

# Who Needs a Professional Fiduciary?

By: Marguerite C. Lorenz, CTFA, CLPF, Lorenz Fiduciary Services, Inc. (April 28, 2010)

**Why Would I Need a Professional Fiduciary?** Many clients ask, "Why would I need a professional trustee or executor when I have friends and family available to me?" Another question I frequently get asked is, "Why would I pay you, when a beneficiary of my trust would be willing to do the work for their portion of the inheritance?"

This article explores the advantages of an independent third-party managing your affairs during your lifetime and after your death.

**Understand what your Trustee must do**, whether it's an inexperienced family member or a trained professional. What are you expecting this person to do and be for you; what if you are incapacitated, you have resigned as your own trustee or you have died? Most of my clients need some kind of help, as much as 2 or more years BEFORE death. IRS tax clearance may not be granted for up to three years after the final tax return is filed. Know of anyone who has become suddenly ill? Maybe their children and grandchildren live out of town or have a very busy work life? Heard any stories about probate or unscrupulous friends/family when an individual could no longer manage for themselves? Many of these situations are completely preventable with good planning and the right people selected who will do the work.

## Some of the topics your Trustee must manage often include;

Accounting	Completing Transactions	Finalizing Funeral Arrangements
Correspondence	Filing Tax Returns	Scaling Down the Household
Follow-Through	Documenting Distributions	Move You to Assisted Living
Decision Making	Pet Care	Organizing
Treating Your Beneficiaries Equally	Securing and Shipping Personal Property	Following the Law (State and Federal)
Fulfilling Specific Trust Provisions	Inventory and Appraisal	Deciding Which Documents to Keep
Negotiating Agreements	Marshalling Assets	Archiving Records
Court Procedures	Paperwork for Multiple Institutions	Accessing Computer Records
Selling Real Estate	Employing Appropriate Professionals	Filing and Shredding Documents

**The Job of Looking After You, Your Health and Your Property** is often overwhelming for a loved one, even if they feel duty bound and their heart is in the right place. Your loved one may feel he or she knows what is right for you, and will take on tasks and decisions that are beyond your written instructions. Your loved one is not trained to seek counsel on certain financial decisions that are governed by your detailed trust document, the probate code, ethical standards and commonly accepted protocol. Worse, your loved one's choices and actions may be disputed by other beneficiaries, if they are made aware, or your loved one may take advantage financially, without even intending to.

Let's say your loved one is particularly skilled at accounting and documenting and very much wants the jobs involved with acting as Trustee of the Trust, Executor of the Will, Agent under the Power of Attorney for Finance and as your Agent under the Advance Health Care Directive. Considering the level of responsibility and that a formal accounting is required to be prepared each year, shouldn't your loved one be compensated? Will any of this work take away from the usual way your loved one makes a living? When do you think your loved one would begin working for you? Might you hesitate to ask for assistance, even if you really need it, because you would be imposing on your busy loved one? I have seen loved ones take on this work, fight with siblings over the details, grow weary of maintaining the family life/job while serving Mom, deny themselves compensation and then grow angry and resentful over the thankless years, after they have lost

their sibling relationships. Don't let this happen to people you love! Maintain your Family Harmony. What if your loved one served as Agent for Health Care and a professional handled the rest?

Let's talk about the fact that some people do not have children or close relatives and friends whom they would trust to act on their behalf. Some clients are afraid of burdening their family and friends with the responsibility. Others simply do not trust the available people whom they would appoint as their trustee, guardian or executor, i.e., you may trust your son to do the right thing, but you may not be so sure about his wife; or you would pick your neighbor, but she is the same age as you.

**Selecting Your Fiduciary.** The choices available are: Corporate Fiduciary (like a Bank or Trust Company), Family Member/Friend (or more than one named as Co-Trustees), Independent Fiduciary (like a California Licensed Professional Fiduciary) or another willing Professional you know, such as a CPA or Attorney. Your Financial Advisor generally cannot serve as your Trustee, but may have a Trust Department available.

