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A Summary of Duties of the Trustee

You have been appointed Trustee of a Trust. A Trustee is the individual or corporation that is entrusted with the administration of property on behalf of others.

The assets owned by the Trust will include those assets that the Grantor (the one who established the Trust) or others have transferred to the Trust.

You will need to open an account in the name of the Trust, with yourself as Trustee. This can be a bank account, a money market, or a brokerage account – as you see fit. You will use either the Social Security number of the Grantor, or the tax ID number that the IRS has assigned to the Trust when you open this account, and when you transact any business that requires a tax identification number (such as filing tax returns). If you need assistance in obtaining a tax ID number please contact us.

The Trust may also own real property. This could be real property that the Grantor has transferred to the Trust, or it may be property that you as the Trustee purchase in the name of the Trust.

If the Trust was established for estate tax planning purposes, and if additional transfers are made from the Grantor to the Trust, it may be necessary for you to prepare a “Crummey Notice” each time such a gift is made to the Trust. If you need assistance in doing so please contact us.

Being appointed and serving as a Trustee is a very serious undertaking. Every Trustee is held to a high standard of performance – considerably higher than the performance acceptable for your own affairs. A person who holds property for another is a fiduciary. Every Trustee is a fiduciary and has certain duties which must be strictly carried out. These duties include:

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1. Duty to carry out the terms of the trust agreement.
2. Duty of loyalty to the beneficiary.
3. Duty to act and invest prudently.
4. Duty to not delegate Trustee responsibilities.
5. Duty to maintain the books and records and keep the beneficiary reasonably informed of the trust administration.

Of these duties, perhaps the most significant duty is that of undivided loyalty to the beneficiary. The Trustee must administer the trust solely in the best interests of the beneficiary and exclude from consideration his own advantage as well as exclude the welfare of any other person. Because the Trustee is in a position of such intimacy with the beneficiary and has such control over the beneficiary's property, a Trustee is held to a higher standard than would govern in an ordinary business transaction. Chief Justice Cardozo eloquently described this duty in the case *Meinhard v. Salomon*, 249 N.Y. 458 (1928), by saying: "Many forms of conduct permissible in a workaday world for those acting at arm's length are forbidden to those bound by fiduciary ties. A Trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the *punctilio of honor the most sensitive*, is the standard of behavior."

To make decisions about making distributions to the beneficiary, or purchasing goods or services for the beneficiary, you will be guided by the specific terms of the Trust. As such, it is important that you read and understand the distribution standards in the Trust agreement. For example, if the Trust is a Support Trust, the Trustee may be more liberal in making distributions; if it is a Special Needs Trust the Trustee will likely be more conservative. If you are not certain what distribution standard applies to the Trust you are administering, please contact us.

As Trustee you will decide which items, if any, you want to pay for out of the income and principal in the Trust. Following is a partial list of things that are permissible, all of which are, of course, subject to being allowed by the terms of the Trust, being appropriate for the beneficiary, and having enough assets in the Trust.

1. A house or condominium.
2. A car.
3. Tuition, books, student fees.
4. Services for the beneficiary's therapy, rehabilitation, and training.

5. Medical and dental care; therapy; medical equipment; assistive or adaptive devices.
6. Items or services necessary to maintain the beneficiary's health, safety, and welfare.
7. Private health insurance premiums and deductibles.
8. Recreational and cultural experiences.
9. Computers, radios or other electronic equipment.
10. Recreational activities, vacations, athletic contests, movies, and trips.
11. Telephone and cable bills.
12. A burial plot for the beneficiary.

It is of utmost importance that you keep complete and accurate records. It may be necessary to determine whether distributions from the Trust are income or principal. You should keep a record of each disbursement as it is made, keep the receipt for the disbursement, and review the records monthly when you balance the Trust accounts. You should review the records again each year, in preparation for the filing of the income tax return.

Because filing an income tax return on behalf of the Trust can be a daunting task, and because the rules regarding taxation of Trusts are different than those regarding individuals, I strongly encourage you to engage a CPA to assist you with this task. The expenses incurred can be paid from the Trust assets, and would be well spent.

As you embark on this new experience of acting as a Trustee remember that we are here to assist you. Please contact us when we can be of further assistance.

