

ACTING AS A TRUSTEE: BOON OR BURDEN?

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I. INTRODUCTION

A. What is a Trustee?

Definition: MCL 700.1107(o):

“Trustee” includes an original, additional, or successor trustee, whether or not appointed or confirmed by the court.

Definition: Merriam Webster:

Trustee: a natural or legal person to whom property is legally committed to be administered for the benefit of a beneficiary (such as a person or a charitable organization), one (such as a corporate director) occupying a position of trust and performing functions comparable to those of a trustee.

B. A Trustee is a Fiduciary

Definition: MCL 700.1104(e):

“Fiduciary” includes, but is not limited to, a personal representative, funeral representative, guardian, conservator, trustee, plenary guardian, partial guardian, and successor fiduciary.

Definition: Merriam Webster:

of, relating to, or involving a confidence or trust: such as

- a: held or founded in trust or confidence a *fiduciary* relationship a bank's *fiduciary* obligations
- b: holding in trust
- c: depending on public confidence for value or currency

From Merriam Webster:

Fiduciary relationships often concern money, but the word *fiduciary* does not, in and of itself, suggest financial matters. Rather, *fiduciary* applies to any situation in which one person justifiably places confidence and trust in someone else and seeks that person's help or advice in some matter. The attorney-client relationship is a fiduciary one, for example, because the client trusts the attorney to act in the best interest of the client at all times. *Fiduciary* can also be used as a noun for the person who acts in a fiduciary capacity, and *fiduciarily* or *fiducially* can be called upon if you are in need of an adverb. The words are all faithful to their origin:

Latin *fidere*, which means "to trust."

C. The Michigan Trust Code MCL 700.701-7913

While many portions of the EPIC are applicable to Trustees, Article VII of the EPIC is the Michigan Trust Code and addresses trusts specifically.

II. PRELIMINARY CONSIDERATIONS

A. Should I serve as a Trustee?

Sounds like an easy question. But coming up with an answer can be complicated. Some people think serving as a trustee is simple, but it usually involves a lot of responsibility and even potential liability. However, if things go wrong or problems arise, gratitude for serving as a trustee may be hard to find.

1. Are you competent to serve?

What skills do you bring to the table? Were you nominated because of special expertise? If you are "just" a well-respected family member, is that reason enough to accept appointment?

2. Can you devote the time and effort to serve?

Acting as a trustee takes time. It is not just an "honor" or "title". Are you geographically available to serve without excessive travel and expense?

3. Can you afford to serve?

Are you going to charge a fee? If not, can you afford the necessary time to properly administer a trust? If you do take a fee, will that influence relationships with beneficiaries? Can the trust afford to pay you?

4. Will serving as trustee damage relationships?

If you must make difficult decisions involving family members, how will this effect ongoing relationships? What about longtime friends or clients? A trustee has the duty to follow the trust and make decisions others may not agree with or like.

5. You may (probably will) need the assistance of others, such as:

- a) Attorney.
- b) CPA.
- c) Appraisers.
- d) Investment Advisor.
- e) Realtor.
- f) Realty management company.
- g) Insurance agent.

B. How do I accept to serve as Trustee?

MCL 700.7701 Acceptance or rejection of trusteeship; powers of person designated as trustee

Sec. 7701.

- (1) Except as otherwise provided in subsection (3), a person designated as trustee accepts the trusteeship by doing either of the following:
 - (a) Substantially complying with a method of acceptance provided in the terms of the trust.
 - (b) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.
- (2) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.
- (3) A person designated as trustee, without accepting the trusteeship, may do all of the following:
 - (a) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified trust beneficiary.
 - (b) Exercise all powers set forth under section 7818(1)(a).
 - (c) Inspect or investigate trust property to determine potential liability under other law or for any other purpose.

C. How do I let others know I have authority as Trustee?

By providing a certificate of trust pursuant to MCL 700.7913

Certificates of trust

Sec. 7913.

- (1) Instead of furnishing a copy of the trust instrument to a person other than a trust beneficiary, the trustee may furnish to the person a certificate of trust that must include all of the following information:
 - (a) The name of the trust, the date of the trust, and the date of each operative

trust instrument.

