

## What are the Duties of a Trustee?

As my first boss in the trust business told me 40 years ago, "to be forewarned is to be forearmed." What did he mean by that? To protect your own personal liability, know what is required for each and every trust you manage. No two are alike. Understand that a trustee has a difficult and important job. There is the potential for personal liability, yet little or no potential for personal benefit except knowing that in the long you helped others. In most cases, one entrusted with the responsibility of a fiduciary has the knowledge that he or she complied with a loved one's wishes. Often, a trustee is tasked with the responsibly and duty of looking after a beneficiary's physical, financial and emotional wellbeing. The keys to managing this difficult position are fully understanding what is required, identifying the potential issues and conflicts associated with the particular trust relationship and managing these issues and conflicts prudently and without bias.

One ends up being a fiduciary for another when a friend, business associate or family member is having a Will or Trust written by their attorney and asks you if you would be willing to serve as a trustee of trusts created under the specific documents. With a complete lack of knowledge but honored by the request, you agree to serve. As a friend of mine once said, "it was one of those things that seemed like a good idea at the time."

Or, possibly a friend, business associate or family member recently passed away and then you discover they have named you as a trustee or executor in the Will. Regardless of how one came to be entrusted by another as a fiduciary, there is likely curiosity about the extent of the obligations, how much time the work will require, and where does one go to find help in meeting the duties and obligations of the role of a fiduciary.

This article is not a substitute for legal or tax advice from your attorney or CPA. Hopefully it will provide sufficient information regarding the responsibilities and duties one could personally take on and help you decide when one should hire professional assistance.

Assets owned by trusts and the circumstances of trust beneficiaries do not remain stationary. A trustee's duties are constantly changing. Notwithstanding this, a trustee can avoid most of the problems associated with the trustee-beneficiary relationship if the trustee does the following:

1. Is responsible to all of the beneficiaries *and* to the terms of the trust;
2. Attempts to see issues from the beneficiaries' perspective (even if the trustee does not ultimately come down on the issue in a way the beneficiary would like);
3. Devote the time, energy and expertise necessary for the trust estate in question;
4. Direct the trust estate in a way the trustee would like if the trustee were the beneficiary, *but also* as a prudent investor would act regarding the trust estate;
5. Establish and follow appropriate policies and procedures; and
6. Communicate plainly, politely, and frequently with the trust beneficiaries.

If a trustee fails to develop adequate procedures and policies, *or* if a trustee fails to follow them, a trustee is likely to find that they have effectively personally guaranteed the success of their decisions as a trustee due to the potential for personal liability. But, when a trustee faithfully fulfills their responsibilities as a fiduciary, the trustee can be confident they have lived up to the "trust" a loved one or friend placed in them.

**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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