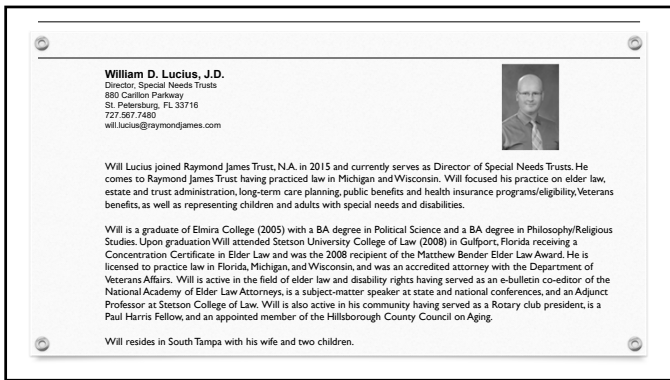


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2



3

EVERYTHING IS REGULATED!

- O.C.C.
- BILLIONS IN FIDUCIARY ACCOUNTS
- REGULATED PROCESSES (PAC, VALUATION, ANNUAL RVWS., INTERNAL COMPLIANCE)
- SEC, BSA, AML, etc.
- U.T.C.



4

CREATION.

- PAC review of governing instrument
- Any flaws to document OR execution (i.e., satisfaction of state law requirements for valid trust, capacity, formalities of last will, properly witnessed/notarized, etc.)
- Compliance with 42 U.S.C. § 1396p(d)(4)(a)!!!
- Notice to SSA/Medicaid agency

5

STEP	ACTION
1	Does the trust contain the assets of an individual who was under age 65 when the trust was established? (See SI 01120.203B.2, in this section.) <ul style="list-style-type: none"> • If yes, go to Step 2. • If no, go to Step 9.
2	Does the trust contain the assets of a disabled individual? (See SI 01120.203B.4, in this section.) <ul style="list-style-type: none"> • If yes, go to Step 3. • If no, go to Step 9.
3	Is the disabled individual the sole beneficiary of the trust? (See SI 01120.203B.6, in this section.) <ul style="list-style-type: none"> • If yes, go to Step 4. • If no, go to Step 9.
4	Did a parent, grandparent, legal guardian, or court establish the trust? (See SI 01120.203B.7, in this section.) <ul style="list-style-type: none"> • If yes, go to Step 5. • If no, go to Step 9.

6

5	Does the trust provide specific language to reimburse any State(s) for medical assistance paid upon the individual's death as required in SI 01120.2038.10, in this section? <ul style="list-style-type: none"> • If yes, go to Step 6. • If no, go to Step 9.
6	Verify if the trust contains any early termination provisions as described in SI 01120.199. If the trust does not contain any early termination provisions, go to Step 7 . If the trust contains any early termination provisions, does it meet the early termination criteria in SI 01120.199F that would make early termination acceptable? <ul style="list-style-type: none"> • If yes, go to Step 7. • If no, go to Step 9.
7	The trust meets the special needs trust exception to the extent that the assets of the individual were put in trust prior to the individual's attaining age 65. Any assets placed in the trust after the individual attained age 65 are not subject to this exception, except as provided in SI 01120.2038.3, in this section. Go to Step 8 for treatment of assets placed in trust prior to age 65. Go to Step 9 for treatment of assets placed in trust after attaining age 65.
8	Evaluate the trust under SI 01120.2000.1.a. to determine if it is a countable resource.
9	The trust (or portion thereof) does not meet the requirements for the special needs trust exception. Consider if the pooled trust exception in SI 01120.203D in this section applies. If neither exception applies, determine whether the undue hardship waiver applies under SI 01120.203K in this section.

