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## **DUTIES OF EXECUTORS AND TRUSTEES**

Many people are unclear about what exactly is expected of an executor or trustee. What are the legal and moral obligations and expectations, and how does one go about fulfilling these responsibilities?

Under the law every executor or trustee is a fiduciary. A fiduciary is a person or institution placed in a position of trust and confidence to do something for the benefit of others (the beneficiaries). Because a fiduciary is placed in a position of trust, he, she or it is held to a high standard of care, must act only in the best interests of the beneficiaries and may never use the position for personal benefit.

The following lists illustrate the general types of activities for which fiduciaries are responsible. The specific responsibilities of any particular fiduciary are dictated by the circumstances (a more complex situation may involve considerably more tasks, while a simpler situation may require fewer). Nonetheless, the following may be useful in giving you a general understanding of the scope of the responsibilities. Every executor or trustee should promptly obtain the advice of competent professionals before accepting any executor or trustee responsibility or undertaking any action in that capacity.

### EXECUTOR RESPONSIBILITIES

An executor's involvement begins with the death of a person. The executor has the responsibility for managing the decedent's assets subject to probate and distributing them to the beneficiaries as soon as reasonably possible. Usually, an executor's involvement is completed within 6-18 months after the date of death

#### Collect Assets and Information

- Locate the original will and file it with the probate court
- Locate and inventory the contents of the safe deposit box
- Identify each and every asset comprising the probate estate and protect and manage those assets in accordance with the applicable law
- Identify the decedent's assets passing to others by reason of joint tenancy, beneficiary designation or other payable on death arrangements and coordinate their disposition. This may involve asserting liens over these assets if necessary for tax purposes
- Apply for all benefits payable to the estate, such as death benefits from Social Security, the Veteran's Administration, pensions, insurance etc.
- Establish separate bank accounts for the estate to receive income from the assets of the

estate. An executor must always keep the assets of the estate safe and separate from the assets of any other person, especially the executor himself.

- Identify and locate names and addresses of all heirs, legatees, and next of kin
- Assemble deeds, abstracts, lease contracts, and insurance policies for each parcel of real estate
- Investigate the status of any business interest owned
- Locate and inventory automobiles, furniture, jewelry, and other possessions
- Collect securities and other assets
- Comply with all legal obligations in connection with formally establishing the estate

#### Determine Debts and Claims Against the Estate

- Determine current liabilities, including doctor, hospital, rent, etc.
- Determine what debts exist: mortgage, bank loans, and automobile loans
- Publish legal notice about claims against the estate in the newspaper and comply with all legal requirements for notifying potential creditors
- Examine the demands of creditors and oppose invalid claims
- Obtain professional advice before paying any claim or debt, because an executor may be personally liable for any improperly paid claims or debts

#### Manage the Estate During Administration

- Establish precise bookkeeping records for all receipts and disbursements
- Identify, protect and administer all assets of the estate including all personal property, securities, cash and cash equivalents, real estate holdings, partnership interest and business interests, and with the assistance of competent professional advisors develop a comprehensive coordinated plan for the liquidation, management and disposition of each asset of the estate, taking into account all legal obligations of the executor. An executor may be personally liable for the mismanagement of estate assets
- Inventory all assets and arrange for their valuation
- Examine all real estate as to condition, adequacy of insurance, status of taxes and assessments
- Collect receipts and manage money in the estate in accordance with the will until it is time for final distribution
- Review all investments and make necessary changes to preserve and protect value
- Examine books and records of any business interest and have necessary audits and appraisals made
- Supervise the family owned business
- Review the immediate needs of the survivors and arrange for living expenses

#### Determine and Pay All Taxes

- Pay all real estate and other taxes
- Compute value of the estate for state and federal tax purposes and prepare preliminary tax notices required by law
- Select valuation date for federal estate tax purposes
- With the assistance of competent professional advice, determine the possibility of post death tax planning

- Determine whether administrative expenses should be charged against income taxes or estate taxes
- Prepare all applicable estate income tax returns and last income tax return of decedent
- Determine charitable, marital and other deductions
- Determine which funds will be used to pay taxes
- Prepare and file state and federal estate tax returns

#### Distribute the Estate

- Determine who is entitled to share in the estate
- Determine how and to whom assets will be distributed. However, to minimize the risk of antagonism between the executor and beneficiaries, this determination should be made very early on in the administration process with the guidance of competent professional, and most likely it should be discussed with, and approved by, the beneficiaries.
- Pay all final costs
- Arrange for the transfer and re-registration of assets, including securities, into the new owner's name
- Prepare all the information needed for the final accounting to the court and beneficiaries
- Provide all beneficiaries with the cost basis of the property that they inherited

### TRUSTEE RESPONSIBILITY

A trustee may initially become involved upon a person's death, or possibly during his or her lifetime, as well. The trustee's responsibilities are to manage the trust property for the benefit of its beneficiaries and distribute the principal as directed under the terms of the trust. Very often, a trust is the beneficiary under a decedent's will. Depending upon the terms of the trust, a trustee's function may last a short or very long period of time. Generally, the activities of a trustee in the 6-18 months following a death are the same as those of an executor, but trustee responsibilities in the continued management of a trust, which continue far beyond death, are unique to the trustee.

