

The Unsung Heroes of the Personal Trust World

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Administrative Trustees in Delaware

Occasionally the news media will feature a feel-good story about someone who performs a small act of heroism or kindness...an everyday hero. Examples include a person who anonymously pays off a department store layaway purchase during the holidays or who pays for someone's groceries when they realize the person in front of them doesn't have enough money. In the personal trust business, there is an everyday hero - the Trust Administrator. The Trust Administrator is often maligned for being "just an Administrative Trustee." However, the service they provide often goes above and beyond their job duties. Trust Administrators often serve as quasi-family counsellors, psychologists, surrogate parents, and disciplinarians, all while maintaining professional relationships with their clients.

What is an Administrative Trustee? In Delaware, as in several other states, the traditional duties of a trustee can be "trifurcated." In other words, the duty of managing investments, discretionary distributions, and trust administration can be separated and managed by different fiduciaries. A Delaware Directed Trust can have an Investment Direction Advisor, a directed Discretionary Distribution Advisor, and a Trust Administrator, as allowed. Each state, for example, South Dakota, Alaska, and Nevada, have statutes governing the ability to direct such functions, but Delaware's statutes are by far the best and have been validated by case law.

People often believe that when the fiduciary duties of managing the investments and discretionary distributions are directed by parties that are not the trustee, there is nothing left for the Administrative Trustee. Fortunately, most trust documents clearly define the duties of the Administrative Trustee, and the actual activities of the Administrative Trustee often go far beyond the defined duties.

Planning with Delaware Trusts

Why do estate planners throughout the U.S. choose to use states such as Delaware when assisting clients with challenging planning needs? It might seem like an obvious question, but more and more planners are looking to place trusts in states with similar statutes as Delaware for asset protection, long-term generational planning, state and local tax planning, the modification of existing trusts domiciled in other states through the “decanting” process, and/or the ability to keep a trust “quiet,” among other reasons. The latter is a particularly popular feature of Delaware trusts, allowing the provisions and even the existence of a trust to be kept confidential from certain beneficiaries, such as minors, for a prescribed period of time.

The Delaware Asset Protection Trust (DAPT) is used for clients who wish to transfer assets to protect business interests or personal assets. Clients who are engaged in careers such as medicine, law, or construction, or who have substantial assets that may be at risk if they should be sued, are candidates for asset protection planning. A DAPT does not stand alone, however. The plan can include provisions that keep the assets in trust for the long term and provide for the care of beneficiaries long after the grantor has passed.

Delaware legal and planning practitioners, and those of us in the personal trust space, believe Delaware continues to offer the best of all domestic locations for situs. This is due to the expertise of the Delaware Court of Chancery and its ability to schedule, hear, and adjudicate a trust matter quickly providing an efficient way for matters to be heard and resolved. States other than Delaware typically utilize court systems that do not provide a specific court for trust matters. While some other states can offer the same benefits discussed above if there is an issue with a trust, the court systems in those states will likely take more time and effort, which results in greater costs to resolve conflicts with the trust.

Transition from the Plan to Administration

As part of the planning process, the estate planning attorney will discuss the selection of a qualified Delaware trustee with the client. The choices are many, and the client may have a qualified Delaware trustee in mind based on a current or previous relationship. If the client does not have a previous relationship with a Delaware trustee who will provide administration of the trust in Delaware, the attorney may suggest options to the client. Options for an Administrative Trustee can be banks, trust companies, or individuals providing Administrative Trustee services located and performed in Delaware. After the client has chosen and met their preferred trustee, the Administrative Trustee begins the trust opening process.

Opening a New Trust – The Process

Perhaps the most important part of the new relationship between the Administrative Trustee and the client is the very beginning. Setting up and opening the new trust account is an exacting and time-consuming process. Proper opening procedures are key to setting the tone for a lasting client relationship, as well as complying with federal and state laws and internal policies. Processes and procedures in account openings are also essential to ensure the trustee is in compliance with internal and external auditors and regulators.

The Administrative Trustee is introduced to the client by the internal or external referral source. It is important for the client to know who will be managing the administration of their trust as early in the relationship as possible to ensure that the client is comfortable sharing personal information with their trustee. The introduction and initial conversation can also serve to detect any incompatibility between the Trust Administrator and the client and provide an opportunity to make a change in administrator, if necessary.

As the parties are getting comfortable with each other, the opening process is started. One of the first steps to accepting a trust is a review of the trust document and assets that will be put into the trust. The trust document review is intended to ensure the trustee can faithfully administer the trust as it is written. Prior to the trust being fully executed, the trustee must be comfortable with the many provisions of the trust. The trustee will also review the intended funding to ensure the assets are acceptable to them. After the trustee communicates that the trust document and the assets are acceptable, they will request information regarding the grantor, beneficiaries, and advisors. Financial institutions are required to perform Know-Your-Customer (KYC) background checks on every person in the relationship. Examples of KYC investigations include obtaining government-issued photo identification and verification of Social Security numbers with a Form W-9, or W-8BEN in the case of a foreign citizen. Many trustees use a subscription background check service to verify identity and ensure potential clients are not on watch lists, do not have a criminal background, or participate in public behavior that might create reputational risk for the trustee.

The new trust is then approved either through a committee or a group of managers who review the information for completeness, as well as assess the trust for risk and any other required factors. After the trust is approved, administration commences.

Administrative Trustee Duties

A well-drafted trust instrument will clearly define the duties of an Administrative Trustee. While it may seem the job of the Administrative Trustee is simple, the detail in execution can be complex and will require expertise, organization, and attention to detail.

