



Capable Key-Masters

Two years after the Pritzker trust debacle, family trustees continue to put themselves—and their wealth—in legal peril.

IN THE FALL OF 2002, Liesel Pritzker filed suit against her father, Robert, and other family members, accusing them of secretly shifting money away from her trust fund and cutting her out of a plan to divide up the family's estimated \$15 billion fortune. Liesel's brother, Matthew, filed a similar suit shortly thereafter. At the heart of the dispute was whether Robert, acting as trustee, had the legal authority to alter his children's interest in their trust funds without their knowledge. The case was settled in Liesel and Matthew's favor in January 2005 for approximately \$900 million.

Trust and estate professionals recommend hiring independent, rather than family, trustees in order to avoid this type of acrimony. The Pritzker lawsuit gives yet another reason for such advice. There is often a strong rationale for choosing a family member as a trustee, and, in many cases, families are well served by having at least one relative. After all, a family member is often the most trustworthy option. But hiring an independent outsider to oversee the family's wealth is smart—despite how difficult it can be for a family lawyer to convince a grantor to do so—particularly in the case of blended families, such as the Pritzkers. Robert's marriage to Liesel and Matthew's mother, Irene, his second wife, ended in an acrimonious divorce.

Problems can arise because a trustee is charged with a duty of loyalty to all beneficiaries. Trustees often exercise discretion to invest assets or make distributions; when they exercise this discretion, they must always act in the best interests of the beneficiaries and ignore any personal interest. This is not easy if trustees are burdened with a history of family conflicts or have their own economic interest in a trust, as is often the case with family trustees.

While the issues in Pritzker were complex, they are not unique. We recently encountered a situation in which an individual served as trustee for two trusts: one for his immediate family and one for another branch of the family. The trusts were largely made up of assets of the family's closely held business and were therefore undiversified. The trustee was left to decide whether to continue to invest the assets of the trusts in the business' transactions, which would seem financially prudent, or diversify the assets in the trusts, which would help mitigate risk. If he made a decision that benefited his immediate family's trust over his extended family's trust, he could be criticized, even if

this result was unintentional. Ultimately, he decided to step down as a trustee for his extended family, and they appointed an independent trustee in his place.

Indeed, nearly two years after the Pritzker settlement, conflicts of interest continue to present critical issues for families and their trustees. A classic scenario occurs when an adult child serves as trustee for the assets of a parent (or stepparent) during the parent's lifetime—assets that will then pass to the child upon the parent's death. Because that child stands to inherit any money that remains in the trust following the parent's death, he may find it difficult to make objective decisions when asked to use funds from the trust to pay for his parent's expenses. In New York, the case of philanthropist Brooke Astor raises these concerns. Her grandson, Philip C. Marshall, has accused his father, Anthony D. Marshall, of failing to use her funds solely for her benefit. This summer, a court named an independent fiduciary as temporary guardian of her assets.

Concerns also frequently arise when an individual serves as trustee for assets set aside to benefit a sibling. For example, in one trust established by the parents of a beneficiary, the beneficiary's brother and sister serve as trustees, and they disapprove of some of his lifestyle decisions. They consistently deny his requests for funds, despite the fact that the requests are usually very reasonable and in accordance with the trust documents. They contend that they know what their parents would have wanted. Again, a grantor creates the potential for personal and biased interpretations of a trust's terms whenever he chooses a family member as trustee. Alternatively, an independent trustee possesses no personal history to cloud his judgment, and can also act as a buffer to diffuse family disagreements and help preserve the peace.

As our society becomes increasingly litigious—and as the Pritzker case illustrates—family squabbles too often are being played out in court. With many grantors today establishing trusts with ever-longer terms, appointing the right trustee can carry implications for many future generations. Choose wisely. ▣

Gail E. Cohen, executive vice president of Fiduciary Trust Company International, has more than 25 years' experience in the area of trusts and estates.

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