



Responsibilities of a Successor Trustee

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What Is a Trust?

A trust is a legal arrangement under which a person, called the grantor or settlor, transfers assets to a trustee, who manages those assets for the benefit of others, the beneficiaries. The arrangement is typically set out in a formal written document, called the trust agreement. Although trust agreements can be structured in many ways to accomplish a variety of planning goals, they all fall into one of two major categories: revocable (the grantor can revoke or amend the trust) or irrevocable (the grantor cannot revoke or amend the trust). Particularly with a revocable trust—the more common of the two types—it is not unusual for the grantor of the trust and the initial trustee to be the same person.

The Successor Trustee's Role

A successor trustee is the person or institution who takes control of the trust assets when the original trustee dies, resigns, or becomes incapacitated. A successor trustee's primary objective is to properly administer the trust assets according to the trust's terms and in keeping with fiduciary standards.

You should consider the successor trustee's responsibilities carefully prior to accepting the role. If you have any reservations, it is best to decline the position. Keep in mind that any change in trustee should be documented in writing.

Trust Administration

Upon appointment, a successor trustee must take these initial steps:

- Obtain a copy of the trust agreement and review it.
- Inventory the trust assets.

- Notify any banks or brokerage firms of his or her appointment.
- Obtain a new tax ID number for the trust, if necessary. (e.g., if a revocable grantor trust becomes irrevocable).

Understanding the trust's purpose will help keep the trustee from running afoul of the grantor's intentions. Common purposes include protecting assets for special needs beneficiaries and protecting assets from taxation. For example, many tax-planning trusts have very specific distribution requirements designed to protect the trust assets from estate taxation. An improper distribution by the trustee could cause these otherwise protected assets to become subject to tax.

The trust agreement will explain how the trust assets are to be invested, how the assets are to be distributed to the beneficiaries, the powers granted to the trustee, and other administrative matters. Because state law also governs trust administration, the trustee should become familiar with its requirements. If the trust is difficult to understand, the trustee should seek legal counsel to help interpret it.

Fiduciary Responsibilities

In their fiduciary role, successor trustees have several fundamental duties:

Duty of loyalty. A trustee has a legal obligation to the trust beneficiaries. The duty of loyalty is the most basic fiduciary duty, and it requires the trustee to administer the trust solely in the beneficiaries' interests. Trustees should not enter into a transaction that personally benefits them, much less one that benefits them at the expense of the trust. A trustee who is also a beneficiary must be particularly cautious. Conflicts may arise between a trustee's personal interests and the trust, or between the trust and third parties. The trustee should always put the trust's interests first.

Duty of general prudence. A trustee must deal with the trust assets as a "prudent person" would handle the property of another. A trustee's actions will be judged based on what a reasonable person might have done under similar circumstances, given the same limitations and information.

Trustees will be held to a higher standard of care than if they were simply investing their own funds. A trustee with relevant education or experience may be held to an even higher standard of care.

Duty regarding investments. Within a reasonable time of accepting the role, a successor trustee should review the retention and distribution of trust assets to ensure that the investment strategy reflects the trust's terms and purpose. Generally, investment decisions should consider the needs of both the current income beneficiaries who receive payment from the trust for a certain period, and the remainder beneficiaries, who receive the assets left in the trust when the payment term has ended. The Uniform Prudent Investor Act and the Uniform Principal and Income

Act, which have been adopted by most states, also provide guidance on trust investment strategy.

Trustees are strongly encouraged to employ an investment advisor to assist them in this duty and to help prepare an investment policy statement to support investment decisions. Asset management remains actively litigious, and an investment advisor can help trustees avoid pitfalls in managing trust assets.

Duty regarding distributions. The trust will dictate when and how the trust assets are distributed.

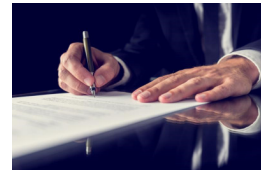
Common formulas include:

- Outright distributions
- Specific percentages in specific intervals (frequently by age)
- An ascertainable standard (health, maintenance, and welfare)
- Specific needs, such as education or health care
- Complete trustee discretion to determine the time and nature of distributions

When discretion is involved, trustees should carefully evaluate the beneficiary's needs, other sources of income, and the reasonableness of the request. Often, trustees must balance the income beneficiaries' needs with the remainder beneficiaries' interests. Thus, it is important for trustees to carefully document their distribution decisions and the reasons supporting them.

Duty to render accounts and other reporting requirements.

The trustee is responsible for ensuring that the trust's annual federal and state tax returns are filed, along with any other filings required by state agencies or the courts. Again, trustees may want to employ professional advisors to help with these filings.



In addition, beneficiaries are generally entitled to receive an annual accounting of trust assets. (In accordance with state law or the trust agreement, beneficiaries may be entitled to more frequent accountings.) To prepare these accountings and tax filings, trustees should keep detailed records that reflect annual income, expenses, investment gains or losses, and distributions. Accuracy is important!

Trustees should also review state law to determine other reporting obligations. Some states have adopted the Uniform Trust Code (UTC), which requires trustees to fulfill very specific reporting obligations, such as providing copies of the trust to the beneficiaries; other states have modified the UTC's reporting requirements. In addition, some states may require trustees to provide other notices to beneficiaries, such as notification of a change in trustee or a change in trustee compensation.

Duty to keep property separate. Trust property should be kept separately from the trustee's personal property. This is a commonsense duty that trustees disregard with surprising frequency, paving the way for liability.

Duty not to delegate. Fiduciary obligations cannot be delegated to a third person. If a trustee lacks specialized skills or knowledge, it is prudent to employ professional advisors, such as an investment advisor, attorney, or accountant. The trustee must still exercise a fiduciary role in supervising advisors employed by the trust.

This material has been provided for general informational purposes only and does not constitute either tax or legal advice. Although we go to great lengths to make sure our information is accurate and useful, we recommend you consult a tax preparer, professional tax advisor, or lawyer.

My staff and I deeply appreciate the continuing opportunity to work with you. Please let me know if you have any questions or requests. Thank you.

Sincerely,

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