

Trustees: Risk Mitigation and Best Practices

Part 1 of a 4-Part Series



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Trustees are held to the highest fiduciary standards under the law. Whether you are acting as an individual trustee or a trustee under a private trust company, understanding the risks and responsibilities is critical to serving as a trustee.

Managing the liability is not always easy, but it is achievable if you follow certain policies and approach the management of the trust and the execution of its activities in a professional and responsible manner.

The following are several areas where you can take action to minimize liability.

Obtain Insurance (Errors & Omissions and Directors & Officers)

Trustees acting in an individual capacity can be held personally liable for failure to adequately serve the needs of the trust and its beneficiaries. Pursuing a fiduciary role through a Private Trust Company (PTC) insulates individuals from their personal risk to some extent but transfers those risks to the PTC. As such, all trustees should endeavor to obtain insurance for their errors and omissions. If there is a corporate entity, directors and officers insurance should be obtained as well.

Prepare a Trust Administrative Memorandum

Understanding the trust documents and ensuring that the trustee has the ability to administer the assets directly or through the use of outside vendors is an important part of risk mitigation.

As a best practice, it is worth having a trust administrative memo (TAC memo) prepared by either the trustee, trust counsel, or the operating team of a PTC to ensure that the trustees understand the nature of trust assets, the issues in the trust, and the administrative activities necessary under both state and federal law and within the trust document.

The TAC memo consists of three parts: a table summarizing salient information, a descriptive section summarizing the trust provisions as well as setting out observations by the administrative team, and a table listing outstanding routine tasks that need to be addressed as part of the trust “on-boarding” process.

The memorandum should also address any gaps such as the lack of strong retention language in the trust document or lack of authorization to delegate investment authority, or limitation on investments - often found in older documents. If the role of trustee reaches unacceptable levels of risk in the management, sufficient to warrant a refusal of the appointment as trustee, you should raise this with the grantor and understand what issues are involved in refusing to act (often there is no clear succession).



In the case of a PTC, the committee needs to be able to review the TAC memorandum and ask questions, relying on the administrative team to prepare these memoranda and raise issues of interest or concern to the committee.

Hold Quarterly Communications with Beneficiaries

As a best practice, we recommend that trustees have regular and frequent communication with the trust beneficiaries. In the case of a PTC, quarterly meetings or communications with beneficiaries and an annual in-person review are integral to the function of the enterprise. The quarterly review process ensures constant communication between the trustees and the beneficiaries and enables the trustees (or PTC) to minimize confusion or missed expectations with respect to trust management, diversification of investments and operation.

Quarterly beneficiary communications might consist of a trust administration and investment letter, and/or a PowerPoint summary. Additionally, a call may be conducted by the trustee, the administrative team of the PTC, or appropriate subcommittee. Annual reviews are typically more in-depth, should be in person, and should include a broader group (attorney, CPA, investment committee of PTC) and include outside investment managers.

Trustee Best Practices
Do understand the implications of the Prudent Investor Act and the Principal and Income Act on trust management.
Do understand your rights and responsibilities as a trustee.
Do create a philosophy for the PTC to follow in the creation and operation of the enterprise.
Don't let family ties, views, or prejudices obscure your legal obligations as a trustee.
Do focus on collaboration and consensus. Ensuring that all parties act in sync and that beneficiaries receive sufficient financial planning and education about the importance of the trusts for their long-term financial well-being.
Do have clear, repeatable metrics for making investment decisions, implementing trust structure and distribution decisions.
Do understand trust documents and distribution provisions.
Do recognize and use the flexibility offered to trustees under the Principal and Income Act to ensure that the best result for the beneficiary is obtained while balancing the fiduciary obligations of the trust.

Bottom Line

Whether you have chosen to appoint an individual trustee or create a family Private Trust Company, selecting a dependable trustee to oversee your family's estate plan is one of the most important decisions for ensuring your wealth is managed and distributed according to your wishes. And, although creating an estate plan can be complex, it helps ensure your family will be provided for after your death and is a core element of any long-term wealth management strategy.



You'll want to make sure your trustees have a full understanding of the issues, responsibilities, and time involved in the process and have the resources and objectivity required to be effective. All aspects of estate planning involve significant legal considerations and many tradeoffs in terms of control or tax savings. It is imperative to work with a qualified estate planning attorney and advisor to obtain expert advice in crafting your long-term strategy and designing trusts or other entities that will shape your overall family legacy.

At Cerity Partners, our dedicated Family Office team has helped many families with their trustee and fiduciary needs. For more information on our Fiduciary and Trustee service, please contact your Cerity Partners advisor.

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Susan is a Partner in the New York City office with more than thirty years of experience serving as a senior director in trust, wealth management and family office advisory firms, and as a personal fiduciary advisor to individuals and families. She helps large families and family offices evaluate and establish Private Trust Companies (PTCs) and develops family office governance and operating structures, including fiduciary policies and procedures.

Prior to joining Cerity Partners, Susan was the Director of Fiduciary and Senior Wealth Advisor at EMM Wealth, a fifty-year-old multi-family office serving high-net-worth individuals and families throughout the country.

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