

CHICAGO ESTATE PLANNING COUNCIL

March 19, 2014 – Navigating the Trustee's Duty to Disclose
The Standard Club, 320 S. Plymouth Court, 5th Floor Ballroom, Chicago, IL

"How much is enough, or too much? Beneficiaries' Rights to Information"

By

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I. INTRODUCTION

A. Legal Trends

1. It is an increasingly risky business to serve as Trustee.
 - a. Fiduciary litigation seems to be on the rise.
 - b. Beneficiaries have discovered that they, like the rest of society, can seek redress for actual or perceived wrongs in the courts.
 - c. The trend in trust law is a perception that a trust is owned by or belongs to the beneficiaries, whose rights control over the settlor's intentions.
2. Business Management vs. Risk Management
 - a. Trustees may implement a balancing test of beneficiaries having a right to information that allows them an opportunity to protect their interests weighed against whether it is appropriate that certain "beneficiaries" have some or all of that information.
 - b. Beneficiaries may fear that "angering" the trustee by asking for information will be detrimental to them in other areas of the administration, including discretionary distributions.
 - c. One of the primary benefits of establishing trusts is privacy; so the idea of challenging trustees in court may be a veiled threat because the other beneficiaries may not want their family matters subject to public scrutiny.
3. In all cases, the terms of the document and state law will govern. The interplay between the two will vary by state and needs to be carefully considered.

B. Topics to be covered:

1. Fundamental basis—Trustee's duties to furnish information and render accounts
2. Overview—*the Four Cornerstones*: (1) Who gets, (2) What do you get, (3) In what format do you get it (what counts as delivery) and (4) When do you get it?
3. Silent Trusts—Can a grantor prescribe that the beneficiary gets little or no information about the trust?
4. Costs to Obtain Information—Can a trustee use trust funds to dispute a beneficiary's right to information? What rights does the beneficiary have to utilize trust funds in a trust dispute?

II. FUNDAMENTAL TRUSTEE DUTIES

A. Duty to Furnish Information

1. Restatement (Second) of Trusts, Section 173¹: “The trustee is under a duty to the beneficiaries to give them upon their request at reasonable times complete and accurate information as to the nature and amount of the trust property, and permit them or a person duly authorized by them to inspect the subject matter of the trust and the accounts and vouchers and other documents relating to the trust.”
2. Restatement (Third) of Trusts, Section 82: “(1) . . . a trustee has the duty (a) promptly to inform fairly representative beneficiaries of the existence of the trust, of their status as beneficiaries and their right to obtain further information, and of basic information concerning the trusteeship; (b) to inform the beneficiaries of significant changes in their beneficiary status; and (c) to keep fairly representative beneficiaries reasonably informed of changes involving the trusteeship and about other significant developments concerning the trust and its administration, particularly material information needed by beneficiaries for the protection of their interests. (2) Except as provided in §74 [revocable trusts] or as permissibly modified by the terms of the trust, a trustee also ordinarily has a duty promptly to respond to the request of any beneficiary for information concerning the trust and its administration, and to permit beneficiaries on a reasonable basis to inspect trust documents, records and property holdings.”
 - a. Where there are several beneficiaries, including vested remaindermen, each of them is entitled to information. Whether a contingent remainderman is entitled to information varies from state to state.
 - b. According to the Comments to the Restatement (Third), the term “fairly representative” beneficiaries is designed to reflect the diversity of beneficial interests and concerns. The trustee has a duty to select and inform a limited number of beneficiaries whose interests appear “fairly representative.” *See* cmt. (a)(1).
3. Uniform Trust Code, Section 813(a): “A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and the material facts necessary for them to protect their interests.”
4. Under the Restatement (Third) approach, the trustee’s duty would seem to be discharged by providing information to current beneficiaries entitled or eligible to request income or principal distributions, as well as vested remaindermen.
5. Co-trustees are entitled to enough information about the trust to fully participate in the administration of the trust, to carry out the purposes and terms of the trust, and to

¹ The Restatement is not binding law in any state. It is often persuasive to legislators or courts, but is not binding authority.

prevent or redress a breach of trust by a co-trustee. *See* Bogert, *The Law of Trusts and Trustees*, §961 (1983).

B. Duty to Keep and Render Accounts

1. “The trustee is under a duty to the beneficiary to keep and render clear and accurate accounts with respect to the administration of the trust.” Restatement of Trusts (Second), Section 172.
2. “A trustee has a duty to maintain clear, complete and accurate books and records regarding the trust property and the administration of the trust, and, at reasonable intervals on request, to provide beneficiaries with reports or accountings.” Restatement (Third) of Trusts, §83.
3. Uniform Trust Code Section 810—Recordkeeping and Identification of Trust Property
 - a. 810(a) A trustee shall keep adequate records of the administration of the trust.
 - b. 810(b) A trustee shall keep trust property separate from the trustee’s own property.
 - c. 810(c) Except as otherwise provided in subsection (d), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.
 - d. 810(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

III. THE FOUR CORNERSTONES

A. Who Receives Information—“Who Gets” (per UTC and IL law)

1. Beneficiaries Entitled to Information per UTC (Qualified Beneficiaries) (*See* Exhibit 1—State-by-State Survey, Dana G. Fitzsimons, Jr., *UTC Reporting Requirements: Default vs. Mandatory by Enacting Jurisdiction and State Law Variations as of January 2014*)
 - a. UTC Type 1 Qualified Beneficiary: A beneficiary who, on the date the beneficiary’s qualification is determined, is a distributee of trust income or principal. U.T.C. § 103(13)(A).
 - b. UTC Type 2 Qualified Beneficiary: A beneficiary who, on the date the beneficiary’s qualification is determined, would be a distributee of trust income or principal if the interests of the [Type 1 Qualified Beneficiaries]

distributees . . . terminated on that date without causing the trust to terminate. U.T.C. § 103(13)(B).

- c. UTC Type 3 Qualified Beneficiary: A beneficiary who, on the date the beneficiary's qualification is determined, would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date. U.T.C. § 103(13)(C).
- d. Contingent remainder beneficiaries are considered beneficiaries under UTC Section 103(3)(A). This applies even if they are not qualified beneficiaries.

(Sometimes contingent remainder beneficiaries can be qualified, as will be shown in an example below.)

Practice Example – Type 1 & Type 2 Qualified Beneficiaries

Grantor creates an irrevocable trust. The trust allows all of the income to be paid for the benefit of Friend for the duration of ten years *or* for Friend's lifetime, whichever is shorter. After the shorter of ten years or Friend's life, the trust income goes to Grantor's Son. What types of beneficiaries are the parties?

Practice Answer

Friend is a type 1 beneficiary because he is currently entitled to income from the trust. Grantor's Son is a type 2 beneficiary because he is entitled to assets of the trust after a certain amount of time, and because the trust will continue at that time. Note that Grantor's Son's interest is vested.