Typical Administrative Trustee duties are enumerated below along with some detail as to the proper execution of the duty. This is not meant to be a complete study of how all Trust Administrators manage trust accounts, but to give an example of what is involved in the regular administration of trusts:

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1. Maintain an account to receive trust income, accept contributions, pay expenses and distributions from the trust, allocate activity to income or principal as the trust specifies, or at the trustee's discretion.

- Depending on the trustee, the trust account may be established on a trust accounting system where the trustee accounts for and maintains custody of the assets. The trustee may not retain custody of the assets. In this case, accounts can be opened at a bank or brokerage firm by completing forms and submitting them to the chosen custodian.

- The trustee ensures the account is funded with sufficient cash to be used to pay expenses of the trust. Expenses include trustee fees, legal costs, or expenses of the property held in the trust. Distributions to beneficiaries are also paid from the cash portion of the trust.

- If sufficient income from trust assets is not generated to maintain appropriate funding for expenses, funds must be raised by the trustee.

- Direction from the Investment Direction Advisor must be obtained prior to liquidating assets to maintain an appropriate cash balance.

2. Receive direction from the Discretionary Distribution Advisor and document discretionary distribution decisions.

- The Administrative Trustee must maintain the records of all distributions under the duty to maintain records outlined below.

3. Maintain trust records, such as statements, tax returns, accountings, and documentation resulting from trust activity, and respond to inquiries from notice recipients, advisors, and unrelated third parties.

- Trust assets can be maintained directly with the trustee, such as in the case of a marketable investment portfolio, or held in many different forms, such as LLCs, brokerage accounts, life insurance policies, and any variety of assets that a trust might hold. It has become common for trusts to hold intangible or hard-to-value assets, such as business interests. Every asset must be accounted for and the information maintained by the Administrative Trustee.

- Hard-to-value assets, such as LLCs, must be valued periodically, and it is the Administrative Trustee's responsibility to ensure that such valuation is completed.

- Current and future beneficiaries, as well as a Designated Representative in the case of a silent trust, require at least an annual accounting of investments and activity. All advisors such as Investment Direction Advisors, Discretionary Distribution Advisors, and Trust Protectors should also receive accountings on a regular basis.

- All documentation regarding any trust activity must be maintained by the Administrative Trustee.

4. Prepare or ensure the preparation and filing of trust tax returns.

- The Administrative Trustee often arranges for the preparation of trust taxes through a service they may

provide. However, the trustee may allow the client to use their own tax preparer.

- The Administrative Trustee is responsible for signing the trust tax return. Prior to signing the return, the Administrative Trustee must be certain the return is correct and must file the return on time. If the return cannot be filed by the tax deadline, the Administrative Trustee must ensure an extension is filed and estimated tax payments are made prior to the filing deadline.

- If the trust tax return is put on extension, the Administrative Trustee is responsible for the return being filed prior to the extension deadline.

- The trustee may also be required to provide distribution information for the beneficiaries' personal tax returns in the form of a tax letter.

5. To retain accountants, attorneys, agents, and other advisors in connection with the performance of the trustee's administrative duties.

- The Administrative Trustee must select the appropriate professional advisors as required to properly administer the trust.

6. To maintain an audit trail of discretionary distributions showing the rationale for each decision, whether the Discretionary Distribution Advisor gives direction to the Administrative Trustee or the Administrative Trustee is the discretionary decision maker.

Other important duties that may not be outlined within the trust document include:

1. Provide professional implementation of the trust portion of a client's estate plan.

2. Provide an independent decision maker as required by the trust.

3. Provide access to highly favorable state laws, such as Delaware, Nevada, South Dakota, and Alaska, by being present in those domiciles.

4. Provide independent and unbiased administration of the trust. The trustee cannot be influenced by personal relationships with a beneficiary or class of beneficiaries, as the trustee's duty is to the trust, not to any particular beneficiary or beneficiaries.

Perhaps the most important function of the Administrative Trustee is being a part of the client relationship team. At larger trust service providers, there may be a team of professionals that work together to provide administration, investments, and planning services to the trust client. Independent trust service providers may only provide administration services. In order to fully service the client, the independent trust service provider will work with the Investment Direction Advisor, the financial advisor who directly manages the investments, and the client's accountants and attorneys. This team approach ensures that the client's needs are being served. The coordination of the client's professional advisors pertaining to the trust often lies with the Administrative Trustee.

The Trust Administrator builds collaborative relationships with all parties. The responsibility of maintaining records means that the administrator must be aware of all of the trust's business. Communication with all parties must be maintained on a regular basis. The most rewarding aspect of the administrator's job is building lasting relationships with clients and service partners. A Trust Administrator is often the first call a client will make when they assistance or have questions about their trust. Since trusts are a private and personal matter, clients often use their Trust Administrator as a resource to work through difficult family issues on which they may need financial assistance. The Trust Administrator maintains strict confidentiality while providing an unbiased sounding board for the client. If a discretionary distribution is needed (where the discretionary power resides with the trustee), the Trust Administrator will provide the necessary expertise to assist the client in meeting their goals while adhering to the terms of the trust. There are times when the trustee is not able to grant a request. This can cause conflict; however, most Trust Administrators work with the client to assist them in resolving issues that brought them to the trust for assistance even if the resolution does not involve a distribution from the trust.

It takes a special skillset and personality to be a Trust Administrator. Attention to detail, professionalism, relationship management, empathy, organization, and a high standard of client service are just a few of the qualities that go into being a great Trust Administrator. Estate planning attorneys and clients

are fortunate to have an excellent group of professional Trust Administrators in Delaware from which to choose.

The content of this article is intended only as an example of the duties of an Administrative Trustee.



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