Editors’ Synopsis: Much has been written recently of high-profile financiers and lowly conmen taking advantage of lay investors. Part of the reason these scandals go undetected for so long is the lack of transparency inherent in some of the investment vehicles and the lack of curiosity or sophistication of the investors. Trusts generally are thought to be immune from such scandal because of the fiduciary duty required of a trustee. A fiduciary duty, after all, is the highest level of care that can be imposed on a caretaker of assets. But what is to stop a trustee from looting a trust or abusing its powers?

The primary roadblock is the trustee’s duty to inform. A beneficiary can monitor a trustee’s actions—including investments, disbursements, and expenses—because the trustee must make its actions transparent to the beneficiary. If a trustee’s actions are suspect, in theory a beneficiary can catch the trustee’s indiscretion before much damage is done to the trust’s assets. But to which beneficiaries does the trustee truly owe this duty? Is this a duty the trustee must perform affirmatively, or can the trustee rely on beneficiaries to request this information on their own?

This Article first explores the history of a trustee’s duty to inform and describes the types of beneficiaries found in common law, the Uniform Trust Code (UTC), and the Restatement (Third) of Trusts (Restatement). The Article defines the trustee’s duty to inform as described in the UTC and the Restatement, and analyzes the policy reasons behind it, as well as the pitfalls associated with neglecting this duty. The Article explores the balancing act that a trustee must perform, weighing both practicality and fiduciary duty concerns, and concludes that a trustee owes to vested beneficiaries (current and remaindermen) an affirmative duty to provide information regarding the day-to-day administration of the trust. The trustee owes a non-affirmative duty to contingent beneficiaries and must provide information upon request.

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I. INTRODUCTION

Two individuals operating as co-trustees allowed a third co-trustee to manage the investments of the trust. The third co-trustee indicated that he would be investing the trust assets in foreign bonds; unbeknownst to the other co-trustees, he invested in these bonds as an individual with the bonds payable to his own account. When the bonds matured, the third co-trustee took payment personally and then later became insolvent. The beneficiaries of the trust sued the two other trustees and the court found them liable for the loss.

Though resembling a modern-day white collar fraud, the year was 1818 and the case was one of the first involving a trustee’s duty to inform beneficiaries. The case, Walker v. Symonds,1 involved a co-trustee investing in East India Company bills under his own name. The trustees who authorized the investor let four years pass without following up on the investments.2 In finding the co-trustees liable for the loss, Lord Chancellor Eldon explained:

It is the duty of trustees to afford to [the beneficiaries] accurate information of the disposition of the trust-fund; all the information of which they are, or ought to be, in possession: a trustee may involve himself in serious

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1 (1818) 36 Eng. Rep 751, 753 (C.P.).
2 See id.
difficulty, by want of the information which it was his duty
to obtain.\textsuperscript{3}

This English case inspired American author Joseph Story to write later
in the nineteenth century, “it is the duty of the trustee . . . to afford accurate
information to the [beneficiary] . . . of the disposition of the trust property;
and if he has not all the proper information, to seek for it, and if practicable,
to obtain it.”\textsuperscript{4}

Although a trustee’s duty to inform has long been an established part of
the law, the duty has evolved over time.\textsuperscript{5} Moreover, little has been written
about it\textsuperscript{6} and there has been little standardization of the elements of the duty
among the states or the manner in which trustees attempt to comply with it.\textsuperscript{7}
One trustee may send statements to all of the beneficiaries, including the
remainder beneficiaries, preferring to be cautious and avoid the appearance
of secrecy. Another trustee may choose to send statements only to the cur-
rent beneficiaries, citing the difficulties associated with tracking down and
updating beneficiaries as well as the practical problems that can arise when
multiple beneficiaries ask questions. There is little agreement about the
proper approach to the duty to inform, including to whom the trustee owes
the duty, what information the trustee must send to the beneficiaries, and
whether the duty is an affirmative one or if a trustee can simply wait for the
beneficiaries to ask for information and then reply.\textsuperscript{8}

This Article begins with a discussion of the purpose of a trustee’s duty
to inform and a brief history of case law and academic writings that estab-
lish and analyze the duty. The Article next discusses the different types of
trust beneficiaries. This discussion is important for two reasons. First, a
trustee owes a different level of duty to different categories of beneficiaries.
In addition, the two main authorities discussed in this Article, the Uniform
Trust Code (hereinafter UTC)\textsuperscript{9} and the \textit{Restatement of Trusts},\textsuperscript{10} define the

\textsuperscript{3} \textit{Id.} at 772.
\textsuperscript{4} 2 \textsc{Joseph Story}, \textit{Commentaries on Equity Jurisprudence, as Administered in
\textsuperscript{5} See infra Part III.
\textsuperscript{7} See \textit{id.} at 1608-10.
\textsuperscript{8} See \textit{id.}
\textsuperscript{9} See \textsc{Unif. Trust Code} § 103 (amended 2005), 7C U.L.A. 413 (2006). As of June
2011, twenty-four states and the District of Columbia have enacted the UTC: Alabama,
Arizona, Arkansas, District of Columbia, Florida, Kansas, Maine, Michigan, Missouri,
Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon,
Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, West Virginia, and
The terminology used in common law also can differ from that used in academic writings. The Article next analyzes the duties a trustee owes to each beneficiary under the Restatement of Trust and the UTC. Finally, the Article examines some of the problems that may occur when a grantor of a trust desires privacy or to keep the existence of the trust or some of its terms secret, causing a conflict for the trustee.

The Article concludes that a trustee owes an affirmative duty to all vested beneficiaries to provide them with the documentation necessary for such beneficiaries to protect their interests in the trust property. The trustee does not owe contingent, remote, or nonascertainable beneficiaries the same level of duty. If, however, a contingent beneficiary is ascertainable, the trustee must provide this information upon request. Remote or non-ascertainable contingent beneficiaries are not owed a duty.

II. WHY DOES A DUTY TO INFORM EXIST?

"Where the relation of the trustees . . . and [the beneficiaries] is admitted or clearly established, the [beneficiaries], as the true owners of the [trust assets], have the right to the production and inspection of all documents and papers relating to it."12 Jairus Ware Perry’s statement, published first in his 1882 treatise, is significant because it recognizes that, although a trustee may be the legal owner of assets held in trust, the trustee is not the equitable or beneficial owner of such assets.13 In the proverbial bundle of sticks, many types of owners can be present. The trustee holds the assets but does not directly benefit from them in the form of income payments, apprecia-
tion, rents, or otherwise. Rather, the trustee’s function is to ensure the safety
of the assets and to use them for the benefit of the beneficiaries as the trust
document directs; the actual benefits of ownership are split amongst the vari-
ous beneficiaries.

