ADAMS BROWN
Trust Solutions
above+beyond

Duties of a Trustee

Simplifying the Complex While Safeguarding Your Legacy

INITIAL DUTIES OF A TRUSTEE

Courts hold trustees to a high standard of prudence and care, so trustees must use thought and experience in fulfilling their fiduciary duties. The following list is not exhaustive but presents the breadth and depth of duties to be fulfilled as an example.

Accumulate & protect assets of deceased or former trustee

[see “Executor Checklist.pdf” & IRS Publ 559]:

- ☐ Inventory home
  - Examine all correspondence, books and boxes (even inside old shoes) for valuables
  - Check everywhere, even behind paintings, in grandfather’s clock, the toolbox, freezer and toilet tank
  - List each item in detail; “white stone” for diamond, “yellow metal” for gold
- ☐ Accumulate records on checking accounts, mutual funds, real estate, closely-held businesses, etc. and collect all notes and documentation re: user names & passwords
  - Review checking account activity, paying special attention to deposits and credit card statements
  - As utilities are turned off, make sure to get reimbursed for deposits
- ☐ Contact Home & Auto Insurance Agent(s)
  - Notify agent(s) of death and change address to Adams Brown Trust Solutions as the executor/trustee for billing purposes
  - Inquire about life insurance benefits
  - Inquire about scheduled personal property (*i.e.*, valuables)
- ☐ Contact Employer’s Human Resources Department
  - Did decedent or will family receive any defined benefits proceeds?
  - Did decedent or will family receive any defined contribution benefits?
  - Are there any life insurance benefits?
- ☐ Accumulate at least the past three years’ tax returns (intestate heirs might seek benefit through Rev Rul 2004-68, 2004-31 IRB 118)
- ☐ Turn off automatic debits/drafts against checking account(s)

Accumulate & protect assets of deceased or former trustee *(Continued)*

- [ ] Begin developing cash flow projections
    - Income taxes (for both individual's final and trust's initial returns)
    - Estate taxes (federal & state)
    - Monthly outflows (e.g., utilities, debt-burden, property & income taxes, etc.)
    - Business outflows (e.g., salaries, rent, utilities, debt-burden, property & income taxes, etc.)
- [ ] Develop an inventory for use in preparing the estate's tax returns and to notify "qualified beneficiaries" (see below)

    Date-of-death valuations of assets included in federal estate tax returns must be calculated according to IRS rules & regulations
- [ ] Publish Notice to Creditors, even if not a probate estate

Decisions & Tax Elections:

- [ ] Consider §645 Election if decedent had a funded revocable living trust

    This allows estate exemption, FYE election (§444) and other elections, deductions and credits to be used in trust's fiduciary tax return—File Form 8855.
- [ ] Consider requesting §734 Election if estate includes partnership(s) with distributions
- [ ] Consider requesting §743 Election if estate includes partnership(s) with transfers
- [ ] Consider filing Form 843 or 1040X for refund or abatement of previously paid taxes in excess of amounts due
- [ ] Consider §2032A Special Use Election if estate includes closely-held business(es) with real property or family farm
- [ ] Consider §2057 Election for family-owned business deduction
- [ ] Consider §6166 Election to get extension to pay estate-tax due on family-owned business
- [ ] Make sure to use §691(c) IRD deduction, and advise beneficiaries (including trusts to be funded by estate) to use §691(c) as well
- [ ] Review past 48 months' activity for missed required minimum distributions (RMDs)
- [ ] Review past 36 months' activity for re-characterization of IRAs or QRPs into Roths—should they be reversed?
- [ ] Review past 18 months' activity for distributions or "lapsed" rollovers (non-direct transfers) from QRPs and/or IRAs—consider asking the IRS to re-characterize them as direct-transfers

Convert assets to cash:

- [ ] Call local Social Security Administration office or 1.800.772.1213 to cancel SSA checks, and request $255 "burial award" for the surviving spouse or eligible child
- [ ] For veterans, call 800.827.1000; to claim a veteran's insurance, call 800.669.8477 and 800.419.1473
- [ ] For a retired KPERS participant, contact kpers@kpers.org or 785.296.6166 to claim the $6,000 lump sum death benefit
- [ ] Request Form 712 with each life insurance policy payoff
- [ ] Consider §6166 Election for an extension to pay estate-tax due on family-owned business
- [ ] Before selling any assets, review trust to determine if any items are to be distributed in-kind to beneficiaries
- [ ] Consider distributing some assets in-kind rather than liquidating them and distributing the proceeds (if the trust grants you such authority; done fairly and in accordance with terms of instrument)
- [ ] Don't worry about capital gains or losses—every asset's basis (except above IRD) will step up (or step down) to values at either date-of-death or "alternate-date" (*i.e.*, DOD + six-months)
- [ ] NOTE: Trustees must not self-deal. Penalties for self-dealing are severe!

