

Vetting the Value of a “Professional” Trustee

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International Foundation
OF EMPLOYEE BENEFIT PLANS 

Agenda

- What is a professional trustee and independent fiduciary?
- Why would a plan seek a professional trustee?
- What is the appointing entity likely to accomplish?
- Other concerns and considerations
 - Legal foundation
 - Payment
 - Selection and oversight

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What Is a Professional Trustee?

A Professional Trustee is someone who isn't otherwise affiliated with union or management who is appointed to fill a vacancy in the Board of Trustees.

0

A) Agree

0%

B) Disagree

0%

C) It depends*

0%

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*Have you considered a career in law?

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What Is a Professional Trustee?

- Usually has some type of expertise
 - Possibly associated with the industry, benefits, etc.
- Usually not employed by contributing employer, union, association
 - Sometimes have past relationships
- Why we keep saying usually—It's all definitional
 - What if a company with many multiemployer plans hires someone specifically to sit as a Trustee?
Is that a Professional Trustee?

How Is That Different Than an Independent Fiduciary?



Authority to Appoint

The appointing party can hire a Professional Trustee any time they want

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A) Agree

0%

B) Disagree

0%

C) It depends

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Trust Agreement: Authority to Appoint Trustees

- Law provides few limits on who can be a Trustee
- Trust agreement need not have specific authorization . . . but need to make sure it isn't precluded
 - e.g., Trustees can only be union members or employer owners/employees
- Trust agreement would need authorization if disturbing normal Board structure
 - e.g., bringing a neutral as a deciding vote

Can a Professional Trustee Be Paid?

A Professional Trustee has to be paid by the appointing party, not the plan, because Trustees can't be compensated from a plan except for reimbursement of reasonable travel/meeting. expenses

👏 0

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Can a Professional Trustee Be Paid?

- Misperception that Trustees can only be reimbursed for expenses
 - That rule only applies to those receiving full-time pay from a union or contributing employer
 - Other Trustees can be compensated for their time*

*Trust agreement must still allow for payment if plan will be paying

Many trust agreements do not say that as a default

Can a Professional Trustee Be Paid?

- As with any service provider, compensation must be reasonable
 - Do all Trustees need to vet this even if the person is appointed by one “side”?
 - How is it vetted?
- Appointing party often pays but plan could
 - Plan payment more common for a neutral trustee or a specific-issue independent fiduciary than an everyday Professional Trustee

Standard of Care for a Professional Trustee

Professional Trustees are good for plans because, as professionals, they have a heightened obligation beyond what a "regular" Trustee does.

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Standard of Care for a Professional Trustee

- Standard of care for Trustees
 - Care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in similar circumstances
- Professional Trustees are subject to this same standard
 - Possible that their existing expertise makes them more “familiar with such matters” such that less outside expertise is required by them to meet this standard

Benefits of Having Professional Trustees

The reason to have a Professional Trustee is to get the expertise of a professional.

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0%

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Benefits of Having Professional Trustees

Complexity

Actuarial, accounting, admin expertise

Focus

Professionals can be more focused on the job

Conflict

When one side of the Board is conflicted

Vacancies

Potential liability for vacancies— Many good people don't have time or desire

Leadership

Leadership, experience, best practices from other funds

Uniform strategy

Ensuring consistent strategy across multiple plans

What about removing bargaining issues from decisions?

2019 IFEBP Survey on Trends in Multiemployer Trustee Boards

Exhibit 1 | Trust Fund Challenges



Trustee Recruitment, Selection and Retention

Responding trust funds have cited some difficulty in recruiting and retaining both labor and management trustees. On the labor side, more than one in four (26.4%) respondents state that recruiting new labor trustees is more difficult than it was five years ago, while 17.6% state that retaining new labor trustees is more difficult. Those on the management/employer side cite more difficulty in recruiting and retaining trustees. About three in five (58.2%) respondents state that recruiting new management/employer trustees is more difficult than it was five years ago, while 37.6% stated that retaining new management/employer trustees is more difficult (Table 5).

Downside of Having Professional Trustees

Professional Trustees can't be as good as "regular" trustees because they have no "skin in the game."

👍 0

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Downside of Having Professional Trustees

Don't want
decisions
made in a
vacuum

Disincentive
to find
"next gen"
plan leaders

Potential
impact on
dynamics—
Are other
Trustees
reluctant to
challenge?

Cost of
hiring a
professional

No
established
process for
sourcing
and vetting
Professional
Trustees

Key Takeaways

- There is no universal definition of Professional Trustee
- There are a number of different reasons a plan, union or employer may have for appointing a Professional Trustees
- In weighing the costs vs. benefits, consider the particular goals that you are trying to achieve
- Source, educate and monitor your Professional Trustee consistent with those goals

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