The interests of the grantor and the interests of the beneficiaries gener-
ally are well aligned. The grantor desires for the trust to benefit the benefi-
ciaries, and the beneficiaries wish to benefit from the trust. But what about
the interests of the trustee versus the interests of the beneficiaries? Some
obvious issues arise where the person or entity managing the assets is dif-
ferent from those who wish to derive benefits from the assets.

Agency cost is the loss suffered by a principal when the interests of the
principal and agent are not aligned.14 In the case of a trustee-beneficiary
relationship, the wealth and livelihood of the beneficiary (the principal)15 is
at stake; not so for the trustee (the agent).16 This relationship theoretically
results in a trustee not working as hard to manage the assets of the trust as
the trustee might if the trustee’s assets were at stake rather than those of the
beneficiary. The losses resulting from these misaligned incentives are the
agency costs associated with the trustee-beneficiary relationship.17

Additional agency costs are associated with the relationship between the
trustee and the grantor of a trust. The grantor is not necessarily able to ob-
serve the behavior of the trustee (the grantor is, after all, very often de-
ceased).18 The grantor likely does not want the trustee benefiting from the
trustee’s own actions, and the behavior of individual trustees (unlike, to
some extent, corporate trustees) is often not subject to market discipline.19

14 See Michael C. Jensen & William H. Meckling, Theory of the Firm: Managerial
Behavior, Agency Costs and Ownership Structure, 3 J. FIN. ECON. 305, 308 (1976); see also
15 See id.
16 See id. at 2761-62.
17 See id.
18 See Sterk, supra note 14, at 2770.
19 See id. at 2771.
One possible solution to the agency cost problem is to give the trustee a financial incentive to act in the best interests of the beneficiary.\footnote{See Gallanis, supra note 6, at 1616. The principal could completely eliminate agency costs if the principal were to align the agent’s compensation perfectly with the agent’s efforts, but this approach would have the unfortunate effect of transforming the agent into the principal. See Sterk, supra note 14, at 2771. The original principal would no longer have any interest in the agent’s actions, defeating the principal’s purpose in creating the agency relationship. See id.} An example would be to link the trustee’s compensation to the gains and losses of the trust assets.\footnote{See Gallanis, supra note 6, at 1616.} This solution is incomplete, however, because the trustee’s financial stake will always be limited in relation to the stake held by the beneficiary and because the trustee and beneficiary likely have a different tolerance for risk (the trustee’s risk tolerance creates an incentive to act according to his own preferences and not those of the beneficiary).\footnote{See id.} “[N]o compensation scheme short of transferring complete ownership of the project to the agent will solve the incentive problem in all possible scenarios when the agent’s efforts are unobservable.”\footnote{Robert H. Sitkoff, An Agency Costs Theory of Trust Law, 89 CORNELL L. REV. 621, 637 (2004) (emphasis added).}

Professor Gallanis, author of an article concerning whether a trustee’s duty to inform should be mandatory, points out that the last word of this sentence is extremely important: unobservable.\footnote{See Gallanis, supra note 6, at 1616.} By reducing the level of secrecy surrounding the trustee’s actions, the trustee will be more likely to act in the beneficiary’s interests. Armed with knowledge regarding the day-to-day operations of the trust, a beneficiary is better equipped to enforce the beneficiary’s rights with regard to the trustee’s management of the trust assets.\footnote{See RESTATEMENT (THIRD) OF TRUSTS § 82 cmt. e (2007).} The Restatement echoes this sentiment: “[O]ne’s enforcement of his or her rights as a trust beneficiary normally requires an awareness not only of the trust’s existence but also of the terms of the trust.”\footnote{See UNIF. TRUST CODE § 813(a) cmt. (amended 2005), 7C U.L.A. § 610-11 (2006); see also McNeil v. McNeil, 798 A.2d 503 (Del. 2002). “At a minimum, in all states, a Trustee has a duty to keep beneficiaries reasonably informed of the trust and its administration so that they may enforce their rights. See § 813 cmt, 7C U.L.A. at 610-11.}
In short, the duty to inform is necessary for beneficiaries to protect their interests in trust assets and to ensure that trustees are doing their job. Monitoring of a trustee’s actions by the beneficiaries is important because often the interests of beneficiaries and those of the trustee are not aligned. Trustees performing their fiduciary duties in a manner that is transparent and observable allows beneficiaries to keep an eye on their property interests. Providing beneficiaries with the opportunity to observe the administration of trusts also helps trustees avoid liability that may be associated with doing business in the dark.

III. THE HISTORY OF A TRUSTEE’S DUTY TO INFORM AND RECENT DEVELOPMENTS

The 1818 *Walker v. Symonds* case discussed above and the writings of Joseph Story that soon followed were among the first cases and commentary to discuss a trustee’s duty to inform a beneficiary of the ongoing administration of the trust. They began a running discussion—though incomplete and undeveloped—of a trustee’s duties in this regard, including to whom the trustee owes the duty, to what extent the trustee owes the duty, and if the trustee breaches the duty, who is liable for the consequences.

Early treatises in American law continued this discussion. Perry’s treatise, published first in 1882, said that beneficiaries have the right to the production and inspection of trust documents. Clearly a rule had developed that required a trustee, as the legal but not equitable owner of trust property, to keep the beneficiaries of the trust apprised of the day-to-day administration of the trust. In 1939, Professor Scott’s influential treatise, *The Law of Trusts*, stated the following:

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 administration of the trust. . . . Where a trust is created for several beneficiaries, each of them is entitled to information as to the trust. Where the trust is created in favor of successive beneficiaries, a beneficiary who has a future interest under the trust . . . is entitled to such information, whether his interests is vested or contingent.

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27 See supra Part I.
28 See Perry supra note 12.
Note that according to this treatise, the law entitles current beneficiaries and future beneficiaries, including contingent beneficiaries, to receive some level of information. The law in this area has continued to evolve.

