



Considerations Selecting a Family Trustee

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It is not uncommon for parents who are creating a supplemental needs trust (SNT) for a loved one with disabilities to assume that naming one of the child's siblings as the trustee is a perfect solution. They often believe that someone who's grown up alongside the beneficiary is best positioned to understand their needs and will naturally look out for their interests. Unfortunately, they often don't see this arrangement's potential risks and how the role may affect family chemistry long after parents are gone.

The first step in special needs planning should always be candid communication. If asked outright, many siblings may admit that they don't want to be responsible for managing their sibling's money and don't want to be in the position of declining a request for the use of funds. Trusteeship can often entail stressful, time-consuming responsibility, which must be shouldered in addition to other personal obligations, such as those to the trustee's own family and career.

Too frequently, albeit understandably, families sidestep this tough discussion. In other cases, children who don't wish to disappoint their parents reluctantly accept the role and then, once parents have passed away, will either renounce their appointment or, after a period of time, seek to resign in favor of an independent third party. If no alternative trustee has been designated, the matter may lead to a court proceeding, with a judge appointing a trustee who would not have been the parents' choice.

In our law practice, we consistently recommend the appointment of a corporate trustee, either (and preferably) in the primary trustee role, but most certainly as an alternate or successor. We make this recommendation for a couple reasons. First, even if a sibling is willing and able when the trust is drafted, they may not be when the time comes to administer, based on changes in their own lives or the beneficiary's. Second, appointing a sibling as trustee often puts them in a position where they may be considered to be in conflict with the Trust beneficiary.

By way of example, many times siblings are named as remainder beneficiaries, eligible to receive any funds left in the SNT after the primary beneficiary's death and payment of the trust's outstanding obligations. Their decisions with regard to the use of trust funds could directly affect the size of their future inheritance.

Finally, most corporate trustees have systems, knowledge and an ability to be objective without risk to a family relationship, and they have longevity.

Family Dynamics

Naming a sibling trustee can potentially change the nature of valued relationships. It's the trustee's sole responsibility to determine what distributions should be made and that can mean saying no to requests from a brother or sister. The conflict can become especially heated, depending on the nature of the beneficiary's disability.

Even in ideal relationships, all siblings experience some level of rivalry. The reality is that parents must usually devote more of their time to a child with special needs than to other members of the family. As a result, siblings often report taking on "little parent" roles. And while they report many positive aspects to growing up alongside someone with disabilities, it changes the nature of childhood. Hidden resentments can surface amidst the mounting responsibilities of trusteeship. Parents' good intentions can backfire in ways that cause lasting damage to the family fabric. Our job as attorneys is to facilitate the conversation with the families we represent and encourage them to have these hard conversations.

Then there's the possibility of "overcompensation." Some siblings feel guilty about having a more typical upbringing than the beneficiary, and this can lead them to make imprudent decisions.

And what if there are other adult siblings? They may be bitter about being passed over as trustee or disagree with the way in which the SNT is being managed. The arguments can end in litigation.

Expense

Families frequently assume that naming a sibling trustee would be less expensive than hiring a professional. But unless the sibling possesses the right combination of skills, the trust will almost certainly end up paying more. If the sibling isn't a skilled money manager, they will probably want to hire a financial advisor. If they aren't knowledgeable about the regulations surrounding government programs—which change frequently— they will need to work with a special needs attorney to ensure that their distribution decisions don't imperil important benefits such as Medicaid and Supplemental Security Income (SSI). And if they aren't up to speed on trust taxation, a CPA may get involved, too. [Unlike a professional trustee, few siblings carry the liability insurance](#) that would protect them in the event that they make a misstep. And acquiring that insurance would entail yet another expense. On top of all this, once they begin to understand how much of their time is demanded as trustee, they may opt to accept the commission they're entitled to as compensation for their own services.

Better Options

There are a number of ways, other than becoming sole trustee, that a sibling can support a loved one with special needs. They could be named a co-trustee, with their responsibilities matched to their skill set and available time. [They could be named a trust protector](#), monitoring the trustee's performance and ensuring that decisions were in the beneficiary's best interest. They could be named guardian, if the severity of their sibling's disability prevents them from making important decisions on their own behalf. Most importantly, they could focus their energies on advocating for their sibling with service providers and others who affect the individual's quality of life.

In most cases, the sibling relationship is life's longest. Rather than burdening it with the responsibilities of trusteeship, it's often better to leave brothers and sisters free to deepen their ties by simply spending quality time together.

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