



1. **Overview of Fiduciary Duty.** There is a bifurcation of interests, both legal and beneficial, between a trustee and the trust beneficiaries. The trustee, as the holder of the legal title, is responsible for the preservation, enhancement, and distribution of trust property so as to ensure that its benefits inure to the beneficiaries. The fiduciary duty links the trustee to beneficiaries and is a cornerstone duty that the trustee owes to trust beneficiaries.
2. **Duty of Prudence.** A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distribution requirements, and other relevant circumstances while exercising reasonable care, skill, and caution.
3. **Highlights:**
 - a. Objective standard of care & subject to a reasonableness test.
 - b. Higher standard for professional trustees.
 - c. Scope of duty may be modified by terms of trust agreement.
 - d. Several functions within this duty.
4. **Functions.** Complying with the different functions within the duty of prudence are a good guide to compliance. Functions include the following: asset investment; asset distribution; asset identification, separation, collection, and protection; record keeping; bringing and defending claims.
 - a. **Investment function:** Requires the trustee to invest the trust assets as a prudent person would, using reasonable care, skill, and caution.
 - i. Modern portfolio theory
 - ii. Duty to review trust portfolio upon taking trusteeship
 - iii. Duty to diversify assets—market, sector, and stock
 - iv. Invest based on beneficiaries' situations plus trust purpose and terms
 - v. Generally must follow any restrictions in trust agreement
 - vi. Tips
 - b. **Distribution function:** Must act reasonably and with good faith when making distribution decisions.
 - i. Trustee must take into account wants and needs of both current and remainder beneficiaries, as well as concurrent beneficiaries
 - ii. If trust agreement gives trustee discretion to make distribution decisions, trustee has duty not to delegate that decision-making authority
 - c. **Record keeping:** Gather records from prior trustee; hand records to next trustee. Incur only reasonable costs and charge reasonable fees.
5. **Breach of Duty.** A trustee might breach the duty of prudence in many different ways, including following an imprudent process or no process, acting negligently, commingling assets, failing to account, improperly delegating decision-making authority, or violating distribution terms.
6. **Remedies for Breach of Duty.** If the trustee violates the duty of prudence, the trustee can be held liable for actual or presumptive monetary damages. The trustee may also be removed.
7. **Tips for Satisfying Duty.** The trustee should exercise due diligence in administering a trust by knowing who the beneficiaries are, what the trust document allows and prohibits, and understanding the intent of the grantor. The trustee can obtain consent of the beneficiaries for actions as trustee and request court approval for its actions. The trustee should communicate regularly with beneficiaries and keep clear and detailed records.

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