

To be a Trustee of an Irrevocable Life Insurance Trust, also known as an “ILIT,” is to be on a shifting landscape. Today, more than ever, Trustees are scrutinized for their performance and there are numerous hazards and obligations. Here are a couple of tips for the individual who might find themselves Trustee of an ILIT:

**Crummey Notices.** Much ILIT planning makes use of the annual exclusion amount, allowing the Grantor (the creator of the Trust) to make annual gifts to the Trust for purposes of paying the premium without incurring a gift tax. In order for the Grantor’s payment to the Trust to qualify for the exclusion, the Trustee must be sure to send out what are termed “Crummey Notices” after each payment. The notices go to the beneficiaries, granting them the right to remove a piece of the premium payment for a limited amount of time. Forgetting to send this notice will cause the Grantor to incur gift tax liability, and will certainly be a failure to adhere to the terms of the Trust.

**Premium Payments.** It is important to make sure that the premium payments are timely made on the life insurance policy and the policy is kept in force. Clearly, this means cutting the check to the insurance carrier after payment is deposited into the Trust. However, it also covers more responsibility as well. The Trustee cannot just passively wait for the Grantor to make a payment to the Trust. The Trustee’s obligations and, more importantly, liabilities exist regardless of what the Grantor does. It is therefore very important that the Trustee prompt the Grantor every year to make a payment for the premium. If the Grantor isn’t making timely payments, or any payments whatsoever, the Trustee will likely need to find another way to cover the premium payments. This could involve using the cash value within the policy or securing a loan to make the premium payments. These are not efficient options, but the Trustee has to do what they can to preserve the purpose of the Trust.

**Monitoring the Policy.** The days are past when an ILIT simply involved purchasing a policy inside the Trust and then forgetting about it. The so called “buy-and-die” approach. The Trustee needs to monitor the policy to see if it is still effective and appropriate for the purposes of the Trust. The Trustee should review the Policy Illustration on the life insurance policy yearly. The Policy Illustration provides in-depth details about the life insurance policy. The Trustee also needs to regularly review the financial health and solvency of the carrier of the policy, how the policy is doing from an investment perspective, and whether there are other alternatives, such as different policies, which might better serve the purposes of the Trust and diminish risk. Failure to prudently manage the insurance policy, as it is an investment like any other, could open the Trustee up to significant liability in the future.

*These responsibilities do not diminish or disappear when you are serving as the Trustee of your friend’s or even your family’s ILIT. When individuals accept the position of Trustee for an ILIT, they usually do not realize what is expected of them. Often times, even the Grantor does not realize what he or she is asking of a friend or family member. It is important to educate yourself on the role, and do what you can to protect the Trust and yourself when you are serving as Trustee. Please contact Goosmann Trust Law Counsel if you would like to know more about Irrevocable Life Insurance Trusts.*

