



Will Power

Craig R. Hersch *Florida Bar, Board Certified, Wills, Trusts & Estates Attorney; CPA*

DOES YOUR TRUSTEE CHARGE A TERMINATION FEE?

If you changed your attorney and he charged you a termination fee would you pay it? If your old CPA charged a termination fee to supply your new CPA with your tax information would you think it fair? Did your mutual fund company take a chunk out when you withdrew money? So then why would you allow your trust company to charge a termination fee? That's today's topic.

Recently bank trust companies and financial institutions have been penalizing clients who wish to change financial advisors. The most recent volley into this field is the "termination fee". Typically, this is a fee charged (in some cases it might be 2% of the value of the assets being transferred) when you change trustees.

While I believe that bank and trust companies should charge a fair fee for the services that they provide, I somehow have trouble with the concept of a termination fee. Don't confuse a termination fee with services related to the administration of a settlor's estate after his or her death.

Those charges are normal and can be expected. I have trouble with the concept that if a family does not wish to have the named bank or trust company work for the family any longer (perhaps the bank has merged, its investment performance is suffering, its fee schedule has changed, the personnel have changed – or any other number of reasons), then that family should not be tied to the institution or pay a ransom in the form of a termination fee.

You should inquire with your bank or trust company to determine if they charge such a fee. If they do, you might want to consider negotiating with that institution that no such fee would be charged, and obtain that

consent in writing. Another option is to visit with your estate-planning attorney and amend your trust to include provisions that enable the removal of a trustee without penalty.

One such provision is often referred to as a "portability clause". This clause would allow you or a trusted family member or other party to change trustees if that person did not feel the trustee was performing up to the family's standards. You can fire just about anyone else who works or performs services for you or your family, why shouldn't you have the ability to fire your trustee?

Another such provision would be contained within the trustee fee compensation provision. You might want to include language that would prohibit a termination fee or other such fees that are not related to services rendered on behalf of the trust. That provision should be carefully drafted to ensure that a trustee could be fairly compensated for their work (or else no one would serve as trustee and then you would have a host of other problems), while being fair to the beneficiaries if a change is ever desired.

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