Passing the Baton: Trustee Resignation, Release, and Transition Challenges in Supplemental Needs Trusts

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I. Introduction

Supplemental Needs Trusts play a critical role in securing the long-term well-being of individuals with disabilities while preserving access to many means-tested public benefits. Many of these trusts will eventually face a key transition moment: the resignation of a trustee and the appointment of a successor. These transitions require thoughtful planning (when available), documentation, and a clear understanding of the legal and practical differences in the administration of first- and third-party SNTs.

II. Understanding the Trust Types: First-Party vs. Third-Party SNTs

Supplemental Needs Trusts (SNTs) are essentially "discretionary" spendthrift trusts, which by design allow a trustee to make distributions of any type for the benefit of a beneficiary with a disability. However, a supplemental needs trust will circumscribe this general grant of discretion by instructing the trustee not to exercise it in a fashion which would have an adverse impact on a beneficiary's eligibility for publicly or privately funded benefits, unless the trustee in the exercise of discretion determines that a distribution and the resulting impact on benefits is in the beneficiary's best interest.[1] If drafted properly, the principal and accumulated income of such trusts (both first-party and third-party, discussed below) are treated as "exempt" in determining financial eligibility for many means-tested government benefits.

While all supplemental needs trusts will follow this general rule, there are two discrete subsets of supplemental needs trusts: first-party supplemental needs trusts and third-party supplemental needs trusts. The line of demarcation between the two is drawn to identify the *source* of the property used to fund the trust and not necessarily the name of the settlor or beneficiary of the trust instrument, a fact which can lead to confusion for the practitioner and client alike.

Supplemental needs trusts which are designed to hold the property of *someone other than the person with the disability* are most commonly referred to as third-party supplemental needs trusts and will be referenced as such throughout this article. These are to be contrasted with supplemental needs trusts, which are designed to hold the property of *the person with the disability*, which will be referred to throughout as first-party supplemental needs trusts.[2]

Intuitively, this distinction makes sense. A third-party (defined in this context as someone other than the beneficiary, as well as someone other than a person who has a legal responsibility to support the beneficiary) can do with his or her property whatever he or she may want, including disinheriting the beneficiary with the disability altogether. To the extent the third party would like to create a trust that explicitly limits the availability of

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[1] Practitioners should confirm if their state law permits these kinds of distributions if they do in fact supplant available public benefits.

[2] These trusts are also referred to as self-settled trusts, OBRA '93 trusts, or (d)(4)(A) trusts (the latter two references being the common name and the relevant subsection of the federal legislation that authorized their use).

trust funds so that the beneficiary can continue to receive benefits from the Medicaid program or otherwise, the third party should have the right to do so.

By way of contrast, if an individual with a disability already owns assets that would otherwise need to be exhausted before government benefits were available, then there must be some accommodation in the rules of the benefit program itself before those assets can be disregarded. This accommodation is found in the federal Medicaid and Supplemental Security Income (SSI) statutes themselves.[3] Both of these benefit programs, which might otherwise penalize an applicant for divesting himself of assets that could be used for support (SSI) or medical care and services (Medicaid), have provided an *exception* to these general rules for assets that have been transferred to a first-party supplemental needs trust.[4] If the trust is properly drafted, the transfer of property to the trust will not disrupt benefit program eligibility, and the principal and accumulated income of the trust will be exempt from consideration while in the hands of the trustee.

Stated more simply, First-party SNTs are funded with the assets of the individual beneficiary, often because of litigation, inheritance, or retroactive benefit awards. These trusts are governed by federal law under 42 U.S.C. § 1396p(d)(4)(A) and must include a Medicaid payback provision, requiring reimbursement to the state upon the death of the beneficiary. They are often court-supervised and created through settlement proceedings, meaning any changes—including trustee resignation or distribution changes—may require judicial approval.

Third-party SNTs, by contrast, are funded with assets belonging to someone other than the beneficiary—typically a parent or grandparent. They are not subject to Medicaid payback requirements and tend to allow more flexibility in administration. Many third-party SNTs are privately drafted and do not require court oversight unless incorporated into a court settlement.

