

A Slightly Contrarian View
Of
Non-Judicial Settlement Agreements
By Fred Franke¹

The Maryland Trust Act (“MTA”) follows the Uniform Trust Code (“UTC”) in the codification of non-judicial settlement agreements. Both renditions permit, indeed encourage, the use of informal agreements to alter irrevocable trusts instead of seeking court intervention.

Both limit the scope of non-judicial agreements, however, to exclude any change that would violate a material purpose of the trust and any change that a court of equity could not properly approve. “Material purpose” is not defined by either the MTA or the UTC. It derives from the common law of trusts. Likewise, the scope of what changes to an irrevocable trust could a court properly approve is based on decisional law.

Material purpose, of course, would be derived from the specific terms of the trust. Both the MTA and the UTC define the “terms of a trust.” Each defines it as the manifestation of the settlor’s intent as expressed in the instrument or what can be established by other admissible evidence in a judicial proceeding.

The MTA and the UTC both provide that the common law is to “supplement” the statutory provisions. By its nature, the meaning of the non-judicial settlement agreement provisions cannot be teased out from merely the common or ordinary meaning of the words contained in the statute and code standing alone. It requires recourse to legislative history and to the common law of trusts.

One view of non-judicial settlement agreements is that, if all interest parties agree to its terms, it is virtually unassailable. This may not be correct.

Context is King: The Maryland Rules of Statutory Interpretation²

¹ These materials benefited from discussions with my partner, Jack Beckett, about the tension between the importance of material purpose and other common law requirements for a “valid” non-judicial settlement agreement under the Uniform Trust Code and its Maryland version, on the one hand, and the sweeping ability of the interested persons benefitting from a proposed settlement to release the trustee from liability arising from a breach of its duty to protect the important purposes of the trust.

² “The meaning – or ambiguity – of certain words or phrases may only become evident when placed in context.” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000) (O’Connor, J.). The case turned on whether nicotine is a “drug” and thereby susceptible to regulation by the federal Food and Drug Administration. As any smoker or former smoker can corroborate, nicotine is indeed a drug. The court held that it was not a drug for FDA regulatory authority over drugs.

By using terms with meaning developed by the common law over centuries, the Maryland Trust Act must be understood and applied within the context of the common law of trusts. It also means that the “plain meaning” of many of its provisions are inherently ambiguous which is the trigger for the courts to look to the legislative history in its search for the meaning. This makes the apparent flexibility of the scope of what safely can be accomplished by a nonjudicial settlement agreement difficult to tease out and essentially problematic.

Unlike the strict Textualist approach, Maryland statutory interpretation is ultimately to “elucidate the will of the legislature” which certainly involves, and may stop at, the words used in the statute:

When interpreting statutes, our overarching goal is to ascertain and implement the intention of the Legislature. We turn first to the words of the statute. If, in pursuit of the North Star of intent, the words of the statute, given their common and ordinary meaning, are unambiguous and express a plain meaning, our inquiry stops normally and we interpret the statute as written. If the text is ambiguous, however, we look to other evidence of the Legislature's intent, including the relevant statute's legislative history, the structure of the statute, the relationship of the statute to other laws, and the relative rationality of competing constructions.

There is, however, one important and particularly relevant interpretive principle reining-in our quest to elucidate the will of the Legislature: we will not presume abrogation of the common law unless the Legislature's intent to do so is clear.³

Where or What is the MTA's Legislative History

The codification of Maryland trust law was an enormous undertaking. Prior to the creation of the Maryland codification, in what became known as the Maryland Trust Act, most of Maryland trust law was from the common law of trusts. When adopting the substantial codification of Maryland trust law that became effective in 2015, the Uniform Trust Code was used as a guide to the codification process. It was fitting to use the UTC as a guide to the Maryland codification because the UTC generally followed the common law of trusts: “The U.T.C. does not make sweeping changes in the common law of trusts, but neither does it woodenly copy the previous judge-made law.”⁴

The MTA used the UTC as a guide to its codification, but it did not “woodenly” copy the UTC. Some of the differences between the Maryland and UTC versions are significant. The Maryland treatment of the rights of a beneficiary's creditors to access trust assets (MTA Subtitle 5), for example, is

³*Antonio v. SSA Sec., Inc.*, 442 Md. 67, 74 (2015). One of the purest textualist, however, would disagree: “The greatest defect of legislative history is its illegitimacy. We are governed by laws, not by the intentions of legislators.” *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Justice Scalia concurring opinion).

