the last 10 to 15 years. And, although none of them answer the question definitively, the findings they cite give us some signposts about financial happiness.
We think we have far more control over future events than we do.

Our memories tend to be faulty; our brains, after having experienced something, will fill in “facts” that didn’t actually exist, with the result that we build a past that never happened.

Lack of true imagination is common: We find it particularly difficult to imagine that we will ever think, want, or feel differently than we do now.

We treasure our own uniqueness. We see ourselves as better (more intelligent, more effective in business) or even worse (more selfish), but never average. As a result, we fail to learn from the experiences of others.
Money and Happiness

We have a difficult relationship with money. We have been told that money alone does not equal happiness. However, it is possible that, in some cases, money can add to happiness.

The National Academy of Sciences reported that people’s emotional well-being increases along with their income, but only up to about $75,000 per year. On the other hand, it also seems that incremental increases in income once a person is safely above the poverty level (or perhaps above the annual $75,000 level) do not result in incremental increases in happiness.

Studies of other countries’ levels of happiness bear this out. People in Latin American countries, for instance, where average income levels are much lower, are more or less on a par in the happiness department with Americans, who have the highest per capita income (see infographic, opposite).

It may be that Americans are not as happy as their income level would suggest because we live in a culture of stress: We are overworked and our consumer culture (like our biology) posits that feeling good is the main purpose in life, rather than a by-product of living right.
 DOES MONEY BUY HAPPINESS?
TWO COUNTRIES, TWO LEVELS OF WEALTH

**WELL-BEING INDEX ELEMENTS**

<table>
<thead>
<tr>
<th>ELEMENT</th>
<th>PANAMA</th>
<th>UNITED STATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>PURPOSE</td>
<td>66%</td>
<td>34%</td>
</tr>
<tr>
<td>SOCIAL</td>
<td>68%</td>
<td>41%</td>
</tr>
<tr>
<td>FINANCIAL</td>
<td>32%</td>
<td>39%</td>
</tr>
<tr>
<td>COMMUNITY</td>
<td>58%</td>
<td>37%</td>
</tr>
<tr>
<td>PHYSICAL</td>
<td>63%</td>
<td>32%</td>
</tr>
</tbody>
</table>

**THREE COUNTRIES, THREE LEVELS OF WEALTH**

**LIFE EXPECTANCY AT BIRTH (TOTAL, YEARS)**

- **PANAMA**: 77 YRS
- **U.S.**: 78 YRS

**GDP AS OF 2013**

- **PANAMA**: $0.04265 TRILLION
- **U.S.**: $16.8 TRILLION

**GDP GROWTH**

- **PANAMA**: 8.4%
- **U.S.**: 1.9%

Data sources: Gallup-Healthways Global Well-Being Index, World Bank
Planning Our Way to Happiness

So what can we do with this information? Because self-control is so critical for happiness, it would seem that in-depth planning for your financial life is an important component to happiness. If you have adequate information about your financial situation and can use that information to formulate a road map for where you want to go, then you are likely to have greater autonomy, or control, and therefore may have a greater potential to be happier.

Good planning is not merely “financial” planning. This is true because money alone does not make a person happier. Rather, solid planning is built on a basis of solid discovery. That is, to formulate a plan that may truly improve your life, you must first discover those key goals and issues that really motivate you, and then compare your existing financial situation against these goals to see how prepared you are to meet those goals. Once you’ve uncovered what is most important to you, you can begin to formulate a plan that really makes sense and that can potentially lead you to greater happiness.
This kind of planning can’t be done on a website or with software. It requires soul-searching and possibly some help from professionals who know how to ask the right questions and interpret the answers. But the reward for doing it the right way just might be a greater degree of happiness!
Put in more tangible terms, we strongly recommend planning that proceeds in the following steps. Note that the first four steps aren’t really planning at all, but rather discovery steps that are necessary before any meaningful planning can take place:
Identify your key goals and issues. Make them specific and start with the nonfinancial ones. One author identified seven factors that included things like family and personal relationships, meaningful work, friends, and values as being key drivers of happiness. Think of those kinds of goals first. What might retirement look like to you? Will you be the kind of person who will always have to work — not for the money but to keep you from going crazy? If maintaining community and personal relationships is important to you, do you really need that second house? Let personal, values-based decisions drive the financial ones.

