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DUTIES OF A SUCCESSOR TRUSTEE

If you have been named as Successor Trustee of a Trust, you have many job duties, responsibilities and, often, many people to please. This article is designed to set forth your duties with regard to the administration of that trust.

Fiduciary Responsibility The Basic Premise

Much of what is done in the implementation of estate planning and probate administration falls under the umbrella of what is known as **fiduciary responsibility**. **Fiduciary responsibility is the highest of all obligations imposed on an individual in the law.** In the simplest of terms, the fiduciary obligation of a person acting as a Successor Trustee requires that he function and conduct himself to maximize the benefit for the beneficiaries of the Trust. The concept of fiduciary is founded in ideals of integrity, reliance, honesty, trust, and fair-dealing. The conduct of the fiduciary is measured in hindsight, and therefore it demands a high level of planning, research and fidelity.

The services rendered by the fiduciary must be based on the highest degree of integrity and fidelity. Failure to follow those standards may result in a loss to the beneficiaries of the Trust as well as in significant personal liability to the Successor Trustee.

The measure of the fiduciary responsibility of a Successor Trustee is judged by the following standards:

1. Adequate capability and time to perform the services required.
2. Proper guidance from legal, accounting and financial counsel on an on-going basis.
3. Careful preparation and implementation of legal documents.
4. Maintenance of quality records and regular reporting.
5. Ready access to information and disclosure of relevant documents and information to the beneficiaries on a regular basis.
6. Preparation and filing of all reports, whether to institutions or government tax agencies.

If you are unable to complete any of these tasks, you must seriously consider whether to agree to act as a Successor.

Specific Trustee Duties

The Trustee is responsible for gathering all of the Trust assets; making certain that all taxes, administrative expenses, and debts have been paid; and distributing the assets according to the terms of the Trust. As Successor Trustee, you will have certain responsibilities with respect to the administration of the Trust as outlined below:

1. Gathering Assets and Preparing a List of Assets.

To prepare an accurate inventory and any necessary tax returns, you will need to provide create a *detailed* list of all of the assets owned by the Trust. Each asset must be valued as of the date of death. That means that for each asset, the Successor Trustee will need to have an account statement (for bank accounts and investments); an appraisal or taxable value (for real estate); or a “blue book” value (for vehicles). These values will form the basis for the Trust inventory that the Successor Trustee provides to the beneficiaries.

2. Paying Bills.

The Successor Trustee needs to determine which bills are due and maintain a suitable amount in liquid assets, such as a checking account or other type of account with check writing privileges. The law requires the Successor Trustee to review the decedent’s papers to determine who the creditors might be. If there are funds available, the Successor Trustee must pay all of the *legitimate* creditors. The Successor Trustee can reimburse the person who paid the funeral bill. Any credit cards should be destroyed. The Successor Trustee should notify all credit card companies that the deceased has died and the account should be closed.

3. Paying Fiduciary Fees.

The Successor Trustee is entitled to be paid a fee for the time spent on administering the Trust. Although many Trustees eventually decline the fee, it is a good idea to start keeping records of the time spent on the Trust. These records should include the date of the service, the amount of time spent, a description of the services performed and any mileage or other out-of-pocket expenses.

4. Filing Tax Returns.

These asset values described above will also form the basis of the federal and Michigan estate tax returns, if any are required. If it appears the deceased’s total estate is less

than \$5 million (for 2011 and 2012), then no estate tax return needs to be filed. If the estate is larger than that amount, then the Trustee may need to retain an accountant to prepare and file a Federal Estate Tax Return. The Estate Tax Return is due nine months after the date of death. When the Federal Estate Tax Return cannot be filed within nine months of the date of death, then an extension must be obtained. However, an estimated tax payment will be required to be paid with the extension request.

A final income tax return (Form 1040) must be prepared for the deceased's last year of life. Also, Trust income tax returns (Form 1041) must be prepared for each calendar year starting the year of death and continuing until dissolution of the Trust.

5. Starting Probate Proceedings

If the Successor Trustee finds that any assets were owned solely by the deceased, without a joint owner or a beneficiary designation, those assets will require probate administration. The person in charge of the probate administration, the Personal Representative, is named in the Last Will and Testament, not the Trust. The Personal Representative is often, but not always, the same person named as the Successor Trustee.

6. Re-Titling Assets.

If there are assets that are registered to the Trust, the Successor Trustee must re-title them in the name of the Successor Trustee. Investments should have a caption like the following sample:

John Doe, Successor Trustee of the William Jones Living Trust U/A/D January 15, 2010.

The decedent's Social Security number can no longer be used to report income and dividends from the Trust assets. The Successor Trustee must obtain an Employer Identification Number for the Trust from the I.R.S. (or have an accountant or attorney obtain that number) and provide that EIN to all institutions which are holding Trust assets.

7. Keeping Beneficiaries Informed.

As part of its fiduciary duty, a Successor Trustee is required to keep the beneficiaries informed about the administration of the estate. The Trust will set forth the specific guidelines that must be followed. However, even if the trust is silent, the law requires that the Successor Trustee inform each beneficiary, in writing of:

- a. The Trust's existence;
- b. The court where the trust is registered (if it is registered);

- c. The Trustee's name and address;
- d. The beneficiary's right to receive a copy of the trust terms that describe or affect his interest; and
- e. Relevant information about the trust property (i.e., a list of the Trust assets their location and value, etc.)

8. Preparing an Accounting.

A Successor Trustee may prepare an accounting for the Trust. The Accounting begins with an inventory of all assets in the trust, shows what income was collected, what disbursements were made, what assets were sold during the period of administration and any gains or losses. The accounting is completed at least annually and when all assets are distributed to the beneficiaries according to the terms of Trust.

It is important for the Successor Trustee to keep very specific records of exactly what deposits and disbursements are made out of the Trust assets. The beneficiaries are entitled to review the accounting and all of the receipts. If the beneficiaries believe there are any improprieties, they may ask a probate court to review the accounting. A probate court has the power to order a Trustee to reimburse the Trust for improper expenditures or to refund an excessive Trustee fee.

9. Investing Assets.

If assets are not required to immediately pay bills, the Successor Trustee has a duty to invest the Trust assets prudently. In Michigan, a Trustee is required to behave as a "prudent investor". This means that a Successor Trustee must invest as a prudent investor of discretion and intelligence, who is seeking a reasonable income and preservation of capital, would invest under the same circumstances. That means that the Successor Trustee must consider the time horizon, the age of the beneficiaries and the amount of risk and then invest the assets prudently. If a Successor Trustee feels it needs assistance with investments, it may retain a competent investment advisor to assist in the investment decisions.

10. Making Discretionary Distributions.

The Trust may specify that assets can be distributed to beneficiaries in the discretion of the Trustee. If that is the case, the Trust may provide some guidance about what factors are to be considered by the Trustee before releasing funds. It is not unusual for a Trust to use the "HEWS" standard – which allows a Trustee to distribute funds for a beneficiary's health, education, welfare and support. However, the Trust may be silent on the issue and leave distributions to the complete discretion of the Trustee.

The length of ongoing administration of the Trust depends on terms of the Trust. If the Trust distributes income and principal to a minor or a disabled beneficiary, the Trust administration continue for years.