

# The Duties and Liabilities of a Trustee

Let's say you are asked by a family member or loved one to be a trustee. Or perhaps you are setting up a trust and are considering who to name as the trustee(s). It is an honor to be asked since it shows the grantor has a high degree of trust in the potential trustee. However, before an individual accepts, he or she should be aware of all the responsibilities and liabilities involved.

A trustee must manage the trust assets as set forth in the trust document. Here are five important steps for trustees to take:

**1. Realize you have a fiduciary duty**, which means you are held to a high standard of trust and cannot put your personal interests above the interests of the trust. Under the law, you have certain duties to perform. In addition, you are not allowed to engage in "self dealing," which involves taking actions that benefit yourself, your family or anyone else who is not a trust beneficiary. For example, personally borrowing from the trust assets would constitute self dealing (unless the trust allowed for it).

**2. Read the trust document** to determine your responsibilities and liabilities. A properly drafted trust document will make these issues clear. The job of the trustee is to carry out the specific instructions, even if he or she does not agree with them.

**3. Be aware that you must take reasonable care and diligence when acting.** For example, if investing, you must invest prudently and follow any investment guidelines set forth in the trust. If you receive checks, they should be promptly deposited.

*Note:* Although a trustee is ultimately responsible for managing assets, it does not mean he or she has to do everything personally. A trustee can delegate tasks to professional advisors, as long as reasonable care is taken in selecting and managing the advisors and it is permitted in the trust document.

**4. Be careful about tax filings** (and state governments) can hold a trustee personally liable for unpaid taxes. Consult with a tax advisor to ensure you are in compliance with tax laws.

**5. Keep good records and do not commingle trust assets.** Keep trust assets in a separate trust account. A trustee is not allowed to mix the assets of the trust with his or her personal assets. This is one of the reasons why it's important to keep good records — so you can prove what assets are owned by the trust, the tax basis and how you managed them. Under state law, a trustee may have to provide information to beneficiaries and/or a periodic accounting.

Before accepting an appointment as a trustee, think carefully about the responsibilities and liabilities. Discuss the potential risks with your estate planning advisor. Although it's an honor to be asked, make sure you go into the job with your eyes wide open.

## Trustee Tax Tasks

Here are just some of the tax tasks a trustee may have to complete:

- Apply for a tax ID number from the IRS on Form SS-4.
- File an annual federal (and possibly state) income tax return for the trust if it has taxable income.

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