

HARRIS LAW & CO.

Protecting Families & Businesses Through All of Life's Journeys

TRUSTEE CHECKLIST

How do you choose the right trustee? What are your options? What does a Trustee do? Choosing the right trustee for your trust is essential to ensuring your trust accomplishes your goals.

Imagine you are coaching the super bowl. Your team is down by 4 with 10 seconds left to play. You are at the 5-yard line. Your team has momentum. They drove down the field with confidence and zest. You tell the team to run the ball. The whistle blows and your QB makes the handoff to the likely MVP of the game, he has the most yards for night, he is a leader off and on the field, and your team has complete trust in him. He goes down behind the line of scrimmage and time runs out. What went wrong?

Your QB handed the ball off to a wide receiver who sometimes takes a quick snap. But was he the right player for that play? No. The coach failed to properly consider WHO should run the ball & who has the necessary skillset to ensure the play works as intended.

The good news, you are not in the super bowl and you have more than 10 seconds to pick the RIGHT trustee to ensure your plan's success. So let's get started...

TRUSTEE DUTIES

Before you can select the right trustee, you need to understand the general duties of a trustee. Of course, this can vary greatly depending on the type of trust you are setting up. Today, we are going to focus on revocable trusts. A nursing home protection trust and special needs trust have additional duties.

- Make Investments
- Pay Bills
- Prepare Tax Returns
- Manage Accounts
- Make Distributions
- Communicate with Beneficiaries
- Hold Assets
- Safeguard Trust Property
- Follow Trust Terms
- Act in Best Interest of Beneficiaries



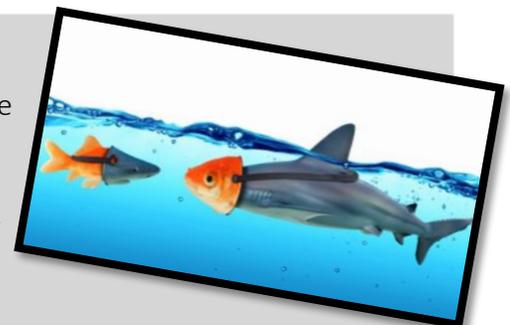
Not every duty has to be carried out by the same trustee and not every trust has to have the same trustee. While someone may be the right person to ensure your goals are fulfilled, they may not be the best with investing your assets. A separate investment advisor or trustee may be named. Trusts are flexible. If you have a concern or a fear about naming a trustee discuss it with your attorney to learn about other options that are available to you. You don't know what you don't know.

CO-TRUSTEES

You may also name co-trustees to serve. However, we caution doing so unless you have "tie-breaker" provisions built into your trust. Disputes often arise when trustees are carrying out their duties due to differences in opinion on what is in the best interest of the beneficiaries. What is reasonable to one person is not always reasonable to another. Consider adding a Trust Protector if you name co-trustees.

IRREVOCABLE TRUSTS – DIFFERENT RULES

Special Needs Trusts, Nursing Home Trusts, and Asset Protection Trusts have different rules due to their legal and tax structure. You may not be able to establish the trust and serve as trustee like you do in your revocable trust. These trusts tend to be more complex and require higher levels of expertise from your Trustee as well. Consider building in a trick play to give yourself the flexibility to change your trustee down the road.



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SUCCESSOR TRUSTEES

Naming one trustee is not enough. You should always name successor trustees in the event your named trustee cannot serve when called upon. We recommend that you have three trustees named in sequential order to ensure your trust always has someone to serve. Of course, your trustee selection should be reviewed every 3-5 years or as recommended by your attorney to ensure it stays up to date and the position is filled by someone that can effectively serve. Think of adding a trust protector to help further ensure that the duties of the trustee are carried out pursuant to your wishes.

WHO CAN SERVE AS TRUSTEE?

The law places few limitations on who can serve as a trustee. The individual must be over the age of 18 and able to manage their own affairs. Most trusts will place additional constraints on who can serve to help further ensure the goals are fulfilled. For most revocable trusts established by married couples, each spouse serves as trustee and has full control over their assets. People also commonly name adult children, relatives, close friends, professionals, and financial institutions. Many financial advisors are not able to serve due to restraints placed on their licenses or by their companies. However, they may be able to serve in a non-fiduciary, advisory capacity.

TRUST PROTECTOR

Naming a Trust Protector gives you added security and protection over your trustee when you are no longer able to manage your own affairs or have passed away. The Trust Protector can provide a sort of “oversight” function for your trust and offer streamlined and private dispute resolution for your trustees and beneficiaries. The Trust Protector may also have the power to name new trustees or replace named trustees. Often, a trust protector only serves when called upon by a beneficiary or a currently serving trustee. Trust Protectors are generally financial institutions or the attorney who drafted your plan and focuses on trust law.

TRUSTEE CHECKLIST

Does your trustee check all the boxes?

- Good Judgment
- Over 18 Years Old
- Trustworthy
- Capable of Separating Own Beliefs v. the Best Interest of the Beneficiaries
- Diligent
- Good with Money (or Capable of Working with Someone Who Is)
- Able to Communicate Harmoniously with Beneficiaries
- Proactive
- Organized
- Able to Address and Handle Disputes
- Timely
- Good with Paperwork
- Willing to Obtain and Rely on Professional Legal Advice
- Willing to Obtain and Rely on Professional Financial Advice
- Agreed to Serve (YES—DO NOT SURPRISE SOMEONE)
- Level Headed
- Able to Follow Trust Terms That They Do Not Agree With

**This article is intended for general informational purposes only and is not meant to give legal advise. Please consult with a qualified attorney regarding your situation.*