

THE Good Advisor

A Trustee You Can Trust

Trustees enjoy a significant role in ensuring that charitable remainder trusts accomplish their two-fold mission—providing life benefits to beneficiaries and channeling remainder funds to charities. The trustee functions in a regulatory environment that is complex at best, and at worst, fraught with traps for the unwary. Selection of a competent and knowledgeable individual is crucial to the success of the trust.

What legal issues do trustees face? What conflicts arise, given that life interests may differ from remainder interests? What latitude do trustees have to rely on expert advice, interpret trust terms and shape distributions? These considerations are all a part of finding the right fit when choosing a suitable trustee.

Charitable Remainder Trusts (CRTs) have proven especially versatile in achieving charitable and personal financial goals since their introduction under the Tax Reform Act of 1969.¹ A properly drafted CRT can meet a variety of retirement, estate and charitable planning needs and many donors are attracted to the flexible funding and payout options. However, CRTs can be extremely complex and difficult to administer, even if the trust document is well written. In addition, mistakes made during the operation of the trust can possibly disqualify the trust, resulting in the loss of the charitable deduction and other tax advantages.

In this issue of *The Good Advisor*, we will take a look at the key role the trustee serves in administering a charitable remainder trust.

What Is a Charitable Remainder Trust?

A CRT is a “split interest” trust—in other words, it has both charitable and non-charitable beneficiaries. A CRT pays out income to one or more non-charitable beneficiaries for life (or lives) or a term of up to 20 years, then distributes the remainder to charity.² In order to qualify, a CRT must satisfy the following requirements:

- the payout rate cannot be less than 5% or more than 50% of the fair market value of the assets originally placed in trust³
- the actuarial value of the assets eventually distributed to the charity (the “remainder interest”) must equal at least 10% of the value of the assets at the time of the trust’s creation⁴

CRTs take one of two forms: a charitable remainder annuity trust (CRAT) or a charitable remainder unitrust (CRUT). A CRAT pays the beneficiary an annuity equal to a specific percentage of trust assets valued at the time the trust is created. Additional contributions to the trust are not permitted.⁵ A CRUT pays the beneficiary an annuity equal to a specific percentage of trust assets valued annually. Additional contributions to the trust are permitted.⁶

While there is only one type of CRAT, there are different types of CRUTs permitted under the Code:

- A **NICRUT** (Net Income CRUT) makes annual payments equal to the specified percentage, or the net income actually earned by the trust, if less.⁷
- A **NIMCRUT** (Net Income with Makeup CRUT) is similar to a NICRUT and makes annual payments equal to the specified percentage, or the net income actually earned by the trust, if less.⁸ However, if the payout is less than the specified percentage in one or more years, the accumulated income deficits will be “made up” in subsequent years when there is income above the specified percentage.
- A **Flip CRUT** begins as a NICRUT or NIMCRUT, then “flips” into a standard CRUT upon the occurrence of a triggering event as described in the trust document.⁹ The flip option is particularly attractive when the trust is initially funded with illiquid or hard-to-market assets.

General Overview

The trust instrument is the primary source of the trustee's powers and duties. The terms of the trust can expand or limit the powers afforded to the trustee under state statutes—but only to the point where such powers and duties are not contrary to state law. The trustee must clearly understand the applicability of state law (of the state named as the domicile of the trust) and to what extent the duties outlined in the Uniform Prudent Investor Act and Uniform Principal and Income Act apply in that state.

In addition to the duties of the trustee imposed by the trust document and state law, there are those established through common law and refined by precedent. These include the following:

- exhibiting loyalty
- dealing with beneficiaries impartially
- exercising reasonable care and skill
- keeping and rendering accounts
- properly segregating assets

While the donor is responsible for naming the trustee and/or defining permissible trustees, the trustee makes the decisions governing the trust's operations once it is funded. The trustee's functions include (but are not limited to):

- establishing the value of assets
- investing assets
- accounting for income
- allocating capital gains
- making distributions to non-charitable beneficiaries
- performing other administrative functions as necessary

Who Can Be a Trustee?

