

Consider full range of ramifications when appointing fiduciaries

Serving as a fiduciary is truly an awesome responsibility that one should neither accept nor bestow lightly.

People often appoint fiduciaries and accept fiduciary roles — as executors, trustees, guardians of minors and corporate board directors — without carefully considering all the personal, financial, legal and emotional ramifications of their choices. There are even cases in which fiduciaries have been named without being informed of their appointment, leaving them with potentially no moral obligation to serve.



**FIDUCIARY
RESPONSIBILITY**

**E. DEANE
KANALY**

When naming a fiduciary, it's sensible to seek professional counsel in:

- Identifying and naming fiduciaries.
- Obtaining their acceptance.
- Communicating desires and intentions.
- Providing for contingencies by naming successors, should a primary fiduciary become unable or unwilling to fulfill responsibilities.

DONOR INTENT

In most states, an individual of legal age or a qualified institution can serve in a fiduciary capacity. However, few individuals have the time, resources, knowledge or experience to properly perform this legal and moral obligation.

Dividing the fiduciary responsibility between a personal and professional appointment may best serve the intent of the estate owner or donor. Trust officers and other professionals are uniquely qualified with the experience and education to represent the financial affairs of people who are minors, incapacitated, deceased or otherwise unable to manage their own affairs, while a family member or a close friend could prove to be very useful from a personal standpoint.

Unfortunately, instead of allowing for

“considered judgment” in naming a trustee or executor, most estate and trust documents are crowded with legal considerations and only last-minute thought is given to naming the fiduciaries.

The short list of the most important factors to consider when weighing individuals and institutions for appointment to fiduciary responsibilities includes:

- Experience. Does the person have the knowledge and ability to serve?
- Continuity. Will the person be part of the donor's life in 10 or 20 years, or longer?
- Investment acumen. Does the person have the time and resources to manage money wisely? Is he monitoring investments on a regular basis and aware of changes that could affect funds? Can he handle all the types of assets the donor now has or could have in the future?
- Objectivity. Can the person make good decisions that are purely in the best interest of the beneficiaries?
- Fairness. Can the person exhibit fairness to all beneficiaries, while complying with the donor's wishes?
- Diligence and responsiveness. Will the person devote the time and resources to respond to fiduciary responsibilities when necessary (not based on his timetable, but instead based on the needs of chosen beneficiaries to be served)?

MORE THAN MONEY

Understanding fiduciary responsibility is key to properly managing business and personal affairs. There are many dos and don'ts of personal financial and estate planning, all of which should be taken into consideration when selecting a fiduciary or accepting this responsibility.

A fiduciary's role is broader than managing assets and making investment decisions. People are often called upon to make “God-like” decisions on behalf of others, such as providing funds from a trust for the amputation of an elderly woman's diseased leg. A fiduciary is responsible for making tough decisions that the donor would be called upon to make if able to do so.

Decisions must be made in the best interest of

the beneficiaries, without any conflicts of interest and within the framework of donor intent. It's equally important to ensure that the same person who serves as trustee does not stand to benefit from his own decisions.

For example, wise parents will name a trustee for their minor children's inherited estate and name a separate individual to serve as guardian. A guardian may choose to spend the child's trust fund in ways that were not intended. Additionally, by naming a separate trustee, the parents avoid putting the relationship with the child at risk by requiring the guardian to also make all financial decisions. Think of a rebellious teenager wanting more money than he has the maturity to manage and the picture is clear.

An independent trustee would be called upon to make good financial decisions in the best interest of the minor, while allowing the guardian to continue to raise the child.

IGNORANCE IS NO DEFENSE

Most Americans are very good at making money, yet unqualified, unwilling or unable to manage money. Educating young people about finances and fiduciary responsibility can help avoid financial problems later in life.

Those chosen to serve as a guardian, executor or trustee should be honored that they are viewed as “trustworthy” in the eyes of the parent, estate owner or donor.

The same is true of those asked to serve on the board of directors of a public company. It is an honor and yet carries serious responsibilities to the corporate shareholders. Look no further than the Enron, WorldCom or Tyco debacles to understand how important board directors are to serving the best interest of all shareholders.

E. Deane Kanaly is founder and chairman of Kanaly Trust Co. (www.kanaly.com), a fee-only financial services firm that provides financial planning, investment management, trusts and estates and wealth management.