- (b) The name and address of each current trustee.
 - (c) The powers of the trustee relating to the purposes for which the certificate of trust is being offered.
 - (d) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.
 - (e) The authority of cotrustees to sign on behalf of the trust or otherwise authenticate on behalf of the trust and whether all or less than all of the cotrustees are required to exercise powers of the trustee.
- (2) A certificate of trust may be signed or otherwise authenticated by the settlor, any trustee, or an attorney for the settlor or trustee. The certificate must be in the form of an affidavit.
 - (3) A certificate of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations included in the certificate of trust to be incorrect.
 - (4) A certificate of trust need not include the dispositive terms of the trust instrument.
 - (5) A recipient of a certificate of trust may require the trustee to furnish copies of those excerpts from each trust instrument that designate the trustee and confer on the trustee the power to act in the pending transaction.
 - (6) A person that acts in reliance on a certificate of trust without knowledge that the representations included in the certificate of trust are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the trust and other facts included in the certificate of trust.
 - (7) A person that in good faith enters into a transaction in reliance on a certificate of trust may enforce the transaction against the trust property as if the representations included in the certificate of trust were correct.
 - (8) A person that makes a demand for the trust instrument in addition to a certificate of trust or excerpts of the trust instrument is liable for damages, costs, expenses, and legal fees if the court determines that the person that made the demand did not act pursuant to a legal requirement to demand the trust instrument.
 - (9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding that concerns the trust.

III. DUTIES AND OBLIGATIONS

A. Duties and powers of a Trustee

MCL 700.7801

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, expeditiously, in accordance with its terms and purposes, for the benefit of the trust beneficiaries, and in accordance with this article.

MCL 700.7802(1)

A trustee shall administer the trust solely in the interests of the trust beneficiaries.

MCL 700.7816 General powers of trustee

Sec. 7816.

- (1) A trustee, without authorization by the court, may exercise all of the following:
 - (a) Powers conferred by the terms of the trust.
 - (b) Except as limited by the terms of the trust, all of the following:
 - (i) All powers over the trust property that an unmarried competent owner has over individually owned property.
 - (ii) Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property.
 - (iii) Any other powers conferred by this article.
- (2) The exercise of a power is subject to the fiduciary duties prescribed by this article.

For specific powers, which are extensively listed in the Trust Code see MCL 700.7817.

B. No self-serving actions are allowed as Trustee pursuant to MCL 700.1214:

Unless the governing instrument expressly authorizes such a transaction or investment, unless authorized by the court, except as provided in section 3713, 5421, or 7802, or except as provided in section 4405 of the banking code of 1999, 1999 PA 276, MCL 487.14405, a fiduciary in the fiduciary's personal capacity shall not engage in a transaction with the estate that the fiduciary represents and shall not invest estate money in a company, corporation, or association with which the fiduciary is affiliated, other than as a bondholder or minority stockholder. A fiduciary in the fiduciary's personal capacity shall not personally derive a profit from the purchase, sale, or transfer of the estate's property. A fiduciary's deposit of money in a bank or trust company, in which the fiduciary is interested as an officer, director, or stockholder, does not constitute a violation of this section.

C. Fiduciary relationship and duty to maintain privacy

MCI 700.1212:

- (1) A fiduciary stands in a position of confidence and trust with respect to each heir, devisee, beneficiary, protected individual, or ward for whom the person is a fiduciary. A fiduciary shall observe the standard of care described in section 7803 and shall discharge all of the duties and obligations of a confidential and fiduciary relationship, including the duties of undivided loyalty; impartiality between heirs, devisees, and beneficiaries; care and prudence in actions; and segregation of assets held in the fiduciary capacity. With respect to investments, a fiduciary shall conform to the Michigan prudent investor rule.
- (2) Except in response to legal process, in cases expressly required by law, or in the necessary or proper administration of the estate, a fiduciary shall not disclose facts or knowledge pertaining to property in the fiduciary's possession or to the affairs of those for whom the fiduciary is acting in any manner without the consent of the heirs, devisees, beneficiaries, protected individuals, or wards. The fiduciary of a minor or an incapacitated individual may give this consent on behalf of that individual. This subsection's restriction on disclosure does not apply in an action or proceeding in which the fiduciary and the fiduciary's heir, devisee, beneficiary, protected individual, or ward are parties adverse to each other after the identity and relationship is determined and established.

