

# Unpacking the Trustee Relationship

A Primer for  
Advisors and Clients

by  
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Individual Trustee  
Pinion



**T**he estate plan is drafted, reviewed, and signed. It has forged and strengthened relationships, assuring clients that their assets will be managed in accordance with their wishes, and everyone involved can breathe a collective sigh of relief. It's now time to engage a trustee to ensure that the trust is administered properly and carries out the client's desires.

The importance of the trustee's role is often underestimated. What does a trustee do? What are the different types of trustees? How is the selection decision made? Can a family member be a trustee? How can a trustee ameliorate long-standing family squabbles that may erupt once the client's wishes are revealed? What steps can the trustee take to avoid problems in the future? This primer plumbs the depths of this essential relationship, delving into all of its aspects. Attorneys and advisors familiar with the trustee relationship may find that it uncovers effective ways to guide their clients. This article is designed to educate clients about the vital role the trustee plays in supporting their family members for generations to come.

## **When is the Best Time to Name a Trustee?**

Family and property issues typically arise during document drafting, so naming a trustee early in the process is ideal. But clients may not grasp the intricacies of the trustee relationship. Just as they toiled

hard and retained experienced people to guide them in creating their wealth, hiring a trustee to navigate the complexities of investment and distribution decision-making requires similar skills. The trustee becomes a trusted advisor for the client's remaining lifetime and for that of future generations, fostering clear communication and educating them to ensure the trust's smooth administration. A relationship lasting in perpetuity means building a strong bond from the outset so the trustee can learn about the family members and their dynamics, the nature of distributions, the timing of any upcoming liquidation events, and set expectations for each party.

### What Are The Three Types Of Trustees, and How Do They Differ?

Trustees come in three forms: corporate, individual, and independent. Each has advantages and disadvantages that should be carefully weighed in the client's decision-making.

**Corporate Trustee** - A corporate trustee is usually a bank or trust company. Highly regulated and conservative in their approach, they have in-house resources such as accountants, attorneys, and investment advisors to prepare income tax returns, address legal issues, and provide asset management.

However, a corporate trustee's complex structure may appear impersonal, underscored by its rigid policies dictated by regulators. A corporate trustee usually has other lines of business (lending, credit, custody, investment management) that may affect the relationship. For example, when a corporate trustee has investment responsibility for the trust's assets, the trustee may have an incentive to sell a proprietary or affiliate investment product to a trust. This benefit to the trustee may present a conflict or possibly place the trustee in an awkward position of declining to act should sensitive family dynamics rear their head. In these situations, the corporate trustee may seek to have an Investment Direction Advisor appointed to direct the trust's investments.

**Individual/Family Trustee** - An individual trustee typically is not part of a larger entity (bank, trust company) and may be more accessible and have a more personal style. They also may have lower management costs and a simpler trust account set-up process.

The individual trustee knows the client and beneficiary(s) well and is aware of the family dynamics, a clear advantage if a dysfunctional family member requires special attention. Robert E. Maloney, an individual

*(Continued on p. 16)*

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(continued from p. 15)

trustee and founder of the New Hampshire-based fee-only planning firm, Squam Lakes Financial Advisors LLC, notes: “My client had a rocky relationship with her adult son. We inserted a personal explanation in the document to acknowledge it, justifying her decision to leave the bulk of her estate in her revocable trust to endow a scholarship at her alma mater, and granting her son a lesser share as an income beneficiary.” This example illustrates why an individual trustee is often sought after for their unique skill and insight in working with challenging family members.

Sharing common values and the family’s legacy, a family trustee may be preferable, as they have a [trusting relationship with the beneficiary\(s\)](#) and may perform the duties without charging for their services. They also may have knowledge of the family’s investment preferences [and have a good understanding of the best way to make distributions to the family beneficiary\(s\)](#).