⁴ David M. English, *The Uniform Trust Code (2000): Significant Provisions and Policy Issues*, 67 MO. L. REV. 143, 153 (2002). Professor English is the Reporter for the UTC.

markedly different from the UTC approach (UTC Article 5). These differences, as well as others, are the reason the Maryland statute is not called the Maryland Trust Code.⁵

Tellingly, Maryland did not adopt UTC § 1101 (“Uniformity of Application and Construction”): “In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.” This provision was not adopted in Maryland “because the Act is not intended as a uniform act.”⁶

The comments to a provision lifted verbatim by a state of a uniform act, however, should be seen as part of that state’s legislative history and, at least, signaling how that statutory provision should be understood.⁷ The rejecting of the uniform language for a bespoke provision should likewise signal how the bespoke provision should be understood.⁸

The Plastic Nature of the “Terms of a Trust”

As demonstrated by a lot of litigation, statutes (and ideas in general) can be difficult to express without ambiguity. Moreover, the application of the MTA to any issue regarding a specific trust will depend on the terms of that trust. The “terms of a trust” is a defined term under the MTA: “‘Terms of a trust’ means the manifestation of the intent of the settlor regarding the provisions of a trust as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.”⁹

⁵ Many states that have adopted much, or all, of the UTC are called trust codes. See the Illinois Trust Code, 760 ILCS 3/1501.

⁶ John P. Edgar, *Comparison of Maryland Trust Act to Prior Maryland Law and the Uniform Trust Code*, 38 (Updated 2016) (Available on the Baker, Donelson website). Regardless of whether this treatise is technically the official legislative history of the MTA, it comes quite close. It is a valuable resource. Mr. Edgar served as the reporter for the Maryland State Bar Association, Section Council of the Estate and Trust Law Section and he was one of the Section Council’s representatives during the legislative process.

⁷ Gregory A. Elinson and Robert H. Sitkoff, *When a Statute Comes with a user Manual: Reconciling Textualism and Uniform Acts*, 71 Emory L. J. 1073 (2022). Their core argument is that proper “textualist” interpretation should always consider the language of a uniform act statute in the context of the legislative intent as expressed in the comments because those comments are directives or signals the state legislature send when they enact a uniform statute. This view, of course, would upend the traditional, or at least superficial view, of textualist theory of statutory interpretation. The comments consist of its “user manual.”

⁸ “The ULC does not present Uniform Acts on a take-it-or-leave-it basis. Rather, a legislature may incorporate specific provisions of a Uniform Act or even portions of individual provisions. The choice of how much of a Uniform Act to enact thus has important interpretive consequences. For courts to play their appropriate role in our separation of powers system, they must recognize that the strength of the legislature’s signal is variable in a manner that affects the persuasive weight of the comments. As the Iowa Supreme Court has explained, “[w]e can determine legislative intent **from selective enactment or divergence from uniform act.**” *Id.* at 1113. (cleaned up) (Emphasis added).

⁹ MTA § 14.5-103 (aa). Each of the Restatements of Trusts uses the same definition. See, for example, Restatement (Third) of Trusts § 4 (2003). For an overview of the admissibility of extrinsic evidence to establish

In will construction cases, the plain meaning rule precludes evidence external from the document itself that contradicts what is contained in the will.¹⁰ Under the MTA, testamentary or inter vivos trusts may be modified by extrinsic evidence even if the evidence contradicts the plain meaning of the trust: “The court may reform the terms of a trust, even if unambiguous, to conform the terms to the intention of the settlor if it is proved by clear and convincing evidence that both the intent of the settlor and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.”¹¹ Thus, the terms of the trust itself will add ambiguity to much fiduciary litigation.

