Successor Trustee Manual

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Successor Trustee Manual

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Introduction

These Trustee instructions are provided courtesy of our law firm. These instructions are designed to provide the Trustees with some directions to help them do the job better. Most people are unfamiliar with the duties of a fiduciary, such as an Agent or a Trustee. A fiduciary owes a high duty to the person upon whose benefit the fiduciary acts. That duty must come first in all matters related to handling matters as a fiduciary. A Trustee owes the highest duty recognized by law to the person upon whose benefit the Trustee acts.

These instructions are a guide and are not intended to provide legal advice to the Trustee. The relationship between the Trustee and the beneficiaries of the trust requires a great deal of care and due diligence on the part of the Trustee. Each Trustee, when more than one Trustee is acting, must make his or her own decision about what the duty is. Typically, the attorney who drafted the trust is the attorney who represents the Trustee. However, when more than one Trustee is serving, there are potential conflicts of interest between the Trustees. When this happens, the attorney is obligated to inform the Trustees with whom a conflict exists. Those affected Trustees might be wise to hire their own legal counsel to represent them.

Keep in mind that these guidelines are general in nature, and are here to help you as the Trustee avoid legal liability. If you have specific questions, you should seek the advice of an attorney who is competent in this area of the law.

No one can be forced to accept the position of Trustee or Personal Representative. However, if you accept the position, you must also accept the responsibility that goes along with it. It is in the best interest of both current and future beneficiaries to hold you to those responsibilities. Therefore, DO NOT TAKE THIS POSITION LIGHTLY.

Successor Trustee Instructions

As a Trustee, you have certain duties to perform, and there are certain rules that you must follow. These few pages are intended to provide you a general idea of what is involved in being a Trustee. You may be confronted with questions and problems beyond the scope of a brief explanation such as this. If in doubt you should consult the attorney for the trust.

Fiduciary law does not demand absolute perfection in judgment, but it does demand absolute loyalty, absolute honesty, and absolute disclosure, even if that disclosure hurts. Fiduciaries, such as Trustees, are treated differently by law.

A quote from Justice Benjamin Cordozo (a former United States Supreme Court Justice) is in order:

> *Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A (fiduciary) is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions. . . . Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. . . .*

A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence.

A fiduciary duty is a legal or ethical relationship of confidence or trust regarding the management of money or property between two or more parties, most commonly a *fiduciary* and a *principal*.

A fiduciary duty is the highest standard of care at either equity or law. A fiduciary is expected to be extremely loyal to the person to whom he owes the duty (the "principal"); he must not put his personal interests before the duty, and must not profit from his position as a fiduciary, unless the principal consents. The word itself comes originally from the Latin *fides*, meaning faith, and *fiducia*, trust.

In a fiduciary relationship, one person, in a position of vulnerability, justifiably reposes confidence, good faith, reliance and trust in another whose aid, advice or protection is sought in some matter. In such a relationship, good conscience requires one to act at all times for the sole benefit and interests of another, with loyalty to those interests. Examples of a fiduciary relationship include doctor/patient; attorney/client; pastor/parishioner and trustee/beneficiary.

Article One
Basic Rules

How to Sign Documents as Trustee -- When signing anything on behalf of the trust, always sign as ***"(Your Name), Trustee,"*** unless you were the Trustmaker (the person who made the trust, also known as the Trustmaker, Grantor, Settlor, or Trustor). By signing as Trustee, you will not be personally liable for that action as long as that action is within the scope of your authority under the trust and under applicable laws.

Section 1.01 Sources of the Trustee's Authority

There are three sources where the Trustee may find authority. Your authority comes first from the trust instrument, and your duties and powers as described there are your first instructions. You should read the trust instrument with care, and from time to time read it again. The trust instrument may contain specific provisions that take precedence over the general rules set forth in any memorandum or in this manual. However, the trust cannot protect you from liability for things that are against "public policy." For example, if the trust document states that a beneficiary is not entitled to an accounting, that is against public policy since it leaves the beneficiary no way to determine what assets the trust holds and what the beneficiary should be receiving.

The second source of your authority comes from the law – Title 15 of the Colorado Revised Statutes, Colorado Uniform Prudent Investor Act, Colorado Uniform Principal and Income Act, and Colorado Uniform Probate Code. These laws apply to anything that is not specifically spelled out in the trust document. If the trust lacks instructions, it would be a good idea to pick up a copy of all of the acts that apply. The trust can reimburse the Trustee for obtaining copies of these acts.

The third source of authority is the "common law," that is, the case law surrounding this subject. In many cases, cases have been brought to the courts because the document and the applicable are silent on issues. We are currently in an environment where a vast body of case law may not longer be valid, though much of it will still be valid under the new laws. However, we have no cases where the new law has been applied to particular cases.

Section 1.02 Trustee's Duty of Loyalty

As a Trustee, you must always act to further the interests of the trust and the beneficiaries. You are serving as Trustee for the benefit of someone other than yourself. You should not enter a transaction that gives you an opportunity to benefit yourself at the expense of the trust. If any situation should arise in which there is a conflict between your personal interests and the trust or between the trust and the interests of third parties, you as Trustee should put the interests of the trust first. For example, you as Trustee should not sell trust property to yourself or sell your property to the trust because this might incline you to take advantage of the trust. You as Trustee should not loan trust funds to yourself for personal or business purposes. The rules set forth in this paragraph are strict and apply not only to transactions in

which you would deal directly with yourself, but also prohibit transactions in which you as a Trustee would deal with organizations, such as partnerships or corporations, in which you are personally interested. This rule applies although the transaction may be scrupulously fair and even if it is favorable of a Revocable Living Trust created by you to the trust. These rules would not strictly apply to you as Trustee of a Revocable Living Trust created by you and in which you are the principal lifetime beneficiary.

Section 1.03 Self-Dealing

Self-dealing is a difficult concept to master. A Trustee is self-dealing when he benefits in any way from the trust he is managing unless he is also the Trustmaker. Here are some practical examples:

(a) Example One – The Car Sale

Though Mr. and Mrs. Elderly are no longer able to drive, they have a nice new car. They name their children, Bob, Carol, and Don as Trustees. The children decide to sell the car. Bob wants to purchase the car. Can he do it without self-dealing? The answer is that it depends. *(Get used to that answer – it's the most common start to an answer to ANY legal question.)*

Scenario 1 -- Can the three children agree on a price and Bob pay the trust that price? No, it is self-dealing because there has been no showing that the price they agreed upon was a reasonable price for the vehicle. In this case, Bob is liable for self-dealing and Carol and Don are liable for breach of trust or breach of fiduciary duty.

