

# **A Beneficiary's Right to Information**

**Maryland State Bar Association  
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**A BENEFICIARY'S RIGHT TO INFORMATION**  
**MSBA CONTINUING LEGAL EDUCATION PROGRAM**  
**APRIL 10, 2012**  
**By Fred Franke\***

1.1 *Trust Law in General.* At present, the law of trusts in Maryland is largely a creature of the Common Law. Conceptually, rules regulating complex human relationships, like the fiduciary duties owed by a trustee to a trust beneficiary, may be more perfectly developed by the evolutionary process of the Common Law as opposed to the attempting to codify such rules: "What has been said [about the development of judge-made law] will explain the failure of all theories which consider the law only from its formal side; whether they attempt to deduce a corpus from a priori postulates, or fall into the humbler error of supposing the science of the law to reside in the *elegantia juris*, or logical cohesion of part with part. The truth is that the law is always approaching, and never reaching, consistency. It is forever adapting new principles from life at one end, and it always retains old ones from history at the other, which have not yet been absorbed or sloughed off. It will become entirely consistent only when it ceases to grow."<sup>1</sup>

The Common Law of Maryland, and of most states, however, has a dearth of cases offering guidance in trust cases. In the 2012 General Assembly, the Maryland State Bar Association proffered a codification of the law of trusts modeled after the Uniform Trust Code.<sup>2</sup> This proposed codification (the "Maryland Trust Act"), as well as the Uniform Trust Code itself, does not purport to sweep away the Common Law but to augment it.<sup>3</sup> Although not yet

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<sup>1</sup> Oliver Wendell Holmes, Jr., *The Common Law, Lecture I-Early Forms of Liability* (Project Gutenberg 2000, [www.gutenberg.org](http://www.gutenberg.org)).

<sup>2</sup> HB 682. HB 750 was introduced, then withdrawn, in the 2011 Session of the Maryland General Assembly. The Uniform Trust Code was completed by the National Conference of Commissioners in 2000 with amendments in 2001, 2003, 2004 and 2005. It has been enacted, in some form, in 25 jurisdictions, including D.C., Virginia, and Pennsylvania. In 2012 forms of the UTC are being introduced in New Jersey and Massachusetts as well as in Maryland.

<sup>3</sup> The Reporter for the Uniform Trust Code addressed the relationship that the UTC was meant to have with the existing body of Common Law: "[E]fforts to reduce rules to writing will result in excess rigidity and insufficient

governing the law of Maryland, this paper will address the treatment of a beneficiary's right to information and to trust enforcement under, the Common Law, the Uniform Trust Act and the Maryland Trust Act.

1.2 ***The Importance of the Right to Information.*** A trust, at its core, is defined in terms of the duty owed to the beneficiary: "A trust ... is a fiduciary relationship with respect to property for the benefit of another person."<sup>4</sup> Assuring that the Trustee fulfills its duty to the beneficiary hinges on the beneficiary knowing what actions the Trustee has been taking. In other words, a beneficiary's right to information concerning the trust and its management is the fundamental basis for securing a beneficiary's rights. Indeed, as set out below, the beneficiary's right to enforcement exists even when a Trustee has "absolute" or "sole" discretion.

### **DISTRIBUTIONS AND TRUSTEE DISCRETION**<sup>5</sup>

2.1 ***Introduction.*** A beneficiary's right to information forms the basis of his or her ability to enforce the trustee's obligations under the terms of the trust. To a large degree, therefore, the nature and type of information required to be provided is dictated by the beneficiary's enforcement rights under the terms of the trust.

2.2 ***Settlor Intent: Support/Discretionary Trusts.*** The beginning point as to the extent and degree that a beneficiary may compel a distribution is, of course, the intent of the settlor as that intent is captured by the terms of the trust. Restatement (Second) of Trusts § 128 (1959) ("The extent of the interest of the beneficiary of a trust depends upon the manifestation of intention of the settlor ...")

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discretion vested in the Courts to adapt to changing conditions. Even on issues that drafters have elected to codify, the UTC, in many cases, does not specify every detail, the drafters preferring flexibility and brevity to greater precision." David M. English, *The Uniform Trust Code (2000): Significant Provisions and Policy Issues*, 67 Mo. L. Rev. 143-144 (2002).

<sup>4</sup> Restatement (Second) of Trusts § 2 (1959).

<sup>5</sup> Some of this section appeared as a portion of the author's materials entitled "Trust Litigation: the Enforcement of Beneficiary Rights," Fiduciary Litigation in Maryland (MSBA 11/4/11).

Historically, the manifestation of this intention was generally fitted into two distinct categories; whether the trust was a "support" or "discretionary" trust:

*d. Discretionary trusts.* By the terms of the trust it may be provided that the trustee shall pay to or apply for a beneficiary only so much of the income and principal or either as the trustee in his discretion shall see fit to pay or apply. In such a case it depends upon the manifestation of intention of the settlor to what extent the trustee has discretion to refuse to make such payment or application. If the settlor manifests an intention that the discretion of the trustee shall be uncontrolled, the beneficiary cannot compel the trustee to make any payment to him or application for his benefit, if the trustee does not act dishonestly or arbitrarily or from an improper motive. See § 187.

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*e. Trust for support.* By the terms of the trust it may be provided that the trustee shall pay or apply only so much of the income and principal or either as is necessary for the education or support of a beneficiary. In such a case the beneficiary cannot compel the trustee to pay to him or to apply for his benefit more than the trustee in the exercise of a sound discretion deems necessary for his education or support.<sup>6</sup>

In practice, the two categories are not separate and distinct, but matters of the degree of latitude that a Court will give to the trustee in his or her exercise, or non-exercise, of discretion:

A discretionary trust is one in which the settlor gives the trustee authority over the trust, for example, to use discretion in the timing and amount of income payments to the beneficiary. A settlor may provide that the trustee have "sole, absolute and uncontrolled" discretion whether to pay or apply trust income or principal to or for the benefit of the beneficiary. The settlor may also give less latitude to the trustee's discretion, for example, describing it as "sound discretion," or "as the trustee deems appropriate," or simply, "the trustee's discretion." If the settlor does not impose any standards or guides that the trustee is to consider, these trusts are sometimes called pure discretionary trusts. However, it has become more common for the settlor to limit the trustee's discretion by a standard, for example, for the trustee to exercise discretion for the support and education of the beneficiary. These are also now considered discretionary trusts. These descriptions of

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<sup>6</sup> Restatement (Second) of Trusts § 128 (1959).

the trustee's discretion and the standards for application of discretion are useful to determine the beneficiary's interest in the trust; however, there is little uniformity between, or even within, jurisdictions.

Even with a pure discretionary trust in which the trustee's discretion is "sole and absolute," or "uncontrolled," and the trust is without standards, the beneficiary may obtain judicial review to determine whether the trustee has abused that discretion. If there were no judicial review, and the terms were taken literally, the trustee would, in effect, be the owner of the trust property and the settlor's trust terms would be precatory only.

The difference in the court's review of a trustee's discretion is a matter of degree; the courts have permitted a continuum of discretion. The court will review a trustee's more extensive discretion to determine whether the trustee acted or failed to act in good faith and with proper motive. For example, a beneficiary may question the trustee's good faith where the trustee made trivial or no income payments to the beneficiary in more than one year, or made payments to some beneficiaries but not to others who are in similar circumstances. Some courts determine whether the trustee acted arbitrarily and capriciously.

The Restatement (Second) of Trusts § 187 position was that the trustee must act "in a state of mind contemplated by the settlor," and this position is repeated in the Restatement (Third). For example, under a direction for the trustee to pay income for the settlor's spouse's "comfortable support and maintenance," a court will review the trustee's very parsimonious payments to the surviving spouse as an abuse of discretion for failing to follow the settlor's guidance and ignoring the settlor's state of mind.

At the other end of the continuum, where the trustee's discretion is least extensive, courts may give the trustee less latitude and review for reasonableness. A court will not set aside a trustee's reasonable exercise of discretion. Thus, if one term of a trust provides for the trustee, "in his sole and absolute discretion," to make payments of principal to the beneficiary where the trustee determines that the beneficiary is capable of wisely investing the funds, but also another term provides that the trustee "in his discretion," make payments of principal to the beneficiary for emergencies in the beneficiary's health, a court, reviewing for the trustee's abuse of discretion, should defer more to the trustee's decision whether the beneficiary is capable of investing wisely than it defers to the trustee's decision not to make payments where the beneficiary

claims a health care emergency.

In fact, however, courts do not always distinguish these terms in their review of the trustee's abuse of discretion. Courts will always require the trustee to act in good faith and to accomplish the trust's purposes. They also often require the trustee to act reasonably. One court, for example, interpreting trust language that ranged from "discretion" over income payments, "sole discretion" over principal payments, and "sole discretion" that was "absolute and binding," said that it would not interfere with trustees who acted "in good faith from proper motives, and within the bounds of reasonable judgment."

When a settlor creates a discretionary trust that imposes standards for the beneficiary's support or for support, maintenance, and education, these trusts are now often called discretionary support trusts. The courts have had difficulty determining how to enforce the beneficiary's interest in these trusts. Because of the support standard, the trustee's discretion is more restricted than it would be under a pure discretionary trust, but the trustee has more discretion than in a pure support trust. Trust terms for support have been interpreted to mean that the trustee is to be guided by the beneficiary's accustomed standard of living, or "station in life," and usually also includes support for the beneficiary's household. Discretionary support trusts are also treated in § 229, post.

The Restatement (Third) of Trusts and the Uniform Trust Code now eliminate the distinction between discretionary and support trusts, treating the latter as a discretionary trust with a standard.<sup>7</sup>

**2.3    *The Support/Discretionary Trust Distinction in Maryland.*** An illustration of the use – and elasticity – of these categories in Maryland occurs in *First National Bank of Maryland v. Department of Health and Mental Hygiene*.<sup>8</sup> In that case, a trust was established for the benefit of the testatrix's daughter who resided in Spring Grove Hospital for over twenty years. The terms of the trust document would probably be characterized by Bogert as a "hybrid": ("My trustees ... shall pay from time to time the net income and so much of the principal as they, in their absolute and uncontrolled discretion, may determine, to my daughter, Annesley Bond

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<sup>7</sup> George G. Bogert and George T. Bogert, *The Law of Trusts and Trustees*, § 228 (2011).

<sup>8</sup> *First Nat. Bank of Md. v. Dept. Health and Mental Hygiene*, 284 Md. 720, 399 A.2d 891 (1979).

Baugh, or, in their absolute and uncontrolled discretion, may apply the same for her maintenance, comfort or support.") The trustees refused to invade principal to pay Spring Grove Hospital thus forcing the shortfall to the state of Maryland.

The *First National* Court saw the classification of the trust as either support or discretionary as determinative:

The paramount issue now before us is whether the trust principal may be charged with the costs of the care of Annesley Bond Baugh. The answer to this question, in turn, depends on which of two commonly recognized types of trusts the testatrix intended to create, that is, whether by the fifth item of her will she intended to establish a support trust or a discretionary trust.

A support trust, it is generally recognized, is one that provides that "the trustee shall pay or apply only so much of the income and principal or either as is necessary for the education or support of the beneficiary . . . ," thereby barring the beneficiary from transferring his interest and precluding his creditors from reaching it. Restatement (Second) of Trusts s 154 (1957); Accord, G.G. Bogert & G.T. Bogert, *The Law of Trusts and Trustees* s 229, at 726 (2d ed. 1965); 2 A. Scott, *The Law of Trusts* s 154, at 1176 (3d ed. 1967). If this trust were entirely for the support of Miss Baugh, however, she could, by showing the trustees have abused their discretion, compel them to make any payment reasonably necessary for that purpose, *Offutt v. Offutt*, 204 Md. 101, 110, 102 A.2d 554, 559 (1954) (quoting Restatement of Trusts s 128, Comment e (1935)); likewise, this Court has recognized that when a supplier of necessities the State in this case has a claim against the beneficiary of a support trust, the interest of the beneficiary in the trust can be reached to compel payment for the required items or services. *Safe Deposit & Tr. Co. v. Robertson*, 192 Md. 653, 660, 65 A.2d 292, 295 (1949) (quoting Restatement of Trusts s 157 (1935)); See *Pole v. Pietsch*, 61 Md. 570, 573-74 (1884).

In contrast, if, by direction of the settlor, all or any part of the trust assets can be totally withheld from the beneficiary by the trustees then, to the extent it can be so retained, a discretionary trust would be created. The Restatement of Trusts, Second, sets forth the definition and incidents of a discretionary trust as follows:

(I)f by the terms of a trust it is provided that the trustee shall pay to or apply for a beneficiary only so much of the income and



principal or either as the trustee in his uncontrolled discretion shall see fit to pay or apply, a transferee or creditor of the beneficiary cannot compel the trustee to pay any part of the income or principal. (Restatement (Second) of Trusts s 155(1) (1957).)

