

Trustee's Duties Extend to Remainder Beneficiaries Too  
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A trustee has various duties to the beneficiaries of a trust. What often seems to be forgotten is that these duties run not only to the current beneficiaries but to the remainder beneficiaries as well. State laws dictate the nature of these duties and to whom they are owed. Historically, state common law and statutes have not been uniform. The Uniform Trust Code ("UTC") brought significant changes in this area, but many of the states that have adopted the UTC have modified the relevant provisions. Thus, even among UTC states, there is no uniformity in many situations. In some cases, the trust instrument may attempt to change the duties of the trustee. However, state statutes and judges may override even the clear intent of the grantor.

Duties of a Trustee

A trustee's duties are determined by the trust instrument, common law and state statutes. A trustee's basic duties are to hold the assets of the trust, to administer them solely for the benefit of the trust beneficiaries and to carry out the terms of the trust instrument.

A trustee's duties include the following:

1. *Duty of loyalty.* The trustee must act with undivided loyalty and solely in the interests of the trust beneficiaries. The trustee must act in a manner that will avoid placing the trustee's personal interests in conflict with those of the beneficiaries.
2. *Duty of care.* The trustee must act with the same level of care and diligence in carrying out the purposes of the trust as would a person familiar with the role of a trustee. If a trustee holds itself out as a professional trustee or as having special skills, it may be held to a higher standard of care.
3. *Duty to administer the trust by its terms.* The trustee is bound to administer the trust as it is written. If there are ambiguities in the trust instrument, it may be necessary to seek help from a court or attorney.
4. *Duty of impartiality.* The trustee is required to treat all of the beneficiaries of the trust impartially, unless the trust instrument provides otherwise. "Impartially" does not necessarily mean "equally," though.
5. *Duty to segregate property.* The trustee must not commingle the trust property with the trustee's own property or other property not held by the trust. Absent

statutory authority or authority under the trust instrument, the trustee should not even commingle assets of separate trusts created under the same trust instrument.

6. *Duty to preserve trust property.* The trustee is under a duty to use reasonable care and diligence in preserving and protecting trust property for the benefit of the beneficiaries. Thus, for example, a trustee may be required to maintain fire and casualty insurance for any buildings owned by the trust.

7. *Duty of confidentiality.* The trustee is bound to keep personal information about the trust beneficiaries while acting as trustee confidential, and should not reveal details of the trust to third parties (including other beneficiaries) except where otherwise required by law.

8. *Duty to keep records.* The trustee must keep detailed records showing the assets, liabilities, receipts and disbursements of the trust.

9. *Duty to account.* The trustee must periodically give a written report to the beneficiaries how the trust is being administered. The form and frequency of the accounting varies from state to state.

10. *Duty to furnish information and communicate.* In addition to any written accountings, the trustee is required to keep beneficiaries informed regarding the trust and its administration. The trustee should also furnish other information to a beneficiary that is reasonably requested.

11. *Duty to enforce and defend claims.* The trustee is under a duty to enforce any claims the trustee may have, including against a predecessor trustee, and to defend claims brought against the trust. However, the trustee can also compromise claims if it is the best interests of the beneficiaries to do so. The trustee should consider the economics of suing or defending in making these decisions.

12. *Duty not to delegate.* In general, a trustee is not allowed to delegate the trustee's discretionary (as opposed to ministerial) powers. State law, and possibly the terms of the trust instrument, can vary this duty.

All of these duties are owed to all of the beneficiaries of the trust. Troubles for a trustee often arise when some of the beneficiaries are not treated impartially or kept informed of the trustee's actions, or are not even informed of the existence of a trust.

#### Duty of Impartiality and Investments

An area that has historically tested the trustee's duty of impartiality is the investment of trust assets. The trustee is required to invest in a manner that

simultaneously discharges the trustee's obligation to provide income for the income beneficiaries while also providing growth for the remainder beneficiaries. This is often an impossible task, especially in these days of very low yields on investments.

