

# Who Pays the Attorney's Fees in Trust Litigation?

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19<sup>th</sup> Annual Changes and Trends Affecting Special Needs  
Trusts

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## The Longstanding Tension in a Trust

Trustee

v.

Beneficiaries



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## Part One: The Trustee's Attorney's Fees

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## The Trustee's Attorney's Fees

### GUIDANCE FROM THE TEXAS ESTATES CODE

- Texas Property (Trust) Code Section 113.018 – right to hire professionals (attorneys/accountants)
  - “reasonably necessary” for administration of trust
- Texas Property (Trust) Code Section 114.063(a)
  - (a) A trustee may discharge or reimburse himself from trust principal or income or partly from both for:
    - (1) advances made for the convenience, benefit, or protection of the trust or its property;
    - (2) expenses incurred while administering or protecting the trust or because of the trustee's holding or owning any of the trust property; and
    - (3) expenses incurred for any action taken under Section 113.025.

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# The Trustee's Attorney's Fees

## GUIDANCE FROM THE TEXAS ESTATES CODE

- Section 114.063(a)
  - Important language from this section recognizes that the trustee should be using these fees to “protect” or “administer” the trust assets
  - Very clear that some suits will permit payment of Trustee attorney's fees from the trust corpus
- Section 114.064(a)
  - permits the court to “make such award of costs and reasonable and necessary attorney's fees as may seem equitable and just” in a proceeding falling within the purview of the Texas Property (Trust) Code.
- Ultimately – trial court makes the determination regarding the assessment of fees

# The Trustee's Attorney's Fees

The \$64,000 (or more) question:



What about when the beneficiaries allege breach of trust or fiduciary duty?

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