Accord, G.G. Bogert & G.T. Bogert, *Supra*, s 228, at 717, 720-21; 2 A. Scott, *Supra*, s 155, at 1180. Thus, payment cannot be compelled out of a discretionary trust unless it is shown that the trustees have acted arbitrarily, dishonestly, or from an improper motive in denying the beneficiary the funds sought. Restatement (Second) of Trusts s 128, Comment d (1957); See *Offutt v. Offutt*, *supra*, 204 Md. at 110, 102 A.2d at 558.<sup>9</sup>

The Court then determined that the trust was a discretionary trust, at least as to corpus, regardless of the modifying language.

2.4 *Eliminating the Categories under the UTC and Restatement (Third).* The Restatement (Third) of Trusts and the Uniform Trust Code eliminated the distinction between support and discretionary trusts, generally treating a support trust "as a discretionary trust with a standard."<sup>10</sup> This approach drew heated debate. Critics of the approach adopted by the Restatement (Third) and the Uniform Trust Code perceived that there was a change from the Common Law of trusts and that this change exposed trust assets to heightened exposure to the claims of the beneficiaries' creditors. Mark Merric & Steven J. Oshins, *Effect of the UTC on the Asset Protection of Spendthrift Trusts*, 31 Est. Plan. 375 (2004). Such criticism has drawn pronounced refutation. Kevin D. Millard, *Rights of Trust Beneficiaries Under the Uniform Trust Code*, 34 ACTEC L.J. 57, 63 (2008) ("[N]ote that the theory that a creditor could not reach the trust because the creditor stood in the shoes of the beneficiary and the beneficiary could not force distributions from the trust was flawed, because no matter how broadly worded the trustee's discretion was, it was always subject to review by a court for abuse."); Robert T. Danforth, *Article Five of the UTC and the Future of Creditors' Rights in Trusts*, 27 Cardozo L. Rev. 2551,

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<sup>9</sup> *First Nat. Bank of Md. v. Dept. Health and Mental Hygiene*, 284 Md. 720, 399 A.2d 891 (1979).

<sup>10</sup> George G. Bogert and George T. Bogert, *The Law of Trusts and Trustees* § 228 (2011).

2581 (2006) ("Implicit in the critics' argument is the assertion that, by granting a trustee extended discretion, the trustee's exercise of that discretion becomes essentially unreviewable. But this has never been true at Common Law. An essential principle of the Common Law of trusts is that a trustee's exercise of discretion is always subject to judicial review, no matter how broadly the trustee's discretion may be described ... [T]hat will not be interpreted so as to relieve the trustee from an obligation to account for its discretionary judgments. Because a trustee is a fiduciary, it would be inconsistent with the concept of a trust to insulate a trustee's exercise of discretion from all judicial review."); Also see Alan Newman, *Spendthrift and Discretionary Trusts: Alive and Well Under the Uniform Trust Code*, 40 Real Prop. Prob. & Tr. J. 567, 601-618 (2005). The relationship of the blurring of the distinctions between support and discretionary trusts as related to supplemental needs trusts is discussed below.

**2.5 Retaining the Categories in the Maryland Trust Code Proposal.** Unlike the Uniform Trust Code, the Maryland Trust Act retains the distinction between support and discretionary trusts. Almost any discretionary provision sweeps the trust into the discretionary trust category under the Maryland proposal.<sup>11</sup> Nevertheless, discretionary trusts are subject to Court oversight for trustee abuse of discretion (including the failure to act reasonably in exercising discretion).<sup>12</sup> The claims of creditors to discretionary trusts, however, are severely limited under the Maryland Trust Act as is the case under the UTC.<sup>13</sup>

**2.6 Ascertainable Standards and Estate Planning.** Many trusts, of course, with an eye on the estate tax exclusionary rules, provide the corpus distributions (or, for that matter, income distributions) are to be governed by an "ascertainable standard." Indeed, by tying trustee

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<sup>11</sup> Maryland Trust Act § 14.5-103(F)(1)(V)(2) ("Discretionary Distribution Provision"); § 14.5-103(M)(2) ("Mandatory Distribution Provision"); § 14.5-103(W)(2) ("Support Provision").

<sup>12</sup> Maryland Trust Act § 14.5-203.

<sup>13</sup> Maryland Trust Act § 14.5-502.

discretion to an ascertainable standard, married couples can engage in estate planning without imposing on the surviving spouse a third party trustee. It permits the surviving spouse to be his or her own trustee which often is the recommended estate planning technique:

In terms of the marital planning endeavor, the most common form of marital and non-marital Trust drafting entails a relatively simple structure that we all know well. The non-marital Trust receives the largest amount of a married decedent's gross estate that can pass with the least amount of federal estate tax (with a potential state death tax cost in some "decoupled" jurisdictions – that part of this planning has not yet been resolved by most planners). In 2008 this means the first \$2 million goes into the non-marital Trust. The balance of the estate typically qualifies for the marital deduction.

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[M]y *default* recommendation (all other things being equal) would be (to the extent the client is willing and the spouse is able) to begin with a template or recommended plan that would ... make the spouse trustee of each (trust.)<sup>14</sup>

The foundation of this basic estate planning technique is the rule that a beneficiary is not the "owner" of a trust even if the beneficiary is the trustee of that trust as long as the discretionary distributions are limited to an "ascertainable standard." 26 U.S.C.A. § 2041(b)(1)(A) provides that the federal gross taxable estate includes all property over which a decedent had a general power of appointment or a power to invade except for a power to invade that is limited by an ascertainable standard: "A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment." Thus, it is possible for the beneficiary to be the sole trustee or a co-trustee of a trust for his or her benefit as long as the power to make discretionary payments is limited by such an ascertainable standard. The distinguishing feature of a limited power of

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<sup>14</sup>Jeffrey N. Pennell, *The Joseph Trachtman Lecture – Estate Planning For The Next Generation(s) Of Clients: It's Not your Father's Buick Anymore*, 34 ACTEC L.J. 2, 8-9 (2008).

appointment, as opposed to a general power of appointment, is that the standard permits the power to be exercised in a manner "reasonably measurable in terms of [the beneficiaries'] needs." U.S. Treas. Reg. § 2041-1(c)(2).

The federal gift tax provisions run parallel to the estate tax provisions in the treatment of an ascertainable standard. Under the gift tax provisions, the exercise of a general power of appointment is deemed to be a transfer by the donee of the power but the exercise of a power to consume or invade limited by an ascertainable standard is exempted from the general rule. 26 U.S.C.A. § 2514(c)(1). The gift tax regulations give a description of powers of appointment that are limited by ascertainable standards:

A power is limited by such a standard (an ascertainable standard) if the extent of the possessor's duty to exercise or not to exercise the power is reasonably measurable in terms of his needs for health, education, or support (or any combination of them). As used in this subparagraph, the words "support" and "maintenance" are synonymous and their meaning is not limited to the bare necessities of life. A power to use property for the comfort, welfare or happiness of the holder is not limited by the requisite standard. Examples of powers that are limited by the requisite standard are powers exercisable by the holder's "support," "support and reasonable comfort" "maintenance in health and reasonable comfort," "support in his accustomed manner of living," "education, including college and professional education," "health," and "medical, dental, hospital and nursing expenses and the expenses of invalidism."

U.S. Treas. Reg. § 25.2514-1(c)(2).

**2.7 Ascertainable Standards are Measurable.** The "ascertainable standards" are ascertainable for the very reason that they are measurable. In *Ithaca Trust Co. v. United States*, 279 U.S. 151, 49 S. Ct. 291 (1929) the issue was whether a charitable estate tax deduction was permissible where a trust for the widow's maintenance "in as much comfort as she now enjoys" preceded the gift over to the charity. The Supreme Court upheld that the deduction for the gift

over stating: "The standard was fixed in fact and capable of being stated in definite terms of money." Because the ascertainable standards are fact based, such standards are not rooted in the opinion of the trustee/beneficiary. In a New York case, for example, the issue was whether the widow, who was a co-trustee of a trust for her benefit to maintain her standard of living, could unilaterally determine the extent of the principal invasion. In that case, the Court held that she did not have the right to determine the extent of the principal invasion: "'standard of living' is therefore the manner in which one lives at a particular time; it is a fact to be established by proof of relevant circumstances ... they are facts which may be readily established ... contrary to the counsel for the trustees, the decedent did not intend to confer upon the trustees the power to determine her 'standard of living.' 'Standard of living' is a fact not an opinion." *In Re Golodetz' Will*, 118 N.Y.S.2d 707, 713 (N.Y. 1952) (In *Golodetz* the trustees had "absolute and uncontrolled" discretion to invade the principal to maintain the widow in her accustomed standard of living.) Nor are the ascertainable standards of support and maintenance to be determined by a beneficiary: "It is clear that the Testator did not intend the last-quoted clause (the standard of living clause) to constitute a designation of his wife as the person to determine the amount to which she is entitled from the trust and hence it is a matter for the Court to determine upon a proper showing. It may be observed, moreover, that the construction urged upon us by the Petitioner (the widow) would enable her in effect to destroy the trust." *In Re Morse' Will*, 98 N.Y.S.2d 43, 47 (N.Y. Sur. 1950).

2.8 ***The Rights of Remainder Beneficiaries and Ascertainable Standards.*** A trustee, when exercising a distribution standard, must balance the needs of the current beneficiaries and the remaindermen. Indeed, this rule, characterized as a duty of impartiality informs the basis for the Uniform Trust Code and the Maryland Trust Code rules requiring information to be given to

the current life beneficiary and, at least, to the first-line remaindermen. The duty of impartiality governs a trustee's conduct regardless of the identity of the trustee, including when a trustee is also a beneficiary. *Caver v. Caver*, 176 Md. 171, 183, 4 A.2d 132, 138 (1939) ("As a trustee Mrs. Caver was under a duty to exercise her power to sell fairly and impartially for the equal benefit of all of the remaindermen and any grant of a gift, benefit or advantage to one remainderman at the expense of the others would constitute a breach of that duty.")<sup>15</sup> Restatement (Second) of Trusts § 183 (1957) ("When there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them."); Restatement (Second) of Trusts § 232 (1957) ("If a trust is created for beneficiaries in succession, the trustee is under a duty to the successive beneficiaries to act with due regard to their respective interests."); Restatement (Third) of Trusts § 79 (2005), gen. cmt. b. at 128-129 ("The duty of impartiality is an extension of the duty of loyalty to beneficiaries ... In many modern trust situations, the trustee (or one or more co-trustees) will be a life beneficiary or perhaps a remainder beneficiary. In a case of this type, there will inevitably be some conflicts of interest that are approved, implicitly at least either by the settlor or through an appointment process that is authorized by the terms of the trust ... In these circumstances there is, on the one hand, some inference of a preference for a confidence in the trustee-beneficiary but, on the other hand, a general recognition that a trustee-beneficiary's conduct is to be closely scrutinized for abuse, including abuse by less than appropriate regard for the duty of impartiality." Internal references omitted.)

The exercise of a distribution power by a trustee (regardless of who is trustee) involves a fiduciary judgment which the Courts will oversee to prevent misinterpretation or abuse of the discretion:

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<sup>15</sup> Mrs. Caver was the trustee and current beneficiary who "sold" property to one of the remaindermen at less than fair market value and took back a note.

§ 50. Enforcement and construction of discretionary interests.

(1) A discretionary power conferred upon the Trustee to determine the benefits of a Trust beneficiary is subject to judicial control only to prevent misinterpretation or abuse of the discretion by a Trustee.

(2) The benefits to which a beneficiary of a discretionary interest is entitled, and what may constitute an abuse of discretion by the Trustee depend on the terms of the discretion, including the proper construction of any accompanying standards, and on the settlor's purposes in granting the discretionary power and in creating the Trust.

Restatement (Third) of Trusts § 50 (2001). In a word, the trustee abuses his or her discretion when he or she makes or fails to make a distribution contrary to the express terms of the trust:

[A]n abuse of discretion occurs when a trustee acts from an improper even though not dishonest motive, such as when the act is undertaken in good faith but for a purpose other than to further the purposes of the Trust or, more specifically, the purposes for which the power was granted ... [A] discretionary power to make distributions for a beneficiary's "support" does not permit the Trustee to make well-intentioned, even otherwise reasonable, distributions that are not support-related.

Restatement (Third) of Trusts § 87 cmt. c at 244 (2005). (Emphasis added.); *Waesche v. Rizzuto*, 224 Md. 573, 587; 168 A.2d 871, 877 (1961) ("A court of equity will not interfere in the exercise of the discretionary power conferred on the trustees provided that the power was honestly and reasonably exercised. However, it must appear that the trustees acted in good faith, having a proper regard to the wishes of the testator and to the nature and character of the trust reposed in them.")

