

Title

The trustee's general duty to account to nonqualified beneficiaries is regulated by general principles of equity, not the Uniform Trust Code: A critique of *Schwalm v. Schwalm* (2023)

Text

The Uniform Trust Code is not self-contained and all inclusive. It does not even presume to define what a trust is. It is merely an aggregation of tweaks to the law of trusts, the trust relationship being a creature of equity, not statute. In the case of an irrevocable trust, the trustee is accountable in equity to all the beneficiaries, whether their interests are vested or contingent, present or future. Assume X is designated as entitled to the remainder in corpus. Were the trustee not accountable to X even during the life of the trust, then the trustee, not X, would be the true remainder beneficiary. X would be a beneficiary in name only. The trustee of an irrevocable trust owes fiduciary duties to all the beneficiaries. This must be. Enforceability is the glue that holds a trust relationship together. And accountability is enforceability's *sine qua non*. No accountability, no enforceability. No enforceability, no trust. The UTC's concept of the qualified beneficiary is causing much confusion. The UTC does not subvert the principle of general fiduciary accountability. Rather, the UTC imposes on the trustee an additional layer of accountability, namely the duty to render period reports to a sub-set of the general beneficiary class, namely the qualified beneficiaries: "Due to the difficulty of identifying beneficiaries whose interests are remote and contingent, and because such beneficiaries are not likely to have much interest in the day-to-day affairs of the trust, the Uniform Trust Code uses the concept of 'qualified beneficiary' to limit the class of beneficiaries to whom certain notices must be given or consents received." UTC § 103(13), cmt. The UTC in no way interferes with the critical equity maxim that the trustee of an irrevocable trust has an affirmative duty to furnish each beneficiary with all the information that that particular beneficiary would need to effectively defend his, her, or its equitable property rights. Only when there is compliance does the breach-of-trust statute of limitations begin to run against the beneficiaries. Equitable accounting is a general procedural remedy that has been ubiquitous in fiduciary litigation since time immemorial. See generally §7.2.3.1.1 of *Loring and Rounds: A Trustee's Handbook* (2024), which section is reproduced in the appendix below.

The Appeals Court of Massachusetts in *Schwalm v. Schwalm* ignores core trustee-accountability doctrine, doctrine that was reinforced, not diluted, by Massachusetts' version of the UTC: "Had the legislature intended to include a duty to account to nonqualified beneficiaries," the court notes, "it could have done so." See 2023 WL 4376737. True, but irrelevant. The general duty pre-existed the MUTC and survived its enactment fully intact. See MUTC §103 (expansive definition of term beneficiary) and §105(b)(2) (fiduciary duties owed to all beneficiaries). The Supreme Judicial Court of Massachusetts needs to see to it that nonqualified beneficiaries of irrevocable trusts are not prevented by the state via its judiciary from defending their vested and contingent equitable property rights. The integrity of the very institution of the trust is at stake, at least in Massachusetts. *Colecchia*, unfortunately, was not an aberration. See my Jan. 1, 2022 JDSUPRA posting: <https://www.jdsupra.com/legalnews/the-uniform-trust-codes-qualified-benef-37154/>.

Appendix

§7.2.3.1.1 Equitable Accounting [from *Loring and Rounds: A Trustee's Handbook* (2024)].

*In probate court, nothing speaks more eloquently or provides more insight into factual and legal issues than an accounting.*⁵⁶

An equitable accounting is not only a form of litigation discovery but also a critical procedural equitable remedy, critical in that it lays the informational groundwork for all the other equitable remedies, both procedural and substantive. “Save in exceptional cases, the right to an account is dependent upon the existence of a fiduciary relationship,” such as the relationship of trustee and beneficiary or agent and principal.⁵⁷ Because one’s beneficial interest in a trust is an equitable right, it is in equity that one petitions for an accounting of the trustee’s actions.⁵⁸ Who is entitled to an equitable accounting in the trust context? As we discuss more generally in §6.1.5.1 of this handbook, all the beneficiaries of a trust would have standing. This would include the remaindermen, as well as those whose equitable interests are contingent. For a more detailed and general discussion of who would qualify as the beneficiary of a particular trust, the reader is referred to §5.1 of this handbook.

An incident of the trustee’s general duty to account is the specific affirmative duty to furnish the beneficiaries with all the information that the beneficiaries need to enable them to protect their equitable interests under the trust.⁵⁹ That is the type of information that the typical decree or order for an equitable accounting is designed to uncover.

As a practical matter, a court with jurisdiction over the trustee of a trust, or its property, is entitled to any and all information pertaining to the trust that it can get its hands on.⁶⁰ Accordingly, its powers to extract information that is relevant to the affairs of the trust are expansive. One procedural vehicle for exercising these powers is the decree for an equitable accounting.⁶¹ At least one court has even exercised this power *sua sponte* (on its own motion).⁶²

In *Bleak House*, Dickens caricatured the consequences of the failure of a fiduciary to obey a judicial order for general accounting: “A sallow prisoner has come up, in custody, for the half-dozen time, to make a personal application ‘to purge himself of his contempt’; which, being a solitary surviving executor who has fallen into a state of conglomeration about accounts of which it is not pretended that he had ever any knowledge, he is not at all likely ever to do ...In the meantime his prospects in life are ended.”⁶³

⁵⁶Opening sentence of decision in *Christie v. Kimball*, 202 Cal. App. 4th 1407, 136 Cal. Rptr. 3d 516 (2012).

⁵⁷Snell’s Equity ¶18-04 (31st ed. 2005).

⁵⁸Snell’s Equity ¶18-04 (31st ed. 2005).

⁵⁹See generally §6.1.5.1 of this handbook (the trustee’s duty to provide information to the beneficiary).

⁶⁰See generally §8.40 of this handbook (jurisdiction over the trustee).

⁶¹See, e.g., *Jimenez v. Lee*, 547 P.2d 126 (Or. 1976) (“This is a suit brought by plaintiff against her father to compel him to account for assets which she alleges were held by defendant as trustee for her.”).

⁶²See *Christie v. Kimball*, 202 Cal. App. 4th 1407, 136 Cal. Rptr. 3d 516 (2012) (“We conclude the probate court’s general power to supervise administration of trusts permits it to order a trustee’s accounting on its own motion.”).

⁶³Charles Dickens, *Bleak House*, Ch. 1 (In Chancery).