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Selecting an Irrevocable Trustee



By Michael Cody, CPA, LL.M. & Jamie Cody, LL.M. • December 15, 2011

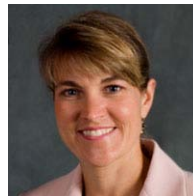


Michael Cody

When selecting a trustee for an irrevocable trust, one of the the most critical factors is the long-term stability and strength of the relationship between the grantor and the candidate for trustee. A trustee is a fiduciary. The word fiduciary comes from the Latin word fiducia, which means trust, confidence or reliance. When a grantor chooses someone to act as trustee, the choice should be focused on someone who is trusted, in whom great confidence is placed and who is reliable. A trustee is in a position of trust or confidence with respect to someone else, and has a duty to act for the benefit of the trust beneficiaries pursuant to the grantor's instructions. At Cody & Cody, we always advise that the grantor select someone with whom the grantor already has an established trusting relationship, who is loyal to the grantor and who is willing and able to carry out the wishes of the grantor, whatever they may be.

Another critical factor in selecting a trustee for an irrevocable trust is the capability of the candidate to handle the responsibilities that this newly acquired role entails.

We always inquire as to the sophistication and financial responsibility of the potential trustee. The trustee must be comfortable and adept at making decisions that will affect the trust and its beneficiaries and to execute on those decisions. It is important that a trustee take the position very seriously, be well organized, and responsive to the grantor and trust beneficiaries. We advise that clients select someone who not only meets these criteria but is also willing to take on the responsibilities that go along with the job, as it can sometimes be a thankless job and difficult, particularly when beneficiaries are spendthrifts, minors or there is discord among them. To the extent possible, we request to meet with the trustee to explain his/her role as trustee, the recordkeeping requirements and overall duties and responsibilities of a trustee.



Jamie Cody



An additional factor to consider in selecting a trustee for an irrevocable trust is the interpersonal skills of the potential Trustee and his or her relationship with not only the grantor, but with the grantor's spouse, children and most importantly, the beneficiaries of the trust. The relationship with the grantor is vital, but most issues arise once the grantor is either incapacitated or deceased. It helps if the trustee has either had a good previous relationship with the beneficiaries or can establish a good relationship with them. Grantors keep property in trust for many reasons, but the inability of a beneficiary to handle his or her financial affairs is typically a major concern. The ability of a potential Trustee to effectively handle the trustee-beneficiary relationship should be an important consideration in the grantor's selection.

Careful thought must also be given to whether or not more than one trustee should serve at a time.

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We often advise that one serve at a time, as it can be difficult for all parties to agree and they might be located in different areas, making it difficult to coordinate decision making. However, in an adversarial situation, more than one trustee may be advisable as a tiebreaker or voice of reason. Perhaps in an adversarial situation, a disinterested and/or corporate trustee is advisable, with the caveat, however, that since they are often somewhat removed from the situation and may not always follow the true intentions of the grantor. In addition, a corporate trustee can be costly.



Ultimately, selecting an irrevocable trustee is a personal decision for each grantor. We consider it our role to advise clients to not only consider the immediate responsibilities of the position, but also how the trustee's role will evolve over time, to ensure the best decision possible.

About the Authors

Michael T. Cody is both an attorney and Certified Public Accountant at [Cody & Cody](#), and has practiced in the field of estate planning since 1987. He began his career as a Certified Public Accountant with KPMG Peat Marwick in its tax department. Before becoming a partner in the firm of Cody & Cody, Michael also gained experience in the Law Department of Phoenix Home Life Mutual Insurance Company and with the estate planning law firm of Drew, Mersereau & Knierim. Attorney Cody focuses his practice in the areas of wealth transfer and wealth preservation, including general and advanced estate planning, business succession planning, retirement planning, asset protection planning, and taxation.

Jamie Nadeau Cody has practiced as an attorney since 1992 and is admitted to practice in both Connecticut and Massachusetts. Jamie focuses her law practice exclusively in the areas of estate planning and elder law, with a special interest in Long-Term Care issues and matters affecting the elderly. Her areas of professional concentration include sophisticated estate planning techniques and comprehensive estate planning design, encompassing lifetime gift planning, life insurance planning and business succession planning.

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