

# Unique Asset Management Challenges and Solutions

By

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# Unique Assets Associated Risks

Reputational

Operational

Compliance

BSA/AML

Financial

Fiduciary

# Case Study 1: The Bead Lady Estate - TPP

- Facts and Circumstances
  - 16 not-for-profit beneficiaries (charities)
  - Estate consists of real estate, tangible personal property (TPP), stocks, bonds, cash – valued ~\$7 million.
  - Will specifies:
    - Beads to be donated to each charity
    - Beads can't be sold on Amazon or all at once in the market
    - Loose beads to certain charities and finished products to other charities
- What due diligence should be required?
  - Home inspection
  - TPP review



# Bead Lady Estate Risks

## Financial

- Costs to administer the Estate exceed fee for the service
- Missing/Lost TPP

## Operational – Infrastructure to Manage the TPP

- Human Resources needed to properly administer – dual control

## Fiduciary/Compliance

- High cost of bead appraisal vs. value of the beads when bead distribution is directly to charities

# Bead Lady Estate Challenges

## Inventory of TPP

- Volume of Beads (3 Tons)
- Dual Control for inventory and appraisal

## Storage of TPP

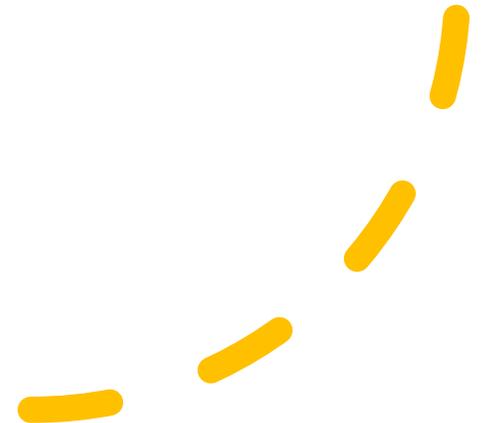
- Several storage units needed – contract in the name of the estate
- Marshalling beads into containers – 3 Home Depots and 3 Menards in the area cleaned out all inventory of containers/bins
- Transport – 3 trucks

## Disposition of TPP – Will Restrictions

- Will requires distribution of beads to charities – what if charities refuse beads?
- Will doesn't specify how to allocate loose beads and products among beneficiaries

# Bead Lady Estate Risk Mitigation

- Dual Control over TPP packing and storing
- Storage units in the name of the estate
- Trucking company insured
- RE sold
- Beads delivered to the Charities





# Case Study 2: Arty's Estate - Collectibles

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- Fact and Circumstances
  - 750 pieces of fine art in various mediums and time periods
  - During decedent's life, collectibles are in a vault with mold
  - Beneficiaries – 3 siblings located in Canada, Singapore and US
  - Estate is court-supervised – beneficiaries do not get along
  - Decedent DOD late 2018
  - Auction Houses shut down for a period due to Covid. Not set up for online auctions.
  - Collectible art values materially increase during 2020 and 2021
  - Multiple pieces of ivory with insufficient provenance documentation

# Arty's Estate Risks

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- Financial
  - Beneficiary dissatisfaction – litigation risk
  - Loss/Damage of Collectible(s) – mold exposure
  - Valuation of Assets and IRS Art Panel valuation rulings – tax implications
- Operational
  - Human Capital Resources – dual control
  - Vendors – auction houses, transport, insurance providers, professional art handlers/union, storage, mold remediation
  - Inventory and tracking/monitoring of Collectibles
  - Working with international beneficiaries that don't get along
- Fiduciary
  - Safety and Security of collectibles – items remained in the home until appropriate storage acquired. Hired security company 24/7 to monitor the home and purchased security/camera system for the home.

# Arty's Estate Challenges

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- Auction Houses
  - Delay to sell due to Covid
  - Obtain bids from multiple 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> tier houses
    - NDAs before signing contracts to get pieces viewed and bids – initial bids done from photographs due to Covid
    - Contract term negotiations: shipping costs, commission and enhanced hammer, insurance, authentication, restoration costs
    - Selection of auction houses require court approval and all beneficiaries to agree
  - Not all fine art sells at the same time – at the mercy of auction house's schedules (i.e. sales dedicated to specific artists only occurring once per year)

# Arty's Estate Challenges Continued

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- Handling of Collectibles
  - Professional/licensed handlers – organizing/coordinating when needed
  - Storage facilities – security, climate controlled, ability to handle volume
  - Complete provenance documentation
    - Not organized and in one location – spread throughout the house
    - Manual review based on auction house requests – only send documentation auction house requested
- Authentication
  - Items deemed inauthentic – Plan B and C, sometimes Plan D for disposition
  - What if no one will take the item(s)? e.g. ivory

