

# AUGUST 2020 NEWSLETTER

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## CONSIDERING A CORPORATE TRUSTEE?

## BENEFITS OF USING A CORPORATE TRUSTEE AND HOW TO CHOOSE THE RIGHT ONE

### FIRM ANNOUNCEMENTS

#### 1. AWARDS:

Pozzuolo Rodden, P.C. is pleased to announce that Martindale-Hubbell, the information service company to the legal profession since 1868, announced that Joseph R. Pozzuolo's 2020 Peer Review Rating for ethical standards and professional ability is excellent.

Pozzuolo Rodden, P.C. is pleased to announce that Martindale-Hubbell congratulated Joseph R. Pozzuolo, Esquire on his 45th Bar Anniversary showcasing his years of hard work and proven experience.

#### 2. PAST SEMINARS:

Joseph R. Pozzuolo, Esquire presented the following continuing legal and accounting education (CLE/CPE) webinar seminars for Clear Law Institute on Wednesday, July 15th @ 1pm:

## How Middle Income Families Should Prepare For Retirement, Including Ethics

Please contact Christine Wainwright at [Chrissy@Pozzuolo.com](mailto:Chrissy@Pozzuolo.com) or Clear Law Institute at [gqueen@clearlawinstitute.com](mailto:gqueen@clearlawinstitute.com) if you would like the online details to attend upcoming or any other past online CLE/CPE seminars.

### 3. BLOGS:

1. The following are a few of the business, tax, employment, estate planning and business litigation blogs posted on our main website [www.pozzuolo.com](http://www.pozzuolo.com) during the past month:

- a. How To Leave Money In A Trust For A Spouse Or Child;
- b. ROTH IRA Conversion Opportunities During The COVID-19 Disaster; and,
- c. Under What Circumstances May A Will Executor Change Or Go Against The Terms Of A Will?

**Please visit our website [www.pozzuolo.com](http://www.pozzuolo.com) for more information on these and other relevant business, tax, estate, business litigation and employment topics.**

2. The following are a few of the family law blogs posted on our family law website [www.pozzuolofamilylaw.com](http://www.pozzuolofamilylaw.com) during the past month:

- a. How To Uncouple Insurance Policies In Divorce;
- b. The Benefits Of Divorce Mediation; and,
- c. Divorce Decree Forbidding Overnight Guests: Is An Occupant A Guest?

**Please visit our website [www.pozzuolofamilylaw.com](http://www.pozzuolofamilylaw.com) for more information on these and other relevant family law topics.**

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## **CONSIDERING A CORPORATE TRUSTEE?**

### **BENEFITS OF USING A CORPORATE TRUSTEE AND HOW TO CHOOSE THE RIGHT ONE**

In today's world, people are living longer and as a result health and long term care costs continue to rise. As a result your savings and inheritance must grow larger and last longer. Estate planning takes a more central role in your overall financial strategy and one important investment option is to establish a trust. Trusts are very complex documents that take a lot of thought and planning not only when drafting but also in the day to day investment management options for yourself and ultimate beneficiaries at your death including the selection of your Trustee(s).

In today's complex environment, the role of a trustee can be burdensome. The trustee is responsible for distributing income and principal to the beneficiaries of the trust according to the terms of the trust. While many individuals name a family member or friend, a corporate trustee has many additional benefits over an individual trustee. A corporate trustee is a bank's trust department or

trust company. Its employees can help you build, manage and protect your wealth and help ensure that current and future generations benefits from the continuity, prudence and professionalism that a well-established organization can provide.

A corporate trustee may provide the following valuable benefits in the administration and management of your trust:

- Corporate trustees generally will have experience, having provided such services countless times before. Most have experience with all kinds of assets, including stocks and bonds, real estate, farms, closely held businesses, mineral properties, international investments and collectibles.
- Corporate trustees can provide an investment platform for you the client, they can tailor your investment goals to your needs to generate a reasonable return with less risks. Corporate trustees give their full attention to managing trust assets and because their staff collectively has more experience and resources than an individual, they often achieve better results.
- Corporate trustees will provide professional services and have access to other useful professionals like lawyers, accountants and tax experts.
- Corporate trustees can provide excellent record-keeping services, are objective and permanent.
- Corporate trustees are objective. They will follow your trust instructions objectively and faithfully, something family members are often unable to do.
- Corporate trustees will better protect your wealth as they are regulated by both federal and state regulatory agencies.

The best ways to get the most benefit from a corporate trustee are to take care in the selection process of the corporate trustee and to place checks and balances on their powers as trustee of your assets.

### **The Selection Process**

The trust creator or Grantor has almost complete flexibility in choosing a trustee. Selecting the right corporate trustee is an individual process and will depend on your wants, desires and needs and the goals you wish to achieve in creating a trust and the distribution of your property at your death. The value of the trust assets will also be an important factor in choosing a corporate trustee.

#### **1. Shop Around**

An important step in the selection process is to “shop around.” Look for the corporate trustee at the right price. Many institutions may have minimum or fixed fee schedules but may be willing to negotiate fees depending on the size, magnitude and complexity of your trust assets. Other institutions may unbundle their services and charge separate fees for separate services. For example, they may

charge separate fees for investment management, tax services, custody services, or trust management services. Thus, you can pick and choose among which specific services you want the corporate trustee to perform based on what you are willing to pay.