D. Duty to notify Creditors

MCL 7007608

If there is no personal representative of the settlor's estate to whom letters of administration have been issued so that the publication and notice requirements of section 3801 have not been discharged, each trustee of a trust described in section 7605(1) shall publish and serve a notice to creditors in the same manner, with the same duties, and with the same protection for the trustee and the attorney for the trustee as described in section 3801 for a personal representative. The notice shall comply with applicable court rules and contain the name of the trust's deceased settlor; the trust's name or other designation, if any; the date the trust was established; the name and address of each trustee serving at the time of or as a result of the settlor's death; and the name and address of the trustee's attorney, if any. The notice shall state the date of publication.

E. Duty to inform and report to Beneficiaries

MCL 700.7814

- (1) A trustee shall keep the qualified trust beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a trust beneficiary's request for information related to the administration of the trust.
- (2) A trustee shall do all of the following:
 - (a) Upon the reasonable request of a trust beneficiary, promptly furnish to the

trust beneficiary a copy of the terms of the trust that describe or affect the trust beneficiary's interest and relevant information about the trust property.

- (b) Subject to subsection (6), within 63 days after accepting a trusteeship, notify the qualified trust beneficiaries of the acceptance, of the court in which the trust is registered, if it is registered, and of the trustee's name, address, and telephone number.
 - (c) Subject to subsection (6), within 63 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, notify the qualified trust beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the court in which the trust is registered, if it is registered, and of the right to request a copy of the terms of the trust that describe or affect the trust beneficiary's interests.
 - (d) Notify the qualified trust beneficiaries in advance of any change in the method or rate of the trustee's compensation.
- (3) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified trust beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust property and, if feasible, their respective market values, and, if applicable, any disclosure required under section 7802(5). In the trustee's discretion, the trustee may provide the report to any trust beneficiary. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report shall be sent to the qualified trust beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified trust beneficiaries a report on behalf of a deceased or incapacitated trustee.
- (4) If the terms of a trust direct that accounts and information be provided to less than all qualified trust beneficiaries, at the court's direction, the trustee shall provide statements of account and other information to persons excluded under the terms of the trust to the extent and in the manner the court directs.
- (5) A trust beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A trust beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.
- (6) Subsection (2)(b) and (c) applies only to a trustee who accepts a trusteeship, an irrevocable trust created, or a revocable trust that becomes irrevocable on or after the effective date of the amendatory act that added this section.

F. The prudent investor rule and special skills

MCL 700.7803:

The trustee shall act as would a prudent person in dealing with the property of another, including following the standards of the Michigan prudent investor rule. If the trustee has special skills or is named trustee on the basis of representation of special skills or expertise, the trustee is under a duty to use those skills.

The Michigan Prudent Investor rule is set forth at MCL 700.1501—1512

MCL 700.1502 sets forth the general rule to be followed:

- (1) A fiduciary shall invest and manage assets held in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate. To satisfy this standard, the fiduciary must exercise reasonable care, skill, and caution.
- (2) The Michigan prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of the governing instrument. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on the provisions of the governing instrument.

G. Taxes

MCL 700.7819

- (1) A trustee may do any of the following in connection with a tax matter:
 - (a) Make, revise, or revoke an available allocation, consent, or election affecting a tax that is appropriate in order to carry out the settlor's estate planning objectives and to reduce the overall burden of taxation, both in the present and in the future. This authority includes, but is not limited to, all of the following:
 - (i) Electing to take expenses as estate tax or income tax deductions.
 - (ii) Electing to allocate the exemption from the tax on generation skipping transfers among transfers subject to estate or gift tax.
 - (iii) Electing to have all or a portion of a transfer for a spouse's benefit qualify for the marital deduction.
 - (iv) Electing the date of death or an alternate valuation date for federal estate tax purposes.
 - (b) Exclude or include property from the gross estate for federal estate tax purposes.