INDIVIDUALS. The donor is generally permitted to be the trustee or co-trustee, or to reserve the right to replace the trustee.¹⁰ However, if the donor or another family member is to be trustee, the donor should probably retain a qualified administrator or tax professional with specialized expertise in CRTs to serve as co-trustee. This is especially true since the advent of the Uniform Prudent Investor Act and the Uniform Principal and Income Act, both of which require more diligence by the trustee in the way of investment and distribution functions.

Trust terms can allow for payment of trustees (including donor-trustees) for their service. An exception to the self-dealing rules permits reasonable compensation to be paid to a disqualified person for personal services.¹¹ However, it is important to establish the "reasonableness" of trustee fees (e.g., proof of hours worked, expertise, ability and training, and prevailing economic conditions)

The trustee can be an income beneficiary of the CRT, whether the trustee is the donor or someone else. The donor can also reserve the right to replace the trustee, either personally or with another individual or entity.

CHARITIES. A charity can serve as trustee. Often, a charity will perform this function for a low fee or no fee, which obviously favors the beneficiaries. However, some charities choose not to serve as trustee due to concerns over liability or lack of internal resources. Moreover, a charity is unlikely to serve if it is only one of many charities who benefit from the trust, or if the donor has the power to revoke its remainder interest.

INSTITUTIONS. Institutions such as banks or trust companies are generally better qualified to manage certain assets, such as real estate. Also, donors concerned about continuity often choose an institution—after all, a bank is more likely to be "alive," willing and able to serve as trustee in 20 or 30 years than an individual (this is an especially apt consideration for a testamentary CRT, when trust inception could be many years into the future). In choosing an institutional trustee, donors should consider factors including fees, investment policies and historical returns.

Valuing Trust Assets

It is essential for the trustee to accurately value a donor's assets to determine a tax basis when initially funding a CRT, since the cost basis carries over to the trust. For example, if a donor funds the trust with stocks that cost \$100,000 and now have a value of \$500,000, the trustee must determine when the donor acquired the stocks and how the initial \$100,000 is allocated among them in order to establish the basis. But consider a more complicated scenario: say a donor retains the life income interest with a named beneficiary at death. The retained income interest brings the trust assets into the donor's estate, which triggers a step-up (or step-down) in basis to the extent these assets are included in the estate. The result is that the trust is also entitled (or required) to restate tax basis.¹²

Investing Trust Assets

The trustee has discretion with respect to investments, but owes a fiduciary duty to the income beneficiary (usually the donor or a family member) as well as the charitable remainderman. The income beneficiary's level of interest in how the underlying trust investments perform is likely to depend on whether the CRT is designed as a CRAT or a CRUT.

Balancing the interests of the parties can raise difficult issues for the trustee. For example, in the case of

a CRAT, the recipient may prefer investments that are so safe they are inconsistent with maximizing the trust's total return over the life of the trust. In the case of a CRUT, the recipient may prefer to maximize current income (often through weighting a portfolio more heavily toward higher-yielding securities). This may prejudice the charity's interest since such investments may be inconsistent with a balanced approach to long-term investing designed to maximize total return over time.

The trustee must be the one to make these important investment decisions. The tax regulations provide that "a trust is not a charitable remainder trust if the provisions of the trust include a provision which restricts the trustee from investing the trust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets."¹³

Measuring Fiduciary Accounting Income

A CRUT (but not a CRAT) is permitted to have an income limitation—the trustee may pay out only net income if that is less than the unitrust percentage amount. The basic nature of the income limitation is that it ultimately shifts more assets to the charity to the detriment of the income beneficiary, a result which does not increase the income tax deduction. If the CRUT contains a make-up provision (NIMCRUT), the limitation may be mitigated by the presence of significant accounting income in later years that "turn around" the prior limitations. So it is possible that the trustee's discretion in measuring fiduciary accounting income will affect the timing and/or the amount of payments to the beneficiary.

