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Wills, Trusts, and Estates for
Legal Assistants

Sixth Edition



Wolters Kluwer

Chapter 20

TRUST ADMINISTRATION

Chapter Objectives

- Describe the fiduciary duties, responsibilities, and powers of trustees
- Explain the concept of a prudent investor
- Draft an exculpatory clause
- Discuss the ethical components of a trustee's duty of loyalty
- Analyze the general rules for allocating trust income and expenses

Overview of Trust Administration

- Accept trusteeship
- Post bond
- Register trust
- Possess and safeguard trust property
- Identify and locate beneficiaries
- Follow settlor's instructions
- Act as fiduciary
- Support and defend trust

How Trustee Possesses and Safeguards Trust Property

- Record deeds
- Buy insurance
- Keep the property repaired
- Place valuable personal property in a safe deposit box
- Register corporate securities



Selection of Investments

- Statutory “legal” list
- Prudent person standard
- Prudent investor or portfolio standard
- Noneconomic considerations

Prudent Person Standard

- In evaluating the propriety of a trustee's investments, the trustee is held to the degree of care and level of skill that a person of ordinary prudence would exercise in dealing with his or her own property.

Different Investment Approaches Depend on a Variety of Factors (slide 1 of 2)

- General economic conditions
- Anticipated effects of inflation or deflation
- Tax consequences
- The role that each investment plays within the overall trust portfolio
- Expected income

Different Investment Approaches Depend on a Variety of Factors (slide 2 of 2)

- Anticipated appreciation
- The beneficiary's other resources
- The need for liquidity, regular income, preservation of corpus, and/or appreciation of corpus
- A particular asset's special relationship or value to the trust purposes or to the beneficiary



ESG Movement

- Permitting trustees to consider environmental, social, and governance factors in making investment decisions



Duty to Diversify

- All Trustees have general duty to Diversify
- How to achieve for Small Trust
- How to achieve for key assets

Exculpatory Clause

- Settlor may alter the rules for Trustee in meeting the standards for “prudent person and prudent investments”
- Sample language for exculpatory clause in Trust:
My Trustee shall not be liable for any loss, cost, damage or expenses sustained through any error of judgment or in any other manner except for and as a result of a trustee’s own bad faith or gross negligence



Allocation of Expenses

- **Allocated to income:**

Property taxes; insurance premiums; interest on loans; ordinary repairs; reasonable allowance for depreciation; legal expenses that concern primarily the interests of income beneficiaries; taxes on receipts that are considered income.

- **Allocated to principal:**

Costs of investing the principal; capital improvements; legal expenses that concern the interests of remainder beneficiaries; taxes on profits

- **Allocated between income and principal:**

Trustee's compensation; expenses associated with accountings



Deviation

- Deviation typically occurs if one of the following circumstances exists:
 - The purposes of the trust have been fulfilled.
 - The purposes of the trust have become illegal.
 - The purposes of the trust are now impossible to fulfill.
 - Because of circumstances not known to or anticipated by the settlor, compliance with the terms of the trust would defeat or substantially impair the trustee's ability to accomplish the purposes of the trust. This latter situation is the most often asserted ground for a deviation.



Administrative Revisions

- Using its deviation powers, the court can authorize a wide array of administrative revisions such as the following:
 - Changing the trustee
 - Permitting the trustee to perform acts that are not authorized or are forbidden by the trust instrument
 - Prohibiting the trustee from performing acts that the settlor mandated in the trust instrument
 - Modifying the terms of the trust
 - Terminating the trust

Modification of Trust by Decanting

- **Decanting:** A mechanism for a trustee to accomplish a modification in the terms of an **irrevocable trust** by distributing assets to another trust with different terms, using the trustee's discretionary authority to distribute trust assets to or for the benefit of trust beneficiaries.
- A Hot topic in modern trust law



Methods of Termination

- Express terms of trust
- Revocation by settlor
- Consent of beneficiaries
- Merger of legal and equitable title
- Lack of property
- Court order

