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## WHAT TO DO WHEN SOMEONE DIES

This outline is designed to give the family an idea of some of the things which may need to be done when someone dies. Because family situations differ greatly, because the size and make-up of estates vary greatly, and because decedents may have very different estate plans (or lack thereof), this discussion is general in nature and SHOULD NOT be viewed as legal advice. It provides a list of some things to be considered, many of which should be discussed with your attorney.

Some clients may have will-based estate plans, under which a "Personal Representative" gathers and distributes the estate. Other clients may have living trust-based estate plans, under which a "Successor Trustee" gathers and distributes the assets.

In this memo I shall refer to all wills and trusts as "estate planning documents." I shall refer to the person who gathers and distributes the estate as the "Executor."

Nevertheless, keep in mind that the personal representative under a will may have additional court reporting and other court obligations which may be avoided if the estate is owned by a living trust or passes under joint tenancy or beneficiary designations.

I have reviewed several books on settling an estate. Many are very weak, some outright dangerous. I am pleased to recommend one book from Nolo Press written by Mary Randolph and entitled "The Executor's Guide - 2nd Edition." It is reasonably thorough, and runs over 400 pages, but it not state specific; hence still the need to consult with a local attorney. It is available through Barnes & Noble, Amazon, etc., and costs about \$35 (soft cover).

**PRE-DEATH CONSIDERATIONS:** No discussion of what needs to be done after someone dies would be complete without a discussion of some of the things to consider when death is imminent:

- 1) Prepare and/or update Estate Planning Documents. Consider leaving assets in trust for the disabled child, the spend-thrift child, the child on Medicaid, the child in a bad marriage, and even the successful child.

- 2) Prepare a list of assets, insurance policies, etc. Discuss the list and location of relevant documents with your heirs.
- 3) Consider gifting and other actions to reduce estate taxes and/or achieve Medicaid eligibility for nursing home costs. Consider rolling over 401(k) to IRA.
- 4) Update beneficiary designations and review any joint tenancies. Remember that such assets will not pass pursuant to your estate plan unless payable to your trust or estate, which may or may not be advisable depending on the situation.
- 5) Set up Social Security & pension checks for direct deposit. Set up direct payment of utility bills and insurance from your checking account. Direct payments to and from your checking account will reduce the workload for your family if you become disabled and reduce the chances of lost checks and lapsing insurance.
- 6) Consolidate investment accounts, securities, and dividend re-investment accounts into one account. It is a lot easier for your executor to deal with one account here in Colorado than numerous transfer agents in Boston and New York.
- 7) Consolidate bank accounts and CD's into one bank (or a few banks if FDIC limits are of concern to you.)
- 8) Discuss funeral and burial desires with your family. Don't necessarily pre-pay, but do pre-plan. What is it going to cost? Get a "General price list" from your local funeral home.
- 9) Write your own obituary - Review the newspaper for examples.
- 10) Keep family members informed as to ALL of the above, including location of important documents and persons to notify upon of your death. Perhaps they should use your Christmas card list.
- 11) Consider selling assets on which you have a large loss. If you have a capital loss carry-over, consider recognizing gains prior to death to offset those losses.
- 12) If you have a living trust, be sure your assets are titled in the name of your trust and that the beneficiary on your life insurance policies is your trust. For most of our married clients the primary beneficiary on IRAs should be your spouse, and then either your children or your trust. Discuss the latest recommendations for your situation with your attorney.

- 13) A review of the family planning, estate tax planning, and even income tax planning with your attorney may be appropriate once death becomes imminent.

#### **POST-DEATH CONSIDERATIONS:**

The job of the executor is to gather the assets, pay the proper debts, expenses, and taxes, and then distribute the remaining assets to the beneficiaries pursuant to any will or trust. Numerous reporting requirements are imposed on the executor to report to the beneficiaries, the IRS, the probate court, and in some cases, to the creditors of the decedent and possibly others.

The executor has a duty to protect and preserve the estate's assets. The executor should attempt to put together an inventory of all assets and their values as of the date of death. Probate court requires that this be done within 90 days of death.

Even if there is no probate, we suggest that the beneficiaries be notified of the known assets and liabilities as soon as possible after the decedent's death. Keeping beneficiaries notified of everything is the easiest way to avoid litigation which can devastate an estate.

The executor should collect the various assets. Valuables, such as securities, jewelry and other personal items of substantial value should be kept in a safe place such as a safe deposit box, to which only executor has access.

If the decedent completed a "Personal Property Memorandum," that should be consulted as to the disposition of certain of these valuables.

So how does the executor go about getting assets liquidated or titled in the name of the estate or reflecting the he/she is now the trustee? The first step is contact the "keeper of the title", that is, the bank, the brokerage firm, or the transfer agent. Each asset will have its own requirements.

If the asset is titled in joint tenancy, all that is usually needed is a death certificate to vest title in the surviving joint tenant. A new account form and W-9 for taxes may also be required.

If the asset has a surviving named beneficiary, all that is needed is a death certificate and usually a beneficiary claim form. The insurance company, IRA administrator, or employer will provide you with their forms. You will need to contact such organizations and request the appropriate form. They may ask to see a copy of the death certificate first.

If the property is titled in just the decedent's name with no surviving joint tenant or named beneficiary, then it is part of the decedent's "probate estate" and the disposition of such assets (and only those assets) is controlled by the decedent's will. Probate must be opened and "letters" from the court issued which prove your legal capacity to act on behalf of the decedent's estate.

There is an exception: If the total probate estate is under \$50,000, a small estate affidavit is usually sufficient to liquidate the asset or transfer title.

If the asset is owned by your revocable living trust, then your successor trustee needs to prove to the "keeper of the title" that the original trustee(s) are now deceased (a death certificate) and that the successor trust is authorized to act. Usually a death certificate and the "Affidavit (For Property of Trust)" or "Statement of Authority" should be sufficient, but often the "keeper" will request a copy of the first and last pages of the trust, and the page which lists the successor trustees. They may also request an attorney's opinion letter that the trust is valid and still in full force and effect under local law. We can provide that as needed.

The executor should maintain an accurate record of all deposits into and withdrawals from these accounts, reflecting the amount and sources of each deposit and the amount and purpose of each check drawn.

If the decedent was collecting Social Security benefits, you will need to notify them and provide a death certificate. Do this in person if a surviving spouse is involved who will qualify for larger benefits. A surviving spouse will generally receive the larger to his or her Social Security payment or the decedent's payment.

With respect to assets which are not sold immediately, verify that sufficient insurance coverage is maintained. Who is driving the decedent's car? Is the family home unoccupied? The answers to those questions could nullify the existing coverage.

Creditor claims may need to be paid and, depending on whether they are paid from a probate estate or from the Trust, the executor may have different responsibilities and latitude. Death taxes may need to be paid and, even if taxes are not due, many estates will nevertheless be required to file a federal estate tax return.

You will need for a new tax ID number for the estate and for each trust involved. These can be obtained by completing form SS-4 available on-line at [www.IRS.gov](http://www.IRS.gov). There are some exceptions.

There will be income tax returns due for both the decedent and the decedent's estate and/or trust. An attorney or accountant should be consulted. Professional fees may be paid to the attorney, accountant and others, including the executor, from the estate assets.

Do you have to wait until all assets have been liquidated before making distributions? Generally no, but be sure to keep a cash reserve to cover unexpected debts, expenses, and taxes.

