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## **RESPONSIBILITIES OF THE TRUSTEE AND SETTLEMENT OF REVOCABLE TRUST UPON DEATH OF THE TRUSTOR**

Upon the death of the Trustor of a typical revocable trust and subject to the particular provisions of the written trust agreement, there are several general responsibilities of which the Trustee should be aware

**MAINTAIN THE LOYALTY OF A FIDUCIARY.** As Trustee, you are cloaked with certain powers and duties. Some of these are established by law, absent instructions set forth in the trust instrument. In all events, however, you are to act with the utmost loyalty and faithfulness. This means that you will follow the law and the provisions of the trust document closely and that you will not allow personal prejudice, personal interests, or divided loyalties to interfere with the proper performance of your duties as Trustee. If you sense that a conflict of interest might arise if you were to serve as Trustee, you must bring this matter to the attention of the lawyer who is assisting you. In summary, you must maintain a high degree of faithfulness to the trust or trust estate and conduct yourself with the utmost degree of integrity and impartiality.

**PROTECT ALL TRUST PROPERTY DURING ADMINISTRATION OF THE TRUST.** You are responsible to protect and preserve all trust assets after the decedent's death and throughout the administration until the trust assets are finally distributed to the beneficiaries who are entitled to them. This may require renting secure storage facilities, safe deposit boxes, and maintaining insurance on real or personal property. It could even include employing security guards, maintenance personnel, or tenants in order to protect property. Sometimes the cost of protecting or maintaining a particular asset may be of greater cost than the asset is worth, and thus consideration must be given to the wisdom of selling or disposing of the asset.

**INVENTORY THE TRUST.** In this regard, you are responsible to determine exactly what assets belong to the trust, e.g., which assets, real estate, personal property, etc., belonged to the decedent at the time of his or her death and are a part of the trust assets. Some assets pass to another person outside of the trust administration and are not under the control of the Trustee. Joint tenancy with right of survivorship and life insurance death benefits, are just two common examples of assets that pass free of the claim of the Trustee. Occasionally, you

may be called on to prosecute or defend a civil lawsuit if the decedent was involved in litigation prior to his or her death, or his or her death arose as a result of such decedent's alleged negligence, or the alleged negligence of another person. Normally, this job is handled by the personal representative (i.e., executor) of the estate of the decedent.

**DETERMINE CREDITORS AND DEBTS.** Sometimes claims and debts are paid from probate assets and not from the trust. If the trust requires the Trustee to pay all valid debts, then your duties include determining the amount, nature and legitimacy of creditors' claims and arranging for their payment. It is your duty to determine if a creditor's claim is valid.

**PREPARE ALL REQUIRED TAX RETURNS.** You step into the shoes of the deceased person and may be required to file a final income tax return. Sometimes this is done solely by the surviving spouse, or even the personal representative. Additionally, it may be necessary to file an Oklahoma inheritance tax return if any property passes to a person or entity other than a spouse. If the trust or estate is of sufficient size, you may be required to file a federal estate tax return. Finally, if during the administration period, the trust has sufficient income of its own, you may be required to file a fiduciary income tax return. It may be necessary to file form SS-4 with the IRS and obtain an identification number ("E.I.N.") for the estate in order to open bank accounts in the name of the trust. It is important to keep in mind that the trust estate and the taxable estate, as determined for estate tax purposes, are different. The trust estate only includes assets which properly are included as assets of the trust but, as mentioned above, does not include assets which pass outside the trust estate. However, the inheritance tax laws include everything as taxable assets, that is all assets owned by the decedent or in which the decedent had an interest, regardless of how those assets passed to other persons after death, i.e., life insurance proceeds (if the decedent/insured was the owner), and joint tenancy property, and property passing via probate proceedings.

**MAINTAIN ACCURATE ACCOUNTING RECORDS.** During administration and at the final closing of the trust estate, it may be required by the trust provisions that you prepare and provide to the beneficiaries an annual and/or final accounting which records in considerable detail all receipts and all disbursements made by you as Trustee since you assumed your duties as Trustee. Thus, it is important that you keep accurate records of all transactions affecting the trust and that you keep all trust financial matters separate from your own personal financial records. It is usually wise to establish a separate trust checking account to handle receipts and disbursements.

**FINALIZE THE TRUST ESTATE.** Upon completion of all duties imposed upon you as Trustee, you may prepare (if required by the trust provisions), an annual or final accounting which describes and lists your receipts and disbursements of funds made by you as Trustee. The documentation will also display all remaining assets of the trust and will set forth to whom the remaining property is distributable, i.e., pursuant to the terms of the trust. You should verify that all taxes have been paid, as well as all other debts of the trust, that the trust is ready to close or at least ready to make further distribution. You should complete the transfer of all remaining property to the proper beneficiaries and obtain receipts evidencing that you have

completed the distribution process. At this point, your duties have ceased and the trust is fully administered and closed, subject to the provisions of the trust.

**COMPENSATION.** The trust document may contain provisions for the Trustee's fees and expenses. You, of course, are not required to accept any compensation as the Trustee and, in the event you accept compensation, it will be ordinary income to you and is subject to income taxation as such. Attorney fees are not set by statute but are determined by the agreement between the Trustee and the attorney.

**THE ROLE OF YOUR ATTORNEY.** Your attorney, as a professional, will assist you in carrying out your duties as the Trustee. It is extremely important that you maintain close contact with the attorney for the trust so that he may be able to advise you properly regarding the needs and problems that may arise as the trust administration process is carried out. As the old saying goes, "It is easier to get oneself into a mess than to get out of one." Some actions once taken cannot be undone and, therefore, seeking advice and assistance from your attorney will help avoid problems. It would be appropriate and wise to consult with your attorney before employing other professionals such as accountants, real estate appraisers or brokers, business brokers, or property managers, to avoid duplication of effort and expenses, as well as assuring compliance with law and the provisions of the trust.

The settlement of the trust is independent of settlement of a probate estate, which is handled by a personal representative (i.e., executor or administrator). Although the roles of settlement of the trust may be parallel to and even similar to that of probate administration, they are nevertheless different and care must be taken to avoid conflicts and duplication of effort and expenses of the Trustee versus the personal representative. You should consult your attorney to help clarify the roles of trustee and the personal representative to help reduce confusion and problems.

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