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Avoiding Fiduciary Pitfalls

**WHAT THE NON-INSTITUTIONAL
FIDUCIARY NEEDS TO KNOW**

Congratulations! You've been nominated!

- ▶ Badge of Honor?
 - ▶ Organized
 - ▶ Loyal
 - ▶ Trustworthy
 - ▶ Fair
 - ▶ Capable
 - ▶ The "Favorite"



Congratulations!
You've been
nominated!

- ▶ Misconceptions:
 - ▶ "I'm in charge"
 - ▶ Leverage over beneficiaries
 - ▶ Discretion in decision making = Substitution of decision making.
 - ▶ "I know what he would have really wanted."



Fiduciary Duty:

The word fiduciary comes from the Latin *fiducia*, meaning "trust," and means a person who has the power and obligation to act for another under circumstances which require total trust, loyalty, good faith and care.

A person legally appointed and authorized to hold and manage assets for the benefit of another person, rather than for his or her own profit.

Investopedia.com

When Fiduciary Duty Begins

- ▶ Personal Representative – Utah Code Ann. §75-3-701
 - ▶ Upon Appointment
 - ▶ Relation back
 - ▶ Ratification

- ▶ Trustee - Utah Code Ann. §75-7-701
 - ▶ Upon notice to the beneficiaries;
 - ▶ Accepting delivery of trust property;
 - ▶ Exercising trustee powers of performing trustee duties; or
 - ▶ Upon substantial compliance with the terms of the trust.



Duties of a Personal Representative

General Duty

- a. To settle and distribute an estate in accordance with the terms of the probated and effective will and Utah code and as **expeditiously** and **efficiently** as is consistent with the best interests of the estate. (Utah Code Ann. §75-3-703)
- b. To settle the estate **without adjudication** except to resolve questions concerning the estate or its administration. (Utah Code Ann. §75-3-704)
- c. To observe the **standard of care** applicable to trustees as described by Section 75-7-902. (Utah Code Ann. §75-3-703)

Inventory and Appraisement

- a. An initial personal representative should, within three months, prepare, with reasonable detail, an inventory of property owned by the decedent at the time of death and send it to interested persons who request it. (Utah Code Ann. §75-3-705)
- b. The personal representative should supplement the inventory with any property not included in the original inventory that comes to the knowledge of the personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading. (Utah Code Ann. §75-3-707)

Possession of Estate

- a. The personal representative has the right, and should take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. (Utah Code Ann. §75-3-708)
- b. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession. (Id.)

Duties of a Trustee

General

A trustee must administer the trust ***expeditiously*** and ***in good faith***, in accordance with its terms and purposes and the interests of the beneficiaries. (Utah Code Ann. §75-7-801)

- Duty of Loyalty
- Duty of Impartiality
- Duty of Prudent Administration
- Cost of Administration
- Trustee's Skill
- Recordkeeping and Identifying Trust Property
- Duty to Collect Property
- Duty to Control and Protect Trust Property
- Duty to Invest Prudently
- Duty to Enforce Claims
- Duty to Inform and Report



Avoid
Fiduciary
Pitfalls!

How to Avoid Fiduciary Pitfalls

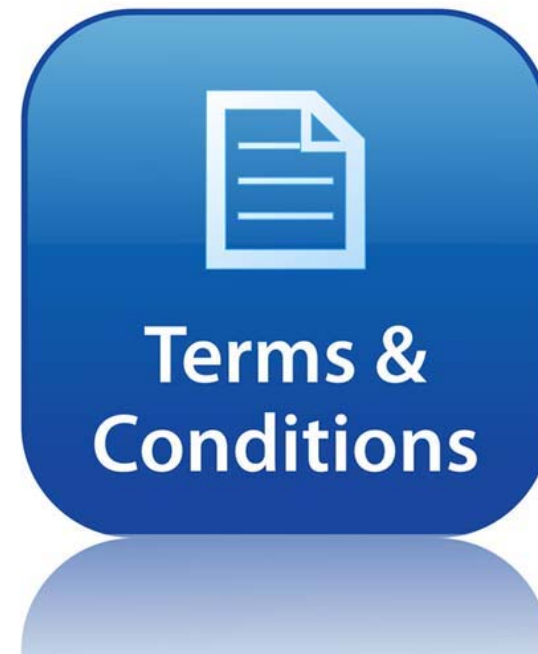
1. Understand the risks and responsibilities associated with being a fiduciary;

responsibility



How to Avoid Fiduciary Pitfalls (cont.)

2. Understand the
Terms of the
Document and
Administer
Accordingly



How to Avoid Fiduciary Pitfalls (cont.)

3. Compensation:

- ▶ Reasonable Fees
- ▶ Disclose Changes
- ▶ Don't Postpone Payment



How to Avoid Fiduciary Pitfalls (cont.)

4. Keep Beneficiaries Informed
 - Inventory/Accounting
 - Detailed Records
 - Good Communication



How to Avoid Fiduciary Pitfalls (cont.)

5. Give Notice

- Notice to Creditors
- Notice to Beneficiaries



**IMPORTANT
NOTICE**

How to Avoid Fiduciary Pitfalls (cont.)

6. Prudent Investments

- ▶ Permissible Investments
- ▶ Diversify Assets
- ▶ Balance Beneficial Needs and Interests
- ▶ Real Estate
- ▶ Business Assets



How to Avoid Fiduciary Pitfalls (cont.)

7. File Returns and Pay Taxes

- ▶ Know the deadlines
- ▶ Identify missing Returns
- ▶ File Form 8971
- ▶ Minimize Personal Liability
 - ▶ Hire a professional
 - ▶ Consider IRS Forms 56, 4810, and 5495.



How to Avoid Fiduciary Pitfalls (cont.)

8. Administer Expeditiously and Efficiently

(The interests of the
beneficiaries supersede
other personal or
professional commitments.)



How to Avoid Fiduciary Pitfalls (cont.)

9. Use Professional Advisors



How to Avoid Fiduciary Pitfalls (cont.)

10. Safeguard Assets

- ▶ Identify Assets
- ▶ Take Control
- ▶ Segregate



How to Avoid Fiduciary Pitfalls (cont.)

11. Be Loyal

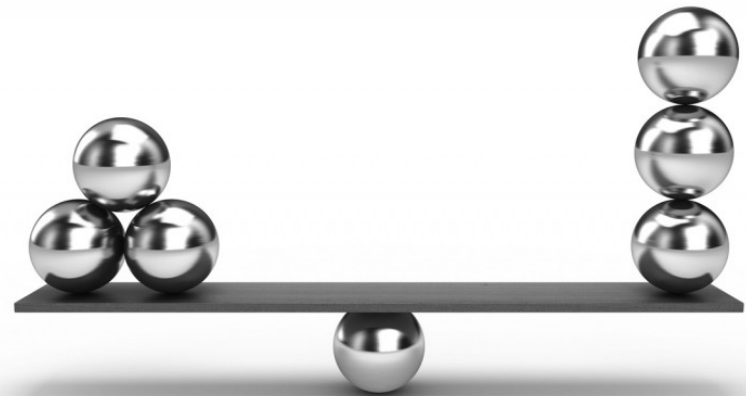
- Beneficiaries' interest come first;
- Avoid self-dealing



How to Avoid Fiduciary Pitfalls (cont.)

12. Be Impartial

- Consider all interests
 - Income only
 - Income and principle
 - Life estate
 - Current interest vs. remainder interest



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Thank you!

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