



Role of the corporate trustee

When a trust is created, the creator of the trust names someone, either an individual or a corporation such as a bank or trust company, to serve as the trustee and to assume legal ownership of the property, which could be cash, securities, real estate or other property. A corporate trustee is often suited to trusts where the size of the trust, the complexity, and composition of assets requires a high level of experience.

The corporate trustee holds legal title to the property for the benefit of the decedent and acts according to the terms of the trust.

Definition

Corporate trustee

A bank or trust company appointed to act in a fiduciary capacity to execute a trust.

Selecting a corporate trustee

Here are some questions to assist in searching for a corporate trustee:¹

- ❓ Does the trustee have prior experience?
- ❓ Will the trustee understand all legal issues that may arise and have fiduciary accounting and taxation knowledge?
- ❓ Is the trustee able to select the proper investments for a trust or does the trustee have the experience to select an appropriate investment manager?
- ❓ Does the trustee have experience in trust administration and understanding the terms of the trust?
- ❓ In case of fraud or mismanagement, how would the trust be protected?

Experienced trustees can mitigate risk during the life of a trust.

¹ "How a Corporate Trustee Can Help a Financial Planner Meet Their Client's Goals," Thomas M. Forest, CPA, AEP, Journal of Financial Service Professionals, Vol. 61, No. 6, November 2007. © Society of Financial Services Professionals, Newtown Square, PA.

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Duties of the corporate trustee

The corporate trustee may be appointed as either trustee with sole responsibility or co-trustee to assist an individual trustee, who is, in many cases, a family member. Designating a bank or trust company as co-trustee may provide a level of expertise, objectivity and support that the individual may need to carry out the duties required. There are many duties of a trustee that are commonly accepted, and a partial list of these duties is shown here:²

- **Duty of loyalty** — A trustee must administer a trust solely in the interests of the beneficiaries. The most fundamental duty of a trustee is not engage in acts of self-dealing.
- **Duty of administration** — A trustee must administer a trust in accordance with its terms, purposes and interests of the beneficiaries. A trustee must act prudently and exercise reasonable care, skill and caution.
- **Duty to control and protect property** — A trustee must take steps to control and protect trust assets.
- **Duty to keep trust property separate and maintain adequate records** — A trustee must keep trust property separate from trustee's own property (no commingled accounts) and render clear and accurate records with respect to trust administration.
- **Duty of impartiality** — A trustee must act impartially if there are two or more beneficiaries, with respect to investing, managing, and distributing trust assets.
- **Duty not to delegate** — A trustee should not delegate functions to others that he/she can reasonably perform itself, and may not transfer the position of trustee to another.

Note: Many states now permit delegation of certain duties, such as investment management, pursuant to statute.

- **Duty to furnish information** — A trustee must keep beneficiaries reasonably informed about the administration of the trust and of material facts necessary for them to protect their interests.
- **Duty of prudent investment** — A trustee who invests and manages trust property has a duty to comply with the “prudent investor rule” unless otherwise stated in the trust terms or permitted by state law. The prudent investor rule requires a fiduciary to exercise reasonable care, skill, and caution to invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust.
- **Duty to enforce and defend claims** — A trustee must take reasonable steps to enforce claims of the trust and to defend claims made against the trust.

Activities and administration

The corporate trustee is responsible for identifying all the trust property and maintaining, protecting and controlling trust property. The corporate trustee will invest and reinvest the trust property and exercise discretionary powers over both income and principal. The trustee will administer the trust property according to the trust document, maintain clear and accurate financial records, file fiduciary income tax returns and report periodically to the beneficiaries. It is also the trustee's responsibility to follow up on any claims that may be due to the trust, and to defend the trust against any actions brought by third parties. This is not meant to be an all-inclusive list and the duties of the trustee and specific language in a document can determine the nature and extent of these powers. State trust law will apply in the absence of specific language.

² “Duties of Trustees and Other Fiduciaries,” by Janice J. Sackley, CLU, CFE © 2010, Originally published in NSCP Currents, March/April 2010.

All investments involve risk, including loss of principal.

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