The trustee may have limited discretion in measuring the trust's fiduciary accounting income, making judgments within the parameters of state law and the terms of the trust. The fiduciary accounting income concept can affect payouts and thus have tax consequences, although it is not a tax law concept per se. Also, it is not the same as measuring accounting income under generally accepted accounting principles.

At times, the tax rules have something to say about what will be acceptable in measuring fiduciary accounting income. IRS regulations provide: "Trust provisions which depart fundamentally from concepts of local law in the determination of what constitutes income are not recognized."¹⁴

Making Distributions to Non-Charitable Beneficiaries

A trustee must distribute to non-charitable beneficiaries before the end of the year; however, for both CRATs

and CRUTs, there are exceptions—certain circumstances under which the trustee may make the distributions after the end of the year.¹⁵ The trustee will have to deal with such issues as expense allocations among the four-tier reporting categories.¹⁶ The trustee should understand these rules when structuring the trust's investments.

The tax rules provide that income flows out of the CRT to the income beneficiary in the following order:

- ordinary income
- capital gains
- other income (i.e., tax-exempt income)
- return of capital

For example, a trust that realizes \$50,000 of ordinary income, \$500,000 of capital gains and \$50,000 of municipal bond income would first have to distribute \$550,000 before it could distribute any municipal bond income.

The trustee will need to monitor the trust's cash flow requirements. A CRAT must distribute the annuity no less often than annually, and the CRUT must distribute the unitrust amount at least annually unless an income limitation applies. If the income limitation is subject to a make-up provision, the NIMCRUT may be required to make an unusually large distribution in a year in which there is significant accounting income.

Trustee Intangibles

The process of selecting a trustee can be, and perhaps should be, a challenge. The candidates that emerge from a search may all be qualified, experienced and dedicated individuals. In the end, it may come down to qualities beyond technical abilities.

Conclusion

Who should you trust? This seemingly simple question may be hard to answer, especially in the context of overseeing a charitable trust, since someone you deeply trust may not necessarily make a good trustee. Choosing an appropriate trustee involves matching skills and duties, and weighing any number of factors that may be unique to the trust, its anticipated operations and the needs of beneficiaries. With well over 100,000 CRTs in the United States,¹⁷ a pool of potential talent unquestionably exists. The challenge is to find a trustee that is appropriate to the unique demands of the particular trust.

For additional information, an electronic copy of our in-depth companion booklet, *The Importance of a Trustee to the Success of a Charitable Remainder Trust* may be accessed in the Professional Advisor Section of our website at www.catholicfoundation.com.


Endnotes

- 1 Pub.L. 91—172. The Act added section 2055(e) to the Internal Revenue Code, which denies an estate tax charitable deduction of a remainder interest in a trust unless the non-charitable interest takes the form of an annuity or unitrust interest that meets the qualification standards of IRC §664.
- 2 Reg. Sec. 1.664-1(a)(1)(i)
- 3 IRC §664(d)(1)(A)
- 4 IRC §664(d)(1)(D) and IRC §664(d)(2)(D)
- 5 IRC §664(d)(1)
- 6 IRC §664(d)(2)
- 7 IRC §664(d)(3)(A)
- 8 IRC §664 (d)(3)(B)
- 9 Reg. Sec. 1.6643(a)(1)(i)(c)-(f)
- 10 Rev. Rul. 80-83, 1980-1 C.B. 210, which preceded Reg. Sec. 1.664-1(a)(7) regarding valuation of unmarketable assets; Rev. Rul. 77-285, 1977-2 C.B. 213
- 11 IRC §4941(d)(2)(E) and Reg. Sec. 53.4941(e)-1(c)(6). A definition of a disqualified person under IRC §4946(a) often includes the family members most likely to be singled out as trustee.
- 12 PLR 200202078
- 13 Reg. Sec. 1.664-1(a)(3)
- 14 Reg. Sec. 1.664-3(a)(1)(i)(b)(3)
- 15 Reg. Sec. 1.664-2(a)(1)(i) and Reg. Sec. 1.664-3(a)(1)(i)
- 16 See IRC §664(b)
- 17 See <http://www.irs.gov/pub/irs-soi/14eowinbulsplitinterest12.pdf> the CRT must represent the charity's remainder interest.