The first thing you should do if you are in the process of making such important decisions is to contact an estate planning attorney to discuss the various issues involved. It is unwise to download documents from the internet and think you have an adequate estate plan. A good Estate Planning Attorney is worth more than the documents created. Your answers to the questions asked by your attorney, and your decision process, documented by a careful attorney make all the difference in your written plan. Your Financial Advisor or CPA may be able to recommend an Estate Planning Attorney and or a local Fiduciary.

Establishing a good relationship with your attorney makes updates more effective to accomplish your goals. Whether you want to finalize your will, execute powers of attorney or health care (advance) directives, or create a trust, an attorney should guide you through this process. The Estate Plan often includes all of these types of documents, which are designed to work together to achieve your goals.

Although working with an attorney appears to be expensive, the savings you realize by getting good advice more than makes up for it. Legal expenses, court costs and the time your beneficiaries have to spend fighting are much more expensive. When your attorney recommends that you seek a professional third-party fiduciary to act on your behalf, you should take the time to thoroughly research which person or entity you would want to appoint.

**The Pro's and Con's of Corporate Fiduciaries.** Corporate fiduciaries, such as banks and trust companies, or brokerage trust departments are usually insured, and are closely monitored by federal and/or state regulators to ensure that adequate controls are in place for their banking transactions. Please know that in California, such Trust Officers are exempt from licensing. Given the recent experience of late 2008, it is important to understand that Corporate Fiduciaries are bound to use the investment departments inside their corporation, regardless of performance. There is a natural conflict of interest in this system in that the Trustee and Financial Advisor work for the same corporation and may serve the Corporations interests before that of the Trustor (you).

Many people feel banks and trust companies charge high fees. Their fees are generally referred to as "market fees" and charge a monthly, quarterly or annual fee based upon the value and type of the assets they are managing in a trust or estate. Some companies also charge hourly fees or flat fees for certain activities or situations. It is very important to closely review the bank or trust company's fee schedule so that you understand how and what fees will be charged to your account. If the Trust Services fees appears low, review the fine print on the following pages of the fee schedule, as this is a critical part of your due diligence.

The other issue that comes up often with banks and trust companies acting as professional fiduciaries is the value of the account. The fact of the matter is that your account may not be large enough for the bank or trust company to be interested in managing. Larger banks and trust companies typically set a minimum of \$1-\$2 million for an account, while smaller banks and trust companies will probably consider managing accounts that are at least \$250,000. The bank and trust companies also seek your deposits, mortgage loan business, business loan business, and have their own exclusive investment department. The bank will not utilize the financial advisor you have a relationship with, but instead, will move your account into their own proprietary products.

Another complaint about large banks and other financial institutions is that clients and their beneficiaries feel they have to tell their story over and over again, and do not receive the personal service they should be entitled to. Many trust officers are expected to handle 200 families and like employees of any corporation, may be moved or promoted as the company sees fit, even though the client's family doesn't want the change. Some trust departments are in another state, or have a call center in another country, rather than someone local. In working with your bank, do you have to talk to a computer on the phone rather than a live person? Smaller trust companies and community banks may be able to provide more personal service to customers than the larger banks and financial institutions, but the question of whether or not they are locally owned or will be bought up by a larger bank is on everyone's mind.

**The Pro's and Con's of Other Professionals.** You really like your CPA or Attorney and have known him for a long time. Couldn't he serve as Trustee? Yes, but acting as Trustee is a complex job, beyond accounting or legal matters and could challenge any professional not accustomed to serving in this way. Many CPA's and Attorneys turn down this kind of work. Also, consider the value of asking your CPA or Attorney to continue acting as your advocate by reviewing the accountings presented by your Trustee. Many Professional Trustees hire an Attorney and CPA to consult with on each case in order to ensure that everything is done correctly. When the Trustee and Attorney are the same person, who is the advocate for you, the client?

**The Pro's and Con's of Co-Trustees.** Perhaps you have decided that the time has come for all of your children to work together. The Pro of Co-Trusteeship is that your loved ones get to really test their relationship. After all, they are going to inherit it all, so why not have them do the work and save any professional fees? First, understand that your Co-Trustees must agree, unanimously, on every decision, action and transaction. Please look at the list on Page 1 again. If you and your spouse (or your sibling, or best friend...) had to do these tasks for someone else, would the two of you agree, 100%, on everything?