III. Beginning with the end in mind

One of the most effective ways to avoid complications during a trustee transition is to draft the trust instrument (whenever possible) with resignation and succession procedures clearly defined.

To simplify future transitions and reduce the risk of court or agency entanglement, careful drafting is essential. Trust instruments should name successor trustees outright or establish a clear mechanism for their appointment.

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[3] 42 U.S.C. §§ 1396p(d)(4)(A), 1382b(e)(5). Other program rules (Section 8, Food Stamps, etc.) treat transfers to first-party supplemental needs trusts in different ways. For trust beneficiaries participating in more than one program, attention should be given to each specific program's criteria.

[4] In New York, in 96 ADM-8, *OBRA '93 Provisions on Transfers and Trusts*, New York State Department of Social Services Transmittal (March 29, 1996), first-party supplemental needs trusts are referred to as "exception" trusts, reflecting the fact that contributions to such trusts do not generate a period of ineligibility for institutional-level Medicaid services.

Even when successor trustees are named in advance, transitions can falter if those individuals are unwilling or unable to serve when the time comes. Common reasons include lack of available funds to justify professional involvement, complex lifetime beneficiary needs, challenging family dynamics, or simply personal circumstances such as health or relocation. To avoid administrative dead-ends, trust instruments should include flexible provisions that allow for removal and replacement of named successors without court intervention, while preserving fiduciary integrity and beneficiary protections. For example:

> ***TRUSTEE'S NAME*** *and* ***TRUSTEE'S NAME*** *shall be the initial Co-Trustees of this Trust, with authority to serve independently of each other.*
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> *If either* ***TRUSTEE'S NAME*** *or* ***TRUSTEE'S NAME*** *is removed by an order of a Court having competent jurisdiction, dies, becomes incapacitated, or is otherwise unwilling or unable to serve as Trustee, the remaining one of them shall serve as sole Trustee of the Trust.*
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> *If both* ***TRUSTEE'S NAME*** *and* ***TRUSTEE'S NAME*** *are removed by an order of a Court having competent jurisdiction, die or are otherwise unwilling or unable to serve as Co-Trustees, the Grantor**s** nominate, constitute, and appoint*
> *as successor Trustee of this Trust.*
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> *Notwithstanding the foregoing, the Grantor**s** (acting jointly while both are still living, or by the surviving Grantor if one has passed), shall retain the power to change the identity, succession, or otherwise amend the Trustee appointment provisions of Article IX of this Trust with or without cause, provided, however, that any corporate Trustee so appointed must be authorized to provide fiduciary services in the State of New York. Under no circumstances shall the Beneficiary be named as a Trustee. Any such amendment shall be made through a written and acknowledged statement by the Grantor**s**, and notice shall be provided to the same individuals and in the same manner outlined in paragraph E of this Article IX.*
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> *In order to make prudent decisions in the exercise of this power,* ***both Grantors*** *shall be entitled, upon request, to copies of all financial statements related to this Trust* ***and any Trust created hereunder****. Upon the death of* ***both Grantors****, then _____ shall have the authority*

to exercise this power. If _____ is unable to exercise this power for any reason, then shall have the authority to exercise this power. The individual or individuals who are named herein to exercise this power shall be known as "Trustee Monitor(s)."

*The position of "Trustee Monitor" is not a fiduciary position or role and Grantor**s** direct that no Trustee Monitor shall be held to fiduciary standards due to his or her role as a Trustee Monitor. The Grantor**s** direct that no Trustee Monitor shall be found to have any duty and shall not incur any liability by reason of any error of judgment, mistake of law, or action of any kind taken or not taken, in connection with his or her actions or inactions as Trustee Monitor. Each Trustee Monitor shall be fully indemnified from the trust property against any claim or demand by any trust beneficiary or trust creditor or any other party relating to the administration of this Trust.*

*The Grantor**s** have created the position of Trustee Monitor so that trusted individuals may take steps, as provided for in this Trust Agreement, to help _____ by providing advocacy and support through communication with the Trustees, or by removing and replacing the Trustees without necessitating court involvement. If the Trustee Monitor does not act, then Court action remains available, just as Court action would otherwise be available to any beneficiary.*

