Morgan Stanley

THE KELLIHER CORBETT GROUP
AT MORGAN STANLEY

Choosing a Trustee

Before settling on a trustee, you should consider the vital attributes required, and what structure best suits your personal and financial circumstances.

Protecting wealth built over a lifetime and passing it smoothly to your beneficiaries can be a challenging and somewhat daunting task. Vital to the effort is setting up and periodically revising a thoughtful estate plan as your personal and financial situation evolves.

For UHNW individuals, an estate plan often includes one or more trusts in order to meet certain estate-planning goals. The success of a personal trust turns in large part on the selection of a suitable trustee to manage the trust in the face of what can be complex, and changing, family and financial circumstances.

If you have already created a trust but no longer consider the trustee suitable, it may be possible to remove and replace the trustee. If you are creating a new trust, you will be required to choose one or more individuals or entities to serve as trustee(s). In either case, selecting a trustee who demonstrates a high degree of competence, judgment, reliability and experience is essential, since you and your beneficiaries will depend on the trustee to carry out the provisions of the trust today and for years to come.

The trustee has the fiduciary responsibility to manage, administer and distribute trust assets according to the terms of the trust document. The trustee is required to follow rigorous standards set out in applicable state law, and to act impartially and exclusively in the interest of the current beneficiaries and the remainder of the beneficiaries of the trust. When consulting with your attorney in creating the trust document, you decide on the identity of the trustee, as well as the scope of the trustee's powers and discretions. Trusts are extremely flexible; it's possible to give the trustee very broad powers, very limited powers or something in between.

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A TRUSTEE MUST DISCHARGE MANY FIDUCIARY-, ADMINISTRATIVE- AND INVESTMENT-RELATED OBLIGATIONS, SUCH AS:

- Investing trust assets in a prudent manner (unless the document dictates that investment control and responsibility to someone else)
- Distributing trust income and/or principal to beneficiaries, as directed in the trust agreement
- Making tax elections concerning the trust and the investments therein, and filing required tax returns
- Providing record-keeping for all trust transactions that differentiate between principal and income
- Issuing regular statements of account activity and reports to trust beneficiaries
- Answering any questions the beneficiaries may have concerning the trust
- Filing reports in court if the trust is created under a will or otherwise is subject to judicial supervision
- Being available to meet with the client, the beneficiaries of the trust and professional advisers

You may select an individual or an entity as trustee, and in some circumstances, you may be able to act as your own trustee, alone or in conjunction with others. As set out in the chart below, there are a number of questions to consider when choosing between a natural person and a corporate trustee.

Choosing Between a Corporate Trustee and a Natural Person

KEY ATTRIBUTES	KEY QUESTIONS
Experience	Does the trustee have full-time, experienced personnel devoted to the highly complex and time-consuming tasks of properly managing a trust?
	Does the trustee have a deep understanding of individual family members, family history and dynamics, individual and group challenges and opportunities?
	Could multiple generations of a family name the same trustee to ensure continuity and consolidation of financial affairs?
Financial Resources	Are the beneficiaries of the trust protected from loss in the case of breach of fiduciary duty?
	Can the trustee be sued for breach of fiduciary duty and charged for improper conduct or for failing to act when action was required?
	Will banking authorities periodically subject the trustee to scrutiny, supervision and audit?
Administrative Capabilities	Is the trustee familiar with legal requisites?
	Can the trustee's experience in trust administration relieve individuals of burdensome administrative details?
	Are accounting, audit, administrative and investment experience and facilities of the trustee provided without additional cost?
	Can the trustee provide continuity of management without regard to illness, incapacity, death, vacation or business trips?
	Does the trustee have the facilities and experience needed to collect debts, income, accounts receivable and other funds owing to the trust?
Impartiality/ Nature of Relationship	Is the trustee free from personal bias regarding beneficiaries?
	Are the trustee's services provided pursuant to a professional business relationship rather than as an accommodation, sense of family obligation or personal favor?
Costs	Will the trustee act without compensation?

CORPORATE TRUSTEE	NATURAL PERSON AS TRUSTEE
YES	?
?	?
YES	NO
YES	?
YES	YES
YES	NO
YES	?
YES	?
YES	?
YES	?
YES	?
YES	?
YES	?
NO	?

It's easy to look at the chart to the left and conclude, almost reflexively, that an entity is nearly always preferable to an individual. But that's not correct. The chart can't capture the nuances of many situations. Instead, keep in mind that the question mark so often appearing in the column for natural persons reflects just that — a question, the answer to which needs to be determined. Don't conclude that an individual is inherently unqualified to provide the relevant service or lacks the desired attributes; only that such an appointment raises a question that requires an answer.

While there will be a frequent role for a corporate trustee to play in an UHNW client's estate plan, it is undeniably the case that, often, family members, friends, or advisors, such as attorneys, possess the deep and nuanced knowledge of the family and its individual members that no corporate trust department can replicate, however diligent and well-intentioned. In these situations, where deep personal knowledge is essential, a hybrid structure including both natural persons and a corporate trustee will often serve a family best — the individual to provide personal knowledge and experience, and the corporate trustee to provide unbiased and professional judgment, independence, professional administration and, essentially, unlimited life.

By understanding the advantages and disadvantages of naming an individual versus an entity as trustee, you can determine the best fiduciary structure for accomplishing your goals. This is an area where your Financial Advisor, drawing on the deep resources Morgan Stanley has built for its UHNW clients and working in collaboration with your attorney and other professional advisors, can add value.

Your Financial Advisor can help you understand and address your estate-planning goals and how such goals relate to the proper selection and structuring of trusts, trustee provisions and fiduciary plans, while also helping you to evaluate what type of trustee will work best in your unique situation.

Trusts are not necessarily appropriate for all clients. There are risks and considerations which may outweigh any potential benefits. Establishing a trust will incur fees and expenses which may be substantial. Trusts often incur ongoing administrative fees and expenses such as the services of a corporate trustee or tax professional.

Morgan Stanley Smith Barney LLC ("Morgan Stanley"), its affiliates and Morgan Stanley Financial Advisors and Private Wealth Advisors do not provide tax or legal advice. Clients should consult their tax advisor for matters involving taxation and tax planning, and their attorney for matters involving trust and estate planning, charitable giving, philanthropic planning and other legal matters.

Morgan Stanley Smith Barney LLC does not accept appointments nor will it act as a trustee, but it will provide access to trust services through an appropriate third-party corporate trustee.

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