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The Importance of a Trustee to the Success of a Charitable Remainder Trust

In This Issue:

- A Split Interest Trust in One of Two Forms
- Trustee Limits, Powers and Duties
- Who Can Be a Trustee?
- Valuing / Investing Trust Assets
- Measuring Fiduciary Accounting Income
- Distributions to Non-Charitable Beneficiaries
- The Intangibles of Trustee Selection

The Importance of a Trustee to the Success of a Charitable Remainder Trust

Trustees enjoy a significant role in ensuring that charitable remainder trusts accomplish their two-fold mission—providing life benefits to beneficiaries and channeling remainder funds to charities. The trustee functions in a regulatory environment that is complex at best, and at worst, fraught with traps for the unwary. Selection of a competent and knowledgeable individual is crucial to the success of the trust.

What legal issues do trustees face? What conflicts arise, given that life interests may differ from remainder interests? What latitude do trustees have to rely on expert advice, interpret trust terms and shape distributions? These considerations are all a part of finding the right fit when choosing a suitable trustee.

Charitable Remainder Trusts have proven especially versatile in achieving charitable and personal planning goals since their introduction under the Tax Reform Act of 1969.¹ A properly drafted CRT can meet a variety of retirement, estate and charitable planning needs, and many donors are attracted to the flexible funding and payout options. Nonetheless, CRTs can be extremely complex and difficult to administer, even when the trust document is well written. In addition, mistakes made during the operation of the trust can disqualify the trust, resulting in the loss of the charitable deduction and other tax advantages.

In this issue we will take a look at the key role the trustee serves in administering a charitable remainder trust.

A Split Interest Trust in One of Two Forms

A CRT is a “split interest” trust. In other words, a CRT has both charitable and non-charitable beneficiaries. As such, it pays out income to one or more beneficiaries during the trust term (one life, two joint lives or a period of up to 20 years), then distributes the remainder to a qualified charity.² To qualify, a CRT must satisfy the following requirements:

- the payout rate cannot be less than 5% or more than 50% of the fair market value of the assets originally placed in trust³
- the actuarial value of the assets eventually distributed to the charity (the “remainder interest”) must equal at least 10% of the value of the assets at the time of the trust’s creation⁴

CRTs take one of two forms: a charitable remainder annuity trust (CRAT) or a charitable remainder unitrust (CRUT). A CRAT pays the beneficiary an annuity that is equal to a specific percentage of trust assets *valued at the time the trust is created*. Additional contributions to the trust *are not* permitted.⁵ A CRUT pays the beneficiary an annuity equal to a specific percentage of trust assets *valued annually*. Additional contributions to these trusts *are* permitted.⁶

While there is only one type of CRAT, there are several different types of CRUTs permitted under the Code:

- A NICRUT (Net Income CRUT) makes annual payments equal to the specified percentage, or if less, the net income actually earned by the trust.⁷
- A NIMCRUT (Net Income with Makeup CRUT) is similar to a NICRUT and makes annual payments equal to the specified percentage, or if less, the net income actually earned by the trust.⁸ However, if the payout is less than the specified percentage in one or more years, the accumulated income deficits may be “made up” in subsequent years when there is income above the specified percentage.

- Flip CRUT begins as a NICRUT or NIMCRUT, then “flips” into a standard CRUT when a triggering event, described in the trust document, occurs.⁹ The flip option is particularly attractive when the trust is initially funded with illiquid or hard-to-market assets such as real estate or closely held stock. If these assets are not sold right away, or do not earn any income, the trust is relieved from the obligation of making in-kind or partial distributions.

Trustee Limits, Powers and Duties

The trust instrument is the primary source of the trustee’s powers and duties. The terms of the trust can expand or limit the powers afforded to the trustee under state statutes—but only to the point where such powers and duties are not contrary to state law. The trustee must clearly understand the applicability of state law (of the state that is named as the domicile of the trust) and to what extent the duties outlined in the Uniform Prudent Investor Act and Uniform Principal and Income Act apply in that state.

