

THE BASICS OF HANDLING AN ESTATE

The estate administration process includes the probate of an estate and/or trust and the filing of tax returns for the deceased. We have listed the basic concepts and responsibilities with which you should become familiar if you have been named as the personal representative under a will or a trustee under a trust.

Fiduciary Responsibility **The Basic Premise**

Much of what is done in administering an estate or trust falls under the umbrella of **fiduciary responsibility**. In the simplest of terms, the fiduciary obligation of a person acting as a personal representative or trustee requires that he function and conduct himself to maximize the benefits for the beneficiaries of the estate or 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 loyalty.

If you accept a fiduciary appointment as personal representative and/or trustee for the benefit of others, your services must be based on the highest degree of integrity and fidelity. Failure to follow those standards may result in not only a loss to the beneficiaries of the trust or estate, but may also result in personal liability to the personal representative or trustee. **Fiduciary responsibility is the highest of all obligations imposed on an individual in the law.**

Before you agree to accept the job of personal representative or trustee, you should make sure that you possess the following:

1. Adequate capability and time to perform the services required.
2. Proper guidance from legal, accounting and financial advisors on an on-going basis.
3. Careful understanding, preparation and/or implementation of legal documents, reports and tax returns.
4. Maintenance of quality records and accessibility to the beneficiaries.
5. Ready and regular access to information and disclosure of relevant documents and information to the beneficiaries on a regular basis.

If you are unable to complete any of these tasks, you must seriously consider whether to agree to act as the personal representative or trustee.

The Probate Estate

A probate estate is opened if the decedent dies with assets titled in his or her **sole, individual** name. For example, assets transferred by the decedent prior to death to the decedent's revocable living trust are **not** subject to probate (and will be explained, in more detail, below).

Generally, a probate estate is opened in the county where the deceased resided at the time of his death. Probate can proceed, informally, formally or supervised by the Court. The first documents filed in the county probate court list the type of administration, and the legal heirs and beneficiaries under the will (if there is one). The fiduciary is referred to as the **Personal Representative**. The probate court will issue **LETTERS OF AUTHORITY** which allow the Personal Representative to act on behalf of the deceased.

In probate, the personal representative administers the estate without court involvement unless and/or until an interested person asks the court to rule on a matter. Informal probate is the simplest, fastest and least expensive method of probating an estate. In supervised probate, the probate court is involved much more extensively. For example, in a supervised estate, an annual accounting must be approved by the court. Furthermore, the supervised personal representative has much less flexibility and power than an independent personal representative.

A probate estate must remain open a minimum of five months. If payment of federal or state estate taxes is involved (see discussion below), a typical probate estate remains open from one to three years. However, in most probate estates, there is very little activity after the first year.

The majority of the time administering the estate is spent notifying the creditors, paying debts and final expenses, selling the home, distributing personal items and transferring assets from the deceased's name to the probate estate and later to the beneficiaries under the will. If there are no federal and state estate taxes due, most estates, barring the unforeseen, can be closed less a year after they are opened.

The probate court requires that an Inventory of the deceased's assets be prepared and submitted to the court for review. This inventory must list all of the assets that were in the deceased individual's name, valued at the date of death. It does not include assets that were joint with another, such as a spouse or child, assets in the name of a trust, or assets with a beneficiary designation (such as life insurance policies or retirement accounts).

The Inventory is due 91 days after the probate estate has been opened, or from the date on the letters of authority. If the personal representative needs additional time to gather information regarding the deceased assets, a preliminary inventory can be presented to the court and amended at a later date. The probate court will require that an inventory fee, based on the value of the inventory, be paid before the estate is closed.

Distribution of Assets

After all the probate estate assets have been collected and retitled in the name of the deceased's estate and all the taxes have been paid, the probate estate is ready to be distributed according to the terms of the will (or state law, if there was no will). Closing statements and receipts from the beneficiaries will be required by the county probate court before the personal representative will be discharged and the probate estate closed. If there was a "pour-over will" (a will which assigns all the assets to the trust), the trustee will give the receipt from the trust to the personal representative to file with the court. Otherwise, the final orders issued by the court will enable the assets to be retitled in the beneficiary's name. The probate process is now completed.

The Trust Estate

If the decedent had a trust and assets were registered to the trust, the successor trustee must re-register the assets in their name as successor trustee and obtain a new employer identification number. Court intervention is rarely necessary. Some institutions will require that a certificate of trust, or other additional documents signed by the successor trustee, be submitted along with the registration request. If there is a probate estate and the will "pours over" to the trust, the successor trustee will eventually take title to the assets that are now in the probate estate.

The length of administration of the trust depends on terms of the trust. If the trust requires the trustee to manage money until children reach a "mature" age (such as 35 or beyond) then the administration could continue for many years.

The trustee is required to follow the terms of the trust instrument in connection with investments, distribution of assets, accounting, etc. You should become familiar with these terms. As the language in a Trust frequently not in "plain" English, you should call our office with **any** questions.

Keeping Beneficiaries Informed

As part of your fiduciary duty, you are required to keep the beneficiaries informed about the administration of the estate. The trust will set forth the specific guidelines that you must follow. However, even if the trust is silent, the law requires that, within twenty-eight (28) days of the Settlor's death, you must 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 assets you are managing, their location and value, etc.)

At least once a year, you must provide an accounting to each beneficiary. The accounting must include:

- a. All significant transactions affecting the trust;
- b. The value of the assets; and
- c. All gains and losses during the accounting period.

Payment of Decedent's Final Tax Liabilities

Whether or not a probate proceeding is commenced, the decedent's final federal, state and local tax liabilities must be paid. Those tax liabilities may include income, intangibles and single business taxes. These taxes will be paid by the personal representative if a probate proceeding is commenced. If a probate estate is not opened, then they will generally be paid by the trustee of the trust.

The filing date for decedent's final returns are as follows:

1. The decedent's final federal, state and local **Income Tax** Returns must be filed by the 15th day of the fourth month after the end of the decedent's tax year in which he or she died. This is usually April 15 of the calendar year after decedent's death.
2. The decedent's final **Michigan Intangibles Tax** Return must be filed by the 30th day after the decedent's tax year in which he or she died. This is usually April 30 of the calendar year after decedent died.
3. The decedent's final **Michigan Single Business Tax** Return must be filed by the last day of the fourth month after the date of decedent's death.

We are not tax advisors and are providing this only as general information. Naturally, we urge any fiduciary to engage the services of an accountant, as needed, to carry out the fiduciary duties.

Payment of the Federal Estate Tax

Within nine months after the decedent's death, the federal estate tax return must be filed, and any tax due paid. Generally, the federal estate tax return will not have to be filed if the decedent's estate (which includes **all** assets regardless of how titled) is under the exemption (in 2008, that amount is \$2,000,000).

When the federal estate tax return cannot be filed within 9 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.

The IRS will audit the federal estate tax return after it is filed. If the return is taxable, then a field audit may be done by IRS personnel from the Detroit Office. The audit may not require the involvement of the personal representative or trustee. The IRS will issue a closing letter when the audit is completed. It generally takes six months to two years to receive the closing letter, whether or not there is an audit. However, if the IRS and the fiduciary do not agree, the process can take longer. The federal estate tax closing letter is needed to close the probate estate.

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