

Deceit, Deception, and Discovery: Enforcing the Wishes of the Trustor

RICHARD H. LAMBIE, CLPF

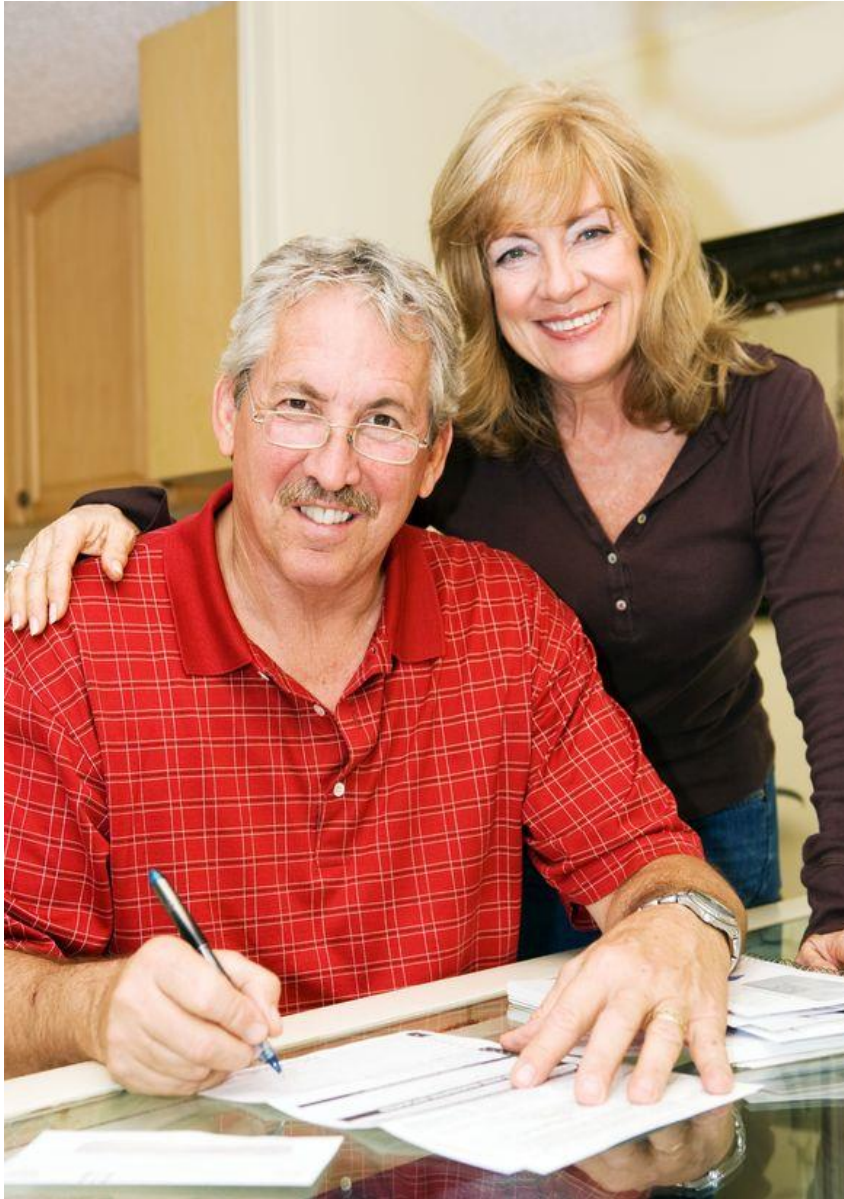
Richard H. Lambie Professional Fiduciary
(408) 551-2122 | richard@rhlambie.com

DAN G. BERRIS, J.D., LL.M.

Ferrari Ottoboni Caputo & Wunderling LLP
(408) 280-0535 | dberris@ferrarilawpartners.com

March 18, 2019

Santa Clara County Estate Planning Council



Trusts

- **Trustor**

- Creates Trust
- Transfers legal and equitable title of assets to the Trust

- **Trustee**

- Holds legal title to assets of the Trust Estate
 - Fiduciary Duties to Beneficiaries
- Collects, manages, protects, and marshals Trust assets
- Maintains books and records about Trust assets
- Files all required tax documents (e.g., income tax returns, estate tax returns)
- Accumulates and distributes income and principal to the Beneficiaries
- Invests assets as a prudent investor and in the best interest of Beneficiaries
- Provides information and accountings to Beneficiaries



