

Trustee's Handbook

This information is provided as a courtesy to our clients, and to those who have been chosen to serve as Trustee of a Trust created by our clients. We feel it is important that a Trustee understand not only the nature of how a Trust works, but also the responsibilities that come with the task of acting as a Trustee. As such, we hope this information will answer your questions or supplement any knowledge you may already have.

Even with the information provided in this Handbook, it is inevitable that you will encounter questions and concerns. The material presented is general information. It should not be considered in place of the advice of an attorney on your specific situation.

Should you have any questions or concerns, please feel free to contact us.

What is a Trust?

As a Trustee, it is important to understand the instrument which grants your authority. Most likely, but not in all circumstances, you have been named as Trustee of a Trust created by yourself or someone close to you.

In simple terms, a Trust is a relationship in which a person, called a Grantor, transfers assets, to another person, called a Trustee. In some instances, the Grantor and the Trustee may be the same person. The Trustee then manages and controls this asset for the benefit of another, called a Beneficiary. Beneficiaries range from family members and friends, to charitable organizations and even cherished pets.

An asset is any kind of property. This may include a personal residence, investment accounts, vehicles, businesses or tangible or intangible items. The instrument which creates this relationship is referred to as the Trust Agreement.

The Trust Agreement will spell out the specific terms of the Trust including the primary parties, the Grantor, Trustee and Beneficiaries. The Trust Agreement will also specify the terms under which the Trust will operate. As Trustee, you are responsible for administering the Trust assets in conformance with the Trust Agreement.

Many people understand the nature of the Trust by analogizing it to a corporation.

Grantor of Trust is like the Incorporator of a Corporation (Formation)

Trustee is like the Board of Directors/Officers (Operation)

Beneficiary is like the Shareholders (Appreciation & Distribution)

Another simple analogy is a tool chest in which you put all of your tools to safeguard them. The Trustee is the person in charge of the tool chest. The Trustee supervises the tool chest and may permit others to use the tools. The tool chest keeps the tools from getting lost. The Trustee makes sure the tools are kept in good order and inventoried.

The Grantor has made arrangements to transfer all the assets they want to be in the Trust. The Trustee's job is to make sure the assets are maintained, and that the money and assets in the Trust are available for the Beneficiaries to use - all in accordance with the instructions in the Trust documents.

The Trust Agreement will define what you should do with the Trust assets. It may simply state that the assets should be distributed amongst the Beneficiaries upon the Grantor's death.

On the other hand, the Trust may include provisions by which the Trust assets are distributed over a period of time to the Beneficiaries. These distributions will be for the Benefit of the Beneficiaries and commonly include:

- Providing food, clothing and shelter.
- Providing for educational expenses.
- Providing for funding of new business ventures.
- Assisting with the purchase of a home.

The purposes for which Beneficiaries may benefit from Trust assets are limited only by the Grantor's desire to allow Trust assets to be used.

While the purpose and structure of a Trust may be virtually unlimited, Trusts can be generally divided into two categories: Revocable and Irrevocable.

Trust

1. **Revocable Trust** - A Revocable Trust, often referred to as a Living Trust or a Revocable Living Trust, as the name suggests, is revocable and amendable. This means it can be terminated or changed by the Grantor anytime during the Grantor's life. A Revocable Living Trust gives instructions as to how the Grantor's assets are to be administered during the Grantor's lifetime and distributed at the Grantor's death.

During the lifetime of the Grantor, the assets of a Revocable Trust may still be under the control of the Grantor. Even if there is a separate Trustee, the Grantor retains much power. However, the nature of the Trust changes upon the death of the Grantor.

Upon the Grantor's death, a Revocable Trust becomes irrevocable and the assets must be administered or distributed pursuant to the terms written in the Trust document.

2. **Irrevocable Trust** - Trusts can also be irrevocable, meaning that they cannot be changed or terminated, even during the life of the Grantor. A major characteristic of an Irrevocable Trust is that the Trust assets are placed out of the Grantor's control. This gives the Trustee power to control the Trust assets. In doing so, the Trustee must administer the Trust in accordance with the terms provided in the Trust document.

As Trustee, this distinction is very important because it will determine your specific legal obligations. In Ohio, Trusts are governed by statute. This statute is Ohio Revised Code Title 58 and generally referred to as The Ohio Trust Code. The Ohio Trust Code governs the powers and duties of a Trustee, and the rights and interests of a Beneficiary. Some provisions of the Trust Code may be superseded by language of an individual Trust Agreement.

Becoming a Trustee

While you may become a Trustee under a variety of circumstances, generally you will be either an initial Trustee or a successor Trustee.

