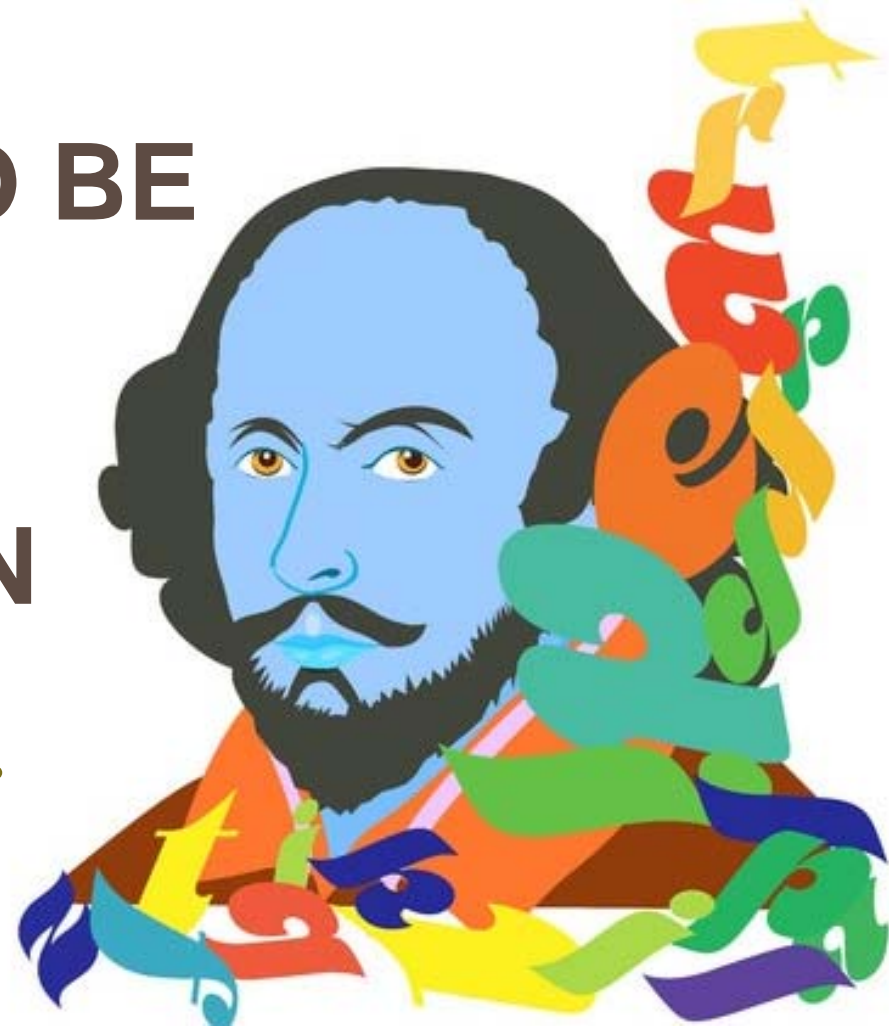


YOU'RE THE TRUSTEE NOW WHAT?

Robert D. Kaplow, Esq.