# Case Study 3: Dr. Jekyll – Closely Held Business

- Fact and Circumstances
  - Ongoing Plastic Surgery Medical Practice at time of Dr. Jekyll's death
  - Sole practitioner – one office location
  - Medical practice had one office employee
  - Office contains client files and medical equipment
  - Office space leased
  - Office medical equipment – old/outdated and some hazardous materials



# Dr. Jekyll Risks

## Reputation

- Communications with patients not handled properly
- Medical records – risk of privacy breach

## Compliance

- HIPPA
- EPA
- IRS

## Operational

- Transport of medical files
- Storage of medical files
- Disposition of medical equipment/hazardous materials
- Filing to wind down the entity
- Payroll

# Dr. Jekyll Challenges

- Identify an attorney with Medical Practice experience
- Identify vendor(s) for:
  - Removal of medical hazardous waste and pharmaceuticals
  - Storage of medical client files for 9 years and then disposal (pre-pay)
  - Transport of client files
  - Purchase of medical equipment
- Phone Voicemails from clients/doctors
  - Listen to voicemails to determine appropriate action
- Communication to Practice's clients about Dr. Jekyll's death



## Dr. Jekyll Risk Mitigation

- Dual Control
- Hired attorney with appropriate experience
  - For HIPPA guidance
  - For winding the business down and all filings
- Pre-pay storage and destruction of medical records
  - HIPPA holding period could be longer than the estate is open
- Communication to the market – posting in local newspaper for specified period based on counsel advice

# Case Study 4: Scooter the Neutered Cat Trust

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- Fact and Circumstances
  - Decedent's estate pours into a trust that will focus on increasing the live release rates of cats in shelters and to care for her surviving cats. ~\$90 million
  - Trust Assets: marketable securities and RE
  - Trust requirements:
    - Cats to remain in the house and cared for by a paid caregiver until they die
    - During the life of the cats, trust funds may be spent for care and maintenance of cats and with the bulk used for cat related charities and awareness
    - Upon the last cat's death trust distributes to various cat related charities



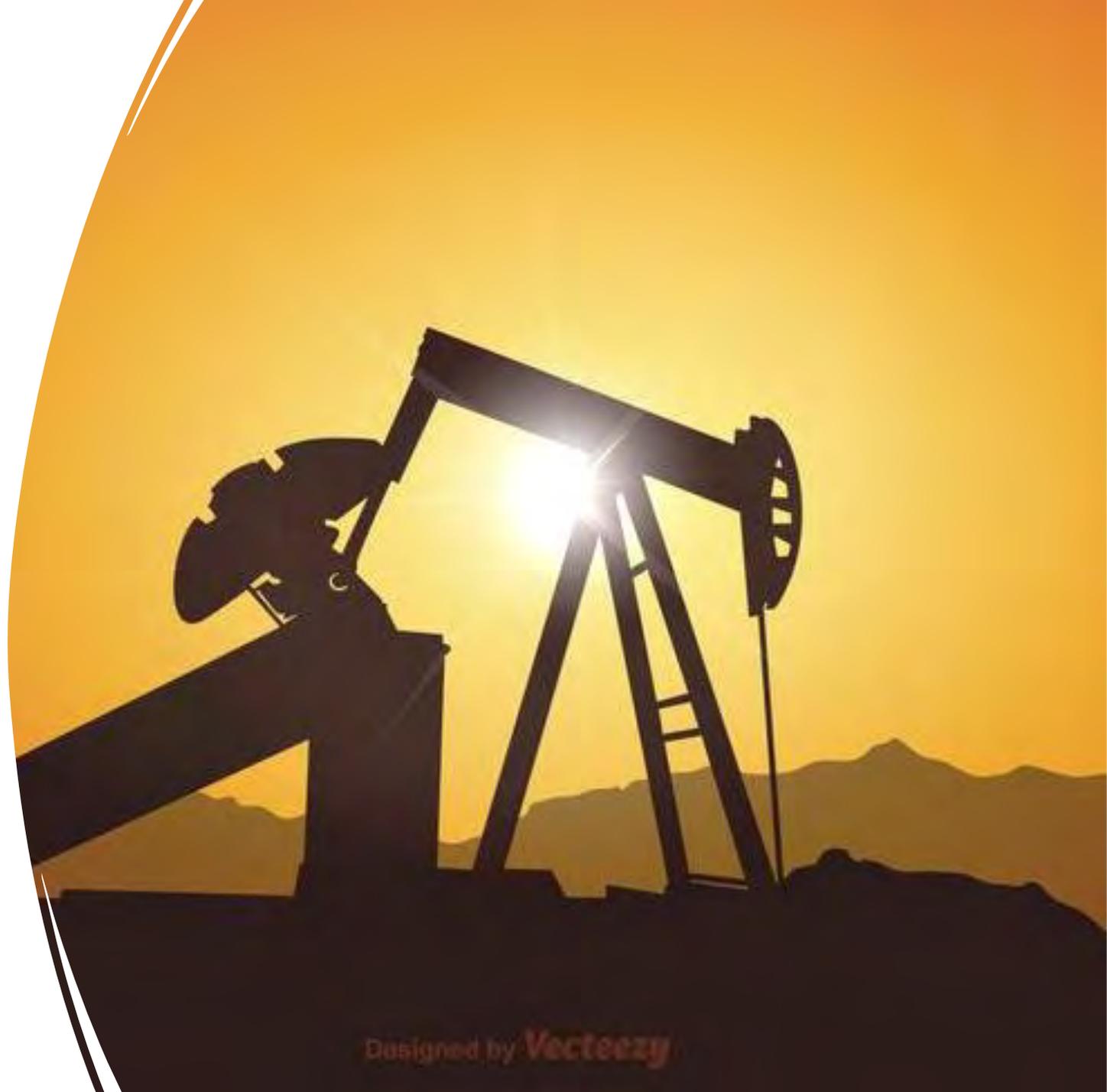
# Scooter the Neutered Cat Risks and Remediation Options