*The Trustee Monitor may help to avoid the stress and expense of Court action by using the authority the Grantor**s** have provided in this Trust Agreement. But the future is uncertain and under no circumstances shall any Trustee Monitor acquire any duty to monitor this Trust or any duty to take action, and the Grantor**s** want to ensure that a Trustee Monitor is not punished by being held to a fiduciary standard simply because a Trustee Monitor may take action with respect to this Trust. Further, in the event a Trustee Monitor does take action with respect to this Trust, such action shall not be viewed as an assumption of ongoing responsibility, and the provisions of this section shall continue to apply.*

This type of clause ensures continuity in administration even when transitions do not go according to plan. It also empowers trust stakeholders to keep the trust functioning without unnecessary delay or litigation, especially in emotionally or financially strained

situations. In cases where the Trust beneficiary is competent, if there is no adverse treatment under state Medicaid law, the beneficiary can be given the authority to remove and replace or fill a vacancy in Trusteeship.

When possible, the Trust should be drafted to contemplate resignation without court approval and a mechanism for the release of a resigning Trustee. For Example:

> *A Trustee may resign at any time by giving a written and acknowledged notice, either delivered personally or sent by registered mail at least thirty (30) days prior to the effective date of such resignation, to the Co-Trustee, if one is then serving, to the Grantors, to the Beneficiary, (or if the Beneficiary shall be under a legal disability, to the Beneficiary's court appointed guardian or duly appointed agent), and to the then-serving Trustee Monitor(s). If at the time of resignation, the successor Trustee designated hereunder is unable or unwilling to serve, or if no successor has been designated by the Trustee Monitor(s) serving at the time, then the resigning Trustee shall have the authority to appoint an individual or corporate Trustee to serve authorized to provide fiduciary services in the State of New York.*
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> *Any resignation pursuant to the provisions herein shall become effective immediately upon required notice to all parties, but no later than thirty (30) days after such written notice shall have been delivered as provided for herein. On or before the effective date of the resignation, the resigning Trustee shall deliver to the successor Trustee and to those persons entitled to notice of resignation a statement of all receipts and disbursements of the Trust, together with an inventory of the assets belonging to the Trust. In addition, the resigning Trustee shall transfer physical possession of the assets of the Trust to its successor. Thereafter, the resigning Trustee shall be discharged of any further duties and obligations as Trustee, although no Trustee shall be fully released from liability for its administration of the Trust prior to resignation without a judicial settlement of its accounts by a court of competent jurisdiction, or upon agreement by all interested parties at the time of such resignation. A duly appointed Agent under Power of Attorney or court-appointed Guardian shall have the authority to settle any such accounting on behalf of any beneficiary and to do so without Court involvement.*

Including a detailed resignation provision within the trust instrument offers a clear, efficient roadmap for trustee transitions without immediate court involvement. By specifying notice requirements, authority to appoint a successor in the absence of a designated replacement, and obligations for asset transfer and interim accounting, this clause ensures continuity of administration and reduces the risk of disruption to the beneficiary's support. It also balances practical efficiency with accountability by preserving the option for judicial settlement or informal approval by interested parties, providing flexibility for both private and court-supervised trusts.

IV. The Resignation Process: Steps and Requirements

Procedurally, the resignation of a trustee should begin with formal notice to all relevant parties, including co-trustees, the successor trustee, current and remainder beneficiaries, and the applicable Medicaid agency (in the case of a first-party trust). If the trust is court-supervised, the resignation must often be approved by the court, particularly where the trust was created under judicial authority.

Before initiating a resignation, a trustee has a continuing duty to (and should as a matter of practice) ensure that the transition will not jeopardize the trust's integrity or the beneficiary's well-being. This means updating and organizing all trust records, including financial statements, disbursement logs, correspondence with public benefits agencies, case managers and any care-related documentation. If an informal accounting has not been prepared recently, the trustee should compile one to provide a clear snapshot of the trust's current position and recent activity. Outstanding obligations, such as pending disbursements, reimbursements, or vendor payments, should be identified and either fulfilled or documented for the successor trustee.