**TO BE OR NOT TO BE
(A TRUSTEE)
THAT IS
THE QUESTION**

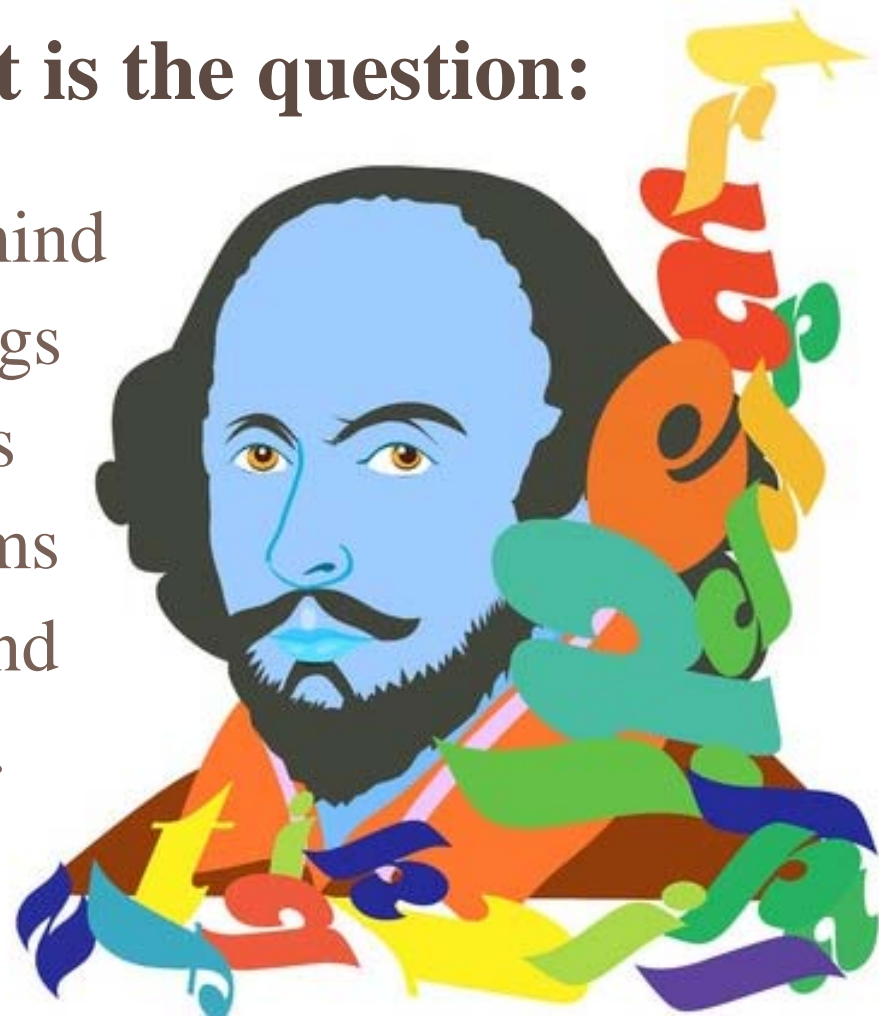
Robert D. Kaplow, Esq.



To be or not to be – that is the question:

Whether 'tis nobler in the mind
to suffer as trustee the slings
and arrows of outrageous
beneficiaries or to take arms
against a sea of troubles and
oppose the beneficiaries.

Hamlet



I. Trustee Duties – Fiduciary Obligation

- A. Based on trust terms, Michigan statutes and common law
- B. Michigan Trust Code – effective April 1, 2010
MCL 700.7801
- C. Duty to administer the trust
- D. Duty of care and performance
- E. Duty of loyalty
- F. Duty to keep records and furnish accounts

