

MEMORANDUM
RE: TRUSTEE DUTIES AND RESPONSIBILITIES

You have been designated as a Trustee of a trust and in that capacity you have significant duties and responsibilities. The following is a list of duties and responsibilities you should consider and adopt as "best practices".

The Trustee should:

1. Read, review and understand all the provisions in the Trust Agreement.

2. Hire a good lawyer and a good accountant who are experienced in trust matters.

3. Learn how to keep the trust accounting records.

4. Review the distribution provisions of the Trust Agreement closely with the lawyer who drafted the instrument or the lawyer hired to assist the Trustee in trust administration. These reviews should include whether distributions of income and/or principal are subject to an "ascertainable standard" or whether the distribution authority is broader and more subjective, allowing the Trustee the discretion as to what distributions are appropriate. As Trustee, you must also be aware of when the Trust will terminate (including partial terminations), and which individuals and/or entities will receive the remaining trust assets. The Trustee should also discuss the distribution rules with the current trust beneficiaries.

5. Understand the interests between the current beneficiary and the remainderman beneficiaries (typically children or grandchildren of the current beneficiary). Often times the Trust authorizes income and principal distributions according to a standard, i.e. to "support and maintain" the beneficiary in accordance with a defined living standard. The Trustee should determine that standard and any limits that might be imposed on Trust distributions.

(a) Current Beneficiaries. It is recommended that the Trustee obtain a projected budget of the current beneficiary's income and expenditure needs, including a description of other income sources and assets available to the current

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beneficiary during the term of the Trust if the Trust requires the Trustee to consider the other income sources and assets prior to making distributions. Sometimes this may require the Trustee to request copies of prior tax returns and detailed copies of the beneficiary's financial statements.

(b) Remainderman Beneficiaries: Although most of your contact will be with the current income beneficiary or beneficiaries, you should also consider the interests of the remainderman beneficiaries. The remainderman beneficiaries are the persons or charities who will receive the trust property when the current beneficiary dies or is no longer an eligible beneficiary. The scope of your contact with the remainderman beneficiaries may be dependent upon who they are. If they are children or grandchildren and the surviving spouse is the current primary beneficiary, then your contact may not need to be as frequent although you should always keep in mind the ultimate beneficial interests of the remainderman beneficiaries. However, if the remainderman beneficiaries are persons who might have interests adverse to the primary beneficiary (i.e., children by a previous marriage, disruptive children or perhaps even some charities), then those beneficiaries may need to be provided information regarding the trust on a current and continuing basis so they may understand the operative provisions of the Trust. If the remainderman beneficiaries are actively adversarial, then you need to make sure that the distributions to the current beneficiary are strictly within the permissible guidelines set forth in the dispositive provisions of the trust agreement. The Arkansas Trust Code has provisions which are aimed at limiting the information that is available to the remainderman beneficiaries; however, that might not be a good policy for the Trustee to follow. We have noted in the past that charitable remainderman beneficiaries are becoming more interested in the current day-to-day administration of the Trust during the lifetime of the current beneficiary.

Even non-adversarial remainderman beneficiaries might have divergent economic interests. For example, one or more children might be wholly dependent upon their wage income and other limited resources currently available to him or her; while other children may have substantial earnings and other income and/or has married into a family of wealth.

Just as in the context of some probate procedures, a trust administration can create intra-family hostilities and jealousies which sometimes boil over when the time arrives to divide up the family assets among younger generations.

The duties of a Trustee should not change if the Trustee is also the sole current beneficiary of the Trust. However, exposure to claims and suits from beneficiaries obviously lessens in the event the Trustee is also the sole current beneficiary of a Trust. Nevertheless, as stated above, a Trustee should be mindful of the interests of the remainderman (i.e., those beneficiaries of the Trust who receive property upon the death of the current life beneficiary). The Trustee owes a duty to those remainderman beneficiaries to ensure that their future interests in the Trust are protected.

A Trustee who serves as Trustee of the Trust currently benefitting more than one current beneficiary (even if the Trustee is one of the current beneficiaries) should be more sensitive to the investment and distribution decisions. However, the Trustee should be mindful that the legal duties and responsibilities of the Trustee are not dependent on who are actually current beneficiaries even though the practical exposure to liability claims from beneficiaries may be reduced when beneficiaries consists of the Trustee or family members of the Trustee.

6. If the Trust owns significant investments in stocks, mutual funds, bonds, CDs, or cash investments, the investment management of the trust assets is an extremely important responsibility. In the event the Trustee does not have significant experience in investment management, the Trustee should retain the services of an experienced investment counselor to provide investment management assistance to the Trust.

7. If the assets are significant, consider selecting two or more investment co-coordinators at two or more different brokerage/investment houses.

