

OHIO TRUST ACCOUNTINGS: KEEPING BENEFICIARIES INFORMED AND TRUSTEES OUT OF TROUBLE

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I. INTRODUCTION

If, in your practice, you have represented either a trustee or the beneficiary of a trust, the odds are high that you have encountered a dispute relating to the provision of information by the trustee, or the acceptance of said information by a beneficiary. While formal accounting procedures are hoped by many practitioners to be left in the Probate Court, a trust's administration is not completely without regulations when it comes to recordkeeping and circulation of information.

To effectively represent a trustee or trust beneficiary, one must first have a mastery of the relevant statutory and common law regulations relating to a trustee's duty to inform and record keep. Second, an intimate understanding of common law application is important for avoidance of litigation and adversarial actions. This article will provide guidance regarding the relevant guidelines and how they've been interpreted by Ohio Courts so you can protect your beneficiary clients and keep your trustee clients out of trouble!

II. WHAT ARE THE RULES?

Most probate practitioners who practice in the realm of trust administration are generally familiar with a trustee's duty to

inform and report. However, not all have an acute understanding of the background and statutory provisions which direct said duty.

The bounds of a trustee's obligation to inform and report to trust beneficiaries can be found in R.C. 5808.13. This Revised Code section derives, of course, from the Uniform Trust Code. Relevant to trust accountings are two provisions: R.C. 5808.13(A) and (C), which must be read in conjunction with each other to ensure compliance by a trustee with their duties.

First, R.C. 5808.13(A) contains, broadly, one of the most fundamental duties of a trustee:

A trustee shall keep the current beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

The most important consideration to be made in evaluating a trustee's duty under R.C. 5808.13(A) is whether the information provided is information which is required for the beneficiary to protect their interests. The information production necessary to comply may look different at different stages of administration. For example, a "trustee may be required to provide advance notice of transactions involving real estate, closely-held business interests, and other assets that are difficult to value or replace."¹ Keep in mind that the first sentence of R.C. 5808.13(A) requires a trustee to *volunteer* information at semi-regular intervals, not just respond to inquiries as they arrive.

Of course, in addition to the proactive production of information by a trustee to a beneficiary, a trustee must also respond to a beneficiary's request for information about the trust's administration with as much frequency as those requests may be made. A beneficiary's request must be reasonable, and a trustee is exempted from the duty to promptly furnish the requested information when the request would be unreasonable under the circumstances.² Important to note is that this provision allows the *beneficiary* to determine what information they believe is relevant to protect their interests instead of the trustee.³ If in your practice you find yourself representing a trust beneficiary, do not shy away from making information requests under this provision!

Also found in R.C. 5808.13 is R.C. 5808.13(C), which is far more specific than R.C. 5808.13(A). The Subsection provides that:

A trustee of a trust . . . shall send to current beneficiaries, and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and, if feasible, the trust assets' respective market values.

This Subsection is the crux of the trust accounting requirement, directing that, on an annual basis, beneficiaries—whether current or not—are legally entitled to various information of the trustee's activities and trust's administration. The type of information to be disseminated is not left to the imagination, but very clearly spelled out in the statute, and thus should serve as a reference point for both practitioners

preparing and reviewing annual trust accountings.

Finally, and more tangential to the accounting issue than R.C. 5808.13, is R.C. 5808.10(A), rounding us out with a record-keeping requirement: “[a] trustee shall keep adequate records of the administration of the trust.”

Keeping these three Revised Code Sections close in hand during either the representation of a trustee or beneficiary is crucial to ensure a trustee's compliance with their duties and a beneficiary's enforcement of their rights.

III. WHAT DO THE RULES MEAN?

Despite the seemingly-clear language of R.C. 5808.13(A) and (C), and R.C. 5808.10(A), it has likely become obvious to most of us that the true requirements are up for a certain level of debate. Let's review some of the nuances that must be kept in mind when interpreting the relevant Revised Code Provisions.

