THE FIDUCIARY'S HANDBOOK

Third Edition

Articles prepared by members of the

Estate Planning Council of Seattle

For additional copies
or further information on
other Council publications, please contact
The Estate Planning Council of Seattle
PO Box 99593
Seattle, WA 98139
(206) 285-4066
(206) 284-0342 FAX
www.epcseattle.org
info@epcseattle.org

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Introduction

This third edition of *The Fiduciary's Handbook* is one of three publications of the Estate Planning Council of Seattle. It is made up of six articles that describe the duties, responsibilities, and liabilities that are to be accepted when an individual becomes a fiduciary. The handbook provides a practical guide to conducting the specific duties of each fiduciary. This is done in a helpful "how to" format that includes checklists, things to watch out for, pages for notes, and a list of trustee powers taken directly from the Washington statutes.

This handbook has two primary goals. The first is to help educate those who are considering becoming fiduciaries. The second is to provide a "first source" for the person who has already accepted a fiduciary role and who is beginning to map out a plan for conducting his or her duties in that position.

The Fiduciary's Handbook joins the Council's other publications, *Estate Planning* and *Dealing with the Death of a Loved One*. *Estate Planning*, a highly successful publication, addresses facts of life, property, and death as it educates the reader on how to plan for property disposition, purchase insurance, minimize estate and gift taxes, and plan for retirement. *Dealing with the Death of a Loved One* provides guidance on the myriad questions and issues that one faces when a loved one passes away.

These publications are the result of many months of work by Council members acting under the guidance of the Council's Executive Committee and with the support of the membership it serves. The Council hopes that the knowledge and direction provided by these and future publications will help promote productive, successful planning for families and businesses in our community.

The Estate Planning Council of Seattle is an organization whose membership comprises attorneys, certified public accountants, insurance agents, brokers who are chartered life underwriters, trust officers, and certain other financial and estate planning professionals. All members actively practice in the estate planning field.

The Fiduciary's Handbook was written and edited by Council members. Articles were written by Sandra R. Blair, Karen E. Boxx, Vincent A. Gervais, Roberta K. Reed, Barbara C. Sherland, Kimbrough Street, Gerald Treacy, and Victor Van Valin. Serving as general and technical editors and overseeing all organizational and publishing matters were Douglas C. Lawrence, P. Robert Brown, and William F. Super. These articles were updated for the third edition by Karen E. Boxx, Barbara Isenhour, Charles Riley, Mark Roberts, Robin Russell, Barbara C. Sherland, and William F. Super. The Council is grateful for the contributions of time and effort by all these individuals.

Lastly, several words of caution: The description of duties, responsibilities, and liabilities presented here is intended to serve as a general guide in Washington. Each fiduciary position is unique, and every fiduciary action must be tailored to the specific circumstances presented. Further, the duties of all fiduciaries must be performed with an appropriate knowledge of property, tax, and other laws and regulations, which are subject to change. As a result, this publication should not be used as a substitute for professional assistance in specific circumstances. The Council disclaims any responsibility for any actions taken on the basis of the materials contained in this publication. Before taking any action as a fiduciary that you are personally unfamiliar with, you should seek the advice of qualified advisers. Only they can provide you with complete and up-to-date counsel as you conduct your fiduciary duties.

The Estate Planning Council of Seattle, May 2009

Overview: General Fiduciary Duties

What Is A "Fiduciary"? Do You Want To Be One?

A "fiduciary" is someone who is trusted to manage property for someone else, the "beneficiary." Extraordinary trust and confidence are placed in a fiduciary. As a consequence, the fiduciary is expected to carry out the fiduciary duties carefully and honestly. The fiduciary is also expected to act selflessly and with undivided loyalty to the beneficiary. The fiduciary is given broad powers to carry out these tasks, which may carry personal liability for improper actions.

This handbook describes a number of different fiduciaries:

The "executor" or "administrator" (also known as a "personal representative"), who settles the estate of a person who has died and distributes the estate's assets to the persons entitled to receive them – the beneficiaries;

The "trustee" of a trust, who manages the assets for the trust's beneficiaries and makes distributions to them;

The "guardian," who manages the assets of a person no longer able to manage personal and financial affairs;

The "attorney-in-fact," who acts under a power of attorney and manages assets for a person no longer able to manage personal and financial affairs; and

The "custodian" for a minor, who manages assets for a minor beneficiary under the Washington Uniform Transfers to Minors Act.

A fiduciary serves in a position of responsibility. Before you agree to serve as a fiduciary you may wish to read this handbook and consult your professional advisers. Do you really want to serve as a fiduciary? Do you have the time, skill, and patience? Are you really the right person for the job? Consider how you would respond to either of these advertisements:

WANTED: Wise "parent figure" to manage and distribute assets for someone else. Compensation: fair fee, respect, and gratitude.

WANTED: Referee to judge demands of disgruntled and unreasonable persons and to umpire disputes between them. Compensation: sleepless nights and heartburn.

Both of these ads are for the position of a fiduciary. Either ad may accurately describe the experience you may face as a fiduciary. The experience you will have serving as a fiduciary will depend on many factors, some of them outside your control, such as:

- The persons involved, their personalities, and the relationships among them;
- The assets involved and their location;
- The time required and your availability; and
- The skills required and how they compare with your skills.

Some of these questions you can assess yourself; others may require experienced assistance. For example, be cautious if you become involved with any land on which “hazardous substances” have been used – such as land once used as a gas station or dry cleaning establishment, or even vacant property once used for dumping. Being involved as a fiduciary with this kind of property could involve personal risk to your own assets.

The more knowledgeable you are about your legal duties as a fiduciary, the greater the likelihood of a smooth and positive administration. While the specific duties of the fiduciaries discussed in this handbook may differ, all fiduciaries share the general duties discussed below. The chapters that follow will discuss in greater detail how these duties affect each type of fiduciary.

General Fiduciary Duties

Duty To Carry Out The Fiduciary Purpose. If you are asked to serve as a fiduciary, or if you are appointed by a Will, trust, or power of attorney to serve, you always have the right to decline. However, once you accept the appointment, your job is to carry out the “fiduciary purpose” until you properly resign or are replaced. The fiduciary purpose is the obligation to protect the interests of the persons to be benefited by the arrangement (the beneficiaries) and to carry out the specific terms and spirit of that arrangement.

Your duties and responsibilities as a fiduciary are governed by the terms of the instrument under which you are acting, for example, the Will or the trust. If there is no governing document, such as a Will or trust, or the controlling document is silent, Washington statutes and case law often provide guidance. Many attorneys, trust officers, and accountants are knowledgeable and experienced in this area and can provide you with advice and assistance.

As a fiduciary, you must follow any specific instructions in the governing document. Even with the best possible motives, you cannot substitute your judgment for those explicit directions. Sometimes the document or the law may give you wide discretion. In that instance your duty is to exercise that discretion in a manner that will carry out the general fiduciary purpose.

Duty To Be Prudent. Your acts as a fiduciary will normally be judged by comparison to what a "prudent person" would have done in the same circumstances.

Washington law provides that a "prudent person" exercises 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.

This does not mean that you may take the same risks with fiduciary assets under your care that you may take with your own assets. You may sometimes be less than prudent in the management of your own affairs: you might allow a check payable to you to remain on your desk for several weeks, earning no interest, or you might allow your own deposit at a bank to exceed the FDIC insurance levels. However, if you accept appointment as a fiduciary, you do not have the luxury of lapses like these. A prudent person would promptly deposit checks and see to it that all assets are properly insured.

If you do take an imprudent risk and the beneficiary is damaged as a result, you, as a fiduciary, will be personally responsible for repaying any loss out of your own pocket. What is more, in extreme cases you could also be found to be criminally at fault.

Duty Of Loyalty. As a fiduciary, you may be acting on behalf of persons who need assistance or protection. Sometimes these persons will have little or no capacity to act in their own interest. Great trust and confidence are being placed in you. As a result, you are held to a high duty of loyalty to the persons whom you serve. You cannot put your own interests above those of your beneficiaries. You cannot take any personal advantage or profit from your position as a fiduciary (with the exception of reasonable compensation for your services). Moreover, you must scrupulously avoid getting into any situation where your own interests and the beneficiaries' interests could conflict.

Good faith and good motives are no excuse for breaching the duty of loyalty.

> **Example:** Let's assume you are trustee of a trust that holds only some useless land. Can you buy the land from the trust, at a fair price, if your sole motive is to put some cash assets into the trust so that the trust can support the beneficiary? No. That purchase is a breach of your duty of loyalty.

> **Example:** Let's assume that you are the executor of your mother's Will, and your sisters and you are the beneficiaries of her estate. Can you live in your mother's house before it is sold by the estate and drive her automobile? No. That would be a violation of your duty of loyalty, even if you pay the utilities and gasoline, unless you do so with the consent of the other beneficiaries.

Your fiduciary duty of loyalty runs to all the persons who have an interest in the fiduciary assets – both those persons who currently enjoy the benefits and those who will later benefit. One of the most difficult aspects of the fiduciary's job arises simply from the fact that the duty of loyalty runs to both current and future beneficiaries. Often their interests conflict. The fiduciary must consider and balance the competing interests.

> **Example:** Assume Jane leaves her estate in trust. You, the trustee, are directed to pay all the trust's income to her second husband for as long as he lives. When he dies, you are to distribute the trust's assets to Jane's children from her prior marriage. In investing the assets, you have a duty of loyalty to Jane's husband to produce a reasonable level of income; at the same time, you also owe a duty of loyalty to Jane's children to invest so that the trust assets appreciate enough to keep up with inflation during the years Jane's husband is alive.

Duty Of Impartiality. As a fiduciary, you should generally be impartial in dealing with the persons who have an interest in the fiduciary assets. However, being impartial does not necessarily mean treating all beneficiaries equally.

If, for example, the governing document permits you to make distributions to each beneficiary based on need, you may reasonably decide to distribute more to one than another, but you must do so in an unbiased manner.

Duty To Identify And Collect Property. As a fiduciary, you must actively take steps to determine the nature and extent of the assets under your fiduciary control.

In some instances, this is easy: If your mother names you custodian of 100 shares of IBM stock under the Uniform Transfers to Minors Act, you know you are responsible for that stock.

In other instances, this duty is more time-consuming and even burdensome. If you are acting as the personal representative of a decedent's estate you may need to search the house, search any safe deposit box, and review tax returns and records to identify all the assets belonging to the decedent.

Once you have identified the assets for which you are responsible, you must take whatever steps are necessary to place the assets under your exclusive legal control. If fiduciary rights to the property are disputed, you may need to bring a lawsuit to establish your right to control. As the assets are identified, you should list them and, if you are acting as executor or administrator of an estate, you must prepare an inventory of th.

Duty To Protect Property. Although you must identify and take possession of the assets involved, you MUST NOT combine (or "comingle") the fiduciary assets with your own personal assets. Commingling assets can quickly muddy the water as to which assets belong to whom and might enable your own personal creditors to have access to the fiduciary property. As a result, you should never, for any reason, deposit fiduciary funds in your own bank account or take title to fiduciary assets simply in your own name without any indication of the fiduciary relationship. Likewise, if you are a fiduciary for several trusts or estates, you normally should not combine the assets of one with another.

What, then, should you do with the property you control as a fiduciary? Fiduciary assets are to be earmarked as clearly as possible to indicate that you exercise legal control over the property but that the property does not belong to you. For example, if you are executor of an estate, all estate funds should be deposited in accounts titled as follows: "Your Name, Executor of the Estate of John Q. Deceased."

To protect the fiduciary assets from loss, it is wise to review the adequacy of any existing insurance coverage. Insurance may be required on residential or other real estate, or on valuable items like art, jewelry, and antiques.

As a fiduciary, you are charged with defending both the fiduciary relationship and the assets. If someone tries to invalidate a Will of which you are executor, it is your job to prove the Will's validity. Similarly, if someone claims a fiduciary asset, your duty is to defend your right to it as a fiduciary.

Duty To Invest Prudently. How do you know whether a particular investment is prudent? It is important to be aware that some investments you or your neighbor might make personally would not be considered "prudent" for a fiduciary to make. However, there is no list of permissible or impermissible fiduciary investments you can review. Instead, fiduciary investments are judged on the basis of the prudent person standard discussed above.

There are few hard and fast rules in this area because the prudence of an investment depends on all the facts and circumstances at the time. In this area you may find it helpful to seek the counsel of professional advisers regarding the types of investments generally made by or avoided by fiduciaries. They can also help you identify the factors to consider in judging the prudence of any particular investment you are considering.

Assets under your fiduciary control must generally be promptly invested or otherwise "put to work" to produce income. For example, any checks and cash you receive should quickly be deposited in interest-bearing accounts or otherwise prudently invested. Real estate should normally be leased or managed to produce income.

