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Duties of Trustees

Congratulations, someone special has designated you their Trustee. While an honor, a trustee stands in a special relationship as a fiduciary with responsibilities to the grantor of the trust and to the beneficiaries. According to Black’s Law Dictionary, a fiduciary is “a person having duty, created by their undertaking, to act primarily for another’s benefit in matters connected with such undertaking.” In carrying out their fiduciary duties, the trustee must be mindful of the unique relationship and indeed, their responsibilities.

The starting point and initial guide for any trustee is the trust instrument itself – and its specifications of what the trustee is to do to accomplish the purpose of the trust. The trust instrument also typically identifies the powers the trustee is granted to accomplish the trust purpose. (A discussion of trust powers is the subject of a separate article.) The purpose of this article is to give a broad summary overview of a trustees “duties” rather than “powers” because the failure to properly exercise trustees’ duties can land a trustee in hot, if not boiling, water!

A word of caution from the author: the following is a general, inexhaustive list and description of basic categories of a trustee’s typical duties as prescribed by governing law, by the trust instrument, and by legal precedent. As such, it is critical that the trustee read and *understand* the entire trust instrument. In the event the trustee needs guidance in understanding or interpreting the term of the trust, they should seek guidance from a qualified attorney.

- Duty to Administer Trust by its terms (and applicable law). A trustee is obligated to administer the trust strictly by its terms (so long as the trust terms are not illegal).
- Duty of Skill and Care. A trustee is to administer the trust diligently and as a prudent person would (considering the purposes, terms, and circumstances).
- Duty to Act with Loyalty. This duty obligates the trustee to deal fairly with beneficiaries and to administer the trust in the interest of the beneficiaries.
- Duty to Act with Impartiality. A trustee is required to act with regard for diverse beneficial interests in investing, protecting, and distributing the trust estate.
- Duty to Delegate. Interestingly enough, the trustee is required to perform their responsibilities of trusteeship personally, except where a prudent person of comparable skill might delegate responsibilities to others with higher competence.
- Duty to Furnish Information and to Communicate. The trustee has the duty to keep the beneficiaries reasonably informed about any changes to their trust status, changes in trusteeship, significant developments, particularly of material information needed to protect beneficiaries’ interest, and to respond to beneficiaries’ request for information concerning the trust and trust administration.



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- Duty to Keep Records and Provide Reports. The trustee is required to maintain clear, complete, and accurate books and records regarding trust property and trust administration; and to provide accountings to the beneficiaries at reasonable intervals upon request.
- Duty to Invest and Manage Funds as a Prudent Investor would. Except as may otherwise be provided in the trust instrument itself, a trustee must exercise reasonable care, skill, prudence and diligence in investing and managing trust funds, not in isolation, but in context of trust portfolio and overall investment strategy, incorporating risk and return objectives reasonably suitable to the trust purposes.

As mentioned above, the above listings are very general, broad and incomplete descriptions of basic categories of a trustee's duties, as prescribed by governing law, by the trust instrument, and by legal precedent. As such, it is critical that the trustee understand their full responsibilities - read and *understand* the entire trust instrument. In the event the trustee feels the need guidance in interpreting, understanding or fulfilling the terms of the trust, they should seek guidance from a qualified attorney (just as a prudent person would). The attorneys of Handler Thayer LLP are available to provide guidance for any trustee who may just be starting or concluding their role; or for a trustee who may be faced with a dilemma or challenge as times or circumstances change.