

Chattanooga Tax Practitioners

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From the Bazaar to the Bizarre:
**Planning for and Administering
Unusual Assets in Estates and Trusts**

By

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In almost all cases, planning for and administering marketable securities – with values vast or modest – is easy and conflict free; but people care deeply about, and sometimes fight about, *things* – including land and closely-held assets, but especially personal effects. Despite this, many estate and trust professionals give scant attention to personal effects and other unusual assets, *until the fighting begins*.

I. **Personal Effects and Homes in General:** Personal property division causes more probate problems than any other aspect of estate administration. Therefore, this aspect of estate planning deserves more attention than it typically receives. In administration, it is important for the fiduciary to take control of the personal property as soon as possible. This is not always possible, but it is important to make every reasonable effort to identify all the assets, and to oversee their proper disposition. It is axiomatic that a fiduciary must know what the assets are in order to administer them prudently. Most or all states require an inventory of estate or trust assets, either formal or informal, within a reasonable time following the establishment of the estate or trust. For example, Ala. Code § 19-3-24 reads “it is the duty of the trustee... within 20 days after entering upon the execution of such trust, to make an inventory of the entire trust property so far as the same has come to his possession or knowledge...” Even more generally, fiduciaries are generally required to take control of estate and trust assets in a timely manner. For example Tenn. Code Ann. § 35-15-809 (West) states, “A trustee shall take reasonable steps to take control of and protect the trust property.” Fiduciaries are expected and may be required to make such inventories and take control within a reasonable amount of time because if they do not, it can be impossible to get property back for appraisals and a “fair” division. This is often one of the greatest challenges facing fiduciaries, whether professional or family members. Try to get everyone to agree on a *process* for division before anyone takes anything.

A. **Specific Gift** – Include a specific gift of all personal property, and perhaps the home, in every will, even if the residue passes to the same person. Specific gifts do not carry out “Distributable Net Income” (DNI). Distributing the same assets as part of the residue could carry out “phantom” income, without any cash to pay the resulting tax. (Internal Revenue Code § 663(a)(1)) Another advantage is that specific gifts are generally the last gifts to abate if the estate is insolvent. For both practical

and legal reasons, personal property and homes are often distributed quickly and separately from cash or investments. Speedy distribution is typically in the best interest of both the beneficiary and the fiduciary, but make sure to do some preliminary investigation to ensure the gift will be legal. As we shall see below, specific gifts of certain assets, like firearms or alcohol demand a high standard of review.

B. Contemplate boilerplate:

1. Compare “All my *household furniture and furnishings*... and other such personal effects” with “All my *tangible personal property*,” and compare both with “All my *personal property*.” Arguably, “personal property” includes everything other than real estate. What about gold bullion stored in a safe deposit box? What about gold held on account at a metals trading firm? Should these assets pass as personal property if the investments do not pass outright to the same beneficiary? Conversely, is jewelry stored in a bank safe deposit box included in a gift of household items? (See SunTrust Bank Georgia Wills and Trusts: Suggested Forms, 2013 Edition [herein SunTrust Bank Form Book] Basic Will footnotes 9-11) {All SunTrust Bank Form Book provisions in this paper are Copyright SunTrust Bank, and used with permission. All rights are reserved, except that licensed attorneys using their independent professional judgment may use sample language as a resource.}
2. It is always best to refer specifically to cars, boats, planes, and any valuable collections. State statutes and case law vary, and these assets may or may not pass under general personal effects language. *If an asset is of particular importance to the client or the beneficiary, consider particular language.*

C. **Clarity** – Describe specific items clearly and concisely. Do not say “my diamond ring” since there may be more than one. Also, do not say, “the ring I bought on my trip to Italy” unless your executor and everyone in the family knows what you mean. When the testator tells you the descriptions to include in the will, stop and think about whether you could identify the pieces without additional information.

D. **Detailed Lists in Wills** – Generally, try to avoid long lists of specific items in the will. They are a pain to administer, and the executor may have to investigate what happened to something that cannot be found. Moreover, remember that in many states *every* beneficiary must sign a notarized receipt, or be served, etc., to close the estate in court. Small gifts under a will to 20 individuals may mean court notice to or consents from an extra 20 people.

- E. **Incorporation by Reference** – Consider the use of letters, lists or memos. Some documents refer to a separate letter or list of personal property. These can make the legal drafting easier, faster and less costly, and they may also avoid the need for Probate Court notices or receipts, although some form of receipt is still good practice. State laws vary, and these separate writings may or may not be binding. If they are not binding under your state law, the will should note that the list is precatory and not binding. Even if your state allows binding incorporation by reference, this can cause real problems if you are incorporating lists drafted by lay people (our clients – and you know how dim some of them are!). The lists can be hard to locate, and even if the fiduciary finds the list, they can be hard to read, let alone interpret and enforce. Of course, you should encourage the testator to be as clear and concise as possible, but also consider provisions to help and protect the fiduciary. Perhaps relieve the fiduciary of any obligation to search, if the list is not found with the will. Moreover, specifically authorize the fiduciary acting in good faith to make binding interpretations. Should the testator give copies of the personal property letter to all concerned, during life? As with other aspects of the estate plan, sharing the plan beforehand can have real advantages and disadvantages.
- F. **Look for Trouble** – Try to anticipate and plan for difficult situations. *Ask the testator to be completely honest (with themselves and with you) about possible family problems before drafting the estate plan.* The reasons for this obviously go far beyond personal property.
- G. **“As they Agree”** – Be wary of a provision distributing assets as two or more beneficiaries agree among themselves. If the children fight while mom is alive—and perhaps even if they get along while mom is alive – dividing personal effects among beneficiaries “as they agree” is asking for trouble in the small, but significant, number of estates where they cannot agree. It may also be unfair to meek siblings who simply defer to dominant siblings in order to keep the peace. Does “*as they agree*” language give a difficult child veto power over the process? It is far better to give the fiduciary the authority to conduct the process – especially if the fiduciary is not one of the participants. At the least, add something like “... as they agree, or as my executor determines if they fail to agree within 90 days.”
- H. **Language to Consider:**
1. **Standard Provision** – For a good standard provision, we humbly suggest the SunTrust Bank Form Book provision:

“All my household furniture and furnishings, books, pictures, objects of art, silverware, jewelry, clothing and other such personal effects, and any automobiles and boats I may own at

the time of my death, I give and bequeath to my spouse, if my spouse survives me by thirty (30) days, otherwise to my descendants who so survive me, per stirpes. The reasonable costs of delivering such property shall be paid by the Executor as an expense of my estate.” (Basic Will, Item IV)

2. **Consider Cash Equalization** – Cash equalization can be an equitable solution if there is a wide fluctuation in the market value of personal effects, or where the beneficiaries have different interest in or ability to use the personal effects. Consider the optional sentence shown in the next paragraph.
3. **Expanded Provision** – If you foresee a difficult division, or perhaps in all situations, consider using a more detailed provision. For example, with an optional sentence shown in brackets:

“All my household furniture and furnishings, books, pictures, objects of art, silverware, jewelry, clothing and other such personal effects, and any automobiles and boats I may own at the time of my death, I give and bequeath to my spouse, if my spouse survives me by thirty (30) days. If my spouse does not so survive me, then I give and bequeath such property to my descendants who so survive me, per stirpes, in shares determined as follows. The Executor shall give advance notice to my descendants of a time and place determined by the Executor for the division, and my descendants shall draw lots to determine the order of selection of articles, which order shall be reversed after each round. Each descendant shall select an article of property, in turn, until no articles remain, or no descendant chooses to make a selection. The Executor may prescribe additional rules for the division process. [After the selection described above is completed, the Executor shall make cash distributions to achieve per stirpes proportions among the overall distributions to my descendants under this Item, based on the fair market value of the articles selected, as determined by the Executor.] Any articles of tangible personal property described in this provision that are not distributed under the foregoing procedures may be sold, with the proceeds being added to and distributed as a part of my residuary estate, or donated to one or more charitable organizations, or otherwise disposed of, as the Executor deems best in its sole discretion. The reasonable costs of delivering or, if applicable, otherwise disposing of the property described in this Item shall be paid by the Executor as an expense of my estate.”
(SunTrust Bank Form Book, Alternate Tangible Personal Property Bequest.)

For other approaches see Radford, Mary F., Redfearn: Wills and Administration in Georgia, 7th Ed. § 17:40 (h).

- I. **Reverse Order when Taking Turns** – When taking turns, it is more equitable to reverse the order each round. For example, assume that there are 12 items, and that everyone agrees that item 12 is the most desirable, 11 is the second most desirable, etc.:

Repeat Order	Allen	Barb	Cheryl
Round 1	12	11	10
Round 2	9	8	7
Round 3	6	5	4
Round 4	<u>3</u>	<u>2</u>	<u>1</u>
Total	30	26	22

Reverse Order	Allen	Barb	Cheryl
Round 1	12	11	10
Round 2	7	8	9
Round 3	6	5	4
Round 4	<u>1</u>	<u>2</u>	<u>3</u>
Total	26	26	26

This is true even if only two people are taking turns:

Repeat	Allen	Barbara
Round 1	12	11
Round 2	10	9
Round 3	8	7
Round 4	6	5
Round 5	4	3
Round 6	<u>2</u>	<u>1</u>
Total	42	36

Reverse	Allen	Barbara
Round 1	12	11
Round 2	9	10
Round 3	8	7
Round 4	5	6
Round 5	4	3
Round 6	<u>1</u>	<u>2</u>
Total	39	39

- J. **Conflicts of Interest** – If the Executor is one of the people receiving personal property, consider naming an impartial arbiter to oversee the personal property division. Disagreement on the fair division of personal property can occur in even close families. *This is an excellent time to discuss the overall merits of a corporate fiduciary with your client!*

- K. **Delivery Costs** – Generally provide for the payment of personal property shipping costs. For example, “The reasonable costs of delivering such property shall be paid by the Executor as an expense of my estate.” (SunTrust Bank Form Book, p. 13) What if the personal effects go to Jane and the residue goes to John? More typically, what if one beneficiary lives in Hawaii (and selects the concert grand piano), while his sister lives next door to the decedent? Furthermore, is a shipping cost reasonable if it exceeds the fair market value of the item being shipped?
- L. **Facility of Payment** – Be sure that either your personal effects or your facility of payment provision, or both, cover distribution of personal effects to minors and others under a disability.
- M. **Personal Effects in Trust?** Generally, personal effects are not well suited to being held in trust, even if the balance of the estate is. Should, or must, the Trustee retain physical possession? Does the Trustee have a duty to sell the personal property because of the lack of an investment return? To a lesser degree, the same is true for homes. On the other hand, however, sometimes a trust is the answer to a difficult situation. If so, include specific language authorizing beneficiaries to use or hold such assets, rent free, and (especially) relieving the fiduciary of responsibility for the assets.
- N. **Life Estate in Personal Effects?** Another alternative is to create a legal life estate in the personal effects, or in a home and its contents. (See SunTrust Bank Form Book, p. 383) A life estate granted to a surviving spouse can qualify for a QTIP election. However, virtually all lay people, and even many lawyers, are unfamiliar with life estates and how they work. A life estate carries more legal weight than an outright gift coupled with a non-binding request that the current beneficiary later give or leave the items in question to certain “remainder beneficiaries.” As a practical matter, however, the only difference may be that a remainder beneficiary may make a claim against the estate of the life tenant for waste, but such claims are probably rare and rarely successful.
- O. **Debt Secured by Assets** – If you are making a gift of any property that may be encumbered by debt, including but not limited to a house that may have a mortgage or an equity credit line, remember to say that the gift is “subject to any indebtedness secured thereby.” Otherwise, it is not clear whether the executor must, or even may, pay the debt. A provision saying that (absent a specific provision to the contrary) all encumbered property passes subject to the debt is good “boilerplate” since security interests and liens can be unforeseen. Perhaps the same provision should also specifically authorize the fiduciary to pay part or all of such debts for a reasonable administrative period, as the fiduciary deems it appropriate. In other words, give the fiduciary discretion to pay debts that are secured by specifically gifted assets – at least during the period of administration.

P. **Insurance** – In general, a fiduciary should see to it that all valuable assets are properly insured, either by continuing appropriate existing insurance or by acquiring insurance. Consider both coverage and cost, and beware of provisions invalidating coverage if a home is vacant – as it may be following the grantor’s death. With valuable collections and other unusual assets, adequate coverage can be difficult to obtain or very expensive. If you cannot adequately insure assets at a reasonable cost, they should probably be stored in a safe deposit box or other secure location. A home safe does not provide the same level of protection against theft or against the heat of a fire. On a different matter, try to locate and retain copies of a decedent’s homeowner policy, especially any personal property riders. The agent may ask for the policy in the event of an estate tax audit.

II. **Diversification** – The vast majority of states require trustees to follow “The Prudent Investor Rule” and to diversify trust assets. Many states hold executors to a lesser standard of preserving and protecting the assets, but personal representatives of estates are required to act prudently and in the best interests of the beneficiaries, and courts may look to trustee rules to judge the investment actions and inactions of all fiduciaries. Each of these concepts affects both estate planning and administration. Fiduciaries must consider how these concepts interrelate when agreeing to act.

A. **The Prudent Investor Rule** – Most states follow the Uniform Prudent Investor Act, or a variation of the Act. For a typical example, Mich. Comp. Laws Ann. § 700.1502 (West) reads “A fiduciary shall invest and manage assets held in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate. To satisfy this standard, the fiduciary must exercise reasonable care, skill, and caution.” The Act goes on to allow trusts to be administered according to their own language rather than this statutory pronouncement. For example, the same statute provides that the “prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of the governing instrument. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on the provisions of the governing instrument.”

Thus, the trustee is put in an interesting position. If the trust instrument is silent or gives little guidance to the matter, the trustee must consider what a “prudent investor” would do with the trust assets, and will be potentially liable for failing to do what a “prudent” investor would have done. However, absent any specific language in the trust instrument, the trustee may have *more* flexibility administering the trust under the Prudent Investor Rule because a “prudent” investor may do something radically different from what the settlor may have done. On the other hand, if the trust specifically restricts, eliminates, or alters the default rule, then the trustee will be absolved from resulting liability to the extent that trustee

“acted in reasonable reliance” with the document terms. However, being constrained by the trust language, for example directed to retain assets, will often *decrease* investment opportunities, thus failing to maximize trust returns. Of course, questions of what a “prudent” investor would have done, or what entails “reasonable reliance” are open to interpretation (and litigation), so fiduciaries must exercise caution regardless of whether the governing law or the governing document embraces, rejects or modifies the Prudent Investor Rule.

- B. Diversification** – Diversification is really a natural extension of the Prudent Investor Rule. Stated in a trite but true way, is it prudent to keep too many eggs in the same basket? Many times a significant portion of an estate or trust is invested in one asset, and that asset is often the source of the wealth. Nonetheless, there comes a point where it becomes impractical, unreasonable, or at least perilous for the fiduciary to hold a substantial portion of the trust comprised of the same property. Would a “prudent” investor retain a concentration? As most professionals know, Diversification can be a challenge for a fiduciary when the beneficiaries favor retention, or when the trust holds stock of a closely held corporation or other illiquid asset.

Nearly every state has enacted some form of the Uniform Prudent Investor Act language concerning diversification, but typically with language allowing broad discretion or "wobble room." For example 20 Pa. Cons. Stat. Ann. § 7204 (West) states “except as provided in section 7205 (relating to retention of inception assets), a fiduciary shall reasonably diversify investments, unless the fiduciary reasonably determines that it is in the interests of the beneficiaries not to diversify, taking into account the purposes, terms and other circumstances of the trust and the requirements of this chapter.”

This statute highlights several diversification concerns. It leaves significant discretion in the hands of the trustee as to the propriety of diversification. What “interests of the beneficiaries” should be considered? Maximization of income? Protection of trust property at the expense of income? Neither? While the statute does require the trustee to take into account the “purposes, terms, and other circumstances,” unless the trustee has a good knowledge of the wants and desires of trust beneficiaries it will be difficult if not impossible to determine what their best interest is.

Another interesting diversification problem comes from the exclusion of “inception assets.” Several states have a similar carve-out for assets initially transferred into the trust. While this establishes the trustee is not *required* to diversify such assets, it none-the-less raises questions of trustee duty to beneficiaries under the Prudent Investor Rule. Proper client screening prior to establishing the trust and periodic communication with

beneficiaries after the trust is established will likely mitigate, but not eliminate, the ramifications of applying both the Prudent Investor Rule and the general duty to diversify.

As a practical matter, fiduciaries who maintain concentrations can become de facto guarantors that the asset will perform well. If the asset performs well, the beneficiary's profit, and everyone is happy. If the asset performs badly, it can be very difficult to prove that the fiduciary was acting prudently by holding the concentration. With clear hindsight, the decision to hold a significant position in an asset that performed badly may appear imprudent, almost by definition; and fiduciaries, like everyone else, live in an ever more litigious world. It may not be fair, but fiduciaries holding concentrations increasingly face a scenario of *heads the beneficiaries win, tails the fiduciary loses*.

Nonetheless, diversification is not a viable option in some situations. Planning for unusual assets may include planning for a lack of diversification. As discussed below, if trust property cannot be transferred or sold, or can only be transferred or sold with difficulty, or at a significant discount to its intrinsic value, it is important that the governing document specifically address the situation. If that is not possible, it is more important than ever that the fiduciary carefully consider the options (especially if those options are few or unattractive), carefully reconsider the options on a regular basis, carefully document the considerations, and carefully keep the beneficiaries fully informed.

C. **Administration of Old Irrevocable Trusts** – What should a fiduciary do in a state that has embraced the modern trend of requiring, or encouraging, that concentration risk be reduced, or even in a state that has not *yet* done so?

1. **Diversify or Otherwise Manage Concentration Risk** – Diversification is a good thing! Every trustee should diversify, or otherwise manage risk, unless there are very good reasons to avoid doing so. Sale of concentrated assets, with diverse investment of sale proceeds, is an obvious answer. In appropriate situations, including a desire to defer recognition of capital gains, the fiduciary can manage risk using exchange funds, “collars” of offsetting puts and calls, or purchase of additional diverse assets.
2. **Do Not Diversify** – If there are good reasons to maintain a non-diverse portfolio, review the question periodically and *paper your file* to show that you have regularly considered the advantages of diversification and non-diversification.

The area of fiduciary duty to diversify, or otherwise manage the risk of concentrations, is very much in ferment. There have been a number of

court cases around the country dealing with this issue, and it is difficult to know how specific or emphatic one must be in drafting where the client wants the fiduciary to be able to retain a concentration.

D. Planning for New Trusts – What to Do?

1. **Diversify or Otherwise Manage Concentration Risk** – Diversification is a good thing! While many practitioners may be tempted to “protect” trustees by routinely waiving the diversification duty in trust documents, consider whether this is in the best interest of the beneficiaries, absent special circumstances. For most trusts, consider language such as:

The Trustee shall, by diversification or other appropriate mechanisms, reasonably manage the risk of concentrated holdings of assets in any trust created hereunder in accordance with [the applicable state code sections or common law rule]. The Executor, however, need not make any change in the investments that will be found in my estate at the time of my death for the purpose of creating a diversity of investments. (SunTrust Bank Form Book, Basic Will Item XI.)

Of course, this language may force the trustee to diversify the investments, if the risk cannot be effectively managed in other ways. This provision requires trustees to diversify, or otherwise manage concentration risk, because diversification rules typically do not apply to executors per se.

2. **Waive the Duty Where Appropriate** – For clients with a strong preference for retention of particular assets, and other instances where diversification is not appropriate or intended, consider the following language:

I have confidence in the investments that will be found in my estate at the time of my death, and no change need be made by the Executor or Trustee in these investments for the purpose of creating a diversity of investments. The Executor or Trustee may sell or otherwise dispose of such investments, if and to the extent the Executor or Trustee deems such sale or disposition to be in the best interest of my estate or any trust, but the Executor or Trustee shall not be required to sell or otherwise dispose of such investments and shall not be liable for failing to do so. With respect to the investments that will be found in my estate at the time of my death, the Executor or Trustee shall be exempt from, and I hereby waive, any duty otherwise imposed by [the

applicable state code sections or common law rule], or by any other statute or principle of law, to manage the risk of concentrated holdings of assets by diversifying or by using other mechanisms to minimize that risk. (SunTrust Bank Form Book, footnote 69.)

