

Spring 2011 Newsletter



David Brantz, his wife, Carly, and big sister, Samantha, are delighted to welcome Carina Jean Brantz, born on February 7, 2011. At birth, Carina weighed 7 pounds, 3 ounces and was 19 inches long.

David's practice focuses on estate planning, trust administration, probate, real estate and business law. He is also an active participant on the Board of Trustees for The Community Foundation serving Boulder County, the Boulder County Estate Planning Council, and the Colorado Bar Association's Trust and Estate Section.

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Serving as Trustee

Serving as trustee of a trust is an important and sometimes difficult job. You must abide by the terms of the trust instrument, as well as state and federal law. There are a variety of laws applicable to trusts that may not be readily apparent by reading the trust instrument, and yet you are required to adhere to them. It is important to understand your obligations and carry them out carefully in order to avoid personal liability. Below is a non-exclusive list of your responsibilities.¹

1. File Tax Returns. Depending upon the type of trust and the amount of annual income, you may need to file annual state and federal income tax returns for the trust.

2. Register the Trust. In most cases, irrevocable trusts that are administered in Colorado must be registered with the court in the county where the trust is administered. Many trusts have no other court involvement beyond the trust registration requirement.

3. Accountings. You should keep careful records of the trust assets, including receipts and disbursements. Under Colorado law, the trustee must provide information about the trust to the beneficiaries upon reasonable request. The trust instrument may require a greater level of disclosure. For example, it may direct the trustee to provide annual accountings to the beneficiaries, whether or not the beneficiaries request them.

4. Mandatory Distributions. You must follow the directions in the trust regarding distributions. The trust may mandate when certain distributions are made, such as requiring annual distribution of income or directing that a certain beneficiary receive a percentage of the trust principal upon reaching a certain age.

5. Discretionary Distributions. In many cases, trusts grant the trustee discretion to determine whether to make distributions. There may be some limitations on the discretion, such as providing that distributions can only be made for the beneficiary's health, education, maintenance and support, or requiring that the trustee first consider other resources available to the beneficiary before making distributions. These decisions can often be difficult to make because the trustee must exercise its discretion based on facts and circumstances. These determinations may yield different results even for beneficiaries of the same trusts.

6. Management of Assets. There are several fiduciary duties that apply to the management of assets. Many of these fiduciary duties are contained in Colorado's Uniform Prudent Investor Act. You cannot necessarily make the same investment decisions for the trust assets that you would make for your own assets.

A word about "Income"

If the trust requires that you distribute all income from the trust (*i.e.* annually), it is important to know what is meant by "income." For purposes of distributions, "income" is normally determined under state law, which is often very different from "income" for income tax purposes. Colorado's Uniform Principal and Income Act generally applies to determine what is income for state law purposes. The provisions of the Act are complex.

Learn more about changes to the federal estate, gift and generation-skipping transfer (GST) taxes made by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 in our special January newsletter available on line at: www.stoverlawcolorado.com

Serving as Trustee continued

Your fiduciary duties regarding investments include the following:

- *Duty of Impartiality* – You must act impartially in investing and managing the trust assets, taking into account any differing interests of the various beneficiaries.
- *Duty of Loyalty* – You must invest and manage the trust assets in the interest of the beneficiaries, rather than for your own interest or that of third parties.
- *Duty of Care* – You must invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust and by exercising reasonable care, skill and caution. Included in the duty of care is generally an obligation to diversify trust assets to minimize investment risk.

7. Maintain Separate Existence of the Trust. It is essential that the separate existence of the trust be continually recognized and respected. It is important that the property of the trust be clearly understood to belong to the trust and not to you personally. Trust assets should never be commingled with your own assets.

Some Options to Consider:

We can work with you to review your specific duties in light of your particular trust. A trustee can generally hire attorneys, accountants and financial advisors, and pay those expenses from the trust.

If you are concerned about continuing to serve as trustee, there may be options to resign and allow someone else to serve as trustee, or to serve with a co-trustee. For example, a bank or trust company may be willing to serve as co-trustee and handle the accountings, tax returns and management of assets.

¹ This article is based upon Colorado law. The laws of other states may be different. While the fiduciary duties discussed in this article apply to trustees who are individuals or corporations, this article is intended for the individual trustee.