In 2002, the Delaware Supreme Court decided *McNeil v. McNeil*, a pivotal case regarding a beneficiary’s right to information. The facts of *McNeil* revolve around one of five trusts set up for the children and wife of the grantor. The grantor led the children to believe they were merely remainder beneficiaries; in reality, the grantor gave the trustees discretion to distribute principal and income to the children. One of the siblings, upon realizing that for decades he had been unaware of his ability to benefit from the trust, sued the trustees for, among other things, their failure to inform him of his status as a beneficiary. The court found that the trustees breached their duty to inform and surcharged the trustees for their breach. The court noted, “The duties to furnish information and to act impartially are not subspecies of the duty of care, but separate duties. Whatever may have been McNeil, Sr.’s intention in this regard, he did not expressly relieve the trustees of the duties [to furnish information and to act impartially].” Even though the father assisted in misleading the children regarding their status as current beneficiaries (whether it was his intention to keep their status a secret or not), the father’s actions do not excuse the trustee’s duty to inform.

More recently, the Court of Appeals of Michigan decided *Welch v. Weiner*. The trust’s successor trustee notified a contingent beneficiary that she was one of the beneficiaries of the trust. The beneficiary then tried to find out more information about the trust terms. The trustee refused to give out information and would not hand over a copy of the trust document. The beneficiary petitioned the court to remove the trustee and to obtain a copy of the trust document. The court agreed that the beneficiary

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30 798 A.2d 503 (Del. 2002).
31 See id. at 506.
32 See id.
33 See id. at 506-07.
34 See id. at 510-11.
35 Id. at 509 (citation omitted).
36 See id. at 510.
38 See id. at *1-2.
39 See id. at *2.
40 See id.
was entitled to a copy of the trust document. The court held that the trustee was required to act prudently and in good faith, and by refusing to hand over the requested information the trustee breached his duty to the beneficiary. As a result of this breach, the court removed the trustee.

In 2009, the beneficiary in *In re Baird* petitioned the court to remove the individual trustee because the trustee would not provide annual accountings, which Montana law and the trust document required. The trustee argued that no accounting should be necessary because there was no information worthy of reporting (the trust corpus consisted only of mineral interests subject to non-income producing oil and gas leases). Although the district court and later the Supreme Court of Montana held that there was not sufficient cause to remove the trustee, the court required annual accountings regardless of whether there was anything of significance for the trustee to report. Montana’s Supreme Court notably stated, “[A]n annual accounting would have identified this issue long ago, and perhaps resolved the matter between the parties, instead of allowing it to linger for many years. Further, the beneficiary is entitled to know whether there has been any activity with regard to the trust’s mineral interests.”

Most recently, *Wilson v Wilson* dealt with a suit against a trustee brought by beneficiaries seeking an accounting and alleging a breach of fiduciary duty. The beneficiaries believed that the trustee allowed the trust’s settlor to control the trust assets and invest them in speculative and highly risky business ventures. The trust document provided, specifically, that no inventory, appraisal, or periodic accounting to any beneficiary was necessary. This language was significant because many state laws allow a settlor to override the duty to inform beneficiaries by inserting language to that effect into the trust document. Citing a trustee’s overriding duty “to act in

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41 See id. at *7.
42 See id. at *15.
43 See id.
44 204 P.3d 703 (Mont. 2009).
45 See id. at 705.
46 See id. at 706.
47 Id. at 706.
48 690 S.E.2d 710 (N.C. App. 2010).
49 See id. at 711.
50 See id.
51 Per the court, North Carolina, the state in which this case was brought, does not make the duty to inform beneficiaries mandatory. See id. at 712; see also N.C. GEN. STAT. ANN.
good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries,” however, the court imposed a mandatory duty and stated that state laws allowing a trust document to override a trustee’s duty to inform does not excuse a trustee from acting in good faith.52 In ruling that the information being sought by the beneficiaries was reasonably necessary to enforce their rights under the trust agreement, the court echoed an earlier Nebraska case: “Any notion of a trust without accountability is a contradiction in terms.”53

In sum, case law and academic writings confirm that the trustee has a duty to keep the beneficiaries of a trust informed of the trust’s day-to-day administration. The *Restatement of Trusts* acknowledges the duty to inform,54 which is echoed in the *Restatement (Second) of Trusts*55 and the *Restatement (Third) of Trusts*.56 Further, the duty to inform is found in the UTC57 and has been included in the Uniform Probate Code (hereinafter UPC) since its inception.58 A trustee’s duty to keep the beneficiaries informed of a trust’s administration is well-recognized in American law and continues to develop.

IV. TYPES OF BENEFICIARIES

To determine the beneficiaries to which a trustee owes a duty to inform, a description of the various types of beneficiaries is first necessary. Although the terminology can vary, for the purposes of this Article three broad types of beneficiaries are most commonly found in trusts: current beneficiaries, vested remainder beneficiaries, and contingent remainder beneficiaries.

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52 Wilson, 690 S.E.2d at 714 (quoting N.C. GEN. STAT. ANN. § 36C-1-105 (2009)).
53 Id. (quoting In re Guardianship and Conservatorship of Sim, 403 N.W.2d 721, 736 (Neb. 1987)).
54 See *Restatement of Trusts* § 173 (1935).
55 See *Restatement (Second) of Trusts* § 173 (1959).
56 See *Restatement (Third) of Trusts* § 82 (2007).
aries. As discussed below, the UTC and the Restatement describe these three categories in a somewhat different manner.59

A current beneficiary is any beneficiary currently entitled to a benefit from the trust. This includes, but is not limited to, a grantor who retains an interest in the trust (income, power to revoke or amend, etc.), an income beneficiary, or a beneficiary currently entitled to principal distributions from the trust.

Example 1:

At Grantor’s (G) death an irrevocable trust is created for the benefit of G’s wife (W). All income goes to W for her life. Upon W’s death, the remaining principal is distributed to W’s then-living child (C).

In this example, W is the current beneficiary. G is not a current beneficiary because he has relinquished all the rights he and his estate had regarding the trust property. C is not a current beneficiary because C is not currently entitled to any distributions from the trust, whether income or principal. C may not receive any benefit from the trust until W’s death.

Slightly changing this example creates a very different result:

Example 2:

G at his death creates an irrevocable trust for the benefit of W. All income goes to W for her life. C may request principal distributions, which may be made in the trustee’s sole discretion, for expenses related to C’s education. Remainder to C upon the death of W.

