

The Successor Trustee's Guidelines and Checklist

Asset Management

If you are asked to serve as successor Trustee of a 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 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 may be, you must keep the wishes of the Trust creator in mind.

Accept or Decline?

Before you decide to accept or decline the appointment as Trustee, here are a few tips to help you make this decision 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. Keep in mind that the Trustee shall administer the Trust in good faith, expeditiously, in accordance with its terms and purposes, for the benefit of the Trust beneficiaries and in accordance with the Michigan Trust Code. The Trustee may not act in bad faith or with reckless indifference to the purpose of the Trust or the interest of the Trust beneficiaries. However, the Trustee is not liable for the acts (or failures to act) of anyone it hires in good faith to perform services. A successor Trustee is also under no obligation to inquire into the acts or accounts of a prior Trustee. In no event shall a successor Trustee be liable for acts, omissions or failures to account properly prior to its qualification as Trustee. The Trustee is similarly under no obligation to inquire into the acts or accounts of a Personal Representative who is transferring property to the Trustee.
3. 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 contracted out to other professionals, including asset management.

4. Finally, remember that you can resign at any time.
5. The following are signs of accepting the job as successor Trustee:
 - (a) Filing a written acceptance with the qualified beneficiary(s);
 - (b) Accepting delivery of Trust property;
 - (c) Exercising powers or performing duties as Trustee;
 - (d) Otherwise indicating acceptance of the Trustee within 63 days of knowing of the designation.

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.

The Trustee must first notify "Qualified Trust Beneficiaries" of the Trust existence, the identity of the Trustmaker, and of the right to request a copy of the terms of the Trust that describe or affect the Trust beneficiary's interest. The notice must also identify the court in which the Trust is registered, if any. The Trustee must provide this notice within 63 days after the Trustee acquires knowledge of the creation of an irrevocable Trust, or the date the Trustee acquires knowledge that a formally revocable Trust has become irrevocable, whether by death of the Trustmaker or otherwise.

GETTING STARTED IMMEDIATELY:

1. Notify the funeral home.
 - (a) See that any burial instructions left by the decedent are carried out.
 - (b) Call the local paper and place a notice in the obituary column. When placing an obituary in the newspaper, do not include the deceased person's street address and avoid providing the entire birth month, date and year of the decedent.
 - (c) Ask the funeral home to notify the social security office to stop benefits and to obtain any death benefit.
 - (d) 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).
 - (e) Determine if there are any Veteran or government agencies, besides Social Security, that need to be contacted.
2. 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.
3. Notify the Personal Representative and any Trustee named in a Will or Trust, other than yourself.
4. Notify the decedent's attorney, friends, family members and employer or employees of the death.
5. Notify the decedent's landlord, if any, and the suppliers of telephone service, cable and utilities.
6. Notify the post office of the death and arrange for the collection of the decedent's mail.
7. Go through the decedent's records and files to locate all assets and accounts.

8. 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 for unpaid debts).
9. Change the locks on the home. (This prevents those with keys from taking things from the home).
10. Notify the home insurance company that the home is not occupied and update the coverage.
11. Put car on storage insurance unless it has been left to a specific member of the family, if so transfer title as soon as possible and terminate the car insurance.

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. If the deeds cannot be located a copy of the last recorded deed can be located at the Register of Deeds in the county where the property is located.
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 to 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 and arrange for any such sales.

IN-DEPTH ADMINISTRATIVE DUTIES

1. Upon the death of the Trustmaker, the Trustee shall keep the "Qualified Trust Beneficiaries" reasonably informed about the administration of the Trust and of the material facts necessary for them to protect their interest. Unless unreasonable under the circumstances, a Trustee shall promptly respond to a Trust beneficiary's request for information related to the administration of the Trust.
 - (a) A Trustee shall prepare a report identifying the Trust property, investments, liabilities, receipts, and disbursements, including the source and amount of the Trustee's compensation, a listing of the Trust property and, if feasible, their respective market values. In addition, the report must include disclosure related to the Trustee's compensation for investment advisory or management services. The Trustee shall send the report at least annually and at the termination of the Trust.
 - (b) No particular format or formality is required for a report, unless a court specifies its content and presentation. A statement of account shall be delivered as practicable after the closing of the accounting period or upon termination of the Trust.

- (c) Any beneficiary receiving a specific gift and not a percentage or portion of the Trust shall not receive an inventory or accounting, except as it pertains to the specific gift.
- (d) The Trustee's annual accounting, including fees and expenses reflected in it, shall be binding on any person to whom it is sent and that person's successors unless a written objection is received by the Trustee within 90 days after receipt of the accounting by the beneficiary. *If an objection is not received within 90 days, then the beneficiary has been deemed to have approved the accounting.* A living parent, guardian or other person having physical custody of the beneficiary may act for a minor or legally disabled beneficiary in approving or disapproving the accountings. The Trustee is also authorized to file an accounting with a court of competent jurisdiction at any time. Reasonable attorneys' fees and expenses related to this judicial proceeding may be charged against the Trust.

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 to determine the new cost basis. This should be reviewed when a single person dies, when one spouse dies or when the surviving spouse dies.

Cost basis is the original purchase price plus capital improvements minus depreciation. Typically, whenever property is sold, any amount received over the cost-basis will be taxed at capital gains tax rates. The cost-basis may be "stepped-up" to the date of death value and the original purchase price or capital improvements may not be relevant.

4. **Creditors:** Whether or not a probate estate is opened, the estate is primarily liable for decedent's debts. If no probate estate is opened, the Trustee will need to publish Notice (see "Getting Started" #8). 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 debts of the decedent.

5. **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.

6. **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 the CPA, determine the amount of cash that will be needed to pay all tax liabilities including estate taxes.
7. **Safe Deposit Box:** Inventory the contents and distribute the contents as directed by the Trust document.
 8. **Decedent's Business:** If the decedent owned a business, 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. Contact the corporate attorney that handled the corporate books.
 9. **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.
 10. **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.
 11. **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 Trust 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.