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# What, Grandma Made Uncle Rico Trustee?

(Advising Non-professional Fiduciaries)

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# WAR STORIES

# What is a Fiduciary?

- ◆ A fiduciary is a person who holds a legal or ethical relationship of trust with one or more other parties. Typically, a fiduciary prudently takes care of money or other assets for another person.

# Who is a Fiduciary?

- ◆ Utah Code §75-1-201(16) – “Fiduciary” includes
  - Personal Representative
  - Guardian
  - Conservator
  - Trustee
- ◆ Who else?
  - UTMA Custodians, attorney-in-fact, health care agent

# Non-professional Fiduciaries

- ◆ There are many personality types and individual circumstances that make a person who they are.
- ◆ To quote Forrest Gump:  
“You never know what you’re gonna get.”

# Non-professional Fiduciaries

## ◆ Frank and Francine

- Oldest Siblings who expect to be “in charge” and believe that they have been given the power by Mom and Dad to control the estate.
- Birthright
- Surprised to find out that there are fiduciary duties and rules they must follow in the documents.
- May not come back after the first meeting.

# Ethical Considerations

## ◆ Competent

- **Know who you represent!**
- Read and understand the documents. If you don't know, ask someone who does.
- Understand and track deadlines
- Know what the **Prudent Investor Rule** is, if it applies, and what it requires.
- Know what the **Uniform Principal and Income Act** is, if it applies, and what it requires.

# Ethical Considerations

- ◆ Attentive
  - Depending on the type of client, this will be a major or minor part of the engagement.
  - Use docketing system to track deadlines and other important dates.
    - Example: A Trustee has obligations to provide a copy of the relevant parts of the trust, provide notice regarding the irrevocable nature of a trust, provide notices to creditors, file ESBT and other tax elections; obtain tax ID numbers, provide asset information to the Personal Representative (for estate tax purposes), provide annual accountings and reports; and make final distributions.



# Ethical Considerations

- ◆ Have the hard conversations early
  - “People change when money is involved.”
  - “Don’t be a victim of circumstance.”
  - “This is work.”
- ◆ Collaborate with them, listen to their ideas.
- ◆ Tell them “No.”

# Build A Team

- ◆ You don't know what you don't know.
- ◆ Possible team members:
  - Attorney (different practice areas)
  - CPA
  - CFP/Advisor
  - Insurance Agents
  - Medical Professionals/Experts
  - Care providers

# Protect Their Interests and Reduce Exposure to Liability

- ◆ Tell them the consequences of a breach.
- ◆ Recommend E&O if it is appropriate.
- ◆ Keep beneficiaries informed.
- ◆ Use receipts and releases.
- ◆ Take advantage of statutes
  - Notice to creditors, notices regarding proposed distribution, annual accountings, petitions for instruction (seek the court's blessing), and close it out.

Protect Their Interests and Reduce  
Exposure to Liability

USE  
A  
CHECKLIST

# Traps for the Unwary

- ◆ Trust Protectors (fiduciary, or not?)
- ◆ Tax Returns
  - If you close an estate before the final tax return is filed, reserve some money to pay.
- ◆ Avoid Conflicts of Interest
  - Who do you represent and in what capacity?
  - Diminished Capacity.



Finally . . . .

# WAR STORIES



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# The End

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THANK YOU!!!