

You Have Been Named as Trustee for a Living Trust — Now What?

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You have recently been named as trustee for the trust of a family member or for that of a close friend. What does this mean? What should you do to ensure that your loved one's wishes are carried out completely after their death? Although this may initially produce some anxiety on your part, having a clear understanding about your role will provide clarity and help you easily fulfill your responsibilities.

As a Trustee, you have the legal status of a "fiduciary." This means that you are acting on behalf of others (the Trust beneficiaries) and you owe them certain legal duties. Another way to look at this more simply is that, as a Trustee, you have been placed in a position of "trust."

The extent of your duties depends somewhat on the language of the Trust document itself. Regardless of the Trust document, most states impose certain legal duties or obligations upon you in their laws, often known as their "fiduciary", "trust administration" or "probate" statutes. Keep in mind that both the Trust document and specific state law must be consulted (which is another reason you may want to engage an attorney to assist you).

- Your Trustee duties include, but are not limited to:
- Duty to identify and locate Trust assets.
- Duty to control, maintain and preserve Trust property.
- Duty to keep Trust property separate and identified as Trust property.
- Duty to follow the terms of the Trust and the laws governing Trust administration.
- Duty to exercise the standard of care of a "prudent" person under like circumstances.
- Duty of loyalty and impartiality.
- Duty to avoid conflicts of interest.
- Duty to enforce claims of the Trust and defend claims against the Trust.
- Duty to act reasonably when exercising any discretion.
- Duty to account to the beneficiaries.
- Duty not to delegate improperly.
- (If the Trust provides for Co-Trustees, in other words some other person, bank or Trust company has been named to act along with you): Duty to be sure that all Co-Trustees participate in the Trust Administration and Duty to prevent any other Co-Trustee from committing a breach of Trust.



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- Duty to maintain confidentiality.

It is key to exercise good, honest common sense and seek qualified professional advice whenever you are unsure of your duties.

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