In addition to the duties of the trustee imposed by the trust document and state law, there are additional requirements established through common law and refined by precedent. These include:

- loyalty
- dealing with beneficiaries impartially
- exercising reasonable care and skill
- keeping and rendering accounts
- segregating trust assets properly

While the donor is responsible for naming the trustee and/or defining permissible trustees, the trustee makes the decisions governing the trust’s operations once it is funded. The trustee’s functions include (but are not limited to):

- establishing the value of trust assets
- investing trust assets
- accounting for trust income
- allocating capital gains
- making distributions to noncharitable beneficiaries
- performing other administrative functions as necessary

Who Can Be a Trustee?

Individuals. The donor is generally permitted to be the trustee or co-trustee, or may reserve the right to replace the trustee.¹⁰ However, if the donor or another family member is to be the trustee, the donor should probably retain a qualified administrator or tax professional with specialized expertise in CRTs to serve as co-trustee. This is especially true since the advent of the Uniform Prudent Investor Act and the Uniform Principal and Income Act, both of which require more diligence by the trustee in the way of investment and distribution requirements.

Trust terms can allow for payment of trustees (including donor-trustees) for their service. An exception to the self-dealing rules permits reasonable compensation to be paid to a disqualified person for personal services.¹¹ However, it is important to establish the “reasonableness” of trustee fees (e.g., proof of hours worked, expertise, ability and training, and prevailing economic conditions).

The trustee can be an income beneficiary of the CRT, whether the trustee is the donor or someone else. The donor can also reserve the right to replace the trustee, either personally or with another individual or entity.

Charities. A charity can serve as trustee. Often, a charity will perform this function for a low fee or no fee, which obviously favors the beneficiaries. However, some charities choose not to serve as

trustee due to concerns over liability or lack of internal resources. Moreover, a charity is unlikely to serve if it is only one of many charities who benefit from the trust, or if the donor has the power to revoke its remainder interest.

Institutions. Institutions such as banks or trust companies are generally better qualified to manage certain assets, such as real estate. Also, donors concerned about continuity often choose an institution—after all, a bank is more likely than an individual to be “alive,” willing and able to serve as trustee in 20 or 30 years (this is an especially apt consideration for a testamentary CRT, when trust inception could extend many years into the future). In choosing an institutional trustee, donors should consider factors including fees, investment policies and historical returns.

Successor Trustees. The same issues involved in selecting a trustee also apply to selecting successor trustees. One additional function a successor trustee must perform is the examination of the actions of the preceding trustee.

Co-Trustees or Special Trustees. A co-trustee or special trustee might have only specified responsibilities. For example, a donor might name a co-trustee with the sole responsibility of valuing unmarketable or illiquid assets.¹²

Valuing Trust Assets

It is essential for the trustee to accurately value a donor’s assets to determine a tax basis when initially funding a CRT since the cost basis carries over to the trust. For example, if a donor funds the trust with stocks that cost \$100,000 and now have a value of \$500,000, the trustee must determine when the donor acquired the stocks and how the initial \$100,000 is allocated among them to establish the basis. But consider a more complicated scenario: say a donor retains a life income interest with a named beneficiary at death. The retained income interest brings the trust assets into the donor’s estate, which triggers a step-up (or step-down) in basis to the extent these assets are included in the estate. The result is that the trust is also entitled (or required) to restate tax basis.¹³

Before accepting the role of trustee, it is wise for the potential trustee to obtain written confirmation identifying the person or persons that will be responsible to provide the trustee support for basis, holding period and classification of the assets that fund the trust. In the case of CRUTs (which permit the contribution of additional assets after initial funding), the responsibility extends to any future contributions. For testamentary CRTs, the trustee may ask the executor to provide basis and valuation information.

