

THE FIDUCIARY ASSIGNMENT

A Tale of Heroes & Villains

Overview

- **Introduction and Where It All Starts**
- **The Two Categories of Financial Advisor Services**
 - Fiduciary vs Suitability (*The Differences & How Do You Know?*)**
- **What is a Fiduciary? When & Why is one needed? Are they all the same?**
- **What's a Trust? Why Do Trusts Exist? Really.....**

What's the Trustee Really Do?

Thoughts on Selecting a Trustee

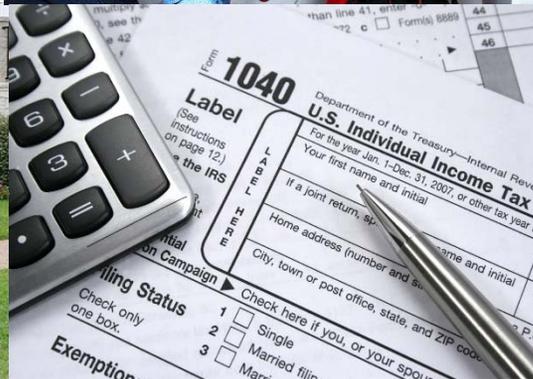
The “Whole Cast” of a Trust

Tips for Managing a Trust Smoothly

Your Life Is a Full Time Job



Some Stuff You Do; Some Stuff Someone Else Does



Your Savings & Investments

*This has to be managed. You can
Do-it-yourself or **hire someone.***



Hiring a Financial Advisor – Can Be Tricky

Two standards of service offered in the USA:

- 1) Fiduciary Standard** – Advisors who are registered with the SEC under the Investment Advisers Act of 1940; and
- 2) Suitability Standard** – Broker-Dealers and others that call themselves “advisory” in nature. Broker-Dealers operate under supervision of FINRA

FINRA = Financial Industry Regulatory Authority, a non-profit authorized by Congress to oversee the broker-dealer industry.

Fiduciary – A definition

Fidere = to trust [Latin]

Google defines “Fiduciary” as:
“involving trust; especially with regard to the relationship between a trustee and beneficiary.”

***The money vein runs
through the heart.***

- Louis A. Montag

***When your head, heart
and stomach agree on
something, you trust it.***

- A Wonderful Longtime Client

The **Fiduciary** Standard – “A Duty To Care”

The Highest Standard of Care - The Code of Ethics and Standards of Professional Conduct requires that “Members and Candidates **must act for the benefit of their clients and place their clients’ interests before their employer’s or their own interests.”**

The SEC regulates **Registered Investment Advisors** as fiduciaries, and requires these firms to:

- Act with undivided loyalty and utmost good faith
- Provide full and fair disclosure of all material facts, defined as those which "a reasonable investor would consider to be important"
- Not mislead clients
- Avoid **conflicts of interest** (such as when the advisor profits more if a client uses one investment instead of another) and disclose any potential conflicts of interest
- Not use a client's assets for the advisor's own benefit or the benefit of other clients

The **Suitability** Standard – “Non-Fiduciaries”

The **Suitability** Standard of care is:

- 1) lower than a **fiduciary** duty and
- 2) requires only that the broker has a reasonable basis to believe a recommended course of action is suitable for the client based on a reasonable inquiry into her investment profile.

The compensation structure at many brokerage firms often makes it inherently difficult for staff to act without conflicts of interest.

What does this mean?

Buyer Beware - How To Tell the Difference?

- 1) **Are you a Fiduciary?** A direct question deserves a direct answer. Pay attention to the reply. Consider asking to see the answer in writing.
- 2) **Do you receive any type of compensation in addition to what I'm paying you?** Some advisors receive commissions or other product-based compensation when they steer clients into funds or products (private equity, real estate, mutual funds, insurance, annuities). This is a conflict of interest. It can indicate that the advisor is not, in fact, a fiduciary.
- 3) **Are you "dual-registered"?** Some advisors are registered as both investment advisors and broker-dealers. Often a professional is acting in the role of salesperson. If your advisor is also a broker-dealer, make sure you understand which hat they are wearing when providing advice to you.
- 4) **Have you ever been cited by a professional or regulatory organization for disciplinary reasons?** Check the advisor's records on FINRA's BrokerCheck website to learn if they have any client complaints. Keep an eye out for complaints related to providing financial and advisory services.