Practice Example – Type 1 & 3 Qualified Beneficiaries

Grantor creates an irrevocable trust. All income is for the benefit of Wife during Wife's lifetime. During her lifetime, Wife may appoint the trust principal to whomever she chooses (other than to herself). If Wife does not exercise this power, principal goes to Child outright. Assuming the Wife has not yet appointed the trust principal, what types of beneficiaries are the parties?

Practice Answer

Wife is a type 1 beneficiary because she is currently entitled to income. Child is a type 3 beneficiary because she would be entitled to the trust principal if the trust terminated *today*. A type 3 qualified beneficiary is someone who, on the date in question, would be entitled to income or principal if the trust terminated on that date. Since Wife has not exercised her power, Child would receive the principal if the trust terminated. This can be confusing because Child is a type 3 beneficiary even though she is not a vested remainder beneficiary. *So as a practice note, all vested remainder beneficiaries are qualified, but all qualified beneficiaries are not necessarily vested.*

Practice Example – Type 1 & 3 Qualified Beneficiaries & Non- Qualified Contingent Beneficiary

Grantor creates an irrevocable trust, with all income for the benefit of Friend during Friend's lifetime. Upon Friend's death, Friend may appoint the trust principal to either the Salvation Army or the Red Cross. If Friend does not exercise this power, principal goes to Friend's Child. What types of beneficiaries are the parties?

Practice Answer

This answer is similar to the previous one. Friend is a type 1 beneficiary because he is a current beneficiary. Child is a type 3 beneficiary because she is entitled to trust principal if the trust is terminated today. The Salvation Army and Red Cross are both considered contingent remainder beneficiaries (they are not qualified beneficiaries under the UTC, though they may be entitled to some information, as will be explained below).

2. Beneficiaries Entitled to Information per Illinois Law.

a. Current beneficiaries are clearly entitled to an accounting.

Every trustee at least annually shall furnish to the beneficiaries then entitled to receive or receiving the income from the trust estate, or if none, then those beneficiaries eligible to have the benefit of the income from the trust estate a current account showing the receipts, disbursements and inventory of the trust estate. A current account shall be binding on the beneficiaries receiving the account and on such beneficiaries' heirs and assigns unless an action against the trustee is instituted by the beneficiary or such beneficiary's heirs and assigns within 3 years from the date the current account is furnished. 760 ILCS §5/11(a). *Notice that a "current account" is not defined in the statute.*

- (1) Current beneficiaries include beneficiaries who are entitled to discretionary distributions, even if they are not actually receiving these distributions. *See Goodpasteur v. Fried*, 183 Ill. App. 3d 491, 495 (1st Dist. 1989).
- (2) Caveat: Although the Illinois Trusts and Trustees Act only requires a trustee to account to current income beneficiaries, Illinois court decisions have held that remainder beneficiaries may be entitled to an accounting on demand (1) where the beneficiary's purpose is proper, and (2) to see that the trust is properly executed. *See Corsi v. Corsi*, 706 N.E.2d 956 (Ill. App. Ct. 1998).
- (3) Therefore, a trustee should not assume that a beneficiary who is not entitled to an accounting by statute will not be able to obtain one through exercise of the equity powers of the courts.

- b. Are vested remainder beneficiaries entitled to an accounting too?

In *Whalen v. Whalen*, 217 Ill. App. 3d 557 (3rd Dist. 1991), wife’s trust made husband the trustee and granted him a life estate in the trust’s income. The couple’s five children were the trust’s remainder beneficiaries. Two of the children brought a complaint for a trust accounting against the trustee.

The court held that “defendant owes a common law duty to account to the plaintiffs who are clearly vested remaindermen with respect to the residue of the residual trust.” *Id.* at 560.² This is a “duty to render accounting at reasonable times.” *Id.* at 558.

- c. Contingent remainder beneficiaries are not entitled to an accounting unless mismanagement can be shown.

In *Bullis v. DuPage Trust Co.*, 72 Ill. App. 3d 927 (Ill. App. Ct. 1979), the plaintiff was the decedent’s son, and the trustee was the DuPage Trust Company. The plaintiff sued for construction of what he claimed were ambiguous trust terms, and also for a trust accounting. The court held that, as a vested remainderman, the plaintiff was entitled to an accounting. The *Whalen* court relied on this opinion for its holding.

Then, in dicta, the court commented that, “[i]f [plaintiff] were merely a contingent remainderman as the trial court viewed him, an accounting could have been withheld unless ‘waste, mismanagement or dissipation of assets appear or can be shown.’” *Bullis* at 932.

3. (For a review of how to categorize a beneficiary per the UTC and Illinois, see Exhibit 2, *Defining the Beneficiary*, attached hereto. For an illustration of interchanging between UTC categories and Illinois categories, see Exhibit 3, *UTC and Illinois Beneficiary Conversion Flow Chart*, attached hereto.)

B. Duties Owed—“What Information Beneficiaries Get Per the UTC”

1. UTC Duty to Inform and Report under Section 813 (See Exhibit 4: *UTC Duty to Inform Chart*)
 - a. Three types of duties
 - (1) Initial duty
 - (2) Ongoing duty
 - (3) Duty to report *upon request*

² See, also, *Bullis v. DuPage Trust Co.*, 72 Ill. App. 3d 927, 931 (Ill. App. Ct. 1979).

- b. Initial Duties Upon Trustee Acceptance
 - (1) Qualified Beneficiary
 - (i) Within 60 days of a trustee accepting trusteeship, he/she is required to provide Qualified Beneficiaries with the trustee's name, address and telephone number. U.T.C. §813(b)(2).
 - (ii) Within 60 days of the trustee's knowledge of an irrevocable trust, or that a trust has become irrevocable, the trustee shall notify the Qualified Beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, and the right to a trustee's report as per the Uniform Trust Code Section 813(c) (see (c)(1) below). U.T.C. §813(b)(3).
 - (2) Non-Qualified Beneficiaries. Trustees are not required to give Non-Qualified Beneficiaries initial notice under the UTC. *See* U.T.C. §813(b)(2)-(3).
- c. Ongoing Duty to Inform. All three types of UTC Qualified Beneficiaries are to be kept reasonably informed about the trust's administration and material facts needed to protect their interests. The UTC is still requiring a trustee to be thoughtful and use reasonable judgment. The trustee, depending on the circumstances, cannot just blindly follow the strict elements of the UTC and believe that their duties will always be fulfilled. *See* U.T.C. § 813 cmt.
 - (1) Type of information
 - (i) A report of 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, their respective market values. Unif. Trust Code § 813(c).
 - (ii) Note that "the Uniform Trust Code employs the term 'report' instead of 'accounting' in order to negate any inference that the report must be prepared in any particular format or with a high degree of formality." Unif. Trust Code § 813 cmt.
 - (2) Type 1 Qualified Beneficiaries are the Only Class Entitled to the Report
 - (i) Distributees or permissible distributees of trust income or principal (i.e., Type 1 Qualified Beneficiaries) must receive the Section 813(c) report at least annually (and upon termination of the trust). U.T.C. § 813(c).

