

THINK ABOUT IT

THINK ABOUT IT IS WRITTEN BY STEPHAN R. LEIMBERG, JD, CLU AND EDITED BY EUGENIE DERITTER

HOW TO CHOOSE A TRUSTEE

There are literally dozens of reasons why our clients utilize trusts.

Why the choice of trustee is so very important,

1. Eight characteristics of a good trustee,
2. Some important factors that should be considered when choosing a trustee for a particular type of trust, and
3. Nine potential candidates to serve as trustees.

WHY A GOOD TRUSTEE IS SO IMPORTANT

The selection of trustee is one of the most important decisions a grantor makes. If the trustee selected is not a suitable choice, the trust's effectiveness may be diminished (or in a worst case scenario its purpose defeated) no matter how carefully the trust document is prepared or how clearly the client's intentions are expressed.

A trustee, who chooses poor advisors, is careless about tax issues, makes poor investment decisions, or is not sensitive to the needs of the trust beneficiaries, can create conflicts, as well as subject the trust (and its beneficiaries) to unnecessary expenses and taxes, and losses on investments.

On the other hand, a good trustee often will be able to find ways to carry out the grantor's wishes with the least costs and conflicts, even if mistakes were made in creating the trust or if unforeseen problems arise.

EIGHT CHARACTERISTICS OF A GOOD TRUSTEE

The perfect trustee would have all of the following eight characteristics: (1) competence, (2) the ability to act in the best interests of the beneficiaries, (3) understanding of the grantor's objectives and knowledge of beneficiary's needs, (4) knowledge of the subject matter of the trust, (5) experience, (6) availability and willingness to serve, (7) proximity to beneficiary, and (8) the ability to serve without conflict of interest.

Obviously no trustee will meet all of these criteria, but a good trustee will satisfy most of them.

1. **Competence.** Although it seems unnecessary even to list competence as a qualification, in many instances grantors (when setting up trusts) are influenced by personal or emotional considerations and allow them to influence their selection process. A child who lives near the grantor or trust beneficiaries may be a convenient choice as a trustee, but may not be a wise choice when the subject matter of the trust is the family business of which he or she has no personal knowledge. Competence does not necessarily have to be measured by knowledge of all of the trust assets. Instead, a competent trustee should be able to understand the nature of his or her specific duties, select a course of action to take, recognize the limits of his or her knowledge and capabilities, and have the maturity to secure professional assistance where and when needed.
2. **Ability to act in the best interests of the beneficiaries.** While the trustee is charged with carrying out his or her duties as authorized and dictated by the trust instrument, the overriding consideration is the fact that he or she is acting in a fiduciary capacity in handling assets for the trust beneficiaries. To fulfill his or her fiduciary responsibilities, a trustee should make all short- and long-term decisions in the best interests of the beneficiaries. Selling a family home or business or allocating trust funds for the purchase of a home or to finance a business for a beneficiary, are examples of the types of serious considerations that trustees must deal with regularly.

It is often necessary to make long-range decisions that are not necessarily popular with the beneficiaries. In addition to following the terms of the trust while maintaining impartial and absolute loyalty to the trust beneficiaries, the trustee must have the objectivity and fortitude to make difficult and, at times, unpopular decisions.

Let us use an example of a trust that is set up to hold assets for the grantor's children after the grantor's death until each child reaches age 40. How should the trustee handle a request by the grantor's son to invest \$100,000 (e.g., 20 percent of his trust share), in a take-out pizzeria suggested by a couple of the son's college-age friends (who have no money to invest)? The trustee must consider whether the investment is worthwhile, what funds will be available after

the investment, whether the investment will require the allocation of additional funds. The trustee must also assess the beneficiary's maturity and capability of running the business, whether it is the type of business in which the beneficiary should invest, and what the effects of saying "no" will have on this beneficiary, and "yes" to the others. In many instances, what is really in the best interest of the beneficiary is a subjective and extremely difficult decision for a trustee to make.

