

UNIFORM PRUDENT INVESTOR ACT

Although the recently enacted Uniform Trust Act (effective in Kansas as of January 1, 2003) addresses investment, administration and distribution of trust property, it does not repeal the Uniform Prudent Investor Act. There is simply some overlap between these two sets of statutes. If you are currently managing assets for someone else in any of the following roles, you need to be aware of the law and rules relating to those who act in fiduciary capacities.

Are you:

- 1) A trustee or successor trustee of a revocable living trust, irrevocable trust, or testamentary trust?
- 2) An administrator of an estate?
- 3) An executor of a will that has been admitted to probate?
- 4) An agent acting under the terms of a Power of Attorney?

Kansas adopted (in 1994) the Uniform Prudent Investor Act. The prudent investor rule reads as follows:

- (a) Except as otherwise provided in subsection (b), a fiduciary who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this act.
- (b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on the provisions of the trust.
- (c) As used in this act, "fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

It is important to understand that as regards trusts, the language in the trust agreement regarding the fiduciary responsibilities of the trustee will control. Therefore, it is important to understand what authority is granted by the terms of the document.

Under the Prudent Investor Act, a fiduciary is imposed with a certain standard of care in managing assets for the benefit of the beneficiaries.

- (a) A fiduciary shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the fiduciary shall exercise reasonable care, skill and caution.
- (b) A fiduciary's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives suited to the trust.

The statute goes on to list a number of circumstances a trustee shall consider in the course of investing and managing assets. Those considerations are:

1. General economic conditions.
2. The possible effect of inflation or deflation.
3. The expected tax consequences of investment decisions or strategies.
4. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible property and real property.
5. The expected total return from income and the appreciation of capital.
6. Other resources of the beneficiaries who are eligible to receive discretionary payments of trust income or principal assets.
7. Needs for liquidity, regularity of income and preservation or appreciation of capital.
8. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more beneficiaries.

Next month we will discuss these responsibilities in light of the current economic forecast and recent history of a “down” market.

Every situation is unique. Please get advice from a knowledgeable estate planning attorney before deciding how trust assets should be managed in your situation.

Tim J. Larson, JD, PA, has its offices in Wichita, Kansas. Tim J. Larson and Logan M. Brown are members of Wealth Counsel, the Wichita Estate Planning Council, and *e.Planners*, a select group of nationally known and recognized Estate-planning Attorneys.