



## HAVE YOU EVER BEEN ASKED TO SERVE AS TRUSTEE OF A TRUST? WHAT DOES THAT MEAN FOR YOU?

March 17, 2019

Have you ever been asked by a family member or friend to serve as Trustee of a trust for the benefit of their children or family members? While it is easy to be flattered and honored by this request, you should fully understand the role and responsibility of a Trustee before accepting the job as the role of Trustee carries with it many tasks and responsibilities that could lead to personal liability for your actions as Trustee.

Simply put, a trust is a legal relationship where the Trustee holds legal title to property and has the legal responsibility to manage that property for the benefit of the individual or individuals who are the beneficiaries of the trust.

The responsibilities of the Trustee fall into three broad categories: (1) Investment, (2) Distribution and (3) Administrative. In making decisions in each of these categories, the Trustee must be sure he or she is following the law, the terms of the trust and must properly balance the needs of the current beneficiaries of the trust and the future or remainder beneficiaries of the trust. All of the decisions of the Trustee can be challenged by those beneficiaries now or in the future.

### *Investment*

The Trustee is responsible for investing the property of the trust to meet the goals set out in the trust agreement and to meet the distribution standards described in the document. The Trustee is a fiduciary who is held to a higher standard and, in most circumstances in most states, is held to a “prudent investor” standard. The prudent investor act requires a fiduciary to diversify the portfolio and invest for a combination of income and growth. If the Trustee does not have the requisite skill to manage the investments, the Trustee should hire a qualified financial advisor to advise him or her on the trust investments. A Trustee can be subject to personal liability for investment decisions that sour and do not fall in line with either the prudent investor act, the terms of the governing instrument and/or the applicable state law.

### *Distribution*

The Trustee also is responsible for interpreting the terms of the trust that describe how and when distributions should be provided to the beneficiaries. Often, the Trustee will have a duty to have regular conversations with the beneficiaries about their needs to determine whether distributions are appropriate. Some trust instruments can be drafted with very specific directions. Most trust agreements give the Trustee the discretion to determine the timing and amount of distributions --sometimes within some broad parameters but sometimes in the Trustees discretion with little guidance. Again, these decisions are fraught with personal liability as the Trustee must always consider both the current and potential future needs of both the current beneficiaries of the trust and the remainder beneficiaries of the trust. When trusts have multiple current and future beneficiaries, this can be especially tricky.

# CUMMINGS & LOCKWOOD LLC

## *Administrative*

Finally, the Trustee must file certain documents. The Trustee is responsible for preparing and filing the annual federal and state income tax returns for the trust. Depending on the state in which the trust was established or the requirements of the document, the Trustee must provide accountings or certain information to the beneficiaries periodically. The Trustee also must keep records documenting all of the Distribution and Investment decisions described above.

## *How can Cummings & Lockwood LLC help?*

The attorneys in Cummings & Lockwood LLC Private Clients Group regularly advise individuals, banks and other Professional Trustees to be sure they are effectively meeting their various responsibilities and obligations as Trustee with the relevant law and governing instrument. Cumming & Lockwood's staff of fiduciary accountants regularly prepare fiduciary income tax returns for Trustees. While Cummings & Lockwood LLC does not provide investment advice, we can assist Trustees by advising on the best mechanisms for choosing, monitoring and delegating day to day investment authority to appropriate investment advisors as permitted by trust laws. In addition, Cummings & Lockwood LLC Litigation Group has extensive experience in defending Trustees for their actions as Trustee. Please contact your Cummings & Lockwood LLC attorney today if we can be of assistance.