

A Sense of Your Duties

The Duty of Loyalty: The most fundamental duty of a trustee is the obligation to act solely in the beneficiaries' best interest. This means that you must not only do what is best for the trust's beneficiaries, but also do so without furthering your own interests, unless the beneficiaries consent after full disclosure. As with the other trustee duties, if your non-compliance results in any losses or damages to the trust property, you and/or your co-trustees may be personally liable for any decrease in value.

The Duty of Prudent Investment: In 1995, the California legislature enacted the Uniform Prudent Investor Rule. This rule is as follows:

A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Prob C § 16047(a)

The statute then prescribes more specific duties, including:

- ◆ *A duty to select risk and return objectives reasonably suited to the particular trust (Prob C §16047(b)).*
- ◆ *A duty to diversify (Prob C §16048).*
- ◆ *A duty to evaluate investments in the context of the portfolio as a whole (Prob C §16047(b)).*
- ◆ *A duty to avoid unreasonable or inappropriate costs (Prob C §16050).*
- ◆ *A duty to consider tax consequences (Prob C §16047(c)(3)).*

The Duty of Impartiality: This responsibility requires you to be impartial between classes of beneficiaries and within each class of beneficiaries, as long as this rule is consistent with the trust creator's intent. This means that you cannot favor an income beneficiary over a remainder beneficiary, nor favor one income beneficiary over another unless it is consistent with the terms of the trust.

The Duty to Preserve Trust Assets: As a trustee, you are required to preserve the trust property. This duty requires you to pay taxes on the property, insure it against loss, protect it from theft, and maintain the property's condition to ensure that a property's value is not decreased.

The Duty to Segregate, Earmark, and Account: The duty to account for trust assets requires that you keep clear and accurate records of all transactions affecting the trust's property. This responsibility includes keeping trust property separate from your own property, documenting trust property as such, and keeping accurate accounts and records of all trust-related transactions. Failure to segregate and earmark property can make accurate accounting impossible and can lead to suspicions of self-dealing which, in the absence of complete and accurate records, will likely be resolved against you.

Summing It Up

Being a trustee means adhering to specific standards, responsibilities, and expectations. It's important that you fully understand your duties and the role that you will play as the trustee of a trust. Our office is happy to answer questions that you may have, as well as guide you toward resources that will help facilitate your duties as a trustee.