The duties of a trustee vary depending on the powers provided for in the trust agreement. The type of trust, its purpose, and particular nuances of the trust agreement can also affect the role that trustees play in managing the trust assets and dealing with beneficiaries. Generally, it is the trustee’s duty to manage the trust property as a prudent person would manage someone else’s property, and to distribute the assets according to the terms of the trust agreement.

**GENERAL DUTIES OF A TRUSTEE**

*By Julius H. Giarmarco, Esq.*

Below is a list of some of the typical duties prescribed by trust agreements and state law:

1. **Duty to Administer the Trust by Its Terms**: The trustee has the duty to administer the trust and manage the trust assets in strict accordance with the terms of the trust. To the extent possible, the trustee should follow the terms of the trust as it’s written on its face without attempting to interpret the language. In the event of ambiguity, the trustee should seek the advice of legal counsel.

2. **Duty of Skill and Care**: Trustees are held to a high standard of performance in administering the trust. Most states (such as Michigan) require that the trustee exercise reasonable care, skill, and caution in managing trust assets.

3. **Duty to Give Proper Notice**: Different trusts have different notice requirements. The trustee should review the trust agreement carefully to ensure he or she has a complete understanding at which point notice must be given to beneficiaries, to co- or successor trustees or to others. Most trusts require notice to beneficiaries if there is a change in the acting trustee or the delegation of trustee powers or the appointment of a co-trustee. Some trusts provide beneficiaries with the right to withdraw interest or principal from the trust upon the occurrence of a particular event or upon the beneficiary attaining a particular age.

4. **Duty to Communicate**: The trustee has a duty to keep the beneficiaries informed of the various activities of the trust, including the trust’s current investments, investment performance, and other information regarding the administration of the assets. This may include providing each beneficiary with a copy of the trust agreement (once it becomes irrevocable).

5. **Duty to Account**: Most state laws require the trustee to provide (at least annually) a current accounting of the trust assets, liabilities, receipts, and disbursements to the trust beneficiaries. In doing so, the trustee should distinguish between expenditures of income and principal. If the trustee receives compensation, then this should also be clearly identified in the accounting.

6. **Duty of Loyalty and Impartiality**: The trustee’s fiduciary duty is to the trust’s beneficiaries. The trustee may not act in any manner that puts its personal interests or that of a third party ahead
of the trust beneficiaries. The trustee’s loyalty should be to all of the beneficiaries and not to a particular individual or group (unless otherwise provided for in the trust agreement). The trustee should be aware of the different types of beneficiaries (i.e., income, principal, or both) in making decisions with respect to trust assets. In making investment and distribution decisions, for example, it is necessary that the trustee balance the interest of both the lifetime beneficiaries and the remainder beneficiaries.

7. **Duty to Invest Prudently**: Some states (such as Michigan) have adopted the Prudent Investor Rule which requires the trustee to invest and manage trust assets as a prudent investor would considering the purposes, terms, distribution requirements, and other circumstances of the trust. This duty includes properly diversifying the trust assets, the retention and disposition of existing investments, and the pursuit of an investment strategy that provides for a reasonable stream of income and safety of principal. The Prudent Investment Rule may be expanded, restricted or eliminated by express provisions of the trust agreement. It may be advisable for the trustee to seek a professional investment advisor when dealing with the Prudent Investment Rule.

8. **Duty Not to Commingle Funds**: The trustee has an absolute duty not to commingle personal assets with trust assets. Trust property must be kept separate in various bank accounts and other financial institutions and properly designated as trust property.

9. **Duty to Pay, Enforce and Defend Claims**: The trustee must evaluate all claims presented and pay all valid claims against the trust. Such claims may include administrative fees, fees for professional services rendered on behalf of the trust beneficiaries and fees incurred in maintaining trust assets. In some instances, the trustee is also responsible for pursuing claims of the trust against 3rd parties and defending claims brought by third parties against the trust. Depending on the particular situation, it may be necessary for the trustee to settle or even abandon a claim.

10. **Duty of Confidentiality**: The trustee should keep trust matters confidential unless otherwise required by the trust agreement or by law. The trustee should ensure that any information about the beneficiaries be kept confidential.

11. **Duty Not to Delegate**: The trustee has a duty not to delegate trustee functions that could otherwise be performed by the trustee, particular those duties that require the judgment and discretion of the trustee. It may be necessary, especially in the context of prudent investing, to employ certain agents to assist with the investment decisions of the trust. Some states, such as Michigan, require that the trustee provide notice to the beneficiaries if delegating investment functions to a third party.