

Irrevocable Trusts: Tennessee

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A Question and Answer (Q&A) guide exploring irrevocable trusts in Tennessee. This Q&A discusses the Tennessee Uniform Trust Code, highlighting key statutes such as the Uniform Principal and Income Act and the Tennessee Uniform Prudent Investor Act of 2002. It addresses the creation, modification, and termination of irrevocable trusts, explaining the requirements for valid trust formation, including settlor capacity and intent, beneficiary designation, and trustee duties. The document also discusses investment services trusts, emphasizing creditor protection under the Tennessee Investment Services Act of 2007. Furthermore, it examines trustee appointment, compensation, liability, and the concept of directed trusts, where trust advisors and protectors play pivotal roles. The guide outlines the trustee's obligations to inform beneficiaries, including provisions for silent trusts, which allow for discretion in beneficiary notifications. Additionally, it provides insights into the modification and early termination of trusts, including options for uneconomic trusts. Tennessee's approach to trust administration, including nonjudicial settlement agreements and court supervision, is also covered, offering a helpful overview for legal practitioners and individuals interested in trust law.

Answers to questions can be compared across a number of jurisdictions (see [Irrevocable Trusts: State Q&A Tool](#)). For similar information relating to revocable trusts in Tennessee, see [State Q&A, Revocable Trusts: Tennessee](#).

For a Toolkit providing jurisdiction-neutral irrevocable trust forms that can be used with this Q&A, and other resources to help counsel draft irrevocable trust instruments under Tennessee law, see [State-Specific Irrevocable Trust Drafting Toolkit](#).

Key Statutes and Rules

1. What are the key statutes and rules that govern irrevocable trusts in your state?

State Law

The rules and laws pertaining to trusts in Tennessee are found in Title 35 of Tennessee Code Annotated (the Tennessee Uniform Trust Code) and relevant case law (T.C.A. §§ 35-15-101 to 35-15-1301). The Tennessee Uniform Trust Code incorporates by reference:

- The Uniform Principal and Income Act (T.C.A. §§ 35-6-101 to 35-6-601).
- The Tennessee Uniform Prudent Investor Act of 2002 (T.C.A. §§ 35-14-101 to 35-14-114).

(T.C.A. § 35-15-901.) Tennessee has no income or other transfer taxes applicable to trusts. However, Tennessee does have an excise tax (effectively, an annual business income tax) that applies to business interests, even if they are held in trust (T.C.A. §§ 67-4-2001 to 67-4-2023). However, there is an excise tax exception for family-owned businesses (T.C.A. § 67-4-2008(a)(11)(B)(i)).

Federal Law

Federal law, including federal estate, gift, generation-skipping transfer (GST), and income tax rules, frequently applies to irrevocable trusts, depending on the purpose and characteristics of the trust (26 U.S.C. §§ 1 to 2801; 26 C.F.R. §§ 1.0-1 to 26.7701-2). For specific information related to federal estate, gift, and GST taxes, see Practice Notes:

- [Federal Estate Tax](#).
- [Federal Gift Tax](#).
- [Federal Generation-Skipping Transfer Tax](#).

For examples of specific rules and provisions applicable to specific types of irrevocable trusts, see [Irrevocable Trust Creation, Funding, and Administration Toolkit](#) and [Irrevocable Trust Funding Checklist](#).

Applicability of Rules to Revocable Trusts

Many individuals (settlor) create revocable trusts as will substitutes to dispose of their assets at death. These revocable trusts generally become irrevocable on the settlor's incapacity or death. Once a revocable trust becomes irrevocable, it is generally subject to the same rules as a trust that was irrevocable when created. For more information on revocable trusts, see [State Q&A, Revocable Trusts: Tennessee](#).

Applicability of Rules to Testamentary Trusts

A testamentary trust is a trust created under a testator's will and generally comes into existence and becomes irrevocable when the testator dies. Testamentary trusts are generally subject to the same rules as all irrevocable trusts once the court creates them at the settlor's death, except for the Family Owned Non-Corporate (FONCE) tax exemption allowing testamentary trusts, but generally not other trusts, of family members holding certain specified non-corporate interests to qualify for the Tennessee excise tax exemption (T.C.A. § 67-4-2008(a)(11)). For information on wills that may include testamentary trusts, see [State Q&A, Wills: Tennessee](#).

Trust Requirements

2. What are the requirements for a valid trust in your state?

Methods of Creation

A trust creator (settlor) may create a trust in Tennessee by:

- Transferring property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect on the settlor's death.
- Declaring that the settlor holds identifiable property as trustee.
- Exercising a power of appointment in favor of a trustee.

In addition, a court may create a trust under its statutory or equitable powers. (T.C.A. § 35-15-401.)

Trust Purposes

A trust may be created only to the extent the purposes of the trust are:

- Lawful.
- Possible to achieve.

(T.C.A. § 35-15-404.)