A particularly important part of the duty of prudent investment is to diversify the fiduciary assets. "Diversification" is the opposite of putting all the fiduciary eggs into one basket. It means investing in assets that will respond differently to varying economic developments. The purpose of diversification is to minimize the risk of loss. For example, a trust's assets would not normally be invested only in bonds. Diversification usually suggests investing part of the trust's assets in cash deposits, part in stocks, and part in bonds.

Duty Not To Delegate Unwisely. You have been selected to serve as a fiduciary because someone has confidence in your ability and judgment. This does not mean, however, that you must personally perform each fiduciary task. It is often appropriate to employ someone else (an "agent") to perform a particular aspect of your fiduciary management task, but it is not appropriate to delegate all your responsibilities.

It is not always clear which acts you should perform personally and which are appropriate to delegate. Again, professional advisers can help you. If you do decide to delegate, it is important to review the background and qualifications of the person you select. Written agreements with each agent are advised.

Once a matter is delegated, you should not ignore what happens from then on. You must periodically review the performance of the person you selected to be sure his or her performance is adequate. It's important to be aware that delegation does not get you "off the hook." If someone to whom you have delegated duties acts imprudently, you can be held liable.

> **Example:** You are trustee of a $250,000 trust, but you are not personally skilled in making investment decisions. You delegate to an investment adviser who fails to diversify and who invests all the money in technology stocks. If technology stock prices tumble, you can be personally responsible for the loss, even though you properly delegated investment decisions. The concentration in technology stocks may be found to be imprudent because there was no diversification.

Duty To Furnish Information. When you are acting as a fiduciary, you often have considerable discretion because confidence has been placed in your judgment. As a result, you are usually not legally required to inform or consult with the beneficiaries before acting. An exception to this general rule applies to trusts. If you are trustee of a trust, Washington State law requires you to give notice in advance of certain transactions that could have very significant effects on the interests of the trust beneficiaries (see the chapter titled Trustees of Trusts).

The beneficiary of the fiduciary arrangement is often the only person who can monitor the performance of the fiduciary. Consequently, to assist beneficiaries in protecting themselves, you must respond to the beneficiaries' reasonable requests for information. Some fiduciaries also have a statutory duty or duty under the governing document to render periodic accountings to the beneficiaries so that the beneficiaries know what is going on. It is a good idea to check with your professional advisers when you begin your fiduciary duties so that you know the scope of your accounting obligations.

Even if you are not required to file formal accountings, the need for good recordkeeping cannot be overemphasized. You will need to keep a record of everything you receive as a fiduciary: all assets and all income and gains from those assets. Likewise, you will need to record all payments you make as a fiduciary, any distributions you make to beneficiaries, and all bills you pay.

Whether you keep these records separately or as part of the fiduciary banking records, you will find it very helpful to list and label each individual receipt or disbursement separately (rather than, for example, lumping all of one day's receipts into one figure). This practice will assist you later in any required accountings and in preparing any required income tax returns. If, in managing numerous securities, you place them in a brokerage account, the broker's statements will ease your recordkeeping chores.

Income tax laws may require you to file a federal or state income tax return for the assets you control. For example, an estate or a trust often has to file its own income tax return. You may also be required to send to the beneficiaries certain information relating to the fiduciary assets, which they will need to file with their own tax returns. The income tax rules relating to fiduciaries are sometimes complicated, and advice should be sought from a professional who is experienced in the field of fiduciary taxation.

Multiple Fiduciaries. You may not be acting alone as a fiduciary. You may be a co-fiduciary, acting with one or more other fiduciaries. The relationship between co-fiduciaries is not always the same. Must you all act unanimously, or does "majority rule"? Can you delegate certain management tasks to your co-fiduciary? The answers to these questions can be found in the governing document or in the law if the document is silent. Circumstances differ, and it is important to consult with your professional adviser.

Even if majority rules or you are allowed to delegate particular tasks, you cannot sit back and let the other fiduciary do all the work. If you stand by passively and let another fiduciary cause harm to the beneficiary or the fiduciary assets, you can be held personally responsible.

Summary

As a fiduciary, you have many responsibilities, often involving discretion and always requiring honesty and good judgment. The discussion of general fiduciary duties in this chapter, and the more detailed discussion of the responsibilities of specific fiduciaries in the following chapters, will assist you in better understanding the scope and nature of your duties. These chapters will also help you identify the areas in which you may need to request professional advice. The greater your understanding of your fiduciary responsibilities, the greater the likelihood that your fiduciary experience will be an effective and positive one.

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Fiduciary Accounting

Fiduciary accounting is generally of concern to personal representatives and trustees. In some cases it may be a concern for other fiduciaries. This type of accounting is unique for two reasons: first, because many of the rules, principles, and concepts vary from state to state and second, because many of the actions taken by the fiduciary (including some that will affect the accounting) are governed not by state or federal laws but by the wishes of the decedent or grantor as expressed in the Will, trust, or other governing instrument.

Even though there are many more similarities than differences between a fiduciary's accounting system and systems for other entities, the differences are very important. The most important one is that a fiduciary has to deal with two distinct classes of "owners" (the beneficiaries): income beneficiaries and principal beneficiaries. The interests of each can be – and often are – opposed to one another. This distinction makes it vital to maintain two separate sets of records that accurately distinguish between the two classes and account for their respective interests so that each may be fully protected.

There is no standard accounting system for fiduciaries because each arrangement varies so much in size and complexity. Accordingly, the accounting records should be designed with the particular situation in mind. Many fiduciary estates are so small that it is probably not necessary to even establish a formal set of books. Others, because of their size or complexity, will require a formal accounting system. Regardless of the size or complexity of the system, the principles of fiduciary accounting must be followed. Every fiduciary must understand these principles and follow them in the administration of the fiduciary estate.

In accepting the responsibility of being a fiduciary, a person also agrees to manage the assets in accordance with the wishes of the person who established the fiduciary relationship. This normally requires fairness to all beneficiaries. It often also requires the fiduciary to make periodic reports to the beneficiaries, the federal and state governments, and in some cases, the court or the person who established the relationship.

The basic objective of fiduciary accounting is to establish and maintain accounting records that will enable the fiduciary to prepare a report that clearly and accurately provides meaningful information to the interested parties. As a general rule, the following information should be maintained by the fiduciary:

- Records relating to the receipt of the fiduciary assets (the opening balance sheet);
- Records of earnings, gains, and other receipts, and of expenses, costs, and other expenditures;
- Records of all distributions made from the income and principal accounts; and
- Where applicable, an allocation of the receipts and disbursements between the income and principal accounts.

A principal problem encountered in designing and maintaining such a system is the absolute necessity to distinguish clearly between the principal of the estate or trust and its income. The distinction between principal receipts and disbursements and income receipts and disbursements can often be found in the Will or trust instrument. If the governing instrument is silent, state law (normally the Washington Principal and Income Act of 2002) should be reviewed for clarification.

This distinction between principal and income is necessary because in many cases the decedent's Will, or the trust instrument, designates one person to receive the income (an income beneficiary) and another to receive the principal (a remainder beneficiary). Even though it may not be necessary under the terms of the document to make such distinctions, the fiduciary duty to provide information and the requirements of estate and income tax laws make it desirable, if not mandatory, to do so. As a result the accounting system must be maintained in such a way that at any time the amount accruing to the two classes of beneficiaries may be readily determined. Finally, by distinguishing between principal and income, both the fiduciary and the beneficiaries can better determine the investment performance of the assets.

The Washington Principal and Income Act can be referred to for direction governing the treatment of principal and income in cases where the Will, trust, or other governing instrument is not clear or complete. The basic philosophy of the Washington Principal and Income Act is that the person who makes the Will or creates the trust can allocate receipts and expenditures in such a manner as is deemed appropriate. The function of the Act is to supply rules of allocation between principal and income where the Will, trust, or other governing instrument fails to give them.

In general, the Act provides that rent, interest, ordinary dividends, business income, ordinary repairs, fiduciary income taxes, and one-half of the fiduciary's fees are income items. Proceeds from the sale of fiduciary assets, loan repayments, insurance proceeds, capital improvements, capital gains taxes, and the other one-half of the fiduciary's fees are normally principal items. Depreciation expenses are unique, and professional guidance should be obtained before deciding how to allocate those expenses among the accounts.

If neither the governing document nor the Washington Principal and Income Act provides guidance, the fiduciary should adopt a reasonable and fair approach. The fiduciary needs to take into consideration the interests of those entitled to income as well as those entitled to the principal and must act in such a manner as persons of ordinary prudence, discretion, and judgment would in the management of their own affairs.

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Personal Representative
Of A Decedent's Estate

When a person dies leaving assets that require a probate, the court appoints a fiduciary to administer that proceeding. If the fiduciary is named in the decedent's Will and subsequently appointed by the court, he or she is called an "executor." If the decedent died without a Will, or if the court selects the fiduciary for some other reason, he or she is called an "administrator." In Washington, the term "personal representative" is used to describe any fiduciary appointed to administer a decedent's estate, regardless of how the person is selected.

Who Will Serve As Personal Representative Of The Estate?

If a decedent leaves a validly executed Will that names a person to serve as personal representative, that nomination will generally be respected unless the person named is disqualified. Reasons for disqualification include:

- Conviction of a felony;
- Being under the age of 18;
- Conviction of a misdemeanor involving moral turpitude; and
- Being of unsound mind.

There is another circumstance that may alter the choice of personal representative. If the decedent was married at the time of death, the surviving spouse has a statutory right to administer the community property, regardless of whom the decedent named in the Will as personal representative.

Potential conflicts of interest should be considered in selecting a personal representative. The person named is not automatically disqualified from serving if he or she is also a beneficiary of the estate. In fact, it is very common for a family member, such as a child, to serve as personal representative even though such a family member is also receiving a share of the estate. However, if the conflict is more direct, for example if the personal representative is also a major creditor of the estate and the estate is marginally solvent, then the conflict may be grounds for disqualification or removal.

An attorney may be named to serve as personal representative. If an attorney who has also prepared the Will is to be named, the attorney should discuss this decision with his or her client thoroughly and disclose in writing all implications of his or her serving as personal representative.

If a person dies without a Will, or if the Will fails to appoint someone who is willing and able to serve as personal representative, Washington law gives preference to certain persons to fill that role. The following persons, in the order listed, are entitled to serve as personal representative:

- The decedent's surviving spouse or state registered domestic partner, if any;

- The decedent's next of kin, in the following order:
  a child;
  a parent;
  a sibling;
  grandchildren;
  nephews or nieces;

- The Washington Director of Revenue, if any part of the estate is distributable to the state of Washington because there are no other qualified heirs;

- One or more "principal" creditors; and

- If no one else has asked to be appointed in the 40 days following the decedent's death, "any suitable person" who requests the court to be appointed.

What Are The Primary Duties Of A Personal Representative?

The personal representative's job is to ensure that the decedent's wishes, as expressed in his or her Will, are carried out. Therefore, the duties of a personal representative are to marshal the assets of the decedent; pay his or her debts, funeral expenses, and other expenses of estate administration; and distribute the balance of the estate according to the Will. In doing this, the personal representative is to settle the estate as quickly as possible. With respect to the investment of estate assets, the personal representative's primary responsibility is to preserve the assets of the estate. A personal representative should be familiar with the investment powers and responsibilities of a trustee. Although a personal representative generally does not have the same affirmative duty to diversify the assets of the estate that a trustee would have with respect to a trust, a personal representative should consider an investment plan that minimizes the risk of diminution of the principal of the estate, particularly with respect to setting aside funds for the prepayment of estate taxes and other liabilities.

To Whom Does The Personal Representative Owe A Fiduciary Duty?

The personal representative's fiduciary duty is owed to all parties who have an interest in the estate. Primarily, the personal representative owes a duty to the beneficiaries of the estate to administer the estate properly so that they receive all that they are entitled to as promptly as possible. The personal representative also owes a duty to the creditors of the estate so that all valid claims are paid to the extent assets are available. Finally, the personal representative is considered an officer of the court and has a general obligation to the court to administer the estate efficiently and fairly, which includes a duty to carry out the decedent's intentions.

Because of the broad range of this fiduciary duty, and because conflicts can arise among the persons to whom the personal representative must be loyal, often the personal representative must resolve those conflicts and make decisions based on the nature of the duty he or she owes to the various parties.

In any event, certain fundamental obligations are absolutely clear: personal representatives must refrain from self-dealing, preserve assets so that creditors with valid claims can be paid and beneficiaries can receive to the fullest extent their distributions, administer the estate solely in the interest of the beneficiaries (but not to the extent of refusing to pay valid claims), and uphold their duty of loyalty to the beneficiaries. This can best be accomplished by taking basic prudent steps, such as always keeping estate funds in separate accounts, segregating estate and nonestate assets, keeping careful records of all transactions, and never using estate property for personal benefit without paying for such use.

What Authority Does The Personal Representative Have?

In Washington, most personal representatives have "nonintervention powers," which means that the personal representative can settle the estate without prior court approval for each transaction. The estate must be solvent for the personal representative to be entitled to these powers, and the court must specifically grant them in an order.

