

FIDUCIARY DUTIES

When a person accepts the responsibility of becoming an executor or a trustee, that person (“fiduciary”) also accepts fiduciary duties which arise from the applicable instrument, and by operation of law.

These include, but are not limited to:

1. If the person is an executor or other personal representative appointed by the court, some (but not all) of the duties imposed by law are set forth in the court form of “Duties and Liabilities.” The fiduciary is obligated to file with the court an acknowledgment of receipt of this document before being appointed.

In addition:

2. A fiduciary has the duty to administer the trust or estate in accordance with the applicable instrument, and according to the laws of trusts and estates.

3. The fiduciary must act in the highest good faith towards the beneficiaries. The fiduciary must make full disclosure of material facts. He or she must not acquire an interest adverse to the trust or the beneficiaries. He or she must not use the position to gain any advantage over the beneficiary or to engage in any self dealing.

4. The fiduciary has the duty to administer the trust or estate solely in the interests of the beneficiaries.

5. If a trust or estate has two or more beneficiaries, the fiduciary has the duty to deal impartially with them. The fiduciary must also act impartially in investing and managing the fiduciary assets.

In an estate, the power to invest is much more limited than in a trust.

6. The fiduciary has a duty not to use or deal with trust or estate property for the fiduciary’s own profit or for any other purpose unconnected with the trust or estate. The fiduciary must not engage in any transaction in which the fiduciary has an interest adverse to the beneficiary.

7. A transaction between the fiduciary and his or her beneficiary, trust or estate, and by which the fiduciary obtains an advantage, is presumed to be a violation of the fiduciary duties.

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8. The trustee of one trust has a duty not to knowingly become a trustee of another trust adverse in its nature to the interest of the beneficiaries of the first trust, and a duty to eliminate the conflict or to resign as trustee when the conflict is discovered.

9. The fiduciary has a duty to take reasonable steps to take and keep control of and to preserve the trust or estate property.

10. The trustee of a trust is under a duty to use reasonable care and skill to make the trust property productive.

11. Within a reasonable time after becoming trustee, the trustee must review the assets and, unless otherwise provided in the trust instrument, retain or dispose of them in order to conform to the prudent investment requirements. Unless otherwise provided in the trust instrument, the trustee must dispose of unproductive property.

12. The fiduciary must keep trust or estate property separate from his or her individual property, and from the property of other trusts or estates. A fiduciary who mingles trust funds or property with his or her own property can be absolutely liable for their safety and for the value of their use.

13. A fiduciary has a duty to take reasonable steps to enforce claims that are part of the trust or estate property.

14. A fiduciary has a duty to take reasonable steps to defend actions that may result in a loss to the trust or estate.

15. A fiduciary has a duty to apply the full extent of the fiduciary's skills.

16. A fiduciary has a duty not to delegate to others the performance of acts that the fiduciary can reasonably be required to personally perform. A fiduciary may not transfer the office of fiduciary to another person, nor delegate the entire administration to a co-fiduciary or other person.

In a case where a fiduciary properly delegates a matter to an agent, a co-fiduciary, or other person, the fiduciary has the duty to exercise general supervision over the person performing the delegated matter.

17. Where an interest in real property is transferred by reason of death or otherwise, the fiduciary must timely file a change of ownership statement with the county recorder or assessor in the county where the real property is located.

18. The fiduciary must administer the trust or estate with reasonable care, skill and caution.

19. A fiduciary has the duty to keep good books and records, to report information, and to prepare and file detailed accountings of his or her administration. Such accountings must be provided to the beneficiaries, and, in the case of an estate or a trust which is under court supervision, with the court.

20. The above is intended to provide an idea of some of the numerous responsibilities a person accepts when he or she becomes a fiduciary. It is not a complete list.

Additional fiduciary duties apply to particular facts and circumstances. In general, the fiduciary is required to do all that the law requires him or her to do under the circumstances. Fiduciary duties include obtaining competent counsel to advise of the fiduciary's duties and liabilities under the circumstances.

The above is general information only. It is not to be considered or relied upon as legal advice. Each case must be reviewed and planned in light of its own particular facts. Mr. Bradford provides legal advice only to persons who are his clients.

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