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Norway Savings ASSET MANAGEMENT GROUP

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How to choose your trustee

A cautionary tale from Ohio.

A wealthy grandmother in Ohio established irrevocable generation-skipping trusts for each of her grandchildren at birth. The grandmother served as the trustee of the trusts until she resigned in 2000 because of her advanced age. The father of the grandchildren took over as trustee at that time. Although the trusts permitted distributions to the grandchildren after they turned 21, and termination when they reached 25, no distributions were made. In fact, for years the grandchildren had no knowledge of the trusts.

A lawsuit has been filed, and the press details published in October are sketchy. Apparently, at some point the father either died or resigned his trusteeship, and the mother took over that job. When the children finally learned about the trusts and made inquiries, they learned that the mother had poured all the trust assets into a new trust for which she herself was the main beneficiary. What's more, her new cotrustee resides in a New Hampshire state prison. He will live there for the next 30 years because he was convicted of stealing some $409,000 from his own father's estate.

Remarked one observer: "For other wealthy grandparents the moral is obvious: Naming a reputable bank or trust company is worth the trustee fees."

Whom can you trust with your trust?

More and more affluent families are turning to trust-based solutions to their wealth management and inheritance problems. However, a trust is only as good as its trustee.

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Have you been asked to serve as trustee, perhaps for a parent's trust? Do you plan to ask your child to be your trustee? Although such a course of action may be a natural impulse, it may not be the best approach.

A family member has the advantage of a personal understanding of the trust beneficiaries, and that is no small thing. Unfortunately, family members usually lack experience and ability in several other crucial areas.

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Amateur trustees—watch out for these traps

There are many ways for a trustee to fail to meet the obligations of sound trust management.

Faulty records. There's much more to trust accounting than balancing checking accounts and keeping track of portfolio statements. Income, asset values, and distributions must be reported to the beneficiaries on a regular basis. "Beneficiaries" refers not only to those who receive current trust income, but also to those who will receive the assets when the trust terminates. We suggest a team approach, including a trust attorney, a tax professional, and an investment manager. *Note: We are pleased to serve as agent for a trustee!*

Failure to diversify. Laws governing the prudent investment of trust assets vary from state to state. In general, concentration of assets should be avoided. According to many experts, a red flag should go up when any one holding accounts for more than 10% of a trust. Problems with that holding could lead to lawsuits by disgruntled beneficiaries against the trustee. On the other hand, the person who creates a trust may override the diversification requirements. For example, shares in a family business could be exempted from the diversification mandate.

Biased distributions. One of the most important benefits of trust-based wealth management is delivery of financial resources to multiple generations, today and in the future. Trouble is, finding the appropriate balance between current and future interests is not easy. Trustees need to document reasons for allowing or denying invasion of a trust for particular beneficiaries, for example. What's more, the investment strategy chosen for a trust inadvertently may favor some beneficiaries over others. When a family member is a trustee, the issue of bias can become quite emotional.

Expecting a payday. Trustees should be paid, but beneficiaries don't always see it that way. When the trustee is a family member with an interest in the trust, the payment issues can be especially sensitive. Compensation matters should be settled before the trustee assumes the duties of trust management.

False sense of safety. Some amateur trustees assume that, given their relationships to the family and trust beneficiaries, their work won't be scrutinized closely. Not so. The role of trustee has potentially unlimited liability. Trustees may be called to account for their investment choices, as well as for the quality of their fiduciary judgments about trust distributions.

Trustee checkpoints

To make an informed decision about your choice of trustee, think about questions such as these:

- Does the prospective trustee have the time and experience necessary to handle the job?
- Has the organization or individual performed capably in both bull and bear markets?
- Could conflicts of interest arise between your trustee and your family?
- Will each and every beneficiary be treated fairly and impartially?
- What fees will the trustee charge? Do the fees include investment management costs, or will they be an additional expense?
- If conflicts develop between the beneficiaries, how will they be resolved? Will all the beneficiaries respect the decisions of the trustee?

Consider the professional alternative as your trustee

Given the complexities of modern trust management, one might expect that businesses, such as trust companies and bank trust divisions, would become available to meet that need. One would be absolutely correct! That's us!

Key qualifications that we bring to the table:

- ***Integrity.*** The single most important qualification for any trustee is . . . trustworthiness. A trustee must live up to standards higher than those that prevail in everyday business.
- ***Investment experience.*** A trustee may be called upon to consider the current income needs of a surviving spouse and the capital growth needs of two children who face heavy education expenses in years to come, and then to come up with an investment program that does justice to both requirements.
- ***Administrative know-how.*** A trustee must make sure that trust assets are properly titled and safeguarded, collect income, and distribute or reinvest it as the terms of the trust direct, and perform any number of other chores.
- ***Tax and accounting capabilities***. A trustee must be aware of federal and state tax requirements, keep detailed, accurate records, and submit timely reports to beneficiaries.
- ***People skills.*** The ability to serve as a trustworthy financial advisor, both to the individuals who create trusts and the beneficiaries that they name, may not be a formal requirement of trusteeship, but it's important nonetheless.

We offer you our technical skills and our financial and auditing infrastructure for the successful implementation of your trust plan. Most importantly, we offer you our experience as trustee. It's a truism that every wealthy family is different, and so is every trust plan. Yet all trust management is governed by the legal standards of *fiduciary duty*. We've seen a range of family circumstances, of market environments, of trust purposes and objectives.

Shall we discuss your needs?

