

The Powers and Fiduciary Duties of Trustees in Nebraska

By Bryan P Robertson
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Bryan P Robertson, JD, CPA
Director, Trust Services, Wealth Management



OFFICE: 14010 FNB Parkway | Suite 200 | Omaha | NE | 68154
MAILING: 1620 Dodge Street | SC: 8125 | Omaha | NE | 68197
Direct 402.602.8769
bryanrobertson@fnbo.com | fnbo.com
[Bryan Robertson, Director, Trust Services | FNBO](#)

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Program Overview

A look at 1) the statutorily enumerated **powers** of trustees, 2) the role of **powers** conferred upon and limitations imposed by the terms of the trust, 3) the constraints imposed upon trustee **powers** by the fiduciary duty statutes, 4) the nature of the fiduciary **duties** outlined in those statutes, 5) the processes of acceptance, resignation, and removal, and 6) the nature of the prudent investor rule.

I. Statutorily Enumerated Powers of Trustees

General Powers of Trustee

Neb. Rev. Stat. 30-3880 (UTC 815)

A trustee, without authorization by the court, may exercise 1) the powers conferred by the terms of the trust and 2) except as limited by the terms of the trust, a) powers over the trust property (that a competent unmarried person has over individually owned property), b) any powers appropriate to achieve the proper investment, management, and distribution of trust property, and c) any powers conferred by the Nebraska UTC.

I. Statutorily Enumerated Powers of Trustees

Specific Powers of Trustee

Neb. Rev. Stat. 30-3881 (UTC 816)

The statute identifies 26 specific powers that a trustee may exercise. Included in the list are the powers to collect, accept, acquire, sell, exchange, borrow (with or without security), merge/dissolve/vote entity interests, alter/improve/repair real property, lease, grant options, insure, pay/contest/settle claims, pay expenses of administration, exercise tax elections, make loans, pledge, pay/apply/retain incapacitated person distributions, distribute, resolve disputes, prosecute/defend claims, wind up at termination.

II. Role of Powers Conferred or Withheld by the Trust Terms

General Powers of Trustee

Neb. Rev. Stat. 30-3880 (UTC 815)

A trustee, without authorization by the court, may exercise 1) the powers conferred by the terms of the trust and 2) except as limited by the terms of the trust, a) powers over the trust property (that a competent unmarried person has over individually owned property), b) any powers appropriate to achieve the proper investment, management, and distribution of trust property, and c) any powers conferred by the Nebraska UTC.

III. Constraints Upon Powers Imposed by Fiduciary Duty Statutes

General Powers of Trustee

Neb. Rev. Stat. 30-3880 (UTC 815)

The exercise of a power of a trustee is subject to the fiduciary duties prescribed by sections 30-3866 to 30-3882. Those sections are outlined in IV. below.

IV. Nature of Fiduciary Duties Outlined in Statutes

Duty to Administer Trust

Neb. Rev. Stat. 30-3866 (UTC 801)

The trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the Nebraska Trust Code.

IV. Nature of Fiduciary Duties Outlined in Statutes

Duty of Loyalty

Neb. Rev. Stat. 30-3867 (UTC 802)

A trustee shall administer the trust solely in the interests of the beneficiaries.

The statute discusses as potential breaches the trustee executing trust property transactions or investments while acting in an individual capacity (either alone or through related or controlled parties or entities).

If fair to the beneficiaries, this duty does not preclude 1) the appointment or compensation of the trustee or 2) a transaction involving the trustee while acting in multiple fiduciary capacities or a transaction involving another trust or estate in which a beneficiary has an interest.

IV. Nature of Fiduciary Duties Outlined in Statutes

Impartiality

Neb. Rev. Stat. 30-3868 (UTC 803)

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

IV. Nature of Fiduciary Duties Outlined in Statutes

Prudent Administration

Neb. Rev. Stat. 30-3869 (UTC 804)

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

IV. Nature of Fiduciary Duties Outlined in Statutes

Trustees Skills

Neb. Rev. Stat. 30-3871 (UTC 806)

A trustee who has special skills or expertise or who is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

IV. Nature of Fiduciary Duties Outlined in Statutes

Control and Protection of Trust Property

Neb. Rev. Stat. 30-3874 (UTC 809)

A trustee shall take reasonable steps to take control of and protect the trust property.

IV. Nature of Fiduciary Duties Outlined in Statutes

Recordkeeping and Identifying Trust Property

Neb. Rev. Stat. 30-3875 (UTC 810)

A trustee shall keep adequate records of administration of the trust.