Nonintervention powers include:

- The power to sell assets, including real estate;
- The power to borrow money on behalf of the estate; and
- The power to distribute assets to individual beneficiaries without prior court approval.

A personal representative with nonintervention powers has considerable authority and independence in settling the estate. Nonintervention powers reduce the cost and delay of probate but increase the responsibility of the personal representative. The personal representative has the authority to make most decisions on his or her own, but must carefully consider fiduciary duties in making each decision because the personal representative is ultimately answerable for that decision.

How Does The Personal Representative Satisfy The Fiduciary Duties Owed When Administering The Estate?

Checklist Of Duties. The personal representative's duties include:

- Identifying and notifying the proper heirs and beneficiaries;
- Winding up the decedent's personal affairs, such as notifying the post office and the Social Security Administration if the decedent was receiving Social Security, closing up the decedent's residence, and canceling credit cards;
- Taking possession of the decedent's property and making sure that valuables are stored safely and all property is adequately insured;
- Examining the decedent's papers to locate assets, such as bank accounts and insurance policies, and to identify creditors;
- Collecting benefits, such as life insurance, veterans benefits, and refunds for prepaid services such as magazine subscriptions, that are due to the estate or to beneficiaries;
- Preparing an inventory and valuation of estate assets;

- Filing all necessary income and estate tax returns, including the decedent's last income tax return, and paying all taxes due;

- Collecting all debts owing to the decedent or the decedent's estate and pursuing lawsuits on behalf of the estate;

- Identifying proper claims against the estate and either paying them or rejecting improper claims;

- Dividing and distributing the remaining assets to the appropriate beneficiaries; and

- Accounting to the beneficiaries and to the court and closing the estate.

These duties must be carried out in a way that satisfies the personal representative's general fiduciary duties discussed in the Overview. For example, the personal representative should follow the guidelines set forth in that chapter's discussion of the duty to manage assets prudently when gathering the assets and holding them until distribution.

Creditor's Claims. A significant responsibility of the personal representative is to identify and notify creditors of the estate and to pay all proper claims. The term "creditors' claims" refers to debts of the decedent that arose before the decedent's death, and not to debts or obligations arising during the administration of the estate.

Washington law sets out a procedure that, in general, allows the personal representative to eliminate the claims of creditors who do not come forward within a four-month period. The personal representative who elects to obtain the four-month cutoff must publish notice of the claim period in a legal newspaper and file notice with the court. If a personal representative wants the benefit of the four-month cutoff with respect to a creditor who is reasonably ascertainable, the personal representative must also provide the creditor with actual notice. A creditor is generally deemed to be reasonably ascertainable if the personal representative would discover the creditor in a review of the decedent's correspondence and financial records, and discussion with family members. If a personal representative does not elect to provide notice to creditors, creditors must generally come forward with claims within two years from the date of death.

If a claim is presented, the personal representative must determine whether it is properly payable. If a personal representative pays a claim that was unenforceable (for example, a claim that had not been properly presented), then by doing so the personal representative may have violated his or her fiduciary duty to the beneficiaries, who would have otherwise received those funds.

Smaller claims present particular issues. If the claim is $1,000 or less, it will be deemed automatically allowed by the personal representative unless it is formally rejected in a timely manner.

Although a personal representative owes a duty to the creditors to preserve the assets in order to cover proper claims and to pay such claims, the personal representative is not responsible for helping a creditor properly file its claim. For example, even if the personal representative knows that a duly notified creditor has not filed its claim with the court, telling the creditor of the defect in time for the creditor to correct it may violate the personal representative's duty to the beneficiaries.

If a personal representative decides that a claim is not properly payable, then it is the personal representative's duty to reject the claim. The personal representative may also need to resolve contingent claims. For example, the decedent may have personally guaranteed a loan for a business, and the loan may have been current at the date of the decedent's death, so that no amount is currently due with respect to the guarantee. If the lender properly presents its claim, the personal representative should make arrangements that are acceptable to the lender and are reasonable for the estate in order to obtain a release of the guarantee.

Defending And Interpreting The Will. A paramount duty of the personal representative is to carry out the decedent's wishes as set forth in the Will and see that the estate is properly distributed. This is the "fiduciary purpose" that the personal representative must carry out, as discussed in the Overview. Part of this duty is to uphold the decedent's Will. If anyone brings a Will contest proceeding, it is the duty of the personal representative to defend the Will in that action. Also, if any term in the Will is ambiguous, the personal representative must determine the proper interpretation of that term, requesting assistance from the court if necessary. In Washington, the process of seeking court assistance has been streamlined by the Trust and Estate Dispute Resolution Act, which provides jurisdiction for courts to declare the rights of parties in connection with trusts and estates.

Collecting And Managing The Estate Property. Besides protecting the tangible assets such as artwork and real estate through proper storage and insurance, the personal representative must protect the investment assets through proper management. Generally, except as otherwise directed by the Will, the personal representative must manage the assets of the estate in the same manner a reasonably prudent person would manage his or her own assets. The personal representative's duties regarding asset management can be somewhat different from a trustee's: the emphasis is generally on preserving the estate rather than producing income during the probate period.

The personal representative has dual and sometimes conflicting responsibilities: on the one hand, to settle the estate quickly, and on the other, to collect and preserve as much of the estate as possible for payments of debts and distribution to the beneficiaries. For example, if the decedent had a potential interest in real estate that could only be brought into the estate through litigation, the personal representative should consider bringing a lawsuit. In making this decision, the personal representative needs to weigh the value of the property against the costs of the litigation and the possible delay, while considering the chances of success.

Inventory And Appraisal. The personal representative must prepare an inventory and appraisement of the probate assets within three months of the opening of the probate. The inventory and appraisement includes a listing of probate assets and the value of the assets as of the date of the decedent's death. This inventory does not need to be filed with the court (and in most cases probably should not be filed with the court), but the personal representative must provide a copy to a beneficiary or a creditor upon his or her request. The valuation of the estate assets as of the date of death is essential to the preparation of an estate tax return, if one is required. The valuation is also necessary even if there is no requirement to file an estate tax return, so that the assets of the estate can be established.

Use Of Attorneys, Accountants, And Other Experts. The personal representative may hire and rely on professionals such as attorneys, accountants, and financial advisers. If the personal representative has used due care in selecting qualified individuals to assist in the management of the estate, then the personal representative generally should not be liable for the actions of such professionals. The personal representative, however, cannot be completely passive and surrender all duties to those professionals. If the personal representative fails to properly select or supervise hired agents and professionals, he or she runs the risk of incurring liability for the agent's conduct. This is because the personal representative has violated the duty not to delegate, discussed in the Overview. For example, in one Washington case, a personal representative made no attempt to identify heirs, even though he had ample opportunity to do so. This task was left to the attorney, who had failed to make adequate inquiries. The court held that the personal representative was responsible for the failure to locate and notify heirs who were living in Norway.

Relationship With The Attorney For The Estate. The relationship between the personal representative and the attorney for the estate is unlike other attorney-client relationships. The personal representative, in his or her fiduciary capacity, is the client of the estate attorney. The attorney therefore represents the personal representative, not the beneficiaries of the estate. As such, the communications between the attorney and the personal representative are protected by the attorney-client privilege, with one important exception. The attorney, like the personal representative, also owes a duty to the beneficiaries and to the court. If the attorney knows of a breach of the personal representative's fiduciary duty, the attorney may reveal that breach to the court that appointed the personal representative.

Estate And Income Tax Issues. The personal representative is responsible for determining whether any federal or state tax returns are required and, if so, for filing those returns on time and paying any tax due. Important decisions are often necessary with respect to certain elections and how the funds will be raised to pay the tax (for example, which assets should be sold). To fulfill these tax duties properly, and to avoid the personal liability that can be imposed under the Internal Revenue Code, the personal representative should consider obtaining substantial assistance from a competent tax adviser.

The following is a checklist of significant federal tax questions that the personal representative will have to answer in administering the estate. It is possible that other tasks and decisions will be necessary, depending on the circumstances. The purpose of this list is to illustrate the complexity of the tax duties; it is not exhaustive and is not meant to be an explanation of the substance of these tax issues:

- Is an estate tax return required? This depends on the size of the estate and the gifts made by the decedent during life.

- Is an extension of time for filing any return needed or available? In some circumstances, even though the information is ready, the filing of the estate tax return should be delayed because intervening events could create tax savings.

- Is the surviving spouse a citizen of the United States, and if not, is he or she likely to become a citizen in the near future?

- Are there trusts established in the Will, and if so, are there special elections that may be required on an estate tax return?

- Are disclaimers advisable? A disclaimer is made when a beneficiary refuses to accept a benefit from the estate to which he or she would otherwise be entitled. Disclaimers are often useful in creating tax savings, although they may be used for other reasons.

- Does the estate include a closely held business or a farm? If so, and if certain technical requirements are met, then the estate may be able to defer payment of the estate tax or to value the farm or business property in a more advantageous manner.

- Is there any other permissible way to delay payment of estate taxes?

- How should the decedent's remaining exemption from generation-skipping transfer tax be allocated?

- Will an estate income tax return be required?

- Should administration expenses be claimed on the income tax return or the estate tax return?

- Are any of the estate assets difficult to value? Should those assets be appraised by a professional?

- Will income tax returns or gift tax returns need to be filed for the decedent?

- Did the decedent file gift tax returns during his or her lifetime?

- Did the decedent own any partnership interests? If so, the personal representative should discuss possible tax elections with the partnership's tax advisers.

In making these decisions, the personal representative will have to consider not only the effect on the total tax bill but also the effect on the respective beneficiaries. Sometimes a savings of total taxes paid will favor one beneficiary over another.

What Is The Potential Liability Of The Personal Representative?

The personal representative must be concerned with potential personal liability for failure to carry out his or her fiduciary duties while administering the estate. By law, the personal representative is required to post a bond before beginning to administer the estate, unless the bond requirement is waived (as it is in most Wills). If a bond is posted, the surety company that issued the bond will also be liable for the personal representative's misconduct.

Under the Internal Revenue Code, the personal representative is responsible for ensuring payment of taxes due from the estate. If the taxes of the estate are not paid, the IRS may hold the personal representative individually liable for those taxes.

Summary

The fiduciary responsibilities of a personal representative are complex and sometimes conflicting. Although the personal representative of a solvent Washington estate has a great deal of power and autonomy in making decisions, that personal representative is also answerable to a diverse group of parties whose interests often are in conflict. It is therefore imperative that, in order to fulfill those fiduciary responsibilities, the personal representative consider the effects on all interested parties before making decisions. The personal representative should also consider seeking the court's assistance in resolving any ambiguities in the Will and any apparently conflicting duties.

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Trustees Of Trusts

General Considerations In Becoming A Trustee

The essence of a trust is a legally binding arrangement under which the party establishing the trust appoints one or more persons (or a corporation) as "trustee" to hold property in a fiduciary relationship for the benefit of a third person, the "beneficiary." A trustee's job is to carry out the directions contained in the trust's governing instrument, which typically is a Will or trust agreement. In doing so, a trustee at all times must act for the benefit of the beneficiaries, even though the trustee holds legal title to the trust assets.

Of paramount importance in deciding whether to accept one's appointment as trustee is to understand the level of responsibility and the high standard of care imposed upon a fiduciary generally. This is discussed in the Overview and in more detail in this chapter. A trustee should consider whether he or she can make the necessary time commitment to effectively fulfill his or her obligations as trustee. A trustee must consider the nature and amount of the assets the trustee will be expected to manage, and the beneficiaries for whom they will be managed. A trustee will likely be working with the assets of the trust and beneficiaries for a long period of time, and should be confident in his or her ability to perform his or her duties within the spirit of the trust.

Before accepting his or her trusteeship, a proposed trustee should read and become very familiar with the trust document itself. If the document is confusing or there seems to be a conflict or an ambiguity in the terms, the proposed trustee may consider consulting with a professional adviser, or even the grantor if the grantor is still alive. Where there is doubt about the scope of the trustee's powers in administering the trust or the provisions of the trust instrument itself, the trustee must always bear in mind the original intent of the trust's grantor in carrying out his or her duties.

If you are named as a trustee you are not obligated to accept. If you decline, another qualified trustee will be found either as named in the trust document or by going to court. In some cases, you may be asked to serve as a successor trustee to another fiduciary. This could be from a former trustee who has died, resigned, been removed, or become incompetent. If the trust is a "testamentary trust" (one established under the terms of a Will) the trust property will normally be accepted from the personal representative.

A successor trustee will not usually be responsible for the predecessor trustee's actions, unless the successor trustee is aware that the previous trustee made mistakes and in accepting the successor trusteeship does not take any corrective action or seek the assistance of a professional adviser. Often, a successor trustee will request written assurances that he or she will be held harmless from any unknown mistakes of the predecessor trustee. If you are aware of mistakes, you may need to seek the assistance of a professional adviser to correct them.

