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DUTIES OF A FLORIDA TRUSTEE

Trusts have long been used as vehicles to transfer wealth to future generations, although they have traditionally been viewed as vehicles used only by high net worth individuals and families. In Florida, however, trusts have become a common component in many estate plans, regardless of an individual's net worth. In prior newsletters we have discussed why trusts have become an important component of one's estate plan and the many advantages to leaving assets in trust for future generations. We have also discussed the importance of selecting an appropriate Trustee and various options to consider. This article will focus on the duties and responsibilities of the Trustee and provide guidance for those individuals asked by a family member, friend or client to serve as a Trustee.

Individuals generally feel flattered when a family member or friend asks them to serve as a Trustee. However, before accepting such appointment, one should be fully aware of the duties and responsibilities associated with acting as a Trustee. A Trustee is a "fiduciary" and has a legal obligation to act in the best interests of the beneficiaries. The trust instrument should detail the specific duties and powers bestowed upon the Trustee so the Trustee is fully aware of his or her obligations and responsibilities. To the extent the trust instrument does not detail the Trustee's duties and powers, the Florida Trust Code (the "Code") contains a number of sections regarding duties and powers of Trustees. While the terms of the trust instrument generally prevail over the provisions of

the Code, certain duties apply to all Trustees and may not be waived by the terms of the trust. For example, the Code provides that the Trustee has a duty to "administer the trust in good faith, in accordance with its terms and purposes and in the interest of the beneficiaries, and in accordance with this code." Such duty to administer the trust may not be waived or modified by the trust instrument. In addition, another non-waivable duty is the duty of loyalty.

The Trustee's duty of loyalty requires that the Trustee administer the trust solely in the best interests of the beneficiaries.



Upon acceptance of trusteeship, the Trustee should quickly ascertain the beneficiaries of the trust as the Trustee has a duty to inform and account to the beneficiaries. The Code provides specific requirements for notifying the beneficiaries of the trust's existence

continued on page 3


ITEMS OF SENTIMENTAL VALUE CAN HAVE A LASTING EFFECT

As you may have seen recently in the news, the family of the late actor, Robin Williams, settled a lawsuit regarding, among other things, the tuxedo he wore on his wedding day. Pursuant to the provisions of his will, Williams left all of his tangible personal property (including clothing) that he acquired prior to his marriage with his third wife to his children. He also left his house that he shared with his third wife and its contents to her. The tuxedo worn at his wedding was, obviously, acquired prior to such marriage, but was also physically located in his house and was of sentimental value to his wife. One of the questions of the lawsuit was to determine to whom the tuxedo belonged.

While the terms of the settlement are not public, it is an important lesson to remember that items of tangible personal property can have sentimental (not just monetary) value to your family members and the distribution of such property after your death may cause friction among family members. To reduce the potential for fighting among family members, it may be worthwhile to consider your items of tangible personal property and what sentimental value those items may have with your family members (and/or other beneficiaries of your estate). It may be best to sit down (with or without family members) and create a list of all items of tangible personal property and specifically identify which family members you want to receive such items at your death. As you may be aware, Florida law permits a decedent to dispose of tangible personal property by a separate writing

that is referred to in such decedent's Will. Therefore, you can change your list at any time without having to go through the formalities of revising your Will. The separate writing must be signed and describe the items and the intended beneficiary with reasonable certainty.

Other options could include donating items of tangible personal property to a local organization like a museum so family members (and the public) can regularly enjoy viewing these items or to provide direction in your Will that your Personal Representatives sell your tangible personal property at your death and have the net proceeds therefrom pass of part of your estate. The sale of such property would have the effect of letting your family members decide how much they are willing to pay for an item of sentimental value while having the proceeds go back into the estate to be divided.

Regardless of how you decide to distribute your tangible personal property after your death, it is an important lesson to remember that family members can easily battle over property with little to no monetary value because such items have high sentimental value and it will be easier to direct the distribution of such property in order to reduce the potential for fighting. Please contact your estate planning attorney to revise your Will or to assist you with the preparation of a separate writing to account for the distribution of your tangible personal property after your death. 



ARE YOU PROPERLY PROTECTED?


5 IMPORTANT INSURANCE QUESTIONS TO CONSIDER

Although many families simply renew their insurance policies each year without much thought, it is important to examine your coverage at least once a year – often in conjunction with an annual financial review - and consider any changes that have taken place. Even minor changes in your estate plan or lifestyle, such as transferring a property to a trust or entity, a new teen driver in your household, or hiring a new housekeeper, can impact your insurance program as well, sometimes even negating coverage as a result.

