



FIDUCIARY DUTIES OF AN EXECUTOR

The Trustee of a Trust and Personal Representative under a Will (collectively referred to below as "Executor" of the "Estate") owe a fiduciary duty imposed by law to the beneficiaries. Although the Executor is generally not liable for the decedent's debts or for the Executor's actions when acting in good faith, an Executor can incur personal liability for failure to comply with the Executor's fiduciary duties. Some of those duties are:

- 1. Administer the Trust and/or Will according to its Terms:** The Executor has an affirmative duty to read and understand the terms of the Trust or Will. This is important because the Executor must know the terms and their effects to properly administer the Estate according to its terms. The Executor can incur personal liability for the failure to follow the terms of the relevant document.
- 2. Duty of Impartiality:** The Executor may not favor themselves, if they are a beneficiary, over other beneficiaries, including remainder beneficiaries, nor may they favor one beneficiary over another beneficiary.
- 3. Avoid Conflicts of Interest:** If a decision needs to be made that could benefit the Executor at the expense of another beneficiary, the Executor should seek advice from an attorney to avoid an appearance of favoritism. The law imposes strict liability when an Executor is involved in self-dealing.
- 4. Duty of Loyalty:** The Executor is charged with the need to be loyal to the beneficiaries of the Estate and to protect the assets in the Executor's hands, as a prudent person dealing with their own property would do.
- 5. Preserve Estate Property:** There is an affirmative duty imposed by law on the Executor to gather and protect the assets of the Estate from harm or loss of value. This includes the duty to ensure that adequate insurance is placed on Estate property.
- 6. Keep Estate Property Separate:** The Executor should never commingle Estate property with the personal property of the Executor. The Executor should open a separate bank account for the Trust or Estate and use that account for all (and only) Estate matters.



- 7. Enforce Claims:** The Executor must enforce all claims due the decedent and the Estate so that the Estate is not diminished due to a lack of diligence in collecting on claims. Similarly, the Executor may be required to pay all legally-enforceable claims against the Estate and may be personally liable if he or she "over distributes" to the beneficiaries, thus resulting in insufficient funds available to pay creditor claims.
- 8. Defend Actions:** The Executor must seek legal advice and defend the Estate from actions intended to take Estate property or otherwise diminish the value of the property to be held for the beneficiaries.
- 9. Not to Delegate:** The Executor may not delegate their responsibility to others. That does not mean that the Executor may not delegate tasks to professional advisors, but the Executor is responsible to see that the advisors act properly with respect to Estate property.
- 10. Register Trust/File the Will and Notify Beneficiaries:** State law may require the Executor to register the Trust and file any Will, and to provide appropriate periodic information to the beneficiaries, including a copy of the relevant documents and periodic inventories and accountings. The attorney can help the Executor with this.
- 11. Report and Account:** Perhaps the most important duty of the Executor is to record all transactions involving the Estate finances so that a clear record of what has occurred is available. The reports prepared from these records are the essential information indicating the Executor's respect for the Estate, its property and its beneficiaries.
- 12. Tax Returns:** The Executor has a duty to prepare and file required federal and state income tax returns for both the decedent as well as the Estate. The filing of a federal estate tax return (IRS Form 706) may be required or desirable and should be discussed with an attorney.
- 13. Liquidate/Invest Assets:** Depending on the terms of the Trust or Will, the Executor has the obligation to liquidate and distribute assets in an orderly and timely fashion, or to invest the Estate assets prudently. Executors have been found liable for retaining the decedent's undiversified portfolio, for failing to liquidate qualified plans in a timely manner, and/or for failure to consider tax implications to the Estate and the beneficiaries when liquidating and distributing assets.

The Executor may be held personally liable for losses and expenses caused by breaches of these duties and may result in the removal of the Executor. If you have any questions or concerns regarding your role as Executor, you should discuss them with an Attorney.

This Memo is offered as an informational summary only and does not constitute specific legal advice. You should consult with a legal professional before acting on the advice contained herein.

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