Remainder beneficiaries have often brought suits against trustees when the trustees have arguably favored the income beneficiaries when making investments. Oftentimes, the courts have held for the income beneficiaries based on a rationale that the trustee's duty to the remainder beneficiaries is to preserve the principal for their benefit, not to increase its value. So, for example, in *SunTrust Bank v. Merritt*,<sup>1</sup> a decedent left three trusts at her death, one for each of her son and two daughters. Each trust was initially funded with about \$675,000. The son was co-trustee of his trust with the bank and persuaded the bank to leave the assets invested primarily in tax-exempt bonds. At the son's death in 2000, the trust was worth about \$732,000. During that same time, his sisters' trusts, invested almost entirely in stocks, had nearly tripled in value. The remainder beneficiaries' sued the bank, contending that the trustee had breached its duty of impartiality because the value of the trust had not even kept up with inflation during the income beneficiary's life. The court rejected this argument, stating that "the duty owed to the remainder beneficiaries is to preserve and protect--not increase--the corpus of the trust."<sup>2</sup> Thus, even though the actual purchasing power of the corpus was not preserved, the court felt that the trustee's primary duty was to provide income to the income beneficiary.

Similarly, the court in *Pennsylvania Co. v. Gillmore*<sup>3</sup> held that a trustee was not under any duty to sell tax-exempt securities in order to increase the value of the trust. In this case, the sale of the securities would only have benefited the contingent remainder beneficiaries and would have substantially reduced the income available to the income beneficiaries. The vested remaindermen also objected to the sale. The court stated that "[i]t is the duty of the trustee to return the highest income to the life tenants consistent with the safety of the corpus, and not an income which the trustee may deem to be sufficient for their purposes."<sup>4</sup> It also said that the trustee's duty to the contingent remaindermen does not include a duty to increase the corpus of the trust unless it could be accomplished without harming the other trust beneficiaries.

To address this problem, the 1997 Uniform Principal and Income Act ("UPIA") incorporated a provision allowing a trustee to reallocate receipts between income and principal. Thus, for example, in a year when the trust earns little income but has significant appreciation, the trustee could reallocate some of the growth to income. This allows a trustee to invest on a total return basis while still meeting the trustee's obligation to treat all of the beneficiaries impartially. Section 105 of the UPIA prevents a court

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<sup>1</sup> 612 S.E.2d 818 (Ga. App. 2005)

<sup>2</sup> Id., at 822

<sup>3</sup> 43 A.2d 667 (NJ Ch. 1945)

<sup>4</sup> Id., at 672

from interfering with the trustee's exercise of this power unless it finds the trustee abused its discretion. To induce a trustee to exercise this power, the primary remedy for a breach of the trustee's duty is to undo the adjustment by modifying future distributions.

An alternative method of dealing with this issue is through conversion of a trust to a total return trust, or unitrust. Many states have adopted legislation allowing this. Although the statutes vary from state to state, in general, the trustee can make this change without court approval if the conversion is in the best interests of the beneficiaries and the trust describes the amount distributable to a beneficiary in terms of the trust's income. In most cases, the percentage that may be used is anywhere from 3% to 5%, often based on a rolling average of the trust's assets. In some cases, the acceptable percentage may vary depending on whether the beneficiaries or a court agrees to the conversion. As a practical matter, though, a trustee is likely to want to keep the unitrust percentage in the 3% to 5% range.

While the power to adjust and the power to convert a trust into a total return trust are generally discretionary with a trustee, remainder beneficiaries should be aware that these options may exist and should consider urging the trustee to use them in appropriate circumstances. In some states, a beneficiary can petition the court to convert a trust into a unitrust if the trustee has turned down a request from the beneficiary to do so. Interestingly, at least in some states, the trustee has no duty to notify the beneficiaries that this law exists.

#### Duty of Impartiality and Distributions

A trustee's duty of impartiality also extends to decisions to make or not make distributions to beneficiaries. The language of the trust instrument is crucial in determining whether the grantor intended that one beneficiary or a class of beneficiaries be favored over other beneficiaries. In the absence of clear direction from the grantor, the trustee must be careful when deciding if a distribution should or should not be made so as not to violate this duty.

Generally, courts will not interfere with a trustee's exercise of its discretion unless it is an abuse of that discretion. For example, in *In the Matter of the Trust Created by Lilly and Lilly*,<sup>5</sup> the remainder beneficiaries objected to an accounting by the trustee after the trustee made substantial distributions to the then current beneficiary. The trustee showed that it had only made the distributions after carefully reviewing each request (and had, in fact, turned down many other requests). The trustee also had met with the beneficiary on regular occasions to work with the beneficiary in developing a budget. The court noted that it should not interfere with the trustee's decisions as long as the trustee acted in good faith and within the bounds of reasonable judgment.

