

The Duties and Liabilities of Trustees

1. The Trustees are subject to liabilities for any loss that may flow from their failure to act properly. They have to bear the burdens of ownership. They must see to the expenses of ownership and may become liable for such things as breach of contract and tort. Their liability is absolute.
2. The Trustees must comply with the general law of trusts and the applicable regulations. It means that the trustees must administer a pension plan in accordance with, and must ensure the plan's contractual provisions comply with applicable pension legislation and the Income Tax Act and Regulations. They should be aware of the general nature of their obligations.
3. The Trustees must be familiar with all trust documents and adhere to the terms of the trust. New trustees should take reasonable steps to verify that there have been no prior breaches of trust.
4. It is a primary duty of the trustees to participate in the administration of the trust. If there is more than one trustee they should act unanimously, unless there are provisions to act by majority vote. In case of a breach of trust the passive trustee cannot seek defense in pleading that he or she did not take part in the decision that led to the breach. A failure to act is in itself a breach of trust.
5. A general rule is that the trustees should administer the trust personally and not delegate. It is in itself a breach of trust to delegate to others, and if any loss flows from an improper delegation the trustees are liable for the loss. Exceptions are employees of the trustees, independent contractors retained to give advice or assist, or finally agents contracted by the trustees.
 - Trustees may, (under certain circumstances must), seek advice from third parties, but must weigh the advice themselves before any action is taken or decisions are made.
 - May assign third parties administrative tasks.
 - Decision making should be undertaken by the trustees themselves but if the terms of the trust permit, trustees may delegate certain decisions, within those terms.
 - Trustees are obligated to select and supervise the third parties with reasonable care.

6. Under the terms of the trust agreement trustees may be required to act or refrain from acting in a specified way. However, the trustees should use their power to act like any prudent person when dealing with the property of another person. If they fail to do so, they will be liable for any consequential loss suffered by the trust. Their liability is not exculpated by pleading that they lack expertise in relation to the matter out of which the breach arose.
7. Trustees owe a duty of loyalty to the trust. They must act honestly and in good faith, ignore irrelevant matters and finally act solely for the benefit of the trust regardless of personal views and interests. The trustees may not only be unaware of the conflict, but in fact honestly believe that what is being done is for the benefit of the trust, and still be liable if a court finds there is a conflict. The conflict of duty and interest exists not only if there is an actual conflict on the facts, but also if the possibility of there being a conflict is extremely remote.
8. Trustees should act impartially between the beneficiaries ensuring that they receive all the benefits they are entitled to as expressed in the terms of the trust. However, trustees may exercise discretion in certain situations if justified by the trust and general law.
9. Trustees have a duty to ensure that the plan receives all the monies it is entitled to, and must warn beneficiaries of any risk due to cessation or reduction of contributions.
10. Trustees have a duty to safeguard and invest trust assets. They must act in the best interest of the beneficiaries, as a prudent person, without undue risk of loss and with a reasonable expectation of return.
11. Trustees are required to draw up, and review at least annually, a statement of investment policies and procedures. This should be done by the trustees personally, advice may be sought, but all decisions in the end are theirs. Trustees may use the services of an investment advisor but are required to provide a certain level of supervision. If beneficiaries are given erroneous or incomplete information about the plan, and the beneficiaries rely on that information to their detriment, the trustees may be held liable to the beneficiaries for negligence or misrepresentation.
12. If the breach of trust results in a loss to the trust, the trustee will be liable to make good the loss. If the trustee makes a personal profit as a result of the breach, the trustee may be required to account to the trust for the profit, or to hold any specific property acquired as a result of the breach of constructive trust..