3. Understanding of grantor's objectives and knowledge of beneficiaries' needs and circumstances.

Before making any important decisions, the trustee must understand the grantor's priorities (as to which preference or whose interest should take precedence) and goals as well as the financial needs of the beneficiaries. A most common scenario is when a husband has set up a trust for his wife and children. This means the trustee must have accurate knowledge of all of the family assets, both inside and outside the trust. An income and expense statement must be worked out so that distributions from the trust will fit into the family's overall financial plan and meet the needs of the beneficiaries.

The trustee must also be aware of any special needs of a beneficiary. For example, a child might be physically or mentally handicapped and require special care and treatment. These considerations must be incorporated into the overall financial and trust planning.

4. Knowledge of the subject matter of the trust. An individual trustee may be able to manage the few periodic and routine administrative duties if most of the trust assets consist of mutual funds. If the bulk of the trust assets consist of listed securities, the trustee should work with, or have access to a good investment advisor. Alternatively, a bank or trust company with a competent investment department that can handle the trust assets more effectively should be considered as a trustee (or co-trustee).

However, if the trust assets mainly consist of a family-owned business or a unique piece of real estate, it would be helpful if the trustee has experience working or dealing with the business or assets (or similar ones of its kind) in question. Examples of suitable choices include a brother who knows and cares about the client's children and is also active in the business (unless this could create a conflict of interest in regard to the business following the grantor's death). Another example would be to name someone who has worked with the client in handling and managing the real estate or property to be placed in the trust. He or she would be aware of any particular issues and problems (such as zoning regulations, past history of the property, hazardous material or other environmental matters), and would certainly be an excellent choice as a trustee or co trustee to administer and manage the real estate or property in the trust.

5. **Experience.** The job of a trustee is often difficult, time-consuming and multifaceted. It is inadvisable to select someone who has no experience or background in fulfilling the duties that a trustee will be called upon to perform. Having said that, it is not necessary for the grantor to choose someone who has served as a trustee; nevertheless, it is wise for the grantor to select someone who, because of background and experience, is familiar with the duties and responsibilities that he or she will be asked to undertake.

To the extent possible, clients should consider choosing professional trustees to act as sole trustees or, better yet, as co trustees. These persons or entities could share the trusteeship with family members or long-time friends who might have a close and caring relationship to the beneficiaries, but lack the background and experience (and perhaps time and inclination) to perform the important functions required of trustees without assistance. The grantor's choices of professionals include: investment advisors; attorneys or CPAs/accountants who are familiar with the grantor's objectives, assets, business/investment philosophy, and family members; and especially banks and trust companies that have extensive experience and expertise in handling and managing other people's assets (and are accountable to state auditing teams).

6. **Availability and willingness to serve.** Not only are a trustee's duties difficult and time-consuming, but they can often extend over long periods of time. A trust set up by a mother for her daughter until her daughter reaches age 35 can last for 30 years if the daughter is only 5 years old when the trust is established. Many trusts last for more than one or two generations. Obviously, the client is imposing a tremendous obligation when he or she appoints someone as a trustee to handle, supervise, and manage the trust assets for the beneficiary(ies) over such an extended period of time.

A client might have selected the ideal, extremely qualified trustee because of his or her personal attributes and affection for the trust beneficiaries. However, despite good intentions, the trustee's personal situation might prevent him or her from performing all the necessary tasks, or taking the time to handle the day-to-day functions necessary to adequately manage the trust investments for the beneficiaries.

In these situations, the client should consider appointing a bank or trust company to serve as a co trustee (or successor trustee). Under this arrangement, the bank or trust company could perform the day-to-day trust functions and the individual trustee could act as a liaison between the corporate trustee and the beneficiaries, and therefore have the time to ensure that the beneficiaries' needs are properly met. Provisions could be made in the trust instrument for the individual trustee to replace the corporate trustee with another corporate trustee if he or she is not satisfied with the corporate trustee's performance.

