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# Trustees: Explicit Policies and Procedures to Mitigate Risk

Part 4 of 4-Part Series


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Every trust should have formal written distribution policies that include:

- A recitation of distribution provisions in the trust documents
- The trustee's interpretation of these documents through the use of a trust summary or gap analysis
- Any philosophical approach or belief that will be used when reviewing special distribution requests
- The timing and manner of distributions
- Clear expectations of the beneficiary regarding the receipt of distributions

Distribution policies are also important for the management of trust assets. They provide investment managers with guidelines for when cash is needed from the portfolio and the amount of liquidity to be kept on hand.

## Fiduciary Policies and Procedures

Trusts (and trustees) benefit from having strong, detailed fiduciary policies and procedures. In the case of a Private Trust Company (PTC), the PTC board will approve the operational policies and procedures that dictate how the PTC will manage all aspects of the trust.

By having clear, repeatable processes, the PTC can ensure that its administrative processes are consistently applied, and beneficiaries understand what must occur before any action can be taken. For example, special distributions of trust assets might require the beneficiary to submit a memorandum, which will be reviewed by X members of the distribution committee within Y time horizon. By providing this type of clarity, the PTC can manage beneficiary expectations regarding how quickly they can access cash in a portfolio, increasing the emphasis on their personal liquidity to provide emergency funds.

## Guidelines for Recordkeeping

The trustee (or PTC) will need to have strong records for:

- **Accounting.** The trustee needs strong accounting mechanisms to ensure each trust has robust principal and income reports and that necessary transaction information is captured for tax purposes. At the corporate level, the PTC needs accounting systems to ensure its costs are accurately reflected in trust administration, and fees for services are appropriately reflected on the books and records of the company.
- **Tax Compliance.** The trustee needs to ensure that all trusts comply with requisite state and federal income tax reporting. They often hire a third-party vendor to provide this service.
- **Custody and Reporting.** The trustee (or PTC) will work with a selected outside custodian to facilitate the creation and maintenance of reporting mechanisms for all trusts. Regardless of whether a PTC chooses to staff its own educated team of employees, the custodial and reporting functions are usually licensed from a third-party vendor. Of importance is the custodian's ability to perform principal and income accounting for the trusts, track tax and other considerations, provide oversight of investment activity (collection of dividends and interest), and deliver accurate performance reports, ideally independent of the investment managers.

- **Beneficiary Meetings and Communications.** The trustee will need to hold quarterly and annual beneficiary meetings. Maintaining copies of all meeting materials and beneficiary communications should be part of the recordkeeping requirement.
- **Audit.** In the case of a PTC, its audit committee will oversee the audit process, sign off on the audit, and submit it to the board for approval. The PTC must hire outside parties to objectively audit both the PTC's corporate work and trust administration. For example, did the PTC follow the appropriate policies and procedures when it approved the attorney bills for XYZ trust?

## Beneficiary Education

While the quarterly meetings provide a great platform for communication, a trustee needs to err on the side of over-communicating with beneficiaries. They should evaluate what each beneficiary needs to understand the topics discussed during the meetings, and then address these educational gaps through tailored programs delivered either individually or in small groups. For every trust, the trustee needs to be able to build consensus and collaboration with the beneficiaries to ensure they understand management decisions and the tradeoffs, even if they don't like them. Moreover, a wise trustee needs to create a strong paper trail in terms of communication, education and outreach to show that the beneficiaries were aware of the trustee's actions and understood the decisions. If a situation turns sour, this pattern of education and communication will protect the trustee over the long term.

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Susan is a Partner in the New York City office with more than thirty years of experience serving as a senior director in trust, wealth management and family office advisory firms, and as a personal fiduciary advisor to individuals and families. She helps large families and family offices evaluate and establish Private Trust Companies (PTCs) and develops family office governance and operating structures, including fiduciary policies and procedures.