Equally important is a coordinated handoff to the successor. This includes not only the transfer of trust assets and records but also practical onboarding support: making introductions to care managers or public benefits caseworkers if there is no formal (private case manager) or informal support (parent, family member or otherwise) managing this transition and ensuring that regular disbursement schedules are not disrupted. Whether this transition requires judicial approval depends on the trust instrument and applicable state law. In many jurisdictions, court approval is mandatory for resignations court-created trusts (whether testamentary or a first-party SNT), even if the trust document itself provides an alternative mechanism. When court approval is involved, the Trustee should be prepared to formally account for its activities as Trustee.

V. Accounting and Trustee Release[5]

At some point, every trustee seeking to be discharged must account to its beneficiaries. If those beneficiaries are competent and willing, they can "settle" the trustee's accounting voluntarily and without court order. This is often not an option for Trustees of Trusts who have a beneficiary who has diminished or diminishing capacity.

Some courts provide forms that trustees must use in summarizing financial activity. Some court forms are very simple, requesting only opening and ending balances and a summary of distributions made over the accounting year. Others are more elaborate and track unrealized gain and loss, allocate expenses to principal and income, and allow the trustee to provide additional information on explanatory schedules.

Used here, the term "informal accounting" refers to accountings which are filed with a court, an agency, or presented to a beneficiary for informational purposes. In some cases, they are required by statute, by court order or by the terms of the trust document. In others they are not required but are prepared voluntarily by a trustee to keep the beneficiaries informed of trust activity.

The format used for an informal accounting can vary. A year-end financial statement that a trustee provides to a beneficiary could be considered an informal accounting. A checkbook ledger and accompanying bank statements might be appropriate in some circumstances. If a trustee is required to account by court order and the court has a preferred form, then the trustee will use that form. If there is no court filing requirement, a trustee wishing to keep its beneficiaries informed of trust activity can use whatever form it deems appropriate. Some trustees may send financial statements, others may use a more elaborate format similar to what would be used in an estate accounting.

A proceeding for "judicial settlement" involves a petition to a court asking for review and approval of the trustee's accounting.[6]

State variation on accounting requirements

There is no requirement under the federal or many state statutes that a trustee prepare annual accountings of any type or with any frequency.[7] As a result, many trusts that are

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[5] This section of the materials is adapted from an article prepared by this author co-authored with Edward V. Wilcenski for the National Academy of Elder Law Attorneys (NAELA) newsletter and subsequently published in the New York State Bar Journal in a series of three articles. *See* Edward V. Wilcenski & Tara Anne Pleat, *Administration of Supplemental Needs Trusts, an Improved Approach*, New York State Bar Journal, Part 1 Mar. 2019 at 12 , Part 2 Mar. 2020 at 22, Part 3 Apr. 2020 at 40.

[6] These proceedings are filed with notice to all interested parties. In New York, the form of the accounting which must accompany the petition is promulgated by the Chief Administrator of the State of New York and is comprehensive. *See* SCPA § 106; Official Form JA-4, "Trust Accounting With Instructions".

[7] Such is the case in New York, where there is no statutory, regulatory, or administrative requirement that a trustee of any trust prepare annual accountings. Matter of Kaidirmouglou, NYLJ November 5, 2004 at page 28 (Sur. Ct. Suffolk Co. 2004); Matter of KeyBank, 58 Misc.3d 235 (Sur. Ct. Saratoga Co. 2017); Matter of Feuerstein, 147 A.D.3d 688 (First Dept. 2017).

managed for beneficiaries with diminished capacity are administered without ongoing oversight. If the trustee wants to resign during the beneficiary's life or seeks to have its accounts settled upon the beneficiary's death, the trustee's discretionary decisions will be subject to second guessing inherent in proceedings for judicial settlement of multi-year accountings.

The proactive trustee can mitigate the risk of belated challenge by keeping the beneficiaries regularly informed of trust activity, but the effectiveness of this approach will be determined in part by the accounting format used, the frequency of the disclosure, and the capacity of the beneficiary.

Accounting considerations for the SNT Trustee

The aspects of administration of trusts for individuals with diminished or diminishing capacity, communication challenges, unfamiliar government benefit programs in the context of SNTs, and the inability to informally settle accounts – present unique risks for these trustees.