Threshold Requirements

The threshold requirements to create a valid trust require that:

- The settlor has capacity to create a trust. Tennessee statute provides the capacity standard for creating a revocable trust (see [State Q&A, Revocable Trusts: Tennessee: Question 3](#)). However, Tennessee does not have a statute providing a separate capacity standard for creating an irrevocable trust. Tennessee courts have required, for a transfer by deed, that the transfer be the grantor's conscious, voluntary act and that the grantor have intelligent comprehension of the act (see *Brown v. Weik*, 725 S.W.2d 938, 944 (Tenn. Ct. App. 1983); *In re Conservatorship of Davenport*, 2005 WL 3533299, *17-*18 (Tenn. Ct. App. Dec. 27, 2005).) When an irrevocable trust involves a material lifetime transfer, counsel should consider documenting the facts supporting the settlor's capacity, including the settlor's understanding of

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the irrevocable nature of the trust, the property transferred, and the effect of the transfer.

- The settlor indicates an intent to create the trust. In considering a settlor's intent, a court considers only those manifestations of intent that are admissible as proof in a judicial proceeding (T.C.A. § 35-15-402, cmts.; see *Tenn. Div. of the United Daughters of the Confederacy v. Vanderbilt Univ.*, 174 S.W.3d 98, 113 (Tenn. Ct. App. 2005)).
- There is a definite beneficiary, unless the trust is:
 - a charitable trust;
 - for the care of an animal, as provided in T.C.A. § 35-15-408; or
 - for a noncharitable purpose as specified in T.C.A. § 35-15-409 (see Purpose Trusts).
- A beneficiary is definite if the beneficiary can be ascertained currently or in the future subject to any applicable rule against perpetuities.
- A trustee's power to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property if the power had not been conferred.
- The trustee has duties to perform. Despite this requirement, a passive trust (a trust holding assets where the trustee has no duties or trust administration responsibilities) is not terminable merely because it is passive (T.C.A. § 35-15-402(e)).
- The same person is not the sole trustee and sole beneficiary. However, a trust is not invalid solely because the settlor is both the sole trustee and the sole current beneficiary, if the trust designates at least one other beneficiary entitled to receive a beneficial interest in the trust property on the settlor's death. A remainder beneficiary, even one whose interest is contingent or postponed until the settlor's death, prevents merger and preserves the trust's validity. (T.C.A. § 35-15-402(a)(5), cmts.; see *Atkins v. Marks*, 288 S.W.3d 356, 366 (Tenn. Ct. App. 2008).)

(T.C.A. § 35-15-402.)

A trust does not fail because it has no trustee. However, a vacancy in the trusteeship that leaves a trust without a trustee must be filled (see *Fitzgerald v. Doggett's Ex'r*, 155 S.E. 129, 134 (Va. 1930); see Question 7: Filling Vacancies in a Trusteeship).

Purpose Trusts

A settlor may generally create a trust for a noncharitable, but otherwise valid, purpose (other than for the care of an animal) that the trustee selects, without a definite or ascertainable beneficiary. These trusts are called purpose trusts. Purpose trusts, like all Tennessee trusts, cannot exist for more than 360 years after creation, under the Tennessee rule against perpetuities (see Question 6). (T.C.A. § 35-15-409(1).)

Purpose trusts may be enforced by a trustee, trust protector, or other person named in the trust agreement or, if none, by the person the court appoints (T.C.A. § 35-15-409(2)). The trustee can apply purpose trust property only for its intended use (except to the extent the court determines the value of trust property exceeds the amount required for its intended use). The trustee must distribute any purpose trust property that is not needed for its intended use to the settlor, if then living, or the settlor's successors in interest. (T.C.A. § 35-15-409(3).)

Trust Property Requirements

The property requirements for an irrevocable trust are the same as for a revocable trust (see [State Q&A, Revocable Trusts: Tennessee: Question 5: Trust Property Requirements](#)).

Tennessee Investment Services Trusts

In Tennessee, settlors may create self-settled trusts, known as investment services trusts, which are exempt from the claims of the settlors' creditors under certain conditions (T.C.A. § 35-16-101, gen. cmt.). There are additional requirements to create investment services trusts (see Question 6: Provisions Creating Valid Tennessee Investment Services Trusts).

Trust Registration

Effective January 1, 2022, a trustee of a trust principally administered in Tennessee may register that trust with the Tennessee Secretary of State and obtain a certified copy of the registration. The registration is voluntary and not required to create a valid trust in Tennessee. (T.C.A. § 35-15-113.)

For more information regarding trust registration in Tennessee, see [State Q&A, Revocable Trusts: Tennessee: Question 5: Trust Registration](#).

Effect of Fraud, Duress, or Undue Influence

If the creation of a trust is procured by fraud, duress, or undue influence, the trust (or any part so procured) is void (T.C.A. § 35-15-406).

