Halliday Private Trust
Integrated Trust Solutions for Clients

Trust Connection

A Monthly Report of Trust News and Information

November 2016

Welcome to *Trust Connection*, our monthly newsletter highlighting Trust news and information. Each month we will feature timely articles of interest.

He Did WHAT?!? Ethics in the Estate Plan

The Malcolm Baldrige National Quality Award (MBNQA), an award presented annually by the President of the United States to organizations that demonstrate quality and performance excellence, defines ethical behavior as follows:

"The term, ethical behavior, refers to how an organization ensures that all its decisions, actions, and stakeholder interactions conform to the organization's moral and professional principles. These principles should support all applicable laws and regulations and are the foundation for the organization's culture and values. They define 'right' from 'wrong' behavior."

Ethics is a code of behavior that differentiates right from wrong but it is not law as one can do things that are legal yet unethical. It is often a matter of particular facts and circumstances involved. Nonetheless, there are behaviors that are presumptively bad, and most institutions develop policies and procedures to address common circumstances that may arise. However, new circumstances arrive and are altered every day that put people at risk who work around large amounts of money in complex arrangements.

Justice Benjamin Cardozo, the famous jurist who was elevated from the High Court of New York State to the United States Supreme Court, described the basic fiduciary rules in a partnership lawsuit context as follows "Many forms of conduct permissible in a workaday world for those acting at arm's length are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior." It is that distinction of behaviors "permissible in the workaday world," being forbidden for fiduciaries that is a subtle distinction with great significance.

It all starts with the creation of the plan. Working with someone who has your best interests at heart and not their own business interests can make all the difference. The American Institute of CPAs (AICPA) Code of Professional Conduct calls for an "unswerving commitment to honorable behavior, even at the sacrifice of personal advantage." This opportunity for personal advantage is one of the most widely observed ethical issues in the estate settlement world, yet most non-professional fiduciaries will dismiss it as "not taking advantage" or "paying a fair price" for the property. Rationalization does not trump ethics. A few examples of unethical behavior in estate settlement may include:

- The sale of trust property to the fiduciary individually
- The personal use of trust property
- The purchase of trust property by fiduciary directly from trust or even at an auction
- Making a loan from the trust to the fiduciary

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About Us

At Halliday Private Trust, it is our mission to assist our clients in the process of providing solutions, specifically through a wide range of financial advice.

Since 1982, we have utilized a full spectrum of financial services to help our clients navigate every major hurdle in their financial lives. Because we are an independent financial services firm, we utilize an open architecture approach to locating the most suitable investment options for our clients.

Our role is to help clients make smart decisions about their money. We understand that each client has unique needs and requires personalized solutions based on their goals, objectives and concerns.

A LOCAL TRUST SOLUTION

Call us today at (800) 786-1598 to learn more about working with Halliday Private Trust.

For information and assistance, please feel free to contact one of our Trust Advisors:

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This is not to say these things can never be done, but exceptions should follow protocol. Exceptions to self-dealing transactions can include transactions that are:

- Authorized in the trust document, although "authorization" does not justify the action by itself; it must also be in the best interests of the beneficiaries
- Completed with the approval of a court of competent jurisdiction, or
- Completed with the consent of all of the beneficiaries

For example, when a family member trustee or executor has a challenge in their home or business finances, they may decide to lend themselves money from the estate or trust. They will rationalize that it is good for the estate or trust because "I will pay more than the bank will for a CD." However, it now puts them in position of both borrower and lender. How would that ever be resolved if things go wrong? Whose interest would they defend, since they are on both sides? The end result is not the issue; it is that they have put themselves in a position where a conflict of interest exists. That is unethical behavior unless pre-arranged with the exceptions above. It is not always the action itself but the implications that upset the other beneficiaries and sometimes destroys family relationships at the same time. Again, using independent professionals not only assures safeguards through their lack of self interest as both a fiduciary and beneficiary, it creates processes to double-check policies and procedures and often audits those procedures for an internal double-check. This practice manages unethical behavior.

The duty of impartiality is another important fiduciary standard to ensure there is not only no self-advantage, but also no advantage to one beneficiary over another. Imagine the strain on the relationships for a surviving spouse named as trustee of a trust for which they are the current beneficiary and children of the deceased spouse's prior marriage are the remainder beneficiaries, examining every distribution as money not being saved for them. Even with no inappropriate behavior, the relationship is often put under great stress and at a time of strained emotions to start with – the death of a spouse or parent.

For example, in the case of Brooke Astor, New York socialite and philanthropist, her son was named her caretaker, and then, as the New York Times reported, "his life was turned upside down by allegations of mistreatment of his mother and mismanagement of her affairs." This claim was initially made by another family member and it led to his conviction at an advanced age, followed by time in prison from which he was released due to failing health. "Well, regrets, naturally" he was quoted as saying, and when asked if he could do it again, would he do things differently, he replied, "Quite." And this is the problem. There is no do-over. It is a one-time chance to do things properly. Choose well.

When considering your own estate plan, consider not just the competence of the parties you are naming, but the time and the role in which they are being placed. The estate world is full of sad stories of people taking advantage of the circumstances, or even the implication of it, and this can lead to broken finances, relationships, and lives. Professionals also have to follow ethical rules, but they do not have the built-in conflicts as fiduciary and beneficiary. They have done this many times and have protocols to ensure that ethical issues do not interfere.

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