

Estate Administration Fiduciary's Help Guide and Checklist & Summary of Fiduciary's Duties

Article One

Introduction and "The Basics"

Estate administration can be a very complicated and often rather emotional process. A loved one – your spouse, parent, sibling, friend – has died and you find yourself with newfound responsibilities. While this guide is not intended to eliminate your need to work with us as your attorneys, it should answer some of your more basic questions and help you gather the information and documentation we will need to help you fulfill your duties as the fiduciary of the estate.

Also, we are required to inform you that this guide is not intended to constitute legal advice, as your unique facts and circumstances will always dictate the proper legal course of action in your case. In addition, this guide does not indicate any attorney-client relationship and we are not representing you in any capacity unless and until we have entered into a written representation agreement. Do not rely on the content of this guide as a substitute for legal advice. You should always rely on the advice of legal counsel to guide you through an estate administration.

Section 1.01 Our Role as Your Attorneys

When we are retained to represent someone in the administration of an estate, we generally do so under a formal written fee agreement, which outlines the scope of the services we will render and the method of calculating our fees. In addition, we document the fact that there is an inherent conflict of interest in representing someone who is both the Fiduciary and a beneficiary. Unless our fee agreement expressly states otherwise, we will be representing you only in your role as fiduciary.

Section 1.02 Your Role as "Fiduciary"

As the fiduciary of the estate, you have assumed a series of important responsibilities and duties. It is important that you understand that your role as fiduciary is wholly separate from any other role you may have under the estate such as surviving spouse, beneficiary, heir at law, etc. You will be held accountable for your decisions and actions during the time the estate is under administration. This is true whether you are the trustee under a trust, the personal representative under a probate estate or have simply assumed certain responsibilities to wind up the affairs of someone else.

Once you have accepted position of fiduciary, you are responsible for the administration of an estate and you should not turn over the complete administration of the estate to others. This does not mean that you must actually perform all of the administrative work yourself. You can delegate certain administrative details to persons qualified to handle them. However, the responsibility for the administration of the estate always remains with you as fiduciary.

If you are the trustee under a trust, you will be held accountable to the beneficiaries of the trust. In most circumstances, the trust can be administered without the intervention of a court. The trust sets forth the rules governing trust administration. In addition, the Florida Statutes provide supplemental trust administration procedures that may apply.

If you are the executor under a will, or if you are the administrator of an intestate estate (commonly referred to in both circumstances as the "personal representative"), you are accountable not only to the beneficiaries but also to the court with jurisdiction over the estate. The will (if any) provides some of the rules governing the estate administration. In addition, the Florida Statutes dictate the procedures governing probate proceedings and further

defining the personal representative's duties and powers. Note that specific court approval may be required to empower you to act in certain circumstances such as property sales.

Generally speaking, as the fiduciary, your primary responsibilities can be summarized under three main categories:

(a) Collection and Management of Assets

Your first duty as fiduciary is to protect and preserve the estate assets. You should put together an inventory of all assets and their values as of the date of death.

Next, to the extent permitted by your powers as fiduciary, you should begin to collect or "marshal" the assets belonging to the decedent's estate. Below is a summary of many of the important things that must be done as quickly as possible to preserve the estate:

(1) Checklist of Initial Responsibilities for Fiduciary

As the fiduciary you are entrusted with all duties and responsibilities to wind up the personal affairs of someone who has died. While your final responsibility will involve distributing estate property to the beneficiaries, there are a number of other administrative steps required before the estate is ready to be distributed. You should always be prepared to demonstrate to third parties with whom you deal that you are in fact authorized and empowered to act. This may require the preparation of an Acceptance of Trust and Notice of Trust under a trust administration, or Letters of Administration under a probate estate.

Remove valuables from the residence and store safely.

Complete a change of address form with the Post Office to have the decedent's mail forwarded to you.

Determine whether it is appropriate to change locks on any property not occupied by the spouse or a primary beneficiary.

Determine immediate cash needs for any beneficiary; identify accounts where cash is immediately available; determine if any immediate expense must be paid. (Hint: There are not many).

