

# Guidelines for Individual Executors & Trustees

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## Estate Planning Information & FAQs

### Introduction

After an individual's death, his or her assets will be gathered, business affairs settled, debts paid, necessary tax returns filed, and assets distributed as the deceased individual (generally referred to as the "decedent") directed. These activities generally will be conducted on behalf of the decedent by a person acting in a fiduciary capacity, either as executor (in some states called a personal representative) or as trustee, depending upon how the decedent held his or her property.

As a first step, it is helpful to know the meaning of a few common terms:

- **Fiduciary** - An individual or bank or trust company that acts for the benefit of another. Trustees, executors, and personal representatives are all fiduciaries.
- **Grantor** - (Also called "settlor" or "trustor") An individual who transfers property to a trustee to hold or own subject to the terms of the trust agreement setting forth your wishes. For income tax purposes the same term is used to mean the person who is taxed on the income from the trust. Confusing, but different concepts.
- **Testator** - A person who has made a valid will (a woman is sometimes called a "testatrix").
- **Beneficiary** - A person for whose benefit a will or trust was made; the person who is to receive property, either outright or in trust, now or later.
- **Trustee** - An individual or bank or trust company that holds legal title to property for the benefit of another and acts according to the terms of the trust. This can be confusing in that you can sometimes be both a trustee and a beneficiary of the same lifetime (inter-vivos) trust you established or a trust established by someone else for you at their death (testamentary trust).
- **Executor** - (Also called "personal representative;" a woman is sometimes called an "executrix"). An individual or bank or trust company that settles the estate of a testator according to the terms of the will, or if there is no will in accordance with the laws of the decedent's estate (intestacy), although a person acting in intestacy may be called by a different name, such as administrator.
- **Principal** and **Income** - Respectively, the property or capital of an estate or trust and the returns from the property, such as interest, dividends, rents, etc. In some cases, gain resulting from appreciation in value may also be income.

Other defined terms may be found in our [Glossary](#).

As a general rule, the administration of an estate or trust after an individual has died requires the fiduciary to address certain routine issues and follow several standard steps

to distribute the decedent's assets in accordance with his or her wishes. These guidelines focus on activities that occur in an estate or trust immediately after the individual has died.

## Understanding the Will

It is very important to read and understand the will or trust so that you will know who the beneficiaries are, what they are to receive and when, and who, if any, your co-fiduciaries are. Does the will give everything outright, or does it create new trusts that may continue for several years? Does a trust mandate certain distributions ("All income earned each year is to be paid to my wife, Nancy") or does it leave this to the trustee's discretion ("My trustee shall distribute such income as she believes is necessary for the education and support of my son, Alan, until he reaches age 25")? The document often imparts important directions to the fiduciary, such as which assets should be used to pay taxes and expenses. The document will usually list the fiduciary's powers in some detail.

Most fiduciaries retain an attorney who specializes in the area of trusts and estates to assist them in performing their duties properly. An attorney's advice is very helpful in ensuring that you understand what the will or trust and applicable state law provide. For example, at an initial meeting it is common for the attorney to review step by step many of the key provisions of the will or trust (or both) so that you will understand your role. Be mindful that if you accept the appointment to serve as an executor or trustee, you will be held responsible for understanding and implementing the terms of the trust or will.

## Managing Estate Assets

It is the fiduciary's responsibility to take control of (marshal) all assets comprising an estate or trust. Especially when a fiduciary assumes office at the grantor's or testator's death, it is crucial to secure and value all assets as soon as possible. Some assets, such as brokerage accounts, may be accessed immediately once certain prerequisites are met. Typical prerequisites are an executor obtaining formal authorization, sometimes referred to as Letters Testamentary, from the court and producing a death certificate. Other assets, such as insurance, may have to be applied for by filing a claim. The usual practice is to engage a professional appraiser to value the decedent's tangible property, such as household furniture, automobiles, jewelry, artwork, and collectibles. Depending on the nature and value of the property, this may be a routine activity, but you may need the services of a specialist appraiser if, for example, the decedent had rare or unusual items or was a serious collector. Real estate, whether residential or commercial, and any business interests also must be valued. Besides providing a valuation for assets that may be reported on a court-required inventory or on the state or federal estate tax return, the appraisal can help the fiduciary gauge whether the decedent's insurance coverage on the assets is sufficient. Appropriate insurance should be maintained throughout the fiduciary's tenure. The fiduciary also must value financial assets, including bank and securities accounts. Bear in mind that for federal estate tax returns for estates that do not owe any federal estate tax, certain estimates are permitted. This might lessen the appraisal costs that must be incurred.