2.9 ***Extended Discretion and Court Enforcement of Distributions.*** In some trusts, however, the settlor appears to grant discretion without any standard or measurement of the settlor's intent. In those cases, the settlor grants extended discretion ("absolute" or "unlimited" or "uncontrolled" discretion). Extended discretion, according to the first two Restatements of

Trusts, obviates the requirement that the trustee act reasonably:

The mere fact that that the trustee is given discretion does not authorize him to act beyond the bounds of a reasonable judgment. The settlor, may, however, manifest an intention that the trustee's judgment need not be exercised reasonably, even where there is a standard by which the reasonableness of the trustee's conduct can be judged. This may be indicated by a provision in the trust instrument that the trustee shall have "absolute" or "unlimited" or "uncontrolled" discretion. These words are not interpreted literally but are ordinarily construed as merely dispensing with the standard of reasonableness. In such a case the mere fact that the trustee has acted beyond the bounds of a reasonable judgment is not a sufficient ground for interposition by the court, so long as the trustee acts in a state of mind in which it was contemplated by the settlor that he would act. But the court will interfere if the trustee acts in a state of mind not contemplated by the settlor. Thus, the trustee will not be permitted to act dishonestly, or from some motive other than the accomplishment of the purposes of the trust, or ordinarily to act arbitrarily without an exercise of his judgment.<sup>16</sup>

In his treatise, Professor Scott distills the test to the "state of mind not contemplated" standard:

"The real question is whether it appears that the trustee is acting in a state of mind in which it was contemplated by the settlor that he should act."<sup>17</sup> This shift away from "reasonableness" would appear to embrace subjective criteria which, by its nature, would be difficult for a court to second guess. It reduces the standard from a test of whether an abuse of discretion has occurred, in trusts providing for extended trustee discretion, to whether the power was exercised or, for that matter not exercised, in bad faith or through some other showing of improper motive and not in the state of mind contemplated by the settlor that he or she would act.

In practice, however, the courts impose a reasonableness standard regardless of whether the discretion is extended or absolute despite the early treatment in the first two Restatements:

The authorities do not appear to support the Restatement position that there is no requirement of reasonableness in the exercise of a

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<sup>16</sup> Restatement (First) of Trusts and Restatement (Second) of Trusts § 187, cmt. j.

<sup>17</sup> 3 Austin Wakeman Scott, The Law of Trusts § 187 (3d ed. 1967).



power granted in the trustee's absolute discretion. Most courts have held that the exercise of an absolute power is subject to the court's review and determination as to whether the power had been unreasonably exercised by the trustee.<sup>18</sup>

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It would appear that the difference in the attitude of the courts towards "simple" discretionary powers, on the one hand, and "absolute" or "uncontrolled" discretionary powers, on the other hand, is one of degree rather than kind. The courts appear more likely to find an abuse of a simple discretionary power than an abuse of an absolute or uncontrolled discretionary power. In addition to the commonly recognized factors used to determine whether there has been an abuse of discretion, a standard of reasonableness has been applied by the courts in judging the exercise of a discretionary power (whether simple or absolute), a standard implied from the settlor's intent and the purposes expressed in the trust instrument. With respect to court review of discretionary powers, this standard is consistent with the standard of care and skill of a prudent man and is based upon established fiduciary standards and principles.<sup>19</sup>

This was also the conclusion of Professor Halbach in his seminal 1961 article: that "reasonableness" was, in fact, required in every case involving extended discretion, but usually the Courts framed the discussion under "the state of mind contemplated by the settlor" standard:

[I]n numerous cases the trustee's 'absolute' or 'controlled' discretion has been overturned on much the same ground as that on which simple discretions have often been upset – typically, unreasonably small payments to the beneficiary. Such cases *can* be interpreted as coming within the *Restatement* formulation requiring the trustee to act in the 'state of mind' ... contemplated by the settlor, 'and the modern opinions, almost without exception, have expressed their results in these terms when interfering with the trustee's judgment. Even though language in the decisions tends to perpetuate the *Restatement's* wording of the rule, any distinction between the test of reasonableness and the state-of-mind test is difficult to discern from the holdings of these cases. In fact, the requirements set out in the dicta of some cases, phrased in terms of requiring 'reasonable judgment' and 'sound discretion,' go far in obliterating

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<sup>18</sup> Bogert, *supra* n. 34, § 560.

<sup>19</sup> George G. Bogert, George T. Bogert & Amy Morris Hess, *The Law of Trusts and Trustees* § 560 (rev. 2d ed. Cum. Supp. 2009).

any such distinction.<sup>20</sup>

If good faith was purely subjective (the "pure heart" test), enforcement would be illusory – effectively negating the trust. Trusts presuppose giving enforceable rights to beneficiaries. In a Delaware case, for example, the trust instrument stated that distributions by a committee of trustees were "not subject to review by any court." In that case, the Court ignored the provision: "A trust where there is no binding legal obligation on a trustee is a trust in name only and more in the nature of an absolute estate or fee simple grant of property."<sup>21</sup>

2.10 ***Extended Discretion and the Uniform Trust Code.*** The non-modifiable Uniform Trust Code good faith standard, like the standard traditionally governing extended discretion under Common Law, is applied in a way to implement the settlor's intent and to benefit the beneficiaries. As such, it implies the reasonable exercise of discretion. This mirrors the approach of the Restatement (Third):

§ 50. Enforcement and construction of discretionary interests.

(1) A discretionary power conferred upon the trustee to determine the benefits of a trust beneficiary is subject to judicial control only to prevent misinterpretation or abuse of the discretion by the trustee.

(2) The benefits to which a beneficiary of a discretionary interest is entitled, and what may constitute an abuse

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<sup>20</sup> Edward C. Halbach, Jr., *Problems of Discretion in Discretionary Trusts*, 61 Colum. L. Rev. 1425, 1429 (1961), Professor Halbach's article followed the Restatement (Second) of Trusts by two years but collects and discusses cases that largely substantiate the discussion of the enforcement of discretionary trusts contained in § 50 of the Restatement (Third) of Trusts. That this is so, of course, should come as no surprise as Professor Halbach is its Reporter. The cases that Professor Halbach discusses in his article should further put to rest any suggestion that the Restatement (Third) of Trusts radically departed from existing law in this regard.

<sup>21</sup> *McNeil v. McNeil*, 798 A.2d 503, 509 (Del. Supr. Ct. 2002). There are potential adverse federal tax consequences if a trustee cannot be held to a reasonableness standard as to discretionary distributions. One of the exceptions to grantor income tax inclusion, for example, requires that a power to appoint must be under a reasonably definite, ascertainable standard: "[I]f a trust instrument provides that the determination of the trustee shall be conclusive with respect to the exercise or non-exercise of a power, the power is not limited by a reasonably definite standard." Treas. Reg. § 1.674(b)-1(b)(5)(i). A similar position could be advanced for federal gift and estate tax purposes. Thus when drafting provisions giving a trustee, who is also a beneficiary, distribution discretion under "ascertainable standards," it may be prudent not to use extended discretion language. Generally, of course, a trust without the trustee's obligation to account is not a trust: "A settlor who attempts to create a trust without any accounting in the trustee is contradicting himself. A trust necessarily grants rights to the beneficiary that are enforceable in equity." Bogert, *supra* n. 34, at § 974.

of discretion by the trustee, depend on the terms of the discretion, including the proper construction of any accompanying standards, and on the settlor's purposes in granting the discretionary power and in creating the trust.<sup>22</sup>

Thus, where under § 187 of the Restatement (Second) a trustee's exercise or non-exercise of a discretionary power is only subject to review upon a showing of "abuse," now under § 50 of the Restatement (Third), a trustee may be second-guessed by a Court if the trustee's exercise of a discretionary power was grounded in a "misinterpretation" or the "abuse" of the discretion, and "abuse" is broadly defined. In either event, the standard governing trustee conduct, regardless of whether such trustee enjoyed extended discretion, was never simply that of good faith alone but good faith in reasonably implementing the settlor's intent for the benefit of the beneficiary.<sup>23</sup>

Neither under the Uniform Trust Code, or at Common Law, is good faith used in the contract law sense. Although "good faith" forms an important role under the Uniform Trust Code, it is not a defined term and one would expect the Courts to continue to use the extensive body of the Common Law of trusts for an understanding of its sense and definition.<sup>24</sup> Whether in the context of a non-modifiable baseline rule under Section 105(b)(3) or when defining the limits of absolute discretion under Section 814(a), good faith under the Uniform Trust Code should be understood in its traditional trust sense. It approximates the Common Law of trusts and, by wedding good faith to the settlor's intent and the interests of the beneficiaries, it dances back to a general fiduciary duty that cannot be modified by the terms of the agreement: "[A] settlor may not so negate the responsibilities of the trustee that the trustee would no longer be acting in the

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<sup>22</sup> The Restatement (Third), § 50.

<sup>23</sup> In one Maryland case, for example, the Court held that the job of the Court is to imagine the testatrix's world view to ascertain her intent. *Bregel v. Julier*, 253 Md. 103, 111, 251 A.2d 891, 895 (1969) ("Sitting in Loretta's armchair, her testamentary intent becomes clear.")

<sup>24</sup> Professor Langbein (one of the Uniform Trust Code drafters), however, suggests that one look to the body of law in contract discussing the meaning of "good faith." John H. Langbein, *Mandatory Rules in the Law of Trusts*, 98 Nw. U. L. Rev. 1105, at note 96 (2004) (directing one to a treatise by Professor Robert S. Summers for "a succinct account of the nuances developed in contract law ... emphasizing the core notion of honest dealing."). The UTC did not so restrict the definition.

fiduciary capacity."<sup>25</sup>

Indeed, the standards regulating a trustee's exercise of discretion as to beneficiary distributions are generally seen as the exercise of fiduciary duty:

A trustee's discretionary power with respect to trust benefits is to be distinguished from a power of appointment. The latter is not subject to fiduciary obligations and may be exercised arbitrarily within the scope of the power.<sup>26</sup>

It is the fiduciary nature of the exercise of discretion that guarantees review and regulation by the Courts: "[N]o language, however strong, will entirely remove any power held in trust from the reach of a Court of Equity."<sup>27</sup>

### 2.11 Beneficiary Right to Enforcement and the Supplemental Needs Trust. As

noted, under the Common Law a beneficiary has the right to enforce his or her rights to a

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<sup>25</sup> Unif. Trust Code § 105, cmt. Within limits, of course, section 105 permits modification of the basic fiduciary duties, including the duty of loyalty. Sections 105(b)(3) and 814(a) provide absolute backstops to the ability to modify such duties by prohibiting the elimination of the obligation to act in good faith and in accordance with the terms and purposes of the trust and in the interests of its beneficiaries. The "missing" piece of this litany, if you will, is the obligation to act in the "sole" interest of the beneficiaries. This opens the door to permitting trustees to engage in acts of self-interest as long as the activity is in the best interest of the trust beneficiaries. John H. Langbein, *Questioning the Trust Law Duty of Loyalty: Sole or Best Interest?*, 114 *Yale L. J.* 929 (2005); Melanie B. Leslie, *In Defense of the No Further Inquiry Rule: A Response to Professor Langbein*, 47 *Wm. & Mary L. Rev.* 541 (2005). The benefit-the-beneficiaries rule is mandatory. Langbein, *Mandatory Rules*, *supra* n. 22, at 1112 ("A default rule is one that the settlor can abridge, but only to the extent the settlor's term is 'for the benefit of [the] beneficiaries.' The requirement that there be benefit to the beneficiaries sets the outer limits on the settlor's power to abridge the default law.") Coupled with the modern portfolio theory of trust investing, the benefit-the-beneficiary rule may cause difficulties when a settlor wishes to have a trust hold a particular asset instead of a broad array of assets and asset classes. Jeffrey A. Cooper, *Empty Promises: Settlor's Intent, the Uniform Trust Code, and the Future of Trust Investment Law*, 88 *B.U. L. Rev.* 1165, 1168 (2008) ("Under Professor Langbein's formulation of the benefit-the-beneficiaries rule, the 'benefit' of a trust provision is determined by reference to objective notions of prudence and efficiency rather than the settlor's subjective intent. Carried to its logical extreme, this emerging reading of the benefit-the beneficiary rule (the 'emerging rule') could redefine the area of trust investment management. Trust documents frequently include specific investment management directives, such as a mandate that the trustee retain a certain portfolio investment or family business. Whereas trust law historically has honored such restrictions, the emerging rule seemingly would enforce only those which maximize economic value for the trust beneficiaries. If the settlor's chosen restrictions fail this objective test of economic benefit, they simply can be cast aside."); Benjamin H. Pruett, *Tales from the Dark Side: Drafting Issues from the Fiduciary's Perspective*, 35 *ACTEC L.J.* 331, 352 (2009) ("These provisions (the benefit-the-beneficiary rules) leave open the possibility that any provision of a trust that deviates from normal fiduciary practice might be found to be 'out of bounds' on the grounds that such a provision violates the rule that the trust provisions must be 'in the interest of' and 'for the benefit of' the beneficiaries.")

<sup>26</sup> Restatement (Third) § 50 cmt. a.

