

Updates

Understanding Your Role as a Trustee for Your Family

Part 1 of our Serving as a Trustee series

Being asked to serve as a trustee is an honor. It demonstrates respect for your skills, honesty, judgment and character. When asked, your first inclination likely is to accept, because we have been conditioned to accept honors bestowed upon us. But you should give some careful thought to accepting the role of trustee.

Serving as a trustee brings with it serious responsibilities, and these responsibilities expose you to potential personal liability and reputational damage if done poorly or wrong.

When you serve in the role of trustee, you are a “fiduciary” and will be held to a very high standard of behavior. As a fiduciary, you accept a significant number of duties, the most important of which are the duties of loyalty and care, and the duty to act in accordance with the terms of the trust agreement.

The Trustee’s Fiduciary Duties

In order to effectively serve as a trustee, you must understand your fiduciary duties and perform all of them. Although many duties can be expanded, narrowed or sometimes even eliminated in a trust instrument, trustee duties generally include:

- The duty of loyalty to the beneficiaries, meaning that the trustee’s actions must promote and protect the interests of the beneficiaries, and not the trustee’s own interests.
- The duty to act in accordance with the terms of the trust agreement.
- The duty to exercise care when administering the trust.

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- The duty of good faith toward the beneficiaries.
- The duty to act impartially and not favor any one beneficiary or group of beneficiaries over other beneficiaries, such as the current beneficiaries over the future beneficiaries.
- The duty to keep the trust's property separate from the property of the trustee.
- The duty to invest assets pursuant to the prudent investor rule or as directed by the terms of the trust.
- The duty to provide information to the beneficiaries about the existence of the trust, its terms and its assets. This is an especially crucial duty and includes the responsibility to respond to requests for information about the trust and provide annual accountings to keep beneficiaries informed about the activities of the trust.

Failure to Fulfill Trustee Duties

Some duties carry strict liability. For example, violating the duty of loyalty can expose the trustee to liability even if the transaction is fair and no economic damages are suffered by the beneficiaries.

If you do not understand your duties, you can still be held liable for violating them – ignorance is no excuse in the eyes of the law. If your failure to carry out your duties causes financial harm to a beneficiary, they could file a lawsuit against you to recover the loss, and your regular third-party liability coverage may not protect you. Even if you purchase insurance coverage to protect you financially in this role, a legal battle such as this can greatly damage your reputation and that of the family.

Litigation can also create a situation where the family's business and affairs are no longer private, but are instead splashed across news headlines. Examples abound of formerly private families that became embroiled in expensive and very public lawsuits between beneficiaries and family trustees.

Carefully Consider the Role of Trustee

Serving as a trustee for your family can be a valuable experience for you, while also providing an important service to your family. But before you accept the position, make sure that you understand the role you will play for the family and are willing to accept the responsibilities and liability that come with it.

Your Warner attorney can help you understand the trustee role and responsibilities, so reach out to your attorney or to Mark Harder, at mharder@wnj.com or 616.396.3225, with questions about how to effectively serve in the role while protecting yourself (which will be discussed further in the upcoming part three of this series, "Protecting Yourself When Serving as a Trustee").

