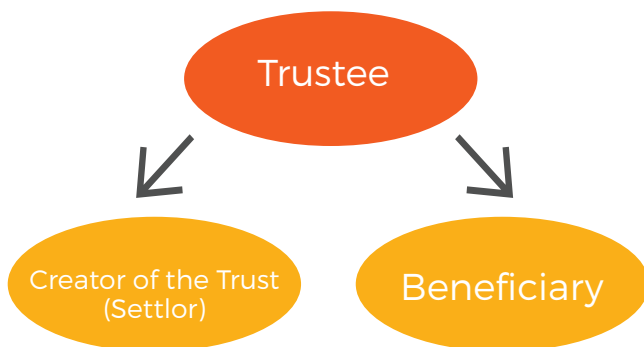


WHITE PAPER

Non-Professional Trustees

Trustee-Beneficiary Relationships



The trustee-beneficiary relationship is an important aspect of comprehensive estate planning, and special care should be taken to determine who is designated as trustee. A person designated as such should be trustworthy and capable of managing trust assets. A trustee is legally considered a fiduciary and thus has a fiduciary duty to make decisions that are in the best interest of the trust beneficiaries.

A trustee must always act in accordance with a fiduciary standard of care. This standard of care requires trustees to manage trust assets in good faith, exercising their powers as a prudent person would with reasonable care, skill and caution. Consequently, trustees must consider multiple factors when exercising the powers granted to them. A trustee has a duty to remain impartial and must not favor the interests of one trust beneficiary over those of another. Furthermore, a trustee has a duty to be loyal to the trust creator's wishes as expressed in the trust agreement and act as the trust creator would in the same circumstances. Therefore, it is incredibly helpful when the trust creator places guiding language in either the trust instrument or other documents. A fiduciary must avoid self-dealing or conflicts of interest in which the potential benefit to the trustee conflicts with what is best for the trust beneficiary.

Non-Professional Trustees

To ensure there are no incidents of ownership, someone other than the grantor of the trust must be appointed to act as trustee, and they are responsible for managing the trust assets.

A family member, friend, or co-worker that has been asked and has agreed to take on this role is known as a non-professional trustee.

Non-professional trustees are generally chosen based on personal relationships. They typically lack the knowledge and experience of professional trustees and do not realize the full extent of their fiduciary role.

Fiduciary Role for Non-Professional Trustees



Fiduciary Responsibilities

- Applies to both Non-Professional and Professional Trustees

A non-professional trustee is considered by law to be a fiduciary. They have the same responsibilities and duties as professional trustees which involve being ethically obligated to act in that person's best interests.

If a non-professional trustee is not performing their duties or not achieving the best possible outcomes for the trust beneficiaries, it is referred to as "fiduciary risk".

Non-professional trustees have tremendous responsibilities and are required to act in trust's best interests, while maintaining a strict "duty of care". Their fiduciary obligation is ongoing and requires them to always make appropriate decisions, regardless of their own self interests.

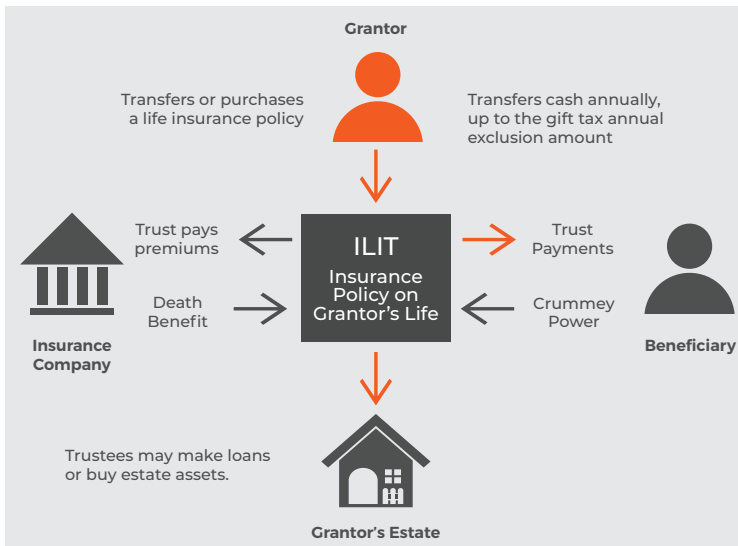


Fiduciary Duty

- Avoid conflicts of interest
- Act in the trust's best interest
- Never act for their own self interest
- Provide proper oversight
- Make decisions that protect and/or enhance trust assets

Just like professional trustees, a non-professional trustee's fiduciary obligation is one of the highest imposed by law, and the implications of breaching that duty can be severe. It could include criminal penalties, but generally the penalties are civil and result in monetary damages being awarded. In some jurisdictions, punitive damages may even be awarded for violating the fiduciary obligation, especially if the violation was intentional or malicious. Punitive damages are not limited to actual losses and are intended to punish bad behavior.

Non-Professional Trustees of Irrevocable Life Insurance Trusts



An Irrevocable Life Insurance Trust or ILIT, is created primarily to own life insurance. In order to create an ILIT, an irrevocable trust must be established. The trustee, on behalf of the trust, owns the insurance policy. The ILIT is named as the beneficiary, so at death, the payout will go directly in the ILIT and will not have to go through probate. As a result, the trust beneficiaries can receive the benefits of the life insurance policy without having to pay income or estate taxes.

ILIT trustees, whether professional or non-professional, must adhere to the statutes for the states in which the trust is domiciled and must establish a process for determining suitability of trust-owned life insurance on an ongoing basis. Life insurance policies should be monitored to ensure against risk of lapse and to identify options to keep the policy on track. Not having an established process could lead to unintended breach of fiduciary duties and possible legal liability against the trustee.

Trust Management Responsibilities	Policy Management Responsibilities
Handling Premium ILITs	Paying Insurance Premiums
Managing Crummey Letters	Tracking Policy Performance
Filing Tax Returns	Reviewing Product Alternatives
Monitoring Client Circumstances	Evaluating Carrier Strength

Through proper execution of a prudent process, non-professional ILIT trustees can reduce their liability by being confident they are fulfilling their fiduciary responsibilities. Not having an established process could lead to unintended breach of fiduciary duties and possible legal liability against the non-professional trustee.

Proformex supports non-professional trustees of irrevocable life insurance trusts by establishing a process for sending premium gift reminders, producing Crummey letters, verifying premium payments, and continually monitoring policy performance.