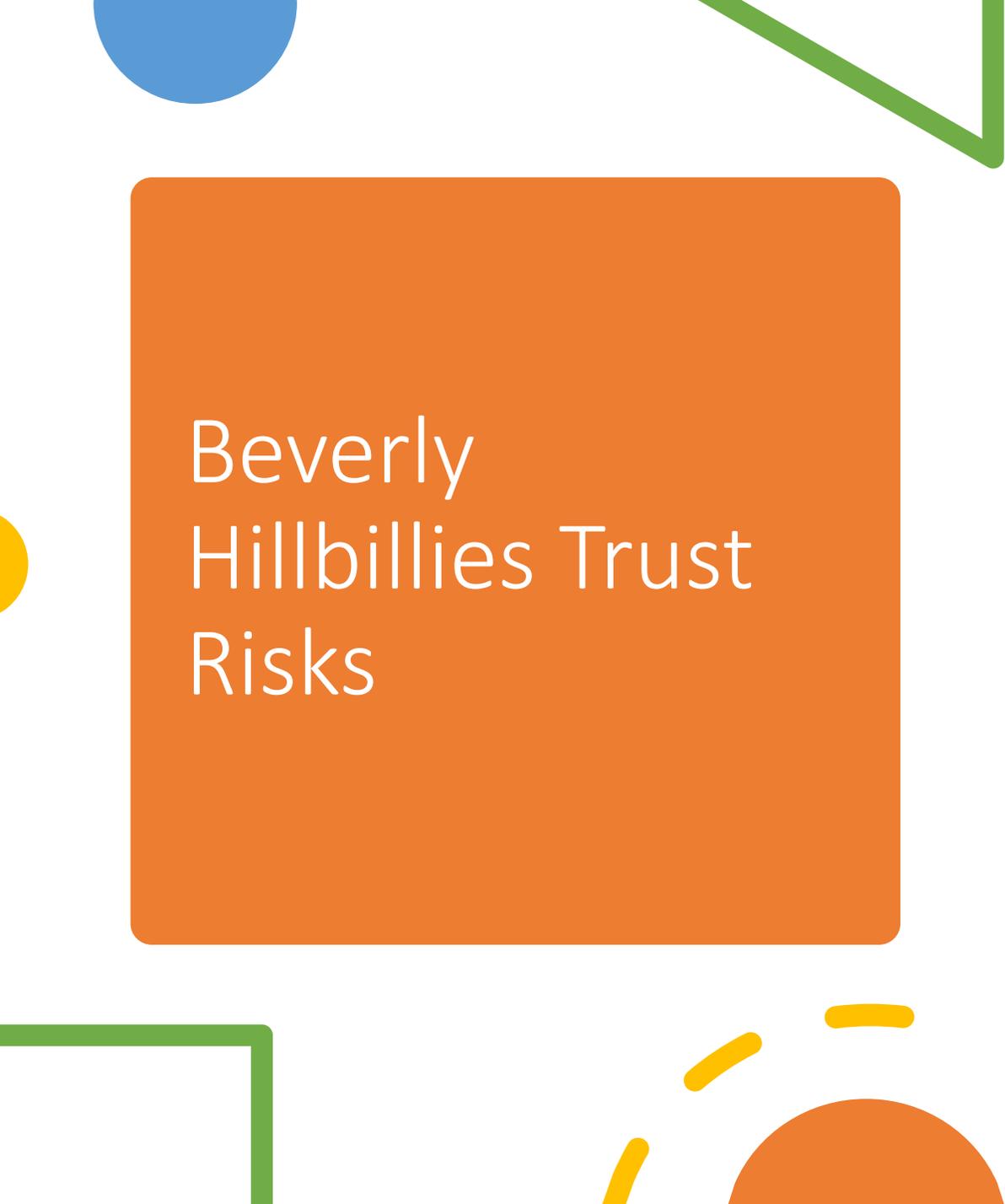
- Operational
  - Cats have more than nine lives – chip the cats!
  - Residents in the RE are not beneficiaries - Caregiver and who else?
  - RE not maintained – may lose value
  - Bill pay – receipts to determine budget to pay Caregiver and costs for cat maintenance
  - Periodic vet visits to ensure cats are being well cared for

