



1. **Accept the Trusteeship.** Prepare and execute the necessary paperwork to become the trustee of the trust. If you are the initial trustee, this involves signing the initial trust document. If you are a successor trustee, this may include verifying the death of the settlor with a death certificate, obtaining a trustee resignation form, and/or executing a trustee acceptance form. If the change in trustees is due to the settlor's incapacity, be sure to follow the proper procedures as specified in the trust document for verifying incapacity. Trustee change forms and acceptance related forms are best prepared by an attorney.
2. **Review the Trust.** Carefully review the trust instrument and know the terms. Identify the current and remainder beneficiaries. Identify what distributions you are obligated to make and calendar them. Identify any additional duties, restrictions or rules that are imposed on you by the trust instrument. Consult with an attorney if you have difficulty understanding or interpreting any provisions of the trust.
3. **Gather and Review Any Other Relevant Estate Planning Documents.** Carefully review any other relevant estate planning documents such as a will, power of attorney, or beneficiary deed. Understand how those documents relate to the administration of the trust.
4. **Identify, Inventory, and Secure the Trust Assets.** Identify all assets in the trust, including any real estate, bank or brokerage accounts, personal property, private investments, and life insurance. Prepare a clear and detailed inventory with asset values. Ensure that all trust property is protected, including by obtaining and maintaining insurance on trust property.
5. **Assemble Your Team.** When necessary, hire professionals to conduct and assist with the administration of the trust. Such professional may include attorneys, financial and investment advisors, accountants, and property managers.
6. **Consider How the Trust Assets Should Be Managed.** Manage and invest trust assets in an appropriate manner, including by—where appropriate—delegating to a professional investment advisor. Keep in mind that the Trust may provide direction as to how the trust assets should be managed.
7. **Communicate with the Beneficiaries.** Send an initial communication to all beneficiaries, informing them of the trust, who the trustee is and how to contact the trustee with questions. Get to know the beneficiaries. Establish a line of communication and a plan for keeping each of them regularly informed concerning the administration of the Trust.
8. **Keep Clear and Detailed Records.** The trustee has a duty to keep records for the trust. The trustee's clear and detailed records should include the trust documents, trust inventory, appraisals of trust property, trust accountings, beneficiary information (including communications with the beneficiaries), distribution information, and tax filings.
9. **Obtain Releases for Trust Distributions and Know When to Seek Court Approval.** When you make distributions pursuant to the terms of the Trust, have the beneficiaries sign receipts acknowledging the distributions. If it is the final distribution, the receipt should also include language releasing you from liability. If you anticipate a potential challenge to any of your actions as trustee, consider seeking court approval in advance of taking action.
10. **Know Your Fiduciary Obligations.** Know and understand your fiduciary obligations under the trust's governing law. The primary duties are the duty of loyalty and the duty of prudence. These duties include the duty to administer the trust in the best interest of the beneficiaries, the duty of impartiality, the duty of prudent administration, the duty to keep records and the duty to inform and report.

Contact



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1. Accept the Trusteeship.

- a. Prepare and execute the necessary paperwork to become the trustee of the trust.
- b. If you are the initial trustee, this involves signing the initial trust document and ensuring the date of the agreement is clear.
- c. If you are a successor trustee, this may include verifying the death of the settlor with a death certificate, obtaining a trustee resignation form, and/or executing a trustee acceptance form.
- d. If the change in trustees is due to the settlor's incapacity, be sure to follow the proper procedures as specified in the trust document for verifying incapacity.
- e. A prudent initial step is to prepare and execute a Certificate of Trust immediately. This ensures that you have a public-facing document ready as evidence of your trusteeship and ensures that you know the information required for that Certificate immediately. Doing this at the beginning usually proves helpful as a resource in the future.
- f. Trustee change forms and acceptance related forms are best prepared by an attorney.

2. Review the Trust.

- a. Carefully review the trust instrument.
- b. The governing documents could include amendments, nonjudicial modifications, decanting documents and court orders.
- c. Identify all of the current and remainder beneficiaries.
- d. Identify what distributions you are obligated to make and calendar them.
- e. Identify any additional duties, restrictions or rules that are imposed on you by the trust instrument.
- f. Consider preparing a summary of the Trust for easy reference.
- g. Consult with an attorney if you have difficulty understanding or interpreting any provisions of the trust.

3. Gather and Review Any Other Relevant Estate Planning Documents.

- a. Carefully review any other estate planning documents.
- b. Such documents might include a will, power of attorney, or beneficiary deed.
- c. Understand how those documents relate to the administration of the trust.
- d. Consult with an attorney if you have difficulty understanding or interpreting any provisions of the other estate planning documents and how they relate to or impact the administration of the trust.



