6 Things to Ask Before Agreeing to Be a Trustee

Being asked to serve as the trustee of the trust of a family member is a great honor. It means that the family member trusts your judgment and is willing to put the welfare of the beneficiary or beneficiaries in your hands. But being a trustee is also a great responsibility. You need to go into it with your eyes wide open. Here are six questions to ask before saying “yes”:

1. **May I read the trust?** The trust document is your instruction manual. It tells you what you should do with the funds or other property you will be entrusted to manage. Make sure you read it and understand it. Ask the drafting attorney any questions you may have.
2. **What are the goals of the grantor (the person creating the trust)?** Unfortunately, most trusts say little or nothing about their purpose. They give the trustee considerable discretion about how to spend trust funds with little or no guidance. Often the trusts say that the trustee may distribute principal for the benefit of the surviving spouse or children for their “health, education, maintenance and support.” Is this a limitation, meaning you can’t pay for a yacht (despite arguments from the son that he needs it for his mental health)? Or is it a mandate that you pay to support the surviving spouse even if he could work and it means depleting the funds before they pass to the next generation? How are you to balance the needs of current and future beneficiaries? It is important that you ask the grantor while you can. It may even be useful if the trust’s creator can put her intentions in riding in the form of a letter or memorandum addressed to you.
3. **How much help will I receive?** As trustee, will you be on

your own or working with a co-trustee? If working with one or more co-trustees, how will you divvy up the duties? If the co-trustee is a professional or an institution, such as a bank or trust company, will it take charge of investments, accounting and tax issues, and simply consult with you on questions about distributions? If you do not have a professional co-trustee, can you hire attorneys, accountants and investment advisors as needed to make sure you operate the trust properly?

4. **How long will my responsibilities last?** Are you being asked to take this duty on until the youngest minor child reaches age 25, in other words for a clearly limited amount of time, or for an indefinite period that could last the rest of your life? In either case, under what terms can you resign? Do you name your successor or does someone else?
5. **What is my liability?** Generally trustees are relieved of liability in the trust document unless they are grossly negligent or intentionally violate their responsibilities. In addition, professional trustees are generally held to a higher standard than family members or friends. What this means is that you won't be held liable if for instance you get professional help with the trust investments and the investments happen to drop in value. However, if you use your neighbor who is a financial planner as your adviser without checking to see if he has run afoul of the applicable licensing agencies, and he pockets the trust funds, you may be held liable. A well-respected Massachusetts attorney who served as trustee on many trusts used a friend as an investment adviser who put the trust funds in risky investments just before the 2008-2009 stock market crash. The attorney was held personally liable and suspended from the practice of law. So, be careful and read what the trust says in terms of relieving you of personal liability.

6. **Will I be compensated?** Often family members and friends serve as trustees without compensation. However, if the duties are especially demanding, it is not inappropriate for trustees to be paid something. The question then is how much. Professionals generally charge an annual fee of 1 percent of assets in the trust. So, the annual fee for a trust holding $1 million would be $10,000. Often, professionals charge a higher percentage of smaller trusts and a lower percentage of larger trusts. If you are doing all of the work for a trust, including investments, distributions and accounting, it would not be inappropriate to charge a similar fee. However, if you are paying others to perform these functions or are acting as co-trustee with a professional trustee, charging this much may be seen as inappropriate. A typical fee in such a case is a quarter of what the professional trustee charges, or .25 percent (often referred to by financial professionals as 25 basis points). In any case, it's important for you to read what the trust says about trustee compensation and discuss the issue with the grantor.

If after getting answers to all these questions you feel comfortable serving as trustee, then by all means accept the role. It is an honor to be asked and you will provide a great service to the grantor and beneficiaries.

For more on the different kinds of trusts, click here.

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