Initiate Ongoing Fiduciary Duties:

- [ ] Income from qualified marital trusts [including Q-TIPs] must be sent to the surviving spouse on a regular and recurrent basis
- [ ] Notify all "qualified beneficiaries" (current and future beneficiaries, except in the case of a qualified marital trust and the surviving spouse is alive) of the trust's existence and their respective rights in accordance with your state's statutes; provide them with above inventory and copy of trust instrument (agreement and/or will) as requested
- [ ] Prepare periodic accounting of assets held (balance sheet) and transactional activity (income statement), at least annually
- [ ] Structure/re-structure portfolio according to allocation best suited to "comfort zone" of beneficiary(ies), with diversification a primary goal
- [ ] Document decisions (involving assets, transactions and beneficiary distributions) thoroughly, to show thoughtfulness, fairness and prudence

ONGOING DUTIES OF A TRUSTEE

Courts hold trustees to a high standard of prudence and care, so trustees must use thought and experience in fulfilling their fiduciary duties. The following list is not exhaustive but presents the breadth and depth of duties to be fulfilled as an example.

Invest with a Plan:

- [ ] Exercise impartial care and skill (Prudent Investor Rule standard), loyally and in good faith
- [ ] Safekeep, safeguard, preserve and protect trust assets against dissipation, deterioration or diminution
- [ ] Develop allocation of trust portfolio according to beneficiary(ies) “Comfort Zone”
    - Measure Investor Profile of current beneficiary class
    - Determine investment horizon (i.e., is portfolio intended to last current beneficiaries’ lifetime or a shorter period; will assets be distributed outright at death of current beneficiaries or continue for a set period of time or indefinitely?)
    - Utilize “total return” distribution calculations, if possible, to benefit both current and remainder beneficiaries together as equitably as possible
    - Develop portfolio with projected return/risk profile likely to match beneficiaries’ profile
    - Is proposed portfolio likely to meet beneficiaries’ needs (liquidity, cash flow, total return, etc.)
- [ ] Maintain diversity of investments; better yet, re-allocate portfolio according to beneficiaries’ comfort zone in accordance with your state’s statutes
- [ ] Rebalance portfolio periodically

Notification:

- [ ] Provide complete, timely and accurate statements of activity and value
- [ ] As beneficiaries each reach age of majority or when deaths occur, notify “qualified beneficiaries” as appropriate according to your state’s statutes
- [ ] When a powerholder who authorized purchases and/or retention of directed investments dies, review such holdings with new powerholders and liquidate or re-document as appropriate

Taxes:

- ☐ Maintain records, produce information to facilitate investment management and tax return preparation
- ☐ Trap taxable income when and where appropriate amongst estate and trust entities; When appropriate, use §663(b) election to avoid trapping income at the highest fiduciary income tax brackets
- ☐ Monitor IRD (see above; e.g., beneficiary designations on IRDs, MRDs on IRAs, etc.)
- ☐ Carefully consider §67(e) deductibility of fiduciary advisory and services fees (vs. the non-deductibility of investment management fees)
- ☐ Maximize after-tax return, using tax-free investments when and where appropriate; monitor and manage capital gains and losses using capital-loss carryover
- ☐ Review income tax returns, and pay taxes due in timely manner
- ☐ Exercise Q-TIP and Generation-Skipping Tax exemptions and exclusions as appropriate; manage distributions from such taxable entities as applicable

Work with Beneficiaries to Develop Our Understanding of their “Big Picture”:

- ☐ Develop educational, retirement or estate plan goals within the context of family harmony
- ☐ Discuss multi-generational planning

Exercise Discretionary Authority over Distributions

With these considerations in mind, distributions should be timed and allocated across beneficiaries and tax years to best support enjoyment of both income and principal, consistent with the trust’s stated terms and goals (see “Trapping Distributions”). When possible, use total return distribution methods to balance the interests of current and future beneficiaries.

WHAT WE DO

We provide trust and fiduciary services designed to simplify complex situations and **reduce the burden on you and your family**.

Trust administration

Managing distributions, reporting, compliance and ongoing oversight

Trust agency accounts

Allow you to remain in Control as Trustee.

Investment oversight

Coordinating portfolios to support long-term goals

Estate managment

Helping carry out your plan with clarity and care

Retirement and investment accounts

Aligning assets with your broader trust strategy

Charitable trusts and foundations

Supporting giving goals in a structured, tax-aware way

Special situations

Including conservatorships and more complex needs

Supporting you with trust solutions for individuals, families, businesses, foundations and endowments.

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