

Trustee Rights and Liabilities to Third Parties

A. Torts

A trustee is *personally* liable for torts the trustee, their agents or employees commit in the course of their employment. Examples of torts include "wrongful action" or "failure to act." Generally, a trustee may be exonerated or reimbursed from the trust estate if:

- The trustee was properly engaged in business activities and the tort is one that is common in that business activity;
- The trustee was properly engaged in a business activity and neither the trustee nor the trustee's employee or agent is guilty of actionable negligence or intentional misconduct; or
- The tort increased the value of the trust property.

However, if the trustee is entitled to exoneration or reimbursement because of an increase in value to the trust property, the amount of the exoneration or reimbursement is limited to the increased value of the trust property.

B. Contracts of the Trustee

If a trustee enters into a contract on behalf of a trust and a legal claim later arises on the contract, the plaintiff may sue the trustee in the trustee's *representative capacity* and may collect the judgment against the trust estate. However, a trustee *may* be sued individually if the contract entered into on behalf of the trust does not *exclude the trustee's personal liability*. The Texas Trust Code provides that use of the word "Trustee" or "as Trustee" after the trustee's signature is evidence of intent to exclude personal liability. Accordingly, whenever an act on behalf of a trust requires the trustee's signature, the trustee should follow their individual name with the word "Trustee" or "as Trustee".

IMPORTANT: This publication is designed to provide general information about planning ideas and strategies. Always consult with your legal, tax, investment, and insurance advisors about your unique circumstances before changing or implementing any financial, tax, or estate planning strategy.

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