



What you need to know as a trustee

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A trustee has the legal authority and fiduciary responsibility to manage assets held in a trust, handle administrative and financial matters related to the trust, and protect the interests of all beneficiaries. Depending on the terms of a trust, the trustee—both current and future—may be required to perform a number of varied and complex duties. Below is some basic information about trusts and the role of trustees in general.

What is a trust?

A trust is a legal arrangement with one or more parties—the trustee(s)—managing assets for the benefit of others—the beneficiaries. Benefits of trusts may include the potential for reduction of estate and other transfer taxes, control of assets, probate avoidance, leaving a legacy for future generations, and asset preservation. Each state has laws that provide a framework for establishing trusts and describe the rights and duties of the parties. The trust document details how a particular trust will be administered. The trust document may also override aspects of state law and include additional rights and duties of the parties involved.

Trusts typically have three key parties: the grantor, the trustee, and the beneficiary. There may be one or more person or entity in each role. Different parties may fill each position or may operate in more than one capacity. In some cases, one party may fill all three roles.

Types of trustees

There are several types of trustees. The most common are defined below.

- An **individual trustee** is just that, an individual. There may be one or more individuals appointed as trustee.
- A **corporate trustee** is typically a trust company or a trust department within a bank.
- A **successor trustee** serves after the original trustee declines the position, ceases to serve, or is removed. Trustees change periodically due to incapacity, death, resignation, or removal. The trust document and governing state law describe the process for changing trustees. It may be possible for a trustee to appoint his or her successor.

If more than one trustee is serving at the same time, they are **co-trustees**. The trust document may specify whether the co-trustees may act alone, by majority rule, or unanimously. If the trust document does not contain specific guidance, state law determines how many co-trustees are needed to take an action.

While not a trustee, another position of authority that may be appointed within a trust document is a **trust protector**. A trust protector is typically an independent third party not related to the grantor, trustee, or beneficiary who may be given one or more special powers to aid in administration of the trust.

Characteristics of a suitable trustee

A trustee is a fiduciary and must treat the beneficiaries impartially and administer the trust solely for the benefit of the beneficiaries. While a grantor may name anyone as a trustee, there are several traits which make a suitable trustee. An ideal trustee should be:

- Impartial and able to make sound decisions based on the terms of the trust document, state law, and the needs of current and future beneficiaries
- Willing to serve and have the time and availability to do so
- Reliable, trustworthy, and possess integrity

- Competent and have good judgment
- Familiar with the trust document and governing law

Most trust documents allow the trustee to hire others to manage more specialized trust assets, such as investments, real estate holdings, or closely held businesses.

Trustee duties

The trustee has many duties. Fiduciary duties of a trustee are defined by the terms of the trust and applicable laws.

- **Asset management.** A trustee has a duty to prudently manage the assets of the trust. The trustee must balance the interests of beneficiaries when considering trust investments. For example, current beneficiaries may prefer that assets be managed in a way that potentially provides for income distribution now, while remainder beneficiaries may prefer that assets be managed with a goal of growing principal for future distributions.
- **Trust distributions.** In reviewing a request, the trustee should evaluate whether the request fits within the distribution terms of the trust document. The trustee may also need to understand the beneficiary's other resources and balance the interests of other current and remainder beneficiaries.
- **Recordkeeping and communication.** The trustee is responsible for keeping records of trust administration activity including investment performance and distribution decisions. The trustee is also responsible for keeping the beneficiaries reasonably informed about the trust's administration and responding to information requests from them.
- **Tax filings.** The trustee is responsible for filing required trust tax returns. Generally, taxes on income are paid by the trust or the beneficiaries.

Trust distributions

The trust document describes the circumstances for which a distribution can be made to a beneficiary and whether the distribution can be paid from income, principal, or both.

Distributions from a trust may be mandatory or discretionary. Examples of mandatory distributions include a requirement to distribute all income or an outright distribution when a beneficiary attains a certain age. Examples of discretionary distributions include those subject to the trustee's full discretion or a standard like health, education, maintenance, and support.

The trustee must consider the needs of all beneficiaries unless the trust document directs the trustee to give preference to certain beneficiaries over others.

If a trust has more than one beneficiary, the trust document may outline whether distributions of income, principal, or both should be made equally among the beneficiaries. Trust documents may also include provisions that equalize the division of trust assets at a point in the future to account for distributions made to one or more beneficiaries prior to the division date.

Conclusion

The role of a trustee is one of the most critical in the wealth planning process. If you are named as a trustee, be sure to consult with your legal and tax advisors about the specific responsibilities you may have related to the particular trust for which you serve.

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