

Speaker 1: [\(00:03\)](#)

Welcome to the Vandenack Weaver legal visionaries podcast brought to you by interactive legal here's your host Mary van denes.

Speaker 2: [\(00:12\)](#)

Welcome to today's episode of Vandenack Weaver, legal visionaries, a weekly podcast discussing updated legal news, evolving methods of providing legal service and law practice issues. My name is Mary Vandenack founder and managing partner at Vandenack Weaver, LLC. I'll be your host. As we talk to experts from around the country about closely held business tax trusts and estates, legal technology, law firm, leadership and wellbeing. Before we start today's episode, I want to thank our sponsor. Here's the message from interactive legal.

Speaker 3: [\(00:51\)](#)

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Speaker 2: [\(01:40\)](#)

Today's episode is on trustee selections for trust. My guest today is Sarah Dewey. Sarah Dewey is vice president of trust services at Carson group in Omaha, Nebraska have the benefit of having known Sarah for a long time through a long career. How many years have you been in the trust business? 15, 15 years. And so you've been, you've seen it done a few different ways, and you've seen a lot of interesting situations we've been involved in a few situations that have given you some significant experience in your current perspective on trustee planning. Yes. Well, I appreciate you joining us today, sir. Thank

Speaker 4: [\(02:19\)](#)

You. It's a pleasure to be here, Mary.

Speaker 2: [\(02:20\)](#)

So the first thing I just want to talk about is, you know, we're talking about trustee selection, but let's just start off talking about trusts in general, in an estate plan. What are some of the let's start with the basic reasons and there's all kinds of fancy trusts, but what's the basic reason for using a trust?

Speaker 4: [\(02:37\)](#)

Well, really one of the most important reasons to use a trust is to minimize income tax, minimize death tax. Um, but you know, let's not let the tax tail wag the dog, right? There are other reasons to create trusts. You can protect loved ones, special needs, um, potential, uh, loved one's plan for that as well. Uh, you can anticipate that you're going to have some change in family status. And so, you can kind of create those trusts to anticipate those really the beauty and the challenge of trust is that they are so flexible.

And the other thing about trust is there are so many of different types of trusts. So, it's important that you work with your team to make sure that you're getting the right kind of trust vehicles in place to provide that protection. You can also avoid probate,

Speaker 2: [\(03:26\)](#)

Probate.

Speaker 4: [\(03:27\)](#)

Probate is the administrative process of settling your estate. So, it's a public process. So,

Speaker 2: [\(03:33\)](#)

So everything about your life becomes a public matter. There's no privacy, correct. So, you can get some privacy with the trust vehicle is one advantage of that. Definitely. And so when you have a probate process, they have to go to some judge and I fill out a bunch of paperwork and I say, oh, here, can I have you approve doing a plan that I really want to do? And what you can do with the trust is not do that correct.

Speaker 4: [\(03:56\)](#)

You know, and it's not, it's not the worst case scenario in every single state, but a lot of people don't want their private affairs to be sort of a public affair.

Speaker 2: [\(04:05\)](#)

And I think there's some recent court rulings that make, create some challenges about insurance. If you don't do proper planning. And there was a case of a house that burned down and there was no insurable interest, the insurance company didn't have to pay. So, it's, there's some things like that that you can structure in the trust. Well, once you have a trust in estate planning. And so, we talked about there's basic trust, and then there's a bunch of fiancée trusts, and we'll talk about some of those trust vehicles in another conversation. But today we're going to talk about sort of when you have a trust. And I know it varies on the type of trust, but selecting a trustee, which is hugely significant in recent years, you know, our, firm's seen a lot of growth in the trust and estate litigation industry. And some of that, you have a trustee, maybe who's not a professional or just doesn't have time or whatever the case might be. But let's talk about what exactly is the role of a trustee in estate planning. I know that's an overly broad questions to maybe we narrow that down and say, somebody creates what we would call a standard revocable trust that they title assets in during their life. And then that trust takes control when they die, as opposed to some of our other fancy trusts. So, what would the role of the trustee be in that case? And I assume really what's that role at the death of the creator of the trust? Right?

