

DUTIES AND RESPONSIBILITIES OF A TRUSTEE

In basic terms, a trust is created when one person (the trustee) takes legal title to property, but holds and manages the property for the benefit of someone else (the beneficiary). The person who creates the trust is called the settlor or grantor. There are many types of trusts that may be created to manage property and achieve different goals, including protection of assets for the grantor or the grantor's family members, or estate tax planning. Regardless of the structure or purpose of the trust, every trust has at least one trustee, and there are certain duties and responsibilities that come with that role.

What Are the Basic Duties of a Trustee?

As a trustee, you have been named to manage money or property for someone else, which makes you a fiduciary. Your basic duties as a trustee are outlined in the Maine Uniform Trust Code, but you should also look to the trust document itself to determine whether it imposes additional requirements. Serving as a fiduciary requires you to be honest and trustworthy, and to act in good faith with regard to trust matters. Failing to meet these standards could lead to your removal as a trustee, or cause you to be sued or forced to repay money that is mismanaged.

If you are serving as a cotrustee, you must coordinate with the other cotrustee and share any information concerning decisions regarding administration of the trust. This is true whether the trust document gives you and the cotrustee the power to act alone or whether it requires you to agree on decisions. All cotrustees have the responsibility to protect the beneficiary's best interests, which means you must ensure that you and any cotrustees are working together effectively, and that no cotrustee harms the interests of the beneficiaries.

Your duties as a trustee fall into four basic categories. First, you must act only in the beneficiaries' best interests. Second, you must carefully manage the trust money and property. Third, you must keep the trust property separate from other property, including your own property. Fourth, you must keep good records of your actions as trustee.

What Are the Specific Powers and Responsibilities of a Trustee?

The first step you should take as a trustee should be to read the trust document carefully. This document is your most important tool in determining your duties as a trustee. Among other things, the trust will have provisions regarding the scope of your authority, how and when to make distributions to the beneficiaries, whether you can delegate authority or name new trustees, and what you should do in the event that you must resign as trustee. If the trust is a revocable trust, and the settlor is alive, the settlor may also direct you to take certain actions as the trustee. You should follow any such direction, even if it is contrary to the terms of the trust document.

The Maine Uniform Trust Code imposes certain duties on trustees that may or may not be reiterated in the trust document itself. Even if they are not contained within the trust document, they are still duties of which you must be aware and that you must fulfill. Examples of such duties include: being impartial in your treatment of the beneficiaries (if there are multiple beneficiaries); acting prudently in making discretionary distributions and in investing trust property; collecting, controlling, and protecting trust property; knowing when and whether to delegate your authority as trustee to a professional, and monitoring anyone to whom you delegate authority; and keeping accurate records of your transactions as a trustee.

1. Managing Trust Property in General

Trustees are only responsible for managing the property that is actually transferred to the trust. Once there is property in the trust, the trustee has a fiduciary duty to manage the trust property as a prudent person would, considering the purposes, terms, distributional requirements, and other circumstances of the trust. Trustees must use reasonable care, skill, and caution in fulfilling this obligation.

The Maine Uniform Trust Code outlines the trustee's power to invest trust assets. Trustees themselves are not obligated to invest trust assets. The Code specifically authorizes trustees to seek the advice of professionals (on this issue and on property management in general), and it may be best for the trustee to consult a financial advisor if the trust assets and purposes suggest that complex investing is appropriate.

It is crucial that trustee always keep trust property separate from non-trust property. The trustee should never deposit the trust's money into a personal bank account or investment account of the trustee or another person for any reason. In addition, no one should hold title to trust property in his or her individual capacity. Ownership documents should show that the owner is the trust or the trustee in his or her capacity as trustee. Titles, checks, or other documents relating to trust property should be signed by the trustee in a way that makes it clear that he or she is signing as the trustee, for example by signing "[trustee's name], as trustee for the _____ Trust."

