

# Criminal Liability of Executors & Trustees

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## Editor-in-Chief

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Fiduciaries such as executors, administrators, trustees and guardians face civil liability if they fail to properly care for the assets under their care. In addition, they can face criminal liability for certain conduct.

## Texas Penal Code

A person is guilty of misapplication of fiduciary property if he or she "intentionally, knowingly, or recklessly misapplies property he holds as a fiduciary." The offense is a first degree felony if the value of the property misapplied is \$200,000 or more, punishable by a fine of up to \$10,000 and by prison time between five and 99 years.

The definitions in the statute specifically include a trustee, guardian, administrator, executor, and an agent appointed under a durable power of attorney.

## Recent Case: Trustee Sentenced to Eight Years

In a 2010 case from the Eastland Court of Appeals, a trustee of a trust created in her father's will was sentenced to eight years in prison, fined \$10,000, and ordered to pay \$350,000 in restitution for fiduciary theft.

When the defendant became the trustee, the brokerage account containing the trust funds had over \$620,000 in it. Three and a half years later, the defendant had drained the account to zero. During that time, her mother had passed away, which was supposed to trigger a distribution of the trust assets to other family members. Instead of making the distribution, the defendant used the trust funds to purchase assets for her own use and to make bankruptcy payments that she and her husband owed.

In a sad miscarriage of justice, the conviction was set aside and the defendant received an acquittal due to a technical defect in the indictment.

## Risk Avoidance

Acting in a fiduciary capacity is a tremendous responsibility that carries the risk of having to respond in civil damages and, in some cases, can also subject the fiduciary to criminal liability. Fiduciaries should act responsibly at all times, and need to have quality legal counsel advising them.

If you have questions, click [here](#) to contact Steve Spitzer.

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## Your Probate Litigation Resource

Cowles & Thompson's probate litigation section has a web site at [www.TexasEstateDisputes.com](http://www.TexasEstateDisputes.com). The web site provides current information on disputed probate, heirship and trust issues, including the latest on statutory changes made by the Texas Legislature.

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