Scenario 2 -- The three children agree to determine what the value of the car is by independent means. Either Don or Carol goes to a car dealer and asks the dealer for what price would the dealer sell the car. Then Bob pays the price the dealer suggested to the trust. Is there self-dealing in this case? Probably not, assuming several things. If the car dealer would be considered knowledgeable was asked to value the car for a prospective buyer from the dealership if the dealership owned the car, and put the value in writing so that it could be verified, there is no self-dealing problem. However, if the dealer is given facts indicating that the lowest value should be used, there is a problem. What if the dealer says, "The value is between "X" and "X + Y"?" There is self-dealing at value "X," but not at value "X + Y." Why? Because "X" might not be a reasonable price under the circumstances.

Scenario 3 -- Either Don or Carol take the same action in going to a car dealer as in Scenario 2, then put the car on the market. They agree to give Bob a first right of refusal on any offers they receive. After having the car up for sale for one week, they have three offers, all of different values. Bob agrees to match the highest offer and pay the trust that amount. Is that self-dealing? No. If Bob had paid any amount less than the highest amount, it would be self-dealing. However, in this case, Bob matched the highest reasonable amount

that the trust would likely have gotten for the car. If Don or Carol receive only one bid and ask Bob to match it, then there could be a self-dealing problem. Why? Because without several bids, it might be argued that the bid received was by not truly a legitimate offer. An auction type offer, however, is less subject to this complaint. The safest way is to put the car up for sale for a specific period of time, then let Bob match the highest offer received in that time, assuming there is more than one offer.

Another viable strategy is to use the Kelly Blue Book value of the vehicle, and have Bob pay full price. Only if there is a higher offer from a third person would there be a problem with this. If Bob were the sole Trustee, he would need to appoint another Trustee to make the decision to sell it to himself, regardless of the price.

(b) Example Two – The Land Lease

Mr. Farmer owns a farm and ranch. He has been operating the place for almost 50 years, but has decided to retire and have his four children run the operations. He wants to just live off the rent from the land and a percentage of the crops. He names them all as Trustees of his Revocable Living Trust and he and his wife do some traveling. The children do not all have equal involvement. Andy, the oldest son, lives in another state and has nothing to do with the farming and ranching operations. Bill, Cathy, and Debbie all live in the area. Bill owns and operates land adjoining the Farmer place. Cathy and Debbie are both married. Cathy and her husband Jim own a small farm, but would like to work more land. Debbie and her husband Mike have been helping operate Mr. Farmer's place for the last five years.

Bill wants to lease some of the pastures for grazing his own stock. Since the area he wants is unsuitable for any other purpose, the others have no problem with Bill using part of the land adjacent to his own for that purpose. Jim and Cathy want to take about one-third of the farming acreage to grow crops on. Debbie and Mike want to operate the remaining portion and have some farming and some ranching. All three children agree on who wants to do what. Of the three, only Bill is not struggling financially.

There are several potential self-dealing problems here. If Bill pays less than the fair market value of the land on which his stock will graze, that is self-dealing. If Jim and Cathy pay less than either fair market value for rent, or the standard crop percentage agreement, that is self-dealing. If Debbie and Mike pay less than fair market value for rental on the place they are running, that is self-dealing. The big danger here is the three agreeing on something less, sort of a "I'll scratch your back if you'll scratch mine" deal.

Suppose all are willing to pay fair market value. There may still be a problem because of how the fair market value is determined for the particular arrangement. There could also be a problem if Andy does not agree with

something they want to do because he is in the best position (other than the parents) to bring a suit for breach of fiduciary duty. The best thing to do here might be for none of the three to vote on any arrangement that involves any of them. It would also be very wise to get written permission from the Farmers (as the Trustmakers and beneficiaries) to any arrangement made.

(c) Safe Rules to Avoid Self-Dealing

1. The Trustee who is interested in a piece of trust property (Trustee/buyer) shall not make any decision as a Trustee regarding the disposition of that property.

2. The Trustee/buyer shall pay the same price that the property would be sold for in the open market, or fair market value. Fair market value is defined as the price a willing buyer would pay a willing seller when neither is under any compulsion to act and both are in command of the relevant facts. In other words, the buyer does not have to buy and the seller does not have to sell. Both are aware of the facts of the transaction and the way that transaction fits into the market place. Neither is compelled to act. The price that results is a fair exchange of value, or Fair Market Value.

3. If the true value can be established in writing, such as for a piece of real estate, then the Trustee/buyer must pay the most that could be reasonably expected in terms of payment. Anything less is self-dealing.

(d) The Bottom Line on Self Dealing

All transactions involving a Trustee/buyer who is not the Trustmaker should be arms-length transactions. Fair market value is the standard and if an issue comes up, the Trustee/buyer must be able to prove the transaction was a fair market value transaction since the presumption is that the self-dealing was involved.

Generally, a Trustee should avoid purchasing trust property, unless the trust specifically sets forth a method for doing so and all other Trustees agree to the purchase and the purchase price. Just one other Trustee disagreeing can cause a lot of potential problems.

Once you have accepted position of Trustee, you are responsible for the administration of a trust and you should not turn over the complete administration of the trust to others. This does not mean that you must actually perform all of the administrative work yourself. You can delegate certain administrative details to persons qualified to handle them. For example, you can employ an agent to collect rents. However, the responsibility for the administration of the trust always remains with you as Trustee.

If you are one of two or more Trustees, you cannot rely on the other Trustees to administer the trust. You should participate in the administration. If another Trustee is acting improperly with respect to trust matters, you have the obligation to act to correct the situation. You have an obligation to be aware that another Trustee is acting improperly with respect to trust matters. With joint and several liability, each Trustee is responsible to the beneficiaries for the misconduct and breaches of duty of the other Trustees.

As a Trustee, consider your job to be the watchman for the beneficiaries. If something goes wrong, don't let it go wrong on your watch!

You must keep the trust property separate and distinct from your own property. In other words, you should have a separate bank account or accounts for the trust and not put either trust principal or income into your personal accounts. Trust assets must be readily identifiable as such and should be segregated from your other property.

