

Administering a Trust: 11 Duties of a Trustee

Has someone appointed you as a trustee of a trust and you now want to know what your duties are? Do you want to make sure you carry them out properly? Or perhaps you are a beneficiary of a trust and you want to know whether the trustee is properly administering the trust. This article will review some of the duties of a trustee so you have a better understanding of what the job entails.

Generally, a trustee's first task is to read the trust documents. That may sound obvious, but sometimes the trust document language is quite daunting and the terms are confusing. However, to understand what the trust requires and what it permits a trustee to do, both the trustee and the beneficiary should read the trust documents — or work with their attorneys to understand the requirements.

Usually, what is most important to look for is the discretion the trustee has in making decisions — including, but not limited to, investment and distribution decisions. This is where most of the contention can occur between a trustee and beneficiaries. For example, the beneficiary may accuse the trustee of abusing the trustee's discretion, in addition to not properly following the terms of the trust.

Trust duties are based on common law as well as trust law coded within your particular jurisdiction. However, here are some of the general duties:

1. A trustee has a duty to administer the trust in accordance with its terms as discussed above.
2. A trustee must have a duty of loyalty to the beneficiaries. A trustee must act in the best interests of the beneficiary (or beneficiaries) and not in the trustee's own self-interest.
3. There is a duty to carry out the management of the trust without imprudently delegating a task. A trustee has a duty to manage and review the activities of other professionals hired to help manage the trust, including investment advisors, accountants, property managers and attorneys.
4. The trustee has a duty to keep records and provide an accounting, usually on an annual basis.
5. A trustee must provide information to beneficiaries, including a copy of the trust document and the financial information, including material transactions. This is where much contention occurs when the beneficiary becomes frustrated with a lack of transparency.
6. There is a duty to exercise reasonable care as a *fiduciary* — meaning that the trustee should make decisions with discretion and intelligence.
7. When it comes to trust property, the trustee has a duty to take control. In other words, the trustee must have the titles of property transferred to the trustee for the benefit of the trust. This is a critical step because if the property is not in the trustee's name on behalf of the trust, the trust is not funded with the assets. An unfunded trust fails.
8. A trustee must be impartial. There is a duty of impartiality among beneficiaries whether they are income beneficiaries or remaindermen (those who may receive the assets when the trust terminates). This also can be contentious because an income beneficiary can claim that the trustee favors the remainderman or vice versa.
9. A trustee has a duty to account for activities among co-trustees. This can cause problems if there are multiple trustees doing certain trust tasks but are not cooperating or informing the other trustees.
10. There is a duty to prudently invest and make property productive. When it comes to investing, a trustee cannot be passive. Investment decisions must be made prudently following the terms of the trust.

11. A trustee has a duty to act in good faith. The trustee should always act in a transparent and honest manner.

Overall, a trustee has a fiduciary duty to the beneficiaries of the trust, which puts the trustee in a role that requires due diligence, restraint, prudence and fairness. Consult with your attorney about questions or issues with trust administration.

The Law Office of Eugene Gorrin, LLC
17 Watchung Avenue, Suite 204
Chatham, NJ 07928
973.701.9300
egorrin@gorrinlaw.com
www.gorrinlaw.com