Complete your own personal balance sheet. Having a personal and detailed balance sheet lets you see at a glance what your total financial picture looks like, including assets that you might not otherwise consider, like life insurance and real estate.

Identify your risk sensitivity. We’ve now endured the Great Recession and we know viscerally how that feels. In light of that experience, what is your emotional reaction to risk? This is less about how a financial professional might describe it and more about your reaction to it.

Assemble a list of your estate planning documents.

Begin the planning process with all this information at hand. Only after you’ve assembled all the information just described should you start the planning process.
When people think of what happens to their property at death, they usually think of wills and probate. However, with the rise in use of revocable living trusts and the increase in value of retirement plans and life insurance, going through the probate process is not only optional, it sometimes doesn’t happen even when the decedent wants it to.
Types of Property

Different kinds of property and ownership arrangements result in different ways in which that property is transferred upon an owner’s death.
**Single ownership**

This is the way most people think of owning property. A person holds title to an asset (a bank account, for instance) in his or her name. The person can do whatever he or she wants to do with the property. Note that this category does not include retirement plans or life insurance, which have special features.

**Tenancy in common**

A type of ownership in which a co-owner can pass on their interest at their death in the manner they choose. For example: If person A and person B own a parcel of real property as tenants in common, person A can pass on his or her interest to whomever he or she chooses through a will, and person B has no say over where that interest goes.

However, a co-owner often cannot dispose of his or her fractional interest during his or her life without the consent of the other co-owner.
Right of survivorship

Refers to property that is co-owned with another person and cannot be separately disposed of at death; rather, the deceased co-owner’s interest passes automatically to the other co-owner (commonly known as joint tenancy with right of survivorship, “JTWROS”).

Trust

A trust is a legal arrangement involving three parties: the person creating the trust (the grantor, trustor, or settlor), the person who owns legal title to the property (the trustee), and the person for whom the trust is administered (the beneficiary).

The grantor gives legal title of assets to the trustee, who in turn agrees to administer the property in accordance with the terms of the trust agreement. This means that the administration and disposition of the property is governed not simply by who owns the property but also by the trust agreement.
Beneficiary designation

This is property that is owned by one person and passes at death, not by will but by beneficiary designation. Properties that pass by beneficiary designation include:

- Life insurance policies
- Individual retirement accounts (IRAs)
- 401(k) plans
- Annuities
- Many types of employment benefits, such as stock options and deferred compensation

When the owner of a beneficiary designation property establishes ownership, he or she is asked to fill out a beneficiary designation form, naming the beneficiaries who are to receive the property in the event of the owner’s death.

If the owner fails to fill out a beneficiary designation, the property passes according to the document establishing the property (typically, the property passes under the person’s will).
Community property

Certain states are “community property” states, which means generally that any property acquired through your earnings while you’re married is owned half by you and half by your spouse.

Property acquired before the marriage or by gift during the marriage is typically referred to as “separate property.”

Community property can be converted to separate property, and vice versa, by using a “community property agreement” signed by both spouses.

Community property can affect other types of property ownership. For example, a husband acquires a life insurance policy while he is married and he names his daughter as the beneficiary. His wife owns one-half of the insurance policy, so even though his daughter is the sole beneficiary, she is only entitled to half the death benefit, while his wife is entitled to the other half.
Community property refers to property acquired through your earnings while you’re married, which is deemed to be owned half by you and half by your spouse.
Wills and the Probate Process

For property to be passed on at death, a person’s will must be “probated,” meaning it must go through a legal process to establish the validity of the will. Historically, the probate process was expensive and drawn-out. While this perception continues to live on, many states now have a much more streamlined probate process.