3. What provisions, if any, must be included for a trust to be irrevocable?

In Tennessee, unless the terms of a trust expressly provide that the trust is irrevocable, the trust is revocable (T.C.A. § 35-15-602).

Terms of a Trust

The terms of a trust are defined under the Tennessee Trust Code to mean the manifestation of the settlor's intent regarding a trust's provisions as either:

- Expressed in the trust instrument.
- Established by other evidence that would be admissible in a judicial proceeding.

(T.C.A. § 35-15-103(33).)

Counsel should always expressly indicate that a trust is irrevocable in the trust terms if that is the settlor's intention. The best way to do this is through a written trust instrument that provides that the trust is an irrevocable trust.

Trust Formalities and Execution Requirements

4. Must an irrevocable trust instrument be in writing to be valid?

Under Tennessee law, a trust does not need to be in writing unless the trust disposes of real property (T.C.A. 29-2-101(a)(4) and 35-15-407).

Though oral trusts are otherwise generally valid, a proponent of an oral trust must prove its creation and terms by clear and convincing evidence (T.C.A. § 35-15-407; see Question 3: Terms of a Trust).

Despite this general rule, irrevocable trusts should always be in writing:

- To expressly provide that the trust is irrevocable (T.C.A. § 35-15-602; see Question 3).
- Because though a settlor may not initially intend to

transfer real property to a trust, depending on the type of trust, the settlor may want to do so later.

- Because most irrevocable trusts are created for one or more specific intended purposes and the purposes and required provisions to achieve those purposes should be documented in writing (see, for example, [Practice Notes, Understanding Irrevocable Life Insurance Trusts](#) and [Grantor Retained Annuity Trusts](#)).

5. What are the execution requirements for a valid written irrevocable trust instrument? In particular, please specify requirements for:

- The settlor's signature.
- The trustee's signature.
- Witnesses.
- Notarization.

Signature Requirements

In Tennessee, an irrevocable trust should always be in writing to expressly provide that the trust is irrevocable (T.C.A. § 35-15-602; see Question 3). Generally, all written trust instruments should be signed by the settlor. However, in Tennessee, there are no statutory trust requirements for:

- A settlor's signature.
- A trustee's signature.
- Witnesses' signatures.

(T.C.A. §§ 35-15-402, 35-15-407, and 35-15-601.)

However, the settlor must comply with other statutory and common law requirements not in the Uniform Trust Code (T.C.A. § 35-15-407). For example, if a trust is to hold real property, the settlor must comply with the statute of frauds. Therefore, it is advisable when creating a trust in Tennessee to create a written trust instrument with the settlor's and trustee's signatures acknowledging the creation of the trust and agreeing to its terms. (T.C.A. § 35-15-407, cmts.)

Witness Requirements

Tennessee law does not require a trust instrument to be witnessed to be valid.

Notary Requirements

There are no notary requirements to create a valid trust in Tennessee (T.C.A. §§ 35-15-402, 35-15-407, and 35-15-601). However, even though notarization is not required, trust instruments are commonly notarized to:

- Minimize fraud.
- Ensure that the trust is recognized in other jurisdictions, if necessary.

Common Irrevocable Trust Provisions

6. Discuss specific provisions commonly found in an irrevocable trust instrument and the rules that apply to these provisions in your state. In particular, please discuss the following provisions and their effect:

- No contest clause.
- Incorporation by reference of trustee powers.
- Virtual representation.
- Rule against perpetuities.
- Sample rule against perpetuities clause.
- Governing law.

Provisions included in irrevocable trust instruments in Tennessee are generally substantially the same as and subject to the same rules as those included in revocable trust instruments regarding:

- No contest clauses.
- Incorporation by reference of trustee powers.
- Virtual representation.
- Governing law (though a provision regarding changing the governing law of a trust created under a revocable trust instrument may only be operative on the death of the settlor while a similar provision in an irrevocable trust instrument is generally immediately operative when the trust is created).

A rule against perpetuities provision is commonly included in both revocable and irrevocable trust instruments in Tennessee. However, a rule against perpetuities provision included in an irrevocable

trust instrument is slightly different from a rule against perpetuities provision included in a revocable trust instrument, largely because the rule against perpetuities begins to run for a trust created under:

- A revocable trust instrument when the interest becomes irrevocable, which is generally when the settlor dies.
- An irrevocable trust instrument when the interest is created, which is generally when the trust instrument is executed.

(T.C.A. § 66-1-202.) For a sample rule against perpetuities clause for use in irrevocable trust instruments, see Question 6: Rule Against Perpetuities Sample Clause for Irrevocable Trust Instrument. Effective July 1, 2024, Tennessee has a different rule against perpetuities for relocated trusts, which is when the principal place of administration of a trust created in a foreign jurisdiction is transferred to Tennessee (T.C.A. § 66-1-202(g)).

For more information on each of these types of provisions and the applicable rules, see [State Q&A, Revocable Trusts: Tennessee: Question 12](#).