Some people have named all three or four of their beneficiaries as Co-Trustees, so as not to have anyone feel left out or without control. Can you imagine 3 Presidents of the United States; each in a different state: having to decide on and sign the same important documents; will they all agree on every detail, every time? How long would it take for each of those documents to be decided upon and signed? This includes every check signed for every payment. So far, in my experience, Co-Trusteeship doesn't work and I will not Co-Trustee with anyone. In the Co-Trusteeships that look like they are working, it is because someone has taken the leadership and tells the other two Co-Trustees where to sign.

**The Pro's and Con's of Independent Trustees.** There are also private professional trustees, guardians and executors who work independently. The California Licensed Professional Fiduciary has had specific training and a licensing exam. She makes her own decisions about which cases to accept. Many of these fiduciaries take on the same cases banks do, and their fees are generally lower than that of banks or trust companies. This option means naming individuals (not companies), so you will want to name more than one as alternate trustee, just in case the first individual becomes ill or dies. Ask your prospective Fiduciary how your specific assets will be handled and what resources they have available. This Fiduciary will also be asking who the professionals are that you already trust and know, so she can continue those relationships which benefit you.

It is important to get to know the professional fiduciary you select to manage your trust or estate. This may be the person who helps you receive care in your home; who may also handle all your finances and who may communicate directly with your family members. Make sure this individual has appropriate liability insurance, is bondable, and has good internal controls with respect to his/her business practices. It is a given that family members are never asked to live up to these standards.

The Professional Fiduciary should supplement their insurance coverage every time she takes on a new trust, and have appropriate policies/ procedures in place for the management of your assets, and most importantly, follow those policies and procedures. Some controls, written in the provisions of your trust, for any individual (family member, friend or professional) who would serve as your trustee is to require an annual accounting be presented to you, as Trustor of your Trust, filed with the Court or provided to your

beneficiaries, and to require that all correspondence be sent to all of your beneficiaries at the same time, so they are treated equally. This is particularly tough for Family Member Trustees.

Independent fiduciaries can also provide you with the personal service that you might want or need, because they usually accept accounts in areas close to where they reside and/or operate their business. These professionals have developed good relationships with local service providers who understand that if they serve well, the professional Trustee may hire them again on a different case. Family members who only serve on one case do not share this advantage. This kind of experience can also result in getting the needed help quickly and for a lower price. Ask the Professional Fiduciary you interview about her succession plan; i.e., what happens if she goes on vacation or becomes ill? Does the Professional Fiduciary have good internal controls for handling bill payments and petty cash?

Professional Fiduciaries may also be willing to act as attorney-in-fact for health care decisions; whereas, corporate fiduciaries are generally not allowed to take on this role for individuals. Not all professional Fiduciaries take on Conservatorship or Guardianship cases. For more information you can visit, [www.pfac-pro.org](http://www.pfac-pro.org), the website for the Professional Fiduciary Association of California.

**Professionals Offer Greater Peace of Mind.** An experienced, licensed Professional Fiduciary offers a variety of solutions, has received specific training, is objective in dealing with your beneficiaries and is duty bound to follow your wishes as closely as possible. When you hire a professional, it is their full time job to take care of you and your estate; an unpaid family member has to juggle all of this work with their job, family and normal life, and things may slip through the cracks. Mistakes by a non-professional can be more costly than hiring a professional in the first place.

Your Professional Trustee will make an effort to work with the other professionals you already know and trust, allowing for greater protection of your desires and assets.

You want a Professional Trustee and Executor who serves full time for several cases. Ask the Professional Fiduciary you are interviewing about his insurance coverage, staff, succession plan, office arrangements, and fee schedule. In California, this type of Professional must be licensed. You can learn more about licensing requirements and who is licensed at <http://www.fiduciary.ca.gov/>

**There will come a time when you will not be able to do the things you have always done.** The bottom line is that there are good reasons to select a professional fiduciary, and there are many issues to consider when deciding which type of professional fiduciary is the right one for you. Everyone wants their plan implemented the way they have directed, and if you want things to work out the way you intend them to, **it is important to establish good relationships with the professionals who will put your plan into action.**

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