



ESTATE & TRUST ADMINISTRATION

Estate Administration

Estate administration is the process of managing and settling a deceased person's estate. This process is generally overseen by a personal representative, known as an executor (if there was a will) or an administrator (if there was no will), who is appointed by the court. Estate administration involves a series of legal and financial duties, which can vary in complexity depending on the size and nature of the estate, the clarity of the deceased person's wishes, and the laws of the jurisdiction. The typical steps involved in estate administration include:

1. **Filing for Probate:** The executor or administrator typically needs to file a petition with the probate court to initiate the process. This includes proving the validity of the will (if one exists) and obtaining the legal authority to act on behalf of the estate.
2. **Notification:** Beneficiaries, creditors, and other interested parties are usually notified of the decedent's passing and the commencement of the probate process.
3. **Inventory and Appraisal:** The executor/administrator must create a detailed inventory of the estate's assets, which can include bank accounts, real estate, personal belongings, stocks, and bonds. Appraisals may be necessary to determine the value of certain assets.
4. **Managing Estate Assets:** This can involve everything from safeguarding physical property to managing investment accounts. The executor/administrator may need to liquidate assets to pay debts and taxes or to distribute to beneficiaries.
5. **Paying Debts and Taxes:** The estate's debts, including any outstanding bills, loans, and taxes, must be paid. This might include filing a final income tax return for the deceased and paying any estate taxes due.
6. **Distribution of Assets:** Once debts and taxes have been settled, the remaining assets are distributed to the beneficiaries according to the will's instructions or, if there's no will, according to the laws of intestate succession in the jurisdiction.
7. **Final Accounting and Closing the Estate:** The executor/administrator must provide a final accounting of all actions taken and all monies received and spent during the administration of the estate. Once approved by the court and the beneficiaries, the estate can be officially closed.

Trust Administration

Trust administration refers to the process of managing and settling a trust after the death of the individual who created it (known as the grantor or settlor). Unlike estate administration, which is supervised by the probate court, trust administration is generally a private process, not subject to court oversight, unless a dispute arises that requires judicial intervention.

The individual responsible for managing the trust after the grantor's death is known as the trustee. The trustee's role is to administer the trust according to its terms and in the best interests of the beneficiaries. Here are the key steps involved in trust administration:

1. **Review of Trust Documents:** The trustee begins by reviewing the trust documents to understand the grantor's instructions, identify the beneficiaries, and ascertain their duties and powers as trustee.
2. **Assuming Role of Trustee:** The trustee needs to formally accept the role of trustee. This can be through a written document known as an Acceptance of Trusteeship, which acknowledges their understanding and acceptance of the responsibilities involved. A Certificate of Trust must be updated to reflect the acting trustee and the trust tax identification number.
3. **Notification of Beneficiaries and Heirs:** The trustee is typically required to notify the beneficiaries and possibly certain heirs of the grantor's death and the existence of the trust. The notification may include information about their right to request a copy of the trust.
4. **Inventory and Appraisal of Trust Assets:** The trustee must identify and take control of all trust assets. This can involve transferring accounts into the trustee's name as trustee, securing property, and obtaining appraisals to establish the value of certain assets.
5. **Payment of Debts and Taxes:** The trustee is responsible for paying the grantor's final debts and expenses. This may include filing final income tax returns and, if necessary, estate or inheritance tax

returns.

6. **Managing Trust Assets:** The trustee may need to manage or invest the trust assets prudently during the administration period, always adhering to the standards outlined in the trust document and applicable law.
7. **Distribution to Beneficiaries:** The trustee distributes the trust assets to the beneficiaries according to the terms of the trust. This could involve outright distributions or continuing to hold and manage the assets in trust for the beneficiaries' benefit, depending on the trust's instructions.
8. **Accounting:** The trustee must keep detailed records of all income, expenses, and distributions related to the trust. They may be required to provide periodic accountings to the beneficiaries.
9. **Closing the Trust:** Once all the trust's terms have been fulfilled, the trustee can proceed to close the trust.

Applying for a Taxpayer Identification Number

When a person passes away, it's often necessary for the executor of their estate or the trustee of their trust to obtain an Employer Identification Number (EIN), also known as a Taxpayer Identification Number (TIN), for the estate or trust. This is necessary because an estate and trust are a separate legal entity for tax purposes.

An EIN is often required to open a bank account for the estate or trust. It's also necessary for other financial transactions, such as selling assets or investing funds on behalf of the estate or trust. The executor or trustee will need an EIN to file any required tax returns for the estate or trust, including the estate's final income tax return (Form 1041) and any estate or inheritance tax returns.

