

# DUTIES IN THE ADMINISTRATION OF A REVOCABLE LIVING TRUST AT THE DEATH OF OWNER/SETTLOR/GRANTOR

If you've been named as the Successor Trustee of a Revocable Living Trust, all of the duties may seem overwhelming. Here's a checklist of things you need to do to administer the trust.

## 1. Contact the drafting Attorney

You need to contact the Attorney or law firm that drafted the estate plan for the decedent. The law firm can provide you with the necessary guidance as well as draft certain documents that will need to be filed, as you will read below.

## 2. Review trust documents

The first step in administering a trust estate is to locate and review all of the decedent's estate planning documents. Most estate plans include the Revocable Living Trust agreement (sometimes called Declaration of Trust), the Pour-Over Will, Durable Power of Attorney, Health Care Directives and Living Will. Because the decedent has passed away, the Durable Power of Attorney, Health Care Directive and Living Will are no longer valid. You should carefully review the Trust Agreement to determine the identity of the Successor Trustee since the owner of the Trust, also known as Grantor or Settlor could have made changes to the Trust, the identities of all beneficiaries of the trust and the plan of distribution the decedent intended. You should make a list of the beneficiaries with their names, addresses, phone numbers, e-mail addresses, age and social security numbers.

## 3. Make required filings

- A. File original Will with the Probate Court. Most states require that you file the Will immediately or within a certain number of days after the death of the decedent. You will need to check with the Probate court to find out where to send the Will or call the attorney who drafted the estate plan for the decedent, if known.
- B. Record the Death Certificate in County where decedent or trust owned real property. This will remove the decedent's name from the property tax rolls and provide evidence of ownership if the property is to be sold.
- C. Obtain taxpayer identification number for trust.
- D. File Notice of Trust with Probate Court. Again, this may not be required in every state. The purpose of this notice is to notify any creditors of the decedent or other interested party that, although the decedent has no probate estate, there is an existing trust that must be administered. Most states, after the decedent's death, completely cut off the claims of the Grantor's (decedent's) unsecured creditors. Some states that do not do this and require debts to be paid from trust assets are: California, Florida, Massachusetts, Michigan, New Jersey, New York and Oregon.
- E. You will likely need to retain legal counsel to assist with the above referenced filings.

## 4. Obtain authority to serve as Successor Trustee

If you are named in the trust as the Successor Trustee, you will need to have evidence of your authority to act as Trustee. The banks, brokerage firms and other third parties will not give you information or allow you to transact business on behalf of the trust until they have these documents. In most cases, you will need the following documents:

- A. Original signed trust agreement and all amendments to it.
- B. Death certificate of the Grantor (owner of the Trust)
- C. Acceptance of Trustee Form. By this document, you accept the appointment of Trustee of the trust and agree to perform all of the duties of the Trustee pursuant to the Trust Agreement and the law.
- D. Any other documents required by the provisions of the Trust Agreement.

