

NEWSLETTER



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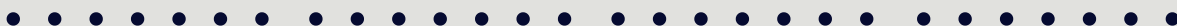
WHAT ARE THE DUTIES OF A TRUSTEE?

By Katherine B. Albrecht

One of the most important decisions when it comes to creating a Trust is who to name as the Trustee. This job should not be taken lightly. Trustees are responsible for safeguarding your assets for you and your beneficiaries. Trustees are fiduciaries which means that they are legally responsible for handling money and property in the best interest of another individual, not their own. They have a legal duty to put the needs of the trust above their own.

The State of Michigan requires that a Trustee must be 18 years old. They must also be of a sound mind. While those requirements seem

simple, choosing a Trustee is an extremely important decision. They must be someone you can trust completely, but it would also be wise to choose someone who is skilled in organization and communication and has some knowledge of financial matters. The individual must also have the time to devote to taking care of your trust. It can be an incredibly involved process. There may be some instances where the Trustee will encounter time-sensitive issues, so they will need to be available to handle those. You should choose someone who you trust to make good judgments and who has good common sense. This individual will be responsible for



taking care of your estate exactly how you want it to be taken care of.

Trust estates vary in size. One trust can be rather simple, where a family member might be a desirable choice to name as Trustee, but others can be complex, which can also include operating or liquidating a business. The complexity of your trust estate should be considered when choosing a Trustee. There will more than likely be pros and cons to every type of trustee option. When choosing a Trustee, consider the following options for the position:

- Family member**
- Friend of the family**
- Attorney, accountant, or another trusted advisor**
- Bank or other financial institution with a trust department**

There are many responsibilities that come with the role of Trustee. In April 2010, the Michigan Trust Code went into effect. This is a set of laws that puts forth requirements for Michigan Trustees. The position of Trustee requires a significant amount of work. The main responsibility is to administer the trust. This means the Trustee must:


- **Manage and distribute the assets and funds to beneficiaries in the manner called for in the Trust Agreement.**
- **Keep adequate records of the administration of the trust and create an annual report of all assets held in the trust estate, income received, and distributions made.**
- **Pay any bills that are due.**
- **Pay off debts.**

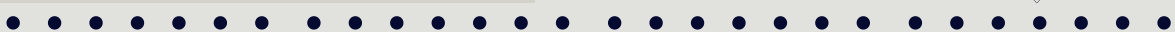


- **Resolve any claims or lawsuits that may arise.**
- **Notify creditors.**
- **Value the trust assets, including obtaining appraisals of personal items and real estate.**
- **Sell trust assets if necessary.**
- **Pay Federal and State taxes, including property taxes and income tax.**

The Trustee should keep a detailed report of all the jobs they have performed as well as a time log for every one of those jobs. This will help determine the appropriate compensation for the Trustee for the work done in administering the trust.

MCL 700.7801 states, "Upon acceptance of trusteeship, the trustee shall administer the trust in good faith, expeditiously, in accordance with its terms and purposes, for the benefit of the trust beneficiaries, and in accordance with this article."

As you can see, being named a Trustee comes with many important responsibilities. It would be wise to seek legal counsel to walk you through the process to ensure you are doing everything according to Michigan law and in the best interest of the trust if you agree to act as a Trustee. 



CLASSIFICATION OF CRIMINAL OFFENSES

By Beier Howlett

You have been charged with a crime, but do you fully understand what it means? Do you know the severity of the charges you face? Do you understand the impact it could have on your future?

In Michigan, there are three categories of criminal offenses. (1) civil infraction, (2) misdemeanor; (3) felony.

Infractions

A civil infraction is the lowest offense. Typically, if you are charged with a civil infraction, it is because you violated a traffic law or a local ordinance such as noise violations, or illegal structures on your property, among others. A civil infraction is accompanied with a monetary fine, but not any jail time. The person charged with a civil infraction has the right to appear in court to dispute the charge and the prosecution has the burden to prove that you committed the crime by a preponderance of the evidence. In most cases, the prosecution has enough evidence to prove the charge but may offer a plea deal of a lesser charge depending on the circumstances. There is usually an incentive to accepting a plea deal, and in most circumstances, the plea deal is accepted by the defendant. When the prosecution doesn't offer a plea deal and/or the charged individual feels the prosecution doesn't have evidence to prove the case then the parties proceed to a formal hearing. It is important to know that if you do not pay the fines for the civil infraction, or appear in court as scheduled, then the ticket will be defaulted. If you fail to pay the fines associated with a ticket after admission or after default, then you could face potential show cause and/or contempt of court proceedings (including

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Best Lawyers is the oldest and most respected peer review publication in the legal profession. The lawyers selected for this prestigious recognition are considered the top lawyers in their geographical area and practice specialty.



