12. What to Expect From a Trustee

If you are a trust beneficiary, what should you expect from your trustee? If you have been named a trustee, what will be your duties and responsibilities?

This article discusses the duties of a trustee, trustee's fees, and what to expect from a trustee. It will describe some differences between an individual trustee and a "corporate trustee" and offer help in deciding which to use. For more information, see the Council's companion volume, *The Fiduciary Handbook*.

Responsibilities of a Trustee

Basically, a trustee is charged with the responsibility of managing the trust assets for the sole benefit of the beneficiaries. All management decisions are guided by the provisions of the trust document and by applicable laws. Within this general responsibility, a trustee must perform specific duties and has specific responsibilities. These duties and responsibilities are so important that Washington has passed special laws (particularly charters 11.98 and 11.100 in Title 11, Revised Code of Washington) to detail the authority, duties, and responsibilities of trustees. These statutory provisions apply to the extent the trust document does not specify otherwise.

Preservation of Assets

As you would expect, a primary duty of a trustee is to preserve the trust assets. This includes taking custody of the assets, keeping them safe, and keeping them separate from other property held or owned by the trustee. These basic duties also make the trustee responsible for maintaining adequate fire and other hazard insurance, as well as liability insurance that would be needed to protect the trust property. Likewise, the trustee must defend the trust against any claims against trust property.

Making the Property Productive

In managing trust property for the benefit of the beneficiaries, the trustee has a duty to make the property productive. State laws require a trustee to act prudently in this regard, which means the trustee must deal with the trust property as he would deal with his own assets in acting on his own behalf. Among these requirements the trustee must consider the nature, marketability, and expected returns of the investments, as well as general market conditions, time frame with respect to final distribution of assets, and the effects of taxes and inflation. Additionally, matching the investments to the needs of the beneficiaries is an ongoing process requiring the trustee to both monitor the investments and communicate with the beneficiaries, so that charges can be made when necessary.

A trustee must also be diligent in performing all duties. While a trustee generally cannot delegate all decision-making authority to someone else, a trustee can, and should, hire expert advice to benefit the trust if the trustee does not have a particular skill. Thus, for example, a trustee may employ professional investment, insurance, legal, or tax advisor as needed.

The trustee must also file appropriate tax returns, pay any taxes due from the trust, and advise trustors and beneficiaries of tax consequences from distributions.

Loyalty to Beneficiaries

The trustee must be completely loyal to the beneficiaries. This includes the avoidance of any self-dealing or self-gain in connection with managing the trust property. From the trust beneficiary's standpoint, the trustee must deal impartially with each beneficiary. If the needs of the beneficiaries conflict, the trustee must resolve the situation fairly and objectively. For example, an older beneficiary may want high current income, whereas a younger beneficiary of the same trust may want future capital growth of the trust assets. In this situation, the trustee must try to meet each of these needs by appropriate investment planning.

While a trustee does not have a specific duty to communicate with trust beneficiaries (other than certain accounting reports and the giving of notice of the sale of property in certain situations), as a beneficiary you would expect to receive regular communications and you should inform your trustee of that wish. Also, a trustee should communicate with income beneficiaries to keep aware of other financial resources available to them and to know their income tax brackets and their particular financial needs. All this information is necessary to determine appropriate investment strategy and plan distributions.

Trustee's Fees

Under Washington law, a trustee is entitled to reasonable compensation for services performed. Statutory fees are not specified and the basis for compensation is generally related to time spent on administration of the trust, as well as to other factors such as the amount of expertise required to manage trust assets and the complexity of the trust. For example, most corporate trustees charge annual fees that range from three-fourths of one percent to one and one-quarter percent of the value of the trust assets. Typically, the actual fee is computed on the basis of a percentage-of-assets charge for investment services, plus a scale of hourly rates for other specific work performed by individuals. The fee should reflect the work being performed. Different hourly rates are applied based on the type of work (such us general trust administration or tax work), as well as the experience level of the person performing the work.

