

# A Trustee's Survival Guide

By ARDEN DALE WSJ, 11/1/10

Dealing with demanding heirs comes with the territory for trust and estate advisers, but the amount of time and energy spent on them seems to be growing.

The term "trust-fund baby" may be a cliché, but advisers say there is some truth to its connotation of an exaggerated sense of entitlement. Even when those babies grow older, some still act like brats, believing they not only inherited money but also the right to treat an adviser or a trustee like a servant.

More than ever, advisers are dealing with disgruntled and obstinate heirs. And the result of such behavior can prove costly—in terms of pricey legal fees and damaged relationships—among heirs and with advisers.

Take the recent case of *W.A.K. II v. Wachovia*. A minor sued Wachovia Bank, and lost, over its handling of a trust created by his grandmother. His main complaint was that the bank didn't diversify stock held in the trust; his grandfather was serving as co-trustee, and both his grandfather and father had approved the holding of the stock. The case is on appeal, according to Bowlman T. Bowles, a lawyer for W.A.K. II, on the question of whether a professional trustee has a duty to educate a co-trustee about diversifying investments.

Angry heirs don't always sue, but many vent over the phone and in person. A rise in rudeness now may stem from economic hard times, with people feeling desperate about the need to draw on a trust or worried that its investments are dwindling. A trust officer at a bank is often on the front line fielding calls, but an estate attorney may also be acting as trustee.

An heir may call a series of meetings, with dialogue getting more and more heated. In one case, an adviser got urgent requests from the parent of a child named in a trust, pressuring for disbursements that weren't warranted.

The person grew frantic, saying a catastrophe would occur if they didn't get the money, according to Dana G. Fitzsimons, a partner at McGuire Woods in Richmond, Va. Eventually, the trust officer hired Mr. Fitzsimons to help him deal with the parent's demands.

Professional trustees are trained to handle hostility and usually manage to keep a cool head. Sometimes, one who keeps a stiff upper lip with a beneficiary makes the mistake of venting to another, who turns around and repeats the conversation. "The worst thing you can ever do as a trustee is get mad," said W. Bjarne Johnson, an attorney at Church, Harris, Johnson & Williams, in Great Falls, Mont. Instead, an adviser needs to stay calm, take a deep breath and

explain the situation, sticking to the facts. Addressing the problem often makes it vanish. Given a rational explanation of why something can't happen, a troublesome person may fade away.

Fighting with a client, on the other hand, can escalate tensions and backfire. The bottom line is that everyone must follow the dictates of the documents in the end, and that an angry heir may simply not have the authority to get what he wants.

Trust officers at a financial institution listen, collect information and then may take the request—say, to withdraw more money—to a committee that looks it over and decides whether it is consistent with language in the document.

Often, the most demanding heirs are those with the most tenuous relationship to the deceased. "It's some kind of inverse relationship," Mr. Johnson said. "The more remote they are, the more insistent—they just know that Aunt Margaret wanted them to have this or that."

Indeed, grandchildren, as in the Wachovia case, are more likely to sue over an estate than children of the deceased, according to Mr. Fitzsimons. This is where one sees lawsuits to compel large distributions, to support a lavish lifestyle or avoid having to work.

Many people have a very simplistic view of a trust. "This money was for me and I want it," they think, not understanding some complexities, advisers say.

This makes life hard for advisers, who often must keep various loyalties straight. A trust may provide lifetime income for a spouse or child, leaving what is left over to others, known as remaindermen. In that case, the trustee has to balance the needs of direct beneficiaries with those of the remaindermen, making sure assets are invested to grow.

## Do's and Don'ts for Heirs and Trustees

Estate and trust advisers say clients should heed these tips:

### DO

**Read the trust instrument.** Then read it again. Then read it one more time.

**Ask the trustee reasonable questions** about the trust, the trust investment strategy, and what you can (and cannot) expect from the trust and from the trustee.

**Communicate openly with the trustee** about your needs, and be prepared to provide documentation of your needs and your financial situation to the trustee.

**Seek the advice of your own counsel** experienced in trust and estate matters if you don't feel that your needs are being met or if you have unresolved concerns or questions about the trust.

### DON'T

**Harass, threaten, or shout** at the trustee.

**Pass up opportunities** to speak with your trustee in person about the trust and your needs.

**Be offended, indignant, or evasive** if the trustee asks you to provide documentation to support your request for a distribution.

**Assume you can use your interest in the trust** as collateral for a loan, or sell it to someone else.

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