A. CURRENT BENEFICIARIES VERSUS OTHER BENEFICIARIES

The first line of R.C. 5808.13(A) reads: “A trustee shall keep the current beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests.” As you'll notice, this duty only applies to *current* trust beneficiaries, meaning a beneficiary who, on the date in question, “is a distributee or permissible distributee of trust income or principal.”⁴ This limiting language means that a trustee does *not* need to volunteer information about the trust's administration to

remainder beneficiaries under general circumstances.⁵

The caveat lies in both the second sentence of R.C. 5808.13(A), as well as the language of R.C. 5808.13(C). Those Subsections do *not* contain the limiting “current beneficiary” language, meaning that any beneficiary, whether a remainder or more remote beneficiary, may request information about the administration of the trust and is likewise entitled to receipt of annual accountings should they request one. In practice, this fact is often lost on trustees and/or their counsel, which can lead to lengthy debates and trustee liability. The rule is essentially this: a trustee *must* keep current beneficiaries apprised of the trust’s administration sufficiently to enable them to protect their interest. Upon reasonable request of any non-current beneficiary, a trustee *must* respond with the requested information, and/or include that beneficiary as a recipient of the annual trust accountings required under R.C. 5808.13(C).

B. FORMALITIES OF AN R.C. 5808.13(C) REPORT

One of the most controversial topics—and rightfully so—surrounding the annual trust accounting is its form and substance. While the plain language of R.C. 5808.13(C), logically speaking, is fairly specific, the Official Comment makes clear that there are no black and white formal requirements to this process: the term “report” instead of “accounting” is specifically used in the language of the statute “to negate any inference that the report must be prepared in any particular format or with a high degree of formality.”⁶ Rule-followers like myself really appreciate the clarity here.

So, if there are no formatting or formality requirements to speak of, what exactly should an annual trust accounting look like? I wish I could give you a complete and accurate set of rules, but interpretation of R.C. 5808.13(C) seldom makes its way through court scrutiny. What we are left with are pieces of interpretation which must be strung together to fit any specific circumstance.

For example, in *Thallman v. Thallman*, 2016-Ohio-992, 2016 WL 953150 (Ohio Ct. App. 3d Dist. Seneca County 2016), trust beneficiaries brought an action against the trustees seeking an accounting pursuant to R.C. 5808.13(C).⁷ After a lengthy court battle involving numerous issues (please read this case in its entirety as it is very informative on a number of common questions related to trust accountings!), it was found that a trustee providing access to tax records and financial statements from the institution that managed the trust’s assets was sufficient to comply with the reporting requirements of R.C. 5808.13.⁸ The language of the Official Comment to R.C. 5808.13, which the Court quotes in *Thallman*, even states: “[t]he reporting requirement might even be satisfied by providing the beneficiaries with copies of the trust’s income tax returns and monthly brokerage account statements if the information on those returns and statements is complete and sufficiently clear.”⁹

So, depending on the clarity of the documents, annual reports consisting of monthly statements and tax returns may do the trick. Be mindful, however, of assets that are not or cannot be disclosed on these categories of documents (tangible personal property, I’m looking at you!)

the sufficiency of which depend on *complete* reporting.

A review of the relevant caselaw reveals that some courts require a little more detail, however, than the Third District did in *Thallman*. In *In re Marjorie A. Fearn Trust*, 2012-Ohio-1029, 2012 WL 850735 (Ohio Ct. App. 5th Dist. Knox County 2012), the Court held that a handwritten ledger of trust activities called a “Record Book” did *not* fulfil the requirements of R.C. 5808.13(C), as “[a]n inventory was not included, nor was there a running account of daily disbursements and receipts.”¹⁰ Therefore, the Fifth District sought what is essentially a full accounting of all income and expenditures, much like a probate court accounting, even while acknowledging that the defendant trustee was not a professional trustee.¹¹ This seems to me like some formality is required after all.

