

Trustee Self Dealing and Other Conflicts of Interest



A. Texas Trust Code Provisions

The Texas Trust Code ("Code") prohibits trustees from engaging in many transactions where a trustee is acting in more than one capacity. For example, unless expressly permitted by the trust agreement, the Code prohibits a trustee from borrowing funds from the trust as a loan or making loans to an affiliate, director, officer or employer of the trustee or an affiliate. Another example of the Code is that trustees are prohibited from selling trust property to, or purchasing trust property from, the persons or entities listed in the previous example. Additionally, the Code prohibits a trustee from selling assets from one trust to another trust where the trustee serves as trustee of both trusts, except where the trust assets being sold are bonds, notes, bills or other obligations fully guaranteed by the U.S. government and sold for fair market value.

B. Trust Agreement Provisions Authorizing Self-Dealing

Generally speaking, trust agreements may relieve individual trustees of certain duties, liabilities and restrictions, but the trust agreement may not relieve corporate fiduciaries of the self-dealing restrictions promulgated by the Texas Trust Code. A trustee must be careful when relying on language in trust agreements that purport to authorize self-dealing. Some courts have suggested that such trust agreement language may be against public policy.

C. Some Common-Sense Advice to the Trustee Regarding Self-Dealing

When it comes to a potential self-dealing matter, "If you have to ask it if creates a conflict of interest, then don't do it." As a general rule, if a trustee will get a benefit (or if another party *could think* you will get a benefit) that you would not get if you were not the trustee, then don't do it. If the action is something a trustee would rather not fully disclose in advance to all beneficiaries, then again, don't do it. If a beneficiary objects, and a potential conflict exists, without question don't do it. *When it comes to personal liability to a trustee, poor judgment is sometimes forgiven by a judge or jury but one can be sure that self-dealing will never be forgiven in court.*

IMPORTANT: This publication is designed to provide general information about planning ideas and strategies. Always consult with your legal, tax, investment, and insurance advisors about your unique circumstances before changing or implementing any financial, tax, or estate planning strategy.

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