General Duties Of A Trustee

There is a special relationship of "fiduciary responsibility" to the trust beneficiaries that affects all of the actions of a trustee in carrying out a trust. Many of a trustee's fiduciary duties are imposed by state law, but they are often expanded or limited by the terms of the trust document itself. The following summary describes a trustee's typical duties.

Duty To Identify And Collect Property

The grantor who established the trust, or the personal representative of an estate in the case of a testamentary trust, will deliver to you as trustee the assets that will fund the trust. You have a duty to identify and collect that property, and inventory those assets with the correct cost basis and tax acquisition date. You also have the duty to properly identify those assets as trust assets. You should record any conveyance of trust real property to you as trustee in the records office of each appropriate county. Leases of trust real property, real estate contracts, mortgages, and promissory notes should all have proper assignments to you as trustee. For example, the title to the assets may be registered in the name of "Jane Doe as trustee for the benefit of John Doe, under a trust agreement/last will and testament of Mary Smith dated January 1, 2000."

Duty To Protect Property

Segregating Trust Property. The trustee has a strict duty not to commingle personal funds or other nontrust assets with trust property. Trust property must be kept separate from your own property and from that of other trusts by registering the title in the name of the trust and separately accounting for receipts and expenditures attributable to it. Trust funds held at financial institutions must be segregated from your personal accounts and should be designated as property of the trust.

Preserving Trust Property. Tangible personal property and real property should be insured to an extent commensurate with its current appraised value.

In preserving trust real property you need to pay real estate taxes and mortgages and make necessary repairs. If a lawsuit is necessary to enforce a claim that the trust has, you must initiate a lawsuit. If trust funds are insufficient to preserve trust property (for example, if there are insufficient liquid assets to pay real estate taxes), then you need to notify and consult with the beneficiaries to determine an appropriate course of action. In preserving trust property, the trustee has the duty to enforce claims on behalf of the trust and defend the trust against adverse claims. In deciding whether to pursue a claim, the trustee must consider if the cost to enforce or defend the claim outweighs the benefits to the trust.

Duty Of Confidentiality

A trustee should keep the affairs of the trust confidential, unless otherwise required by law. The trustee should not disclose the terms of the trust, the identity of beneficiaries or the nature of the trust assets to anyone who is not a beneficiary except to the extent necessary to carry out the trustee's duties, and should also preserve the confidentiality of any personal information the trustee learned about the beneficiaries through his or her role as trustee.

Duty To Act Prudently

Investments. The investments of trust property must meet the "prudent person standard." An overall concept to keep in mind is that a trustee must be prudent in his or her overall handling of the trust investments. The investment portfolio for the trust is judged as a whole, rather than by applying the standard to each individual investment standing alone. Unless otherwise required by the trust instrument, the trustee will generally have a duty to diversify investments and determine an appropriate asset allocation. In making these determinations the trustee must investigate the financial needs and risk tolerances of all of the beneficiaries as well as the time horizon of the trust.

The following are some considerations when reviewing possible investment choices:

- Probable income and probable safety of capital;
- Marketability;
- Length of term of investments;
- Duration of trust;

- Liquidity requirements;
- Beneficiaries' needs and outside assets;
- Tax consequences; and
- Economic environment and inflation.

Prudence is judged by reviewing the facts and circumstances existing at the time the investment was made. You may support the prudence of your investment decisions by keeping written records of the factors considered and the circumstances in which the investment was made.

You will need to analyze the extent to which the trust assets, taken as a whole, meet the "prudent person standard" and the determined investment objectives of the trust. Because the prevailing economic climate may change and the needs of the beneficiaries may evolve, a regular review of the suitability of the assets as trust investments should be undertaken. Some trustees develop investment policy statements to lend clarity and consistency to their investment programs and use these as benchmarks for evaluating the trust's performance.

If you receive imprudent investments into the trust from the person creating the trust, or from the probate estate, you have a duty to dispose of them within a reasonable time. Your duty to make trust property productive generally requires the sale of unproductive assets and the reinvestment of the proceeds in income-producing assets also within a reasonable time.

A trustee has a general duty to diversify the investments to minimize the risk of loss. There may be practical reasons for nondiversification, such as when a trust is too small to allow broad diversification, or when a trust may suffer significant capital gains taxes from the sale of assets with low-cost basis or if the assets of the trust are unique (limited liability company). In such circumstances, you may consider obtaining the informed approval and written consent of affected beneficiaries to the nondiversification of the trust, or you may seek court approval of your investment proposal.

As an exception to the diversification duty, if a single investment comprises a large portion of the investments that were originally either placed in trust by the person creating the trust or, in the case of a testamentary trust, received from the personal representatives of the decedent's estate, there is no strict duty to diversify the investment received so long as it meets the investment objectives of the trust and you exercise care and prudence in deciding to retain or sell the asset.

Trust Administration. As trustee, you must administer the trust "prudently" and by the terms of the trust. If you have any special skills in managing assets, you must apply them in your trusteeship. For example, if you are a registered investment adviser, you must use your investment knowledge, experience, and resources in investing trust assets. If you do not have special skill or training in investing trust assets, and the assets of the trust are significant, you should consider seeking professional assistance to ensure that your investment strategy is prudent.

The powers and discretion granted to the trustee in the trust administration are generally set forth in the trust's governing instrument. If the trust instrument is silent on a particular issue, then Washington trust law will control the powers of the trustee. Those statutory trust powers are attached at the end of this book in Appendix A.

Trust Distributions. As a trustee, you may be directed to distribute discretionary amounts of principal or income for a beneficiary's care, support, or other needs. Exercising this discretion is often one of the major responsibilities of a trustee. Review the distribution language in the governing instrument carefully to ensure that a proposed distribution is within the scope of your authority. As trustee, you may need to periodically collect information regarding the beneficiary's outside income and resources in order to exercise your discretion in an informed manner. You may also find it appropriate to seek information from other interested persons, such as the beneficiary's family members or the grantor of the trust if still living.

If you have authority to make discretionary distributions as trustee, it is extremely important for you to regularly communicate with the beneficiaries regarding their financial needs and circumstances, and then review their circumstances at appropriate intervals. Records should be kept of their needs and resources, as well as of any unique circumstances or pertinent facts that influenced the distributions that were eventually made, in case those distributions are later called into question. If you make honest, informed. and reasonable decisions in exercising powers to make distributions, then the courts will not generally second-guess your exercise of discretion. Failure to exercise care and due diligence, on the other hand, may lead to potential liability.

Trust Termination. The trust document determines the time when the trust terminates, typically at a certain age, at the death of a beneficiary, or at a predetermined date. A trustee's duty is to distribute the trust assets to the remainder beneficiaries entitled to them within a reasonable time after the terminating event occurs. You are allowed a reasonable period of time to make these final distributions to ensure that final costs and bills are paid or provided for, and to determine who the appropriate beneficiaries are and their respective shares.

Duty Of Loyalty

A fundamental duty of any trustee is that of exclusive loyalty to the trust beneficiaries. This duty prohibits any self-dealing between you and the trust, such as investments by the trust in your own personal business ventures or investment accounts. The trustee may not engage in any act that puts his or her personal interests in conflict with those of any of the trust beneficiaries. You may not borrow money from the trust, even if you agree to pay reasonable interest on the borrowed funds. However, without violating your duty of loyalty, you may loan money to the trust if the trust has a legitimate need for funds and if you charge an interest rate competitive with that charged by other lenders.

There may be unique situations involving transactions between a trust and its trustee that would benefit the trust but may appear to be a conflict. As such, if there is even the appearance of self-dealing, you must carefully document that the benefits being received from the trust are reasonable in light of the benefits being provided to the trust and its beneficiaries. The more prudent action is to avoid any acts that could be construed as self-dealing, or to obtain advance agreement from all the interested parties in the trust that the transaction is permissible.

Duty Of Impartiality

The trustee has a primary duty to treat beneficiaries impartially, unless otherwise specified in the trust document. The duty of a trustee requires particular consideration of the interests of the lifetime beneficiaries with those of the remainder beneficiaries in making investments, repairs, and replacements to trust assets; allocation of receipts and expenditures between income and principal; and discretionary distributions of income and principal. Income beneficiaries of a trust are entitled to income (trust income) earned from the trust assets for as long as is provided by the trust. Remainder beneficiaries are entitled to the trust asset themselves (trust principal) at the end of the income beneficiaries' interests, all according to the terms of the trust.

It is very important to properly allocate trust receipts and expenditures between the principal and income accounts as this allocation will directly impact the amount that is available to the two types of beneficiaries. In the absence of instructions in the trust, the law requires you to generally account for rent, interest receipts, dividends, business income, ordinary repair expenses, trust income taxes, and half of your trustee's fee as income items. Proceeds received from the sale of trust assets, trust loan repayments, insurance proceeds, capital gains taxes, capital improvement expense, and the other half of your trustee's fee are normally allocable to the principal account. (Please see the chapter on Fiduciary Accounting for a review of these issues in greater detail.)

It is equally important to weigh the interests of income and remainder beneficiaries in investing trust assets. For example, you should regularly solicit and keep records of the facts concerning the financial needs and circumstances of each beneficiary. Then you can set an investment objective for the trust as a whole. The income beneficiaries' needs will generally require that you make some investment in income-generating assets, such as bonds. The remainder beneficiaries' needs will generally necessitate some investment in growth-oriented investments, such as stocks. The number of beneficiaries; their ages, outside income, and tax brackets; the duration of the trust; and the investment economy all are factors that will influence the allocation of investments.

Duty To Not Delegate Unwisely

A trustee may supplement his or her trust administration expertise by delegating the performance of some, but never all, of the duties to prudently selected and supervised advisers and agents. In fact, depending on the nature and complexity of the trust assets, prudence may dictate that the trust should engage advisers or agents to assist in administering the trust. For example, the trustee may employ attorneys, accountants, investment advisers, and real estate managers to advise or assist in the performance of administrative duties. However, the trustee is not protected from liability by blindly following a hired agent's advice. The trustee must still oversee the acts of the agent and must also use reasonable care both in the selection and retention of the agent or adviser.

When there are multiple trustees of a trust, each co-trustee has a separate and independent fiduciary duty to participate in the administration of the trust, to review transactions made by the other co-trustees, and to use reasonable efforts to correct any mistakes that are made. Generally, when there are three or more co-trustees, any powers may be exercised by a majority of their number. When there are two trustees, they must act jointly. In some cases, a trustee may agree to delegate a power or duty to another trustee, but this delegation must be in writing and should be clearly identified.

Duty To Keep And Furnish Records And Accounting

A trustee must keep accurate trust records. State law requires that accountings be provided to adult beneficiaries at least annually unless the trust document provides otherwise. Records such as bank statements, security trade confirmations, brokerage statements, filed tax returns, and court orders must all be maintained by the trustee and available for review by the beneficiaries.

In addition, a trustee must provide information prior to entering into a "significant nonroutine transaction."

"Significant nonroutine transactions" generally include:

- Transactions in real or tangible personal property constituting 25% or more of the trust's value at the time of the transaction;
- Transactions in stock constituting a controlling interest in a corporation; and
- Transactions in closely held stock representing more than 25% of a corporation's outstanding shares.

Before a significant nonroutine transaction can be completed, the trustee must provide the person who created the trust (if living) and each adult income beneficiary with a written notice that describes the nature and material terms of the transaction.

Taxes

In most cases, a trustee will be required to file with the appropriate tax authorities an annual tax return or returns for the trust and to pay necessary taxes. The rules governing taxation of trusts differ from those applicable to individuals, so a trustee is encouraged to seek the assistance of a qualified tax professional. Also, because a beneficiary may be required to report all or a portion of trust distributions as income on his or her personal tax returns, a trustee is often required to provide tax reporting information to the beneficiary. The trustee should provide this information well in advance of the beneficiary's own filing deadlines in order to allow the beneficiary to file a timely return.

Trustee's Compensation

A trustee is entitled to financial compensation for his or her services as trustee. State law authorizes a trustee to receive "reasonable" compensation from the trust. Some criteria used to determine reasonable compensation may include, but may not necessarily be limited to, the risk and responsibility assumed by the trustee, the time required to perform the trustee's duties, customary fees charged, extraordinary services required, types of issue involved, results obtained, and other factors.

The trustee is also entitled to out-of-pocket reimbursement for costs that have been incurred. Fees paid to accountants, attorneys, or investment managers may be separate to the extent that those services are not being charged for by the trustee and normally provided for by the trustee. If a trustee is a family member, it is often desirable to address the question of compensation in the trust document or request a review by the courts. Many professional trustees have standard published fee schedules for specific trustee services. If appropriate, a trustee may apply to the court for approval of his or her fee if he or she believes that its reasonableness will be questioned.

Resignation As Trustee

If it becomes necessary to resign as trustee, the process for resignation and appointment will be governed first by the language of the trust document. The document may specify any advance notice that may be required and how a successor is selected. If the document is silent, the trustee may petition the court for his or her resignation and the appointment of a successor, or the resigning trustee and all the beneficiaries may be able to determine these matters by written agreement. The transfer of the trust assets to a successor trustee may result in the discharge of the resigning trustee from any further responsibility for the trust, but it does not necessarily release the trustee from any liability for his or her past actions. Therefore, when a trustee resigns, he or she may prepare, or may be asked to prepare, a final accounting of his or her actions. This accounting will be approved by the beneficiaries informally by agreement or by the court in a judicial proceeding in order to release and relieve the trustee from any further liability regarding the trust.

