Warner Norcross + Judd

ESTATE PLANNING FOCUS

SPRING 2018

ARTICLES

P5 Education and Commendations
P6 Oh, the Places They'll Go Now, with a 529 Plan!
P8 New Michigan Laws Guard Against False Property Tax Exemption Claims
P10 Attorney Spotlight: Mark Harder

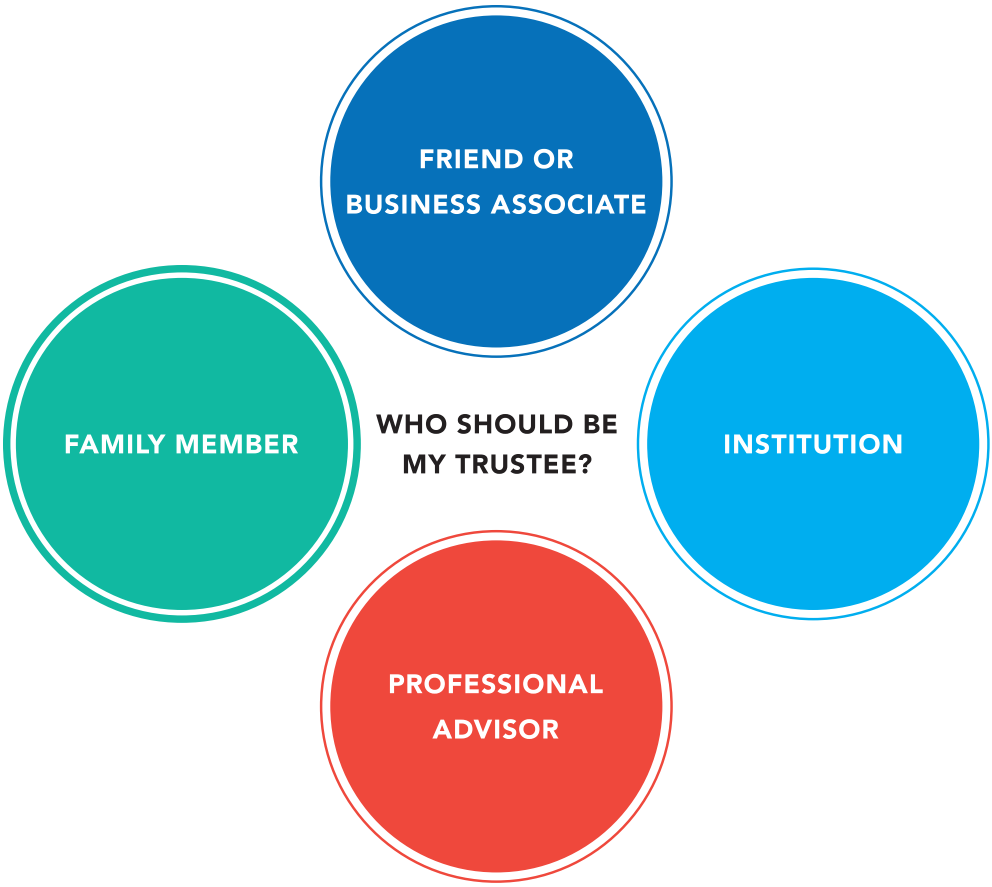
WHO CAN I TRUST TO BE MY TRUSTEE?

MARK HARDER
616.396.3225
mharder@wnj.com

Estate plans often include trusts. Whether establishing a new trust, modifying an existing trust or dealing with a transition of the incumbent trustee, selecting the person or institution who will act as your trustee is one of the most important decisions you and your family members will make.

So what are your options?

The legal qualifications are simple: the trustee must be a bank or an individual over the age of 18 who is competent to manage his/her own affairs. The practical qualifications, however, are more complicated. Most importantly, a trustee must have the skill set to properly administer the trust and must possess and exercise good judgment. Does the trustee truly understand the duties and responsibilities of a trustee and how to administer the trust and apply best practices? If not, will the individual recognize what he or she does not know and seek out and follow that advice? In addition, because a trusteeship often is a long-term commitment, you may need someone who will be available for a long period of time. Finally, serving as a trustee can be time consuming and you will need to ensure that your choice has the time and is committed to serve the needs of the beneficiary.



With these things in mind, you have several options:

- Family Members
- Friends and Business Associates
- Institutions
- Professional Advisors

SHOULD I CHOOSE A FAMILY MEMBER?

Choosing a relative as your trustee can offer several advantages. She would likely share your values and the family dynamics to help navigate emotional issues. She may also understand the operation, importance and role of the family business to the family and in the estate plan. Finally, she may understand the objectives in creating the trust and stay focused on achieving the settlor and family's goals.