Investing Trust Assets

The trustee has discretion with respect to investments, but owes a fiduciary duty to the income beneficiary (usually the donor or a family member) as well as the charitable remainderman. The income beneficiary’s level of interest in how the underlying trust investments perform is likely to depend on whether the CRT is designed as a CRAT or a CRUT. The trustee’s success in investing assets may be met with some indifference by a CRAT beneficiary, since the annuity payout is fixed. A CRUT beneficiary, on the other hand, whose annual payment varies with the annual valuation, is likely to be vitally concerned with the overall investment success. Of course, the charity is attentive in either case due to its remainder interest.

Balancing the interests of the parties can raise difficult issues for the trustee. For example, in the case of a CRAT, the recipient may prefer investments that are so safe they are inconsistent with maximizing the trust’s total return over the life of the trust. In the case of a CRUT, the recipient may prefer to maximize current income (often through weighting a portfolio more heavily toward higher-yielding securities). This may prejudice the charity’s interest since a strategy like this may be inconsistent with a balanced approach to long-term investing designed to maximize total return over time.

The trustee must be the one to make these important investment decisions. The tax regulations provide that “a trust is not a charitable remainder trust if the provisions of the trust include a provision which restricts the trustee from investing the trust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.”¹⁴ So, the donor cannot indirectly control investments through trust document provisions, or mandate that donated assets are to be retained rather than sold. In a private letter ruling, the IRS concluded that a CRT is not qualified if the trust document goes too far in delegating investment responsibility to an investment advisor, absolving the trustee of investment responsibility.¹⁵ On the other hand, many state laws stress the importance of the trustee seeking competent investment counsel. These “prudent investor” standards must be taken into account when formulating and monitoring the CRT’s investment strategy. For example, state law may (subject to possible exceptions) impose a diversification requirement.¹⁶

Measuring Fiduciary Accounting Income

A CRUT (but not a CRAT) is permitted to have an income limitation—the trustee may pay out only net income if that is less than the unitrust percentage amount. The basic nature of the income limitation is that it ultimately shifts more assets to the charity to the detriment of the income beneficiary, a result which does not increase the income tax deduction. If the CRUT contains a make-up provision (NIMCRUT), the limitation may be mitigated by the presence of significant accounting income in later years that “turn around” the prior limitations. So it is possible that the trustee’s discretion in measuring fiduciary accounting income will affect the timing and/or the amount of payments to the beneficiary.

The trustee may have limited discretion in measuring the trust’s fiduciary accounting income, making judgments within the parameters of state law and the terms of the trust. The fiduciary accounting income concept can affect payouts and thus have tax consequences, although it is not a tax law concept per se. Also, it is not the same as measuring accounting income under generally accepted accounting principles.

At times, the tax rules have something to say about what will be acceptable in measuring fiduciary accounting income. IRS regulations provide: “...proceeds from the sale or exchange of any assets contributed to the trust by the donor or purchased by the trust may be allocated to income, pursuant to the terms of the governing instrument, if not prohibited by applicable state law.”¹⁷

Distributions to Non-Charitable Beneficiaries

A trustee must distribute to noncharitable beneficiaries before the end of the year; however, for both CRATs and CRUTs, there are exceptions—certain circumstances under which the trustee may make the distributions after the end of the year.¹⁸ The trustee will have to deal with such issues as expense allocations among the four-tier reporting categories.¹⁹ The trustee should understand these rules when structuring trust investments.

The tax rules provide that income flows out of the CRT to the income beneficiary in the following order:

- ordinary income
- capital gains
- other income (i.e., tax-exempt income)
- return of capital

For example, a trust that realizes \$50,000 of ordinary income, \$500,000 of capital gains and \$50,000 of municipal bond income would first have to distribute \$550,000 before it could distribute any municipal bond income.

The trustee will need to monitor the trust's cash flow requirements. A CRAT must distribute the annuity no less often than annually, and the CRUT must distribute the unitrust amount at least annually unless an income limitation applies. If the income limitation is subject to a make-up provision, the NIMCRUT may be required to make an unusually large distribution in a year in which there is significant accounting income.