W is still a current beneficiary because she is entitled to distributions of income. G still has relinquished all rights to the trust property and is still not a beneficiary. C, however, is now a current beneficiary. Although C is not entitled to any distributions for education (distributions for education can only be made in the discretion of the trustee), C does have an immediate interest in the trust principal and is therefore a current beneficiary of the trust. Note that the remainder beneficiary of the trust is also C; C gets the

59 Though this Article examines the UTC in detail, it is worth noting that the UPC does away with the vested/contingent beneficiary distinction. The UPC states that “future interests [in trust] are ‘nonvested.’” Unif. Probate Code § 2-707(b) cmt. (amended 2008), 8 pt. 1 U.L.A. 198 (Supp. 2010). The UPC indicates that any future interest is really contingent on the beneficiary surviving to the point of the distribution. See id. For an excellent discussion on this topic, see F. Philip Manns, Jr., New Reasons to Remember the Estate Taxation of Reversions, 44 REAL PROP. TR. & EST. L.J. 323 (2009).
trust corpus upon the death of W. Thus, C is both a current beneficiary and a vested remainder beneficiary, discussed next.

A vested remainder beneficiary is considered vested because, even if the beneficiary does not receive a current benefit from the trust, the beneficiary has a vested property interest that can’t be taken away. By some accounts, a contingent remainder beneficiary includes a remainder beneficiary who must survive the current beneficiary before receiving a benefit from the trust. For the purpose of this Article, this type of beneficiary is referred to as a vested remainder beneficiary. As long as a present or future benefit cannot be taken away from a beneficiary during his lifetime, the beneficiary has a vested property interest.60

Example 3:

G creates an irrevocable trust for the benefit of W. All income goes to W for her life. Upon W’s death, all income shall go to C for C’s life. Upon the death of C, the principal goes to C’s children.

In this example, C is still a vested remainder beneficiary. Note that although C will not receive the principal of the trust upon W’s death, C will receive the income generated by the trust for C’s life if C survives W. Because C will receive a future benefit from the trust, C is vested.

The third basic type of beneficiary is the contingent or contingent remainder beneficiary.

Example 4:

At his death, G creates an irrevocable trust for the benefit of W. All income goes to W for her life. At W’s death, W may, in her will, appoint the trust principal to whomever she chooses. If W does not exercise this power of appointment, C will receive the principal of the trust.

In this example, W is still a current beneficiary and still receives all current income from the trust. C, however, is no longer vested. Whether C will receive anything upon the death of W is unknown because W can appoint the principal of the trust any way she desires by writing a will. C may still receive the property if W chooses to name C in the will or if W fails to appoint the trust property in her will. But because C’s interest is entirely contingent on W’s actions or inactions, C’s interest is no longer certain, and C

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60 See Manns, supra note 59.
is a contingent remainder beneficiary.\textsuperscript{61} Note that “C” is ascertainable—that is, his identity can be determined.

Noteworthy here, and important to the analysis of a beneficiary’s right to receive information about a trust, is the level of remoteness associated with the three different types of beneficiaries. A current beneficiary is the least remote—enjoying a current benefit from the trust. A vested remainder beneficiary is more remote than a current beneficiary; though a vested remainder beneficiary will likely enjoy a benefit sometime in the future, no current benefit flows to this beneficiary. Contingent remainder beneficiaries, in these examples, are the most remote; in some cases they may even be impossible to identify. These beneficiaries may or may not ever receive a benefit from the trust, though the possibility of them receiving a benefit does exist.\textsuperscript{62}

A. The Uniform Trust Code

The UTC recognizes three types of beneficiaries,\textsuperscript{63} called qualified beneficiaries.\textsuperscript{64} The first type of qualified beneficiary, referred to hereinafter as Type 1, is described in UTC Section 103(A): “[A Type 1 beneficiary is a beneficiary that] is a distributee or permissible distributee of trust income or principal.”\textsuperscript{65} This type of beneficiary is a current beneficiary, as described above. The beneficiary could derive an immediate benefit from the trust. In Example 2 above, \(W\) was entitled to current income distributions from the trust. \(C\) could request principal distributions at the discretion of the trustee for educational expenses. Both of the beneficiaries would be Type 1 beneficiaries under the UTC.

The second type of qualified beneficiary under the UTC, referred to hereinafter as a Type 2 beneficiary, is described in UTC section 103(B):

\begin{itemize}
  \item \(C\) is arguably a vested remainder subject to a complete defeasance—because \(C\)’s interest is certain unless \(W\) removes it via her will. For the purpose of this Article and for the purpose of analyzing a trustee’s duty to inform, the general definition of contingent beneficiary will apply.
  \item These examples are very basic; many different scenarios give rise to these types of beneficiaries.
  \item “The definition of ‘beneficiary’ includes only those who hold beneficial interests in the trust.” Unif. Trust Code § 103 cmt. (amended 2005), 7C U.L.A. 416 (2006). Note that a charitable trust does not create beneficiaries: “Because a charitable trust is not created to benefit ascertainable beneficiaries but to benefit a community at large . . . , persons receiving distributions from a charitable trust are not beneficiaries as that term is defined in this Code.” Id.
  \item Id. § 103(13)(A).
\end{itemize}
“[A Type 2 beneficiary is a beneficiary that] would be a distributee or permissible distributee of trust income or principal if the interests of the [Type 1 beneficiaries] terminated on that date without causing the trust to terminate.”

In Example 3 above, W receives income for life. At W’s death, C is to receive income for life. Upon W’s death, assuming C survives W, the trust will not terminate and distribute outright to anyone. Rather, the principal will remain invested and the income will be distributed to C for C’s life. C is a vested remainder beneficiary and also a Type 2 beneficiary under the UTC. C would be a distributee of trust income if the interest of W, the Type 1 beneficiary, were to terminate without causing the trust to terminate.