Plus, they usually work cheap!

That being said, choosing a family member has its drawbacks. He may lack the time and skills to effectively administer the trust and to carry out the settlor's objectives. He also may have difficulty saying "no" to requests from

other family members regarding investment opportunities, loan requests and distribution requests or have conflicts of interest.

Choosing a family member can also cause or exacerbate bad feelings among family members. A trustee's power and control over your assets and to make distributions can cause resentment among beneficiaries. If the family member fails to effectively manage the trust, it could damage familial ties.

WHAT IF I CHOOSE A FRIEND OR BUSINESS ASSOCIATE?

A friend or business associate may not have some of the objectivity issues associated with family members serving as trustee, while still ensuring that the trustee is someone with insight into the family, its values, its business, and its affairs. Friends or business associates also can be a good choice because it is easier for someone outside the family to say "no" to requests that should be refused. She would not have the emotional baggage of a family member and can make decisions knowing she will not suffer the family repercussions that could occur from an unpopular decision.

And, like family members, they may agree to work cheap!

Of course, friends and business associates can have their downsides. Like family members, they may lack time, experience and skills to properly administer the trust. Saying "no" could still be a problem too.

SHOULD I CHOOSE AN INSTITUTION INSTEAD?

Selecting an institution to serve as trustee may not present the problems caused when a family member, friend or business associate is selected as a trustee, because institutional trustees have the experience, resources and systems to effectively administer the trust. They also can be objective and will not have familial conflicts of interest. They probably can more easily say "no" to requests that should be declined. They also have continuity so the family will not have to choose a successor down the road when an individual trustee dies or becomes incapacitated. Finally, they will have insurance to cover a mistake, so it can be easier to recover damages for ineffective management or mismanagement of the trust assets.

Sound ideal? Keep in mind they have policies and procedures they must follow and decision-making can take time. They may be more conservative than your family would like. For example, they can be very uncomfortable holding concentrated positions in family controlled enterprises and in private equity investments. Trust officers also will be less familiar than others with your family's circumstances and values.

Institutions have some other disadvantages you might not face with other choices. Trust officers sometimes move to other positions within their organization or to entirely different institutions, and their replacements will need to be "re-educated" about the family and each trust when turnover occurs. Finally, institutions might be acquired, and the character of the institution may evolve and result in a different institution acting as your trustee than the one selected.

IS A PROFESSIONAL ADVISOR A BETTER CHOICE FOR ME?

A professional advisor can embody the best of friends and institutions, as he may be more likely than family or friends to have experience and skills to administer a trust (although that can vary and is not guaranteed). Professional advisors may also know the family and be well acquainted with the settlor's intent and goals for the trust. The advisor also may be objective and trusted by the beneficiaries. Using an advisor may also enhance family privacy by limiting the number of individuals with involvement in the family's affairs.

However, not every advisor is suitable to serve. Some trusted individuals may nevertheless lack expertise or resources to serve. Some firms prohibit individuals associated with the organization from serving as a fiduciary. In addition, not all family members may trust or respect the advisor, and his power over the trust assets may cause nervousness or resentment in the family. And like family members, friends, and business associates, an advisor will eventually die, may become sick or incapacitated, or may retire, thereby necessitating the appointment of successors.

Choosing a trustee is an important decision, and your advisors should be a great help as you consider the pros and cons of each of these options on your particular situation. With some thoughtful consideration, you can choose the trustee that best meets your needs.

EDUCATION & COMMENDATIONS
SPRING 2018

Education

- Sean H. Cook presented "Tax Reform Update" and spoke at the "Tax Reform Discussion" at the Family Office Exchange (FOX) Senior Management Council Meeting in Boca Raton, Florida, February 26-27
- Daniel Borst presented on "Prenuptial Agreements After the *Allard Case*" to the Grand Rapids Bar Association, February 21
- Warner published its 2017 Diversity + Inclusion Annual Report, February 14
- Warner introduced its new Legacy Matters blog directed at high net worth individuals and family offices. Visit: http://www.wnj.com/Blogs/Private-Client-and-Family-Office-Blog to read our blog series — and subscribe to receive blogs directly to your email.
- Susan Gell Meyers was interviewed by *Barron's* for a December 16, 2017 article on incentive trusts

Commendations:

- James J. Steffel was elected Executive Partner for the Muskegon office in February 2018
- Carl W. Dufendach was named Grand Rapids Trusts & Estates Lawyer of the Year for 2018 by *Best Lawyers*
- Susan Gell Meyers was named Grand Rapids Closely Held Businesses and Family Businesses Law Lawyer of the Year for 2018 by *Best Lawyers*
- David L.J.M. Skidmore was named Grand Rapids Trusts & Estates Litigation Lawyer of the Year for 2018 by *Best Lawyers*
- Partners Mark K. Harder and Susan Gell Meyers earned top writing honors at the Family Office Exchange Fall Forum

