

## SELECTION OF FIDUCIARIES

In your estate planning you will have to select executors, trustees, and agents for financial and medical decisions. The selection of a fiduciary is often difficult and requires a great deal of thought. The following is designed to assist you in determining who is best suited to serve as your fiduciaries.

- **Questions.** Do I select individuals or corporate fiduciaries? Should I use my local bank trust department? If I select individuals, should it be a family member or a trusted friend? If I choose an individual as my fiduciary, who should be the back up or successor in the event the named individual is unable to continue to serve? Should the successor be a corporate fiduciary?
- **Problem.** Further complicating this decision is a growth in litigation cases between beneficiaries and fiduciaries, making the selection of fiduciaries and the acceptance by the fiduciary even more thought provoking.
- **Issues.** Many people choose family members. This may be appropriate for several reasons including: the knowledge of the family by the individual, the awareness of the assets owned by the family, and the fact that family members often take a smaller or no fees when they serve. These all may be advantages in selecting a family member; however, on the other side of the ledger is the potential for family conflict (and possible litigation) because a family member is "in control" of the distributions to other family members.
- **Factors in Choosing.** What follows is a checklist of characteristics for you to consider in your selection of fiduciaries.
  - Common Sense - Acting as agent under a power of attorney and administering an estate or trust often involves conflicting interests, desires, and allocation of funds to competing uses. With respect to any decision, there is no "rule book" and the fiduciary will be called on to make difficult decisions applying broad principles of fiduciary law. An abundance of common sense is necessary to make these decisions.
  - Acumen - Does the fiduciary have sufficient acumen to make business or investment decisions competently and does the fiduciary have sufficient acumen to acquire and discern competent business and investment advice?
  - Expertise - Individual fiduciaries often lean on lawyers and accountants for their expertise to handle basic administration of estates and trusts. If that is not available, the individual trustee should have the skills to handle the basic administrative items or find competent help.
  - Wisdom - Do the selected fiduciaries have the wisdom to follow the provisions of the will, trust, or power of attorney, as well as to make wise investment decisions with the assets under their control? Will the assets include stock of the family business? Does the fiduciary have the skills and wisdom to make decisions regarding the business?

- Knowledge - Closely aligned with wisdom, does the fiduciary have the pertinent knowledge to manage the assets? Will the fiduciary make the necessary effort to acquaint himself or herself with the uniqueness of the assets, or to acquire the appropriate advisor(s) to assist them?
- Integrity - Fiduciaries are sometimes in a position that can be abused by an unscrupulous investment advisor, a self-centered beneficiary, or the beneficiary's spouse. Selecting a person or a corporate fiduciary who you trust to maintain the integrity of your wishes and directions is vitally important.
- Another important consideration is the amount of time which will be required to handle the responsibilities of the fiduciary. These duties include filing annual tax returns, making sure records are kept up to date, and following the requirements for distributions to beneficiaries as set forth in the governing documents.
- What remuneration is appropriate for the fiduciary?
- **Successors** - Often people do not put as much thought into the selection of a successor fiduciary as they give to the initially named person or entity. Obviously a successor may be put in the same position as the original fiduciary if he, she, or it dies, becomes disabled, is incompetent to serve, or resigns or refuses to act. Accordingly, you should analyze the potential successors in the same manner as you consider the initial fiduciaries.
- **Agents Under Medical Directives.** While the preceding points are focused on who is best suited to handle financial related matters, as you consider who to name as your agents under your advanced medical directive you should also be certain to consider who is best suited to follow your wishes and make medical decisions on your behalf in the event you are unable to do so.

As you consider these important matters, please feel free to ask us any questions you may have. We would welcome the opportunity to provide you with our thoughts based on your unique situation.