



FIDUCIARY DUTIES AND RESPONSIBILITIES

What to Know When Serving as Trustee or Executor

Many people consider it an honor to be named as trustee or executor over a loved one's estate. It can be the ultimate sign of admiration and trust. However, serving in this capacity comes with a broad array of duties and responsibilities – obligations which a fiduciary may be legally required to perform or they could be subject to personal liability.

Executor and Trustee

An executor is the person appointed by the creator of a last will to carry out the terms of the will. Specifically, they are tasked with managing an estate through the probate process. In Florida, an executor is referred to as a Personal Representative. A trustee is an individual that has been given the responsibility of managing property in a trust. For purposes of this article, we are specifically referring to a trustee tasked with administering trust assets after the death of the trust creator. Individuals and institutions, such as a bank or trust company, can serve in either of these roles.

Duties and Responsibilities

There are many responsibilities and tasks common to serving as either a trustee or executor, including:

- Locating, securing, valuing, and managing trust or estate assets
- Identifying and notifying beneficiaries, including the obligation to keep beneficiaries reasonably informed of status of administration
- IRS reporting, which may include the deceased's final individual tax returns, estate tax returns, or trust tax filings
- Accounting – tracking and reporting all income, expenses, distributions, and transactions
- Final distributions of assets to beneficiaries
- Duties specific to executors include (i) managing probate process, (ii) publishing notice to creditors in a legal publication, and (iii) opening and managing estate bank account
- Tasks more frequently associated with trustees are (i) investment of trust assets, (ii) establishing further trusts for beneficiaries, and (iii) filing a notice of trust

Fiduciary Liability

During the administration of an estate or trust, an executor or trustee owes a fiduciary duty to all beneficiaries. Running afoul of this duty can lead to personal liability. Common situations where personal liability has been incurred include:

- **Failure to abide by prudent investor standard.** Ordinarily associated with trustees, the prudent investor rule in the Florida Trust Code holds that trustees are to invest and manage assets “as a prudent investor would considering the purposes, terms, distribution requirements, and other circumstances of the trust.”
- **Mismanagement of assets.** This is a broad category, but can include (i) payment of unenforceable debts, (ii) mixing personal assets with estate/trust assets, and (iii) unreasonable delay of distributions to beneficiaries.
- **Favoritism.** A duty of impartiality is owed to all beneficiaries, as the fiduciary cannot favor one class of beneficiaries over another. This may be especially true for trustees who may have to manage competing interests of current and remainder beneficiaries.