

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

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## **WHAT IS A FIDUCIARY?**

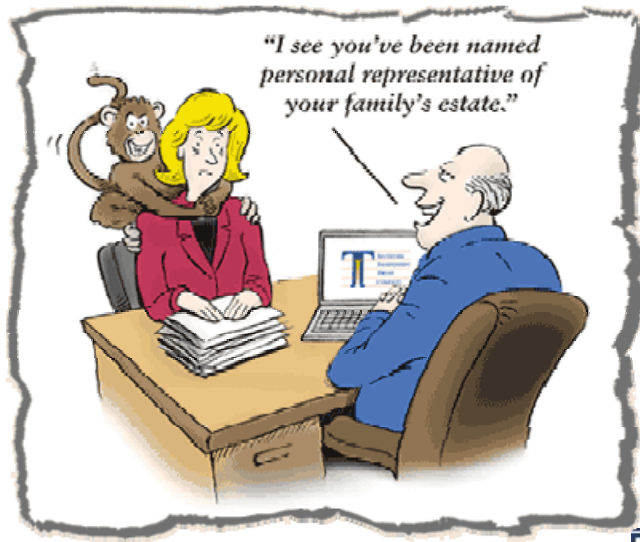
- ◆ “A person holding the character of a trustee...in respect to the trust and confidence involved with a trustee and the scrupulous good faith and candor which it requires.” Blacks Law Dictionary
- ◆ Executors and trustees are both fiduciaries
- ◆ Both owe a high duty of good faith, fair dealing, honest 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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