- (c) Value property for federal estate tax purposes.
 - (d) Join with the surviving spouse or the surviving spouse's personal representative in the execution and filing of a joint income tax return and consenting to a gift tax return filed by the surviving spouse or the surviving spouse's personal representative.
- (2) A trustee's decision on a matter described in subsection (1)(a) binds all beneficiaries.
 - (3) After making a decision described in subsection (1)(a), a trustee may make compensating adjustments between principal and income in the manner provided by the uniform principal and income act, 2004 PA 159, MCL 555.501 to 555.1005.

H. Environmental Liabilities

MCL 700.7818 Specific powers of trustee; environmental matters

Sec. 7818.

- (1) In connection with an environmental concern or hazard, a trustee may do any of the following:
 - (a) Inspect property or the operation of a business activity on property, including property held in or operated by a sole proprietorship, partnership, corporation, or limited liability company or any other type of entity, for the purpose of determining compliance with environmental law affecting the property and to respond to an actual or threatened violation of an environmental law affecting property held or tendered to the trustee.
 - (b) Take action necessary to prevent, abate, or otherwise remedy an actual or threatened violation of an environmental law affecting property held by the trustee, either before or after a governmental body initiates an enforcement action.
 - (c) Refuse to accept property in trust if the trustee determines that the property to be transferred to the trust either is or may be contaminated by a hazardous substance or has been or is being used for an activity directly or indirectly involving a hazardous substance that could result in liability to the trust or otherwise impair the value of the trust property.
 - (d) Settle or compromise at any time a claim against the trust that a governmental body or private party may assert involving the alleged violation of an environmental law affecting property held in the trust.
 - (e) Disclaim a power granted by a document, statute, or rule of law that, in the sole discretion of the trustee, may cause the trustee to incur personal liability

under an environmental law.

- (f) Decline to serve or resign as a trustee if the trustee reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of a potential claim or liability that may be asserted against the trustee on the trust's behalf because of the type or condition of property held in trust.
 - (g) Appoint an independent special trustee to hold title to, and take a reasonably required action, as provided in this section, relating to environmental law in regard to, property tendered to the trust, until the time that the trustee determines that no substantial risk exists if the tendered property becomes part of the trust property or abandons the tendered property.
 - (h) Charge the cost of an inspection, review, abatement, response, cleanup, settlement of claim, or remedial action authorized by this section against the trust property.
- (2) A trustee is not personally liable to a trust beneficiary or other party for a decrease in value of trust property by reason of the trustee's compliance with an environmental law, specifically including a reporting requirement under that law. The trustee's acceptance of property or failure to inspect property or a business operation does not create an inference that there is or may be liability under an environmental law with respect to the property or business operation. The authority granted by this section is solely to facilitate the administration and protection of trust property and is not to impose greater responsibility or liability on the trustee than imposed by law absent this section.

I. Discretion

MCL 700.7815

Discretionary trusts; no beneficiary rights; trustees, abuse of discretion, acts constituting; rules for exercise of powers; limited or prohibited powers; exceptions

Sec. 7815.

- (1) A beneficiary of a discretionary trust provision as described in section 7505 has no property right in a trust interest that is subject to a discretionary trust provision, and has no right to any amount of trust income or principal that may be distributed only in the exercise of the trustee's discretion. However, except as provided in subsection (2) and notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as “absolute”, “sole”, or “uncontrolled”, a trustee abuses the trustee's discretion in exercising or failing to exercise a discretionary power if the trustee does any of the following:
 - (a) Acts dishonestly.