- (3) Type 2/Type 3 Qualified Beneficiaries and Non-Qualified Beneficiaries
 - (i) The Trustee is NOT required to provide ongoing reports to these beneficiaries.
 - (ii) However, the trustee SHALL send them to these beneficiaries upon request. U.T.C. §813(c).
- (4) The duty to keep beneficiaries reasonably informed is *separate* from the requirements under subsection (c) of Section 813 to send the report upon request and applies only to all Qualified Beneficiaries.
- d. Duty to Inform Upon Request. All beneficiaries—Qualified or Non-Qualified.
 - (1) As indicated above, all beneficiaries, upon request, are entitled to receive information covered under Section 813(c), any information related to the administration of the trust, and a copy of the trust instrument.
 - (2) The trustee should balance the foregoing against, Section 813(a) which makes an exception when it would be “unreasonable under the circumstances”³ to provide the requested information.

C. Duties Owed—“What Information Beneficiaries Get Per Illinois Law”

- 1. Every trustee at least annually shall furnish to the beneficiaries then entitled to receive or receiving the income from the trust estate, or if none, then those beneficiaries eligible to have the benefit of the income from the trust estate a current account showing the receipts, disbursements and inventory of the trust estate. 760 ILCS §5/11(a); *See also Bullis* at 932.
- 2. As seen above, vested remainder beneficiaries may be entitled to an accounting too. *Whalen*, 217 Ill. App. 3d at 560.
- 3. No special form, however, of keeping books is required. *Wylie v. Bushnell*, 277 Ill. 484, 491-92 (Ill. 1917).
- 4. [A] trustee's duty to account begins when he has accepted the trust and qualified in the manner required by law; it then ‘becomes his duty to examine carefully the terms of the trust in order to ascertain exactly what property forms the subject-matter of the

³ “Subsection (a) also requires that the trustee promptly respond to the request of any beneficiary, whether qualified or not, for information related to the administration of the trust. Performance is excused only if compliance is unreasonable under the circumstances. Within the bounds of the reasonableness limit, this provision allows the beneficiary to determine what information is relevant to protect the beneficiary’s interest. Should a beneficiary so request, subsection (b)(1) also requires the trustee to furnish the beneficiary with a complete copy of the trust instrument and not merely with those portions the trustee deems relevant to the beneficiary’s interest.” U.T.C. § 813 cmt at 148.

trust, who are the beneficiaries, and what are the trustee's duties with respect to the trust property and cestuis.' *Id.*

D. Other Issues: Privacy

Practice Example: Privacy

Client, Aaron, is the beneficiary of a large trust. Aaron has recently encountered some difficult issues, separating from his wife and struggling with a drug addiction. He is also on the board of directors of a large company, along with his two brothers, Jimmy and Phillip. Jimmy and Phillip are current beneficiaries of the same trust. The three brothers have been in a power struggle for the company over the past year, but they are still on relatively good terms and are not engaged in any sort of litigation.

Under the trust, Aaron is entitled to discretionary income for health services, including treatment for mental health and drug addiction. As trustee, you have determined that these discretionary disbursements would be proper. An issue arises, however, when Aaron pleads with you not to tell his brothers about the disbursements or, at the very least, not to disclose the reason for them. What should you do, as trustee?

Practice Answer

As trustee, you are required under the UTC and Illinois law to keep all of the current beneficiaries informed about the trust, and this includes at least an annual accounting of the disbursements made. Accordingly, you must include in your reports the amount of the disbursement made to Aaron. As for a rationale for the disbursement, it may be possible to describe it as "Medical Costs" in the report. This may ease Aaron's concerns in the short-term, but in the long-term, it is not likely to solve the problem, as it will probably raise concern when the other two brothers receive the report.

In the end, the law requires disclosure and privacy concerns like these may be ignored by the trustee. The other two brothers are entitled to know how the trust funds are being spent because they have equal interests in trust.

Practice Note: This may be a case where one should consider drafting a trust agreement that creates a separate trust for each sibling, rather than a spray trust. In such a case, each sibling would not be privy to information about the others' disbursements (and each would begin with an equal subtrust which would not be diluted by a distribution from a sibling's separate subtrust). The trustee should also consider if severance of the trust into three separate trusts is permitted under state law and the governing document.

E. Other Issues: Inheritance

Practice Example: Contingent Beneficiaries and Inheriting the Right to Information

Lynn is Joe's mother. Harvey is Lynn's father, and the grantor of a trust. Fred is Harvey's best friend. Lynn is the sole current income beneficiary under the trust. Upon Lynn's death, if Fred predeceases Lynn, the trust principal goes to Joe. Otherwise, principal goes to Fred upon Lynn's death.

Lynn passes away and Fred is still alive. Lynn's will leaves everything she has to Joe. What rights to information about the trust does Joe currently have?

Practice Answer

Joe has no rights to information about the trust. Prior to Lynn's death, he did have rights to information upon request under the UTC (but not in Illinois), as a non-qualified beneficiary. Now that Lynn has passed away, Joe no longer has those rights because he is not a beneficiary of the trust.

Joe does not inherit the right to information from his mother because the right to information about the trust is not property. Joe's right to information is solely determined by his status under the trust agreement at the time that his request for information is made.

F. In What Format Do You Get It/What Counts as Delivery?

1. There is very little law that specifies the specific format in which an accounting or report must be provided; the essential requirement is that the report provides sufficient information to allow the beneficiaries to protect their interests. "The fundamental objective of any fiduciary account should be to provide essential and useful information in a meaningful form to parties interested in the accounting process." Robert Whitman & David M. English, *Fiduciary Accounting and Trust Administration Guide* 3 at 43 (2002).
 - a. The Restatement (Third) of Trusts, Section 83(b) provides:

"A trustee's duty to provide 'reports' or 'accountings' to a beneficiary may be satisfied by relatively informal reports that reveal trust assets and liabilities, receipts and disbursements, and other transactions involving trust property, and that disclose the amount and bases of compensation paid to the trustee(s) and any agent(s) during the accounting period covered by the report. Trust assets should be listed with their respective market values (using good-faith estimates as necessary) as of the date of the accounting."
 - b. State law may direct what information is required to be included. *See, e.g.*, Florida (Fla. Stat. Ann §736.08135 & Fla. Prob. R. 5.346), Texas (Tex. Prop. Code Ann. §113.152), and Illinois (760 ILCS §5/11).