This provision refers to both executors and trustees to avoid any implication of a different standard, since the desire to retain certain investments would presumably apply both to estate administration and to trusts created under the will. In the case of an inter vivos trust, the reference should be to investments that have been, or will be, in the trust rather than to investments held by the testator at the time of death.

- 3 **Planning for a Lack of Diversity** – Even if language like that in section 1 above, calling for diversification or management of risk, becomes standard in your drafting (and the author thinks that it should), it is not appropriate in certain situations. *Drafters should use language waiving diversification, like that shown in section 2, in any situation where the very purpose of the trust is to hold a particular type of asset, or where the estate plan may rely on non-diverse assets.* Examples include a **life insurance trust** or a plan designed to hold a **family limited partnership** or other closely-held asset. Where there is a concern about particular assets, such as an interest in a closely held business, the drafter would be well advised to go further and specifically mention the particular assets that are exempt from the duty to manage the risk of concentrations.

III. Foreign Assets and Accounts – Planning for and administering assets for foreign nationals and individuals with significant multi-national holdings is beyond the scope of this presentation. However, relatively small foreign asset holdings can cause disproportionate headaches in administration. Therefore, ask every estate-planning client if he or she holds, or may acquire, foreign assets. If so, encourage them to close small accounts, or carefully research the requirements for collecting the assets after the account holder’s death. Consider ownership by entities, but only those understood and respected by the country holding the asset.

IV. Guns, Booze, Boats, Planes, Art, Cash and More – A Selection of Specific Asset Issues:

A. Firearms:

“Go ahead, make my day.” ~ Dirty Harry

“Never give a gun to an angry beneficiary.” ~ The first rule.

Some estimates suggest that the number of guns and the number of people in the U.S. may be roughly equal. (Rawling, Nathan G., *A Testamentary*

Gift of Felony: Avoiding Criminal Penalties From Estate Firearms, 23 Quinn. Prob. Law Jour. 286 (2010)) Therefore, many estates and some trusts contain guns. How should a fiduciary handle firearms? *Very carefully...*

1. **“Exotic” Guns** – While most adults can legally possess, and transfer, most firearms, **mere possession of certain unregistered unusual weapons may be a crime under federal and state law.**

- a. **Federal Law** – The federal National Firearms Act (26 U.S.C. 56) imposes significant restrictions on certain defined “NFA” weapons. The mere possession or transfer of unlicensed NFA weapons can be a crime. However, this law applies to only a very small percentage of guns, including machineguns, “sawed off” guns, silencers, mortars and “pen” guns.

If the decedent had the proper registration, the executor may take possession of the gun. Note that you cannot transfer possession of an NFA gun, even temporarily. For example, leaving it overnight in the custody of an appraiser might subject both of you to criminal prosecution.

The personal representative may transfer the weapon, but only *after* proper forms are submitted and approved. If you cannot find the decedent’s registration paperwork, the government will provide information only to a duly appointed personal representative. The records are treated as confidential tax information.

In addition to other requirements, registration requires the new owner to obtain the signature of the chief law enforcement officer of his or her home jurisdiction. Reportedly, some police chiefs and sheriffs refuse to sign off on these forms, with little recourse on the part of citizens. The arguably onerous registration requirements are cited by those who advocate registration in the name of so-called “gun trusts,” on the theory that once registered in the name of such a trust, use and enjoyment of the gun can continue, perhaps in perpetuity, without re-registration.

If the weapon is not registered, the gun is “contraband” and the fiduciary (or anyone with possession) has a legal obligation to report the matter to the nearest ATF office or to a law enforcement agency as soon as possible. *Mere possession of an unregistered NFA weapon can be punished by up to 10 years in prison and fines of up to*

\$250,000. (www.atf.gov/firearms/faq/national-firearms-act-firearms.html). Vehicles or vessels used to transport contraband weapons are subject to government seizure.

When Congress enacted the NFA in 1934, it set the fee for registration at \$200 – an amount that was prohibitively high in the midst of the great depression. The fee remains \$200; the estimated inflation adjusted amount is \$3,453.84.

The federal Gun Control Act (44 U.S.C. 18) imposes additional restrictions on certain weapons, including assault weapons, plastic guns, machine guns, armor-piercing bullets, and body armor.

- b. **State Law** – Many states have a similar restriction on possession of “exotic” weapons without the requisite federal license. For example, Georgia law provides:

“Unlawful possession of firearms or weapons. A person commits the offense of unlawful possession of firearms or weapons when he or she knowingly has in his or her possession any sawed-off shotgun, sawed-off rifle, machine gun, dangerous weapon, or silencer, and, upon conviction thereof, he or she shall be punished by imprisonment for a period of five years.” (Ga. Code Ann. § 16-11-123 (West))

“Dangerous weapon” for this purpose includes rocket launchers, bazookas, hand grenades, and similar military-type weapons. (Ga. Code Ann. § 16-11-121 (West)) However, those with the proper federal license are exempt from the state restrictions. (Ga. Code Ann. § 16-11-130 (West)) The crime appears to be limited to possession, not to transfer or distribution, but can a fiduciary distribute without taking possession, at least in theory?

While unlikely, firearm possession poses a provenance problem. While “bona fide purchaser” rules or theory of laches may help curtail liability, none-the-less state law frowns upon the receipt and disbursement of stolen property. For example Ga. Code Ann. § 16-8-7 (West) simply states “a person commits the offense of theft by receiving stolen property when he receives, disposes of, or retains stolen property *which he knows or should know* was stolen unless the property is received, disposed of, or retained with intent to restore it to the owner. “Receiving” means acquiring possession or control or lending on the

security of the property.” (Emphasis added.) How do you prove all the firearms in the trust were acquired lawfully? Under what circumstances *should* a fiduciary know that a gun – or any other asset – might have been stolen?

A final firearm caveat, states generally do not permit possession of weapons with defaced, altered, or removed serial numbers. For example Nev. Rev. Stat. Ann. § 202.277 (West) reads, “a person shall not knowingly possess a firearm on which the serial number has been intentionally changed, altered, removed or obliterated. Any person who violates the provisions of this subsection is guilty of a category D felony”. For this reason, alone visual inspection of any firearm in the estate or trust is prudent, because even a nonprofessional can tell when serial numbers have been defaced.

- c. **The Problem** – *Can you tell the difference between a “regular” handgun, rifle or shotgun and a regulated “exotic” weapon?*
2. **Prohibited Gun Owners** – Almost all adults may possess guns. However, both federal and state laws exclude certain people from lawful possession, or carrying of, a firearm.
 - a. **Federal Law** – The federal law makes it a crime to “dispose of” a gun to a prohibited person. Presumably, *dispose of* includes distribution to such a person by a fiduciary. Specifically, 18 U.S.C. § 922 (d) provides that:

“It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person **knowing or having reasonable cause to believe that** [*emphasis added*] such person—

 - (1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
 - (2) is a fugitive from justice;
 - (3) is an unlawful user of or addicted to any controlled substance...;
 - (4) has been adjudicated as a mental defective or has been committed to any mental institution;
 - (5) who, being an alien –
 - (A) is illegally or unlawfully in the United States...

- (6) who has been discharged from the Armed Forces under dishonorable conditions;
- (7) who, having been a citizen of the United States, has renounced his citizenship;
- (8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person...; or
- (9) has been convicted in any court of a misdemeanor crime of domestic violence.”

b. **State Law** – Most if not all states regulate firearm possession, transfer, and ownership, at least to a degree. Often the list of persons barred from possession of weapons under state law is similar to, but not quite the same as, the federal list. For example, Georgia restricts anyone under age 21, while the federal rules restrict those with restraining orders or dishonorable military discharges.

Sometimes interesting and unexpected prohibitions exist. For example in South Carolina is it illegal for a person to knowingly sell, deliver, or transport for sale any handgun to a person who is a member of a subversive organization. S.C. Code Ann. § 16-23-30. If the terms of an estate or trust call for distribution of a gun, or holding a gun in trust, should the fiduciary obtain a criminal background check, either formally or informally, before transferring the firearm?

Additionally, weapons or devices not covered by federal statute may be prohibited under state law. For example, in Virginia it is illegal for anyone to import, transfer, or possess a “plastic firearm.” These firearms are difficult or impossible to detect using X ray machines used at many airports.

Most states have similar prohibitions on the sale or possession of firearm silencers or mufflers, although many provide exceptions for silencers properly registered under the NFA. Certain states go even further, making the possession of dangerous non-firearm weapons. For example, Tennessee law makes a blanket prohibition against the knowing possession or transportation of “any other implement of serious bodily injury or death that has no common lawful purpose.” Tenn. Code Ann. § 39-17-1302 (West). Throwing stars, nunchaku, katana, and other

exotic non-firearm weapons could easily fall into this category.

Often, state law has safe-harbor provisions for certain types of weapons. Typical examples of permissible possession and transportation of otherwise contraband weapons include weapons that are in non-functioning condition and used as curios, antiques, or ornaments.

c. **The Problems:**

- (1) **Collecting the Weapon** – If the fiduciary (or the employee of the corporate fiduciary) does not have a valid license or permit to carry a weapon, can the fiduciary legally take possession of a gun for safekeeping or delivery to a beneficiary? What if the fiduciary, or employee, is a prohibited person him or herself?
 - (2) **Distributing the Weapon** – *Do you know the criminal, mental health and military history of the beneficiary? Do you ask beneficiaries to obtain and present a current weapons carry license from their home state prior to turning over the firearm? Do you ask out-of-state beneficiaries to come to you to pick up weapons?* A lack of knowledge is clearly a defense to the federal crime. Is distribution of a weapon to an ineligible person a crime under state law? If it is, is lack of knowledge a defense? Under what circumstances should a prudent fiduciary know, or have reason to believe, that a beneficiary is ineligible to receive a weapon? Liability may exist for fiduciaries that do not do their homework regarding the federal, state and local laws, and the beneficiary facts. As they say, an “ounce of prevention is worth a pound of cure,” so wise fiduciaries will take appropriate steps to dispel any “reasonable cause to believe” the transferee is a prohibited possessor.
3. **Out of State Beneficiary** – If the beneficiary entitled to a weapon is in another state, then the laws of that state also factor into the legality of the transfer. *Must you determine the laws of the beneficiary residence?* Even if you establish that the out-of-state beneficiary may receive the gun under the laws of his or her home state, how should you get the gun to the beneficiary? **Federal law appears to make it a crime to transport guns across state lines**

for delivery to another person without the proper license! However, there is an exception for inherited weapons. The federal law allows a person:

“[T]o transport into or receive in the State where he resides... any firearm... [if such person] lawfully acquires [such] firearm by bequest or intestate succession in a State other than his State of residence..., if it is lawful for such person to purchase or possess such firearm in that State...”
(18 U.S.C. § 922(a)(3))

Note, interestingly, that this provision allows *the beneficiary* to transport the gun; it does not allow *the fiduciary* to transport the gun. Therefore, if the beneficiary does not come to you to pick up the weapon, use a licensed dealer as an intermediary to send the gun for you. For this reason, and in light of other restrictions on shipping guns, **if the beneficiary cannot meet you in your state, use a gun dealer to arrange delivery.**

4. **Potential Liability to Third Parties?** What if you unknowingly transfer an unregistered “NFA” or other prohibited weapon? What if you unknowingly transfer any weapon to a prohibited person? What if a weapon you distribute is later used inappropriately? *Might a fiduciary have liability, with or without criminal culpability?* Probably not, but these are the epitome of dangerous weapons, and no fiduciary wants to be known for providing weapons later used in a heinous crime.
5. **Rely on Experts** – It is good practice to have every firearm evaluated and appraised by an expert. Ask them to inform you if it is an “NFA” weapon, or if it appears to be subject to any other restrictions. Should you use an expert to handle the transfer and delivery of every weapon? *If you are in doubt, contact an expert or the authorities!*
6. **Receipt** – It may be helpful to use special receipt language, and I attach an untested example as Exhibit A. This may not help, but it probably does not hurt. If “NFA” guns are involved, add appropriate additional language certifying the necessary registration.
7. **Sale** – While a fiduciary is probably entitled to sell most firearms privately, prudence suggests that most if not all sales should be to, or arranged through, a licensed dealer.
8. **Planning** – Ask every client if he or she owns firearms as a standard estate planning question. If the answer is yes, ask about

the number and nature of the weapons, and if any firearms are “NFA” guns. Also, of course, ask if the client has any specific desires regarding disposition of the weapons. Perhaps add a condition to any specific gift of a firearm that the beneficiary must establish his or her legal right to receive and carry the weapon. Some have suggested the use of trusts as the owner of record for “NFA” guns, to avoid (some might say, skirt) transfer restrictions. (See, 23 Quinn. Prob. Law Jour. 286, footnote 5) Presumably, other legal entities, such as an LLC or LP, may serve a similar purpose by facilitating the transfer of beneficial ownership without transfer of legal ownership. These techniques may or may not be effective with regard to registration. However, if the beneficiary is stopped by the authorities while possessing an NFA weapon, he or she should be prepared to produce the appropriate paperwork to show both the registration in the name of the trust, and his or her status as a proper trust beneficiary. Most relevant laws prohibit *possession* of “exotic” weapons, and the *carrying* of any guns without a permit. Ownership by an entity does not appear to be relevant.

B. **Alcoholic Beverages:**

“There are better things in life than alcohol, but alcohol makes up for not having them.” ~ Terry Pratchett

Almost all estates contain some alcoholic beverages – ranging from valuable collections of fine wine, to a six-pack of cheap beer, to a dusty bottle of peppermint schnapps on the top kitchen shelf. How should a fiduciary handle alcoholic beverages (herein, “alcohol”)?

1. **Restrictions on Transfer to Minors** – There is no law restricting the ownership or possession of, or responsible use of, alcohol by adults. However, every state likely has prohibitions on the transfer of alcohol to minors. For example S.C. Code Ann. § 61-6-4070 reads “it is unlawful for a person to transfer or give to a person under the age of twenty-one years for the purpose of consumption of alcoholic liquors...” Additionally, several states will impute liability for the damages caused by intoxicated minors to those that sold or gave the alcohol to the minor. While this is probably not of great concern to any fiduciary, it is reminder that alcohol should not be distributed to minors.
2. **Restrictions on Transfers to Adults** – Many states prohibit the *transfer* of alcohol without a liquor license. For example, in Georgia:

“No **person** shall manufacture, **distribute**, sell, handle, or possess for sale, or otherwise deal in, alcoholic beverages without first obtaining all applicable licenses...[emphasis added]” (Ga. Code Ann. § 3-3-3(a) (West))

Violation of this provision is a crime. (Ga. Code Ann. § 3-1-4 (West)) There is no definition of “distribute,” and simple logic suggests that this provision applies to distributions by fiduciaries to beneficiaries or heirs. There is no apparent exemption for distributions made in accordance with a Will or Trust. On the contrary, for the purposes of this law, person explicitly includes executors and trustees:

“‘Person’ means any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, **estate, trust**, business trust, receiver, **fiduciary**, or other group... [emphasis added]” (Ga. Code Ann. § 3-1-2(17) (West))

Other states are less restrictive, assuming that the appropriate taxes were paid when the alcohol was purchased by the decedent. For example, in Tennessee:

“No person... shall receive, possess or transport with the intent to redistribute... any intoxicating liquor that has not had all taxes attributable to the intoxicating liquor paid...” (Tenn. Code Ann. § 39-17-703 (a). See also Tenn. Code Ann. § 57-3-304)

The Tennessee statutes also contain presumptions that possession of less than five gallons of alcohol is not an offense. (Id.)

3. **Restrictions on the Importation of Alcoholic Beverages** – As with firearms, distribution can be a challenge if the beneficiary is in a different state. States are usually concerned with the quantity and tax status of imported alcoholic beverages. Tennessee law shows the importance of each attribute in the same statute: “It is an offense for any person, firm or corporation, other than a common carrier or entity licensed under this title, to transport... untaxed alcoholic beverages or wine... within, into, through or from this state in quantities in excess of five gallons (5 gals).” Tenn. Code Ann. §57-3-401. In some states, improper importation can result in seizure of the contraband alcohol. (Vt. Stat. Ann. tit. 7, § 561 (West))
4. **Valuation** – See the discussion below.

5. **What to Do?** While certain rare wines can be sold at auction in some states, the vast majority of libations do not warrant such treatment. Moreover, as a practical matter, few if any licensed dealers will purchase alcohol from “lay people” because appropriate storage cannot be guaranteed. Therefore, in most situations if an estate or trust holds alcohol sale is not an option. Every fiduciary has the duty to protect estate and trust assets. Therefore, it is rarely appropriate to destroy alcohol, at least if it has any value. Query, is there a distinction between “distributing” a bottle to a beneficiary, and allowing the beneficiary to “take” the bottle? Perhaps the only answer is consumption! Remember, however, your fiduciary duty is to the beneficiaries. So, be sure that they share in the consumption.

C. **Endangered Species, Ivory, and Other Regulated Artifacts** – In an effort to protect them, at home and around the world, the federal government has enacted laws and treaties restricting ownership and trade in products derived from endangered species. These include the Endangered Species Act of 1973, the African Elephant Conservation Act of 1989, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora. (See, Phelan, Ben, *The Ins and Outs of Owning Ivory*, [Antiques Roadshow – Follow the Story](http://www.pbs.org/wgbh/roadshow/fts/chattanooga_200804A10.html), on-line article, www.pbs.org/wgbh/roadshow/fts/chattanooga_200804A10.html (2009))

1. **Endangered Species** – The Federal Endangered Species Act contains an ever-growing list of plants and animals who are threatened with or near extinction, and contains blanket prohibitions concerning permissible possession and transportation of protected flora and fauna. Possession, even without intent, can be a “strict liability” crime. If a fiduciary accepts the assets of an estate or trust, the fiduciary can commit a misdemeanor with or without knowledge of the problem asset. With regard to endangered species of fish or wildlife listed under the act, 16 U.S.C.A. §1538 makes it a federal offense to “deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species; or sell or offer for sale in interstate or foreign commerce any such species.” Furthermore, 16 U.S.C.A. §1540 provides that any such flora or fauna are subject to asset seizure and forfeiture.

Particular care is required whenever an estate or trust corpus contains any type of mounted bird or bird derived article. The Migratory Bird Treaty Act (16 U.S.C.A. §703 et seq) makes it a violation, absent specific regulatory permission, to “at any time, by any means or in any manner, to... possess..., deliver for shipment, ship..., cause to be shipped..., deliver for transportation, transport

or cause to be transported... any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof...” Even more specifically, the Protection of Bald and Golden Eagles Act (16 U.S.C.A. §668) makes it a federal crime in most cases to “possess... [or] transport... any bald eagle commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest, or egg thereof...” See the valuation discussion below for discussion of a work of art containing a stuffed eagle.

States often have their own Endangered Species Acts. Therefore, compliance with the Federal Act may not always guarantee release from liability. For example, New Mexico specifically states “In the event the jaguar is de-listed as a federal endangered species, the department of game and fish shall prohibit the taking, possession and sale of jaguars or parts thereof.” N.M. Stat. Ann. § 17-2-4.1 (West). Compliance with the federal Endangered Species Act should therefore act as a floor, not a ceiling, for any wild animal or plant trust property.

