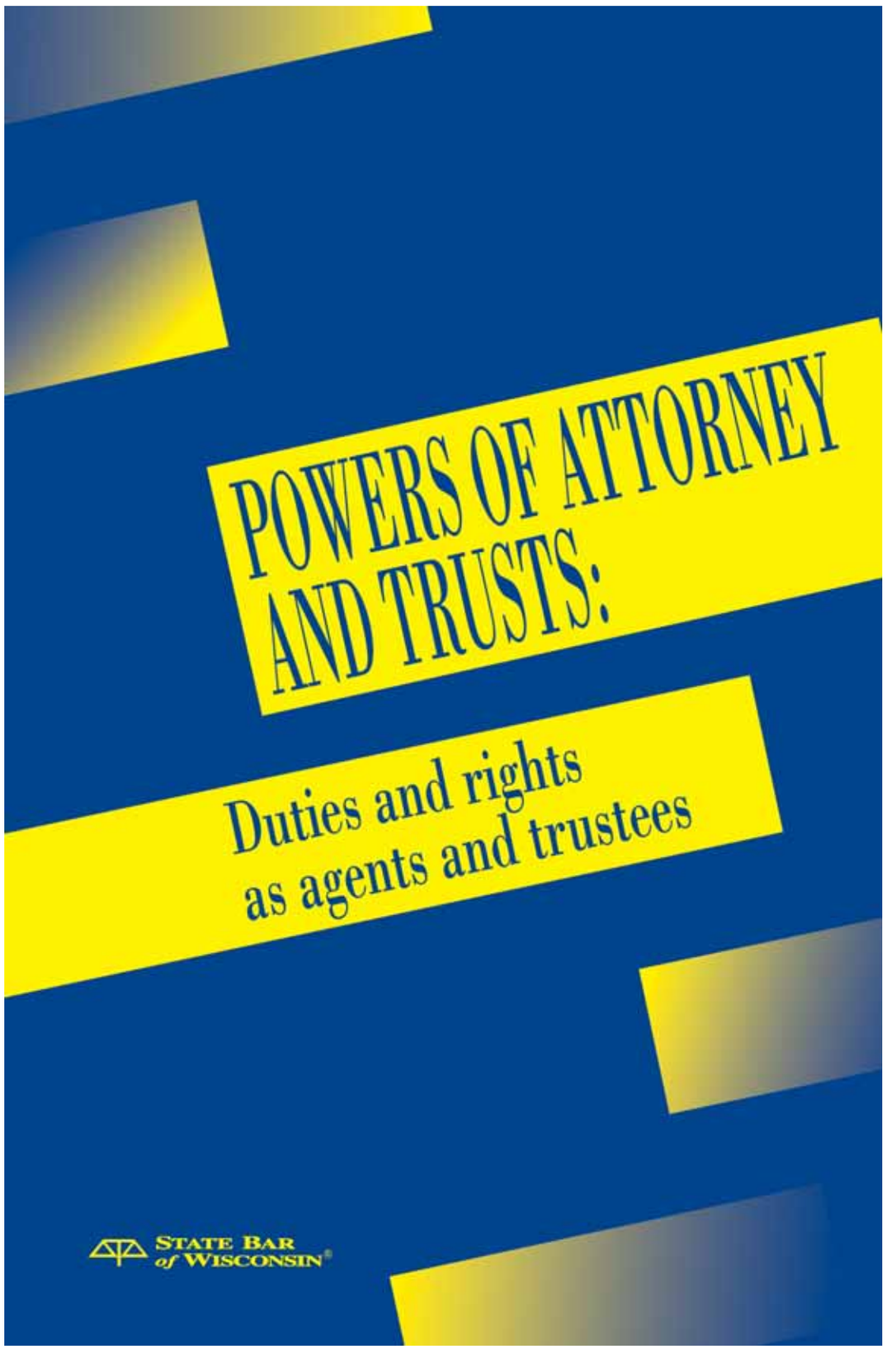
POWERS OF ATTORNEY AND TRUSTS:
Duties and rights as agents and trustees
STATE BAR of WISCONSIN®

POWERS OF ATTORNEY AND TRUSTS: Duties and rights as agents and trustees

Published by the State Bar of Wisconsin's
Consumer Protection Committee

STATE BAR of WISCONSIN®
WISCONSIN LAWYERS
EXPERT ADVISERS SERVING YOU.