- (b) Acts with an improper motive, even though not a dishonest motive.
 - (c) Fails to exercise the trustee's judgment in accordance with the terms and purposes of the trust.
- (2) Unless the trust instrument expressly provides otherwise, a trustee is not liable to a beneficiary for failure to exercise the power described in section 7820a or the power described in section 5a of the powers of appointment act of 1967, 1967 PA 224, MCL 556.115a.
- (3) Subject to subsection (5), the following rules apply to a trustee's exercise of a power unless the terms of the trust expressly indicate that the rule does not apply:
- (a) A person other than a settlor who is a trust beneficiary and trustee of a trust that confers on the trustee a power to make distributions pursuant to a discretionary trust provision to or for the trustee's benefit may exercise the power only in accordance with an ascertainable standard.
 - (b) A trustee may not exercise a power to make distributions pursuant to a discretionary trust provision in a manner to satisfy a legal obligation of support that the trustee personally owes another person.
- (4) A power whose exercise is limited or prohibited by subsection (3) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.
- (5) Subsection (3) does not apply to any of the following:
- (a) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the internal revenue code, 26 USC 2056 and 2523, was previously allowed.
 - (b) Any trust during any period that the trust may be revoked or amended by its settlor.
 - (c) A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the internal revenue code, 26 USC 2503.

J. Possible Liability of Trustees

Part 9 of the Michigan Trust Code sets forth the liability of trustees and the rights of persons dealing with a trustee.

MCL 700.7901: Breach of trust; remedies of courts for breach of trust

Sec. 7901.

- (1) A violation by a trustee of a duty the trustee owes to a trust beneficiary is a breach of trust.
- (2) To remedy a breach of trust that has occurred or may occur, the court may do any of the following:
 - (a) Compel the trustee to perform the trustee's duties.
 - (b) Enjoin the trustee from committing a breach of trust.
 - (c) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means.
 - (d) Order a trustee to account.
 - (e) Appoint a special fiduciary to take possession of the trust property and administer the trust.
 - (f) Suspend the trustee.
 - (g) Remove the trustee as provided in section 7706.
 - (h) Reduce or deny compensation to the trustee.
 - (i) Subject to section 7912, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds.
 - (j) Order any other appropriate relief.

A trustee can be ordered to pay damages for breach of trust.

MCL 700.7902: Damages for breach of trust

Sec. 7902. A trustee who commits a breach of trust is liable to the trust beneficiaries affected for whichever of the following is larger:

- (a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred.
- (b) The profit the trustee made by reason of the breach.

IV. TRUSTEE COMPENSATION AND EXPENSES

A. Trustee compensation MCL 700.7708:

- (1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

- (2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if either of the following apply:
 - (a) The duties of the trustee are substantially different from those contemplated when the trust was created.
 - (b) The compensation specified by the terms of the trust would be unreasonably low or high.
1. Is the trust large enough to support fees?
2. Did you commit to do it without fee?
3. Will beneficiaries be surprised or upset if you charge a fee?
4. How do you determine an appropriate fee?

Keep track of your time and keep good records!

5. What does the trust state about fees?

6. Fees must be reasonable taking into account several factors. See *Comerica Bank v Adrian*, 179 Mich App 712:

“In *In the Matter of Will of McDonald*, 138 Misc. 2d 577, 525 N.Y.S. 2d 503 (1988), reconsideration den 140 Misc.2d 49, 530 N.Y.S.2d 453 (1988), a New York court noted that courts have used the following factors to determine the reasonableness of a testamentary trustee's proposed fee: (1) the size of the trust, (2) the responsibility involved, (3) the character of the work involved, (4) the results achieved, (5) the knowledge, skill, and judgment required and used, (6) the time and the services required, (7) the manner and promptness in performing its duties and responsibilities, (8) any unusual skill or experience of the trustee, (9) the fidelity or disloyalty of the trustee, (10) the amount of risk, (11) the custom in the community for allowances, and (12) any estimate of the trustee of the value of his services. The weight to be given any factor and the determination of reasonable compensation is within the probate court's discretion. In this regard, we note that while time spent is one indicator of value, it may be a poor indicator in some circumstances. *In re Baird Estate, supra*, 137 Mich. App. p. 637, 357 N.W.2d 912. Naturally, the probate court must consider the circumstances of the case in determining which factors are to be given weight. As always, the burden of proof is on the claimant to satisfy the court that services rendered were necessary and that charges therefor are reasonable. *Id.* Again, a claimant's failure to present records concerning his services is usually weighed against him. *Id.*, p. 638, 357 N.W.2d 912. *Comerica Bank v City of Adrian*, 179 Mich App 712, 724; 446 NW2d 553, 559 (1989)

B. Hiring professionals

1. The Trust Code gives you authority to hire MCL 700.7817 (v) & (w):

Sec. 7817. Without limiting the authority conferred by section 7816, a trustee has all of the following powers:...