Speaker 4: [\(05:26\)](#)

Well, the list is non-exhaustive really in being a trustee, but mainly it's the safeguarding and the protection of assets, the gathering of all those assets. And then looking to that trust document to see what is supposed to happen with those assets, the trustee may have to make tax elections. They're going to have to do tax filings for the trust. They are the legal owner of that trust. So, they're responsible for everything that flows into that trust and everything that flows out of that trust. They could be making distributions to beneficiaries, to charities. They could be making distributions to trusts within

trusts or sub trusts, resulting trusts. You know, somebody dies, everything flows in and then to one sort of administrative trust and then it creates trust further trust. So, it can be a very complicated process. Yeah.

Speaker 2: [\(06:18\)](#)

Let me ask a question. So, the, a lot of times people will choose those, say like, well, we don't want to deal with the expense of a professional trustees. So, I want my, you know, friend Johnny and I mean, Tony, hasn't had a job for 20 years, but he's a good guy. And I think he'd be the right person to be the trustee of my trust. Why might that not be the best decision for somebody to make about their trustee?

Speaker 4: [\(06:41\)](#)

Well, I would first ask what experience Johnny has. I mean, has another job for a while and Hey that's okay. But what experience does he have in dealing with marketable securities, real estate, life insurance annuities, anything that you might own does, is he equipped to handle that in what I mean by handle? That is he's the one I have to, you have to go identify all those things, place them into a legal structure, get an EIN, you know, safeguard those assets, manage those assets, make sure those assets are protected and productive for the beneficiaries. He has that highest level of law, um, standard of care under the law, which is the fiduciary standard. So really, it's just about experience. Does Johnny have time, you know,

Speaker 2: [\(07:30\)](#)

And let's change it from Johnny. Cause when you bring up the time issue, a lot of times somebody might have a lawyer and accountant in their family. And so, let's say one of the beneficiaries is married to a lawyer. And so, then it's like, well, I'm going to name the lawyer. You know, son-in-law as the trustee for our trust, we have six kids, they all live in different parts of the country. There, you know, they're not, they haven't stayed close, but we think that, you know, lawyers, lawyer son-in-law would be great trustee because he at least understands the law. Now he's a personal injury lawyer. But what about that type of decision? Is that at least better than jobless Johnny for 20 years

Speaker 4: [\(08:07\)](#)

Potentially no to that son-in-law lawyer only because of that time factor settling in a state funding, trusts being a trustee can take hundreds of hours.

Speaker 2: [\(08:17\)](#)

Is there any risk in that case that the lawyer who's married to the one of the beneficiaries might have some fiduciary liability? Like, is it, are they going to be more susceptible to somebody saying, oh, you're making decisions on, in favor of your spouse as opposed to the rest of the beneficiaries? Cause isn't a significant part of the trustee's role to look out for all the beneficiaries.

Speaker 4: [\(08:40\)](#)

Yes. The trustee has a duty of loyalty to all the beneficiaries, all the remainder beneficiaries. So, you could potentially see a scenario where somebody might question, you know, Hey, what, what is, your husband doing? Uh, he's the might, you know, sister asked sister, what's your husband doing? Why, why are they exercising discretion this way over the trust? You know, why is it taking so long? There could, it

could create not only it, it could create bad relationships. It could destroy family relationships because you have that questioning of what's going on or being favored in the, in the scenario of that, of that trust and those distributions. So it can create a lot of family conflicts, I think in addition to time, no.