Also be cautious about making distributions before the "survivorship" period and "creditor period" has expired, as you could be personally liable for any losses sustained as a result of such distributions.

The executor may be allowed to distribute assets in kind or sell assets and distribute cash. The provisions relating to the distributions to beneficiaries are generally contained in the estate planning documents.

On final distribution of the remaining assets, it is advisable for the executor to provide the beneficiaries with a final accounting and obtain a receipt from each beneficiary. If any controversy arises, a court hearing (or "Formal Closing") may be necessary to resolve differences.

Depending on the estate plan, the executor may be required to hold an inheritance in trust for one or more beneficiaries. The executor is then responsible for additional reporting, management of assets, and distributions consistent with the controlling document.

Although the executor has the final say on many issues, the executor is held to very high standards: to avoid self dealing, to handle and invest funds prudently; to treat the beneficiaries (including himself) fairly; to properly report the inventory of assets and income and expenses to the beneficiaries. The failure of the executor in any of these capacities is both grounds for removal and being held personally liable. The courts tend to deal very harshly with executors who breach their fiduciary duties.

Many executors have found check lists to be helpful. We have included the following lists which are fairly extensive. No doubt many of the items will not apply to every situation. I choose to be overly thorough, and allow you, the reader, to select which ones might be applicable to your situation.

If you do not understand a particular item, you may wish to discuss it with your estate attorney. We would be happy to assist you in the event you do not have an estate attorney.

1. INITIAL ITEMS FOR FAMILY TO DO

- \_\_\_ If you are alone, telephone a friend or family member who can spend the next few hours with you
- \_\_\_ Notify family members
- \_\_\_ Make funeral arrangements
- \_\_\_ Arrange for obituary/Call newspaper. In Denver: 303-892-2511 for guidelines, or 303-892-2307 (weekdays) or 303-893-2312 (weekends) for questions
- \_\_\_ Obtain the appropriate number of death certificates; (four plus one for each asset. Three accounts at one bank will require only one certificate. Three cars transferred at different times will require three original death certificates. Most places will return the original if you ask them to do so.)
- \_\_\_ Arrange for care for minor children, pets, etc.
- \_\_\_ Notify your attorney and make an appointment immediately
- \_\_\_ Often it is beneficial for the family to meet with the attorney while the family is in town for the funeral
- \_\_\_ Contact the V.A. if decedent was a veteran; Consider burial at Ft. Logan. VA will provide a headstone, etc.
- \_\_\_ Create a list of the decedent's assets and their values as of the date of death, indicating the name of the asset, account number, the manner in which title is held including if it is in joint tenancy, the value of date of death, and the name(s) of the beneficiaries, if any
- \_\_\_ Notify the post office of the death and arrange for the collection of mail for the decedent
- \_\_\_ Avoid entering into contracts for anything, and avoid spending, gifting or lending large sums of money
- \_\_\_ Make appointment to meet with the attorney, perhaps while family is in town for the funeral
- \_\_\_ Prepare an agenda or list of questions to discuss with the attorney
- \_\_\_ Have the attorney prepare written or visual explanation of the estate plan

2. ITEMS EXECUTOR SHOULD BRING TO INITIAL MEETING WITH ATTORNEY

- \_\_\_ Original estate planning documents
- \_\_\_ Death certificates
- \_\_\_ Preliminary Asset and Liability information (estimates are OK)
- \_\_\_ List of questions/special concerns/immediate cash needs

CAUTION: DO NOT remove the decedent's name from assets nor file beneficiary claim forms (on life insurance, IRA's, etc.) before meeting with the attorney. We often recommend leaving the decedent's name on a checking account so if you ever get a check payable to the decedent you have a place to deposit it.

3. ITEMS TO DISCUSS AT FIRST MEETING WITH ATTORNEY

- \_\_\_ Identify and illustrate over-all plan and distribution scheme

- \_\_\_ Review checklist/questionnaire from executor; or give to executor to complete
- \_\_\_ Gather preliminary estimate assets and liabilities
- \_\_\_ Discuss income tax basis adjustment of assets
- \_\_\_ Determine if the deceased made taxable gifts after 1976
- \_\_\_ Discuss adequacy of insurance coverage on real and personal property
- \_\_\_ Determine title to assets (and beneficiaries if applicable)
- \_\_\_ Was decedent a trustee, beneficiary, power-holder of any other trust; get copies of all relevant documents
- \_\_\_ Determine whether a probate proceeding is necessary
- \_\_\_ Discuss the need for probate in other states
- \_\_\_ Discuss assets not under control by executor, such as joint tenancy assets or assets with beneficiaries
- \_\_\_ Did decedent and spouse ever live in a community property state? Is there any "community property"? (The CP states are LA, TX, NM, AZ, CA, NV, WA, ID, WI, AK)
- \_\_\_ Review cash requirements
  - \_\_\_ Initial death tax estimate: \_\_\_\_\_
  - \_\_\_ Surviving spouse's cash requirement: \_\_\_\_\_
  - \_\_\_ Administration expense estimate: \_\_\_\_\_
- \_\_\_ Have executor sign authorizations to obtain records or information
- \_\_\_ Have executor to locate and inventory contents of all safe deposit boxes. Should others/attorney be present?
- \_\_\_ Arrange for safekeeping of any assets at risk (personal property)
- \_\_\_ Discuss liquidation of assets/distributions
- \_\_\_ Discuss outstanding liabilities of decedent
- \_\_\_ Discuss notice to creditors procedure (by publication) and the one-year statute of limitations
- \_\_\_ Discuss executor's fiduciary duties
- \_\_\_ Discuss executor's compensation and maintenance of time records. Discuss bookkeeping requirements (e.g., best to use one bank account for receipts and disbursements)
- \_\_\_ Discuss attorney compensation and fee estimates
- \_\_\_ Discuss need for regularly scheduled meetings
- \_\_\_ Calendar next follow-up meeting; date: \_\_\_\_\_
- \_\_\_ Discuss need for appraisals and step up/down in basis
- \_\_\_ Is surviving spouse not a U.S. Citizen?
- \_\_\_ Discuss Disclaimers and how they might benefit the family
- \_\_\_ Mail original of Will to probate court clerk
- \_\_\_ Sign fee agreement letter
- \_\_\_ Executor's fiduciary duties letter or handout
- \_\_\_ Authorization to communicate with others
- \_\_\_ Obtain name, address, phone number, and taxpayer identification number for each trust or estate beneficiary
- \_\_\_ Review requirements for specific assets categories:
  - \_\_\_ Qualified S Corp. (trust election needed?)
  - \_\_\_ Partnership (IRC §754 election? Income tax return?)
  - \_\_\_ Family farm or Family business special elections
  - \_\_\_ Toxic waste issue with any real property?
  - \_\_\_ Any outstanding options or escrow?