Trusts & Estates Education at Work

Did you know that Warner trusts and estates attorneys can educate your workforce? We bring our knowledge and experience to your business and can cover a range of topics tailored to your employees' interests:

- Charitable Giving
- Estate Planning
- Estate Administration
- Family Business and Succession Planning
- Family Office Representation
- Fiduciary Representation
- Powers of Attorney
- Probate
- Tax Planning

Contact us at 866-533-3018 to learn more about our customizable learning sessions.

OH, THE PLACES THEY'LL GO NOW, WITH A 529 PLAN!

DANIEL BRICK
616.752.2531
dbrick@wnj.com

LAURA JELTEMA
616.752.2161
ljeltema@wnj.com

Everyone with a child has probably enjoyed Dr. Seuss' *Oh, the Places You'll Go!*, a short children's book emphasizing each person's potential for success and personal development in life, limited only by one's imagination. While as a child the story can be quite inspiring, most people will not realize this potential without a proper education, and nowadays this means college. Praises to Dr. Seuss for inspiring so many, but he did fail to mention that such potential could be further stifled by the ever-increasing cost of education. Luckily, with proper planning and recent changes in the law, you can be better equipped to assist your child in achieving the potential Dr. Seuss so describes.

A common topic in estate-planning discussions involves tax-advantaged options for endowing successive generations with the ability to afford the rising costs of higher education. Luckily, several strategies exist including direct payment of tuition (elementary to graduate school) or a 2503(c) minors trust, and 529 Plans. Each educational strategy has its limitations, but the 529 Plan (named after the section of the Internal Revenue Code from which it originates) offers a popular educational savings vehicle that provides flexibility, control and tax savings.

Anyone can create and contribute to a 529 Plan and each state offers its own version. The differences by state include the investment advisor, fees charged, investment options, and availability of state income tax deductions for amounts contributed. Despite each state having its own version of the 529 Plan, generally the plans are not exclusive to the state of the plan's origin and may be used interstate; however, depending on the type of plan chosen additional restrictions may apply.

Operationally, a 529 Plan functions similarly to a traditional individual retirement account. Like an individual retirement account, a 529 Plan enjoys tax-free growth while the funds remain in such account. Distributions from a 529 Plan will not be taxed so long as they are made solely for "qualified higher education expenses." Distributions made that do not qualify as

"qualified higher education expenses," will become subject to federal taxes and a 10% penalty.

Traditionally, the term "qualified higher education expenses" pertained only to expenses for matriculation and living expenses associated with post-secondary institutions of higher learning (public and private). Examples of expenses covered include: tuition, fees, room and board, and purchase of a personal computer and peripheral equipment if required by the institution. The *Tax Cuts and Jobs Act of 2017* (Act) expanded the scope of "qualified higher education expenses" to include "expenses for tuition in connection with enrollment or attendance at an *elementary* or *secondary public, private,* or *religious school*," but uncertainty exists as to whether this benefit will be available in Michigan due to possible constitutional issues.

While the Act does serve to expand the scope of expenses covered, it also caps the amount of expenses payable to elementary and secondary schools at $10,000 per year. Expenses for post-secondary institutions remain uncapped by a specific dollar amount, but are limited to the posted tuition, fee and room and board schedule published each year by the post-secondary institution the student is attending.

One popular feature of the 529 Plan is the ability to fund the plan upfront with 5 years' worth of annual exclusion gifts. For 2018, the annual gift tax exclusion amount is $15,000 per person. This translates into the ability of an individual contributor to "front-load" a 529 Plan with up to $75,000, or $150,000 if married and an election to split-gifts is made. It should also be noted that 529 Plans do have a maximum contribution cap, which varies by state (generally $235,000 to $520,000).

Another popular feature of the 529 Plan is the ability to change the plan's beneficiary if funds remain; however, this change is limited to certain family members of the primary beneficiary.

Finally, careful consideration should be undertaken as to whom will be the owner of the 529 Plan as unintended transfer tax consequences can occur if not first discussed with your estate planner.

529 Plans offer flexibility and opportunity. If you have questions or are interested in a 529 Plan or other strategies to assist successor generations "move mountains," contact your estate planner.

