



Risk Management for
Professional Fiduciaries

Presented by:
Lawrence D. Hilton, Esq.

***Importance of Risk
Management***

“The first duty of business is to survive.
The guiding principle of business
economics is not the maximization
of profit. It is the avoidance of loss.”

Peter Drucker

Methods for Managing Risk

- ⊃ Risk Avoidance
- ⊃ Risk Reduction
- ⊃ Risk Transfer

Risk Avoidance Methods

- ▷ Client Screening
- ▷ Conflict Screening
- ▷ Matter Screening

Client Screening Considerations

- ▷ Expectations
 - Time frame
 - Decision Making
 - Best Interests
 - Substituted Judgment
 - Oversight
 - Court
 - Family
 - Co-Trustee/Agent
- ▷ Case History
 - Prior Fiduciaries
 - Disputes to date

Conflict Screening

- ▷ Clearly identify
 - The client
 - The ward/conservatee
 - Prior/current advisors
 - Potential beneficiaries
- ▷ Consider the investment strategy to date
- ▷ Consider estate asset holdings

Matter Screening

- ▷ Do you have the:
 - Time
 - Interest
 - Expertise
 - As to Asset types in the estate
 - As to physical care needs
- ▷ Does the estate have:
 - Sufficient funds
 - Adequate oversight

Risk Reduction Methods

- ▷ Written Understandings
 - Court Orders
 - Trust Documents
 - Engagement Agreements
- ▷ Calendaring
- ▷ Fiduciary Controls
- ▷ Policies/Procedures
- ▷ Communications (who, when, how)
- ▷ Continuing Education

Engagement Documents

- ▷ Identify the parties
- ▷ Define the scope of services
- ▷ Accountings
 - Frequency
 - Content
- ▷ Explain billing procedures
- ▷ Describe dispute resolution method

Calendaring Considerations

- ▷ Develop a calendaring system with
 - Redundancy
 - Cross-checks
 - Backup

Fiduciary Controls

- ▷ Trust accounts
 - Segregate funds
 - Always keep funds in balance
- ▷ Confidentiality
 - Establish policies
 - Communicate appropriately

Written Procedures

- ▷ Established procedures render actions:
 - Consistent
 - Uniform
 - Defensible
- ▷ Consider at least the following areas:
 - Appointment acceptance/withdrawal
 - Communication methods and standards
 - Filing/backup systems
 - Billing/accounting
 - Continuing education
 - Employee policies and procedures

Risk Transfer

- ▷ Insurance
- ▷ Indemnity Agreements

Types of Insurance

- ▷ Errors & Omissions
- ▷ Fiduciary Bonds
- ▷ Business Office Policy (BOP)
 - General Liability
 - Property
 - Employee Dishonesty
- ▷ Workers Compensation Insurance
- ▷ Employment Practices Liability Insurance
- ▷ Life, Health Disability
- ▷ Homeowners for assets under management

Factors In Selecting Coverage

- ▷ Cost
- ▷ Coverage
- ▷ Continuity
- ▷ Claims Handling
- ▷ Claims Paying Ability

***Errors & Omissions
Insurance***

- ▷ Market Overview
- ▷ NGA Program Update
- ▷ Coverage Highlights
- ▷ Underwriting Criteria
- ▷ Tips for Controlling your Premium Costs
- ▷ Retirement Planning (Tail Coverage)

Recommendations

- ▷ Develop Policies and Procedures to
 - Avoid Risk
 - Reduce Risk
 - Transfer Risk
- ▷ Follow Your Procedures
- ▷ Plan for the Future