Should any questions arise as to the proper interpretation of the terms of the trust, you should consult the attorney for the trust. If the trust wording is ambiguous, it will likely be necessary for the attorney to petition the proper court to obtain a court ruling on the matter. Dealing "off the top of your head" can be a highly dangerous practice, exposing you to personal liabilities.

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Article Two
Absolute Loyalty

The Trustee owes an absolute duty of loyalty to the beneficiaries of the trust. While not a complete list, the following actions are examples of the breach of the duty of loyalty:

Section 2.01 Examples of Breach of Duty of Loyalty

(a) Individual Trustee

- Buying trust property; or
- Leasing trust property to himself; or
- Buying trust property at a sale forced by a third person; or
- Buying for himself outstanding claims against interests in trust property; or
- Selling his own property to the trust; or
- A Trustee of one trust selling to himself as Trustee of another trust; or
- A Trustee under a lease taking renewal or buying a reversion for himself; or
- Employing himself to do specialized work for the trust; or
- A Trustee of corporate stock voting for himself as director or officer of the corporation; or
- A Trustee of a business engaging in a competing business on his own behalf; or
- Accepting a gift from one with whom he conducts trust business; or
- Securing incident benefit to self while engaged in trust business; or
- A Trustee with a duty to buy for the trust purchasing for himself; or
- Acting for the trust and also for a third party who deals with the trust; or
- Indirect disloyalty -- dealings with relatives affiliated parties and similar persons.

(b) Corporate Trustee

- Buying an earmarked pool of investments for trusts; or
- Buying its own stock or holding its own stock for a trust; or
- Depositing trust assets with itself; or
- Lending its own funds to a trust.

Absolute loyalty is best accomplished with full disclosure. A Trustee has more than a duty to not make any material misrepresentations; he has a duty to make full and accurate confession of all fiduciary activities, transactions, profits, and mistakes.

Article Three
Standard of Proof and Legal Presumptions

In our court system, there are three standards of proof. The standard to prove someone guilty of a crime is "proof beyond a reasonable doubt," which is the highest standard of proof in our system. In some civil cases, the standard of proof is "clear and convincing" evidence, or approximately a 75% chance that what is being alleged is true. The lowest standard of proof is "preponderance of evidence." This standard means more likely than not, or slightly over 50%. In any case involving an action against a Trustee, the preponderance of evidence standard applies to Trustee wrongdoing. These are the easiest cases to win because they have the lowest burden of proof. For Trustees, that means a jury does not have to be very convinced that the Trustee has done something wrong to find against the Trustee.

Legal presumptions also exist in our court system. For example, a person charged with a crime is "presumed innocent until proven guilty." That means they will be treated, for legal purposes, as innocent until the state proves all elements of the case against them beyond a reasonable doubt. For lawsuits against Trustees, the presumptions are against the Trustee. If, for example, there is an ambiguity in the matter, that ambiguity will be resolved against the Trustee. That is because of the Trustees special duty to the beneficiary.

The standard of proof and the legal presumptions dictate that wise Trustees will be completely above reproach. Do not, as the Trustee, do anything that could be questioned. If something you do is questioned, you will have a difficult time proving you did nothing wrong if there is any evidence, including presumptions under the law, against you.

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Article Four
Investments

Perhaps the most important continuing responsibility that you have, other than keeping your books, discussed below, will be the duty to keep the assets of the trust invested. It is not safe or prudent to simply put the money in a savings account and let it accumulate interest. As the Trustee, you must be proactive and seek out the most prudent strategies. You will be judged not according to the fact that the trust didn't lose money, but by whether the amount of money it made was reasonable compared to similar amounts under trust by most investors. It is important for you to remember that if you are serving as a Trustee for someone other than yourself, you will be held to a higher standard of care in this regard than you would be in matters of investing your own funds.

Most states have adopted by law a standard of trust investments that has been called the "Prudent Man Rule." The Prudent Man Rule applies except as otherwise directed by the trust instrument. Since this rule is the heart of all investment judgments, it is quoted here at length from a typical statute.

> **The Prudent Man Rule:** In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of others fiduciaries shall be required to have in mind the responsibilities which are attached to such offices, the size, nature, and needs of the estates entrusted to their care, and shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to permanent disposition of their funds, considering the probable income as well as the probable safety of their funds, considering the probable income as well as the probable safety of their capital. Within the limits of the foregoing standard, fiduciaries are authorized to acquire and retain every kind of property, real, personal, and mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures, and other corporate obligations, stocks, preferred or common, securities of any open-end or closed-end management type investment company or investment trust, and participation in common trust funds, which men of prudence, discretion and intelligence would acquire or retain for their own account.

What does this mean for you? Clearly this rule gives you as Trustee the power to invest trust money in the kinds of property in which men of prudence and caution would invest their own money. It imposes on you the standards of investment that a prudent investor would follow considering all the circumstances involved.

Generally, consider the value of the trust assets and the purpose of the trust, to the extent practical.

Section 4.01 Things You Should Do

- Diversify the assets of the trust among many types of investments such as stocks, bonds, mortgages, etc.

- Diversify among various industries with your stock holdings.

- Seriously consider investing in other things beside financial products, such as real estate. For example: *If you invest in financial only assets, and let's say get a 10% return instead of the industry average of 9% in financial assets over that period of time, you may not be in the clear. If real estate investments that made sense produced 15% returns, you are arguably 33% BELOW the standard by which you will be judged. Remember that diversification applies not only to financial assets, but to the entire portfolio as well.*

- Consider current income as well as long-term capital appreciation, since there are conflicting interests between the current income beneficiaries and the eventual capital beneficiaries that must be balanced. Under the new laws, this is trickier than ever.

- Seek professional guidance both for initial investment and for continuing review of investments held if you are at all in doubt.

- Act quickly if things are going wrong and take corrective action as soon as possible. That does not mean selling a good stock just because it took a dip in the stock market, but if the portfolio loses money two or three months in a row, it might be time to see if you can take corrective action. It may be that the market is just in a down period, and the most prudent thing is to do nothing for a while longer. The point is, you need to be proactive and looking at this regularly.

Section 4.02 Things You Should NOT do

- Speculate with trust assets in the hope of making a "big killing."

- Lend trust money to yourself, no matter how good your security; buy trust assets for your own account; or engage in other forms of self-dealing.

- Continue to hold an investment that no longer meets the "prudent man" standards.

- Continue to hold assets transferred to you as Trustee without an independent investigation of their quality as trust investments.