I. Trustee Duties – Fiduciary Obligation

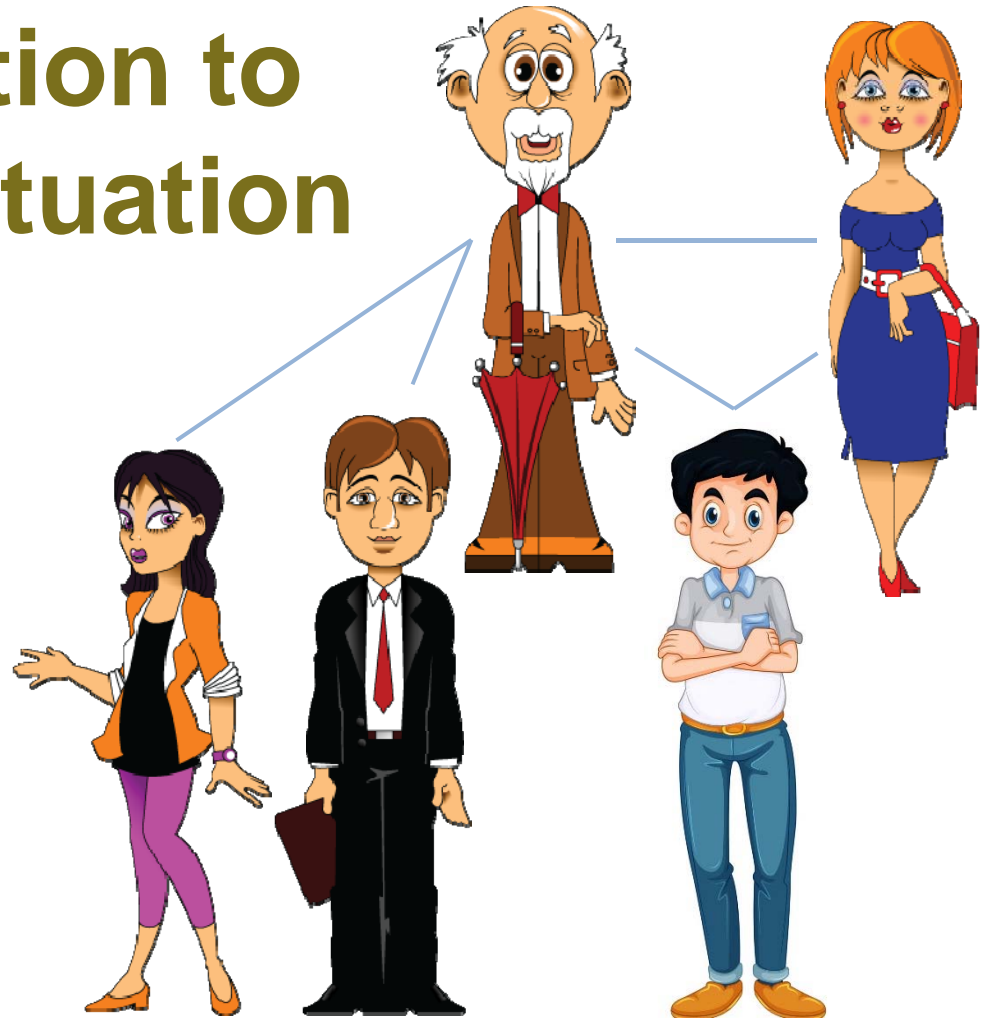
- G. Duty to take control of trust property
- H. Duty to enforce claims on behalf of the trust and defend claims against the trust
- I. Duty to pay expenses and taxes of the trust
- J. Duty to keep trust property separate from trustee's property

I. Trustee Duties – Fiduciary Obligation

- K. Duty to make trust property productive
- L. Duty to follow trust terms regarding distributions to beneficiaries
- M. Duty to furnish information
- N. Duty to exercise reasonable care and skill as the trustee

II. Application to Real Life Situation

- A. Bob Brady
- B. Tammy Brady
- C. Michelle Brady
- D. Mickey Brady
- E. Harvey Brady



II. Application to Real Life Situation

Bob - Dies 2014

Estate - \$15,000,000

Lifetime Gifts to Trusts

\$5,000,000 to Wife – QTIP Trust

Mickey – Personal Representative & Trustee

Personal Property – Equally to Kids

Trusts – Distributions to Harvey and Mickey over 5 Years

Michelle's share – Held in trust for her lifetime

III. Initial Steps

- A. Gather assets and protect assets.
- B. File will with probate court.
- C. Obtain Employer Identification Number.
- D. Open bank account for estate/trust.
- E. Notify beneficiaries of trust terms.
- F. Publish Notice to Creditors and notify known creditors.

III. Initial Steps

- G. Arrange for appraisals of assets.
- H. Hire attorney at Maddin Hauser to represent the Trustee.
- I. Determine if probating of assets is required in Michigan or any other state.
- J. Get copies of all gift tax returns and last three years of income tax returns.

III. Initial Steps

- K.** Prepare inventory of trust assets.
- L.** Notify banks, stock brokers, etc. that you are the Successor Trustee and provide your contact information and the new EIN.
- M.** File claims for life insurance proceeds, other benefits such as retirement plans, IRAs.

IV. Ongoing Administration

- A. Determine what assets need to be sold and which assets are to be retained – Determine how to invest the assets.
- B. Determine how federal estate tax will be paid.
- C. Allocate personal property among three beneficiaries – lottery, Trustee decision, individual choices?
- D. Prepare for litigation from Michelle.
- E. Notify beneficiaries of ability to disclaim.

