

MyTrustCo.com Trustee Checklist Notes

First Year

1. **Obtain a copy of the Trust Agreement, and any related legal documents** (e.g. Appointment of Trustee, Court Order, etc.). Review the Trust to be sure you understand its purpose, your rights and entitlements, the Trustee's powers and limitations, and the event that will terminate the Trust.
2. **Obtain Trustee (and Advisors, e.g. Investment Advisor, Distribution Advisor, Protector, if any) contact information.**
3. **Provide your contact information to the Trustee and Advisors.**
4. **Request initial meeting with the Trustee and Advisors to review:**
 1. The Trust
 2. Your entitlements
 3. How funds will be disbursed
 4. How the assets will be invested
5. **In addition to liquid investments, are their unique assets (e.g. boat, vacation home) held in the Trust which you may use? If so, how will access to those assets work?**
6. **Request to receive copies of the statements for the Trust.**
 - If you are currently entitled to fund from the Trust (whether mandatory payments or in the discretion of the Trustee) most state laws will require you receive statements (also referred to as an "accounting") at least annually.
 - **If you are a future beneficiary**, whose interest begins either at the death of a current beneficiary or at the termination of the Trust, you may not be automatically entitled to regular statements. However, most Trust laws will support your right to request, and to receive, information on the Trust, at least a copy of the Trust Agreement and a statement of assets. The one exception to this rule may be a "Silent Trust", but in that case you should not even know of the Trust's existence until the happening of a predetermined event such as the death of the Settlor, or you reaching a certain age.
 - **Note: as a current or future beneficiary**, the Trustee should be required to "account" to you at a minimum when the Trust Terminates or when the Trustee resigns. The Trustee usually provides some form of summary of the financial activity (this could be a very high level summary of the starting and ending point of the assets or the full detail of all activity) and a "Receipt, Release and Indemnification Agreement" for you to sign which releases the Trustee from any potential liability for their actions.
 - **Remainder beneficiaries:** traditionally you could receive information if you requested it from the Trustee under the theory that your future interest in the Trust would entitle you to go to court and compel the Trustee to account. While that still holds true, many states have adopted a version of the Uniform Principal and Income Act which requires a Trustee to provide you with their contact information and at least an annual statement if you are a "qualified beneficiary". This is typically defined as a remainder beneficiary who would receive assets or an interest in the Trust if it terminated today. It would not apply to remote contingent beneficiaries. A Silent Trust would be an exception to this rule.

7. **Request a meeting.**

Being entitled to benefits from a Trust is a wonderful gift providing financial benefits. The Trustee (and Advisors) should be there to enforce the terms of the Trust which includes seeing you receive all you are entitled to under the Trust. A face to face meeting would be preferred but a conference call would work if the parties are not near each other. This is your opportunity to have any questions answered, to establish some preferred practices (e.g. requesting funds, future meetings), and to get a good relationship established.

8. **Confirm when and how funds will be disbursed to you.**

- **Provide instructions for delivery.** If your right to funds is discretionary provide the Trustee with the information necessary for the Trustee to review the request.
- **Confirm the contact information for the tax preparer** who will send you the information needed for your tax return.
- **It is recommended you keep copies of all correspondence,** tax information and annual statements provided to you.

9. **Understand your role and rights.** If you do not, keep asking for additional information until you do.

10. **Understand the benefits of the Trust, including asset protection for you and your family.** (When the Trustee has discretion to pay funds, creditors should not be able to reach the assets.)

If you are also a Co-Trustee:

- **You will be required to approve all decisions** relating to the management and investment of the Trust (unless the Trust Agreement specifically carves out certain duties to a Co-Trustee or an Advisor).
- **Keep copies of all your correspondence and notes from conversations,** especially those where you exercised your authority as a Co-Trustee regarding investments, distributions, or some other aspect of the administration of the Trust. You may at some point be asked to prove you acted reasonably at the time and in the best interests of the beneficiaries and the Trust.

If you are also an Advisor or Protector:

- **You will have specific duties outlined in the Trust Agreement.** They may be contingent and generally inactive duties (e.g. a Trust Protector whose job is to appoint a new Trustee after a resignation); or they may be current and very active (e.g. an Investment Advisor, or a Distribution Advisor).
- **In either case:**
 - Make sure you understand the full extent of your duties as an advisor, including the implications of not exercising your power or authority.
 - Keep records of all correspondence and decisions, should you ever be called upon to prove you acted reasonably and prudently in the exercise of your power.

Annually:

- **If your Trustee does not reach out to you,** the beginning of the year is a good time to have a conversation about your current situation and your expected needs for the upcoming year. Do you anticipate any additional expenses? Do you expect your family situation to change (births)?
- Confirm receipt of any tax information you will need for your personal return.
- **Address change:** ensure the Trustee, Advisors and tax preparer have your new contact information.
- **Ask to schedule meetings or conference calls** as frequently as you are comfortable (e.g. monthly, quarterly). Information about the Trust is your right and the Trustee's obligation.
- Keep copies of all documentation, including notes from meetings.

- **Question anything you don't understand.** You have a right to information and to having all reasonable questions answered by the Trustee. If it comes to a conflict, a court should compel the Trustee to provide information about their administration of the Trust.
- **Once you understand the Trust and your rights,** you can make educated requests for funds or additional information.
- **If you are also an Advisor:** then at least annually you should review the investments and needs of all the beneficiaries with the Trustees and any other Advisors. Keep records of the discussion and decisions.

Termination of the Trust

Confirm the termination event with the Trustee.

- This could be the passing of one of the current beneficiaries (know as a "measuring life"); your attaining an age set forth in the Trust Agreement (e.g. 35 years old); or, less frequently, at the discretion of the Trustee.
- Note: in some Trusts there are partial terminations (also known as "step offs") where a percentage of the Trust may be paid outright at certain ages (e.g. one third at age 30; one half of the balance at age 35; and the balance at age 40). The termination process for a full or partial termination is essentially the same.

Confirm what happens next according to the Trust Agreement. Ask for an explanation of the necessary steps to complete the termination and an estimated time for completion. You should receive the following:

1. Request for instructions on how to delivery your share of the Trust which may also include an opportunity for you to request to receive the net share of the current investments or the net proceed upon sale;
2. A "Receipt, Release and Refunding Agreement" which relieves the Trustee from liability, acknowledges receipt of the assets and where you promise to refund any over distribution of assets
3. Some form of final accounting.
4. You will be asked to sign and return the Release Agreement before you receive your share of the Trust.

If you are given a Power to Appoint funds of the Trust outright or in further Trust, consider doing so effectively and generously so more generations of beneficiaries can share the "wealth". First consult with you estate planning attorney and/or tax advisor to coordinate with your existing estate plan and judge the potential tax impact, if any.