2. **Ivory** – In *The Ins and Outs of Owning Ivory* (supra) the author, Ben Phelan notes that it is *illegal* to own: Asian ivory, and Asian ivory objects, imported after 1976 and less than 100 years old at the time of importation; raw African ivory imported after 1989; or African Ivory objects imported after 1989 and less than 100 years old at the time of importation. While providing general guidelines, the author cautions that the actual rules are detailed and complex. For example, Asian ivory imported before 1976 is legal to own, but illegal to sell, while African ivory imported before 1989 has no restrictions. The question for us is *how many fiduciaries, or even experts, can distinguish between Asian and African ivory, and estimate the age of a carving?* Once again, use caution, and consider retention of a qualified expert, at least if faced with a significant object or collection. At the planning stage, if the client has paperwork establishing a legal provenance, advise them to share the information, or at least its existence and location, with the fiduciary and the beneficiaries.
3. **Archeological Resources** – The federal Archeological Resource Protection Act (16 U.S.C.A. §470) makes it a federal offense to “exchange, transport, receive, or offer... any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.” Furthermore, it is illegal for any person to “exchange, transport, or receive” any archeological resource if that resource was excavated

or removed from public or Indian lands in violation of Federal law. Provenance is important because the restrictions do not apply to items lawfully obtained prior to October 31, 1979. However, the statute is silent as to whether this safe-harbor applies to transactions in violation of state law prior to October 31, 1979. There is also a blanket allowance for arrowheads found on the surface of the ground.

- D. **Illegal Drugs or Other Contraband** – Fiduciaries sometimes encounter illegal drugs or other contraband. A prompt report to the police or other authority is usually appropriate, but each situation must be evaluated in light of the circumstances. If the fiduciary is a lawyer, client confidentiality or other ethical considerations may come into play. Federal and some state authorities may be entitled to seize not only the contraband, but also the property containing the contraband or facilities used in the manufacture of the contraband. Therefore, the fiduciary who fails to act promptly may endanger other assets, to say nothing of potentially exposing themselves to criminal or civil sanctions. See the Civil Asset Forfeiture and Reform Act (CAFRA), 18 U.S.C.A. §983.
- E. **Large Sums of Cash** – A number of laws and regulations aim to combat “money laundering” and use of the financial services industry by terrorists and other criminals. One result is that “large” cash transactions receive special scrutiny. Fiduciaries sometimes discover or receive large sums of cash. If you do, you will likely be asked to provide additional information when the cash is deposited. It is a federal crime to break a deposit up into smaller deposits in an effort to avoid this reporting.
- F. **Aircraft:**
1. **Registration and Transfer** – Aircraft registration, and transfer of ownership, is handled by the Federal Aviation Administration, Aircraft Registration Branch. To transfer ownership of an aircraft, you must use the official FAA form *Aircraft Bill of Sale*. (www.faa.gov/documentLibrary/media/form/ac8050-2.pdf) The FAA regulations provide that:
 - Transfer by an executor or administrator must include a certified copy of Letters Testamentary or Letters of Administration;
 - In the absence of probate, an heir-at-law can submit a notarized affidavit attesting to the lack of probate, and the legal entitlement to ownership of the airplane; and

- Transfer by a trustee must include “a certified true copy of the court order appointing the trustee or, if appointed without a court order, a certified true copy of the complete trust instrument.”

(www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry/media/AFS-750-93.pdf).

2. **Taxation** – Some or all states assesses personal property tax on airplanes. For example, see [Georgia etax.dor.ga.gov/ptd/adm/forms/pt50a/LGS_aircraft_personal_property_tax_return_and_schedules_PT-50A.pdf](http://Georgia.etax.dor.ga.gov/ptd/adm/forms/pt50a/LGS_aircraft_personal_property_tax_return_and_schedules_PT-50A.pdf).
3. **Ownership by an Entity** – To manage potential liability, and for ease of transfer, it may be beneficial to create a single purpose LLC or partnership to hold title to an airplane.

G. **Boats:**

1. **Small Boats without Motors** – In Georgia, and presumably most states, smaller sailboats, rowboats, kayaks, and other vessels without mechanical propulsion, and vessels used exclusively on private ponds or lakes, are not subject to registration. No formal paperwork is needed to transfer ownership to a beneficiary. Depending on circumstances, a fiduciary may use a letter, a bill of sale, a receipt, or some combination, to memorialize a distribution.
2. **Larger Sailboats and all Motorboats** – In general, medium sized and motorized watercraft must be registered with the state. For example, to transfer ownership in Georgia, use the Department of Natural Resources *Certified True Bill of Sale for Vessel* (www.georgiawildlife.com/boating/registration).
3. **Really Big Boats** – Vessels with a volume (not to be confused with weight) of “5 net tons” or more must also be registered with the National Vessel Documentation Center of the U.S. Coast Guard. This generally applies to boats with a length of 25 or more feet. See www.uscg.mil/hq/cq5/nvdc for registration and transfer requirements. Ships subject to federal registration are often exempt from state or local registration, but that may not be the case in all jurisdictions.

H. **Intellectual and Creative Property – See Intelligent Planning for Intellectual Property**, by Adam F. Streisand & Gabrielle A. Vidal, in the 47th Annual Heckerling Institute on Estate Planning (LexisNexis 2013).

I. **Death of an Artist** – Planning for, and administering, the estate of an artist or writer poses unique challenges. Where the artist dies owning a

large collection of his or her own works, valuation must balance the famous (or at least fabled) death-related scarcity-induced increase in values with the reality that the artist's collection may easily overwhelm demand. Furthermore, sales by some artists are closely linked to the activity and "marketing" efforts of the artist him or herself. Once they are gone, sales may dwindle. One approach for an artist with consistent sales is to calculate a present value for a projected stream of sales spread out over many years. In a situation with infrequent sales, a significant discount for the time and expense of marketing is probably justified.

J. **Animals:**

1. **Pet Trusts** – Can you owe a fiduciary duty to Fido (or Felix)? At common law, animals could not be trust beneficiaries, and trusts for the benefit of pets could be found to be invalid. Perhaps seen as an easy political campaign issue (who doesn't want to allow people to pamper their pets?), a growing number of states have enacted laws permitting "pet trusts." Because of the unique nature of the trust beneficiary, these laws are often much more explicit than laws governing other "honorary" trusts.

Illinois statute contains a good overview of pet trust law in many states. The first paragraph addresses both legal and public policy concerns: "A trust for the care of one or more designated domestic or pet animals is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this Section, to presume against a merely precatory or honorary nature of its disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent." IL ST CH 760 § 5/15.2. Thus, in one fell swoop the legislature addresses validity, dissolution, and construction of pet trusts that previously had been left open to judicial interpretation.

More importantly, Illinois then provides several exemptions and additional considerations unique to pet trusts. It safeguards the trust itself from encroachment by unscrupulous trustees: "Except as expressly provided otherwise in the instrument creating the trust, no portion of the principal or income of the trust may be converted to the use of the trustee or to a use other than for the trust's purposes or for the benefit of a covered animal," but it also considers the estate plan of the settlor or decedent as a whole: "The court may reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use." Other provisions dictate who will receive the trust corpus upon dissolution, ability of the trustee to enforce the trust purpose, a waiver of the general accounting and

filing requirements for trustees, and an exemption of such pet trusts from the common law rule against perpetuities. If your state statute does not address all of these issues, and perhaps even if it does, the governing document should address each. For example, the Georgia pet trust statute does not specifically address the perpetuities issue, and at least one commentator has suggested that a trust could fail if it were created for a very long-lived animal, such as a tortoise, that survived beyond the statutory perpetuities maximum.

Other, non-legal considerations for pet trusts are equally important. First, although it may be possible to have a corporate fiduciary, it is likely better to have an individual act as fiduciary. As such, proper care is necessary to ensure the trustee will neither convert nor waste trust assets, nor neglect the animals to preserve trust corpus. Thus, it may be prudent to have a non-remainder beneficiary of the trust or estate act as fiduciary. Furthermore, the current home and family situation of proposed trustees should be considered. Some residences may have restrictive covenants concerning the type and/or number of permissible pets. Trustees that do or may have small children may be poor candidates for certain animals. Trustee allergies and individual preferences (“cat person” vs. “dog person”) should also be taken into account. Finally, because of the unexpected nature of dealing with any animal, it is highly advisable to have your client name several successor or alternative trustees in case their first choice is or becomes unable or unwilling to serve.

2. **Common Law States** – If your state does not recognize pet trusts, but your client is concerned about care of their pet, specific gifts can be conditioned on acceptance of “Fido” and coupled with precatory language regarding the animal’s care. Whether as beneficiary of, or property of, a trust give particular care to planning for animals. Business succession planning includes an added dimension, and avoidance of even the shortest time delay becomes critical, where the business includes livestock and other agricultural products. Without proper management, and sometimes even with proper management, animals can easily become *wasting* trust assets. In many situations, it is prudent to hire managers with specialized expertise.
- K. **People and the Parts Thereof** – Regarding reproductive matter, see **The Brave New World of ART Children**, by Bruce M. Stone, Susan N. Gary and R. Hugh Magill in the 47th Annual Heckerling Institute on Estate Planning (LexisNexis 2013). If you have a client interested in cryonics (i.e. having their head or entire body frozen in the hope that they can be “reanimated” in the future), very careful and unusual planning is required.

See www.alcor.org as one resource. Last, and perhaps least, the Georgia Probate Act specifically provides for the possible sale of *used* heart pacemakers. (Ga. Code Ann. § 53-4-73 (West))

- L. **Electronics** – The typical issue encountered by fiduciaries in our increasingly electronic world is retrieving or managing legitimate data, as discussed in **Digital Death: What to Do When Your Client is Six Feet Under but His Data is in the Cloud**, by James D. Lamm, Christina L. Kunz and Damien A. Riehl, in this in the 47th Annual Heckerling Institute on Estate Planning (LexisNexis 2013). However, there is also a potential dark side to modern data storage. While no fiduciary would ever want to believe their client capable of storing such reprehensible images, strict federal and state penalties exist for those that possess or disseminate child pornography. Federal and most state statutes require the disseminator to have knowledge of the contents before liability attaches, but none-the-less it may be prudent to inspect any electronic devices for such content and take proper actions if such content is found. 18 U.S.C.A. §2252(c) allows an affirmative defense that the person “promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof – (A) took reasonable steps to destroy each such visual depiction; or (B) reported the matter to a law enforcement agency...”
- M. **Real Estate** – Real estate is a common estate and trust asset; so common in fact that fiduciaries may overlook potential problems lurking right under the surface. The Comprehensive Environmental Response, Compensation, and Liability Act has been amended to lessen the impact on trustees and other fiduciaries holding temporary title to the property, but liability may still exist. CERCLA penalties are found under 42 U.S.C.A. §9607. The Act starts with a blanket removal of fiduciary liability for more than the value of the assets held in fiduciary capacity. That is to say, there is no default personal liability on the part of the fiduciary. The exclusions to this safe-harbor immediately follow. If the fiduciary is liable “independently of the person's ownership of a vessel or facility as fiduciary for actions taken in a fiduciary capacity.” Furthermore, the fiduciary may be personally liable if “negligence of the fiduciary causes or contributes to the release or threatened release.”

CERCLA provides a “safe harbor” to fiduciaries in the following circumstances:

- (A) undertaking or directing another person to undertake a response action under subsection (d)(1) of this section or under the direction of an on scene coordinator designated under the National Contingency Plan;

- (B) undertaking or directing another person to undertake any other lawful means of addressing a hazardous substance in connection with the vessel or facility;
- (C) terminating the fiduciary relationship;
- (D) including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying or enforcing the term or condition;
- (E) monitoring or undertaking 1 or more inspections of the vessel or facility;
- (F) providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary;
- (G) restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;
- (H) administering, as a fiduciary, a vessel or facility that was contaminated before the fiduciary relationship began; or
- (I) declining to take any of the actions described in subparagraphs (B) through (H).

Many state laws were amended to absolve fiduciaries from personal environmental liability before CERCLA itself was amended. However, that does not mean there are no fiduciary liabilities concerning compliance with environmental matters. Almost all states require fiduciaries to attend to environmental concerns. These duties generally pertain to assessing environmental conditions and remediation and removal of environmental contamination. Additionally, a beneficiary who finds himself the new owner of contaminated property might attempt a claim against the fiduciary who distributed that property to him by claiming a tort under breach of fiduciary duty – which might not be limited even if the direct fiduciary liability is reduced by statute. If, as most state law demands, fiduciaries have a duty to inspect and protect trust property, is it a breach of fiduciary duty to fail to recognize, prevent, or address environmental contamination before it is too late? Many states recognize personal fiduciary liability in tort. For example, New Mexico law states “A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.” N.M. Stat. Ann. § 46A-10-1010 (West). Thus, it may be better for a fiduciary to be overly cautious than presumptive of immunity when it comes to federal and state environmental liability.

- V. **Valuation of Prohibited or Restricted Assets:** At least in theory, if an estate or trust cannot legally sell an asset, is the fair market value zero?
- A. **Alcohol** – Today, many wines, at least, are offered for sale on the internet. Where it is appropriate to establish values, a prudent fiduciary can probably use retail prices (gathered on-line, or by a visit to a local retailer) as a starting point for valuation, with discounts or other adjustments as appropriate.
- B. **Endangered Species, Ivory, and Other Regulated Artifacts** – In a recent dispute, the estate of a prominent art collector held a work by artist Robert Rauschenberg that contains a stuffed bald eagle. The work had been on loan to the Metropolitan Museum of Art. Because the estate could not legally sell the work, the taxpayers argued for a market value of zero. The IRS experts had a slightly different opinion, valuing the work at \$65 million, based at least in part on the shadowy international black market for illegal masterpieces. The matter settled on the eve of trial, with the work donated to the Museum of Modern Art, with the work having a zero value for both estate and income tax purposes. See Estate of Ileana Sonnabend, Deceased, Antonio H. Sonnabend and Nina Sundell, Executors v. Commissioner of Internal Revenue (United States Tax Court Docket No. 000649-12); Art’s Sale Value? Zero. The Tax Bill? \$29 Million www.nytimes.com/2012/07/22/arts/design/a-catch-22-of-art-and...starring-a-stuffed-eagle.html; and other press reports. **WHY DID THE WORK MOVE FROM ONE MUSEUM TO ANOTHER?**
- C. **Contraband and Other Illegal Assets** – Although beyond the scope of this paper, it is reportedly established that tax laws can be applied to the “street value” of illegal assets. Famously, Al Capone went to jail not for obtaining money illegally, but for failure to report his ill-gotten income. Certainly, the public interest is served by this approach, and a fiduciary called upon to handle the affairs of a criminal should attempt to establish fair market value, even if it results in an insolvent estate because the assets subject to tax cannot be sold. Query whether the same harsh result should apply to the estates of otherwise law-abiding citizens that happen to include assets that can no longer be sold legally.
-

Exhibit A

Firearm Acknowledgement of Receipt, Relief of Liability and Indemnification

Estate of Six Gun Smith, Deceased

State of Georgia, _____ County

To: SunTrust Bank as Executor of the **Estate of Six Gun Smith**

As a beneficiary of the Estate, I acknowledge the following:

1. The Executor is delivering to me, and I acknowledge receipt of and responsibility for:
One Acme, Saturday Night Special Model pistol, serial # 1234; and
One Rusty Red Model shotgun, serial # 5678
 (herein “the Gun[s]”).
2. I acknowledge receipt of the Gun[s], in full [partial] satisfaction of the gift under Item _____ of the Will of Six Gun Smith.
3. I certify that: I possess a valid, current, Georgia **Weapons Carry License**; I am legally entitled to receive, own, possess and use the Gun[s], under all applicable federal, state and local laws and regulations; I have no knowledge of, and I have never been informed of, any restriction or prohibition on my right to receive, own, possess and use the Gun[s] or other such firearms; and I will fully comply with all federal, state and local laws and regulations regarding my ownership, possession and use of the Gun[s].
4. I release and relieve SunTrust Bank, and all of its affiliates, officers, employees, attorneys and agents, of any liability in any way related to the Gun[s], and I agree to indemnify fully all of them against any related claims.
5. I am over 21 years of age, I am not suffering from any legal disability, and I am legally competent to sign this Receipt, Relief and Indemnification. I am signing on behalf of myself, my heirs, successors, assigns and agents.

Pistol Packing Mama

Sworn to and subscribed before me

this _____ day of _____, 201__.

Notary Public

[Seal]

Date Commission Expires: _____

Exhibit B – National Survey of Relevant Law

Compiled by Georgia State University third year law student Christopher Lessard

Alabama

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, but only if the trustee, the trustee's employee, or the trustee's agent is personally at fault. Ala. Code § 19-3B-1010

A beneficiary may not commence a proceeding against a trustee for breach of trust more than two years after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust, or two years after certain terminating events Ala. Code § 19-3B-1005

Prudent Investor Rule / Diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Ala. Code § 19-3B-902

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Ala. Code § 19-3B-903

Illegal Possession / Transfer of Firearm

No felons or habitual drunkards permitted to own pistols or have a pistol under their control. Ala. Code § 13A-11-7

Special exception for purchase, possession or sale of pistols as curiosities or ornaments or to the transportation of such pistols unloaded and in a bag, box or securely wrapped package, but not concealed on the person. Ala. Code § 13A-11-83

A person who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun in violation of federal law is guilty of a Class C felony. Ala. Code § 13A-11-63

Possession of endangered species / protected species

Any person, firm, association, or corporation who takes, catches, kills, or has in possession at any time, living or dead, any protected wild bird not a game bird, or who sells or offers for sale, buys, purchases, or offers to buy or purchase any such bird or exchange same for anything of value, or who shall sell or expose for sale or buy any part of the plumage, skin, or body of any bird protected by the laws of this state, or who shall take or willfully destroy the nests of any wild bird, or who shall have the nests or eggs of

the birds in his or her possession, except as otherwise provided by law, shall be guilty of a misdemeanor. Ala. Code § 9-11-232

Transfer / Possession of Alcohol

Unlawful for any person to manufacture, transport, or import alcoholic beverages into this state, except in accordance with the reasonable rules and regulations of the board. Unlawful for any person to sell, give away, or otherwise dispose of taxable alcoholic beverages within this state on which the required taxes have not been paid as required by law. Ala. Code § 28-3A-25

Alaska

Fiduciary / Trustee Liability

Subject to AS 13.36.105--13.36.220, a trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if personally at fault. Alaska Stat. Ann. § 13.36.095 (West)

Trustee required to make disbursements from trust principal related to environmental matters. Alaska Stat. Ann. § 13.38.810 (West)

Unless resolved or barred under (b) or (c) of this section, and notwithstanding the lack of adequate disclosure, all claims against a trustee who has issued a report received by the beneficiary and who has informed the beneficiary of the location and availability of records for examination by the beneficiary are barred unless a proceeding to assert the claims is commenced within three years after the beneficiary's receipt of the report. Alaska Stat. Ann. § 13.36.100 (West)

Prudent Investor Rule / Diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Alaska Stat. Ann. § 13.36.230 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Alaska Stat. Ann. § 13.36.235 (West)

Illegal Possession / Transfer of Firearm

A person commits the crime of misconduct involving weapons in the third degree if the person knowingly possesses a concealable firearm, and that person is a felon. Illegal to sell, transfer, or transport prohibited weapons or weapons with altered or destroyed identification markings Alaska Stat. Ann. § 11.61.200 (West)

Possession of endangered species / protected species

Unless permitted by AS 16.05 - AS 16.40 or by regulation adopted under AS 16.05--AS 16.40, a person may not take, possess, transport, sell, offer to sell, purchase, or offer to

purchase fish, game, or marine aquatic plants, or any part of fish, game, or aquatic plants, or a nest or egg of fish or game. Alaska Stat. Ann. § 16.05.920 (West)

Transfer / Possession of Alcohol

Except as provided in AS 04.11.020, a person may not knowingly manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage unless under license or permit issued under this title. Alaska Stat. Ann. § 04.11.010 (West)

Arizona

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. Ariz. Rev. Stat. Ann. § 14-11010

A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding, or within two years of certain terminating events. Ariz. Rev. Stat. Ann. § 14-11005

Prudent Investor Rule / Diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution. Ariz. Rev. Stat. Ann. § 14-10902

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Ariz. Rev. Stat. Ann. § 14-10903

Illegal possession / transfer of firearm

Illegal to possess a deadly weapon or prohibited weapon if such person is a prohibited possessor; or sell or transfer a deadly weapon to a prohibited possessor; or possess a defaced deadly weapon knowing the deadly weapon was defaced. Ariz. Rev. Stat. Ann. § 13-3102

Possession of endangered species / protected species

It is unlawful for a person to knowingly kill, wound or possess a jaguar or any part thereof. Ariz. Rev. Stat. Ann. § 17-320

Transfer / Possession of Alcohol

It is unlawful: 1. For a person to buy for resale, sell or deal in spirituous liquors in this state without first having procured a license duly issued by the board. 2. For a person to sell or deal in alcohol for beverage purposes without first complying with this title. It is unlawful for any person, not a qualified licensee under this title, to import spirituous

liquors into this state from a foreign country unless: 1. Such person is the legal drinking age. 2. Such person has been physically within such foreign country immediately prior to such importation and such importation coincides with his return from such foreign country. 3. Except as provided in subsection B, the amount of spirituous liquor imported does not exceed the amount permitted by federal law to be imported duty-free, in any period of thirty-one days, except that if the federal law prescribing such duty-free limitation is repealed or amended, then in no event shall the amount of duty-free importation into this state be more than one liter of spirituous liquor during such period. Ariz. Rev. Stat. Ann. § 4-244

Arkansas

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. Ark. Code Ann. § 28-73-1010 (West)

A beneficiary may not commence a proceeding against a trustee for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding, or within five (5) years of certain terminating events Ark. Code Ann. § 28-73-1005 (West)

Prudent Investor Rule / Diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Ark. Code Ann. § 28-73-902 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Ark. Code Ann. § 28-73-903 (West)

Illegal possession and transfer of firearm

Unless specifically permitted, no person shall possess or own any firearm who has been: (1) Convicted of a felony; (2) Adjudicated mentally ill; or (3) Committed involuntarily to any mental institution. Ark. Code Ann. § 5-73-103 (West)

Possession or use of a machine gun for offensive or aggressive purpose is declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than ten (10) years. Ark. Code Ann. § 5-73-204 (West)

Possession of endangered species / protected species

No person shall catch, kill, injure, pursue, or have in his or her possession, either dead or alive, or purchase, expose for sale, transport, or ship to a point within or without the state, or receive or deliver for transportation any species of wild fowl except black birds, crows,

and starlings unless authorized to do so by a validly adopted regulation of the Arkansas State Game and Fish Commission or by a federal regulation constitutionally adopted and imposed. Ark. Code Ann. § 15-45-210 (West)

Transfer / Possession of Alcohol

It is unlawful for a person to buy, bargain, sell, loan, own, have in possession, or knowingly transport in this state an intoxicating liquor upon which the Arkansas excise tax prescribed by law has not been paid. Ark. Code Ann. § 3-3-216 (West)

It shall be unlawful for any person, including any corporation or legal entity: (3) To own, possess, or knowingly transport any illicitly distilled spirituous, vinous, or malt liquors.