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PART IV:

PREFACE

One of the functions of the State Bar of Wisconsin's Consumer Protection Committee is to provide information to the public in areas of law where people are being harmed in some way because of lack of information. The committee learned that some agents or trustees had gotten into trouble because they did not understand their basic duties as an agent or trustee. The committee created this handbook to provide such information.

Read carefully the parts of this handbook that apply to you, and use it as a reference as you go about your duties as either agent or trustee.

This handbook is not a substitute for getting advice from a lawyer. Each situation is unique. Laws can change any time. Only someone who has been trained in the law can help you analyze complex problems and properly apply the law to various situations.

Important:
This handbook was prepared based on law as it existed in October 2008. It is only issued to inform; *it is not a substitute for getting advice from a lawyer.* No person should ever apply or interpret any law without the aid of an expert trained in the law who also knows the facts, because the facts may change the law's application.

Part I

INTRODUCTION

What is a Durable Power of Attorney for Finances and Other Property?

The Durable Power of Attorney is a signed and notarized document by which one person, the *principal*, gives another person, an *agent*, authority to act on the principal's behalf. The authority may be general, giving the agent broad power to make decisions, or limited, giving the agent the power to do one or more specific things. Most general powers of attorney prepared today are durable, which means the authority continues even if the principal becomes disabled or incapacitated and cannot act for himself or herself. A principal can make the power of attorney effective immediately or at some later date or event, such as when the principal becomes incapacitated. Under most circumstances, a properly executed general durable power of attorney avoids the need for a court-appointed guardian or conservator.

NOTE: This brochure does *not* address powers of attorney for health care decision-making, which are governed by different laws and involve different considerations. Individuals are encouraged to complete powers of attorney for health care to appoint an individual, called a "health care agent," to make health care decisions for them.

Part 2

CONSIDERATIONS IN USING A DURABLE POWER OF ATTORNEY

Why should I consider a Durable Power of Attorney?
Insurance statistics reveal that one out of two Americans will suffer a period of prolonged disability in his or her lifetime. If you cannot manage your own affairs someone else must. A *Durable* Power of Attorney allows your agent to act even if you become incompetent.

If you do not have a Durable Power of Attorney and you become incompetent, it may be necessary for your family to ask the court to appoint a guardian for you. Appointing a guardian takes time and is cumbersome, public, and expensive. The family must hire a lawyer who will arrange for a court hearing. A physician must provide evidence that you cannot handle your own affairs. Unless the attorney the court has appointed to look out for your interests decides otherwise, you would have to go to the courthouse to hear the testimony that you are incompetent.

Many people think that it's not necessary to have a durable power of attorney if they don't have much money or if they hold all property jointly with a spouse or partner. However, there are many actions an agent would need specific legal authority to do – regardless of how much (or little) money you have or whether you hold most of your assets jointly with another person. Some examples include: applying for work-related disability or income continuation benefits, and public benefits such as Social Security disability; accessing or changing retirement plans; filing insurance claims or appealing denials; signing tax forms; selling a home to move somewhere more accessible; contracting for health care services; and hiring accountants or lawyers.

What may I authorize the agent to do for me?
An agent may perform a variety of tasks for you, including handling bank accounts, paying bills, buying and selling real estate, handling a business, applying for public benefits, making changes to life insurance or retirement plans, filing taxes, hiring workers for personal assistance,

hiring lawyers and accountants, securing investment advice, making gifts, creating or transferring assets to a trust, compensating an agent, reimbursing an agent, and more. For each of these tasks you may authorize your agent to do almost anything the law permits you to do yourself. Your lawyer can discuss your specific concerns with you.

What should I consider before including a gifting power?
First, you need to recognize how dangerous a power to make gifts can be if your agent turns out not to be honest. You may decide, therefore, not to give your agent the power to make gifts. If you don't want to include a gifting power, it is best to include a statement prohibiting gifting.

Under Wisconsin law, unless there is a specific provision authorizing gifts in the Power of Attorney, gifts are not permitted. Without such a specific provision, third parties, such as Medicaid, the IRS, and title companies, are not permitted to recognize the gift.