- \_\_\_ Promissory notes- Delinquent or in foreclosure?
- \_\_\_ Any business or profession needing immediate attention?
- \_\_\_ Is there an ESOP?
- \_\_\_ Federal/state payroll tax reporting
- \_\_\_ Notice to Dept. of Human Services (Medicaid) required?
- \_\_\_ Small Estate Affidavit (If probate not opened)
- \_\_\_ Surviving spouse IRA rollover
- \_\_\_ Exercise of options (Buy/Sells, Stock options/others)
- \_\_\_ Any Real Estate under contract?
- \_\_\_ Statutes of Limitations
  - \_\_\_ Tax refund (type): \_\_\_\_\_
  - \_\_\_ Wrongful death action \_\_\_\_\_
  - \_\_\_ Creditor Claims: \_\_\_\_\_
  - \_\_\_ Publication if Probate opened (CPC =one year) \_\_\_\_\_

4. CALENDAR IMPORTANT DEADLINES AND SPECIAL ASSETS

- \_\_\_ Form 706 estate tax return and State returns (due 9 months from DOD; or file Form 4768 extension to file \_\_\_\_\_)
- \_\_\_ Alternate valuation date (6 months after DOD) \_\_\_\_\_
- \_\_\_ Disclaimer (9 months from DOD) \_\_\_\_\_
- \_\_\_ Form 709 gift-GSTT tax return (4/15 or extension date in year following gift) \_\_\_\_\_
- \_\_\_ Form 1040 & State final personal income tax returns (4/15 or extension date) \_\_\_\_\_
- \_\_\_ Form 1041 and State fiduciary income tax returns (4/15 or extension date) \_\_\_\_\_
- \_\_\_ 65-day distribution after 12/31 (Income tax) \_\_\_\_\_
- \_\_\_ Review trust income distribution terms \_\_\_\_\_
- \_\_\_ First trust inventory/accounting due \_\_\_\_\_
- \_\_\_ Status letters to beneficiaries (ASAP) \_\_\_\_\_
- \_\_\_ Periodic attorney/heir meetings \_\_\_\_\_

5. DOCUMENTS TO BE PREPARED BY ATTORNEY

- \_\_\_ Prepare new trustee affidavits
- \_\_\_ Prepare Trust Registration Statement if required by law.
- \_\_\_ Send Form 56, Notice Concerning Fiduciary Relationship, to IRS
- \_\_\_ Prepare SS-4 to obtain tax ID number on estate and trust(s)

6. SPOUSAL/BENEFICIARY ESTATE PLANNING CONSIDERATIONS

- \_\_\_ Review estate plan of surviving spouse; watch for conflicts.
- \_\_\_ Review trust, will, powers of attorney, and other documents for adequacy of estate planning
- \_\_\_ Determine whether any changes need to be made in the spouse's estate plan
- \_\_\_ Estimate size of surviving spouse's estate and advise of strategies to reduce estate taxes on his or her death.
- \_\_\_ Consider limited estate planning issues of trust beneficiaries within the trustee's control
- \_\_\_ Determine generation skipping transfer tax issues.



- \_\_\_ Determine if a beneficiary has powers of appointment that can or should be exercised; determine if beneficiary should be notified in writing
- \_\_\_ Discuss FDIC rules if more than \$250,000 is held in any one institution
  
- 7. IF DECEDENT HAS A TAXABLE ESTATE
  - \_\_\_ Does the decedent have a taxable estate; that is, over \$5 million if decedent died in 2011)?
  - \_\_\_ Discuss Alternate Valuation Date?
  - \_\_\_ Discuss how various assets are valued
  - \_\_\_ Discuss who will prepare estate tax return
  
- 8. HOME AND OTHER PROPERTY OPERATION AND MANAGEMENT
  - \_\_\_ Maintain fire and casualty insurance; Pay property taxes.
  - \_\_\_ Inspect for needed maintenance/repairs
  - \_\_\_ Obtain keys; copy of leases, etc.
  - \_\_\_ Notify and work with any property managers: examine management contract; consider hiring manager; Arrange for maintenance of structure and landscaping.
  - \_\_\_ Determine if notice to tenants is necessary or advisable; determine need to change rental payment arrangements
  - \_\_\_ Account for rental and security deposits; pursue any delinquent rent
  - \_\_\_ Review leases; determine if any leases due to end or be renewed
  - \_\_\_ Review for risk of toxic contamination
  - \_\_\_ Maintain utilities (gas, electric, and water); protect from freezing.
  - \_\_\_ Notify assessor of where to send property tax bills
  - \_\_\_ Determine and pay property taxes when due; review assessor's value; consider appeal if high.
  - \_\_\_ Interview and retain appraisers: consider hiring directly as attorney's expert to protect privilege; request oral or draft reports before finalizing.
  - \_\_\_ Determine effect of high or low value on basis and estate tax
  - \_\_\_ Determine if out-of-state counsel is needed to deal with out of state property
  
- 9. PUBLICLY TRADED SECURITIES
  - \_\_\_ Determine title to financial instrument
  - \_\_\_ If held directly, obtain copy of actual security
  - \_\_\_ If held in nominee form, obtain copy of brokerage statement
  - \_\_\_ Value security - generally, the average between the highest and lowest quoted sales prices on the valuation date
  
- 10. MORTGAGES AND NOTES (payable TO decedent)
  - \_\_\_ Request copies of all loan documents
  - \_\_\_ Determine if security interests have been recorded
  - \_\_\_ Executor to inform payor of executor's address for payment of future loan installments

\_\_\_ Determine value of mortgages, promissory notes, or contracts to sell land; consider applicable discounts; if valued at less than FMV of unpaid principal plus interest accrued to DOD, documentation required to support a lower value or worthlessness  
\_\_\_ Record releases when paid in full

11. LIABILITIES, CLAIMS AND DEBTS

\_\_\_ Prepare a listing of all tax and non-tax, secured and unsecured, matured and contingent debts, claims, liabilities, obligations, liens, etc., of the decedent. Any lawsuits pending?  
\_\_\_ Review all loan and other documents; determine if action can be taken to limit or eliminate contingent liabilities  
\_\_\_ Consider practical impact of one-year statute of limitations when dealing with claims  
\_\_\_ Consider notifying secured creditors of decedent's death to avoid missing notices of delinquency or default  
\_\_\_ Determine which debts/claims must be paid; request payment history; set up payment plan; keep payments current  
\_\_\_ Determine who is liable for payment: review documents creating the liability  
\_\_\_ Coordinate trust administration with litigation counsel if decedent is a party to litigation at death

12. LIFE INSURANCE PROCEEDS AND OTHER DEATH BENEFITS

\_\_\_ Obtain all original life insurance policies  
\_\_\_ Review ownership and beneficiary designations  
\_\_\_ Determine if death benefit is included in taxable estate  
\_\_\_ Determine if decedent owned policy on the life of another  
\_\_\_ Determine if any transfers of LI within three years of death  
\_\_\_ Determine if any transfers for value  
\_\_\_ Request claim forms from life insurance companies  
\_\_\_ Request Form 712 for each life insurance policy  
\_\_\_ File health insurance claims to cover the cost of the decedent's last illness  
\_\_\_ Are accidental death benefits applicable?  
\_\_\_ Remind surviving spouse to apply for SSA funeral benefits  
\_\_\_ Remind executor to notify SSA of death of decedent to terminate monthly benefits of decedent; SSA may "grab" payments made after death from account. Possibility of overdraft?  
\_\_\_ Notify Dept. of Human Services within 90 days of death with copy of death certificate if the decedent received Medicaid benefits or if the decedent was the surviving spouse of a person who received such benefits  
\_\_\_ Apply for veteran benefits if applicable

13. EMPLOYEE BENEFITS

\_\_\_ Pension plans; Stop payment/apply for spousal benefits if applicable

- \_\_\_ 401(k) plans - Consider options, including spousal rollover to IRA; rollover to inherited IRA for non-spouses after 12/31/06.
- \_\_\_ 403(b) plan (similar to 401(k) and offered by non-profit organizations)
- \_\_\_ Employee stock ownership plan (ESOP)
- \_\_\_ IRAs and qualified annuities
- \_\_\_ Stock options may have to be exercised within 30 days
- \_\_\_ Request letter from employer, plan administrator, IRA sponsor or insurance company setting forth all relevant details including the designated primary beneficiaries and contingent beneficiaries.
- \_\_\_ Determine proper valuation of decedent's interest in plans for estate tax purposes (Form 706)

