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Choosing An Executor And / Or Trustee

Writing a will is a great way to legally document your plans for where your money will go when you die or become incapacitated, who will be in control of your estate, and who the beneficiaries will be. Additionally, for those who have chosen a trust instrument to control their assets, perhaps as part of a tax mitigation strategy, it can help establish the person who will ultimately take responsibility for following the law and running the trust.

To preserve your own legacy, you have the power to determine much of what happens to your wealth. But to do this sufficiently, you must make some important decisions before your death to ensure that the process goes smoothly.

Why Pick an Executor or Trustee?

For most people, establishing an estate plan or a living trust is a crucial piece of financial wellness. Without those legal assurances, the wealth that you have worked hard to create and grow could become the source of conflict within your family or divvied up by a probate judge, rather than being used according to your plans to benefit loved ones or favored causes.

Working with a financial advisor to allocate for growth, tax efficiency, and your own needs, as well as the future security of loved ones, is a good first step.

Seeking estate planning or trust formation advice could involve enlisting the services of a reputable law firm that specializes in trusts and estate planning.

When it becomes time to prepare a living trust or a last will and testament, you will have to name an executor or trustee. That person ideally will be someone who takes on the responsibility of making sure that your assets are distributed in accordance with your wishes.

Just as a newly elected president of the United States takes a public oath to execute the duties of the office faithfully, an executor is a person named in the will who faithfully carries out the wishes of the person who wrote it. A trustee is simply someone trusted to carry out the legal obligations spelled out in the terms of the trust.

In both positions, the person assumes a great deal of responsibility and is legally obliged to make just decisions.

Who to Pick?

One's executor or trustee should be someone who will do the job faithfully. Most state laws stipulate that the executor or trustee be a fiduciary, meaning they need to act in the best interests of the estate. This is the case even when the executor or trustee is a beneficiary. For many, an executor or trustee is likely to be a spouse, child, or another family member. While each state has slightly different requirements for this role, usually the person must be at least 18 years of age and mentally and physically able to carry out the duties.

To screen to see if someone is fit for the role of an executor or trustee, you must consider a few factors:

- Are they likely to be alive for several more years, or as long as it takes to handle the role?
- Do they have the time?
- Do they live within a reasonable distance?
- Do they have the knowledge base and maturity to handle the estate?

Your executor or trustee should understand the importance of performing the duties of the role. Since executing a will is likely to involve complicated financial tasks such as settling bills, closing accounts, dealing with creditors, or disposing of real estate, choosing an executor who has some practical financial knowledge might be a good option.

In times of grief especially, having bills to pay and a business to handle might not be something a spouse or even a child wants to deal with. A loyal friend with knowledge of financial matters might be another good option.

Some people want to choose co-executors or more than one trustee. While it may be allowed, the general recommendation is to narrow it down to one individual, as multiple people can complicate the decision-making process. If more than one person cannot agree on a course of action, it could delay settling the estate or create unnecessary expenses.

Whether a will or a trust, legal and complicated financial issues can emerge. For questions regarding federal or state estate tax, for example, the executor or trustee may have to turn to a certified public accountant or other tax resource.

If a family member is not available or is unwilling to serve as executor or trustee, another option is a qualified lawyer, a bank, or another financial entity, such as a trust company. However, it is important to note that these professionals are likely to charge a fee for their services, which could be significant in some cases. Nonetheless, these services can be worth the cost, given the ethical duties and professionalism required.

Planning for a future that doesn't include you can invoke difficult emotions and challenging conversations, but making good decisions now should provide for greater comfort in the future and relieve stress for family members during a time of loss. The right executor or trustee might be an easy choice, or it might require seeking out professional advice.

Either way, we are here to help guide you toward growing your wealth and making it work for you and your legacy.



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