For additional information about no contest clauses, see [State No Contest Clause Laws Chart](#) and [Standard Clause, No Contest Clause for Will or Trust](#).

Rule Against Perpetuities Sample Clause for Irrevocable Trust Instrument

"Maximum Duration of Trusts. *Notwithstanding any other provision herein, all non-charitable trusts created herein shall terminate as required by the Tennessee Uniform Statutory Rule Against Perpetuities, Tenn. Code Ann. § 66-1-201 et seq., and as amended, if applicable, and at such time shall proportionately distribute all assets free and clear of trust, per stirpes, to those persons entitled to receive income."*

Provisions Creating Valid Tennessee Investment Services Trusts

Creditors of the settlor generally can reach assets transferred by a settlor to a trust of which the settlor is also the beneficiary (T.C.A. § 35-15-505). However, under the Tennessee Investment Services Act of 2007 (T.C.A. §§ 35-16-101 to 35-16-112), settlors may

create self-settled trusts, known as investment services trusts, which are exempt from the claims of the settlors' creditors under certain conditions (T.C.A. § 35-16-101, gen. cmt.).

Investment Services Trust Instrument

To be a valid investment services trust, the trust instrument must:

- Incorporate Tennessee law to govern the validity, construction, and administration of the trust.
- Be irrevocable.
- Appoint at least one qualified trustee. To be qualified, the trustee:
 - must be a Tennessee resident or a corporate trustee licensed under Tennessee law;
 - must have at least some concrete duties, which may include custody of assets or preparing tax returns, or must be materially administering the trust; and
 - cannot be the transferor of the asset to the trust (this generally means the settlor cannot be the trustee).
- Contain a spendthrift provision prohibiting the settlor or any beneficiary from transferring, assigning, pledging, or mortgaging their interest in the trust.

(T.C.A. § 35-16-102(7), (12).)

Qualified Dispositions to Investment Services Trust

To be exempt from claims of the settlor's creditors, the transfer to an investment services trust must be a qualified disposition. A qualified disposition:

- Is a transfer of an asset by the settlor or other transferor to a valid investment services trust (this discussion contemplates that the settlor is the transferor) (T.C.A. § 35-16-102(7), (11)).
- Can only be considered a qualified disposition if the settlor executes a qualified affidavit before making a transfer to the trust. New affidavits are not required for future additions to the trust. The affidavit ensures the transferor is not defrauding the settlor's creditors in transferring assets to the trust. (T.C.A. § 35-16-103.)

The affidavit must include the following statements:

- The settlor has full right, title, and authority to

transfer the assets to the trust.

- The transfer of the assets to the trust will not render the settlor insolvent.
- The settlor does not intend to defraud a creditor by transferring the assets to the trust.
- The settlor does not have any pending or threatened court actions against the settlor, except for those court actions identified by the settlor on an attachment to the affidavit.
- The settlor is not involved in any administrative proceedings, except for those identified on an attachment to the affidavit.
- The settlor does not contemplate filing for relief under the federal bankruptcy code.
- The assets being transferred to the trust were not derived from unlawful activities.

(T.C.A. §§ 35-16-102 and 35-16-103.) There is no express time limit for making a transfer to the investment services trust after the affidavit is executed. However, no transfers should be made after any of the statements in the affidavit become inaccurate.

Challenges to Transfers to Investment Services Trust

A qualified transfer of property by the settlor to a self-settled trust may be challenged by:

- A pre-transfer creditor within the later of:
 - 18 months from the date of the transfer of the property to the trust; or
 - six months from the date the creditor discovered or should have discovered the transfer. Tennessee deems discovery of the transfer any time a public record is made as to the transfer relative to the qualified disposition (for example, a recorded conveyance of qualified property to the trust) (Tenn. Code Ann. § 35-16-104(b)(2)).
- A post-transfer creditor within 18 months from the transfer.

(Tenn. Code Ann. § 35-16-104(b)(1).)

However, creditors cannot bring an action regarding qualified disposition property unless the creditor proves by clear and convincing evidence the settlor made the transfer with the intent to defraud that specific creditor. (Tenn. Code Ann. § 35-16-104(b)(2)).

For jurisdiction-neutral information regarding self-settled asset protection trusts, known in Tennessee as investment services trusts, see:

- [Practice Note, Self-Settled Asset Protection Trusts](#).
- [State Domestic Asset Protection Trust Chart](#).
- [Quick Compare Chart, State Laws on Domestic Asset Protection Trusts \(DAPTs\)](#).

Trustee Appointment

7. What are the rules regarding appointment of trustees and acceptance and declination of trusteeship in your state? In particular, please discuss:

- Who is eligible to act as trustee.
- Priority rules for filling vacancies in a trusteeship if the named trustees fail to qualify or stop acting.
- How a nominated trustee accepts or declines the nomination.

