

**GETTING AHEAD OF FAMILY FEUDS
AND EMERGENCY SITUATIONS:
TRUSTEES' FIDUCIARY DUTIES**

FACT PATTERN “A”

FACT PATTERN A: PRESSURED TO MAKE TRUST DISTRIBUTION

Option 1: Go to Court!

- Petition court to approve distribution.

Option 2: Family Agreement!

- Agree to distribute, provided beneficiaries execute agreement approving distributions.

Option 3: Man Up — Use Your Discretion!

- Exercise discretion and agree to distribution without a release or court approval, accepting risk of litigation.

Option 4: Indemnify!

- Agree to distribute, provided matriarch releases and indemnifies Specialbank - including for surcharge and costs of defending distribution.

Option 5: You're Out!

- Introduce other options, e.g., secured loan, trust modification, etc., while declining to make distribution — and risk losing the business.

FACT PATTERN “B”

FACT PATTERN B: EVOLVING ROLES IN TRUST RELATIONSHIPS

Option 1: Sweet Talk Him!

- Have a meeting with the John and his trusted advisors to review the evolution of the trust relationship, and review his new role. He can be reinstated as a trustee, however, this will negate the state income tax benefits.

Option 2: Change It Up!

- Determine if John would be satisfied if a member of his family is named as a co-trustee or a directed adviser (but ensuring that the family member's domicile does not result in adverse state fiduciary income consequences).

Option 3: R-E-S-P-E-C-T!

- Document all conversations and continue to obtain John's approval for all investments and discretionary payments transactions as if he were still a trustee.

Option 4: Keep Your Friends Close

- Schedule regular meetings with John monthly and review all investments/transactions for review purposes only.

Option 5: Trouble On the Run!

- Recommend that the bank resign; there are only going to be more problems with this family going forward.

FACT PATTERN “C”

FACT PATTERN C: POTENTIAL UNDUE INFLUENCE BY THE CAREGIVER

Option 1: Turn a Blind Eye!

- Recognize the General Power of Attorney and honor the request from the caregiver as Agent on behalf of Ron.

Option 2: I Can't Hear You!

- Simply ignore the caregiver's request and Ron's new General Power of Attorney and refuse to make the distribution.

Option 3: Talk It Out!

- Meet with Ron to determine if he is competent, wants the withdrawal and that he understands that he signed a new General Power of Attorney which has given his caregiver unfettered powers to manage his financial affairs.

Option 4: Call In Reinforcements!

- Contact Ron's sister and/or her children before making any decisions, given that they are the remainder beneficiaries of the Trust (and also might be beneficiaries of Ron's estate). Consider also calling Ron's attorney.

Option 5: Punt to the Authorities!

- Report the incident to Adult Protective Services.

FACT PATTERN “D”

FACT PATTERN D: DIRECTED TRUSTEE PUSHED FOR RISKY INVESTMENT

Option 1: I Hear and Obey!

- You are a directed Trustee—make the investment. You don't even need that waiver of the Prudent Investor standard!

Option 2: We've Got to have SOME Law!

- Determine that the investment is too risky and refuse to make the investment. After all, it's not illegal!

Option 3: But Think of the Children!

- Determine that the non-growth/all-income nature of the investment is unfair to the interests of the future beneficiaries and refuse to make the investment unless the other beneficiaries also agree (and maybe indemnify).

Option 4: Can't We All Just Get Along?

- Suggest conversion of the trust to a Unitrust.

Option 5: Go to Court!

- Petition the Court for instructions.