Advantages to the probate process:

1. The probate process provides a ready legal forum in which to test the will’s validity.
2. If the decedent died with difficult creditor issues, probate offers a clearly defined process for addressing them.

If a person dies without a will or trust, single ownership property still passes under the probate process. But in this situation, it passes according to “intestacy,” the state law that dictates where property passes if a person dies without a will (and if the property does not pass through some other means, such as by survivorship). In general, property passes first to a surviving spouse, then to children, then to parents, and so on.
TO WILL OR NOT TO WILL: UNDERSTANDING WILLS AND PROBATE

**WHAT IS A WILL?**
- A legal instrument
- Permits a person, the testator, to make decisions on how his estate will be managed and distributed after his death.

**WHAT IS PROBATE?**
Court-supervised process that:
- Verifies the will’s authenticity
- Pays off any outstanding bills
- Distributes the estate’s assets

**WHY CHOOSE A WILL?**
- Simplicity during your lifetime
- Choice in guardians for your children
- Control over how your assets are distributed
- Typically less expensive than a trust
- Helpful in resolving credit issues or challenges to a will

**WHO SHOULD CONSIDER A WILL?**
- Younger people whose plans may change over the years
- Those who anticipate a challenge to their estate
- Those who prefer not to use trusts

**WHAT ARE THE DRAWBACKS?**
- Probate can be long and expensive
- A will and power of attorney are less effective than a trust in the event of incapacity
- Probate proceedings are a matter of public record
- Property in different states requires individual probate processes

---

92% of adults under the age of 35 do not have a will

39% of males feel it is not necessary

26% of females feel it is too costly

FAMOUS AMERICANS WHO DIED WITHOUT A WILL:
- Abraham Lincoln
- Billie Holiday
- Martin Luther King Jr.
- Howard Hughes
- John Denver
- Sonny Bono

2 in 4 American households with children do not have a will

Sources (from top to bottom): Virtual Attorney, LegalZoom, Black America Web, Forbes, Rocket Lawyer
Revocable Living Trusts

In the case of revocable living trusts, the grantor is often the trustee and the beneficiary. In other words, the grantor gives property to himself or herself as trustee and agrees to administer it for his or her own benefit as beneficiary.
USING A REVOCABLE LIVING TRUST

Benefits:
- Trusts are generally easier than a will to administer at death, especially if the grantor has property in multiple states.
- Trusts offer advantages that durable powers of attorney can’t in case of incapacity.
- Trusts offer privacy that probate can’t offer.

Drawbacks:
- Trusts are generally more expensive to create than a will.
- Cost savings are not as great in states that have a streamlined probate process.
- Trusts can be confusing or unsettling.

A TRUST IS A LEGAL ARRANGEMENT INVOLVING THREE PARTIES:
Grantor places assets in a trust, which is administered by a trustee for the benefit of the beneficiary.
One person can play all three roles, depending on the trust.

REVOCABLE LIVING TRUST:
This type of trust, created during the grantor’s lifetime, can be revoked, meaning the grantor still has control over the assets.
What Happens If You Become Unable to Manage Your Assets?

The way that property passes at death occupies a lot of planners’ thinking, but often the more important question is how can the property be managed during the property owner’s lifetime. Most of the time, the property is managed by the owner; however, if that owner becomes incapacitated, the question becomes whether a third party can manage the property on the owner’s behalf to help ensure that the owner’s bills are paid.
**Possible solution: revocable trusts**

The type of ownership that offers the greatest incapacity planning benefits is trust property. If you become incapacitated, the person named as successor trustee takes over control of all trust assets, managing them on your behalf. This frequently makes the revocable trust a suitable choice for a person with incapacity concerns.

There are a few drawbacks:

1. The successor trustee only has control over assets that are “transferred to the trust” — that is, assets titled in the trustee’s name.
2. Some assets can’t be transferred to the trustee, which means that the trust is ineffective to handle management of those assets.
3. The grantor of the trust may forget over time to transfer assets to the trust, with the result that the successor trustee has no power to manage those assets.