The Common Law of Trusts Underpins the MTA

The MTA directs that the common law of trusts supplements the statute. MTA § 14.5-106 (“The common law of trusts and principles of equity supplement this title, except to the extent modified by this title or another statute of this State.”). Hence the common law of trusts is baked into the code itself. To complicate the statutory interpretation of the MTA further, the common law is not a static body of law: “The truth is, that the law always approaching, and never reaching, consistency. It is forever adapting new principles from life and at one end, and it always retains old ones from history at the other, which have not yet been absorbed or sloughed off. It will come entirely consistent only when it ceases to grow.”¹²

The Non-Judicial Settlement Provisions

MTA § 14.5-111 generally tracks UTC section 111 using very similar language but with only one potentially substantive modification. Like the UTC, the Maryland Act permits interested persons to “enter into a binding nonjudicial settlement agreement with respect to a matter involving a trust.”¹³

The MTA provisions on nonjudicial settlement agreements, as with the UTC, predicate all non-judicial settlement agreements’ validity on it not violating a material purpose of the trust which, in turn, would hinge on the terms of that trust. The agreement must also only contain terms that could be properly made by a court: “A nonjudicial settlement agreement is valid only to the extent the settlement does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this title or other applicable law.”¹⁴

The Maryland statute and the UTC provisions list certain “matters” that may be resolved by non-judicial settlement agreements. The list is not inclusive and recites six examples of what may be

the “terms” of a trust, see Frederick R. Franke, Jr. & Anna-Katherine Moody, “The Terms of the Trust: Extrinsic Evidence of Settlor Intent,” 40 ACTEC L. J. 1 (Spring 2014).

¹⁰ It permits, however, extrinsic evidence of surrounding circumstances that supports, not contradicts, what is written in the will. *Castruccio v. Estate of Castruccio*, 239 Md. App. 345 (2018).

¹¹ MTA § 14.5-413 (Reformation of terms by court).

¹² Oliver Wendel Holmes, Jr., *The Common Law*, Lecture I (Project Gutenberg 2000, www.gutenberg.org).

¹³ MTA § 14.5-111(b). The UTC Section 111 states that such agreements may be “with respect to **any** matter involving a trust.” (emphasis added).

¹⁴ MTA § 14.5- 111 (c); UTC Section 111 (c).

resolved: “(1) The interpretation or construction of the terms of the trust; (2) The approval of a report or accounting of a trustee; (3) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of a necessary or desirable power; (4) The resignation or appointment of a trustee and the determination of the compensation of a trustee; (5) Transfer of the principal place of administration of a trust; and (6) Liability of a trustee for an action relating to the trust.”¹⁵

The pedestrian character of the list gives no great insight to the flexibility of such agreements. The comment to UTC Section 201 (Role of Court in Administration of Trust), however, states that the non-judicial settlement provisions are meant to cover much that otherwise might require court involvement: “[T]he Uniform Trust Code encourages the resolution of disputes without resort to the courts by providing such options as the nonjudicial settlement authorized by Section 111...”¹⁶

Both the MTA and the UTC provide that an interested person may request the court determine whether the representation was adequate and determine whether the terms and conditions of the agreement could have properly approved by the court.¹⁷ The reference to “terms” and “conditions” refers to the requirement that the validity of the agreement requires that it is consistent to the material purpose of the trust. The UTC also has a provision that any “interested person may request the court to approve a nonjudicial settlement.”¹⁸ The Maryland statute did not include such a provision. “This provision was deleted from the Act in 2016, out of concern that it implies that a court also has the power to not approve, or overrule, or refuse to recognize, an NJSA.”¹⁹

The Maryland Trust Act § 14.5-410 (Termination of Noncharitable Irrevocable Trusts), similar to the non-judicial settlement agreement section, provides that for court termination or modification upon the trustee and all beneficiaries’ consent if it “is not inconsistent with a material purpose of the trust.”²⁰

Termination/Modification under Common Law

The general American rule, subject to important limitations, is that “if all of the beneficiaries of an irrevocable trust consent, they can compel the termination or modification of the trust.”²¹ The limitations under common law were three: the termination or modification by beneficiary consent was ineffective (i) if it “ would be inconsistent with a material purpose of the trust,” (ii) “the

¹⁵MTA § 14.5- 111 (d); UTC Section 111 (d)

¹⁶ UTC Section 201, comment.

