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Wills, Trusts, and Estates for
Legal Assistants

Sixth Edition



Chapter 21

TRUST ENFORCEMENT

Chapter Objectives

- Identify the remedies available against trustee for a breach of trust
- Explain the process of tracing trust property
- Describe the concept of marshalling assets
- Understand the requirements for the approval or ratification of a trustee's actions by a beneficiary
- Discuss the circumstances under which an action against a trustee may be time-barred



Remedies Against the Trustee

- Money damages
- Removal of trustee
- Pre-breach remedies
- Criminal sanctions
- Damages in absence of breach

Trustee Conduct Constituting Cause for Removal

- Breach of trust
- Trustee becomes incompetent
- Trustee becomes insolvent
- Other causes—the court has great leeway



Remedies Involving Trust Property

- Tracing
- Subrogation
- Marshalling
- Bona fide purchasers

Tracing

- **Tracing** permits the beneficiary to recover the actual trust property or its proceeds from the trustee or a third party for the benefit of the trust.
- The beneficiary follows the trail of the misappropriated property and once it is located, can recover that property unless it is in the hands of a bona fide purchaser.

Marshalling

- Protecting a junior claimant by requiring a senior claimant to satisfy the senior's claim from a source unavailable to the junior.

Situations Where the Beneficiary Might Be Liable

- Misappropriation or wrongful dealing with trust property
- Consenting to or participating in a breach of trust with the trustee
- Failure to repay a loan of trust funds that was authorized under the trust instrument
- Failure to repay a distribution from the trust that was in excess of the amount to which the beneficiary was entitled



Typical Requirements for an Effective Approval or Ratification

- Breach waivable under local law
- Beneficiary is competent
- Trustee makes full disclosure
- Consent documented in writing

Statute of Limitations

- A beneficiary must bring an action against the trustee for breach before the applicable statute of limitations expires. The time varies among the states with most periods being between two and six years.
- **Discovery rule:** the statute of limitations in an action for the breach of a trust begins to run when the beneficiary knows or reasonably should have known of the breach.

