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Fiduciary Duties of a Trustee

A trustee is a protector and manager of assets for the benefit of both current and remainder beneficiaries. A trustee is responsible for:

1. Managing trust assets safely and productively;
2. Administering the trust according to its terms;
3. Preparing trust tax returns and accountings; and
4. Carrying out the trust objectives.

A trustee's duties include investment management, accounting and record keeping, protection of trust assets, management of all financial affairs, and compliance with the intentions of the trustor (the creator of the trust) and current trust law. A trustee should maintain a record of the assets that are held in the trust or have been conveyed to the trustee, as well as details of all future income and disbursements of the trust.

Generally, a revocable living trust becomes irrevocable upon the death of the trustor. A trustee must take the following steps when a trust becomes irrevocable:

1. Notify the trust beneficiaries of the existence of the trust and inform them that the trust has become irrevocable. Also inform them of the identity of the trustee and their right to request trustee reports.
2. Keep the beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for those beneficiaries to protect their interests.
3. Respond to beneficiaries' request for information reasonably related to the administration of the trust.
4. Provide a copy of the trust instrument to beneficiaries, if requested.
5. Notify beneficiaries of the installation of a successor trustee.
6. Notify beneficiaries of any changes in the fee structure for trustee compensation.
7. At least annually, and at the termination of a trust, provide the beneficiaries with a report of trust activities, including a) a listing of trust property and liabilities; b) the market value of trust assets, if feasible; and c) an accounting of all trust receipts and disbursements, including the source and amount of the trustee's compensation.

It is the trustee's responsibility to make tax related decisions, pay trust expenses, and balance the sometimes conflicting interests of multiple trust beneficiaries as the trustee invests and distributes trust assets.

Upon death, the trustee is required to file and necessary federal and state tax returns including:

1. The Decedent's final federal and state income tax returns from January 1 to the date of death, due April 15, of the year following the year of death.
2. Federal and Oregon fiduciary income tax returns reporting income received after the date of death through the period of trust administration. The trustee will need to determine the tax reporting period, either on a calendar-year or fiscal-year basis.
3. An Oregon inheritance tax return if the Decedent's assets exceed \$1 million in 2007, due nine months from the Decedent's death.
4. A federal estate tax return if the Decedent's assets exceed \$2 million in 2007, also due nine months from the Decedent's death.

If a tax is due, the trustee has the option of valuing property reported on the federal estate tax return and Oregon inheritance tax return at its value on the date of the trustor's death, or its value six months thereafter. Using the "alternate valuation date" may be helpful to reduce taxes if assets decline in value.

Typically, there is no court supervision of the actions and financial transactions of a trustee. The trustee may be accountable, however, to trust beneficiaries and other persons interested in the trust for failing to adequately administer the trust. To avoid personal liability, a trustee should:

1. Diversify the investments of trust assets;
2. Avoid speculative or risky investments;
3. Never co-mingle trust assets with the trustee's personal assets;
4. Receive and disburse all trust funds in and from the trust bank account, thereby providing a complete record of trust financial transactions; and
5. In all discretionary matters, choose the course of action that is in the best interest of all the beneficiaries and consistent with the trust agreement, that is, the intent of the trustor.

A trustee is entitled to reasonable compensation for services rendered and for the fiduciary duties assumed. Additionally, a trustee is entitled to pay from the trust estate reasonable fees for the trustee's accountant and attorney and any costs incurred to administer the trust.

Again, the trustee is bound by the specific instructions in the trust agreement and by Oregon law and must act in the best interest of all the trust beneficiaries, including remainder beneficiaries. This summary is not a substitute for legal advice. The trustee should secure legal and tax advice to carry out the fiduciary duties summarized above.