Hiring Someone? Its Your Choice...

Fiduciary

vs.

Suitability



Ever Had a **Fiduciary** Relationship?

Recognize these **Fiduciary** Relationships?

Doctor/Nurse & Patient

Teacher & Student

Rabbi/Priest & Parishioner

Board member & Shareholder

Financial Services *(Most common use of the term Fiduciary)*

Certified Public Accountant (CPA) & Client

Lawyer & Client

Financial Advisor (CFA) & Client

Trustee & Beneficiary

What is a Trust?

A Trust potentially shelters assets from

- Some Inheritance Taxes.
- Your “future ex-son-in-law.”
- The judgement of that wayward family member. You know who.
- A creditor, or any party who offers a loan.
- A business partner. One or more.
- Life’s many routine liabilities, like auto accidents, dog-bites, etc.

A trust is useful for:

- 1) A physically, mentally or emotionally impaired person, or
- 2) To share ownership of an asset among a group.

****Important point on all Trusts: Irrevocable vs Revocable.****

What's a Trustee Really Do?

A trust is simply a Contract between the Trust Grantor and the Grantor's chosen Trustee. (Trustee is sometimes the beneficiary.)

- A trust has its own tax identification number and must file its own annual tax returns with federal and state governments. The Trustee signs the returns and is liable for them.
- The Grantor decides the trust's rules and guidance language. The trustee follows the rules and interprets the trust over time. The beneficiary's interests must be upheld, but disagreements can and do occur.
- The trustee maintains proper managing of the assets in the trust and may defend herself/himself using assets in the trust.

The Trustee That You See and Choose



***THE
PERSONAL
TRUSTEE***



**THE
CORPORATE
TRUSTEE**

The Trustee That You Usually Get



***THE
PERSONAL
TRUSTEE***



**THE
CORPORATE
TRUSTEE**

Corporations As Trustees

- *Usually banks, often large.*
- *Use only their own investment products and people. No outsiders allowed usually.*
- *Bundle multiple services: investing; tax filing; legal work, etc.*
- *Fees rise, and are all inclusive, so there may be services you do not need.*
- *Turnover of staff means a new trustee representative is routine.*

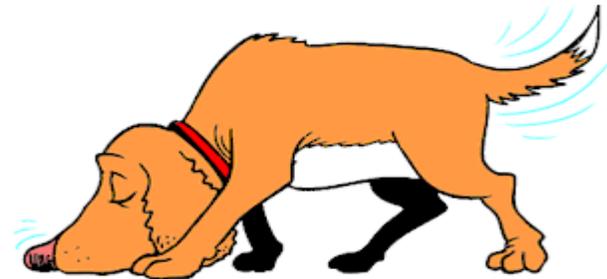
Keep this in mind:

- *When the trustee is appointed, there is no going back; only forward. Especially with Irrevocable Trusts. Know how to replace the trustee if this doesn't work well. A well-written trust always includes language about replacing the trustee. Portability matters.*
- *Consider the corporation's long-term investment record because you seek a long-term relationship.*
- *Though corporations never "need" a successor trustee because they "live forever," corporations are commonly sold, have office politics, and may resign (rare).*
- *New in the last decade is the **Independent Corporate Trustee**, like Cumberland Trust, or one of its few competitors. An advantage this has is you may use your own Investment Advisor, Accountant, and other professionals you respect.*

People as Trustees

How and where to find a Personal Trustee?

- No Simple Task*
- Start with those you trust*
- This decision can take time*
- Best situations allow the Grantor to spend some time explaining important matters to the Trustee.*
- When the trustee is appointed, there is no going back; only forward. Especially with Irrevocable Trusts.*
- A well-written trust always includes language about replacing the trustee.*



So Who To Trust?

- Uncle Louie*
- My sister*
- The dog*
- Whatshisname*
- College roommate*
- First spouse*



So Many Fine Choices to Consider...



The Whole Cast

- 1. Grantor/Grantors – Creates and places “gifts” into the trust**
- 2. Trustee/Trustees – Chosen to manage the trust**
- 3. Beneficiary/Beneficiaries – Benefits from the trust**
- 4. The Underpaid Professionals**
 - **T&E Attorney – Writes it and offers counsel**
 - **Accountant – Files tax returns and offers counsel**
 - **Investment Advisor or “Asset Manager” – Manages assets in it and offers counsel**

Often a leader from among these folks emerges.

