



FALL 2024

Trusts in New Jersey—
Understanding the Duties
& Responsibilities of
New Jersey Trustees

planning matters

PRACTICAL INSIGHTS INTO
ESTATE PLANNING & WEALTH PRESERVATION

Compliments of Lindabury's Wills, Trusts & Estates Group



LINDABURY

McCORMICK, ESTABROOK & COOPER, P.C.
Attorneys at Law

You're thinking about succession planning, and so are we.

Lindabury, McCormick, Estabrook & Cooper has you and your family covered. The attorneys in our Wills, Trusts & Estates group have experience levels ranging from 10 to 40+ years in the field of estate planning and estate administration.

MEET THE PLANNERS



John R. Blasi, Esq.
Westfield
jblasi@lindabury.com



James K. Estabrook, Esq.
Westfield
jestabrook@lindabury.com



David G. Hardin, Esq.
Summit
dhardin@lindabury.com



Mary Patricia Magee, Esq.
Red Bank
mmagee@lindabury.com



Elizabeth Engert Manzo, Esq.
Westfield
emanzo@lindabury.com



Elizabeth Candido Petite, Esq.
Westfield
epetite@lindabury.com



Anne Marie Robbins, Esq.
Westfield
arobbins@lindabury.com

trusts in

understanding the duties &

by Anne Marie Robbins, Esq.

As a general rule, trusts are created in one of two ways. *Inter vivos* trusts are established by an agreement or declaration during the life of the creator (called the “grantor” or “settlor” of the trust). Testamentary trusts are created in the will of a testator and do not exist until the testator dies, the will is probated, and the executor of the will transfers assets to fund the trust. Testamentary trusts are irrevocable, and cannot be changed except in limited circumstances, whereas *inter vivos* trusts may be revocable (*i.e.*, may be amended or terminated) or irrevocable.

In New Jersey, a trustee is entrusted with significant responsibilities that require not only the proper management and distribution of assets but also the fulfillment of strict fiduciary obligations. Whether the trustee is an individual or a corporate entity, the role demands a high level of diligence, integrity, and accountability. For beneficiaries, understanding a trustee’s duties is essential to ensure that their rights are protected, while for trustees, knowing the full extent of their responsibilities is crucial for effective administration.

The trustee’s role lasts the length of the trust’s duration, or until the trustee sooner resigns, dies, or is removed.

A trustee can become personally liable for a breach of duty when the breach results in a loss to the trust. However, the trustee is not a guarantor of the trust assets and usually will not be held liable for losses that occur despite the faithful performance of his or her duties. Remedies for a breach of trust can include one or more of: denial of commissions, surcharge, and removal as a trustee.

Asset Management: Protecting & Growing the Trust

One of the primary responsibilities of a trustee is the prudent management of trust assets. Trustees must act in accordance with the trust’s terms while adhering to the fiduciary standard of care. This means they must make decisions that are in the best interests of the beneficiaries while managing the trust in a way that preserves and, when possible, enhances the value of the assets.

Investment Decisions: Trustees are required to manage trust assets with the same care and diligence that a prudent investor would. In New Jersey, this duty is governed by the Prudent Investor Rule, which mandates that trustees must diversify investments to reduce the risk of loss and ensure that the trust’s financial goals are met. Trustees should seek professional advice when making complex investment decisions to ensure compliance with this standard and to safeguard the assets.

Record-Keeping & Reporting: Accurate and thorough record-keeping is an essential aspect of managing trust assets. Trustees must maintain detailed records of all transactions, including receipts, disbursements, and investment decisions. These records must be available to beneficiaries

upon request, ensuring transparency in the administration of the trust. Regular reports should be provided to beneficiaries to keep them informed about the status of the trust’s assets and the trustee’s actions.

Tax Management: Trustees are responsible for ensuring that all tax obligations of the trust are met. This includes filing any necessary state and federal income tax returns and paying any applicable taxes on income generated by trust assets. Trustees must also be mindful of the tax implications of distributions to beneficiaries and other trust transactions, seeking professional advice when necessary to minimize tax liabilities for the trust and beneficiaries.