¹⁷ MTA § 14.5- 111 (e); UTC Section 111 (e).

¹⁸ UTC Section 111 (e).

¹⁹ John P. Edgar, *Comparison of Maryland Trust Act to Prior Maryland Law and the Uniform Trust Code*, supra. Note 4 at page 5. The reference to 2016 reflects the fact that MTA § 14.5- 111 was enacted in 2016 and not along with the earlier enactment of the MTA.

²⁰ MTA § 14.5-410 (a); UTC Section 411. MTA § 14.5-410 (b) reverses the spendthrift clause being a per se material purpose: “The existence of a spendthrift provision or similar protective language in the terms of the trust does not prevent a termination of a trust under subsection (a)(1) of this section.” The UTC version has this provision as an optional clause.

²¹ Restatement (Third) of Trusts, § 65.

beneficiaries cannot compel its termination or modification except with the consent of the settlor” if living, or (iii)” after the settlor's death, with authorization of the court if it determines that the reason(s) for termination or modification outweigh the material purpose.”²²

The second restriction (settlor consent) recognizes that the material purpose concern would not be an issue if the settlor is consenting to the change: “Because the rights of the beneficiaries are thus limited out of respect for serious objectives that appear to have motivated the settlor in creating the trust, however, the material-purpose restriction does not apply if the settlor is alive, legally competent, and content to waive it.”²³

The third restriction highlights the narrow nature of the ability of the beneficiaries to modify or terminate a trust without petitioning the court if it would violate any of the trust’s material purposes. With court approval, however, if the reasons for the modification/termination “outweigh, at the time, the concerns or objectives reflected in the material purpose” the court may order the modification or termination.²⁴

As to the first restriction, MTA § 14.5-111(c) and UTC section 111 (c) require that a non-judicial settlement agreement is “valid” to the extent it does not violate a material purpose of the trust. “The line is not always easy to draw between a ‘material purpose’ on the one hand and, on the other, specific intentions that are deemed less important,” but it is difficult to make the determination with certainty.²⁵ This creates an issue for the trustee: “As a practical matter, however, the trustee is under a duty to assure that all requirements of the rule are satisfied before acting on a beneficiary plan for termination or modification. If the trustee takes action, reasonably and in good faith, on the basis of the consent of the beneficiaries, but it turns out that the action was contrary to a material purpose of the trust or that consent was not properly obtained from or on behalf of all beneficiaries, the *consenting* beneficiaries may not hold the trustee liable for damages resulting from action taken by the trustee before becoming aware of the impropriety.”²⁶

Accordingly, the UTC section 1009 (Beneficiary’s Consent, Release, or Ratification) holds that a trustee is not liable for any breach if the beneficiary consents, releases the trustee or ratifies the conduct. Any non-judicial settlement agreement would fall into this trustee protective category as to the consenting beneficiaries. This may make the material purpose, in as practical matter, a non-issue under the UTC in most cases: “In many cases, however, the material purpose limitation will be more illusory than real. If trust beneficiaries and the trustee wish to enter into a binding nonjudicial settlement agreement but would be foreclosed from doing so under section 111 by its

²² Id.

²³ Id. comment on subsection (2)(d).

²⁴ Id. comment on subsection (2).

²⁵ Id. comment on subsection (2).

²⁶ Id. general comment (a). A trustee, of course, would have the ability to seek instructions from the court or a court determination of whether a material purpose is being violated but this would defeat the purpose of a non-judicial resolution.

material purpose limitation, they could effectively do so by entering into an agreement with respect to which the trustee would be protected under section 1009.”²⁷

The MTA did not adopt UTC section 1009. It did, however, add MTA § 14.5-907 (Consent of beneficiary to conduct constituting breach) with the same provision: “A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach,” unless the trustee induced the release or ratification improper conduct or the beneficiary did not know their rights or the material facts regarding the breach. As reflected in the Restatement (Third), “this section is consistent with common law. As with proposed distributions under Section 14.5-817, many Maryland trustees already follow the practice of obtaining beneficiary consent, release or ratification, but Section 14.5-907 formalizes the effect of doing so.”²⁸