## Handling Debts and Expenses

It is the fiduciary's duty to determine when bills unpaid at death, and expenses incurred in the administration of the estate, should be paid, and then pay them or notify creditors of temporary delay. In some cases the estate may be harmed if certain bills, such as property or casualty insurance bills or real estate taxes, are not paid promptly. Most states require a written notice to any known or reasonably ascertainable creditors. While most bills will present no problem, it is wise to consult an attorney in unusual circumstances, as the fiduciary can be held personally liable for improperly spending estate or trust assets or for failing to protect the estate assets properly, such as by maintaining adequate insurance coverage.

The fiduciary may be responsible for filing a number of tax returns. These tax returns include the final income tax return for the year of the decedent's death, a gift or generation-skipping tax return for the current year, if needed, and prior years' returns that may be on extension. It is not uncommon for a decedent who was ill for the last year or years of his or her life to have missed filing returns. The only way to be certain is to investigate. In addition, if the value of the estate (whether under a will or trust) before deductions exceeds the amount sheltered by the estate tax exemption amount, which is \$5 million inflation adjusted (\$5.25 million in 2013), a federal estate tax return will need to be filed. Even if the value of the estate does not exceed the estate tax exemption amount, a federal estate tax return still may need to be filed. Under the concept of portability, if the decedent is survived by a spouse and he or she intends to use any estate tax exemption the deceased spouse did not use, an estate tax return must be filed.

Since the estate or trust is a taxpayer in its own right, a new tax identification number must be obtained and a fiduciary income tax return must be filed for the estate or trust. A tax identification number can be obtained online from the IRS website. You cannot use the decedent's social security number for the estate or any trusts that exist following the decedent's death.

It is important to note for income tax planning that the estate or trust and its beneficiaries may not be in the same income tax brackets. Thus, timing of certain distributions can save money for all concerned. Caution also should be exercised because trusts and estates are subject to different rules that can be quite complex and can reach the highest tax rates at very low levels of income. Some tax return preparers and accountants specialize in preparing such fiduciary income tax returns and can be very helpful. They are familiar with the filing deadlines, will be able to determine whether the estate or trust must pay estimated taxes quarterly, and may be able to help you plan distributions or other steps to reduce tax costs.

Most expenses that a fiduciary incurs in the administration of the estate or trust are properly payable from the decedent's assets. These include funeral expenses, appraisal fees, attorney's and accountant's fees, and insurance premiums. Careful records should be kept, and receipts should always be obtained. If any expenses are payable to you or someone related to you, consult with an attorney about any special precautions that should be taken.

## Funding the Bequests

Wills and trusts often provide for specific gifts of cash ("I give my niece \$50,000 if she survives me") or property ("I give my grandfather clock to my granddaughter, Nina") before the balance of the property, or residue, is distributed. The residue may be distributed outright or in further trust, such as a trust for a surviving spouse or a trust for minor children. Be sure that all debts, taxes, and expenses are paid or provided for before distributing any property to beneficiaries because you may be held personally liable if insufficient assets do not remain to meet estate expenses. Although it is usual to obtain a receipt and refunding agreement from the beneficiary that states that he or she agrees to refund any excess distribution made in error by the fiduciary, as a practical matter it is often difficult to retrieve such funds. In some states, you will need court approval before any distributions may be made. Where distributions are made to ongoing trusts or according to a formula described in the will or trust, it is best to consult an attorney to be sure the funding is completed properly. Tax consequences of a distribution sometimes can be surprising, so careful planning is important.

## Trust Administration

Trusts are designed to distinguish between income and principal. Many trusts, especially older ones, provide for income to be distributed to one person at one time and principal to be distributed to that same person a different time or to another person. For example, many trusts for a surviving spouse provide that all income must be paid to the spouse, but provide for payments of principal (corpus) to the spouse only in limited circumstances, such as a medical emergency. At the surviving spouse's death, the remaining principal may be paid to the decedent's children, to charity, or to other beneficiaries. Income payments and principal distributions can be made in cash, or at the trustee's discretion, by distributing securities as well as cash. Never make assumptions, as the terms of every will and trust differ greatly. There is no such thing as a "standard" distribution provision.

Unless a fiduciary has financial experience, he or she should seek professional advice regarding the investment of trust assets. In addition to investing for good investment results, the fiduciary should invest within the applicable state's prudent investor rule that governs the trust or estate and with careful consideration of the terms of the will or trust, which may modify the otherwise applicable state law rules. A skilled investment advisor can help the fiduciary decide how to invest, what assets to sell to produce cash for expenses, taxes or outright gifts of cash, and how to minimize income and capital gains taxes. Simply maintaining the investments that the decedent owned will not be a defense if an heir claims you did not invest wisely or violated the law governing trust investments. In all events, it is important to have a written investment policy statement stating what investment goals are being pursued.

