

Two Ways to Stay Out of Trouble As a Trustee

The simple ways to stay out of trouble are (1) know what the trust documents say and (2) follow the terms and conditions of the trust. This assumes the trust was prepared by a Louisiana attorney whose practice includes estate planning. The difficulties many trustees encounter involve understanding the legal terminology and the appropriate ways to follow the terms of the trust. The following information applies to individuals who are appointed Trustee in a will which creates a trust effective at the testator's death.

Key components of a will with a trust.

The Testator- person writing the will with trust provisions. The Trustee- the person who will administer the trust during its term. Principal- the original amount of money/assets put into the trust. Income- the amount of money earned on the principal. Income Beneficiary- the individual who will receive income from the trust. Principal Beneficiary- the individual who will receive the principal from the trust.

If an individual is an income beneficiary only, the trustee cannot invade the principal of the trust. He cannot disperse any of the money/assets originally placed in the trust to the income beneficiary. Likewise, if an individual is a principal beneficiary only, the trustee cannot invade (remove from the trust) the principal before the date when the trust ends for the income beneficiary. If an individual is both the income and principal beneficiary, the trust can provide for income only until the date ending the trust at which time the principal will be dispersed.

Louisiana law describes the duties of the trustee to the beneficiary. A violation of his duties is a breach of his trust and can be grounds for legal action by the beneficiaries. La. Rev. Stat. 9:2081. A trustee must administer the trust solely in the interest of the beneficiary. When there is more than one beneficiary, a trustee must administer the trust impartially, based on what is fair and reasonable to all the beneficiaries unless the trust instrument gives him authority to favor one beneficiary over another. La. Rev. Stat. 9:2082. A trustee is under a duty to a beneficiary to keep and render clear and accurate accounts of the administered trust. The trustee must give the beneficiary or his legal representative a clear and accurate accounting at least once a year. Failure to provide the yearly accounting is probably the biggest mistake trustees make. A trustee must administer the trust as a prudent person would. In satisfying this standard, the trustee must exercise reasonable care and skill, considering the purposes, terms, distribution requirements and other circumstances of the trust.

La. Rev. Stat. 9:2090.

A trustee must act in good faith toward his beneficiary in carrying out the purposes for which the trust was created. The trustee is to exhibit undivided loyalty to the beneficiary. If a trustee violates his fiduciary duty of good faith and impartiality, the beneficiary of a trust may institute an action to compel a trustee to perform his duties as trustee, to enjoin a trustee from committing a breach of his trust, to compel a trustee to redress a breach of trust or to remove a trustee. La. Rev. Stat. 9:2221.

Additionally, a trustee who commits a breach of trust shall be chargeable with (1) A loss or depreciation in value of the trust estate resulting from a breach of trust, (2) A profit made by him through breach of trust, or (3) A profit that would have accrued to the trust estate if there had been no breach of trust. La. Rev. Stat. 9:2201.

In conjunction with the trustee's fiduciary duty to act in good faith with impartiality and honestly, and in accordance with the terms and conditions of the trust, the following three examples represent the good, the bad, and the ugly:

EXAMPLE NO.1:

The testator prepares a will with a testamentary trust where the spouse is the income beneficiary only for life. The children are the principal beneficiaries. The trustee in accordance with the trust qualifies as trustee and receives a Federal Identification No. for the trust. The trustee sets up the trust. The trustee invests the assets of the trust and pays the income to the income beneficiary during the spouse's life. During this period the trustee provides a yearly accounting to the income and principal beneficiaries. At the death of the spouse the principal of the trust is distributed to the principal beneficiaries as provided in the trust agreement. The good trustee.

EXAMPLE NO.2:

The testator prepares a will with a testamentary trust where the spouse is the income beneficiary only for life. The children are the principal beneficiaries. The trustee for the trust qualifies as the trustee and secures a Federal Identification No. for the trust and sets up the trust. The trustee invests the assets of the trust and pays the income to the income beneficiary during the spouse's life. So far, this trustee's actions are correct. However, the trustee makes distributions of the principal to the principal beneficiaries in violation of the trust agreement. At the spouse's death, the trustee distributes the remainder of the trust assets to the principal beneficiaries. The trustee does not provide annual accountings to the beneficiaries. The bad trustee.

EXAMPLE NO. 3:

The testator prepares a will with a testamentary trust where a minor grandchild is the income beneficiary until age 25, at which time he is to receive the principal as he is also the principal beneficiary. The trustee qualifies as the trustee and the attorney secures a Federal Identification No. for the trustee for the trust, all of which actions are correct. However, the trustee does not setup the trust account as instructed by the attorney. The trustee purchases Certificates of Deposit in his own personal name and does not pay all of the income or principal to the income beneficiary and principal beneficiary. No accounting is given to the income beneficiary or his legal representative. The trustee distributes the balance of the assets to the grandchild when he reaches the age of 25 years. The ugly trustee.

Trustee No. 1 has done everything right and is to be congratulated. Trustee No. 2 has breached the terms of the trust agreement and is subject to having the beneficiary institute an action under La. Rev. Stat. 9:2221 discussed above. Trustee No. 3 has done everything wrong and is subject to La. Rev. Stat. 9:2221. Additionally, Trustee No. 3 will be chargeable with any loss or depreciation in value of the trust estate, any profit made by the trustee or profit not made by the trust. La. Rev. Stat. 9:2201.

In conclusion, the trustee must act in accordance with the provisions of the trust instrument. A trustee must act in good faith in his dealings with the beneficiary and in carrying out the purposes for which the trust was created. The trustee must administer the trust solely in the interest of the beneficiary. The trustee owes the beneficiary the fundamental duties of loyalty, fairness, and impartiality in the administration of the trust on behalf of and for the account of the beneficiary.