**Other options**

If all assets were held as single ownership property, there are two alternatives for managing those assets:

1. If the property owner executed a durable power of attorney, then the agent under that power may be able to manage the assets on behalf of the property owner.
2. If the property owner does not have a power of attorney that is accepted by the institution, then a guardian or conservator must be appointed for the property owner. This is typically a very expensive, time-consuming procedure, requiring court supervision and reporting to court on a regular basis.
Planning Alternatives

In light of all this information, what is the best way to own property for purposes of passing it at death or for managing it during your lifetime? It may be best to take a look at each scenario and determine which makes the most sense for your individual situation.

Talk to Us [click here]
<table>
<thead>
<tr>
<th>SCENARIO 1</th>
<th>SCENARIO 2</th>
<th>SCENARIO 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>You own only beneficiary designation property and right of survivorship property.</strong></td>
<td><strong>You own a mix of different property types.</strong></td>
<td><strong>You own a mix of different property types.</strong></td>
</tr>
<tr>
<td><strong>WHAT HAPPENS</strong></td>
<td><strong>ONE OPTION</strong></td>
<td><strong>ONE OPTION</strong></td>
</tr>
<tr>
<td>At the person’s death, all his or her property passes to the surviving joint owner or to the beneficiary of the retirement plan/insurance.</td>
<td>Draft a will and power of attorney. Its chief benefit is that it offers simplicity during your lifetime: No transfers or ongoing maintenance of asset titling is required. It does, however, subject your estate to probate.</td>
<td>Draft a revocable living trust. You no longer own the assets directly, but own as a trustee; you have a fiduciary duty to yourself; and you have to transfer all the assets to yourself.</td>
</tr>
<tr>
<td><strong>WHO</strong></td>
<td><strong>WHO</strong></td>
<td><strong>WHO</strong></td>
</tr>
<tr>
<td>Best considered by young married couples without children. This technique also may work for people who may be very elderly and who have only one child or another heir whom they trust implicitly.</td>
<td>Best for younger people who will probably change their wealth transfer plans several times before their deaths; people who may be anticipating some kind of challenge to their wills; or people who just don’t really understand how trusts work and will probably fail to “fund” it adequately, resulting in a probate in any event.</td>
<td>Those who have terminal or very serious illnesses, who are imminently facing incapacity or who have a significant history of these issues in their families, and who are elderly (perhaps age 80 or above). Also highly recommended for those who have real property in more than one state or with privacy concerns.</td>
</tr>
</tbody>
</table>
CHAPTER THREE

The Importance of an Annual Estate Plan Review

The estate planning process involves contemplating your own mortality, trying to decide how to provide for loved ones, and grappling with potential tax consequences. It means finding a lawyer who is competent, empathetic, and responsive. Sometimes it means having difficult family meetings. Small wonder, then, that so many people haven’t addressed their estate planning needs. But even those who have grappled with these problems and gone through a comprehensive planning process may not have finished — if they haven’t transferred their assets to recommended accounts or trust structures.
Titling Makes a Difference

Good estate planning lawyers will have their share of horror stories about assets passing to the wrong people.
Estate planning lawyers alone can’t be relied on to solve the problem, because most people may only talk to their estate planning attorney once every five or 10 years. Even if the lawyer ensures that assets are properly titled at the time the estate plan is completed, people often acquire new assets afterward. And these assets are generally the ones that cause the problems because they have not been reviewed to ensure that they are owned in the proper form.

The way you own your wealth can have a huge impact on whether that wealth will actually pass at your death according to plan. In other words, the way in which assets are “titled” can either support or undermine your estate plan.

