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

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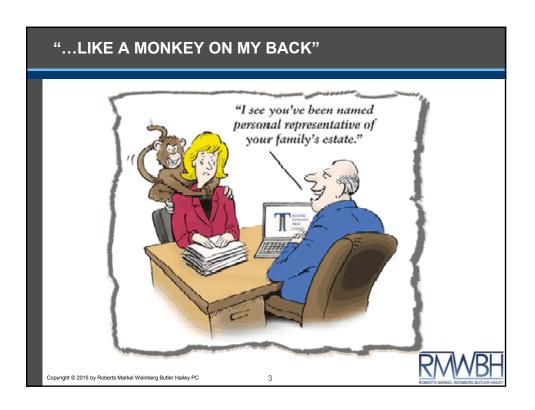
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WHAT IS A FIDUCIARY?

- "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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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

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5



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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6







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