Katherine B. Albrecht delivers high value legal services in the area of estate planning, probate estate, trust administration, among many others. She is an expert at preparing comprehensive estate plans including wills and trusts.



Michael Gibbons has been practicing law for almost 30 years with a focus on business and commercial law and litigation. He has a diverse client base and regularly counsels clients on a wide range of business matters.



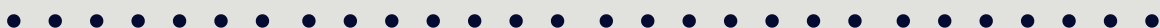
Peter Gojcaj specializes in business and commercial law and litigation, municipal and school law, as well as landlord/tenant law and real estate. He is an expert in his field and keeps his clients' interests the focus of his practice.



Jeffrey Haynes has been recognized since 1989 for his work in environmental law and litigation. He is one of the most well respected environmental law attorneys in Michigan and has been practicing for over 45 years.



Mary Kucharek specializes in municipal law and serves as the City Attorney for the City of Birmingham, City of Orchard Lake Village, and the Village of Lake Orion. She provides dedication and support to her clients throughout the legal process.



additional fines and costs, issuance of bench warrant, contempt of court misdemeanor offense, etc.)

Misdemeanors

A misdemeanor offense is more serious than a civil infraction, but less serious than a felony. If you are charged with a misdemeanor, it is because you have violated local or state laws. Some states, unlike Michigan, have different classifications of misdemeanor charges like A, B, and C. In Michigan, misdemeanors are classified by the individual crime and the applicable sentence. You could see jail time in a local county jail and/or fines and costs if you are convicted of a misdemeanor. Also, the criminal charge will be listed on your criminal record.

Misdemeanors are handled at the local district court level where the offense allegedly occurred. These offenses carry a maximum jail sentence of either-90 days, 93 days, 180 days, or 1 year. The amount of the jail sentence depends upon the severity of the incident and the repeat offender status of the defendant. (e.g. for a first offense drunk driving the defendant faces 93 days in jail; a BAC greater than .17 faces 180 days in jail; second offense drunk driving faces 1 year in jail.) There are some misdemeanor charges that could result in a maximum jail sentence of two years. Although identified as a misdemeanor, these offenses are treated like felonies and are handled at the Circuit Court.

When you face misdemeanor charges, you have a constitutional right to trial. However, it is common for your attorney to try to negotiate and/or plea bargain your misdemeanor charge to a civil infraction, a lesser misdemeanor charge, and/or a plea that will allow the conviction to remain off your criminal record. The advantage to negotiating is to avoid jail, higher fines, and potentially keep the offense off your criminal record.

Felonies

A felony is the most serious criminal charge. Felonies carry the highest punishments and could become a permanent part of your criminal record which can create serious consequences for you and your future. In Michigan, these matters are heard at the Circuit Court in the county where the crime was committed.

In Michigan, the following felony charges are classified into the following categories:

First Degree Murder: This offense is punishable by life in prison without the possibility of parole.

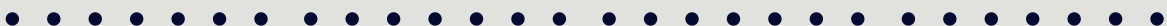
M2: This class only applies to murder in the second degree and punishment can include up to a life sentence in prison.

Class A Felony: Aside from first degree murder and second degree murder, the most serious offenses in Michigan are class A felonies. Penalties for class A crimes range from a year in jail to life in prison. These offenses include kidnapping, assault with a lethal weapon with the goal to rob or steal, and first-degree criminal sexual behavior.

Class B Felony: Up to 20 years in prison. This type of felony includes crimes like child pornography, second-degree child abuse, and second-degree arson.

Class C Felony: Up to 15 years in prison. This type of felony includes crimes like manslaughter, wrongful death caused by a DUI, and second-degree criminal sexual conduct.

Class D Felony: Up to 10 years in prison. This type of felony includes crimes like embezzlement or larceny valued at more than \$20,000, as well as human trafficking.