Speaker 2: [\(09:30\)](#)

Well, and that's what I'm, you know, involved in one where, you know, I'll just generically make up some of the facts, but let's say mom and dad decided to name their three kids as trustees and both mom and dad are currently incapacitated. And so now the three kids are all trying to be involved in both care decisions for him, capacity to parents, as well as trustee decisions. None of them have any professional experience in this. Right. Right. And personally, as somebody who assists with estate planning for a living, what I like to see is to be part of facilitating family or relationships at the end of life, as opposed to having them at each other's throats. And it seems like that may be one of the places, but again, the fiduciary liability can be significant when you are acting as a trustee. What generally are these obligations?

Speaker 4: [\(10:19\)](#)

Well, you have the duty of accounting. I mean, is it going to be easy for you to produce a list of every single transaction and receipt, receipt and distribution that occurred in that trust? You know, you could have people with 15 financial accounts, several homes, a lot of people bought second homes during the pandemic. You have homes in different states, you must account for all of that and keep records of all that. And report that to the, all the beneficiaries. So, you know, that's, that's one thing. So, if you don't do that correctly, you know, you could be questioned, um, you know, really do you want that all on your shoulders? And when you don't know what you don't know there the liability does extend to you until personally until you are really proven to have not breach that fiduciary duty. Right.

Speaker 2: [\(11:10\)](#)

So in the context of the professional trustee, right, is there training as to what your fiduciary obligations are and you have insurance, right? Yeah. So, is it, is it common for an individual trustee to have insurance? No,

Speaker 4: [\(11:25\)](#)

Absolutely not.

Speaker 2: [\(11:26\)](#)

And I think we see that waived a lot in trust documents, right? So, we name individual trustee and what we really, I always think that we're not really doing them a favor. We named them as a trustee and then we don't require insurance. And we put them in a tough situation with family members because I would say all bets are off when you're incapacitated or dead. And I've seen families that everybody thinks gets along that it's, you know, an over the nativity set under the Christmas tree when they were in first grade or whatever the case might be. Perfect. And so, having putting people in those position, I think makes it a little more difficult to have a healing at this time, as opposed to something positive. But so you can get, you can take that trustee that you've named, who gets in the middle of the fight about the nativity set, then get sued over it and doesn't have any insurance coverage to pay for that lawsuit. And it's, as you said, a personal liability,

Speaker 4: [\(12:22\)](#)

Really not an honor to be trustee individually, especially in a case like that. Right. It's all puppies and roses until mom and dad are incapacitated and or deceased. And then like you said, all bets are off.

Speaker 2: [\(12:34\)](#)

And sometimes if everything just distributes at right mom and dad's death, then maybe that's not such a big issue, but there's still a matter of gathering assets and things like that. Correct. Right. But what I think people sometimes overlook is the fact and the situation I'm dealing with now, where I have a husband and wife, both with trust and they are both currently incapacitated and named all of their kids as co-trustees. And it's like a war zone. And that's, to me where it would be nice to see potentially a professional trustee. But I think you've said there are cases where you might want to name a surviving spouse as trustee. When would that be appropriate?

Speaker 4: [\(13:13\)](#)

You know, when the, the spouse is the sole beneficiary, you know, surviving spouse, younger, you know, spouse, everything goes outright to spouse. You could see that that would be an easy case for naming an individual slash spouse, surviving spouse, as the successor trustee of your trust. It's when you maybe get a little bit older and that surviving spouse could face her own health issues that you may want to rethink that to having it be a younger individual and, or potentially a corporate trustee professional trustee scenario.

Speaker 2: [\(13:48\)](#)

And is there a time when it's appropriate to name your child as a trustee?

Speaker 4: [\(13:54\)](#)

Well, most people think that, sure. Let's just name our, our son and daughter. It's a very common default. I don't know if you see that commonly in your practice, but most people just want to name that oldest son or daughter. So whether it's appropriate, there could be the case where, where it could be, but I find it almost better to default to that professional slash corporate trustee, because you risk all of the things that we mentioned previously, the family dynamics does that person have time. Do they want to be shouldered with that potential liability? The cost to,

Speaker 2: [\(14:31\)](#)

So what if, you know, it's, dad's died, mom's living one kid everything's going out. Right.

