LEE KIEFER & PARK
TRUST AND ESTATE ATTORNEYS

Basic Fiduciary Duties

1. **Definition**. A fiduciary is a person that is appointed to act in a position of trust for the benefit of others. Generally, a fiduciary is identified in a governing document such as a will, trust, power of attorney, or related documents. A fiduciary is empowered to carry out the purposes and intents of the person(s) for whom the governing documents benefit. Fiduciary roles include: a personal representative of an estate, the trustee of a trust, an agent under a power of attorney, and a guardian.

1.1 Trustee: the person, bank, or trust company who holds legal title to the trust assets. The trustee manages the trust assets and makes distributions to the beneficiaries of the trust according to the terms of the trust.

1.2 Personal Representative: A personal representative is the court-appointed fiduciary that administers the estate and distributes the estate assets pursuant to the will or the intestate succession laws. The term personal representative is a general title that also includes Executor or Administrator.

2. **A Fiduciary's Duties and Standard of Care**. A fiduciary is held to a fiduciary standard of care. This means that the fiduciary must use more care with other people's assets than they would with their own. The five primary fiduciary duties are:

2.1 Account. The fiduciary must account to the beneficiaries and keep them informed as to the management of trust or estate assets.

2.2 Comply. The fiduciary must comply with the governing document and applicable state and federal law. This includes the duty to pay debts, taxes, and other property expenses, as well as to make the distributions as directed in the governing document.

2.3 Loyal. The fiduciary must be loyal to the beneficiaries. The fiduciary must not make decisions that favor the fiduciary personally or anyone else more than the beneficiaries.

2.4 Impartial. The fiduciary must be impartial when it comes to the various beneficiaries, unless the governing instrument provides otherwise. In other words, the fiduciary cannot take sides.

2.5 Prudent. The fiduciary must be prudent in the investments made and in the management of the assets.

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3. **Prohibited Acts.** A fiduciary standard of care means that there are certain actions a fiduciary must never do.

3.1 Act without the consent of a co-fiduciary (or a majority of all co-fiduciaries, if there are more than two) except as authorized in the governing document or pre-arranged by the co-fiduciaries.

3.2 Make unwise, speculative investments or engage in "self-dealing" transactions that have the potential to benefit the fiduciary, the fiduciary's business, or closely related persons, except as specifically authorized either by a court order or by the governing document and all co-fiduciaries.

3.3 Make a distribution not specifically authorized in the governing document or before the time authorized.

3.4 Deposit trust/estate funds into a personal account or deposit personal funds into a trust/estate account.

3.5 Make loans without adequate documentation and proper security under the circumstances.

3.6 Engage in purchases or other transactions between the trust/estate and the fiduciary individually (or any business entity directly or indirectly controlled by the trustee) without prior court permission.

3.7 Make cash disbursements to a beneficiary or any other person without getting a signed receipt.

3.8 Take title to assets in the fiduciary's personal name without reflecting their capacity as fiduciary.

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