14. HOUSEHOLD AND PERSONAL EFFECTS

- \_\_\_ Value household and personal effects; Consider use of affidavit if value low.
- \_\_\_ Appraise items of artistic or intrinsic value (e.g., jewelry, furs, silverware, paintings, antiques, books, vases, rugs, coins or stamp collections) if value of one item > \$3,000, collection of items > \$10,000
- \_\_\_ Review riders on homeowner's insurance policy
- \_\_\_ Consider safekeeping, security, or storage requirements
- \_\_\_ Consider videotaping or photographing assets

15. OTHER ASSETS

- \_\_\_ Airplanes, boats, automobiles and other automotive equipment
- \_\_\_ Debts due decedent, other than notes and mortgages (receivables?)
- \_\_\_ Farm products, growing crops, timber
- \_\_\_ Income tax refunds
- \_\_\_ Intellectual property (e.g., patents, copyrights, trademarks)
- \_\_\_ Judgments
- \_\_\_ Lottery winnings
- \_\_\_ Mineral, oil and gas rights
- \_\_\_ U. S. Savings Bonds (Discuss tax issues)
- \_\_\_ Keep inventory list of all assets, even if not in trust or in probate estate as they may be needed for estate tax purposes.

16. ACCOUNTINGS

- \_\_\_ Determine what accountings are required (see estate plan)
- \_\_\_ Consider "over-reporting" to beneficiaries; send copies of all statements, invoices, payment stubs, letters, etc.
- \_\_\_ Determine if court approval of accountings is desirable
- \_\_\_ Send confirming letter to executor and accountant regarding responsibility for preparation of accountings, form of accounting, and example format

- \_\_\_ Remind executor to deposit all income and receipts in estate or trust bank account and to write all trust checks from same bank account to simplify accounting
- \_\_\_ Obtain written waivers of accounting if desired
- \_\_\_ Make sure accounting records provide clear tracing of assets, income, and disbursements for later subtrust funding

17. PERSONAL INCOME TAXES

- \_\_\_ Determine who will prepare and file final returns of decedent
- \_\_\_ Determine estimated tax payments which may be due for surviving spouse or other beneficiaries
- \_\_\_ Joint return: may elect for decedent and surviving spouse if spouse not remarried before end of year; Thereafter, surviving spouse files as single unless dependents involved.
- \_\_\_ Recognition of savings bond interest: if decedent had not elected to recognize and report interest income, may do so on final return or may recognize on fiduciary return or beneficiary's return (Series E or EE bonds)
- \_\_\_ Medical expenses: may elect as income tax deduction if paid within one year from DOD; or as debt of decedent on 706 return

18. FIDUCIARY INCOME TAX RETURNS

- \_\_\_ Determine who will prepare and file estate/trust returns
- \_\_\_ File Form SS-4 with IRS to obtain taxpayer identification number for all new trusts, and for estate if probate opened
- \_\_\_ Confirm that Form 56 Notice of Fiduciary Relationship with IRS for new trustee of new irrevocable trusts is filed
- \_\_\_ If over \$600 is paid to third persons (executor, attorney, accountant, etc.) from trust issue Form 1099 to payees by 1/31; File 1099's with Form 1096 with IRS & CO by 2/28.
- \_\_\_ Discuss election to have living trust treated as part of probate estate for income tax filings
- \_\_\_ Estimate estate/trust income and notify beneficiaries of their potential tax income based on their distributions
- \_\_\_ Consider whether distributions within first 65 days of tax year should be treated as made in prior year

19. COURT PROCEEDINGS

- \_\_\_ Deliver original will to court clerk
- \_\_\_ Determine if probate necessary after verifying title to assets; If necessary, open probate; notify beneficiaries.
- \_\_\_ Determine applicability of spousal elective share

20. DISPOSITION OF NON-TRUST ASSETS

- \_\_\_ Joint tenancy: File death certificate to vest title in name of surviving tenant(s); Complete and file supplemental affidavit as needed.
- \_\_\_ Beneficiary assets (Life insurance, IRAs, POD accounts, etc.): File death claim form to vest title in name of beneficiary or have proceeds paid to beneficiaries.

- \_\_\_ Remainder beneficiary of life estate: record affidavit or other documentation to remove decedent's name
  
- 21. SALE OF TRUST ASSETS
  - \_\_\_ Determine need for liquidity (estate tax, cash bequest, claims and debts, administrative costs)
  - \_\_\_ Determine whether cash distribution preferable to in kind distributions (beneficiaries do not want assets; beneficiaries as co-owners often a bad idea)
  - \_\_\_ Ascertain if asset cannot be held in successor trust (trust language prohibits; trust not qualified as S corporation shareholder)
  - \_\_\_ Restrictions on sale (in documents or in other agreements, e.g., buy-sells, leases, recorded covenants or restrictions, rights of first refusal, existing contracts, etc.)
  - \_\_\_ If no preexisting arrangements:
    - \_\_\_ Unsolicited buyers
    - \_\_\_ Determining listing or sale price
    - \_\_\_ Marketing by professional agents (realtors, business brokers, investment bankers, secondary market makers for limited partnerships)
    - \_\_\_ Private marketing by executor (but consider duty to obtain best price and terms)
    - \_\_\_ Purchases by trustee; potential conflict of interest issue; Consider full disclosure and consent.
  - \_\_\_ Consider obtaining court approval or instructions to protect executor
  - \_\_\_ Determine whether to notice beneficiaries or seek approval (obtain consents or waivers, or give informal notice)
  - \_\_\_ Determine if best deal for estate/trust and beneficiaries
  - \_\_\_ If property to be sold on a carry-back note, best to get beneficiaries approval first.
  - \_\_\_ Consider effect of sale price on date of death or alternate valuation
  - \_\_\_ Plan for timing of any gain on sale in best fiscal year for trust/estate and beneficiaries
  - \_\_\_ Consider effect of basis adjustment upon death
  - \_\_\_ Determine if disposition of IRD item accelerates gain
  - \_\_\_ Involve tax preparer in planning and reporting
  
- 22. ESTATE TAXES
  - \_\_\_ Review previously filed gift tax returns (Form 709s)
  - \_\_\_ Determine available applicable exclusion amount and availability of marital and/or charitable deductions.
  - \_\_\_ Determine that the QTIP requirements are met for trusts benefitting the surviving spouse
  - \_\_\_ Were any assets previously subject to estate taxes within past 10 years?
  - \_\_\_ Obtain certified copy of will, death certificate, letters
  - \_\_\_ Obtain tax identification numbers of beneficiaries
  - \_\_\_ Obtain copies of pertinent documents, e.g., trusts for which decedent was trustee, settlor, beneficiary or power holder

