

Trustee Fiduciary Duties

Our Trust & Estate Planning Team

Dennis M. Patrick
dpatrick@tn-law.com

Gordon V. Johnson
gjohnson@tn-law.com

Ivory L. Ruud
iruud@tn-law.com

Jack W. Carlson, Of Counsel
jcarlson@tn-law.com

Donna Olson, Paralegal
dolson@tn-law.com

Contact Us

3600 American Blvd. West
Suite 400
Bloomington, MN 55431
P: (952) 835-7000
F: (952) 835-9450
www.tn-law.com



Trustee Fiduciary Duties

1. Duty of Loyalty

The Trustee has the duty of undivided loyalty to the beneficiaries. The Trustee must administer the trust solely for the benefit of the beneficiaries. No Trustee self-dealing is allowed and is considered a wrongful act. The Trustee cannot take advantage of his/her position for his/her own personal gain.

2. Duty to Collect and Protect Trust Assets

The Trustee has the duty to obtain possession of the trust assets without unnecessary delay and to keep them under his/her control throughout the term of the trust. The Trustee must use reasonable care to protect and preserve the assets of the trust. The Trustee should examine any assets received from the Personal Representative to make sure it is what the Trustee expected to receive.

3. Duty to Identify Assets as Trust Property

The Trustee must identify (inventory) trust assets in the name of the trust.

4. Duty Not to Commingle Trust Funds

The Trustee must keep trust assets separate from the Trustee's own personal assets and from the funds of any other trusts.

5. Duty Not to Delegate

The Trustee must personally perform the responsibilities of the trusteeship, except when delegating those responsibilities to others would be in the best interest of the trust, i.e., delegating duties to an accountant or a tax advisor. When deciding whether and how to delegate duties, the Trustee must exercise fiduciary discretion and act as a prudent person would act in similar circumstances.

6. Duty of Impartiality

The Trustee has the duty to deal impartially with both the income beneficiary (recipient of income from the trust for a predetermined situation) and the remainder beneficiary (recipient of any remaining principal upon the expiration of the trust). The trust should produce reasonable income while at the same time being preserved for the remainder beneficiary.

7. Duty to Inform and Account to the Beneficiaries

The Trustee must keep the beneficiaries reasonably informed about the administration and the status of the trust. An annual report is standard with an accounting of gains, losses, expenses and income. The Trustee must give the beneficiary, upon request and at reasonable times, complete and accurate information as to the nature and amount of the trust property and to permit the beneficiary to inspect the accounts and other documents related to the trust.

General Administrative Duties of the Trustee

1. It is the Trustee's duty to collect all assets of the trust estate and title them in the name of the trust. The Trustee should create a trust inventory of all assets held in the trust, identifying the assets, their current fair market value and their tax basis. A professional appraiser may be needed to determine the value of trust property.
2. The Trustee must administer and distribute the trust estate according to the provisions of the trust. Trust assets need to be invested prudently, properly diversified and invested impartially for the beneficiaries. Assets should remain invested, unless they are retained for only a very short period of time.
3. The Trustee must pay all trust expenses, including taxes, as required by the trust document or by law after verification that the expenditures are proper and valid. All expenses paid must be deemed reasonable.
4. The Trustee must distribute the trust assets in accordance with the trust document. Distribution can be based on a particular date, but sometimes the Trustee must exercise discretion as to when and how much to distribute to a particular beneficiary. The Trustee may need to obtain information before making discretionary distributions, such as the funds available to a beneficiary from sources other than the trust.
5. The Trustee must file trust income tax returns on a calendar year. Trust income tax returns are due on April 15th.
6. The Trustee must keep a record of all receipts, expenditures, distributions and income. The Trustee must also document sales, loans or other dispositions of the trust assets. On an annual basis, the Trustee should prepare an accounting

all trust activities and make this document available to the trust beneficiaries.

7. The Trustee may retain (at reasonable fees) advisors to assist with the accounting, investing and legal issues of the trust.
8. The Trustee is entitled to receive reasonable compensation for his/her services rendered to the trust. This must be reported as taxable income to the Trustee and as a deduction for the trust.

If you have any questions about your fiduciary duties as a Trustee or want more details and guidance regarding any of these items, please call or email a member of our Trust and Estate Planning team.