The Trustee accepts the trusteeship and assumes control of the trust assets. He, she or it must determine if any special problems are involved or special asset protection is required.

- Get acquainted with the beneficiaries
- Become aware of special requirements of beneficiaries
- Note special provisions in the trust
- Analyze trust assets

There are a variety of responsibilities that must be faced by the trustee. Each can be of critical importance to the beneficiaries depending on the unique circumstances of the trust property and the family makeup.

#### Trustee's Initial Administrative Functions

- Review the estate if the trust is created under a will
- Make sure all assets are properly titled in the trustee's name as trustee and registered

under the appropriate tax identification number

- Establish separate bank accounts for the trust assets. As with an executor, a trustee must always keep the trust assets safe and separate from the assets of any other person, especially the trustee himself. A trustee can be personally liable for mismanagement of trust assets.
- Review all leases and other contracts relating to trust assets
- Prepare a complete detailed inventory of trust assets and their values
- Establish the income tax basis and holding period of each asset
- Establish books of account for the trust
- Establish systems for the constant supervision of all trust assets and activity
- Comply with any legal formalities required under applicable law

### Trustee's Ethical Responsibilities

A trustee's ethical duties generally include the following:

- Being active, diligent and skillful in administering the trust
- Not blindly delegating trust responsibilities to another co-trustee
- Being circumspect about delegating any trustee responsibility to another and once done supervise, monitor and evaluate the performance of the delegate
- Seeking legal, investment and other professional advice as needed, and especially before undertaking any significant trust activity
- Acting in good faith and on behalf of the trust in all activities
- Being alert to all potential problems and "danger signals"
- Keeping trust communications and transactions confidential
- Supervising and evaluating the performance of all persons involved with trust
- Guarding against undue influence over any interested persons
- Disclosing all necessary information to beneficiaries
- Never using the trust assets for the benefit of anyone other than the beneficiaries
- Never using the trust assets for the trustee's personal gain

### Trustee's Investment Responsibilities

- Study the investment powers in the trust for directions or restrictions
- Adopt an investment policy for the trust that complies with the trust terms, needs of the beneficiaries and all applicable law, including the Prudent Investor Rule
- Maintain complete, accurate and detailed records of all income, expenses, purchases, sales and other transactions
- Maintain investment balance that meets the income beneficiary's needs but produces as much growth as possible for the remaining beneficiaries
- Avoid any act of self-dealing or conflict of interest
- Exercise a high degree of diligence in carrying out the terms of the trust and keeping funds skillfully invested
- Maintain close supervision over any real estate or business interest and follow the management and finances
- Maintain proper and adequate insurance on trust assets

### Trustee's Authority

Many powers that a trustee may exercise are established under state law. The creator of the trust (the “grantor”) can limit these powers or grant additional powers in the trust agreement or will. Broad and liberal powers increase the trustee’s flexibility but also create added risks for abuse by a trustee and should be considered carefully with the input of an attorney. Such powers may include the:

- Power to retain property that is left in trust so the trustee will not be forced to sell it for legal reasons
- Power to vote stocks and broad powers over any business interest or real estate in trust
- Power to hold stock and securities in nominee name in order to simplify sales and facilitate prompt transactions
- Power to make a wide range of possible investments to maximize performance and cope with changes in the investment climate
- Power to determine what is income and principal
- Power to allocate income and principal between or among certain beneficiaries
- Power to sell or exchange trust assets, including real estate or business interest held in trust
- Power to allocate assets to various shares of trusts on a pro rata or non-pro rata basis
- Power to set up reserves for repairs, maintenance and replacement of certain trust assets
- Power, where possible under state law, to avoid having the trust administered under court jurisdiction or become subject unnecessarily to multiple state regulation
- Power to compromise or settle claims for or against the estate rather than be forced to litigate
- Power to borrow money

#### Trustee Financial Duties to the Beneficiaries

- Assist the beneficiaries with planning expenditures
- Distribute income to the beneficiaries as provided in the agreement
- As a convenience, deposit funds in beneficiary accounts
- When provided by trust instrument, apply funds as needed for a beneficiary’s use when incapacitated, in ill health or advanced years
- Maintain loyalty and impartiality to the beneficiaries
- Provide funds for support, education and health of minors
- When provided by trust instrument, exercise a discretionary power to pay principal to beneficiaries as needed

#### Trustee’s Responsibility for Taxation

- Determine accounting period
- File trust tax returns and maintain detailed records
- Protest improper tax assessments
- Determine timing investment sales and purchases to minimize taxes
- Supply tax information to beneficiaries

#### Trustee’s Distribution of Assets

- Make partial distributions as required by the trust agreement
- Make final distribution of all trust assets as required by the trust agreement

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