How a Trustee Should Handle an Unhappy Beneficiary

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The trustee of a trust is responsible for managing trust assets in the sole interest of its beneficiaries. The trustee stands in a special relationship of fiduciary responsibility to the grantor of the trust and to the beneficiaries. Where the beneficiaries’ expectations are in line both with the trust’s terms and the law, there should be few headaches for the trustee who is doing his or her job.

But problems arise when beneficiaries with unreasonable expectations start making demands that would compel a trustee to act contrary to the terms of the trust and/or the law. A similar issue arises where the beneficiaries have good faith (but ultimately incorrect) beliefs that the trustee is doing something wrong. Both of these scenarios can create an unhappy beneficiary and a potential legal mess.

The probate and estate litigation attorneys of Rosen Hagood offer some practical advice for trustees who are dealing with dissatisfied beneficiaries.

Don’t Wait Until the Beneficiaries Become Unhappy

Before your beneficiaries have the chance to become unhappy, be proactive. Here are a few steps to minimize the likelihood that you will have to contend with a disgruntled beneficiary:

Initiate early contact with the beneficiaries.

Get in touch with the beneficiaries relatively soon after you’ve either been named a trustee of a trust or, at the latest, after the death of the settlor. Be aware that after you accept a trusteeship or begin administering the trust, you have 90 days to provide certain information to beneficiaries.

Call a meeting.

Organizing a meeting with the beneficiaries is a great way to explain both the process of administering the trust and the trustee’s role in doing so. You can answer beneficiaries’ questions and build a relationship with them in the process.

Know what your duties are.

Don’t wait to find out what the trust says or what your responsibilities are. It is critical that the trustee read and understand the entire trust instrument. A trustee’s duties may be specified in the governing instrument or may be explicit or implicit in applicable state and federal law. A knowledgeable probate attorney can help answer any questions you may have.

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Engage competent professionals when appropriate.

Generally, a trustee has a duty not to delegate to others the performance of any acts the trustee can reasonably be expected to perform personally, particularly those acts involving the exercise of judgment or discretion. However, the trustee may employ agents, such as attorneys, accountants, and investment advisors, to advise or assist in the performance of administrative duties.

Be available and a good communicator.

Various provisions of the South Carolina probate laws require trustees to provide certain reports and updates to beneficiaries at least annually or on a periodic basis, including information about the assets of the trust and the trust's investment performance. The trustee may also be required to furnish other information to beneficiaries upon request. The trustee of a trust should be mindful of these obligations and endeavor to provide regular and timely updates to the beneficiaries as well as respond to requests for information from the beneficiaries. A lack of communication skills or a reluctance of the trustee to be available to the beneficiaries may cause problems.

What To Do if the Beneficiary Is Unhappy

But let's assume the above steps failed to satisfy the beneficiary. Here are a few things to do:

Keep a record of all communications.

Save your emails, keep your phone records, and make a list of the times you've contacted beneficiaries (or they've contacted you). Importantly, make a note of who initiated each communication. For phone calls or in-person meetings, you may wish to add details to your personal notes such as the length of the conversation and general matters discussed.

Document the distribution of trust assets to a beneficiary.

You should be doing this with respect to all beneficiaries anyway, but double check that you are maintaining a record of all distributions to the unhappy ones. It may be a good idea to request a receipt from the beneficiary for certain distributions. In any event, make sure to document each time there is a distribution of trust assets to a beneficiary.

Make a checklist of your duties.

As you administer the trust, you need to check off everything you've accomplished so you know exactly where you are in the process. This way, you can provide a ready answer to the inevitable beneficiary question of, "How close are we to finishing this?" This is also a great way to stay on top of your reporting duties.

Document all compensation.

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Trustee compensation is a subject which can breed suspicion or make an already unhappy beneficiary that much more irritated. Some trusts specify the compensation that a trustee of a trust may receive. Where the trust is silent on this, South Carolina probate laws allow for compensation that is "reasonable under the circumstances." Whichever standard applies to you, keep a record of your compensation.

Be careful to preserve privileges.

A trustee's communications with his or her lawyer involving advice on matters of trust administration are considered to be privileged and do not need to be shared with the beneficiaries. Indeed, the sharing of such privileged communications with the beneficiaries may cause a waiver or loss of privilege. Be careful not to forward or share otherwise privileged emails, correspondence, and communications with the beneficiaries.

Let an attorney help.

If you're being accused of misconduct, or there are matters you simply cannot address on your own, it's time to retain legal counsel. The probate and estate litigation attorneys of Rosen Hagood regularly assist trustees with administration issues and defend trustees who are accused of violating their fiduciary duties.

Are you dealing with an unhappy beneficiary? We can help. Give Rosen Hagood a call today.

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