

Am I Qualified to Serve as A Successor Trustee

Asset Management

If you are asked to serve as successor Trustee of a parent, grandparent or friend's Trust, consider it an honor, but give the appointment careful consideration before accepting. A Trustee has the responsibility of safeguarding the Trust assets for the benefit of the beneficiaries. Safeguarding the assets may be as simple as collecting and turning over all the money to an investment advisor for management, or it could be as complicated as running a business that was owned by the Trust creator. In addition to overseeing the investment and management of the Trust assets, a Trustee must also keep current and accurate records of the Trust assets and a list of all debts and expenses paid.

Emotional Involvement

Before you agree to serve as the successor Trustee, there are two potential problems that any Trustee should be aware of before he or she accepts the appointment. When you step in as the Trustee, you may no longer be viewed as a friend, but as the person who is now managing the beneficiaries' money. For some beneficiaries, you may become the substitute parent or grandparent, and there will be times that you must make unpopular decisions. Many beneficiaries may not be happy with the fact that their money is being managed for them. Their frustration may be expressed by attacking the type of Trust investments or your Trust management. This emotional involvement with the beneficiaries may be difficult to handle if you are not used to confrontation or emotionally challenging situations.

But you must always keep in mind that you were chosen as the Trustee because the parent, grandparent or Trust creator recognized that the beneficiary needed to be protected from squandering the money or from mismanagement of the assets. No matter how difficult or unpopular the decisions are, you must keep the wishes of the Trust creator in mind.

Accept or Decline?

Before you decide to accept or reject the appointment as Trustee, here are a few tips to help you make this decision on whether to accept or decline and some guidelines to help you act as successor Trustee once you have accepted the appointment.

1. Have a heart-to-heart conversation with the Trust creator to better understand any wishes, fears or concerns.
2. Establish a relationship with an estate planning attorney and certified public accountant. Anything that you don't want to do or don't feel comfortable handling can be sub-contracted out to other professionals, including Trust asset management.
3. Finally, remember that you can resign at any time.
4. Below are some tips to help you with the process of serving as Successor Trustee.

SUCCESSOR TRUSTEE'S CHECKLIST

Immediately after a death, the Trustee will need some help in handling the affairs and administration of the decedent's estate. Of course, there is no substitute for a personal consultation with an estate planning attorney to go over all of the duties, but, in the interim, each of the attached checklists will give the fiduciary a general overview of his or her immediate responsibilities.

GETTING STARTED IMMEDIATELY:

1. Notify the funeral home. Ask the funeral home to make application for the social security death benefit.
2. Arrange to receive several copies of the death certificate. Twelve is not too many in most cases (the Funeral Home can request these for you).
3. Arrange for the care of any minors or elderly persons the decedent was caring for and any pets who were dependent on the decedent for care.
4. See that any burial instructions left by the decedent are carried out.
5. Call the local paper and place a notice in the obituary column.
6. Notify the Personal Representative and any Trustee named in a will or Trust, other than yourself.
7. Notify the decedent's attorney, friends, family members and employer or employees of the death.
8. Notify the decedent's landlord, if any, and the suppliers of telephone service, cable and utilities.
9. Notify the post office of the death and arrange for the collection of mail of the decedent.
10. Go through the decedent's records and files to locate all assets and accounts.
11. Publish notice to creditors in the newspaper in the county in which the decedent lived at the time of death. (This starts a statute of limitation for future claims).
12. Determine if there are any Veteran or government agencies, besides Social Security, that need to be contacted.

THINGS TO DO AS SOON AS TIME PERMITS:

1. Locate the original Trust and/or original will of the decedent.
2. Retain an attorney and possibly an accountant to provide any necessary advice or assistance to begin the probate procedures for any assets that were not titled in the Trust. You may call on the law office of Redmond, Redmond & Yokom to provide these services for you.
3. Locate the deeds to all real property owned by the decedent.
4. Arrange for the probate of any out of state real property of the decedent.
5. Locate all insurance policies.
6. Determine any and all debts owed the decedent and make arrangement to collect these debts.
7. If necessary, decide which assets will be sold to pay the expenses of administration and taxes due because of the death of the decedent and arrange for any such sales.

