

What Responsibilities Does A Trustee Have?

Estate Planning Strategies

A trustee is responsible for a number of tasks, most of which are simple, and some of which are complex. These tasks must be performed with the highest level of integrity. The trustee must also take into account the best interests of the beneficiaries.

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

- Acting only in the best interests of the trust and its beneficiaries.
- Remaining impartial by not favoring the interests of one beneficiary over another (unless the trust stipulates this to be so).
- Managing assets and fulfilling trust provisions with reasonable care.

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The Trust Document and Responsibilities

It is important to read and understand the trust document and state law, which explain the rules and limits of a trustee. In addition, trustees must understand their responsibilities as outlined in the trust document before accepting the role.

A trustee needs to know why the trust was established, what it is designed to accomplish and where assets are located. Also, a trustee needs to understand when and how distributions are supposed to be made to beneficiaries and what administrative functions—e.g., filing trust tax returns—need to be performed. Finally, the trust document will state whether there is one trustee or two or more co-trustees. If there are co-trustees, the trust document will determine whether there is a division or sharing of responsibilities, or whether each co-trustee has full authority to act.

The Trust Documents Determine the Trustee's Duration of Service

The trust document will state whether the trust lasts for a specific time frame, i.e., the life of the grantor or the life of the grantor's children, or for an indeterminate period. Some trusts that are created for the benefit of children and/or grandchildren are designated to terminate at a specific age, e.g., 25, 30 or 35 years. If the trust terminates at a specific age, then once the child or grandchild attains that age, the trustee will distribute the remaining assets of the trust to the beneficiary, and the trust will be closed. The trustee's responsibilities end when the trust ends.

The trustee must also be familiar with laws that affect the administration of the trust. The trust document usually, but not always, trumps applicable law, but if the trust document is silent, then applicable law governs. Investing Guidelines for Trustees

The trust document and applicable law will dictate what the trustee may invest in. Applicable law may limit what investments the trust may hold. Within these limits, the trustee must act according to a standard of care that states it is his/her responsibility that investing be done with the beneficiary's best interests

in mind, in accordance with the Prudent Investor Rule. The trustee must also understand the trust document to know whether the purpose of the trust is for the beneficiary to receive income every year or every quarter, or is the purpose of the trust to grow the assets so that when the beneficiary reaches a certain age or the trust has been in existence a certain amount of time, a greater sum may be distributed to that beneficiary. These are questions that need to be asked and answered before a trustee can make investment decisions.

Powers of the Trustee

The trust document and local law will dictate what powers the trustee has including 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 that distribution; but the trustee will still have the responsibility to decide which assets are used to make the distribution. If the trust document specifically forbids principal from being distributed for the purchase of a frivolous item—e.g., a Lamborghini—then the trustee is required to decline that request.

Liabilities of the Trustee

If the trustee acts in the best interests of the beneficiaries of the trust 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 act to manage the trust assets prudently or if he/she does something that was not authorized according to the terms of the trust document. As a general rule, a trustee will post a surety bond to protect against the trust suffering losses as a result of the trustee's negligence or misconduct unless the trust document waives that requirement.

Other Responsibilities

As a general rule, a trustee is required to provide beneficiaries with an annual report 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.

The trustee is also responsible for filing an annual trust income tax return (Form 1041) with the Internal Revenue Service.

Compensation

Depending on the applicable law and the terms of the trust document, a trustee may be entitled to compensation—i.e., paid a fee—for services rendered. 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 offer interpretations and help the trustee make decisions, but the decision is the trustee's. The trustee may also hire an accountant for reporting and tax preparation and a financial advisor for investment guidance or portfolio management.

Delegating responsibilities to an accountant and/or an attorney may make the trustee's job easier to handle, but the trustee must always remember that he/she is ultimately responsible for any decisions made.

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.

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