

## Understanding the Duties and Responsibilities of a Trustee

If you have been named as a trustee or successor trustee for someone's trust, you may be wondering what you are supposed to do. Successor trustees can relax a bit, because you don't do anything right now: You will only begin to act when the current trustee fails or ceases to act. If you have been named as a trustee, you may already be acting in that capacity.

In either case, it is important that you understand your duties and responsibilities. This handout will help. Let's start with some explanations.

### WHAT IS A TRUST?

A trust is a legal entity that can own assets. A trust agreement looks much like a Last Will and Testament. And, like a will, a trust includes instructions for whom you want to handle your final affairs and whom you want to receive your assets after you die. There are different kinds of trusts: testamentary (created in a will after someone dies); irrevocable (usually cannot be changed); and revocable living trusts.

Today, many people use a revocable living trust instead of a will in their estate plan for a variety of reasons (which are beyond the scope of this handout). As long as the individual who establishes the trust is alive and competent, he or she can change the trust document, add or remove assets, and even terminate the trust entirely.

### WHO ARE THE PEOPLE INVOLVED WITH A LIVING TRUST?

The **grantor** (also called settlor, trustor, creator or trustmaker) is the person who establishes and funds the trust. Typically, only the grantor can make changes to his or her trust.

The **trustee** manages the assets that are in the trust. Many people choose to be their own trustee and continue to manage their affairs for as long as they are able. Married couples are often co-trustees, so that when one dies or becomes incapacitated, the surviving spouse can continue to handle their finances with no other actions or steps required.

A **successor trustee** is named to step in and manage the trust when the trustee is no longer able to continue (usually due to incapacity or death). Typically, several are named in succession in case one or more cannot act. Sometimes two or more adult children are named to act together. Sometimes a corporate trustee (bank or trust company) is named. Sometimes it is a combination of the two.

The **beneficiaries** are the persons or organizations who will receive the trust assets after the grantor dies.

### HOW DOES A LIVING TRUST WORK?

The grantor either transfers his or her assets into the trust during the grantor's lifetime or upon the grantor's death. To transfer assets to the trust during lifetime, the grantor will update asset titles from his or her individual name to the name of the trust. To fund the trust upon death, the grantor will designate the trust as the payable-on-death or transfer-on-death beneficiary of his or her accounts, policies, and plans (such as retirement accounts and life insurance policies). Many individuals use a combination of the above to fund their trust both during their lifetime as well as upon their death.

## WHAT DO I NEED TO KNOW NOW?

The grantor should make you familiar with the trust and its provisions. You need to know where the trust document, trust assets, insurance policies (medical, life, disability, long term care) and other important papers are located. However, don't be offended if the grantor does not want to show you values of the trust assets; some people are very private about their finances.

You also need to know who the trustees are, who successor trustees are, the order in which you are slated to act, and if you will be acting alone or with someone else.

## WHAT RESPONSIBILITIES WILL I HAVE AS A TRUSTEE?

The most important thing to remember when you step in as trustee is that *these are not your assets*. You are safeguarding them for others: for the grantor (if living) and for the beneficiaries, who will receive them after the grantor dies.

As a trustee, you have certain responsibilities. For example:

You must follow the instructions in the trust document.

- You cannot mix trust assets with your own. You must keep separate checking accounts and investments.
- You cannot use trust assets for your own benefit (unless the trust authorizes it).
- You must treat trust beneficiaries the same; you cannot favor one over another (unless the trust says you can).
- Trust assets must be invested in a prudent (conservative) manner, in a way that will result in reasonable growth with minimum risk.
- You are responsible for keeping accurate records, filing tax returns and reporting to the beneficiaries as the trust requires.

## DO I HAVE TO DO ALL OF THIS MYSELF?

No, of course not. You can have professionals help you, especially with the accounting and investing. You will also probably need to consult with an attorney from time to time. However, as trustee, you are ultimately responsible to the beneficiaries for prudent management of the trust assets.

## WHAT DO I DO WHEN THE GRANTOR DIES?

You will have essentially the same duties as an executor named in a will would have.

The trustee is responsible for seeing that the trust is administered properly and in a timely manner. You may be able to do much of this yourself, but an attorney, corporate trustee and/or accountant can give you valuable guidance and assistance. Here's an overview of what needs to be done.

Inform the family of your position and offer to assist with the funeral. Read the trust document and look for specific instructions. Notify a co-trustee as soon as possible.

Make an appointment with an attorney to go over the trust document, trust assets and your responsibilities as soon as possible. Do not sell or distribute any assets before you meet with the attorney. There are certain requirements of a trustee under Virginia's Uniform Trust Code, some of which must be completed within 60 days of the grantor's death, so promptly consulting with an attorney is critical.

Before the meeting, make a preliminary list of the assets and their estimated values. You'll need exact values later, but this will help the attorney know if an estate tax return will need to be filed. If there is a surviving spouse or if the trust has a tax planning provision, the attorney may need to do some tax planning right away. The trust may also need its own tax identification number.

Collect all death benefits payable to the trust (e.g., life insurance, retirement plans) and put the funds in

an interest bearing account titled in the name of the trust until assets are distributed. Under no circumstances should you make any distributions until after you have determined there is enough money to pay all expenses, including taxes.

Notify the bank, brokerage firm and others of the grantor's death and that you are now trustee. They will probably want to see a certified death certificate (order at least 12), a certificate of trust and your personal identification.

To finalize the list of assets, you will need exact values as of the date of the grantor's death. Some assets will need to be appraised. An estate sale may need to be held to dispose of household goods and personal effects.

Keep careful records of final medical and funeral expenses, and file medical claims promptly. Keep a ledger of bills and income received. Contact an accountant and attorney to prepare final income and estate tax returns, if required. Verify and pay all bills and taxes. Make a final accounting of assets and bills paid, and give it to the beneficiaries.

If the assets are to be fully distributed, you will divide the cash and transfer titles according to the instructions in the trust. That's it . . . you're finished and the trust is dissolved.

If the assets are to stay in trust for the beneficiary(ies), the you will need to hold and administer the funds according to the terms of the trust.

## **SHOULD I BE PAID FOR ALL THIS WORK?**

Yes, trustees are entitled to reasonable compensation for their services (unless the trust states otherwise). Trustees are also able to be reimbursed for any out of pocket expenses he or she pays on behalf of the trust. The trust document should give guidelines on these matters.

## **WHAT IF THE RESPONSIBILITIES ARE TOO MUCH FOR ME?**

Consider hiring an attorney, bookkeeper, accountant or corporate trustee to help you. (A corporate trustee can manage the investments and do the recordkeeping.) If you feel you cannot handle any of the responsibilities due to work, family demands or any other reason, you can resign and let the next successor trustee step in. If no other successor trustee has been named, or none is willing or able to serve, then a court may be involved in selecting the successor trustee (unless the terms of the trust state otherwise).

## **Learn More**

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