Finally, another Fifth District Case, *McHenry v. McHenry*, 2017-Ohio-1534, 88 N.E.3d 1222 (Ohio Ct. App. 5th Dist. Stark County 2017), affirmed a trial court’s holding that, upon a request of a beneficiary for additional information regarding the trust’s expenditures, the trustee’s provision of cancelled checks and receipts did not comply with the trustee’s duties to keep the beneficiary informed, because those documents “did not sufficiently provide [the beneficiary] with material fact necessary for her to protect her interests.”¹²

The bottom line, given the above, is that different circumstances require differently-formatted trust accountings. Additionally, the level of detail required may very well be dictated by a trust’s beneficiaries. My personal philosophy: when in doubt, overshare.

C. WAIVERS

A final element of the trust accounting that is subject to either misunderstanding and/or misinterpretation is the effect of a waiver in a trust document. I, and I’m sure many of us, in reviewing trust instruments, have seen settlors attempt to waive various trustee duties, including those related to the provision of trust accountings.

Pursuant to R.C. 5808.13(B), a trust settlor *may* waive the annual accounting requirement contained in R.C. 5808.13(C), meaning that a trustee need not prepare and distribute a trust accounting or trustee’s report on their own volition. However, a settlor *may not* waive a trustee’s duties under R.C. 5808.13(A) to “respond to the request of a current beneficiary of an irrevocable trust for trustee’s reports and other information reasonably related to the administration of a trust.”¹³ Interestingly enough, and likely subject to further debate, is the use of “current beneficiary” in this provision. As discussed above, R.C. 5808.13(A) divides a trustee’s duties to beneficiaries into two categories: those owed to “current beneficiaries” and those owed to other beneficiaries. However, R.C. 5801.04(B)(9) potentially lacks the distinction. Be sure to perform your own adequate evaluation and analysis when confronted with this Subsection—that is until I write another article about it!

Finally, a beneficiary may waive their right to a trust accounting or other information which would otherwise be required to be distributed by a trustee.¹⁴ If you represent a trust beneficiary, it is possible your client will be asked by a trustee to execute a formal waiver in an effort to create efficiency in the administration

process. Please be sure to discuss your beneficiary’s rights, as well as the duties of a trustee in this context, before they execute any waiver. Of course, any waiver made by a beneficiary may be revoked as to future accountings, and does not preclude requests for information.¹⁵

IV. CONCLUSION

Whether you represent a trustee or a beneficiary, in-depth knowledge of trust accounting requirements in Ohio can only serve your clients well by allowing them protection either from suit or breaches of trust. Having these statutory provisions and common law applications in your back pocket in case a dispute were to arise is recommended and may potentially keep your clients out of costly court battles, which only delay the administration of a trust and cost all parties both emotionally and financially. When in doubt, rely on statute, err on the side of formality, and overprovide!

ENDNOTES:

¹See R.C. 5808.13, Official Comment (additional citations omitted).

²See R.C. 5808.13, Official Comment.

³See R.C. 5808.13, Official Comment.

⁴R.C. 5808.01(F)

⁵See R.C. 5808.13, Official Comment.

⁶R.C. 5808.13, Official Comment.

⁷*Thallman v. Thallman*, 2016-Ohio-992, ¶ 6, 2016 WL 953150 (Ohio Ct. App. 3d Dist. Seneca County 2016).

⁸*Thallman v. Thallman*, 2016-Ohio-992, ¶ 51, 2016 WL 953150 (Ohio Ct. App. 3d Dist. Seneca County 2016).

⁹*Thallman v. Thallman*, 2016-Ohio-992, 2016 WL 953150 (Ohio Ct. App. 3d Dist. Seneca County 2016).

¹⁰*In re Marjorie A. Fearn Trust*, 2012-Ohio-1029, ¶ 25, 2012 WL 850735 (Ohio Ct. App. 5th Dist. Knox County 2012).

¹¹*In re Marjorie A. Fearn Trust*, 2012-Ohio-1029, ¶ 26, 2012 WL 850735 (Ohio Ct. App. 5th Dist. Knox County 2012).

¹²*McHenry v. McHenry*, 2017-Ohio-1534, ¶ 50, 88 N.E.3d 1222 (Ohio Ct. App. 5th Dist. Stark County 2017).

¹³R.C. 5801.04(B)(9).

¹⁴R.C. 5808.13(D).

¹⁵R.C. 5808.13(D).

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