4. **Identify, Inventory, and Secure the Trust Assets.**
- a. Such assets might include real estate, bank or brokerage accounts, personal property, and life insurance.
 - b. Prepare a clear and detailed inventory with asset values and tax basis.
 - c. If necessary, obtain appraisals of all trust property.
 - d. Ensure that all trust property is properly titled in the name of the trustee. Inform third parties of the new trustee name and contact information, completing any necessary forms.
 - e. Ensure that all trust property is protected, including by obtaining and maintaining insurance on trust property.

5. **Assemble Your Team.**
- a. When necessary, hire professionals to conduct and assist with the administration of the trust.
 - b. Such professional may include attorneys, financial and investment advisors, accountants, and property managers. Calendar check-ins and reviews with each person to whom you delegate work.
 - c. Rely on your team to assist in their relative areas of expertise.
 - d. It is always better to involve professionals sooner rather than later, as professionals can be an important asset to you in preventing or defending any challenges to your actions as trustee.

6. **Consider How the Trust Assets Should Be Managed.**
- a. Manage and invest trust assets in an appropriate manner, including by—where appropriate—delegating to a professional investment advisor.
 - b. Keep in mind that the Trust may provide direction as to how the trust assets should be managed.

7. Communicate with the Beneficiaries.

- a. Identify the beneficiaries.
- b. Get in touch with the beneficiaries and let them know that you will be administering the trust.
- c. Get to know the beneficiaries.
- d. Establish a line of communication and a plan for keeping each of them regularly informed concerning the administration of the Trust.
- e. Keeping in regular contact with the beneficiaries is one of the most effective ways to avoid litigation.

8. Keep Clear and Detailed Records.

- a. Everything you do as a trustee should be well documented.
- b. The trustee's clear and detailed records should include the trust documents, trust inventory, appraisals of trust property, trust accountings, beneficiary information (including communications with the beneficiaries), distribution information, and tax filings.
- c. Use a standard organization system that can be adopted for each trust you are administering.
- d. Having clear and detailed records will protect you in the event your actions as trustee are challenged.

9. Obtain Releases for Trust Distributions and Know When to Seek Court Approval.

- a. When you make distributions pursuant to the terms of the Trust, have the beneficiaries sign receipts acknowledging the distributions.
- b. If it is the final distribution, the receipt should also include language releasing you from liability.
- c. If you anticipate a potential challenge to any of your actions as trustee, consider seeking court approval in advance of taking action.

10. **Know Your Fiduciary Obligations.**

- a. Know and understand your fiduciary obligations under Minnesota law.
- b. These duties include: (1) the duty to administer the trust in the best interest of the beneficiaries; (2) the duty of loyalty; (3) the duty of impartiality; (4) the duty of prudent administration; and (5) the duty to inform and report.
- c. Keep apprised of new laws or other legal authority applicable to trustees.

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SCENARIO

Stephen Smith passed away in 2002. He was survived by his three children—Sarah Smith, Karen Jones, and Calvin Smith. Prior to his death, Stephen established the Stephen Smith Revocable Trust (the “Trust”). During his lifetime, Stephen served as the Trustee of the Trust. His daughter Sarah became the Trustee upon Stephen’s death.

The approximate value of the Trust is \$4 million dollars, which includes investment accounts totaling upwards of \$2.5 million, a cabin in northern Minnesota, and a condo in Florida. Between 2002 and the present, various disputes arose between the siblings concerning the administration of the Trust. Karen accused Sarah of improperly investing the investments. In addition, there was frequent conflict between all three siblings concerning their shared use of the cabin and condo.

The siblings ultimately entered into a nonjudicial settlement agreement, pursuant to which you were appointed as successor trustee of the Trust. As part of the discussions concerning the nonjudicial settlement agreement a number of other issues were raised by the siblings:

1. The siblings discussed consenting to the work of the prior trustee, Sarah, and waiving prior accountings.
2. Calvin requested an interim distribution from the Trust to start a business. He previously received two interim distributions (as allowed under the terms of the Trust) for the same purposes. Both of his prior business ventures failed.
3. Karen accused Sara of underinsuring the cabin.
4. The siblings wondered about taxes, but decided it is probably fine, as Sarah didn’t think anything was needed because she read something about how trusts can shelter money from taxes.

None of these issues were addressed in the nonjudicial settlement agreement.

You just signed your acceptance as Trustee. What do you do?