THERE'S A NEW MARSHALL IN TOWN

Trustee Duties When Trust Payments Go Off Track

By Megan Brand and Susie Germany, Esq.

1



- WANTED: For 20 years of operating an independent law practice, Fiduciary Wrangler, Former Deputy Public Administrator.
- SPECIAL SKILLS: Can advise a professional fiduciary, operate a tractor, and teach Megan how to load for bear — possibly before lunch.
- FAMILY OUTFIT: Three grown children, including two active-duty service members.
- CAUTION: May be armed with decades of legal experience and unusually practical wilderness knowledge as a true Colorado cowgirl



- WANTED: Executive Director of CFPD, for the ongoing wrangling of pooled and individual trusts across the Colorado frontier.
- PLACE OF ORIGIN: Kansas-raised, with just enough cowgirl in her blood to make poor decisions seem well-managed.
- KNOWN TO TRAVEL IN LARGE NUMBERS: Raising a herd of six kids at home, proving that managing a nonprofit may actually be the quieter part of her day.
- CAUTION: Approaches complicated trust matters with calm authority and may spontaneously organize the entire posse.

30

2

Ridin' the Trail: What We'll Cover

Payments Assigned to Trust
What can (and can't) be directed to a trust, and how to structure it right

When Payments Go Off Track
Six real-world case scenarios where funding derailed

Trustee & Counsel Obligations
Trustee duties to locate, collect, and protect trust assets

Practical Administration
Tracking systems and a step-by-step process for closing the loop

2

3

Keeping Watch Over the Trust

Pooled and individual special needs trusts often depend on funding from court orders, settlement agreements, or statutory obligations. Trustees must understand their fiduciary duty to secure these payments and navigate the legal mechanisms available when payments lapse.

This session covers:

- Identifying funding obligations
- Pursuing delinquent payments
- Knowing when to engage counsel and coordinating with them
- Documenting compliance
- Scalable tracking systems for recurring payments across beneficiaries

3

4

Types of Payments Assigned to Trust

Part 1 of 2 — the most common sources trust administrators see:

Annuities

Such as structured settlements for personal injury

Military Survivor Benefit Plan (SBP)

Assigned annuity payments to a special needs trust

Court Settlement Contract

A stand-alone contract or agreement through settlement

Child or Spousal Support

Court-ordered support payments directed to trust

4

5

Types of Payments Assigned to Trust

Part 2 of 2:

Judgment or Lien

- Erroneous filings that treat the trust as a conservatorship asset. The judge assesses attorney fees to the petitioning party
- Trustee may need to petition the court to protect an asset (like a home), pay attorney fees, and record a lien for payment when it sells

Will Directing Payment

A will directed to pay into a 3rd-party trust

Conserved Assets

Court-ordered to fund a trust

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Off Limits: What Cannot Be Assigned

POMS SI 0120.200 G.1.c. names these as ineligible for assignment to trust:

- TANF / AFDC (Temporary Assistance to Needy Families)
- Railroad Retirement Board–administered pensions
- Veterans' pensions and assistance
- Federal employee retirement (CSRS, FERS) via OPM
- Social Security Title II and SSI payments
- Private ERISA pensions (29 U.S.C.A. § 1056(d))

6

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How to Properly Structure Payments

POMS SI 0120.200 G.1.d. — Assignment of Income

A legally assignable payment assigned to a trust is income for SSI purposes, unless an exclusion applies or the assignment is irrevocable. Court-ordered assignments (child support, alimony, Military SBP) are considered irrevocable and thus not income.

Two Golden Rules for Drafting

A Properly Drafted Will

"I give all my remaining estate to my son, John Doe, if he survives me, to be held in trust subject to the provisions of Article 3 of The John Doe Supplemental Needs Trust."

Identify the Source First

Attorneys should identify the source of each anticipated trust payment before deciding how to structure it. Revocable assignments can count as income.

7

8

Draft It Right: Payable to the Trust

	INCORRECT	CORRECT
Court Orders & Settlements	*"Pay to the Order of John Doe"*	*"Pay to the Order of the John Doe Special Needs Trust"*
Beneficiary Designations	*Beneficiary — Jane Doe*	*Beneficiary — The Jane Doe Special Needs Trust*
Payment Structure	*Payable to the Beneficiary, then deposited into the Trust*	*Payable directly to the Trust*

8

9

Wanted: When Payments Go Off Track

Six real cases where trust funding derailed

9

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WANTED: FUNDING GONE ASTRAY

Case 1: Tyler

The redirected annuity payment

Tyler is entitled to annuity benefits from a personal injury settlement, irrevocably assigned to his pooled trust. As an adult, unhappy that the trustee denied requests for medical marijuana and other undocumented expenses, Tyler calls the annuity company himself and redirects the next payment to himself. The annuity company complies.

WHAT DO YOU RECKON?