# Case Study 5: Beverly Hillbillies Trust – Mineral Rights

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- Fact and Circumstances
  - Mineral Rights have passed through 5 generations
  - Mineral Rights are in title of original owner
  - Assets of the Trust: mineral rights worth ~\$1,500
  - 15 Beneficiaries
  - Costs to retitle correctly exceeds value of the asset (>\$25,000)



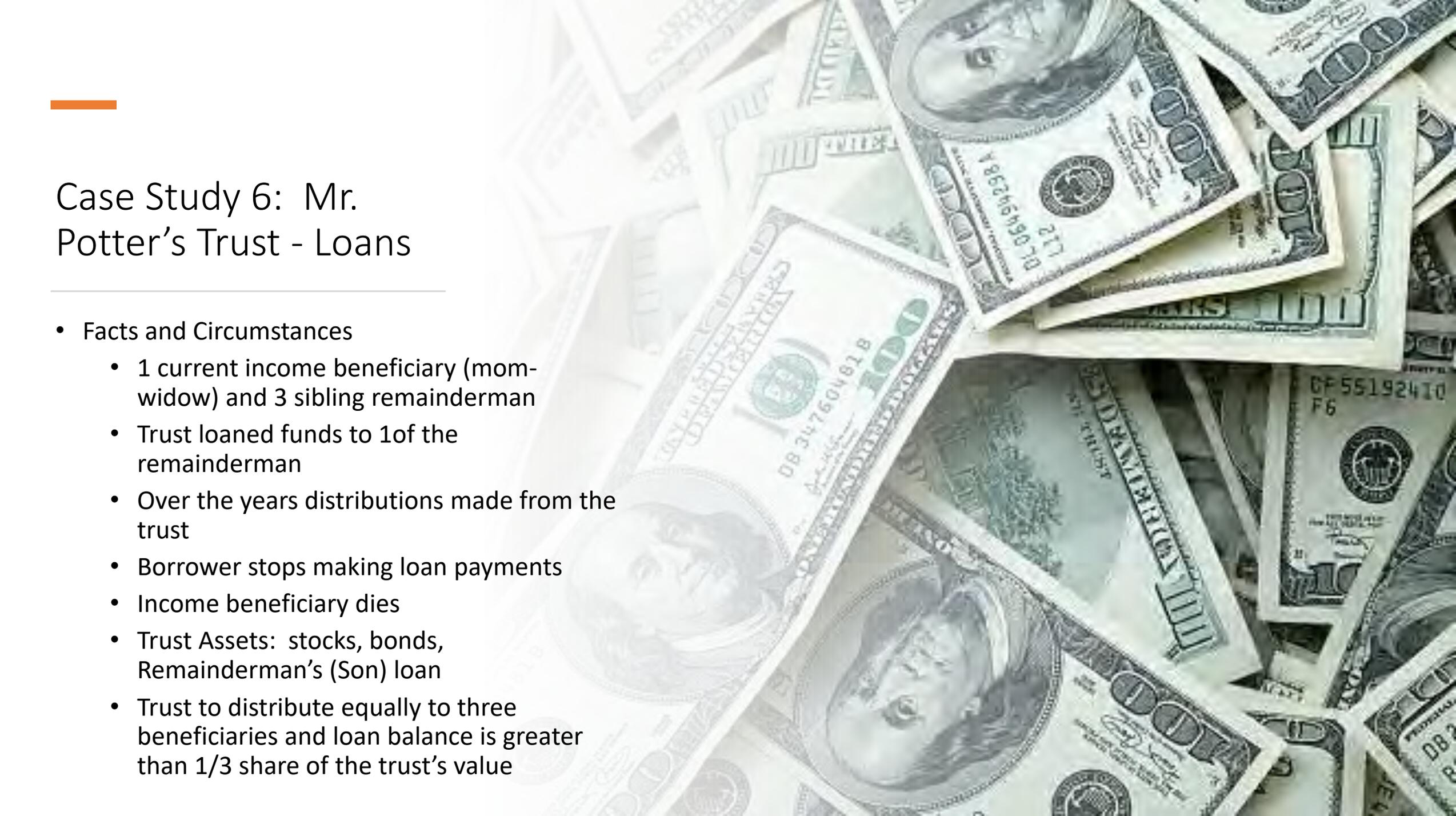


## Beverly Hillbillies Trust Risks

- Financial
  - Economically not feasible to correct title – who pays?
- Compliance
  - IRS reporting
  - Legal Ownership
- Operator learns original owner is deceased, all royalties are placed in a suspense account and future royalties frozen until titling resolved

# Beverly Hillbillies Trust Risk Mitigation

- Negotiated with purchaser to sell interests from original grantor's trust that bank was trustee
- Purchaser agreed to take the rights and retitle into their name upon the sale
- Bank third party assisted in determining fair value for the sale and reviewed the offer/paperwork
- Bank issued a Mineral and Royalty Conveyance (a.k.a. deed) to the purchaser to transfer the asset



Case Study 6: Mr. Potter's Trust - Loans

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- Facts and Circumstances
  - 1 current income beneficiary (mom-widow) and 3 sibling remainderman
  - Trust loaned funds to 1 of the remainderman
  - Over the years distributions made from the trust
  - Borrower stops making loan payments
  - Income beneficiary dies
  - Trust Assets: stocks, bonds, Remainderman's (Son) loan
  - Trust to distribute equally to three beneficiaries and loan balance is greater than 1/3 share of the trust's value

# Mr. Potter's Trust Risks

## Financial

- **Litigation from beneficiaries**