An initial Trustee is one who has been named Trustee upon the creation of the Trust. A successor Trustee is one who has taken over the Trustee position from another. This often occurs when the Grantor was the initial Trustee. In either case, it is your duty and responsibility to administer the Trust in accordance with the provisions of the Trust Agreement.

While the Trust Agreement spells out your specific rights and responsibilities, there are certain statutory responsibilities that cannot be overwritten. These will be explained in further detail.

Whenever you are faced with the opportunity to be a Trustee, it is important that you read and fully understand the Trust Agreement. It is important because this defines the actions you are both permitted, as well as required, to

perform as Trustee. Should you have difficulty with the language, or do not fully understand any parts of the agreement, you should seek the advice of legal counsel.

Process

If you have been named as the initial Trustee of a Trust, your duties will begin as soon as the Trust is executed. Often, you will be the designated Trustee of your own Trust and in many cases this will be a Revocable Trust. You will have all the responsibilities of a Trustee, and at the same time as Grantor, in the case of a Revocable Trust, you are permitted to amend or revoke the Trust.

A successor Trustee's role may be very different. As successor Trustee, you will not likely have the ability to amend or revoke the Trust Agreement. Typically, the Grantor retains this power. Upon the death of the Grantor, the Trust will become irrevocable. This is important because it triggers certain duties mandated under Ohio law.

Acceptance or Rejection

While it (may be flattering to be asked to be a trustee, there are legal and financial risks involved. You should know that it is not mandatory to accept the position as Trustee. Careful consideration should be contemplated before accepting this position. You can be deemed to have accepted the position under Ohio law by:

1. Accepting the Trustee position in any manner provided in the Trust Agreement.
2. Unless provided to the contrary in the terms of the Trust Agreement, accepting the Trust property, acting as a Trustee, or otherwise indicating an intention to accept the Trusteeship.

On the other hand, declining a Trustee position is a result of an affirmative expression to decline the position. You need not give a formal rejection, but a clear and early communication is recommended. The appropriate recipient of the rejection depends upon the circumstances of your particular case. Ordinarily, it would be appropriate to give the rejection to the person who informs you of the proposed Trusteeship. Otherwise, it would be wise to give notice of rejection to a Beneficiary with a present interest in the Trust because the Beneficiary would be motivated to seek appointment of a new Trustee.

Co-Trustee

You may encounter a situation in which you, along with another person or persons, have been named as Co-Trustees. In this situation, your acceptance is separate from any other named Co-Trustees.

Trust

Should you accept the Trusteeship as a Co-Trustee, your individual and collective activities will be largely determined by the language of the Trust Agreement. To the extent that the agreement does not specify how you must act, Ohio law provides specific actions concerning Co-Trustees.

As well as understanding the agreement, you must be willing to accept the responsibilities that come with being a Trustee. Specifically, upon a Trustee's acceptance of a Trusteeship, the Ohio Trust Code requires the Trustee to administer a Trust in good faith and in accordance with the Trust's terms and purposes, the interests of its Beneficiaries, and the Ohio Trust Code. The act states, "A Trustee shall administer the Trust solely in the interests of the Beneficiaries."

Duties and Responsibilities

Your main responsibility is to manage and control the Trust assets for the benefit of Beneficiaries. The Beneficiaries are those people, entities, charities and in some cases, pets, who are entitled under the Trust agreement to receive some benefit from the Trust assets.

The benefits can range from an immediate dispersal of the Trust assets to a long term administration. If immediate dispersal is required, the Trust will terminate once all the assets have been distributed to the Beneficiaries. Your job in this process will be to ensure that the correct Beneficiaries receive the assets they are named to receive.

When a Trust is to be administered over a period of time, the Trustee position requires more work. You will be responsible for managing the assets and may be permitted or required to make periodic disbursements. It is important to read and understand the Trust Agreement so you are aware of when and how these distributions may be made. Additionally, it is good practice to know and understand the Beneficiaries' needs and living situations. This will help you in determining any discretionary distributions.

Although specific details are beyond the scope of this information, it is worth noting that some Trusts are created as a "wholly discretionary trust." These are often used with a special needs Beneficiary. If you are the Trustee of this type of Trust, it is extremely important that you fully understand how distributions should be made because improper distributions may jeopardize a Beneficiaries ability to receive support from any social service programs.

Regardless of the Trust purpose, Ohio law states "A Trustee shall administer the Trust solely in the interests of the Beneficiaries." This requires that as well as acting in good faith and in accordance with the terms and purposes of the Trust you are required to:

1. Act impartially: Unless the Trust agreement states otherwise, you must invest, manage and distribute

Trust property in an impartial manner. This requires giving due regard to each Beneficiary's respective interests.