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<sup>5</sup> 1997 WL 570946 (Minn. App. 1997) (unpublished opinion)

On the other hand, in *Austin v. U.S. Bank of Washington*,<sup>6</sup> the court did find an abuse of discretion when the trustee increased payments to the income beneficiary based on her emergency needs without first investigating whether an emergency existed. The attorney for the income beneficiary made two requests for increased distributions which were granted by the trustee. The remainder beneficiaries later challenged those distributions, claiming that the trustee failed to consider adequately the income beneficiary's other resources outside of the trust before increasing the trust distributions to her, make adequate inquiries into the beneficiary's financial condition or do any type of follow-up to see if the increased payments continued to be necessary. The trial court agreed with these contentions and the appellate court affirmed. Although the trustee generally has significant latitude with respect to discretionary distributions, the trustee still must go through a decision-making process and, as part of that process, consider the interests of all of the beneficiaries when making those decisions.

#### Duty to Furnish Information and Communicate

An area that holds great potential for litigation and trustee liability is the trustee's duty to furnish information and communicate with the trust beneficiaries. Although these duties can be viewed as fundamental duties of a trustee, state law has often been unclear on the exact parameters of these duties. Moreover, a settlor may not want the trustee to tell the beneficiaries anything about the trust. This can leave a trustee in an uncomfortable position.

Courts have historically viewed these duties as necessary from a public policy standpoint. Without information related to the trust and its administration, there would be no effective check on the power of the trustee. On the other hand, trust laws have shown great deference to the intent of the settlors of trusts and on restrictions that settlors have placed on beneficiaries and trusts. These two principles can clash when it comes to what needs to be communicated to a beneficiary.

The Restatement (Second) of Trusts described the trustee's duty to furnish information as "a duty to the beneficiary to give him upon his request at reasonable times complete and accurate information as the nature and amount of the trust property" and to allow the beneficiary to review trust accounts and related documents.<sup>7</sup> However, the Restatement (Third) of Trusts changed this to an affirmative duty to notify beneficiaries of their status as beneficiaries and to keep "fairly representative" beneficiaries informed of significant developments concerning the trust and its administration.<sup>8</sup> Comment a(1) to Section 82 says that a trustee can usually fulfill its duty to provide information to "fairly representative" beneficiaries by providing that information to beneficiaries who

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<sup>6</sup> 869 P.2d 404 (Wash. App. 1994)

<sup>7</sup> §173

<sup>8</sup> §82

are currently entitled or eligible to receive income or principal from the trust and those beneficiaries who would receive the income or principal if the current beneficiaries' interests or the trust terminated. Despite the Reporter's comments that this rule had become "widely recognized in primary and secondary authorities," this proactive requirement was not how most courts had interpreted the trustee's duty to notify in the past.

Section 813 of the UTC also imposes an affirmative duty on trustees to inform and report. Paragraph (a) of that Section provides that "a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust." Under paragraph (d) of Section 813, a beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. However, the settlor is not permitted to modify this Section. Nevertheless, about one-half of the jurisdictions that have adopted the UTC have either eliminated Section 813 or made it waivable by the settlor of the trust.

The fact that a beneficiary's rights are contingent or subject to divestment is not sufficient to eliminate the trustee's duties to that beneficiary. In *Rearden v. Riggs National Bank*, the court noted that even "potential remaindermen have an interest in the trust that must be respected."<sup>9</sup> Indiana courts have held that remainder beneficiaries that could be divested and remote contingent remainder beneficiaries named in the trust instrument both are entitled to accountings from a trustee.<sup>10</sup> Likewise, in *Seifert v. Leonhardt*,<sup>11</sup> the Missouri Appellate Court held that beneficiaries with future contingent interest could seek an accounting from a trustee. The Supreme Court of Minnesota has ruled that a beneficiary who will not take any property from a trust after the death of the life beneficiary because of the life beneficiary's prospective exercise of a power of a testamentary power of appointment is still entitled to the rights of a beneficiary until the death of the life beneficiary.<sup>12</sup> However, in a different context, the Illinois Supreme Court ruled that grandchildren of a deceased grantor were not entitled to any notice of a restrictive clause in a trust while their mother, who had a power of appointment over the trust, was alive because they had "no vested interest to protect."<sup>13</sup>