- c. Most corporate fiduciaries take the position that monthly or other intermittent account statements (provided at least annually) provide sufficient information to be deemed a “report” meeting the trustee’s obligation to account.
 - d. The particular governing document can also require certain additional items be included in any accounting or report, although such a provision is not common.
- 2. One might assume that electronic delivery of reports or accountings is permitted. However, in many states, the law is less than clear regarding the permissibility of such notice or disclosure.
 - a. When a written document is mailed to the required beneficiaries, common law dictates that upon placement in a mailbox, the notice or report is deemed to be delivered, and notice is deemed provided. Whether the item is actually received or opened is not relevant, if all of the necessary formalities required for proper delivery (proper address, postage, deposit into a permitted mailbox, etc) are followed.
 - b. The requirements for electronic delivery are much less clear.
- 3. The Uniform Electronic Transactions Act (“UETA”) has been adopted in 47 states and the District of Columbia; the other three states (Illinois, New York and Washington) have statutes pertaining to electronic transactions.
 - a. The UETA focuses primarily on electronic records and signatures. It requires that all parties explicitly agree to conduct transactions electronically. The intent is to provide that electronic records are equivalent to paper records and electronic signatures are given the same legal effect. It provides default rules for delivery and receipt of records electronically. *See* Unif. Elect. Transact. Act Summary, Uniform Law Commission.
 - b. An item is deemed to be sent when it is properly addressed to the recipient and leaves the control of the sender. *See* UETA § 15(a)
 - c. An item is deemed received when it enters the system the recipient designates or uses, in a form that capable of being processed by that system. UETA § 15(b).
 - d. The UETA deals with “transactions”; it is not clear that trust statements and notices fall within the definition of transactions under the UETA.
- 4. States deal with this issue in a variety of ways.
 - a. Illinois law provides clear guidance on electronic delivery of trust notice. Section 5/11(g) of the Illinois Trust & Trustees Act provides that the presumption of receipt by a beneficiary applies “to the mailing or delivery of an account by electronic means or the provisions of access to an account by

electronic means so long as the beneficiary has agreed to receive such electronic delivery or access.” (760 ILCS §5/11(g))

- b. Nevada Law, Nev. Rev. Stat. §165.137(k) provides that a beneficiary is deemed to have received a copy of a trustee’s account if the account was sent and received as required under Nevada law on electronic delivery and receipt, is attached to an e-mail or is accessible via link in an e-mail to a secure website.
 - c. Delaware (12 Del. Code Ann. §3534), Washington (Wash. Rev. Code §11.96A.110) and Pennsylvania (20 Pa. Cons. Stat. Ann. §7709) also explicitly permit electronic delivery of trust notices. The UTC, in Section 109, permits electronic delivery as well.
5. One of the open issues for corporate trustees is whether delivery via an e-mail notice and link to a secure website where the statement is available is deemed to be notice. This has been a contentious issue in Florida. Currently proposed legislation would allow for delivery via access to a secured website only if the recipient has specifically agreed to receive documents in this manner and if the recipient receives certain disclosures.

G. When Do You Get It?

1. Most statutes, as well as common language in governing documents, require that an accounting be provided at least annually. *See, e.g.*, 760 ILCS §5/11(a); Flor. Stat. Ann. §736.0813.
2. Following provision of the accounting, state law governs the statute of limitation applicable to the information disclosed. For example, Florida law provides a six month statute of limitation after receipt of a trust disclosure document (which would include an accounting that complies with Florida law). F.S.A. §736.1008. Illinois law includes a three year statute of limitations from the date the accounting is furnished. 760 ILCS 5/11(a).

III. SILENT TRUSTS

A. Introduction

1. A Silent Trust (aka Quiet Trust) is an irrevocable trust in which the grantor directs the trustee not to inform the beneficiary of the trust’s existence or provide the beneficiary with some or all of the information regarding the trust.
2. Many states have enacted legislation that expressly allow for Silent/Quiet Trusts (e.g., Alaska, Arizona, Delaware, Maine, Missouri, New Mexico, Ohio, Oregon, South Dakota, Texas and Utah).
3. Other states allow for Silent/Quiet Trusts by implication. More specifically, Illinois law allows the terms of the trust agreement to govern unless there is an express

statute to the contrary. Currently, the Illinois Trusts and Trustees Act does not include a statute on a duty to inform a beneficiary that can override in some way an express provision in the trust.

B. General Scope of Silent Trusts

1. The states that expressly allow for Silent Trusts do not have uniform rules regarding the scope of disclosure. More specifically, some states authorize a grantor to restrict a beneficiary's right to information prior to attaining a certain age. Other states allow for fairly broad restrictions to information, but at some point require it be provided.
2. For example, Delaware law allows a grantor a broad opportunity to limit a beneficiary's right to information.

“Notwithstanding any other provision of this Code or other law, the terms of a governing instrument may expand, restrict, eliminate, or otherwise vary: (1) The rights and interests of beneficiaries, including, but not limited to, the right to be informed of the beneficiary's interest for a period of time. . . provided, however, that nothing contained in this section shall be construed to permit the exculpation or indemnification of a fiduciary for the fiduciary's own wilful misconduct or preclude a court of competent jurisdiction from removing a fiduciary on account of the fiduciary's wilful misconduct. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this section.” 12 Del. C. § 3303

3. The Uniform Trust Code does not permit the terms of the trust agreement to govern exclusively. In fact,
 - a. UTC Section 105(b)(8) provides that a grantor cannot waive the duty to inform “qualified beneficiaries” who have reached age 25 of the trust's existence, the trustee's identity and the beneficiary's right to request trustee reports.
 - b. UTC Section 105(b)(9) provides that a grantor cannot waive a trustee's duty to respond to a qualified beneficiary's request for “report and other information reasonably related to the administration of a trust”.

C. Public Policy Balancing Test

1. “If a fiduciary can be rendered free from the duty of informing the beneficiary concerning matters of which he is entitled to know. . . , equity has been rendered impotent”. *Wood v. Honeyman*, 169 P.2d 131,164 (Or. 1946).
2. As broad as Delaware's statute might be, the limit to withholding information cannot be boundless.

D. Practical Considerations

1. *Information Delegate.* If a grantor insists on precluding a beneficiary from information, perhaps an information delegate might be used to help the trustee manage his/her fiduciary duties.
 - a. Washington, D.C. enacted a statute that allows a settlor to waive or modify the right to provide a beneficiary with information by “designating a person or persons to act in good faith to protect the interests of beneficiaries, to receive any notice, information, or reports. . . in lieu of providing such notice, information, or reports to the beneficiaries.” D.C. Code §19-1301.05(c)(3).
 - b. As an adjustment to the information delegate concept, perhaps the trust agreement could require an accountant or professional trustee to audit the trust on behalf of the beneficiary periodically.
 - c. Florida Statutes Section 736.0306 provides “If specifically nominated in the trust instrument, one or more persons may be designated to represent and bind a beneficiary and receive any notice, information, accounting, or report. The trust instrument may also authorize any person or persons, other than a trustee of the trust, to designate one or more persons to represent and bind a beneficiary and receive any notice, information, accounting, or report.”
 - d. Query: how much contact with the state is required to allow a settlor to make use of such a designated representative approach, and how long such an approach can continue. Is a beneficiary never entitled to know of their interests in a trust?