Eligibility to Act as Trustee

The rules regarding eligibility to act as trustee in Tennessee for an irrevocable trust are identical to the rules regarding eligibility to act as trustee for a revocable trust (see [State Q&A, Revocable Trusts: Tennessee: Question 13: Eligibility to Act as Trustee](#)).

Filling Vacancies in a Trusteeship

Where there are no remaining trustees, the successors named in the trust instrument die, resign, or refuse to act, and any procedure in the trust for appointing additional successor trustees (if any) fails, a successor trustee may be appointed, in the following order of priority, by:

- Unanimous agreement of the qualified beneficiaries of the trust.
- The court.

(T.C.A. § 35-15-704(c).)

Trust instruments should include a procedure for appointing additional successor trustees if all the named successor trustees cannot serve for any reason. This power is typically given to the resigning trustee, the designated successor trustee, or the qualified beneficiaries.

Tennessee's public trustee statute applies when a person entitled to serve or currently serving as trustee cannot be identified or located, dies, resigns, is removed, is adjudicated incapacitated, declines to serve, fails to serve, or resigns as trustee (T.C.A. § 30-1-404). The statute also permits the relevant parties to waive the three-month waiting period for petitioning for appointment of a successor or substitute trustee (T.C.A. § 30-1-404(b)(2)).

For more information regarding appointing successor trustees and a jurisdiction-neutral form for appointing a successor trustee for an irrevocable trust, see [Standard Document, Appointment of Successor Trustee for Irrevocable Trust](#).

Qualified Beneficiaries

A qualified beneficiary is generally:

- A distributee or permissible distributee of trust income or principal.
- A person who would be a distributee of income or principal if the trust terminated on the date the beneficiary's qualification is determined.

(T.C.A. § 35-15-103(24) and cmts.; *Brown v. Brown*, 2013 WL 1619687, at *10 (Tenn. Ct. App. Apr. 16, 2013).)

A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary if, when the charitable organization's qualification is determined, the charitable organization would be a qualified beneficiary if it were an individual beneficiary. The attorney general and reporter may exercise the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in Tennessee in certain circumstances. (T.C.A. § 35-15-110.)

Accepting a Nomination as Trustee

The rules for accepting a trusteeship for an irrevocable trust in Tennessee are identical to the rules regarding accepting a trusteeship for a revocable trust. For more information, see [State Q&A, Revocable Trusts: Tennessee: Question 14](#).

For a jurisdiction-neutral form for accepting an appointment as trustee, see [Standard Document, Acceptance of Trusteeship](#).

Declining a Nomination as Trustee

The rules for declining a trusteeship for an irrevocable trust in Tennessee are identical to the rules regarding declining a trusteeship for a revocable trust. For more information, see [State Q&A, Revocable Trusts: Tennessee: Question 15](#).

For a jurisdiction-neutral form for declining an appointment as trustee, see [Standard Document, Declination of Trusteeship](#).

Trustee Compensation

8. What are the rules, if any, regarding trustee compensation in your state?

The rules regarding trustee compensation in an irrevocable trust in Tennessee are identical to the rules regarding trustee compensation for a revocable trust.

For more information, see [State Q&A, Revocable Trusts: Tennessee: Question 16](#).

Multiple Trustees

9. Who has authority to act when there are multiple trustees?

The rules regarding authority to act when there are multiple trustees of an irrevocable trust in Tennessee are identical to the rules regarding authority to act when there are multiple trustees of a revocable trust. For more information, see [State Q&A, Revocable Trusts: Tennessee: Question 17](#).

Removal and Resignation of Trustees

10. Can a trustee be removed from office, and if so, how?

In Tennessee, the settlor, a co-trustee or a qualified beneficiary may petition the court to remove a trustee, or the court may remove a trustee on its own initiative, based on the same criteria for removal that applies to removal of a trustee of a revocable trust (see [State Q&A, Revocable Trusts: Tennessee: Question 18](#)).

In addition, a trust instrument should generally include a trustee removal provision specifying who has authority to remove trustees and the method for doing so.

For jurisdiction-neutral information regarding removal of trustees, see [Standard Clause, Removal of Trustee Clause for Will or Trust: Incapacity of Trustee](#).

11. What rights does a trustee have to resign from office?

The rules regarding trustee resignation for an irrevocable trust in Tennessee are identical to the rules regarding trustee resignation for a revocable trust (see [State Q&A, Revocable Trusts: Tennessee: Question 19](#)).

For a jurisdiction-neutral trustee resignation form, see [Standard Document, Resignation of Trustee](#).

Trustee Liability

12. What is the standard of care applicable to the trustee?

In Tennessee, the trustee must administer the trust until the trust terminates or a successor trustee is appointed, and all assets are delivered in good faith, according to:

- The trust's terms and purposes.
- The beneficiaries' interests.
- Tennessee trust law.