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<sup>9</sup> 677 A. 2d 1032, 1036 n.4 (D.C. 1966)

<sup>10</sup> *Lewis v. Clifton*, 837 N.E.2d 1016 (Ind. App. 2005); *Marshall & Isley Trust Co. v. Woodward*, 848 N.E.2d 1175 (Ind. App. 2006)

<sup>11</sup> 975 S.W. 2d 489 (Mo. App. 1998)

<sup>12</sup> *Matter of Gold*, 342 N.W. 2d 332 (Minn. 1984)

<sup>13</sup> *In re Estate of Feinberg*, 919 N.E.2d 888, 901 (Ill. 2009)

Breaches of other duties of a trustee may also be enforced by a contingent beneficiary. For example, in *Giagnorio v. Torkelson Trust*,<sup>14</sup> a contingent beneficiary sued a trustee for allegedly breaching her fiduciary duties by selling stock at a discount price to another contingent beneficiary of the trust. The court held that the contingent beneficiary had standing and allowed the suit to go forward. It cited the case of *Burrows v. Palmer*, which held that a trustee “owes the same fiduciary duty to a contingent beneficiary as to one with a vested interest in so far as necessary for the protection of the contingent beneficiary’s rights in the trust property.”<sup>15</sup>

### Revocable Trusts

Historically, revocable trusts have been treated differently than irrevocable trusts with respect to issues such as notice and communication with beneficiaries. For the most part, unless the settlor was incapacitated, the trustee generally had no duty to notify the beneficiaries of aspects of the administration of the trust. This understanding has found its way into both the Restatement (Third) and the UTC. Section 74 of the Restatement and Section 603(a) of the UTC both provide that the duties of the trustee are only to the settlor while a trust is revocable unless the settlor is incapacitated.

For example, in *Ullman v. Garcia*, the Florida appellate court rejected a guardian’s attempt to disaffirm certain Totten trust accounts on the basis of undue influence. The court held that Florida case law and statutes provided that a revocable trust cannot be contested until the death of the settlor because “the devisee of a revocable trust does not have any control over ownership of the trust property until the settlor’s death.”<sup>16</sup> Similarly, in *In the Matter of Malasky*,<sup>17</sup> the court refused to allow remainder beneficiaries to challenge the accounting of the trustee for actions taken during the settlor’s lifetime. *But see Siegel v. Novak*,<sup>18</sup> where a Florida court applying New York law held that trust remainder beneficiaries had standing to challenge pre-death withdrawals made on behalf of the settlor by her agent. The court distinguished *Malasky* because in this case, the trustee was not the settlor of the trust when the withdrawals occurred.

The Kentucky Supreme Court took a very different view of the rights of remaindermen of revocable trusts in *JP Morgan Chase Bank, N.A. v. Longmeyer*.<sup>19</sup> Bank One (later purchased by JP Morgan) was named trustee of a revocable living trust. The grantor of the trust named charities as remainder beneficiaries. Ten years later, shortly before the settlor’s death, her caregiver arranged to have a new attorney draft a new estate

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<sup>14</sup> 686 N.E.2d 42 (Ill. App. 1997)

<sup>15</sup> 125 N.E.2d 484 (Ill. 1955)

<sup>16</sup> 645 So.2d 168, 169 (Fla. App. 1994)

<sup>17</sup> 736 N.Y.S.2d 151 (N.Y. App. 2002)

<sup>18</sup> 920 So.2d 89 (Fla. App. 2006)

<sup>19</sup> 275 S.W.3d 697 (Ky. 2009)

plan for the settlor. The new plan increased the amount going to the caregiver, removed the charities as beneficiaries and replaced Bank One with the attorney as the new trustee. Bank One continued as investment advisor at that time but did not raise any objections or questions related to the new estate planning documents. Shortly after the settlor's death, the Bank was removed as investment advisor. At that time, after consulting counsel, Bank One notified the charities named in the prior plan about the change in the trust. The charities sued those involved in the change and settled their claims for \$1,875,000. The defendants in turn sued the Bank to recover the \$1,875,000 under the theory that the Bank as (former) trustee breached its duty to the settlor by disclosing confidential information to the (former) charitable beneficiaries.