Dealing With Problems

Circumstances may arise when either your responsibilities as trustee or the best course of action for the trust is not clear.

Generally speaking, the courts will be reluctant to intervene in a normal matter requiring the trustee's exercise of discretion because that would be merely substituting its judgment for that of the trustee. Nevertheless, when competing interests of different beneficiaries may clearly expose the trustee to a legal challenge regardless of which decision the trustee may make, or where the provisions of the trust are ambiguous or in conflict with each other, you may petition the court for instructions. Washington's Trust and Estate Dispute Resolution Act provides a streamlined forum for resolving these issues.

In addition, in some circumstances, the trustee, in conjunction with all the present and future beneficiaries of the trust, can enter into a binding agreement under Washington's Trust and Dispute Resolution Act relating to the trust administration. These agreements may be used for many purposes, including to agree upon the interpretation of ambiguous trust language, resolve questions regarding investments and distributions, grant or limit powers of the trustees, and appoint an additional or a successor trustee. If minor beneficiaries or presently unascertained beneficiaries have interests in the trust, this procedure can allow for an independent special representative to be appointed by the court to represent their interests in the agreement.

Summary

A trustee must exercise many skills in order to perform his or her duties effectively. Paying attention to detail, making prudent investments, preserving the safety of trust assets, managing deadlines, keeping up to date on legal and tax changes, and facilitating ongoing open communication with the trust beneficiaries are all part of the job description. Carrying out the wishes of the grantor, often for many generations, can be a daunting task in an ever-changing investment climate and in view of the evolving needs, goals, and desires of the beneficiaries. This chapter will hopefully help guide you toward accomplishing the trust purposes in a manner consistent with the grantor's hopes and expectations.

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Guardians

When individuals become so mentally incompetent or disabled that they cannot handle their own affairs, the court may appoint a guardian to assist them. A guardian who handles personal affairs is called a "guardian of the person." A guardian who handles financial affairs is called a "guardian of the estate." The person needing assistance is called the "incapacitated person." Minors are also considered incapacitated persons for whom a guardian of the person and estate can be appointed.

A guardian of the person is responsible for caring for the incapacitated person's personal needs and affairs, including housing, food, clothing, and medical needs. A guardian of the estate is responsible for the financial affairs of the incapacitated person, including investments, expenditures, and lawsuits on behalf of the incapacitated person. In most cases an appointed guardian will serve in both positions.

State law recognizes that not all incapacitated persons have the need for a "full" guardian, responsible for all aspects of the person's personal and/or financial affairs. Some incapacitated persons need help in certain areas but are not fully incompetent. These persons can continue to manage certain limited aspects of their personal or financial affairs. In such cases the court will appoint a "limited" guardian to assist the incapacitated person only in those areas where assistance is needed. The order appointing a limited guardian must specify which decision-making powers have been taken away from the incapacitated person and the period of time for which the order is applicable. The law requires that the guardianship be tailored to be the least restrictive alternative possible.

Guardianships are established by the superior court for the county where the incapacitated person resides. The superior court establishes the guardianship initially by court order and then retains jurisdiction of the guardianship to monitor the actions of the guardian. The guardian must file periodic reports with the court and comply with any other requirements ordered by the court. The court can set hearings to review the actions of the guardian and address any concerns raised by the incapacitated person or other interested parties. The court can and will remove a guardian who is not complying with court orders and the statutory requirements for a guardian.

If you are serving as guardian you need to review the court order establishing the guardianship to determine what authority has been granted to the guardian and what limitations, if any, have been placed on the guardian's ability to make decisions for the incapacitated person. You should review your duties set out in the court orders and the time deadline for complying with those duties.

Who Can Serve As Guardian?

In selecting and appointing a guardian, the court has as its primary concern the best interests of the incapacitated person. An individual guardian must be over age 18 unless he or she is the parent of a minor who is the subject of a guardianship. An individual serving as guardian must be of sound mind and cannot be convicted of a felony or misdemeanor involving moral turpitude. A state or federally regulated trust company or bank may serve as guardian of the estate of an incapacitated person. A professional guardian or guardianship agency, which charges a fee for serving as guardian, may be appointed to serve as guardian of the person and/or estate, provided the professional guardian has been certified under state law.

In making the appointment, the court gives special preference to the parents of a minor, who are viewed as the "natural" guardians of the child. Even if a parent is under age 18, the court may appoint the parent to serve as guardian. Nevertheless, the parent should be reasonably capable of performing the required guardian duties on behalf of the minor child.

The court considers the wishes of the incapacitated person in making an appointment of guardian. Prior to becoming incapacitated, the individual may have designated the person whom the incapacitated person wanted to serve as guardian or limited guardian under a durable power of attorney. If so, the court must appoint the person selected, except for "good cause" or disqualification.

Similarly, a parent may appoint a guardian for a minor under the parent's Will, and the court will usually follow the parent's wishes. This is one of the most important reasons for a parent to prepare a Will.

What Are The Duties And Responsibilities Of A Guardian?

The courts hold guardians to the highest fiduciary standard in caring for and representing the incapacitated person. The guardian is always under the general direction, control, and supervision of the court.

Duties Of The Guardian Of The Person

General Duties. The guardian of the person must care for and maintain the incapacitated person, assert the incapacitated person's rights and best interests, and provide timely, informed consent to necessary medical procedures. If the guardianship is for a minor, the guardian of the person must see to it that the minor is properly trained and educated, and has the opportunity to learn a trade, occupation, or profession. Typical duties of a guardian of the person include finding suitable housing, arranging for caregivers, supervising medical treatment, authorizing medical procedures, and arranging for training or education. The court order establishing the guardianship of the person may have limited the guardian's responsibilities to a few specific tasks (e.g., "Consult with Mr. Smith's doctors on his medication management and contract for a home health nurse.").

Required Plans And Reports. The guardian of the person must prepare and file a "personal care plan" with the court within three months after appointment. The plan must include an assessment of the incapacitated person's physical, mental, and emotional needs and ability to perform or assist in the activities of daily living. The plan must also describe the guardian's specific plan for meeting the incapacitated person's needs. In addition to the personal care plan, the guardian must file an annual report on the condition of the incapacitated person.

Medical Responsibilities. The guardian of the person is not authorized to involuntarily commit or detain the incapacitated person. Only the county mental health professionals can do that through formal involuntary commitment procedures under state law. The guardian of the person may not consent on the incapacitated person's behalf to any of the following procedures:

- Therapy or any other procedures that induce convulsion;
- Surgery solely for the purpose of psychosurgery; or
- Other mental health procedures that restrict physical freedom of movement or other crucial rights.

If the guardian of the person believes the above procedures are appropriate, the guardian must petition the court for authorization. The court will appoint an attorney to represent the incapacitated person before ruling on a request for authorization for these procedures.

In making choices between alternate medical procedures, the guardian of the person is expected to make decisions based upon what the incapacitated person would choose to do if he or she were competent and understood all of the circumstances. The standard is not to make choices based upon what most persons would do or based upon what the guardian believes is the best choice. The same standard would apply if the decision is whether to terminate life support for a person who is in a permanent vegetative state.

Duties Of The Guardian Of The Estate

The guardian of the estate will have access to the incapacitated person's assets and monthly income. The guardian will pay bills for the incapacitated person, invest the assets, buy or sell real estate, and purchase goods and services for the incapacitated person. The court order establishing the guardianship of the estate may have limited the guardian's responsibilities to a few specific tasks (e.g., "Receive Mr. Smith's pension check, pay his rent, and sell his home.").

In managing the financial affairs of an incapacitated person, a guardian must comply with certain additional statutory duties.

Bond. In most cases, unless the guardian is a bank or trust company, the court will require the guardian to post a bond. The court sets the bond amount based upon the value of the estate under the control of the guardian. For example, if the incapacitated person's assets are valued at $100,000, the court will probably require the guardian to post a bond for $100,000. Alternatively the court could set a bond for a lesser amount and then require the financial institution holding the assets to block the remainder of the funds until there is a court order authorizing the guardian to access the blocked amount. With a $100,000 estate, the court could, for example, require the guardian to post a $25,000 bond and then have the bank holding the funds block or freeze the remaining $75,000 of assets in the account until the court authorizes further withdrawals. Because of the bond requirement, it is very important to determine if you are able to qualify for a bond before the court appoints you to serve as guardian of the estate.

Inventory Of The Estate. The guardian of the estate must file an inventory of the estate assets within three months after appointment. The inventory must include a statement of all encumbrances, liens, and other secured charges on any item.

Accounting. The guardian of the estate must file an annual account of the administration of the guardianship, including income received during the accounting year, disbursements, and the ending balance at the end of the accounting year. For smaller guardianship estates, the court has discretion to set the accounting term at up to three years instead of an annual reporting requirement. The court reviews the guardian's periodic report carefully to ensure that it balances. Failure to file periodic reports by the due date can result in the court removing the guardian.

Financial Investments. The guardian of the estate should typically ask the court to grant him or her the power to take the same types of actions that a trustee is allowed to take under Washington law. The guardian must invest and reinvest the incapacitated person's property in accordance with the rules applicable to trustees. The court must specifically authorize the guardian of the estate to invest in assets that are not government insured or guaranteed.

Guardianship Bank Account. A separate account should be established to handle guardianship income and to make disbursements. Guardianship assets must not be commingled with the guardian's own funds. A guardianship bank account keeps the funds segregated and provides a clear record of income and disbursements for the incapacitated person.

Actions Requiring Prior Approval Of The Court

Guardian's Acts In General. Because of the close supervision of the guardianship administration by the courts, guardians are frequently required to obtain prior court approval before acting on behalf of the incapacitated person. In general, where some doubt exists as to whether a particular act is permissible, the guardian or limited guardian should always consider obtaining prior court approval.

Gifts. No gift of the incapacitated person's property can be made without prior court approval. In appropriate circumstances, the court may authorize gifts of the incapacitated person's property to relatives, friends, and prospective beneficiaries under the incapacitated person's Will, or to other individuals or charities in which the incapacitated person is believed to have an interest.

Sales. The guardian of the estate must obtain prior court approval before selling any of the incapacitated person's property. This restriction applies both to real estate and to personal property of the incapacitated person.

Settlement Of Claims. The guardian of the estate must seek prior court approval of any compromise of a claim involving the incapacitated person. Otherwise, the compromise may not be binding.

What Decisions Can The Guardian Make As To The Domestic And Personal Affairs Of The Incapacitated Person?

Marriage And Divorce. The order appointing a limited guardian may specify whether or not the incapacitated person should be entitled to enter into a marriage. This will not be permissible if the incapacitated person is incompetent; however, a person with some functional limitations may well be capable of entering into marriage. In general, the guardian should not commence a divorce action on behalf of an incapacitated person. If the best interests of the incapacitated person would be served by a divorce and the circumstances otherwise warrant it, the court may permit a divorce action to be commenced on the incapacitated person’s behalf. The guardian should not initiate a divorce action until the court has authorized it.

Residential Changes. The guardian may place the incapacitated person in a residential treatment facility without court order, so long as the incapacitated person does not object to the placement.

Wills And Other Estate Planning Documents. If an incapacitated person wants to create a Will, there may be a question about whether he or she has the mental capacity to do so. The court order establishing the guardianship may have addressed that issue. If not, the guardian should petition the court for authorization for the incapacitated person to execute a Will. Failure to do so may invite an attack on the Will’s validity at a later time.

A guardian cannot execute a Will for an incapacitated person but the guardian, with court authorization, can establish a trust for the benefit of an incapacitated person. The court will need to consider and approve the proposed testamentary disposition under the terms of the trust. The court will look to the intentions of the incapacitated person if the intentions can be ascertained. The guardian shall not be required to include as a beneficiary of the trust any person who there is reason to believe would be excluded by the incapacitated person if he or she had testamentary capacity.

What Are The Limitations On The Powers Of The Guardian?

Over the years, the courts have developed a number of important limitations and restrictions on the powers of guardians and limited guardians.

Contracts And Agreements Between Guardian And Incapacitated Person. The courts view any transaction between the guardian and an incapacitated person with great suspicion. If such a transaction is deemed harmful to the incapacitated person's best interests, the court will presume that the transaction resulted from the guardian's "undue influence" over the incapacitated person. A guardian is not permitted to profit from any transaction involving the incapacitated person. Similarly, purchases and rentals by the guardian of an incapacitated person's property are carefully scrutinized. The guardian must not treat the incapacitated person's property as the guardian's own.