If you decide to give your agent the power to make gifts, you have to decide how extensive the gifting power should be. Should it be limited to a certain class of persons (your spouse, children, etc.) or charitable organizations? Should it be limited to specific circumstances such as at holidays or birthdays, or for tax or Medicaid planning? Should there be a monetary limit on gifts? Should the agent be permitted to make gifts to himself or herself?

In sum, the advantages and disadvantages of a gifting power should be considered carefully when completing a document. Seek the advice of a competent attorney.

What characteristics should I consider in selecting my agent?
Select someone in whom you have total faith and trust, someone who is honest and loyal to you. Consider whether the person you have in mind is available and willing to serve. While it's always handy for the person to be geographically close, it is certainly possible for a conscientious agent to handle your financial matters from a distance. Trustworthiness is the most important factor. Find out if the person has the knowledge and experience required to manage your business or investments.

Plan ahead; what if this person, although willing to serve now, is unable to serve later? If possible, provide for one or more other persons to succeed your initial agent. The Durable Power of Attorney may also allow your agent to appoint his or her own successor.

If you have concerns about financial management, or extensive security holdings, your document may authorize your agent to transfer financial assets to a standby trust with a corporate trustee. Your agent will continue to handle your financial affairs but will not have the day-to-day worry about investment decisions. The easier you make it for your agent, the more likely he or she will be willing to act as agent.

While corporate trustees can act as agents, some are reluctant to do so even in the financial area. The standard Durable Power of Attorney gives more decision-making powers to agents than some corporate trustees are comfortable with. A corporate trustee, however, may accept the appointment if its role is limited to transferring your stocks and bonds to a previously established standby trust of which it has been named trustee.

A person you would like to select as your agent may have a legal conflict of interest with your own interests. This is fine if you know the person can be trusted to protect your interests and you are willing to accept the conflict. It is unwise to appoint someone who is not financially stable or who has personal problems.

While it's natural to consider family members for this kind of responsibility, it's important to be honest and objective when selecting an agent. Fully consider whether family members have the time, skills, and commitment to be conscientious in performing this important fiduciary responsibility for you. Consult with the individual or corporate trustee you have in mind as agent before completing your document. Remember, your agent may be exercising the power when neither you nor anyone else may be able to monitor the agent's actions.

How can I protect myself against abuse by my agent?

The best protection is to pick an individual in whom you have total trust. Other methods of protecting yourself are: including a statement of the agent's fiduciary duty in the actual document; requiring your agent to sign the document and thereby acknowledge his or her acceptance of the fiduciary duty; requiring that the agent be bonded; prohibiting gifts (or limiting gifts as to amount or recipients); requiring the agent to send regular accountings to another person or persons. You also can ask the agent to meet with your lawyer to better understand the powers being delegated, your expectations, and the agent's fiduciary duty to you.

The agent usually serves without any supervision and without a surety bond to protect you or your estate if the agent misuses your assets. That is why you need someone in whom you have great faith and trust. If you can't find someone who meets those requirements, do not use a Durable Power of Attorney. Instead, discuss your concerns with your lawyer, who can suggest other ways to meet your needs and objectives.

What can I do if I believe my agent stole from me?

First, seek the advice of a competent lawyer. Second, and very important, immediately revoke (cancel) your Durable Power of Attorney so that the agent cannot do any more damage. This is best accomplished by signing a dated statement indicating that you are revoking the document. This statement should include the date you signed the original document and the agent's name and clearly state that you are revoking all of the agent's power. It is wise to sign the revocation document in the presence of a notary public. Mail or deliver the original revocation to your agent. Make copies of the revocation document and immediately send them to all individuals and institutions (for example, banks) that you believe have a copy of the Power of Attorney document.

You have two options to try to recover the stolen assets. You may consult with a private attorney about various civil actions you could bring against your agent to recover the funds you believe your agent stole. These civil lawsuits might include actions for conversion (injury to personal property), an accounting, breach of an agent's duty to the principal, constructive trust, and others. An attorney can fully explain these actions to you. Keep in mind, however, that if you believe your agent has already spent the funds and has no other funds to repay you, even a successful lawsuit may not result in your funds being returned to you.

