TRUSTEES NEED TO KNOW: FIDUCIARY DUTY CLAIMS
Published on 2 August 2017

What is a fiduciary?

“A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets: A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal”.

Bristol and West Building Society v Mothew [1998]

All trustees have fiduciary duties which demand loyalty and good faith to the beneficiary.

Why have fiduciary duties?

Fiduciary duties are required in order to prevent unwanted conduct on the part of the fiduciary. Fiduciary duties are separate to and additional to a trustee’s duties. All trustees are fiduciaries but not all fiduciaries are trustees. There is no overlap.

Can breach of a fiduciary duty be avoided?

A fiduciary may be able to avoid liability for breach of fiduciary duty by seeking the informed consent of his principal.

What are the ramifications for a fiduciary acting in breach of duty?

Any action taken in breach of a fiduciary duty can be set aside even if there has been no resulting loss. A proprietary remedy enabling the claimant to assert rights against property in the defendant's possession may also be available.

How can we help?

We act for trustees, executors, personal representatives and for individuals claiming against estates, trustees or other parties. We also often advise on complex and cross-jurisdictional issues, and regularly work alongside other intermediaries based offshore. Our team is recognised for our expertise in this field by the legal directories: The Legal 500 and Chambers & Partners.

If you have any questions arising from this ‘Need to Know’ please do not hesitate to contact our Wills, Trusts and Inheritance Disputes Team: contentioustrustsandprobate@kingsleynapley.co.uk

This Need to Know provides general guidance of the law in this area at the date of publication. Specialist advice should also be sought.