Speaker 4: [\(14:39\)](#)

I could see that. That would be a case where you could have an individual child be the trustee so long as they're working collaboratively with the team that mom and dad had in place. I think that that kid could have success. However, we can't fail to mention the fact that that child is going to be grieving the loss of parents. And do they want to have that decision and all that burden, uh, rest on their shoulders at that time and having to fulfill the duties of the trust. So always having a backup that's in giving that child the ability to maybe appoint a co corporate trustee or a co-trustee at that point to just help get all the I's dotted, T's crossed, administer that trust. Maybe it passes out, right? Like you've said, we can wrap it up

relatively quickly with the assistance of a professional trustee and greatest state planner. Like you, boom we're again, you know, we're good to go. But again, always giving that sort of backup and the flexibility building that into that plan would be important.

Speaker 2: [\(15:39\)](#)

We are going to take a brief break from our episode for a word from one of our sponsors, Carson, private client

Speaker 5: [\(15:46\)](#)

Of planning focuses on liquidity management and charges you a fee based on a percentage of your assets. But entrepreneurs typically invest in their business resulting in light liquidity. That requires a unique strategy at Carson private client. We provide a proactive and holistic strategy for building and protecting your wealth. Our mission is to alleviate the stresses and the burdens of coordinating all those financial strategies. Carson, private client will work with your current team of advisors to customize a strategy that manages all aspects of your life and wealth, giving you back the time to focus on what matters most complex needs require sophisticated solutions. Reach out to our office at 4027798989 to schedule your consultation. Investment advisory services offered through CWM LLC, and sec, registered investment advisor.

Speaker 2: [\(16:46\)](#)

Okay. Let's continue our episode. So, there's two things you said I counted back up to is one, you'd mentioned the concept of naming a co-trustee in certain situations. And, and the other thing was that when you want to name it trustee varies a little bit with the complexity of a plan. So sometimes what I see is like, we have a time where there, we want to have a point at which the child is going to be more involved. Is it appropriate sometimes to name a corporate trustee with an individual co-trustee and let them act together?

Speaker 4: [\(17:21\)](#)

Yes, I think so. Like you said, in the case where the child wants to be more involved, the parents want the child to be aware of what is going to happen, should something, or when that event occurs to them and involve that child so that things can go potentially a little bit smoother when that event occurs. And then

Speaker 2: [\(17:38\)](#)

Professional trustee, I assume we'll have the resources that can help educate the individual. Co-trustee give them the support, make sure everything is on track and there may be a day cause there's one of the planning strategies we see currently is that we might do a life trust for a child as an asset protection strategy. And we'll say that rather than giving the assets outright, you know, so the old way used to be, oh, let's do one third at 30 and one third at 35 and one third at 40. Well, who knows where your kid's going to be at a particular age? That's just a crazy guess. You really have no idea. And I personally started doing that kind of planning when I had a 55 year old guy come in with his mom and say, please explain to my mom that I want her to leave my assets, that her and my inheritance and trust for life so that I can have asset protection.

Speaker 2: [\(18:28\)](#)

And I was like, oh, wait a minute. I have some successful guy in his fifties. So, I'm seeing that as a strategy, that's evolving in the estate planning industry. And that's one of the reasons I'm asking about that as I kind of like, as opposed to just all of a sudden, especially if there's substantial wealth or just substantial complexity, which can happen even without a lot of wealth, right. Is bringing that co-trustee and giving them the opportunity to work with a professional trustee. So what do you think if you just say these are the situations that clearly call for a professional trustee, can you identify like this is when there really should be a professional trustee involved,

Speaker 4: [\(19:05\)](#)

Advanced planning, high net worth complex estate plans where you might have specialty assets, you have assets held in different states. You have multiple trusts within your ecosystem of your estate plan. blended families. I really think trusts are having a corporate trustee choosing the right trustee in that case is extremely important. And, uh, the special needs aspect, um, you have the layers of the onion that you're appealing back on a special needs situation where you're starting with that trust document, but then you've got not only state trust law, but then you also have federal Medicaid rules, SSI rules, state Medicaid rules got a lot of layers of that onion to unpeel. So, in those special needs situations where you have a child or grandchild who is on those government benefits, they're going to need to work with a corporate trustee in that case.