You may also report the theft to the police and district attorney. If they believe that a crime has been committed (for example, theft or abuse of a vulnerable adult) the district attorney may criminally prosecute your agent. A criminal prosecution may result in your agent paying a fine or serving time in jail or prison; it does not automatically guarantee that you will be repaid the stolen funds. However, a judge may be able to order your agent to "make restitution" to you.

Part III

WHAT IF I AM APPOINTED AS THE AGENT UNDER SOMEONE'S POWER OF ATTORNEY

What are my responsibilities as agent?
When you agree to act under a Durable Power of Attorney you become the agent of the principal. As agent you are what the law calls a "fiduciary." This means you have a duty to act in the highest good faith for the principal's benefit.

What should I do when I become an agent?
Read the entire Power of Attorney document, taking note of the powers the principal has given you. You can do only the things the principal has empowered you to do. If you have any question as to whether you have been authorized to make a certain decision, you should ask the principal for clarification or instructions, if possible, or obtain advice from a lawyer. If you are managing all of the principal's property, it may be advisable to consult with a lawyer for specific advice about what is necessary to carry out your duties and protect the principal's property. For example, you will need to make or get a complete inventory of the principal's assets. This is necessary so that you know what you are responsible for and can keep property such as real estate and motor vehicles properly insured. If you have many assets to manage, either a corporate trustee custodial account (set up through the principal's bank) or a corporate trustee may help you manage and keep track of the assets.

Some agents deposit securities in the safekeeping of a brokerage firm, which may be convenient for an active investment account. However, as agent, you are still responsible for keeping the assets safe. You could be personally liable if you are negligent by selecting a failing brokerage house, resulting in a loss of assets to the principal.

If you are going to be responsible for any bill paying for the principal, you should take a copy of the Durable Power of Attorney to the princi-

pal's bank and get your signature recognized by the bank. You should consider setting up a checking account in the principal's name and order checks containing both the principal's name and your name as power of attorney. After the checks are printed, you may then write out the principal's checks, signing your name and writing "P.O.A." next to it.

What do I do with the Power of Attorney document?
First, sign the document as the agent, if a signature line is part of the document. Then, keep the original in a safe place such as in your safe deposit box or with the lawyer who prepared it. Most Power of Attorney documents provide that a copy has the same authority as the original, so keep the original document and make copies to give on request. If you are selling real estate as agent, you must record the original in the office of the register of deeds in the county in which the real estate is located. Make sure that the original is returned to you after recording.

What records should I keep?
Keep the usual checking and savings account records. In addition, because you are acting for someone else, you must keep careful records of what you do with the principal's property. (For a sample Record of Daily Activity, refer to Appendix C at www.legalexplorer.com/POA). That record should show all of the following:

- the principal's income – the money you receive for the principal. You should deposit these funds in an account for the principal. Never put the principal's money and yours in the same account;
- the principal's expenses – the money you pay for the principal's needs. If you write a check, do so from the principal's account, not from your own funds; and
- other transactions, such as purchases and sales of assets.

When does my authority to act as agent begin?
The Power of Attorney should state when your power to act begins and ends. For example, most powers of attorney provide for "immediate authority" – that is, they allow you to begin acting as soon as the principal signs the Durable Power of Attorney document. In some cases, the principal may provide for "springing power" – that is, that you have power to act only if the principal has been determined to be incapable of acting. A document that provides for a springing power usually will say

how incapacity will be decided (for example, after a doctor's examination and certification).

When does my authority to act as agent end?

Your authority ends when the principal dies, but may end sooner if the document so provides.

Depending on the specific language in the Power of Attorney document, your authority to act may end:

- on the date provided in the Power of Attorney, if there is one;
- on the occurrence of a specific event, for example, when two physicians have decided that the principal has regained the ability to act for himself or herself;
- when the principal becomes incapacitated, IF the power does not state that it is durable (continues into incapacity);
- when the principal, or his or her court-appointed guardian or conservator, revokes the power by signing and dating a statement saying that the power is revoked;
- if a court says that you no longer have the power to act; or
- when you resign, which you may do at any time. Many Power of Attorney documents name an "alternate agent" or "successor agent" to act in case you cease to act for any reason. If you do resign, you should notify the principal and, if there is one, the successor agent. If there is no successor agent, and if the principal is unable to create a new Power of Attorney, you should continue as agent at least until another arrangement can be made. Seek the advice of a lawyer if you are uncertain what to do.