What is your obligation for recovering this payment?
What about future payments?
When do you bring in an attorney?
What do you do when a sternly written letter from your attorney goes unnoticed?

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WANTED: FUNDING GONE ASTRAY

Case 2: Eleanor

The payments that quietly stopped

Eleanor sustains a brain injury in an accident that kills her fiancé. Beyond a modest insurance payout, her attorney negotiates a court-ordered (civil settlement) monthly payment from the driver and his parents to her pooled trust. Eleanor draws down the trust each month to meet her needs. Her case manager notices the balance dwindling and discovers the deposits have ceased. Eleanor hesitates to bring in counsel because of the cost, but the trustee determines they have an obligation to pursue it. Counsel then learns the son is filing for bankruptcy, and his parents are divorcing, with the father also contemplating bankruptcy.

WHAT DO YOU RECKON?

How does the bankruptcy complicate this case?
How do you balance your fiduciary duty to Eleanor and weigh that with her getting nothing at all?
At what point do you get the court involved?

11

12

WANTED: FUNDING GONE ASTRAY

Case 3: Jack

Lost in the trustee handoff

Jack's attorney arranged for a substantial family trust to pay a lump sum, plus ongoing monthly payments, to his third-party pooled trust, all codified in a court order. Years later, the pooled trust trustee receives an agreement to release and indemnify the family trust's trustee. It turns out that when the family trust's corporate trustee changed institutions, the monthly deposits simply never continued.

WHAT DO YOU RECKON?

Does the release to indemnify include the necessary provisions for you to sign as trustee? What about statutory interest?
What liability, if any, did the pooled trust have in not recognizing these deposits had not been made?

12

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WANTED: FUNDING GONE ASTRAY

Case 4: Sally and John

The estate that was never funded

Sally and John, both born with intellectual developmental disabilities, are beneficiaries of their father Dan's estate alongside their sister Cheryl. Dan's lifelong friend and attorney Bob serves as Personal Representative. Bob sells the house, liquidates assets, and makes a large distribution to Cheryl for her new business. Three years pass; the trusts for Sally and John are never funded. The named trustee opens a court action to compel funding. Years of costly litigation exhaust what little the beneficiaries have, and the estate no longer has assets to fully fund the trusts.

WHAT DO YOU RECKON?

Are you, the name trustee, tracking all deposits that are made payable to the trust as part of the estate?
At what point do you bring in counsel to review accountings and court filings?
When do you need to bring in an attorney or GAL to represent the beneficiaries?

13

14

WANTED: FUNDING GONE ASTRAY

Case 5: Olivia

The frivolous petition

Olivia, a teenager with a significant developmental disability from a birth injury, is moved by her Professional Guardian from a trust-owned home to a host home. The trustee decides to sell the home. In a last-ditch bid for control, her father petitions for a new guardian and conservator, listing only the trust and the trust-owned home as assets. The dad proceeds despite the judge's warning; the court denies the motions. The court assesses nearly $40,000 in attorney fees jointly against Dad and his attorney, payable to the trust. Dad files for bankruptcy.

WHAT DO YOU RECKON?

An award of attorney fees can feel like a win, until you realize that you, as trustee, now have the obligation to track them down?
How do you assess the cost of additional attorney fees to track down what is owed against your fiduciary duty?

14

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WANTED: FUNDING GONE ASTRAY

Case 6: Paul

The boat debacle

Paul's father dies suddenly in an auto accident. Nearly all the estate funds are payable to Paul's third-party SNT with one exception: "personal property" belonging to his father. The Personal Representative, his father's wife (not Paul's mother), determines an extravagant boat qualifies as personal property and transfers it to herself. Paul's mother, also his guardian, believes the boat should fall into the trust's residuary. Settling the "boat debacle" brings multiple questionable transactions by the PR to light.

WHAT DO YOU RECKON?

Is it our duty as trustee to participate in mediation to settle a dispute?
How do you consider the remainder beneficiaries or benefit programs when such an asset may be seen as a transfer without fair consideration?
Have you considered utilizing a special administrator for forensic accounting, etc?

15

16

Common Threads Across the Cases

These aren't outliers; they're patterns. Assets intended for a trust may never reach it when:

Beneficiaries self-redirect
A payor complies with a call from the beneficiary, bypassing the trust

Payors default or vanish
Bankruptcy, divorce, or institutional change interrupts payments silently

Records don't transfer
Successor trustees never see the order; institutional handoffs drop the ball

Fiduciaries breach duty
A PR delays, mismanages, or diverts funds meant for the trust

Litigation exhausts assets
Court battles to compel funding can consume the very assets at stake

Ambiguity gets exploited
Vague terms like "personal property" invite self-serving interpretation

16

17

The Law of the Land

Trustee & counsel obligations under the Uniform Trust Code

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18

Trail Note

36 states follow the Uniform Trust Code, and several states rely on their own comprehensive or independent trust statutes instead:



- California
- Delaware
- Georgia
- Indiana
- Iowa
- Louisiana
- Nevada
- New York
- Oklahoma
- South Dakota
- Texas
- Washington



16

19



UTC § 812

Duty to Collect Trust Property

THE RULE

A trustee must take "reasonable steps" to compel a former trustee or any other person to deliver trust property to the trustee.