Speaker 2: [\(20:01\)](#)

And as I recall, special needs is one of your passions thingy. Yes. So, and that's an area and the state laws vary so much. So even if somebody with a special need's child lives in Nebraska at one moment then moves to New York state and then moves to California. Those laws vary dramatically. It's important. So, when you have the individual trustee and the other thing with that is the state taxation, right? The one thing you don't want to do is have an individual trustee who resides in California ever be the trustee of a trust because you're going to tax in California based on that trustee relationship. So what would be the factors that somebody should think about when they are deciding who should I select as a corporate trustee? Let's say that they've got a complex trust planning situation and there are, you know, whatever the case is might be. I think that in almost any situation, it's an appropriate choice and the way trusts are designed today, there's a lot of flexibility, but what factors should they look at and deciding this is the right corporate trustee for me to consider,

Speaker 4: [\(21:05\)](#)

They can ask things like, do you have an investment management division? How are the investments handled in our world today? We're seeing different approaches. There, we see a model where, which has existed for decades of the bundled approach, where you have a corporate trustee who accepts trusteeship upon death or incapacity handling the investment management and all of those administrative duties that are associated with being trustee. Then you have situations where you have the bifurcation or hyper furcation of various duties. So the assignment of various duties to individuals and, or professionals, a team within your estate plan with, within your trust, really so asking who is actually going to be performing those, what are the various decisions that will be considered when you're making discretionary distributions? What's the process? How is the trust company going to be able to handle a potential lawsuit? What's the insurance that it's there. We talked about that earlier,

Mary, you know, is there something we need to know about insurance? Somebody does something wrong at the corporation. What's going to back them up, how much insurance is in place, if there is a lawsuit.

Speaker 2: ([22:33](#))

And so the other thing I see is I think different trust companies have different niches in terms of types of trusts, levels of wealth, dealing with types of beneficiaries by being centralized. Like, let's say I send somebody over to you because I really want them to work with you. Sometimes I send them over. They get to work with you sometimes not. So, some of those things are factors as well. We're coming to the end of our time. So, is there just any last comment you would have want to make about the, when a corporate trustee really is important or that selection process, or just mention maybe even what Carson wealth does in terms of its model?

Speaker 4: ([23:11](#))

Absolutely. I think as you started out to reiterate Mary, it's so important to just give some pause and deep thought to who you think is the right person or company institution to be serving in that role, because it's a very important role. As we mentioned, you can have trust that lasts for the lifetime. So, who is the right person to be serving and taking care of your loved ones when you're no longer here or able to make those decisions? So we spent really spending some time looking at that with your team on a regular basis to make sure that that trustee selection still makes sense for you at Carson private trust, we're able to step into the role as administrative trustee. So, the beauty of that is that you can say, great, I want to work with my investment advisor. I have this great financial advisor. I've worked with this team for many years. You can bring that advisor to the table and then we can step in as administrative trustee. We have no role in making investment decisions for the trust. It is solely the responsibility of the investment advisor in that case.

Speaker 2: ([24:15](#))

And so, again, not all trust company. So the kind of the point is really, you need to maybe work with your advisory team and come up with a list of questions that you ask and deciding what trust, what trustee makes sense for my particular structure. And even within a structure, if you have a multi trust structure that might vary by the trust. Right? Right. Well, I really appreciate you being here today. Sarah, thanks very much for being on today's episode. As we get to the end of our episode, I want to thank our sponsors, interactive, legal, and Carson, private client. That's all for now. Thanks for listening to this week's episode and stay tuned for our weekly releases,

Speaker 6: ([24:58](#))

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