May the principal still act after giving me a Power of Attorney?

Yes, if the principal is competent. The fact that the principal has given you authority to act does not limit in any way the principal's ability to act for herself or himself. While the principal is competent, she or he can take any action, including undoing something that you have done as agent. To avoid confusion or other problems you should talk with the principal to make sure you are not working at cross purposes.

How must I act?

You must act in the highest good faith toward the principal. "Good faith" means not taking advantage of another, even through technicalities of

law. You must follow the instructions of the Power of Attorney and must use ordinary care and diligence even if you are not taking any pay for your work as agent.

Are there things I must not do?
Yes. You must be careful not to do anything that does not benefit the principal. (Exception: If the document permits gifting, you may do so on behalf of the principal, but only according to the terms the principal has specified in the document.) Some things may benefit both the principal and another person, such as using the principal's car and gas to take the principal on a trip. In such cases you should be careful that you are acting primarily for the principal's benefit. It is wise to get advice from a lawyer before you use the principal's money or property in a way that benefits someone in addition to the principal. Always keep your money and property separate from the principal's.

May I hire people to assist me?
Yes. You should get the help you need to carry out your duties as agent. For instance, if you are managing many assets, you should get investment advice or even make arrangements with a trust company to manage the investments through a custodial account. The reasonable costs of these services are expenses that should be paid from the principal's assets.

May I use property for myself?
No, unless the Power of Attorney specifically allows you to use any of the property for your own benefit. For example, unless the document specifically says so, you may not borrow money from the principal even if you are paying it back at the same or a higher interest rate you would pay a bank. Also, you should not sell any of the principal's property to yourself, your friends, or your relatives even at a fair price unless the Power of Attorney makes it clear that you can.

May I make donations or gifts?
No, unless the Power of Attorney specifically says that you can make donations or gifts. You are to use the money for the principal's benefit, and such donations and gifts are not considered to be for the principal's benefit. If, however, the document authorizes gifting, you may make gifts

of the principal's property, but only as specified in the document. For example, the document may list certain family members or charities. It may permit gifting only in amounts consistent with past giving, or only if the gifts don't cause tax consequences or jeopardize eligibility for public benefits. Again, read the document carefully! Even with a gifting provision, however, you must still be mindful of your fiduciary responsibility. The principal's needs come first. Obtain a lawyer's advice if you have questions about a gifting power or its provisions.

May I charge fees for my services as agent or reimburse myself for out-of-pocket expenses?

Yes, unless the document provides that as agent you may not receive compensation. Even if no fees are established in the Power of Attorney you are entitled to receive *reasonable* fees. However, if the Power of Attorney establishes fee amounts or rates for you as agent, you are bound by the document's provisions. If the principal is competent, the two of you should agree on what would be a reasonable fee. In deciding what is reasonable, you should consider the following factors:

- the customary fees for the services you are performing as agent;
- any unusual skill or experience you have that you are using as agent for the principal's benefit;
- the amount of risk and responsibilities you have assumed as agent;
- the time you spend in carrying out your duties as agent; and
- any fee estimate you gave in advance.

Your fees as agent are reportable on your income tax returns as income.

While many agents receive fees, it is not required for you to accept any fees as agent. You can agree to serve without charging a fee.

If the document so authorizes, you also may use the principal's money to reimburse yourself for reasonable and necessary out-of-pocket expenses that you have incurred in acting as agent for the principal's benefit.

If there is a dispute about your fees, a court may decide what is fair compensation and can reduce or deny fees to you if you have not carried out your responsibilities according to law and the terms of the Power of Attorney.

Part IV

THE TRUST

What is a trust?

Trusts are written agreements that provide for managing property. This management is provided by someone with a special position of responsibility and duty for the benefit of others. The trust agreement involves at least three parties:

- the *settlor* or *grantor* – the person who creates the trust;
- the *trustee* – the person who agrees to accept the settlor's property and manage it as the trust directs; and
- the *beneficiary* – the person or people who will get the income from the property in the trust and, with the settlor's direction, the property itself.

The settlor can name two or more people, called *co-trustees,* to act together as trustees.