Ark. Code Ann. § 3-3-402 (West)

California

Fiduciary / Trustee Liability

A trustee is personally liable for obligations arising from ownership or control of trust property only if the trustee is personally at fault. Cal. Prob. Code § 18001 (West)

A trustee is personally liable for torts committed in the course of administration of the trust only if the trustee is personally at fault. Cal. Prob. Code § 18002 (West)

General three-year statute of limitations for actions against trustee, except for tolling for works of art or other enumerated historically or culturally significant artifacts. Cal. Civ. Proc. Code § 338 (West)

Prudent Investor Rule / Diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Cal. Prob. Code § 16047 (West)

In making and implementing investment decisions, the trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is prudent not to do so. Cal. Prob. Code § 16048 (West)

Illegal possession and transfer of firearm

Any person who has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 23515, or who is addicted to the use of any narcotic drug, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony. Cal. Penal Code § 29800 (West)

Where neither party to the transaction holds a dealer's license issued pursuant to Sections 26700 to 26915, inclusive, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through a licensed firearms dealer pursuant to Chapter 5. Cal. Penal Code § 27545 (West)

Any person who, within this state distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, any .50 BMG rifle, except as provided by this chapter, is guilty of a felony. Cal. Penal Code § 30600 (West)

Possession of endangered species / protected species

No person shall import into this state, export out of this state, or take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the commission determines to be an endangered species or a threatened species, or attempt any of those acts, except as otherwise provided

Cal. Fish & Game Code § 2080 (West)

Transfer / Possession of Alcohol

Except as otherwise provided in this section, alcoholic beverages may be brought into this state from without this state for delivery or use within the state only by common carriers and only when the alcoholic beverages are consigned to a licensed importer, and only when consigned to the premises of the licensed importer or to a licensed importer or customs broker at the premises of a public warehouse licensed under this division. Cal. Bus. & Prof. Code § 23661 (West)

Colorado

Fiduciary / Trustee Liability

A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault. Colo. Rev. Stat. Ann. § 15-16-306 (West)

Generally, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary if not filed within six months of receipt of such final accounting or other statement. Colo. Rev. Stat. Ann. § 15-16-307 (West)

Prudent Investor Rule / Diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Colo. Rev. Stat. Ann. § 15-1.1-102 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Colo. Rev. Stat. Ann. § 15-1.1-103 (West)

Illegal possession / transfer of firearm

Any person who knowingly purchases or otherwise obtains a firearm on behalf of or for transfer to a person who the transferor knows or reasonably should know is ineligible to

possess a firearm pursuant to federal or state law commits a class 4 felony. Colo. Rev. Stat. Ann. § 18-12-111 (West)

Illegal to knowingly possess a “dangerous weapon” (firearm silencer, machine gun, short shotgun, short rifle, or ballistic knife) or an “illegal weapon” (a blackjack, gas gun, metallic knuckles, gravity knife, or switchblade knife). Colo. Rev. Stat. Ann. § 18-12-102 (West)

Possession of Endangered / Threatened Species

Except as otherwise provided in this article, it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale, or ship and for any common or contract carrier to knowingly transport or receive for shipment any species or subspecies of wildlife appearing on the list of wildlife indigenous to this state determined to be endangered within the state. Colo. Rev. Stat. Ann. § 33-2-105 (West)

It is unlawful for any person to hunt, take, or have in such person's possession any wildlife that is the property of this state as provided in section 33-1-101, except as permitted by articles 1 to 6 of this title or by rule or regulation of the commission. Colo. Rev. Stat. Ann. § 33-6-109 (West)

Transfer / Possession of Alcohol

(1) Except as provided in section 18-13-122, C.R.S., it is unlawful for any person: (g) To manufacture, sell, or possess for sale any alcohol beverage unless licensed to do so as provided by this article or article 46 or 48 of this title and unless all licenses required are in full force and effect. Colo. Rev. Stat. Ann. § 12-47-901 (West)

Connecticut

Fiduciary / Trustee Liability

Trustee shall make disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination. Conn. Gen. Stat. Ann. § 45a-542y (West)

No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of. Conn. Gen. Stat. Ann. § 52-577 (West)

Prudent Investor Rule / Diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution. Conn. Gen. Stat. Ann. § 45a-541b (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Conn. Gen. Stat. Ann. § 45a-541c (West)

Illegal possession / transfer of firearm

A person is guilty of criminal possession of a firearm or electronic defense weapon when such person possesses a firearm or electronic defense weapon and (1) is a convicted felon, (2) has been convicted as a delinquent, (3) is subject to a restraining order, (4) is subject to a firearm seizure order, or (5) is prohibited from shipping, transporting, possessing, or receiving a firearm pursuant to 18 USC 922(g)(4). Conn. Gen. Stat. Ann. § 53a-217 (West)

A person is guilty of firearms trafficking if such person, knowingly and intentionally, directly or indirectly, causes one or more firearms that such person owns, is in possession of or is in control of to come into the possession of or control of another person who such person knows or has reason to believe is prohibited from owning or possessing any firearm under state or federal law. Conn. Gen. Stat. Ann. § 53-202aa (West)

Possession of Endangered / Threatened Species

“Endangered species” means any native species . . . and any species determined to be an “endangered species” pursuant to the federal Endangered Species Act. Conn. Gen. Stat. Ann. § 26-304 (West)

If the Commissioner of Energy and Environmental Protection determines that trade in Connecticut of raw elephant ivory or products manufactured or derived from elephant ivory contributes to the extinction or endangerment of elephants, he shall adopt regulations in accordance with the provisions of chapter 54¹ to regulate such trade. Conn. Gen. Stat. Ann. § 26-315 (West)

Transfer / Possession of Alcohol

A tax is hereby imposed at the rates provided in section 12-435 upon the storage or use within this state of any untaxed alcoholic beverages in the possession of any person other than a licensed distributor or carrier for transit from without this state to a licensed distributor within this state. For the purposes of this section, any untaxed alcoholic beverages unaccounted for in transit, storage, or otherwise, are presumed to be used and consumed in this state by any person, including any distributor, carrier, warehouseman or consumer, last having possession of such untaxed alcoholic beverages. Conn. Gen. Stat. Ann. § 12-435b (West)

Delaware

Fiduciary / Trustee Liability

The debts, obligations and liabilities incurred by a fiduciary by reason of the ownership or control of property held in a fiduciary capacity, including but not limited to liability violation of environmental law, shall be enforceable solely against the fiduciary fund and no fiduciary shall be obligated personally for any such debt, obligation or liability solely by reason of owning or controlling the fiduciary fund. Del. Code Ann. tit. 12, § 3328 (West)

A beneficiary may initiate a proceeding against a trustee for breach of trust until the first to occur of: (1) Two years after the date the beneficiary was sent a report that adequately disclosed the facts constituting a claim; or (2) The date the proceeding was otherwise precluded by adjudication, release, consent or limitation. Other claims for certain terminating events must be filed within five years. Del. Code Ann. tit. 12, § 3585 (West)

Prudent Investor Rule / Diversification

When investing, reinvesting, purchasing, acquiring, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use. Del. Code Ann. tit. 12, § 3302 (West)

a provision in any trust instrument directing the retention of any such property as a trust investment shall be deemed to waive any duty of diversification otherwise applicable to the fiduciary with respect to such property and shall exonerate the fiduciary from liability for retaining the property except in the case of willful misconduct. Del. Code Ann. tit. 12, § 3304 (West)

Illegal possession / transfer of firearm

Except as otherwise provided herein, the following persons are prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm within the State: (1) felons, (2) persons who have ever been committed for a mental disorder, (3) juvenile delinquents, (4) persons subject to a family court protection order. Del. Code Ann. tit. 11, § 1448 (West)

Possession of Endangered / Threatened Species

Notwithstanding any other provision of this title, the importation, transportation, possession or sale of any endangered species of fish or wildlife, or hides or other parts thereof, or the sale or possession with intent to sell any article made in whole or in part from the skin, hide or other parts of any endangered species of fish or wildlife is prohibited, except under license or permit from the Division of Fish and Wildlife. Del. Code Ann. tit. 7, § 601 (West)

Transfer / Possession of Alcohol

No sale and delivery of alcoholic liquor shall be made in this State unless by a manufacturer or other person who holds a license of the Commissioner to sell and deliver alcoholic liquor and unless the sale and delivery is made to a person who is authorized to receive alcoholic liquor under Chapter 5 of this title. Del. Code Ann. tit. 4, § 701 (West)

District of Columbia

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. D.C. Code § 19-1310.10

A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding, or within three years of certain terminating events. D.C. Code § 19-1310.05

Prudent Investor Rule / Diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. D.C. Code § 19-1309.02

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. D.C. Code § 19-1309.03

Illegal possession / transfer of firearm

No person shall own or keep a firearm, or have a firearm in his or her possession or under his or her control, within the District of Columbia, if the person: (1) is a convicted felon, (2) is not licensed under §22-4510 to sell weapons, and the person has been convicted of violating this chapter, (3) is addicted to any controlled substances. D.C. Code § 22-4503

Except as otherwise provided in this unit, no person or organization in the District of Columbia (“District”) shall receive, possess, control, transfer, offer for sale, sell, give, or deliver any destructive device, and no person or organization in the District shall possess or control any firearm, unless the person or organization holds a valid registration certificate for the firearm. D.C. Code § 7-2502.01

Possession of Endangered / Threatened Species

The Council of the District of Columbia is authorized to restrict, prohibit, regulate, and control hunting and fishing and the taking, possession, and sale of wild animals in the District provided, that nothing herein contained shall authorize the Council to prohibit, restrict, regulate, or control the killing, capture, purchase, sale, or possession of migratory birds as defined in regulations issued pursuant to the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. §§ 703-712). D.C. Code § 22-4328

Transfer / Possession of Alcohol

No person shall sell any alcoholic beverage in the District without having first obtained an appropriate license as required by this title. D.C. Code § 25-102

Florida

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property only if the trustee is personally at fault. Fla. Stat. Ann. § 736.1013 (West)

A trustee that acquires ownership or control of a vessel or other property, without having owned, operated, or materially participated in the management of that vessel or property before assuming ownership or control as trustee, is not considered an owner or operator for purposes of liability under chapter 376, chapter 403, or any other environmental law. A trustee that willfully, knowingly, or recklessly causes or exacerbates a release or threatened release of a hazardous substance is personally liable for the cost of the response, to the extent that the release or threatened release is attributable to the trustee's activities. Fla. Stat. Ann. § 736.08163 (West)

A beneficiary is barred from bringing an action against a trustee for breach of trust with respect to a matter that was adequately disclosed in a trust disclosure document unless a proceeding to assert the claim is commenced within 6 months after receipt. Other claims may be allowed against the trustee for up to forty years. Fla. Stat. Ann. § 736.1008 (West)

Prudent Investor Rule / Diversification

A fiduciary has a duty to invest and manage investment assets as a prudent investor would. This requires the exercise of reasonable care and caution. The fiduciary has a duty to diversify the investments unless, under the circumstances, the fiduciary believes reasonably it is in the interests of the beneficiaries and furthers the purposes of the trust, guardianship, or estate not to diversify. Fla. Stat. Ann. § 518.11 (West)

Illegal possession / transfer of firearm

It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been: (1) convicted of a felony, (2) found to be a delinquent. Fla. Stat. Ann. § 790.23 (West)

It is unlawful for any person to own or to have in his or her care, custody, possession, or control any short-barreled rifle, short-barreled shotgun, or machine gun which is, or may readily be made, operable; but this section shall not apply to antique firearms. Fla. Stat. Ann. § 790.221 (West)

Possession of Endangered / Threatened Species

Whenever the sale, possession, or transporting of alligators or alligator skins is prohibited by any law of this state, or by the rules, regulations, or orders of the Fish and Wildlife Conservation Commission adopted pursuant to s. 9, Art. IV of the State Constitution, the sale, possession, or transporting of alligators or alligator skins is a Level Three violation under s. 379.401. Fla. Stat. Ann. § 379.3014 (West)

Transfer / Possession of Alcohol

It is unlawful for any person to have in her or his possession within this state any alcoholic beverage on which a federal excise tax is required to be paid, unless such federal excise tax has been paid as to such beverage. Fla. Stat. Ann. § 562.18 (West)

Georgia

Fiduciary / Trustee Liability

A judgment rendered in an action brought against the trust shall impose no personal liability on the trustee or the beneficiary. Ga. Code Ann. § 53-12-308 (West)

The trustee shall be accountable to the beneficiary for the trust property. A violation by the trustee of any duty that the trustee owes the beneficiary shall be a breach of trust. Ga. Code Ann. § 53-12-300 (West)

If a beneficiary has received a written report that adequately discloses the existence of a claim against the trustee for a breach of trust, the claim shall be barred as to that beneficiary unless a proceeding to assert the claim is commenced within two years after receipt of the report. There is a six-year statute of limitations for breach of trust actions against the trustee by a beneficiary from the time the beneficiary discovered or reasonably should have discovered the subject of such a claim. Ga. Code Ann. § 53-12-307 (West)

Prudent Investor Rule / Diversification

A trustee shall exercise the judgment and care under the circumstances then prevailing of a prudent person acting in a like capacity and familiar with such matters. Ga. Code Ann. § 53-12-340 (West)

A trustee shall reasonably manage the risk of concentrated holdings of assets in a trust by diversifying or by using other appropriate mechanisms, except as otherwise provided in this Code section. Ga. Code Ann. § 53-12-341 (West)

Illegal possession / transfer of firearm

Any person who . . . has been convicted of a felony by a court of this state or any other state. . . who receives, possesses, or transports any firearm commits a felony . . . Ga. Code Ann. § 16-11-131 (West)

No person shall have in his possession any sawed-off shotgun, sawed-off rifle, machine gun, dangerous weapon, or silencer except as provided in Code Section 16-11-124. Ga. Code Ann. § 16-11-122 (West)

Possession of Endangered / Threatened Species

Except as otherwise provided by law, rule, or regulation, it shall be unlawful to hunt, trap, fish, take, possess, or transport any nongame species of wildlife. . . . Nothing in this Code section shall be construed to authorize the taking of any species which is protected under the federal Endangered Species Act of 1973, P.L. 93-205, as amended, or under any state law which has as its purpose the protection of endangered or threatened species. Ga. Code Ann. § 27-1-28 (West)

Transfer / Possession of Alcohol

An individual may possess and transport in this state the following quantities of alcoholic beverages upon which the taxes imposed by this title have not been paid:

(A) In the case of distilled spirits, not in excess of one-half gallon; (B) In the case of malt beverages, not in excess of 576 ounces or two standard cases of 12 ounce cans or the equivalent thereof or one 7.75 gallon keg or barrel; and

(C) In the case of wine, not in excess of one-half gallon, except where the wine possessed was purchased and shipped pursuant to Code Section 3-6-32 and where the possessor has in his or her possession documentation evidencing that the wine was so purchased and shipped. Ga. Code Ann. § 3-3-8 (West)

Hawaii

Fiduciary / Trustee Liability

A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if the trustee is personally at fault. Haw. Rev. Stat. § 560:7-306 (West)

Any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within two years after receipt of the final account or statement, or in any event notwithstanding lack of full disclosure within three years. Haw. Rev. Stat. § 560:7-307 (West)

Prudent Investor Rule / Diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Haw. Rev. Stat. § 554C-2 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances or directives of the trust, the purposes of the trust are better served without diversifying. Haw. Rev. Stat. § 554C-3 (West)

Illegal possession / transfer of firearm

No person who is a fugitive from justice or is a person prohibited from possessing firearms or ammunition under federal law shall own, possess, or control any firearm or ammunition therefor. Haw. Rev. Stat. § 134-7 (West)

No person shall possess any firearm that is owned by another, regardless of whether the owner has consented to possession of the firearm, without a permit from the chief of police of the appropriate county, except as provided in subsection (c) and section 134-5. Haw. Rev. Stat. § 134-4 (West)

No person shall willfully alter, remove, or obliterate the name of the make, model, manufacturer's number, or other mark of identity of any firearm or ammunition.

