A TRUSTEE'S DUTY OF LOYALTY IN WISCONSIN

In Wisconsin, anyone who agrees to become a trustee is agreeing to become a "fiduciary." A fiduciary is a person or corporation that has legal obligations to a trust's "beneficiaries," those who will benefit from a trust. In our state, a trustee owes the utmost duty of loyalty to the trust beneficiaries.

A trustee's duty of loyalty requires him or her to administer the trust solely in the interests of the beneficiaries. A trustee violates the duty of loyalty if he or she puts personal interests above the trust beneficiaries' interests.

The trustee is not allowed to profit or make deals for his or her own benefit in the administration of a trust. The duty of loyalty requires that the trustee not be motivated in his or her actions by self-interest or the interests of third parties. A trustee assumes a duty to protect the interests of the trust estate when he or she accepts an appointment as trustee. This means that a trustee cannot allow his or her personal interests to conflict with that duty in any way. This rule is intended to prevent any possible selfish interest of the trustee that can interfere with the trustee's duty to the trust's beneficiaries. Wisconsin courts have held that acting in good faith alone is not enough to satisfy the trustee's duty of loyalty to the beneficiaries.

A trustee must proceed with the utmost caution if he or she engages in a transaction between himself or herself and the trust. For example, if a trustee buys a property owned by the trust, the trustee must be able to show that he or she acted prudently and in a business-like manner with a view to obtain the same fair market value price as he or she might have anticipated with proper due diligence. In general, it is required that trust beneficiaries approve a sale between the trust and a trustee.

If you have any question, please contact Greg Lyons at Greg.Lyons@wilaw.com or 414-276-5000.