

# What does a Trustee do?

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Your estate plan may include several different trusts. The reason is that various types of trusts can accomplish a myriad of estate planning goals. Accordingly, it's critical to understand the role of a Trustee.

## The Trustee's duties

The Trustee is the person who has legal responsibility for administering the trust on behalf of the interested parties. Depending on the trust terms, this authority may be broad or limited.

Generally, a Trustee must meet fiduciary duties to the beneficiaries of the trust. He or she must manage the trust prudently and treat all beneficiaries fairly and impartially.

This can be more difficult than it sounds because beneficiaries may have competing interests. For example, under a trust's terms, a spouse in a second marriage may be entitled to annual income while the children of the deceased's first marriage are entitled to the remainder. The Trustee must balance out their needs when making investment decisions.

In some instances, the Trustee is granted the discretion to distribute or withhold the distribution of trust funds. For example, this discretionary power may be intended to protect assets from the beneficiary's creditors or safeguard funds until the beneficiary reaches a certain age. The Trustee in such a discretionary trust should be sympathetic to the intent of the trust and legitimate needs of the beneficiary.

The decision about naming a Trustee is similar to the dilemma of choosing an executor. The responsibilities require great attention to detail, financial acumen and dedication. Because of the heavy reliance on investment expertise, choosing a professional over a family member or friend is generally recommended. At the very least, make it clear to the Trustee that he or she may — and should — rely on professionals as appropriate.

## Reasons for choosing an alternate

It's not enough to designate someone as Trustee. It's absolutely essential to also designate a "successor" (or an "alternate") in the event that your top choice is unable or unwilling to fulfill the responsibilities. For instance, what happens if your Trustee predeceases you? Or what if your designated Trustee declines to accept the position or subsequently resigns if permission is allowed by the trust or permitted by a court? This further accentuates the need to name backups for this important position.

Without a named successor, the probate court will appoint one for the estate. For a Trustee, the trust will often outline procedures to follow. As a last resort, a court will appoint someone else to do the job.

Practical suggestion: Choose the "next best" person to step in. Make sure that he or she is on board with your decision. Similar to the discussion about naming a power of attorney, consider whether you should name a professional as a backup. Please contact us with questions.

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