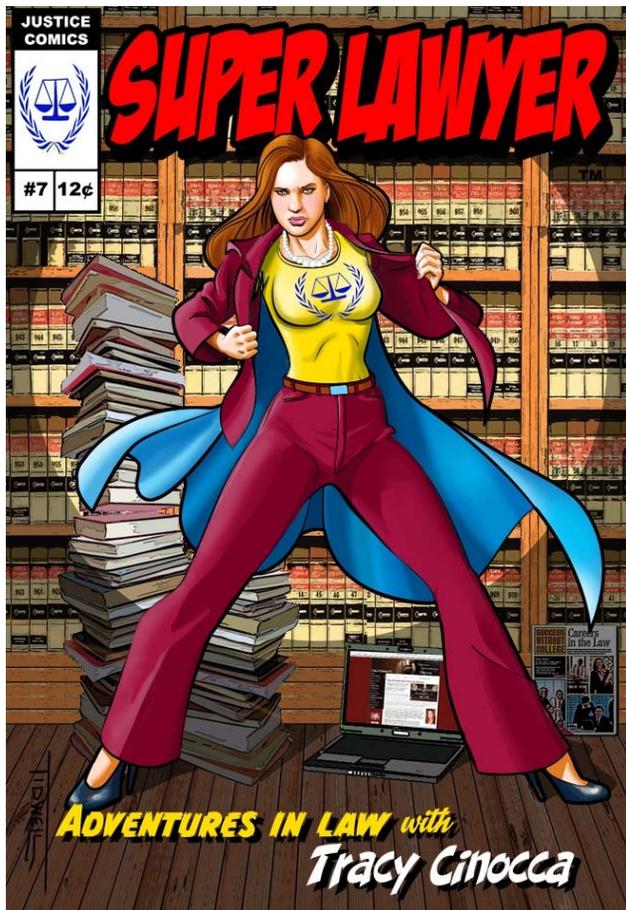
The Prepared Grantor or Trustee

How to Succeed?

- *Start by knowing and consulting the cast:*
 - *Know the attorney – Did she write the trust? If not, has she read it and is trust law a focus of her practice?*
 - *Know the accountant - Has this person worked with the family already? Have they worked on trusts?*
 - *Know the investment professional – Is this person well matched to manage the assets in the trust? Does anyone know and trust John?*

*“But I have promises to keep,
And miles to go before I sleep,
And miles to go before I sleep.”*

Trust & Estate Attorney



- ✓ *Specializes in Trusts & Estates*
 - ✓ *Not her first rodeo*
 - ✓ *Lives nearby, in your state*
 - ✓ *May outlive you*
 - ✓ *Knows the people involved*
 - ✓ *Knows the issues on your mind*
 - ✓ *Knows why this trust matters*
 - ✓ *You trust their judgment*
- ...perhaps you like her as a person.*

The Accountant



"Tom, come quick! Kinney in accounting has come up with a way to put a price on happiness!"

- ✓ ***Knows the tax code***
- ✓ ***Often works with Trusts***
- ✓ ***Plenty of experience***
- ✓ ***Lives nearby, in your state***
- ✓ ***May outlive you***
- ✓ ***Creative problem solver***
- ✓ ***Knows the people involved***

***...and perhaps you like him
as a person.***

Investment Professional



- ✓ Understands the asset that is owned and has experience managing this asset.
- ✓ Charges a fair fee.
- ✓ Coordinates with the other two advisors.
- ✓ Contributes to an easy going atmosphere.
- ✓ Easy to communicate with and explains complex matters clearly and forthrightly.
- ✓ Is responsive.
- ✓ Hard not to like as a person...if you choose well.

Managing a Trust Well Means Managing the Trust Among the People Involved



OR



How is Trust Created and Maintained?

Establish a Rhythm

- Review information as a group, at least by phone.
- Work by consensus.
- Avoid urgent decision making.
- Prepare for deadlines (like tax filings).
- In general, everyone should be able to maintain their dignity.
- This is not without challenges or obstacles, and takes time. That's why professionals and the trustee are paid roles with fair fees.
- Thank people for their help.

Questions

Appropriate and thoughtful.... Or Inappropriate and insensitive?