Cancel credit cards, charge accounts and magazine subscriptions and ask for refunds, if possible.

If you can gain access to the decedent's safe deposit box, do not remove contents until it has been inventoried in the presence of a bank officer – only then should contents be removed.

Gather personal records, including checkbooks and statements for at least three years; obtain copies of income tax returns for last three years.

Contact individuals who owe money to the decedent and arrange for continued collection.

Determine whether decedent had an interest in a partnership, Limited Liability Company, closely-held corporation or other active business interest and arrange for continued operation and safeguarding of decedent's interest in the business.

Gather all life and accident insurance policies. (Don't forget to check travel clubs, alumni associations, credit card companies, trade associations and any organization that might make life insurance available to its members.)

Contact Social Security and VA if applicable.

Hold any Social Security received after date of death, as benefits paid during the month of the decedent's death will be recalled by the Social Security Administration.

Make certain that property and casualty insurance coverage continues on personal effects, automobiles, real estate and any goods in storage.

Check for fire insurance on dwelling. Confirm whether the coverage applies if the dwelling is vacant.

Employ any necessary domestic help, security guards, or any other type of assistance that might be required for dependent or beneficiary.

Obtain all checkbooks and gather any outstanding bills that arrive.

(2) Documents to be Located and Gathered

You should obtain originals of the following documentation:

- Trust Agreement and Pour Over Will (if applicable);
- Last Will and Testament (if applicable);
- Deeds and other documents assigning assets to the trust or to the decedent;
- Vehicle titles;
- Most recent title insurance policies for real estate;
- Insurance policies (life, house, vehicle, etc.);
- 5 to 10 certified copies of Death Certificate;
- Any business agreements, leases, promissory notes, etc.

In addition, you should obtain originals or copies of the following:

- Most recent property tax statements on real estate;
- Any appraisals on real estate completed in the past two years;
- Statements for all bank accounts, investments and other assets;
- Mortgage statements;
- Tax returns for the past three years, if any have been filed.

(b) Payment of Debts, Taxes and Expenses

In all likelihood, the decedent will have some bills or other debts that must be properly addressed after death. Depending on whether the obligations are addressed through a probate estate or from a trust, you may have different responsibilities and repayment options. Some of the fees and expenses may not be payable until the probate estate, if any, is ready for distribution to the beneficiaries.

You should carefully review Article Two of this guide for a discussion and checklist for the preparation of the Estate Tax Return and review Article Three for information on proper reporting of taxable income attributable to the estate. There are many details to attend to and some educated decisions to make in the preparation of these important tax returns. You should certainly rely on the advice of competent counsel to assist you in the preparation of all tax returns.

(c) Distribution of Estate Property to Beneficiaries

Beneficiaries under a trust may be entitled to ongoing payments of income and/or principal for a period of time beginning with the death of the decedent, or may be entitled to lump sum payments. The fiduciary may be allowed to distribute property in kind or sell properties and distribute cash. The provisions relating to the distributions to beneficiaries are contained in the trust document. On final distribution of the remaining assets, the fiduciary should obtain a receipt from each beneficiary.

Beneficiaries under an estate subject to probate proceedings may be able to receive some distributions during the course of the estate administration under certain circumstances (e.g., family allowance, petition for partial distribution, etc.); however, in most circumstances the estate is not distributed until the very end of the court proceedings.

If you are aware that any beneficiary has a guardian or if assets will be distributed into another trust for any beneficiary, you will need to know the identity and address of the guardian or trustee. If any beneficiary is a minor, you will need to provide the beneficiary's date of birth. If any person named as a beneficiary died before the decedent, you will need to know that person's date of death and the identity of their heirs. Depending on the circumstances, a formal determination of heirs may be required in a separate probate proceeding for the deceased beneficiary.

Please see Article Four of this guide for a more complete discussion of estate distributions.