- \_\_\_ Review all major transfers; review releases of powers made within 3 years from date of death
- \_\_\_ Review transfers with retained interests (JT, UTMA, etc.)
- \_\_\_ Look for powers of appointment; examples:
  - \_\_\_ "5 and 5" power not exercised at death
  - \_\_\_ "Hanging" Crummey withdrawal rights in ILIT
  - \_\_\_ Power to invade trust principal without regard to ascertainable standards
  - \_\_\_ Power to use property to discharge obligation of support (custodial account)
- \_\_\_ Review election to deduct administration expenses for estate taxes vs. income taxes.
- \_\_\_ Review election to deduct medical expenses paid within one year of death for estate taxes vs. income taxes on decedent's final income tax return
- \_\_\_ QTIP election made on 706 in total or in part (formula for partial election included on 706)
- \_\_\_ Reverse QTIP election for allocation of decedent's GSTT exemption to QTIP property
- \_\_\_ Determine that surviving spouse is a U.S. citizen; if not, will she become a U.S. citizen prior to filing the 706; Create QDOT if necessary and irrevocably assign property to trust prior filing of 706
- \_\_\_ Determine if alternate valuation is applicable
- \_\_\_ 6-month extension of time to file return (extend to 15 months from date of death); does not extend payment of estate taxes.
- \_\_\_ Determine sufficient reserve to be held by executor until a favorable closing letter is received
- \_\_\_ Don't forget to file the state Estate Tax Returns if real property is owned in other states and if required by such state. Colorado has not had an estate tax since 2005.
- \_\_\_ Determine if terms of trust allocate payment of tax; follow terms where applicable
- \_\_\_ Take necessary measures provided under federal and state law to collect reimbursement of taxes from responsible parties

### 23. GIFT TAXES

- \_\_\_ File gift tax returns for taxable gifts of decedent for which returns have not yet been filed.
- \_\_\_ Review for bargain sale between family members, adding names to title on deeds, etc., settlor's payment of someone else's expenses, interest-free or below market rate loans, child living in home rent free. Consider gift tax exemption.
- \_\_\_ Allocate GST exemption between gift and estate tax returns; if applicable to lifetime transfers, must claim on gift tax return

### 24. GENERATION SKIPPING TRANSFER TAX

- \_\_\_ Are there any significant Generation Skipping Transfers
- \_\_\_ Discuss with executor the three types of transfers which might trigger a GST tax.

- \_\_\_ Determine The Unused "Generation Skipping Transfer Tax Exemption" (\$5 million in 2011, less prior allocations)
  - \_\_\_ Did the decedent allocate any GST exemption during life?
  - \_\_\_ Were there any "automatic allocations" during life?
  - \_\_\_ Determine if decedent made any lifetime gifts to trusts with skip persons without properly allocating the GST exemption.
  - \_\_\_ Did decedent make any direct gifts to skip persons in excess of the annual exclusion amount without making the correct GST exemption allocation (check values). If yes, determine the effect of the automatic GST exemption allocation rule.
  - \_\_\_ Decedent's GST exemption may be allocated by executor at any time on or before the 706 due date including extensions.
  - \_\_\_ Consider always using a formula to allocate GST exemption.
25. DISCLAIMERS (useful in limited situations:)
- \_\_\_ To reduce or eliminate marital deduction gift; to fully utilize decedent's ET exclusion; fund the Family Trust.
  - \_\_\_ Prefer using fractional interest disclaimer stated in terms of a formula or a percentage disclaimer
  - \_\_\_ To create a marital deduction; Disclaimer by all beneficiaries other than spouse to pass property to spouse.
  - \_\_\_ To qualify trust for QTIP election
  - \_\_\_ To perfect or increase charitable deduction gift.
  - \_\_\_ To avoid general powers of appointment; consider disclaimer of 5/5 power, power to invade principal of trust for "happiness" or "welfare"
  - \_\_\_ To skip a generation and subject property to GSTT to utilize any unused GSTT exemption of decedent, e.g., a financially secure beneficiary might disclaim in favor of her children.
  - \_\_\_ To avoid a GSTT, e.g., a grandchild or more remote descendant can disclaim to prevent a GSTT from being imposed
  - \_\_\_ To avoid multiple administrations and unnecessary death taxes or possible claims where beneficiary dies within 9 months
  - \_\_\_ Be particularly alert to conflicts of interest in advising different parties regarding disclaimers; obtain written waivers of conflict or refer potential disclaimant to independent counsel
  - \_\_\_ Review technical requirements (IRC §2518)
    - \_\_\_ Irrevocable and unqualified
    - \_\_\_ Writing signed by disclaimant
    - \_\_\_ Identify property interest being disclaimed
    - \_\_\_ Deliver disclaimer to the executor or other appropriate party not later than 9 months after date of death
    - \_\_\_ No acceptance of benefits; Disclaimant cannot redirect property (disclaim special power of appointment in family trust)
    - \_\_\_ Review state law and conform disclaimer to both state and federal law
  - \_\_\_ Determine to whom the disclaimed property will pass
  - \_\_\_ Review trust instrument for disclaimer directions; review beneficiary designations.

## 26. DISTRIBUTION AND SUBTRUST FUNDING

- \_\_\_ Determine if any distributions should occur before end of calendar year (or during the 65-day election period)
- \_\_\_ Assure the validity of the will or trust before any distributions are made
- \_\_\_ Consider liability of the executor if assets are distributed to the wrong beneficiaries
- \_\_\_ Consider filing an action for court approval of inventory, final accounting, and distributions; notice beneficiaries.
- \_\_\_ Consider existence of various liens and debts before distribution
- \_\_\_ Consider postponing distributions or subtrust funding until expiration of one-year statute; filing of 706 return; or receipt of IRS closing letter.
- \_\_\_ Determine whether income triggered on distribution of assets; Distribution of IRD items or funding pecuniary gifts with appreciated assets. Advise trustee/beneficiary.
- \_\_\_ Calculate and set aside reserve amount
- \_\_\_ Determine if distribution carries interest one year after DOD or income earned
- \_\_\_ Obtain valuation of assets to be distributed as of distribution date, if needed
- \_\_\_ Make outright cash distributions, or transfer title to non-cash assets; if distribution is in kind to satisfy a pecuniary amount note regs. re gain or loss
- \_\_\_ If distributed asset encumbered, have beneficiary formally assume liability
- \_\_\_ Determine name of each subtrust; communicate to trustee, accountant.
- \_\_\_ Obtain tax ID number for each new trust, except where income is attributable to surviving spouse and the spouse's SSN is used (e.g., marital trust)
- \_\_\_ Review issues re funding the marital deduction gift:
- \_\_\_ Determine what type of formula in trust instrument to determine required funding method
- \_\_\_ Attempt to distribute appreciating assets which may be sold during survivor's lifetime to surviving spouse, especially primary residence.
- \_\_\_ Avoid distribution of life insurance policies on the life of the surviving spouse to surviving spouse
- \_\_\_ Select date for funding subtrusts; allocations to subtrusts will be considered effective as of the selected date
- \_\_\_ Obtain valuation of trust assets as of selected date and complete allocations and transfers of title within a reasonable period of time (ASAP)
- \_\_\_ Prepare written schedule of assets, with values, allocated to each subtrust
- \_\_\_ If multiple beneficiaries, review trust instrument re whether pro rata allocation required, or non-pro rata allocation is permissible re avoiding taxable sale or exchange



27. FINAL REVIEW

\_\_\_\_ Review with trustee systems established for trust  
administration: bookkeeping, accounts and other records;  
verify segregation of trust accounts

\_\_\_\_ Review fiduciary duties with trustee; verify that trustee is  
attending to accountings; filing fiduciary income tax  
returns; reviewing investments; making distributions  
required or permitted under trust agreement; other duties

\_\_\_\_ Distribution any reserve amount held back from distribution

## **Trustees and Executors Duties (excerpted from publications of the Colorado Bar Association)**

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What is involved in being the executor of someone's estate or trust? This memo should give you some general concepts and some idea of the responsibilities.

