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SERVING AS PERSONAL REPRESENTATIVE OR TRUSTEE IS NOT FOR SISSIES!

By

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HOW DOES A TRUST WORK?

- The Trustee owns the trust property.
- The Beneficiaries are the persons benefiting from the trust and have "equitable" title.
- The trust agreement is a "roadmap" of the Trustee's duties.
- The Trustee must pay even more attention to the trust investments and disbursements than he would for his own assets.

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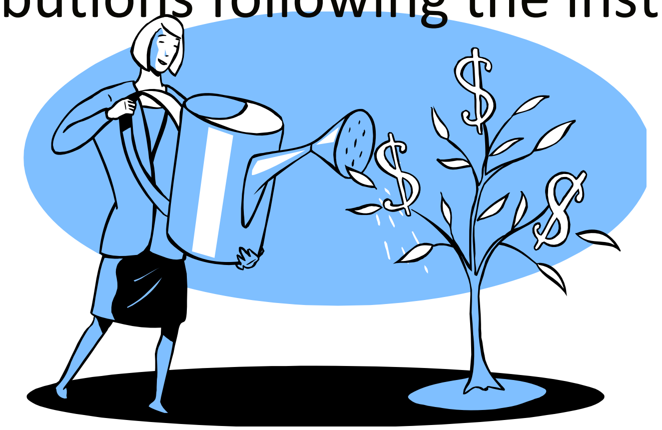
PRINCIPAL DUTIES OF TRUSTEE

- The key concept of trust law is the duties and responsibilities of the Trustee.
  - Take possession of trust property.
  - Protect trust assets.
  - Carefully and "in good faith" read, understand and follow the terms and purposes of the trust.
  - Diversify investments, unless the trust provides otherwise
  - Make payments or distributions following the instructions contained in the trust.
  - Delegate Properly.



THE TRUST AGREEMENT IS A ROADMAP

- The Trustee must read and reread and reread the trust agreement, even the technical terms, to determine his responsibilities to the beneficiaries.

AN INVESTMENT ISSUE: DIVERSIFICATION

- THE SITUATION: In 2005, you became trustee of a $1,000,000 trust for the benefit of your nieces and nephews. The trust is invested as follows:
  - Wachovia Bank $800,000
  - Cash $200,000
  - The Trustee is generally under a duty to diversify the trust assets, unless the trust contains express instructions to the contrary.
  - The nieces and nephews have instructed the Trustee to sell none of the Wachovia shares.

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The Stuff You Don't Want to Read

- To invest and reinvest the trust estate and the proceeds of sale or disposal of any portion thereof, using the judgment and care under the circumstances then prevailing that persons of **prudence**, discretion and intelligence exercise in the management of their own affairs, **not in regard to speculation** but in regard to the permanent disposition of their funds, **considering the probable income as well as the probable safety of their capital**, in any property or securities, including such loans, bonds, stocks, mortgages, common trust funds, mutual funds (including those managed or advised by the Trustee), securities, partnerships (whether general, limited or special), interests as members in limited liability companies, or other enterprise, stock or interest in any family corporation, or other property, real or personal; to purchase options for such purposes; to exercise options (including, without limitation, stock options), rights, or warrants; to purchase securities or other property, as the Trustee may deem suitable; to make temporary investments in securities of the United States or any agency thereof; to purchase and sell fractional shares and subscription rights to which the trust estate may become entitled; and to exercise such powers without regard to any **statutory or constitutional limitations** applicable to the investment of funds and **though the acquisition might violate principles of investment diversification, so long as the Trustee reasonably determines that the acquisition thereof is in the best interests of the trust estate and that, because of special circumstances, the purposes of the trust are better served without diversifying investments**.

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ADDITIONAL BOILERPLATE

- Notwithstanding anything to the contrary above, to hold and retain without liability for loss or depreciation any interest in WACHOVIA transferred to the Trustee or to which the Trustee becomes entitled, and to invest and reinvest the trust estate and the proceeds of sale or disposal of any portion thereof in WACHOVIA, without regard to any statutory or constitutional limitations applicable to the investment of funds and though the acquisition might violate the principals of prudent investing.

DIVERSIFICATION PART 2

- THE SITUATION: For many years, the trustee has invested trust assets in a diversified fashion, allocating 50% of trust assets to a broad spectrum of equities and 50% to bonds paying a fixed income.

- The trust suffers a 40% decline in value during the 2008-9 financial, banking and real estate "meltdown."
- What is the Trustee's exposure?
- What is "prudent" investing?

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BALANCING THE INTERESTS OF THE BENEFICIARIES: THE TRUSTEE AS KING SOLOMON

- WHO ARE THE TRUST BENEFICIARIES?
  - Beneficiary A ("Income Beneficiary") is entitled to all income from the trust
  - Beneficiary B ("Remainder Beneficiary") receives whatever is left upon A's death.

- Conflicting Interests!!!
  - THE SITUATION: The sole asset of a trust is a $1,000,000 piece of land which generates only $10,000/year of income.
  - A = an elderly, retired piano teacher in poor health who is living on Social Security.
  - B = several nieces and nephews of A, who want to hold the land because of its potential for appreciation in the future.

KING SOLOMON AGAIN

- THE SITUATION: A is the president of ABC Company and owns 20% of its shares. The remaining 80% of the company shares are owned by a trust for A's benefit.
- ABC company has lost money for several years, and the trustee suspects that A is suffering from substance abuse problems and neglecting the business.
- B-1, B-2 and B-3, who are A's children, are the remainder beneficiaries. They are not involved in the business.
- A wants to declare a large dividend and double A's salary.
- Should the business be sold?

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AND AGAIN!!!

- THE SITUATION: The trustee receives $1,000,000 of life insurance proceeds upon the death of the father. The beneficiaries are A and B.
- What factors should the trustee consider in deciding how to invest the insurance proceeds?
  - Does A have other wealth?
  - Is A destitute?
  - Does A have any anticipated future needs, such as education or health costs?
  - Does A have a responsibility to support B?
  - What are the ages of the beneficiaries?
  - How long will the trust last?
  - What are B’s needs? Does B have any “special needs?”

DISTRIBUTIONS

- Carefully interpret the roadmap, the terms of the trust.
  - "Pay all income to A."
  - "Pay all income to A. If income is insufficient for health, support and maintenance, supplement income with principal."
  - "Pay all income to A. If income is insufficient for health, support and maintenance, *considering other resources available to A*, supplement income with principal."
  - "Pay all of A's educational expenses, accumulating the rest for B's ultimate use."
  - "Spray income and principal between A and B as needed for their *happiness*, accumulating any income not distributed."

THE DUTY OF LOYALTY

- DO NOT COMMINGLE ASSETS
- Avoid conflicts of interest. The trustee decides to sell the unproductive tract of land, or the family business.
  - Can the trustee purchase the asset himself?
  - Allow his child to purchase the asset?
  - At what price and on what terms?

- Keep accurate records.
- **COMMUNICATE WITH BENEFICIARIES**

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MY BEST FRIEND CAN TAKE CARE OF THE CHILDREN – OR CAN HE???

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