Trusts

- **Trustee (cont.)**
 - Individual Trustee
 - Professional Trustee
- **Beneficiary**
 - Holds equitable title to assets of the Trust Estate
- **Attorney**
 - Represents the Trustee
 - Advises the Trustee about Fiduciary Duties
 - Helps the Trustee administer the Trust Estate in compliance with all relevant legal authorities
 - Communicates with appraisers, accountants, financial planners, and other third party advisors



Case Study

- **Trustor**
 - Teresa
 - Recovering alcoholic
 - Not married
- **Successor Trustees**
 - Fred
 - Insurance Broker of Trustor
 - Coordinated with attorney to help Trustor create Trust
 - Francis
 - Friend of Trustor
 - Debtor of Trust Estate



Case Study

- **Beneficiaries**

- Bill
 - Boyfriend of Trustor
 - Truck driver
- Barbara
 - Friend of Trustor
 - Housekeeper
 - Administrative Assistant at ABC Staffing Company



Assets of the Trust

- ABC Staffing Company
 - Trustor is the sole shareholder of the company
- Principal Residence
- Vehicle
- Boat
- Promissory Notes and Deed of Trust
- Bank Accounts
 - Small amounts of cash-on-hand

Death of Trustor & Removal of Trustees

- Date of Death
 - Cause of death unknown
 - Fred and Francis become successor Co-Trustees
 - Fred and Francis take immediate possession of Trust Estate
 - ABC Staffing Company accounts blocked from employees
- Alleged physical altercation between Fred and Barbara
- Restraining order obtained against Fred
 - Order protects both Beneficiaries, Barbara and Bill
 - Bill subsequently claims he did not agree with allegations against Fred
- Ex Parte Petition for Order Removing Co-Trustees
 - Counsel for Beneficiaries, Barbara and Bill, file Petition
 - Order suspends Co-Trustees and appoints Richard as Temporary Trustee
 - Richard immediately takes possession of Trust Estate



Initial Administration

- **Special Administration**
 - Urgent appointment
 - Bond obtained
 - Final income tax return of Trustor filed
 - Assets marshalled
- **Heggstad Petition**
 - Promissory Notes and Bank Accounts
 - Assets deemed to part of Trust Estate
- **Creditor Claims**
 - Fred and Francis
- **Termination**
 - Accounting filed
 - Order granted



ABC Staffing Company

- Obtained and prepared corporate records
- Appointed corporate officers
- Managed corporation
 - Established control of management
 - Gained confidence of staff
 - Accessed blocked corporate bank accounts
 - Coordinated with accountants to prepare financial statements
 - Filed corporate income tax returns



ABC Staffing Company

- Managed corporation (cont.)
 - Hired new insurance broker
 - Hired human resources company to review corporate policies
 - Obtained health insurance to remedy noncompliance with ACA
 - Increased salaries for key employees
 - Increased pricing to improve profit margins
 - Resolved personal disputes
- Arranged valuation of business
 - Establish basis
 - Determine whether an estate tax return must be filed





Suspended Trustees

- **Substitution of Counsel**
 - Fred and Francis substitute in pro per
- **Settlement**
 - Meeting between counsel and suspended Trustees
 - Demand for payment of Trustees' fees
 - Mediation
 - Bob and Barbara represented by counsel
 - Settlement Agreement
 - Stipulation and Order regarding resignation of suspended Co-Trustees

Ongoing Administration

- **Principal Residence**
 - Sale of residence
 - Preliminary distribution
 - Affidavit of Death of Trustee
 - Loan for Beneficiaries
 - Deed and ancillary documents
- **Boat**
 - Sale
- **Vehicle**
 - Return to lender
- **Promissory Notes**
 - Irregularities with notes
 - Demand for payment
 - Partial payment received
 - Promissory note issued for remaining balance
 - Structure of promissory note
 - Consent of Beneficiaries



Distribution & Termination of Trust

- Informal Accounting
- Waiver of Formal Accounting
- Release of Liability
- Preliminary Distributions
 - Assignment of ABC Staffing Company stock
 - Minute book
 - Stock ledger
 - Resignation of Director
 - Resignation of Agent for SOP
 - Assignment of Promissory Note
 - Distribution of Cash
- Reserve for Contingent Liabilities
- Amended Death Certificate - Cause of Death - Acute Intoxication from ingestion of lethal amount of medication



Thank You

Any Questions?

RICHARD H. LAMBIE, CLPF

Richard H. Lambie Professional Fiduciary
367 S. Baywood Avenue, San Jose
(408) 551-2122 | richard@rhlambie.com

DAN G. BERRIS, J.D., LL.M.

Ferrari Ottoboni Caputo & Wunderling LLP
333 W. Santa Clara St., Ste. 700, San Jose
(408) 280-0535 | dberris@ferrarilawpartners.com