A family trustee could be problematic, however. If the trustee also is a beneficiary, the trust assets can be taxable in their estate. In addition, a family trustee may lack the time, experience, and skills to administer the trust, or be reluctant to refuse requests for distributions that are not in line with the trust’s dispositive provisions, possibly engendering resentment from other family members. A beneficiary(s) could perceive that the family trustee is exhibiting inappropriate financial behavior or has divided loyalties. Court cases are rife with [examples](#) of family members whose greed, pride, or resentment depleted trust assets. For these reasons, a family member serving as trustee should not be allowed to serve alone. An individual trustee serving alongside them can monitor the trust to guard against potential damage from a family trustee who may not be adequately prepared to administer the trust or fails to act in the best interest(s) of the beneficiary(s).

**Independent Trustee** - An independent trustee can be an objective decision-maker. Picture a corporate trustee and individual trustee at opposite ends of the scale, with the [independent trustee at its midpoint](#). Their only business is trust administration, so they are free from conflicts surfacing from other business lines. Regulated and possessing technical expertise, an independent trustee may not have a beneficial interest in the trust, [barring many entities from serving](#). The independent trustee is experienced, yet personal, and is client centered, functioning as a family partner. Their high standards of care emanate from doing one thing well: serving as trustee.

Beneficiaries who value continuity may prefer an independent trustee over a corporate trustee. Kevin Quinn, President of the nationwide Independent Trustee Alliance, observes, “Key people may leave the company or be promoted to new roles, forcing beneficiaries to work with a different team. In contrast, when a beneficiary needs to contact an independent trustee, they will be speaking to the same person now and in the future. Also, an independent trustee can easily terminate advisors if they are not performing, because the trustee, rather than the beneficiary, is their client, and can make decisions without deferring to a trust review board. I was brought in to help with a trust after the beneficiaries succeeded in replacing a corporate trustee whose relationship with the beneficiaries deteriorated because of a complicated living situation that the trustee didn’t want to address. My understanding and appreciation of the family circumstances means I can quickly make decisions in line with the terms of the trust while displaying empathy toward the family members.”

Independent trustees, however, do not provide investment advice, so a trust investment direction advisor or delegation of trust investment powers by the trustee to a professional investment advisor may be desirable. If they lack in-house tax and legal resources, they may assess an extra layer of fees to consult with advisors who provide these services.

### What Does The Trustee Do, and What Risks Could They Incur?

Think of a trustee as a quarterback who calls the plays for the team. Specifically, the trustee is obligated [to adhere to the terms of the trust](#) and to apply prudence and reasonableness in making decisions. The trustee provides transparency for all information and accounting. Most important, the trustee maintains objectivity, acting so as not to prefer one beneficiary over another.

However, a trustee could be subjected to risks in the form of liability claims. These claims may stem from distributing assets in favor of one beneficiary over another, failing to protect assets, mismanagement, making poor investment decisions, and improper accounting.

Occasionally, trustees are required to participate in amending or changing a trust. The Trust Protector often has the power to authorize changes to a trust. The trustee may be directed by the Trust Protector to amend a trust for administrative purposes, decant a trust to alter the trust due to changes in tax law or other circumstances, merge two similar trusts, or modify the trust’s terms. An example of a reason to decant a trust is to change the place of administration to a legal jurisdiction that is more favorable to the trust.

Trustees can protect themselves through indemnity agreements, liability insurance, and by retaining the types of advisors mentioned above.

Who's who in the trust document, and what role do they play?

The parties of the trust document are the grantor, beneficiary(s), trustee, protector, designated representative, and advisors.

- **Grantor** - The grantor, sometimes called the Settlor or Trustor, is the creator of the trust, and funds it with their assets. The grantor then transfers their wealth for the benefit of heirs or for estate tax purposes.
- **Beneficiary(s)** - The beneficiary(s) is/are the individual(s) for whom the trust is created.
- **Trustee** - The trustee administers the provisions of the trust and manages its assets. They have a fiduciary duty to safeguard assets, act in the best interests of the beneficiary(s), and provide accounting and investment management.
- **Protector** - The protector [monitors the trustee in a directed trust](#) and may remove a trustee if they act dishonestly. They also can approve changes in the language of the trust document, terminate a

trust, adjust distributions to the beneficiary(s), and add or remove beneficiary(s). The protector's authority is governed by the language in the trust document.

