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Robert Whitman
University of Connecticut School of Law

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Flexible Fiduciary Accounting from the Outset of Administration

By Robert Whitman

At the first meeting of the National Fiduciary Accounting Project in 1970, a decision was reached that the project would work toward unifying fiduciary accounting practice nationally by creating a set of Uniform Principles and Model Account Formats that would serve as one way to properly account by a so-called Charge and Discharge Statement.

Most state statutory provisions in the United States calling for fiduciary accounting are based on Charge and Discharge Fiduciary Accounting. This type of accounting starts with opening inventory values, adds gains during administration, and deducts expenditures for taxes, expenses, and distributions, leaving a balance on hand at the time of the accounting.

Charge and Discharge Fiduciary Accounting was the most popular form of fiduciary accounting in the 19th century; before the computer made it possible to more easily create fiduciary accountings that provide more information to beneficiaries by periodically providing computer generated statements. Today, periodic statements can clearly present information to beneficiaries in an understandable way. The statements can also provide performance data, allowing beneficiaries to gain a more in-depth understanding of the details of administration on a regular and ongoing basis.

The decision made by the National Fiduciary Accounting Project to focus exclusively on Charge and Discharge Fiduciary Accounting was based on project members' familiarity with that type of fiduciary accounting. There was no intention on the part of the project to decree that Charge and Discharge Fiduciary Accounting was the "best" type of fiduciary accounting or the type of fiduciary accounting that necessarily should be mandated by state statutes.

In 1984, the project issued its final report, and, subsequently, its Uniform Principles and Model Account Formats won widespread acceptance as "one form" (not the only form) of fiduciary accounting that would be found to be acceptable in courts in the United States.

On the 20th anniversary of the issuance of the project's report, it seems appropriate to revisit the important question that was originally sidestepped.

What is the "best" type of fiduciary accounting? I would suggest that Flexible Fiduciary Accounting from the Outset of Administration is a reasonable candidate. Flexible Fiduciary Accounting would be most likely to accomplish the major goals for fiduciary accounting: (1) to answer beneficiary questions as quickly as possible, (2) to allow beneficiaries early input into the form and scope of accounting best suited to their needs, and (3) to allow the fiduciary, depending on the size and complexity of the assets being accounted for and the resources and expertise of the fiduciary, to offer a variety of accounting choices to the beneficiaries.

In considering standards for flexible fiduciary accounting, the following might be kept in mind:

- Taking a trust administration as an illustrative example, the fiduciary must willingly serve both the settlor and the beneficiary group. To the settlor, the fiduciary owes an obligation to carry out the trust terms in accordance with the settlor's wishes. To the beneficiary group, the fiduciary owes, among other things, the duty of effectively conveying full information regarding the stewardship of the fiduciary.
- In the event of a conflict between the duties owed to the settlor and the beneficiary group, the guiding principle for the fiduciary is that the purpose for creating the fiduciary's obligation is to properly serve the beneficiary group.
- To maximize the information conveyed to the beneficiary group in the most effective and economical way, the fiduciary should, from the outset of administration, offer the beneficiary group a reasonable plan for accounting. In creating such a plan, the fiduciary will need to take into account costs and the resources available to the fiduciary. The fiduciary will also need to balance the interests of the settlor and the various beneficiaries constituting the beneficiary group. When doubt about what a reasonable plan for accounting should be, the guiding principle should be that except when conflicts and/or special circumstances may exist, without creating an unreasonable expense, full disclosure and complete transparency regarding fiduciary conduct are expected and information is to be disclosed promptly after a request is made.
- In the event that a reasonable plan for accounting cannot be agreed to between the fiduciary and the beneficiary group, the fiduciary shall offer a proper resolution plan to decide the matter. Depending on the circumstances, such a plan may involve an independent resolution officer, mediation, arbitration, or a court decision.

When all of the parties focus from the outset of administration on the need for reasonable, effective accounting at a reasonable cost, and when the fiduciary demonstrates a willing and helpful attitude toward answering beneficiary requests for information, the chances of the administration proceeding smoothly are greatly enhanced.

Robert Whitman is a professor of law at the University of Connecticut School of Law in Hartford, Connecticut, and chair of the H-1 Uniform Acts for Probate and Trust Law Committee. Professor Whitman served as reporter for the National Fiduciary Accounting Project.