2. Keeping Records

Trustees have a duty not only to keep records of their transactions as trustee, but also to keep the beneficiaries reasonably informed about the administration of the trust. The trustee should keep a detailed list of everything the trust receives and everything the trust spends, as well as the relevant dates, the individuals involved in the transactions, and the reasons why money is being received or spent. Trustees should save receipts and notes, even for small expenses, so that the trustee's reports can be complete and accurate. This is important because the trustee must create reports to send to the beneficiaries of the trust at least once per year. In addition, if a beneficiary makes a reasonable request for information, the trustee must promptly respond by providing reports and other information reasonably related to the administration of the trust. When the trust is terminated, the trustee must send the beneficiaries who receive distributions a report of

the trust property, liabilities, receipts, and disbursements. This includes information such as trustee compensation, a listing of the trust assets, and the value and tax basis of the trust property.

If the trust is revocable, and the settlor is alive, the trustee owes the duty to report and inform only to the settlor, even if the settlor lacks capacity to revoke the trust. If the settlor is alive but incapacitated, the trustee must provide information and reports to the person or persons the settlor has designated in the trust document to receive information on his or her behalf. If the settlor did not name such a person, then the trustee should report to the settlor's spouse or registered domestic partner, agent under a durable power of attorney, court-appointed conservator, or court-appointed guardian, in that order. If none of those individuals exist, then the trustee may fulfill the duty to report and inform by providing the information to the beneficiaries. After the settlor's death, the trustee must then report to and inform the beneficiaries of the trust.

3. Providing Notice

The beneficiaries are entitled to information regarding the position of trustee. Within sixty days of accepting appointment as trustee, the trustee must notify the beneficiaries that he or she has accepted the appointment. The notice must provide each of the beneficiaries with the trustee's name, address, and telephone number. The trustee must also provide notice any time the rate or method of trustee compensation changes. If the trustee resigns, he or she must provide thirty days' notice of resignation to the beneficiaries, the settlor of a revocable trust, and any cotrustees.

4. Taxes

For a revocable trust, while the settlor is alive, the settlor must add the income of the trust to his or her other income and file a Form 1040 with the IRS. After the settlor's death, the trust becomes irrevocable. For irrevocable trusts, if the trust generates more than \$600 of income in a calendar year, then the trustee must file a federal income tax form (Form 1041). A trust might be governed by the laws of one state, but be administered in another state or states. The trust could therefore be responsible for income taxes in those states where it has investments, in addition to federal income taxes.

5. Common Mistakes by Trustees

Understanding the duties of a trustee and following the practices suggested in this article can help to avoid many of the mistakes that trustees sometimes make. Some of the most common mistakes made by trustees include:

- Forgetting to file income tax returns;
- Closing the trust without filing a final report with the beneficiaries;
- Selling trust assets to themselves or their children without giving the beneficiaries the option to purchase the assets at a higher price;

- Letting others drive vehicles owned by the trust without first transferring ownership, which could subject the trust—and the trustee—to a lawsuit;
- Discarding or donating personal possessions without checking with the beneficiaries to see if they want the items;
- Forgetting to keep real estate owned by the trust insured; and
- Discarding paperwork or records that a beneficiary may request, such as checks, bank statements, and the like.

6. Trustee Compensation

Trustees are entitled to compensation for time spent administering the trust, as well as any costs of administration. The standard under Maine law is that trustees “may incur only costs that are reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.” If a trustee is going to charge for his or her time, the trustee should keep complete records of his or her time. The trustee should record the work they completed, how much time it took, and when and why it was done, so that if anyone questions the compensation received, the trustee can show that it was reasonable.

What Should I Do if I Am Named as a Trustee?

Serving as a trustee is a significant responsibility. While this article outlines the basic duties of all trustees, there are more specific duties that will apply based on the type of trust for which you are a trustee and the purposes of the trust. Carefully read the trust document as soon as possible. If you have any questions about your duties or responsibilities, you should consider meeting with an attorney for advice on how to properly fulfill your role as a trustee.

This article is intended to provide information of a general nature only. It does not provide or replace professional legal advice, and it does not establish an attorney-client relationship with the Maine Elder Law Firm or Rudman Winchell. Please consult an attorney for advice regarding your specific circumstances.

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