- Delegate investment decisions to others. The trust instrument may enlarge or limit investment powers, but you should always keep in mind the Prudent Man Rule quoted above.

Article Five
Powers of Trustee

As Trustee, how are you to know just what powers you have to assist you in carrying out the instructions of the person who created the trust? In other words, how are you to determine your administrative powers?

First, you must determine whether a State statute governs the trust and sets the specific powers of a Trustee. For this, you should consult the attorney for the trust.

If such a specialized statute is not applicable, you are governed in your powers as Trustee by the terms of the trust. In addition to the enumerated powers, you also have all powers "necessary and appropriate" to carry out the terms of the trust and not forbidden by the trust instrument

Under the terms of the trust, you have the power to perform every act reasonably necessary to administer the trust except as limited by the trust instrument. Should any conflict arise between the powers in the trust instrument and the powers under a statute, those in the trust instrument are to be favored.

If you are acting as a Cotrustee, you should keep in mind that all of the Cotrustees must agree in the exercising of trust powers unless the instrument itself directs otherwise. Also, and most important, "delegating" to others those acts which you personally should perform as Trustee or Cotrustee is forbidden unless the delegation is, generally, of a purely ministerial matter.

In exercising any powers that the trust instrument gives you, as Trustee, you must always act as a prudent person under the facts in each situation. Sometimes the trust instrument gives the Trustee very broad powers or purports to relieve the Trustee of responsibilities that the Trustee would otherwise have, but the Trustee still has a duty to exercise the powers fairly and prudently. The Trustee should not rely on clauses in the trust instrument which excuse him from fault as courts are very strict with Trustees.

Section 5.01 Joint and Several Liability

Each Trustee is "jointly and severally" liable for the acts of all other Trustees. Each Trustee has an incentive to watch over the other Trustees since they could be held liable for any another Trustee's breach of fiduciary duty. Consequently, votes on any matters should be made in writing, with the provision being voted on being carefully worded. Any dissenting beneficiaries who are out-voted will not be held liable in our trust documents if they make their objections in writing and notify all other Trustees of their objections and dissenting vote.

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Article Six
Accounting

Now that you are a Trustee, you must set up and keep a set of Trustee's books. To do this, it is not necessary to be a CPA, but your records must at least make a clear distinction between property you handle as Trustee and your own property. Any mixing of the two types is strictly prohibited.

Your records should list all assets received, held, and disposed of, and all receipts and disbursements, giving the date, amount, and explanation of each.

If the persons who receive income under your trust instrument are different from those who will receive the capital when the trust terminates, your records should classify all receipts and disbursements as income or principal. In most cases, there will be no difficulty about this -- ordinary dividends and interest are clearly income, proceeds from a sale of stock are principal.

Many trust instruments contain instructions to the Trustee to guide him in resolving these and other accounting problems, and you may find all of the guidance you need from this source. If you do not, the attorney for the trust will be able to advise you by applying a law called the "Uniform Principal and Income Act" which is in effect in some form by most states. This law is too lengthy to be quoted here, but contains accounting guidelines for almost every situation that might arise. This is one reason why you should consider hiring the services of a CPA.

From records kept in the above manner, you or your accountant can draw the information necessary to prepare trust tax returns, reports to your beneficiaries, or reports to the Court if your trust is under Court jurisdiction.

Remember that the trust you are administering is a separate person in the eyes of the law, and although it has no physical body, a clear set of books forms a record of its healthy and independent life.

As a Trustee, you are entitled to reimbursement for your reasonable expenses in the administration of the trust. You are also entitled to a reasonable fee for services performed, but you are not required to take a fee. If you do, it should be added to your other income for your personal income tax return.

If you are required by the trust or by law to provide an accounting, that accounting must meet the guidelines set forth in the Colorado Probate Code. Even if the trust document does not require an annual accounting, under Colorado law, any beneficiary may demand an accounting one time per year. Therefore, even if the trust does not require a complete accounting, you should prepare one to keep with the trust records.

Along with an accounting, you must provide all beneficiaries a complete copy of the trust agreement. In addition, at least one time per year, each beneficiary must be given the right to examine the books and records of the trust.

The Trustee has a duty to account to the beneficiaries at least annually. In rendering such an accounting, the Trustee must notify the beneficiary of the following:

- All trust property, any changes in the status of such property, and its approximate fair market value; and
- Detailed information regarding all trust bank accounts, including bank statements; and
- The nature of all investments of the trust, including information on assets loaned and the supporting documentation, such as notes signed, the collateral if any, for such loans; and
- Any and all insurance, of all types, in force for the trust assets or for a beneficiary, and the dates and amounts of all premium payments; and
- Any gifts made from the trust, the purpose of such gifts, and who received the gifts; and
- All debts of the trust, the name and pertinent information about the creditor, and the nature of the claim; and
- A list of all known claims presented to the Trustee, the name and pertinent information about the claimant, the nature of the claim, and what action the Trustee took regarding that claim; and
- All receipts that have come into the trust and how those receipts were derived; and
- All expenses, distributions, and disbursements made from the trust, to whom such disbursements were made, the purpose of the disbursement; and
- Whether those distributions were made from principal or income; and
- An affidavit that all tax returns have been filed; and
- An affidavit that all taxes and bond premiums have been paid; and
- A statement specifying the Trustees' fee, and, if necessary, how that fee was calculated. The Trustee may submit any evidence of time spent and the customary fees for similar services in that locale to support the Trustees' fees.
- The Trustee would be wise to get the trust beneficiaries to sign receipts for the accountings as they are rendered.

Article Seven
Income Taxes

A Revocable Living Trust is referred to by the Internal Revenue Code as a "grantor trust" during the lifetime of its maker. Such a trust is not required to file income tax returns if you are both the grantor and Trustee or Cotrustee, Treas. Reg. §1.671-4(b). With respect to other types of trust, you as Trustee may have an obligation to file fiduciary income tax returns with the District Director of Internal Revenue (Form 1041). The obligation arises if the trust had any "taxable income" or had "gross income" of $600.00 or over, regardless of the amount of "taxable income" in any taxable year.

You are well advised, if a layman, to seek professional assistance in the preparation of these returns as they do differ substantially from personal income tax returns. An attorney or accountant should be consulted.

What is a "taxable year?" As a Trustee, you may have the option of using a calendar year or a fiscal year as the "taxable year." However, a "grantor trust" must use the calendar year. Only after a careful analysis of the various tax implications to those either receiving the income from the trust or those to whom the income is taxable can a proper decision be made as to what "taxable year" to use.