If you are dealing with a probate asset, you will be issued "letters" from the court which reflect your appointment as personal representative. These letters are evidence to third parties of your authority to act on behalf of the estate. You may need to order certified copies of these letters to present to banks, insurance companies, etc. If securities are involved, the letters generally must be issued within 60 days of the requested transfer or sale.

Assets owned by a revocable living trust do not require court authorization. You may, however, be required to provide a copy of the trust or at least an "Affidavit (For Property of Trust)" which evidences your authority to act.

Your general duties to the beneficiaries include:

1. The duty to be impartial; that is, not to favor the interest of one party over another
2. The duty of undivided loyalty (not to put your own interest in conflict with those of the estate), and
3. The duty to administer the estate with care and prudence.

More specifically, your specific duties include:

1. Collecting and taking an inventory of the assets of the estate
2. Managing these assets during the period of administration and paying the estate bills, including claims of creditors, expenses of administration and any taxes
3. Making distribution to the heirs or the beneficiaries under the will or trust.

In Colorado, you can choose the degree of formality with which you open or close probate and the extent of court supervision over your activities as personal representative. The more likely there is to be a challenge by beneficiaries, the more desirable formal proceedings may be, even though they are more time consuming and expensive than informal proceedings. Formal proceedings require court filings, notice to beneficiaries, and court hearings. Formal proceedings give everybody their day in court on your time schedule. Informal proceedings, where there's no notice and no binding orders, are more in the nature of administrative proceedings before the Registrar of the court. Many estates are opened informally, but closed formally so as to get the protection of a court order for the personal representative that the administration and distribution of the estate was done correctly. If you are named personal representative in a will you have the power, prior to your appointment by the court, to carry out written instructions of the deceased relating to his body, funeral and burial arrangements. You may begin to take and protect the decedent's property. No property should be removed or distributed prior to the opening of the estate.

Although assets owned by the decedent's living trust can be liquidated, transferred and distributed without court proceedings, it may be desirable to submit a final inventory and accounting and close formally.

Within three months after your appointment you must prepare a written inventory of the assets of the estate on the court approved form. If it's a supervised administration with a formal closing, the inventory must be filed with the court. Otherwise, you can simply give it to interested parties without court filing.

With a trust the requirements for an inventory and an accounting may be specified in the trust document. Regardless, beneficiaries are generally entitled to an inventory and an accounting.

Set up an estate accounting system at the beginning of the administration of the estate. You must keep records of all cash and other financial transactions of the estate and provide written accountings to the beneficiaries. For supervised administration or formal closing the accounting is filed with the court.

Promptly after your appointment as the personal representative of the estate, you must prepare a notice of your appointment and mail it to all those interested in the estate, and file proof with the court that this notice has been given. The purpose of the notice is to acquaint the interested persons with some of the facts and ground rules regarding administration of the estate, including the name and address of the personal representative, whether a bond has been filed and the court where papers relating to the estate are on file. Send a notice to known creditors and publish a notice according to the law. Claims which arose before the decedent's death are barred if not presented within four months after the date of the first publication of this notice. Failure to publish extends the claim period to one year from the date of death. A claim arising at or after death must be filed no later than four months following the date when the claim arose.

A claim may be either filed with the court or given to you as personal representative. No specific form is required. For example, a bill that comes in the mail is a properly presented claim (but don't pay bills that are only presented orally). If you disagree with a claim, you have 60 days to dispute the claim by giving written notice of disallowance to the claimant and filing such notice of disallowance with the court. The creditor then has 60 days to begin proceedings to enforce the claim.

It is also not advisable to pay any claims until the extent of all claims can be determined, usually at the end of the claimant period, unless it is certain that estate assets far exceed possible claims.

For decedents dying after June 30, 2002, the Colorado Probate Code authorizes a family allowance of \$24,000 for a surviving spouse and/or minor children during the period of administration. This amount may be increased by court order at the request of an interested person. The Code also provides for a \$26,000 allowance to the surviving spouse that is generally exempt from creditors. Where the family is entitled to these allowances, they are paid before payment to creditors.

Under our Probate Code, the surviving spouse can take a portion (up to one-half) of the decedent's "net augmented estate" instead of what they would otherwise receive under a will. The purpose is to prevent one spouse from completely "disinheriting" the other. The augmented estate includes both probate type assets (property passing under a will or by intestacy) and non-probate assets (property passing outside of the probate estate such as joint tenancy property, assets owned by a living trust, and some proceeds of life insurance). A spouse or child omitted from a will may also have a right to take a share of the probate estate. All of these provisions are technical in nature and, if applicable, should be discussed with the personal representative's attorney.

As personal representative, you are responsible for collecting and managing all probate assets prior to distribution. What you can and cannot do may be specified in the will. Once you are appointed, you have full authority and control over the assets which the decedent owned in his name alone or as a co-tenant with others. Property held in joint tenancy with right of survivorship is not a probate asset; nor are proceeds of life insurance payable to a named beneficiary other than the estate.

To put others on notice of your authority, you should have the decedent's assets registered in the name of the estate with you as personal representative. This is completed by using your letters of appointment as evidence of your authority.

For registered stocks and bonds, you will need to submit to the transfer agent your letters of appointment, along with the securities and an affidavit of domicile which can be obtained from a broker or bank. (If you need to sell securities to raise cash for estate expenses, you can do so without having the securities reregistered first. Bonds in bearer form need not be reregistered.) For real estate, you will need to use your letters of appointment as evidence of your authority to sell or distribute the property.

Since the period of estate administration is relatively short, personal representatives generally don't establish a long range investment program. While the estate must be made sufficiently liquid to provide for the payment of debts, taxes and expenses, the estate doesn't necessarily have to be reduced to cash to facilitate distribution. Assets owned by the decedent may be retained, if they're not speculative in nature and as long as there is proper diversity among the estate's investments.

The standard which Colorado law provides for investments is that of a "prudent man" managing the property of another. The statute provides in part:

The Prudent Man Rule: In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of others, fiduciaries (including personal representatives) shall be required to have in mind the responsibilities which are attached to such offices, and the size, nature and needs of the estates entrusted to their care, and shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of their capital.

Tax Responsibilities: You must file the final income tax returns for the decedent as well as any gift tax returns. You are required to file a federal estate tax return (Form 706) if the estate is of sufficient size to require such a filing. There is also a separate income tax return that must be filed for the estate.

When a person dies, his taxable year ends on the date of death and his income and deductions are reported through that date. If the individual was married as of his date of death, there is an option available by which the estate can join with the surviving spouse in filing a joint income tax return for that year in which the decedent died. You may also be able to take certain deductions on the decedent's final income tax return or claim them as an expense of administration on the federal estate tax return. If in doubt as to what elections are available or how to take them, consult with the attorney for the estate or an accountant.

As personal representative you must determine whether or not a federal estate tax return (Form 706) must be filed. In determining this, your obligations extend beyond the assets of the probate estate; under our estate tax system, the taxable estate includes non-probate assets such as joint tenancy property, proceeds of insurance policies and assets in trust. If the total value of all these assets exceeds \$5,000,000 (2011), then these returns must be prepared and filed no later than nine months after the date of death. As with the final decedent's income tax returns, some elections and options are available. These can mean significant benefits and tax savings for the estate; consult with the attorney for the estate to see what options are appropriate in your situation.

