

TAX AND WEALTH ADVISOR ALERT: WHAT SHOULD YOU DO IF YOU ARE NAMED TRUSTEE?

Perhaps a friend or loved one has recently passed away and has named you as the trustee of their trust. You may be wondering, “What does it mean to be a trustee?”

Your job as “trustee” makes you responsible for carrying out the terms of the trust. In a nutshell, think of this job as stepping into the grantor’s shoes and making the same decisions he or she would have if they were alive. The grantor likely chose you to be his or her trustee because they trusted you to take care of their loved ones and their finances after they died.

The trustee owes a fiduciary duty to the beneficiaries to put their needs above the trustee’s, protect and invest trust assets prudently, and treat beneficiaries fairly. This fiduciary duty means that the trustee must comply with the trust terms, as well as the applicable state and federal laws. By doing so, a trustee can avoid potential liability for breach of that fiduciary duty.

You can prepare yourself for the trustee’s role with the following overview of a trustee’s job.

Be Knowledgeable of the Trust Provisions and Your Responsibilities.

If you accept the role of trustee, it is important to understand the trust document and your responsibilities. The trust document will tell you what the grantor’s intentions were, who the beneficiaries are, and when they receive distributions of trust assets and under what circumstances.

You should consult with an attorney about your responsibilities and how to execute the terms of the trust in a timely manner. Take the trust document and any information you have about the trust assets to your meeting. To protect yourself from potential liability, do not sell trust assets or make distributions to the beneficiaries until you fully understand the trust document and your responsibilities.

Take Control Over the Trust Assets.

As trustee, you are responsible for managing the trust assets and need to take control over the trust assets. This means that you should contact the decedent’s financial advisor,

accountant, and attorney to locate any trust assets. Next, work with the decedent's financial advisor and banker to update the titles of assets to reflect that you are now the trustee. Make sure you collect any death benefits due from any life insurance policies, Social Security, or any other agency or association. Assets that were titled in the name of the decedent may be subject to a probate proceeding before they can be titled in the name of the trust. Once assets are titled in your name as trustee, you have the ability to manage and invest the assets.

Create a Budget.

Make sure you understand the costs of administering the trust and that you have adequate liquidity to pay for taxes and other expenses. For example, a trust that owns real estate will need to pay for property taxes and any water, electric, and lawn maintenance bills to preserve its value.

Keep Accurate Records and Prepare a Trust Accounting.

You are responsible for keeping accurate records of all trust transactions. Many trusts require the trustee to give an annual trust accounting to the beneficiaries. The trust accounting will show the fair market value of all trust assets, earned income, taxes, and expenses, and any trust distributions. Keep all receipts, bank statements, brokerage statements, and closing statements on hand to help you prepare a trust accounting. Even if the trust does not require you to prepare a trust accounting, you will still need to keep records of all trust transactions to communicate your decisions to the trust beneficiaries and protect yourself from liability.

Invest the Trust Assets Wisely.

A trustee has a fiduciary duty to invest the trust assets prudently. It is often understood that this means that the trustee will invest the assets to achieve reasonable growth with minimal risk. Diversification is the key to ensuring a proper allocation of liquid assets, capital preserving assets, and income producing assets. An attorney and financial advisor can help you determine the proper investment allocation.

File Tax Returns.

You should work with an attorney and accountant to ensure that all tax returns are filed and paid in a timely manner, including the decedent's final income tax return and annual trust tax returns. Finally, you should work with an attorney to determine whether an estate tax return is due. If an estate tax is owed, an estate tax return must be filed within nine months of the decedent's date of death.

Trustee Compensation.

Trustees can be paid “reasonable” compensation for their services. You should consult with an attorney to determine what this means in your situation.

Distribute the Trust Assets.

Finally, the trustee is responsible for distributing the trust assets to the beneficiaries in the manner described in the trust document. For example, the trust could say that the trust assets are to be divided equally between beneficiaries and given to them outright, free of trust. Other trusts may provide that the assets be divided equally between the beneficiaries, but held in a separate trust share for each beneficiary’s benefit. Each separate trust share will need to apply for an Employer Identification Number (EIN), file annual tax returns, and prepare annual trust accountings (if required) for the trust beneficiary(ies).

If you have any questions, please contact Kelly M. Spott at kelly.spott@wilaw.com or 414-276-5000.