A trustee shall not co-mingle trust property with his own property.

To the extent feasible, the trustee shall cause the trust property to be designated so that the interests of the trust appear in records maintained by parties other than the trustee and the beneficiaries.

IV. Nature of Fiduciary Duties Outlined in Statutes

Enforcement and Defense of Claims

Neb. Rev. Stat. 30-3876 (UTC 811)

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

IV. Nature of Fiduciary Duties Outlined in Statutes

Collecting Trust Property

Neb. Rev. Stat. 30-3877 (UTC 812)

A trustee shall take reasonable steps to 1) compel a former trustee to deliver trust property and 2) redress a breach of trust known to the trustee to have been committed by a former trustee.

IV. Nature of Fiduciary Duties Outlined in Statutes

Duty to Inform and Report

Neb. Rev. Stat. 30-3878 (UTC 813)

A trustee shall keep qualified beneficiaries reasonably informed about facts necessary for them to protect their interests.

A trustee shall send to distributees and permissible distributees at least annually a report of the trust property.

A beneficiary may waive the right to a trustee's report.

The duties of a trustee to inform and report are subject to the exclusivity provisions of 30-3855. According to those provisions, in certain circumstances, the duty to inform and report may be owed exclusively to a party other than the beneficiary.

IV. Nature of Fiduciary Duties Outlined in Statutes

Distribution Upon Termination

Neb. Rev. Stat. 30-3882 (UTC 817)

Upon termination of a trust, the trustee may send the beneficiaries a proposal for distributions.

Upon the occurrence of an event terminating a trust, the trustee shall proceed expeditiously to distribute the trust property.

A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent 1) it was induced by improper conduct of the trustee or 2) at the time of the release, the beneficiary did not know of the beneficiary's rights or of the the material facts relating to the breach.

V. Processes of Acceptance, Resignation, and Removal

Accepting or Declining Trusteeship
Neb. Rev. Stat. 30-3857 (UTC 701)

A person designated as trustee accepts trusteeship by substantially complying a method of acceptance provided in the terms of the trust.

If the trust is method-silent, accepting delivery of trust property, exercising powers or duties, or otherwise indicating acceptance is deemed to be acceptance of trusteeship.

Statutory registration of the trust is also effective as acceptance.

A designated trustee who has not accepted may reject the trusteeship. Lack of acceptance following a reasonable period of designation-awareness is rejection.

Inspection or preservation are not themselves acceptance.

V. Processes of Acceptance, Resignation, and Removal

Resignation of Trustee

Neb. Rev. Stat. 30-3861 (UTC 705)

A trustee may resign 1) upon at least 30 days notice to the qualified beneficiaries, the settlor (if living), and all cotrustees or 2) with the approval of the court.

The term "qualified beneficiary" is defined in Neb. Rev. Stat. § 30-3803(13) as a beneficiary who, on the determination date, 1) is a distributee or permissible distributee of trust income or principal, 2) would be a distributee or permissible distributee of trust income or principal if the interests of the current distributees and permissible distributees of trust income or principal terminated without causing the termination of the trust, or 3) would be a distributee or permissible distributee of trust income or principal if the trust terminated.

V. Processes of Acceptance, Resignation, and Removal

Removal of Trustee

Neb. Rev. Stat. 30-3862 (UTC 706)

The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee.

A court may remove a trustee on its own initiative.

The court may remove a trustee if 1) the trustee has committed a serious breach of trust, 2) lack of cooperation between cotrustees substantially impairs administration of the trust, 3) because of unfitness, unwillingness, or persistent failure to administer the trust effectively, the court determines that removal is in the best interests of the beneficiaries, or 4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal best serves the interests of all beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

VI. Nature of the Prudent Investor Rule

Prudent Investor Rule

Neb. Rev. Stat. 30-3883 to 30-3889 (Collectively)

A trustee must comply with the Prudent Investor Rule.

The Prudent Investor Rule may be altered by the provisions of a trust.

A trustee is not liable for actions taken in reasonable reliance on the provisions of a trust.

VI. Nature of the Prudent Investor Rule

Prudent Investor Rule

Neb. Rev. Stat. 30-3883 to 30-3889 (Collectively)

A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

The rule includes a list of considerations including economic conditions, inflation, tax, income verses appreciation, external resources, liquidity, and an asset's special relationship or special value.

VI. Nature of the Prudent Investor Rule

Prudent Investor Rule

Neb. Rev. Stat. 30-3883 to 30-3889 (Collectively)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.