7

TERMINATION.	
<u>THIRD PARTY</u>	<u>FIRST PARTY</u>
<ul style="list-style-type: none"> • RESULTING TRUSTS • OVERLY BROAD DISCRETION • AMBIGUOUS LANGUAGE 	<ul style="list-style-type: none"> • FAILURE TO INCLUDE PAYBACK PROVISION • FAILURE TO INCLUDE A <u>PROPER</u> PAYBACK PROVISION • NO POA??? • IS AN ESTATE NECESSARY?

8

EXAMPLE (THIRD PARTY)
<p>“Art.VI Ultimate Disposition. Upon the death of the grantor's son, Jeffrey, the Trustee shall distribute the remaining principal of the trust established for Jeffrey to one or more charitable organizations as selected by the Individual Trustee...The Individual Trustee shall have sole and absolute discretion in selecting the charitable organizations to receive the balance of the trust estate and the judgment of the Individual Trustee shall not be subject to challenge or to judicial review.”</p>

9

EXAMPLE (FIRST PARTY)

"5.3. This Trust shall terminate upon the death of Luke. After the Trustee has reimbursed itself and the TAC for all fees and expenses, the Trustee shall then wind up and close the trust estate. Any remaining principal and undistributed income of the trust estate shall be subject to Luke's testamentary non-general power of appointment in favor of anyone except himself, his estate, his creditors and creditors of his estate. In default of his exercise of this power of appointment, the Trustee shall distribute the trust estate to the heirs of Luke according to the Washington laws of descent and distribution..."

10

TRUSTEESHIP.

APPOINTMENT

- Pre-acceptance review of exposure to liability
- Confirm acceptance or declination
- Notice, authority to transact business, chain-of-title
- Request suggested language provided by trustee

COMPENSATION

- Is it reasonable?
- Understand and communicate all costs
- Refer to published fee schedule
- Address whether there is an unequal allocation between P & I

11

EXAMPLE – APPT. LANGUAGE

"Until Erin attains age twenty-five (25), the corporate trustee shall receive compensation for the performance of its functions as trustee hereunder in accordance with an agreement between it, on the one hand, and Erin's legal guardian, if any, provided that such fee agreement may not exceed the corporate trustee's scheduled rates...After Erin attains age twenty-five, Erin shall have the right to enter into the foregoing agreement with the corporate trustee..."

12

MULTI-PARTICIPANT TRUSTS

Will it be beneficial to the beneficiary?

POWERHOLDERS	PURPOSE	TRUST LANGUAGE
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13

EXAMPLE - UDTA

“TRUSTEE shall serve hereunder as Corporate Trustee and DISTRIBUTION DIRECTOR shall serve as the Distribution Director under this Trust Agreement. Each of the designated parties shall serve hereunder as fiduciaries but shall be responsible only for decisions that fall within their respective authorities as defined by the Trust Agreement. Both may rely conclusively on the instructions of the other if that instruction relates to a matter under the other’s authority and neither shall have a duty or obligation to review the underlying validity of such instruction or activities of the other...”

14

VACANCIES.



• RESIGNATION



• REMOVAL



• SUCCESSOR TRUSTEE APPOINTMENT

15

EXAMPLE – APPT. LANGUAGE

“Sec. 5.04(a). Trustee Succession. This section governs the removal and replacement of my trustees. (a) Removal by Beneficiaries. The Primary Beneficiary may remove a Trustee with or without cause. A Trustee may be removed under this section only if, on or before the effective date of removal, the person or persons having the right of removal appoint an individual or corporate fiduciary that simultaneously commences service as Trustee. The Trustee so appointed may not be related to or subordinate to the person or persons having the right of removal within the meaning of Section 672(c) of the Internal Revenue Code....The right to remove a Trustee under this section does not grant the person holding that right any of the powers of that Trustee.”

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EXAMPLE – APPT. LANGUAGE

“Trust Protector shall have the power to remove any Trustee serving hereunder and appoint any successor corporate Trustee. At all times the trustee shall be a corporation organized under the laws of the United States or any state thereof that is authorized to perform trust functions and has assets under management of no less than Seven Hundred and Fifty Million Dollars.”