Your estate plan is a critical component of your financial and life planning. You may have invested a great deal of emotional energy (not to mention legal fees) in establishing a plan that truly reflects the values that you want to pass along with your wealth. Don’t let that work go to waste because of titling problems.
You need to review (or have someone review for you) all of your assets in light of your estate plan every year to ensure that these problems won’t arise at your death.
You can perform this review yourself by undertaking the following steps:

☑ **Build a comprehensive personal balance sheet.** Make a list of all of your assets, including life insurance and retirement plans. In a separate column next to that list, indicate the way in which each asset is held: for instance, “trustee,” “individually,” “joint tenants with right of survivorship,” and so forth. For any **beneficiary designation property** (life insurance, retirement plans, and corporate benefits), list who is named as primary and secondary beneficiaries.

☑ **Determine your estate plan.** What kind of estate planning documents do you have? A will? A revocable living trust? Nothing? Again, nothing may be a perfectly reasonable answer for younger professionals who don’t have children.

☑ **Compare asset titling with your plan.** It should become apparent pretty quickly if there are gaps. For example, if you have a revocable living trust but your assets are owned in your own name, generally you have a problem.

☑ **Retitle your assets or see a professional.** Not all apparent inconsistencies are actual problems. For example, many estate plans leave property to a spouse in trust, rather than outright, but intentionally name the spouse as the outright beneficiary of retirement plans because there are income tax benefits to doing so. Before making any changes, you should check with your estate planning lawyer or fiduciary professional to confirm that you really should make a change.
Chapter Four

How Should I Provide for My Heirs?

One of the first things people think of when they consider estate planning is the arrangements they’ll make for heirs, whether a surviving spouse, kids, friends, or charities.
Issues to Consider

The way property passes to beneficiaries depends on several factors: How much, to whom, and in what form.
How much?

It may seem like a fairly easy question to answer, but it can be surprisingly difficult.

The reaction of many married couples is that each will leave everything to the other. But what if there are children from a previous marriage? If both spouses have wealth of their own, then maybe the plan would be for the first spouse to die to leave some portion of his or her estate to his or her children from the previous marriage.

Another challenging point is how much is enough for children? Parents want to leave their children enough to increase their happiness but not so much that it drains their initiative. This issue may be addressed by deciding to give children less or pass on wealth in a restricted fashion (usually in trust).
To whom?

**Giving to family: Consider making gifts to grandchildren**

This can benefit the children as well since they won’t have to cover expenses (like education) that the gift to the grandchildren may cover.

Assets passing to grandchildren are not subject to creditor claims of the child. Gifts to grandchildren won’t be subject to estate tax at the child’s death.
Giving to charity: Think about donor advised funds or private foundations

Option 1: A donor advised fund is created by you at a qualified tax-exempt charity that allows you, your family, or organization to recommend grants.

Benefits: Separate the timing of your grants from the timing of the tax deduction; potentially enjoy a larger deduction; donate complex or highly appreciated assets while avoiding capital gains taxes; delegate the administration of your account to simplify your recordkeeping.

Option 2: A private foundation allows you to make grants to support social, educational, religious, or other charitable activities while potentially qualifying for tax advantages.

Organizational notes: Your foundation can be organized as either a nonprofit corporation or a charitable trust. There are some administrative functions required with running a private foundation, including filing tax returns.

In what form?

Establishing a lengthy trust with complicated distribution directions isn't especially helpful if the trust will only hold $100,000 of assets, but it may be very helpful if the trust assets are $10 million.
Dividing the Wealth: Three Approaches

A retired parent with two children has two assets: a home worth $3 million and an investment account worth $5 million.
### First Approach

**“Equalizing” Gifts**

**The Situation**
The parent knows her son wants the home, while the daughter has a business and could use the liquidity. So the parent leaves the home to the son and the investment account to the daughter.

**Considerations**
The retired parent may be living off her investment account to the point that her expenditures are greater than her earnings. This can mean that, while the value of the house might be appreciating, the investment account value is shrinking, resulting in an imbalance.