Consider interviewing multiple corporate trustees. To improve the likelihood that a trust company will carry out your wishes as you see fit after you are gone, it is important to get to know the people who will be administering the trust. A meeting will give you the opportunity to understand the philosophy of the corporate trustee that you feel most comfortable with.

It is also important to shop around in the sense that some institutions may elect not to serve as trustee for your trust based simply on the fair market value of your assets. The institution may require some minimum amount before they serve as trustee. Make sure you know if the institution you select in your document has such minimum requirements.

## **2. Research and Investigate the Financial Institution**

A not so obvious step in the selection process is to investigate the actual services provided by the trust officers of the financial institution. A trust company will probably house an entire department of trust officers who are experienced and highly credentialed. Meanwhile, a bank may be offering trust services simply as a promotional tool to draw business, cross-sell and generate profits for the bank. In that way, the bank is not singularly working on trusts. You may want to question its dedication to the management of your trust assets. Consult with the potential corporate trustee to determine their policies and philosophy with regard to discretionary distributions. This can vary significantly between different entities.

Further investigation of the financial institution should include a look at the professionals it employs. While a trust company is permanent and continuous, maybe it has a highly proportionate number of young trust officers resulting from a high turnover rate in terms of employees. Thus, you or your spouse and children, may not be dealing with the same person from year to year in the management of your assets. Determine whether the institution is responsive. You want a responsive trust officer or professional who you can easily contact. Research whether their professionals have the requisite experience and what type and size of accounts they have handled in the past. Meet with the trustees and professionals on a regular basis, perhaps monthly, quarterly, or annually. Review your accounts managed by the corporate trustee from time to time with an independent third party, such as your lawyer or accountant.

Being able to meet with the trust officer or professional requires that you choose a financial institution in your geographical location. Much like you would not want to appoint an individual trustee who lives across the country, you do not want to pick a corporate trustee who is not familiar with your state's or communities laws. Consult your local jurisdiction as well to determine which financial institutions are authorized to provide trust services. For example, the Orphans' Court of Philadelphia publishes a list of financial institutions authorized to provide trust services.

## **3. Give the Financial Institution a Try-Out**

Try out the corporate trustee. If you are considering which corporate trustee to appoint as trustee

of your trust assets, possibly retain the corporate trustee to manage part of your portfolio while you are alive. Waiting to have a corporate trustee appointed at death could cause confusion and uncertainty in an already difficult time. Furthermore, the trust company will be able to become familiar with you, your situation, your business interests and your family. If the trust company does not perform as expected, then you have time to retain and try out another one.

### **Powers of Corporate Trustee**

Another way to obtain the most benefit from a corporate trustee is to place checks and balances on their power and ability to manage your trust estate. Corporate trustees may not be familiar with your family situation. Moreover, a corporate trustee will probably never fully know your desires as to how you want your assets to be distributed.

#### **1. Give Clear Directives**

In your trust document or will, make sure that you clearly state how you want your assets invested and your property distributed. Establish guidelines as to how you expect the assets to be invested. When meeting with the financial institution, be clear on your investment goals – for example, whether you want to focus on producing income or preserving principal. Be clear on your intended distribution policy. State clearly whether you want or do not want every beneficiary to receive equal distributions based on their needs, or whether his/her other assets are to be considered prior to any health, support, maintenance or education distributions. Be specific about which needs may be met if distributions are to be provided in a non-pro-rata basis. The clearer you can be with your directives, the closer the corporate trustee will be to achieving your goals.

#### **2. Appoint Co-Trustees**

Appoint trusted family members or advisors as a co-trustee, individuals who know you, your family, and your expectations personally. They can provide an important personal voice in the management and distributions of your assets. When you are no longer living, you will want to have someone who can speak in your place under certain circumstances. You may want to give the individual co-trustee this power. For example, if a disagreement arises between your corporate and individual trustees over the management or sale of your business or whether a distribution should be made to a child beneficiary for the purchase of a business or home, you may desire the individual co-trustee's decision control.

Allow the individual co-trustee(s) to have power to negotiate the fees charged by the corporate trustee. That way, you'll have an insider in place who can control costs.

Also, it is extremely important to include a "portability clause" within your trust to give your individual co-trustee or the majority or all of your adult beneficiaries the power to remove and change the corporate trustee and appoint a new corporate trustee without cause and without court approval. Ultimately, if the corporate trustee is not performing its duties, has hostility towards a beneficiary, mismanages the assets, fails to comply with the terms, merges, consolidates or even closes, it can be replaced with another corporate trustee by your individual co-trustee or beneficiaries without cause and without judicial approval.

Corporate trustees can be extremely beneficial in the administration and management of your trust. In cases where the trust is complex and will require significant time and effort to oversee, a corporate trustee may be a necessity. But do not make a blanket selection of a corporate trustee and make sure whoever is appointed follows your wishes. Make sure to obtain the most value for your money and to have your wants and needs achieved. Ultimately, it is your trust.

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This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at [INFO@POZZUOLO.COM](mailto:INFO@POZZUOLO.COM).