Naming Children as Trustee Can Cause Tension, Hurt Feelings

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One of the most important decisions that trust clients make is who will administer their trust after they are gone. Anyone can be named as a trustee of a trust. Naming a private professional fiduciary may be the smartest option to help prevent conflict down the road, but trustees often name a family member or close friend in hopes of avoiding the perceived extra costs of using a private fiduciary. Unfortunately, naming a family member may have the inverse result of increasing the cost of administration and family-member trustees often face increased scrutiny from their family-member beneficiaries. The responsibilities and duties that accompany the office of the trustee, as well as the rights of the beneficiaries to demand that the trustee take action and provide them with information, can leave trustees feeling that their job is a thankless one.

Many parents have blind spots when it comes to their children, and they do not realize that naming one or two of their children to the exclusion of others is a recipe for conflict. Siblings who previously dealt with each other at arms-length and on equal footing are faced with a change in the power dynamic. While the trustee is placed in a perceived position of strength, having access to mom and dad’s financial information and making decisions about the administration of the trust, the trustee must remain neutral and is accountable to the beneficiaries for all actions taken regarding the trust. The trustee must keep detailed records including receipts for all trust expenditures and the beneficiaries have rights to obtain trust related information. A trustee is held to a high standard and owes fiduciary duties to the beneficiaries so there is little room to make mistakes.

While trust advisors, including attorneys and accountants, guide the trustee through the process of administering the trust and advise the trustee of her duties, the long to-do list is often overwhelming.

California Probate Code Section 16000 et seq. sets forth the framework of the trustee’s duties including the trustee’s duty to administer the trust solely for the benefit of the beneficiaries, to treat the beneficiaries impartially, to preserve the trust property and to make it productive, to enforce claims that the trust may have and to defend the trust from claims that may cause loss to trust property, and to apply the full extent of the trustee’s skills. Ultimately the simple act of naming a trustee places a great deal of responsibility on that individual. A trustee’s duties are made even more complicated when the trustee is also a beneficiary of the trust. In that case, the trustee finds himself wearing two hats and balancing his responsibilities as a trustee with his interests as a beneficiary (usually necessitating separate legal counsel to represent the individual as a trustee and as a beneficiary).

Those who find themselves in the position of trustee are wise to seek out good advisors early to help the trustee navigate the process.

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