7. **Proximity to beneficiary.** Your client's sister in California might otherwise have been an excellent choice as trustee – except that the grantor's grandson (and trust beneficiary) lives in Florida and has ongoing needs that must be attended to on a regular basis. In this case, it might be more practical and beneficial to appoint someone locally, perhaps to serve with the client's sister as a co trustee, so that there is a co-trustee nearby to make sure that the beneficiary's needs are met on a timely and regular basis.

[NOTE: Naming a contemporary of an elderly grantor as sole trustee for the grantor's grandchild may not be suitable because of the potential that the trustee may not be capable of serving for the extended trust term for a very young beneficiary. See discussion under item 3 of "Key Factors to Consider" below.]

8. **Ability to serve without conflict of interest.** One element that grantors often overlook when selecting a trustee (or trustees) is the potential conflict that may arise between the trustee(s) and the beneficiaries. For instance, your client's business partner of 30 years would make an ideal trustee to handle her share of the business for her children following her death, were it not for the fact that, as trustee, the business partner would in effect be his own partner. In other words, an unavoidable conflict of interest will be created because every decision that the trustee makes concerning the business will affect him and his family as well as that of the grantor.

The trust and confidence that a client and his or her business associate have built up (even over decades or a "working lifetime") for the good and welfare of each other do not necessarily extend to family members or beneficiaries of the deceased business owner. Instead of two people making business decisions objectively, one person is now put in a position where he or she has to make those decisions for two distinct (and possibly opposing) groups of people with different and, perhaps, diverging needs, objectives, and agendas. In our example, as trustee, the surviving partner may have to sell your client's business interest and attempt to obtain the highest possible price. But as an owner, that action may not be in his best interest. Therefore, the client must consider what other alternatives are available such as an independent trustee or a family member (if someone in the grantor's family is familiar with the business).

Another conflict that can arise is when one child is chosen as a trustee to manage assets for a parent (e.g., the client, or the client's surviving spouse). A child who is a trustee for a parent usually has a conflict of interest because he or she is most likely also a remainderman under the trust. Any money or asset distributed to the parent (or the surviving parent) may mean the child will ultimately receive less from the trust. For instance, a child selected as trustee might be inclined to make investment and distribution decisions that would give your client's surviving spouse less current income and financial security than intended. Even if the child is perfectly fair

(and equitable) about carrying out your client's wishes, the mere hint (or appearance) that his or her actions might be motivated by self-interest (and not impartial) could poison the relationship between the surviving parent and the child. Furthermore, a surviving parent may resent having his or her life controlled – even in some small ways – by a child. For these reasons, it may be more prudent to have independent trustees (either individual or corporate), rather than children serve as trustees.

Similarly, giving one child the responsibility for the management of funds and assets for the benefit of his or her siblings can divide the family that may have gotten along well during the grantor's lifetime. To prevent potential family disharmony, the possible solutions include: appointing all of the children as joint or co trustees (which may or may not avoid intra-family discord or disputes), or an independent trustee may be chosen to act as "tie breaker." In extreme cases where intra-family hostility is already present or inevitable, the only solution may be to exclude all children (and others who are trust beneficiaries) from serving as trustees or successor trustees.

KEY FACTORS TO CONSIDER WHEN CHOOSING TRUSTEE(S) FOR A PARTICULAR TYPE OF TRUST

There are many important factors that should be considered when selecting a trustee (or trustees) for a particular type of trust. Here are seven of the key factors:

- 1. Nature and purpose of the trust.** If your client is setting up a revocable living trust to manage his/her assets during lifetime and to avoid probate at death, with ultimate distribution of assets to his/her children, the client could serve as the initial trustee. It would not be necessary to consider other potential candidates (although we almost always strongly suggest that at least two backup, successor trustees be named). On the other hand, if the purpose of the trust is to hold and/or invest in assets worth \$1,000,000 or more for your client's grandchildren (in other words, to maximize his/her generation-skipping transfer exemption which is currently set at \$1,500,000), a corporate trustee or a professional money manager should be considered – in addition to one or more individual co trustees who know your client's grandchildren and their needs.
- 2. Size of the trust.** If your client wants to place \$11,000 in a trust for each of his four great nieces and nephews, the small size of the trust alone would not warrant the services or justify the costs of a corporate or professional trustee. However, if the trust assets were considerable, managing the trust might be too great a responsibility for an individual trustee without a strong background in money management and taxation. In that case, a corporate or professional trustee should be considered.

