

(SELECTED) FIDUCIARY DUTIES OF A TRUSTEE

TRAVIS COUNTY WOMEN LAWYERS &
SOLO/SMALL FIRM LAWYERS

February 28, 2008

JESSICA M. WARREN
Vice President Trust Officer
515 Congress Ave. 10th Floor
Austin, Texas 78701

(512)397-2417

Jessica.Warren@UStTrust.com

U.S. TRUST 

Bank of America Private Wealth Management

FIDUCIARY DUTIES OF A TRUSTEE

OUTLINE OF SELECTED DUTIES THAT WE WILL COVER TODAY:

- **Duty to Invest as a Prudent Investor / Uniform Prudent Investor Act (UPIA)**
Texas Property Code S 117.003
Factors to Consider listed in Texas Property Code S 117.004
- **Duty of Impartiality / Uniform Principal and Income Act (UPIA)**
Chapter 116 of the Texas Property Code
- **Notice Requirements**
Texas Property Code S 113.058
Beneficiaries who have reached the age of 18
Remote Contingent Beneficiaries
- **Tax Considerations**
- **IOTA Accounts**
- **Questions?**

TAKE AWAYS:

- Read the Trust and follow its terms. The terms of the trust usually trump the Trust Code, but there are exceptions that are listed in S 113.0035.
- Follow a Process and Procedure when reaching discretionary decisions and document the process.
- Hire Experts to help you, such as tax lawyer/CPA, Investment professional, lawyer with fiduciary expertise. Note that the Investment Duty can be delegated. See Texas Property Code S 117.011.
- Start out right from the beginning.

Advantages & Disadvantages of a Corporate Trustee Compared to an Individual Trustee

INDIVIDUAL TRUSTEE

Advantages:

- Familiarity
- Donor's Intent
- Fee may be lower
- Simplicity / Short term Trusts

Disadvantages:

- May become unable to serve due to retirement, incompetence, or death
- Personal liability
- Lack of impartiality
- Lack of expertise in trust administration
- No formal oversight

CORPORATE TRUSTEE

Advantages:

- Impartiality
- Experience / Expertise
- Liability –
Higher standard of care imposed on a corporate trustee
Perception of deeper pockets
- Continuity
- Subject to oversight by state and federal regulations
- Resources -
Investments
Accounting / Record Keeping
Specialty asset management
More locations for beneficiaries who are spread out

Disadvantages:

- Size of the Trust in relation to fee may make a corporate trustee uneconomical
- Employee Turnover
- Internal Procedures / “Red Tape”
- May appear impersonal at times