

Points of Law

Number 2003-3

September 19, 2003

Wallace D. Cegavske, Attorney at Law
NM 87102
Office 505 242-3444
242-3770
Website Your-Estate.com
Estate.com

302 Silver Ave SE

Albuquerque,

Fax 505

Email [info@Your-](mailto:info@Your-Estate.com)

NOTE TO READERS

Past issues of Points of Law and other helpful information can be found on my website, Your-Estate.com. It can be visited at any time.

This issue discusses problems with appointment of trustees and makes a few suggestions about choosing trustees.

PROBLEM TRUSTEES

Prospective trustors take great care in defining the terms of their trusts. Endless information is available to help draft terms to efficiently accomplish client purposes. Unfortunately, one seldom sees a frank discussion of the problems of selecting an appropriate trustee. It is obvious that the best drawn trust will not work without a good trustee. Few cases involving trustee malfeasance reach the appellate courts and thus written opinions detailing wrongdoing are rare. Most problems involving trustee misbehavior are resolved by negotiation.

A glimpse of one type of problem that can result from selection of an inappropriate trustee was reported in the Albuquerque Journal July 15, 2003. Charities cried foul when the home of local showman, Frank Crosby, was sold for \$14,000 by the trustee Crosby had appointed. The home had been left to charity and was valued at \$170,000. Even worse, the charities learned that the meager proceeds would be further reduced by real estate commissions. The situation was made public and resolved under threat of litigation.

Other problems involving misdirection of assets, outright refusal to follow the trust instructions, unsecured borrowing from aged and incapacitated trustees, inept investment decisions, and family disputes are not unusual.

PICKING THE TRUSTEE

Most trustors want to serve as trustees of their own trusts as long as possible and chose a relative to be successor trustee after the death of the last trustor. While many such relatives have made fine trustees, not all families are so blessed as to have members sufficiently familiar with financial matters and the intricacies of family relationships to be good trustees. When picking a trustee, one should look for qualities such as good health, financial knowledge, mature judgment, lack of conflict with beneficiaries and diplomatic ability. Before picking any trustee, at least two important questions need to be asked:

- Would I be comfortable if this person began managing my money tomorrow?
- Would I feel secure if this person was in charge of allocating my money to my needs?

In a large number of cases, the trustors cannot answer both questions in the affirmative for any available trustee.

DIVIDING TRUSTEE DUTIES

Some clients conclude that the best choice is to place their assets in the hands of a trustee but to require the trustee to consult with family advisors in making decisions that affect the beneficiaries. The trustee is often a professional trust officer and the advisor is usually a relative in touch with the beneficiaries=needs who serves as a watch-dog on the trustee's administration of the trust.

As opposed to trust services offered by major banks, smaller trust companies are competing to provide services to modest sized estates, and are flexible as to the terms of the trust and charge fees no larger than one would expect to pay for a managed investment account.

RECOMMENDATIONS

Trustors may best accomplish their purposes if they:

SEPTEMBER 19, 2003
NEWSLETTER

- Choose trustees qualified by aptitude, age, and experience to perform the required duties.
- Consider appointment of professional trust officers if no family members are qualified to serve.
- Draw trust terms to allow changing of the trustee on demand of the beneficiaries.
- Consult with qualified professional advisors.