

Service

Private Wealth

Professionals

GARRETT C. REUTER, JR.
ST. LOUIS:
314.480.1500
GARRETT.REUTER@
HUSCHBLACKWELL.COM

MCKENZIE PAULSEN
PHOENIX:
480.824.7919
PHOENIX:
480.824.7890
MCKENZIE.PAULSEN@
HUSCHBLACKWELL.COM

The Trustee's Role: What Every Grantor Should Know

When most people think about creating a trust, they picture a complicated set of documents full of legal jargon. But at its core, a trust is much simpler than that. It is a legal arrangement built on a relationship, specifically, a relationship among three key roles:

1. **Grantor:** that's you, the person who creates the trust and defines its terms (also sometimes referred to as the Settlor).
2. **Beneficiaries:** the people you want to benefit from the trust.
3. **Trustee:** the person you appoint to carry out your wishes and manage the trust.

Each role is essential, but it is the trustee who carries the greatest responsibility. In fact, choosing the right trustee may be one of the most important decisions in your estate plan. The right trustee will faithfully carry out your intentions and ensure your plan is administered smoothly for years to come. In contrast, choosing the wrong trustee can jeopardize the effectiveness of an otherwise well-designed plan. To better understand why this choice is so important, let's look at the role of a trustee.

What is a Trustee?

A trustee is the individual or entity responsible for managing and administering your trust. Once appointed, the trustee is legally obligated to follow the terms you have carefully set out in your trust document. In practical terms, this means the trustee is responsible for deciding when and how distributions are made, safeguarding the trust's assets, managing investments, keeping careful records, and communicating with the beneficiaries.

What makes this role so significant is that a trustee is a fiduciary. A fiduciary is legally required to act in the beneficiaries' best interests, rather than his/her/its own interest. This obligation carries one of the highest standards of legal responsibility that exists. A trustee who fails to meet the applicable fiduciary duties can face severe consequences, including being held personally liable for any resulting harm in some cases.

What are a Trustee's Fiduciary Duties?

The following is a brief overview of the primary obligations a trustee must fulfill:

1. **Duty of Loyalty:** Requires that the trustee act solely in the best interests of the beneficiaries. At its heart, this duty is about avoiding self dealing, meaning a trustee may not use the trust for personal benefit. For example, a trustee generally cannot borrow money from the trust, engage in conflicted transactions, or receive improper compensation.
2. **Duty of Prudence or Care:** Requires the trustee to act with the same care, skill, and diligence that a "prudent investor" would. This does not require the trustee to be a financial expert, but rather to make informed decisions and to seek professional advice when appropriate. In practice, this requires the trustee to diversify assets and to reduce unnecessary risks.
3. **Duty to Administer the Trust:** Requires a trustee to manage the trust's operations, including following the terms of the trust document, managing accounts, maintaining records, filing tax returns, and more.
4. **Duty to Inform and Account:** Requires the trustee to keep the beneficiaries reasonably informed of the trust management. This is accomplished through periodical accountings and reports of the trust's financial activities.
5. **Duty of Impartiality:** Requires a trustee to balance the interests of all beneficiaries, including the current beneficiaries and any future beneficiaries.

Who Should You Pick as Your Trustee?

Understanding what a trustee is required to do is only half of the equation. The other half is choosing the right person(s) to do it. For some, that may be a relative or a close friend. What really matters, however, is whether the individual possesses the qualities the role demands.

Key Characteristics: The right trustee will not only have good moral character, but also good judgment. When considering who should serve in this role, consider the following key characteristics:

1. **Integrity:** Your trustee will step into your role once you are no longer available to manage the trust. You should choose someone you can trust to follow the rules of the trust and will not act to the detriment of the beneficiaries.
2. **Competence:** A trustee must be able to manage accounts, understand basic investment principles, keep organized records, and perform other administrative responsibilities. This does not mean your trustee needs to be a financial expert. Rather, they need to be someone who takes the role seriously and seeks outside advice and management when necessary.
3. **Time:** Serving as a trustee can be a considerable time commitment. Make sure to pick someone you know will have the time to perform the required duties.

Individual or a Corporate Trustee: Once you have identified the qualities you are looking for, the next question is whether those qualities are best found in an individual or a professional institution. An individual trustee can sometimes offer greater familiarity with the beneficiaries and your wishes. However, the role can be taxing on a person and may even strain family relationships. A corporate trustee, such as a bank or trust company, can provide you with professional management, experience, and neutrality. Also note that any trustee generally is allowed to receive reasonable compensation for services rendered; and when naming a corporate trustee to serve, it is a good idea to review its applicable fee schedule for administering the trust.

Consider Naming Co-Trustees: If you are hesitant to vest all authority in a single individual, then naming co trustees can be an effective solution. They can share in the responsibilities while also serving as a check and balance to each other's actions. It is even possible to name an individual and a corporate trustee as co-trustees.

Name Successor Trustees: Because life is unpredictable, it is important to name successor trustees who can step in if the original trustee becomes unable or unwilling to serve.

Revisit Your Trustee Appointments: Finally, the "right" trustee today may not be the right trustee later. Family dynamics shift and relationships evolve. It is important to periodically revisit who you have appointed as a trustee.

Key Points

Overall, choosing the right trustee is an important decision to ensure that your trust will operate as you intended. Remember, the trustee is the person with direct access to and control over the trust assets. Therefore, the trustee role carries great responsibility as a fiduciary who must act solely in the beneficiaries' best interests. When selecting a trustee, the most important qualities to look for are integrity, competence, and a genuine commitment to the role. Your options include an individual, a

corporate trustee, or co-trustees, with successor trustees also named to account for unforeseen circumstances.

Contact Us

For more detailed information regarding a trustee's role and what a grantor should know, please contact Garrett Reuter, McKenzie Paulsen, or your Husch Blackwell attorney.