Given these risks, a prudent trustee might be inclined to seek judicial approval of its actions on a regular – and perhaps an annual – basis. The trustee could petition for judicial settlement of its accounting or could seek "advice and direction" on a proposed distribution plan. Both proceedings present risks of their own, and neither approach – if undertaken annually - would be cost effective.

A trustee could present a formal accounting for judicial settlement on an annual basis.[8] Where the beneficiary has a cognitive disability, and regardless of whether a property guardian has been appointed, most courts will appoint a guardian *ad litem*. Some guardians *ad litem* are attorneys with significant experience with individuals with diminished and diminishing capacity, but many are not. Inexperienced guardians *ad litem* can complicate a proceeding for settlement.

Recommendations regarding accounting

To manage and mitigate risk, the trustee should take the following steps:

1. In states where an annual accounting is not required, the trustee should prepare an informal accounting of trust activity on an annual basis, and provide copies of the accounting to the beneficiary with the disability (if competent, or to the court appointed guardian or agent under power of attorney if not) and to the Medicaid program representative if the trust is a first party Supplemental Needs Trust.[9] If the beneficiary is a minor, the beneficiary's parents should also receive a copy.

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[8] SCPA 2208(3)(b).

[9] In the author's first party supplemental needs trust practice we provide copies of annual accountings to the Medicaid program representatives, and in our third-party trust practice to remainder beneficiaries when possible and practical.

In the context of Supplemental Needs Trusts the informal accounting should clearly delineate distributions which would have an impact on benefit eligibility, or which provide a derivative benefit to third parties, and should include clarifying information in the explanatory schedules as appropriate.

Finally, the informal accounting should be prepared in the same format that would be required in a proceeding for judicial settlement so that the trustee can move quickly to have its accounts settled if any party receiving a copy raises an issue.

2. On a periodic basis, the trustee's accounts should be judicially settled. Even if a trustee is providing comprehensive informal accountings on an annual basis to all beneficiaries and none of the beneficiaries raise an issue, the trustee should nonetheless petition for judicial settlement after several years in order to wipe the slate clean. Frequency will depend on a number of factors. If a trustee is making regular and significant distributions from a well-funded trust, it might petition for judicial settlement every few years. If the trust is modestly funded and relatively inactive, it might petition less frequently.

Circumstances which can complicate the settlement of a trustee's accounting (whether informally by agreement or by court order) are familiar to attorneys who represent trustees in contested accounting proceedings. Older financial records are lost or unavailable, a common occurrence in an era of bank consolidation. Trust officers retire, taking with them the first-hand knowledge of a beneficiary's circumstances and the basis for certain discretionary distributions. Relationships with beneficiaries may sour over time, increasing the likelihood of objections.

For trustees of trusts where the beneficiary is compromised in some way, there are additional variables and uncertainties. In the context of Supplemental Needs Trusts government benefit program rules change over time, and a distribution that might have had no impact on a particular benefit under a prior policy may now result in a penalty. New programs might emerge which provide funding for services that the trustee has been paying for with trust funds for many years. Finally, attorneys who represent the Medicaid program (in First Party Supplemental Needs Trusts) in proceedings for judicial settlement also retire, and their replacements may take a much more adversarial approach in settlement proceedings. Periodically seeking judicial settlement puts all parties on notice – the beneficiary with the disability, the Medicaid program (for first party Supplemental Needs Trusts), and the remainder beneficiaries – and requires them to present their objections for review by the court.

3. For significant transactions or transactions which would clearly result in a derivative benefit to someone other than the beneficiary that is not specifically contemplated in the Trust instrument, the trustee should consider seeking prior court approval.

This approach – comprehensive informal annual accountings, regular petitions for judicial settlement, and periodic applications for court approval - is antithetical to

traditional estate planning, where attorneys try to limit administrative expense and judicial oversight when drafting trusts, and where trustees try to avoid interaction with the courts. Advocates and family members may be concerned over the financial impact of this approach on the availability of funds for the trust beneficiaries who have trusts of more limited amounts. These are understandable concerns.

