

# Accountability

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Issue XIX

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## TRUSTEE LIABILITY INSURANCE

Trustee liability insurance is little-known specialty coverage for trustees and trust service providers. A trustee liability insurance policy will protect the trustee, and the trustee's personal assets, from actions arising from his or her duties as a trustee.

Trusts come in many forms and sizes, presenting their trustees and service providers with a variety of duties. The range of duties leads to a broad and complex range of exposures for trustees. Additionally, the law defining a trustee's liability for various situations and actions is expanding.

Trusts may own a wide range of asset types. In some trusts the assets are traditional financial assets such as stocks and bonds, but many trusts comprise of illiquid assets such as real estate or ownership in family companies. The level of cash flow from these assets has significant implications for the management structure of the trust, the distributions to beneficiaries and ultimately on the liability of the trustees.

Trustee investment and distribution decisions are governed by a combination of the trust and trust law. In many cases the terms of the trust gives the trustee wide latitude in making decisions, but can be subject to interpretation and second guessing by beneficiaries.

Trustees can be hold legally accountable for the decisions they make and the services they provide, with personal assets at stake.

And often the allegations are based on trustee actions that should be defensible but are still litigated. And protection from the cost of litigation is just as important, if not more so, than protection for the payment of damages.

Claims against trustees are often triggered by differences of opinions between the trustees and one or more beneficiaries. One area of contention is often investment performance. Trustees have a duty to reasonably select an investment advisor and to direct the advisor in accordance with trust guidelines. The trustee may also have to make investment decisions on assets in the trust not under control of an investment advisor, such as real estate and ownership of private companies.

Trustee liability claims do occur and the frequency is increasing. Most importantly, they often occur without merit, but due to the complexity and emotion are very expensive to defend.

Trustee liability coverage is a form of professional liability insurance, and is always provided on a claims-made basis. To underwrite a trustee liability an insurer requires significant information on the size and structure of the trust and the experience of the trustees. In addition to an application, underwriters will want to review the trust agreement, trust assets and the background on the trustees.

Often accountants are trustees because of their relationship to the settlor of the trust.

CPAGold™ will, subject to the full policy terms and conditions, cover insureds in their roles as trustees. However, there are a number of valid reasons to obtain separate coverage. These might include:

- It may be requested by the Trust Agreement or the Trustees themselves;
- It provides a separate and unique limit of liability for a specific trust/trustee services, which will not be impaired by claims from other areas of practice;
- It can be extended to cover all Trustees, not just the trust service (CPA's) providers;
- Because it provides specific protection, the premium may be specifically charged-back to the Trust.

If you are providing services or serving as a Trustee to a significant number of Trusts or serve larger multi-million dollar Trusts, it may be prudent for you to evaluate the possible of separate insurance coverage. Your agent can provide you with full information and a premium indication.