

# Selecting A Trustee

## Choosing the Right Trustee for Your Family



**Mark Harder, Partner Warner Norcross + Judd**

**Selecting the person or institution who will act as your trustee** is one of the most important decisions you and your family members will make.

Legally, anyone over the age of 18 with the mental capacity to manage his/her own affairs can be a trustee. But practically, to protect your assets, you are going to want someone with a level head, some time on his/her hands and the ability to make decisions.

**Don't assume you need to choose a family member as your trustee--you actually have plenty of choices.**

### Where to Look for Trustees

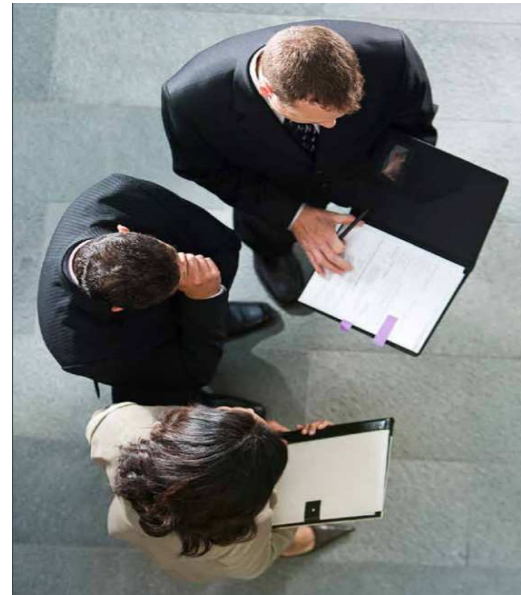
- Family Members
- Friends and Business Associates
- Institutions (Bank, Trust Co.)
- Professional Advisors
- Family Trust Companies

### Questions to Ask About Trustees

Will this trustee:

- Exercise good judgment?
- Understand the duties and responsibilities of a trustee?
- Have time to devote to performing these duties?
- Have the skill sets to administer the trust, apply best practices and meet beneficiary needs?
- Understand what he/she does not know and seek and follow advice?
- Be available for a long period of time?

Remember that choosing a person as your trustee means that you will need a



successor at some point due to the trustee's eventual death or incapacity.

### Examining the Trustee Alternatives

**Your choice will depend on the factors that are most important to your family, such as privacy, cost, experience, risk and family harmony.**

### Family Members

*Pros:*

A family member is a popular choice because he/she

- Understands the family and its businesses
- Would provide privacy by limiting the spread of family information to outsiders

Plus they often work cheap!

*Cons:*

A family member comes with years of emotional baggage and

- Can be resented by other members for having control over assets.
- Usually lacks skills and objectivity, as well as insurance to cover mistakes
- May have difficulty saying "no" to requests, due to family repercussions

## ***Friends and Business Associates***

### *Pros:*

This choice

- Will likely understand the family
- May have more objectivity and willingness to say “no”
- May also work cheap!

### *Cons:*

This person

- May lack skills and time to complete duties
- Likely lacks insurance to cover mistakes
- May still be close enough to the family to have an inability to say “no”
- May be resented or not trusted by all family
- Will eventually need a successor

## ***Institutions***

### *Pros:*

An institutional trustee

- Will have the skills, experience, resources and systems to effectively administer the trust
- Will have insurance to make it easier to recover damages for ineffective management
- Should be able to be impartial and say “no” to requests as needed

### *Cons:*

An institutional trustee

- Will be less familiar with your family’s circumstances and values
- May take some time to make decisions
- May be more conservative than your family would like
- May be uncomfortable holding concentrated positions in family enterprises and in private equity investments
- Could be acquired by another institution, and you may end up with a different entity acting as your trustee.

NOTE: While institutional trustees will not need successors, the trust manager may move to another position, requiring “re-education” of a new manager for each trust.

## ***Professional Advisors***

### *Pros:*

A professional such as investment advisor can embody the best of friends and institutions, as she:

- May know the family well and be trusted by them
- May be more likely than family or friends to be objective
- Could have the experience, skills, systems and procedures to administer a trust (although that is not guaranteed)
- Can also support family privacy by limiting the number of individuals with involvement in the family’s affairs

### *Cons:*

- Some advisors are prohibited from serving as a fiduciary to avoid a conflict of interest with their investment professional role.
- She may lack the expertise or resources to be a fiduciary.
- She may not be trusted or respected by all family members.
- A successor will eventually be needed.