(T.C.A. § 35-15-801.) The trustee's duties include the duty:

- Of loyalty (T.C.A. § 35-15-802).
- Of impartiality (T.C.A. § 35-15-803).
- To prudently administer the trust (T.C.A. § 35-15-804).
- To control and protect trust property (T.C.A. § 35-15-809).
- To inform and report to beneficiaries, where required (T.C.A. § 35-15-813(a)(1)).

A trustee must administer the trust as a prudent person would by exercising reasonable care, skill, and caution. In administering the trust, the trustee must consider the trust's purposes, terms, distribution

requirements, and other circumstances. (T.C.A. § 35-15-804.)

A trustee with special skills or expertise, or who was named trustee in reliance on the trustee's representation that the trustee has special skills or expertise, must use those special skills or expertise in administering the trust (T.C.A. § 35-15-806).

A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. A trustee must exercise reasonable care, skill, and caution in delegating a duty or power to another person (T.C.A. § 35-15-807(a)).

13. Under what circumstances is a successor trustee liable for the acts of a prior trustee?

The rules regarding successor trustee liability for an irrevocable trust in Tennessee are identical to the rules regarding successor trustee liability for a revocable trust. For more information, see [State Q&A, Revocable Trusts: Tennessee: Question 21](#).

14. Under what circumstances is a trustee liable for the acts of a co-trustee?

The rules regarding co-trustee liability for an irrevocable trust in Tennessee are identical to the rules regarding co-trustee liability for a revocable trust. For more information, see [State Q&A, Revocable Trusts: Tennessee: Question 22](#).

15. To what extent can the trust instrument waive trustee liability?

The rules regarding waiver of trustee liability in an irrevocable trust instrument in Tennessee are identical to the rules regarding waiver of trustee liability in a revocable trust instrument. For more information, see [State Q&A, Revocable Trusts: Tennessee: Question 23](#).

16. Does your state have a statute authorizing directed trusts?

Tennessee statute provides the exclusive method to control and create a directed trust or its provisions

(T.C.A. §§ 35-15-808 and 35-15-1201 to 35-15-1205). Nonjudicial settlement agreements can be used to establish a directed trust and to approve an investment decision or policy (T.C.A. § 35-15-111(c)).

A trust advisor or trust protector, other than a beneficiary, is considered a fiduciary regarding each granted power, with traditional:

- Fiduciary duties to the beneficiaries.
- Liability for any loss resulting from a breach of fiduciary duty.

In exercising or refraining from exercising a power, a trust advisor or trust protector acting as a fiduciary must act in good faith and under the terms and purposes of the trust and the interests of the beneficiaries. A trust advisor or trust protector may serve in a nonfiduciary capacity when specifically appointed in that capacity and, when acting in that capacity, is liable only for acting in bad faith or with reckless indifference. (T.C.A. § 35-15-1202.)

A trust advisor or trust protector is an excluded fiduciary, regardless of whether serving in a fiduciary capacity, with respect to each power granted or reserved exclusively to one or more other trustees, trust advisors, or trust protectors (T.C.A. § 35-15-1202). An excluded fiduciary is not liable for losses resulting from complying with the trust director or trust advisor (T.C.A. § 35-15-1205). In addition, excluded fiduciaries acting pursuant to a valid direction of a trust protector or trust advisor (and fiduciaries acting in good faith and with reasonable care) in a managerial capacity of a closely held business are generally not liable for loss or failure to maximize returns (T.C.A. § 35-15-820).

The powers of the trust advisor and trust protector are granted by either:

- The terms of the trust.
- A nonjudicial settlement agreement (agreement of the qualified beneficiaries) (see Question 7: Qualified Beneficiaries).
- Court order.

(T.C.A. § 35-15-808(b) and cmts.)

A trust protector or advisor may be a committee of more than one person, other than a trustee, holding at least one specified statutory power or duty under the terms of the trust including the power to:

- Amend the trust to achieve favorable tax status or respond to changes in tax or certain other laws affecting the trust.
- Remove and appoint a trust protector or trust advisor under the trust terms.
- Review and approve a trustee's trust reports or accountings.
- Change the governing law or principal place of trust administration.
- Consent to a trustee's action or inaction in making distributions to beneficiaries or investment of trust assets.
- Advise the trustee concerning any beneficiary.
- Terminate all or part of a trust.
- Select and delegate powers to investment advisors, managers, and counselors.

(T.C.A. § 35-15-1201(a).)

Tennessee statute sets out additional specific duties and liabilities of trust advisors and protectors (T.C.A. §§ 35-15-1201 to 35-15-1206).

To act as a trust advisor or protector (or to act as a corporate trustee) in Tennessee, an entity generally must be:

- A Tennessee trust company.
- A Tennessee bank with trust powers.
- A national bank with trust powers and with a physical presence in Tennessee.
- Certain other institutions to the extent authorized by Tennessee or federal law.