APPLICATION

This mandates that the trustee search for, identify, and take physical or legal custody of all property belonging to the trust at the inception of their administration.

18

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UTC § 809

Duty to Control and Protect Trust Property

THE RULE

"A trustee shall take reasonable steps to take control of and protect the trust property."

APPLICATION

Securing assets includes taking physical possession of tangible items, changing locks on real estate, moving funds to secure trust bank accounts, and purchasing adequate insurance against loss or damage (UTC § 816).

19

21

UTC § 810

Recordkeeping and Earmarking

THE RULE

A trustee must keep adequate records of trust administration (§ 810(1)) and keep trust property separate from the trustee's own property (§ 810(2)).

APPLICATION

Titled assets like bank accounts, real estate, and stocks must be properly retitled in the trust's name rather than held individually, a process known as "earmarking."

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22

UTC § 804

General Duty of Prudent Administration

THE RULE

A trustee must administer the trust as a prudent person would, exercising reasonable care, skill, and caution.

APPLICATION

If a trustee fails to thoroughly search for missing assets, or allows assets to waste away for lack of security, they may be found in breach of this standard.

21

23

UTC § 816(1)(a)

Accompanying Power to Collect Property

THE RULE

A trustee has the specific power to "collect trust property and accept or reject additions to the trust property."

APPLICATION

The trustee has both the authority and responsibility to evaluate whether to accept an addition. Just because an asset CAN be assigned to the trust does not mean it SHOULD be.

22

24

Just Because You Can...

...doesn't mean you should.

An asset CAN be assigned to the trust under UTC § 816(1)(a), but the trustee has both the authority and the responsibility to evaluate whether that addition should actually be accepted.

Every acceptance decision should weigh the trust's purpose, benefits eligibility, encumbrances, and administrative burden, not just legal eligibility.

23

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If a Trustee Fails to Locate & Secure Assets

Beneficiaries can bring a civil lawsuit. Core causes of action:

Breach of Fiduciary Duty

Leaving assets uncollected, uninspected, or unsecured (abandoned real estate, untracked accounts) violates the standard of care.

Breach of Duty to Collect & Protect

Failing to promptly secure tangible property, financial accounts, or real estate, leading to loss, theft, or damage.

Common Law Negligence

Acting carelessly or failing basic investigative steps to find assets that reasonably belonged to the trust.

24

26

Remedies & Court Actions Available

Surcharge

Court orders the trustee to personally pay for lost, uncollected, or mismanaged assets, plus lost interest or earnings.

Removal or Suspension

Beneficiaries can ask the court to remove the negligent trustee and appoint a professional or successor trustee.

Compel Accounting & Inventory

The court can order a full forensic accounting of all assets managed, or failed to locate.

Attorney's Fees

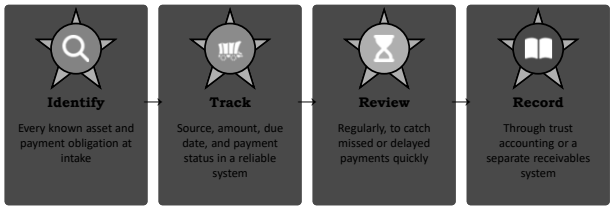
Courts may order the negligent trustee to pay beneficiaries' legal fees if their failure forced a court battle.

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27

Build a System, Not a Scramble

A well-organized intake process is the first step to ensuring all known assets and future obligations are identified and documented.



26

28

Deciding Whether to Pursue Collection

Not a "one size fits all" model — weigh cost of recovery against the asset's value. Consider:

- Value of the trust
- Likelihood of successful recovery
- Strength of the trust's legal claim
- Identity and solvency of the person or entity holding the asset
- Potential impact on the beneficiary
- Whether failure to act could breach fiduciary duty

Not a mathematical formula, but a documented decision-making process. Identify the asset, consider the circumstances, and make an informed fiduciary decision.

27

29

Closing the Loop

Effective administration needs more than identifying assets. The trustee must close the loop:

1. Identify the asset (Assignment of income)
2. Secure it
3. Monitor it
4. Reconcile it
5. Investigate discrepancies
6. Pursue remedies and document the resolution!

28

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The Strongest Administration

isn't the one in which nothing ever goes wrong.

It's the one where, when something does go wrong, the trustee can show:

- ✓ We identified it.
- ✓ We investigated it.
- ✓ We evaluated the options.
- ✓ We took reasonable action.
- ✓ And we documented why.

29

31

Questions, Pardner?



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30

32