When the Trustee and Beneficiaries are Siblings

By: Brandon C. Walecka, Esq.

Walecka Law, P.C.

774-203-9003

Brandon@WaleckaLaw.com

We see this scenario often: A parent passes away and one of the decedent's children, a beneficiary of the trust, takes over because they were named trustee of the parent's trust. Other siblings are also beneficiaries. Since no one in the family is familiar with the legal and financial technicalities of trust administration, this is uncharted territory for everyone. And buried in that new territory? Land mines that can imperil the bonds between siblings, even those who have gotten along well until now.

Beneficiaries may begin to wonder just what the trustee is doing, what to expect, and of course, when they'll see their money. And because the trustee is "just" a sister or brother, beneficiaries may be inclined to inquire excessively or make outsize demands. On the other side, the trustee/beneficiary may be caught up in the nuts and bolts of handling the trust and consider their siblings' requests as intrusive or suggesting that they are not trustworthy. Resentment can build on both sides. In the worst-case scenario, one or more beneficiaries may even resort to a lawsuit to have the trustee removed. Most families never recover from this kind of rift; we have seen it happen.

Fortunately, an incendiary situation like this can usually be avoided if all family members understand, in advance, the legal rights and obligations of beneficiaries and trustees. It can help a great deal when the trustee retains an attorney experienced with trust administration. But even if the trustee feels they can handle it and goes it alone, families that want to remain on good terms are well-advised to become familiar with the fundamental ground rules of trust administration.

What are the ground rules?

First, the trustee is legally obligated to keep beneficiaries informed. Timely and effective communication goes a long way to neutralizing doubts and misunderstandings. Good communication begins with the trustee alerting beneficiaries that trust administration has commenced. The trustee must also provide all beneficiaries with a copy of the trust and any amendments, as well as a complete list of trust assets. I strongly recommend that all beneficiaries carefully read each of these items.

Typically, beneficiaries are entitled to a full accounting of the trust's transactions on an annual basis, although a trustee may do so more often if they wish. The annual accounting must show all trust transactions: expenses of the trust and all income and growth of trust assets.

The trustee must never co-mingle trust assets with their own assets. Even if a trustee has no intent to defraud, it gives the appearance of impropriety. A trustee can be no less vigilant about this just because the decedent was a parent and co-beneficiaries are siblings. Trust assets require their own checking accounts, brokerage accounts, even their own safety deposit boxes. Keep a clean paper trail.

Beneficiaries should respect the fact that the trustee is legally bound to carry out the terms and provisions of the trust, which are the wishes of the deceased parent. The trustee cannot and should not make exceptions simply because their co-beneficiaries are siblings. If you are a beneficiary with financial problems asking your trustee sibling for a loan from trust funds, expect to be refused (unless the terms of the trust provide for it). Chances are you have put your trustee sibling in a very uncomfortable position. In refusing, your sibling has made the right decision. Don't resent a sibling trustee for honoring their legal obligations.

A trustee must not sell assets to the trust or buy assets from the trust. Conflicts of interest must be avoided. Where such a situation cannot be avoided, the trustee/beneficiary should get agreement to such a transaction by other siblings, in advance.

A trustee must never "borrow" funds from the trust for their own use, even with the intention of paying back the money. A trustee who is a beneficiary may not favor themself over the other beneficiaries.

Beneficiaries must realize that the trustee can, at their own discretion, use trust funds to hire professionals to help with administering the trust. Professionals may include bookkeepers, accountants, attorneys, etc. Depending on the provisions of the trust, the trustee may be entitled to reasonable compensation. Most family members do not take compensation, but there can be exceptions.

The above are by no means all of a trustee's duties, but just an overview of the most important ones related to trustee-beneficiary interactions. Again, we urge all beneficiaries, not just the trustee, to read and understand the trust instrument. Knowing everyone's rights and obligations will help preserve family harmony. Also, while trust administration does not require the services of an attorney, it is often prudent for the trustee to use the services of a qualified trust administration lawyer. This lets the beneficiaries know that the trustee is getting solid legal advice, and diminishes the chances of a sibling accusing the trustee of being unfair, arbitrary, etc.

Do you have a suggestion for a future article topic for Attorney Walecka? Reach out to him directly with a question or topic you think would be helpful to readers.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.