



Tax centered legal advice | [tntaxlaw.com](http://tntaxlaw.com)

## Considerations in Naming or Serving as Trustee

M. Alan Moore, Jr.

[amoore@tnlaw.com](mailto:amoore@tnlaw.com)

# Who is Alan and Why is He Here?



# Who is Alan and Why is He Here?

- Family Man with responsibility
- Retired Trust Officer with First Horizon Bank
- Brad signed me up and told me I needed to be here

# Goals for Today

- Discuss the Trusts and the Need for Trusts in Estate Planning
- Discuss the Roles of a Trustee In Trusts
- Discuss the Importance of Picking the Right Trustee
- Discuss the Pitfalls (Fun Stories about Trustee Issues)

# Why Trusts in Estate Planning



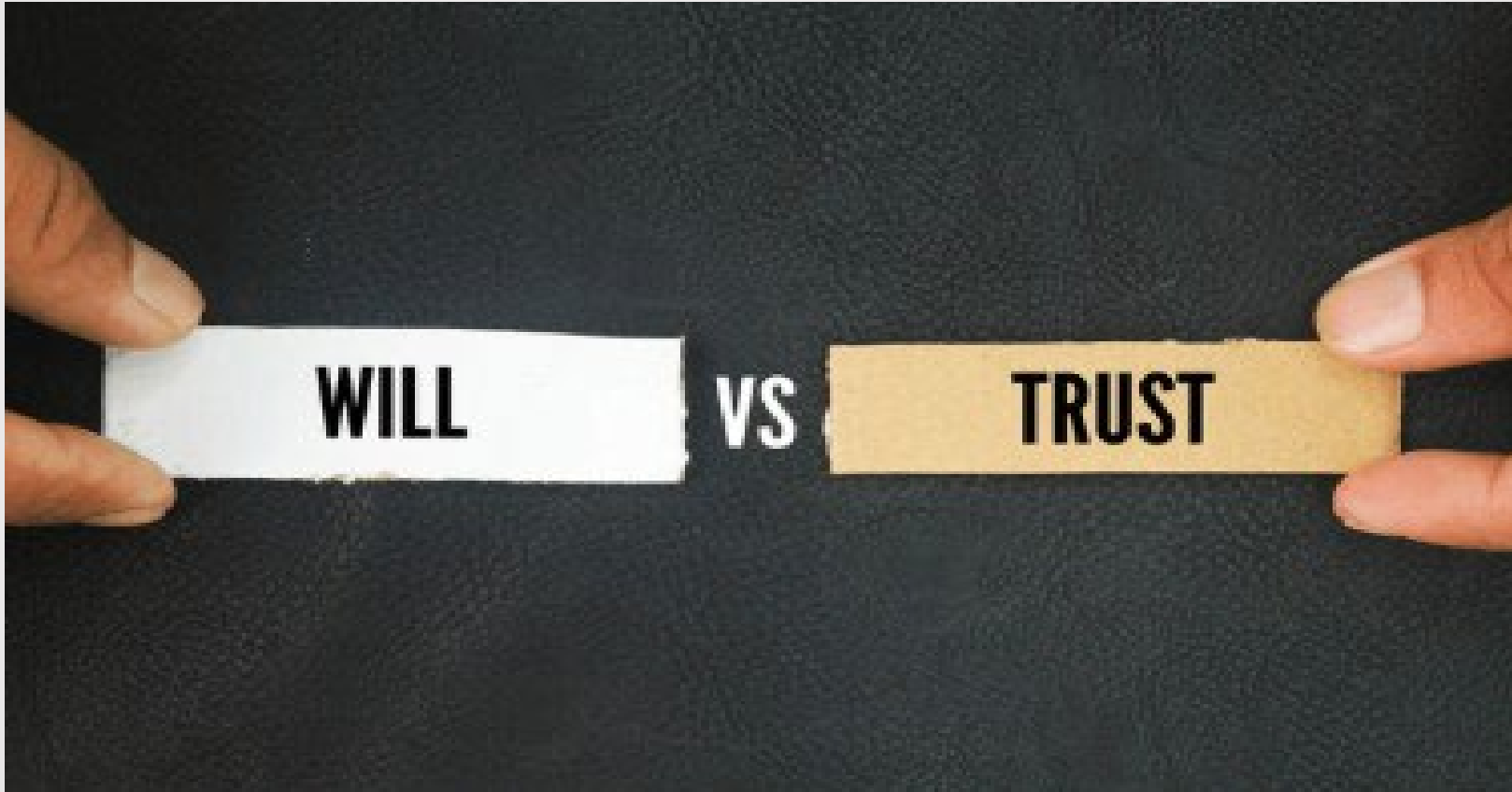
# Why Trusts in Estate Planning

- What is a Trust?
  - A trust is a fiduciary arrangement that specifies how your assets are to be distributed.
    - 3 Roles: Grantor, Trustee, and Beneficiary
    - Assets and Terms