The UTC describes a third type of beneficiary, referred to hereinafter as a Type 3 beneficiary, as follows: “[A Type 3 beneficiary is a beneficiary that] would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.” This third category of beneficiary is very broad; it covers any beneficiary who is entitled to any distribution on the date of the trust’s termination. In Example 1 above, W receives income for life. At W’s death, the principal goes to C. In this case, C is a Type 3 beneficiary. In Example 2, C is entitled to discretionary trust principal and also receives the trust corpus on the death of W. C is a Type 1 and a Type 3 beneficiary. In Example 3, C’s children are the Type 3 beneficiaries. Upon C’s death (assuming C has children), C’s children receive the trust principal. Example 4 is where it gets more complicated: the trust principal goes to either C or to whomever W chooses in her will. In this case, the Type 3 beneficiaries are contingent. The beneficiary could be C, or it could be someone else, determined by W’s power of appointment. The ultimate beneficiary won’t be determined until the trust terminates; in this case, at W’s death. As long as W retains the power to appoint the trust corpus by will, determining who ultimately gets the principal of the trust is impossible. Even if W created a will, as long as she is alive, she retains the power

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66 Id. § 103(13)(A).
67 Id. § 103(13)(C).
68 UTC section 103 comments state that holders of powers of appointment, whether or not they receive income or principal, are considered to be beneficiaries. UNIF. TRUST CODE § 103 cmt. (amended 2005), 7C U.L.A. 415 (2006). The type of beneficiary they are depends on the nature of the power of appointment. If the power is a general power of appointment, meaning the holder can exercise the power in favor of themselves, their creditors, their estate, or the creditors of their estate, and if the power is presently exercisable, then this beneficiary would be a current beneficiary, or a Type 1 beneficiary. Holders of powers of appointment are included in the UTC because their interests are significant enough that they should be afforded the rights of beneficiaries. Though the UTC recognizes a power of
to amend or revoke the will. We won’t know if C will get anything until the trust terminates; if W does not appoint anyone else via her will, C will take. Although C is a named beneficiary, W can direct the trust assets away from C. In this example, C is an ascertainable contingent beneficiary. Those that may take via W’s power of appointment are non-ascertainable contingent beneficiaries. Under the UTC, appointees under the will of a living person are not qualified beneficiaries.69

B. The Restatement of Trusts

The Restatement takes a much more informal approach.70 Section 82 simply refers to “fairly representative beneficiaries.”71 The comments point out that the purpose of this approach is to balance practical considerations for the trustee and reflect the diversity of the beneficial interests.72 A trustee’s duty under the Restatement is to make a good-faith effort to inform a “limited number of beneficiaries whose interests and concerns appear fairly representative—i.e., likely to coincide with—those of the trust’s beneficiaries generally.” According to the Restatement, this gives the beneficiaries a reasonable opportunity to monitor the trustee’s actions.73

Although allowing for flexibility, the comments explain that a trustee’s duty to inform fairly representative beneficiaries generally can be satisfied by providing information to those beneficiaries who are entitled or eligible to receive income or principal distributions from the trust and to those who would be so entitled if the interests of those currently entitled were to terminate (current beneficiaries and vested remainder beneficiaries).74

appointment holder, under common law, the holder of a power of appointment is not considered to be a beneficiary. See § 103 cmt., 7C U.L.A. at 415.

69 Under the UTC section 103 comments, “Because the exercise of a testamentary power of appointment is not effective until the testator’s death and probate of the will, the qualified beneficiaries do not include appointees under the will of a living person.” § 103 cmt., 7C U.L.A. at 418. Note, however, that the takers in default (in Example 4, C) are considered to be qualified beneficiaries. See § 103 cmt., 7C U.L.A. at 418.

70 See Restatement (Third) of Trusts § 82 (2007).
71 Id.
72 See id. at cmt. a(1).
73 Id.
74 See id. The duty can be satisfied by providing information “(i) to those beneficiaries who are either entitled or eligible to receive distributions of income or principal and (ii) to those who would be entitled or eligible to receive distributions of income or principal if either the trust or current interests referred to in (i) above were then to terminate.” Id. Note that the comments also address the issue of a power of appointment. “Occasionally, however, the trustee’s duty to provide information about a trust will extend also to a donee of a power
V. THE TRUSTEE’S DUTY TO INFORM

Knowing which beneficiaries are which and what the beneficiary’s relationship is to the trust assets makes it easier to determine the beneficiaries that are owed a duty to inform under the UTC and the Restatement. The more remote a beneficiary, the less information is owed. The duty to inform, however, varies somewhat between the UTC and the Restatement, both in the information that needs to be given and to whom it must be given.

A. Uniform Trust Code

Section 813 of the UTC covers the duty to inform.75 Under this section, “[a] trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests.”76 The UTC considers this duty as something owed to all qualified beneficiaries—Type 1, Type 2, and Type 3 beneficiaries. If the beneficiary is currently entitled or will be entitled to take from the trust, then the trustee owes that beneficiary a duty to keep them informed of the administration of the trust.

What information, exactly, is owed to the beneficiary? Section 813 continues:

(b) A trustee:
(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;
(2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee’s name, address, and telephone number;
(3) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, . . . shall notify the qualified beneficiaries of the trust’s existence, . . . of the right to request a copy of the trust instrument, and of the right to a trustee’s report . . . and

76 § 813(a), 7C U.L.A. at 609 (emphasis added).
(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee’s compensation.\textsuperscript{77}

The duty to provide this information is prefaced in each subsection with the word \textit{shall}. Under the UTC these duties are not optional; the trustee owes these duties unconditionally, unless these duties are explicitly waived by the beneficiary.\textsuperscript{78} In other words, this duty is an affirmative one. The first sentence of the comment to UTC section 813 states, “the duty to keep the beneficiaries reasonably informed of the administration of the trust is a fundamental duty of a trustee.”\textsuperscript{79}

Under the UTC, the trustee owes an affirmative duty to keep Type 1, Type 2, and Type 3 beneficiaries informed—that is, current beneficiaries, and beneficiaries who would take if the current beneficiary’s interest terminated (whether the trust were to terminate or not). But what about the contingent beneficiary, who may or may not benefit from the trust? The comment to UTC section 103 states the following:

Due to the difficulty of identifying beneficiaries whose interests are remote and contingent, and because such beneficiaries are not likely to have much interest in the day-to-day affairs of the trust, the Uniform Trust Code uses the concept of ‘qualified beneficiary’ . . . to limit the class of beneficiaries to whom certain notices must be given or consents received.\textsuperscript{80}

Those classes of beneficiaries are the Type 1, Type 2, and Type 3 beneficiaries. The UTC does not affirmatively require that contingent beneficiaries receive information.