### Second Approach

**Percentage of Estate or Trust**

**The Situation**
The parent leaves 50 percent of her estate to each child.

**Considerations**
The children are free to divide the property up so that the son could wind up with most or all of his share in the form of the house, but the daughter might take part of the house as well to make up for the dwindling size of the investment account. If the percentage gifts are not going to be equal to all beneficiaries, then the person making the gift should be very clear in communicating the reason why. This will go a long way to ease the hurt feelings.

### Third Approach

**Shared Ownership**

**The Situation**
Each beneficiary owns a fractional interest of the assets given.

**Considerations**
This is perhaps the most “fair” solution, in the sense that all beneficiaries receive the same interest. The children or other beneficiaries have to get along.
The Trust Process

*Trusts typically focus on protection. And it is this more traditional “protection” aspect that is often cited by those who emphasize extensive use of trusts in estate planning.*

**Traditional reasons for using trusts**

- Protecting beneficiaries against their own lack of experience, either in investing or with unscrupulous advisors.
- For a person with disabilities, either as a result of an accident, genetics, or self-inflicted behaviors (like substance abuse).
- Protecting beneficiaries from others, primarily creditors.
- Protecting beneficiaries from each other. The trustor may want to benefit two or more beneficiaries who don’t get along or may not get along in the future. A trust is the standard solution.
- Protecting trust assets from division in a divorce action. In community property states, keeping inherited assets in a separate trust will help avoid having those separate assets commingled with the community assets.
- Allows for joint asset management. While ownership and joint management can be worked out using structures like corporations, partnerships, and limited liability companies, trusts may be important when minors are involved or when unified management oversight is required.
- Protecting beneficiaries from the IRS. Such trusts are established to be exempt from estate, gift, and generation-skipping transfer taxes.
Distribution options
The universe of trust distribution provisions can be divided into two large subsets: objective and subjective provisions.

Objective provisions
These leave no room for a trustee to be overindulgent. They may be income-based or incentive-based. For example, one may distribute a fixed amount for the beneficiary to start a business or professional practice, or it may deny distributions if the beneficiary fails a drug or alcohol test.

Points to remember
Traditional “income-only” provisions are useless in most settings because they bear no relation to any goals that the grantor might have.
- They cannot adapt to the needs of a particular individual.
- They do not allow for changing circumstances.

Subjective provisions
These require the trustee to exercise discretion in making value judgments.

Points to remember
- The grantor’s intention should be set forth in sufficient detail to tell the trustee the trust’s deeper purpose.
- The more discretion given to the trustee, the greater the likelihood that the trustee will exercise power in a manner the grantor would not have agreed with.
- Discretion guarantees only flexibility, not success.
- Trustee exculpation should be added, including provisions that set forth how the costs of litigation are to be paid.
Align Your Priorities

Issues for you and your estate planning attorney to consider
Precatory language
Nonbinding language in a trust agreement stating preferences or purposes of a trust to help guide the trustee in making decisions. This may include:

- Primary purpose for creating the trust
- A statement of distribution preference
- A statement of beneficiary preference

Greater beneficiary control and involvement

- The beneficiary can have control over the trustee identity. If it isn’t appropriate for the beneficiary to become a trustee, the beneficiary should at some point have the power to remove and replace the trustee.
- The beneficiary should be entitled to have as much knowledge about trustee decisions as possible.

The family conundrum
In many states, trust assets become “marital” assets. This can create tension that, at a minimum, you should discuss thoroughly with your attorney.

One possible approach might be to require that a beneficiary, before getting married, enter into a premarital agreement as a prerequisite to receiving trust distributions.

It may also make sense that legal fees for setting up such an agreement be paid from trust assets.
CHAPTER FIVE

Who Should Be in Charge?