## Types of Trusts

- Living (Inter-Vivos) v. Testamentary
  - When a Trust is written and When it becomes effective
- Irrevocable v. Revocable
  - Can you Withdraw, Change or
- Temporary and Legacy Planning
  - Rule Against Perpetuities

# Why Use a Trust Instead of Will?



# Why Use a Trust Instead of Will?

- Avoid Probate
  - Costs
  - Time
  - Privacy
- Lifetime Control
- Long Term Control
- Control of not only “who” but “how” and “when”
  - With Specific Control
- Flexibility



# Common Goals in Trust Planning

- Common Goals of Trusts

- Transfer Ownership
- Minimize Estate Tax
- Minimize Income Tax
- Protect Assets
- Preserve Assets
- Charitable Legacy
- Special Need Care

# What is a Trustee?

- **DEFINITION:** A trustee is a person or organization entrusted with managing assets held in trust for the benefit of others. It's a role that carries legal and ethical responsibilities.
- **DUTY SUMMARY:** A trustee has a fiduciary responsibility to act in the best interest of the trust's beneficiaries and NOT themselves (T.C.A. §35-15-802 Duty of Loyalty)
- **DUTY TO DISTRIBUTE:** The role of following a trust's terms to distribute property

# What is a Trustee?



# Sources of Guidance for a Trustee

- The Trust Document
- Administration Law
  - Tennessee Uniform Trust Code (T.C.A. §35-15-101, et. seq.)
- Internal Revenue Code
- Investment Laws
  - Prudent Investor Act and Prudent Person Rule
  - ERISA
  - SEC
  - FDIC
- Banking and Common Law

# General Duties of a Trustee

- Manage assets: Invest, distribute, protect.
  - Prudent Investor Act
  - Uniform Principal and Income Act
- Fiduciary duties: Loyalty, impartiality, prudence (T.C.A. § 35-15-801)
  - Following the standards set out in the trust document
  - No self-dealing (T.C.A. § 35-15-802)
- Ensure compliance:
  - Taxes- File Form 1041,
  - Adhere to TUTC

# General Duties of a Trustee continued

- Follow the Trust- Grantor's specific restrictions
  - HEMS- ascertainable standard
  - Marrying
  - Sin Behaviors
- Beneficiary rights: Duty to inform (T.C.A. § 35-15-813)
  - Silent Trusts (Quiet Trust) in Tennessee (T.C.A. § 35-15-813 (e))
- Stay Updated with Beneficiaries
  - Flexibility
  - Opportunities with Trust Protectors, Decanting, and NJSA



# Who May Serve as a Trustee?



# Who May Serve as Trustee

- **Any adult individual May serve as Trustee in the State of Tennessee**
  - Criminal
  - Minor
  - Incompetent
- **Corporate v. Individual**
  - Corporate: Offers expertise, impartiality, continuity; higher fees.
  - Individual: Personal knowledge, flexibility; risks bias or inexperience.
- **Sole Trustee v. Co-Trustee**
  - Combination of above
  - Tennessee's directed trusts (T.C.A. § 35-15-1301): Splits roles for flexibility.
  - Business Trustee



# Pitfalls in Trustee Selection and Administration

- Poor selection: Inexperienced or biased trustees.
- Mismanagement: Improper investments or distributions.
- Communication failures: Leading to beneficiary disputes.
- Solutions: Professional oversight, clear terms, audits.