(T.C.A. §§ 35-15-1301(a) and 45-2-1001.) These entities are generally subject to strict regulation. However, if certain statutory requirements are satisfied, a special purpose entity established for the purpose of acting as a trust advisor or protector solely under the terms of a trust where the settlor or beneficiary is a family member (and where the entity is not otherwise engaged generally in trust company business or holding itself out as a fiduciary for hire) may act as a trust advisor or protector without being subject to regulations governing institutional fiduciaries. (T.C.A. § 35-15-1301(b).)

The power to appoint a successor trustee under a trust instrument includes the power to appoint multiple successor trustees, trust protectors, and

trust advisors (T.C.A. § 35-15-716(a)). In addition, trust instrument provisions regarding qualifications, duties, indemnity, compensation, and removal apply equally to trustees, trust protectors, and trust advisors (T.C.A. § 35-15-716(b)).

For additional information regarding directed trusts generally, see [Practice Note, Directed Trusts](#) and [State Directed Trust Laws Chart](#).

Court Supervision

17. Is an irrevocable trust court supervised?

Trusts and trustees are normally not subject to continuing court supervision in Tennessee. However, similar to a revocable trust, an interested person may petition for court involvement regarding any matter involving the trust's administration including a request for instructions and an action to declare rights. (T.C.A. § 35-15-201.) For more information, see [State Q&A, Revocable Trusts: Tennessee: Question 26](#).

In addition, in certain circumstances a court may modify an irrevocable trust or authorize its early termination (see Question 18).

Trust Modification and Early Termination

18. What are the options for modifying or early termination of an irrevocable trust?

Trust Modification and Termination

In Tennessee, a court may:

- Modify the administrative or dispositive terms of a trust (or terminate the trust) if because of circumstances not anticipated by the settlor, modifying or terminating will further the purpose of the trust (T.C.A. § 35-15-412(a)).
- Modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration (T.C.A. § 35-15-412(b)).
- Conform the terms to the settlor's intent if it is proved by clear and convincing evidence that both

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the settlor's intent and the terms of the trust were affected by a mistake of fact or law (T.C.A. § 35-15-415).

- Modify the terms of a trust to achieve the settlor's tax objectives, as long as the modification is in a manner that is not contrary to the settlor's probable intent (T.C.A. § 35-15-416).

In addition, a trust terminates to the extent either:

- The trust is revoked or expires under its terms.
- No purpose of the trust remains to be achieved.
- The purposes of the trust have become unlawful or impossible to achieve.

(T.C.A. § 35-15-410(a).)

A noncharitable irrevocable trust may also be:

- Modified or terminated by the trustee on the consent of all qualified beneficiaries during the settlor's lifetime, even if modification or termination is inconsistent with a material purpose of the trust, if the settlor does not object to the proposed modification or termination after statutorily required notice (T.C.A. § 35-15-411(a)).
- Following the settlor's death:
 - terminated on consent of all qualified beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust (T.C.A. § 35-15-411(b));
 - modified on the unanimous agreement of the trustee and all qualified beneficiaries if the modification does not violate a material purpose of the trust (T.C.A. § 35-15-411(c)); or
 - modified on consent of all the qualified beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust (T.C.A. § 35-15-411(c)).
- In any of these cases, if not all qualified beneficiaries consent to the proposed modification or termination, as applicable, the court may approve a modification or termination if the court is satisfied that:
 - had all qualified beneficiaries consented, the trust could have been modified or terminated under these rules; and
 - the interests of a qualified beneficiary who does not consent will be adequately protected.

(T.C.A. § 35-15-411(g).)

For a definition of qualified beneficiaries, see Question 7: Qualified Beneficiaries.

In addition:

- If the applicable requirements are met, and the trust does not provide otherwise, a trustee with authority under the trust can decant the property of an irrevocable trust (original trust) into a new trust (second trust) by modifying or restating the original trust instrument. For these purposes, original trust means the trust from which principal is being distributed, and second trust means the original trust after modification or restatement or another trust to which property from the original trust is or may be distributed. If the second trust is created by restatement or modification of the original trust, the exercise of the decanting power does not require retitling property titled to the original trust or changing a payable-on-death or beneficiary designation to the original trust, even if the second trust is created by a fiduciary or other person. (T.C.A. § 35-15-818.) For additional information, see [Practice Note, Trust Decanting](#) and [State Decanting Laws Chart](#).
- A charitable trust may be modified or terminated under different rules (T.C.A. § 35-15-413).

Early Termination of Uneconomic Trusts

A trustee who determines that the value of the trust property is insufficient to justify the cost of administration and notifies the qualified beneficiaries may terminate the trust if either:

- The trust has a total value less than \$250,000.
- The trustee's annual fee as set forth in the trustee's published fee schedule is 5% or more of the market value of the trust principal as of the last day of the preceding trust accounting year or the present market value of the trust principal if there is no applicable trust accounting for a preceding year.

(T.C.A. § 35-15-414; see Question 7: Qualified Beneficiaries.)

The court can also terminate a trust if the court determines that the value of the trust property is insufficient to justify the cost of administration (T.C.A. § 35-15-414).