The return must be filed on or before the 15th day of the fourth month following the close of the taxable year (April 15th if you use a calendar year). With trusts, there is no installment method for payment of taxes. The entire amount must be paid on the due date of the return.

As an individual, you have your Social Security number that is used, among other things, as an identification number of your personal returns. A "grantor trust" uses the Social Security number of its maker for income reporting purposes. Other trusts have to obtain a "taxpayer identification number" from the District Director of Internal Revenue (Form SS4). This number, called an Employer Identification Number (EIN), is used on your fiduciary income tax returns and may be needed for other purposes. When you are acting as the successor Trustee, you may need to acquire an EIN.

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Article Eight
Final Distribution of Trust Assets

Upon closing the trust, the Trustee should provide a final accounting. The following should be included in the final accounting:

- The property, rents, revenues, and profits received by the Trustee during the term of the trust; and
- The disposition of the property, rents, revenues, and profits; and
- The debts and expenses of the trust that remain unpaid; and
- The property that remains in the hands of the Trustee; and
- A statement that the Trustee has paid all required bond premiums, insurance premiums, and any other payments that the Trustee is required to keep current; and
- A description of the tax returns filed by the Trustee during the term of the trust; and
- A complete accounting of the taxes that the Trustee has paid during the term of the trust; and
- A description of all current delinquencies in the filing of tax returns or the payment of taxes, and the reasons for each delinquency; and
- Other facts that should be disclosed to give and full, complete, and definite understanding of the condition of the trust and Trusteeship.

The Trustee is liable for the final accounting.

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Article Nine
Distributions

We have talked previously about some of the things that are of great importance to you as Trustee. Now we will talk of some things that are of particular interest to the beneficiaries -- when and under what circumstances do they get their money.

The trust instrument should tell you who is to receive benefits from the trust and when those benefits are to be paid. It may also give you certain discretionary powers with regard to distribution.

If you serve as Trustee for one or more beneficiaries other than yourself under a trust of which you are not the Trustmaker, let us consider an example of a discretionary distribution and see what problems might arise.

> You have power in your sole discretion to distribute income or principal or both among your sister's three children to provide for their maintenance, support, and education. Alice is a sophomore in college and doing very well. Bob is "doing his thing" in San Francisco, while Charlie is doing average work in high school and is something of a sports car nut. You receive a request from the children's guardian for $3,000 for Alice's tuition for the coming year to be spent in Europe, $1,000 for medical expenses for Bob who is undernourished and high on drugs, and $2,000 for a car for Charlie. Which of these requests can you honor under the standards given?
>
> **For Alice:** Education is a proper purpose of the trust, but does it have to be in Europe? Perhaps Alice will get just as good an education here for half the cost. If you enable her to go to Europe, can Bob or Charlie later claim that you abused your discretion or even breached your fiduciary duty to the trust to the extent that $3,000 exceeds the cost of her education at the existing institution? If you allow her to go to Europe, you should make certain that the reasons for her going there instead of staying here are well documented.
>
> **For Bob:** Support and maintenance are proper purposes, but does this term include medical expenses or is it intended to be limited to ordinary living expenses such as room and board? Is spending money for Bob's medical care related to drug -related problems without requiring some kind of drug treatment prudent?
>
> **For Charlie:** Does support and maintenance include a car if Charlie has access to a reliable car now? What if Charlie has a part time job and needs transportation?
>
> In all three cases, the trust document itself may provide you the answer. However, frequently the trust documents do not cover things like this specifically, which makes the job of carrying out the trust instructions much

> more difficult. You should attempt to carry out the intent of the person who created the trust if that can be determined from the trust instrument. You should also consider the size of the trust, the amount of income, the needs and convenience of the beneficiaries, and the various other demands that the trust might be called upon to meet.

No attempt can be made in this short Manual to outline all of the problems that may arise in the exercise of your discretionary power, but the above example should encourage you to analyze every distribution for possible problems before paying the money.

Remember that when your permissible sphere of action is limited by a standard, you must observe that standard or risk a lawsuit for breach of trust or breach of a fiduciary duty. You are personally liable (that means your own assets are at risk) if you lose a fiduciary duty lawsuit.

Article Ten
Your Liability as a Trustee

As Trustee, you are liable to the beneficiaries for any loss to the trust estate and for any gain the trust estate should have realized, but did not, if:

- You failed, for any reason, to exercise the care and skill of a man of ordinary prudence; or
- You negligently or intentionally did something you ought not to have done; or
- You negligently or intentionally failed to do something you ought to have done.

In certain matters, you may be liable though your improper action was not intentional or negligent.

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Article Eleven
Title to Trust Assets

How should legal title to trust assets be taken? In whose name should real estate be held, securities registered, and bank accounts maintained? There is some difference of opinion regarding the best ways of handling the title problem. The circumstances in each case are important. For these reasons, you should have the guidance of an attorney to decide how to hold title to trust assets. Generally, with a Revocable Living Trust, the appropriate title is:

Section 11.01 *** Option 1 – Sole Trustee

[Trustee 1], sole Trustee, or [his/her] successors in trust, under the [RLT], dated [Trust Date], and any amendments thereto.

Section 11.02 *** Option 2 – Joint Trustees

[Trustee 1] and [Trustee 2], Trustees, or their successors in trust, under the [RLT], dated [Trust Date], and any amendments thereto.

If you are the Trustmaker, just sign your name like you normally do. If you are a successor Trustee, when signing documents, including checks, you should sign your name as, "Your Name, Trustee." By signing as "Trustee," you will not be held personally liable as long as the action you are taking is within the scope of authority of the trustee. This rule does not apply to the Trustmaker, only to successor trustees. Trustmakers of a revocable trust are not held liable for their actions as Trustees.

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Article Twelve
Duty to Invest

Under Colorado law applicable to guardians, the guardian has a duty to lend or invest surplus funds. Failure to do so can form the basis of a suit for loss of principal and for loss of interest as well. It is important to note that this applies to guardians, and not necessarily Trustees. However, the Trustee should not allow a significant amount of funds to sit in a bank account at low interest rates for very long. It is safer to invest the money than to leave it sitting.

If a majority of Trustees are unable to agree upon a specific investment strategy, it is wise for each Trustee to submit a plan for managing the money. Such a plan should include a risk class with which the Trustee is comfortable and an income or expected return rate with which the Trustee is comfortable. Then Trustees can agree on the lowest common denominator and invest accordingly.

