

Estate Planning 101

By Attorney Marlene S. Cooper

“WHO CAN BE TRUSTED?”

When creating estate planning documents such as a living trust, power of attorney for finances or health care, or even a simple will, one of the most difficult decisions my estate planning clients face is: “Who can be trusted to handle my affairs if I become disabled or pass away?” I generally ask my clients, married or not, to identify at least two people who can serve as successors -- persons who can be trusted to take over their affairs should circumstances require.

The natural inclination for many people is to simply appoint the oldest of their children, a parent, or his or her best friend as their successor. Sometimes, however, these people may not be the best candidates for the job. The questions that you need to ask are: “Is the candidate physically located nearby? Does he or she have the time to devote to my affairs as well as his or her own? Does he or she have the intellectual capacity to make sound business decisions and follow through? Is he or she organized? Does he or she have the emotional temperament and sense of fairness to deal with my beneficiaries? Is he or she so financially secure that he or she won’t be tempted to misuse my property for his or her own purposes?” If your first choice in a successor does not possess all of the desired traits, you might consider appointing two persons to serve as joint trustees so that together they can round out each other’s shortcomings and handle the job. Of course, you must be sure that these two people get along and can work well together.

Once a successor has been identified, there are other questions that need to be answered such as: (1) Will the successor be paid for his or her services? (2) Will the successor have to post a bond to ensure faithful performance of his or her duties? and (3)

Will the successor be required to give a written accounting of his or her handling of the estate to a court or the beneficiaries? The answer to these questions depends on your assessment of the skills and trustworthiness of your appointed successor.

If you don't have the ideal candidate in your circle of family and friends, there are other options. Some people appoint trusted professionals that they have an established relationship with to serve as their successor, such as an accountant or financial advisor. The lawyer who drafted the trust is legally disqualified from serving as your successor unless he or she is related to you. Where a professional is asked to serve as successor, the professional is usually paid for services performed and required to post a bond and account to the beneficiaries.

If, after exhausting your list of family, friends, and professionals you still don't have a good candidate to serve as your successor, you can appoint a professional trustee. This can be either an individual who works as a professional private trustee (also known as "professional fiduciary"), or a corporate institution such as a bank or trust company. Professional fiduciaries usually charge by the hour (\$50 to \$150 per hour), with the rate depending on the complexity of the work involved. Institutions usually charge a percentage of the value of the estate and some require a minimum estate value.

Though the issue of choosing a successor is a challenging one, it must be faced as part of estate planning. With careful thought, the right solution will be found. © 2010 by Marlene S. Cooper. All rights reserved. *(Marlene S. Cooper is a native of Pasadena, a graduate of UCLA, and has been an attorney for over 30 years. Her practice is focused entirely on estate planning and probate. You may obtain further information on estate planning and probate at www.marlenecooperlaw.com. You may also contact Attorney*

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