Trust instruments frequently include a provision indicating the settlor's intent regarding early termination.

Information Provided to Trust Beneficiaries

19. What information are the beneficiaries of an irrevocable trust entitled to when the trust is created and throughout its administration?

In Tennessee, the trustee has several duties to provide information to irrevocable trust beneficiaries. Unless the trust instrument provides otherwise (or a person with authority to do so directs otherwise in a writing delivered to the trustee), the trustee generally must:

- Keep the current mandatory or permissible distributees of trust income or principal, or both, reasonably informed about the trust administration and the material facts necessary for them to protect their interests. If a trust is divided into separate shares for the sole benefit of a single beneficiary or a separate group of beneficiaries, the trustee's duty only applies to the beneficiary or beneficiaries of the separate share of the trust.
- Unless unreasonable under the circumstances, respond in a reasonable amount of time to a qualified beneficiary's request for information related to the trust administration. A qualified beneficiary must reimburse the trustee for any reasonable expenses incurred in responding to requests for information.

(T.C.A. § 35-15-813(a), (e).)

More specifically, the trustee's duty to inform and report includes (but is not limited to) the requirement that the trustee provide the relevant beneficiaries with:

- **Notice of acceptance of trusteeship.** Unless the trust instrument provides otherwise (or a person with authority directs otherwise in a writing delivered to the trustee), within 60 days after the trustee's acceptance and funding of an irrevocable or nongrantor trust, the trustee must give notice that the trust was established to:
 - each current income beneficiary;
 - each vested ultimate beneficiary of a remainder interest; and
 - anyone who holds a power of appointment (other than in a fiduciary capacity).

- The notice must include:
 - a complete copy of the trust instrument along with the trustee's name, address and telephone number; or
 - an abstract of the trust which includes the trustee's name, address, and telephone number and information specified by statute (depending on the beneficiary's particular interest in the trust).
- The notice requirements do not apply if the trust is nominally funded or funded only with a life insurance policy on a living person. (T.C.A. § 35-15-813(b), (e).)
- **Notice on termination of an income interest.** The trustee must give the same notice as is required after acceptance of a trusteeship on termination of an interest of any current income beneficiaries, to:
 - the income beneficiaries who are takers of the terminated interest; and
 - if at that time, 60 days have already elapsed, anyone who holds a power of appointment (other than in a fiduciary capacity).

(T.C.A. § 35-15-813(c).)

- **Notice on trust termination or trustee removal or resignation.** On these events, the trustee must proceed to distribute the trust property to the persons entitled to it within a reasonable time, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, attorney fees, and taxes (T.C.A. § 35-15-817(a)). Notice, containing the required statutory statements, is not required but may be given if the trustee seeks to be relieved from liability on that trustee's removal or resignation, or on the full or partial termination of the trust (T.C.A. § 35-15-817(b), (c)). If sent, this notice must be sent to:
 - the grantor, if living;
 - each qualified beneficiary or that qualified beneficiary's representative to the extent there is no material conflict of interest; and
 - all other then-serving trustees, trust advisors, and trust protectors known to the trustee sending the notice.

(T.C.A. § 35-15-817(d).) The trustee may also provide the notice to additional persons the trustee reasonably believes may also have an interest in the trust (T.C.A. § 35-15-817(e)). Persons may object

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to this notice within 45 days of receiving the notice (notice is presumed received five business days after mailing), by identifying with reasonable specificity the portion of the notice or exhibits objected to and the basis for the objection, as provided under statute (T.C.A. § 35-15-817(f) to (l)).

Notice or the sending of a document must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt, including delivery:

- By first-class mail.
- By personal delivery.
- To the person's last known place of residence or place of business.
- By a properly directed electronic message.
- By providing the notice or document through electronic means if the person consented in a record to receive information electronically and did not revoke that consent. A notice or document is deemed accessible by electronic means if the means of electronic access were provided in the record or if it can be shown that the electronic access was actually used.

(T.C.A. § 35-15-109(a).)

A beneficiary may waive the right to a trustee's report or other information to which the beneficiary is entitled and may withdraw a waiver previously given with respect to future reports and other information (T.C.A. § 35-15-813(d)).

For the definition of qualified beneficiary, see Question 7: Qualified Beneficiaries.

Silent Trusts

The settlor may:

- Designate a person to receive notices rather than a beneficiary.
- Direct that notices not be sent, in which case the notices are provided to the settlor, the trust protector, or the trust advisor, as applicable.

(T.C.A. § 35-15-813(e).) Tennessee refers to trusts containing these provisions as silent trusts. If the designated person receives the notices, the applicable statutes of limitations related to those notices can run (T.C.A. § 35-15-813(h)).

The main reason for silent trusts is settlor concern that trust beneficiaries may become unproductive if the beneficiaries are aware of the trust. The settlor may use silent trust provisions to keep those beneficiaries unaware of the gifts in trust for a certain time.

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