

*Trust & Estate Administration*

# The Role and Responsibilities of a Trustee – A Helpful Guide<sup>1</sup>

A trust is a legal arrangement through which an individual (or an institution, such as a bank or law firm), called a “trustee,” holds legal title to property for the benefit of another person, called a “beneficiary.” If you have been appointed the trustee of a trust, this is a strong vote of confidence in your character, judgment and maturity. However, with that comes potential legal liability and a significant number of duties.

Outlined below is a brief overview of some of the key duties and responsibilities of a trustee:

## **FIDUCIARY RESPONSIBILITY**

As a trustee, you stand in a “fiduciary” role with respect to the beneficiaries (current and future), meaning you have a legal duty to act solely in another party’s interests. As a fiduciary, you will be held to a very high standard of personal and professional conduct in administering the benefits of the trust.

## **THE TRUST’S TERMS**

Read and understand the trust. The trust is your guide and you must follow its directions, whether about when and how to distribute income and principal or what reports you need to make to beneficiaries.

## **INVESTMENT STANDARDS**

Your investments must be prudent, meaning that you cannot place money in speculative, self-serving or risky investments. In addition, your investments must take into account the interests of both current and future beneficiaries.

## **DISTRIBUTIONS**

Where you have discretion on whether or not to make distributions to a beneficiary, you need to evaluate his/her current needs, his/her future needs, his/her other sources of income and your responsibilities to other beneficiaries before making a decision.

## **ACCOUNTING**

Keep track of all income to, distributions from and expenditures by the trust. Usually you must give an account of this information to the beneficiaries on an annual basis.

## **TAXES**

Depending on whether the trust is revocable or irrevocable and whether it is considered a “grantor” trust for tax purposes, the trustee will have to file an annual tax return and may have to pay taxes.

## **DELEGATION**

You cannot delegate your responsibility as trustee, but if the trust document permits it, you may hire agents to carry out certain functions. For example, you may be able to hire financial advisors to make investments, accountants to handle taxes and record keeping for the trust, and lawyers to advise you on questions of interpretation. However, as trustee, you are ultimately responsible for the actions of agents taken on your behalf.

## **FEES**

Trustees are entitled to reasonable fees for their services. Family members often do not accept fees. Banks, trust companies and law firms typically charge fees for their services. In general, what’s reasonable depends on the work involved, the amount of funds in the trust, other expenses paid out by the trust, the professional experience of the trustee and the overall expenses for administering the trust.

## TRUSTEE ACTIVITIES CHECKLIST<sup>1</sup>

The following is a guideline for some of the primary duties of a trustee. It is not intended to be a comprehensive list of activities. You should seek advice of counsel in determining your roles and responsibilities.

- Conduct a thorough search for all estate planning documents. Look for all current and revoked wills, pour-over wills, trusts, powers of attorney, trust amendments and restatements, trust schedules, trust asset lists, and deeds to trust property. Put all documents in order based on date of execution.
  - Collect all previously prepared trust-related documents such as estate tax returns, gift tax returns, trust tax returns, prior accountings of trust assets, notices of proposed action, and any principal and income adjustment actions.
  - Determine whether the Uniform Prudent Investor Rule applies to the trust.
  - Read estate planning documents, and set aside any previously revoked documents. Once you find the most current trust, read it through very carefully again from beginning to end. Make notes of anything you find unusual (note the page and paragraph number in your notes for easy reference).
  - Identify all interested persons, including heirs, successor trustees, current beneficiaries and remainder beneficiaries. Obtain their complete names, addresses, telephone numbers, email addresses, age and any other contact information you can find. (Warning: Failure to use due diligence in correctly identifying, locating and notifying all interested parties could expose you to financial liability.)
  - Retain legal counsel to assist you with trust administration duties. You have the legal right to use trust funds to pay an attorney to assist you with the administrative process. Failing to retain counsel is not a valid excuse for any wrongful acts or omissions during the trust administrative process.
  - Initial meeting with your attorney:
    - Start by understanding your attorney's scope of representation
    - Make sure your attorney reviews trust terms with you
    - Make sure your attorney explains your fiduciary duties as trustee
    - Make sure your attorney reviews trust circumstances and purpose with you
    - Discuss any emergencies (pending litigation, needs of beneficiaries, etc.)
    - Discuss fees, obtain engagement letter
  - Obtain tax payer identification number for irrevocable trusts. If you are the trustee you can obtain that number by calling the Internal Revenue Service.
- If necessary, be prepared to file a tax return for the trust.
  - If you have liquid trust assets, immediately open a trust checking and savings account. Make sure you maintain an accurate accounting of all trust assets and their earnings. Your deposits must be FDIC insured.
  - Establish a record keeping system. At a minimum it should include folders for financial records and beneficiary communications – including notes from telephone calls and copies of all letters sent and received, beneficiary meeting minutes and a journal of actions and communications.
  - Make a complete and detailed inventory of all trust assets. If you have assets that are difficult to value, consider hiring a professional appraiser. Discuss it with your attorney.
  - Review trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust.
  - Send California Probate Code Section 16061.7 Notice to all named beneficiaries and heirs within 60 days.
  - Determine whether the amount of trust assets warrant the assistance of a professional investment manager. If you determine assets are not significant enough, you might want to consider speaking to a professional about a mutual fund strategy. If investment decisions are necessary, meet with your attorney to discuss issues necessary for the drafting investment delegation guidelines. Determine if court approval is necessary to carry out investment strategy.
  - Divide trust assets into sub-trust(s) if required under the terms of trust.
  - Prepare and send an initial accounting to beneficiaries identifying all assets, debts, income and expenses.
  - Arrange for any necessary distribution of assets to beneficiaries (at least 120 days after giving notice).
  - Obtain receipts from beneficiaries showing proof of distributions.

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