The trial court held that the Bank had a fiduciary duty as trustee to notify the remainder beneficiaries of the trust of the revocation. The appellate court reversed the trial court, holding that the trustee either had to defend the trust in its own name or turn the assets over to the new trustee. On ultimate appeal to the Kentucky Supreme Court, that Court found that Kentucky trust law imposed a duty to keep beneficiaries informed of material facts affecting their interests. In reaching that result, the Court said that the Kentucky statute requiring a trustee to keep the beneficiaries of a trust reasonably informed of the trust and its administration did not distinguish between revocable and irrevocable trusts, something, the court acknowledged, might come as a surprise to trust settlors (and perhaps lawyers?):

“In fact, many laypersons who create revocable living trusts as will substitutes might be shocked to learn that a trustee has a duty to inform contingent beneficiaries of their potential interests, given the understanding of many settlors that so long as they are living and competent the trust assets remain essentially under their control and that they may freely change their mind about beneficiaries' interests. But if our trust statutes [based on the UTC] are out of touch with modern policy or with the expectations of today's community, it is the legislature's task to amend the statutes, not this Court's role to re-write them.”<sup>20</sup>

Kentucky has since reversed the *Longmeyer* decision by statute. Now, as long as the trust is revocable and the settlor is not incapacitated, the trustee has duties only to the settlor.

Should the trustee have taken the action it did? The dissent suggested that the appellate court was correct and that the trustee could have asked a court for instructions as to the validity of the trust amendment and its removal as trustee if it had suspicions about the actions taken. That would have allowed for a court to determine the issue after all interested parties, including the charities that had been replaced as beneficiaries, had

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<sup>20</sup> Id. at 701-02

been notified and would have left the trustee a neutral party in the dispute. The dissent also noted the timing of the trustee's actions, which it felt relevant to the issue.

In Illinois, guardians may, by statute, petition the court to create or modify an estate plan. The statute directs that notice be given as directed by the court.<sup>21</sup> Under the statute, notice is required to be given "to all other persons interested as the court directs." Commentators and practitioners have wondered whether the statute could be used to conduct what would amount to a "pre-death will or trust contest." For example, assume that potential undue influence by a caretaker is discovered pre-death (the revocable living trust is amended to add the caretaker as a substantial beneficiary), and daughter opens a guardianship estate to protect her father. May the guardian amend the revocable living trust to revoke the offending amendment? It would seem so, and the next question is to whom must notice be given and who would have standing to challenge an amendment.

In the recent case of the *Estate of Michalak*,<sup>22</sup> a guardian petitioned the probate court to, among other things, amend a disabled person's revocable trust to unwind a revocable trust that allegedly was executed at a time when the grantor lacked capacity. The court granted the petition, and removed the alleged wrongdoers as contingent remainder beneficiary and as successor trustees of the trust. The alleged wrongdoers and now former remaindermen appealed the probate court's order that approved the amendment to the trust, and the guardian challenged their standing to appeal on a theory that, as with a will, one cannot challenge the validity of a revocable trust (or an amendment) until the grantor dies because no person's interest in the trust property vests until the death of the grantor. While the grantor is alive and retains the right to further amend or to revoke the trust, no vested interests exist, only expectancies.

The *Michalak* court, however, disagreed, and distinguished the rights of remaindermen under a revocable trust from the expectancies of those who have the possibility of a future interest under a will. "The principal distinction between a will and a trust is that in the former, the beneficiary has no interest until the death of the testator, while in the latter, [sic] beneficiary has an interest the moment the trust is created. The fact that a beneficiary's actual enjoyment of the trust *res* is contingent upon the settlor's death does not negate the existence of a present interest in the beneficiary during the settlor's lifetime." [citations omitted]. In so doing, the court distinguished this case from *Estate of Henry*,<sup>23</sup> where the court ruled that a legatee who was removed from a will pursuant to a codicil in a guardianship proceeding did not have standing to challenge the codicil. The court noted that a remainder beneficiary is one whose identity cannot be definitely ascertained or is conditioned on an event that is not certain to happen. Because the appellants would become successor beneficiaries (they were identified by name in the trust) upon the death (which is an event certain to happen) of the grantor, their interests

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<sup>21</sup> 755 ILCS 11a-18(a-5)

<sup>22</sup> 934 N.E.2d 697 (Ill. App. 2010), app. den. 943 N.E.2d 1101 (Ill. 2011)

<sup>23</sup> 919 N.E.2d 33 (Ill. App. 2009)

were vested, not contingent. Although the court held that the former remainder beneficiaries had standing to challenge the amendment to the trust, it ultimately upheld the trial court's approval of that amendment.