Possession of a firearm or ammunition upon which any mark of identity has been altered, removed, or obliterated shall be presumptive evidence that the possessor has altered, removed, or obliterated the mark of identity. Haw. Rev. Stat. § 134-10 (West)

Possession of Endangered / Threatened Species

With respect to any threatened or endangered species of aquatic life, wildlife, or land plant, it is unlawful, except as provided in subsections (f), (g), and (j) for any person to . . . possess, process, sell, offer for sale, deliver, carry, transport, or ship, by any means whatsoever, any such species. Haw. Rev. Stat. § 195D-4 (West)

Transfer / Possession of Alcohol

It shall be unlawful for any person not having a valid license to manufacture or sell any liquor except as otherwise provided in this chapter. It shall also be unlawful for any person, not having a valid wholesale license or a valid manufacturer's (including rectifier's) license, to import any liquor from without the State, except as otherwise provided in this chapter. Haw. Rev. Stat. § 281-3 (West)

Idaho

Fiduciary / Trustee Liability

A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault. Idaho Code Ann. § 15-7-306 (West)

Any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within six (6) months after receipt of the final account or statement, or notwithstanding lack of full disclosure after three (3) years. Idaho Code Ann. § 15-7-307 (West)

Prudent Investor Rule / Diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution. Idaho Code Ann. § 68-502 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Idaho Code Ann. § 68-503 (West)

Illegal possession / transfer of firearm

A person who previously has been convicted of a felony who purchases, owns, possesses, or has under his custody or control any firearm shall be guilty of a felony. Idaho Code Ann. § 18-3316 (West)

Possession of Endangered / Threatened Species

No person shall hunt, take or have in possession any migratory birds except as provided by federal regulations made pursuant to the federal migratory bird treaty act, as amended, and in accordance with related rules and proclamations promulgated by the commission. Idaho Code Ann. § 36-1102 (West)

Transfer / Possession of Alcohol

Except as authorized by title 23, Idaho Code, any person who shall have in possession, manufacture, transport, purchase, sell, or dispose of any alcohol beverage, including any distilled spirits, beer or wine, shall be guilty of a misdemeanor. Idaho Code Ann. § 23-602 (West)

Alcoholic liquor lawfully purchased may be transported, but no person shall break open, or allow to be broken or opened any container of alcoholic liquor, or drink, or use, or allow to be drunk, or used any alcoholic liquor therein while the same is being transported. Idaho Code Ann. § 23-505 (West)

Illinois

Fiduciary / Trustee Liability

Trustee shall pay costs and disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination. IL ST CH 760 § 15/14

Unless otherwise provided, actions to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued. IL ST CH 735 § 5/13-205

Prudent Investor Rule / Diversification

Trustee has a duty to invest and manage trust assets as a prudent investor would considering the purposes, terms, distribution requirements, and other circumstances of the trust. This standard requires the exercise of reasonable care, skill, and caution.

The trustee has a duty to diversify the investments of the trust unless, under the circumstances, the trustee reasonably believes it is in the interests of the beneficiaries and furthers the purposes of the trust not to diversify. IL ST CH 760 § 5/5

Illegal possession / transfer of firearm

A person commits the offense of unlawful possession of firearms or firearm ammunition when he is a narcotic addict, has been a patient in a mental hospital within the past 5 years, is intellectually disabled, has any explosive bullet in their possession. IL ST CH 720 § 5/24-3.1

No person may acquire or possess any firearm, stun gun, or taser within this State without having in his or her possession a Firearm Owner's Identification Card previously issued in his or her name by the Department of State Police under the provisions of this Act. IL ST CH 430 § 65/2

Possession of Endangered / Threatened Species

It is unlawful for any person: (1) to possess, take, transport, sell, offer for sale, give or otherwise dispose of any animal or the product thereof of any animal species which occurs on the Illinois List; (2) to deliver, receive, carry, transport or ship in interstate or foreign commerce plants listed as endangered by the federal government without a permit therefor issued by the Department as provided in Section 4 of this Act. IL ST CH 520 § 10/3

Transfer / Possession of Alcohol

All alcoholic liquor imported into this State must be off-loaded from the common carrier, vehicle, or mode of transportation by which the alcoholic liquor was delivered into this State. The alcoholic liquor shall be stored at the licensed premises of the importing distributor before sale and delivery to licensees in this State. IL ST CH 235 § 5/6-8

Indiana

Fiduciary / Trustee Liability

If the injury is the result of the trustee's personal act or omission as trustee, the trustee will be personally liable and the injured party will be entitled to satisfaction of his claim from the trustee's individual property first and then, to the extent the claim is yet unsatisfied, from the trust estate. Ind. Code Ann. § 30-4-3-10 (West)

Any right against a trustee for breach of trust shall be barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the right is commenced within three (3) years after receipt of the final account or statement. Ind. Code Ann. § 30-4-6-12 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Ind. Code Ann. § 30-4-3.5-2 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Ind. Code Ann. § 30-4-3.5-3 (West)

Illegal possession / transfer of firearm

A serious violent felon who knowingly or intentionally possesses a firearm commits . . . a Class B felony. Ind. Code Ann. § 35-47-4-5 (West)

A person who has been convicted of domestic battery under IC 35-42-2-1.3 and who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a domestic batterer, a Class A misdemeanor. Ind. Code Ann. § 35-47-4-6 (West)

A person who owns or possesses a machine gun commits a Class C felony. Ind. Code Ann. § 35-47-5-8 (West)

Possession of Endangered / Threatened Species

Except as otherwise provided in this chapter, a person may not take, possess, transport, export, process, sell or offer for sale, or ship, and a common or contract carrier may not knowingly transport or receive for shipment a species or subspecies of wildlife appearing on any of the following:(1) The list of wildlife indigenous to Indiana determined to be endangered in Indiana under this chapter.

(2) The United States list of endangered wildlife (50 CFR 17.11) as in effect on January 1, 1979. Ind. Code Ann. § 14-22-34-12 (West)

Transfer / Possession of Alcohol

Possession of Untaxed Beverages Prohibited. It is a Class C misdemeanor for a person to sell, barter, give away, or possess, an alcoholic beverage, knowing that all taxes due the state on it are not paid. Ind. Code Ann. § 7.1-5-4-1 (West)

Sale of Untaxed Alcoholic Beverages Prohibited. It is unlawful for a person to recklessly sell, give, withdraw for sale or gift, offer for sale, display, barter, exchange, purchase, receive, possess, transport, or store an alcoholic beverage upon which the appropriate excise tax and applicable license fee have not been paid. Ind. Code Ann. § 7.1-5-10-4 (West)

Iowa

Fiduciary / Trustee Liability

A trustee is personally liable for obligations arising from ownership or control of trust property, including liability for environmental law violations, and for torts committed in the course of administering a trust only if the trustee is personally at fault. Iowa Code Ann. § 633A.4601 (West)

A claim against a trustee for breach of trust is barred as to a beneficiary who has received an accounting pursuant to section 633A.4213 or other report that adequately discloses the existence of the claim, unless a proceeding to assert the claim is commenced within one year after the receipt of the accounting or report. Iowa Code Ann. § 633A.4504 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust property as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Iowa Code Ann. § 633A.4302 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that the purposes of the trust are better served without diversifying. Iowa Code Ann. § 633A.4303 (West)

Illegal possession / transfer of firearm

A person who is convicted of a felony in a state or federal court, or who is adjudicated delinquent on the basis of conduct that would constitute a felony if committed by an adult, and who knowingly has under the person's dominion and control or possession, receives, or transports or causes to be transported a firearm or offensive weapon is guilty of a class "D" felony. Iowa Code Ann. § 724.26 (West)

Any person, other than a person authorized herein, who knowingly possesses an offensive weapon commits a class "D" felony. Iowa Code Ann. § 724.3 (West)

Possession of Endangered / Threatened Species

Except as otherwise provided in this chapter or by rule, a person shall not take, possess, transport, import, export, process, sell or offer for sale, buy or offer to buy, nor shall a common or contract carrier transport or receive for shipment, any species of fish, plants, or wildlife appearing on the following lists which shall be adopted by rule of the commission: 1. The list of fish, plants, and wildlife indigenous to the state determined to be endangered or threatened within the state pursuant to section 481B.3. 2. The United States list of endangered or threatened native fish and wildlife as contained in 50 C.F.R. pt. 17 as amended to December 30, 1991. Iowa Code Ann. § 481B.5 (West)

Transfer / Possession of Alcohol

No person, acting individually or through another acting for the person shall directly or indirectly, or upon any pretense, or by any device, manufacture, sell, exchange, barter, dispense, give in consideration of the purchase of any property or of any services or in evasion of this chapter, or keep for sale, or have possession of any intoxicating liquor, except as provided in this chapter; or own, keep, or be in any way concerned, engaged, or employed in owning or keeping, any intoxicating liquor with intent to violate any provision of this chapter, or authorize or permit the same to be done. Iowa Code Ann. § 123.22 (West)

Kansas

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. Kan. Stat. Ann. § 58a-1010 (West)

A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and

informed the beneficiary of the time allowed for commencing a proceeding, or two years after certain terminating events. Kan. Stat. Ann. § 58a-1005 (West)

Prudent Investor Rule / Diversification

A fiduciary shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the fiduciary shall exercise reasonable care, skill and caution. Kan. Stat. Ann. § 58-24a02 (West)

A fiduciary shall diversify the investments of the trust unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Kan. Stat. Ann. § 58-24a03 (West)

Illegal possession / transfer of firearm

Criminal possession of a firearm by a convicted felon is possession of any firearm by a person who has been convicted of a person felony . . . or a crime under a law of another jurisdiction which is substantially the same as such felony or violation, or was adjudicated a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a person felony . . . Kan. Stat. Ann. § 21-6304

Criminal use of weapons is knowingly (5) selling, manufacturing, purchasing or possessing a shotgun with a barrel less than 18 inches in length, or any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger, whether the person knows or has reason to know the length of the barrel or that the firearm is designed or capable of discharging automatically. Kan. Stat. Ann. § 21-6301 (West)

Possession of Endangered / Threatened Species

Except as otherwise specifically provided by this section or rules and regulations adopted pursuant to this section, a special permit is required for any person subject to the jurisdiction of this state to: (1) Export from this state any endangered species included in a list adopted pursuant to K.S.A. 32-960; (2) possess, process, sell , offer for sale, deliver, carry, transport or ship, by any means whatsoever, any such endangered species. Kan. Stat. Ann. § 32-961 (West)

Transfer / Possession of Alcohol

It shall be unlawful for any person to: (1) Evade, or attempt to evade, the payment of tax or duty on any alcoholic liquor, in any manner whatever. . . . (2) Have in such person's possession any cask or package of alcoholic liquor, without having thereon each mark required therefor by law, and any such cask or package not having thereon each such mark shall be forfeited to the state of Kansas. Kan. Stat. Ann. § 41-407 (West)

Kentucky

Fiduciary / Trustee Liability

A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault. Ky. Rev. Stat. Ann. § 386.730 (West)

Any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within six (6) months after receipt of the final account or statement, or notwithstanding lack of full disclosure within three (3) years of such final accounting. Ky. Rev. Stat. Ann. § 386.735 (West)

Prudent Investor Rule / Diversification

The liability of a trustee does not arise from the mere fact of a loss to the estate, in the absence of the violation of some statutory inhibition. It arises, if at all, from a failure to exercise the judgment of a prudent businessman investing funds of his own or of others. People's State Bank & Trust Co. v. Wade, 269 Ky. 89, 106 S.W.2d 74, 76 (1937)

Illegal possession / transfer of firearm

A person is guilty of possession of a firearm by a convicted felon when he possesses, manufactures, or transports a firearm when he has been convicted of a felony, as defined by the laws of the jurisdiction in which he was convicted, in any state or federal court. . . Ky. Rev. Stat. Ann. § 527.040 (West)

A person is guilty of possession of a defaced firearm when he knowingly possesses a defaced firearm unless he makes a report to the police or other appropriate government agency of such possession. . . Ky. Rev. Stat. Ann. § 527.050 (West)

Possession of Endangered / Threatened Species

No person shall import, transport, possess for resale or sell any endangered species of wildlife, the hides, skins, or other parts thereof, or any article made in whole or in part from the skin, hide, or other parts of any species of wildlife designated as an endangered species by regulation promulgated by the Department of Fish and Wildlife Resources except as provided in subsection (3) of this section (permit for zoological, educational, or for scientific purposes). Ky. Rev. Stat. Ann. § 150.183 (West)

Transfer / Possession of Alcohol

A person shall not do any act authorized by any kind of license with respect to the manufacture, storage, sale, purchase, transporting, or other traffic in alcoholic beverages unless he holds the kind of license that authorizes the act. (2) The holding of any permit from the United States government to traffic in alcoholic beverages without the corresponding requisite state and local licenses shall in all cases raise a rebuttable presumption that the holder of the United States permit is unlawfully trafficking in alcoholic beverages. Ky. Rev. Stat. Ann. § 243.020 (West)

Louisiana

Fiduciary / Trustee Liability

A trustee who has incurred personal liability for a tort committed in the administration of the trust is entitled to indemnity from the trust estate if:

(1) The tort was a common incident of the kind of business activity in which the trustee was properly engaged for the trust, or, (2) Although the tort was not a common incident of such activity, if neither the trustee nor an officer or employee of the trustee was guilty of personal fault in incurring the liability. La. Rev. Stat. Ann. § 9:2196

An action for damages by a beneficiary against a trustee for any act, omission, or breach of duty shall be brought within two years of the date that the trustee renders, by actual delivery or mail to the beneficiary an accounting for the accounting period in which the alleged act, omission, or breach of duty arising out of the matters disclosed therein occurred. However, such actions shall in all events, even as to actions within two years of disclosure, be filed within three years of the date that the trustee renders an accounting for the accounting period in which the alleged act, omission, or breach of duty occurred. La. Rev. Stat. Ann. § 9:2234

Prudent investor rule / diversification

Unless the trust instrument provides otherwise, a trustee shall invest and manage trust property as a prudent investor. La. Rev. Stat. Ann. § 9:2127

Diversification is usually is necessary to reduce risk. 2001 La. Sess. Law Serv. Act 520 (H.B. 1083) (WEST)

Illegal possession / transfer of firearm

It is unlawful for any person who has been convicted of a crime of violence . . . to possess a firearm. La. Rev. Stat. Ann. § 14:95.1

No person shall intentionally receive, possess, carry, conceal, buy, sell, transfer, or transport any firearm which has been illegally obtained or from which the serial number or individual identifying mark, as required by R.S. 40:1788, has been intentionally obliterated, altered, removed, or concealed. The provisions of this Section shall not apply to any firearm which is an antique or war relic and is inoperable or for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade, or which was originally manufactured without such a number. La. Rev. Stat. Ann. § 40:1792

Possession of Endangered / Threatened Species

With respect to any endangered species of wildlife, it is unlawful, except as provided in Subsection G of this section, for any person subject to the jurisdiction of this state to: export any such species from this state; take any such species within this state; possess, process, sell or offer for sale, deliver, carry, transport or ship, by any means whatsoever, any such species. La. Rev. Stat. Ann. § 56:1904

Transfer / Possession of Alcohol

No dealer or person shall import or carry into this state any alcoholic beverages on which the tax levied by this Chapter has not been paid by any means of transportation other than a common carrier, except as provided under a permit issued by the secretary . . . importation without a permit renders the means of transportation used subject to seizure, forfeiture, and sale in the manner provided in this Part. La. Rev. Stat. Ann. § 26:362

Maine

Fiduciary / Trustee Liability

Trustee must be personally at fault in tort to be personally liable for obligations arising from ownership or control of trust property, including environmental liability. Me. Rev. Stat. tit. 18-B, § 1010

Trustee may inspect, investigate, and take action to prevent, decline to accept, or otherwise remedy any actual or potential violation of environmental law. Me. Rev. Stat. tit. 18-B, § 816

Trustee liability to beneficiaries limited to one year after sufficient report filed, or after six years from the first to occur of the removal, death, or resignation of the trustee, the termination of the beneficial interest in trust, and the termination of the trust. Me. Rev. Stat. tit. 18-B, § 1005

Prudent investor rule / diversification

Follows Prudent Investor Rule, but allows for expansion, restriction, or elimination by terms of the trust. Trustee is not liable to beneficiaries to the extent they reasonably relied upon terms of the trust. Me. Rev. Stat. tit. 18-B, § 901

Trustee shall diversify investments unless reasonable determination special circumstances require otherwise. Me. Rev. Stat. tit. 18-B, § 901

Illegal possession / transfer of firearm

A person may not own, possess or have under that person's control a firearm, unless that person has obtained a permit under this section, if that person is a felon, a juvenile delinquent or has been involuntarily committed. Me. Rev. Stat. tit. 15, § 393

Machine guns manufactured, acquired, transferred or possessed in accordance with the National Firearms Act, as amended, shall be exempt from criminal sanction. Me. Rev. Stat. tit. 17-A, § 1052

Possession of Endangered / Threatened Species

Generally, an individual cannot possess, process, sell, offer for sale, deliver, carry, transport or ship, by any means whatsoever, any endangered or threatened species or any

part of an endangered or threatened species. A person who violates this paragraph commits a Class D crime. Me. Rev. Stat. tit. 12, § 12808

Unless specifically permitted by regulations of the federal Migratory Bird Treaty Act, 16 United States Code, Sections 703 to 712, or by rules adopted by the commissioner in conformity with Title 5, Part 18, except section 8052, subsection 3 of that Title, a person may not: hunt migratory game birds; possess migratory game birds; transport migratory game birds; or buy or sell migratory game birds. Me. Rev. Stat. tit. 12, § 11855

Transfer / Possession of Alcohol

Except as provided in subsection 1-B, a person other than the alcohol bureau may not import spirits into the State. 1-B. Permitted importation. An individual may transport into the State and may transport from place to place within the State spirits for the individual's personal use in a quantity not greater than 4 quarts. Me. Rev. Stat. tit. 28-A, § 2075

Maryland

Fiduciary / Trustee Liability

Trustee has authority to inspect trust property, and take action necessary to prevent, abate, or otherwise remedy an actual or potential environmental liability. Trustee is not liable for actions taken under this section or any otherwise taking action to comply with environmental law. Md. Code Ann., Est. & Trusts § 14-108; Md. Code Ann., Est. & Trusts § 15-102

An obligation arising from the trustee's ownership or control of trust property, or a tort committed in the course of administering the trust, may be asserted by a third person against the trust property by proceeding against the trustee in a fiduciary capacity, whether or not the trustee is personally liable. Md. Code Ann., Est. & Trusts § 14-405 (West)

Prudent investor rule / diversification

Fiduciary shall invest and manage fiduciary assets as a prudent investor would. Fiduciary shall diversify investments unless fiduciary reasonably believes it is in the best interests of the beneficiaries or furthers the purpose for which the fiduciary was appointed not to diversify Md. Code Ann., Est. & Trusts § 15-114

Illegal possession / transfer of firearm

A person may not possess a regulated firearm if the person: has been convicted of a disqualifying crime . . . is a habitual drunkard . . . is addicted to a controlled dangerous substance or is a habitual user; suffers from a mental disorder and has a history of violent behavior . . . MD PUBLIC SAFETY § 5-133

A dealer or other person may not sell, rent, or transfer a regulated firearm to a purchaser, lessee, or transferee who the dealer or other person knows or has reasonable cause to believe [is a disqualified possessor]. MD PUBLIC SAFETY § 5-134

Possession of Endangered / Threatened Species

Except as provided in subsection (f) of this section and § 10-2A-05.1 of this subtitle, with respect to any endangered species of wildlife, a person may not: export the species from the State; take the species within the State; possess, process, sell or offer for sale, deliver, carry, transport, or ship the species by any means . . . Md. Code Ann., Nat. Res. § 10-2A-05 (West)

Transfer / Possession of Alcohol

Alcoholic beverages may not be bought, possessed, stored, imported, transported, kept or suffered to be bought, possessed, stored, imported, transported or kept in any vehicle, vessel or aircraft or on any premises or under the charge or control of any person except: (i) by a consumer, or (ii) by a licensee as provided in this article . . . Md. Ann. Code art. 2B, § 1-201

Massachusetts

Fiduciary / Trustee Liability

Trustee may investigate, take action to prevent, abate, or remedy, or decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law; Mass. Gen. Laws Ann. ch. 203E, § 816 (West)

A trustee shall be personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. MA ST 203E § 1010

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would, considering the purposes, terms, and other circumstances of the trust, including those set forth in subsection (c). In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Mass. Gen. Laws Ann. ch. 203C, § 3 (West)

A trustee shall reasonably diversify the investments of the trust unless, under the circumstances, it is prudent . . . Mass. Gen. Laws Ann. ch. 203C, § 4 (West)

Illegal possession / transfer of firearm

Whoever, except as provided by law, possesses a machine gun, as defined in section one hundred and twenty-one of chapter one hundred and forty, without permission under section one hundred and thirty-one of said chapter one hundred and forty; or whoever owns, possesses or carries on his person, or carries on his person or under his control in a vehicle, a sawed-off shotgun, as defined in said section one hundred and twenty-one of said chapter one hundred and forty, shall be punished by imprisonment in the state prison for life, or for any term of years provided that any sentence imposed under the provisions of this paragraph shall be subject to the minimum requirements of paragraph (a). Mass.