Use Of Minor's Funds. With few exceptions, the courts prohibit a parent who is serving as a guardian from using the minor child's funds for family expenses. It is the parent's duty to use personal assets to care for the minor, while keeping the minor's guardianship assets intact and invested for ultimate distribution to the minor upon obtaining majority. The guardianship estate cannot be used to satisfy the parent's own obligations of support.

Community Property. If the spouse of the incapacitated person serves as guardian and the guardianship estate holds community property assets, a number of restrictions apply to the spouse/guardian's ability to deal with those community assets. While ordinarily each spouse may exercise broad management powers over community assets, those powers are, in effect, surrendered when the spouse/guardian begins serving. To avoid these restrictions the spouse/guardian may request that the court authorize a legal separation of both halves of the community property, with the incapacitated person's half subject to the guardianship restrictions and the spouse/guardian's half free from such restrictions.

What Compensation And Reimbursement May The Guardian Receive?

The court is to review and specifically approve a guardian's compensation. The guardian may receive such compensation as the court determines to be just and reasonable. In addition to compensation, the guardian may recover any out-of-pocket expenses, including attorneys' fees incurred on behalf of the incapacitated person.

The guardian should not reimburse himself or herself from the guardianship estate until after the court has reviewed and approved a petition regarding the guardian's fees. If the court finds that the guardian has failed to live up to the guardianship responsibilities, the court may reduce or deny the guardian's compensation.

What Occurs On The Death Or Removal Of The Guardian?

If the guardian dies, the court will appoint a successor guardian. A guardian may also be removed for "good and sufficient reasons." These may include mishandling the incapacitated person's estate, committing a fraud against the incapacitated person's estate, using the office of guardian for personal gain, and failing to make a report or follow a court order. The former guardian, or his or her personal representative, must submit to the court and the court must approve a final accounting of the administration of the guardianship.

For a 30-day period following the death of a guardian, a "standby" guardian serves until a successor can be appointed. This standby guardian is a person designated by the guardian to serve in such instances. This designation is required to be made soon after the guardian is first appointed.

How Can Persons Interested In The Guardianship Keep Apprised Of Developments In The Proceedings?

Persons who may be interested in receiving information about the status of the guardianship, including relatives and friends of the incapacitated person, should file a Request for Special Notice of Proceedings with the court and send a copy to the guardian. By filing this document the person making the request is entitled to at least 10 days' prior written notice of any hearing on significant matters in the guardianship proceeding.

What Happens At The End Of The Guardianship Administration?

The guardianship administration terminates upon the death of the incapacitated person, upon a minor's attainment of majority, or upon the recovery of the capacity of the incapacitated person.

Death Of The Incapacitated Person. If the guardianship terminates by the death of the incapacitated person, the guardian may proceed to make burial arrangements and to pay for those expenses from the guardianship estate. A final accounting must be filed in the proceeding within 90 days after the date of death.

If the incapacitated person died without a Will, the guardian may petition the court in the guardianship matter to administer the estate of the deceased incapacitated person without a probate. If the incapacitated person died with a Will, the guardianship estate is transferred to the personal representative administering the estate of the incapacitated person.

Attainment Of Majority. If the guardianship is for a minor, then upon the minor attaining the age of majority (age 18), the guardian's power ceases and the guardian must file a final accounting within 90 days after majority is attained. The guardian may file a "declaration of completion" that states important facts about the guardianship and advises the court that the minor has attained majority. If no one raises objections to the declaration, and if the subject of the guardianship does not request a court order requiring a final accounting or approving the fees of the guardian and the attorney, the declaration of completion will be effective to terminate the guardianship 30 days after it is filed. This period can be shortened even further if the subject of the guardianship signs a waiver of notice form, in which case the declaration is effective immediately upon its filing. If the guardianship funds have been blocked by court order or there is a bond, the guardian will still need to petition the court to terminate the bond and unblock the guardianship account.

Return Of Guardianship Assets. Upon termination of the guardianship the former guardian is required to turn over all assets of the guardianship or limited guardianship to "the persons entitled thereto." This will be the minor who has attained majority in the case of a minor guardianship, the personal representative of a deceased incapacitated person, or the incapacitated person himself or herself in the case of recovery of capacity.

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Attorneys-In-Fact Under Powers Of Attorney

What Is A Durable Power Of Attorney?

A power of attorney is a document signed by one person, called the "principal," who appoints another person, called the "attorney-in-fact" (or sometimes the "agent"), to act on behalf of the principal. Essentially, a power of attorney says, "I authorize John Doe to do the following acts for me and everyone shall accept his acts as if they were my own."

Generally, a power of attorney is only effective so long as the principal is alive and competent. Washington has a statute, however, that authorizes a principal to grant a power of attorney that will remain effective, or that will only become effective, if the principal becomes incapacitated (i.e., unable to manage his or her property and financial affairs). Such a power of attorney is called a "durable" power of attorney. Any power of attorney terminates when the principal dies.

This chapter will discuss your powers and fiduciary duties as an attorney-in-fact for an incapacitated person. The term "durable power of attorney" may be abbreviated as "DPA."

What Powers Can Be Granted Under A Durable Power Of Attorney?

The General Power Of Attorney. Most durable powers of attorney grant very broad powers to the attorney-in-fact. Such durable powers of attorney are called general powers of attorney. They often state that the attorney-in-fact shall have all powers of an absolute owner or all powers that the principal would have if present and competent.

Excluded Powers. Even though the DPA states that the attorney-in-fact has all the powers of the principal, some powers are excluded by the statutes that govern durable powers of attorney in Washington. If you are acting under a DPA that simply gives you all powers of your principal, you cannot make, amend, alter, or revoke a Will or codicil for the principal, nor can you do the following acts unless the DPA specifically authorizes them:

- Make or change the principal's beneficiary designations on any life insurance policy, retirement plan, IRA, joint with right of survivorship account, or other similar nonprobate asset;

- Enter into or revoke a community property agreement or a trust agreement for the principal;

- Make gifts of the principal's property;

- Transfer any of the principal's property to any trust unless the trust is solely for the benefit of the principal or does not dispose of the principal's property in a way that is different from the way it would be disposed of in the absence of the trust;

- Disclaim property on behalf of the principal; or

- Make heath care decisions for the principal.

You should read the DPA carefully. If the instrument simply says that you shall have all powers the principal has, you do not have any of the powers listed above. On the other hand, the DPA may grant you some of these powers and not others. If you are uncertain whether you may do a specific act under the DPA, you should consult a professional adviser to assist in interpreting the document.

Included Powers. Under a general DPA, you are generally authorized to manage all of the principal's property and financial affairs. For example, you can:

- Write checks on the principal's checking amount;

- Make deposits to and withdrawals from the principal's financial accounts;

- Collect debts;

- Make claims;

- Initiate or defend lawsuits;

- Sign financial commitments;

- Make and perform contracts;

- Buy and sell real property, including the principal's residence;

- Sign legal documents;

- Incur debts;
- Buy and sell securities; and
- Generally "stand in the shoes" of the principal.

When signing documents, you should sign the principal's name, followed by the words "by [your name] as attorney-in-fact."

The Special Or Limited Power Of Attorney. Not all durable powers of attorney grant broad, general powers. A DPA may authorize you to handle only one particular transaction, such as the sale of a specific piece of real property, or to perform one particular type of activity, such as managing a securities portfolio. This type of DPA is known as a special or limited DPA.

When Does A DPA Become Effective?

As noted above, a power of attorney is "durable" if it remains effective even if the principal becomes incapacitated, or if it becomes effective only if the principal becomes incapacitated. The time a DPA becomes effective depends on the terms of the document.

Immediate. A DPA may be effective immediately and authorize you to act for the principal even if the principal is not incapacitated. If a DPA is effective immediately, it is irrelevant whether the principal is incapacitated or not. If the DPA does not state when it becomes effective, it is effective immediately.

Specific Time. The power of attorney may provide that it becomes effective only at a specific time or upon a specific event (such as the principal becoming incapacitated). If you are named attorney-in-fact under a DPA that becomes effective only upon the principal's incapacity, how do you know when the power is effective? The DPA itself should tell you. Washington's power of attorney statute provides, "persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective" (RCW chapter 11.94.010(2)). The document should include a definition of incapacity or disability and state how it is to be determined. Sometimes a principal may want to leave this determination up to a particular family member, but usually it must be made in writing by one or more physicians. If the DPA does not specify how incapacity or disability is to be determined, you should obtain a written determination from the principal's attending physician.

If the DPA under which you are acting requires a determination of incapacity or disability by the principal's physician, you may need a letter from the physician to present with the DPA when you need to act for the principal. For example, you will need to go to the principal's bank and present the DPA and the evidence of incapacity so that the bank will recognize your signature on behalf of the principal when you deal with the principal's accounts. Financial institutions will want to have copies of the DPA in their files. If you sell any of the principal's real property, you should have the DPA recorded with the deed so that your authority to act for the owner is part of the public record of title.

Fiduciary Duties Of The Attorney-In-Fact

An attorney-in-fact has fiduciary duties comparable to those of the guardian of an estate or a trustee. The attorney-in-fact, however, generally has much less guidance than a guardian or trustee. The guardianship statutes specify what the guardian's duties are, and the court must give prior approval to many of the guardian's actions. A trustee is guided by the trust instrument and a significant body of trust law. As an attorney-in-fact, you are guided principally by the DPA granting your powers. Many durable powers of attorney only become effective upon the principal's incapacity, so the principal is unable to provide guidance. In many cases, the attorney-in-fact may not be intimately familiar with the principal's affairs. How, then, should you proceed?

The general discussion of the duties of a fiduciary contained in the Overview is applicable and should be read. There are a few specific duties, however, that deserve special mention:

Duty Of Loyalty. If you are serving as an attorney-in-fact, it is important to remember that you are "standing in the principal's shoes." Your most important duty as attorney-in-fact is not to mix your personal assets and affairs with those of the principal. Keep the principal's property absolutely separate from your own. When dealing with the principal's property, you must ignore your own interests and needs and deal with the principal's property solely for the principal's benefit. This means that you must not sell the principal's property to yourself or lend the principal's money to yourself, or in any other way benefit yourself.

If, as is often the case, the principal is not likely to recover his or her competence, you may have to make hard decisions. If you are authorized to make health care decisions for the principal, you must make those decisions as you believe the principal would make them if competent. You may also have to make other decisions, such as:

- Whether to sell the principal's home, other possessions, securities, or other assets to provide for the principal's nursing home care;

- Whether to rent the principal's home to tenants if you think the principal may be able to return home; or

- Whether to hire a financial adviser to assist you in choosing assets to sell or to help you to invest the principal's property wisely.

In addition, you may have to take other actions, such as:

- Defend a lawsuit;

- Pursue a claim;

- File a tax return; or

- Contest a real estate assessment.

Your duties will depend on the circumstances when the DPA becomes effective and the principal's condition. Unlike a guardian, you are not required to obtain the court's approval before you take many of these actions, but in all cases your duty is to act in the principal's best interests and for the principal's benefit. If you think that a court would not approve of an action if you were a guardian, you should not take the action as an attorney-in-fact.

Duty To Identify And Preserve Property. It may be necessary for you to impose order on the principal's affairs if his or her mental capacity has been failing for some time. Your job is to find and become familiar with the principal's property, obligations, and needs, and then to manage the property in such a way that you can fulfill those obligations and provide for those needs. It will be especially important for you to find the principal's financial accounts so that you can pay the principal's expenses and ensure that you receive all bills and tax information. Unlike a guardian or an executor, you do not have a duty to inventory all of the principal's assets.

Duty To Invest Prudently. Your duties regarding investments are not as strict as those of a trustee. You can, of course, change the principal's investments if you think it would be prudent, but you do not have a duty, for example, to discover that the principal is holding some stock certificates in a safe deposit box that are declining in value and should be sold. Like any fiduciary, you must take care to deposit checks promptly, pay bills on time, pay attention to due dates for taxes and the like, and collect any benefits to which the principal is entitled. Your duty is to keep the principal's day-to-day affairs in order as the principal would do if able.

It is not your duty to improve on the principal's own choice of investments.

Court Petition. Although an attorney-in-fact under a DPA generally does not need to seek court authorization to act on behalf of the principal, in some cases you may be unsure whether an action on behalf of the principal is appropriate. In these cases, you may petition the court for an order to approve a proposed act or verify a past act.

As well, the principal or other persons interested in the principal's welfare may petition the court to compel an attorney-in-fact to act or refrain from acting in a particular manner, to modify the powers granted to the attorney-in-fact, to account for the attorney-in-fact's actions, or to remove the attorney-in-fact.

Duty To Account. A guardian must provide regular accountings to the trust beneficiaries. An attorney-in-fact is not required to provide regular accountings to anyone. This does not mean that you should not keep records. You should keep an accounting of all receipts and expenditures of the principal's funds, any sales of the principal's property, and at least an informal record of all actions taken on behalf of the principal.

If the principal regains the ability to manage his or her affairs, the principal can require you to account for your actions. And if the principal dies, you may be called upon to account to the principal's executor or other interested parties for your actions on behalf of the principal, and you will be responsible for transferring all of the principal's property under your control to the executor.

