

Services

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Five Action Items for Trustees in Turbulent Times

With the onset of the COVID-19 outbreak, the first quarter of 2020 saw the end of one of the longest economic expansions in U.S. history. During such periods of relative prosperity, underscored by rising asset values, a Trustee's fiduciary obligations can go without much notice or remark. After all, trust beneficiaries—like all investors—feel the wealth effect of fair economic winds and, except for obvious instances of Trustee incompetence or malfeasance, generally have little cause to complain during the good times.

But good times do not last forever, and we seem to have entered a period of heightened economic and financial uncertainty thanks to the COVID-19 public health emergency. Whether serving in good times or bad, a Trustee must be cognizant of his or her fiduciary obligations and act in the best interest of the beneficiaries of the trust.

These Five Action Items for Trustees provide guidance in managing risk and effectively serving as a Trustee during the current crisis.

1. Review trust's investment portfolio and adjust as appropriate

The Trustee should provide a steady hand in managing assets held in a trust. The Trustee's duty to act prudently is both a best practice and a legal obligation. All 50 states have enacted a form of the Prudent Investor Act that dictates how trust assets should be managed. Under the Act, a Trustee must implement an overall investment strategy that includes risk and return objectives reasonably suited to the trust, which is typically accomplished through investing in a diversified portfolio. Implementation of a diversified investment strategy protects the trust assets and the Trustee.

Now is a good time to conduct a complete review of the trust's investment strategy to ensure that assets are being managed according to the terms of the

trust and its investment objectives. Volatile market conditions like these underscore the importance of implementing a long-term investment strategy. If you have particular questions about diversification or managing unique assets such as business interests or real estate during this tumultuous time, consider consulting an investment adviser to assist in your decision making.

2. Communicate with the beneficiaries

Communication is key in a time of crisis. In many cases the beneficiaries of a given trust have little (or no) experience with investments. The Trustee's job is not only to prudently manage the investments, but to communicate with the beneficiaries and inform them of how the trust is being managed.

Technically, this duty to communicate with beneficiaries is called the duty to inform and report. While the details of this obligation may differ from jurisdiction to jurisdiction, generally the Trustee is required to keep beneficiaries reasonably informed about the administration of the trust. It is a prudent practice to regularly communicate with the beneficiaries and provide pertinent information. During this crisis, the Trustee should provide assurance to the beneficiaries that the trust assets are being appropriately managed. It is advisable that a Trustee inform the beneficiaries, calmly and in writing, of the effect of the recent market drop on trust investments.

3. Review trust terms regarding distributions

As Trustee, you may be called upon to make required or discretionary distributions to the beneficiaries. Required or discretionary distributions may require the liquidation of trust investments in a down market and will affect the trust portfolio's ability to rebound. At the same time, beneficiaries may be out of work or experiencing their own market downturns as a result of the pandemic and looking for increased distributions. The Trustee should assess the effect of current market conditions on distributions and communicate with the beneficiaries about their circumstances and needs.

4. Calendar new fiduciary income tax return deadlines

The Trustee has a duty to prepare fiduciary income tax returns for the trust, where appropriate, and pay any applicable taxes. As a result of recent emergency rules promulgated by the Internal Revenue Service, calendar-year fiduciary returns and first- and second-quarter estimated tax payments have been extended to **July 15, 2020**. Trustees should consult the state law in each jurisdiction in which the trust files returns to determine whether the federal change is being adopted.

5. Check in with third-party professionals

Monitoring third parties engaged to assist with the management of trust assets is a best practice and a legal obligation of a Trustee. This is the time to check in with investment managers, directing parties,

accountants, and other professionals that provide services to the trust. Review and evaluate their performance and the reasonableness of the fees charged, and report your conclusions to the beneficiaries.

Comprehensive CARES Act and COVID-19 guidance

Husch Blackwell's CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.