On the other hand, attorneys and other advocates do a disservice to beneficiaries and trustees when they fail to explain the level of exposure faced by the trustee (especially in the context of First Party supplemental needs trusts), or when they try to draft around the formalities associated with trust administration. If all trust beneficiaries are competent and capable of self-advocacy, estate planners can draft documents to minimize administrative responsibilities and the associated costs. If a trustee cuts corners in keeping records, providing financial statements, or filing tax returns, the beneficiaries may decide to look the other way rather than endure the time and expense of a formal accounting.

But such informal settlement is typically not an option for trusts with compromised beneficiaries, especially first party Supplemental Needs Trusts where the Medicaid program is one of the interested parties. Medicaid's priorities are contrary to those of the beneficiary with the disability and the remainder beneficiaries. The less the trustee spends during the beneficiary's life, the more that this statutory creditor will recover upon the beneficiary's death.

Informal accountings prepared and presented on an annual basis create a record of full disclosure which may serve as a basis to defend against objections in a proceeding for judicial settlement,[10] periodic judicial settlement limits the trustee's ongoing risk, and petitions for advice and direction protect future distributions from later challenge. And this is the case for all trust administrations

A trustee should not consider themselves fully released from fiduciary responsibility until either the court has approved the accounting and formally granted a discharge, or the successor trustee and all relevant beneficiaries (or their legal representatives) have executed a written release. Without such a release, a resigning trustee may remain exposed to future claims alleging breach of duty, mismanagement, or failure to properly administer the trust during their tenure. Proper documentation and formal closure are essential to protect the outgoing trustee from ongoing liability.

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[10] In New York, the failure to object may be considered 'ratification' and serve as a basis for a motion to dismiss the objections of an informed remainderman. Rajamin v. Deutsche Bank Nat'l Trust Co., 757 F.3d 79 (2d. Circuit 2014). Would the Medicaid program be similarly bound? One might argue that a government agency cannot be estopped. *See* Oxenhorn v. Fleet Trust Co., 94 NY2d 110 (1999). This position fails to recognize that in New York, the Medicaid program is named as a beneficiary by statute (N.Y. Social Serv. L. 366(2)(b)(*2*)(v)). In a state court proceeding for settlement of a trustee's accounts, the Medicaid program's interest should be no greater and no less than that of any other remainder beneficiary.

VI. Challenges in Transition

Even with careful drafting and a proactive approach, trustee transitions are rarely seamless. One of the most common challenges is documentation gaps, when records are incomplete, disbursement logs are disorganized, or communication histories supporting trust distributions are limited. These deficiencies can leave the successor trustee without a clear picture of the trust's financial standing or the beneficiary's current needs, and may result in their becoming unwilling to take on the role. This can be common in long standing trusts where there have been prior Trustee changes that were handled informally and now the current Trustee wishes to resign and obtain a full release.

In trusts subject to court supervision, especially first-party SNTs established through litigation or Guardianship proceedings, even routine transitions can require formal petitions and judicial approval depending on the applicable jurisdiction. Re-petitioning the court for distributions or to confirm a new trustee may be unavoidable, and local practice can vary significantly. Moreover, interpersonal conflict between family members or between professional and lay fiduciaries often complicates transitions, particularly when parties disagree about timing, control, or accountability. These issues can delay the acceptance of accountings or the execution of releases.

VII. Conclusion

Trustee resignation and succession in the context of Supplemental Needs Trusts is more than a procedural formality, it can be a fiduciary crossroads with lasting consequences for beneficiaries, families, public benefits, and future administration. Whether managing a first-party trust requiring court supervision and Medicaid oversight, or a privately administered third-party trust with greater drafting flexibility, the importance of careful planning, clear documentation, and appropriate judicial or beneficiary oversight cannot be overstated.

Trustees must navigate unique risks tied to diminished beneficiary capacity, shifting public benefits landscapes, and complex family dynamics, all while ensuring that transitions do not disrupt the essential support these trusts are designed to provide. Incorporating detailed transition provisions at the drafting stage when permissible and possible, maintaining consistent informal accountings, and embracing a proactive approach to successor appointments and releases can protect both trustees and downstream beneficiaries—ensuring continuity, reducing conflict, and upholding the trust's long-term purpose.