

Fiduciaries in Estate Matters: Who do you Trust? (Pt. II)

Part 2 of Our Series Where We Review the Key Players in an Estate Plan.

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Source: Saiber Estate Planning Alert

In the last alert, we reviewed the responsibilities of an executor. In this next introductory review, we will discuss the role of a trustee.

Before we define the role of a trustee, we must explain the definition of a trust first. A trust is an arrangement where a person (or entity) becomes the owner of another's assets for the benefit of others (the beneficiaries).

The trustee is the person or entity that takes ownership and control of the trust assets. Like the executor, the trustee holds a fiduciary relationship with others. A fiduciary is a person or entity whose duty is to act in a way that will benefit someone else financially. Most often, in the estate planning context, the trustee is nominated by either a stand-alone trust agreement or by a provision in a Last Will and Testament. This controlling document explains the settlor's intent for the assets placed into trust and instructs the trustee how to manage the trust. Notably, the individual who creates the trust nominates a trustee, but the position is not accepted until that person consents. In other words, someone cannot make you a trustee without you agreeing to take on the job. Acceptance of a trusteeship imparts a duty on the trustee to the trust beneficiaries and the trust assets. The trustee becomes the legal owner of the trust assets, and has the responsibility to manage the trust according to the terms of the document. The trustee must administer the trust with care and diligence. The trustee will also have an obligation to provide information and maintain records of the trust and has the duties of impartiality, loyalty, confidentiality, a duty to avoid conflicts of interest, a duty to defend claims against the trust and a duty to appropriately and prudently invest the trust assets. The trustee's fundamental role is to make appropriate and timely distribution to the trust beneficiaries pursuant to the terms set forth in the trust.

We advise our clients to choose a trustee who is trustworthy, has a business sense or knows when to seek the help of knowledgeable professionals, and has the time and skills to attend to the job. For those considering accepting a trusteeship, we counsel clients to consider that a trusteeship involves significant responsibility, time and accountability to others.

Should you have any questions about establishing a Trust, please contact Mary Joan Kennedy of Saiber LLC's Estate Planning & Administration practice group.

Last alert: [The Executor](#)

Next alert: The Guardian