<sup>27</sup> *Stix v. Comm.*, 152 F.2d 562, 563 (2nd Cir. 1945) (J. Learned Hand) ("A case involving a trust providing the trustee with "sole and exclusive discretion.")

distribution from a discretionary trust. Historically, this right of enforcement was described as a right to force the trustee to act "in a state of mind which it was contemplated by the settlor that he should act."<sup>28</sup> The *First National* Court described the right to force a distribution from a discretionary trust upon a showing "that the trustees have acted arbitrary, dishonestly, or from an improper motive in denying the beneficiary the funds sought," citing both Bogert and the Restatement (Second).<sup>29</sup> Elsewhere, the Maryland Court of Appeals has stated that the trustee's exercise, or non-exercise, of the power to distribute from a discretionary trust must be "honestly and reasonably exercised."<sup>30</sup> Despite the position of the first two Restatements of Trusts, the Common Law always gave the Equity Court oversight of a trustee's exercise of discretion to assure that it was handled reasonably to implement the settlor's intent. That a trustee must act "reasonably" means that there is an objective standard by which the Court can judge the trustee's actions. This is the basis of the description of a beneficiary's rights to enforcement of a discretionary trust by the Restatement (Third) of Trusts.<sup>31</sup> It is not a departure from existing law, it is a clearer statement of existing law.

Nationally, the cases involving supplemental needs trusts break down into one of three categories of approaching the trust to determine whether the assets of such a trust can be an available resource – (i) a traditional searching for settlor intent, (ii) a balancing of the competing interests, or (iii) an enforcement of a public policy restricting government benefits regardless of settlor intent:

The case law from the various states offers three quite different answers whether discretionary trusts can be held liable for the support costs of an institutionalized beneficiary. An apt analogy might be three parallel rivers each carving a distinct channel. First,

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<sup>28</sup> Restatement (Second) of Trusts § 187.

<sup>29</sup> *First Nat. Bank of Md. v. Dept. Health and Mental Hygiene*, 284 Md. 720, 399 A.2d 891 (1979).

<sup>30</sup> *Waesche v. Rizzuto*, 224 Md. 573, 587, 168 A.2d 871, 877 (1961) (emphasis added.).

<sup>31</sup> Restatement (Third) of Trusts §50. See pages \_\_\_ through \_\_\_ hereof for a detailed treatment of this issue.

some courts approach the issue as merely a standard problem in the interpretation of trust language in which the parties differ as to the degree of authority granted by the settlor to the trustee. For these courts, the path to "justice" is to carry out the intent of the settlor. Most courts that have used this analysis have held that the trust was not liable for the costs of institutionalization. If the court finds, however, that the settlor intended that the trust support the beneficiary, then the trust will be held liable even if the beneficiary resides in a state institution. If the settlor created a "discretionary trust" and yet intended the trust to provide minimum support, the court may require the trustee to assist the beneficiary even though state support is available. If courts choose to follow this rather narrow route and rely solely upon interpretation of the trust language, then over time discretionary trusts should have little trouble avoiding the costs of institutionalization. Drafters of trusts can insert language to the effect that it is the settlor's intent that the trustee consider alternative support sources (including governmental assistance) in the application of his discretionary distribution power. The trust might even contain explicit instructions that the trustee apply the trust assets in a way calculated to supplement rather than supplant governmental assistance. In short, in jurisdictions where the enforcement of trust language is paramount and the interest of the state as the creditor is irrelevant, then the sagacious trust drafter may successfully employ discretionary trusts.

A second judicial approach is one of balancing the competing interests. These courts do not see the problem as a narrow one of mere interpretation of trust language since a finding of discretionary trustee power does not end the discussion. They are troubled by the prospect of an individual receiving state assistance while enjoying the status of being the beneficiary of a trust. To these courts, it is significant that the state is the creditor who must bear the burden of support if the trustee fails to assist the beneficiary. The courts' solution is to balance the intent of the settlor against the legitimate state interest in reimbursement. While the outcome of this balancing is not altogether certain, in general, the courts have favored the right of the trustee to refuse to assist the beneficiary and to resist state attempts at reimbursement. Typical is the New York case of *Estate of Escher*, in which the court held that (a) the testator would prefer the state to support the beneficiary, and (b) to invade the trust would not benefit the beneficiary but only exhaust the trust assets and destroy the testator's intent. Hence, the trust could not be held liable.

Unlike courts which rely upon a strict trust language interpretation,

courts which look to a "balancing of interests test" open the door to the public policy issue of the right of the state to reimbursement for the cost of institutionalization. Here, the intent of the settlor is not a polestar. Other constellations compete for primacy. If, in the end, the testator's intent prevails, it is only because the justification for state reimbursement has not yet won the day. Perhaps if the argument were recast in the form of more modest demands, the courts might be persuaded. The state, for example, rather than claiming complete reimbursement and eventual exhaustion of the trust assets, might ask only for reimbursement up to the amount required for the cost of noninstitutionalization support. Suppose the cost of institutionalization was \$1000 per month, but the state asked for only \$450 per month from the trust on the theory that \$450 per month would have supported the beneficiary had he not lived in a state hospital. The medical expenses, the cost of habilitation, and the extraordinary costs of institutional maintenance could be borne by the state, while the trust could pay an amount equal to the "normal," noninstitutionalized cost of independent living. That, after all, is what the settlor anticipated: the trust would pay the support costs of an independent, noninstitutionalized beneficiary. If the trustee would have paid \$450 a month to support a noninstitutionalized beneficiary, then arguably the trustee should not be allowed to refuse the same amount of support when the beneficiary is institutionalized. The settlor's intent would be honored since he expected the trust to support the beneficiary if he were unable to support himself. It should be irrelevant to either the settlor or the trustee whether the support payments are made to a rooming house or to a state hospital.

While prorating the beneficiary's costs of support between a trust and the state might not appeal to a court that prefers strict construction of trust language, it should be attractive to one which believes that a discretionary trust cannot serve as an absolute haven for a trustee's discretionary judgment. Since the court would be attempting to balance society's interests against those of the settlor, the court ought to be receptive to a solution that appears to ration justice between the parties. Were such a solution employed, the trust could avoid exhaustion of its principal and thereby remain in existence, perhaps to assist a later deinstitutionalized beneficiary. The state would not go away empty handed and might be content with the old saw that "something is better than nothing."

The third judicial approach has been to eschew any balancing of interests and to look solely to the anomaly (at least to these courts) of a trust beneficiary being supported by the state. If a resident of

a state institution is the beneficiary of a trust, then the beneficiary "owns" something of value. Because state law requires reimbursement from institutional residents, the trust beneficiary is indebted to the state. Since the trust represents value that belongs to the beneficiary, the trust in turn is liable to reimburse the state.

The issue is not one of mere statutory interpretation, however. State statutes that require reimbursement speak of the "estate" of the recipient, which is not a self-defining term. The court's definition of an "estate" is therefore critically dependent upon the court's view about the propriety of a trust beneficiary receiving state services. The justification for holding a trust liable is the public policy argument that the state is a unique creditor since it is the provider of last resort. An individual's right to these state services arises out of poverty, not out of a mere desire for free support. As such, all other support sources ought to be exhausted prior to turning to the state. A discretionary trust is perceived, not as a legitimate manner of effecting the settlor's intent, but as an attempt to shirk the costs of institutionalization. As a policy matter, assets available to support the beneficiary cannot be hidden behind the mantle of a trustee's discretionary authority.<sup>32</sup>

Professor Frolik classifies the *First National* approach as fitting into the second category of balancing competing interests. But that is not really the holding of the *First National* Court. The trust in the *First National* case was a hybrid, somewhere between support and discretionary: distributions "in (the trustees') absolute and uncontrolled discretion ... for her maintenance, comfort and support."<sup>33</sup> The *First National* Court saw its task as determining settlor intent from the text set forth in the instrument. If the settlor intended a support trust, then the funds were available to reimburse the government for its assistance. On the other hand, if the settlor intended a discretionary trust, the funds were not able to be reached by the state. At base, the Court's role was to determine settlor intent: "[O]ur task becomes one of ascertaining, from the four corners of

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<sup>32</sup> Lawrence A. Folik, "Discretionary Trusts for a Disabled Beneficiary: A Solution or Trap for the Unwary?", 46 U. Pitt. L. Rev. 335, 363-4 (1985); Also see Carol Ann Mooney, "Discretionary Trusts: An Estate Plan to Supplement Public Assistance for Disabled Persons," 25 Ariz. L. Rev. 939 (1983); Joseph A. Rosenberg, "Supplemental Needs Trusts for People with Disabilities: the Development of a Private Trust in the Public Interest," 10 B.U. Pub. Int. L. J. 91 (2000).

<sup>33</sup> *First Nat. Bank of Md. v. Dept. Health and Mental Hygiene*, 284 Md. 720, 722, 399 A.2d 891, 892 (1979).



the will, which form of trust the testatrix-settlor intended to create." In Maryland, whether a supplemental needs trust will be breached to pay for governmentally supplied services to a disabled beneficiary depends on whether the settlor intended to create a support trust or a discretionary trust – it depends, in other words, on ascertaining, then following settlor intent. Presumably, a trust instrument giving extended discretion to the trustee ("absolute" or "unlimited" discretion) that also states that the trust is intended to supplement, but not replace, governmental assistance meets the *First National* test.<sup>34</sup> Whether a trustee is bound to follow that direction "reasonably" ought not change the character of the trust.

Although the Maryland Trust Code preserves the categorization of trusts as either "mandatory" or "discretionary," the Uniform Trust Code, which obliterates the distinction, does not alter present law so to jeopardize supplemental needs trusts:

Many supplemental needs trusts are drafted specifically to enable the beneficiary to qualify for Medicaid or other public assistance and to provide the beneficiary with amounts other than for the beneficiary's basic support. Such a trust would typically preclude the trustee from making distributions for the beneficiary's basic support needs and authorize the trustee to make distributions for the beneficiary's supplemental needs--that is, to make distributions for non-essentials such as travel, vacations, cultural activities, private (as opposed to shared) institutional housing, elective medical care, etc. There is substantial and consistent case law holding that the assets of such trusts are not considered available resources for Medicaid qualification purposes; moreover, the result is codified by statute in many jurisdictions. The UTC will have no effect on the continued effectiveness of such trusts for this purpose. Under section 814(a), the trustee is required to carry out the terms of the trust in good faith; if the trust terms prohibit distributions for the beneficiary's basic support needs, the UTC will require adherence to this prohibition.

Next, consider a trust expressly intended to be a supplemental needs trust. To what extent will such a trust be considered an available resource for Medicaid purposes, and what effect, if any,

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<sup>34</sup> The proposed Maryland Trust Act would define a trust like the one in the *First National* case as involving discretionary, not mandatory, distribution provisions. Md. Trust Act § 14.5-103(F), (M) and (W).

will the UTC have on that result? In general, a trust under which the trustee is required to make distribution for the beneficiary's basic support needs will be considered an available resource for Medicaid qualification purposes. The UTC will have no bearing on the treatment of such trusts. On the other hand, in general a wholly discretionary trust without a support standard will not be considered an available resource for Medicaid purposes. As discussed earlier, the UTC should not enhance a beneficiary's ability to compel distributions from such trusts; thus the UTC should not adversely affect the effectiveness of wholly discretionary trusts for purposes of Medicaid qualification.

A more difficult issue is the Medicaid treatment of third-party trusts in which the trustee is granted discretion in making distributions for the beneficiary's support. Putting aside the effect that the UTC may have on this question, the case law concerning such trusts is inconsistent, with some cases holding that the trust assets are an available resource for Medicaid qualification purposes, and others holding that they are not. The cases turn on the court's interpretation of the settlor's intent and thus the outcome of any particular case is largely fact-driven. The UTC should have little, if any, effect on the outcome of these cases, although for several reasons it may help somewhat for those seeking to qualify for public assistance. First, as earlier discussed, the UTC treats support trusts as discretionary, thereby limiting a beneficiary's ability to compel distributions. Second, under a 2005 amendment, the comment to section 814 cites with approval language from the Restatement (Third) to the effect that, in exercising its discretion, a trustee should do so in a manner that avoids disqualifying the beneficiary for public benefits. In a borderline case, the comment to section 814 may help produce a favorable interpretation of the language of a discretionary trust that also includes a support standard.<sup>35</sup>

Again, to the extent that settlor intent drives the outcome, careful drafting will immunize a supplemental needs trust.