The estate is a separate income tax paying entity and you must get a separate tax identification number from the IRS. To do this, file a request for a tax identification number through the district director of the IRS on Form SS-4.

You will need this number to open estate bank accounts as well as transfer securities into the name of the estate if they are to be held for any period of time. The tax return used for paying income taxes for the estate is called a fiduciary income tax return. For the IRS, it's form 1041; for the Colorado Department of Revenue it's form 104:1. These forms must be filed if the estate has any taxable income or has gross income of \$600 or more in any taxable year.

The same form is used for income tax returns for trusts. In fact, you can even elect to consolidate the living trust tax return with the estate tax return.

What is a taxable year? As personal representative, you have the option of using the calendar year or a fiscal year as the taxable year. To decide which one to use, you'll have to carefully analyze the various implications to those either receiving assets from the estate or those to whom the income is payable. If you're in doubt as to which is most appropriate, consult the attorney for the estate or an accountant.

The estate income tax returns must be filed on or before the 15th day of the fourth month following the close of the taxable year (April 15 if you use the calendar year). You must pay the entire tax due. After the second year, you must file income tax estimates and make quarterly estimated tax payments.

A surety bond may be required by the terms of the will or by court order. Bond premiums are payable out of the estate as an expense of administration. Should a default occur which the bonding company has to make good, the company will have rights against you to the extent of this loss. Where bond is required, you may be able to make arrangements with the court to reduce the amount of assets subject to bond (such as by depositing stock certificates in the court registry or establishing restricted bank accounts).

Under the Colorado Probate Code your compensation, together with that of your attorney, is subject to a reasonableness test, with time spent and responsibility as two of the most important factors. Many individuals, especially family members, choose to serve without compensation other than reimbursement of out-of-pocket expenses. If you want to do this, consider filing a fee waiver with the court. If you take compensation, it will be taxable as ordinary income. If you take compensation, keep a record of tasks performed and amount of time spent. This is also expected of your attorney.

The assets of the estate belong ultimately to the beneficiaries and not to you, and it is a good practice to make distributions to beneficiaries as soon as this may be done prudently.

Generally, the assets of the estate are paid in the following order:

- a. to distribute assets held by the decedent in the decedent's capacity as a trustee or other fiduciary
- b. to pay the statutory exempt property and family allowances, if claimed and allowed, to close family members
- c. to pay expenses of administration
- d. to pay funeral costs
- e. to pay debts and taxes preferred under Federal law
- f. to pay expense of last illness
- g. to pay debts and taxes preferred under state law
- h. to pay general unsecured creditors
- I. to satisfy specific gifts under a will
- j. to satisfy the residuary beneficiaries under a will or the heirs at law in the case of intestacy.

Distributions need not wait until the closing of the estate. Payments may be made as priority is determined. Partial distributions are often made to beneficiaries during administration. If administration is supervised, distribution may be made only following a court hearing and order.

When administration is complete, the estate does not terminate automatically. Estates may be closed either informally or by formal court order. If the formal closing of the administration and proposed distribution of the estate is approved by the court, the personal representative is discharged or released from liability by court order. In informal closings, a closing statement is filed with the court, indicating that the estate has been fully administered. This procedure does not result in a court order of discharge but does limit the time to one year within which distributees and creditors can challenge your administration and distribution of the estate.

The Colorado Probate Code is intended to speed up the process of administration of estates. Since Colorado has no inheritance tax, many smaller estates (less than \$5,000,000 in 2011) may be administered and distributed shortly following the end of the credit's period (usually within six to twelve months). The Federal Estate Tax Return is not due until nine months after the date of death if the gross estate exceeds \$5,000,000 (2011). Larger estates should not be closed until accounts are settled with the taxing authorities, although partial distributions can usually be made in the interim. If the tax and probate aspects are handled in a timely and careful manner, the great majority of larger taxable estates will be able to be closed within a two-year period.

As a personal representative you are liable to the beneficiaries for any loss to the estate and for any gain the estate should have realized but did not if:

- you failed for any reason to exercise the care and skill of a person of ordinary prudence in managing the property of another, or
- you negligently or intentionally did something you ought not to have done, or
- you negligently or intentionally failed to do something you should have done.

In certain matters, you may be liable even though your improper action was not intentional or negligent.

Words Of Caution: This memo cannot relate everything you may need to know about administering an estate. You should establish an early understanding with your attorney as personal representative for the estate as to what will be expected of you. If you have questions, consult promptly with your attorney. Seeking your attorney's advice before you act may avoid more costly legal services later.

## **SO NOW YOU ARE A TRUSTEE (excerpted from publications of the Colorado Bar Association)**

You have just agreed to be a trustee. You are now in charge of safeguarding the trust's valuable assets, administering the assets and investing them if appropriate, and distributing income and principal from the trust according to the trust instrument. What does this mean? What are your responsibilities? What are your potential liabilities?

"Living" (or inter vivos) trusts are contracts between the creator of the trust (often called grantor, trustmaker, or settlor) and the trustee (often the trust creator). A testamentary trust is a trust created in somebody's will. In either case, you must agree to be trustee. If you do agree, you are bound by both the specific terms of the instrument and the general laws governing trusts and trustees.

Trusts have thousands of uses, ranging from preserving a child's inheritance until they're an adult, to managing the financial affairs of an elderly person, to running a large business. This memo is intended to give you a general idea of what is involved. When you have questions beyond the scope of this brief explanation, consult the attorney for the trust.

Your authority comes first from the trust instrument. Your duties and powers as described there are your basic instructions. Read the trust instrument with care and from time to time read it again. It may contain specific provisions which take precedence over the general rules sketched in this memo.

Generally speaking, you as trustee have three kinds of duties to the trust and its beneficiaries:

1. A duty of impartiality (not to favor the interest of one party over another)
2. A duty of undivided loyalty (not to put your own interest in conflict with those of the trust), and
3. A duty to administer the trust with care and prudence.

A first step may be to register the trust with the Probate Court in the county where the trust is being administered. Registration must occur within 30 days after the death of the Trustmaker unless the trust requires immediate distribution to beneficiaries. There are penalties for failing to register a trust. Also, you should know that the trust registration statement must be amended or updated whenever there is a change in trustee or in the place of administration of the trust. There are court-approved forms for trust registration and amendment.

You don't have to provide a copy of the trust or disclose the terms of the trust when you register it. Its purpose is to ensure that beneficiaries are advised of their interests in the trust and to provide the trustee and beneficiaries information as to the particular court where jurisdiction may be invoked in case questions arise about the administration of the trust. The trustee must inform the beneficiaries of the trust registration and its contents.

The court generally doesn't have ongoing jurisdiction over the administration of the trust (unless provisions of the trust require it) and the trustee doesn't have to file copies of its accountings with the court.

Colorado law gives beneficiaries the right (under certain circumstances) to move the place of trust administration to a place more convenient for them. Should this occur and the place of administration is still in Colorado, a new trust registration will have to be filed in the new county of administration.

You must always act to further the interests of the trust and the beneficiaries. You shouldn't enter into a transaction where you might benefit at the expense of the trust. If a situation arises where there's a conflict between your personal interests and the trust or between the trust and the interest of third parties, you should always put the interests of the trust first.