Failing to reach some sort of agreement may subject all acting Trustees to a breach of fiduciary duty suit. It should also be noted that in addition to losing the suit, courts can award court costs and attorneys fees against the losing fiduciary.

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Article Thirteen
Duty to Gather Assets

The Trustee has a duty to gather and possess the assets of the trust. Possession means to have control over. Obviously the Trustee cannot literally hold on to intangible assets. However, the Trustee should be able to control assets. Sometimes Trustees may have limited control over assets. For example, limited partnership units may be held in trust but the general partner of the partnership and not the Trustee controls the partnership assets. The Trustee only controls the limited partnership units. In such cases, the Trustee should exercise the control over the assets that the limited partnership allows, which is probably not much if any at all.

In gathering assets, the Trustee should consider the cost of and the risk associated with controlling certain assets. For example, if the asset is worth $1,000 but the cost to obtain it is over $1,000, then the Trustee might be better off not trying to obtain that asset. Or, if the asset is worth $1,000 but might subject the trust to claims that exceed the value of that asset, such as could occur when the Trustee transfers land into the trust that is subject to claims as a hazardous waste dump, the Trustee should not spend the money to acquire that asset.

If the trust allows a division of trusts, then high risk assets should be held in a separate trust. Whether that requires separate tax returns is an issue to address, but if the Trustee transfers real estate into a trust with safe assets like marketable securities or cash, and a liability arises on the real estate for which the trust is liable, then those safe assets could be lost. The Trustee has a duty to protect trust assets from this type of problem if it is feasible to do so. If it is not feasible, the Trustee needs to put that in writing and state the reasons for not providing such protection. If the Trustee fails to protect assets and fails to provide a good reason in writing, the Trustee can be held liable for the loss.

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Article Fourteen
Avoiding Potential Liability

There are two things you must be prepared for when acting as Trustee. The first is that you must be prepared to carefully document all transactions in which you engage. The second is that you must prepare to win potential lawsuits against you for your breach of fiduciary duty. While you may perceive the risk of a lawsuit as low in your case, you cannot ignore the possibility. When you are acting as a Trustee and are essentially in control of someone else's assets or inheritance, you are not in the ideal situation since you will be the object of any anger beneficiaries of the trust may feel.

The best way to avoid the lawsuits is to provide the beneficiaries everything and try to be friendly and cooperative. Nobody really wants to sue someone who is nice and communicates well, no matter how much many mistakes they make. It is much more difficult to sue someone with whom you have a good relationship. On the other hand, someone who is difficult to get along with, who does not provide adequate information, and who communicates poorly is easy to sue because there is no relationship to destroy. Thus, take heed how you treat beneficiaries.

If a lawsuit does come, a carefully documented file is going to look a lot better before a jury than a poorly documented file. A Trustee who seeks advice from experts is going to look better than one who does not seek such advice. In other words, from day one you must prepare for a lawsuit. It has been said that if one wants peace, one should prepare for war. A Trustee who is fully prepared for war, but not deliberately doing anything to start a war, is far more likely to win.

For just a moment, consider the dynamics of a lawsuit against the fiduciary (Trustee). First, the case will be tried in court before a jury (in most cases). Juries are quite naturally going to have more sympathy with the party that appears to be the right party. If you have sloppy or no records, have not sought help where something was beyond your area of expertise, and not provided the information you should have, you are not going to look good. Remember that the jury is probably going to be thinking at the beginning of the lawsuit that "If that was me, I would just want the money and want to control it myself. The beneficiary is trying to achieve what I would want if I were in the beneficiary's shoes." Of course, the jury will be required to operate by the rules of the document. Regardless of the personal desires of jurors, it is not your fault the Trustmaker had the trust drafted the way it is drafted.

Your job is to carry out the intent of the trust. Your first line of defense is that you did carry out the intent of the trust. In carrying out the intent of the trust, you must first look to the words of the document itself. You cannot try to say, "I think the Trustmaker intended this or that," and act accordingly. You must look at what was actually said and follow that. Regrettably, words are tools, often imperfect, to express intent.

It may be tempting to fix a problem or correct a poorly worded document. However, that is not your job. Only a court of proper jurisdiction or a Trust Protector can change a trust

document, and even a court's authority is limited. Do not change what is written. However poor it may be, it is the best expression of the Trustmaker's intent. That expressed intent is your defense. You may not add to or subtract from the words of the document. You cannot be selective in carrying out the words of the document. Feel free to use a dictionary to help interpret language. However, keep in mind that a document written many years ago may use words that have a different connotation today. One of the problems in drafting (from the attorney's perspective) is that the meaning of words changes over time. Over years, decades, or even centuries, words that had a clear meaning at one time are now the cause of great uncertainty.

If the document is ambiguous, meaning that you cannot determine its meaning from the words used because they can mean more than one thing, the drafting attorney is probably your best source of help. That attorney may have notes in the file that provides for more clear meaning or more clear intent. However, this is a difficult, and often elusive, concept. Many clients change the language actually used. Where such language represents something out of the ordinary, the language itself can be helpful when the attorney knows it was different. Unfortunately, the only attorney who will know this is the one who drafted it. That attorney may not be around any more, or you may not choose to use that attorney for other reasons. Usually, that attorney's other evidence of intent testimony in a trial will be excluded.

Your second line of defense is that you can document how you carried out the trust terms. The better you do that job, the more difficult it will be for the beneficiary (or anyone else) to show that you did something wrong.

Keep two other things in mind. First, once you accept the job of Trustee, you must carry it out well because you cannot get out of a lawsuit merely by resigning. Second, the most common reason Trustees are sued is because of self-dealing. Read the self-dealing rules carefully and avoid self-dealing, unless the document specifically authorizes self-dealing. If the document does authorize certain acts of self-dealing, absolutely limit self-dealing to those acts specifically authorized. Just because the document authorizes certain self-dealing does not make self-dealing a good idea. Always err on the side of avoiding self-dealing if you have a question.

Important Note: Once you have accepted the job as Trustee, you will be responsible for a final accounting if for some reason you are no longer able or willing to serve as Trustee. If you are unwilling to continue serving, you can resign, but you cannot quit until a replacement Trustee is found. The better the trust document you are working with, the easier it is to find a replacement. Your successor is not going to be anxious to take on liability for which you are resigning if the problem is irreparable due to a poor document. For that reason, you should hire an attorney to represent you prior to becoming a Trustee. The drafting attorney automatically represents the Trustee (you) if you choose to use him or her. It is a good idea to at least interview the drafting attorney even if you decide to hire another attorney.