Until the settlor has transferred more than a nominal amount (such as $10) to the trust, there is nothing for the trustee to do. Such a trust would be an unfunded trust. It would be intended for future use, such as an anticipated disability or old age. When the settlor transfers assets with more than nominal value to the trust, the trustee has something to do.

Important:
The information herein applies to all trusts. If a trust was set up by someone's will, there are some forms that need to be filed with the court that probated the will. Consult with the estate's attorney to determine what forms need to be filed and when.

THE TRUSTEE

Who may be a trustee?
A brief outline of some considerations in setting up a trust and selecting a trustee is set out in Appendix A.

What is the trustee's responsibility?
When you agree to act as trustee you become a *fiduciary*. You have a duty, created by accepting the job of trustee, to carry out the terms of the trust. You are responsible for managing and holding the property within the trust for the beneficiaries. As trustee, you have the powers provided in the trust document, besides those provided in the Wisconsin Statutes. The statutory powers include the power to sell, mortgage or lease property in the trust and the power to vote stock that is part of the trust.

What should I do when I become a trustee?
1) Read the Trust Agreement from beginning to end. Concentrate on the powers given the trustee and the administrative duties of the trustee. If in doubt about your powers, discuss it with your lawyer.

2) Once the trust is created your first actions as trustee should be to:

a) *Ask your accountant or lawyer to prepare a request for a federal identification number from the IRS,* unless the settlor is acting as co-trustee. This number commonly is called an employer identification number. For the trust, it is the equivalent of your personal Social Security number. It is used as your trustee identification number on all future tax returns and by corporate stock transfer agents. While the settlor acts as co-trustee, his or her Social Security number can be used for the trust;

b) *Open a savings account or checking account* in a bank, savings and loan association or credit union whose deposits are federally insured; and

c) *Open a set of accounting records* to record the trust's assets, cash received by you as trustee and deposited in a bank account, checks disbursed by you as trustee, and other transactions such as purchases and sales of assets.

If both marital property and individual property of either or both the settlor and the settlor's spouse are in the trust, record on separate sheets the marital property, the settlor's individual property and the individual property of the settlor's spouse.

If you, as trustee, are not certain whether the property transferred to the trust is characterized as marital property or individual property, ask the grantor's lawyer to instruct you by letter as to the property's character. If your actions incorrectly classify the property under Wisconsin's marital property law, there may be unforeseen income tax, gift tax and/or estate tax consequences.

A set of sample accounting records is found as Appendix D. If the transactions become many and complicated, you should not hesitate to retain professional accounting assistance. The expense of the accountant can be paid from the trust assets.

d) *Prepare separate file folders* for bank statements and canceled checks, paid bills, deposit slips, income items, correspondence, the trust agreement and amendments, accounting records, and tax returns.

If the trust operates a business or owns real estate, you should make additional files. Under these circumstances, you will keep formal accounting records, and you may need some clerical and accounting help to keep the details accurately.

e) *Open a safe deposit box.* Place at least one signed *original* of the trust agreement in the box. If the agreement is amended later, attach any *original* of the amendment to the original trust agreement. Use the safe deposit box for trust assets such as life insurance policies, stock certificates, bonds, notes receivable, deeds, contracts and other valuable documents.

If there are many trust assets, a custodial account with a bank can help in keeping track of them. Ask about the bank's fees for the custodial account and decide whether the settlor wishes the trust to bear the additional expense.

Some trustees deposit securities into the safekeeping of a brokerage firm. This may be convenient for an active investment account, but you still are responsible for the assets' safekeeping. You could be personally liable if you are negligent in selecting a brokerage house that subsequently fails, causing a loss of assets to the trust.

3) As a trustee you have certain tax obligations. If the trust is a revocable trust during the lifetime of the settlor, the trust pays no income

tax. A revocable trust (sometimes called a living trust or revocable living trust) is a particular kind of agreement that you make that says how you want property you put into the trust to be managed and distributed. This trust agreement can be changed or revoked. For most income tax purposes, the existence of the revocable trust before it becomes irrevocable, is ignored. The income is taxable to the settlor. The tax advisor you are using as trustee will prepare a statement of income and expense. This income and expense data is used by the settlor on his or her income tax return. If the settlor also is not a trustee of the trust, you will need to get a federal identification number. A separate income tax return must be filed for the trust, although the settlor – not the trust – pays the tax. When the settlor dies, any portion of the trust that has become irrevocable, becomes a separate taxpayer. Under this circumstance you should consult with a lawyer. The actions needed at that point are beyond the scope of this handbook.