2. Act prudently and competently: You should understand and act in accordance with the Trust Agreement: In doing so, you should exercise reasonable care, skill and caution.
3. Use your skills: You must use any special skills or expertise you may have in order to fully administer the Trust.
4. Enforce and defend claims: As Trustee you must take all reasonable steps to enforce claims of the Trust and to defend claims against the Trust. This may involve filing or defending an action in court.
5. Collect, control and protect Trust property.
6. Keep Trust property separate: The property of the Trust should be kept separate from your own personal property. Most importantly, when Trust assets are money, it should be invested in a specific Trust account separated from any of your personal funds.
7. Keep adequate records: All transactions involving the Trust assets should be carefully documented. You may want to ask an accountant for advice on how to keep records. You will need good records on:
 - a. Income received
 - b. Income paid out
 - c. Additions to principal
 - d. Deductions from principal
 - e. Principal on hand
 - f. Change in Trust investments
 - g. Beneficiary correspondence
 - h. Contracts, loans and obligations of the Trust

Normally, the Trust will allow for the Trustee to employ necessary professionals. (Investment Advisors, CPA's, Attorneys)

Furthermore, you are required, unless unreasonable under the circumstances, to promptly respond to any Beneficiary's request for information related to the administration of the Trust.

Specific Requirements for Irrevocable Trusts

When an Irrevocable Trust is created, or if a Revocable Trust becomes irrevocable, the duties of the Trustee are greatly expanded. These come in the form of additional reporting requirements.

Reporting Requirements

The Ohio Trust Code requires Trustees to keep the current Beneficiaries (a Beneficiary currently entitled to receive Trust assets under an Irrevocable Trust) of the

Trust

Trust reasonably informed about the administration of the Trust and the material facts necessary for the Beneficiaries to protect their interests. This is accomplished through the following required correspondences.

- A. Notification of Trustee Acceptance - the notification should include:
 - 1. Your name
 - 2. Address
 - 3. Telephone Number
- B. Irrevocable Trust Existence - when a new Irrevocable Trust is created, or when a previously Revocable Trust becomes irrevocable, the Trustee must, within 60 days of that event, inform the Beneficiaries of:
 - 1. The existence of the Trust
 - 2. Grantor's identity
 - 3. A right to receive a copy of the Trust Agreement
 - 4. A right to receive annual reports
 - 5. identity of Trustee
- C. Trustee Information - Within 60 days of your acceptance of the Trusteeship of an Irrevocable Trust, you must inform the Beneficiaries of your:
 - 1. Name
 - 2. Address
 - 3. Telephone Number
 - 4. Acceptance of Trusteeship
- D. Trustee Compensation - Notice to current Beneficiaries must be given for any changes in the rate or method of the Trustee's compensation in advance of the change.
- E. Annual and Final Reports - the following information should be included:
 - 1. A listing of the Trust assets
 - 2. Receipts
 - 3. Disbursements
 - 4. The source and amount of the Trustee's compensation
 - 5. If feasible, the Trust assets' respective market values

Upon Request - any of the preceding must be provided to any Beneficiary.

Method of Delivery

Any of the required correspondences as discussed above may be delivered to a Beneficiary by:

- 1. First Class Mail
- 2. Personal delivery
- 3. Delivery to the person's last known place of residence or place of business
- 4. A properly directed e-mail

* As previously discussed, many requirements under the law can be changed or eliminated by the terms of the Trust Agreement. However, the law does not allow the Trust Agreement to eliminate a Trustees responsibility to notify Beneficiaries of the existence of an Irrevocable Trust, the identity of the Trustee, of their right to request Trustee's reports and to respond to their request for Trustee's reports and other information reasonably related to the administration as discussed above. The Trust Agreement may provide Beneficiary "surrogates", or named representatives, to receive such information on behalf of any Beneficiary. In the case of an appointed surrogate, all correspondences should be sent to this surrogate.

On the other hand, a Beneficiary may waive his or her right to receive any of the preceding information. However, any waiver may be repealed at which time the information shall again be required to be given to the Beneficiary.

Powers of Trustee

A Trustee position is not a passive one. The Trustee is responsible for the management, including investment decisions, safeguarding of assets, and record keeping. The Trustee's knowledge, experience, and access to information, must be used if these are special skills for which you have been chosen as Trustee. Should you need advice or these areas are outside your complete understanding, a professional should be used. Examples of such include Investment Advisors, Accountants and Attorneys.

In the course of your administration, you may enter into contracts or other obligations on behalf of the Trust. When doing so, it is important to indicate you are performing such activities in your capacity as Trustee. This can be accomplished by adding the words "Trustee," "as Trustee," "Fiduciary," "as Fiduciary," after your name or signature when acting on behalf of the Trust.

Summary

Read and understand the Trust Agreement.

Have an understanding of the personal details of all Beneficiaries.

Record all activities of the Trust administration.

Keep copies of all correspondence regarding the Trust.

Engage professionals as necessary.