



TO SELL OR NOT TO SELL

Investment decisions for trust department customers are sometimes difficult. BancInsure recently handled a claim that bears this out. The trust department of a bank located in the Midwest was the trustee for an estate of a deceased farmer. The trust department did not act as the executor of the estate. The assets of the estate included the farm property and approximately \$15,000 in cash. The beneficiaries of the trust were the deceased farmer's son and daughter. The testamentary trust called for the trust department to manage the property, collect income and make necessary distributions to the beneficiaries until such time as the beneficiaries reached age 25. At that time the property was to be transferred to the beneficiaries.

Shortly after the trust department became trustee of the estate the mother of the beneficiaries began asking the trust department to sell the property and invest the proceeds in the stock and bond markets. In order to fulfill the clear intentions of the deceased farmer, the trust department refused to sell the property even though it had the authority to do so. The trust department rented the farmland to one tenant and the house on the property to another. Over the years the trust department was able to achieve a return of 6 to 8% a year by keeping the house and property rented. The tenants maintained the property in good condition and even made improvements. The rental income was sufficient to meet the costs of school, college, medical and dental expenses as well as vacations, summer camps, etc. During the trust department's administration of the trust, the mother remarked at she was glad that the property had not been sold as her son was beginning to express an interest in farming.

Later, however, the beneficiaries filed a Petition of Removal of the Bank as Trustee and subsequently filed a lawsuit against the bank for negligent administration of the trust alleging that the trust should have sold the property and invested the proceeds in the stock market in order to maximize the return. They alleged damages of approximately \$470,000. The trust department's position was that it was obligated to fulfill the wishes of the testator who clearly stated his intentions concerning the disposition of the property, even though it had the authority to sell the property. The court ruled in favor of the bank. BancInsure paid the bank approximately \$19,000 for defense costs after the bank had met its \$25,000 retention (deductible).

This is a good example how good faith efforts to properly administer a trust can result in claims of negligence or worse, and points the need for protection from such claims. With the payment of an additional premium a Trust Department Errors and Omissions Endorsement may be added to BancInsure's basic Directors' and Officers' Liability Policy that would provide protection for both the bank and its directors and officers for certain claims.

BancInsure has become a leading writer of Directors' and Officers' Liability Policies, Financial Institution Bonds and other coverages in the United States by providing a sound, stable market, excellent service and fair claims service. If you would like to learn more about BancInsure coverages, please contact your BancInsure marketing representative.