4) Settlors often provide that more property can be put into the trust after its creation. You should consult with the settlor's lawyer about these transfers. The lawyer may need to prepare transfer documents. Keep original documents in your trust files and record them with the county register of deeds if necessary. For example, deeds transferring an interest in land need to be recorded.

May I hire people to assist me?

Yes. You should get the help you need to carry out your duties as trustee. For instance, if there are many trust assets, it is common to get investment advice or even make arrangements with a trust department to manage the investments through a custodial account. You should get legal and accounting advice as needed. The reasonable costs of these services are expenses of the trust and can be paid from the trust assets.

When may I distribute property after the death of the creator of the trust?

Do not distribute assets or sell trust assets without your professional advisor's approval. There can be tax and other serious problems if property is sold or distributed too soon. Your advisor can advise you as to when it is appropriate to make a distribution.

What fees may I charge for my services?

You can charge reasonable fees even if the trust agreement does not establish fees. However, if the trust agreement establishes fees for you as trustee, you are bound by those fees. In deciding what is reasonable, you should consider:

- what the customary fees are for such services;
- any unusual skill or experience you have that you are using as trustee for the benefit of the trust;
- the amount of risk and responsibilities you have assumed as trustee;
- the amount of time spent by you as trustee;
- the character of the trust work, whether routine or involving skill and judgment; and
- any fee estimate you gave in advance.

Your trustee fees are reportable on your income tax returns and can be deducted by the trust as an expense. (Your lawyer or accountant will tell you how these fees should be charged to the trust.)

If there is a dispute about your fees, a court may decide what is fair compensation. The court can reduce or deny fees to you if you don't carry out your duties following the law and the terms of the trust.

You are not required to take fees and can waive fees that are established in the trust agreement.

How must I act as a trustee?

You must act in the highest good faith toward the beneficiary of the trust. "Good faith" means not taking advantage of another, even through technicalities of law. You must follow the instructions of the Trust Agreement and use ordinary care and diligence even if you are not taking any pay for your work as trustee. You must invest the funds of the trust properly to preserve the money and earn some money from the investment. Get advice from a lawyer and an accountant or financial adviser as to what investments are prudent for this trust.

Are there things I must not do?

Yes. There are several things you must not do.

- You may not deal with the trust property for your own benefit or for any purpose not connected with the trust's purpose. This means, unless the trust specifically says you can, you can't buy property from the

trust or make loans, gifts or donations to yourself, your friends or your relatives. This includes gifts or donations to churches or other charities.

- You cannot do anything that would give you an advantage over a beneficiary or take part in any transaction against a beneficiary unless the beneficiary gives you permission after knowing all the facts.
- You cannot mix your property or money with the trust property or money. In other words, there should not be any of your money in the same account with money from the trust. Property should be clearly identified so that there is no question whether it belongs to the trust or to you.

Appendix A

CONSIDERATIONS IN USING A TRUST

Why should I consider creating a trust?
Trusts usually are created to supply management or to conserve property and protect the beneficiary against a disability, inexperience or a tendency to mismanage. Trusts protect the beneficiary and direct the trustee, and can be more flexible than many other alternatives.

What may a trust do?
Trusts can be tailored to achieve a variety of objectives. Trusts can provide property management for minors, the elderly, a spouse or other potential property recipients for whom outright property ownership is not appropriate, is burdensome or is impossible. They also are used to give lifetime use of property to a person (or a group of persons) while ensuring that others eventually will get the remainder of the property. Trusts can avoid probate and can shorten or eliminate the delay in distributing property when you die.

Whom should I select as my trustee?
Because each trust is different, there is no simple answer as to who should be chosen as trustee. The selection of a trustee is an important matter and should be discussed with the lawyer who is drafting the trust for you. A corporate trustee often is used where the trust assets are fairly liquid and the amount in trust is large enough to be effectively managed by a corporate trustee. An individual trustee may be a better choice if the trust assets are less than $150,000 or there are unique assets such as a closely held family business or a farm. The trustee, as the name suggests, must be someone in whom you have great faith and trust. You must be comfortable leaving the trustee in charge of these assets. It is most important that the individual understand the duties and responsi-

bilities and exercise sound judgment. The trustee can hire outside advisors and can hire a bank or trust company to do most of the services a corporate trustee would do if named trustee. Generally, the trustee is responsible to the beneficiaries of the trust for the acts of the agents or employees to whom the trustee has delegated tasks.

