

# Stiller Law Offices

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Client Article

## **Duties of a Trustee**

As an estate planning and administration professional, I am often asked questions about the role of the Trustee of a Living Trust. Following are some of the more common duties and responsibilities of a Trustee, generally applicable to both the original Trustee as well as a Successor Trustee. This is not intended to be an exhaustive or technical list.

Agreeing to serve in a Trustee position upon the death or disability of a friend or family member is not generally an overwhelming commitment; however, some of the Trustee's obligations can be quite burdensome, particularly since a Trust will continue until it terminates under the terms of the Trust

instrument. The specific details of a Trustee's duties and responsibilities vary from state to state. Also, many of the steps that a Trustee must take in administering a Trust depend upon the provisions of the Trust Agreement or the Will and upon the types of assets comprising the

### *You Should Know*



The law of the state that has jurisdiction regarding the Trust often provides default rules that apply to trust administration in that state. These default rules often can be, and generally are, overridden by the terms of the Trust instrument itself. All Trustees must follow the terms of the applicable trust instrument, unless those terms are illegal. All Trustees must fully review the trust instrument and should seek professional assistance if unsure of the meaning of a trust provision or their responsibilities outlined therein.

*To quote from Loring, A Trustee's Handbook, "a... (personal) trust is a complex legal organism that survives on private property... [A] trust represents)... the product of centuries of evolution. It is an 'institute' of great elasticity and generality... (and, in fact, the law demands)... that the trustee be absolutely loyal to the trust, and that the trustee act solely in the interest of the beneficiary... The fountainhead of the trustee's power is the trust instrument. The settlor has the right to include in the trust instrument any provision relating to management of property or to the duties and powers of the trustee provided it is not contrary to public policy, (does not impose an unreasonable restriction on the use of trust property and can be fulfilled)."*

Trust. If all this sounds a bit overwhelming, keep in mind

that you can hire professional help.

## *Duties of a Trustee*

A Trustee:

- ⊙ Accepts the trusteeship and assumes control of trust assets. Regardless of what the Trustee believes the Trustmaker would have wanted him or her to do, the terms of the Trust document must be followed. There the Trustee's powers and duties will be outlined.
- ⊙ Performs initial administrative functions. This includes locating and inventorying all Trust assets and determining their value, collecting all receipts, and paying all expenses and fees. If the Trustee is given "discretion" with respect to a matter, the Trustee must exercise that "discretion" in a reasonable manner.
- ⊙ Must keep all Trust assets separate from all other assets, such as those that are not subject to the Trust, including the personal assets of the Trustee.
- ⊙ Has important investment duties and must

formulate an investment strategy that takes into account several important factors so as to provide the most benefit to the Trust beneficiaries. Generally, the Trustee must oversee all investments and diversify the Trust's investments, in order to minimize the negative effects of an unsatisfactory investment and to ensure that the assets are invested in a prudent and cautious manner to provide for both current and future beneficiaries.

- ⊙ Has the responsibility to exercise his powers wisely and prudently. A Trustee is a fiduciary. By accepting this position, the Trustee accepts certain strictly defined legal duties and responsibilities, and exposes himself to substantial penalties if he fails to discharge his duties properly or violates the high standards expected of Trustees. The law imposes these high standards to protect both the Trust assets and, ultimately, the Trust

beneficiaries. Even though the Trustee's duties are detailed in the Trust instrument, if any Court should later find that the Trustee did not act in a prudent manner with the Trust assets, the Trustee is liable, regardless of whether or not the situation that triggered the Court action was a specific violation of a detailed duty or not.

- ⊙ Must enforce all claims or suits the Trust has against other parties and must defend all actions instituted against the Trust.
- ⊙ Has financial duties to beneficiaries. He must impartially administer the Trust for the benefit of the beneficiaries, which include the current beneficiaries as well as the potential remainder beneficiaries. The Trustee must remain impartial and not favor any beneficiary over another, especially if the Trustee is also a beneficiary. He must calculate and send income and/or principal

distributions to the beneficiaries and must prepare annual accountings of the assets and provide statements of the status of the Trust to each beneficiary.

⊗ Has reporting duties to beneficiaries. He must respond to the request of a current beneficiary for trustee's reports and other information reasonably related to the administration of the Trust and must notify current beneficiaries of the existence of the Trust, of the identity of the Trustee, and of their right to request trustee's reports. Unless eliminated by drafting, the Trustee must keep current beneficiaries reasonably informed about the administration of the Trust and facts important to their interests, must respond to the request by any beneficiary for information related to the administration of the Trust, must send detailed trustee's reports to

current beneficiaries at least annually, upon termination of the Trust and upon a vacancy in trusteeship, must notify current beneficiaries in advance of any change in the method or rate of its compensation, must notify current beneficiaries in advance of a proposed transfer of the Trust's principal place of administration, must notify qualified beneficiaries in advance of the Trustee's intention to terminate an uneconomical irrevocable Trust, and must notify qualified beneficiaries in advance of the Trustee's intention to combine or divide trusts.

⊗ Is responsible for matters of taxation imposed on the Trust, including federal and state income tax returns and the resulting taxes and federal and state estate and/or gift tax returns and applicable taxes.

⊗ Is expected to refrain from self-dealing and must avoid conflicts of interest such as entering into transactions with assets that will result in a profit to the Trustee personally, may not commingle Trust assets with his personal assets, or treat Trust assets as his own.

⊗ Is generally entitled to compensation for his services, in an amount which is governed by the terms of the Trust instrument. This is usually calculated as a percentage of the assets being held in Trust.

⊗ Distributes the Trust assets when the Trust terminates.

If you have questions, it is important to consult a professional regarding the duties applicable to your specific situation. At Stiller Law Offices we are accessible and are always available to assist you with resolution of your Trust administration issues.

*Contact us for more information about the topics discussed in this article. This information is provided as a service to our clients and is not intended to be and does not constitute legal advice.*

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