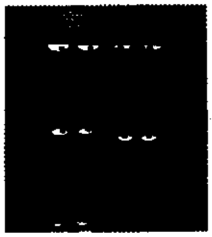



# Natural Fiduciaries

## CPAs Should Carefully Consider the Pros and Cons

*By Michael B. Allmon, CPA*

The roots of modern estate planning are embedded in fundamental human emotions expressed by the ancient folk tale of the grateful dead. The myth takes several forms within a number of cultures, but the gist of it is the yearning of people to show gratitude to those they leave behind after they die.

The grateful dead, as the story goes, are those who have found a way to leave a legacy or tribute to their earthly friends who have helped them in life.

Of course, when you're dead, you actually have no control, so you select a proxy as executor or trustee—also known as a fiduciary—to ensure that the value generated by your life energy is preserved and your wishes for its distribution accomplished.

Unfortunately, the natural inclination to appoint family members or close personal friends as fiduciaries is often not the best instinct. Estate planners have seen families ripped apart and value lost because clients selected fiduciaries who have a direct interest in the disposition of their estate's assets.

That's why good advisers recommend that clients choose disinterested parties, preferably financial or legal professionals, to fulfill fiduciary duties.

### The Best Fit

CPAs fit the fiduciary role best because their backgrounds in tax preparation, accounting and financial planning, as well as their excellent judgment and a natural aversion to risk, makes them prudent administrators.

These are important considerations for people who want to ensure that their estates or trusts will result in desired payout levels to heirs or beneficiaries. They understand that family members or friends usually are ill-prepared to undertake these roles because of the complexities as well as personal interests that can cloud judgment.

Executors or trustees are fiduciaries—agents legally responsible for managing property for the benefit of another individual or a group. Their principal duties include marshaling and valuing assets, keeping those assets productive, paying the estate or trust's bills, preparing an investment plan (including an investment policy), and preparing tax returns.

CPAs excel in all of these areas. Still, a CPA shouldn't rush into accepting the role of executor or trustee without first considering the pros and cons.

### In Favor

Here are some of the reasons CPAs make good executors:

*Trusted Adviser*: Clients usually see CPAs as their most reliable advisers. It's therefore a natural step for them to see CPAs as trustees and executors. Sometimes clients don't realize that their CPA can be a fiduciary. So as part of your "getting-to-know-you" routine, make it a policy to note that you can serve in this role should the need arise.

*General Knowledge*: Education, training and experience provide CPAs with the background to handle the financial duties of estate or trust management. But to be effective financial managers, fiduciaries shouldn't be too specialized in any one area. CPAs have the broad knowledge to know when they need a specialist to assist them as well as the experience to manage any conflicts that might arise.

*Knowledge of Client's Situation*: CPAs often know their clients' financial situations better than the clients do. That intimate knowledge means that CPAs can step into the executor or trustee role with little need to devote additional time to researching a client's financial status.

*Ability to Handle Details*: Keeping track of all the factors—from investments to disbursements—is a huge undertaking that few people can handle without becoming baffled. CPAs do this routinely.

*Preparation of Financial Information*: Fiduciary accounting requires that the executor carefully sort income receipts, principal receipts, income charges and principal charges as well as prepare the required financial reports. A CPA is a natural for this task.

*Obtain Valuations*: A CPA routinely works with valuation experts when a business is bought or sold or in estate planning. CPAs understand the valuation process, and some are even valuation experts themselves. Regardless, CPAs can offer valuation experts insights about a client's property that ultimately could benefit the client and his or her beneficiaries.

*Disposition of Assets*: CPAs often know their clients' wishes and can suggest when a proposed estate plan might not make sense. Clients usually want to be fair with their beneficiaries and want to make equal distributions to them. But fairness and equality aren't necessarily the same thing. This is especially true when dealing with family businesses and succession plans. As observers who are not emotionally involved in the situation, CPAs can provide objective advice.

*Identification of Incentive Desires*: Leaving too much to children too early can destroy their motivation. An estate plan could include provisions to distribute to children based on their performance. For example, if a beneficiary achieves a college degree, she could receive additional funds. Or the estate might match a salary beginning at a minimal level. CPAs often know if such options apply to a specific client and can discuss them with the client.

*Guardian Determination*: The CPA can carefully access the capabilities of potential guardians for minor children as well as help determine care alternatives for a decedent's elderly heirs.

*Enforcement of Wishes*: A CPA can make sure that those selected as guardians as well as co-executors or trustees properly fulfill their duties and understand their responsibilities.

*Monitor Political Climate*: A CPA keeps track of laws and changes in those laws (e.g., the estate tax repeal) that impact estates and trusts.

*Tax Background*: CPAs know tax laws. They have the background to carefully manage the trust or estate so as to minimize all related taxes (both estate and income) on the assets. Further, the CPA trustee usually has prepared the client's income tax returns and can easily segue into handling income tax filing and planning for the estate or trust.

*Cooperating with Others*: The executor must deal with attorneys, real estate agents, bankers, business partners, regulators, creditors and others who either have claim to an estate's assets or who are needed to properly manage the estate. CPAs naturally have close relationships with these professionals and understand their businesses, an advantage in ensuring that the deceased's intentions are met.

*Keeping the Estate Plan Current*: Through CPE and the normal course of business, CPAs keep up with changes in law, technology and society, so they can make suggestions for adjustments to the estate plan to keep it up-to-date.

### The Downside Risks

Consider the following before accepting fiduciary responsibilities:

*Liability*: Heirs can sue if they believe you've mishandled the estate or violated their trust or professional ethics. Your first line of defense is to keep work papers and notes for all actions. You should have appropriate insurance to protect yourself in such situations. And, consult an attorney whenever you make a major decision on the estate's behalf. Attorney fees should be covered as part of the executor's costs for running the estate. So if the estate or trust cannot cover such costs, it is best to decline the job of executor or trustee.

*Potential Inadequate Fees*: Establish an adequate billing rate or billing method at the outset. Once set, you may need a court order to adjust your fees. You don't want to be underpaid, so carefully consider your requirements before you agree to become a trustee or executor. This is especially important since some trusts last many years.

*Your Comfort Level*: Are you sure you want to do this? It's a lot of responsibility. As a trustee or executor, you'll need to hire or work with attorneys, investment brokers, property managers and other professionals to properly manage the estate's or trust's assets.

### Consider a Compromise

If, after considering the pros and cons, you would like to help your client but are concerned about the risks, you might consider acting as a "special co-trustee." Since a trust is a contract, it can specify the duties, responsibilities and (to the defined extent) the related liability exposure.

A special co-trustee can have responsibilities limited to the power to remove and replace a trustee. With this power only, it is possible that you will be able to provide the judgment that your client seeks while limiting your professional liability.

Before you take this or any step toward fiduciary work, you should consult your liability insurer and attorney.

### School of Experience

While there is no school for trustees or executors, CPE courses can be helpful. You also can rely on other CPAs for advice, especially if you join one of CalCPA's state or local estate planning committees.

Being a trustee or executor can be a rewarding experience. Everyone has to plan for their demise, and it's not an easy task. But with help from a CPA, clients can leave a true legacy of gratitude to those they loved in life.


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