Article Fifteen
Interpretation of the Document

In interpreting the document, here are some general rules of document construction:

- Specific intent controls over general intent.
- The entire document should be construed in such a way that it is consistent from beginning to end. If the interpretation of particular language would cause a conflict with another part of the document, choose an interpretation that is consistent, if such an interpretation is possible.
- If two expressions of specific intent appear to conflict, select the one that appears to be most consistent with the general intent.
- "May" is permissive, and allows discretion.
- "Shall" is mandatory, and does not allow discretion.
- "Consider" means what is appropriate, not something that is required. For example, "consider other resources before making distributions" means that in finding other assets, the availability of those other assets might mean a distribution does not have to be made. This is one place where you can "add to" or "subtract from" the actual language of the document.
- "Support" and "maintenance" are synonymous and mean making contributions of money or services necessary for the maintenance of a person. This can mean the cost of living, food, clothing, shelter, medical care, etc. Some trusts do not use both terms because Medicaid eligibility can be lost if the trust uses the term support.
- "Standard of living" is tricky. It is a phrase that is ripe for lawsuits. If you must work with that clause because it is in the document, interpret it to mean the person's standard of living at the time of the Trustmaker's death, or at the time the document was drafted, not what you think his or her standard of living should be.
- A "support trust" requires making distributions to a beneficiary in many cases. Always interpret this clause to require distributions if there is a question, even if you think that distribution is unwise. The beneficiary of a support trust can bring an action to compel a distribution. A true support trust directs the Trustee to pay or apply only so much of the income and principal as is necessary for the education or support of the beneficiary. Restatement (Second) of Trusts § 154 (1959).
- A "discretionary trust" means that the Trustee has the discretion to make distributions without any ascertainable standard. A true discretionary trust provides that the Trustee shall pay to or apply for the benefit of a beneficiary only so much of the trust income and principal as the Trustee in his uncontrolled discretion sees fit to pay or apply. Restatement (Second) of Trusts § 155 (1959). Discretion must be reasonably

exercised. When discretion is conferred upon a Trustee, the Trustee must act within the bounds of reasonable judgment and deal impartially with the beneficiaries. DuPont v. Southern Nat'l Bank of Houston, 771 F.2d 874 (5th Cir. 1985), cert denied, 475 U.S. 1085 (1986). The beneficiary of a discretionary trust cannot bring an action to compel a distribution. However, they can bring an action claiming that the discretion was abused.

- If you are sued for abuse of discretion, you need to show what effort you took to use your discretion. That means your judgment must be informed. If you have not conducted any review of the trust assets or not acquired information related to the beneficiary's needs and circumstances, your decision will be deemed to be arbitrary and you will lose!

- A failure to produce evidence about what effort was made to obtain the information needed to make a reasonably informed decision will likely be fatal to your defense. When you have an affirmative duty to obtain information before making a discretionary decision, you cannot safely sit back and wait for information to come to you. If you resign as Trustee, you must turn over the entire Trustee file. It would be wise to keep a copy of it in case you need it later.

- If you seek advice from third parties, document what advice was given.

Article Sixteen
Presumptions of Interpretation of the "Silent" Document

If the document is silent about a certain issue, there are some presumptions to guide interpretation. Those presumptions are as follows:

- The distribution of property is complete. Thus, if there is a possible way to interpret the document so that all property is distributed, that is the interpretation to use.

- By making a bequest or gift to someone, it was the intent of the Trustmaker to have them receive some benefit. Discretion should not be used to deny the designated recipient a benefit.

- Children are generally favored over grandchildren. Descendants are generally favored over collateral relatives. Relatives are generally favored over strangers.

- The earliest possible "vesting" of the estate is preferred. Unless the language is clear that the date of final distribution is later, earlier is better.

- All persons within a given class are treated equally at final distribution (termination of the trust).

- Distributions need not be equal during the term of the trust, and unless language clearly dictates such, it was not intended to be equal during the term of the trust.

- If the trust is divided between income beneficiaries and remainder beneficiaries, the corpus (principal) of the trust is not to be distributed to the income beneficiaries without specific authorization. The specific authorization is limited to what the document states as limitations to distributions of corpus.

- Every word selected and used is important, and no words are superfluous. The Trustmaker intended the law in effect at the time of creation to continue to be applicable when the document is later interpreted.

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Article Seventeen
General Advice to the Trustee

To help make your job easier, and to help you avoid being sued in your capacity as Trustee, you should carefully consider the following:

- **Read the trust document.** This is the best source for determining the intent and what your job is. It is the best source for determining what the beneficiaries are supposed to receive. It is your best defense for doing something stated by statute or case law.

- **Make a list of the things in the document that are discretionary and the things that are mandatory.** Keeping these two things straight and on a simple list will help you do your job better. As a law firm, we do not provide this because our primary focus is on providing for the needs of the Trustmaker. This involves providing something for the Trustee. The successor Trustee is a person, persons, or entity that we may not represent at the time the documents were created. We chose to not provide this since we would have to charge our client extra for this and our client would receive little or no benefit from providing this to the successor Trustees.

- **Try to understand why the trust was created.** Understanding why the trust was used will help you fulfill your role as Trustee. There are many reasons for using trusts and there was probably more than one reason for creating this trust. Getting the drafting attorney of the trust document to provide you with this information, even if you must pay for their time, can be invaluable to you later. If you choose to use an attorney who did not draft the document, and that attorney is still available, someone like a beneficiary who later hires that attorney, or even calls that attorney as a witness, may have a lot of information you really need but that you don't know. This information could seriously damage you in a lawsuit. Of course, you are not required to retain the attorney who drafted the trust and you may not want that attorney. Just be aware that you, as a successor Trustee, do not have all of the information regarding the formation of this trust. If you do hire the drafting attorney, that attorney does not have to, in fact cannot, give information to a beneficiary because the attorney represents the Trustee and attorney-client privilege applies.

- **Does the Trustee (you) have improper motives?** You should examine your motives carefully and be prepared to prove that your motives are not improper. While that can be difficult to prove, you can offer evidence of what your motives are. When you act, or choose not to act, make sure that you have a good reason for your action or inaction, and put your reasons in writing.