Section 1.03 When you're not the only Fiduciary

When more than one fiduciary is serving, each must understand the scope of their joint responsibilities to the estate and its beneficiaries. Sometimes the fiduciaries disagree on certain duties or decisions, causing a potential conflict of interest between them. If a conflict between the fiduciaries does arise, the attorney representing the estate will inform the fiduciaries about the conflict and may seek to guide them to an agreement. However, it may be necessary for the affected fiduciaries to obtain independent legal counsel to represent them in resolving the conflict.

Fiduciaries are "jointly and severally" liable for the acts of all other fiduciaries serving at the same time. This means that each fiduciary has an incentive to watch over the other fiduciaries, as they could be held liable for another fiduciary's breach of duty. Votes on any matters should be made in writing, with the provision being voted on being carefully worded.

If you are one of multiple fiduciaries, you cannot rely on the other fiduciaries to administer the estate. You should participate in the administration. If another fiduciary is acting improperly with respect to estate matters, you have the obligation to act to correct the situation. You have an obligation to be aware that another fiduciary is acting improperly with respect to trust matters. Each fiduciary is responsible to the beneficiaries for the misconduct and breaches of duty of the other fiduciaries.

(a) The importance (and personal implications) of your role as Fiduciary

You have been placed in a position of great trust. The beneficiaries, the decedent's creditors (and sometimes the court) demand a lot of you. Although the beneficiaries are entitled to receive distributions from the estate, you should be careful to make sure that the estate retains plenty of money to satisfy the obligations of the decedent and cover the expenses of administration, such as attorney's fees, accountant's fees, tax liability, expenses for the maintenance of various assets and other related expenses, etc. If you distribute so much of the estate property to the beneficiaries before satisfying all of the estate's expenses, you can be held personally liable for those costs, effectively making the decedent's creditors your own. Make sure you are in consistent communications with us throughout the administration of the estate.

(b) An Introduction to your Fiduciary Duties

The law imposes certain duties on fiduciaries. The following is intended to be a layperson's introduction to some of the most basic duties. The implications and nuances of your duties as fiduciary are broad and far-reaching, so it is critical that you act with caution.

(1) Duty of Loyalty

By accepting your role as fiduciary, you have agreed to take on the duty of placing the interests of the estate and its beneficiaries above your own. The most fundamental duty of a trustee is the obligation to act solely in the beneficiaries' best interest. This means that you must not only do what is best for the trust's beneficiaries, but that you do so without furthering your own interests unless the beneficiaries consent in writing after full disclosure and independent counsel. As with the other trustee duties, if your non-compliance results in any losses or damages to the trust property, you and any co-trustees may be liable for any decrease in value.

You should not enter a transaction that gives you an opportunity to benefit yourself at the expense of the estate. If any situation should arise in which there is a conflict between your personal interests and the estate or between the estate and the interests of third parties, you as fiduciary must put the interests of the estate first.

One very important aspect of your duty of loyalty is the avoidance of "self-dealing." A fiduciary is self-dealing when he or she benefits in any way from the estate. A few examples of self-dealing, which can result in a breach of the duty of loyalty include:

- Buying trust property or leasing trust property to yourself, either directly or indirectly;
- Selling your own property to the estate;
- Employing yourself to do specialized work for the trust (such as appraisals, conduct sales, etc.);
- Accepting a gift from someone with whom you conduct trust business;
- Dealing preferably with relatives and friends

(2) Duty of Impartiality

You have an obligation to act in an unbiased manner toward the various beneficiaries (absent a provision under the trust agreement to the contrary). This means that you cannot favor an income beneficiary over a remainder beneficiary, nor favor one income beneficiary over another unless it is consistent with the terms of the trust.

When allocating or distributing assets to the beneficiaries, you cannot allocate preferable assets to certain beneficiaries and less desirable assets to others – if the trust agreement (or will or intestate statutes) treat them the same, you must ensure that they are treated equitably, showing no favor to any one in particular.

(3) Duty to Preserve Assets

As the fiduciary, you are required to preserve the estate's property. This means that you must pay taxes on the property, insure it against loss, protect it from theft and maintain the property's condition to ensure that its value is not decreased. These expenses are reasonable estate expenses and should be paid from the estate assets.

