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GENERAL OUTLINE OF TRUSTEE RESPONSIBILITIES AND POWERS

The role of a trustee is important and demanding. Some of a trustee's responsibilities include:

FUNDAMENTAL DUTIES. Trust property must be kept separate and never commingled with the personal assets of the trustee. The trustee must also keep accurate records of the assets, receipts and disbursements of the trust, give regular accountings or statements to the beneficiaries and see to the filing of income tax returns each year by the trust.

DUTY OF IMPARTIALITY. A trustee is a fiduciary. Whether an individual or an institution, a trustee is required by law to administer the trust according to the terms of the trust instrument and applicable law. A trustee may not have bias for or against any beneficiary. A trustee may never act in the trustee's self-interest. A person should always select a trustee that can be depended upon to understand and abide by this duty of impartiality.

PRUDENT INVESTOR STANDARD. A trustee has a duty to invest and manage the trust property in accordance with the prudent investor standard set forth in New York law. This rule is a standard of conduct, rather than a standard of outcome or performance. The trustee is expected to use reasonable care, skill and caution to make and implement investment decisions. A trustee without financial knowledge or experience would be expected either to delegate the investment function or seek investment advice. If a duty is delegated, the trustee must choose a delegate who is qualified to perform the delegated function. Selection should be based on ascertainable factors such as experience, training and reputation.

STANDARD OF INVASION. Many trusts give the trustee authority to invade principal in favor of the income beneficiary based upon certain criteria. These criteria may be specific and ascertainable or quite broad and non-specific. A trustee needs to be aware of the actual language in the trust provisions and understand what invasions that language permits the trustee to make.

INCOME ADJUSTMENT AND UNITRUST OPTION. A direction in a trust to pay out *all* the income of a trust has a vastly different meaning to the income beneficiary if the trust is invested in appreciating assets that yield 2% of current income (as opposed to fixed assets that yield 6%). An income beneficiary might want the trustee to increase income at the expense of long term growth. To reduce this natural tension between growth and income investment, New York law now permits an independent trustee to adjust the income distribution up or down (i.e. add to or take from the income distribution) so that trust beneficiaries can receive an appropriate amount. A similar law allows a trustee to elect to change an income payout requirement to a 4% unitrust payout requirement. A Will can negate these powers or give guidance to the trustee on how to exercise them.

DOCUMENTING DECISIONS. A trustee should be able to document that he or she has followed a suitable process with respect to any decision the trustee makes.

IN CLOSING. This memorandum is a brief overview of the responsibilities of trustees. Our personal service group lawyers are available to meet with you if you have questions.