3. **Duration of the trust.** A trust established for a grantor's young children and/or grandchildren could last for a very long time. Most likely, this will rule out using an elderly person and/or a contemporary of the client as the sole trustee; instead it suggests someone younger or, preferably, a corporate trustee that can serve for an indefinite period of time.
4. **Nature of trust assets.** The client should definitely choose a trustee with the ability to manage the type of asset held in the trust. For example, if your client were to place a business interest or complex real estate portfolio in trust, the trustee should be someone with sufficient experience and expertise to manage the business or investment portfolio for the beneficiaries.
5. **Locations of assets and beneficiaries.** If the major asset in a trust is a home in suburban Philadelphia, a corporate trustee in Alaska might not be the best choice. Similarly, if the client and all of his or her children live in the New England area, an uncle in Colorado may not be the best possible choice as trustee of the children's trust.
6. **Tax considerations.** There are a number of situations in which tax considerations make it inadvisable to use either the grantor or the beneficiary of the trust as a trustee. For example, if a father sets up a trust for a child and names himself as trustee of that trust, the trustee powers held by the father could cause the trust to be a part of his taxable estate at his death, even if the trust is irrevocable.

Similarly, it may not be advisable to name the grantor's spouse as the sole trustee of a trust which is designed to avoid death taxes at the spouse's death. Unless the trust is properly drafted, the assets in the trust might be included in the spouse's estate and the children would have to pay death taxes unnecessarily. Furthermore, trust arrangements under which the grantor's children are both beneficiaries and trustees for themselves (or for their own children, i.e., the grantor's grandchildren) could subject the children to current taxation on trust income or capital gains that are not distributed to them. If tax considerations are important, we usually recommend that independent professional trustees should be used to avoid adverse estate, income and gains tax consequences.

7. **Fees and costs.** Although fees and costs associated with establishing and maintaining any type of trusts are usually one of the factors to be considered, this is particularly important in the case of smaller trusts (with few assets and the provisions are not complex). For example, even if a grantor wants to use a corporate trustee to handle the trust assets in the event of his or her death, if the trust value is relatively small (e.g., under \$100,000), the corporate trustee's minimum fee schedule might make its selection economically unwise.

POTENTIAL CANDIDATES TO SERVE AS TRUSTEE(S)

In most states any individual of legal age (i.e., over eighteen) can serve as trustee. There are trust departments of commercial banks and a growing number of trust companies (not affiliated with commercial banks) that serve as professional trustees as well. It is also possible to name a group of individuals to serve together or in concert with a corporate trustee.

The following list summarizes the potential choices and gives the advantages and disadvantages of each:

1. **Grantor.** It is almost always permissible under state law for the person establishing the trust to name himself or herself as trustee. If two people – a married couple for example – set up a trust, they can name themselves as the initial trustees.

The obvious advantage of the grantor serving as the trustee is that he or she can utilize many of the advantages of a trust, while keeping absolute control and avoiding probate. If all of the grantor's assets are held in trust by the grantor during his or her lifetime, these trust assets can pass directly to the beneficiaries at the grantor's death without the necessity of going through probate. (See chapters 8 and 9 in *The Book of Trusts – 2005 Edition* which discuss the advantages and disadvantages of revocable trusts to avoid probate.) Even though the grantor of a trust can name himself or herself as the initial trustee, the trust document should make provisions for successor trustee(s) in the event of the grantor's disability or death. Then, once the trust is established, it can continue uninterrupted despite the disability or death of the grantor. (A revocable living trust becomes irrevocable upon the grantor's death.)