## Reputational

# Mr. Potter's Trust Risk Mitigation

- Beneficiaries sign receipt and release documents for pro rata interest into the note receivable (distribution “in-kind”)
- Beneficiaries are to forgive the loan in the trust termination agreement (this option may have gift tax consequences)
- Beneficiaries sign a non-judicial settlement agreement

# The Specialist Guardianship – Real Estate

- Fact and Circumstances
  - Adult Ward (former US Military) with advancing Alzheimer's Disease
  - Ward moves into a memory care facility
  - Guardianship assets: stocks, bonds, real estate. ~\$10 million in value
  - RE needs to be sold
  - Adult Ward is a hoarder
  - Middle of winter
  - Water and gas turned off



# The Specialist Guardianship Risks



Financial Risk

Potential  
Litigation



Operational Risks

Dual Control  
Loss of Life



Reputational Risk

Damages to  
neighboring  
properties  
Loss of Life

# The Specialist Guardianship Challenges



Hoarder House



Incendiary devices found



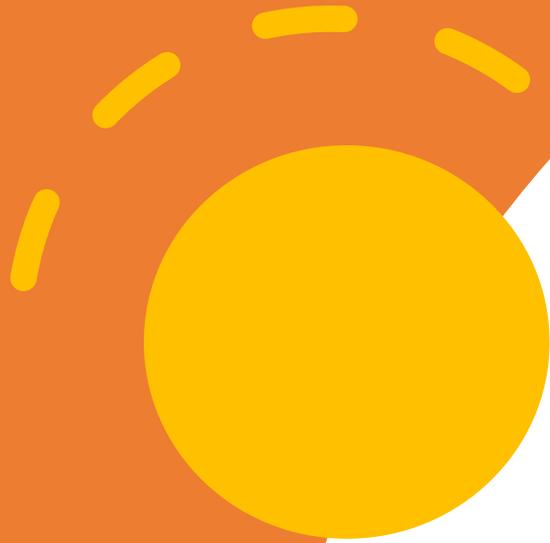
Middle of winter – gas and electric shut off due to devices; risk of pipes bursting/water damage



House break-in via a window

# The Specialist Guardianship Risk Mitigation

- Entire home's block shut down and evacuated
- Senior Management notified of potential press situation
- County Bomb Squad sweeps the house for all incendiary devices
  - 3 active bombs
  - 17 legal and illegal weapons
  - Over 10,000 rounds of ammunition
- Filed a FOI Act for the Bomb Squad police report for insurance file
- Vendor hired to clean out the home
- File police report for break-in (retain for insurance purposes)
- Vendor hired to board up the window
- Utilities turned back on



# Questions

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