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MEMORANDUM REGARDING TRUSTEE'S DUTIES TO BENEFICIARIES

A "trust" is often described as any arrangement in which property (the "trust estate") is transferred by someone (the "settlor") to another person (the "trustee") for the benefit of a third person (the "beneficiary"). Trusts have existed for hundreds of years in England and the United States, originally being used to place an adult in charge of property which had been inherited by a child who was too young to manage his/her own affairs. Over the centuries, rules have developed which impose duties on persons acting as trustees. In 1986, the California legislature enacted statutes which list many of those duties. Trustees should be particularly aware of the following:

Duty to administer trust

(Probate Code Section 16000)

This statute requires the trustee to administer a trust according to law and in accordance with the trust instrument. No matter how good the trustee's intentions, the trustee is not free to administer the trust in any other manner.

Duty of loyalty

(Probate Code Section 16002)

This statute states that the trustee has a duty to administer the trust solely in the interest of the beneficiaries. The trustee cannot use the trust for his or her own benefit.

Duty to deal impartially with beneficiaries

(Probate Code Section 16003)

"If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them." A trustee cannot favor one beneficiary over another. This is particularly critical when the trustee is also one of the beneficiaries. In such cases, it is a clear violation of the law for the trustee to favor himself or herself over another beneficiary.

Duty to avoid conflict of interest

(Probate Code Section 16004)

Trustees have a duty to avoid conflicts of interest. This prohibits a trustee from entering into transactions with trust property which will result in a profit to the trustee, or in which the trustee's interest is adverse to the interests of the trusts or its beneficiaries. For example, a trustee usually must avoid loaning personal funds to a trust, because it would result in the trustee having a conflict between the trustee’s duties to the trust and the trustee’s duties to himself or herself.

Duty to take control of and preserve trust property

(Probate Code Section 16006)

This statute requires trustees to take affirmative action to take and keep control of trust property and to preserve that property.

Duty to make trust property productive

(Probate Code Section 16007)

The trustee is required to make trust property productive. This generally requires that the trustee make sure that trust property is wisely invested.

Duty to keep trust property separate and identified

(Probate Code Section 160091

The trustee must keep trust property separate from property not subject to the trust. For example, a trustee should not keep personal funds and trust funds in the same bank account.

Uniform Prudent Investor Act Title

(Probate Code Section 16045)

This article, together with subdivision (a) of Section 16002 and Section 16003, constitutes the prudent investor rule and may be cited as the Uniform Prudent Investor Act.

Duty of Trustee; Settlor's Right to Expand.or Restrict Rule

(Probate Code Section 16046)

(a) Except as provided in subdivision (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule.

(b) The settler may expand or restrict the prudent investor rule by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions.

Prudent Investor-Rule--Management and Investment of Trust Assets

(Probate Code Section 16047)

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall ·exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets· and courses of action must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that are appropriate to consider in investing and managing trust assets are the following, to the extent relevant to the trust or its beneficiaries:

(1) General economic conditions.

(2) The possible effect of inflation or deflation.

(3) The expected tax consequences of investment decisions or strategies.

(4) The role that each investment or course of action plays within the overall trust portfolio.

(5) The expected total return from income and the appreciation of capital.

(6) Other resources of the beneficiaries known to the trustee as determined from information provided by the beneficiaries.

(7) Needs for liquidity, regularity of income, and preservation or appreciated of capital.

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to ascertain facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment or engage in any course of action or investment strategy consistent with the standards of this chapter.

Trustee's general duty to report information to beneficiaries

(Probate Code Section 16060-16061)

This statute requires trustees to keep beneficiaries informed with respect to matters involving the trust.

Duty to account to beneficiaries

(Probate Code Section 16062)

This statute requires trustees to provide beneficiaries with "accounts," Accounts are detailed statements regarding the financial transactions of the trust. They are similar to bank account statements in which a bank reports a "beginning balance," an "ending balance," and all the transactions that occurred during the reporting period that "account" for the difference between the beginning balance and ending balance. A trustee must keep careful records in order to be able to comply with this requirement.

Discretionary powers to be exercised reasonably

(Probate Code Section 16080)

This statute states that, when a trustee is given "discretion" with respect to a matter, the "discretion" must be exercised in a reasonable manner. The trustee is not free to act in whatever way the trustee wants. This is true even if the trust documents state that the trustee's discretion is "absolute" or "uncontrolled."

General powers of trustee

(Probate Code Section 16200)

A trustee's power (legal authority) to take actions pertaining to the trust is not unlimited, and in some cases may be very restricted. For example, a trust instrument may limit the kinds of investments which the trustee can make with trust property. This statute provides that the trustee powers are those conferred by the statute and the trust instrument. Trustees must be careful to avoid taking unauthorized actions.