## **RIGHT TO INFORMATION**

3.1 ***Duty to Supply Copy of Trust Instrument.*** Both the Uniform Trust Code and the Maryland Trust Act provide that a beneficiary has a right to demand and receive a copy of the

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<sup>35</sup> Robert T. Danforth, "Article Five of the UTC and the Future of Creditors' Rights in Trusts," 27 Cardozo L. Rev. 2551, 2589-90 (2006); Also see Richard E. Davis, "Uniform Trust Code and SNTs: Should UTC Be Feared, Embraced or Ignored?", 5 NAELA J. 13 (2009).

trust instrument.<sup>36</sup> The Uniform Trust Code makes this an absolute right upon demand by a beneficiary. The Maryland approach, however, qualifies the right: "Unless unreasonable under the circumstances, a trustee shall ..." and only a "qualified beneficiary" has this right.<sup>37</sup>

Arguably, the Uniform Trust Code codified the Common Law duty to inform and report:

Under the most basic principle, a beneficiary of an irrevocable trust is always entitled to information about the trust that is reasonably necessary to allow the beneficiary to enforce the trust, even if the terms of the trust restrict disclosure. This traditional principle requires that the existence of the trust itself must always be disclosed -- if a beneficiary does not know that a trust even exists for her benefit, then she will not be able to enforce that trust. The basic fact that a trust exists, however, is not normally sufficient. The trustee must also periodically provide beneficiaries information regarding the administration and condition of the trust. Without this information about the method of administration, the beneficiaries may remain unaware of breaches of fiduciary duty until it is too late to obtain relief.

While the duty to inform is normally triggered when a beneficiary requests information from the trustee, the duty is present even without such a request if deemed to be necessary to protect the beneficiary from a third party. For example, if the beneficiary is about to sell her interest in a trust to a third party, and the trustee is aware that the beneficiary's interest in that trust is more valuable than the beneficiary realizes (and could justify demanding a higher price from the third party), then the trustee is obligated to inform the beneficiary of this information. Additionally, the duty to inform is not limited to current beneficiaries, but also runs "to future beneficiaries regardless of whether [the future beneficiaries'] interests are vested or contingent." In order to fulfill the duty to inform, a trustee is required to provide a full copy of the trust instrument to the beneficiaries, not merely those portions that directly relate to a particular beneficiary.<sup>38</sup>

Interestingly, setting forth this basic Common Law principle and the extent to which a

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<sup>36</sup> UTC § 813(b)(1); MTC § 14.5-813(A).

<sup>37</sup> MTC § 14.5-813(A). ("unless unreasonable under the circumstances ..."). Also, as with the UTC, only qualified beneficiaries get notice and information. A "qualified" beneficiary is the current distribute/beneficiary plus one level below that beneficiary.

<sup>38</sup> Lauren Z. Curry, Agents in Secrecy: The Use of Information Surrogates in Trust Administration, 64 Vand. L. Rev. 925, 929-30 (2011). See, for example, *Fletcher v. Fletcher*, 480 S.E. 2d 488 (V. Ct. App. 1997), for a case supporting this traditional Common Law approach.

settlor could restrict the information flowing to a beneficiary was "the most discussed issue during the drafting of the UTC."<sup>39</sup> Indeed, the majority of jurisdictions that have generally adopted the Uniform Trust Code have modified the provisions relating to disclosure of the trust and of information related to the administration of the trust.<sup>40</sup>

The debate regarding the extent of information that must be provided to the beneficiaries is triggered "by those who advocate allowing the settlor to restrict or eliminate the trustee's duty to inform and report. Some settlors worry about the effect that knowledge of the trust and its administration might have on the beneficiaries. Consequently, some lawyers advocate the ability to create a 'quiet' trust or even a secret trust."<sup>41</sup>

The proposed Maryland Trust Act makes disclosure subject to a reasonableness test<sup>42</sup> may open the opportunity, if enacted, for a settlor to fine-tune disclosure. Thus a settlor might pick a surrogate to receive information (particularly useful, perhaps, in special needs trusts) or limit the information to that part of the trust specifically dealing with that particular beneficiary.<sup>43</sup> On the other hand, the Maryland Trust Act would limit challenges to a trustee's action to one year after the action is "adequately disclosed" to a beneficiary.<sup>44</sup> This shortened statute of limitations would tend to encourage disclosure.

**3.2    *The Nature and Scope of the Trustee's Duty.*** The issue as to the scope and nature of a trustee's duty to provide information to a beneficiary was side-stepped in a recent case

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<sup>39</sup> David W. English, The Uniform Trust Code (2000): Significant Provisions and Policy Issues," 67 Mo. L. Rev. 143, 202 (2002).

<sup>40</sup> Kevin D. Millard, The Trustee's Duty to Inform and Report Under the Uniform Trust Code, 40 Real Prop. Prob. And Tr. J. 373, 384 (2005).

<sup>41</sup> Id. at 374.

<sup>42</sup> MTC § 14.5-813(A).

<sup>43</sup> Indeed, this is the approach adopted by the Uniform Probate Code. UPC § 7-303(b) ("[T]he trustee shall provide the beneficiary with a copy of the terms of the trust which describes or affects his interest ...") (Emphasis added.)

<sup>44</sup> MTC § 14.5-904(a).

by the Court of Appeals. On its way up in *Johnson v. Johnson*,<sup>45</sup> however, the Court of Special Appeals had characterized the right to information and to an accounting in sweeping terms that emphasized that those rights were essential if beneficiaries have enforceable rights. The Court of Special Appeals, quoting Bogert, stated:

A [testator] who attempts to create a trust without any accountability in the trustee is contradicting himself. A trust necessarily grants rights to the beneficiary that are enforceable in equity. If the trustee cannot be called to account, the beneficiary cannot force the trustee to any particular line of conduct with regard to the trust property or sue for breach of trust. The trustee may do as he likes with the property, and the beneficiary is without remedy. If the court finds that the settlor really intended a trust, it would seem that accountability in chancery or other court must inevitably follow as an incident. Without an account the beneficiary must be in the dark as to whether there has been a breach of trust and so is prevented as a practical matter from holding the trustee liable for a breach.<sup>46</sup>

*Johnson* involved the remainder beneficiary in a credit shelter trust seeking an accounting from his stepmother, the sole trustee and the only beneficiary during her life. Although the credit shelter trust provided that she receive all income during life, the right to withdraw principal was governed, unsurprisingly, by an ascertainable standard.<sup>47</sup> The trust also provided for a marital trust to which the stepmother/trustee had extensive rights, including, she claimed, a general inter vivos and testamentary power of appointment.<sup>48</sup>

In *Johnson* the remainder beneficiary was granted his right to an account in the circuit

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<sup>45</sup> *Johnson v. Johnson*, 423 Md. 602, 32 A.3d 1072 (2011). The author of these materials was the attorney for the beneficiary in his quest for an accounting and was such attorney since the origin of the case in the Circuit Court for Calvert County. The beneficiary has prevailed three times: in the Circuit Court for Calvert County, in the Court of Special Appeals, and in the Court of Appeals.

<sup>46</sup> *Johnson v. Johnson*, 184 Md. App. 643, 657, 967 A.2d 274, 282 (2009) [quoting Bogert § 973].

<sup>47</sup> The trust explicitly provided that the credit shelter trust discretionary distributions were to be governed by an ascertainable standard. In the absence of such an explicit provision, however, Maryland law may impose ascertainable standards on a trustee's/beneficiary's right to withdraw under certain circumstances. Estates & Trusts Article § 14-109.

<sup>48</sup> The trust document was not altogether clear and the remainderman never conceded that there was an inter vivos general power.

court. The Court of Appeals dismissed the appeal as not ripe due to the lack of an appealable order and directed the opinion of the Court of Special Appeals to be vacated.<sup>49</sup>

**3.3    *The Nature and Form of the Accounting.*** Thus, the last Maryland case touching on the nature and scope of a beneficiary's right to an account is *Jacob v. Davis*. That case reversed the trial court which granted summary judgment to the trustee against the remainder beneficiary, denying the remainder beneficiary's request for an accounting:

The leading authorities on trusts are unequivocal in their articulation of the right of the remainder beneficiary to an accounting during the lifetime of the income beneficiary and after his or her death. Austin W. Scott and William F. Fratcher, *The Law of Trusts*, (Vol. IIA 4<sup>th</sup> ed.1987) § 172 explains:

A trustee is under a duty to the beneficiaries of the trust to keep clear and accurate accounts. His accounts should show what he has received and what he has expended. They should show what gains have accrued and what losses have been incurred on changes of investments. If the trust is created for beneficiaries in succession, the accounts should show what receipts and what expenditures are allocated to principal and what are allocated to income.

If the trustee fails to keep proper accounts, all doubts will be resolved against him and not in his favor ...

Not only must the trustee keep accounts, but he must render an accounting when called on to do so at reasonable times by the beneficiaries. Where there are several beneficiaries, any one of them can compel an accounting by the trustee. The fact that a beneficiary has only a future interest ... does not preclude him from compelling the trustee to account.

*Id.* (emphasis added).

George Bogert, *The Law of Trusts and Trustees*, (Rev.2d ed.1983) § 961 takes a similar view:

[T]he beneficiary is entitled to demand of the trustee all information about the trust and its execution for which he has any reasonable use....

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<sup>49</sup> Presumably a denial of an accounting by a remainder beneficiary would be an appealable order.

If the beneficiary asks for relevant information about the terms of the trust, its present status, past acts of management, the intent of the trustee as to future administration, or other incidents of the administration of the trust, and these requests are made at a reasonable time and place and not merely vexatiously, it is the duty of the trustee to give the beneficiary the information for which he has asked.

Both Scott, *supra*, and Bogert, *supra*, cite numerous cases in support of the rule that a remainder beneficiary is entitled to an accounting. Scott, *supra*, § 172 at 454; Bogert, *supra*, § 973.

In *Jacob v. Davis*, the trustee provided the remainder beneficiary with various information – brokerage accounts, check registers, probate accountings – but no information detailing an allocation of receipts and expenses between income and principal. The Court of Special Appeals found that such an allocation is mandated by the Maryland Principal and Income Act:

One of appellant's complaints about the information furnished by appellees is that there was no allocation of receipts and expenses to either trust income or trust principal as required under Md.Code (1974, 1991 Repl.Vol.), §§ 14–201 *et seq.* of the Estates and Trusts Article ("Principal and Income Act"). Appellant's expert witness testified that, based on the records provided, it appeared that the trustees had made no allocation; and therefore, the burden of all expenses was borne by the remainder interest. Section 14–202 of the Principal and Income Act provides in pertinent part:

(a) A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

(1) In accordance with the terms of the trust instrument, notwithstanding contrary provisions of this subtitle;

(2) In the absence of any contrary terms of the trust instrument, in accordance with the provisions of this subtitle; ...

*Id.* at § 14–202. The remaining sections of the Principal and Income Act set forth detailed rules as to how a trustee should

allocate receipts and expenses between the income beneficiary and the remaindermen.

The Maryland Principal and Income Act may dictate the rules as to how items are to be treated, it does not mandate a particular form that a fiduciary accounting must take.<sup>50</sup> Indeed, the Uniform Trust Code drops the word "account" so as not to suggest that the trustee must render information to the beneficiaries in any particular form or with any particular degree of formality.<sup>51</sup>

Nonetheless, a project was initiated in 1970 by a consortium of the American Bar Association, the American College of Estates and Trusts Counsel, the American Institute of Certified Public Accountants and others to establish uniform fiduciary accounting principles and to suggest a "simplified" and comprehensive format for fiduciary accountings. Finalized in 1984, this suggested form is by definition, only one approach and, indeed, not one that is uniformly followed.<sup>52</sup>

Basically, the fiduciary account can be rendered in any format as long as it equips the beneficiaries to protect their interests.

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<sup>50</sup> An accounting ordered by the Court, on the other hand, does provide a form for such an accounting. See Md. Rule 10-708 ("Fiduciary's Account and Report of Trust Clerk") set out at Appendix B hereof.

<sup>51</sup> Julia C. Zajac and Robert Whiteman, "Fiduciary Accounting Statutes for the 21st Century," 36 ACTEC L.J. 443, 454-5 (2010) ("The UTC utilizes the term 'report' instead of 'accounting' in order to negate any inference that the report must be prepared in any particular format or with a high degree of formality.")

<sup>52</sup> This method of fiduciary accounting would be acceptable in Maryland and in most jurisdictions. Yet it is not necessarily the last word in fiduciary accounting formats: "The Project focuses essentially on the Charge and Discharge system of accounting ... the most popular fiduciary accounting in the nineteenth century. The authors of the article stress that in today's more technologically advance world it is possible to have a more up-to-date and flexible system ..." Julia C. Zajac and Robert Whiteman, "Fiduciary Accounting Statutes for the 21st Century," 36 ACTEC L.J. 443, 451 (2010). See Appendix A for the report of the Project and a Model Trust Account both adopted in Pennsylvania.



# **NATIONAL FIDUCIARY ACCOUNTING STANDARDS PROJECT**

## **1983 REPORT OF FIDUCIARY ACCOUNTING STANDARDS COMMITTEE**

### **Scope of the Project**

"Fiduciary Accounting" does not have one commonly understood meaning. In a broad sense, it can mean the entire process whereby a fiduciary – normally a personal representative, trustee or guardian – communicates information on an on-going basis regarding his administration of a fund and periodically justifies his administration to the parties in interest and, perhaps, to a court. In another sense, it may be the process whereby a fiduciary – here more often a trustee – periodically keeps parties in interest currently informed of transactions and investment policies being followed.