(4) Duty to Account

The duty to account for estate assets requires that you keep clear and accurate records of all transactions affecting the estate property. First, you must keep all estate property separate from your own property. Failure to do so is called "commingling" of assets and is a clear breach of your duties as fiduciary. This can mean your forced removal as fiduciary and can open you up to personal liability for damages to the beneficiaries. Please refer to Article Three of this guide for a more detailed discussion of estate accounting requirements.

Article Two

Estate Tax Return Preparation

An estate tax return must be filed within nine months from the date of a person's death. This return will report the fair market value of all property belonging to the decedent (or otherwise passing by operation of the decedent's death) as of the date of death. After all estate tax liability has been satisfied, the taxing authorities will provide a release, which in turn will enable the estate assets to be distributed fully and with marketable title.

Section 2.01 Florida Estate Tax

Florida does not have its own estate tax system. Therefore, Florida follows the Federal estate tax system.

Section 2.02 Federal Estate Tax

If the decedent's gross estate is near or above the "Applicable Exclusion Amount" (\$5,430,000 in 2015), a Federal Estate Tax Return must be filed. If necessary, the IRS will allow an "automatic" extension of time to file if requested in time and using the proper form. If an extension is granted, there will be no penalty assessed if the return is filed (and any necessary payment is made) by the date provided on the extension.

The federal estate tax system acknowledges an Unlimited Marital Deduction. (Note – special rules apply if the surviving spouse is not a U.S. citizen.) However, the Internal Revenue Code makes no distinction as to lineal or collateral heirs. The estate tax exemption (Applicable Exclusion Amount) applies to all beneficiaries other than the spouse.

Section 2.03 Gathering Information for the Estate Tax Return

We will provide a form for you to use to gather the information and documentation we will need if we are going to prepare the estate tax return.

Article Three

Fiduciary Income Tax and Accounting

A new Taxpayer Identification Number will be obtained from the IRS to be used in reporting income and otherwise legally identifying the estate of the decedent. Any income earned after the decedent's death is attributed to the "estate" of decedent, whether the estate is held in a trust or is subject to probate administration.

Section 3.01 Accounting to the Beneficiaries

Your records must make a clear distinction between property you handle as fiduciary and your own property. In addition, your records should list all assets received, held and disposed of, and all receipts and disbursements, giving the date, amount and explanation of each. From your records, you or your accountant should be able to draw the information necessary to prepare the estate's income tax returns, accountings to your beneficiaries, or reports to the court if the estate is under court jurisdiction.

The fiduciary has a duty to account to the beneficiaries at least annually. In rendering such an accounting, the fiduciary must notify the beneficiary of the following:

- All estate property, any changes in the status of such property and its approximate fair market value;
- Detailed information regarding all estate bank accounts, including bank statements;
- The nature of all investments of the estate, including information on assets loaned and supporting documentation;
- All insurance in force for the estate assets or for a beneficiary, and the dates and amounts of all premium payments;

- Any gifts made from the estate, the purpose of such gifts, and the identity of the recipients of the gifts;
- All debts of the estate, the identity of the creditor and the nature of the claim;
- Detail all receipts, expenses, distributions and disbursements pertinent to the estate, including the identity of relevant parties and the purpose of the transaction and nature of property involved;
- A statement specifying the fiduciary's fee, if any, and the criteria used for determining the fee. In substantiating the fee, the fiduciary may submit documentation indicating the amount of time spent and the customary fees for similar services in the fiduciary's area to support the fiduciary's fees.

You should make sure to get the beneficiaries to sign receipts for the accountings as they are rendered.

Section 3.02 The Tax Reporting Period

Generally, estates report income on the calendar year, although sometimes it is more advantageous to report on a fiscal year. Our tax advisors can help you decide which is most beneficial for your decedent's estate. When reporting on a calendar year basis, the initial fiduciary's income tax return will report all income earned from the decedent's date of death through the end of calendar year of death. As with individual income tax returns, fiduciary returns are due on April 15 following the year in which the income is earned. Thereafter, the fiduciary will report annual income regularly until the estate is closed or otherwise ceases to earn income.