★ ★ ROLL CALL ★ ★

Stover & Spitz LLC was listed as one of only 16 Tier 1 Colorado law firms in the Trusts & Estates category of the inaugural publication of *U.S. News Best Law Firms*. U.S. News and Best Lawyers, the leading survey of lawyers worldwide, joined to rank nearly 9,000 firms in 81 practice areas in their Best Law Firms publication. Their methodology for rankings involved surveying thousands of law firm clients and lawyers. Tom Stover and Jennifer Spitz are also both listed in the related *The Best Lawyers in America* publication.

Thomas L. Stover was selected to appear in the 2011 Colorado Super Lawyers publication. This is his sixth annual selection. He has maintained a busy schedule of lectures to various organizations on tax and estate planning topics including a continuing legal education presentation regarding the GST implications of the Tax Relief Act of 2010, teaching a session on GST planning at the University of Colorado School of Law and co-presenting a program with Jennifer Spitz to the Boulder County Estate Planning Council on the Tax Relief Act of 2010. Tom was also appointed as Colorado State Chair of The American College of Trust and Estate Counsel (ACTEC) at its most recent annual meeting in Phoenix, Arizona.

Jennifer M. Spitz gave a presentation for the Boulder County Bar Association in February 2011 on the topic of estate planning in light of the Tax Relief Act of 2010. She plans to give similar presentations on that topic to other professional groups later this year. In her capacity as Vice Chair of the Trust and Estate Section of the CBA, Jennifer has helped organize several continuing legal education programs, including the upcoming annual Estate Planning Retreat, which will be held in Santa Fe, New Mexico. Jennifer was recently elected to serve as Chair of the Trust and Estate Section for the 2011-2012 year.

Change to the Colorado Secretary of State Notification Process

If you are the registered agent for a Colorado partnership, corporation, limited liability company or other entity, you should be sure that the Colorado Secretary of State has your current email address. The Colorado Secretary of State will be phasing out the use of postcard notices sent by regular mail, and they will be increasing the use of email notifications. The Colorado Secretary of State sends out notices from time to time about required filings. It is important that they have a current email address for your business entity, to avoid missing important filing deadlines.

We're More than Just Estate Planning:

You may know that Stover & Spitz LLC is a Tier 1 Trust and Estates law firm,¹ with attorneys who are Fellows of The American College of Trust and Estate Counsel (ACTEC) and consistently selected to the Colorado Super Lawyers publication and listed in The Best Lawyers in America for estate planning. But, did you know that our office provides more than just estate planning and trust and estate administration services? Stover & Spitz LLC also has the expertise to provide legal services in matters relating to real estate, business law, charitable giving and asset protection.

Real Estate: Our firm can assist with many of your residential, commercial and/or agricultural real estate needs. We have successfully represented clients in matters relating to the buying and selling of property (including 1031 exchanges), the leasing of property (including commercial, farm, and oil, gas and other mineral leases), the negotiation of construction/purchase agreements, co-ownership agreements, and easement agreements (conservation and otherwise), and in other matters related to condemnation, mortgaging, and development.

Business Law: We can assist with the creation, operation, and dissolution of Colorado entities, including limited liability companies (LLCs), corporations, limited partnerships (LPs), and limited liability limited partnerships (LLLPs). Our firm can prepare resolutions and other documents to help maintain an entity's limited liability status and aid in compliance with the requirements of the Colorado Secretary of State. We can also assist with transactional matters including independent contractor agreements, franchise arrangements, buy-sell (shareholder) agreements, and the purchase or sale of assets or ownership interests.

Charitable Giving: If you are charitably inclined, Stover & Spitz LLC can advise you on the benefits of lifetime and testamentary charitable gifts to IRC § 501(c)(3) public charities, private foundations or donor advised funds. We can also assist with the creation and administration of charitable remainder trusts (CRTs, CRUTs and CRATs), charitable lead trusts (CLTs, CLUTs and CLATs) and other charitable planning techniques.

Asset Protection: Our firm can help identify your most likely creditor risks and implement the appropriate asset protection strategies for your particular needs. Asset protection strategies may include re-titling assets, entering into a marital (or premarital) agreement, forming one or more limited liability entities, making disclaimers, and/or creating irrevocable trusts.

Please let us know how we can help you.

¹ As recognized by U.S. News Best Law Firms.