Remember, the person you select as trustee may not be able to act at a later date. You should provide for someone to take over when the initial trustee can no longer act.

Some persons you select may have legal conflicts of interest to your own interests. This is fine if you know they can be trusted to protect the interest of the beneficiaries and you are willing to accept the conflict.

Be sure to find out if the person you appoint as trustee is willing to act. Remember, if the trustee you name refuses to serve or is unavailable, and there is no successor named, the only alternative is for the court to appoint someone. This is time-consuming and expensive.

Are there any other concerns?

Yes. Generally, a trust should be used only if there is some good reason for not giving the property directly to the beneficiaries. If the trustee does not do a good job, or is dishonest, the beneficiaries may not get what you have intended they receive. You can have the trust buy a security bond, but they often are expensive. The individuals you have named trustee may die, move from the area or in some other way become less desirable as a trustee. You need to plan for these possibilities.

Discuss all your concerns with your lawyer. A lawyer often can suggest ways to meet your concerns using a trust or show you alternatives.

Appendix B

RECORD OF DAILY ACTIVITY

DATE	DESCRIPTION OF TRANSACTION	RECEIPTS		DISBMTS.	
		All deposits & income		All withdrawals & expenses	
7/18/94	Deposit quarterly dividend check Little Marvel Widget Company	795	28		
7/18/94	Sold 1988 Toyota Sedan (Blue Book value ($3,500))	3,750	00		
7/20/94	Wisconsin Telephone Co. (June Bill)			52	15
7/20/94	Electric Bill (period 6/16/94 - 7/15/94)			65	24
8/3/94	Cable TV Bill for August			19	85

NOTE: This record should be kept in addition to the usual checking and savings account records you keep.

Appendix C

SAMPLE ACCOUNTING RECORDS

ABLE MAGWITCH TRUST

Record of Checks Disbursed

Year 1860

Date of Check	Check #	Name of Payee	Explanation of what the check is for	Amount of check
1/16/60	132	Lawyer Jaggers	Monthly allowance for Pip	$1,500
2/14/60	133	Lawyer Jaggers	Monthly allowance for Pip	$1,500
2/18/60	134	James Steamship	Passage to England	$4,500

ABLE MAGWITCH TRUST

Record of Cash Receipts and Deposits
Year 1860

Date of Receipt	Received from	Explanation about source of receipt	Amount received
2/15/60	Ralph Wolff Sheep Ranches, Inc.	Sale of ranch – New S. Wales	$2,500,000.00
3/27/60	James Steamship Company	Partial refund on passage	$5.00

ABLE MAGWITCH TRUST

List of Assets

Description of asset	Cost basis	Who owns	Disposition of
Magwitch Sheep Ranch – New S. Wales	$50,000	Able M.	Sold to R. Wolff Sheep Ranch

Appendix D

BLANK FORMS

The following forms can be photocopied and used for your records.

_____TRUST

Record of Daily Activity

DATE	DESCRIPTION OF TRANSACTION	RECEIPTS		DISBMTS.	
		All deposits & income		All withdrawals & expenses	

NOTE: This record should be kept in addition to the usual checking and savings account records you keep.

_____ **TRUST**

Record of Checks Disbursed

Year _____

Date of Check	Check #	Name of Payee	Explanation of what the check is for	Amount of check

_____ **TRUST**

Record of Cash Receipts and Deposits

Year _____

Date of Receipt	Received from	Explanation about source of receipt	Amount received

_____ TRUST

List of Assets

Description of asset	Cost basis	Who owns	Disposition of

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Other consumer law publications available from the State Bar of Wisconsin include:

- Understanding Guardianships: A Handbook for Guardians
- A Handbook for Personal Representatives
- On Being Eighteen
- The Bill of Rights: An Introduction

For more information, contact the State Bar of Wisconsin, P.O. Box 7158, Madison, WI 53708-7158, (608) 257-3838, (800) 728-7788.

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