B. Restatement of Trusts

The \textit{Restatement} covers the trustee’s duty to inform in section 82. Specifically, section 82 states that a trustee has the following duties:

(a) promptly to inform fairly representative beneficiaries of the existence of the trust, of their

\textsuperscript{77} \textsc{Unif. Trust Code} § 813(b)(1)-(4) (amended 2005), 7C U.L.A. 609-10 (2006).
\textsuperscript{78} \textsc{Unif. Trust Code} § 813(d) (amended 2005), 7C U.L.A. 610 (2006). ("A beneficiary may waive the right to a trustee’s report or other information otherwise required to be furnished under this section.")
\textsuperscript{80} \textsc{Unif. Trust Code} § 103 cmt. (amended 2005), 7C U.L.A. 417 (2006).
status as beneficiaries and their right to obtain further information, and of basic information concerning the trusteeship;

(b) to inform 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 the beneficiaries for the protection of their interests.81

The trustees must promptly inform the fairly representative beneficiaries of the pertinent information relating to the trust. This duty includes all things a beneficiary needs to properly enforce their rights as beneficiaries. The comments to section 82 state that the duty to inform covers the following information: the existence, source, and name of the trust; the extent and nature of the beneficiary’s interest; the names of the trustees; trustees’ contact and compensation information; the roles of co-trustees; and the beneficiary’s right to further information, including information concerning the terms of the trust or a copy of the trust instrument.82

Comment (d) further explains that this section does not impose a regular or routine requirement of reporting or accounting. However, section 82(c), noted above, and as restated in comment (d) imposes an affirmative requirement that “the trustees inform fairly representative beneficiaries of important developments and information that appear reasonably necessary for the beneficiaries to be aware of in order to protect their interests.”83

Note first that this is an affirmative duty of the trustee; also, only the fairly representative beneficiaries enjoy the benefits of this affirmative duty. This duty encompasses the current beneficiaries and the vested remainder beneficiaries; contingent beneficiaries do not enjoy the benefits of this du-

81 Restatement (Third) of Trusts § 82(1)(a)-(c) (2007).
82 See Restatement (Third) of Trusts § 82 cmt. (b) (2003). Note that the UTC does not define the “terms of the trust” as merely the contents of the trust document: “oral statements, the situation of the beneficiaries, the purpose of the trust, [and] the circumstances under which the trust is to be administered” are all considered to be terms of the trust. Unif. Trust Code § 103 cmt. (amended 2005), 7C U.L.A. 419 (2006).
83 Restatement (Third) of Trusts § 82 cmt. d (2007).
The contingent beneficiary is not, however, completely blocked from obtaining information. Comment (e) states that a trustee has a duty “to provide information that is requested regarding the trust property or its administration by any beneficiary, a right not limited to fairly representative beneficiaries.” Thus a contingent beneficiary, a beneficiary that falls outside the Restatement’s definition of a fairly representative beneficiary, is entitled to information regarding the terms of the trust if such beneficiary requests it. A court may, however, limit the frequency or the extent of such inquiries, depending on the remoteness of the beneficiary, the significance of the beneficiary’s property interest, any privacy concerns, etc.

The comments provide the following illustration:

S created a testamentary trust to pay income to B for life, “remainder . . . to B’s issue who survive her, and if none do then to her then-surviving brothers and sister or their issue.” B’s [two children are] . . . living; they consist of her two adult children and several adult and minor grandchildren. B also has living siblings. The trustee’s duty to inform fairly representative beneficiaries . . . can readily be satisfied by providing information to B . . . and to her two children . . . Information . . . need not be provided to the grandchildren or siblings.

Note that B is the current beneficiary. Upon B’s death, her two children will receive the trust assets. If, and only if, B’s children predecease her, would B’s siblings or grandchildren take the trust assets. Thus, B’s children

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84 But see Rearden v. Riggs Nat’l Bank, 677 A.2d 1032, 1035 n.4 (D.C. 1996) (stating a duty to provide information to even potential remaindermen and extending that duty to all who have a present or future interest in the trust); Siefert v. Leonhardt, 975 S.W.2d 489, 492 (Mo. App. 1998) (public policy supports even a contingent beneficiary receiving this affirmative duty to better enforce the trust); UNIF. TRUST CODE § 813 cmt. (amended 2005), 7C U.L.A. 611 (2006). (“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. . . . Within the bounds of the reasonableness limit, this provision allows the beneficiary to determine what information is relevant to protect the beneficiary’s interest.”); Scott on Trusts § 173 (4th ed. 1987) (“[w]here the trust is created in favor of successive beneficiaries, a beneficiary who has a future interest under the trust . . . is entitled to such information, whether his interest is vested or contingent.”).

85 RESTATEMENT (THIRD) OF TRUSTS § 82 cmt. e (2007) (emphasis added).

86 See id. § 82 cmt. a.

87 Id. § 82 cmt. e.

88 Id. § 82 cmt. a, illus. 1.
are vested remainder beneficiaries. The siblings and grandchildren are contingent beneficiaries. In this example, the trustee will satisfy the duty to provide information to fairly representative beneficiaries by keeping the current beneficiary and vested remainder beneficiaries informed of the trust administration. The trustee need not keep the contingent beneficiaries informed.

Under both the UTC and the Restatement, a trustee owes a duty to both the current beneficiaries and the vested remainder beneficiaries to provide the information necessary for them to enforce their rights. They include language indicating that the trustee has an affirmative duty—the trustee must provide this information whether the beneficiaries ask for it or not. The trustee, however, does not owe contingent beneficiaries this same level of duty. A contingent remainder beneficiary (that is ascertainable) may receive information, but only upon requesting it from the trustee.

