

# So Now You Are A Trustee

If you are reading this brochure, you are likely either considering accepting appointment as a trustee or have recently been appointed under a trust agreement. A trustee invokes great responsibility and importance. In addition to carrying out the instructions in the trust agreement, trustees are usually responsible for managing, preserving, and administering someone else's assets for the benefit of the named beneficiaries.

Trust agreements generally provide the trustee with guidelines related to the scope and duration of their authority, how assets are to be managed and distributed, and when and how to work with the beneficiaries. While direction may be provided to the trustee, trust agreements can often be complicated and may even have ambiguous or conflicting terms, and therefore many trustees (even professional trustees) consult with an attorney to ensure that they carry out their duties and responsibilities correctly in order to protect themselves and effectuate the intent of the trustmaker.

Under Colorado law, a trustee is deemed to be a fiduciary, and as such, held to a very high standard of care. A trustee is accountable to the beneficiaries and in some cases a Court, and is expected to act prudently and in the best interests of the beneficiaries at all times.

This brochure is intended to give general information to trustees and is not intended to be legal advice specific to your situation. Given the very serious risks of personal liability, if you are uncertain about any of your duties and responsibilities, rights or powers as a trustee, you are strongly encouraged to consult with an attorney.

## What is Your Authority

Your authority is granted by the trustmaker in the trust agreement. It is important that, even before accepting the trusteeship, that you thoroughly review the trust agreement and understand your duties and responsibilities. In addition, you should understand the duration of your authority, and what you can and cannot do as the trustee. Your trusteeship may last indefinitely, terminate upon the happening of some specified event, or because the trust's assets are completely depleted.

## Your Duties as a Trustee— Ethical and Administrative

### *Ethical Duties*

Generally speaking, a trustee has three kinds of ethical duties to the trust and its beneficiaries:

- A duty of impartiality, not to favor the interest of one party over another.

- A duty of undivided loyalty, not to put your own interest in conflict with those of the trust.
- A duty to administer the trust with care and prudence. You must always act to further the interests of the trust and the beneficiaries.
- You should not enter into transactions in which you will benefit at the expense of the trust and beneficiaries.
- You must keep the trust's assets separate from your own assets, and the trust's assets must be readily identifiable.

### *Administrative Duties*

- **Register trust agreement.** You must register the trust agreement with the Probate Court in the county where the trust is being administered within 30 days after acceptance of the trust by filing a Trust Registration Statement. If you do not the Court may impose penalties for failure to register. Trust Registration Statements must be amended or updated whenever there is a change of trustee or the place of administration. While registration of the trust is required, a Court generally does not have ongoing involvement in the administration of the trust, unless the trust agreement requires it.
- **Notice and Information to Beneficiaries.** You must send the Trust Registration Statement to all beneficiaries to advise the beneficiaries of their interest in the trust and to inform them of the County and Court that has jurisdiction over any disputes related to the trust. In addition, unless the trust agreement provides otherwise, you must provide the trust agreement and asset information to the beneficiaries upon reasonable request.
- **Accounting.** You must set up and keep complete financial records. A trust agreement generally provides provisions stating when accountings to the beneficiaries are due, but if not, you must provide accountings at least annually. The accountings should reflect in detail all income, disbursements, and liabilities, and should show the opening and closing balances for all accounts during the accounting period. You should maintain all supporting documentation in the event the Court or beneficiaries request to review the financial activity.
- **Taxes.** Most trusts will have a distinctive Tax Identification Number ("TIN") and you will be required to file annual state and federal income tax returns.
- **Trust Asset Management and Growth.** You must keep the trust's assets invested, and you will be held to a higher standard of care than if you were investing your

own funds. Colorado law requires trustees to follow the “prudent investor rule,” meaning that you must invest as a prudent person would in a similar situation. In effect, the “prudent investor rule” generally means that you will diversify the investments, balance the need for income versus long-term principal growth, not make risky investments, and continue to reevaluate and consider new advice on an ongoing basis.

- **Distributions to Beneficiaries.** You are often required in the trust agreement to make distributions to beneficiaries. The terms under which distributions must or may be made can differ greatly from trust agreement to trust agreement, and may be mandatory for the beneficiary’s health, education, and maintenance. You may have discretion for whatever you determine to be in the best interest of the beneficiary. Under certain circumstances you may be personally liable for improper distributions, and may be compelled by a Court to make a distribution at the beneficiary’s request.

While you are ultimately accountable and unless otherwise specified in the trust agreement, you may employ the use of professionals and other agents in order to administer the trust. Some trust agreements may call for co-trustees, but each remains equally responsible, and must report any misconduct by a co-trustee as it would be against the best interest of the trust and the beneficiaries if the behavior was allowed to continue.

## **Personal Liability**

You may be personally liable to the beneficiaries for any loss to the trust estate and for any gain the trust estate should have realized if you:

- Failed, for any reason, to exercise the care and skill of a person of ordinary prudence in managing the assets.
- Negligently or intentionally did something or failed to do something.

In certain situations, you may be personally liable even though your improper actions were not intentional or negligent, and for that reason, many trustees secure Errors and Omissions insurance.

## **Compensation and Expenses**

You are generally entitled to reasonable compensation and reimbursement of out-of-pocket expenses related to the administration of the trust from the trust’s assets. Reasonable compensation is determined on a case-by-case basis and good record keeping and accounting is absolutely necessary. Any compensation is considered income to you and as such, is generally taken as a tax deduction by the trust.

In addition to your own fees and expenses, you may hire professionals, including an attorney, accountant, etc. as you administer the trust. Fees, anticipated expenses, and professional fees are usually disclosed in the annual accountings.

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