- **Are you a beneficiary or remainder beneficiary of the trust?** If you are a remainder beneficiary, a breach of fiduciary lawsuit could be problematic if the claim is made that you are not completely providing what you should provide merely to see to it that you receive more when the Trustmaker or existing beneficiary dies. Greed

never plays well to court or a jury! If you are a beneficiary and other beneficiaries are not also Trustees, it is critical that you remain impartial. Favoring one beneficiary (including yourself) over another is dangerous even if the document allows it. Favoring one beneficiary over another is favoritism, and favoritism never plays well before a court or a jury! If you are the beneficiary being favored, greed and favoritism in your own favor is going to turn a jury against you twice as fast and hard as only one of them. See the above rules to determine how you think a jury will look at this.

- **Create a file for the trust and keep it well-documented.** What should be in the file?
    - Notes from regular meetings with the beneficiaries. Include the dates, and preferably the length of the meetings. It is best to note the subjects discussed and the decisions made. Keep up with the "to do" list and make sure it is performed in a timely manner.
    - Get a copy of the income tax returns from the beneficiary. Not only does this provide you a great deal of information about what the beneficiary is claiming for their own tax situation, it provides you with information that can help you utilize discretion in making distributions. Keep in mind that tax returns are signed under penalties of perjury, so having them is a very good defense for you. However, you may not use those tax returns against the beneficiary in litigation or report suspected wrongdoing to the IRS. That is a breach of your fiduciary duty and a breach of the beneficiary's confidentiality.
    - Have the beneficiary provide you with an annual budget. You may want to help prepare that budget if the beneficiary doesn't know how to do it. Having a copy of the budget shows that you had the information to carefully consider their needs in making discretionary distributions.
    - Consider requiring the beneficiary to hire a professional financial planner and obtain copies of the planning being done. You should meet the financial planner and participate in at least some of the meetings. Requiring a copy of the plan will provide you much information about what the needs of the beneficiary are and what other resources the beneficiary has. Of course, they can lie to the financial planner. If the beneficiary lies and you find out, you can consider that in making future discretionary distributions to the beneficiary. If the financial planner lies or conspires with the beneficiary to mislead you and they are licensed, there are legal remedies available to you. You probably have a duty to other beneficiaries to pursue those remedies.

- Pay extraordinary expenses directly to the provider of goods or services, if possible. If not possible, require copies of proof of payment, canceled checks, or receipts.

- Financial statements of the beneficiary, especially those submitted for bank or mortgage loans (where there are penalties for perjury), are excellent sources of information regarding the beneficiary's other resources.

- If the beneficiary works, or receives pensions or social security, copies of pay stubs are invaluable.

- Bank statements from the beneficiary's bank accounts are also invaluable. Coupled with other things, you can get a good feel for the resources available, provided you have all the bank statements.

- Ask for copies of all vehicle registrations (and proof of insurance) owned by the beneficiary. Also ask for copies of the car insurance statements. This will tell you about the make and model of his or her automobiles.

- Ask for credit card statements, and especially year-end statements. This will tell you a lot about spending habits and provide some indication of whether a request for discretionary distributions is being used to pay their creditors. Keep in mind that with "spendthrift" trusts, creditors are not entitled to be paid from trust assets.

- Keep photographs of the beneficiary's house. You might also ask for the home insurance statements that could tell you what kind of value the beneficiary lists for contents, including special value assets.

- Note the size of the beneficiary's family, including the number of children.

- Note whether the beneficiary, or his or her children, attend private or public school.

- Ask what clubs the beneficiary belongs to and what memberships the beneficiary has.

That may seem intrusive. However, if you have discretion, this will document what your discretion is based on. This should not be looked at as a method to verify what the beneficiary tells you (though it will do that). It should be looked at as documenting your files. If providing this information makes the beneficiary feel that you do not trust him or her, let them know that you are looking for a reason to make the distribution, but it has to be documented. Use the information you have to help you find a reason to make the distribution, not avoid making it. Keep in mind that any remainder beneficiaries (those who might take upon the death of the beneficiary) may later claim you were too liberal in exercising your discretion. You could be held liable if you made discretionary distributions without asking for everything reasonably needed to exercise discretion.

I personally look at these requests as being reasonable requests for someone who is honestly asking me to exercise my discretion, at my own risk, to do something for them. As Trustee, you should utilize the "princess" theory. If the Trustmaker treated the beneficiary like a princess, your job is to treat the beneficiary like a princess also.

Why does the trust not require all of this? Good question. If the trust did require it then the Trustee could be held liable for not doing all of this. All of this may not be necessary to use reasonable discretion. It would be pointless to be forced to document all of this in cases where it wasn't necessary merely because the trust required it. Also, anything of this nature that is required by the trust is also something that can be used to remove a Trustee for cause. A Trustee that is removed for cause because they did not follow all their requirements is already way down the road toward being successfully sued for not doing something. Our purpose is not to make it likely that lawsuits will arise. Our job is to try to prevent lawsuits from occurring in the first place. By providing these instructions for the Trustee, we are trying to help the Trustee avoid potential liability.

Article Eighteen
Other Things You May Want

It would be a good idea to obtain copies of the relevant laws and keep them with your Trustee's file. Those laws include:

- Uniform Prudent Investor Act;
- Uniform Principal and Income Act; and
- Title 15, Section 16 Colorado Revised Statutes.

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Article Nineteen
Words of Caution & Final Thoughts

These guidelines in this Manual cannot provide the answer to everything you may need to know in administering a trust. These guidelines are intended to alert you to your duties and to impress upon you the significance of your responsibilities. If in acting as Trustee you have any question about how you should proceed, consult the attorney for the trust before acting. The attorney for the trust technically represents the Trustee. Remember that asking for his or her advice before you act may avoid more costly legal services later.

As Trustee, your primary duty is to administer the trust solely for the benefit of the beneficiary. You have a duty of absolute loyalty to the beneficiary. You must put the interest of the beneficiary above your own interest. Being a Trustee is a paid position. Sometimes the Trustee is paid quite well for doing very little. While that may seem unfair, keep in mind that the Trustee is also giving something up. What the Trustee is giving up is the opportunity to benefit in ways they otherwise might benefit merely because of their role as Trustee. In other words, you are being paid for your loyalty. For that reason, you should always accept the reasonable compensation that the document allows.

For additional information or questions, please contact us.

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