

## What Should You Do if You Don't Trust an Executor or Trustee?

Sometimes, people don't always make the right choice when they name someone to serve as executor of their will or trustee of a trust. They might pick someone who is unethical, or they might just choose someone who is unprepared to handle the responsibility and makes a mess of things. As an estate planning attorney, I work to educate people so that they can make the most effective choices when we work together to prepare a will or trust, but in the end, the decision is up to them, and sometimes the choice doesn't work out.

What can you do in that situation? The answers depend on the circumstances and your relationship to the estate or trust. If you're a beneficiary or heir, you should have legal standing to take decisive action, but even if you are not, it may be possible to find ways to get the executor or trustee to live up to their obligations. In this post, we look at your rights and options when you are in a situation where you don't trust the trustee of a trust or the executor of an estate.

## Overview of the Situation with Executors and Trustees

First, it helps to explain the background and what executors and trustees do.

### Executors Manage Estates During Probate

An estate is the legal term for the property left when someone passes away, and this property usually needs to go through some form of probate in Texas before it can be passed to heirs or beneficiaries. While some property may be owned in a way that it does not become part of the estate, unless someone has specifically created a plan to avoid probate, there is usually an estate left behind.

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If there was a will, the will usually nominates a person to serve as the executor to manage the estate during the probate process. The process includes identifying and paying debts, including taxes, taking steps to conserve property, selling property if necessary, and eventually distributing it to beneficiaries.

## Trustees Manage Many Different Types of Trusts

A trust is a legal entity set up to hold property for the use of someone who may not be prepared to manage it, either because of maturity, legal standing, or other issues. The trustor or trust creator puts property into the trust, and the trustee manages the property so that it can be used by the beneficiary. Often the trustee will distribute money to the beneficiary for a specific purpose, such as an education trust set up to pay for college expenses. If someone has created a revocable living trust to bypass probate, then they usually serve as their own trustee during their lifetime and then someone they've named as the successor trustee takes over when the trust creator/original trustee passes away.

## Executors and Trustees are Fiduciaries

When an executor is authorized to manage an estate through the Texas probate process or a trustee is designated to manage a trust, they are given many responsibilities along with the power to carry out those responsibilities. Sometimes, they exercise the power and overlook many of the responsibilities. The failure to carry out responsibilities could stem from negligence—they might not know or care about doing the job they were authorized to do. Or it could stem from a desire to exploit their power for their own advantage.

Either way, it can be very harmful to the estate or trust, and that hurts those who were

supposed to benefit from the trust or estate. Trustees and executors are both considered fiduciaries. That means they have a duty to act in the best interests of the beneficiaries of the trust or estate rather than their own personal interests. Unfortunately, failure to act according to their fiduciary duty is a common problem. However, trustees and executors have many other duties as well, and poor performance with regard to any of these duties can give the beneficiaries grounds to take legal action to protect their rights in the trust or estate.

## An Executor's Performance of Duties

The person authorized to serve as executor is expected to be ethical in handling the assets of the estate, but they need to be smart and proactive as well. For instance, if the estate contains a house, it would be unethical for the executor to rent the house to someone and keep the rent money for their own use. Instead, any money earned by property in the estate should go back into the estate to be distributed to beneficiaries when the probate process is over.

But as mentioned above, being ethical is not enough. The executor must also take steps to maintain the value of the house so that the beneficiaries don't lose value unnecessarily. That would include maintaining insurance on the property and ensuring that repairs and maintenance needs are met. If the deceased person owed debts and didn't leave enough cash to pay all the bills, then the house or other property might need to be sold to cover the debts. That sale needs to be handled responsibly as well.

The process of paying bills and managing assets is complicated, and some people aren't ready to handle the task. If they miss required tasks or start giving property to beneficiaries before the bills have been paid, then they are making legal mistakes that need to be addressed.

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If you are a beneficiary and the value of your legacy is being depleted, or you are a creditor and you're not getting paid because the executor is mismanaging the money, you have the right to file a lawsuit against the executor to seek compensation. But before filing a lawsuit, it may be faster and more cost-effective to have an attorney try to negotiate an agreement to get the outcome you want, such as a change in executor or specific performance of an obligation, or both.

You should also consider legal action if you believe there are problems with the will that the executor is ignoring, such as if it was created through fraud or the version submitted to probate court is not the most recent version of the will.

## A Trustee's Obligations to Beneficiaries

When someone is serving as a successor trustee of a revocable living trust, their duties are similar to those of an executor. However, they are considerably easier because they don't need to deal with probate requirements, so they can wrap up the process of paying bills and distributing assets to beneficiaries much more quickly. The opportunities for mismanagement are generally not as great as in other situations for that reason, although a trustee can still behave unethically when winding up a revocable living trust.

Other types of trusts often operate for years, and the trustees of those trusts have long-term obligations that are often not managed responsibly. Among other things, a trustee may be responsible for:

- Investing in trust property to maintain or increase value

- Determining whether a beneficiary's request for distributions complies with requirements of federal and state law as well as the terms of the trust document

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- Making timely distributions to the beneficiary when appropriate
- Managing the trust in compliance with fiduciary duties
- Filing federal and state tax returns for the trust
- Providing required accounting and other information to the beneficiary
- Following reporting requirements to maintain the legal status of the trust

If the trustee seems to be making investments or taking other actions that benefit the trustee personally rather than the trust or trust beneficiary, that may be a red flag signaling a breach of fiduciary duty. If a trust owes tax penalties, that could be a sign of incompetence or neglect of duty. A trust administration attorney could review the actions of the trustee to determine whether they are living up to obligations.

If it appears that a trustee is failing to fulfill one or more of the duties owed to the trust beneficiary, then the beneficiary may file a lawsuit seeking compensation for losses. When an attorney works to gather evidence of negligence or deliberate wrongdoing on the part of the trustee, that evidence can be used to support a lawsuit, but it can also be effective to start by using the evidence and arguments in negotiation to gain compensation and changes in trust management without the delays inherent in a lawsuit.

## The Nordhaus Firm Helps Avoid and Overcome Problems with Executors and Trustees

At The Nordhaus Firm, we know how to take effective action when an executor or trustee is not performing the way they should. Sometimes, that involves taking an adversarial approach and filing a lawsuit for compensation. Other times, a more

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cooperative approach with education and assistance can put an executor or trustee back on track or allow a more qualified individual to take over the responsibilities.

If you are concerned about a problem, it is better to seek legal advice early on rather than wait until the issue becomes costly and requires court intervention. We invite you to schedule a free consultation with The Nordhaus Firm to discuss how we may be able to help prevent or resolve problems with a will or trust. Just call us at 214-726-1450 or contact us online to get started with your free consultation.