DUTIES OF A TRUSTEE TO REMAINDER BENEFICIARIES

TOPICS

Introduction

Who is a beneficiary?

Who is a remainder beneficiary?

What are your duties?

What is an accounting?

Final tips & takeaways

Your Presenters

Stacey L. Janssen, Janssen Estate Probate & Elder Law
www.staceyelderlaw.com
913-322-6300

Maureen Lester, Complete Probate & Elder Law
816-601-1234





Uniform Trust Code

This presentation will focus on the provisions of the Uniform Trust Code as adopted in Kansas and Missouri

Beneficiaries/Qualified Beneficiaries

Kansas Definitions: K.S.A. 58a-103

(2) Beneficiary,

(A) Has a present or future beneficial interest in a trust, vested or contingent; or

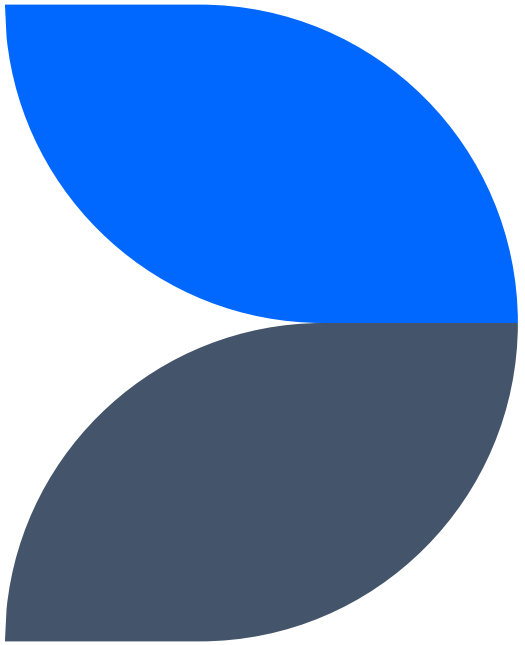
(B) in a capacity other than that of trustee, holds a power of appointment over trust property

(12) Qualified Beneficiary,

(A) “Qualified beneficiary” means a beneficiary who, as of the date in question, either is eligible to receive mandatory or discretionary distributions of trust income or principal, or would be eligible if the trust terminated on that date.

Kansas Comments to UTC

Due to the difficulty of identifying beneficiaries whose interests are remote and contingent, and because such beneficiaries are not likely to have much interest in the day-to-day affairs of the trust, the Uniform Trust Code uses the concept of “qualified beneficiary” to limit the class of beneficiaries to whom certain notices must be given or consents received.



Missouri Definitions

Mo. Rev. Stat. 456.1-103

(19) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(a) is a permissible distributee;

(b) would be a permissible distributee if the interests of the permissible distributees described in paragraph (a) of this subdivision terminated on that date; or

(c) would be a permissible distributee if the trust terminated on that date.



Trustee Duties to Qualified Beneficiaries

Duties to All Beneficiaries

Keep the beneficiaries reasonably informed. Comment to K.S.A. 58a-813, Restatement (Second) of Trusts Section 173 (1959).

"By law, a trustee owes the beneficiaries of a trust three duties: loyalty, impartiality, and prudence.", Roenne v. Miller, 58 Kan. App.2d. 836 (2020)



So…….. what does that mean?

Duty of **loyalty** to administer the trust consistent with its terms, Roenne v. Miller, 58 Kan. App. 2d 836

Duty of **impartiality**, act impartially in investing, managing and distributing. Porter v. Hayes (In re H. Boone Porter Trust), 666 S.W.3d 186.

Duty of **prudence,** act as a prudent person would. Roenne v. Miller, 58 Kan. App. 2d 83

DUTY TO INFORM AND REPORT

UTC SECTION 813 (2)

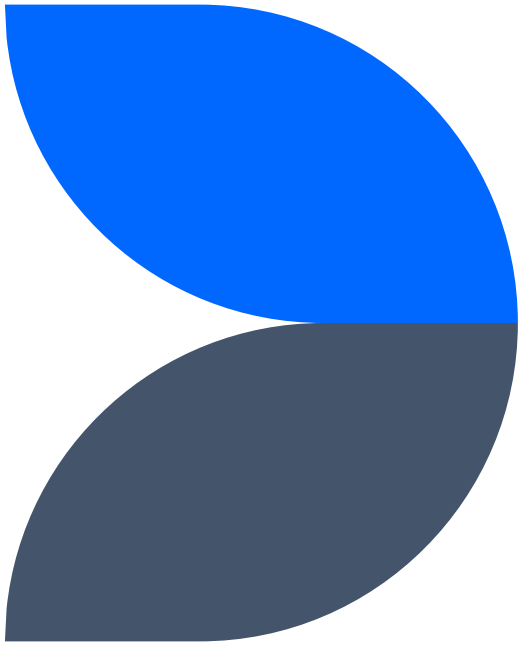
1. Upon request provide a copy of the trust.
2. Within 120 days of accepting trusteeship notify qualified beneficiaries and provide contact information.
3. Within 120 days notify qualified beneficiaries when a revocable trust has become irrevocable.
4. Notify qualified beneficiaries of changes in trustee compensation.

UTC 813 (3)- Accounting/Report

A Trustee shall send to the permissible distributees and other beneficiaries who ask, at least annually, a report of trust property, liabilities and disbursements, including the source and amount of trustee compensation, as list of assets and values.

Fulfilling the Duty to Report

Not a specific format, the UTC comments indicate they chose the word "report" over accounting to avoid the need for a specific format



So....what is this report

The report might be satisfied by providing an income tax return and monthly brokerage statements.

Information must be enough for beneficiaries to protect their interests.



Case Law Examples

In the *Est. of Buder*, 658 S.W.3d 168 (Mo. Ct. App. 2022), the trust said accounting twice a year the statute says once. The court looked to what would be reasonable.

The Supreme Court in *Engelsmann v. Holekamp*, 402 S.W.2d 382 (Mo. 1966), reference *Wood v. Honeyman*, 178 Or. 484, 169 P.2d 131 (1946), Trustee has a duty to show expenditures "were correct, just and necessary...and to keep clear and accurate accounts."

Thank you