

# Can a Trustee Be Held Personally Liable?

If you are ever appointed a trustee, you will have a fiduciary duty to act on behalf of the beneficiaries. If you breach that duty, you may find yourself in court.

Being a trustee is not an easy job. Trustees must follow the terms of the trust and are accountable to the beneficiaries for their actions. They may be held personally liable if they:

- Are found to be self-dealing, or using trust assets for their own benefit;
- Cause damage to a third party to the same extent as if the property was their own; and/or
- Become subject to criminal charges for blatant disregard of the law.

## Basic Principles

If you become a trustee, the following principles can help avoid allegations of wrongdoing that could result in personal liability:

- Manage the trust according to its terms;
- Keep in mind you have a duty of loyalty to the beneficiaries;
- Choose wisely if you are permitted to seek help from outside professionals;
- Provide and retain good accounting records;
- Keep the beneficiaries up-to-date on activities;
- Exercise reasonable care and skill;
- Ensure trust property is titled correctly;
- Act impartially among beneficiaries; and
- Work closely with a co-trustee if there is one.

The key to successfully administering a trust is generally to avoid worrying about what could happen if you do something wrong and focus on the best interests of the beneficiaries.

## Consider all the Facts

Even then, there can be some liability if a trustee winds up unable to pay trust debts with trust assets or fails to take reasonable care to avoid a decision that causes a loss for the trust. Before making decisions, a trustee should take into account all the facts and consider whether to seek advice from lawyers, accountants, investment advisers or other specialists.

After obtaining advice, however, trustees must make decisions on their own and in good faith. They are not permitted to delegate their decision-making power unless authorized by the trust.

Trustees should not commit to any ongoing action that could effectively limit future discretion. If necessary, a trustee can apply to the courts for directions concerning any trust property, the management or administration of trust property or the exercise of any power or discretion. With court approval for a course of action, they can protect themselves from liability.

**The Law Office of Eugene Gorrin, LLC**  
**17 Watchung Avenue, Suite 204**  
**Chatham, NJ 07928**  
**973.701.9300**  
[egorrin@gorrinlaw.com](mailto:egorrin@gorrinlaw.com)  
[www.gorrinlaw.com](http://www.gorrinlaw.com)