



HELPING TRUSTEES AVOID LIABILITY—THE DUTY OF ENFORCEMENT AND DEFENSE OF CLAIMS

When there is a potential legal claim involving a trust, the trustee must act. A trustee has the duty to evaluate affirmative claims of the trust and to pursue those claims when enforcement would benefit the trust. A trustee must also defend claims against the trust. To navigate their legal requirements, trustees should:

- Consult with an attorney immediately upon becoming aware of a potential or asserted claim.
- Assess whether a potential claim could result in the recovery of, or increase the value of, the trust assets, and analyze the costs and benefits of pursuing the claim.
- Defend the assets of the trust against lawsuits by beneficiaries and third parties.
- When accepting the position of successor trustee, be aware of:
 - Possible breaches of the trust by the former trustee.
 - Whether there is language in the trust agreement eliminating a successor trustee's duty to evaluate its predecessor's conduct and pursue potential claims.
 - Whether the beneficiaries have already released the predecessor trustee.

A trustee is entitled to pay attorneys' fees incurred to pursue or defend against claims involving the trust that are reasonable and in good faith from trust assets. When in doubt on any of these issues, a trustee should seek legal advice. It is always better to be safe than sorry.

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