

## MEMORANDUM TO TRUSTEE

If you are accessing this memorandum because you recently lost a loved one, please accept my sincerest condolences for your recent loss. I realize that the death of a loved one can be a very difficult and emotional time.

I have developed this information to provide you (and other survivors) with some idea of what normally must be done to administer an trust in Iowa after a loved one has passed away. Please note that although this list is intended to give you an understanding of the trust administration process, it is not a substitute for competent legal advice.

The key to sorting after-death administration issues begins with how assets are titled (ownership). The legal title to an asset controls how that asset will be distributed. For example, generally speaking:

*Trust Assets* owned by a trust, are disposed of in accordance with the terms of the trust and are not subject to probate.

*Joint Tenancy* is nothing more than right of survivorship. When a joint tenant dies, the remaining joint tenant or joint tenants get the asset. This is true whether there is a will, trust, or other document stating otherwise. Joint tenancy assets are not subject to probate.

*Life Insurance* proceeds generally do not go through probate so long as there is a living beneficiary that is not the estate of the decedent. Life Insurance proceeds are distributed to the named beneficiary or beneficiaries. Again, this is true regardless of what a will, trust, or other document states.

*IRA, 401k or other income tax qualified plans* generally have a named beneficiary, similar to life insurance. There are, however, potential significant income and estate tax issues associated with these types of accounts.

*Assets owned in the name of the deceased person* include the decedent's interest as a *tenant-in-common*. These assets are distributed by the terms of the decedent's will. If there is no last will, they will be distributed the way State law provides. These assets, depending on their value and state law, are subject to probate.

“Administration” or “settlement” of a trust after a death is a sobering responsibility. The trustee should be represented by legal counsel. There are many legal, tax, accounting, and investment obligations/duties of a trustee, some of which impose personal liability on the trustee(s).

The following is a **general summary** of concerns and requirements. It is not all-inclusive. The Huizenga Law Firm, P.C., is experienced and committed to assist the trustee in every step of the process.

## **Administration of Trust Assets**

Where there is a trust and a creator of the trust dies:

- A co-trustee may have to continue on as the sole trustee and administer the trust; or
- A nominated successor trustee or trustees will have to administer the trust.

In some cases, the creators of the trust are husband and wife. When either spouse dies, the surviving spouse is usually a beneficiary and a co-trustee. Depending on the type of trust involved:

- There may be only one trust after the first death. This trust may be under the complete control of the surviving spouse; or
- There may be two or more sub-trusts created after the first death, some revocable and some irrevocable.

### **Immediate Duties of the Trustee**

The trustee, even a surviving spouse, has duties. Depending on the type of trust and the size and type of assets, the trustee usually must:

- ✓ Obtain any required taxpayer identification numbers from the I.R.S.;
- ✓ Notify Social Security and, if a surviving spouse, also apply for the lump sum death benefit;
- ✓ Where appropriate, forward the mail;
- ✓ Notify VA, if deceased was a veteran;
- ✓ Notify Pension Plan Administrator to obtain: (1) designated beneficiaries; (2) elections available and deadlines; (3) description and amount of benefits; and (4) procedures and time limits for benefits.

### **Additional Duties of the Trustee**

In addition, the trustee has responsibility to do the following:

- ✓ Read and interpret the trust and related documents; ask the lawyer for guidance
- ✓ Follow the terms of the trust and related documents;
- ✓ Locate and inventory all assets owned by the deceased person's trust. If the trustee is also the executor of the deceased person's last will, this extends to all assets, if any, that may have been owned by the deceased person in his or her name outside of the trust;
- ✓ Within 6 months, value all assets inventoried as of the date of death; most of the time, appraisals are needed and the Trustee should obtain professional appraisals by qualified appraisers for difficult to value assets.
- ✓ Within 6 months, determine the value of decedent's gross estate; "Gross estate" is a technical federal tax term that may include assets previously transferred. If the value of the Gross Estate" exceeds \$5,430,000.00 million, serious reporting responsibilities with deadlines are triggered.
- ✓ Safeguard all assets. If there are non-cash assets such as personal property, real property, vehicles, etc., the trustee must take appropriate action. For example, real property and vehicles must have insurance. Property taxes and loans must be paid. Security, maintenance, and related issues must be addressed. If the property is a rental, perhaps a property manager must be retained;
- ✓ Timely provide legally required notices. For example:
  - Make sure all creditors (known or suspected) are notified (in writing) of the death and make arrangements to evaluate the claims;

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- Notify the state's health department in writing;
- Most states require that the Trustee provide required formal notice to all beneficiaries of the trust (as well as all heirs at law);
- Comply with applicable Trust Code or state law disclosure for trust beneficiaries
- ✓ Arrange to have tax returns filed. For example, the deceased person's final income tax return, as well as any gift, estate tax, or other return, may be required;
- ✓ Obtain any required taxpayer identification numbers from the I.R.S.;
- ✓ Properly deduct costs of funeral, final illness, taxes, other bills, and cost of administration (including trustee fee, attorney fee, and accountant fee);
- ✓ Refrain from commingling the trust assets with your personal assets (or those of anyone else). The assets should be transferred to a separate trust account, which should be insured and interest-bearing. All trust business should be conducted from this account. The trustee may very well be required to provide a detailed account of tenure as trustee, so keep records of everything;
- ✓ When the administration is concluded, deduct all costs of administration (for example, trustee, legal, accounting, and appraisal fees, taxes, etc.) and distribute the net remaining balance to the appropriate beneficiaries;
- ✓ Clear title to remove the name of the deceased trust creator/trustee from:
  - Real properties;
  - Financial, investment, and other accounts
- ✓ Create any required sub-trusts;
- ✓ Allocate and transfer assets to appropriate sub-trusts;
- ✓ Prepare the accounting;
- ✓ Determine net remaining balance to be distributed; and
- ✓ Upon distribution to beneficiaries, prepare needed receipts. Beneficiaries will have to decide either to waive a formal account or to require a formal account.

### **Summary**

Please note that this information is provided to help you and other survivors understand the trust administration process and give you some idea of what you can expect during the trust administration process. However, because every trust is different, some of the items listed above may not apply in your particular situation. Also, you may have additional requirements that are not listed above depending upon your loved one's unique situation. All information provided was developed based on Iowa estates and the Iowa trust code. If you should have any questions regarding the information presented or about the process, please do not hesitate to contact our office at (712) 737-3885.