Reliance On Power Of Attorney. The purpose of a DPA is to enable you to act on behalf of the principal. Thus, it is important for third persons to be confident that they can rely upon the continuing validity of the DPA. Otherwise, they may refuse to recognize your authority. If you present an affidavit or a declaration to a third party that meets the specifications of

Washington's power of attorney statute, then the third party's reliance on the DPA is presumed to be in good faith and not negligent (RCW chapter 11.94.040). The affidavit generally requires you to state, among other things, that to the best of your knowledge the principal is still living, the required events have occurred that cause the powers under the DPA to become effective, the principal was competent and not subject to undue influence when the DPA was signed, you do not have knowledge of circumstances that would limit your powers or cause the power to be terminated or revoked, you are acting in good faith, and similar information. Providing such an affidavit or a declaration may be necessary in some cases to convince a third party that you in fact possess the authority to act.

Conclusion

Because a person acting under a durable power of attorney generally exercises his or her authority without any requirement of periodic accountings or prior approval of actions, one might erroneously conclude that it is not necessary to be careful in performing your duties on behalf of the principal. Because accountings are not required, you may be tempted not to keep records or to commingle the principal's assets with your own. This is especially true if the principal is incapacitated and there are no family members who may question your actions. It is important to remember that a breach of your fiduciary duties may subject you not only to a lawsuit by the principal or the principal's later-appointed guardian or executor, but also to criminal prosecution. While you are protecting the principal's assets and acting in his or her best interests, also protect yourself by keeping records of your actions and paying close attention to your fiduciary duties.

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Custodians Under The Uniform Transfer To Minor's Act

What Is A Custodianship Under The Uniform Transfers To Minor's Act?

A custodianship is a fiduciary arrangement under which a person called the "custodian" manages funds or property for a person who is under age 21, or in some cases, who is under age 25. A custodianship may arise from a variety of circumstances:

- A Will leaves a sum of money to a child, but because the child is a minor (under age 18), the funds need to be managed by someone for his or her benefit until the child reaches an older age; or
- You desire to set aside some funds for the future benefit of your minor child but want to ensure that someone can continue to oversee the management and investment of those funds until the child is older.

In either case, a person known as a custodian can be appointed to manage the funds for the child. The custodian can then manage those funds for the child under the Washington Uniform Transfers to Minors Act.

In most cases, the custodianship will terminate when the child reaches age 21. However, for custodianships created after July 1, 2007, the individual creating the custodianship may elect to extend the custodianship until the child reaches age 25. If you are considering creating a custodianship until age 25, you should first consult your lawyer or tax adviser because you may be making taxable gifts when you fund the custodianship.

Duties Of A Custodian

As custodian you will be holding assets for the benefit of someone else, and you are clearly a "fiduciary" subject to the general rules that apply to fiduciaries. Because there is normally no governing instrument such as a Will or trust agreement to guide you, you must look at the Uniform Transfers to Minors Act (RCW chapter 11.114) to ascertain your specific responsibilities and risks.

Distribution Of Income Or Principal. The Uniform Transfers to Minors Act gives you broad powers of distribution. You may distribute so much of the income or principal of the custodial account to or for the benefit of the child at such times and in such amounts as you deem advisable, provided that such distributions are for the child's benefit and general welfare. This may include a distribution of the entire account.

Unlike a guardian, you may, but are not required to, obtain prior approval from the local court of any proposed distribution. However, a child who has reached age 18 or any other "interested person" (such as a guardian of the child, an ex-spouse who is a parent of the child, or a creditor of the child) may petition the court to compel you to make distributions on behalf of the child.

Such broad powers of distribution carry with them some tax burdens. Where you both created the custodianship and serve as its custodian, your continuing ability to control when and how much of the account can be distributed will cause the custodial property to be includable in your taxable estate for federal estate tax purposes should you die before the child.

Custodial income that is used to pay for items a parent is legally obligated to provide to the child (e.g., food and clothing) also becomes taxable income to the parent, regardless of whether the parent is the custodian. Generally, a parent's support obligation ceases when a child reaches age 18 or when the child becomes self-supporting. While the issue of just what items fall within the scope of a parent's obligation of support is not well settled, the issue most often arises in the area of education. In a family of modest means, the use of custodial funds to provide for private elementary education should be deemed outside the parent's obligation of support. In a family of large means, the use of custodial funds to provide college education for a child may still be within the parent's obligation of support even though the child has reached age 18.

Even if custodial income is not used for "legal obligations of support," certain income earned in a custodial account for a child may be subject to the "Kiddie Tax," causing that income to be taxed at the parent's highest marginal tax rate.

You should consult with your tax adviser to more fully discuss the application of these rules.

Investment Of Custodial Assets. You may invest and reinvest the custodial funds in virtually any kind of real or personal property. Any investment will be subject to the rules generally applicable to fiduciaries as discussed in the Overview, including the rules concerning self-dealing, diversification, and prudence. All custodial property held by a custodian for the same child will be treated as one custodianship and therefore will be considered together in determining whether the prudence and diversification standards have been met.

A parent who holds custodial property for his or her own child should not overlook the opportunity to use the account as a training tool to help the child learn about handling funds. Because most custodianships are relatively small, some caution must be used in investments that have the potential for continuing liabilities. For instance, the investment of custodial property in a general or limited partnership that otherwise may seem to be a prudent investment may subject the custodial property to future assessments for additional funding of the partnership. Similarly, an investment in real property or a closely held business may give rise to contractual or uninsured tort claims.

Personal Liability Of Custodian

The custodian will not be personally liable for contractual obligations where the custodian clearly signed only in the capacity of "custodian." Nor will the custodian be held personally liable on tort claims arising from the ownership or control of custodial property, unless the custodian is personally at fault.

What if custodial property is used to buy a car for the child and title is taken in the name of the custodian "as custodian"? As a general rule, if the child injures another and is at fault, the child is liable. If the insurance coverage is inadequate, the injured person may reach the remainder of the custodial property, but the custodian should not be personally liable to the injured person in the absence of other circumstances that would render the custodian "at fault."

Accounting And Bond

You must maintain records of all transactions involving the custodial property. You should maintain a specific ledger showing all receipts and disbursements. While you are not required to give a formal accounting of custodianship activity, you must be in a position to render an accounting at any time.

Certain persons involved with the child or the account have the right to petition a court for a formal accounting:

- The donor creating the custodianship (or the donor's estate or guardian);
- The child's estate or guardian;
- An adult member of the child's family; or
- The child if he or she has reached age 18.

You must also maintain the information necessary for the preparation of the child's income tax returns. The income from custodial property is reportable on the child's federal income tax return. You should consult with your tax adviser to determine what tax filings, if any, are required.

You are not normally required to file a surety bond to secure the performance of your duties as custodian. If an interested person believes that a bond would be appropriate, he or she may petition the local court and request that a bond be required.

Resignation, Succession, And Removal

You are always free to decline to serve as custodian. If you initially agree to serve as custodian but later decide to resign and an alternate custodian has not already been designated, you may appoint an adult individual (other than the person who created the custodianship), a bank, or a trust company as your successor. To be effective, written notice of your resignation must be given to the successor custodian and, if the child has reached 18, to the child. Even if you are not ready to resign, you may designate a successor custodian in advance. This contingent appointment must also be done in writing.

If you become disabled or die in office and no successor custodian has been designated, a successor can be appointed in one of several ways:

- A child who has attained the age of 18 may, within 60 days, designate an adult member of the child's family, the child's guardian, or a bank or trust company to serve as successor custodian.

- If the child is under age 18 or fails to act within 60 days, the guardian of the child will serve as successor custodian.

- If there is no guardian of the child's estate, or the guardian declines to serve, the donor (or the donor's estate or guardian), the estate or guardian of the custodian, an adult member of the child's family, or any other "interested person" may petition the local court to appoint a successor custodian.

If you breach your duties as custodian, you may be removed from office by the local court upon the petition of the donor (or the donor's estate or guardian), an adult member of the child's family, the guardian of the child, or even the child if he or she has attained age 18.

Compensation

As custodian you have a right to charge reasonable compensation for services performed during each year. This fee is paid from the custodianship property. If you fail to compensate yourself as you go along, you cannot go back and charge the custodial property for services performed in a prior calendar year; however, you can always reimburse yourself for any reasonable expenses (e.g., accounting fees) advanced on behalf of the custodianship.

These special compensation rules do not apply where you both established the custodial account and serve as its custodian. In those cases you may pay yourself such compensation as you believe appropriate and at any time you believe proper.

There may be an advantage to not being compensated for your services as custodian. Under the Uniform Transfers to Minors Act, an uncompensated custodian is not liable for losses to custodial property arising from "ordinary" negligence. You would still remain liable for losses arising from bad faith, intentional wrongdoing, gross negligence, breach of undivided loyalty, or failure to invest in accordance with the prudent person standard.

Termination Of Custodianship

As a general rule, custodianships terminate when the "minor" reaches age 21; however, in some circumstances custodianships terminate when the child reaches age 18 or 25.

- **Custodianships established between January 1, 1985 and June 30, 1991:** These custodianships terminate upon the child's reaching age 21.

- **Custodianships established on or after July 1, 1991:** The termination date for these custodianships depends on how the custodianship was created:

    - Custodianships established as the result of an outright transfer by the donor during life, through the exercise of a power of appointment, or pursuant to a Will or trust agreement that expressly directs or

authorizes the establishment of a custodial account all terminate when the child reaches age 21.
    - All other custodianships terminate when the child reaches age 18.

- **Custodianships established on or after July 1, 2007:** The same rules apply as outlined above for custodianships established on or after July 1, 1991, except that in a custodianship created by the donor's outright transfer during life, by the exercise of a power of appointment, or by a Will or trust, the person creating the transfer may in the initial nomination of the custodian extend the term of the custodianship until the child is age 25.

As an example, if a Will leaves funds outright to a person who is then under the age of 18 and the personal representative of the decedent's estate elects to exercise its discretion to designate a custodian to hold the funds (rather than attempting to distribute the funds to the child, thereby requiring the establishment of a guardianship or the creation of a blocked bank account), the custodianship would terminate upon the child's reaching 18. This is because the Will did not expressly allow the establishment of the custodial account.

On the termination of a custodianship, the custodial property is turned over directly to the child.

NOTES:

APPENDIX

Appendix A – Trustee's Powers Under RCW 11.98.070*

RCW 11.98.070. Power of Trustee. A trustee, or the trustees jointly, of a trust, in addition to the authority otherwise given by law, have discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage the trust property in accordance with the standards provided by law, and in so doing may:

1) Receive property from any source as additions to the trust or any fund of the trust to be held and administered under the provisions of the trust;

2) Sell on credit;

3) Grant, purchase or exercise options;

4) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights;

5) Deposit stock or other corporate securities with any protective or similar committee;

6) Assent to corporate sales, leases, and encumbrances;

7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;

8) Register and hold any stocks, securities, or other property in the name of a nominee or nominees without mention of the trust relationship, provided the trustee or trustees are liable for any loss occasioned by the acts of any nominee, except that this subsection shall not apply to situations covered by [**RCW 11.98.070] (31) . . .** ;

9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements;

10) Subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth;

11) Compromise or submit claims to arbitration;

12) Borrow money, secured or unsecured, from any source, including a corporate trustee's banking department, or from the individual trustee's own funds;

13) Make loans, either secured or unsecured, at such interest as the trustee may determine to any person, including any beneficiary of a trust, except that no trustee who is a beneficiary of a trust may participate in decisions regarding loans to such beneficiary from the trust, unless the loan is as described in **RCW 83.110.020(2)**, and then only to the extent of the loan, and also except that if a beneficiary or the grantor of a trust has the power to change a trustee of the trust, the power to loan shall be limited to loans at a reasonable rate of interest and for adequate security;

14) Determine the hazards to be insured against and maintain insurance for them;

15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to the income tax basis of specific property allocated to any beneficiary and without any obligation to make an equitable adjustment;

16) Pay any income or principal distributable to or for the use of any beneficiary, whether that beneficiary is under legal disability, to the beneficiary or for the beneficiary's use to the beneficiary's parent, guardian, custodian under the uniform gifts to minors act of any state, person with whom he resides, or third person;

17) Change the character of or abandon a trust asset or any interest in it;

18) Mortgage, pledge the assets or the credit of the trust estate, or otherwise encumber trust property including future income, whether an initial encumbrance or a renewal or extension of it, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

19) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing structures, and make any improvements to trust property;

20) Create restrictions, easements, including easements to public use without consideration, and other servitudes;