In a narrower sense, to which this report is directed, a fiduciary accounting may refer to the statement prepared by a fiduciary at the close of his administration of a fund (or at some appropriate intermediate stage) to reflect transactions that have occurred and to be presented to the parties in interest as part of a process whereby the fiduciary seeks discharge from liability for the events disclosed.

There is undoubtedly much that can be accomplished to improve the general administration of estates and trusts. A broad study of our basic fiduciary accounting models could lead to dramatic change in the future. But such a study as well as general questions regarding what constitutes fair and adequate procedures in a large variety of circumstances remain beyond the scope of this project.

### **Advantages to Be Gained from Uniformity**

The manner in which a fiduciary records receipts and disbursements and gains and losses from investment during the course of administration is commonly dictated by local practice, court rule or statute. In many jurisdictions there is a lack of clarity or consistency regarding the form and content of such an accounting. A uniform form of account and the creation of guiding principles of accounting would be a most helpful development.

Through the development of a uniform form of account the forms that are now in use can be improved. It would not be expected that immediate change to a model account format would be required of corporate fiduciaries with substantial investments in computer programs but ultimately, standardization of forms will permit more effective utilization of machine record keeping techniques and significant cost savings. Standards for acceptable accounting practices will provide needed guidelines.

Since proposed standards can be illustrated by example, we have focused on form and content of a statement of transactions, recognizing that a proper form of account is important whether the account is to be presented in court or employed as part of an informal settlement process between a fiduciary and beneficiaries.

## **Performance Accounting Distinguished**

No effort has been made to standardize that kind of fiduciary accounting which is directed toward an analysis of the investment performance of a fund. Accounts of this type are often distributed to beneficiaries by corporate fiduciaries at regular intervals, generally one year or less, and contain statements of receipts, disbursements and assets on hand at the close of the period. The statement of assets customarily discloses additional information such as cost or tax basis, current market value, current yield expressed sometimes both in dollars and as a percentage of cost or market, and may show the distribution of investments among various categories such as bonds and stocks with subdivision of stocks by industry. These statements can be immensely valuable, both as an aid to the fiduciary in analyzing the structure of the portfolio, and for the information of beneficiaries. Indeed, because this form of report reflects and analyzes current investment policy, it may be described as more positive and forward looking than an unrationalized account of past transactions which is commonly used as a basis for discharge from responsibility for past acts. However, accountings of this type are fundamentally different in purpose from the traditional concept of discharge accounting by a fiduciary. There are inherent limitations that tend to restrict their use to professional institutionalized fiduciaries, and the need for establishment of standards appears to be less pressing than in the conventional area of discharge accounting.

## **Basic Objectives and General Standards of Fiduciary Accounting**

The fundamental objective of an account should be to provide essential and useful information in a meaningful form to the parties interested in the accounting process. It is also important that the account should be sufficiently simple to enable its preparation without unreasonable expense to the fund, or undue distraction from the on-going administration of the estate. Finally, although the parties should understand the nature of the accounting process and the need to protect their interests, the relationship of trust and confidence existing between the fiduciary and the beneficiaries is itself important and the account should not be presented in an adversary format that will unnecessarily impair this relationship.

## **Competing Goals**

Maximum clarity, full disclosure and complete description and explanation of all events to be disclosed appear to be standards that all would accept. But, in combination, they may present many difficulties. For example, clarity may be obscured by the detail that is required for a disclosure that omits nothing. Full explanation of all investment decisions might produce a massive document that few beneficiaries would read. On balance, a set of flexible principles keyed to the standard of good faith supports the utmost protection of the parties and permits accounting standards to change and mature as circumstances require.

Fiduciary accounts rarely will be identical. In addition to the predictable variables of the size and composition of the assets, the period covered and the position of those interested, the significance of particular issues in a controversy may be illuminated by special accounting treatment of some portion of a fund. This suggests that a fiduciary should have enough flexibility to state an account in the manner best adapted to the particular circumstances and

discourages any effort to prescribe a totally rigid format. Accordingly, the following principles are suggested as general standards for fiduciary accounting.

### **Model Accounts**

Sample Executor's and Trustee's accounts are attached to illustrate the application of the suggested standards for fiduciary accounting.

### **Fiduciary Accounting Principles**

**I. Accounts should be stated in a manner that is understandable by persons who are not familiar with practices and terminology peculiar to the administration of estates and trusts.**

#### **Commentary:**

In order for an account to fulfill its basic function of communication, it is essential that it be stated in a manner that recognizes that the interested parties are not usually familiar with fiduciary accounts. It is neither practical nor desirable to require that accounts be tailored to meet individual disabilities of particular parties but any account should be capable of being understood by a person of average intelligence, literate in English, and familiar with basic financial terms who has read it with care and attention.

Problems arising from terminology or style are usually a reflection of the fact that people who become versed in a particular form of practice tend to forget that terms which are familiar and useful to them may convey nothing to someone else or may even be affirmatively misleading. For example, the terms "debit" and "credit" are generally incomprehensible to people with no knowledge of bookkeeping and many people who are familiar with them in other contexts would assume that in the context of fiduciary accounting, the receipt of an item is a "credit" to the fund rather than a "debit" to the fiduciary.

While the need for concise presentation makes a certain amount of abbreviation both acceptable and necessary, uncommon abbreviation of matters essential to an understanding of the account should be avoided or explained.

No position is taken for or against the use of direct print-outs from machine accounting systems. The quality of the accounts produced by these systems varies widely in the extent to which they can be understood by persons who are not familiar with them. To endorse or object to a direct print-out because it is produced by machine from previously stored data would miss the essential point by focusing attention upon the manner of preparation rather than the product.

**II. A fiduciary account shall begin with a concise summary of its purpose and content.**

**Commentary:**

Very few people can be expected to pay much attention to a document unless they have some understanding of its general purpose and its significance to them. Even with such an understanding, impressions derived from the first page or two will often determine whether the rest is read. The use that is made of these pages is therefore of particular significance.

The cover page should disclose the nature and function of the account. While a complete explanation of the significance of the account and the effect of its presentation upon the rights of the parties is obviously impractical for inclusion at this point, there should be at least a brief statement identifying the fiduciary and the subject matter, noting the importance of examining the account and giving an address where more information can be obtained.

It is assumed that the parties would also have enough information from other sources to understand the nature of their relationship to the fund (e.g., residuary legatee, life tenant, remainderman), the function of the account, and the obligation of the fiduciary to supply further relevant information upon request. It is also assumed that notice will be given of any significant procedural considerations such as limitation on the time within which objections must be presented. This would normally be provided by prior or contemporaneous memoranda, correspondence or discussions.

A summary of the account shall also be presented at the outset. This summary, organized as a table of contents, shall indicate the order of the details presented in the account and shall show separate totals for the aggregate of the assets on hand at the beginning of the accounting period; transactions during the period; and the assets remaining on hand at the end of the period. Each entry in the summary shall be supported by a schedule in the account that provides the details on which the summary is based.

**III. A fiduciary account shall contain sufficient information to put the interested parties on notice as to all significant transactions affecting administration during the accounting period.**

**Commentary:**

The presentation of the information in an account shall allow an interested party to follow the progress of the fiduciary's administration of assets during the accounting period without reference to an inventory or earlier accounting that is not included in the current account.

An account is not complete if it does not itemize assets on hand at the beginning of the accounting period.

**Illustrations:**

3.1 The first account for a decedent's estate or a trust should detail the items received by the fiduciary and for which he is responsible. It should not simply refer to the total amount of an inventory filed elsewhere or assets described in a schedule attached to a deed of trust.

3.2 In later accounts for an estate or trust, the opening balance should not simply refer to the total value of principal on hand as shown in detail in the prior account, but should list each item separately.

Instead of retyping the complete list of assets in the opening balance, the accountant may prefer to attach as an exhibit a copy of the inventory, closing balance from last account, etc., as appropriate.

Transactions shall be described in sufficient detail to give interested parties notice of their purpose and effect. It should be recognized that too much detail may be counterproductive to making the account understandable. In accounts covering long periods or dealing with extensive assets, it is usually desirable to consolidate information. For instance, where income from a number of securities is being accounted for over a long period of time, a statement of the total dividends received on each security with appropriate indication of changes in the number of shares held will be more readily understandable and easier to check for completeness than a chronological listing of all dividends received.

Although detail should generally be avoided for routine transactions, it will often be necessary to a proper understanding of an event that is somewhat out of the ordinary.

**Illustrations:**

3.3 Extraordinary appraisal costs should be shown separately and explained.

3.4 Interest and penalties in connection with later filing of tax returns should be shown separately and explained.

3.5 An extraordinary allocation between principal and income such as apportionment of proceeds of property acquired on foreclosure should be separately stated and explained.

3.6 Computation of a formula marital deduction gift involving non-probate assets should be explained.

**IV. A fiduciary account shall include both carrying values—representing the value of assets at acquisition by the fiduciary—and current values at the beginning and end of the accounting period.**

**Commentary:**

In order for transactions to be reported on a consistent basis, an appropriate carrying value for assets must be chosen and employed consistently.

The carrying value of an asset should reflect its value at the time it is acquired by the fiduciary (or a predecessor fiduciary). When such a value is not precisely determinable, the figure used should reflect a thoughtful decision by the fiduciary. For assets owned by a decedent, inventory values or estate tax values—generally reflective of date of death values—would be appropriate. Assets received in kind by a trustee from a settlor of an inter-vivos trust should be carried at their value at the time of receipt. For assets purchased during the administration of the fund, cost would normally be used. Use of Federal income tax bases for carrying value is acceptable when basis is reasonably representative of real values at the time of acquisition. Use of tax basis as a carrying value under other circumstances could be affirmatively misleading to beneficiaries and therefore is not appropriate.

In the Model Account, carrying value is referred to as “fiduciary acquisition value.” The Model Account establishes the initial carrying value of assets as their value at date of death for inventoried assets, date of receipt for subsequent receipts and cost for investments.

Carrying value would not normally be adjusted for depreciation.

Except for adjustments that occur normally under the accounting system in use, carrying values should generally be continued unchanged through successive accounts and assets should not be arbitrarily “written up” or “written down.” In some circumstances, however, with proper disclosure and explanation, carrying value may be adjusted.

**Illustrations:**

4.1 Carrying values based on date of death may be adjusted to reflect changes on audit of estate or inheritance tax returns.

4.2 Where appropriate under applicable local law, a successor fiduciary may adjust the carrying value of assets to reflect values at the start of his administration.

4.3 Assets received in kind in satisfaction of a pecuniary legacy should be carried at the value used for purposes of distribution.

Though essential for accounting purposes, carrying values are commonly misunderstood by laymen as being a representation of actual values. To avoid this, the account should include both current values and carrying values.

The value of assets at the beginning and ending of each accounting period is necessary information of the evaluation of investment performance. Therefore, the account should show current values at the start of the period for all assets whose carrying values were established in a prior accounting period.

**Illustrations:**

4.4 The opening balance of the first account of a testamentary trustee will usually contain assets received in kind from the executor. Unless the carrying value was written up at the time of distribution (e.g., 4.2 or 4.3 supra) these assets will be carried at a value established during the executor's administration. The current value at the beginning of the accounting period should also be shown.

4.5 An executor's first account will normally carry assets at inventory (date of death) values or cost. No separate listing of current values at the beginning of the accounting period is necessary.

Current values should also be shown for all assets on hand at the close of the accounting period. The date on which current values are determined shall be stated and shall be the last day of the accounting period, or a date as close thereto as reasonably possible.

Current values should be shown in a column parallel to the column of carrying values. Both columns should be totalled.

In determining current values for assets for which there is no readily ascertainable current value, the source of the value stated in the account shall be explained. The fiduciary shall make a good faith effort to determine realistic values but should not be expected to incur expenses for appraisals or similar costs when there is no reason to expect that the resulting information will be of practical consequence to the administration of the estate or the protection of the interests of the parties.

**Illustrations:**

4.6 When an asset is held under circumstances that make it clear that it will not be sold (e.g., a residence held for use of a beneficiary) the fiduciary's estimate of value would be acceptable in lieu of an appraisal.

4.7 Consideration such as a pending tax audit or offer of the property for sale may indicate the advisability of not publishing the fiduciary's best estimate of value. In such circumstances, a statement that value was fixed by some method such as "per company books", "formula under buy-sell agreement", "300% of assessed value" would be acceptable, but the fiduciary would be expected to provide further information to interested parties upon request.

**V. Gains and losses incurred during the accounting period shall be shown separately in the same schedule.**

**Commentary:**

Each transaction involving the sale or other disposition of securities during the accounting period shall be shown as a separate item in one combined schedule of the account indicating the transaction, date, explanation, and any gain or loss.

Although gains and losses from the sale of securities can be shown separately in accounts, the preferred method of presentation is to present this information in a single schedule. Such a presentation provides the most meaningful description of investment performance and will tend to clarify relationships between gains and losses that are deliberately realized at the same time.