Taken to its logical conclusion, this case would confer standing on any remainder beneficiary to file a lawsuit to challenge an amendment to any revocable trust that diminishes the beneficiary's interest. Further, a beneficiary should have standing to question the investments and distributions of the grantor/trustee, and even demand accountings. If that is the result of this case, then estate planners should give serious consideration to abandoning revocable trusts in favor of testamentary trusts under wills.

### Modification of Duties to Beneficiaries

In some cases, the settlor of a trust can modify the duties of a trustee. In many cases, these modifications (such as eliminating the obligation of a trustee to diversify investments) potentially will impact all of the beneficiaries of a trust. The most likely modification that could have a disproportionate impact on remainder beneficiaries relates to notification to and communication with those beneficiaries. To what extent can a settlor modify the trustee's duties in this regard?

In *Fletcher v. Fletcher*,<sup>24</sup> the trustee of a trust refused to give the trust beneficiaries information about the trust based on the request of the settlor prior to her death to keep the trust terms and dealings confidential from everyone, including the beneficiaries. The court noted that counsel for neither party had been able to cite cases that were helpful. Relying on the Restatement (Second) of Trusts, the court held that the trustee must give the beneficiary a full copy of the trust agreement and a list of the trust assets. It did not express any opinion on whether the result would have been different if the settlor had included the direction to keep the trust confidential in the trust itself.

On similar facts, an appellate court in North Carolina also ruled that the trustees of a trust could not keep the trust instrument secret from the beneficiaries. As in *Fletcher*, the trustees claimed that the settlor had instructed them not to turn over any information about the trust after his death. However, the North Carolina court stated that the settlor could have made the trust confidential if he had included the instructions in the trust instrument.<sup>25</sup>

As noted above, several states have adopted a version of the UTC that allows for the settlor to opt out of the notice provisions. Even in those states, there may be some question of the enforceability of a provision that attempts to prohibit entirely access to trust information from the beneficiaries or a class of beneficiaries. At least one state now

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<sup>24</sup> 480 S.E.2d 488 (Va. 1997)

<sup>25</sup> Taylor v. Taylor, 481 S.E.2d 358, 362 (N.C. App. 1997)

has a statute that specifically does allow a settlor to keep trust information wholly confidential. Delaware statutes provide that:

“Notwithstanding any other provision of this Code or other law, the terms of a governing instrument may expand, restrict, eliminate, or otherwise vary the rights and interests of beneficiaries, including, but not limited to, the right to be informed of the beneficiary's interest for a period of time, the grounds for removal of a fiduciary, the circumstances, if any, in which the fiduciary must diversify investments, and a fiduciary's powers, duties, standard of care, rights of indemnification and liability to persons whose interests arise from that instrument; provided, however, that nothing contained in this section shall be construed to permit the exculpation or indemnification of a fiduciary for the fiduciary's own wilful misconduct or preclude a court of competent jurisdiction from removing a fiduciary on account of the fiduciary's wilful misconduct. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this section. It is the policy of this section to give maximum effect to the principle of freedom of disposition and to the enforceability of governing instruments.”<sup>26</sup>

### Conclusion.

Despite the Delaware statute, the trend, as shown in Restatement (Third) of Trusts and the Uniform Trust Code, is towards more disclosure, not less. Maybe Delaware will lead the way in this area; perhaps it will become a competitive sort of thing among states as was eliminating the rule against perpetuities. More likely, beneficiaries will become more aggressive in enforcing their rights. Trustees must be increasingly concerned with keeping all beneficiaries informed of the activities of the trust. And we, as counsel for remainder beneficiaries, must make sure we inform them of their rights or we are not carrying out our duty to represent them effectively.

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<sup>26</sup> 12 Del. Code, Sec. 3303(a)