

DO YOU NEED A CORPORATE FIDUCIARY?

CARING FOR YOUR ASSETS – AND YOUR BENEFICIARIES’ FINANCIAL NEEDS

Over the past few years, the laws that impact how individuals plan for their estate and transfer their wealth have changed dramatically. To a great extent, the wealth transfer strategies you pursue today will shape the type of tomorrow you wish to provide for your loved ones. We frequently hear the question from our clients: “What can I do to ensure that my goals are carried out in a manner that fulfills my ultimate desires for my loved ones?”

One of the critical elements of creating a plan to help achieve your goals is to identify someone to stand in your shoes who will act in the best interest of your beneficiaries. Under a properly drafted plan, that person will be required to act in a fiduciary capacity to help ensure that the interests of your beneficiaries are protected and that your plans are carried out according to your wishes. Whether you are just beginning the process of setting up a trust to benefit your family members or charity, creating or updating your estate plan, establishing financial guardianship for a disabled child or implementing a charitable giving strategy, a fiduciary can play a key role in helping you accomplish your goals.

When significant assets are involved it often makes sense to consider a corporate fiduciary – perhaps even serving in conjunction with a relative or close family advisor. Through your will and/or trust, a corporate fiduciary can be given the authority to carry out a wide variety of critical duties, such as managing and distributing assets held in your trust or ensuring that the administrative and technical aspects required to carry out your philanthropic goals are met.

A fiduciary owes a duty of loyalty and prudence to beneficiaries and is required to act in good faith and in the beneficiaries’ best interest in carrying out your intent.

TRUSTS

One of the most important aspects of creating a trust is naming someone to act as your trustee. A trustee is held to a fiduciary standard of care. This means that the trustee owes a duty of loyalty and prudence to your beneficiaries and is required to act in good faith and in the beneficiaries' best interest in carrying out your intent. Because you cannot foresee all of the situations that may occur after your trust is established, it is critical to name someone to act as trustee who will carefully and skillfully carry out your wishes as expressed in the trust instrument. When a family's assets are held in a variety of different forms, under various ownership structures and possibly in various tax jurisdictions, your trustee must possess a wide range of competencies.

When you set up a trust you may need to name a trustee who has experience and expertise in portfolio management, management of non-traditional assets (such as closely held business interests or real estate) as well as trust administration. The trustee plays a very important role in monitoring the trust investments to help ensure that they continue to be suitable for the needs of your beneficiaries. The administration of your trust will also require your trustee to fulfill a range of accounting, reporting and tax filing responsibilities. In making distribution decisions on behalf of your beneficiaries, your trustee must interpret and apply the sometimes complex language of the trust instrument as well as keep in regular contact with the beneficiaries to keep abreast of their needs and any changed circumstances.

What might this entail? For example, Stephen, 55, owns a business. He has a basic estate plan in place with a will and a trust established under that will. The trust provides that after Stephen's death the trustee is required to pay all of the income to Stephen's wife, Susan. After Susan's death, the remaining balance is to be distributed equally to Stephen's children, Samantha, 22, and Simon, 17. The trust is funded with Stephen's assets after his death. The trustee is responsible for investing and managing the trust assets and making distributions to Susan during her life. The trustee must balance Susan's interest with those of the ultimate remainder beneficiaries, Samantha and Simon. Since the trust provisions entitle Susan to all income from the trust, she may want the trust assets invested in income-producing assets. However, Samantha and Simon may prefer a more growth-oriented investment approach that will provide them with a larger inheritance. The trustee must consider the long-term needs of all beneficiaries when deciding how to invest the assets.

If your trust is designed to last far into the future, corporate fiduciaries are best positioned to provide the continuity to help protect your trust assets and the interests of your beneficiaries for the years or generations to come.

ESTATE SETTLEMENT

State laws control how a person's estate must be administered. Your executor must be experienced in the estate settlement rules that will govern all of your property, wherever it may be located. At times it is beneficial to have a corporate fiduciary – who is experienced in complex matters – settle your estate.

Following the instructions you have expressed in your will may seem simple enough, but settling an estate can in fact be quite complicated – especially if something unexpected happens. In our scenario, Stephen is a business owner. Therefore, when Stephen dies, his executor and/or trustee must find an appropriate valuation professional to appraise the business. His executor must also file the appropriate estate and income tax returns, and determine how to pay any estate taxes that might be due.

Stephen had planned to be at the helm of his business for at least another 10 years, so he hasn't developed a succession plan. Unfortunately, Stephen dies in an auto accident before the 10 years elapse. All his assets, including ownership interest in the business, pass directly or via his trust to his wife, Susan. With a career of her own, she has no desire to take over the business. But Susan doesn't want to sell the business either, because their college-aged daughter, Samantha, would eventually like to run the business. Because Stephen didn't create a succession plan, Susan and/or the trustee of the trust must find someone to run the business until Samantha is ready to step in. A corporate fiduciary may be best equipped to handle the business decisions and help ensure business continuity while Samantha finishes college.

GUARDIANSHIP

If you have a disabled adult child or you want to protect your minor children should you die prematurely, a guardian to handle financial matters (also known as a guardian of the property or guardian of the estate) is frequently necessary. This fiduciary manages all assets in the loved one's best interests, complying with relevant guardianship laws to help ensure his or her financial security.

In the scenario we have been discussing, Stephen and Susan have a second child, Simon, 17, who was in the car with Stephen and tragically suffered a serious head injury in the accident. Simon's guardian of the property or estate invests and manages any assets to which Simon may be entitled and also any funds he might later inherit. Working with the guardian of the person, the guardian of the property or estate helps determine living expenses and presents a monthly budget for court approval. The guardian of the property or estate is able to pay all bills and prepare state and federal income tax returns. The guardian of the property or estate also works with the supervising court and legal counsel as necessary to meet ongoing reporting requirements.

With variations that depend on state law and the terms of the trust document, your executor is responsible for performing duties such as:

- Securing and taking an inventory of all your assets
- Having the assets in your estate appraised
- Managing the assets until they can be distributed
- Paying all expenses and debts
- Managing the estate liquidity needs
- Validating all claims against the estate
- Helping to maximize the effectiveness of estate and income tax elections
- Filing the income and estate tax returns
- Supervising any litigation and defending valuations in any audits
- Managing any conflicts between multiple beneficiaries and claimants
- Distributing the assets according to your wishes

A guardian of the property or estate manages all assets in your loved one's best interests, complying with relevant guardianship laws to help ensure his or her financial security.

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FIDUCIARY SERVICES YOU CAN COUNT ON

To help ensure that the needs of your beneficiaries are met, finding a fiduciary you can count on is essential. With the increasing sophistication of assets to be managed and complexity of the relationships involved, a fiduciary with experience and expertise is more important than ever. For this reason, a corporate fiduciary may best meet your needs. Additionally, a corporate fiduciary can provide long-term continuity of management. Families seeking expert, yet personal, attention have been entrusting their assets to Northern Trust for generations. You can count on us to work with you to help achieve your goals for your legacy, your vision and your values.

FOR MORE INFORMATION

For more information about our trust and fiduciary services, contact your Northern Trust relationship manager or visit northerntrust.com.

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