

LEGAL UPDATES

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Administering Irrevocable Trusts – A Checklist for Trustees

A friend, family member, or client has just created an irrevocable trust naming you as the trustee, and you may be asking yourself, “What do I do now?”

Serving as a trustee comes with a lot of responsibility. Here are a few fundamental steps to ensure the proper administration of an irrevocable trust.

1. Obtain a Copy of the Trust

The first and most important step of administering an irrevocable trust is to obtain a copy of the trust and any associated documents prepared by the grantor (i.e., creator) of the trust. Determining the trust’s terms is critical in the management, administration, and distribution of the trust assets.

2. Determine the Beneficiaries

Upon obtaining a copy of the trust, you should determine who the beneficiaries are. As trustee, you owe a fiduciary duty to these beneficiaries. A careful reading of the trust agreement is necessary to understand the scope of your fiduciary duties, which might extend to both current and future beneficiaries. If, for example, the grantor created a trust for the benefit of his or her spouse and descendants, then you could owe a duty to the grantor’s descendants, including those who are not yet born, such as future children or grandchildren. Alternatively, your fiduciary duties may be limited to certain named beneficiaries.

3. Review the Assets

Another critical step in the administration process is determining the assets owned or to be owned by the trust. This could be as simple as reviewing account statements for marketable securities, or if the assets are a closely held

business or other hard-to-value property, you may need to have the property appraised periodically.

If any asset to be held in the trust is a life insurance policy, you should obtain a Form 712, Life Insurance Statement to determine the value of the policy at the time the policy is transferred to the trust.

4. Consider the Distribution Patterns

In addition to determining the beneficiaries, you should also review the terms of the trust to understand how you can distribute the trust assets to the beneficiaries. Some trusts specify that distributions must be made in accordance with a certain ascertainable standard. For example, the terms of the trust might allow you to make distributions for the beneficiary's health, education, maintenance, and/or support. Alternatively, you could have absolute discretion to distribute income and principal to the beneficiaries as you see fit. In addition, be on the lookout for distribution triggers. This can take many different forms, such as a requirement to make monthly or annual distributions upon the beneficiary attaining a certain age. Be sure to read the trust carefully to ensure that all distributions are in compliance with the trust terms.

5. Obtain a Tax ID for the Trust

If the trust is a grantor trust for income tax purposes, then the trust's tax ID number may be the grantor's Social Security number. However, if the trust is a non-grantor trust for income tax purposes (or later becomes a non-grantor trust), then you should obtain a separate employer identification number ("EIN") for the trust. This type of irrevocable trust is considered a separate legal entity and consequently, it will require a unique EIN. Additionally, if the trust divides into separate trusts for the beneficiaries, then each separate trust will need its own EIN.

6. Open a Trust Bank Account

Once you have obtained an EIN for the trust, you will be able to open a bank account for the trust. The trust account should be titled as follows: [Name of Trustee], as trustee of the [Name of Trust] Dated [Date of Trust]. You will need the following information in order to open a trust bank account: name of the trust; date of execution of the trust; tax ID for the trust; and a copy of the trust and/or a trust certificate summarizing the terms of the trust. If the grantor is deceased, you may also need to provide a copy of the death certificate.

7. Keep up with Life Insurance Premiums

For an irrevocable trust that owns a life insurance policy, you should make sure that the trust has sufficient cash on hand to make the insurance premium payments. All premium payments must be made from the trust account, not the grantor's personal account. Often grantors will make annual

contributions to the trust in order to cover the premiums. You should coordinate with the grantor to determine the amount of cash needed for the premium and request a check from the grantor's personal bank account, which should be made payable to you as trustee of the irrevocable trust.

8. Provide Crummey Notices to Beneficiaries

Make sure to notify the trust beneficiaries of transfers to the trust, if required. Whenever a gift to the trust is made you should decide whether any trust beneficiaries are entitled to withdraw some or all of the gift pursuant to the trust terms. If a beneficiary has a withdrawal right over the contribution, then you should prepare and provide the beneficiary with a letter (i.e., a Crummey notice) notifying him or her of any assets transferred to the trust and their right to withdraw a portion of the trust assets.

9. File Income Tax Returns

For a non-grantor trust, you must file a Form 1041, U.S. Income Tax Return for Estates and Trusts to report the income, gains, or losses of the trust and pay any tax due. If the trust is a grantor trust, a "grantor letter" should be prepared to notify the grantor of the items of income, gain, deduction, and loss that the grantor is required to report on his or her individual income tax return.

10. Maintain Accurate Records

Last, but certainly not least: be sure to keep detailed records of all trust transactions. This is important for the purpose of keeping beneficiaries informed and responding to their inquiries. Some trust agreements require the trustee to provide beneficiaries with an accounting annually or at more frequent intervals. Maintaining accurate records will also ensure that you are prepared in the event of an audit or a challenge by a beneficiary.

11. Get Assistance

At times, administering an irrevocable trust can seem very intimidating. Remember that professionals such as attorneys, accountants, and financial managers can serve as invaluable advisors to you.

Contact us

Husch Blackwell's Private Wealth attorneys have decades of experience assisting trustees in trust administration and fulfilling their fiduciary duties. If you require any assistance in the trust administration process, please contact Patrick Conner, Kaitlyn Blanchard, Mélyse Mpiranya, Ethan Ward, or your Husch Blackwell attorney.