



# HELPING TRUSTEES AVOID LIABILITY — THE DUTY OF RECORD KEEPING AND IDENTIFICATION OF TRUST PROPERTY

The duty of record keeping and identification of trust property requires that a trustee *maintain* the material information necessary to protect the beneficiaries' interests. Not only is maintaining the records its own duty, but it is the prerequisite for the duty to inform and report. A trustee should:

- Keep accurate and organized records.
- Record any transfers of property into or out of the trust.
- Document the decision-making process for trust investments.
- Account for:
  - The nature and value of the trust assets when received.
  - How much principal and income the trust has received and from where.
  - How much principal and income has been disbursed and to whom.
  - Any commissions paid.
  - The amount and location of any balance on hand.
  - Expenditures, gains or losses of the trust.
- Clearly identify the trust property as separate from the trustee's own property.
- Retain trust records for as long as the trustee may be liable to the beneficiaries.
- Seek court approval of administrative actions to limit liability.

Failure to keep accurate and thorough records can result in a court resolving any disputed fact against the trustee.

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