The Intangibles of Trustee Selection

The process of selecting a trustee can be, and perhaps should be, a challenge. Candidates that emerge from a search may all be qualified, experienced and dedicated individuals. In the end, it may come down to those qualities beyond technical abilities.

- **Will the trustee consider beneficiaries as individuals?** True, a trustee must ordinarily act with impartiality, treating all beneficiaries in similar fashion. However, trustees that “go the extra mile” and reach out to beneficiaries to understand their circumstances are often the most successful in avoiding conflicts that can disrupt trust administration.
- **Will the trustee inform beneficiaries and explain trust activity?** Keeping beneficiaries abreast of trust activity may not be legally required, but goes a long way toward helping them manage their affairs more productively. A trustee who shares ideas becomes a valued mentor.
- **Will the trustee be a true partner?** This is perhaps the most important consideration. Rapport is essential to what could be a long relationship.

Certainly these are not the only questions to consider, and the personal appeal of a candidate should never constitute the sole basis of a decision. Nonetheless, a good relationship (or the potential for one) will undoubtedly be a factor in selecting a trustee. Donors may find it helpful to prepare a series of topics to discuss with potential trustees that are unrelated to mechanical qualifications. Such a discussion can help illuminate who would best serve the beneficial interests of the trust.

Conclusion

Who should you trust? This seemingly simple question may be hard to answer, especially in the context of overseeing a charitable trust, since not everyone a donor deeply trusts would make a good trustee. Choosing an appropriate trustee involves matching skills and duties, and weighing any number of factors that may be unique to the trust, its anticipated operations and the needs of beneficiaries. With well over 100,000 CRTs in the United States,²⁰ a pool of potential talent unquestionably exists. The challenge is to find a trustee that is appropriate to the unique demands of the particular trust.

How to select someone to trust? While the process may prove demanding, even intimidating at times, the rewards of finding the right fit are well worth struggle and the search.

Endnotes

- 1 Pub.L. 91—172. The Act added section 2055(e) to the Internal Revenue Code which denies an estate tax charitable deduction of a remainder interest in a trust unless the noncharitable interest takes the form of an annuity or unitrust interest which meets the qualification standards of IRC §664.
- 2 Reg. Sec. 1.664-1(a)(1)(i)
- 3 IRC §664(d)(1)(A)
- 4 IRC §664(d)(1)(D) and IRC §664(d)(2)(D)
- 5 IRC §664(d)(1)
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- 9 Reg. Sec. 1.664-3(a)(1)(i)(c)-(f)
- 10 Rev. Rul. 80-83, 1980-1 C.B. 210, which preceded Reg. Sec. 1.664-1(a)(7) regarding valuation of unmarketable assets; Rev. Rul. 77-285, 1977-2 C.B. 213
- 11 IRC §4941(d)(2)(E) and Reg. Sec. 53.4941(e)-1(c)(6). A definition of a disqualified person under IRC §4946(a) often includes the family members most likely to be singled out as trustee.
- 12 With respect to unmarketable assets, the trustee must either utilize a current qualified appraisal as defined in Reg. Sec. 1.170A-13(c)(3) from a qualified appraiser as defined in Reg. Sec. 1.170A-13(c)(5) or an independent trustee must value such assets per Reg. Sec. 1.664-1(a)(7)(i).
- 13 PLR 200202078
- 14 Reg. Sec. 1.664-1(a)(3)
- 15 PLR 8041100
- 16 The Uniform Prudent Investor Act states: “[a] trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.” Uniform Prudent Investor Act §3. The Restatement of Trusts similarly provides that “[i]n making and implementing investment decisions, the trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is prudent not to do so.” Restatement (Third) of Trusts §90(b)
- 17 Reg. Sec. 1.664-3(a)(1)(i)(b)(3)
- 18 Reg. Sec. 1.664-2(a)(1)(i) and Reg. Sec. 1.664-3(a)(1)(i)
- 19 See IRC §664(b)
- 20 See <http://www.irs.gov/pub/irs-soi/14eowinbulsplitinterest12.pdf>

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