

## How a Beneficiary Can Protect Their Interests if a Trustee is Acting Improperly

When you are the beneficiary of a trust, the assets in that trust have been placed there for your use. You deserve to have those assets properly managed and to receive distributions in accordance with the trust terms.

If the trustee is not living up to obligations in some way, you are the one who ultimately suffers harm. And that gives you the right to take action. But what can you do to protect your interests? Should you report the trustee to a watchdog organization? Negotiate changes? File a lawsuit? An estate planning attorney who handles trust administration can review the circumstances and help you pursue the right option for the situation.

### Breach of Duty

Just because a beneficiary does not agree with a trustee's course of action does not automatically give the beneficiary the right to file a lawsuit. The trustee must have breached a duty owed to the trust and, by extension, the beneficiary. Common ways a trustee may breach their duties include:

**Bad business activities.** If a trustee engages in a business that competes with the interests of the trust, that could violate the trustee's fiduciary duties.

**Breach of trust.** Acting in a way that is contrary to the best interest of trust breaches obligations to the trust.

**Failure to act.** This could involve failing to take steps required by law, such as creating an estate inventory, notifying beneficiaries, or transferring assets into a trust when required.

**Fraud.** This is a broad term that covers a range of deceptive actions that cause the trust to suffer while benefiting the trustee in some way.

**Misappropriation of trust funds.** Trustees cannot use funds in the trust for any purpose other than for which they were intended.

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**Poor management.** Failing to follow through with responsibilities such as paying taxes or making distributions could make a trustee liable for harm caused.

Essentially, if a trustee has failed to perform duties competently, breached the fiduciary obligations by not acting in the best interest of the trust, or harmed the trust due to negligence or misconduct, then the beneficiary may have the right to take legal action.

## Options for Relief for Wronged Beneficiaries

Beneficiaries harmed by wrongful conduct by a trustee generally have the right to file a lawsuit to recover trust property lost through improper action. In some instances, the time to act is very limited, such as when a successor trustee is winding up the affairs of a revocable living trust after the grantor has passed away. In such situations, filing a lawsuit may be the most efficient way to protect interests.

In situations where a trustee has long-term management obligations, it might make more sense to schedule a conference and attempt to negotiate a resolution out of court first. This could save money and bring a resolution more quickly. Sometimes, trustees act in ignorance rather than a deliberate attempt to enrich themselves at the trust's expense, and they may be willing to settle issues promptly when the issue is brought to their attention.

If negotiation fails, the evidence gathered to support negotiations can be used to build support for a judgment in court.

## The Nordhaus Firm Can Help Protect Your Interests if You Suspect Wrongdoing

At the Nordhaus Firm, we can review the terms of the trust and the trustee's legal obligations, investigate the situation, and assess whether any wrongdoing has occurred. Then, we can work to negotiate a remedy or help you obtain relief through other channels. If you suspect that your trustee is acting improperly, contact us for a confidential consultation to learn how we can assist.