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ESTATE OF THE UNION

A Newsletter from the team at Stanziola Estate Law

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FIDUCIARY DUTY

Why is it important?



Fiduciary duty is an extremely relevant concept when it comes to estate planning, and it is important to understand the meaning and requirements under the law. A fiduciary duty is the highest duty of care a person can owe to another, and a person has this duty when they have been entrusted to manage money or property or otherwise make important decisions on another person's behalf. A common example of a person holding this responsibility is the trustee of a trust who must manage the assets within that trust. Additional examples include personal representatives of wills and agents under durable powers of attorney.

Persons with fiduciary duty are legally obligated to do the following:

- 1. Place all beneficiaries' interests above their own.**
- 2. Always act in good faith.**
- 3. Treat all beneficiaries fairly with honor and care.**
- 4. Act honestly, fairly, and reasonably.**
- 5. Remain transparent about all relevant, material information.**

Fiduciary Duty (continued):

Care must be taken when selecting fiduciaries as it can be a time consuming and thankless job. Many of our clients want to use family members as fiduciaries because of their familiarity with family dynamics and issues. It is important for the family member to have strong communication skills and be willing to share information with the beneficiaries. In this regard, trust is a key component of establishing and maintaining a constructive relationship with family members. Not all individuals are suited for this type of work and responsibility, and it is easy to create family friction when things go astray. For this reason, it is important to have a process stated in the estate planning documents for removal of a fiduciary if warranted.

An alternative to a family member as a fiduciary is a corporate fiduciary. Although they charge for their services, they bring a level of independence and professionalism. In any case, it is recommended to list a corporate fiduciary as a final back-up since corporations do not die or become disabled. This way, there will always be a fiduciary available to act if needed.

The penalties for breach of fiduciary duty can include suspension or removal as trustee as well as the payment of money damages, attorney fees, and court costs.

If you suspect a trustee is breaching their fiduciary duty, you should demand an accounting of the trust by the trustee to show how the trust is being managed. Further action may be needed, such as the filing of a lawsuit.

At Stanziola Estate Law, we have come across various scenarios where fiduciary duty is in question, and we inform clients regarding actions they can take and assist them in making the important decisions of who to entrust to manage their assets. If you have any questions about the responsibility of a fiduciary, please contact us.



Don't have an estate plan in place? Are you wondering if your current estate plan is subjecting any of your assets to probate? Are you unsure of the next steps? Please contact us at Stanziola Estate Law for a complimentary estate evaluation so we can help determine what options are right for you!

Questions or comments? Jim Stanziola (jim@stanzialaw.com) or Grace Stanziola (grace@stanzialaw.com)

Note: The contents of this newsletter are intended to be informational; under no circumstances should this be interpreted as legal advice.