IV. COSTS TO OBTAIN INFORMATION

A. Trustees’ Right to Use Trust Funds

1. The trustee is entitled to hire an attorney (accountant, auditor, etc.) with respect to the trust administration and to pay such attorney reasonable compensation from the trust estate for services rendered (*See* 760 ILCS §5/4.09; *see also* Restatement (Second) of Trusts § 244) noting that “The trustee is entitled to indemnity out of the trust estate for expenses properly incurred by him in the administration of the trust.”).
2. The trustee is empowered to spend trust funds to defend against a lawsuit (*See* 760 ILCS §5/4.11).
3. Illinois case law establishes a clear exception to this general indemnity rule, however, when a trustee breaches its duty to administer the trust according to its terms.
 - a. When a trustee fails to fulfill its legal duties, it is well established in Illinois case law that a trustee should not be permitted to recover attorneys’ fees related to litigation necessary to enforce the rights of the beneficiaries. *See*

Bennett v. Weber, 323 Ill. 283, 296 (Ill. 1926); *Billings v. Warren*, 216 Ill. 281, 287-88 (Ill. 1905); *Ellis v. King*, 336 Ill. App. 298, 307 (1949).

- b. In *Grate v. Grzetich*, 373 Ill. App. 3d 228 (2007), the trustee breached his fiduciary duty by converting trust assets for personal use, and therefore, the court held that the attorney fees he incurred could not be paid from the trust estate.

B. Beneficiaries' Right to Use Trust Funds (Maybe/Eventually)

1. As a general rule, beneficiaries, however, must pay their own costs as it relates to litigation.
2. Case law allows the trust estate to pay beneficiaries' legal expenses (in some instances).
 - a. See *Orme V. Northern Trust Company*, 25 Ill.2d 151 (1962). **“In will construction cases the costs of litigation are borne by the estate on the theory that the testator expressed his intention so ambiguously as to necessitate construction of the instrument in order to resolve adverse claims to the property.** Legal fees are allowed to a party even though the construction adopted is adverse to his claim. However, such fees should not be authorized where such construction is unnecessary. **The criterion is whether an honest difference of opinion exists.”**
 - b. See *Herlehy v. Marie V. Bistersky Trust*, 407 Ill. App. 3d 878 (1st Dist. 2010)
 - (1) Facts: Plaintiffs alleged that: (A) their great aunt intended to amend her revocable trust to provide them with an increased share prior to her death and (B) the bank trustee breached its fiduciary duty to have the corresponding amendment completed.
 - (2) The trial court held that the plaintiffs were responsible for their own fees.
 - c. Other Illinois court decisions have expanded and clarified the foregoing. In *The Northern Trust Company v. Winona Lake School of Theology*, 61 Ill.App.3d 966, 975 (1st Dist. 1978), the court explained that not all parties to a contested will are entitled to legal fees but “only attorneys representing parties having an interest in the construction of the agreement are entitled to reasonable fees from the estate.” However, the court emphasized that: “A party named in a testamentary agreement and made a party defendant in a complaint to construe a testamentary agreement, has sufficient interest in the construction of the agreement to claim reasonable attorneys' fees.” *Id.*
3. Beneficiaries may have an opportunity to use trust funds to pay for fees to protect their interests. Nonetheless, there is a risk that a court might not agree with the beneficiaries that their pursuit was appropriate, and they may be “out-of-pocket” significant funds until such time as (if) the court grants relief.

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Acknowledgment

The authors of this outline wish to thank Scott Hollander, Esq., of Strauss & Malk LLP, and Amanda Andrews of The Northern Trust Company for their help in legal research and work on the presentation materials.

Exhibit #1

**UTC Reporting Requirements: Default vs. Mandatory by Enacting Jurisdiction
& State Law Variations (as of January 2014)**

Dana G. Fitzsimons Jr., Bessemer Trust⁴

“Default” rules under the UTC may be overridden by express terms in the governing instrument (except as limited under the particular state statutes). “Mandatory” rules may not be overridden by the terms of the governing instrument (subject to effective date limitations under the particular state statutes). Effective date grandfathering under the UTC is determined by (1) date of acceptance of trusteeship before enactment of UTC, (2) an irrevocable trust created before enactment, or (3) a revocable trust that becomes irrevocable before enactment (however, the particular grandfathering provisions should be carefully consulted due to variations in state law).

State/Duty	813(a): Duty to keep reasonably informed.	813(a): Duty to respond to requests for information.	813(b)(1): Duty to provide a copy of the trust instrument.	813(b)(2): Duty to notify of acceptance of trusteeship.	813(b)(3): Duty to notify of trust existence and beneficiary rights.	813(b)(4): Duty to notify of change in compensation.	813(c): Duty to provide annual reports.
NCCUSL §105 §813	Default	Mandatory <u>2004 Amendment:</u> Added optional provision added to make mandatory for qualified beneficiaries age 25 and over.	Default	<u>2004 Amendment:</u> Added optional provision added to make mandatory for qualified beneficiaries age 25 and over. Also added optional new 813(e) providing that this section does not apply to a trustee who accepts a trusteeship before the effective date of the UTC, to an irrevocable trust created before the effective date, or to a revocable trust that becomes irrevocable before the effective date.	<u>2004 Amendment:</u> Added optional provision added to make mandatory for qualified beneficiaries age 25 and over. Also added optional new 813(e) providing that this section does not apply to a trustee who accepts a trusteeship before the effective date of the UTC, to an irrevocable trust created before the effective date, or to a revocable trust that becomes irrevocable before the effective date.	Default	Default

⁴ The views and comments expressed herein are solely those of the author and do not necessarily reflect the views or practices of Bessemer Trust Company, N.A. and its affiliated entities. These materials are for general educational and discussion purposes only and do not constitute legal advice. These materials are not intended as, and may be relied upon as, tax or legal advice by any person. No representation or warranty is made as to these materials. The authors acknowledge and thank Mr. Fitzsimons for his permission to include these materials in this outline.

