

FIDUCIARY RESPONSIBILITIES OF AN INDEPENDENT EXECUTOR/ADMINISTRATOR

The executor or administrator of an estate has a fiduciary duty to an estate, and to its beneficiaries, during the probate and estate administration process. A fiduciary is someone in a position of trust and power, and the law recognizes this and so places an added burden on that person to act with honesty, integrity, good faith, fairness and loyalty. An executor may face a civil lawsuit if he or she fails to perform his or her fiduciary duties as required by law. In addition to the court requirements outlined in PROCESS AND COURT DEADLINES FOR AN INDEPENDENT ADMINISTRATION, some of the primary duties of an executor include:

- Locating the beneficiaries named in the Will
- Giving notice to creditors of decedent's death, paying all valid debts
- Identifying, protecting and managing the decedent's assets
- Preparing and filing tax returns
- Accounting for all assets of the estate and payments made
- Distributing the assets according to the terms of the will and Texas law

A more detailed checklist is also included in this package.

Fiduciary Guidelines

In carrying out your fiduciary obligations, you should observe the following guidelines at all times:

- You should keep the beneficiaries of the estate reasonably informed of the administration and use your best efforts to promptly collect the assets and administer and settle the estate.
- You must always be in a position to account for all revenue received, moneys spent, assets sold (or for some reason purchased), and as to all other matters that directly or indirectly affect the estate.
- Do not commingle the estate's property with your own or that of any of your businesses. Commingling usually is done with cash, and it is imperative that you never commingle estate funds with funds that are not the estate's, not even for a day.
- Do not leave estate funds uninvested.
- Do not engage in any self-dealing with estate assets.

Compliance with many of these guidelines can be accomplished by setting up appropriate estate accounts and handling the estate accounting matters in the manner we will discuss in more detail below.

Accounts and Records

It is your duty to take possession of all property belonging to the decedent. The best way to handle accounting matters is for the estate to open one or more accounts at a bank and/or trust company of your choosing, and then place all the cash and investment grade assets into that account. The first step in setting up the estate account is to obtain a separate taxpayer identification number for the estate. After the hearing, we will obtain this number from the IRS on your behalf. This new number should be used as

the taxpayer identification number for the estate accounts. It is important for you to see that all cash received and expended for the estate passes through the estate account. Generally, the account will operate as follows:

- As estate revenue is received, be it dividends, interest, sales proceeds, or other revenue, the revenue should be deposited into the estate account, and the exact nature of the deposit should be identified in the account ledger.
- All estate disbursements should be made from the estate account, and a detailed record should be maintained of all distributions.
- As we will discuss below, you may have paid some estate expenses to date, including funeral expenses and debts outstanding at the date of death, from your own separate funds. Those estate expenses should be reimbursed to you after the account is opened.

If the above routine is followed consistently throughout the administration of the estate, you will be able to utilize the account statements as the primary resource for information regarding estate receipts and disbursements. We also will be able to note any sales of any non-investment grade assets, such as a car, if the proceeds are placed into the account. The Estates Code requires that you use ordinary diligence in the collections of all claims and debts owed to the estate. You are bound by the terms of the Will with respect to you other specific duties and actions.

Insurance

It is your duty as independent executor to insure the estate property against loss and liability. We advise you to insure any real property (including structures), and any other property of significant value against theft or loss. We also suggest that you carry liability insurance on the real properties and any other estate property which warrants such coverage.

Taxes Returns

You must file the Decedent's final income tax return, due April 15th of the year following their death. A Form 1041, Income Tax Return for the estate, may also be necessary. The Form 1041 is also due April 15th of year. You should be aware that if the estate is taxable, you are required to file State and Federal Estate and Inheritance Tax Returns, or seek an extension of time to file from the IRS (not the Court). This return is due 9 months from date of death. Any taxes due must be paid with the return or extension.

Distributions

After you have gathered the assets of the estate and paid the debts and taxes that are owing, you are ready to distribute the estate. You may then distribute the assets to the beneficiaries named in the Will. This may require written deeds, assignments and other transfer which will assist you with.

* * * * *

IRS Circular 230 Required Notice--IRS Regulations require that we inform you as follows: Any U.S. federal tax advice contained in this communication (including any attachments) is not intended to be used and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or tax-related matter[s].