Gen. Laws Ann. ch. 269, § 10 (West)

Whoever, except as provided by law, in a single transaction or occurrence or in a series of transactions within a twelve month period, knowingly or intentionally distributes, sells, or transfers possession of a quantity of firearms, rifles, shotguns, machine guns, or any combination thereof, shall, if the quantity of firearms, rifles, shotguns, machine guns, or any combination thereof is guilty of a felony. Mass. Gen. Laws Ann. ch. 269, § 10E

Possession of Endangered / Threatened Species

Except as otherwise provided in this chapter, no person may take, possess, transport, export, process, sell or offer for sale, buy or offer to buy, nor shall a common or contract carrier knowingly transport or receive for shipment, any plant or animal species listed as endangered, threatened or of special concern or listed under the Federal Endangered Species Act. Mass. Gen. Laws Ann. ch. 131A, § 2 (West)

Transfer / Possession of Alcohol

Any person may, but only for his own use and that of his family and guests, transport alcoholic beverages or alcohol, without any license or permit . . . Mass. Gen. Laws Ann. ch. 138, § 22 (West)

In order to ensure the necessary control of traffic in alcoholic beverages for the preservation of the public peace and order, the shipment of such beverages into the commonwealth, except as provided in this section and section 19F, is hereby prohibited. Mass. Gen. Laws Ann. ch. 138, § 18 (West)

Michigan

Fiduciary / Trustee Liability

A trustee is personally liable for an obligation arising from ownership or control of the trust estate property or for a tort committed in the course of administration of the trust estate only if the trustee is personally at fault. Mich. Comp. Laws Ann. § 700.7910 (West)

Trustee may appoint an independent special trustee to hold title to, and take a reasonably required action relating to environmental law in regard to, property tendered to the trust . . . Mich. Comp. Laws Ann. § 700.7818 (West)

Beneficiaries may bring a judicial proceeding against a trustee for breach of trust shall within 1 year after an adequate report or 5 years terminating events. Mich. Comp. Laws Ann. § 700.7905 (West)

Prudent investor rule / diversification

A fiduciary shall invest and manage assets held in a fiduciary capacity as a prudent investor would . . . To satisfy this standard, the fiduciary must exercise reasonable care, skill, and caution. Mich. Comp. Laws Ann. § 700.1502 (West)

A fiduciary shall diversify the investments of a fiduciary estate unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the fiduciary estate are better served without diversifying. Mich. Comp. Laws Ann. § 700.1504 (West)

Illegal possession / transfer of firearm

A person shall not manufacture, sell, offer for sale, or possess any of the following: A machine gun or firearm that shoots or is designed to shoot automatically more than 1 shot without manual reloading, by a single function of the trigger; a muffler or silencer; a bomb or bombshell; a blackjack, slingshot, billy, metallic knuckles, sand club, sand bag, or bludgeon;. . . Mich. Comp. Laws Ann. § 750.224 (West)

Possession of Endangered / Threatened Species

Except as otherwise provided in this part, a person shall not take, possess, transport, import, export, process, sell, offer for sale, buy, or offer to buy, and a common or contract carrier shall not transport or receive for shipment, any species of fish, plants, or wildlife appearing on the following lists: the list of fish, plants, and wildlife indigenous to the state determined to be endangered or threatened within the state pursuant to section 36503¹ or subsection (3); the United States list of endangered or threatened native fish and wildlife. This section does not prohibit any of the importation of a trophy under a permit issued pursuant to section 10 of the endangered species act of 1973, 16 USC 1539, which is not for resale and which was lawfully taken in a manner permitted by the laws of the state, territory, or country where the trophy was caught, taken, or killed. Mich. Comp. Laws Ann. § 324.36505 (West)

Transfer / Possession of Alcohol

A person, directly or indirectly, himself or herself or by his or her clerk, agent, or employee, shall not manufacture, manufacture for sale, sell, offer or keep for sale, barter, furnish, import, import for sale, transport for hire, transport, or possess any alcoholic liquor unless the person complies with this act. Mich. Comp. Laws Ann. § 436.1901 (West)

Minnesota

Fiduciary / Trustee Liability

A trustee who is not otherwise a responsible party for a release or threatened release of a hazardous substance from a facility is not a responsible person . . . solely because the facility is among the trust assets or solely because the trustee has the capacity to direct the operation of the facility. Minn. Stat. Ann. § 115B.03 (West)

Except where the Uniform Commercial Code otherwise prescribes, the following actions shall be commenced within six years: (7) to enforce a trust or compel a trustee to account, where the trustee has neglected to discharge the trust, or claims to have fully performed it, or has repudiated the trust relation. Minn. Stat. Ann. § 541.05 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would . . . The trustee shall exercise reasonable care, skill, and caution.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Minn. Stat. Ann. § 501B.151 (West)

Illegal possession / transfer of firearm

The following persons shall not be entitled to possess a pistol or semiautomatic military-style assault weapon or, except for clause (1), any other firearm: juvenile delinquents, the mentally ill, those with chemical dependencies, felons . . . Minn. Stat. Ann. § 624.713 (West)

It is illegal to receive or possess a firearm, the serial number or other identification of which has been obliterated, removed, changed, or altered; or receives or possesses a firearm that is not identified by a serial number. Minn. Stat. Ann. § 609.667 (West)

Possession of Endangered / Threatened Species

A person may not take, import, transport, or sell an endangered species of wild animal, or sell, or possess with intent to sell an article made from the parts of a wild animal, except as provided in section 84.0895. Minn. Stat. Ann. § 97A.501 (West)

Notwithstanding any other law, a person may not take, import, transport, or sell any portion of an endangered species of wild animal or plant, or sell or possess with intent to sell an article made with any part of the skin, hide, or parts of an endangered species of wild animal or plant. Minn. Stat. Ann. § 84.0895 (West)

Transfer / Possession of Alcohol

A person who enters Minnesota from another state and who imports or possesses alcoholic beverages in excess of the tax-exempt quantities provided for in section 297G.07, subdivision 2, paragraphs (a), (b), and (c), is guilty of a misdemeanor. Minn. Stat. Ann. § 340A.7035 (West)

No person may consign, ship, or deliver alcoholic beverages to any place in Minnesota except to a licensed wholesaler's warehouse, if the alcoholic beverages: (1) were manufactured outside Minnesota; and (2) have not previously been unloaded into a licensed wholesaler's warehouse in Minnesota. Minn. Stat. Ann. § 340A.3021 (West)

Mississippi

Fiduciary / Trustee Liability

A fiduciary in its or his individual capacity shall not be considered an owner or operator of any property of the trust or estate for the purposes of any environmental law. Miss. Code. Ann. § 91-9-9 (West)

Prudent investor rule / diversification

Notwithstanding any other provision of this chapter [concerning environmental liability] the fiduciary is subject at all times to the provisions of the Prudent Investor Standard in all its dealings. Miss. Code. Ann. § 91-9-9 (West)

A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.. Miss. Code. Ann. § 91-9-603 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Miss. Code. Ann. § 91-9-605 (West)

Illegal possession / transfer of firearm

It shall be unlawful for any person who has been convicted of a felony under the laws of this state, any other state, or of the United States to possess any firearm or any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, or any muffler or silencer for any firearm unless such person has received a pardon for such felony, has received a relief from disability pursuant to Section 925(c) of Title 18 of the United States Code, or has received a certificate of rehabilitation pursuant to subsection. Miss. Code. Ann. § 97-37-5 (West)

It is unlawful for any person knowingly or intentionally to possess, receive, retain, acquire or obtain possession or dispose of a stolen firearm or attempt to possess, receive, retain, acquire or obtain possession or dispose of a stolen firearm. It is unlawful for any person knowingly or intentionally to sell, deliver or transfer a stolen firearm or attempt to sell, deliver or transfer a stolen firearm. Miss. Code. Ann. § 97-37-35 (West)

Possession of Endangered / Threatened Species

Except as otherwise provided in Sections 49-5-101 through 49-5-119, it shall be unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship, . . . any species or subspecies of wildlife appearing on . . . (2) the United States' List of Endangered Native Fish and Wildlife . . . and (3) the United States' List of Endangered Foreign Fish and Wildlife (Part 17 of Title 50, Code of Federal Regulations, Appendix A). . . Miss. Code. Ann. § 49-5-109 (West)

Transfer / Possession of Alcohol

It shall be unlawful for any person to manufacture, distill, brew, sell, possess, import into this state, export from the state, transport, distribute, warehouse, store, solicit, take order for, bottle, rectify, blend, treat, mix or process any alcoholic beverage except as authorized in this chapter. However, nothing contained herein shall prevent importers, wineries and distillers of alcoholic beverages from storing such alcoholic beverages in private bonded warehouses located within the State of Mississippi . . . Miss. Code. Ann. § 67-1-9 (West)

Missouri

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. Mo. Ann. Stat. § 456.10-1010 (West)

Trustee may inspect, investigate, take action to prevent, abate, decline to accept, or otherwise remedy any actual or potential violation of any environmental law . . . Mo. Ann. Stat. § 456.8-816 (West)

A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after proper notice is given or five years certain terminating events. Mo. Ann. Stat. § 456.10-1005 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would . . . In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Mo. Ann. Stat. § 469.902 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Mo. Ann. Stat. § 469.903 (West)

Illegal possession / transfer of firearm

A person commits the crime of unlawful possession of a firearm if such person knowingly has any firearm in his or her possession and: (1) Such person has been convicted of a felony under the laws of this state, or of a crime under the laws of any state or of the United States which, if committed within this state, would be a felony; or (2) Such person is a fugitive from justice, is habitually in an intoxicated or drugged condition, or is currently adjudged mentally incompetent. Mo. Ann. Stat. § 571.070

A person commits a crime if such person knowingly possesses, manufactures, transports, repairs, or sells: (1) An explosive weapon;. . . (3) A gas gun; (4) A bullet or projectile which explodes or detonates upon impact because of an independent explosive charge after having been shot from a firearm; or (5) Knuckles; or (6) Any of the following in violation of federal law:(a) A machine gun; (b) A short-barreled rifle or shotgun; (c) A firearm silencer; or (d) A switchblade knife. Mo. Ann. Stat. § 571.020 (West)

Possession of Endangered / Threatened Species

The importation, transportation, or sale of any endangered species of fish or wildlife, or hides or other parts thereof, or the sale or possession with intent to sell any article made in whole or in part from the skin, hide or other parts of any endangered species of fish or wildlife is prohibited. Mo. Ann. Stat. § 252.240 (West)

Transfer / Possession of Alcohol

No person, except carriers regulated by the motor carrier and railroad safety division of the department of economic development under chapters 387, 389 and 390, RSMo, shall transport into, within, or through the state of Missouri any intoxicating liquors in quantities larger than five gallons unless such person holds a valid license or permit . . . Mo. Ann. Stat. § 311.420 (West)

Montana

Fiduciary / Trustee Liability

A beneficiary may be precluded from holding the trustee liable for a breach of trust by the beneficiary's release or contract . . . Mont. Code Ann. § 72-34-515

A trustee is personally liable for torts committed in the course of administration of the trust only if the trustee is personally at fault. Mont. Code Ann. § 72-36-103

A trustee is personally liable for obligations arising from ownership or control of trust property only if the trustee is personally at fault. Mont. Code Ann. § 72-36-102

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Mont. Code Ann. § 72-34-603

Trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is not prudent to do so. Mont. Code Ann. § 72-34-605

Illegal possession / transfer of firearm

A person commits the offense of unlawful possession of a firearm by a convicted person if the person purposely or knowingly purchases or possesses a firearm after the person has been convicted of: (a) a felony for which the person received an additional sentence under 46-18-221; or (b) an offense under the law of another state or of the United States that is equivalent to an offense that when committed in Montana is subject to an additional sentence under 46-18-221. Mont. Code Ann. § 45-8-313

Possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 10 years. Mont. Code Ann. § 45-8-304

Possession of Endangered / Threatened Species

Except as otherwise provided in this part, it is unlawful for any person to take, possess, transport, export, sell, or offer for sale and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists: (a) the list of wildlife indigenous to the state . . . (b) any species or subspecies of fish and wildlife included by the department and appearing on the United

States' list of endangered native fish and wildlife (part 17 of Title 50, Code of Federal Regulations, appendix D). Mont. Code Ann. § 87-5-107

Transfer / Possession of Alcohol

Except as provided by this code, a person or the person's agents or employees may not: (a) expose or keep an alcoholic beverage for sale; (b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic beverage; or (c) in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person an alcoholic beverage. Mont. Code Ann. § 16-6-301

Nebraska

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. Neb. Rev. Stat. § 30-3899

Trustee may inspect, investigate, take action to prevent, abate, decline to accept, or otherwise remedy any actual or potential violation of any environmental law . . . Neb. Rev. Stat. § 30-3881

A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after proper notice is given or four years certain terminating events. Neb. Rev. Stat. § 30-3894

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets. Neb. Rev. Stat. § 30-3886

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would . . . In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Neb. Rev. Stat. § 30-3884

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Neb. Rev. Stat. § 30-3885

Illegal possession / transfer of firearm

It is illegal for any person to possess a firearm, a knife, or brass or iron knuckles who has previously been convicted of a felony, who is a fugitive from justice, or who is the subject of a current and validly issued domestic violence protection order and is knowingly violating such order . . . Neb. Rev. Stat. § 28-1206

Any person or persons who shall transport or possess any machine gun, short rifle, or short shotgun commits a Class IV felony. Neb. Rev. Stat. § 28-1203

Possession of Endangered / Threatened Species

With respect to any endangered species of wildlife, it shall be unlawful, except as provided in subsection (7) of this section, for any person subject to the jurisdiction of this state to: (a) Export any such species from this state; (b) Take any such species within this state; (c) Possess, process, sell or offer for sale, deliver, carry, transport, or ship, by any means whatsoever except as a common or contract motor carrier under the jurisdiction of the Public Service Commission or the Interstate Commerce Commission, any such species . . . Neb. Rev. Stat. § 37-806

Transfer / Possession of Alcohol

It shall be unlawful for any person to purchase, receive, acquire, accept, or possess any alcoholic liquor acquired from any person other than one duly licensed to handle alcoholic liquor under the Nebraska Liquor Control Act unless within the specific exemptions or exceptions provided in the act. Neb. Rev. Stat. § 53-175

Nevada

Fiduciary / Trustee Liability

Subject to the rights of exoneration or reimbursement provided in NRS 163.130, a trustee may be held personally liable for any tort committed by the trustee . . . only if the trustee, agent or employee is personally at fault. Nev. Rev. Stat. Ann. § 163.140 (West)

Trustees shall make disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination. Nev. Rev. Stat. Ann. § 164.905 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust property as a prudent investor would, considering the terms, purposes, requirements for distribution, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution. Nev. Rev. Stat. Ann. § 164.745 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Nev. Rev. Stat. Ann. § 164.750 (West)

Illegal possession / transfer of firearm

A person shall not knowingly possess a firearm on which the serial number has been intentionally changed, altered, removed or obliterated. Any person who violates the provisions of this subsection is guilty of a category D felony and shall be punished as provided in NRS 193.130. Nev. Rev. Stat. Ann. § 202.277 (West)

Except as otherwise provided in this section and NRS 202.355 and 202.3653 to 202.369, inclusive, a person within this State shall not: Manufacture or cause to be manufactured, or import into the State, or keep, offer or expose for sale, or give, lend, possess or use a machine gun or a silencer, unless authorized by federal law. Nev. Rev. Stat. Ann. § 202.350 (West)

Possession of Endangered / Threatened Species

Except as otherwise provided by this title or a regulation adopted pursuant thereto, it is unlawful for any person to hunt or take any dead or alive birds, nests of birds or eggs of birds protected by that certain Act of Congress commonly known and referred to as the Migratory Bird Treaty Act of July 3, 1918, as amended, 16 U.S.C. §§ 703 et seq., or protected by a regulation of the Commission. Nev. Rev. Stat. Ann. § 503.620 (West)

Whenever tags are required for any species of wildlife, it is unlawful to have any of that species in possession without the tag attached thereto and such possession without an attached tag is prima facie evidence that the game is illegally taken and possessed. Nev. Rev. Stat. Ann. § 502.150 (West)

Transfer / Possession of Alcohol

Except as otherwise provided in subsection 2, a person shall not directly or indirectly, himself or herself or by his or her clerk, agent or employee, offer, keep or possess for sale, furnish or sell, or solicit the purchase or sale of any liquor in this State, or transport or import or cause to be transported or imported any liquor in or into this State for delivery, storage, use or sale therein, unless the person: (a) Has complied fully with the provisions of this chapter; and
(b) Holds an appropriate, valid license, permit or certificate issued by the Department. Nev. Rev. Stat. Ann. § 369.490 (West)

New Hampshire

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. N.H. Rev. Stat. Ann. § 564-B:10-1010

Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit. N.H. Rev. Stat. Ann. § 564-B:10-1003

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. N.H. Rev. Stat. Ann. § 564-B:9-902

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. N.H. Rev. Stat. Ann. § 564-B:9-903

Illegal possession / transfer of firearm

A person is guilty of a class B felony if he: (a) Owns or has in his possession or under his control, a pistol, revolver, or other firearm, or slingshot, metallic knuckles, billies, stiletto, switchblade knife, sword cane, pistol cane, blackjack, dagger, dirk-knife, or other deadly weapon as defined in RSA 625:11, V; and (b) Has been convicted in either a state or federal court in this or any other state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States of: (1) A felony against the person or property of another . . . N.H. Rev. Stat. Ann. § 159:3

No person shall sell, deliver, or otherwise transfer a pistol, revolver or any other firearm, to a person who has been convicted, in any jurisdiction, of a felony. Whoever violates the provisions of this section shall be guilty of a class B felony. N.H. Rev. Stat. Ann. § 159:7

Possession of Endangered / Threatened Species

With respect to any endangered or threatened species, it is unlawful, except as provided in RSA 212-A:7, II for any person to: (a) Export any such species from this state; (b) Take any such species within this state; (c) Possess, process, sell or offer for sale, deliver, carry, transport or ship, by any means whatsoever, any such species; (d) Violate any rule adopted under this chapter pertaining to the conservation of such species of wildlife listed pursuant to RSA 212-A:6, IV. N.H. Rev. Stat. Ann. § 212-A:7

Transfer / Possession of Alcohol

No person shall possess, transport, procure, furnish, or give away any beverage or liquor except such as has been sold under the provisions of this title or legally purchased outside the state and except as otherwise provided in this title. N.H. Rev. Stat. Ann. § 179:1

New Jersey

Fiduciary / Trustee Liability

A trustee shall make disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination. N.J. Stat. Ann. § 3B:19B-25 (West)

Prudent investor rule / diversification

A fiduciary shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the fiduciary shall exercise reasonable care, skill, and caution. N.J. Stat. Ann. § 3B:20-11.3 (West)

A fiduciary shall diversify the investments of the trust unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. N.J. Stat. Ann. § 3B:20-11.4 (West)

Illegal possession / transfer of firearm

Except as provided in subsection b. of this section, any person, having been convicted in this State or elsewhere of [a felony], who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium . . . or any person who has been convicted of other than a disorderly persons or petty disorderly persons offense for the unlawful use, possession or sale of a controlled dangerous substance as defined in N.J.S.2C:35-2 who purchases, owns, possesses or controls any of the said weapons is guilty of a crime of the fourth degree. N.J. Stat. Ann. § 2C:39-7 (West)

The temporary possession of a firearm by a person receiving, possessing, carrying or using the firearm under the provisions of section 1 of P.L.1997, c. 375 (C.2C:58-3.2) shall not be considered unlawful possession under the provisions of this section. N.J. Stat. Ann. § 2C:39-5 (West)

