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SO NOW YOU ARE A TRUSTEE

Under some type of Trust Agreement, you were named as the Trustee and have accepted the appointment. The title “Trustee” usually invokes a sense of great responsibility and importance—and it should! In addition to carrying out the instructions in the Trust Agreement, Trustees are usually responsible for managing, preserving, and administering someone else’s assets for the benefit of the named beneficiaries.

Trust Agreements generally provide the Trustee with guidelines related to the scope and duration of their authority, how assets are to be managed and distributed, and when and how to work with the beneficiaries. While direction may be provided to the Trustee, Trust Agreements can often be complicated and may even have ambiguous or conflicting terms. Therefore, many Trustees (even professional Trustees) consult with an attorney to ensure they carry out their duties correctly in order to protect themselves and effectuate the intent of the Trustmaker.

Under Colorado law, a Trustee is deemed to be a fiduciary, and as such, held to a very high standard of care. A Trustee is accountable to the beneficiaries and in some cases a Court, and is expected to act prudently and in the best interests of the beneficiaries at all times. A Trusteeship can involve a variety of duties, situations, and parties, and some common examples include managing the financial affairs of an elderly person, running a business, or managing property for a disabled individual.

This pamphlet is intended to give general information to Trustees and is not intended to be legal advice specific to your situation. If you have questions beyond the scope of this pamphlet, you are strongly encouraged to consult with an attorney.

A Trustee’s Authority

A Trustee’s authority is granted by the Trustmaker in a Trust Agreement. It is important that, even before accepting the Trusteeship, that you thoroughly review the Trust Agreement and understand the responsibilities you would be charged with. In addition, you should understand the duration of your authority, and should clearly understand what you can and cannot do as the Trustee. Your

The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibility vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

Trusteeship may last indefinitely, terminate upon the happening of some specified event, or end because the Trust's assets are completely depleted.

A Trustee's Duties

Ethical Duties

Generally speaking, a trustee has three kinds of ethical duties to the trust and its beneficiaries:

1. A duty of impartiality (not to favor the interest of one party over another);
2. A duty of undivided loyalty (not to put your own interest in conflict with those of the trust); and
3. A duty to administer the trust with care and prudence.

A Trustee must always act to further the interests of the Trust and the beneficiaries. He or she should not enter into transactions in which he or she will benefit at the expense of the Trust and beneficiaries. In addition, even if a transaction is fair and in the best interests of the Trust and beneficiaries, the Trustee should avoid all self-dealings. Finally, a Trustee must keep the Trust's assets separate from his or her own property, and the Trust's assets must be readily indefinable.

While the Trustee is ultimately accountable and unless otherwise specified in the Trust Agreement, he or she may employ the use of professionals and other agents in order to administer the Trust. Some Trust Agreements may call for Co-Trustees, but each remains equally responsible, and must report any misconduct by a Co-Trustee as it would be against the best interest of the Trust and the beneficiaries.

Administrative Duties

In addition to the ethical duties above, a Trustee has many administrative duties. Such duties include:

- *Trust Registration Statement*—A Trustee must register the Trust with the Probate Court in the county where the Trust is being administered. Generally, a Trust Registration Statement must be filed within 30 days of the Trust's creation. There are penalties for failure to register a Trust. Trust Registration Statements must be amended or updated whenever there is a change of Trustee or of the place of administration. The Trust Registration Statement must be sent to all beneficiaries, and the purpose of it is to advise the beneficiaries of their interest in the Trust and to inform them of the County and Court that has jurisdiction over any disputes related to the Trust. While registration of the Trust is required, a Court generally does not have ongoing involvement in the administration of the trust (unless the Trust Agreement requires it).
- *Information to Beneficiaries*—Unless the Trust Agreement provides otherwise, a Trustee must provide information (including the Trust Agreement and asset information) to the beneficiaries upon reasonable request.
- *Accounting*—A Trustee must set up and keep complete financial records. A Trust Agreement generally provides provisions stating when accountings to the beneficiaries are to be provided, but if not, the Trustee must account the beneficiaries at least annually. The accounting should reflect in detail all income, disbursements, and liabilities, and should show the opening and closing balances for all accounts for the accounting period.
- *Income Taxes*—Most Trusts will have a distinctive Tax Identification Number ("TIN") and will be required to file annual state and federal income tax returns.

- *Trust Asset Management and Growth*—A Trustee must keep the Trust’s assets invested, and will be held to a higher standard of care than if he or she were investing their own funds. Colorado law requires Trustees to follow the “prudent investor rule,” meaning that the Trustee must invest as a prudent person would in a similar situation. In effect, the prudent investor rule generally means that the Trustee will diversify the investments, balance the need for income versus long-term principal growth, not make risky investments, and continue to reevaluate and consider new advice on an ongoing basis.
- *Distributions to Beneficiaries*—A Trustee is often required in the Trust Agreement to make distributions to beneficiaries. The terms under which distributions must or may be made can differ greatly from Trust Agreement to Trust Agreement. Distributions may be mandatory for the beneficiary’s health, education, and maintenance, or they may be made in the Trustee’s discretion for whatever the Trustee deems to be in the best interest of the beneficiary. Under certain circumstances a Trustee may be personally liable for improper distributions, and may be compelled by a Court to make a distribution at the beneficiary’s request.

A Trustee’s Personal Liability

A Trustee may be personally liable to the beneficiaries for any loss or gain to the trust estate if the Trustee:

- Failed, for any reason, to exercise the care and skill of a person of ordinary prudence in managing the property of another;
- Negligently or intentionally did something they ought not to have done; and/or
- Negligently or intentionally failed to do something they ought to have done.

In certain situations, a Trustee may be personally liable even though their improper actions were not intentional or negligent. For that reason, many Trustees secure Errors and Omissions insurance.

Compensation and Expenses

A Trustee is generally entitled to reasonable compensation and reimbursement of expenses from the Trust’s assets. Reasonable compensation is determined on a case-by-case basis, and good record keeping and accounting is absolutely necessary. Any compensation is considered income to the Trustee, and as such, is generally taken as a tax deduction by the Trust and is claimed as income by the Trustee. A Trustee will likely incur expenses related to the administration of the Trust in addition to their own fee, and may hire professionals, including an attorney, to advise them as a Trustee.

Word Of Caution

These guidelines cannot tell you everything you need to know about being a Trustee, and are simply intended to alert you to your duties and responsibilities as a Trustee. Given the very serious risks of personal liability, if you are uncertain about any of your responsibilities, rights, or powers as a Trustee, you are strongly encouraged to consult with an attorney. It is often less complicated and expensive to get advice to prevent a problem than it is to defend a problem later.

This pamphlet is published as a public service by the Colorado Bar Association (www.cobar.org). It was updated Casey L. Williams in 2010. Its purpose is to inform citizens of their legal rights and obligations and to provide information regarding the legal profession and how it may best serve the community. Changes may have occurred in the law since the time of publication. Before relying on this information, consult an attorney about your individual case.