State/Duty	813(a): Duty to keep reasonably informed.	813(a): Duty to respond to requests for information.	813(b)(1): Duty to provide a copy of the trust instrument.	813(b)(2): Duty to notify of acceptance of trusteeship.	813(b)(3): Duty to notify of trust existence and beneficiary rights.	813(b)(4): Duty to notify of change in compensation.	813(c): Duty to provide annual reports.
Alabama §19-3B-105 §19-3B-813	Default	Mandatory	Default	Default; applies post January 1, 2007	Default; applies post January 1, 2007	Default	Default
Arizona §14-10105 §14-10813 §14-10110	Default	Mandatory, subject to determination by trustee that it is unreasonable under the circumstances	Default; only requires providing relevant portions of trust instrument	Default; applies post January 1, 2009	Default; applies post January 1, 2009	Default	Default See also §14-10110 , which provides with respect to post January 1, 2009 charitable trusts for certain mandatory disclosures to the Attorney General including (1) copies of portions of charitable portions of trust instrument, (2) trustee information, (3) and 30 days advance notice to changes in place of administration, charitable purpose, court proceedings, and compensation and also any dissolution of the charitable trust

Arkansas §28-73-105 §28-73-813	Default; applies post September 1, 2005	Default; applies post September 1, 2005	Default; applies post September 1, 2005	Default; applies post September 1, 2005	Default; applies post September 1, 2005	Default; applies post September 1, 2005	Default; applies post September 1, 2005
State/Duty	813(a): Duty to keep reasonably informed.	813(a): Duty to respond to requests for information.	813(b)(1): Duty to provide a copy of the trust instrument.	813(b)(2): Duty to notify of acceptance of trusteeship.	813(b)(3): Duty to notify of trust existence and beneficiary rights.	813(b)(4): Duty to notify of change in compensation.	813(c): Duty to provide annual reports.
District of Columbia §19-1301.05 §19-1308.13	Default; applies post March 10, 2004	Mandatory; applies post March 10, 2004; and subject to right of the settlor to (1) waive or modify during his lifetime and lifetime of spouse, and (2) designate an alternate person to receive notice	Default; applies post March 10, 2004	Mandatory as to beneficiaries age 25 and over; applies post March 10, 2004; and subject to right of the settlor to (1) waive or modify during his lifetime and lifetime of spouse, (2) designate a different age for mandatory notice, and (3) designate an alternate person to receive notice	Mandatory as to beneficiaries age 25 and over; applies post March 10, 2004; and subject to right of the settlor to (1) waive or modify during his lifetime and lifetime of spouse, (2) designate a different age for mandatory notice, and (3) designate an alternate person to receive notice	Default; applies post March 10, 2004	Default; applies post March 10, 2004

<p>Florida §736.0105 §736.0813 §736.08135</p>	<p>Default</p>	<p>Mandatory</p>	<p>Mandatory</p>	<p>Mandatory; applies post July 1, 2007</p>	<p>Mandatory; applies post July1, 2007</p>	<p>N/A</p>	<p>Mandatory required statutory accountings (for all accounting periods beginning on or after January 1, 2003) that include: all transactions, compensation, gains, losses, valuation of trust assets, significant changes in investments and other transactions, allocation of items between income and principal, distribution plans. UTC provisions apply to post July 1, 2007 accountings</p>
<p>State/Duty</p>	<p>813(a): Duty to keep reasonably informed.</p>	<p>813(a): Duty to respond to requests for information.</p>	<p>813(b)(1): Duty to provide a copy of the trust instrument.</p>	<p>813(b)(2): Duty to notify of acceptance of trusteeship.</p>	<p>813(b)(3): Duty to notify of trust existence and beneficiary rights.</p>	<p>813(b)(4): Duty to notify of change in compensation.</p>	<p>813(c): Duty to provide annual reports.</p>
<p>Kansas §58a-105 §58a-813</p>	<p>Default; does not apply to non- spouse beneficiaries so long as spouse is distributee or has power of appointment and another qualified beneficiary is issue of spouse</p>	<p>Default; does not apply to non- spouse beneficiaries so long as spouse is distributee or has power of appointment and another qualified beneficiary is issue of spouse</p>	<p>Default; does not apply to non- spouse beneficiaries so long as spouse is distributee or has power of appointment and another qualified beneficiary is issue of spouse</p>	<p>Default; does not apply to non- spouse beneficiaries so long as spouse is distributee or has power of appointment and another qualified beneficiary is issue of spouse</p>	<p>Default; does not apply to non- spouse beneficiaries so long as spouse is distributee or has power of appointment and another qualified beneficiary is issue of spouse</p>	<p>Default; does not apply to non- spouse beneficiaries so long as spouse is distributee or has power of appointment and another qualified beneficiary is issue of spouse</p>	<p>Default; does not apply to non- spouse beneficiaries so long as spouse is distributee or has power o appointment and another qualified beneficiary is issue of spouse</p>

<p>Maine T. 18B §105 T. 18B §813</p>	<p>Default; may waive or limit subject to statutory limit as to spouse; may designate surrogate to receive notice for any beneficiary</p>	<p>Mandatory; may waive or limit subject to statutory limit as to spouse; may designate surrogate to receive notice for any beneficiary</p>	<p>Default; may waive or limit subject to statutory limit as to spouse; may designate surrogate to receive notice for any beneficiary</p>	<p>Mandatory for qualified beneficiaries age 25 and over; may waive or limit subject to statutory limit as to spouse; may designate surrogate to receive notice for any qualified beneficiary; applies post July 1, 2005</p>	<p>Mandatory for qualified beneficiaries age 25 and over; may waive or limit subject to statutory limit as to spouse; may designate surrogate to receive notice for any beneficiary; applies post July 1, 2005</p>	<p>Default; may waive or limit subject to statutory limit as to spouse; may designate surrogate to receive notice for any beneficiary</p>	<p>Default</p>
<p>Massachusetts ALM GL ch 203E §105 ALM GL ch 203E §813</p>	<p>Default</p>	<p>Default</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>	<p>Default</p>
<p>Michigan §700.7105 §700.7814</p>	<p>Default; may be waived</p>	<p>Mandatory; subject to determination by trustee that it is unreasonable under the circumstances; may be waived</p>	<p>Mandatory; must be requested; subject to determination by trustee that it is unreasonable under the circumstances; only requires providing relevant portions of trust instrument; may be waived</p>	<p>Mandatory; must notify within 63 days of acceptance; may be waived; applies to acceptance post April 1, 2010</p>	<p>Mandatory; must notify within 63 days of trustee's knowledge of trust existence; may be waived; applies to trusts created post April 1, 2010</p>	<p>Default; may be waived</p>	<p>Default; may be waived</p>
<p>State/Duty</p>	<p>813(a): Duty to keep reasonably informed.</p>	<p>813(a): Duty to respond to requests for information.</p>	<p>813(b)(1): Duty to provide a copy of the trust instrument.</p>	<p>813(b)(2): Duty to notify of acceptance of trusteeship.</p>	<p>813(b)(3): Duty to notify of trust existence and beneficiary rights.</p>	<p>813(b)(4): Duty to notify of change in compensation.</p>	<p>813(c): Duty to provide annual reports.</p>