Possession of Endangered / Threatened Species

Except as otherwise provided in this act or regulations adopted thereunder, no person shall take, possess, transport, export, process, sell or offer for sale, or ship, and no common or contract carrier shall knowingly transport or receive for shipment any species or subspecies of wildlife appearing on the following lists: (1) the list of wildlife determined to be endangered by the commissioner pursuant to this act; (2) the list of nongame species regulated pursuant to this act; and (3) any Federal list of endangered species. N.J. Stat. Ann. § 23:2A-6 (West)

Transfer / Possession of Alcohol

Illegal for any person to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport any alcoholic beverage in violation of this chapter; or b. Import, own, possess, keep or store in this state alcoholic beverages with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport alcoholic beverages in violation of the provisions of this chapter; or . . . e. Possess, have custody of, offer for sale or sell any illicit beverage. N.J. Stat. Ann. § 33:1-50 (West)

New Mexico

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. N.M. Stat. Ann. § 46A-10-1010 (West)

A beneficiary shall not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent

a report that adequately disclosed the existence of a potential claim, or five years after certain terminating events. N.M. Stat. Ann. § 46A-10-1005 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would. . . In satisfying this standard, the trustee shall exercise reasonable care, skill and caution. N.M. Stat. Ann. § 45-7-603 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. N.M. Stat. Ann. § 45-7-604 (West)

Illegal possession / transfer of firearm

It is unlawful for a felon to receive, transport or possess any firearm or destructive device in this state. Any person violating the provisions of this section shall be guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act. N.M. Stat. Ann. § 30-7-16 (West)

Possession of Endangered / Threatened Species

In the event the jaguar is de-listed as a federal endangered species, the department of game and fish shall prohibit the taking, possession and sale of jaguars or parts thereof. N.M. Stat. Ann. § 17-2-4.1 (West)

Except as otherwise provided in the Wildlife Conservation Act, it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship any species of wildlife appearing on any of the following lists: (1) the list of wildlife indigenous to the state determined to be endangered within the state as set forth by regulations of the commission; and (2) the United States lists of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973¹ as endangered or threatened species, but only to the extent that those lists are adopted for this purpose by regulations of the commission. N.M. Stat. Ann. § 17-2-41 (West)

Transfer / Possession of Alcohol

It is unlawful for any person to have in his possession with the intent to sell or resell any alcoholic beverages which to that person's knowledge have been manufactured or transported into this state in violation of the laws of this state. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. N.M. Stat. Ann. § 60-7A-6 (West)

New York

Fiduciary / Trustee Liability

Except as otherwise provided in this article, an express trust vests in the trustee the legal estate, subject only to the execution of the trust, and the beneficiary does not take any

legal estate in the property but may enforce the trust. N.Y. Est. Powers & Trusts Law § 7-2.1 (McKinney)

In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed or other instrument, every fiduciary is authorized to invest and reinvest property of the estate or trust under the provisions of the will, deed or other instrument or as otherwise provided by law and to effect and keep in force fire, rent, title, liability, casualty or other insurance to protect the property of the estate or trust and to protect the fiduciary. N.Y. Est. Powers & Trusts Law § 11-1.1 (McKinney)

Prudent investor rule / diversification

A trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument. A trustee is required to diversify assets unless the trustee reasonably determines that it is in the interests of the beneficiaries not to diversify. N.Y. Est. Powers & Trusts Law § 11-2.3 (McKinney)

Illegal possession / transfer of firearm

A person is guilty of criminal possession of a weapon in the fourth degree when: He possesses a rifle, shotgun, antique firearm, black powder rifle, black powder shotgun, or any muzzle-loading firearm, and has been convicted of a felony or serious offense. N.Y. Penal Law § 265.01 (McKinney)

A person is guilty of criminal sale of a firearm in the third degree when such person is not authorized pursuant to law to possess a firearm and such person unlawfully either: (1) sells, exchanges, gives or disposes of a firearm or large capacity ammunition feeding device to another person; or (2) possesses a firearm with the intent to sell it. N.Y. Penal Law § 265.11 (McKinney)

Possession of Endangered / Threatened Species

Notwithstanding any other provision of this chapter, the taking, importation, transportation, possession or sale of any endangered or threatened species of fish, shellfish, crustacea or wildlife, or hides or other parts thereof, or the sale or possession with intent to sell any article made in whole or in part from the skin, hide or other parts of any endangered or threatened species of fish, shellfish, crustacea or wildlife is prohibited, except under license or permit from the department. N.Y. Env'tl. Conserv. Law § 11-0535 (McKinney)

Transfer / Possession of Alcohol

Any person who shall knowingly possess or have under his control any illicit alcoholic beverages is guilty of a misdemeanor. N.Y. Alco. Bev. Cont. Law § 151 (McKinney)

North Carolina

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. N.C. Gen. Stat. Ann. § 36C-10-1010 (West)

A decision by a trustee not to inspect property, or to decline to accept property, shall not create any inference as to liability, under any environmental law, with respect to that property. N.C. Gen. Stat. Ann. § 36C-10-1005 (West)

No proceeding against a trustee for breach of trust may be commenced more than five years after the first to occur of: (i) the removal, resignation, or death of the trustee; (ii) the termination of the beneficiary's interest in the trust; or (iii) the termination of the trust.

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. N.C. Gen. Stat. Ann. § 36C-9-902 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. N.C. Gen. Stat. Ann. § 36C-9-903 (West)

Illegal possession / transfer of firearm

It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer. This section does not apply to an antique firearm, as defined in G.S. 14-409.11. N.C. Gen. Stat. Ann. § 14-415.1 (West)

Possession of Endangered / Threatened Species

It is unlawful to take, possess, transport, sell, barter, trade, exchange, export, or offer for sale, barter, trade, exchange or export, or give away for any purpose including advertising or other promotional purpose any animal on a protected wild animal list, except as authorized according to the regulations of the Commission, including those promulgated pursuant to G.S. 113-333(1). N.C. Gen. Stat. Ann. § 113-337 (West)

Transfer / Possession of Alcohol

It shall be unlawful for any person to sell any alcoholic beverage, or possess any alcoholic beverage for sale, without first obtaining the applicable ABC permit and revenue licenses. (b) Prima Facie Evidence.--Possession of the following amounts of

alcoholic beverages, without a permit authorizing that possession, shall be prima facie evidence that the possessor is possessing those alcoholic beverages for sale: (1) More than 80 liters of malt beverages, other than draft malt beverages in kegs; (2) More than eight liters of spirituous liquor; or (3) Any amount of non-tax paid alcoholic beverages. N.C. Gen. Stat. Ann. § 18B-304 (West)

North Dakota

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. N.D. Cent. Code Ann. § 59-18-10 (West)

A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim or within 5 years of certain terminating events. N.D. Cent. Code Ann. § 59-18-05 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. N.D. Cent. Code Ann. § 59-17-02 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. N.D. Cent. Code Ann. § 59-17-03 (West)

Illegal possession / transfer of firearm

A person who has been convicted anywhere of a felony offense involving violence or intimidation . . . or an equivalent felony offense of another state or the federal government is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest. N.D. Cent. Code Ann. § 62.1-02-01 (West)

No person may purchase, sell, have, or possess a machine gun, fully automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases, or any other federally licensed firearm or dangerous weapon unless that person has complied with the National Firearms Act [26 U.S.C. 5801-5872]. N.D. Cent. Code Ann. § 62.1-05-01 (West)

Possession of Endangered / Threatened Species

Nothing in this title prohibits the use of any part of a legally taken game bird for decorative purposes or in the making of art works for private use or sale, except that any

part of any legally taken migratory bird may not be sold or bartered except as provided under federal regulations. N.D. Cent. Code Ann. § 20.1-04-02.1 (West)

Transfer / Possession of Alcohol

Any individual knowingly delivering alcoholic beverages to an individual under twenty-one years of age, except as allowed under section 5-02-06, or to a habitual drunkard, an incompetent, or an obviously intoxicated individual is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2. N.D. Cent. Code Ann. § 5-01-09

Ohio

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. Ohio Rev. Code Ann. § 5810.10 (West)

A beneficiary may not commence a proceeding against a trustee for breach of trust more than two years after the date the beneficiary, a representative of the beneficiary, or a beneficiary surrogate is sent a report that adequately discloses the existence of a potential claim or within four years of certain terminating events, including the time the beneficiary “knew or should have known” about the breach. Ohio Rev. Code Ann. § 5810.05 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this requirement, the trustee shall exercise reasonable care, skill, and caution. Ohio Rev. Code Ann. § 5809.02 (West)

A trustee shall diversify the investments of a trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Ohio Rev. Code Ann. § 5809.03 (West)

Illegal possession / transfer of firearm

No person shall recklessly sell, lend, give, or furnish any firearm to any person prohibited by section 2923.13 or 2923.15 of the Revised Code from acquiring or using any firearm, or recklessly sell, lend, give, or furnish any dangerous ordnance to any person prohibited by section 2923.13, 2923.15, or 2923.17 of the Revised Code. Ohio Rev. Code Ann. § 2923.20 (West).

No person shall knowingly fail to report to law enforcement authorities forthwith the loss or theft of any firearm or dangerous ordnance in the person's possession or under the person's control. Ohio Rev. Code Ann. § 2923.20 (West)

Possession of Endangered / Threatened Species

No person shall catch, kill, injure, pursue, or have in the person's possession, either dead or alive, or purchase, expose for sale, transport, or ship to a point within or without the state, or receive or deliver for transportation any bird other than a game bird, or have in the person's possession any part of the plumage, skin, or body of any bird other than a game bird, except as permitted in Chapter 1531. Ohio Rev. Code Ann. § 1533.07 (West)

Transfer / Possession of Alcohol

No person, personally or by the person's clerk, agent, or employee, who is not the holder of an A, B, C, D, E, F, G, I, or S permit issued by the division, in force at the time, and authorizing the sale of beer, intoxicating liquor, or alcohol, or who is not an agent or employee of the division or the tax commissioner authorized to sell such beer, intoxicating liquor, or alcohol, shall sell, keep, or possess beer, intoxicating liquor, or alcohol for sale to any persons other than those authorized by Chapters 4301. and 4303. of the Revised Code to purchase any beer or intoxicating liquor. Ohio Rev. Code Ann. § 4301.58 (West)

Oklahoma

Fiduciary / Trustee Liability

Liability to third persons for any act, omission, or obligation of a trustee or trustees of an express trust when acting in such capacity, shall extend to the whole of the trust estate . . . but no personal liability shall attach to the trustee or the beneficiaries of such trust for any such act, omission or liability. Okla. Stat. Ann. tit. 60, § 174 (West)

A trustee shall make disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination. Okla. Stat. Ann. tit. 60, § 175.502 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Okla. Stat. Ann. tit. 60, § 175.62 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Okla. Stat. Ann. tit. 60, § 175.63 (West)

Illegal possession / transfer of firearm

It shall be unlawful for any person within this state to knowingly sell, trade, give, transmit or otherwise cause the transfer of rifles, shotguns or pistols to any convicted felon or an adjudicated delinquent, and it shall be unlawful for any person within this state to knowingly sell, trade, give, transmit or otherwise cause the transfer of any shotgun, rifle or pistol to any individual who is under the influence of alcohol or drugs or

is mentally or emotionally unbalanced or disturbed. Okla. Stat. Ann. tit. 21, § 1289.12 (West)

Possession of Endangered / Threatened Species

Except as otherwise provided by law, no person may possess any wildlife or parts thereof during the closed season for that particular wildlife species or any endangered or threatened species or parts thereof at any time . . . Okla. Stat. Ann. tit. 29, § 7-502 (West)

Transfer / Possession of Alcohol

It shall be unlawful for any person, firm, or corporation to have in their possession any alcoholic beverages with the intent to sell the same without having first procured a license therefor from the Alcoholic Beverage Laws Enforcement Commission as now provided for by law; and all alcoholic beverages found in the possession or under the control of any person or persons, firm, or corporation who, on the same date, or within fifteen (15) days prior thereto, has violated subsection C of Section 538 of this title, shall be seized by the arresting officer and shall be forfeited to the State of Oklahoma, as provided for in Section 539 of this title. Okla. Stat. Ann. tit. 37, § 568 (West)

Oregon

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. Or. Rev. Stat. Ann. § 130.845 (West)

A civil action against a trustee based on any act or omission of the trustee, whether based in tort, contract or other theory of recovery, must be commenced within six years after the date the act or omission is discovered, or six years after the date the act or omission should have been discovered, unless a report giving adequate disclosure of potential claims was made to the beneficiary, in which case the action must commence within one year. Or. Rev. Stat. Ann. § 130.820 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution. Or. Rev. Stat. Ann. § 130.755 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Or. Rev. Stat. Ann. § 130.760 (West)

Illegal possession / transfer of firearm

Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns or has in the person's possession or under the person's custody

or control any firearm commits the crime of felon in possession of a firearm. Or. Rev. Stat. Ann. § 166.270 (West)

A person may not sell, deliver or otherwise transfer any firearm that the person knows or reasonably should know is stolen. Or. Rev. Stat. Ann. § 166.470 (West)

Possession of Endangered / Threatened Species

Except as provided, no person shall take, import, export, transport, purchase or sell, or attempt to take, import, export, transport, purchase or sell, any threatened species or endangered species, or the skin, hides or other parts thereof, or any article made in whole or in part from the skin, hide or other parts of any threatened species or endangered species. Nothing in this section applies to the resale of used skins, hides or other parts of a threatened species or endangered species or an article made in whole or part thereof if the seller acquired the item sold prior to October 5, 1973. Or. Rev. Stat. Ann. § 498.026 (West)

Transfer / Possession of Alcohol

(2) No person shall purchase, possess, transport or import, except for sacramental purposes, an alcoholic beverage unless it is procured from or through the Oregon Liquor Control Commission, except as provided otherwise in the Liquor Control Act. (3) No person not licensed under the Liquor Control Act shall sell, solicit, take orders for or peddle alcoholic beverages. Or. Rev. Stat. Ann. § 471.405 (West)

Pennsylvania

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. 20 Pa. Cons. Stat. Ann. § 7790 (West)

A beneficiary is barred from challenging a transaction or asserting a claim against a trustee for breach of trust after thirty months if the transaction was disclosed in an annual report. A beneficiary is barred from asserting a claim five years after certain disqualifying events. 20 Pa. Cons. Stat. Ann. § 7785 (West)

Prudent investor rule / diversification

A fiduciary shall invest and manage property held in a trust as a prudent investor would, by considering the purposes, terms and other circumstances of the trust and by pursuing an overall investment strategy reasonably suited to the trust. 20 Pa. Cons. Stat. Ann. § 7203 (West)

A fiduciary, in the exercise of reasonable care, skill and caution, may retain any asset received in kind, even though the asset constitutes a disproportionately large share of the portfolio. 20 Pa. Cons. Stat. Ann. § 7205 (West)

Illegal possession / transfer of firearm

A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth. 18 Pa. Cons. Stat. Ann. § 6105 (West)

A person commits a misdemeanor of the first degree if, except as authorized by law, he makes repairs, sells, or otherwise deals in, uses, or possesses any offensive weapon. It is a defense under this section for the defendant to prove by a preponderance of evidence that he possessed or dealt with the weapon solely as a curio or in a dramatic performance, or that, with the exception of a bomb, grenade or incendiary device, he complied with the National Firearms Act (26 U.S.C. § 5801 et seq.). 18 Pa. Cons. Stat. Ann. § 908 (West)

Possession of Endangered / Threatened Species

It is unlawful for any person to import, export, transport, sell, resell, exchange, take or possess or conspire, aid, abet, assist or attempt to import, export, transport, sell, resell, buy, exchange, take or possess any birds or animals of any endangered or threatened species, living or dead, or any parts thereof, including eggs, or to violate any regulations pertaining to such wildlife or this section. 34 Pa. Cons. Stat. Ann. § 2924 (West)

Transfer / Possession of Alcohol

No property rights shall exist in any liquor, alcohol or malt or brewed beverage illegally manufactured or possessed, or in any still, equipment, material, utensil, vehicle, boat, vessel, animals or aircraft used in the illegal manufacture or illegal transportation of liquor, alcohol or malt or brewed beverages. 47 Pa. Stat. Ann. § 6-601 (West)

Rhode Island

Fiduciary / Trustee Liability

Fiduciary has the power to use assets of the trust which the trustee in good faith deems necessary to prevent, abate, clean up, remedy, or otherwise respond to environmental contamination. R.I. Gen. Laws Ann. § 18-4-26 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. R.I. Gen. Laws Ann. § 18-15-2 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. R.I. Gen. Laws Ann. § 18-15-3 (West)

Illegal possession / transfer of firearm

No person who has been convicted in this state or elsewhere of a crime of violence or who is a fugitive from justice shall purchase, own, carry, transport, or have in his or her possession any firearm. R.I. Gen. Laws Ann. § 11-47-5 (West)

No person shall manufacture, sell, purchase, or possess a machine gun except as otherwise provided in this chapter. No person shall have in his or her possession or under his or her control any sawed-off shotgun or sawed-off rifle as defined in § 11-47-2. R.I. Gen. Laws Ann. § 11-47-8 (West)

This chapter shall not apply to antique firearms unsuitable for use, nor to collections of firearms utilized and maintained for educational, scientific, or any similar purpose without intent to use the firearms. R.I. Gen. Laws Ann. § 11-47-25 (West)

Possession of Endangered / Threatened Species

Individuals in possession of the skins of endangered species must show that the skins were purchased or obtained prior to January 1, 1974. R.I. Gen. Laws Ann. § 20-37-4 (West)

No person shall buy, sell, offer for sale, store, transport, import, export, or otherwise traffic in any animal or plant or any part of any animal or plant whether living, dead, processed, manufactured, preserved, or raw if the animal or plant has been declared to be an endangered species by either the United States secretaries of the interior or commerce or the director of the Rhode Island department of environmental management. R.I. Gen. Laws Ann. § 20-37-3 (West)

Transfer / Possession of Alcohol

Except as otherwise provided in subsection (d) of this section it is unlawful for any person twenty-one (21) years of age or older: (3) to knowingly furnish any alcoholic beverage for the sale, delivery, service of or giving to any person who has not reached his or her twenty-first (21st) birthday; (4) to procure alcoholic beverages for the sale, delivery, service of or giving to any person who has not reached his or her twenty-first (21st) birthday . . . R.I. Gen. Laws Ann. § 3-8-11.1 (West)

South Carolina

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. S.C. Code Ann. § 62-7-1010

A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust, or within three years of qualifying events. S.C. Code Ann. § 62-7-1005

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. S.C. Code Ann. § 62-7-933

Illegal possession / transfer of firearm

It is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State any handgun to: (1) a person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions, or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent; (2) a person who is a member of a subversive organization . . . S.C. Code Ann. § 16-23-30; S.C. Code Ann. § 16-23-530

Possession of Endangered / Threatened Species

Except as otherwise provided in this chapter, it shall be unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship, and for any common or contract carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on any of the following lists: (1) the list of wildlife indigenous to the State determined to be endangered within the State pursuant to subsection (a); (2) the United States' List of Endangered Native Fish and Wildlife as it appears on July 2, 1974 (Part 17 of Title 50, Code of Federal Regulations, Appendix D) . . . S.C. Code Ann. § 50-15-40

Transfer / Possession of Alcohol

It is unlawful for a person to: (1) manufacture, store, keep, receive, have in possession, transport, ship, buy, sell, barter, exchange, or deliver alcoholic liquors, except liquors acquired in a lawful manner and except in accordance with the provisions of this title; or (2) accept, receive, or have in possession alcoholic liquors for unlawful use pursuant to the provisions of this title. S.C. Code Ann. § 61-6-4010

South Dakota

Fiduciary / Trustee Liability

Trustee shall make disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination. S.D. Codified Laws § 55-13A-502

A trustee may also be held personally liable for any tort committed by him subject to the rights of exoneration or reimbursement provided in §§ 55-4-22 and 55-4-23. S.D. Codified Laws § 55-4-28