For example, you should not sell trust property to yourself or sell your property to the trust because this might induce you to take advantage of the trust. You should not loan trust funds to yourself for personal or business purposes. The legal rules in this paragraph are strict and apply not only to transactions in which you would deal directly with yourself, but also prohibit transactions in which you as trustee would deal with organizations, such as partnerships or corporations in which you are personally interested. These rules apply even though the transaction may be scrupulously fair and even if it benefits the trust.

You must keep trust assets separate and distinct from your own property. In other words, you should have a separate bank account or accounts for the trust and not put either trust principal or income into your personal accounts. Trust assets must be readily identifiable as such and should be segregated from your other property.

Once you have accepted the administration of the trust, you shouldn't turn over the complete administration of the trust to others. This doesn't mean you must actually perform all the administrative work yourself; you can delegate certain details to persons qualified to handle them. For example, you can employ an agent to collect rents. However, the ultimate responsibility for administration always remains with you as trustee.

If you are one of two or more trustees, you can't rely on the others to administer the trust. You must participate in the administration. If another trustee is acting improperly with respect to trust matters, you have the obligation of acting to correct the situation and you may be liable for the acts (or failure to act) of the other trustee.

If questions arise as to the proper interpretation of the terms of the trust, consult the attorney for the trust. If the trust wording is ambiguous, it will likely be necessary for the attorney to petition the proper court to get a court ruling on the matter.

How should legal title to trust assets be taken? In whose name should real estate be held, securities registered and bank accounts maintained? Because of varying circumstances and varying opinions on the right way to handle this, consult an attorney to decide how to hold title to trust assets.

As trustee, you must set up and keep a set of trustee's books. You don't need to be a CPA, but your records must at least make a clear distinction between property you handle as trustee and your own property. Any mixing of the two is strictly prohibited.

One essential duty is to account to the beneficiaries of your trust. When you must account may be in the trust instrument; if not, you must account periodically, at least annually. At minimum your account should reflect in detail all items of cash receipts and disbursements, proceeds from the sale of assets and distributions to beneficiaries. It should show opening and closing cash balances and must contain a list of the trust assets at the beginning and at the close of the accounting period. So be sure to list all assets received, held and disposed of, and all receipts and disbursements, giving the date, amount and explanation of each.

If the persons who receive income under your trust instrument are different from those who will receive the principal when the trust terminates, your records should classify all receipts and disbursements as income or principal. In most cases, this will not be difficult; ordinary dividends and interest are clearly income, proceeds from a sale of stock are principal. From records kept in the above manner, you or your accountant can draw information necessary to prepare trust tax returns, reports to your beneficiaries and reports to the court if your trust is under court supervision.

As a trustee, you are entitled to reimbursement of your reasonable expenses in the administration of the trust. You are also entitled to a reasonable fee for services performed, but you're not required to take one. If you do, add this to your other income on your personal income tax return.

Many trust instruments contain instructions to guide the trustee in resolving these and other accounting problems, and you may find all the guidance you need from this source. If not, the attorney for the trust can advise you by applying the Colorado law called the "Uniform Principal and Income Act."

Perhaps your most important duty, besides keeping accurate and detailed books, is keeping trust assets invested.

Remember that you will be held to a higher standard of care when investing as a trustee than you would be when investing your own funds. The Colorado legislature has adopted a standard of trust investments called the "Prudent Man Rule" which was quoted above.

Clearly this rule gives you the power to invest trust money in ways a prudent, cautious person would invest money. It imposes on you the standard of investment which a prudent investor would follow considering all the circumstances involved. As a general rule, you should give due consideration to the value of the trust assets and the purpose of the trust and to the extent practical:

- a. diversify the assets of the trust among many types of investments such as stocks, bonds, mortgages, etc.
- b. diversify among various industries with your stock holdings
- c. balance the need for current income versus long term capital appreciation since the persons who take current income and those who eventually receive the capital have conflicting interests
- d. if you are at all in doubt, seek professional guidance both for initial investments and for continuing review of investments.

**YOU SHOULD NOT:**

- a. Speculate with trust assets in the hope of making big profits
- b. Lend trust money to yourself, no matter how good your security, buy trust assets for your own account or engage in other forms of self-dealing
- c. continue to hold an investment which no longer meets the "prudent man" standards
- d. continue to hold assets transferred to you as trustee without an independent investigation of their quality as trust investments
- e. delegate investment decisions to others

To find out exactly what powers you have to carry out your job as trustee, talk to the attorney for the trust and determine whether the trust is governed by the Colorado Fiduciaries' Powers Act. If this act does not apply you are governed in your powers only by the terms of the trust. In addition to the terms enumerated in the trust, you also have all powers "necessary and appropriate" to carry out the terms of the trust. If the Colorado Fiduciaries' Powers Act is applicable, you have the powers under the Act to the extent reasonably necessary to administer the trust except as limited by the trust instrument. Should any conflict arise between the powers in the trust instrument and those under the Act, you should favor those in the trust instrument.

If you are acting as a co-trustee, keep in mind that all co-trustees must be in agreement in the exercising of trust powers unless the instrument itself directs otherwise. More importantly, remember that you can't delegate those acts which you personally should perform as trustee.

Courts are very strict with trustees. Sometimes the trust instrument grants you broad powers or purports to relieve you of responsibilities which you would otherwise have, but you still have a duty to exercise the powers fairly and prudently.

You may, as trustee, have an obligation to file fiduciary income tax returns with both the Internal Revenue Service (Form 1041) and the Colorado Department of Revenue (Form 104:1). The obligation arises if the trust is not a grantor trust (such as a revocable living trust during the life of the trustmaker) and had "any taxable income" or "gross income" of \$600 or more, regardless of the amount of taxable income in any taxable year.

You may want to ask an attorney or accountant for help in determining the need for and in preparation of these returns as they do differ substantially from personal income tax returns. Quarterly tax deposits are often required of trusts. As with an individual taxpayer, a trustee must file annual returns on a calendar year basis and the return must be filed, and all taxes paid, by April 15. Extension to file (but not pay taxes) are available.

As an individual, you have your Social Security number which you use as an identification number on your personal tax returns. With a trust, it is usually necessary to get a "taxpayer employer identification number" (FEIN) from the District Director of the Internal Revenue Service. This number would be used on your fiduciary income tax returns and when reregistering securities in your name as trustee or when setting up bank accounts for the trust. An attorney or accountant should be able to tell you if getting a number is necessary.

When and how do the beneficiaries of the trust receive money? Your trust instrument should tell you who is to receive benefits and when they are to be paid. It may also give you certain discretionary power over distribution. You should attempt to carry out the intent of the person who created the trust if that can be determined from the trust instrument. You also must consider the assets of the trust, the amount of income, the needs of the beneficiaries and the various other demands the trust might be called upon to meet.

As trustee, you are personally liable to the beneficiaries for any loss to the trust estate and for any gain the trust estate should have realized but didn't, if:

- You failed, for any reason, to exercise the care and skill of a person of ordinary prudence in managing the property of another, or
- You negligently or intentionally did something you ought not to have done, or
- You negligently or intentionally failed to do something you ought to have done.

In certain matters, you may be liable even though your improper action was not intentional or negligent. Many trustees find errors and omissions insurance worthwhile.

Word Of Caution: This memo cannot tell you everything you need to know about administering a trust. It is intended to alert you to your duties and to impress you with your responsibilities. When you're uncertain about something, consulting with the attorney for the trust may avoid personal liability and the need for more costly legal services later.

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