While control by the grantor may be desirable, the IRS will not permit a transfer of asset to a trust to remove that asset from the grantor's taxable estate if he or she is the sole trustee, and it may also require the grantor to include trust income in his or her personal tax return. In general, if the purpose of the trust is to remove assets from your client's gross estate for either estate tax savings or creditor protection purposes, he or she should not be named as sole trustee. If these planning objectives are of the utmost importance, we recommend that independent individual and/or corporate trustee(s) should be appointed.

2. **Family members.** Probably the most frequently named trustees are members of the grantor's family. There are many obvious reasons for a grantor to choose his or her spouse and child (or children) to serve as the sole trustee, or as co trustee(s) with the grantor, or as backup (successor) trustee(s) in the event of the grantor's disability or death.

A very real benefit in selecting family members as trustees is the ability to maintain control of the trust assets. Many people are much more comfortable knowing that trust assets will be managed for them and their families by members of their immediate family in the event of their disability or death. Not only are family members the most familiar with the grantor, but they also have a much better understanding of the grantor's method of handling his or her assets, and they are aware of the grantor's plans for the future. Other advantages are the possibilities of eliminating fees that would otherwise be charged by a professional trustee, and reducing administrative costs. (Assuming the time and services required are not excessive, and the family member/trust beneficiary is willing to forego fees and charges.)

Of course, the selection of a family member as trustee must be consistent with the purposes of the trust. It would make no sense to create a trust for a child because of concerns about the child's maturity and business acumen and then appoint the child as trustee. Similarly, it makes no sense to create a trust in order to avoid or reduce taxes and then name a related party as trustee (e.g., the grantor or his/her spouse) that recreates or aggravates the tax problems because of the possible adverse estate and income tax consequences described above.

Earlier, we discussed the financial conflicts of interest that a family member may have if appointed to serve as trustee. Other disadvantages of choosing family members as trustees are the potential emotional conflicts, intra-family communication problems, and other personality-related issues that could arise. For example, a potential conflict may arise between the surviving spouse as trustee and a difficult child. Likewise, the grantor's child serving as trustee may have to deal with demanding or difficult siblings (and in-laws). We noted the possible damage to the relationship between a child (trustee) and parent (grantor's spouse/beneficiary) when the child controls the "purse string;" these conflicts (and other factors) could escalate greatly in terms of degree and frequency for step parent/step child (children) or other types of blended family situations.

- 3. Friends.** A close and trusted friend of the grantor can be an excellent choice as a trustee. He or she might very well have a good understanding of what the grantor wishes to accomplish under the trust and a close relationship with the prospective beneficiaries. Fees, which should always be arranged in advance, can often be lower than those of a professional trustee.

The disadvantages of naming friends as trustees include: the friend's lack of experience, inability or unwillingness to devote sufficient time to the trustee's duties, and advanced age. From the beneficiaries' perspective, they may resent having the grantor's friend (an outsider regardless of how close he or she might be to the family) given the authority to make decisions for family members – thus, creating a conflict with a long-time family friend, who might have "served" the family just as well (if not better) strictly on a personal level.

- 4. Business associates.** Long-term business associates are often selected to act as trustees because the grantor has knowledge of, and confidence in their business and managerial experience, and there is an underlying comfort level built on their long-term relationship.

The downside risks include potential conflict when the business interest is an asset of the trust and, if the business associate is a contemporary of the grantor, the fact that he or she might not be able to serve throughout a potentially extended term of the trust. Often, these problems can be solved (or entirely avoided) by a properly designed and funded buy-sell arrangement.

- 5. Private investment advisers.** When the bulk of the trust assets consist of cash and listed securities, one obvious potential candidate for trustee is an investment adviser: a stockbroker, financial planner, or other type of professional money manager. Clearly, the major benefit these candidates can bring to their trusteeship is that, by profession, they are trained and skilled in handling assets and making investments for other people. If the investment advisers also have the time and ability to stay in close contact with the beneficiaries to determine their changing needs, they deserve serious consideration as candidates. Should they have a close relationship with the beneficiaries, too, that is still another plus.