Settlor Intent Is Still Supreme

It is noteworthy that the comment to UTC section 111 does not recognize the seemingly “illusory” nature of the material purpose limitation even assuming all beneficiaries consent: “Under this section, a nonjudicial settlement cannot be used to produce a result not authorized by law, such as to terminate a trust in an impermissible manner.”²⁹ The Reporter for the UTC, David M. English, characterized the trust modification provisions of the act as having as its “primary objective” of preserving settlor intent: “Due to the increasing use in recent years of long-term trusts, there is a need for greater flexibility in the restrictive rules that apply concerning when a trust may be terminated or modified other than as provided in the instrument. The UTC provides for this increased flexibility but without disturbing the principle that the primary objective of trust law is to carry out the settlor's intent. The result is a liberalizing nudge, but one founded in traditional doctrine.”³⁰

A pre-MTA case would support the UTC comment suggesting an agreement by the interested parties may not be upheld if the modification violates a material purpose. In *Mahan v. Mahan*, the Supreme Court of Maryland held that a trust beneficiary who was party to an agreement to substitute new trust for original trust did not estop that beneficiary from asserting the invalidity of agreement since giving efficacy to such an agreement would frustrate intent of settlor by avoiding trust's spendthrift provisions.³¹

²⁷ Alan Newman, *The Intention of the Settlor under the Uniform Trust Code: Whose Property Is It, Anyway?*, 38 Akron L. Rev. 649, 702 (2002).

²⁸ John P. Edgar, *Comparison of Maryland Trust Act to Prior Maryland Law and the Uniform Trust Code*, 37, supra. Note 4.

²⁹ UTC Section 111, Comment.

³⁰ David M. English, *The Uniform Trust Code (2000): Significant Provisions and Policy Issues*, 67 Mo. L. Rev. 143, 169 (2002).

³¹ *Mahan v. Mahan*, 320 Md. 262, 276-7 (1990) (“Lillie’s argument that Harvin should be estopped from asserting the invalidity of the 1980 agreement because he was a party to it is also without merit. Acceptance of that argument would have the effect of giving efficacy to the agreement, and that will not be done because

Those not consenting, either directly or through a permitted surrogate to bind a beneficiary, would, of course, also have potential recourse against the trustee. Thus, the degree of trustee risk hinges on the interested persons being properly determined and consenting.³²

Material Purpose

The preservation of the terms of a trust by enforcing its material purposes uphold the ultimate right of one to control their property.³³ Its importance in the common law of trusts of this principle has a long history: “Trust law's exaltation of settlor intent is often attributed to the 1889 decision of the Massachusetts Supreme Judicial Court in *Clafin v. Clafin*.”³⁴

The *Clafin* case involved a trust, with no spendthrift clause, that withheld the final principal distribution to the settlor's son until he reached thirty. The Massachusetts court refused its termination on the consents of all the interest persons: “It is true that the plaintiff's interest is alienable by him and can be taken by his creditors to pay his debts, but it does not follow because the testator has not imposed all possible restrictions that the restrictions which he has imposed should not be carried into effect. The decision in *Bank v. Adams*, 133 Mass. 170, rests upon the doctrine that a testator has a right to dispose of his own property with such restrictions and limitations, not repugnant to law, as he sees fit, and that his intentions ought to be carried out, unless they contravene some positive rule of law, or are against public policy.”³⁵

As noted above, determining what constitutes a material purpose is a factual determination where “drawing the line” between a material purpose and less important provisions is difficult. “Material purposes’ are not readily to be inferred. A finding of such a purpose generally requires some showing of a particular concern or objective on the part of the settlor, such as concern with regard to a beneficiary's management skills, judgment, or level of maturity. Thus, a court may look for some circumstantial or other evidence indicating that the trust arrangement represented to the settlor more than a method of allocating the benefits of property among multiple intended beneficiaries, or a means of offering to the beneficiaries (but not imposing on them) a particular

to do so would frustrate the intent of the creator of the trust by avoiding the spendthrift provisions. We therefore hold that Harvin's right to receive income from the trust established by Frances is not adversely affected by Harvin's execution of the 1980 agreement.”) (Cleaned up). As noted, MTA § 14.5-410 (b) now reverses the spendthrift clause being a per se material purpose.

