

Managing Other People's Money: *I'm Legally Responsible: Now What!*

- Trustee -

**OSHER Life Long Learning Institute | Connie Bourne, Esq.
February 5, 2013**

Seminar Goals

This information is for educational purposes only and does not constitute legal or other professional advice, nor does it contain all the duties of a trustee. It is recommended that you seek advice and services from legal, financial, tax and other estate planning professionals regarding your personal estate and long-term care planning needs.

**Connie Bourne, Esq.
Gainesville, Virginia © 2013**

Fiduciary

- An individual who holds a legal, ethical, and moral relationship of trust between him or herself and another person or persons
- Involves the prudent care of assets, especially money for another person
- Includes duty of care and duty of loyalty

Types of Trusts

- ❖ Living trusts are created while the grantor is still alive.
- ❖ Testamentary trusts are written into a will and go into effect after death.
- ❖ Trusts can be either “revocable,” meaning that the grantor has the right to change or end the trust at any time or for any reason, or
- ❖ “irrevocable,” in which the trust is established so that it cannot be amended or terminated under any circumstances.

Trusts

- ❖ **A Will comes into play only after you die, but a living trust can actually start benefiting you while you are still alive. Established during your lifetime, it is revocable, which allows you to make changes.**
- ❖ **You will transfer most of your property into your living trust during your lifetime, and any assets not transferred can be placed into the trust at the time of death through the use of a simple Pour-over Will.**
- ❖ **A living trust will provide how your assets, and the income earned by the trust, are distributed after your death. If you should become incapacitated or disabled, the trust is in place to manage your financial affairs, usually by a successor trustee.**
- ❖ **A living trust is not subject to probate, so the trust remains private.**

Revocable v. Irrevocable Living Trust

Revocable Living Trust

In the event of disability, your instructions or successor trustee can take over management without court approval

Remains valid even if you move or own property in another state

Avoids probate and the cost associated, no waiting period after death

Your estate affairs remain private and confidential

All of your property is controlled, including life insurance

Irrevocable Living Trust

Cannot be changed or altered by the person who made the trust

Trust owns the assets

Trust names the beneficiaries and assets can be used for the benefit of the beneficiaries

With “special need” language, all proceeds can be protected from government attachment

Specific Duties of Trustee -1

- ❖ **Collect trust property and accept or reject additions to the trust property from a settlor or any other person; Acquire or sell property, for cash or on credit, at public or private sale; Exchange, partition, or otherwise change the character of trust property;**
- ❖ **Deposit trust money in an account ; Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;**
- ❖ **With respect to an interest in a business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;**
- ❖ **With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to: a. Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement; b. Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;**

Specific Duties of Trustee - 2

- ❖ **With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;**
- ❖ **Enter into a lease for any purpose as lessor or lessee, Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;**
- ❖ **Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;**
- ❖ **Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;**

Specific Duties of Trustee - 3

- ❖ **Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust; Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;**
- ❖ **Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;**
- ❖ **Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;**

Specific Duties of Trustee - 4

- ❖ **Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;**
- ❖ **Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;**
- ❖ **Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and**
- ❖ **On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.**