

GUEST CONTRIBUTOR

Licensed private fiduciary an option for estates

By RON WARGO



In a recent article I outlined the importance of selecting a trustee and gave several ideas for making that very important decision. Some options were using a family member, a bank or a trusted advisor who already has a relationship established like an accountant or attorney. Another option well-deserving of a separate article is that of using a California Licensed Private Fiduciary as trustee. While this industry has been around for decades, licensing requirements and professional associations for fiduciaries have arisen in the last five to 10 years, adding additional assurances to the field.

Fiduciaries assume a high legal and ethical obligation to persons for whom they manages assets; the law calls this, obviously enough, a fiduciary duty. A licensed fiduciary can often be an excellent choice to carry out this important role.

A California Licensed Private Fiduciary is a person who has met certain licensing requirements and assumes responsibility for a position of trust. These requirements include completion of at least 30 hours coursework or certificates in Professional Management for Trustees and Professional Management for Conservators. The candidate must submit a criminal background clearance and have live fingerprint scans completed. Then the candidate, after making application to the California Fiduciaries Bureau, must pass a written exam. Fiduciaries may serve by court appointment as guardians, conservators and personal representatives of estates. They also serve by agreement.

As with all trustees, a private fiduciary has the responsibility of carrying out the terms of the trust as set forth in a trust document. Trustee duties can include funding the trust with appropriate assets, safeguarding assets, investing the trust assets, reporting to beneficiaries, keeping proper records and filing income tax returns for the trust, and making distributions in accordance with the trust terms.

In 2007, California required nonfamily members to be licensed in order to become a private fiduciary. The Department of Con-

sumer Affairs of the state of California has a bureau for professional fiduciaries and is responsible for carrying out licensing. Any private fiduciary who continues to serve as a trustee for the benefit of two or more unrelated persons, families or combinations of the two without registering for a license will be subject to removal by the court.

Registration is not the only method to make sure the potential professional fiduciary has a high level of proficiency in his or her chosen field. The Professional Fiduciaries Association of California (PFAC) maintains a rigorous code of ethics, requiring its members to avoid conflicts of interest. In many cases where the court deems it necessary, a PFAC fiduciary member is appointed as a neutral third party to protect vulnerable and incapacitated people from abuse, neglect and exploitation.

All fiduciaries affiliated with the Professional Fiduciaries Association of California must fulfill education and experience requirements. These requirements include either a two-year degree with five years' fiduciary experience or a four-year degree with two years' fiduciary experience as a minimum to become a general member. PFAC members must meet annual educational requirements and standards set by the organization. Members must undertake a minimum of 30 hours of coursework to obtain a license and an additional 15 hours of work each year to keep the license active.

Why would someone opt to choose a private professional fiduciary over a more traditional trustee such as a bank, a family member or a trusted advisor?

First, the estate may be messy and a family member may be part of the mess. For exam-

ple, there may be contention between siblings about the terms of the trust. This can become even more of a problem if family businesses are involved. After a parent dies, emotions may run wild, creating more conflicts than were there to begin with. Many fiduciaries also have backgrounds in psychology, social work and mediation and are obvious choices for these types of situations.

Second, having a private professional fiduciary that the heirs recognize as neutral may allow important tasks to be completed, which could save the trust or estate significant amounts. In many situations, a trust may be too small for a bank to want to deal with. The private professional fiduciary may also be ideal in order to work and communicate with family members, thereby keeping the peace among differing viewpoints. The private professional fiduciary can thus provide the expertise to make sure fiduciary duties are met, such as proper recordkeeping, while allowing the family members to provide insight needed to determine appropriate distributions and other related and more personal decisions.

Third, estate planners often neglect to consider the role of trustee during an incapacitated adult's lifetime, but this is extremely important. Most banks, and even accountants and attorneys are not equipped serve as trustee for a living person over many years with all the issues that arise with incapacity or special needs trusts. Serving in this capacity can be quite daunting and very difficult. The fiduciary can serve an important function in these cases, where other professionals – or even family – simply don't want the trouble and don't have the experience.

Careful consideration of private fiduciaries is imperative when recommending trustee options to your client. It is a good idea to check with a team of advisors about the selection of a trustee. Most of your attorneys, accountants or financial advisors have a list of experienced private professional fiduciaries their clients have used. This category of potential trustees should not be overlooked when selecting your trustee.

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