Your estate plan must be implemented on an ongoing basis. This means that you must not only work with your attorney to choose the right trust language, you must also choose the right trustee to put that language into effect. Trustee selection is a critically important — sometimes the most important — part of the estate planning process. There is no trust that is so well-written that it can ensure against trustee mismanagement. This chapter will discuss the responsibilities a trustee bears, what to consider when selecting a trustee who will best exercise those responsibilities, and some additional options that may add flexibility to the decision.
Given the standard of care to which a trustee is held, and the sometimes difficult decisions a trustee must make, choosing the right trustee is critical to your estate plan’s success.
One process you might follow to choose a trustee would be:

1. Decide what kind of distribution provisions will be in the trust. Will they be fairly objective or more subjective, requiring greater discretion on the part of the trustee? For example, a trust might allow for a beneficiary’s “support.” Does this support encompass buying the beneficiary a house or merely paying the rent?

2. Decide what kind of assets the trustee will be administering. Managing a portfolio of marketable securities requires a very different skill set from that needed to manage a controlling interest in a closely held business.
WHAT DOES A TRUSTEE DO?

A TRUSTEE HAS SOME RESPONSIBILITIES THAT REMAIN CONSTANT:

I’VE BEEN NAMED AS A TRUSTEE FOR MY MOTHER’S TRUST. WHAT ARE MY RESPONSIBILITIES?

A trustee must have undivided duty of loyalty toward all the beneficiaries (no favoritism unless the trust says you can).

A trustee is required by state law to manage trust assets “prudently.” This means that a trustee is held to a higher standard of care in managing the trust assets.

A trustee has administrative responsibilities, prepares and files taxes, and communicates with the beneficiaries as the trust requires.

A trustee must make tough calls when deciding when discretionary distributions are to be made to a beneficiary.
Individual Trustees vs. Corporate Trustees

The decision to appoint an individual or a corporate trustee and choosing the specific trustee require thoughtful analysis. Individual trustees may be the better choice if a particularly close relationship with the beneficiary is needed (when caring for a parent, for example) or if the trust asset requires specialized knowledge (like running a family business).

However, a trustee’s close relationship with a beneficiary can backfire: For example, it’s not always a good idea to name one sibling as the trustee for another sibling because complex emotional ties can get in the way of objective management decisions. Individuals also might be the better choice if the trusts are of smaller value or shorter duration.

Corporate trustees often are the better choice when there isn’t a trusted individual available who can both manage trust assets effectively and make the hard decisions about when (and when not) to make distributions. Corporate trustees also are good choices when choosing an individual would lead to adverse income, gift, or estate tax results.
WHO IS THE RIGHT TRUSTEE FOR YOU?

HOW LARGE IS YOUR TRUST?

MORE THAN $500,000

Must the trustee have specialized knowledge about a family business held in the trust?

YES

INDIVIDUAL TRUSTEE

NO

There is no trusted individual available

There is a potential for clashes among beneficiaries or between the trustee and the beneficiaries

The available individual would face adverse tax results

The available individual would have conflicts of interest

The trust is longer term and multigenerational

The trust is complex and requires extra oversight

YES TO ANY

NO TO ALL

UP TO $500,000

CORPORATE TRUSTEE

INDIVIDUAL OR CORPORATE TRUSTEE
A Corporate Advantage

Although individuals tend to be named as trustee more frequently than corporate trustees, naming the latter does have some benefits:

- **Regulation and oversight**
  A corporate trustee’s actions are reviewed both internally by its own compliance group, and by state and federal banking regulators. Further, most courts hold corporate trustees to higher standards than individuals because they are considered professionals.

- **A broad array of services**
  A corporate trustee has fiduciary professionals, investment managers or specialists, real estate advisors, and other professionals on staff. The professionals bring experience that helps them identify opportunities to improve trust operations, like making certain tax elections or petitioning the court for instructions when needed.
Objectivity
Corporate trustees can be used to make unpopular decisions that individuals might have a harder time with, like telling a beneficiary “no” to a distribution request.

Continuity
Trusts are often long-term, multigenerational tools. A corporate trustee provides continuity of trust administration, unaffected by incapacity or death.