- **Designated Representative** - In states that allow a trust to be "quiet" or "silent," the designated representative, appointed by the grantor, is [authorized to act on behalf of a beneficiary\(s\)](#) who may not have rights to certain information in a trust.
- **Advisors** - The advisors are selected by either the grantor or trustee to perform certain trust management-specific duties. A professional trust advisor may seek the Certified Trust and Fiduciary Advisor professional designation. Offered by the American Bankers Association, the certification demonstrates prowess in general investment knowledge, financial planning, economics, taxation, and trust and fiduciary responsibilities, and also mandates work experience and continuing education requirements. Advisors also may perform accounting and legal services.

#### What Steps Does The Trustee Take To Administer The Trust?

The trustee must review all documents [to understand not only the provisions of the trust but be familiar with the](#)

*(continued on p. 18)*

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## Trusts

(continued from p. 17)

[rules that guide it](#), the powers they have (and those they are not authorized to exert), and their fiduciary responsibility to act in the best interest of the client and beneficiary(s). The trustee assembles assets, pays obligations, and makes distributions, employing a three-pronged approach: collecting information, gathering assets, and administration.

### Collecting Information

Being organized ensures a smooth record-keeping process. The trustee gathers the trust assets and ensures that they are secured and accounted for in the trust's records. The trustee must provide proof of their authority to act on behalf of the trust, and may use an [affidavit of trust](#), rather than the actual trust document, to substantiate the existence and terms of the trust without disclosing it in its entirety. Finally, the trustee obtains information for each beneficiary: photo identification, date of birth, Social Security number, address, telephone number, and email address.

### Gathering Assets

Assets can include securities accounts, personal property, collectibles such as art, real property, operating businesses, and other assets held in a legal entity such as a limited partnership or a limited liability company.

### Administration

The trustee will establish and maintain a separate bank account, with its own tax identification number, to facilitate the administration process. For record-keeping purposes, trustees should keep detailed records of the date and time spent administering the trust.

### What Administration Responsibilities Does the Trustee Have?

Trusts often stipulate ongoing provisions for asset management and income distributions, so the trustee's responsibilities continue long after the initial onboarding is completed. The grantor may designate assets to fund education, for example, or to purchase homes for a beneficiary(s) in the future. The grantor also may specify ongoing philanthropic gifts. The trustee oversees and manages the trust to comply with the grantor's intentions for as long as it exists.

Beyond providing oversight and management, the trustee is a liaison between the beneficiary(s) and other professionals such as an accountant, attorney, and investment manager. The trustee is a sounding board, answering questions and helping resolve family conflicts, a function that the individual trustee, whose personal service and understanding of delicate family relationships may

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best equip them to perform. Finally, the trustee is a solid resource, committed to fostering ongoing communication and education for the beneficiaries on issues that may arise.

### Summary/Conclusion

The grantor's wishes, and the needs of their beneficiary(s), influence their decision on whom to name as trustee. In a perfect world, the estate plan ties everything up in a neat and tidy package. But we don't live in a perfect world, and no trustee can undo years of family dysfunction.

Offering a personal touch and insight into family dynamics that a corporate trustee might not, the independent trustee also provides professional experience and oversight to a trust relationship that a family trustee may not have. They are able to provide guidance and resources to the other advisors, helping to build and maintain family wealth for generations to come.



*Theresa L. Hughes is a trust professional with over 37 years of experience in the trust industry, the last five years as an Individual Delaware Trustee. Theresa is highly knowledgeable about trust administration in general and Delaware trusts in particular. She is currently accepting appointments as a professional individual Delaware directed trustee. She can be reached via email at [trust@piniondelaware.com](mailto:trust@piniondelaware.com). For more information about Delaware Individual Trustee services go to: [www.piniondelaware.com](http://www.piniondelaware.com). You can view Theresa's LinkedIn profile at: [www.linkedin.com/in/thughes-indivttee](http://www.linkedin.com/in/thughes-indivttee)*



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