Missouri §456.1-105 §456.8-813	Default; applies post January 1, 2005. A trustee is presumed to have fulfilled his duty if the trustee complies with other statutory notice provisions	Mandatory; applies post January 1, 2005	Default; applies post January 1, 2005	Default; must notify within 120 days; applies post January 1, 2005	Mandatory for beneficiaries age 21 and over; must notify within 120 days; may name any permissible distributee as surrogate to receive notice for his ancestors or lineal descendants; applies post January 1, 2005	Default; applies post January 1, 2005	Default; applies post January 1, 2005
Nebraska §30-3805 §30-3878	Mandatory	Mandatory	Default	Default; applies post January 1, 2006	Default; applies post January 1, 2006	Default	Default
New Hampshire §564-B:1-105 §564-B:8-813	Default; applies post October 1, 2004. Also includes affirmative duty for trust advisors, trust protectors, and other fiduciaries to provide information to the trustee. May satisfy by providing trust instrument, trustee and trust information, and trustee report. If trustee bound by confidentiality restrictions, may require beneficiary to keep confidential as a condition of disclosure.	Default; applies post October 1, 2004	Default; applies post October 1, 2004	Default; applies post October 1, 2004	Default; applies post October 1, 2004	Default	Default; applies post October 1, 2004 (different grandfathering provisions for irrevocable and revocable trusts)
State/Duty	813(a): Duty to keep reasonably informed.	813(a): Duty to respond to requests for information.	813(b)(1): Duty to provide a copy of the trust instrument.	813(b)(2): Duty to notify of acceptance of trusteeship.	813(b)(3): Duty to notify of trust existence and beneficiary rights.	813(b)(4): Duty to notify of change in compensation.	813(c): Duty to provide annual reports.

New Mexico §46A-1-105 §46A-8-813	Default	Mandatory Waiver only effective where there is an institutional trustee	Default	Mandatory for beneficiaries age 25 and over Waiver only effective where there is an institutional trustee	Mandatory for beneficiaries age 25 and over Waiver only effective where there is an institutional trustee	Default	Default
North Carolina §36C-1-105 §36C-8-813	Default; may satisfy by providing trustee's report	Default	Default	N/A	N/A	N/A	Optional report to satisfy duty to keep reasonably informed
North Dakota §59-09-05 §59-16-13	Default	Default; subject to determination by trustee that it is unreasonable under the circumstances.	Default; only requires providing relevant portions of trust instrument.	Default; applies post August 1, 2007	Default; applies post August 1, 2007	Default	Default
Ohio §5801.04 §5808.13	Default	Mandatory; may designate surrogate to receive notice	Default; may provide partial trust instrument unless request otherwise	Mandatory for beneficiaries age 25 and over; applies post January 1, 2007	Mandatory for beneficiaries age 25 and over; applies post January 1, 2007	Default	Default; applies post January 1, 2007
State/Duty	813(a): Duty to keep reasonably informed.	813(a): Duty to respond to requests for information.	813(b)(1): Duty to provide a copy of the trust instrument.	813(b)(2): Duty to notify of acceptance of trusteeship.	813(b)(3): Duty to notify of trust existence and beneficiary rights.	813(b)(4): Duty to notify of change in compensation.	813(c): Duty to provide annual reports.

<p>Oregon §130.020 §130.710</p>	<p>Default</p> <p>If trustee bound by confidentiality restrictions, may require beneficiary to keep confidential as a condition of disclosure.</p> <p>Information only given to spouse if spouse survives, is financially capable, is the only permissible distributee of the trust, and all of the other qualified beneficiaries are the spouse's descendants.</p>	<p>Mandatory; may waive or modify during life and during spouse's life; may designate surrogate to receive notice</p>	<p>Default</p>	<p>Mandatory; may waive or modify during life and during spouse's life; may designate surrogate to receive notice</p>	<p>Mandatory; may waive or modify during life and during spouse's life; may designate surrogate to receive notice</p> <p>If beneficiary's only interest in trust is distribution of specific item or amount of money, need not notify of right to report unless beneficiary has not received interest six months after trust becomes irrevocable; applies post January 1, 2010</p>	<p>Default</p>	<p>Default; must also provide upon termination, and reports containing information about trust termination must be provided to qualified beneficiaries and any designated surrogate; applies post January 1, 2010</p> <p>If beneficiary's only interest in trust is distribution of specific item or amount of money, need not send reports unless beneficiary has not received interest six months after trust becomes irrevocable; applies post January 1, 2010</p>
<p>Pennsylvania 20 PA CS §7705 20 PA CS §7780.3</p>	<p>The provisions are mandatory post January 1, 2006 (with some extra time for compliance for pre-effective date trusts, and require: (1) duty to respond to reasonable requests for information, (2) various notices upon the happening of a death or incapacity event, (3) notice upon a change in trusteeship, (4) contents of notice include existence of trust, identity of settlor, trustee information, right to a copy of the trust document, and right to annual report. Statute also provides for appointment of surrogate to receive information.</p>						
<p>South Carolina §62-7-105 §62-7-813</p>	<p>Default</p>	<p>Default</p>	<p>Default</p>	<p>Default; applies January 1, 2006</p>	<p>Default; applies post January 1, 2006</p>	<p>Default</p>	<p>Default</p>

State/Duty	813(a): Duty to keep reasonably informed.	813(a): Duty to respond to requests for information.	813(b)(1): Duty to provide a copy of the trust instrument.	813(b)(2): Duty to notify of acceptance of trusteeship.	813(b)(3): Duty to notify of trust existence and beneficiary rights.	813(b)(4): Duty to notify of change in compensation.	813(c): Duty to provide annual reports.
Tennessee §35-15-105 §35-15-813	Default; applies post July 1, 2004; does not apply if settlor directs otherwise in writing If trustee bound by confidentiality restrictions, may require beneficiary to keep confidential as a condition of disclosure	Default; beneficiary must reimburse the trustee for expenses If trustee bound by confidentiality restrictions, may require beneficiary to keep confidential as a condition of disclosure	N/A	N/A	Default; statutory expansion of contents of required notice; applies post July 1, 2004; does not apply if settlor directs otherwise in writing	N/A	N/A
Utah §75-7-105 §75-7-811	Default	Default	Default	Default	Default	Default	Default
Vermont T. 14A §105 T. 14A §813	Default; beneficiary may waive; N/A if trustee reasonably believes assets are < \$10,000 Limited exception for keeping AG informed as to charitable trusts; see 813(f)	Default; subject to determination by trustee that it is unreasonable under the circumstances; beneficiary may waive; N/A if trustee reasonably believes assets are < \$10,000	Default; upon request; beneficiary may waive; N/A if trustee reasonably believes assets are < \$10,000	Default; applies post July 1, 2009; beneficiary may waive; N/A if trustee reasonably believes assets are < \$10,000	Default; applies post July 1, 2009; beneficiary may waive; N/A if trustee reasonably believes assets are < \$10,000	Default; beneficiary may waive; N/A if trustee reasonably believes assets are < \$10,000	Default; must also provide report upon trust termination or vacancy in trusteeship; beneficiary may waive; N/A if trustee reasonably believes assets are < \$10,000
Virginia §64.2-703 §64.2-775	Default Good faith exception	Default Good faith exception	Default	Default; applies post July 1, 2006	Default; applies post July 1, 2006	Default	Default; applies post July 1, 2006

West Virginia §44D-1-105 §44D-8-813	Default	Default	Default	Default; applies post July 1, 2011	Default; applies post July 1, 2011	Default	Default
State/Duty	813(a): Duty to keep reasonably informed.	813(a): Duty to respond to requests for information.	813(b)(1): Duty to provide a copy of the trust instrument.	813(b)(2): Duty to notify of acceptance of trusteeship.	813(b)(3): Duty to notify of trust existence and beneficiary rights.	813(b)(4): Duty to notify of change in compensation.	813(c): Duty to provide annual reports.
Wisconsin §701.0105 §701.0813	Default	Default	Default	Default	Default	Default	Default; applies post effective date.
Wyoming §4-10-105 §4-10-813	Default	Default	Default	Default	Default	Default	Default

Exhibit 2: Defining the Beneficiary

Entitled to more information

ILLINOIS

UTC

UTC Type 1 Qualified Beneficiary: A beneficiary who, on the date the beneficiary's qualification is determined, is a distributee of trust income or principal. Unif. Trust Code § 103(13)(A).