Choosing Between a Corporate and an Individual Trustee

You would probably tend to choose an individual to act as trustee of a trust for the benefit of your children, for example, because you "trust" that person and know that he or she cares about the children. That person's honesty, and business and financial skills would also be important considerations. You might also choose him or her because you think the individual would do a good job managing the assets. In many cases this is entirely appropriate, especially where the individual is closely related to you or the trust beneficiary, either by close friendship or an actual family relationship.

In addition to the above, a family friend or relative who acts as trust typically will not charge a fee for his or her services. Thus, by saving the fee, greater trust benefits are available for your beneficiary. Generally speaking then, an individual trustee may be very appropriate, especially where the trust assets are uncomplicated and easy to manage, such as interest-producing bank deposits or bonds. But, using an individual trustee deserves careful thought.

On the other hand, consider the risks in selecting an individual trustee. If the individual trustee fails to properly invest the funds or uses the trust funds for his or her own benefit, your beneficiary may be left with nothing. This is especially true where the individual trustee does not have sufficient personal assets to make up for any losses to the trust caused due to the individual trustee's mismanagement. Washington law does not require trustees to be bonded, nor does it require court supervision or any other supervision of private trusts. While this is generally a benefit in minimizing the cost of trust administration, it does increase the risk that trust mismanagement will go undetected.

If appointing an individual to serve as trustee under your testamentary plan or as successor trustee for your living trust, it is advisable to discuss that appointment with the designee to determine their willingness and ability to serve. As individuals may become ill or pass away and be unable to serve, appointing an individual or corporate trustee as a successor trustee (or alternate trustee) may be advisable.

A corporate trustee is a corporation authorized under Washington law to conduct business. Corporate trustees may be national or state chartered banks, acting through their trust departments, or certain privately organized trust companies authorized to do trust business.

A corporate trustee offers several distinct advantages, which may be significant. Typically, the corporate trustee has people in its trust department with experience in the areas of investments, taxes, record keeping, and trust administration to efficiently carry out the objectives of the trust. You also do not need to worry about a successor trustee. The corporate trustee is an ongoing business and, unlike an individual trustee, will not die or otherwise become unable to administer the trust. Note also that because a corporate trustee generally holds itself out as having a higher level of skill in managing trusts, it will be held to a higher standard of management performance than an individual trustee when dealing with trust assets, distributions to the beneficiaries, and other aspects of trust management.

A corporate trustee is financially responsible. Corporate trustees must keep trust assets separate from the corporation's assets so that, in the event the corporation were to have financial problems, the trust assets would not be at risk. Also corporate trustees are required to maintain a certain level of insurance coverage for trust assets or employee errors and omissions. In the event of trust mismanagement, the beneficiaries will be able to collect any losses in the trust from the assets of the corporate trustee. In other words, it is unlikely that the corporate trustee will be bankrupt, whereas an individual trustee may simply be unable to make up for any loss that has occurred in the trust, even if it is absolutely clear that the loss was the trustee's fault. Further protection for the beneficiaries is also present because the corporate trustee is subject to periodic audits and examinations by various state and federal agencies.

Co-Trustees

Lastly, you might want to consider naming a corporate trustee to serve as co-trustee with an individual. In this way, you can obtain all of the professional aspects of trust management provided by the corporate trustee, along with the personal involvement, especially in making distribution decisions, of an individual who is a family friend or relative. Since co-trustees generally act by majority rule, two co-trustees must always agree in the trust administration. If an individual and a bank are named as co-trustees, the individual will thus be able to control the actions of the corporate trustee and the corporate trustee will likewise ensure that the individual cannot mismanage the trust administration by acting alone.

An alternative to co-trustees is the designation in the trust document of a specific individual, who the corporate trustee is to consult with in making decisions regarding the needs and disbursements to be made to the beneficiary.