There are special rules regarding mandatory withholding from certain trusts with out-of-state beneficiaries and other complicated regulations that our tax advisors can guide you through.

Article Four

Estate Distribution

Section 4.01 "The Moment You've All Been Waiting For!"

You will probably find early on that most estate beneficiaries have no idea of the responsibilities that you have as fiduciary. Quite understandably, they have likely never been in your position and during the course of the estate's administration they may begin to wonder when they will receive the distribution to which they're entitled under the estate. The more you understand your responsibilities and the better you are able to communicate to the beneficiaries, the smoother the administration will be. This makes for happier beneficiaries, which in turn makes for a happier fiduciary!

Section 4.02 Methods of Distribution

If you are the personal representative of an estate subject to probate proceedings, the estate property will be distributed as ordered by the court. While there are special procedures that allow for partial distributions from the estate, additional procedures mean extra involvement by the attorneys. For this reason most beneficiaries wait until the very close of probate for distributions unless absolutely necessary.

Distributions under a trust provide for greater flexibility, primarily because they do not usually require court involvement. Provisions regarding the methods and timing of distributions will be found in the language of the trust document and as a practical matter, distributions may be made to the beneficiaries as needed while the fiduciary takes care of administrative matters such as tax reporting, settling debts and wrapping other matters. If you are the trustee under a trust, you should familiarize yourself with the terms of the trust and determine whether beneficiaries' shares are to be retained in trust and distributed periodically to or for the benefit of the beneficiaries, or whether the trust will distribute the beneficiaries' shares outright.

For your protection as fiduciary, if a controversy arises among the beneficiaries, all distributions should be suspended until all the issues are resolved in writing.

Section 4.03 Special Beneficiaries

The will or trust may have very carefully drafted provisions governing the manner in which a beneficiary receives distributions. While following the terms of the document is always paramount, it is particularly critical if the beneficiary is disabled or has other special needs that may qualify him or her for governmental assistance. You must take great care to make distributions for these special beneficiaries to comply with both the terms of the trust instrument and in accordance with prevailing laws and regulations.

If a beneficiary is a minor or is legally incapacitated, the trust may provide that distributions may be made to a family member or other person acting as custodian of the beneficiary, even if there are not formal guardianship proceedings in place for the beneficiary. If not, then it may be required to have a court appointed guardian in place before making distributions to a minor beneficiary or to a beneficiary who is incapacitated.

Section 4.04 Distributing Money, Accounts and Personal Property

When the time comes for distribution, you will need to render a final accounting to the beneficiaries (and in probate, to the court) in accordance with the general guidelines set forth under Article Three of this guide. Upon the approval of that final accounting, you will be able to distribute the remaining assets of the estate in accordance with the terms of the trust or will, or otherwise in accordance with the provisions of Florida law. Depending on the nature of the assets, the provisions of the trust, the terms of the will or court order and the desires of the parties, assets may be distributed in kind (such as retitling an account or other asset in the name of a beneficiary) or the assets may be liquidated under the estate and distributed in the form of cash.

Section 4.05 Distributing Real Property

When it comes time to distribute real property from the estate, the method of distribution depends on a number of factors:

(a) Probate

First, if the estate is subject to court jurisdiction, if a person receives the property as a specific gift from the decedent, or if the property is passing in fractional interests among the beneficiaries, the court's order distributing the estate should specifically identify the property and formally convey the property from the estate. Typically, no deed is needed.

If the property is in a probate estate and the beneficiaries have entered into an agreement that one of them will receive the entire property, the agreement should be made in writing and filed with the probate court. Then the court's order should take note of the agreement and distribute the property in accordance with the agreement.

(b) Trust Estate

Real property distributed from a trust estate can be handled by preparing a Trustee's Deed which will convey the property to the proper person.

