



Trustees Who Breach Their Fiduciary Duties

IGNORANCE OF THE LAW IS NOT AN EXCUSE

by ELAINE M. WATROUS, CLPF

It is shocking to see how many Trustees break the law and violate their fiduciary duties. The California Probate Code contains all the duties and responsibilities that Trustees must comply with in order to properly administer a trust yet so few family member Trustees are aware of the rules. There are rules on just about every action a Trustee must take and on actions the Trustee must NOT take from conducting proper notifications to interested parties upon someone's death, marshalling trust assets and investing them according to the Uniform Prudent Investor Act, paying the decedent's debts and issuing accounting reports to the trust beneficiaries, to every other action required of a Trustee in between. Yet, so often these many duties and responsibilities are simply ignored or not known by individual Trustees. But why do so many Trustees get it wrong? The biggest problem is lack of knowledge. Many individuals acting as Trustees have no idea about all of the requirements to follow under the Probate Code and under the trust document itself. They have never been educated, advised, or inquired about their duties at all. It seems shocking just how many people willingly assume the many duties as Trustee, but have no idea what those duties are.

Trustees have a duty to administer the trust according to its terms and carry out the settlor's intentions as stipulated word for word in the trust agreement. The trustee can delegate certain duties to advisors; however, the trustee is still personally responsible to monitor and supervise the actions of their agents in order to safeguard the beneficiaries' interests.

Standard of care, skill and caution must be used by a Trustee as if a reasonable person was dealing with their own property. Relying solely on the investment decisions of another is not considered reasonable without careful research and a plan in place to preserve and grow the trust estate.

The Trustee is under a duty of absolute loyalty to all of the trust beneficiaries by avoiding the appearance of self-dealing and putting the interest of the beneficiaries ahead

of their own. This is often difficult when the Trustee is also one of the beneficiaries. Trustees must consider the needs of the beneficiaries and must not undertake any transaction that would harm the beneficiary's best interest.

The duty to secure and safeguard trust assets means to identify to take and keep control of the trust property until the time comes for beneficiary distributions in accordance with the terms of the trust. Accompanying this duty is the duty to enforce all rights and claims of the trust against third parties including unruly beneficiaries.

The duty to segregate and identify assets is an essential requirement of the Trustee that they do not co-mingle their personal funds with trust funds. If the Trustee fails to keep trust assets clearly separate from their own assets, the Trustee will be liable for any loss the property might sustain.

Duty to invest and make property productive is an important obligation of the Trustee to consider for both the income beneficiary and the principal beneficiary with equal weight. The Uniform Prudent Investor Act requires that the Trustee diversifies trust assets under the Modern Portfolio Theory and applies its principals regarding risk and return. In certain situations the investment vehicle that would benefit one would not benefit the other so it is very important that the Trustee has clear records on the research they performed and the decision making process behind their investment decisions.

The Trustee has a duty to account and must maintain clear and accurate accounting records during the time they are serving as trustee. Trust accountings are more complicated than regular accountings and may need to be prepared by someone with special skill in the event of a contentious administration. In the best of cases, clear and transparent written explanations of all income, expenses, receipts and disbursements of the trust assets must be presented to the beneficiaries at least annually and at the termination of the trust.

Being a Trustee is often a thankless job and it comes with many rules as well as the risk for potential personal liability. One should not make the decision to accept a Trustee position without careful consideration and understanding of exactly what those duties entail. If I had to guess how many family member Trustees were in breach of trust when they first approached our law firm for guidance it would be close to 100% regarding at least some aspect of their duties. So when you are asked to act as Trustee of a California Trust, the first thing you should do is find out what duties and responsibilities you have. In the end, you'll be glad you did because it will be up to you alone to prove you complied with those duties if you ever have to defend your actions as Trustee.



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