³² MTA § 14.5-111 (a) defines interested persons: “In this section, ‘interested person’ means a person whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.” A discussion of who is included as an interested person is beyond the scope of this paper. See, however, Fred Franke and Deb Howe, *The Maryland Trust Act: The Fate of the Unknowledgeable Beneficiary*, 49 U. Balt. L. F. 85 (2019).

³³ *Hodel v. Irving*, 481 U.S. 704, 716 (1987) (A case involving the inheritance rights of members of a certain Indian tribe.) (“One of the most essential sticks in the bundle of rights that are commonly characterized as property—the right to exclude others.”) (Cleaned up). A settlor may put conditions on their gifts.

³⁴ Jeffrey N. Pennell and Reid Kress Weisbord, *Trust Alteration and the Dead Hand Paradox*, 48 ACTEC L. J. 147, 160 (2023).

³⁵ *Clafin v. Clafin*, 20 N.E. 454, 456 (1889).

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advantage. Sometimes, of course, the very nature or design of a trust suggests its protective nature or some other material purpose.”³⁶

How Valid is Valid?

The MTA and the UTC describe specific matters that “may be resolved by a nonjudicial settlement agreement.” This is not an exclusive list and the provisions of 111 permit an agreement “with respect to any matter involving a trust.” The scope of the validity of what can be accomplished by a settlement agreement under MTA § 14.5- 111 (c) or UTC Section 111 (c), however, is clearly restricted to only those not violating a material purpose of the trust or exceeding what an equity could properly approve. The fact that these restrictions are often difficult to determine and apply does not make them nullities.

MTA § 14.5- 111 and UTC Section 111 are derived from the common law. The common law from 1889 forward impose these restrictions. The intent of UTC section 111 as reflected by the official comments and by those of its Reporter support that those restrictions are meant to continue to honor the primacy of the intent of the settlor. Maryland common law holds that an invalid settlement agreement can be set aside by a party to that agreement when the agreement violated a material purpose of the trust.

The Restatement (Third) of Trusts § 65 permits beneficiaries agreeing to changes that may be inconsistent with a material purpose “with authorization of the court if it determines that the reason(s) for termination or modification outweigh the material purpose.” Although MTA § 14.5-111 (e) narrowed what interest persons “may request” the court to address regarding a non-judicial settlement agreement, a trustee can petition a court to do so under other provisions of the code. It may be prudent to lock in a proposed settlement agreement by seeking court authorization.

The role of a trustee in following the trust is fairly settled. As *Clafin* held long ago, a loyalty to the terms of the trust continues even when all beneficiaries agree to depart from those terms for their own benefit:

“Although simple, the single-beneficiary fiduciary relationship is not immune to a conflict of interest. A single beneficiary could easily create a conflict by demanding the fiduciary take action that is not in harmony with the governing instrument. This situation surfaced in the Massachusetts Supreme Court case of *Clafin v. Clafin* where a beneficiary brought a suit to terminate the trust early in order to receive the principal. The provisions of the trust stated that the beneficiary was to receive the principal upon reaching a certain age. The court ruled that the demands of the beneficiary should be disregarded and the terms of the trust should be upheld.

Generally, a fiduciary must act in the best interest of the beneficiary, and also must follow the terms of the governing instrument. However, the court ruled that when these two principles conflict, the governing instrument is to take precedent. The Restatement (Second) of Trusts also affirms this idea: ‘The court will not permit or direct the trustee to deviate from the terms of the trust merely

³⁶ Restatement (Third) of Trusts, § 65, comment on subsection (2).

because such deviation would be more advantageous to the beneficiaries than a compliance with such direction.’”³⁷

If the proposed change to an irrevocable trust is easily determined to not violate a material purpose of the trust, then a non-judicial settlement agreement is the appropriate solution. If such a change to the trust, however, may be “not in harmony” with its material purposes, it would be prudent to seek a judicial remedy where a court could weigh whether the benefits of the proposed modification outweigh clinging to a material purpose that may have lost its value.

³⁷Kennedy Lee, *Representing the Fiduciary: To Whom Does the Attorney Owe Duties?*, 37 ACTEC L. J. 469, 482 (2011).