One disadvantage of using private investment advisers as trustees is that their primary emphasis is on handling and investing money; they are not in the business of keeping in touch or communicating with trust beneficiaries. Another is the obvious and almost certain conflict of interest and ethical problem; namely, there is a lack of checks and balances where the person serving as trustee is responsible for investing trust assets, while as an advisor he or she receives a commission (or fee) on each investment transaction.

- 6. Attorneys as trustees.** Grantors often turn to the attorneys who draft their trust documents as their choice for trustees. Attorneys who are familiar with the grantors' assets and beneficiaries, have investment experience or are in a position to hire qualified investment advisers, and have the time to devote to the administration of the trust and the welfare of the beneficiaries are good candidates as trustees.

One major advantage of any professional as a trustee is that he or she is more likely to carry professional liability insurance than would a family member or friend of the grantor. Therefore, if trust assets are handled improperly, the beneficiaries may be in a better position to be compensated for any loss incurred due to mismanagement of the trust. If the attorney has the necessary characteristics listed earlier, and the grantor has confidence in his or her ability to serve, the attorney may be an excellent choice.

When an attorney is named as trustee, there is always the potential of a conflict of interest and related ethical problems: Does the attorney, in fact, represent the grantor, or the trustee(s), or the beneficiaries? If the attorney represents the family business, who does he or she represent after the business owner/grantor's death? In the event the trust beneficiaries become dissatisfied with the trust and the trustee, the attorney (who prepared the trust document) clearly has a conflict that is difficult – if not impossible – to resolve. Also, few attorneys will take the time or have the skill to properly administer a trust. Consequently, there is the possibility that the trust will not be given the administrative attention it requires (or deserves) – particularly if the attorney has a demanding, time-consuming practice.

7. **Accountants and CPAs.** If the grantor has utilized the services of a CPA or an accountant over an extended period of time and has confidence in his or her ability, the CPA or accountant could be a good choice as a trustee or a co trustee. Even more so than attorneys in many respects, CPAs have a broad and current picture of a client's financial situation. In some cases, this also includes a personal acquaintance with the family members and knowledge of their various needs. Because many people rely on their CPAs or accountants for advice in making major financial decisions during their lifetime, they often hope to have their CPAs or accountants continue to advise their families after their death.

However, a grantor's accountant or CPA is very often his or her contemporary, and therefore may not be able to serve throughout the term of the trust. Other factors that may affect this type of choice include: conflicts between the accountant or CPA and the grantor's family, and time constraints due to the CPAs or accountant's professional and other business commitments.

8. **Corporate trustees.** Commercial banks with trust departments and independent trust companies are in the business of rendering their services as professional trustees. They have the requisite knowledge of, and administrative experience with a variety of trusts, as well as investment expertise and a diversified staff (including lawyers and advisors who, for example, specialize in investment, business, and real estate areas) to serve as trustees. Likewise, they can take care of the routine yet very important bookkeeping task that is essential to proper trust administration, but is often severely lacking when a trust is administered by a nonprofessional.

Unfortunately, when handling a trust for the beneficiaries, a large bank or trust company is only as good as the people administering the trust in question. While size and experience are excellent attributes, they cannot guarantee perfect results.

Often, a trust officer assigned to a particular trust has the personality and qualifications to make certain that the trust is administered properly, following the grantor's wishes as well as acting in the best interests of the beneficiaries. But this may not always be the case as personnel of trust departments or companies may often be reassigned or changed. Therefore, when deciding whether to utilize the services of a corporate trustee, it is important to consider both its disadvantages and advantages.

One factor to consider is the fee charged by corporate fiduciaries. There is typically a schedule that includes a minimum fee, regardless of the size of the trust. For that reason it may not be economically feasible to choose a corporate trustee if the assets in the trust are less than several hundred thousand dollars, or if there are only a few trust assets and the growth of the trust estate is not expected to be significant.

