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Avoid the Trustee Trap
Objectivity and Trust are Critical for Long-Term Success

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In trust planning, one of the most important decisions to be made is the appointment of a dependable trustee to ensure that a family's wealth is managed and distributed according to the family's wishes. When selecting a trustee, many people consider a trusted family member or a close friend for the role. Family members and friends, however, rarely have a full understanding of the issues, responsibilities and time involved in the process. Additionally, these "insiders" often find it difficult to maintain objectivity and impartiality when dealing with sensitive and emotional family matters.

Below are two scenarios that we recently encountered and how we worked with our family office clients to resolve their concerns.

Scenario 1: Co-Trustees Misused the Family's Assets for Personal Gains

Beneficiaries Unprepared for Wealth

- Two beneficiaries received a multimillion dollar estate from their father in a trust.
- The father did not prepare his children for the wealth, nor did he discuss his wealth with his children.

Executor and Co-Trustees Named

- The father named his business partner and his nephew as executor and co-trustees of his children's trusts and control over all of the assets.
- Given their relationship, the co-trustees are familiar with the family dynamics and have relationships with the beneficiaries.

Lack of Role Clarity and Abuse of "Power"

- The co-trustees made several major business decisions independently without consulting the beneficiaries.
- The beneficiaries did not receive communications or statements regarding the administration of the estate and trusts, nor did they receive distributions from the trust for several years.
- When the beneficiaries questioned the co-trustees, the situation became tenuous and threatening, with the cousin (of the beneficiaries) reminding them of "who had the real power and control over the funds."
- After five years without distributions, the beneficiaries sought legal counsel, and the judge compelled an accounting audit of the trust.

Mismanagement Uncovered
• While the beneficiaries did not receive any distributions for five years, the co-trustees paid themselves unusually high trustee fees, took lavish trips, and ate expensive dinners for themselves and their spouses using the trust funds. • One of the co-trustees sold several large stock positions from the estate (amounting to several million dollars) and re-invested the proceeds in various companies in which he was personally invested and/or served as a board member. • In addition to creating a conflict of interest, many of the re-invested positions were inappropriate trust investments.

Litigation
• After two years of litigation, the co-trustees and beneficiaries reached a court-ordered settlement in which the co-trustees repaid their trustee fees, were mandated to reimburse the trust for any lavish expenses, and were mandated to resign immediately. • The beneficiaries were advised by their counsel to name a corporate trustee due to the size of their trust funds, and a corporate trustee's objective and professional approach to trust administration including, the prudent management of complex assets and LLC structures.

After a year of interviewing several trustees, the two beneficiaries named me as independent professional trustee, given my approach, depth and sensitivity to complex fiduciary issues. We worked with the beneficiaries and their counsel to modernize their trusts, while maintaining the original intent of the settlor.

The result of this unfortunate series of events goes beyond monetary fees. The relationship between family members has been permanently broken. Additionally, this situation could have potentially been avoided with proper guidance and advice.

Scenario 2: Trustee Lacked Expertise Needed

Complex Trust Structure
• Three beneficiaries received a multibillion dollar estate from their father in a trust. • The trust had a jurisdiction in Michigan, triggering highly punitive state income and estate taxes. • The deceased father left a billion dollar operatng business in the trust for his children (the beneficiaries). • One child was involved in the day-to-day operations of the business and was very entrepreneurial. • After several years, the children agreed to sell the profitable business in trust, and needed more sophisticated advice.

Choosing the Right Trustee
• Although a trustee was in place, with the guidance of their legal counsel, the beneficiaries began an exhaustive search for a successor trustee. • The criteria included experience with large, complex trust funds, which included an operating business, objectivity, and a professional approach to daily trust administration. • Importantly, the family needed a corporate trustee that was able to service trusts in the state of Delaware given local regulatory requirements.

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Tax Savings and Solution
• After a year of interviewing trustees, the beneficiary worked with EMM Wealth (now Cerity Partners) to find a solution. • Our family office team worked with the beneficiaries' legal counsel to modernize their trusts, while still maintaining the original intent of the Settlor. • A critical decision in the process was to carefully decant (the legal process of revising the current trust documents to another trust situated in a more beneficial state jurisdiction) the trusts to Delaware **BEFORE** the sale of the business, which **saved the family over $2 million in Michigan state tax.**

At Cerity Partners, our dedicated Family Office team has helped many families with their trustee and fiduciary needs. For more information on our Fiduciary and Trustee service, please contact your Cerity Partners advisor.

About Cerity Partners

Cerity Partners is one of the nation's leading independent financial advisory firms. We serve high-net-worth individuals and their families, businesses and their employees, and nonprofit organizations from our offices across the country. Our in-house experts of tax advisors, financial planners, investment professionals, and retirement plan consultants are passionate about and committed to providing objective financial advice and oversight. Visit www.ceritypartners.com to learn more.

Susan is a Partner in the New York City office with more than thirty years of experience serving as a senior director in trust, wealth management and family office advisory firms, and as a personal fiduciary advisor to individuals and families. She helps large families and family offices evaluate and establish Private Trust Companies (PTCs) and develops family office governance and operating structures, including fiduciary policies and procedures.

Prior to joining Cerity Partners, Susan was the Director of Fiduciary and Senior Wealth Advisor at EMM Wealth, a fifty-year-old multi-family office serving high-net-worth individuals and families throughout the country.