

Can You Trust Your Trustee?

Here's what beneficiaries can do to make sure their money is in good hands

For one Pennsylvania woman, the familial attachment to Wachovia Bank is strong. Her husband's grandfather helped found it over a century ago in North Carolina in a space once occupied by a Chinese laundry. But that connection to the institution doesn't stop the woman, who asked not to be identified, from expressing dissatisfaction over Wachovia's management of a family trust. Her beef? The portfolio has generated annual returns of less than 3% since the couple began receiving payments three years ago. "It's awkward, I've got to tell you," she acknowledges. "But I really think we should be achieving better results."

While the bank can't comment on the case, Bernard Destafney, a Wachovia managing director who oversees personal trusts in Philadelphia, says beneficiaries don't always understand that trusts must be managed for more than one generation. The aggressive risks that an individual could take with personal funds wouldn't be acceptable in the trust world, and 3% could be a fair return if the trust is trying to preserve its capital. "Generally trusts are very long term so risks and rewards are balanced very carefully," Destafney says.

Unhappy with what you're getting from a trust? Rid yourself of the idea that you're going to take the account to the bank down the street. If you try to dislodge a trust company through the legal system, the institution can typically use the trust's cash to fight you. Besides, case law traditionally backs the banks.

Still, you are not powerless. Your best bet is to arm yourself with tough questions while remaining gracious. "Sitting down and talking is the only way," says Standish Smith, the founder of Heirs, a nonprofit advocacy group for trust beneficiaries in Villanova, Pa. "When people get confrontational, the trustees just turn off."

Experts say tensions are increasing between trustees and beneficiaries these days. That's partly because they are strangers. A trust established in a small-town bank decades ago could now be parked in an institution thousands of miles away, says Eugene F. Maloney, corporate counsel at Federated Investors and a professor of trust law at Boston University School of Law. "Twenty-two mergers later," he says, "the beneficiary gets handed off to a call center, and all of a sudden you have a recipe for problems."

Trust companies aren't required to operate in the same locale where the account was opened. But in nearly all states, they must follow a weighty document called the Uniform Prudent Investor Act, which dictates the considerable fiduciary responsibilities institutions must assume when overseeing trust accounts.

Fiduciary auditors say, however, that bank trust departments aren't always following the rules that demand they act in the beneficiary's best interests. Common violations include forcing trust accounts to pay high commissions or taking payments from outside mutual fund vendors without sharing it with the trusts. "We have conducted fiduciary audits of bank trust departments, and

their adherence to fiduciary standards are as woeful as we find in corporate boardrooms," says Ronald Hagan, chief executive officer at Roland/Criss Fiduciary Services in Dallas, which advises the retirement planning industry.

If you want to be a savvy beneficiary, here's what you need to do:

KNOW THE QUESTIONS

Get a copy of the free checklist developed by Fiduciary360 (fi360.com), a fiduciary practices firm in Sewickley, Pa. The list of 68 questions will give you a good idea of what to ask. Don Trone, Fiduciary360's chief executive officer, says the most important thing is to ask for the trust's investment policy statement, which is the blueprint for how the assets are to be managed. Then make sure the trust officers are following it. For instance, if granddad wanted the portfolio to be split evenly between government bonds and stock funds, check to see if that is what's tucked inside the account.

SCRUTINIZE THE COSTS

One sure way to boost income is to reduce the fees. For trusts of \$1 million, a ball park figure is 0.75% a year, and the rate comes down as the trust grows. The fee may drop to 0.20% to 0.30% at \$10 million, but don't expect them to drop anymore. If you think your trust's fees are too high, take that up with the bank. That's what Smith did for his wife's \$8.5 million trust. He got a reduction.

Watch out, too, for the bank's proprietary mutual funds. If the account is paying both fund expenses and an annual trust fee, that's too much, says Roger Krasnicki, a St. Louis attorney and principal of Fiduciary Solutions, a litigation support and trust consulting firm. To compensate for the extra layer of fees, some banks provide a rebate to their trust accounts. If your trust isn't getting one, ask for it.

GET A SECOND OPINION

Fiduciary sleuths--specially trained accountants, attorneys, and investment consultants--can be especially valuable when a bank is preparing to close out a trust and distribute the money once heirs sign release forms. In some of these cases, Stewart Frank, a managing director of the Tillit Group, a fiduciary consulting firm in Bingham Farms, Mich., has been asked to poke around before anybody signs anything. The results can be shocking. "In the first case we looked at it, we found what looked like a couple of million dollars worth of problems that had accumulated over a long period of time," Frank recalls.

What happens if a fiduciary uncovers mistakes? A lawyer can lean on the bank for damages. Since banks abhor publicity, they will often agree to a confidential settlement. Frank says he often sees errant banks reimbursing beneficiaries for 66% to 75% of the lost assets.

LOOK FOR AN ESCAPE ROUTE

Some trust documents include a removal clause that permits a beneficiary to move a trust to another financial institution. That's the option that Nancy Pietrafesa, an artist and writer in Berkeley, Calif., chose after she discovered that she was a co-beneficiary of a trust that her grandfather had established decades earlier. Pietrafesa was stunned to learn that the bank had never changed the original investments in 30 years. "We were able to move the trust and get someone who is much more in line with what my grandfather had wanted," she says.

Few trusts set up years ago have such clauses. But it's a good feature to include if you're establishing one today. That way, your heirs will have some leverage with the bank long after you're gone.

By Lynn O'Shaughnessy

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