Corporate trustees may also lack the knowledge, experience, or willingness to administer a family business. In addition, corporate trustees do not have the personal knowledge and interest that a family member, a trusted friend or long-time professional advisor of the grantor can bring to the trusteeship. Therefore, a corporate trustee, while highly qualified in many respects, may not always be the right choice as a sole trustee (but, as noted directly below, may be an excellent choice in combination with one or more trustees).

9. **Combination of family members, friends and professionals.** The size and complexity of a trust may warrant the use of a combination of two or more of the above potential candidates as trustees. In fact, it may be the only solution for large, complex, long-term trusts. For example, if your client wants professional money management, but also wants to make certain that the trustees keep close watch over the beneficiaries to see that their needs are regularly met, then the combination of a corporate trustee and a friend or family member as co trustee may be the preferable choice.

The corporate trustee can manage the assets, make investment decisions, and administer the trust, while the individual trustee(s) can oversee that trust assets and income are being used properly for the beneficiaries, taking into consideration their needs and other available resources. Unlike corporate trustees who are limited to serve in the jurisdiction of the trust situs where they are licensed to conduct business, individual trustees may be appointed in areas near the beneficiaries who are located elsewhere. In that regard, the trustees can keep close contact with the beneficiaries, and make sure that their needs are regularly met – even on day-to-day basis, if necessary.

Under this combination trusteeship, the grantor can separate the various functions and assign them according to the strengths of the trustees. A child active in the family business can be named trustee in charge of that portion of the trust estate, for example, while a professional money manager can manage other assets and investments.

It is often prudent and necessary to build safeguards into the trust to handle future or unforeseen contingencies regarding the trustees. As indicated earlier, it is always advisable to include provisions for backup (or successor) trustees in the trust documents. It is equally important to provide the mechanism to replace one corporate trustee with another – even though corporate trustee can theoretically serve an indefinite period of time.

For example, there is no guarantee that a currently strong, locally based and customer-friendly financial institution will continue to be so indefinitely. Therefore, it may be advisable to appoint an individual special trustee who has the authority to replace the bank or trust company with another corporate trustee of comparable size and investment expertise. In addition, the trust document should specifically stipulate the conditions or criteria under which the special trustee could remove a corporate trustee. These may include an adverse change in the latter's financial position, or in its investment strategy that is detrimental to the trust and its beneficiaries, or a personality conflict with the officer handling the trust.

CONCLUSION

It is exceptionally important for the grantor of a trust to be aware of the characteristics of a good trustee and employ them as criteria in the trustee selection process. A wise choice will significantly enhance the probability that the grantor's objectives will be accomplished with the least costs and conflicts.

This material is for internal use only and is provided courtesy of The Prudential Insurance Company of America, Newark, NJ. The discussion of planning techniques does not imply that a recommendation that a specific planning concept should be implemented. References to legal and tax considerations are made but are not meant to provide advice in this regard. Please remind clients that legal and tax advice, including the preparation of legal and tax documents, should come from an attorney and/or a tax advisor such as an accountant. These advisors can determine how best to utilize such product or technique.

Prudential Financial Planners can prepare financial plans incorporating many of the planning techniques discussed above. Financial Services Associates and producers can work as knowledgeable members of clients' professional teams to provide suitable products.

Investment advisory services offered through Prudential Financial Planning Services, a division of Pruco Securities, LLC.

Stephan R. Leimberg is not affiliated with Prudential and Prudential makes no representation as to the accuracy of the cites.

Prudential Financial and the Rock logo are registered service marks of The Prudential Insurance Company of America and its affiliates.

COPYRIGHT ©2005 STEPHAN R. LEIMBERG / REPRODUCTION PROHIBITED WITHOUT EXPRESS PERMISSION / FOR INTERNAL USE ONLY. NOT FOR USE WITH THE GENERAL PUBLIC.