## 5. Notice requirements

- A. Most states require that all beneficiaries be notified within a specified period of time of the Successor Trustee's acceptance of the Trust and the full name and address of the Successor Trustee.
- B. ***Many states give a beneficiary of a trust the right to obtain a copy of the trust agreement. Unless, you have a valid reason not to, you should provide each beneficiary named in the trust with a copy of the trust agreement including all amendments.***
- C. Notify the post office to forward mail to your address so that you can receive any bills, checks or other mail of the decedent.
- D. Notify the Social Security Administration.
- E. Notify the personnel or human resources department at decedent's place of employment or former place of employment.
- F. Notify banks, brokers, financial advisors, etc.
- G. Notify telephone service and utilities.
- H. Notify insurance companies. Obtain instructions for filing claims. Most insurance companies will only give notice to the beneficiary of the policy. Notifying the company will begin that process. If the trust is the beneficiary, you, as the Trustee, will need to apply for benefits.
- I. Notify Credit Card issuers. They will provide an amount owed and close out the account. Also, if death was due to an accident, they may provide accidental death insurance.
- J. Assemble, Inventory and Take Custody of Assets
- K. Search for assets. As Trustee, you have the duty to locate and take possession of all of the decedent's assets. Ideally, the decedent will have kept a schedule of all of his assets: those owned individually as well as those titled in the name of the trust. If not, or if the schedule is incomplete, you should locate the decedent's financial documents, such as bank statements, statements from brokerages and investment advisors, deeds, stock certificates, life insurance policies and federal and state income tax (or intangible tax, if applicable) returns.
- L. Collect supporting data as to ownership. Once you have determined the existence of an asset, you should obtain the statements, certificates, contracts and policies regarding that asset.
- M. Change Trustee on Existing Accounts and Open New Accounts. For each bank and investment account, you will need to change the name of the Trustee who has authority to manage the account from the decedent to you.
- N. Determine date of death values (and, if applicable, alternate values). For investments and securities, you can contact the decedent's broker or financial advisor for this information. Also, there are many websites that can provide this data.
- O. File claims for insurance, Veterans and Social Security benefits.
- P. File waivers and affidavits releasing property from estate tax liens with the County Clerk's office or the State (if applicable).
- Q. Prepare Trust Inventory with date of death values of all trust assets and, in states where it is applicable, send copies to all trust beneficiaries.
- R. Estimate cash needed for taxes, fees and other expenses of settling the estate.

## 6. Determine Debts Against the Decedent

- A. Determine current bills owed to doctors, hospitals and funeral homes.
- B. Make a diligent search to determine what other debts exist.
- C. Determine validity of, contest or pay, and obtain receipt or satisfaction of debts. As Successor Trustee, you have the fiduciary duty to examine each claim to determine its validity. If appropriate, you have a duty to deny payment of a claim and to defend that denial in court.

## **7. Administer the Trust Estate**

- A. Collect all income, receivables and other moneys due decedent or the trust estate.
- B. Investment of assets. As Successor Trustee, you have the duty to preserve, protect and invest the assets of the trust estate.
- C. Manage Real Estate. If any real property and the house built on it is vacant. You should take steps to secure the property and contents from vandalism and damage. If anyone is residing in the house, you should determine whether that person has the right to be in possession of the house. If the occupants are tenants, you should review the terms of the lease, if written, and make sure to enforce the provisions. You should notify the tenants in writing that the owner is deceased and that they are to make all future payments under the lease to you as trustee. Rent must be collected and deposited in the trust bank account.
- D. Insure the Trust Property.
- E. Keep a detailed record of all income, expenses and estate transactions.

## **8. File Tax Returns and Pay Taxes Due**

- A. Decedent's final Form 1040
- B. Trust income tax return (Form 1041)
- C. Estate Tax Return (Form 706) – if applicable

## **9. Distribute the Trust Assets**

You should read and fully understand the distribution provisions of the trust agreement. The distribution to beneficiaries is made after all debts of the decedent and expenses of the administration are paid. If distributions equal to a certain percentage of the estate are called for, then those percentages are calculated based upon the net value of the estate after payment of debts, expenses and taxes.

If the provisions of the trust provide that property is to be held in trust for the benefit of a certain beneficiary, then you, as Successor Trustee, must hold and administer the property subject to the standards and duties that we have mentioned in this guide.

You must maintain accurate records regarding the trust property, including any additions of principal and income. Generally, you may make partial distributions to beneficiaries as the estate administration progresses in order to hold funds or property back for a period of time to pay unexpected liabilities. You can then make the final distributions to the beneficiaries only when you are certain that all liabilities have been received and paid. If you make complete distribution too early and an unexpected obligation such as taxes or a medical bill surfaces after such distribution, you will likely have a difficult time retrieving funds back from the beneficiaries to pay those expenses. If you distributed all of the trust assets without paying all of the creditors, you may be held personally liable for the shortfall.