

# Fiduciary Duties of Trustees

## In general, what does it mean to be a trustee?

- A trustee's job is to manage the trust property responsibly for the beneficiaries in accordance with the trust instrument.
- A trustee is a fiduciary, which means that the trustee is held to a high standard of care and may be expected to pay more attention to the trust's investment and management than he/she generally would pay to his/her own personal accounts or assets.
- Being a trustee carries significant responsibility and the potential for legal liability.

## When administering the trust, whose interests must the trustee consider?

- Trustees owe their fiduciary duties to the beneficiaries of the trust, consistent with the trust instrument.
- Conceptually, there are two distinct groups of trust beneficiaries. The first group consists of beneficiaries who are entitled or permitted to receive distributions currently. The second group of beneficiaries includes "remainder" beneficiaries, who may receive the trust property after the current beneficiaries have died or upon some other future occurrence.
- Trustees have a duty to act impartially, meaning that they must balance the interests of all the beneficiaries (current and remainder) when making decisions about the trust.

## What types of fiduciary duties does a trustee have to the beneficiaries?

- The fundamental duties of a trustee are as follows: (1) the duty of good faith and loyalty; (2) the duty of reasonable skill and diligence; (3) the duty to give personal attention; and (4) the duty to keep and render accounts.

## What is the duty of loyalty and good faith?

- The duty of loyalty means that the trustee must always act in the best interests of the beneficiaries, and must not put his or her own interests above those of the beneficiaries where trust matters are involved. A trustee must not derive personal benefit from the trust (aside from reasonable compensation) or allow his or her personal interests to conflict with the interests of the trust.
- The duty of good faith means that the trustee must exercise reasonable care, skill and caution in administering the trust. The duty of good faith focuses on whether the trustee's actions and procedures are reasonable, rather than on the outcome of a particular decision (for example, performance of a specific investment).

## What is the duty of reasonable skill and diligence?

- A trustee has the duty to act reasonably and competently in all matters of trust administration.
- A trustee may be personally responsible for any losses sustained by the trust due to his or her failure to exercise reasonable care and skill.
- A trustee with "special skills or expertise" (e.g., an attorney, investment advisor, accountant) or who has represented that he or she has such special skills or expertise, is required to use those skills and expertise in his or her activities as trustee.

## What is the duty to give personal attention?

- A trustee needs to take care that all of the functions of administering a trust are being accomplished. Trustees may hire agents to assist with various administrative and ministerial activities, and may delegate some trustee functions, to the extent that it is prudent to do so.
- Most trust instruments contain provisions regarding a trustee's authority to delegate functions and/or hire advisors. Note, however, that certain decisions and responsibilities are personal to the trustee (e.g., the exercise of judgment or discretion) and may not be delegated.
- A trustee who makes an improper delegation or fails to exercise reasonable oversight over agents or delegates may be personally responsible for resulting harm.

## What is the duty to keep and render accounts?

- A trustee must keep accurate written accounts regarding the trust property, and for those beneficiaries who are entitled to current information (consistent with the terms of the trust instrument and applicable law and practice) must keep beneficiaries reasonably informed regarding trust administration and their beneficial interests.

## What are some actions that a trustee must undertake to meet these duties?

- To meet the fiduciary duties owed by a trustee to the beneficiaries, a trustee must generally manage the trust property responsibly.
- In practice, a trustee needs to invest property in a diversified manner, make unbiased decisions about when and how to make distributions, keep trust property separate from other property, prepare and file tax returns, and keep trust matters confidential.

## What are some practical considerations for investing trust property?

- Broadly speaking, a trustee should follow what a so-called "prudent investor" would do. A trustee is not required to limit investments to publicly traded securities, but also can invest in privately held companies, hedge funds, and other assets with limited liquidity. However, illiquid or unusually risky investments should make up a limited percentage of the portfolio. The investment of trust property should also take into account the benefits of diversification, changes in economic conditions, and anticipated needs of the beneficiaries over time.
- Although courts are generally hesitant to "second-guess" a trustee's investment decisions that are reasonable and consistent with the trust terms, in some instances investment strategies that are aggressive, unusual, or involve conflicts of interest could be viewed as not in the interests of the beneficiaries and thereby could subject a trustee to liability for loss.