What Can A Beneficiary Do To Remedy A Breach Of Trust?

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Taylor Ambrosius

Daniel "Frank" Blanchard, III

June 10, 2021

A trust is a legal vehicle that allows a trustee to hold and direct assets on behalf of a beneficiary. Trustees have extraordinary power to manage a trust and are often responsible for large sums of money, real property, and other assets. Because trustees are entrusted with another's property, they are considered fiduciaries, and therefore have a legal obligation of good faith and loyalty for whom they work. In other words, a trustee must act in the best interest of who they work for.

Unfortunately, sometimes the conduct of a trustee falls short of the standard to which they are held. In most cases, a beneficiary who brings a lawsuit against a trustee is seeking to correct the previous actions of a trustee, but can a beneficiary sue for prospective harm or to prevent breaches of trust by the trustees?

South Carolina's Probate Code (Section 62-7-1001) lists several actions that beneficiaries can take to address situations in which a trustee's duty has been, or is about to be, breached. In South Carolina, a trustee owes such duties as:

- Acting in the best interests of the beneficiaries
- Complying with the terms and instructions of the trust
- Complying with the state's trust laws
- Refraining from using the trust assets for personal gain
- Refraining from commingling (mixing) trust assets with those belonging to the trustee
- Investing carefully with well-diversified investments (using good business judgment)
- Keeping detailed records of investments and other trust activities
- Providing accurate accounting of trust activities to the beneficiaries

Depending on the type of trust, a beneficiary may be able to take legal action for a breach that "may occur." Such a lawsuit can be brought to prevent a breach of trust if there is a reasonable likelihood that the trustee will commit such a breach. There must be evidence that a breach has occurred or is "likely" or "probable" to occur. Mere speculation that a trustee may abuse his or her fiduciary duties is not sufficient.

So what are some of the remedies available to the beneficiary? Upon the beneficiary taking legal action, the court may:

- Order the trustee to perform the trustee's duties

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- Prevent the trustee from committing a breach of trust
- Order the trustee to redress a breach by paying money, restoring property, or by other means
- Order a trustee to provide a trust accounting
- Appoint a special fiduciary to take possession of the trust assets and administer the trust
- Suspend the trustee
- Remove the trustee
- Reduce or deny compensation to the trustee
- Void an act of the trustee, impose a lien or a constructive trust on trust assets, or trace trust assets that were wrongfully disposed of and recover the property or its proceeds
- Order any other appropriate relief

The remedies listed above are powerful, and it is much easier to prevent or reverse erroneous or abusive trustee behavior if detected and addressed as soon as possible. If you are a trustee and have questions regarding your actions or, if you are a trust beneficiary concerned about the actions of your trustee, give Rosen Hagood a call today to learn more about your legal options.

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