

What Trustees Need to Do

Family Office Exchange Blog

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Serving as a trustee is a huge responsibility and can be fraught with peril in terms of potential liability. Trustees owe fiduciary duties to the trust beneficiaries and often must juggle competing interests. It would behoove any individual who is serving (or contemplating serving) as a trustee to invest the time to educate himself or herself on what the role of trustee involves.

The Primary Role of a Trustee

When creating a trust and selecting an individual trustee, most grantors carefully consider naming individuals whom they trust to have the intelligence and good judgment to handle the primary functions of a trustee. The three primary functions of a trustee are:

- To make, or prudently delegate, investment decisions regarding the trust assets;
- To make discretionary distributions of trust assets to or for the benefit of the beneficiaries; and
- To fulfill the basic administrative functions of administering the trust.

While performing these three primary functions, a trustee must act in accordance with the trustee's duties and within the scope of his or her powers. The duties are the obligations a trustee has while fulfilling the fiduciary role. And the powers are the various authorities granted to the trustee.

The Duties of a Trustee

As a fiduciary, a trustee owes the highest level of duties to the trust beneficiaries. The essential trustee duties include:

- The duty of loyalty;
- The duty of impartiality;
- The duty of prudence; and
- The duty to preserve and protect property.

Examples of some specific duties include the duty to read and understand the governing instrument, the duty to provide information and accounts, and the duty of confidentiality. One way to understand if a particular action is a duty is to determine if it is one that the trustee must take.

Trustee Powers

In addition, there are a number of actions that a trustee may take. These are the trustee's powers.

The powers are granted to the trustee either specifically under the governing instrument, specifically by the applicable state statute, or under the relevant common law.

A trustee's powers will relate to the scope of the trustee's authority with regard to the three primary functions — investment, distributions and administration. Specific powers may also relate to the trustee's ability to receive and retain trust property, to contract on the trust's behalf, and to handle the affairs of businesses or other specific assets owned by the trust.

Additional considerations

In addition to gaining a clear understanding of the trustee's duties and powers, there are a few other basic questions an individual trustee should pose before accepting the position. A trustee should determine:

- what constitutes reasonable compensation under the circumstances;
- the litigation risks of service, and;
- whether fiduciary liability insurance is available to protect both the trustee and ultimately the trust assets.

A trustee's education with regard to all the issues described above should be ongoing since the governing laws and norms do change over time.

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