NEW MICHIGAN LAWS GUARD AGAINST FALSE PROPERTY TAX EXEMPTION CLAIMS

DANIEL BORST
616.752.2735
dborst@wnj.com

In Michigan, local services such as police and fire protection, public education, and other city, village and county services are paid through local property taxes. The tax rate, or millage, is the number of tax dollars the owner of the taxed property pays for each $1,000 of the property's taxable value. For example, in Grand Rapids where I live, the property tax rate is 52 mills. So the owner of a house in Grand Rapids with a taxable value of $100,000 pays $52 for every $1,000 of taxable value (or 5.2%) resulting in an annual tax bill of $5,200.

If, however, the owner claims the house as the owner's principal residence, the owner is exempt from taxes of up to 18 mills levied by the local school district. The owner of the $100,000 house in Grand Rapids who claims a Principal Residence Exemption (PRE) will have property taxes reduced to 34 mills, resulting in an annual tax of $3,400.

This saves $1,800 per year in taxes. And the higher the taxable value of the property, the higher the savings will be by claiming the residence as your principal residence.

To reduce your property taxes, owners of multiple properties may be tempted to claim the PRE on their most expensive property. After all, claiming the PRE on your $200,000 house saves you $3,600 per year while claiming it on your $500,000 cottage saves you $9,000. And those who own houses in more than one state may try claiming a PRE on both a Michigan property and a second property in another state such as Illinois, Florida or Arizona.

Before making decisions based on tax savings alone, know that generally you may claim only one PRE on a single property that is not rented by others (there are exceptions for married couples who file separate tax returns, for property owners away on military duty, and for those

who claim the PRE on two properties while listing one for sale). Also, before simply claiming the PRE on your most expensive property, know that your principal residence is defined as the "one place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return." Factors to determine which property is an owner's principal residence include what address the owner uses on her driver's license, where the owner votes and receives mail, and the amount of time spent at the property.

You should also know that last October, Governor Snyder signed into law Public Acts 121 and 122. These new laws make it a misdemeanor to make a PRE claim in Michigan if a similar claim is made on a property in some other state. In such cases, the Michigan homeowner may receive a $500 penalty and lose the ability to claim a PRE in Michigan, even if the out-of-state exemption claim is withdrawn. The new laws also state that homeowners who knowingly give false information on a PRE Exemption Affidavit may be penalized by imprisonment for up to one year and fines up to $5,000.

ATTORNEY SPOTLIGHT:
MARK HARDER

What kind of law do you practice and what do you enjoy about it?

I chair the firm's Private Client and Family Office Practice. I help individuals plan their estates, advise fiduciaries on the administration of trusts and estates, and help families transition their businesses to younger generations. Helping individuals identify their goals and objectives, and designing plans to help them reach those goals, is very rewarding. But, the interpersonal relationships with my clients are what I enjoy most.

Tell me about your journey to becoming an attorney.

Becoming an attorney was something I first considered in middle school. I enjoy researching, writing and problem solving so the intellectual challenge of law school was very appealing. When I graduated in 1982 from the University of Iowa College of Business, attending law school seemed like the next logical step. I'm glad I followed my instincts.

When did you join Warner Norcross + Judd and what attracted you to Private Client and Family Office law?

In 1990 I was practicing in Milwaukee, Wisconsin, and was hired to help build the Holland office. My wife Angie and I are from the St. Joseph area and we wanted to return to the West Michigan lakeshore to raise our family here and be closer to our parents. I found there was a need in the community for a young lawyer providing high quality estate planning and family business succession planning and have been doing it ever since.

What do you think people would be surprised to learn about you?

I am a huge Disney fan and my favorite place in the world to vacation is Walt Disney World. It is constantly changing so there are always new things to experience, and it is the one place I can be a kid again. Plus the Disney cast members treat people extremely well and provide an excellent destination experience. People may also be surprised to learn that I was in the University of Iowa Hawkeye Marching Band in college. I played the trombone and my last performance was in the 1982 Rose Bowl.

What are your hobbies and interests?

In addition to all things Disney, I'm a huge baseball fan. My dad brought me up as a Cubs fan and he recently reminded me that it had been more than 50 years since he took me to my first game at Wrigley Field. I have attended games at 20 of the 30 major league baseball stadiums — 15 of which have been with my dad. In 2016, my dad and I attended four baseball games in 48 hours in three stadiums in two cities. Aside from Disney and baseball, my wife and I are into food and wine and we make our own wine from time to time. We also enjoy spending time with our four boys, who range in age from 24 to 30.

Warner Norcross + Judd

By providing discerning and proactive legal counsel, we build a better partnership with clients.

900 FIFTH THIRD CENTER, 111 LYON STREET NW, GRAND RAPIDS, MI 49503-2487

ADDRESS SERVICE REQUESTED

PRSRT STD
U.S. Postage
PAID
Grand Rapids, MI
Permit # 564