

What Responsibilities Does A Trustee Have?

Estate Planning

A trustee is responsible for a number of tasks of varying complexity, all of which must be performed with the highest level of integrity. The trustee cannot lose sight of the best interests of the trust and its beneficiaries.

Wealth & Estate Planning Strategists
Family Office Resources

A trustee is a fiduciary and is required to manage, preserve, and administer a trust with the highest degree of fidelity and good faith. In general, a trustee's responsibilities include:

- Acting only in the best interests of the trust's beneficiaries.
- Remaining impartial by not favoring the interests of one beneficiary over another (unless such treatment is stipulated in the trust document).
- Managing assets and fulfilling trust provisions reasonably and prudently.

The Trust Document and Responsibilities

A trustee should read and understand the trust document and be familiar with the governing state laws that impact their role and responsibilities. In addition, an individual nominated as trustee should understand these rules and responsibilities before accepting the role. A trustee should consider consulting with an experienced attorney or trust expert to fully understand their role. A trustee should ask why the trust was established, what it is designed to accomplish, the identity of all beneficiaries, and where trust assets are located. Further, a trustee should look to the trust document to understand their duties such as when, how, and under what conditions or standards distributions are to be made to beneficiaries or what administrative functions—e.g., filing trust tax returns—the trustee needs to perform.

The trust document may have triggering events that the trustee should understand. Certain events can cause the trust to change over time, including the death of a beneficiary. The trust document also includes the provisions appointing the trustee. It may name a sole trustee or two or more co-trustees and will usually designate successor trustees or a process for appointing a successor trustee. If there are co-trustees, the trust document or governing law should indicate whether there is a division or sharing of responsibilities and whether the co-trustees may act independently or must unanimously agree on some or all decisions impacting the trust.

The Trust Document Determines the Trustee's Duration of Service

A well-drafted trust document will clearly define the trust's duration, whether it lasts for a specific time frame, i.e., the life of the grantor or the life of the grantor's children or other beneficiaries, or for an indeterminate period (note that the laws of some states may limit the duration of a trust, for example, 360 years). Some trusts are drafted to be multi-generational and are intended to hold property for the creator's children and future generations. The trust document may require that assets held for the benefit of a minor be held in trust until they reach a certain age or ages, i.e. upon attaining the age of 25, 30 or 35.

If the trust term ends at a specific age, then once the beneficiary attains that age, the trustee will distribute the remaining assets of the trust to the beneficiary and the trust will terminate. The trustee's responsibilities end when the trust terminates, and all accounts and expenses are settled. The trustee may also resign in favor of a successor trustee appointed under the trust document or state law. Note that the trustee's potential liability for his or her actions as trustee may outlast the trustee's service, depending on applicable law.

Investing Guidelines for Trustees

The trust document and applicable law will dictate how the trustee may invest and may limit what investments the trust can hold. Generally, the trustee must act in accordance with a standard of care that states it is the trustee's responsibility that investing be done with the beneficiary's best interests in mind as a "prudent investor" would do, in light of the purposes, terms, distribution requirements, and other circumstances of the trust. Therefore, it is important for the trustee to properly evaluate the purpose of the trust and the interests of the beneficiaries in order to make appropriate investment decisions.

Powers of the Trustee

The trust document and applicable state law will define the powers of the trustee, including (as mentioned above) the trustee's discretion over investments and distributions of income or principal from the trust. If the trust document specifies that a distribution of a certain amount must be made during a certain time period, the trustee is obligated to make such distribution; but the trustee will usually still have the responsibility and discretion to decide which assets are used to make the distribution. The trust document may contain guidelines that will assist the trustee in making discretionary distributions, such as specifically forbidding principal from being distributed for the purchase of a frivolous item—e.g., a Lamborghini.

Liabilities of the Trustee

If the trustee acts in the best interests of the beneficiaries of the trust and as a prudent investor would do, or otherwise in accord with the investment standard set forth in the trust document and makes investments within the powers given to the trustee under the terms of the trust, the trustee will not be liable for any losses suffered by the trust. A trustee may be personally liable if he/she fails to manage the trust assets prudently or if he/she does something that was not authorized in the trust document. In some cases, a trust document may require a trustee to post a surety bond to protect against the trust suffering losses as a result of the trustee's negligence or misconduct, although trust documents more often waive that requirement.

Other Responsibilities

As a general rule, unless waived in the trust document, a trustee is required to provide beneficiaries with an annual accounting for all trust income, expenses, and distributions. The trust accounting will represent what the opening and closing balances for the trust were in that year.

Unless the trust's income may be attributed to another individual, such as the grantor, the trustee is also responsible for filing an

TRUSTEE RESPONSIBILITIES

annual trust income tax return (Form 1041) with the Internal Revenue Service as well as state income tax returns, if applicable.

Compensation

Depending on the applicable law and the terms of the trust document, a trustee may be entitled to compensation for services rendered as a trustee. A trustee may wish to consider consulting with an experienced attorney or other trust expert for further details.

Delegation of Responsibilities to Outside Professionals

A trustee may delegate responsibilities to outside professionals, such as an accountant and/or attorney, but as a fiduciary of the trust, the responsibility for such delegation lies with the trustee. For example, a trustee may hire an attorney to assist with the

interpretation of trust provisions to help the trustee make decisions, but the decision is ultimately the trustee's. The trustee may also hire an accountant for tax reporting and preparation, and a financial advisor for investment guidance or portfolio management, but the trustee is ultimately responsible for the results.

Some states' laws recognize that a trustee can delegate tasks but must act as a prudent person would act in making any such delegation. There are laws in certain states that permit trust language that authorizes the appointment of a "trust director," also known as a "trust protector" or "special co-trustee," to assume responsibility and liability for specific tasks or decisions.

Seeking advice or delegating responsibilities to an outside professional may make the trustee's job easier to handle, but the trustee must always remember that unless the applicable state law and trust document provides otherwise, the trustee is ultimately responsible for any decisions made by a delegate.

Important Disclosure

Morgan Stanley Smith Barney LLC does not accept appointments, nor will it act as a trustee, but it will provide access to trust services through an appropriate third-party corporate trustee.

This material has been prepared for informational purposes only and is subject to change at any time without further notice. Information contained herein is based on data from multiple sources and Morgan Stanley Smith Barney LLC ("Morgan Stanley") makes no representation as to the accuracy or completeness of data from sources outside of Morgan Stanley. It does not provide individually tailored investment advice. The appropriateness of a particular investment or strategy will depend on an investor's individual circumstances and objectives. Be aware that the particular legal, accounting and tax restrictions, margin requirements, commissions, and transaction costs applicable to any given client may affect the consequences described.

Tax laws are complex and subject to change. This information is based on current federal tax laws in effect at the time this was written. Morgan Stanley Smith Barney LLC, its affiliates, and Financial Advisors do not provide tax or legal advice. Clients should consult their tax advisor for matters involving taxation and tax planning and their attorney for matters involving trust and estate planning and other legal matters.

The term "Family Office Resources" is being used as a term of art and not to imply that Morgan Stanley and/or its employees are acting as a family office pursuant to Investment Advisers Act of 1940.