**VI. The account shall show significant transactions that do not affect the amount for which the fiduciary is accountable.**

**Commentary:**

Transactions such as the purchase of an investment, receipt of a stock split or change of a corporate name do not alter the total fund for which a fiduciary is accountable but must be shown in order to permit analysis and an understanding of the administration of the fund. These can be best shown in information schedules.

One schedule should list all investments made during the accounting period. It should include those subsequently sold as well as those still on hand. Frequently the same money will be used for a series of investments. Therefore, the schedule should not be totalled in order to avoid giving an exaggerated idea of the size of the fund.

A second schedule (entitled "Changes in Investment Holdings" in the Model Account) should show all transactions affecting a particular security holding such as purchase of additional shares, partial sales, stock splits, change of corporate name, divestment distributions, etc. This schedule, similar to a ledger account for each holding, will reconcile opening and closing entries for particular holdings, explain changes in carrying value and avoid extensive searches through the account for information scattered among other schedules.

*Committee Comment:* The Model Executor's Account and Model Trustee's Account published in connection with the above Report of the Fiduciary Accounting Standards Committee have been replaced by the Model Estate Account and Model Trust Account which appear in this Appendix.



Model Trust Account

IN THE COURT OF COMMON PLEAS OF \_\_\_\_\_ COUNTY, PA.  
ORPHANS' COURT DIVISION  
NO. 12345 of 1994

FIRST AND FINAL ACCOUNT  
For the "Marital Trust" Established under the Will of  
John H. Doe, Deceased

Stated by UPSTANDING TRUST COMPANY, Surviving Trustee  
and  
Mary W. Doe (Deceased Trustee, Died December 30, 2004)  
presented on her behalf by UPSTANDING TRUST COMPANY,  
as Executor of her Will

John H. Doe, Died:	01/30/92
Date of First Receipt of Funds:	02/11/94
Accounting for the period:	02/11/94 to 06/15/06

Purpose of Account: The Trustees offer this Account to  
acquaint interested parties with the transactions  
that have occurred during the Administration.

It is important that the Account be carefully examined.  
Requests for additional information, questions or  
objections can be discussed with:

[Name of Counsel]  
[Address]  
[Address]  
[Telephone Number]  
Supreme Court I.D. No. \_\_\_\_\_

SUMMARY OF ACCOUNT

	<u>PAGES</u>		
<u>PRINCIPAL</u>			
Receipts	3	\$	158,259.02
Net Gain on Sales or Disposition	4-5		<u>114,749.47</u>
		\$	273,008.49
Less Disbursements:			
General Disbursements	6-7	\$	3,782.36
Fees and Commissions	7		<u>4,300.00</u>
			-8,082.36
Balance before Distributions		\$	264,926.13
Distributions to Beneficiaries	8		<u>-10,703.79</u>
Principal Balance on Hand	9	\$	254,222.34
For Information:			
Investments Made	10		
Changes in Holdings	11-13		
<u>INCOME</u>			
Receipts	14	\$	7,755.20
Less Disbursements	15		<u>-72.40</u>
Balance before Distributions		\$	7,682.80
Distributions to Beneficiaries	16		<u>-1,400.19</u>
Income Balance on Hand	17	\$	6,282.61
COMBINED BALANCE ON HAND		\$	<u>260,504.95</u>
=====			
Verification	18		

PRINCIPAL RECEIPTS

Prior Award:

Assets Awarded trustees by Adjudication dated  
January 30, 1994, of Smith, J., upon the  
First Account of the Executors and the  
Schedule of Distribution pursuant  
thereto:

Real Estate

Premises 789 Main Street, Media, PA	\$ 10,000.00
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Bonds

\$7,000 Bethlehem, PA General Bonds 1.75% due 04/01/1995	6,965.00
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\$20,000 Ohio Turnpike Commission Project One bonds, 3.25% due 06/01/2025	18,025.00
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Common Stocks

352 Shs. American Telephone & Telegraph Co.	54,340.00
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5 Shs. Southwest Rodeo Oil Co.	1.00
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703 Shs. XYZ & Co.	67,663.75
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	\$ 156,994.75
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Checking account, Upstanding Trust Co.	264.27
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	\$ 157,259.02
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SUBSEQUENT RECEIPTS

03/15/94 Adjustment of Sewer Assessment	1,000.00
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TOTAL PRINCIPAL RECEIPTS	\$ 158,259.02
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PRINCIPAL GAINS OR LOSSES ON SALES OR OTHER DISPOSITIONS

		<u>GAIN</u>	<u>LOSS</u>
07/02/94 103 Shs. XYZ & Co.			
Net Proceeds	25,614.54		
Acquisition Value	<u>9,913.75</u>	\$ 15,700.79	
04/06/95 100 Shs. XYZ & Co.			
Net Proceeds	22,226.25		
Acquisition Value	<u>9,625.00</u>	12,601.25	
07/11/95 5 Shs. Southwest Rodeo Oil Co.			
Company declared bankruptcy			
Net Proceeds	0.00		
Acquisition Value	<u>1.00</u>		\$ 1.00
03/22/96 1,056 Rts. American Telephone & Telegraph Co.			
Net Proceeds	1,484.41		
Acquisition Value	<u>1,484.41</u>		
03/12/98 1,056 Rts. American Telephone & Telegraph Co.			
Net Proceeds	2,507.00		
Acquisition Value	<u>2,507.00</u>		
12/29/01 \$20,000 Ohio Turnpike Commission Project			
One bonds, 3.25% due 06/01/2025			
Net Proceeds	18,450.00		
Acquisition Value	<u>18,025.00</u>	425.00	
05/05/05 2,112 Rts. American Telephone & Telegraph Co.			
Net Proceeds	1,225.49		
Acquisition Value	<u>1,225.49</u>		
06/19/05 500 Shs. XYZ & Co.			
Net Proceeds	56,337.21		
Acquisition Value	<u>1.00</u>	56,336.21	
08/09/05 \$50,000 Commercial Credit Co., demand note			
Net Proceeds	50,000.00		
Acquisition Value	<u>50,000.00</u>		
FORWARD		\$ 85,063.25	\$ 1.00

PRINCIPAL GAINS OR LOSSES ON SALES OR OTHER DISPOSITIONS (cont'd)

		<u>GAIN</u>	<u>LOSS</u>
	FORWARD	\$ 85,063.25	\$ 1.00
09/22/05	852 Shs. American Telephone & Telegraph Co.		
	Net Proceeds 39,503.92		
	Acquisition Value <u>19,816.70</u>	19,687.22	
11/17/05	Premises 789 Main Street, Media, PA		
	Sold receiving		
	Purchase Money Mortgage \$15,000.00		
	Cash 5,000.00		
	Less: Settlement Costs 1,200.00		
	as itemized in Principal Disbursements		
	Net Proceeds 20,000.00		
	Acquisition Value <u>10,000.00</u>	10,000.00	
11/17/05	\$70,000 U.S. Treasury Bills due 11/19/2005		
	Net Proceeds 68,000.00		
	Acquisition Value <u>68,000.00</u>		
06/15/06	Mortgage on 789 Main Street Media, PA		
	Principal received on account		
	Net Proceeds 250.00		
	Acquisition Value <u>250.00</u>		
	TOTALS	\$ 114,750.47	\$ 1.00
		=====	=====
	NET GAIN TRANSFERRED TO SUMMARY		\$ 114,749.47
			=====

DISBURSEMENTS OF PRINCIPAL

GENERAL DISBURSEMENTS

Federal Fiduciary Income Tax

04/15/05 1st Qtr. Estimated	\$	300.00	
06/15/05 2nd Qtr. Estimated		300.00	
09/15/05 3rd Qtr. Estimated		300.00	
01/15/06 4th Qtr. Estimated		300.00	
04/15/06 Balance 2005		172.00	
04/15/06 1st Qtr. Estimated		290.00	
06/15/06 2nd Qtr. Estimated		<u>290.00</u>	\$ 1,952.00

Pennsylvania Fiduciary Income Tax

04/15/05 1st Qtr. Estimated	\$	100.00	
06/15/05 2nd Qtr. Estimated		100.00	
09/15/05 3rd Qtr. Estimated		100.00	
12/30/05 4th Qtr. Estimated		100.00	
04/15/06 1st Qtr. Estimated		90.00	
05/15/06 Refund 2005		-27.00	
06/15/06 2nd Qtr. Estimated		<u>90.00</u>	553.00

05/15/05 Fire Insurance, 789 Main Street, Media, PA			50.00
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11/17/05 Expenses re Sale of Premises 789 Main Street Media, PA:			
Commission	\$	1,000.00	
Transfer Tax		<u>200.00</u>	1,200.00

FORWARD		<u>\$</u>	3,755.00
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DISBURSEMENTS OF PRINCIPAL (cont'd)

FORWARD \$ 3,755.00

GENERAL DISBURSEMENTS (cont'd)

06/15/06 Reimbursement to Smith, Jones and Brown,  
for Miscellaneous expenses, 02/11/06 to  
date:

Postage and insurance	\$	26.21		
Telephone		<u>1.15</u>	<u>27.36</u>	\$ 3,782.36

FEES AND COMMISSIONS

To be paid:

Smith, Jones and Brown

Attorney's fees

4,300.00

TOTAL DISBURSEMENTS OF PRINCIPAL

\$ 8,082.36  
=====

DISTRIBUTIONS OF PRINCIPAL TO BENEFICIARIES

To: Mary W. Doe

07/01/94	\$7,000 Bethlehem, PA General Bonds 1.75%		
	due 04/01/1995	\$	6,965.00
07/02/94	Cash	<u>238.79</u>	\$ 7,203.79

To: Goodworks Charity

05/04/06	Advance distribution, cash		<u>3,500.00</u>
TOTAL DISTRIBUTIONS OF PRINCIPAL TO BENEFICIARIES		\$	10,703.79
			=====



PRINCIPAL BALANCE ON HAND

	<u>VALUE AT 06/15/2006</u>	<u>FIDUCIARY ACQUISITION VALUE</u>
<u>Bonds</u>		
\$120,000 ABC Corp, demand note	\$ 120,000.00	\$ 120,000.00
\$20,000 Indiana Toll Rd. Comm. East/West Revenue Bonds, 3.5% due 12/01/2022	13,600.00	17,275.00
<u>Common Stocks</u>		
680 Shs. ABC Corp.	56,355.00	48,124.00
1,260 Shs. American Telephone & Telegraph Co.	57,015.00	29,306.40
<u>Mortgages</u>		
Mortgage on 789 Main Street Media, PA	14,750.00	14,750.00
	<u>\$ 261,720.00</u>	<u>\$ 229,455.40</u>
Checking Account, Upstanding Trust Co.	24,766.94	24,766.94
	<u>286,486.94</u>	<u>254,222.34</u>
TOTAL PRINCIPAL BALANCE ON HAND	<u>\$ 286,486.94</u>	<u>\$ 254,222.34</u>

PRINCIPAL INVESTMENTS MADE

12/28/01	\$20,000 Indiana Toll Rd. Comm. East/West Revenue Bonds, 3.5% due 12/01/2022	\$ 17,275.00
06/29/05	\$50,000 Commercial Credit Co., demand note	50,000.00
08/18/05	\$70,000 U.S. Treasury Bills due 11/19/2005	68,000.00
09/28/05	\$120,000 ABC Corp, demand note	120,000.00
09/28/05	Mortgage on 789 Main Street Media, PA	<u>15,000.00</u>
TOTAL PRINCIPAL INVESTMENTS MADE		\$ 270,275.00 =====

CHANGES IN PRINCIPAL HOLDINGS

			<u>ACCOUNT VALUE</u>
<u>American Telephone &amp; Telegraph Co.</u>			
	352 Shs. Awarded at		\$ 54,340.00
04/24/94	<u>704 Shs.</u> Rec'd in three for one split		<u>0.00</u>
	1,056 Shs.		\$ 54,340.00
03/22/96	<u>1,056 Rts. to subscribe to additional stock sold</u>		<u>-1,484.41</u>
	1,056 Shs.		\$ 52,855.59
03/12/98	<u>1,056 Rts. to subscribe to additional stock sold</u>		<u>-2,507.00</u>
	1,056 Shs.		\$ 50,348.59
06/22/98	<u>1,056 Shs.</u> Rec'd in two for one split		<u>0.00</u>
	2,112 Shs.		\$ 50,348.59
05/05/05	<u>2,112 Rts. to subscribe to additional stock sold</u>		<u>-1,225.49</u>
	2,112 Shs.		\$ 49,123.10
09/22/05	<u>852 Shs.</u> Sold		<u>-19,816.70</u>
	1,260 Shs.		\$ 29,306.40
=====			=====
<u>Premises 789 Main Street, Media, PA</u>			
	0 Uts. Awarded at		\$ 10,000.00
11/17/05	<u>Sold receiving</u>		<u>-10,000.00</u>
	Purchase Money Mortgage \$15,000.00		
	Cash 5,000.00		
	Less: Settlement Costs 1,200.00		
	0 Uts.		\$ 0.00
=====			=====