Current Beneficiary: A beneficiary "then entitled to receive or receiving the income from the trust estate, or if none, then those beneficiaries eligible to have the benefit of the income from the trust estate. . ." 760 ILCS 5/11(a).

UTC Type 2 Qualified Beneficiary: A beneficiary who, on the date the beneficiary's qualification is determined, would be a distributee of trust income or principal if the interests of the [type 1] distributees . . . terminated on that date without causing the trust to terminate. Unif. Trust Code § 103(13)(B).

UTC Type 3 Qualified Beneficiary: A beneficiary who, on the date the beneficiary's qualification is determined, would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date. Unif. Trust Code § 103(13)(C).

Vested Remainder Beneficiary: A beneficiary who does not fit as a current beneficiary, but is entitled to income or principal upon the termination of the current beneficiary's trust, and will not lose that remainder interest.

UTC Non-Qualified Beneficiary: A beneficiary who does not fit as a UTC Qualified Beneficiary but *is still a beneficiary* and may become a qualified beneficiary in the future.

Contingent Remainder Beneficiary: A beneficiary who does not fit as a current beneficiary but might gain entitlement to principal or income upon termination of the trust if some other event or condition is satisfied.

Entitled to less information

Exhibit 3: UTC and Illinois Beneficiary Conversion Flow Chart

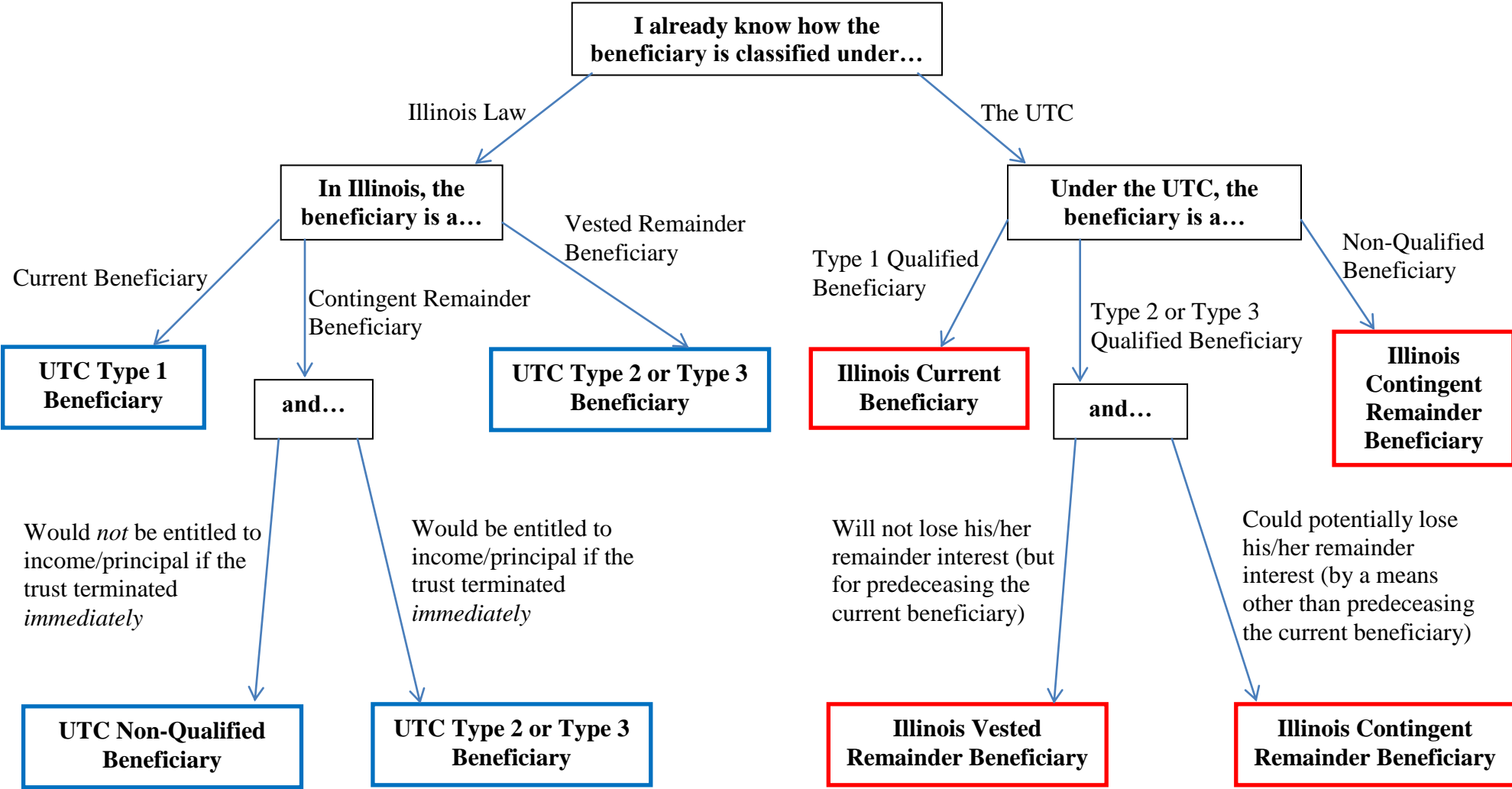


Exhibit 4: UTC Duty to Inform Chart

Type of Information	Reasonably Informed, UTC § 813(a)	Information related to the administration of the trust, unless unreasonable under the circumstances UTC § 813(a)	Copy of the trust instrument, UTC § 813(b)(1)	Initial notice requirements, UTC § 813(b)(2)-(3)	UTC § 813(c) Report
Type-1 Qualified Beneficiary	O	R	R	O	O
Type-2 or Type-3 Qualified Beneficiary	O	R	R	O	R
Non-Qualified Beneficiary	X	R	R	X	R
Non-Beneficiary	X	X	X	X	X

O = Ongoing Duty

R = Duty Upon Request

X = No Duty