21) Manage any business interest, including any farm or ranch interest, regardless of form, received by the trustee from the trustor of the trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:

   a. To hold, retain, and continue to operate that business interest solely at the risk of the trust, without need to diversify and without liability on the part of the trustee for any resulting losses;

   b. To enlarge or diminish the scope or nature or the activities of any business;

   c. To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;

   d. To use the general assets of the trust for the purpose of the business and to invest additional capital in or make loans to such business;

e. To endorse or guarantee on behalf of the trust any loan made to the business and to secure the loan by the trust's interest in the business or any other property of the trust;

f. To leave to the discretion of the trustee the manner and degree of the trustee's active participation in the management of the business, and the trustee is authorized to delegate all or any part of the trustee's power to supervise, manage, or operate to such persons as the trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the trustee to take part in the management of the business as directors or officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the trustee;

g. To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers, accountants, consultants, or other representatives, including anyone who may be a beneficiary of the trust or any trustee;

h. To cause or agree that surplus be accumulated or that dividends be paid;

i. To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;

j. To treat the business as an entity separate from the trust, and in any accounting by the trustee it is sufficient if the trustee reports the earning and condition of the business in a manner conforming to standard business accounting practice;

k. To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the trustor of the trust would have if alive at the time of the exercise, including all powers as are conferred on the trustee by law or as are necessary to enable the trustee to administer the trust in accordance with the instrument governing the trust, subject to any limitations provided for in the instrument;

l. To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in no event may there be a liability of the trustee, except as provided in **RCW 11.98.110(2)** and **(4)**, and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

22) Participate in the establishment of, and thereafter in the operation of, any business or other enterprise according to subsection (21) of this section except that the trustee shall not be relieved of the duty to diversify;

23) Cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where trust property may be affected and retain any property received pursuant to the change;

24) Limit participation in the management of any partnership and act as a limited or general partner;

25) Charge profits and losses of any business operation, including farm or ranch operation, to the trust estate as a whole and not to the trustee; make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;

26) Pay reasonable compensation to the trustee or co-trustees considering all circumstances including the

time, effort, skill, and responsibility involved in the performance of services by the trustee;

27) Employ persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, regardless of whether the act is discretionary, and to act without independent investigation upon their recommendations, except that:

   a. A trustee may not delegate all of the trustee's duties and responsibilities;

   b. This power to employ and to delegate duties does not relieve the trustee of liability for such person's discretionary acts, that, if done by the trustee, would result in liability to the trustee;

   c. This power to employ and to delegate duties does not relieve the trustee of the duty to select and retain a person with reasonable care;

   d. The trustee, or a successor trustee, may sue the person to collect any damages suffered by the trust estate even though the trustee might not be personally liable for those damages, subject to the statutes of limitation that would have applied had the claim been one against the trustee who was serving when the act or failure to act occurred;

28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or foreign country;

29) Retain and store such items of tangible personal property as the trustee selects and pay reasonable storage charges thereon from the trust estate;

30) Issue proxies to any adult beneficiary of a trust for the purpose of voting stock of a corporation acting as the trustee of the trust;

31) Place all or any part of the securities at any time held by the trustee in the care and custody of any bank, trust company, or member firm of the New York Stock Exchange with no obligation while the securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank, trust company, or firm, so long as the bank, trust company, or firm was selected and retained with reasonable care, and have all stocks and registered securities placed in the name of the bank, trust company, or firm, or in the name of its nominee, and to appoint such bank, trust company, or firm agent as attorney to collect, receive, receipt for, and disburse any income, and generally may perform, but is under no requirement to perform, the duties and services incident to a so-called "custodian" account;

32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary;

33) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust; and

34) a. Donate a qualified conservation easement, as defined by section 2031(c) of the Internal Revenue Code, on any real property, or consent to the donation of a qualified conservation easement on any real property by a personal representative of an estate of which the trustee is a devisee, to obtain the benefit of the estate tax exclusion allowed under section 2031(c) of the Internal Revenue Code or the deduction allowed under section 2055(f) of the Internal Revenue Code as long as:

(i)(A) The governing instrument authorizes the donation of a qualified conservation easement on the real property; or

(B) Each beneficiary that may be affected by the qualified conservation easement consents to the donation under the provisions of chapter 11.96A RCW; and

(ii) The donation of a qualified conservation easement will not result in the insolvency of the decedent's estate.

b. The authority granted under this subsection includes the authority to amend a previously donated qualified conservation easement, as defined under section 2031(c)(8)(B) of the Internal Revenue Code, and to amend a previously donated unqualified conservation easement for the purpose of making the easement a qualified conservation easement under section 2031(c)(8)(B).

*Note: Appendix A states Washington law as of January 1, 2009 but does not reflect any later statutory amendments that may be made.

APPENDIX

Appendix B – Estate Planning Council of Seattle Membership Roster (January 2009)

ATTORNEYS

Mark Albertson
Steve W. Andreasen
Prof. Thomas R. Andrews
Timothy L. Austin
Andrew L. Benjamin
Colonel Betz
Watson B. Blair
Robert H. Blais
Daniel C. Blom
Darcy Boddy
Robert Bodkin
Arthur H. Boelter
Karen E. Boxx
C. Dennis Brislawn Jr.
Lora L. Brown
Timothy C. Burkart
Dean V. Butler
Hon. Keith Callow
Michael D. Carrico
Patricia H. Char
Andree R. Chicha
Jeanne Marie Clavere
Ronald L. Cohen
William J. Cruzen
Janis A. Cunningham
Donald C. Dahlgren
Charles W. Davis
James D. Devine
Julie E. Dickens
George Edenword-Breck
John Ederer
Mary Ann Ekman
Elizabeth Fiattarone
James A. Flaggert
Donald D. Fleming
William L. Fleming
Bruce P. Flynn
Dorothy K. Foster
Mary Foster
Stanbery Foster Jr.
Marcia K. Fujimoto
Joseph M. Gaffney
Alisa George
Peter J. Glase
Wendy S. Goffe
Thomas C. Gores
Claudia A. Gowan
Janet Gray
Henry Grenley
Walter H. Hageman Jr.
Bruce G. Hand
Bruce Hanson
Michael Harman
C. Henry Heckendorn
Dennis P. Helmick
Sandra Blair Hernshaw
Laura Hoexter
Kirstin Humann
Henry H. Hurley Sr.
James Hurt
Prof. John Huston
Barbara Isenhour
Brian Ives
Jay Janousek
Adrienne Jeffrey
Peter Johnson
Alan Kane
Thomas M. Keller
Kenneth Kilbreath
Jennifer King
Richard A. Klobucher
Reginald S. Koehler III
Frederic T. (Ted) Kutscher
Jerry H. Landeen
Ivan K. Landreth Jr.
Michael Larson
Douglas C. Lawrence
Michael Longyear
Walter M. Maas III
Robert R. Mackin
Thomas W. Malone
Judd R. Marten
Gail Mautner
Beth McCaw
Pamela McClaran
Matthew B. McCutchen
Patrick J. McGowan
Emmett E. McInnis Jr.
George Merker
William Meyer
Alan L. Montgomery
Malcolm A. Moore
Robert S. Mucklestone
Charles Norman Mullavey
David E. Myre Jr.
Christy C. Newman
Paul W. Oden
Kurt H. Olson
R. Thomas Olson
Prof. William C. Oltman
Heidi Orr
Dudley Panchot
Kevin M. Paulich
Sandra Lynn Perkins
Leslie R. Pesterfield
Susan L. Peterson
Paulette Peterson
Gregory S. Petrie
Douglas L. Phillips
John E. Poffenbarger
Ben Porter
Glenn D. Price
Prof. John R. Price
RoseMary Reed
Ryan Rehberg
Dana Reid
Prof. Mark Reutlinger
Charles W. Riley Jr.
Mark W. Roberts
Filmore Rose
Jennifer Rydberg
Dean Sargent
Mark Schleck
Kenneth L. Schubert Jr.
Barbara C. Sherland
George L. Smith
Carolann O'Brien Storli
Marv Strasburg
Kimbrough Street
Akane Suzuki
David B. Sweeney
Susan Teel
Luke Thomas
Donald L. Thoreson
Albert Thurmond
Andrew Toles
Adrianne Tollefsen
James K. Treadwell
Amy Elmendorf Tucker
Kristina Udall
Mary Anne Vance
Gloria Lung Wakayama
Livingston Wernecke
Matthew Wesley
Carla Wigen
Ann T. Wilson
Laura H. Zeman
William Zook Jr.
Michael J. Zuccarini

CERTIFIED PUBLIC ACCOUNTANTS

Patricia Acuff Neuberger
Joan Albee
Paul F. Anderson
Bruce Breitenbach
Michelle L. Brown
Dell R. Call
Kirk A. Clothier
Jolene G. Cox
Julia de Haan
Dennis DeKay
Debra D. Doran
Robert E. Duffy
Kenneth D. Duncan Jr.
Donna Evered
Douglas Foster
Steve Garber
Brian Heimbucher
Bruce Hubbard
Kathleen Huchabay
Eleanor I. Johnson
Hoon Kang
Robert C. Keasal
David Keene
Steven J. Kessler
John P. Koenes
Kaycee W. Krysty
Donald W. Kurth
Neil Larson
Susanne Lindsley
Kristi M. Mathisen
Vickie McGill
Ross D. McIvor
Vivienne Mitchell
Donald J. Murphy
Ronald D. Nagle
Susan Queary
Norman Roberts
Timothy Searing
Terry A. Smith
Rick Starkenburg
Chris W. Strand
Michael D. Sweeney
Randall L. Tanner
John M. Urrutia
Mary J. Vallat
John R. Walsh Jr.
Donald B. Walter
Richard Whittemore
Eric J. Wikstrom
Pamela K. Wilcut

TRUST OFFICERS

Elaine P. Adams
Henry A. Alkema
Catherine Irby Arnold
Nancy L. D. Atkinson
Michael R. Bauer
Ann J. Buechler
Paul Cantor
Loree Ann Carlisle
Patrick Casey
Rick Conrad
John C.T. Conte Jr.
Roger F. Donahoe
Eric Elliott
David E. Ellison
Frederick G. Fogg
David Foster-Koth
Kevin P. Fox
James K. Gallagher
Bridget Greene
Deborah Haug
Paul A. Hennes
Robert R. Hunt
Michael Hytopoulos
Rod K. Johnson
Mary Kazlusky
Jon Todd (JT) Koenig
Craig F. Korthase
John Lee
Margaret Liu
Soledad (Solita) C. Locsin
A. William Main
Michael C. McBeth
Susan R. Mesenbrink
Thomas Meyers
Tammy Miller
W. C. Twig Mills
Kim Murphy
Robert Newell
Robert Nokes
Christine Odegard
Gregory P. Owens
John W. Petrisor
Bonnie A. Pladson
Don G. Porter
Barbara A. Potter
Christina Riffle
Robin C. Russell
Lee-Norah Sanzo
Donald A. Skraitz
Donald L. Stephens Jr.
Adrienne Stone
Frederic E. Strong
Janet M. Syferd
Lynn Thorburn
David J. Toner
E. Gene Treneer
Michael G. Vranizan
Karl L. Wadsack
Karen Wawrzaszek
David C. Williams
Mooi Lien Wong
Jeffrey Wortley
Curtis Young

CHARTERED LIFE UNDERWRITERS

Robert O. Abbott III
Gregory Amundson
Christina Anderson
Jon A. Barwick
Thomas W. Barwick
Norman (Skip) Bell
Rodney A. Bench
Sanford M. Bernbaum Jr.
Paul Bishop
Fritz W. Bowman
P. Robert Brown
Barry D. Brunt
James D. Bryant
Clement Chiang
John W. Crowley
Loren Davidson
Mary Decker
Richard L. Evans
Lee Fitch
Julie Green
Jeff Henlser
Gail R. Hill
Robert M. Hinz Jr.
George D. (Chip) Holland
George O. Holland
Howard Johnson
Kevin Johnson
Albert H. Kelsey
Edward B. (Ted) Kibble
J. Stuart Lyle
Michael H. Lyman
Joseph Maas
Mitchell V. Maurer
P. Gerry Maurer
Carl W. Middleton III
Douglas L. Mitchell
Les Monsen
Russell C. Oberg
Michael F. O'Brien
Robert H. Philip
Roger D. Pinneo
Kirtland G. Smith
Kathleen Steele
Jon Stotesbery
Lawrence J. Symonds
Harold Teel
Dale R. Terwedo
Douglas A. Thompson
William E. Whitaker
James White
Gene F. Williams

MEMBERS AT LARGE

Daniel M. Asher
Marie Booker
Marite M. Butners
Lorraine Del Prado
Patti Dill
Ronald Dohr
Rick Downey
Caroline Egan
Adrien Gamache
Kathryn Garrison
John Goodwin
Janet Gores
Kirk P. Greene
Yvonne Hall
Mark P. Janci
Raelene Jeffery
Lynette Klein
Melissa Laird
Paul J. Le Blanc
Candy Lee
Dr. Frank Minton
Marilyn M. Montgomery
Marilee Nielsen
Susan E. Peterson
Jeffrey Pritchard
Marlon Sandlin
Monte Scott
William Sperling
Richard Thorvilson
Judith F. Tronsrue
George M. Tronsrue Jr.
Jay Turley
Glen White