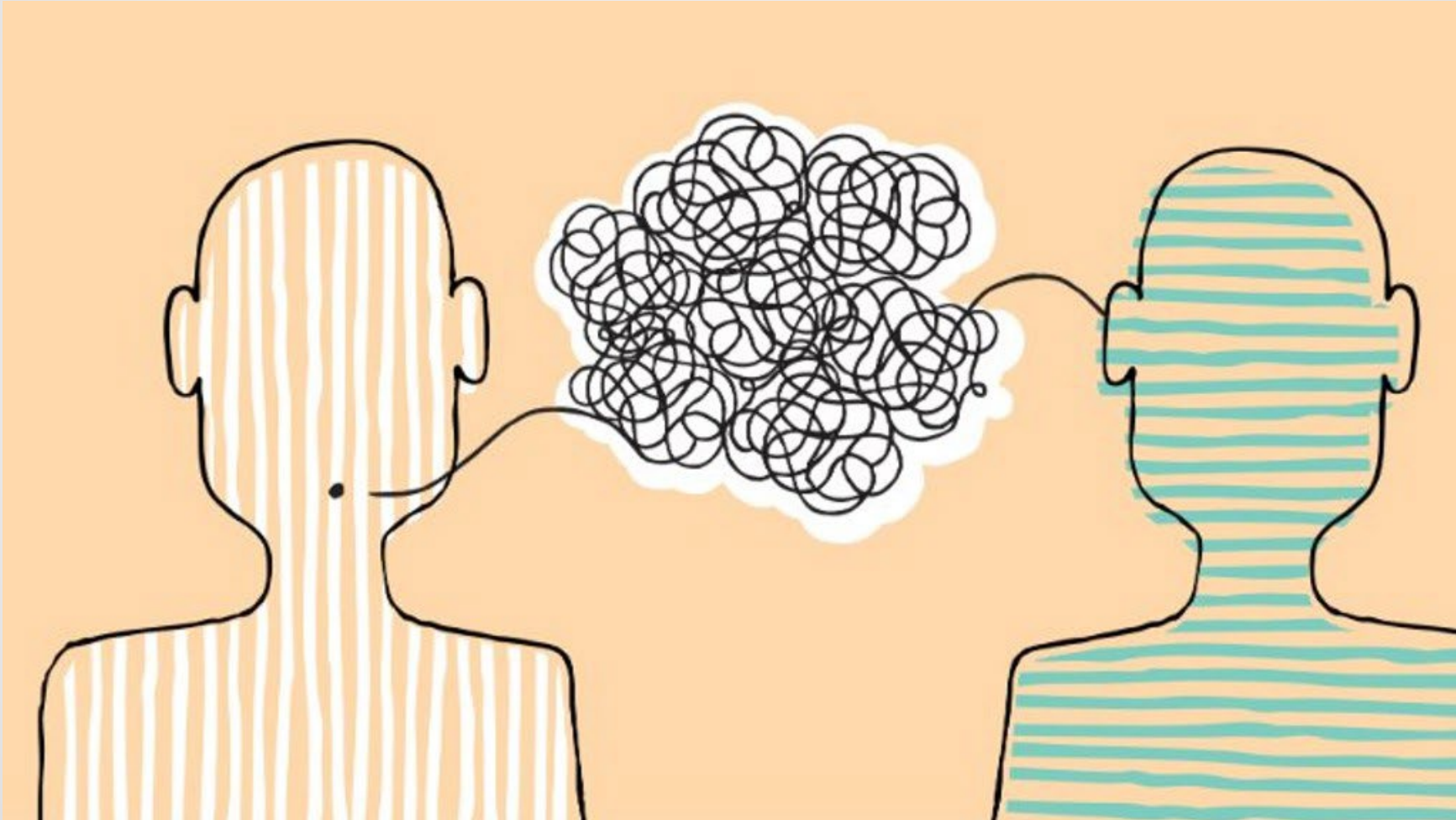
# Poor Selection



# Mismanagement of Assets



# Communication Failures



# Solutions to Pitfalls

- Professional oversight
  - Lawyers
  - Accountants
  - Investment Professionals
- Clear and detailed Trust terms
  - Careful Drafting by Attorneys and coordination with Advisors to ensure Needs are met
- Audit and Communication
  - Ensure Professionals, Trustees, and Beneficiaries are always on the Same Page
- Careful trustee selection:
  - Match skills to trust needs

# Professional Oversight





# Why does this matter to TSCPA

- Work with Trustees
  - Whether they are managing trusts for individuals, trusts for corporations trusts for government, many of the roles and considerations will be the same
- Serve as Trustee
  - More and more individuals are looking toward professional Trustees to serve a role that was traditionally held by family members. While Corporate Trustees are very active, there is a market for lawyers and other fiduciaries to serve in the roles as Trustee for their clients
- Have a Trustee
  - Many of you may currently have trusts set up by family or others or you may simply be involved with an organization who has a need for a trustee to serve
- Need a Trustee
  - As you think about your own future and how you would like to pass on your personal and business assets, if you choose to use trusts, you will need to consider who you name as trustee

# Conclusion

- Trusts May Be Needed for Various Reasons
- Trustee Selection is Critical to Success in Being able to effectually administer a Trust
- Professionals such as Lawyers, CPAs, and Advisors Must Guide Clients to Avoid Pitfalls in Administering Trust and Being Bad Trustees



# Questions?

M. Alan Moore, Jr.

2095 Lakeside Centre Way, Suite 131

Knoxville, Tennessee 37922

Office: (865) 500-3258

[amoore@tntaxlaw.com](mailto:amoore@tntaxlaw.com)