VI. BALANCING THE GRANTOR’S DESIRE FOR PRIVACY WITH FIDUCIARY DUTY

Though the UTC and the Restatement impose an affirmative duty to inform on trustees, these authorities are only a guide. The UTC is not an act that is or must be adopted by state legislatures; the UTC is an effort by the Uniform Law Commissioners to give states a model for codifying their trust laws. The UTC is only as powerful as the number of states that adopt it, and the states are free to vary the language of the code as they see fit. The Restatement is an effort by the American Law Institute to restate the legal rules that constitute the common law in a particular field; the Restatement carries no authority of its own. Ultimately, the applicable state law and a trustee’s corporate or individual policies define the trustee’s obligation to provide information to the beneficiaries. Regardless of policy considerations or trustee best practices, state law may limit the access a beneficiary has to information regarding the trust administration. One common limita-

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89 See supra text accompanying notes 76, 81. This rule is also supported by case law. See Whalen v. Whalen, 577 N.E.2d 859 (1991). Whalen v. Whalen involves a mother who died and left her husband two trusts for which he was both the beneficiary and trustee. Their five children were to receive the trust principal upon the death of the father. Upon receiving a request for an accounting, the father refused. The court ruled that the children were entitled to an accounting and stated, “At common law, a trustee has a duty to render an accounting at reasonable times to the income beneficiaries and vested remainderman.” Id. at 860.


tion placed on a beneficiary’s right to information is a limitation placed within the trust document itself by the grantor.

A grantor may want the trustee to withhold information from the trust’s beneficiaries for a number of reasons. For example, a grantor may wish to keep the contents of the estate private. A grantor may worry that a beneficiary who is aware of the extent of the trust corpus will hound the trustee into making disbursements or, worse, sue the trust to the same effect. Or a grantor may want a beneficiary to remain unaware of the trust until a certain date (for example his thirtieth birthday). Given the discussion above, however, too many restrictions on the communication of information to a beneficiary can be troublesome.

Disagreement exists regarding the extent to which a grantor may limit a beneficiary’s access to trust information. The Restatement states that a grantor may, using the trust document, “limit the trustee’s duty to disclose trust provisions . . . on a reasonable basis, in order . . . to lessen the risk of unnecessary or unwarranted loss of [desired] privacy or [to avoid revealing to a youthful beneficiary his interests].”92 Sections 105 (b)(8) and (9) of the UTC, however, state that the terms of a trust may not prevent a trustee from informing the beneficiaries of the existence of the trust, the identity of the trustee, their right to request a trustee’s report, or other information regarding the administration of the trust.93 But, as an example of a state legislature’s power to modify a uniform code, of the first ten states to adopt the UTC four states deleted these sections from the code.94 In these states, a

92 Restatement (Third) of Trusts § 82 cmt. e (2007). Note, however, that a trustee cannot prevent a beneficiary from requesting information to protect the beneficiary’s interests. See id.; see also Frances H. Foster, Privacy and the Elusive Quest for Uniformity in the Law of Trusts, 38 Ariz. St. L.J. 713, 750 (2006).

93 (b) The terms of a trust prevail over any provision of [the UTC] except: . . . (8) the duty under Section 813(b)(2) and (3) to notify qualified beneficiaries of an irrevocable trust . . . of the existence of the trust, of the identity of the trustee, and of their right to request trustee’s reports; (9) the duty under Section 813(a) to respond to the request of a beneficiary of an irrevocable trust for trustee’s reports and other information reasonably related to the administration of a trust.

94 Kansas, Tennessee, Utah, and Wyoming deleted these sections. See Newman, supra note 93, at 677. Note that the District of Columbia allows a grantor to waive the trustee’s obligation to report to beneficiaries; the grantor may designate a surrogate to receive the information instead. See id. at 676. California is the exception: waivers of notice
trustee can keep a trust’s existence or terms secret from a beneficiary, regardless of any policy reasons to the contrary.

If a grantor directs the trustee to withhold all information from the beneficiary, including whether a trust even exists, the beneficiary is completely unable to protect his or her interests. How can a beneficiary monitor the actions of a trustee to ensure the trustee is acting in the beneficiary’s interests when the beneficiary has no idea that there is anything to monitor? Worse, without a beneficiary knowing of a trust’s existence, a real legal question exists as to whether a trust has even been created. Picture a property owner transferring property to another to hold on behalf of a third party and stating to the transferee that the transferee may not tell the third party of the transfer. Arguably, an enforceable trust has not been created; rather, it is just an outright gift to the transferee accompanied with a statement that the property should be used for the benefit of another. If the transferor is deceased, who would know if the transferee just pockets the property and walks away?

What if, in the above situation, a beneficiary asks the trustee whether a trust exists for his or her benefit? UTC section 105(b)(2) imposes a duty that “a trustee act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.” If the trustee acts consistently with the wishes of the grantor and denies that a trust exists, the beneficiary could argue that the trustee is not acting in good faith or in accordance with the best interests of the beneficiary, regardless of the fact that the trustee’s actions are in accordance with the grantor’s intent. The Restatement provides the following:

Although the terms of the trust may regulate the amount of information which the trustee must give and the

requirements are “against public policy and . . . void.” CAL. PROB. CODE § 16061.7(i) (West 2011); see also Foster, supra note 92, at 750.

95 See Newman, supra note 93, at 677.
96 UNIF. TRUST CODE § 105(b)(2) (amended 2005), 7C U.L.A. 428 (2006); see also Newman, supra note 93, at 679.
97 See Newman, supra note 93, at 680; see also Schmidt v. Rosewood Trust Ltd., [2003] UKPC 26, [2003] 2 A.C. 709. “[H]ow can anyone monitor the trustee and discover whether the power is being misused . . . unless one knows what are the purposes for which the power was conferred upon the trustee by the settlor?” David Hayton, 10 J. INT’L TR. & CORP. PLAN. 139, 143-44 (2003); see also John H. Langbein, Mandatory Rules in the Law of Trusts, 98 NW. U. L. REV. 1105, 1126 (2004) (arguing that denying a beneficiary information about the trust would render the trust unenforceable and illusory; permitting the trustee to ignore fiduciary duties effectively allows the trustee to “loot the trust,” and places “the trustee’s misuse of the property beyond effective remedy.”).
frequency with which it must be given, the beneficiary is always entitled to such information as is reasonably necessary to enable him to enforce his rights under the trust or to prevent or redress a breach of trust.98

Clearly, a balancing act must be performed by the trustee. On the one hand, a beneficiary has an absolute right to information that allows the beneficiary to protect its interests; case law has shown that denying information to beneficiaries will likely have consequences for a trustee. On the other hand, there is the directive from the grantor. A grantor arguably should have the right upon death to control the disposition of his or her assets, including the ability to keep a trust secret from immature or litigious beneficiaries. But a beneficiary (or a representative thereof) simply must have access to key information about the trust and, as demonstrated above, this is an affirmative duty—the trustee must give vested beneficiaries some minimal information, even if they don’t ask for it. To do otherwise would create considerable risk, both for the beneficiary as well as the trustee.