17

EXAMPLE – SUCC. TTEE.

“No Trustee shall have any duty: 1) to investigate the prior acts or failures to act of a Predecessor Fiduciary; 2) to request a formal accounting by a Predecessor Fiduciary; or 3) investigate any accountings provided by a Predecessor Fiduciary. No Successor Trustee shall be personally liable for any act or failure to act by a Predecessor Fiduciary, or for the failure to contest any accounting provided by a Predecessor Fiduciary. The preceding paragraph shall not apply to the extent that the Trustee received a request from a beneficiary with a material interest in its estate to secure such an accounting or conduct an investigation or where the Trustee has actual knowledge of facts that would lead a reasonable person to believe a material loss has occurred or will occur.”

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DISPOSITIVE PROVISIONS.

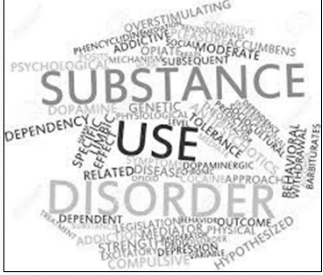
- **RELY ON SPECIAL SKILLS** (less may be better)
- **AVOID FATAL PROVISIONS:**
Mandatory P or I; 5x5 powers; Conduit Language; and ascertainable standards
- **DON'T FORGET GOOD PROVISIONS:**
ABLE: amend to ensure compliance with fed./state law; no bond necessary; delegation; caregivers/case managers compensation; retain professionals; changed circumstances



19

RESTRICTED AND ADDICTED BEHAVIORS

- Is an SNT appropriate?
- Will restrictive language hurt Trustee's ability to help/intervene?
- Does trust set forth a viable recovery process?



20


EXAMPLE

“Notwithstanding the foregoing provisions, if Trustee reasonably believes that a beneficiary under this agreement 1) routinely or frequently uses or consumes any illegal drugs or other illegal chemical substance so as to be physically or psychologically dependent upon that drug or substance; or 2) is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a licensed medical doctor or psychiatrist in a current program of treatment; and as a result of such use or consumption the beneficiary is incapable of caring for himself or herself or is likely to dissipate the beneficiary's resources, then all distributions from the trust shall cease and the Trustee must follow the procedures set forth below...”

21

\$\$\$ & Hard-to-Value Assets

- Consider Trustee's regulatory and legal requirements
- Concentrations
- Restricted Investments
- Use of affiliates and proprietary products
- Real Estate considerations



22

EXAMPLE - AFFILIATES

“(1)(B) To invest and reinvest the Trust corpus in Trustee’s discretion. It is acknowledged that Trustee is an affiliate of Financial Firm and that when the Trustee exercises such discretion, Trustee is permitted to engage the services of Financial Firm or any of its affiliates and to compensate them from the Trust. Such services include but are not limited to investment management or advisory services; investments in mutual funds, bonds, stocks and other securities or accounts offered or managed by affiliates; serving as broker/dealer to execute transactions at retail rates of commission and purchasing any securities underwritten and/or offered or issued by affiliated corporations...”

23

EXAMPLE – REAL ESTATE

“Sec. 10.02 Residence.... Trustee may acquire, hold, and maintain any residence for investment or for the use and benefit of Beneficiary in the exercise of its sole and absolute discretion shall determine appropriate.... Trustee is authorized to use trust principal or income to satisfy all carrying charges of such residence, including but not limited to taxes, assessments and maintenance, and all expenses of the repair and operation thereof, including the employment of domestic servants and other expenses incident to the maintenance of a household for the Beneficiary. This includes expending such amounts Trustee shall determine necessary for the Beneficiary’s care and comfort in any manner whatsoever and to direct payment for modifications to the residence in which Beneficiary is residing to the extent reasonably necessary to accommodate the needs of her disability.”

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QUESTIONS???

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