IN-DEPTH ADMINISTRATIVE DUTIES

1. **Gathering a List of Assets:** All assets must be identified and a complete and accurate inventory must be prepared for one or more of the following reasons:
 - To determine whether federal estate tax is due.
 - To determine new depreciation schedule on income property.
 - To document the stepped-up basis.
 - As a starting point for an accounting.
 - For guidance of the surviving spouse or successor Trustee.
2. **Collection of Decedent's Benefits:** The successor Trustee should collect all benefits for the decedent. These benefits may include disability payments; retirement or disability income, fringe benefits from an employer; funeral and death benefits from social security, Veteran's Administration, or employment agreements; medical expenses from group insurance; group life and disability income benefits; and workers compensation claims.
3. **Appraisal:** An appraisal of assets that do not have an easily determined fair market value (such as real estate or a business) may be necessary for the following reasons. This should be reviewed when a single person dies, when one spouse dies or when the surviving spouse dies.
 - To determine the amount of the stepped-up basis.
 - For asset division.
 - For the accounting.
 - To determine whether estate taxes are due.
4. **Stepped-up Basis:** Basis is the purchase price plus capital improvements minus depreciation. Typically, whenever property is sold, any amount received over the basis will be taxed at capital

gains tax rates. The stepped-up basis is the value of the property as shown on the inventory or federal estate tax return (the value as of the date of death). The inventory should be safeguarded because this is what documents the new basis should the property be sold after the Trustor's death.

5. **Creditors:** If a probate estate is opened, the probate estate is primarily liable for decedent's debts, and if the probate estate does not have enough assets, then the Trust will pay the creditor. The Trust document requires that the Trustee pay the outstanding debts and liabilities of the decedent. Therefore, as Trustee you must investigate the amount and validity of all claims against the estate, and when appropriate, pay the just debts of the decedent.
6. **Clearing Title:** If property is owned jointly with a spouse or if property was owned by the decedent's Trust, a death certificate should be recorded with the Register of Deeds. The Trustee may need to prepare a deed to the new beneficiary based on the distribution provision in the Trust. Once the deed is prepared, it should be recorded.
7. **File Change of Ownership With County Tax Assessor:** When real estate changes hands, it is necessary to file a Property Transfer Affidavit with the local Tax Assessor.
8. **Estate Taxes:** A Federal Estate Tax Return (form 706) may be required upon the death of an individual. The amount an individual can pass tax free at the time of death changes each year and you will need to consult with the attorney or CPA for this amount. A state form is generally required if the federal form is required. Estate tax returns, if an estate tax is due, must be filed within 9 months of the decedent's death to avoid interest and penalties.
9. **Tax Matters:** As a Trustee you should consider the following items and take action to make certain each item is properly addressed.
 - a. Prepare the decedent's final income tax return or seek the assistance of a CPA. Please feel free to consult with the law office of Redmond, Redmond & Yokom for recommendations of a CPA for the estate. The decedent's final income tax return is due on April 15 of the year after the death.
 - b. Determine whether the decedent made estimated income tax payments and whether they should be continued.
 - c. If the decedent owned real property, be sure that real property taxes are paid before the due dates.
 - d. Apply for a tax identification number for the Trust. The SS-4 form can be obtained and/or filled out online or it can be completed by the CPA.
 - e. With the help of an accountant, determine the amount of cash that will be needed to pay all tax liabilities including estate taxes.

10. **Distribution of Assets:** Upon distribution of assets, the successor Trustee should obtain receipts from beneficiaries receiving assets.
11. **Report to Beneficiaries:** A Trustee is required to report and account annually to all beneficiaries for which he or she is managing money. An accounting must contain the following information:
 - a. A statement of receipts and disbursements of principal and income that have occurred during the last complete fiscal year of the Trust or since the last accounting.
 - b. A statement of the assets and liabilities of the Trust as of the end of the last complete fiscal year of the Trust or since the last accounting.
 - c. The Trustee's compensation for the last complete fiscal year of the Trust or since the last accounting.
 - d. The agents hired by the Trustee, their relationship to the Trustee, if any, and their compensation for the last complete fiscal year of the Trust or since the last accounting.
12. **Safe Deposit Box:** Inventory the contents and distribute the contents as directed by the Trust document.
13. **Decedent's Business:** If the decedent owned a business, then steps must be taken to preserve and protect the enterprise. Continuation or liquidation is an issue which must be addressed immediately and appropriate steps taken after this determination is made.
14. **Insurance:** When acting in the capacity of a Trustee, you are responsible for the maintenance of the Trust assets. Therefore, you must review the decedent's automobile, homeowner's liability, and other insurance to assure coverage continues until assets are distributed. In addition, determine if any life insurance existed and collect the proceeds of the policy.
15. **Lawsuits:** Determine if there are any actions pending on behalf of the decedent. Also determine if the decedent's estate has an action for wrongful death of the decedent.
16. **Cash Needs:** It is a good idea when acting as a successor Trustee to estimate the cash needs of the Trust at the time of death of the Trustor. This will enable you to take action in order to obtain the cash needed to pay the obligations of the decedent and any obligations of the Trust which arise in the near future. Some obligations include debts, funeral expenses, taxes and reserve for miscellaneous and general expenses.

SUMMARY

As you can see , there is a great deal of work required when serving as a successor Trustee. Each family situation is unique and may require the advise of an experienced estate planning attorney. Please feel free to contact Danielle Redmond Streed at the Law office of Redmond, Redmond & Yokom at (269) 276-0055 or (888) 573-0114 for assistance.