Investment management expertise
Trustee investments are governed by state statute and almost always require a “modern portfolio theory” (or “total return”) approach. Corporate trustees use this approach regularly.
Trustee selection is a critically important — sometimes the most important — part of the estate planning process.
Although individuals tend to be named as trustees more frequently than corporate trustees, naming the latter does have some benefits:
Are Co-Trustees a Good Idea?

A common question is whether a corporate trustee and an individual can serve together as co-trustees.

When it works well, this can be an excellent solution, combining the insight and concern of a family member with the administrative experience and investment skills of a corporate trustee. To be effective, however, the co-trustee structure must be carefully considered and drafted. For instance, what happens if the co-trustees do not agree? Should there be two or three co-trustees? Should one trustee hold the deciding vote over distributions, investments, or sale of the family business? To alleviate family discord, a corporate trustee could hold the deciding vote over distributions.

Still another possibility is to name a corporate trustee as successor, in the event that an individual trustee is unwilling or unable to serve.
CONCLUSION

What are My Next Steps?

A well-crafted estate plan is a snapshot of your legacy: it shows what you have created over the course of your lifetime and identifies those who will benefit from your generosity. Take the time to map out a wealth transfer strategy and then clearly communicate that strategy to your beneficiaries early, so that all of the decisions are in your control.

Consider sitting down with professionals to review your situation and gain an understanding of how your assets will transfer if you make no changes to your existing plan. A relationship manager at Wells Fargo Wealth Management can work with you to bring dedicated specialists to the table, including wealth planners and fiduciary advisory specialists, who can advise you and coordinate with other advisors, such as your attorney and CPA. Together, you can discuss where you want your assets to go, potential taxes that may be due, and other possible gaps that need to be closed.
The most fundamental estate planning principles remain unchanged. The duties to manage finances and assets prudently, pass values along with wealth to children and grandchildren, and treat all beneficiaries fairly are all responsibilities that are timeless.
Disclosures

Wells Fargo Wealth Management provides products and services through Wells Fargo Bank, N.A. and its various affiliates and subsidiaries.

Wells Fargo affiliates may be paid a referral fee in relation to clients referred to Wells Fargo Bank, N.A.

Wells Fargo Bank, N.A. (the “Bank”) offers various advisory and fiduciary products and services. Financial Advisors of Wells Fargo Advisors may refer clients to the bank for an ongoing or one-time fee. The role of the Financial Advisor with respect to bank products and services is limited to referral and relationship management services. The Bank is responsible for the day-to-day management of non-brokerage accounts and for providing investment advice, investment management services and wealth management services to clients. The Financial Advisor does not provide investment advice or brokerage services to Bank accounts, but does offer, as applicable, brokerage services and investment advice to brokerage accounts held at Wells Fargo Advisors. The views, opinions and portfolios may differ from our broker dealer affiliates. Wells Fargo Advisors is a trade name used by Wells Fargo Clearing Services, LLC, and Wells Fargo Advisors Financial Network, LLC, Members SIPC, separate registered broker-dealers and non-bank affiliates of Wells Fargo & Company. This report is not an offer to buy or sell, or a solicitation of an offer to buy or sell the strategies mentioned. The strategies discussed or recommended in the presentation may be unsuitable for some clients depending on their specific objectives and financial position. This information is provided for education and illustration purposes only.

The information and opinions in this report were prepared by Wells Fargo Wealth Management. Information and opinions have been obtained or derived from sources we consider reliable, but we cannot guarantee their accuracy or completeness. Opinions represent Wells Fargo Wealth Management’s opinion as of the date of this report and are for general information purposes only. Wells Fargo Wealth Management does not undertake to advise you of any change in its opinions or the information contained in this report. Wells Fargo & Company affiliates may issue reports or have opinions that are inconsistent with, and reach different conclusions from, this report.

Wells Fargo & Company and its affiliates do not provide legal advice. Please consult your legal advisors to determine how this information may apply to your own situation. Whether any planned tax result is realized by you depends on the specific facts of your own situation at the time your taxes are prepared.

© 2016 Wells Fargo & Company. All rights reserved.