

FIDUCIARIES GONE WILD: Fiduciary Risk Management for Individual Executors, Trustees and Other Fiduciaries

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WHAT IS A FIDUCIARY?

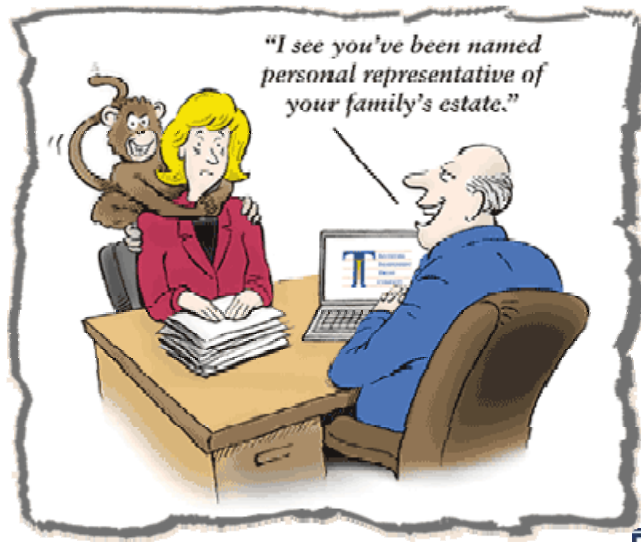
- ♦ “A person holding the character of a trustee...in respect to the trust and confidence involved with a trustee and the scrupulous good faith and candor which it requires.” Blacks Law Dictionary
- ♦ Executors and trustees are both fiduciaries
- ♦ Both owe a high duty of good faith, fair dealing, honest performance and strict accountability
- ♦ Subjects individual fiduciary to personal liability!

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“...LIKE A MONKEY ON MY BACK”



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TRUSTEE'S DUTIES

- ♦ Established by the trust instrument and the Texas Trust Code
- ♦ Also imposed under the common law
- ♦ The duties owed by a trustee are similar to the duties owed by an executor

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DUTY OF LOYALTY

- ♦ Trustee must administer the trust solely in the interest of the beneficiaries
- ♦ May not self-deal
- ♦ However, trustee can still receive compensation for services provided as the trustee, but the trustee cannot profit at the expense of the trust

DUTY TO DEAL IMPARTIALLY WITH BENEFICIARIES

- ♦ Trustee must act impartially in investing and managing trust assets
- ♦ Trustee cannot favor one beneficiary over the other, unless specifically allowed by the trust instrument

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First appeared as part of the conference materials for the
19th Annual Estate Planning, Guardianship and Elder Law Conference session
"Individual Fiduciaries Gone Wild"