## ***Private Family Trust Companies (PFTC)***

### *Pros:*

A PFTC mixes the best of family and institution because it:

- Is staffed with individuals who understand the family’s goals, objectives and values
  - Can provide trust administration expertise
  - Is usually trusted by family members because they have the ability to provide input and influence through their participation in PFTC committees
  - Provides privacy by keeping the family’s information within a family-controlled entity
  - May be more comfortable with holding interests in private equity investments
  - Has institutional continuity, because PFTC’s do not die, become incapacitated, or retire
- Plus, a PFTC may offer tax benefits if it is formed in a state with favorable tax laws.

*Cons:*

- A PFTC is only viable for ultra high net worth families as it requires significant upfront investment in its creation.
- These are relatively new and untested vehicles in the courts.
- These are only permitted in a handful of states, so it may need to be formed and administer at least some functions outside the family's home state.
- Using a PFTC may require modification of existing trusts to be administered in a different state.

### **Making Your Selection**

Clearly, trustee choices are available to fit a variety of needs. You will want to weigh the pros and cons of each alternative within the context of your family situation, since you know your family the best.



Mark Harder is the chair of Warner's Private Client and Family Office Group.

He has dedicated his practice to counseling and representing high net worth individuals, families, family businesses and their owners, and closely held businesses. He provides his clients with estate planning and estate settlement services, advises on family business succession planning matters, represents family and closely held businesses in their day to day business matters, and serves as an adviser and counselor on legal matters to businesses, individuals, and their families.

Mark chaired the Probate and Estate Planning Section of the State Bar of Michigan and also the State Bar of Michigan committee that spent more than five years writing the Michigan Trust Code, which governs how trusts are established and administered in the state. He is a Fellow of the American College of Trust and Estate Counsel.

He can be reached at 616.396.3225 or by email at [mharder@wnj.com](mailto:mharder@wnj.com)

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**Don't forget that your advisors can be a great help as you consider the pros and cons of each of these options within your particular situation.**  
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Another great resource for this decision is the Trustees and Beneficiaries Workshop, held each year by the Family Office Exchange (FOX). The workshop provides sessions about selecting trustees as well as training sessions designed for both trustees and beneficiaries. You can visit the learning programs tab on the FOX website ([www.familyoffice.com](http://www.familyoffice.com)) and click the "View All" button for more information about this workshop.

Choosing a trustee is an important decision, but with some thoughtful consideration, you can choose the trustee that best meets your needs.



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	<b>Family</b>	<b>Friends &amp; Business Associates</b>	<b>Professional Advisors</b>	<b>Institutions</b>	<b>Family Trust Companies</b>
<b>Price</b>	Maybe free (or at least lower cost)	Likely lower cost	Moderate	Moderate	Expensive to form and run company
<b>Knowledge of Family Dynamics, Values, Businesses, Settlor's Objectives</b>	Very High	Maybe high	Moderate to high	Low to moderate	Very High
<b>Experience/Skills</b>	Likely unskilled	Likely unskilled	Possibly unskilled	Very Skilled	Very Skilled
<b>Time Available to Perform Duties</b>	Varies	Likely low	Moderate	High	High
<b>Ability to Say "No" to Bad Requests</b>	Lower?	Lower?	Moderate	High	High
<b>Likelihood of Conflicts of Interest</b>	More Likely	More Likely	More Likely	Low	Low
<b>Affected by Family Conflict/Emotional Baggage</b>	Very High	Low to moderate	Low to moderate	Low	Low
<b>Possible Problems from Family Events like divorce</b>	Yes	Not Likely	No	No	No
<b>Successor Turnover/Re-education</b>	Yes-Due to death or incapacity	Yes-Due to death or incapacity	Yes-Due to death or incapacity	Yes-Due to personnel or entity ownership changes	No
<b>Unexpected New Trustee</b>	No	No	No	Yes-if entity ownership changes	No
<b>Insurance to Cover Mistakes/Mismanagement</b>	No	No	Possibly	Yes	Yes
<b>Time Required to Make Decisions</b>	Likely quick	Likely quick	Moderate	Slow to Moderate	Moderate to quick
<b>Investment Risk Tolerance</b>	Moderate to High	Moderate	Moderate to High	Low	Moderate to High
<b>Willing to invest in Private Equity</b>	Likely	Likely	Possibly	Unlikely	Likely
<b>Protects Privacy for Family through Limited Access to Info</b>	Yes	Possibly	Likely	No	Yes
<b>Prohibitions on Serving as Trustee</b>	No	Possibly prohibited by occupation	Possibly prohibited by employer	No	No
<b>Trusted by Family</b>	Likely	Possibly	Possibly	Likely	Very likely