8. Develop and adopt an investment policy statement regarding how the Trust assets should be invested.

9. Develop an external and independent review process to check on the Trustee's record keeping.

10. Meet with the current beneficiary(ies) and explain the investment process. If there is more than one current beneficiary, find out what each beneficiary thinks about the process, distributions, etc.

11. Review investment portfolios at least quarterly and invite the current beneficiary(ies) to attend meetings on a semi-annual or annual basis.

12. Keep all investment management costs below 200 basis points, including the Trustee's fees.

13. Make sure the current beneficiary of the Trust understands how much of the administrative costs will go to the Trustee in the form of annual fees for trust services and the basis for the fee. Also discuss professional investment management fees paid by third parties.

14. If the Trustee can select a successor Trustee, do so in advance after discussing successor alternatives with beneficiaries.

15. If the current beneficiaries have a testamentary dispositive power over the trust assets, such as a limited power of appointment, communicate that right to the current beneficiary and encourage the current beneficiary to review and continuously update his or her personal estate planning documents.

16. Identifying The Trust For Tax Purposes. The Trust is a separate entity and an

identifying number is required for it for income tax purposes. A federal tax identification number has been assigned to the Trust and this number should be given to banks, corporations, and others who pay interest, dividends or other income to the Trust.

17. Protecting Trust Assets. Any assets which have been transferred to the Trust which should be covered by insurance should be so protected. If insurance is already covering a trust asset, the insurance policy should be revised to add the Trustee (in his or her capacity as Trustee) as the named insured on the policy. This can usually be done at no additional cost. If personal property, a residence, or any automobile has been transferred to the Trust, the Trustee should make sure that such assets are covered by insurance and that the Trustee (in his or her capacity as Trustee) is a named insured. Assets such as stocks and bonds which are owned by the Trust should be placed in a safe place, such as a safe deposit box. If the safe deposit box holds only Trust assets and is in the name of the Trustee, there will be no problem in identifying bearer bonds or unregistered securities as Trust assets.

18. Record Keeping. You should keep good financial records. If you have good records, the Trust should not increase your work.

The Trustee has a responsibility to keep accurate records concerning the trust assets. Books should be set up with the help of an accountant, if necessary, to identify (1) income received, (2) income paid out, (3) additions to principal, (4) deductions from principal, (5) principal on hand, and (6) changes in trust investments. All transactions involving Trust assets should be carefully documented. When the Trust books are originally created, the cost basis of all assets transferred to the Trust should be determined. It is much easier to obtain this information when the Trust is created and records available than to try to track down such information at a later time when assets are sold or otherwise transferred. In addition to satisfying the Trustee's legal responsibilities, accurate books and records will make the successor Trustee's job much easier. A Trustee should not feel burdened by accounting responsibilities which he or she is unable to handle. A professional accountant should be retained when required, or the Trustee may consider utilizing the services of a bank, which may be the successor Trustee, or custodian (as opposed to a Trustee) of the assets.

19. Segregation of Trust Property. The Trustee has an obligation to segregate trust property. If trust property is commingled with the Trustee's own property, the duty will be on the Trustee to prove that which is his/her own property. Any doubt will be resolved in favor of the Trust. Commingling property or investments can also create accounting difficulties and tax problems.

20. Tax Reporting. The Trust is a separate taxpaying and tax filing entity. Both federal and state income tax returns are due each year. This is an area in which your certified public accountant can assist you.

As you can see by reviewing this Memorandum, the duties and responsibilities of a Trustee are quite broad and expansive. However, from a practical matter, the nature of the trust assets will

dictate the magnitude of the duties for which the Trustees will be responsible. For example, if the trust owns a controlling interest in a closely held operating business, there are significant duties and responsibilities that the Trustee must pursue to insure that there is competent management in place to operate the closely held business and that the interests of the owners are protected. By comparison, if the trust owns a farm, the day-to-day activities might not be so great; however, the Trustee will be responsible for insuring that the tenant, or other person operating the farm, does so in a business-like fashion and exercises practices which are best for the agricultural enterprise. What the landowner must contribute (i.e., sharing in costs of seed, fertilizer, providing wells, water, etc.) may determine the magnitude of the oversight.

On the other hand, if the trust owns only investment assets — stocks, bonds, mutual funds, and other securities — then in that case the Trustee is responsible for the prudent investment and management of the investments and should seek appropriate professional guidance.

As always, should you have any questions whatsoever regarding issues relating to the Trust, whether they be interpretive administrative or tax issues or any other issues regarding your duties and responsibilities, you should not hesitate to contact us for clarification and guidance.

Very truly yours,

BARBER LAW FIRM

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Encl.