

The decision to use a Will or Trust to administer your estate is a “cake walk” compared to naming an executor or trustee!

When drafting a will or trust, you must name several people:

- one who will first serve as a trustee or executor; and,
- others who will be successors.

Life is uncertain and fragile. **You want to be survived by some of the people you name.**

You also want those people to be of an age when their capacity to perform the requisite duties will not make them ill-suited for the tasks or unenthusiastic about shouldering these responsibilities.

The “line of succession” in naming executors or trustees is very important if your estate plan provides for testamentary trusts whose assets are to be distributed to children and grandchildren over many years or decades—and possibly generations.

And do not forget, you need to name a Health Care Agent should you need someone to speak for you in a medical emergency!

Plan with confidence your journey in retirement.™

A GUIDE TO

Navigating Retirement

FRED PAYNE, CFP®, NCG
P. O. Box 1320,
Lake Oswego, OR 97035

Plan with Confidence Your Journey in Retirement™

This issue:

Who do you name as your executor or trustee?

This month’s Newsletter discusses the second decision you need to make when planning your estate. Next month, the topic will be about your third decision: *who receives your estate—and when?*

A GUIDE TO Navigating Retirement

SEPTEMBER 2024 NEWSLETTER

NAMING EXECUTORS AND TRUSTEES

If you have an adult child, is she or he the ideal person to be your executor or trustee? Hopefully, yes.

Sometimes, children may have challenges, whether addiction, mental health issues, or the lack of financial acumen or discipline to administer a trust. If you have more than one child, will conflict among siblings ensue when the will or trust is being administered? *A chronological or gender-based appointments is no guarantee that the oldest child or first son or daughter is the best choice.*

Is a sibling, close relative, or good friend—maybe even your attorney—a viable option? Very possibly, particularly if your estate will be distributed as soon as is administratively possible. The duration of the responsibility to act as an executor or trustee is relatively short. Even if you wish your estate to be distributed as soon as practical, your will or trust might provide that the share of a beneficiary who predeceases you is to be distributed to his or her minor children. *And now, the trust becomes a long-term endeavor!*

Is your estate “complicated” because you own real estate, partnership, or business interests, or other illiquid assets? Your executor and trustee must be up to the challenges of administering such an estate.

Often, a will or trust only allows distributions based on a beneficiary’s financial needs, circumstances, or attainment of certain ages. Trusts might contain provisions to protect a beneficiary who otherwise would be a spendthrift or has special needs due to a disability. *Can your choice of a trustee administer a trust that lasts for decades? Will your choice of a trustee have the expertise or willingness to administer such a trust?*

Trustees can have responsibilities before your death. *What if you become ill or suffer cognitive decline, and thus become unable to manage your financial affairs? Your illness or incapacity can last a long time. Who would be the best choice in that situation?*

A good executor or trustee will recognize their limitations when administering your estate. Your will or trust should encourage them to secure the expertise of an estate attorney and CPA.

Should you name co-trustees? Frequently, spouses are co-trustees. If you do name co-trustees other than your spouse, will the co-trustees get along? Provide clear instructions for the co-trustees to follow for reaching decisions and carrying them out. Do not appoint co-trustees simply because you cannot decide who should be first in the line of succession.

Maybe your choice should be a corporate trustee—or named last in the line of succession should all people you name not be able to fulfill their responsibilities. Corporate trustees do not get sick, suffer cognitive impairment, or die. And they are experts.

Most people prefer not to name a financial institution as an executor or trustee. Their concerns are, one, the lack of personal connection to their beneficiaries, and two, the cost.

Typically, the annual cost of a corporate trustee ranges between 1% to 1.5% of the value of the trust’s assets. (Options do exist costing 0.4% or less with companies such as Charles Schwab Trust.) The percentage rate declines as the value of the estate increases.

Discuss with your estate planning attorney the option to include a Trust Protector. Some of the individuals you might name may not be interested in shouldering the burdens of being a trustee or in assuming the personal liability should things go wrong. They might agree to serve as the Trust Protector and be a resource with the knowledge of your personal history and a familiarity with the beneficiary.

In addition to a will or trust, you should have an Advance Healthcare Directive that includes a Medical Power of Attorney. You should also consider granting a trusted person a Durable Power of Attorney to act on your behalf in financial matters—particularly if you only have a will. The Financial POA could be necessary should you become incapacitated before a successor trustee can be put in a place. FYI: all POA’s terminate at your death.

A Trust Protector is not the trustee and does not have day-to-day responsibilities of administering a trust. Rather, **the Trust Protector can “look over the shoulder” of the trustee to judge how good a job the trustee is doing.** If in the opinion of the Trust Protector the trustee is performing poorly or inappropriately, the Trust Protector can replace the trustee with another trustee, either one already named as a successor trustee or a new trustee entirely.

A Trust Protector is bound by the terms of the trust and can be given other powers within the trust: for example, amend specific provisions to conform to your original intentions when circumstances or laws change.

Please contact your estate planning attorney or me with your questions, or if you or a friend wants a copy of *A Guide to Navigating Retirement*.

Fred Payne

Fred@NavigatingRetirement.com 971-453-0130

P. O. Box 1320, Lake Oswego, OR 97035

The contents of *A Guide for Navigating Retirement* are solely the opinions of Fred Payne. The development of the *Guide* is the work of Fred’s wholly owned business: 4LNA, LLC (*For Life’s Next Adventure*). 4LNA, LLC is operated as a separate business activity from the advisory firm (and its affiliates) through which Fred provides financial planning and investment advisory services.