

MCF Private Trust

What do you DO anyway? - Role of a Trustee

Whether individual family member or professional corporate trustee, the roles and responsibilities of a trustee are the same and each option comes with its own risks. Not everyone is aware of the extent, importance and liability of the job. Understanding the responsibilities are important in order to help clients decide whether to take on the extensive responsibilities and liabilities of an individual trustee, or to use a corporate trustee and let the experts administer the trust.

Who Will Serve As Trustee?

The first step of determining the trustee may seem obvious, but it brings up several important points. First, it is not required that an individual accept the role. It is really a nomination to the role and can be declined. You could use a corporate trustee who are experts at administering trusts, or modify the acceptance and add a co-trustee, for instance a corporate trustee. Individuals should consider carefully, is this something I should take on? Do I have the time, knowledge, expertise and resources to commit to the role? Do I have the proper safeguards in place for the liability involved? Or should I use a corporate trustee that is an expert at administering trusts?

Reading and Understanding the Trust Document

The trust is essentially instructions from the person who created the trust as to what they want to happen, when, how, on what conditions, for whom, and with respect to what funds. It is a legal document, so while the words should carry their plain meaning, words in the law may have very specific meaning that need to be understood by the trustee. Inventory the Assets It is the job of the trustee to marshal the assets, safeguard them, keep records and invest them appropriately. Does an individual trustee have the resources to properly manage the assets? A corporate trustee has the experience and expertise to manage the full range of assets in a trust.

Communicate with the Beneficiaries

Beneficiaries have the right to understand the steps above and what their rights are under the trust. They have the right to statements and accountings, a copy of the trust (or at least the portion that pertains to their interest), even if they are a future beneficiary of the trust. Does an individual trustee have the knowledge and time to clearly communicate terms of the trust and answer beneficiaries' questions? If not, a corporate trustee has the resources and skills to manage those communications.





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Invest the Funds

A trustee is responsible for keeping the assets productive, appropriate to the requirements of the trust, sensitive to the income, gift, estate, and generation skipping tax issues that may affect the trust.

Distribute the Funds

Trusts may have automatic distributions (e.g. pay all income annually, or give 1/3 of the assets to the beneficiary when they turn 35 years old), or discretionary distributions (e.g. pay so much, or all, of the trust funds to the beneficiary as needed for their health, education, maintenance, and support as determined by the trustee). In discretionary distributions trustees should keep records of what was distributed and why, since these questions might be asked by future beneficiaries.

File Tax Returns

A trust, not unlike a person, owns assets and earns income on those assets, and therefore must file all appropriate tax returns, Federal and State. In some cases, the trustee may also be responsible for filing the estate tax return if one is required or advisable. Is this a responsibility that an individual trustee has the expertise to manage? If not, a corporate trustee may be the best solution.

Be Loyal

It is important to understand that many activities that may be acceptable, fair business practices in our day-to-day world may be prohibited for a trust. Purchasing from or selling assets to the trust, even at fair market value, or being partial to one beneficiary over another can be an issue. Also, balancing the tax implications of the investments with the various beneficiaries and communicating as needed and keeping transparent records. A trustee needs to have the skills, time and experience to fully administer all aspects of the trust.

Termination of the Trust

At some point in the future, the trust will end and that involves the distribution of all the remaining assets in accordance with the trust document and, again filing all of the appropriate tax returns. In cases of court created trusts and trusts created by a will there may also be court reporting that is required. A corporate trustee has the resources and expertise to manage termination of the trust, something an individual may not be qualified to handle.

Being a trustee is a big job and considering all of the responsibilities is important. Due to the fiduciary responsibilities and legal knowledge required to administer a trust, many individuals are unable to successfully carry out this role. When helping a client think about naming a trustee, help them understand the responsibilities and liabilities, and the powerful benefits of a corporate trustee.



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