- (v) To employ, and pay reasonable compensation for services performed by, a person, including an auditor, investment advisor, accountant, appraiser, broker, custodian, rental agent, realtor, or agent, even if the person is associated with the trustee, for the purpose of advising or assisting the trustee in the performance of an administrative duty; to act without independent investigation upon such a person's recommendation; and, instead of acting personally, to employ 1 or more agents to perform an act of administration, whether or not discretionary.
- (w) To employ an attorney to perform necessary legal services or to advise or assist the trustee in the performance of the trustee's administrative duties, even if the attorney is associated with the trustee, and to act without independent investigation upon the attorney's recommendation. An attorney employed under this subdivision shall receive reasonable compensation for his or her employment.

V. COURT INTERVENTION

A. I thought one of the major benefits of Trusts is to avoid Court involvement?

Yes, that is true but if necessary, the court may intervene is requested. While many and perhaps most trust are administered without court intervention, the truth is the courts are often involved in trust disputes over validity, interpretation and claims of breach of duty by trustees.

B. Court involvement pursuant to the Michigan Trust Code

Court involvement is how the Michigan Trust Code is enforced.

MCL 700.7201

700.7201. Intervention in trust administration; continuing judicial supervision; scope of proceeding involving trust

Sec. 7201.

- (1) A court of this state may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.
- (2) A trust is not subject to continuing judicial supervision unless ordered by the court. Registration of a trust or another proceeding concerning a trust does not result in continuing judicial supervision unless ordered by the court. Subject to court jurisdiction as invoked by an interested person or as otherwise exercised as provided by law, the management and distribution of a trust estate, submission of an account or report to beneficiaries, payment of a trustee's fees and other trust obligations, acceptance and change of trusteeship, and any other aspect of trust

administration shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention, and without court order or approval or other court action.

- (3) A proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and a determination regarding the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do any of the following:
- (a) Appoint or remove a trustee.
 - (b) Review the fees of a trustee.
 - (c) Require, hear, and settle interim or final accounts.
 - (d) Ascertain beneficiaries.
 - (e) Determine a question that arises in the administration or distribution of a trust, including a question of construction of a trust.
 - (f) Instruct a trustee and determine relative to a trustee the existence or nonexistence of an immunity, power, privilege, duty, or right.
 - (g) Release registration of a trust.
 - (h) Determine an action or proceeding that involves settlement of an irrevocable trust.

C. When does a Trustee want involvement of the Court?

1. To protect yourself and gain the imprimatur or “blessing” of the court through orders.
2. To decide difficult questions.
3. To litigate when necessary.
4. To avoid claims that you have breached your duty as trustee.

VI. CONCLUSIONS

A. Don't decide lightly

Acting as a trustee can be rewarding, but it is a job to be done, not an honor to be taken lightly. If you believe you have the right skills and are willing to do the work required, by all means, accept the nomination. However, you should “get all the facts” before you file an acceptance of trust or

begin to act as trustee.

B. Hire the needed experts.

Very few people are qualified to act as trustee without other professionals assisting. Make sure that the trust has assets that will allow you to hire the help you need to administer the trust properly.

C. Acting as a trustee: Boon or Burden?

You can be sure it will be a burden in the sense that there is work to be done, and the obligations and duties may present problems of liability and may be a challenge to personal relationships. There can be rewards both financial and personal, if handled properly. Make sure you investigate and make an informed decision. Acting as a trustee can be both a boon and a burden, but you can be sure that acting as a trustee will be a burden at a minimum.

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