Section 4.06 Obtaining Releases from Beneficiaries

Any time you distribute property to a beneficiary, produce an accounting or otherwise deliver anything to a beneficiary, you should obtain a receipt and release from the beneficiary acknowledging the transaction. This becomes essential in reporting your actions to other beneficiaries, preparing tax returns and when necessary, submitting information to the court.

Section 4.07 Formally Closing the Estate

With probate administration, the estate is formally closed only after the court enters an order distributing the estate assets and discharging the personal representative from any future liability under the estate. The personal representative then makes the final distributions to the beneficiaries under the decedent's will (or as provided by law in an intestate administration). If the estate requires the distribution of real estate (surface or mineral interests), the personal representative may have deeds prepared and filed, or the court's order may be sufficient to transfer title in lieu of deeds. Accounts will be distributed from the estate and retitled in the beneficiaries names and the personal representative should get final releases from all beneficiaries.

Because trust administration usually occurs outside the jurisdiction of the court system, the final distribution and dissolution of the trust usually occurs in the form of a comprehensive agreement between the trustee and the trust beneficiaries, where each acknowledges that the trustee has accounted for every asset that came into the trustee's possession and that the beneficiaries have received all they are entitled to under the trust. The agreement stands as a release of all liability for the trustee. The trustee will convey real estate to the beneficiaries as appropriate by the preparation of necessary deeds and will distribute accounts and other assets as necessary.

Article Five

General Matters and Final Thoughts

Section 5.01 General Advice

(a) How to Sign Your Name as a Fiduciary

When you sign anything on behalf of the estate, always sign your name followed by your fiduciary capacity – e.g., "John Doe, Trustee; Mary Roe, Personal Representative, etc. This notifies persons with whom you are dealing that you are acting in your capacity on behalf of the estate and not conducting personal business.

(b) Read the Trust or Will

This is the best source for determining the decedent's intent and what your job is. It is also the best source for determining what the beneficiaries will receive. Finally, it is your best defense for justifying your actions as fiduciary.

(c) Keep Records and Take Copious Notes

The more organized you are and the better you keep the estate's records, the more clearly you can present information to the beneficiaries and others when necessary.

(d) Deciding Whether to Accept a Fee

As fiduciary, your primary duty is to administer the estate exclusively for the benefit of the beneficiaries. Your duty of absolute loyalty means you must put the interest of the beneficiary above your own interests. Being a fiduciary is a paid position. Sometimes the trust or will provides guidance for calculating the fiduciary's fee. Otherwise, the Florida Statutes provide for a "reasonable compensation", which may require approval by a court.

Sometimes it seems that the fiduciary is paid quite well for doing very little. While that may seem unfair, keep in mind that as the fiduciary, you are also giving something up – that is, you are giving up is the opportunity to benefit in ways that you might otherwise benefit merely because of your role as fiduciary. In other words, you are being paid for your loyalty. For that reason, you should strongly consider accepting the reasonable compensation that the document allows.

Section 5.02 Are Your Own Affairs in Order?

As the fiduciary for someone else's estate, you have gained unique insight into the intricacies and complexities of taking care of the important responsibilities that must be assumed when someone dies. While the experience is fresh on your mind, now is a good time for you to take the time to structure your own estate plan to ensure your loved ones are able to take care of things upon your death. You now have a special insight into the kinds of decisions that must be made and the situations that add stress and difficulty. Armed with this understanding, you can make sure your estate is handled as efficiently as possible and that your beneficiaries are provided for in accordance with your wishes.

As soon as you are ready to begin your own estate planning process, let us know and we will be honored to help. You are to be commended for your willingness to serve as a fiduciary. As you have discovered, it can be a very complicated, and often thankless, task. You were chosen because someone believed in you and knew you were up to the task. It is an honor to assist you, and we are grateful for your business.

Special note:

This guide is intended only for the purpose of providing general information and does not constitute legal advice. By providing this general information sheet we are not establishing an attorney-client relationship and nothing contained in this guide should be construed to necessarily be applicable to your unique situation. You should always engage the services of an attorney to determine which, if any, legal solutions are right for you.

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