CHANGES IN PRINCIPAL HOLDINGS (cont'd)

			ACCOUNT VALUE
			<hr/>
<u>Mortgage on 789 Main Street</u>			
<u>Media, PA</u>			
09/28/05	Mortgage received on sale of said premises	\$	15,000.00
06/15/06	\$250 principal received on account		<u>-250.00</u>
		\$	14,750.00
=====			=====
<u>XYZ &amp; Co.</u>			
	703 Shs. Awarded at	\$	67,663.75
07/02/94	<u>103 Shs.</u> Sold		<u>-9,913.75</u>
	600 Shs.	\$	57,750.00
04/06/95	<u>100 Shs.</u> Sold		<u>-9,625.00</u>
	500 Shs.	\$	48,125.00
07/09/97	0 Shs. 250 Shs. ABC Corp., received @ 47.6875 in one-half for one divestment distribution		<u>-11,921.88</u>
	500 Shs.	\$	36,203.12
01/06/99	0 Shs. 180 Shs. ABC Corp received @ 79.00 in a 0.36 share of one divestment distribution		<u>-14,220.00</u>
	500 Shs.	\$	21,983.12
01/04/00	0 Shs. 250 Shs. ABC Corp. received @ 96.0625 in a one-half for one investment distribution, normally \$24,015.62 of which the following was applied to account value		<u>-21,982.12</u>
	500 Shs.	\$	1.00
06/19/05	<u>500 Shs.</u> Sold		<u>-1.00</u>
	0 Shs.	\$	0.00
=====			=====

CHANGES IN PRINCIPAL HOLDINGS (cont'd)

		ACCOUNT VALUE
<u>ABC Corp.</u>		
07/09/97	250 Shs. Rec'd in distribution on 500 Shs. XYZ & Co.	\$ 11,921.88
01/06/99	<u>180 Shs.</u> Rec'd in similar distribution	<u>14,220.00</u>
	430 Shs.	\$ 26,141.88
01/04/00	<u>250 Shs.</u> Rec'd in similar distribution	<u>21,982.12</u>
	680 Shs.	\$ 48,124.00
06/15/06	0 Shs. 34 Shs. Received as a 5% stock dividend, transferred to income	<u>0.00</u>
	680 Shs.	\$ 48,124.00
=====		

# RECEIPTS OF INCOME

## Waiver of Income Accounting

An Income Accounting having been waived for the period from 02/11/1994 to 12/30/2004 by Upstanding Trust Company, Executor of the Will of Mary C. Doe, Deceased and from 12/31/2004 to 02/28/2006 by Goodworks Charity, a limited Accounting of Income follows:

02/28/06 Balance per last statement rendered	\$	1,773.25
--	----	----------

06/15/06 34 Shs. ABC Corp., 5% stock dividend @ \$79.00		2,686.00
--	--	----------

## ABC Corp. demand note

03/15/06 Interest \$120,000	\$	520.00	
06/15/06 Interest \$120,000		<u>520.00</u>	1,040.00

## ABC Corp.

03/08/06 Dividend 680 Shs.	\$	578.00	
06/08/06 Dividend 680 Shs.		<u>578.00</u>	1,156.00

## American Telephone & Telegraph Co.

03/01/06 Dividend 1,260 Shs.	\$	296.10	
06/01/06 Dividend 1,260 Shs.		<u>296.10</u>	592.20

## Indiana Toll Rd. Comm. East/West Revenue Bonds, 3.5% due 12/01/2022

06/01/06 Interest \$20,000			350.00
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## Mortgage on 789 Main Street Media, PA

06/15/06 Interest			75.00
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## Upstanding Trust Company Checking Account

03/31/06 Interest	\$	27.29	
04/30/06 Interest		27.04	
05/31/06 Interest		<u>28.42</u>	<u>82.75</u>

TOTAL RECEIPTS OF INCOME	\$	7,755.20	=====
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DISBURSEMENTS OF INCOME

06/15/06 Upstanding Trust Co.

5% commission on income collected

3/30/06 to 05/31/06

\$ 72.40

TOTAL DISBURSEMENTS OF INCOME

\$ 72.40

DISTRIBUTIONS OF INCOME TO BENEFICIARIES

To: Upstanding Trust Company, Executor  
of the Will of Mary W. Doe, Deceased -  
Income on hand as of 12/30/2004

03/12/05 Cash	\$ 650.19
---------------	-----------

To: Goodworks Charity

06/15/06 Cash	<u>750.00</u>
---------------	---------------

TOTAL DISTRIBUTIONS OF INCOME TO BENEFICIARIES	\$ 1,400.19 =====
--	----------------------



INCOME BALANCE ON HAND

	<u>VALUE AT</u> <u>06/15/2006</u>	<u>FIDUCIARY</u> <u>ACQUISITION</u> <u>VALUE</u>
<u>Common Stocks</u>		
34 Shs. ABC Corp.	\$ 2,987.75	\$ 2,686.00
	<u>\$ 2,987.75</u>	<u>\$ 2,686.00</u>
Checking Account, Upstanding Trust Co.	3,596.61	3,596.61
	<u>3,596.61</u>	<u>3,596.61</u>
TOTAL INCOME BALANCE ON HAND	<u>\$ 6,584.36</u>	<u>\$ 6,282.61</u>
	=====	=====

UPSTANDING TRUST COMPANY

By \_\_\_\_\_  
Walter Trust, Vice President  
Surviving Trustee under the  
Will of John H. Doe, Deceased

AND

UPSTANDING TRUST COMPANY

By \_\_\_\_\_  
Walter Trust, Vice President  
Executor of the Will of  
Mary W. Doe, Deceased Trustee

VERIFICATION

WALTER TRUST, Vice President of Upstanding Trust Company, Surviving Trustee under the Will of JOHN H. DOE and Executor under the Will of Mary W. Doe, Deceased Trustee under the Will of John H. Doe, hereby declares under oath that said Trustees have fully and faithfully discharged the duties of their office; that the foregoing First and Final Account is true and correct and fully discloses all significant transactions occurring during the accounting period; that all known claims against the Trust have been paid in full; that, to his knowledge, there are no claims now outstanding against the Trust; and that all taxes presently due from the Trust have been paid.

This statement is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

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WALTER TRUST

Dated: \_\_\_\_\_

RULE 10-708. FIDUCIARY'S ACCOUNT AND REPORT OF..., MD R GUARD AND...

West's Annotated Code of Maryland  
Maryland Rules (Refs & Annos)  
Title 10. Guardians and Other Fiduciaries  
Chapter 700. Fiduciary Estates Including Guardianships of the Property

MD Rules, Rule 10-708

RULE 10-708. FIDUCIARY'S ACCOUNT AND REPORT OF TRUST CLERK

Currentness

(a) **Form of Account.** The Fiduciary's Account shall be filed in substantially the following form:

[CAPTION]

**FIDUCIARY'S ACCOUNT**

I, \_\_\_\_\_, make this [ ] periodic

[ ] final Fiduciary's Account for the period from

\_\_\_\_\_ to \_\_\_\_\_

**Part I.** The FIDUCIARY ESTATE now consists of the following assets: (attach additional sheets, if necessary; state amount of any mortgages, liens, or other indebtedness, but do not deduct when determining estimated fair market value)

**A. REAL ESTATE**

(State location, liber/folio, balance of mortgage, and name of lender, if any)

**ESTIMATED FAIR**

**MARKET VALUE**

..... S.....

.....

.....

**TOTAL** S.....

**B. CASH AND CASH EQUIVALENTS**

(State name of financial institution, account number, and type of account)

**PRESENT FAIR**

**MARKET VALUE**

..... \$.....

.....

.....

**TOTAL \$.....**

**C. PERSONAL PROPERTY**

(Itemize motor vehicles, regardless of value; describe all other property generally if total value is under \$1500; state amount of any lien; itemize, if total value is over \$1500)

**ESTIMATED FAIR**

**MARKET VALUE**

..... \$.....

.....

.....

**TOTAL \$.....**

**D. STOCKS**

(State number and class of shares. name of corporation)

**PRESENT FAIR**

**MARKET VALUE**

..... \$.....

.....

.....

TOTAL \$.....

**E. BONDS**

(State face value, name of issuer, interest rate, maturity date)

**PRESENT FAIR**

**MARKET VALUE**

..... \$.....

.....

.....

TOTAL \$.....

**F. OTHER**

(Describe generally, e.g., debts owed to estate, partnerships, cash value of life insurance policies, etc.)

**ESTIMATED FAIR**

**MARKET VALUE**

..... \$.....

.....

.....

TOTAL \$.....

**Part II.** The following income was collected and disbursements were made: (attach additional sheets, if necessary)

**A. INCOME**

(State type, e.g. pensions, social security, rent, annuities, dividends, interest, refunds)

**AMOUNT**

Description of Work		Quantity	Unit	Rate	Total
1	Excavate and backfill 12" x 12" x 12" concrete blocks	100	sq. yd.	\$1.00	\$100.00
2	Excavate and backfill 12" x 12" x 12" concrete blocks	100	sq. yd.	\$1.00	\$100.00
3	Excavate and backfill 12" x 12" x 12" concrete blocks	100	sq. yd.	\$1.00	\$100.00
4	Excavate and backfill 12" x 12" x 12" concrete blocks	100	sq. yd.	\$1.00	\$100.00
5	Excavate and backfill 12" x 12" x 12" concrete blocks	100	sq. yd.	\$1.00	\$100.00
6	Excavate and backfill 12" x 12" x 12" concrete blocks	100	sq. yd.	\$1.00	\$100.00
7	Excavate and backfill 12" x 12" x 12" concrete blocks	100	sq. yd.	\$1.00	\$100.00
8	Excavate and backfill 12" x 12" x 12" concrete blocks	100	sq. yd.	\$1.00	\$100.00
9	Excavate and backfill 12" x 12" x 12" concrete blocks	100	sq. yd.	\$1.00	\$100.00
10	Excavate and backfill 12" x 12" x 12" concrete blocks	100	sq. yd.	\$1.00	\$100.00
TOTAL				\$	1000.00

(State to whom paid and purpose of payment)

[illegible]

Total Income..... \$.....

Total Disbursements ..... \$( ).....

Net Income/(Loss) ..... \$.....

**Part III.** The following changes in the assets of the Fiduciary Estate have occurred since the last account: (attach additional sheets, if necessary)

**A. ASSETS ADDED**

Date	Description of Transaction	Gross Purchase Price	Value at date of acquisition if other than by purchase
------	----------------------------	----------------------	--

**B. ASSETS DELETED**

Date	Description of Transaction	Gross Sale Proceeds	Selling Costs	Carrying Value	Gain (Loss)
------	----------------------------	---------------------	---------------	----------------	-------------

A Summary of the Fiduciary Estate is as follows:

Type of Property	Value reported on last Fiduciary Account	Value reported on this Fiduciary Account
A. Real Estate	\$.....	\$.....
B. Cash and Cash Equivalents	\$.....	\$.....
C. Personal Property	\$.....	\$.....
D. Stocks	\$.....	\$.....
E. Bonds	\$.....	\$.....
F. Other	\$.....	\$.....
Total	\$.....	\$.....

The Fiduciary bond, if any, has been filed in this action in the amount of \$\_\_\_\_\_.

**VERIFICATION:**

I solemnly affirm under the penalties of perjury that the contents of this account are true and complete to the best of my knowledge.

knowledge, information, and belief.

Date

Date

Signature of Fiduciary

Signature of Fiduciary

Address

Address

Telephone Number

Telephone Number

Name of Fiduciary's Attorney

Address

Telephone Number

(b) Report of the Trust Clerk and Order of Court. The Report of the Trust Clerk and Order of Court shall be filed in substantially the following form:

**REPORT OF TRUST CLERK AND ORDER OF COURT**

I, the undersigned Trust Clerk, certify that I have examined the attached Fiduciary's Account in accordance with the Maryland Rules.

Matters to be called to the attention of the Court are as follows:

Date

Signature of Trust Clerk

Address of Trust Clerk

Telephone No. of

Trust Clerk



**RULE 10-708. FIDUCIARY'S ACCOUNT AND REPORT OF..., MD R GUARD AND...**

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**ORDER**

The foregoing Fiduciary's Account having been filed and reviewed, it is by the Court, this .....

day of \_\_\_\_\_(month), \_\_\_\_\_(year),

ORDERED, that the attached Fiduciary's Account is accepted.

(or)

ORDERED, that a hearing shall be held in this matter on \_\_\_\_\_(date).

.....

**JUDGE**

**Source:** This Rule is new.

**Credits**

Adopted June 5, 1996, eff. Jan. 1, 1997. Amended May 9, 2000, eff. July 1, 2000.

Current with amendments received through 9/1/11

End of Document

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