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**Interplay of Guardians and Trustees
In and Out of Court; Administering
SNTs Established in Other States and Other
SSA Regions (Case Studies)**

Peter J Wall

Author Contact Information:

Peter J Wall

True Link Financial

Denver, CO

peter.wall@truelinkfinancial.com

303.551.3831

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I. Introduction

The primary duty of a trustee is loyalty to their beneficiary. This is perhaps the most common tenet in all of trust law. The duty of loyalty is especially important when the trustee must coordinate their efforts with an independent guardian. When fiduciaries work together harmoniously, a beneficiary may truly be best served with all of the financial and personal support that can lead to the highest quality of life possible and the empowerment to live full lives. However, when a beneficiary's multiple fiduciaries disagree or fail to fulfill their duties, the beneficiary's goals may be hindered and their lives stuck in limbo.

This presentation covers facets of the interactions between guardians, trustees and other fiduciaries. Also discussed is non-professional guardian coordination, each party's roles and duties, the capacity in which each party acts, and multidisciplinary practice concerns. Case law affecting fiduciaries will be cited while providing tips to practitioners and fiduciaries on fulfilling their duties of loyalty and impartiality while avoiding litigation. For purposes of these materials, the author uses the terms "beneficiary" or "beneficiaries" consistently throughout.

NOTE: For purposes of brevity, the author has chosen not to add "protected person", "ward," or "principal" in every instance where the terms "beneficiary" or "beneficiaries" is used. The case law and statutory authority pertaining to a request by a beneficiary, protected person, ward, or principal may differ slightly or greatly depending on the fiduciary relationship of Trustee/Beneficiary, Guardian/Protected Person/Ward, and Principal/Agent.

II. Guardianship

There are two facets of guardianship in Texas, both of which include interactions with the trustee of a trust established for the ward. A full listing of duties, rights and reporting requirements for guardians may be found in the Texas Estates Code, Title 3,

Sec. 1001, *et. seq.* Guardians advocate for their wards and may select where the ward will live, determine the ward's medical procedures and treatments and choose who may visit the ward. In some other states, this is typically referred to as "guardianship of the person" or simply "guardianship." Guardians in Texas also have control over the financial assets of a ward outside of any other protective arrangement, such as a trust. In some other states, this type of guardianship is referred to as "conservatorship."

Above all else, guardianship is established to protect vulnerable individuals or minors from abuse, exploitation, fraud and neglect. Guardianship is the most restrictive action that may be taken in order to protect people with disabilities or those who may be incapacitated. Texas Estate Code, Title 3, Sec. 1001.003 defines an *incapacitated person* as "a person who is mentally, physically or legally incompetent," "a person who is judicially declared incompetent," "a person of unsound mind," and/or "a habitual drunkard." Thankfully, because of the onerous restrictive nature of guardianship, Texas Estates Code, Title 3, Sec. 1001.001 emphasizes that "the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person, including by presuming that the incapacitated person retains capacity to make personal decisions regarding the person's residence."

Discretionary distributions from a trust for a protected person become complicated when there is more than one fiduciary involved, especially if the two fiduciaries are not working in tandem. Imagine a scenario wherein the guardian of a beneficiary of a modest sized trust is adamant that the beneficiary stay in the best (and most expensive) Assisted Living Facility ("ALF") in the city. The trustee knows that this will deplete the trust much more quickly than the beneficiary's anticipated life expectancy. If the fiduciaries are not willing or able to work together to find the best solution for the beneficiary, a lengthy (and costly) legal process may ensue. That said, as discussed later herein, a trustee can certainly rely heavily on the input of a guardian and may find their insight invaluable when considering discretionary distributions.

It is also important to note that there are alternatives to guardianship. Proper estate planning with appropriate agent under power of attorney appointments (i.e. medical and financial), living wills and *inter vivos* trusts may all obviate the need for a guardianship. Additionally, in 2015, Texas passed laws to establish supported decision-making agreements as an informal, and much less restrictive, variant of guardianship. The supportive decision maker, or "supporter," does not actually make the decisions; rather, they provide support and assistance to the person in need by making sure the wishes of the person are known. The supported decision-making agreement need not be completed by an attorney. More information on the supported decision-making

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