

## Trustee Duties Under Texas Law

The rules in our State regarding trust administration and trustee powers and duties are found in three locations: (1) the trust agreement (hereinafter the "agreement"); (2) the Texas Trust Code (hereinafter the "Code"); and (3) court decisions interpreting trust law (hereinafter the "Courts").

The Code provides that trustees must administer trusts according to the terms of the trust agreement plus the provisions of the Code. When one of these sources fails to address an issue, but the other does, the source addressing the issue controls. If the agreement conflicts with the Code, the agreement *normally* controls, but not always. When neither the Code nor the agreement addresses an issue, the trustee must look to the Courts' interpretations of Texas Statute to determine the duties and even liabilities of the trustee.

A trustee is a "fiduciary." A fiduciary must act with the utmost care and honesty in carrying out the directions of the person who appointed the trustee to serve.

Trustees have a number of specific duties under Texas Statutes:

- ***Duty of Loyalty.***  
The trustee must administer the trust solely in the interest of the beneficiaries. No fiduciary is permitted to place itself in a position where a trustee would benefit in violating its duties to the current or remainder trust beneficiaries.
- ***Duty Not to Delegate.***  
The trustee must administer the trust and may not delegate to others acts (and in turn the liability for the actions) the trustee must perform. However, the Code *does* permit a trustee to hire bank trust departments and other professionals for legal, accounting and investment support. In any event, final decisions on all issues must be made by the trustee.
- ***Duty to Keep and Render Accounts.***  
The trustee must keep full, clear and accurate accounts of the trust principal and income. The Code gives "first tier" beneficiaries the right to demand a written statement of accounts covering the trust's transactions.
- ***Duty to Furnish Information.***  
The trustee must keep first tier beneficiaries age 25 and older reasonably informed about the trust. These beneficiaries have a right to examine the trust property and accounts, along with vouchers and other documents relating to the administration of the trust.
- ***Duty to Exercise Reasonable Care and Skill.***  
The trustee must exercise the level of care and skill a prudent investor would exercise in dealing with her or his own property.
- ***Duty to Take and Retain Control of Trust Property.***  
The trustee must take all reasonable steps to secure and maintain control over the trust property.
- ***Duty to Invest and Manage Trust Property.***  
The trustee must invest and manage trust assets as a prudent investor would. This includes considering the purposes, terms, distribution requirements and other circumstances of the trust agreement and the various beneficiaries.
- ***Duty to Enforce Claims.***  
The trustee must take reasonable actions to collect claims or debts due to the trust estate.
- ***Duty to Defend.***  
The trustee must do what is reasonable under the circumstances to defend actions by third parties against the trust estate.
- ***Duty Not to Co-Mingle Trust Funds.***  
The trustee must designate trust property as such, and segregate it from your personal property. Likewise, you must keep the property separate from other trusts you may administer. Joint investments among several trusts are permitted, but each trust's interest must be separately identified.

- ***Duty With Respect to Bank Deposits.***  
Although you may deposit trust funds in a bank, you are duty bound to use reasonable care in selecting the institution and you must designate all such deposits as trust deposits. You may not subject the property to unreasonable restrictions on withdrawal or leave it in non-interest bearing accounts for unduly long periods of time. Pending investment, distribution, or the payment of debts, the Code authorizes you to deposit trust funds in a bank that is subject to supervision by state or federal authorities.
- ***Duty to Make Trust Property Productive.***  
Unless the trust agreement says otherwise, you are required to make trust property productive. For example, the Texas Supreme Court ruled that a trustee could be compelled to sell property that failed to produce an annual net income in excess of 1% of its value. The Code provides a method for allocating a portion of net sales proceeds to income if property has been unproductive for more than one year.
- ***Duty to Deal Impartially With Beneficiaries.***  
When there are multiple beneficiaries of a trust, they must be treated impartially.

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