Class E Felony: Up to five years in prison. This type of felony includes crimes like first-degree retail fraud, possession of a firearm or other dangerous weapons with unlawful intent, home invasion, or a third DUI charge.

Class F Felony: Up to four years in prison. This felony includes crimes like unauthorized loan or credit applications and certain drug charges such as manufacturing, possession, and distribution of a certain quantity of marijuana.

Class G Felony: Up to two years in prison. This felony includes crimes like domestic assault or drawing insufficient checking account funds of over \$500.

Class H Felony: This type of felony includes crimes like the use of a stolen ID to commit a crime or the use of false representation to obtain personal records. This type of felony is punishable by jail time, probation, or electronic monitoring.

Whether you are charged with a civil infraction, misdemeanor, or felony, being charged with a criminal offense shouldn't be taken lightly because it can have detrimental impacts on your life. If you are charged with a criminal offense, it is important to consult an experienced attorney to walk you through the process and potential consequences. 

PREPARING LEASES AND RENTAL AGREEMENTS

By Monika Koleci

As a landlord, it is important to prepare lease and rental agreements properly. Lease and rental agreements are the foundation of the legal relationship with your tenant. It is common for lease and rental agreements to be used interchangeably, however there is a difference between the two. Typically, a rental agreement is more of a short-term contract such as month to month, whereas, a lease agreement is a contract for a longer period, usually over six months.

Congratulations to Attorney Jeffrey Haynes for being selected by Who's Who Legal as being among the highest-ranked lawyer in WWL: Environment 2023

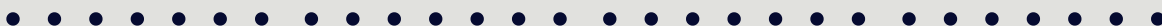


To learn more or contact Attorney Jeffrey Haynes click [HERE](#)

A basic lease or rental agreement should include at least the following information:

Identify the parties in the lease, contact information, and address of property

Be sure to include the names and contact information for all tenants that will be living at the property as well as your (the landlord) name, contact information, and property address. Be sure to include specifics,



especially if the rental property is just a single bedroom. Including a description of the premises would also be a good idea.

The terms of the tenancy

In this part of the agreement, you would need to include how long the rental period will be. State if it is month to month, three months, six months, a year, or even longer. You should put the starting date, the length, and the expiration date of the term.

Rent amount and security deposit

You should state the amount of rent due per month and the security deposit amount. How and when the tenant should pay should also be included. Indicate whether you take credit card payments or if it should be paid by check and state if late fees apply and how much they are. If there are any charges for early termination, you should include that in the agreement too.

State what is or is not included in the rent

If you plan to include utilities such as electric, gas, or cable, you should make sure it is stated in the agreement. If certain furniture or appliances are included with the rent, those should also be listed. If you do not include anything with the rent, that should be stated. The tenants must know their responsibility for utilities and furniture before entering into the contract with you.

Restricted areas

Be sure to include any restricted areas in the agreement. If there are certain rooms, closets, sheds, etc., that you do not want a tenant to access, then you should specifically state that.

Additional fees

If there are fees for pets, parking spaces,

repairs, etc., you need to clearly state that on the agreement. If you have a pet policy, you should include that in the agreement. It should include the following information:

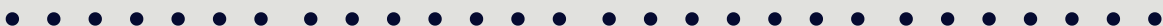
- the type of pets that are allowed
- size that is allowed
- number of pets allowed
- fees associated having pets in the rental property

Landlords access to the property (right of entry guidelines)

It is common for landlords to enter the property at some point during the tenant's stay for repairs or maintenance. You should make clear the notice that will be given before entering the property. If there is a non-emergency situation that you need to address at the property, you should give reasonable notice of when that will take place and when you need entry onto the property. Typically, this would be one to two days. Tenants should know if certain repairs are their own responsibility. If tenants do not adhere to the policy allowing you entry when proper notice is given, that could result in termination of the rental or lease agreement. There could be a situation where you need to enter the property for emergency situations. These types of situations would include gas leaks, fires, broken water pipes, etc. In this case, landlords do not need to give notice to enter.

Tenant's rights to privacy policy

In the agreement, landlords should include the tenant's right to privacy or quiet enjoyment policy. This simply means that the tenants have protections against landlords' unreasonable entrance into or onto the property. Landlords are never allowed to go through the property or belongings of the tenants at will.



