



## Role of the trustee

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When a trust is created, the creator of the trust names someone to serve as the trustee and to assume legal ownership of the property funding the trust, which could be cash, securities, real estate or other property. Many times, a friend, family member or loved one is named as trustee for a trust. A corporate trustee, such as a bank or trust company, may be named as trustee or co-trustee.

### Definition

#### Trustee

The trustee is required by law to act in a fiduciary capacity to execute the trust; this fiduciary capacity includes a number of duties, which can be found on the next page.

### Selecting a trustee

A close friend, family member or loved one who is familiar with the family and cares about the beneficiaries may be a good choice for a trustee. In addition, a trustee who is honest and above reproach will command the respect of the beneficiaries. It would be advantageous for the trustee to have business and financial skills; however, the trustee may engage the services of professionals to assist in executing these duties and charge the estate. While engaging attorneys and accountants to assist the trustee is perfectly acceptable, the cost would ultimately reduce the payout to beneficiaries.

- ❓ Is the trustee trustworthy and honest?
- ❓ Does the trustee have a good sense of organization and attention to detail?
- ❓ Is the trustee in good financial standing?
- ❓ Will the trustee treat all beneficiaries fairly?
- ❓ Is the trustee capable of handling any conflicts among beneficiaries?
- ❓ Does the trustee know about accounting, filing tax returns and securing appraisals?

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INVESTMENT PRODUCTS: NOT FDIC INSURED • NO BANK GUARANTEE • MAY LOSE VALUE

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## Duties of the trustee

There are many duties of a trustee that are commonly accepted, and a partial list of these duties is shown here:<sup>1</sup>

- **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 to 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 the 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 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.
- **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.

## Choosing between an individual or corporate trustee

Whether the trustee is an individual or a corporation, such as a bank or trust company, the trustee must be loyal to the beneficiaries, avoid self-dealing in any way and deal impartially with each beneficiary. Many people choose an individual such as a family member and/or loved one to act as trustee to a trust that would benefit their children. An individual would typically not charge a fee to serve as trustee; thus, the beneficiaries would gain a greater financial benefit. An individual trustee is often a good choice if the trust assets are held in marketable securities and bank deposits and the role is otherwise uncomplicated.

For larger estates, where the trust assets are complicated or illiquid, and could involve temporarily running a business, a corporate trustee may be preferable (see “Role of a corporate trustee” on page 57 of this workbook). As individuals become ill or incapacitated or are unable to serve, a corporate trustee may be named as a successor trustee.

<sup>1</sup> 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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