Trust Distributions: Ensuring Fair & Timely Disbursements

The distribution of trust assets is a critical duty of a trustee, and this task must be carried out in accordance with the terms set forth in the trust document. Trustees are required to follow the grantor’s instructions while balancing the interests of different beneficiaries, which may include current beneficiaries and those with future interests.

New Jersey

responsibilities of New Jersey trustees

Following the Trust Terms: Trustees must strictly adhere to the provisions of the trust document when distributing assets. The trustee has no discretion to deviate from the trust's terms, even if it seems that doing so might benefit the beneficiaries. It is the trustee's duty to interpret and execute the trust as written, and any failure to comply with the terms may result in legal action by the beneficiaries.

Balancing Competing Interests: In some trusts, particularly those with both income and remainder beneficiaries, the trustee may face competing demands. The trustee must balance the need to generate income for current beneficiaries with the preservation of principal for future beneficiaries. This often requires a careful evaluation of distributions to ensure they meet the immediate needs of current beneficiaries without jeopardizing the long-term stability of the trust.

Discretionary Powers: If the trust document grants the trustee discretionary powers over certain distributions, the trustee must exercise this discretion in good faith and in the best interests of the beneficiaries. This may involve considering factors such as the beneficiaries' financial needs, health, and overall well-being. Trustees should document the basis for any discretionary decisions to demonstrate that they acted within the scope of their authority.

Fiduciary Obligations: A Trustee's Duty to Act in Good Faith

At the heart of a trustee's role is the fiduciary obligation to act in the best interests of the beneficiaries. This duty of loyalty and care is the foundation of trust administration and ensures that trustees act with integrity and avoid conflicts of interest.

Duty of Loyalty: A trustee must act solely in the interest of the beneficiaries, avoiding any self-dealing or actions that would benefit the trustee at the expense of the trust. This includes refraining from using trust assets for personal gain or engaging in transactions that could result in a conflict of interest. Trustees must disclose to the beneficiaries any potential conflicts and, when necessary, recuse themselves from decisions where their impartiality could be questioned.

Duty of Care: Trustees are required to administer the trust with the same level of care, skill, and caution that a reasonably prudent person would use under similar circumstances. This duty encompasses all aspects of trust administration, from managing assets to making distributions. Trustees must act with diligence and attention to detail to ensure that their actions are in the best interests of the beneficiaries.

Duty of Impartiality: Trustees must treat all beneficiaries fairly and impartially, particularly when there are multiple beneficiaries with differing interests. This means that trustees cannot favor one beneficiary over another, or one class of beneficiaries over another, unless the trust document explicitly allows it. The trustee must balance the interests of all parties in a way that is consistent with the trust's terms and the grantor's intent.

Beneficiaries: Understanding Your Rights

For beneficiaries, it is important to understand the role of the trustee and the rights to which they are entitled. Beneficiaries have the right to receive accurate information about the trust, including periodic accountings and updates on the status of the trust assets. They also have the right to hold the trustee accountable if they believe the trustee has breached the trustee's fiduciary duties.

Beneficiaries should seek professional advice if they suspect the trustee is not fulfilling the trustee's obligations. Trustees are legally obligated to act in the beneficiaries' best interests, and any failure to do so can result in being criticized and possibly surcharged or removed from office.





LINDABURY

McCORMICK, ESTABROOK & COOPER, P.C.
Attorneys at Law

New Jersey | New York | Pennsylvania
lindabury.com

If you or your clients have questions about the issues discussed in this newsletter please contact a member of Lindabury's Wills, Trusts & Estates group. This newsletter is distributed to clients and professional contacts of Lindabury, McCormick, Estabrook & Cooper as a professional courtesy. The information contained in this newsletter is necessarily general and not intended as legal advice or as a substitute for legal advice. Any estate planning program should be undertaken only after consultation with a professional and an assessment of the relevant considerations.