“A well drafted estate plan can accomplish a wide variety of objectives and goals. One of the increasingly common estate planning tools used to accomplish those objectives and goals is a trust agreement.”
A well drafted estate plan can accomplish a wide variety of objectives and goals. One of the increasingly common estate planning tools used to accomplish those objectives and goals is a trust agreement. Though once used almost exclusively by the wealthy as a means by which the family wealth could be sheltered from taxation and passed down to future generations, trusts are now a frequent addition to the average estate plan.

One reason for the popularity of trust agreements is the fact that they have evolved to the point where there is a specialize trust to fit almost any estate planning need. All trust agreement, however, require the same basic elements for creation, including the appointment of a Trustee. If you are contemplating the addition of a trust to your estate plan you need to understand what a Trustee’s duties and responsibilities are to ensure that you appoint the best person to the position.
First, a brief explanation of how a trust operates. All trusts require the same five elements for creation. First, the individual who creates the trust is known as the “Maker” or “Trustor” of the trust. Second, a trust requires a Trustee who will oversee the trust and manage trust assets.

Third, at least one beneficiary must be named to benefit from the trust assets. Fourth, the Maker of the trust must create trust terms that will dictate how the trust funds are managed and the assets distributed. Finally, sufficient assets must be transferred into the trust to fund it.
**Fiduciary Duty**

A Trustee owed a fiduciary duty to the trust and the trust beneficiaries. A fiduciary duty means that a Trustee must use the utmost care when managing trust assets and making investments with those assets. Risky investments are to be avoided. A Trustee should take into account what is in the best interest not only of current beneficiaries but also of future beneficiaries of the trust.

**Duty and Responsibility to Beneficiaries**

A trustee has a duty to communicate with beneficiaries about trust business. In addition, a Trustee has a duty of absolute loyalty to beneficiaries of the trust. This means the Trustee must put the interests of the beneficiaries first in all dealings and must administer the trust solely or the benefit of the Trustee. This can create a conflict when the Trustee is also a beneficiary of the trust because the Trustee’s duty of loyalty is to *all* beneficiaries equally.
MANAGE TRUST ASSETS

A Trustee has a duty to secure, safeguard and protect all trust assets. This may include keeping extensive financial records for intangible assets or may require actually maintaining physical assets owned by the trust. When real property is owned by the trust, it is best to appoint a Trustee that lives in the same general area as the property as it can be difficult to maintain and protect real property from afar. If the trust has significant investment assets it becomes important that the Trustee have the financial skills and experience needed to property manage those assets.

ABIDING BY TRUST TERMS

The Maker of a trust creates the trust terms that dictate how the trust is managed and how the trust assets are distributed. As long as the terms are not illegal or unconscionable, the Maker may create any terms he/she wishes. The Trustee has a duty to abide by those terms exactly as they are written, unless the Trustee is given discretion to change or modify terms. The Maker of the trust decides how much, if any, discretion a Trustee will have with regard to the trust terms. Among other things, the trust terms
will typically govern the distribution of trust assets as well as provide guidance with regard to investing and managing those assets.

**Making Distributions**

Some trusts make it relatively simple for the Trustee to make distributions because the Trustee has no discretion. If, however, a Trustee has any discretion with regard to making distributions it becomes much more complicated. Often, trust terms provide for regular distributions but also allow a beneficiary to request additional distributions for emergencies or special purchases. In that case, it is crucial to have the right Trustee in place to ensure that trust assets are not squandered.

**Accounting**

A Trustee is responsible for keeping records of all trust business and providing an annual accounting of that business. Detailed records must be kept of all transactions conducted
in the name of the trust, including all income earned by the trust, distributions made by the trust, and expenses incurred by the trust.

**Taxes**

A trust is a separate legal entity. Often, the trust is also a taxable entity. The Trustee is responsible for preparing, filing, and paying all tax obligations owed by the trust.

**Delegating**

Depending on the terms of the trust agreement, a Trustee may be able to delegate some of the duties and responsibilities relating to the trust. For example, a Trustee might retain the services of a certified public account or
an estate planning attorney to help prepare the trust taxes or interpret a trust term. Even if a Trustee is allowed to delegate, however, the Trustee is ultimately responsible for all trust business.

With a more thorough understanding of the various duties and responsibilities of a Trustee it should now be clear why it is so important to take your time and appoint the right person for the job. Discussing your options with your New York estate planning attorney is always a wise idea to help ensure that your trust operates as intended.

Fidelity, Executor and Trustee Guidelines
NOLO, Trusts: Should You Serve as Trustee?
Elder Law Answers, a Brief Overview of a Trustee’s Duties
National Paralegal College, Trustee Duties
About the Attorneys

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Saul Kobrick is an attorney licensed to practice law in the State of New York and the owner, senior partner and founder of The Law Offices of Kobrick & Moccia. Mr. Kobrick is licensed to practice law in all courts of New York State, as well as in the Federal District Courts for the Southern and Eastern Districts of New York. He is a member of the New York State Bar Association as well as a member of the American Academy Estate Planning Attorneys. Mr. Kobrick is also a member of the National Academy of Elder Law Attorneys.

Experience

Prior to founding his Garden City Law Firm in 1992, Mr. Kobrick has for many years, practiced law both as a Sole Practitioner, and in partnership in New York City. His practice focuses on elder law, wills, trusts and estate planning. Mr. Kobrick provides quality Estate Planning and Elder Law services to residents of Nassau County, Westchester County and Suffolk County.

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Mr. Moccia joined the Law Firm in 2006. As a law clerk and became partner in January of 2015. Mr. Moccia speaks regularly to residents of Nassau County, Suffolk County, and Westchester County about estate planning, wills, trusts, and Medicaid planning.

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