

CONVERSATIONS WITH LOVED ONES YOU INTEND TO NAME AS TRUSTEE

Rather than the interview questions I suggest you ask corporate trustees, here I list various conversations to have with your loved ones who you intend to name as a successor trustee.

Too often when I ask a client who they wish to name as their successor trustee a conversation like this occurs:

“I want to name my oldest son Robert as trustee,” my client directs.

“Tell me about Robert,” I ask.

“Well, Robert sometimes gets himself into bad situations. He’s been divorced three times, declared bankruptcy twice and has had a couple of failed businesses,” client offers matter-of-factly.

“Why in the world would you want to name Robert as your trustee?! If you become disabled he has access to all of your money and accounts! He can even sell your home out from under you!”

“Robert’s my first born. He’d be upset if I didn’t name him.”

I am not exaggerating to say that the fictitious conversation above isn’t all that different than several I’ve had with real clients. When considering naming family members as the successor trustee to your trust in the event of your disability or death, you must first realize that the position is one of significant fiduciary responsibility. It is not an honor. It’s a job.

You’re not electing Congress. I’ve had other clients name all of their children as successor trustee in an effort not to offend anyone. While that can work out, it often does not because of sibling rivalry and baggage dating back to their childhood. If you name all three of your children as successor trustee keep in mind it takes two (if a majority is required) or three signatures to accomplish anything. Think of the logistics when you have family spread across the country.

Instead, I suggest that you consider the following questions for any loved one you intend to name in this important role:

- Is she likely to respond to your attorney, financial advisor and CPA or procrastinate until the issue at hand becomes an emergency?
- Is she likely to fire your professionals with whom you’ve had longstanding relationships and replace them with her own advisors who you don’t know?
- Are the duties and responsibilities associated with serving as a trustee something that your loved one would dread or be comfortable taking on?
- Does he have the time to make sure that your bills are paid, investments are reviewed, tax returns filed, and the host of other day-to-day responsibilities you take for granted?
- Does he have trouble making difficult decisions?

- Will she be able to stand up to a difficult sibling or other beneficiary?
- When taking care of your affairs during your disability would she have your best interests at heart?
- Would his spouse have influence over his decisions?

The above are just a few of the threshold questions to consider. What follows are conversations that you should have with various loved ones. Before engaging in these conversations, I highly suggest loaning this book to your loved one. Have them read it first, so they are most aware of the duties and responsibilities you are about to ask them to consider taking on.

WITH YOUR SPOUSE

Most of my clients name their spouse as the primary successor trustee, and often it works out just fine. I've also seen plenty of instances where it hasn't. Taking the time to have heart-to-heart discussions over the following issues can help.

Questions for the Spouse Who Does Not Handle Most of the Money and Investment Matters

Are you comfortable managing our money and finances? Why or why not?

What help might you need? Are you comfortable with our financial advisor?

For investment do-it-yourself clients — Do you feel comfortable continuing to manage our finances as I have with discount or online brokerage firms? If not, what additional help would you need? Would it be easier for you if we established those relationships now while I'm fine and capable of selecting a good advisor? Do you know where I keep my username and passwords for my online bank/investment accounts?

Are you comfortable with our attorney? CPA? Why or why not? Should we make a change?

For tax return preparation do-it-yourself clients — Do you feel comfortable filing our tax returns if I can no longer do so?

Do you know where the copies of our tax returns are kept? Would you feel more comfortable if we established a current relationship with a CPA while I am still fine and capable of selecting a good advisor?

What worries you most about our money and financial matters?

For Those Married Couples Who Have Children of Their Union

If I become disabled or die and you become the trustee, what worries you most about our family relationships?

Are you concerned that any one of our children might ask you for money? How would you react? Would you have troublesaying "no" if doing so would cause financial harm to us, you, or even to the child requesting the money?

If the trust continues on for your lifetime then distributes to our children, how do you feel about managing the investments in such a way to produce the income you need? Would you feel confident balancing your needs against the needs of our children who inherit one day? Should we tell the attorney that your needs are to be considered first and foremost, and give that specific direction in the trust document?

During the aftermath of my passing, will you need help with the legal, tax and financial day-to-day duties given a period when you might be grieving and not capable of making good decisions? If so, would you feel more comfortable naming an impartial trustee or one of our children?

For Marriages with Blended Families - Particularly Where the Trust Benefits the Surviving Spouse for Life and Then the Stepchildren

Please note that the same questions we ask of the spouse above apply to this situation. Add the following:

Are you concerned that my children will look at you as impeding their inheritance? If you are named as a trustee, how likely do you believe it to be that one of the children will claim you have conflict of interest both as a beneficiary and the decision maker over investment and distribution decisions?

Do you feel it would be best to name an independent trustee or co-trustee to serve alongside you to take some of the pressure off?

What other dynamics about our relationships with the children concern you?

With Your Adult Children

It's also common for my clients to name an adult child as the successor trustee. The child doesn't need a legal, tax or financial background as long as she is comfortable working with your professionals.

Do you feel you have enough time to manage my investments, write my checks and pay my bills, file my tax returns, and all the various things I now do for myself if I become disabled? Would it help if you had a professional co-trustee to assist?

How do you feel about dealing with your mother/father/step-mother/step-father in a situation when I am disabled? With your siblings? What concerns you most about that situation?

If you are the trustee during my husband/wife's lifetime, will you put his/her interests at the forefront? The temptation would be to preserve as much of my estate as you can for yourself and your siblings. Can you resist that temptation? What about that concerns you? Does naming an independent professional trustee as your co-trustee help with any of your concerns?

Have you met my attorney, CPA and financial advisor? Do you feel comfortable working with him or her either in the event of my disability or administering my trust estate after my death?

Have I shared enough information about my assets and estate plan with you? What do you want to know now before you have to act?

For investment do-it-yourself clients — Do you feel comfortable continuing to manage my finances as I have with discount or online brokerage firms? If not, what additional help would you need? Would it be easier for you if I established those relationships now while I'm fine and capable of selecting a good advisor? Would you move all of my investments to your broker? Do you know where I keep my usernames and passwords for my online bank/investment accounts?

For tax return preparation do-it-yourself clients — Do you feel comfortable filing my tax return if I can no longer do so? Do you know where the copies of my tax returns are kept? Would you feel more comfortable if I established a current relationship with a CPA while I am still fine and capable of selecting a good advisor? Would you use your CPA in the event of my disability or death or continue to use mine?

What concerns you about your siblings when you are acting as my trustee? Would you be able to tell them “no” if they asked you for an improper or early distribution? Would it be easier if I named an independent co-trustee?