Prudent investor rule / diversification

Unless altered by the terms of the trust instrument or a court order, the trustee's investment decisions and actions shall be judged in terms of the trustee's reasonable judgment regarding the anticipated effect on the trust portfolio as a whole under the facts and circumstances prevailing at the time of the decision or action. S.D. Codified Laws § 55-5-7

The trustee shall diversify the investments of the trust unless, under the circumstances, the trustee reasonably believes it is in the interests of the beneficiaries and furthers the purposes of the trust not to diversify. S.D. Codified Laws § 55-5-8

Illegal possession / transfer of firearm

No person who has been convicted in this state or elsewhere of a crime of violence or a felony . . . may possess or have control of a firearm. A violation of this section is a Class 6 felony. The provisions of this section do not apply to any person who was last discharged from prison, jail, probation, or parole more than fifteen years prior to the commission of the principal offense. S.D. Codified Laws § 22-14-15

Any person who knowingly possesses a controlled weapon is guilty of a Class 6 felony. S.D. Codified Laws § 22-14-6

Possession of Endangered / Threatened Species

Except as otherwise provided in this chapter, no person may take, possess, transport, import, export, process, sell, or offer for sale, buy or offer to buy, nor may a common or contract carrier transport or receive for shipment, any species of wildlife or plants appearing on the following lists: . . . (2) The United States list of endangered or threatened native wildlife effective on January 1, 1977. . . S.D. Codified Laws § 34A-8-9

A person may transport into South Dakota or otherwise possess, sell, or purchase within the state any animal or parts thereof appearing on any of the lists enumerated in § 34A-8-9 that were lawfully taken or acquired in another state . . . if the items are accompanied by the appropriate license, documentation, Convention on International Trade in Endangered Species (CITES) permit, or CITES tag. S.D. Codified Laws § 34A-8-10

Transfer / Possession of Alcohol

Any alcoholic beverage used or possessed in violation of provisions of this title constitutes contraband goods, and is subject to confiscation as provided in this chapter. S.D. Codified Laws § 35-10-11

Tennessee

Fiduciary / Trustee Liability

For tort actions, the debts, obligations and liabilities incurred by a trustee by reason of the ownership, management or control of trust property in the trustee's fiduciary capacity, shall be enforceable solely against the trust and its property, without any obligation or liability personally being borne by any trustee of such trust, unless the trustee is

personally at fault on account of their own willful misconduct. Tenn. Code Ann. § 35-15-1010 (West)

Trustee has authority to inspect trust property, and take action necessary to prevent, abate, or otherwise remedy an actual or potential environmental liability. Trustee is not liable for actions taken under this section or any otherwise taking action to comply with environmental law. Tenn. Code Ann. § 35-15-816 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Tenn. Code Ann. § 35-14-104 (West)

A trustee shall diversify the investments of the trust unless (1) there are special circumstances or (2) the property was initially part of the trust corpus or was acquired pursuant to proper authority. Tenn. Code Ann. § 35-14-105 (West)

Illegal possession / transfer of firearm

A person commits an offense who intentionally or knowingly possesses, manufactures, transports, repairs or sells: (1) An explosive or an explosive weapon; . . . (3) A machine gun; (4) A short-barrel rifle or shotgun; (5) A firearm silencer; (6) Hoax device;(7) A switchblade knife or knuckles; or (8) Any other implement for infliction of serious bodily injury or death that has no common lawful purpose. It is an affirmative defense to prosecution under this section that the person must prove by a preponderance of the evidence that: (1) The person's conduct was relative to dealing with the weapon solely as a curio, ornament or keepsake, and if the weapon is a type described in subdivisions (a)(1)-(5), that it was in a nonfunctioning condition and could not readily be made operable. Tenn. Code Ann. § 39-17-1302 (West)

Possession of Endangered / Threatened Species

Except as provided in regulations issued by the commission, it is unlawful for any person to take, attempt to take, possess, transport, export, process, sell or offer for sale or ship nongame wildlife. Subject to the same exception, it is also unlawful for any common or contract carrier knowingly to transport or receive for shipment nongame wildlife. Tenn. Code Ann. § 70-8-104 (West)

Transfer / Possession of Alcohol

It is an offense for any person, firm or corporation, other than a common carrier or entity licensed under this title, to transport, either in person or through an agent, employee or independent contractor, untaxed alcoholic beverages or wine as defined in § 57-3-101 within, into, through or from this state in quantities in excess of five gallons (5 gals). Any person, firm, corporation or association transporting any alcoholic beverages or wine within or into this state shall bear the burden of proof that the taxes imposed by this title on alcoholic beverages or wine have been paid. Tenn. Code Ann. § 57-3-401 (West)

Texas

Fiduciary / Trustee Liability

The trustee is not liable to the beneficiary for a loss or depreciation in value of the trust property or for acting or failing to act under Section 113.025 or under any other provision of this subtitle if the action or failure to act relates to compliance with an environmental law and if there is no gross negligence or bad faith on the part of the trustee. Trustee shall not be liable for any amount greater than maximum imposed by CERCLA. Tex. Prop. Code Ann. § 114.001 (West)

Trustee shall make disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination. Tex. Prop. Code Ann. § 116.202 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Tex. Prop. Code Ann. § 117.004 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Tex. Prop. Code Ann. § 117.005 (West)

Illegal possession / transfer of firearm

A person commits an offense if the person intentionally or knowingly possesses, manufactures, transports, repairs, or sells: (1) an explosive weapon; (2) a machine gun; (3) a short-barrel firearm; (4) a firearm silencer; (5) a switchblade knife; (6) knuckles; (7) armor-piercing ammunition; (8) a chemical dispensing device; (9) a zip gun; or (10) a tire deflation device. It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant to the National Firearms Act, as amended. Tex. Penal Code Ann. § 46.05 (West)

A person who has been convicted of a felony commits an offense if after the conviction the person possesses metal or body armor. Tex. Penal Code Ann. § 46.041 (West)

A person commits an offense if the person: knowingly sells a firearm or ammunition for a firearm to any person who has been convicted of a felony before the fifth anniversary of the later of the following dates: . . . Tex. Penal Code Ann. § 46.06 (West)

Possession of Endangered / Threatened Species

No person may possess, sell, distribute, or offer or advertise for sale any goods made from endangered fish or wildlife unless: (1) the goods were made from fish or wildlife that were born and raised in captivity for commercial purposes under the provisions of this chapter; or (2) the goods were made from fish or wildlife lawfully taken in another state and the person presents documented evidence to the department to substantiate that fact. Tex. Parks & Wild. Code Ann. § 68.015 (West)

Transfer / Possession of Alcohol

No person may possess, manufacture, transport, or sell an illicit beverage. Tex. Alco. Bev. Code Ann. § 103.01 (West)

Utah

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. Utah Code Ann. § 75-7-1010 (West)

A beneficiary may not commence a proceeding against a trustee for breach of trust more than six months after the date that the beneficiary or a person who may represent and bind the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding, or within one year of certain terminating events. Utah Code Ann. § 75-7-1005 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Utah Code Ann. § 75-7-902 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Utah Code Ann. § 75-7-903 (West)

Illegal possession / transfer of firearm

A Category I restricted person who intentionally or knowingly agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control: (a) any firearm is guilty of a second degree felony; or (b) any dangerous weapon other than a firearm is guilty of a third degree felony. Utah Code Ann. § 76-10-503 (West)

Possession of Endangered / Threatened Species

When a person is adjudged guilty of illegal taking, illegal possession, or wanton destruction of protected wildlife, other than a trophy animal, the court may order the defendant to pay restitution. Utah Code Ann. § 23-20-4.5 (West)

Transfer / Possession of Alcohol

The following are subject to forfeiture pursuant to Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act:

(a) an alcoholic product possessed, purchased, used, stored, sold, offered for sale,

furnished, given, received, warehoused, manufactured, distributed, shipped, carried, transported, or adulterated in violation of this title or commission rules. Utah Code Ann. § 32B-4-206 (West)

It is unlawful for a person or the person's staff to purchase, take, or accept an alcoholic product from another person, except as provided by this title or the rules of the commission adopted under this title. (2) An act is unlawful under Subsection (1) if it is taken: (a) directly or indirectly. Utah Code Ann. § 32B-4-408 (West)

Vermont

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. Vt. Stat. Ann. tit. 14A, § 1010 (West)

A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust, or within three years of certain terminating events. Vt. Stat. Ann. tit. 14A, § 1005 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Vt. Stat. Ann. tit. 14A, § 902 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Vt. Stat. Ann. tit. 14A, § 903 (West)

Illegal possession / transfer of firearm

For purposes of this chapter, “unlawful firearms” means firearms the possession of which constitutes a violation of federal or state law and firearms carried or used in violation of any federal or state law or in the commission of any federal or state felony. Vt. Stat. Ann. tit. 20, § 2302 (West)

Possession of Endangered / Threatened Species

Except as authorized under this chapter, a person shall not take, possess or transport wildlife or plants that are members of an endangered or threatened species. Vt. Stat. Ann. tit. 10, § 5403 (West)

Transfer / Possession of Alcohol

The commissioner . . . and any other law enforcement officer may arrest or take into custody . . . a person whom he or she finds in the act of manufacturing alcohol or possessing a still, or other apparatus for the manufacture of alcohol, or unlawfully selling,

bartering, possessing, furnishing or transporting alcohol, or unlawfully selling, furnishing or transporting spirituous liquor, or malt and vinous beverages, and shall seize the liquors, alcohol, vessels and implements of sale and the stills or other apparatus for the manufacture of alcohol in the possession of the person. He or she may also seize and take into custody any property described in this section. Vt. Stat. Ann. tit. 7, § 561 (West)

Virginia

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. Va. Code Ann. § 64.2-801 (West)

A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding, or within five years of certain terminating events. Va. Code Ann. § 64.2-796 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. Va. Code Ann. § 64.2-782 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Va. Code Ann. § 64.2-783 (West)

Illegal possession / transfer of firearm

It shall be unlawful for any person who has been convicted of a felony. . . to knowingly and intentionally possess or transport any firearm or ammunition for a firearm, any stun weapon as defined by § 18.2-308.1, or any explosive material . . . Va. Code Ann. § 18.2-308.2 (West)

It shall be unlawful for any person who is not a citizen of the United States and who is not lawfully present in the United States to knowingly and intentionally possess or transport any firearm. Va. Code Ann. § 18.2-308.2:01 (West)

It shall be unlawful for any person to manufacture, import, sell, transfer or possess any plastic firearm. As used in this section, “plastic firearm” means any firearm, including machine guns and sawed-off shotguns as defined in this chapter, containing less than 3.7 ounces of electromagnetically detectable metal in the barrel, slide, cylinder, frame or receiver of which, when subjected to inspection by X-ray machines commonly used at airports, does not generate an image that accurately depicts its shape. Va. Code Ann. § 18.2-308.5 (West)

Possession of Endangered / Threatened Species

The taking, transportation, possession, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568. Va. Code Ann. § 29.1-564 (West)

Transfer / Possession of Alcohol

No person, other than a common carrier, shall have, possess, keep, carry, ship or transport alcoholic beverages upon which the tax imposed by the laws of the United States has not been paid. Va. Code Ann. § 4.1-313 (West)

Washington

Fiduciary / Trustee Liability

A trustee may be held personally liable for any tort committed by him or her only if, and to the extent that, damages for the tort are not collectible from trust property as provided in and pursuant to subsection (1) of this section. Wash. Rev. Code Ann. § 11.98.110 (West)

A trustee shall make disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination. Wash. Rev. Code Ann. § 11.104A.260 (West)

Prudent investor rule / diversification

In applying a total asset management approach to fiduciary investments, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs. Wash. Rev. Code Ann. § 11.100.020 (West)

Subject to the provisions of RCW 11.100.060 and any express provisions in the trust instrument to the contrary, a fiduciary shall diversify the investments of the trust unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Wash. Rev. Code Ann. § 11.100.047 (West)

Illegal possession / transfer of firearm

It is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession or under control, any machine gun, short-barreled shotgun, or short-barreled rifle; or any part designed and intended solely and exclusively for use in a machine gun, short-barreled shotgun, or short-barreled rifle, or in converting a weapon into a machine gun, short-barreled shotgun, or short-barreled rifle . . . It shall be an affirmative defense to a prosecution brought under this section that the machine gun, short-barreled shotgun, or short-barreled rifle was acquired prior to July 1, 1994, and is possessed in compliance with federal law. Wash. Rev. Code Ann. § 9.41.190 (West)

The superior courts and the courts of limited jurisdiction of the state may order forfeiture of a firearm . . . in the possession of a person prohibited from possessing the firearm . . . Antique firearms and firearms recognized as curios, relics, and firearms . . . are exempt from destruction and shall be disposed of by auction or trade . . . Wash. Rev. Code Ann. § 9.41.098 (West)

Possession of Endangered / Threatened Species

A person is guilty of unlawful trafficking in fish, shellfish, or wildlife in the first degree if the person commits the act described by subsection (1) of this section and: (i) The fish, shellfish, or wildlife has a value of two hundred fifty dollars or more; or (ii) The fish, shellfish, or wildlife is designated as an endangered species or deleterious exotic wildlife and such trafficking is not authorized by any statute or department rule. Wash. Rev. Code Ann. § 77.15.260 (West)

Transfer / Possession of Alcohol

Except as otherwise provided in this title, any person who has or keeps or transports alcoholic beverages other than those purchased from the board, a state liquor store, or some person authorized by the board to sell them, shall be guilty of a violation of this title. Wash. Rev. Code Ann. § 66.44.160 (West)

West Virginia

Fiduciary / Trustee Liability

A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault. W. Va. Code Ann. § 44D-10-1010 (West)

A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding, or within five years of certain terminating events. W. Va. Code Ann. § 44D-10-1005 (West)

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution. W. Va. Code Ann. § 44-6C-2 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. W. Va. Code Ann. § 44-6C-3 (West)

Illegal possession / transfer of firearm

Except as provided in this section, no person shall possess a firearm, as such is defined in section two of this article, who: (1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; (2) Is habitually addicted to alcohol; (3) Is an unlawful user of or habitually addicted to any controlled substance . . . (5) Is an alien illegally or unlawfully in the United States; (6) Has been discharged from the armed forces under dishonorable conditions. W. Va. Code Ann. § 61-7-7 (West)

A person may not knowingly sell, rent, give or lend, or where the person is other than a natural person, knowingly permit an employee thereof to knowingly sell, rent give or lend a firearm or ammunition to a person prohibited by any provision of this article or the provisions of 18 U. S. C. § 922. W. Va. Code Ann. § 61-7-10 (West)

Possession of Endangered / Threatened Species

It is unlawful at any time for any person to take, possess, transport, import, export or process, sell or offer for sale, buy, barter or trade or offer to buy, barter or trade at any time or in any manner, any bald eagle . . . or any part, nest or egg thereof of the foregoing eagles, or to attempt to do any of these acts. Nothing in this section may be construed to prohibit the taking, possession or transportation of bald or golden eagles legally under the current federal Eagle Protection Act, 16 U.S.C. § 668a, and the current federal regulations, 50 CFR 22.1 et seq. W. Va. Code Ann. § 20-2-5c (West)

Transfer / Possession of Alcohol

A person shall not: (1) Manufacture or sell in this state without a license any alcoholic liquor except as permitted by this article; (2) Aid or abet in the manufacture or sale of alcoholic liquor without a license except as permitted by this article. W. Va. Code Ann. § 60-6-7 (West)

Wisconsin

Fiduciary / Trustee Liability

A trustee shall make disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination. Wis. Stat. Ann. § 701.20 (West)

Prudent investor rule / diversification

A fiduciary shall invest and manage assets as a prudent investor would. In satisfying this standard, the fiduciary shall exercise reasonable care, skill, and caution. A fiduciary shall diversify investments unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the trust is better served without diversifying. Wis. Stat. Ann. § 881.01 (West)

Illegal possession / transfer of firearm

It is a felony for a person to possess a firearm if he or she has been: (a) Convicted of a felony in this state. (b) Convicted of a crime elsewhere that would be a felony if committed in this state under certain circumstances. Wis. Stat. Ann. § 941.29 (West)

Whoever sells, delivers or possesses a firearm silencer is guilty of a Class H felony. This does not apply to sales or deliveries of firearm silencers to or possession of firearm silencers by any person who has complied with the licensing and registration requirements under 26 USC 5801 to 5872. Wis. Stat. Ann. § 941.298 (West)

No person may sell, possess, use or transport any machine gun or other full automatic firearm. Wis. Stat. Ann. § 941.26 (West)

In this section, “look-alike firearm” means any imitation of any original firearm that was manufactured, designed and produced after December 31, 1897, including and limited to toy guns, water guns, replica nonguns, and air-soft guns firing nonmetallic projectiles. “Look-alike firearm” does not include any imitation, nonfiring, collector replica of an antique firearm developed prior to 1898, or any traditional beebie, paint-ball or pellet-firing air gun that expels a projectile through the force of air pressure. (2) Beginning November 1, 1992, no person may sell or distribute any look-alike firearm. Whoever violates this subsection is subject to a Class A forfeiture. (3) This section does not apply to the sale or distribution of a look-alike firearm that complies with the marking or waiver requirements under 15 USC 5001(b). Wis. Stat. Ann. § 941.297 (West)

Possession of Endangered / Threatened Species

Except as provided in sub. (6r) or as permitted by departmental rule or permit: no person may take, transport, possess, process or sell within this state any wild animal specified by the department's endangered and threatened species list. Wis. Stat. Ann. § 29.604 (West)

Transfer / Possession of Alcohol

No person may sell, or possess with intent to sell, intoxicating liquor unless that person holds the appropriate license or permit. Whoever violates this subsection may be fined not more than \$10,000 or imprisoned for not more than 9 months or both. (2) The issuance of any current permit or special tax stamp of the federal government to any person, authorizing or permitting the person to sell intoxicating liquor, shall be prima facie evidence in any prosecution for violation of this section that the person was engaged in selling intoxicating liquor. Wis. Stat. Ann. § 125.66 (West)

Wyoming

Fiduciary / Trustee Liability

A fiduciary is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the fiduciary is personally at fault. Wyo. Stat. Ann. § 4-10-1010 (West)

A beneficiary may not commence a proceeding against a fiduciary for breach of trust more than two (2) years after the date the beneficiary or a representative of the beneficiary received a report that adequately disclosed the existence of a potential claim

for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding, or three years after certain terminating events. Wyo. Stat. Ann. § 4-10-1005

Prudent investor rule / diversification

A trustee shall invest and manage trust assets as a prudent investor would. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution. Wyo. Stat. Ann. § 4-10-902 (West)

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. Wyo. Stat. Ann. § 4-10-903 (West)

Illegal possession / transfer of firearm

Any person who has previously pleaded guilty to or been convicted of committing or attempting to commit a violent felony or a felony under W.S. 6-5-204(b), and has not been pardoned and who uses or knowingly possesses any firearm is guilty of a felony. Wyo. Stat. Ann. § 6-8-102 (West)

Possession of Endangered / Threatened Species

Wyoming Game and Fish Commission empowered to regulate or prohibit the importation of exotic species, small game animals, furbearing animals, protected animals, game birds, migratory birds, protected birds, and fish into Wyoming, and to regulate and permit the importation of big or trophy game animals into Wyoming only for exhibition purposes or for zoos. Wyo. Stat. Ann. § 23-1-302 (West)

Transfer / Possession of Alcohol

No person shall, without authorization from the commission or by law, personally transport alcoholic liquor or malt beverages into Wyoming for sale, use or consumption in the state when the applicable state excise tax has not been paid. No person shall import or transport at any given time more than three (3) liters of alcoholic liquor excluding wine, nine (9) liters of wine or five (5) gallons of malt beverage for the personal use of the possessor into Wyoming if the applicable state taxes have not been paid. This subsection shall not apply to a person importing manufactured wine in accordance with the provisions of W.S. 12-2-204. Wyo. Stat. Ann. § 12-3-101 (West)