VII. ENFORCEMENT BY THE BENEFICIARIES

Should the beneficiaries discover that a trustee is mismanaging the trust, their primary solution will be litigation, or at least the threat of it. Exposing the trustee to liability will encourage the trustee to follow the instructions of the grantor.99 Although an affirmative duty to inform is a tremendously useful tool—allowing beneficiaries to enforce their rights as beneficial owners of the trust property—it is far from a panacea.

Monitoring of the trustee by the beneficiaries is often impractical; beneficiaries often lack the knowledge necessary to detect a trustee’s breach of duty.100 The beneficiaries may also be dependent on the trustee or have a personal relationship with the trustee if the trustee is an individual. Beneficiaries may understand that a trustee has discretionary disbursement powers and may believe that angering the trustee will do them more harm than good.101 A beneficiary may therefore be reluctant to take a trustee to court.102 Further, a trust is often an estate planning instrument specifically used to keep the contents of an estate private; litigation carries the risk that

99 Sterk, supra note 14, at 2768.
100 See id.
101 See id. at 2772.
102 See id. at 2768.
the contents of the trust and its provisions might become public and that a beneficiary’s interest will be cast into the public eye.\textsuperscript{103}

A trustee likely understands that litigation by beneficiaries could be costly; the beneficiaries, after all, must pay their own litigation-related expenses. Although if successful a beneficiary may be able to recover the costs from the trust funds, this may be an unsatisfying victory because the beneficiaries are generally the beneficial owners of the trust property and therefore may be literally recovering from themselves.\textsuperscript{104} Moreover, if the action is not successful, the trust assets will pay the trustee’s costs of legal defense.\textsuperscript{105} An intelligent beneficiary may think twice about bringing an action against a trustee, even if the beneficiary believes it may ultimately win.\textsuperscript{106}

Some concern exists as to whether beneficiaries even understand what they need to monitor. Asset allocation, tax issues, fees, and other aspects of trust administration are often complex and cumbersome. A beneficiary receiving a thirty-page quarterly statement may not know what to do with the rows of figures and lists of transactions. Stewart E. Sterk, author of an article on trust protectors and agency costs, correctly points out that “the assumption of rational, educated beneficiaries is a heroic one.”\textsuperscript{107} Note that a trust beneficiary is often a trust beneficiary for a reason: if the grantor believed the beneficiary was capable of properly handling the trust property, the grantor likely would have just left the property to the beneficiary outright—free of trust.\textsuperscript{108}

Lastly, the preferences of the beneficiaries—and therefore the issues the beneficiaries may try to enforce—are not always the same as the preferences of the grantor. A beneficiary or a trustee may treat a trust in a way the grantor did not contemplate, so the wishes of the grantor may not be carried out. If the trustee, for example, makes large annual distributions to beneficiaries beyond those contemplated by the grantor and does so with the consent of the beneficiaries, there likely will be no one to bring action against the trustee for a breach of fiduciary duty.\textsuperscript{109}

\textsuperscript{103} See Foster, supra note 92, at 730.

\textsuperscript{104} See Sterk, supra note 14, at 2772.

\textsuperscript{105} See id.

\textsuperscript{106} See id.

\textsuperscript{107} Id.

\textsuperscript{108} See Sterk, supra note 14, at 2772. Tax and financial planning reasons aside.

\textsuperscript{109} See id. Stewart E. Sterk notes the emergence of a potential third party to mitigate some of these issues: the trust protector. A trust protector is “a person selected by the settlor to represent the settlor’s interests in making specified trust decisions that the settlor will be
VIII. CONCLUSION

“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.”110

A trustee has an affirmative duty to keep the vested beneficiaries informed of the ongoing administration of the trust. Though there are many things to consider, including applicable state laws and internal trust administration concerns, a trustee must first act with the beneficiary’s interests in mind. To this effect, trustees should adopt a policy, subject to state law, of informing all vested beneficiaries, both current and remaindermen. A vested beneficiary has a legitimate property interest, and as such, has a right to know how it is being managed. If an issue arises with respect to the trust property or the conduct of the trustee, the beneficiary will be unable to protect his or her interest if the beneficiary does not have knowledge of the trust or the manner of its administration.

The trustee’s policy regarding the duty to inform should be affirmative. The trustee should actively seek out the beneficiaries of the trust. This need not be a burdensome process; the trustee can acquire most beneficiary information when the trustee accepts the trusteeship. It may even be in the trustee’s interests to refuse to accept a trusteeship unless the grantor provides complete beneficiary information. Ongoing beneficiary information can be updated regularly from known beneficiaries who are often only too willing to assist the trustee in administering a trust that sends them their monthly checks or house payment.

A trustee stands to significantly limit its liability by keeping a beneficiary up to date on the trust administration. As case law has shown, potential savings in legal fees alone may justify this policy: a beneficiary will be much less likely to sue for a breach if the beneficiary is able to openly communicate its concerns with the trustee (obviously impossible if the beneficiary does not have a window into the trust’s operations). If a trustee is making mistakes with the trust’s administration, a beneficiary calling the trustee out early is in everyone’s best interest; if the mismanagement continues, a small issue could snowball into costly litigation and possibly into substantial liability on the part of the trustee.

At a minimum, the trustee should adopt a policy of sending to all vested beneficiaries the information recommended in UTC section 813: notice of the trust’s existence, a copy of the trust instrument, the trustee’s contact information, and notice of ongoing changes in a trustee’s compensation. In addition, a trustee should give to a vested beneficiary at least annually a statement of accounts, including a list of transactions, disbursements, and balances. For a corporate trustee this generally can be accomplished by simply sending an annual statement.

These recommendations apply only to vested beneficiaries; contingent beneficiaries, if they can be ascertained, should enjoy this same right but only if they request the information. A trustee should not be required to track down remote beneficiaries who may not benefit from the trust. Moreover, potential practical issues might be involved if a remote beneficiary or a taker in default of a power of appointment (such as a charity) receives statements regarding a trust that may never distribute anything to them—the potential for a misunderstanding regarding a contingent beneficiary’s interests (or lack of) is significant.