MONICA ROSSI BAYLIS

Attorney At Law



Monica Rossi Baylis has been practicing law for over 30 years, specializing in family law. She is an expert in her field where she handles a variety of different cases with compassion and understanding. Some of her specialties include divorce, child custody, parenting time, alimony and child support, domestic relations mediations, adoption, paternity, pre-nuptial agreements, child protective proceedings, and grandparent's rights. She also handles adult and juvenile guardianships. Monica involves herself in the community where she has served as a chair of the Juvenile Law Committee and an adjunct professor of legal studies at Baker College. Monica has been acknowledged with many awards including "10 Best Attorneys" by the American Institute of Family Law Attorneys, selected as a Leading Lawyer by the Leading Lawyers Michigan Advisory Board, named to Who's Who in America in 2020, and most recently was selected as one of the "Influential Women in the Law" Class of 2022 by Michigan Lawyers Weekly.

To learn more about Monica, click [HERE](#).

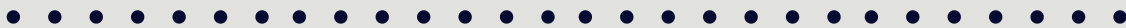
Use, behavior, and rules of tenancy

This section of the agreement should include whether you allow guests to stay on the property. And if you do, state if there is a limit of days they are permitted to stay. Also include your smoking policy and if it is prohibited or permitted on the property. Depending on if the rental property is in a building or complex that is managed by someone else, there might be a no smoking policy in the entire structure. Include that no illegal activity should take place on the property. As well as a firework and noise policy. Also, tenants have the right to live in good, habitable conditions. Your property should be clean and safe for tenants.

Eviction procedures

It might be a good idea to include your eviction procedures in the agreement. Some examples of reasons for tenant evictions are:

- Continual failure to meet rent deadlines. Some landlords put a grace period in their agreement. You also need to give tenants a 7-day written notice before being able to evict them.
- If the tenant violates the agreement in any way including things like smoking if there is a no smoking policy, damaging the property, or having pets when no pets are allowed, the landlord can evict them after they are given a 30 day Notice to Quit.
- When tenants decide to stay on the property at the end of their rental or lease term even though they have not renewed their agreement.
- If the tenants have caused extensive damage to the property.
- Health or safety violations from the tenants. This would include things like not taking out the trash for prolonged periods of time or damaging electrical and plumbing on the property.
- If the tenants conduct illegal activities such as theft, or any dealings with the distribution or consumption of drugs.

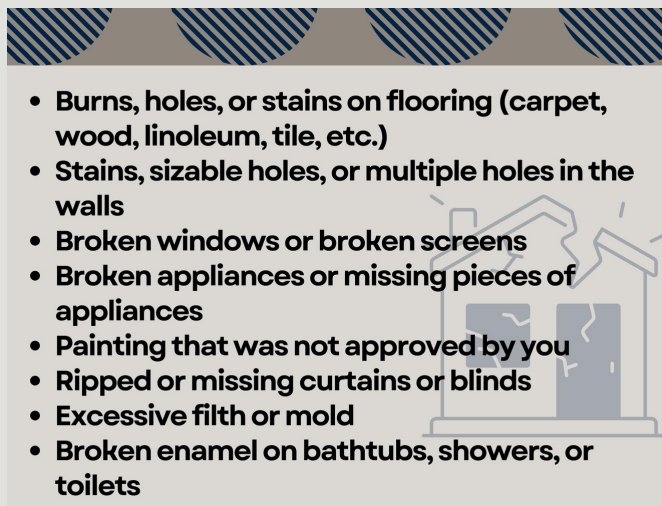


Damaged property

Wear and tear is typical during a tenant's stay. Some examples of normal wear and tear would include:



However, if tenants damage anything on the property, then they will be responsible for paying for it. It is important for them to know this. Some examples of damaged property that could result in a security deposit deduction are:



Signatures

It is important for both the landlord and the tenant to sign and date the agreement. Make sure both parties have copies of the agreement as well.

Rental and lease agreements can be incredibly involved in putting together, but they are extremely important. A well-crafted lease or rental agreement protects both the landlord and the tenant. An attorney specializing in landlord tenant law would be able to guide you in creating a proper rental or lease agreement. ◇

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3001 W. Big Beaver Road, Suite 600 Troy, MI 48084

(248)645-9400 www.bhllaw.us.com