During the period of administration, the fiduciary must provide an annual income tax statement (called a Schedule K-1) to each beneficiary who is taxable on any income earned by the trust. The fiduciary also must file an income tax return for the trust annually. The fiduciary can be held personally liable for interest and penalties if the income tax return is not filed and the tax paid by the due date, generally April 15th.

# Closing the Estate

Estates may be closed when the executor has paid all debts, expenses, and taxes, has received tax clearances from the IRS and the state, and has distributed all assets on hand. Trusts terminate when an event described in the document, such as the death of a beneficiary, or a date described in the document, such as the date the beneficiary attains a stated age, occurs. The fiduciary is given a reasonable period of time thereafter to make the actual distributions. Some states require a petition to be filed in court before the assets are distributed and the estate or trust closed. When such a formal proceeding is not required, it is nevertheless good practice to require all beneficiaries to sign a document, prepared by an attorney, in which they approve of your actions as fiduciary and acknowledge receipt of assets due them. This document protects the fiduciary from later claims by a beneficiary. These formalities are recommended even when the other heirs are relatives, as that alone is never an assurance that one of them will not have an issue and pursue a legal claim against you. Finally, a final income tax return must be filed and a reserve kept back for any due, but unpaid, taxes or estate expenses.

## Common Questions

### **How do I title (own) bank and other accounts?**

Each bank, trust company or investment firm may have its own format, but generally you may use, for a trust, "Alice Carroll, Trustee, Lewis Carroll Trust dated January 19, 1998," or, in a shorthand version, "Alice Carroll, Trustee under agreement dated January 19, 1998." For an estate, you should use "Alice Carroll, Executor, Estate of Lewis Carroll, Deceased."

### **How do I sign my name in a fiduciary capacity?**

An executor signs: "Alice Carroll, Executor (or Personal Representative) of the Estate of Lewis Carroll, Deceased". A trustee signs: "Alice Carroll, Trustee"

### **Where do I hold the estate or trust assets?**

You should open an investment account with a bank, trust company, or brokerage company in the name of the estate or trust. All expenses and disbursements must be made from these accounts, and you should receive regular statements

### **How (and how much) do I get paid?**

Because being a fiduciary is time-consuming and is often difficult, it is appropriate to be paid for your services. The will or trust may set forth the compensation to which you are entitled. If the document does not, many states either provide a fixed schedule of fees or allow "reasonable" compensation, which usually takes into account the size of the estate, the complexity involved, and the time spent by the fiduciary. Executor's or trustee's fees are taxable compensation to you. Several states do not permit you to pay your own compensation without a court order, so ask your attorney before you write yourself a check. Many fiduciaries in the same family as the decedent are quick to waive fees.

Before doing this, however, consult with the attorney for the estate and be certain you understand the full scope of your duties and any ramifications of waiver.

### **What if a beneficiary complains?**

Even professional fiduciaries, such as trust companies, receive complaints from a beneficiary from time to time. The best way to deal with them is to do your best to avoid them in the first place by following the guidelines set forth in these FAQs and consulting with an attorney experienced in estate administration. Many complaints arise because beneficiaries are not kept up to date about the administration of the trust or estate. Frequent communication with beneficiaries is a must. The best approach in all instances is to be proactive by communicating throughout the estate or trust administration process and handling all matters with appropriate formality. If a complaint involves more than routine issues, consult with an attorney who specializes in trust and estate matters.

### **Can I be sued or be held personally liable?**

Your errors or mismanagement of a trust or estate can subject you to personal liability. Common pitfalls include not paying taxes or filing returns on time, improper investment choices (whether too conservative, too speculative, or favoring one beneficiary over another), self-dealing (buying assets for yourself or a family member from the estate or trust, whether at market price), or allowing property or casualty insurance to lapse, resulting in a loss to the estate or trust. Your best protection is to get good professional advice as early as possible in the process, communicate regularly with the beneficiaries, treat everything with appropriate formalities as if you were not a related party (even if you are), and fully document your actions and decisions.

### **How am I discharged as fiduciary at the end of the administration? What if I want to resign?**

Whether you stop acting as a fiduciary because the estate or trust has terminated or you wish to resign before the conclusion of your administration, you must be discharged, either by the local court or by the beneficiaries. In some states, discharge is a formal process that involves the preparation of an accounting. In other states, you can be discharged with the use of a relatively simple document signed by the beneficiaries. If you are resigning prior to the conclusion of your administration, check the will or trust document to see who succeeds you as fiduciary. If no successor is named, you may need a court proceeding to appoint a successor before you can be discharged.