IV. Ongoing Administration

- F. Elect to combine estate and trust under IRC § 645 to adopt fiscal year for the trust, until estate is closed.
- G. Make any required distributions to the trust beneficiaries.
- H. Have regular and open communication with the beneficiaries – be transparent.
- I. Prepare and file estate tax return.
- J. Pay reasonable compensation to yourself as Trustee.

V. Investing Assets

- A. Investing for both income beneficiaries and remaindermen.
- B. April 1, 2000 – Estates and Protected Individuals Code (EPIC) replaced the “prudent man rule” with the “prudent investor rule”.
- C. EPIC adopts modern portfolio theory.

V. Investing Assets

- D. Trustee must exercise reasonable care, skill and caution.
MCL 700.1502.
- E. The prudent investor rule requires consideration of many
circumstances. MCL 700.1503(2)

V. Investing Assets

- F. The prudent investor rule can be modified by the provisions of the trust.
- G. Uniform Principal and Income Act (UPIA) (MCL 555.501, et. seq.) determines how receipts and expenditures of the trust are credited and charged between income and principal.

V. Investing Assets

- H. UPIA also allows the trustee to adjust between income and principal and use a total return approach.
- I. Prepare an overall investment policy and share it with the beneficiaries.
- J. Hire investment professionals.

VI. Distributions to Beneficiaries

- A. Duty of the Trustee - make distributions of trust assets to creditors of the trust and to the beneficiaries of the trust.
- B. Trustee has to follow the terms of the trust.
- C. Mandatory Distributions – “The Trustee shall pay the net income of the Trust to the beneficiary at least quarterly.”

VI. Distributions to Beneficiaries

D. Discretionary Distributions

1. Support trust – “The Trustee shall pay to the beneficiary such amount as the Trustee determines is necessary for the beneficiary’s support.”
2. Pure discretionary trust – “The Trustee may pay to the beneficiary such amount as the Trustee deems appropriate.”



VII. Information to Beneficiaries

A. Beneficiaries entitled to documents:

1. Within 63 days of trust becoming irrevocable, must provide the following to qualified trust beneficiaries:
 - a. Notification of existence of the trust.
 - b. Identity of the grantor.
 - c. The court in which the trust is registered, if any.
 - d. Notification of beneficiary's right to receive a copy of the trust's terms that describe or affect the beneficiary's interest. MCL 700.7814(2)(c).

VII. Information to Beneficiaries

B. Annual accountings.

Trustee must provide the following accounting requirements:

- Trust property and fair market values
- Liabilities
- Receipts
- Disbursements
- Trustee Compensation



VII. Information to Beneficiaries

C. Qualified trust beneficiary – MCL 700.7103(g)

D. Protection for Trustee.

Beneficiary must bring action against trustee within 1 year
If - report adequately discloses existence of potential claim
And -beneficiary is informed of time allowed for bringing
an action

VII. Information to Beneficiaries

1. Following the Uniform Fiduciary Accounting Principles of Accounting Study #19: National Fiduciary Accounting Standards (May 1984) should be adequate to provide protection to the Trustee.
2. If the Trustee does not provide adequate reports, a beneficiary can bring an action against the trustee up to five years following the first to occur:
 - a. Removal, resignation or death of the Trustee,
 - b. Termination of the beneficiary's interest in the trust, or
 - c. Termination of the trust. MCL 700.7905(3).

E. Annual accountings should allocate income, expenses, disbursements, etc. between income and principal.

VIII. Winding Up the Trust

- A. Most trusts (other than dynasty trusts which continue for many generations) come to an end at some point.
- B. Termination can occur for a number of reasons



VIII. Winding Up the Trust

C. Steps to be taken upon termination.

1. File final tax returns.
2. Determine final beneficiaries and their share of assets.
3. Prepare distribution plan and forward to beneficiaries.
4. Liquidate remaining assets.
5. Distribute the assets in kind or the proceeds from the sale of the assets.
6. Prepare final trustee accounting and distribute to beneficiaries.
7. Obtain court approval for final accounting (when appropriate).