Fiduciary Duties

Fiduciary duties are responsibilities that one party (the fiduciary) owes to another party (the principal or beneficiary) when the fiduciary is entrusted with the care of money, property, or another person's well-being. These duties are a cornerstone of the relationship of trust and confidence between the two parties. Personal representatives and trustees have a fiduciary duty to act in the best interests of the beneficiaries. Mismanagement can occur due to lack of experience, negligence, or intentional misconduct. Duties of the fiduciary often include:

- **Duty of Loyalty:** The fiduciary must act solely in the best interests of the beneficiaries, avoiding conflicts of interest and self-dealing. The fiduciary should not profit from their position at the expense of the beneficiaries.
- **Duty of Care:** The fiduciary must manage the assets or affairs of the beneficiary with the care and diligence that a reasonably prudent person would exercise in similar circumstances.
- **Duty of Prudence:** Linked to the duty of care, the fiduciary must make decisions with prudence and discretion, especially in investment and management of assets.
- **Duty of Impartiality:** If a fiduciary serves multiple beneficiaries, they must act impartially in managing and distributing the assets, not favoring one beneficiary over another.
- **Duty to Inform and Account:** The fiduciary is required to keep the beneficiaries informed about the affairs they are managing and to provide regular, accurate accounting of all transactions.
- **Duty of Confidentiality:** The fiduciary must keep the affairs and interests of the beneficiaries confidential, not disclosing information to unauthorized parties.
- **Duty to Follow Instructions:** The fiduciary must adhere to the instructions laid out by the trust, will, or principal, as long as those instructions are legal and in the best interests of the beneficiaries.
- **Duty to Avoid Wasting Assets:** The fiduciary must avoid actions that would waste or devalue the assets under their management, ensuring the property or funds are used effectively for their intended purpose.

Fiduciaries who fail to uphold these duties can be held legally liable for any harm or loss resulting from their breach of duty. Fiduciary duties are taken very seriously in the legal system, and breaching them can result in significant legal and financial consequences.

Problems in Estate and Trust Administration

Estate and trust administration can be a complex and often challenging process, fraught with potential problems. Common problems include:

- **Lack of Clarity:** If the language in a will or trust is vague, contradictory, or incomplete, it can lead to disputes among beneficiaries or with the personal representative or trustee. This can result in delays and litigation.
- **Contests:** Beneficiaries or potential heirs may contest a will or trust for various reasons, including allegations of undue influence, lack of capacity, or improper execution. These contests can significantly prolong the administration process and deplete resources.
- **Inadequate Estate Planning:** Failure to properly plan for taxes, debts, or the disposition of assets can create financial difficulties for the estate or trust and result in unintended consequences for beneficiaries.

- **Difficulty Locating Assets or Documents:** If the decedent did not leave a clear record of their assets and important documents, it can be time-consuming and costly to locate everything necessary for proper administration.
- **Beneficiary Designations:** Since beneficiary designations supersede a will or trust, such may be inconsistent with the estate plan and not reflect a decedent's true intentions.
- **Creditor Claims:** Identifying legitimate creditor claims and ensuring they are paid can be complicated, especially if the claims are disputed or if the estate or trust lacks sufficient liquidity to pay all debts.
- **Family Disputes:** Conflicts among family members, especially in blended families or where there are significant assets at stake, can lead to challenges in fair and efficient estate administration.
- **Tax Issues:** Estates and trusts may face various tax issues, including estate taxes, income taxes, and capital gains taxes. Failure to properly address these can result in penalties and an increased tax burden on the estate or beneficiaries. Additionally, the liquidation of some assets, such as retirement accounts and treasury bonds, may result in significant taxation, resulting in the need to prudently manage any liquidation.
- **Illiquid Assets:** If the estate or trust consists largely of illiquid assets, such as real estate or a closely held business, it may be difficult to distribute assets or pay debts without selling off these assets, which can be time-consuming and may not yield the expected value.
- **Complex Assets:** Managing and valuing complex assets, such as business interests, intellectual property, or assets located in multiple jurisdictions, can complicate the administration process.
- **Changes in Law:** Changes in estate, tax, or probate law can affect the administration of the estate, potentially altering the disposition of assets or the tax implications.

Estate and trust administration can be a complex and time-consuming process, often taking several months to several years to complete, depending on complexity. Personal representatives and trustees are fiduciaries, meaning they are legally required to act in the best interests of the estate or trust and its beneficiaries. Due to the legal and financial complexities involved, many personal representatives and trustees seek assistance from legal, tax, and financial professionals.

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