We invite you to learn more about our capabilities as trustee for your family. You may designate us to serve as sole trustee, or as cotrustee along with family members. Call on us to discuss the possibilities. ☐

Charitable giving at year-end

The Tax Cuts and Jobs Act enacted in late 2017 scrambled the tax calculus on charitable giving to some extent. On the one hand, some restrictions were loosened. The deduction limit for cash contributions to charity was lifted from 50% of adjusted gross income to 60%, and the phaseout of the deduction at higher income levels was eliminated. That's the good news.

The possible bad news was that the rough doubling of the standard deduction, coupled with the $10,000 cap on the deduction for state and local taxes, meant that a large number of taxpayers would no longer be itemizing, and so would get no tax benefit from their charitable giving. The Congressional Budget Office projected that the change might reduce total charitable giving by 4.6%.

That hasn't happened yet. Several studies have estimated that charitable giving actually rose in 2018, following enactment of the new law. Still, many taxpayers may not have realized that they would no longer be itemizing until they filed their 2018 returns in 2019. The patterns of giving for 2019 are not yet clear.

Some retirees have an option for charitable gifts that falls outside of this controversy.

Direct charitable gifts from an IRA

A "charitable IRA rollover" is available to those who have reached age 70½. Up to $100,000 may be transferred directly by the IRA custodian to the charity. When handled properly, there are two favorable tax consequences: The gift is not included in the donor's taxable income, but it does count toward his or her required minimum distribution (RMD) for the year. In past years, many retirees simply have directed their RMDs to charity.

The income tax exclusion for a transfer to charity from an IRA might not seem like such a big deal. After all, one always has been allowed to follow an IRA withdrawal by a charitable contribution and claim an income tax deduction. But it *is* a big deal, because, the full benefit of that deduction is not available to all taxpayers.

- ***Nonitemizers.*** Only an estimated 10% of all taxpayers still itemize their deductions. Just 22% of households with income in the $100,000 to $200,000 range still do so. Retirees typically have lower incomes.
- ***Big donors.*** Percentage limits on the charitable deduction mean that some donors can't take a full charitable deduction in the year that they make a gift. They can carry the deduction forward to future years, but the charitable IRA rollover is much better. No percentage limits (just the $100,000 cap), and the excluded amount is not aggregated with other charitable gifts for the year in determining whether the percentage cap has been breached.
- ***Social Security recipients.*** An increase in taxable income may cause an increase in the tax on Social Security benefits for some taxpayers. The direct gift from an IRA avoids this problem.

Watch out!

A few caveats to keep in mind.

- The donor may not receive anything of value in exchange for the gift from the IRA. If something of value—even as little as $25—is received, the entire exclusion from income is lost.
- The gift must happen after the donor has reached age 70½, and not merely be made during the year the donor reaches that age (which is the rule for required minimum distributions).
- The exclusion is only available for direct charitable gifts from traditional and Roth IRAs, not from 401(k) plans, Keoghs, or other tax-qualified retirement plans. However, it may be possible to arrange a tax-free rollover from such plans to a traditional IRA, and from there make the charitable gift.
- Married couples may exclude up to $200,000 for direct gifts, but only if each spouse has an IRA as the source of the donation.
- Inherited IRAs may have RMDs for younger taxpayers. They don't get the benefit of this charitable transfer rule. A charitable rollover may be made from an inherited IRA, but only if the beneficiary has reached age 70½.

Be sure to consult with your tax advisors before making any decisions that you might not be able to reverse. ☐

Higher threshold

The amount exempt from the federal estate tax will grow to $11.58 million in 2020, up from $11.4 million in 2019. Should both partners of a married couple die in 2020, they could protect $23.16 million from the federal transfer tax at death.

The same exemptions apply to the federal gift tax for next year. The annual exclusion from the federal gift tax remains at $15,000 per donee, with no limit on the number of such gifts that one donor may give. Married couples may split their gifts so as to give $30,000

Philip Roth's estate plan

Author Philip Roth grew up in Newark, New Jersey, a location that figured prominently in several of his works, such as *Goodbye, Columbus*. Roth remembered his hometown in planning his estate. Before his death, Roth donated his personal library of some 7,000 volumes to the Newark Public Library, to be displayed as the Philip Roth Personal Library. Additional details recently were uncovered by *The Wall Street Journal*.

Roth left $2 million to the library to benefit its general collections, to be managed by the Community Foundation of New Jersey. Income from this endowment may be used to purchase books and other materials, but not for capital improvements. A separate bequest will support the room set aside for his personal library. Those funds might support a curator, for example.

Other details of Roth's estate plan were unclear. The *Journal* reported: "His will left all of his assets in a trust, which isn't publicly available." Yes, that's how trusts are supposed to work

Rumor denied

A nasty rumor was circulating in estate planning circles. When someone makes a taxable gift and files a gift tax return, the statute of limitations gives the IRS a limited window to challenge the return. According to the rumor, if the IRS spotted a gift tax return that inadequately disclosed a gift, the return would be set aside instead of being challenged immediately. When the donor died years later, the IRS then would bring up the faulty gift tax return and assess interest and penalties for the interim.

The rumor gained enough traction that the IRS felt compelled to deny it at a November meeting of the American Institute of CPAs in Washington, D.C. "We don't have the ability to flag returns and keep track of them for years and years," said Lauren Busterna, an IRS estate and gift tax policy attorney-adviser. What's more, given the increases in the amounts exempt from federal estate tax, it is quite possible that no estate tax return ever would be filed to provide the basis for follow-up. ☐