Here are five questions to consider as you are reviewing your financial plan and insurance program:

1. Have you purchased any new properties or high-value assets - such as a yacht or aircraft - or transferred ownership of these to a trust or entity?
2. Have you made any upgrades or renovations to your home?
3. Have you purchased any new valuables - jewelry, art, or any

- other collectibles such as wine - or even special vehicles?
4. Did you or your family members experience any lifestyle changes? Did you get married or divorced, change jobs, or accept a new board position? Did any of your children start driving or go away to college?
5. Did you hire new domestic help (either full- or part-time)?

Each of these is an important insurance consideration that, if not properly addressed, could lead to potential coverage gaps and significant out-of-pocket expenses in the event of an uncovered loss. Talk with an expert personal insurance advisor who is familiar with the complex needs associated with a high-net-worth lifestyle and ask for a personal risk review. They can help identify areas that need to be addressed and create solutions to do so. Structured properly, a comprehensive insurance program works to help protect the financial plan you are building with your financial advisor. 


TRUSTEES

(continued from page one)

and advising the beneficiaries of certain rights they may have with respect to the trust. The Trustee should also quickly determine the assets of the trust as the Trustee has a duty to control and protect the trust property. Further, the Trustee has a duty to keep clear, distinct and accurate records of the trust, and ensure the trust property is kept separate from the Trustee's own property. In addition, a Trustee has a duty to administer the trust as a prudent person would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. When the time comes for the Trustee to terminate the trust, the Code provides that the Trustee "shall proceed expeditiously to distribute the trust property to the persons entitled to the property, subject to the right of the Trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes." In addition to the foregoing, the Trustee is also required to invest the trust assets prudently and ensure required taxes are timely paid.

Although certain duties may be waived by the terms of a trust instrument, the Code also imposes the following duties on a Trustee:

- Duty of Impartiality
- Duty to Incur Only Reasonable Expenses
- Duty to Use the Trustee's Special Skills or Expertise
- Duty to Ascertain Marketable Title of Real Property
- Duty to Enforce and Defend Claims


While one may take it as a compliment when a friend or family member asks them to serve as a Trustee, the individual appointed must seriously consider the duties and responsibilities imposed on him or her for serving in such a role. The foregoing indicates certain duties that are imposed on the Trustee but there are many other factors to consider when determining whether to act as a Trustee. Any individual contemplating accepting a trusteeship should seek legal counsel that specializes in trust administration to ensure he or she understands the task at hand and the responsibilities that will be expected. 

PERSONAL REPRESENTATIVES BEWARE: YOUR DUTIES HAVE NOW INCREASED

Congress has added new requirements for Personal Representatives of a decedent's estate by requiring them to report the basis of property acquired by a beneficiary from an estate. The newly enacted section 6035 of the Internal Revenue Code and proposed regulations require that Personal Representatives report the basis information to both the IRS and the beneficiary receiving the property based on the value reported on the federal estate tax return. The aim of new Code section 1014(f) and the basis reporting requirement is to insure that the basis of the property received by a beneficiary is consistent with the value of the property as finally determined for federal estate tax purposes. This is the initial tax basis for the beneficiary receiving such property upon which a gain or loss on a subsequent sale by the recipient beneficiary would be determined.

Although the basis consistency rules under section 1014(f) only apply to property that contributed to an increase in the estate tax, the basis reporting requirement applies to any estate that was required to file an estate tax return. Additionally, while Personal Representatives previously had an obligation to report the asset values of a decedent's estate on an estate tax return, these new rules require filing additional forms identifying the recipient of specific property and providing such beneficiary with the basis information. The proposed regulations require a personal representative to file

amended basis returns if property is distributed to a different beneficiary than initially anticipated or if the value of property is adjusted as a result of an estate tax audit. The IRS is now finalizing regulations regarding the method and timing required in order to be compliant. The IRS has stated that basis returns otherwise due earlier will be accepted if filed by June 30, 2016.

With the newly enacted code sections and proposed regulations, the duties of Personal Representatives administering an estate required to file a Form 706, United States Estate (and Generation Skipping Transfer) Tax Return have been significantly increased, creating substantially more tax compliance obligations for Personal Representatives. 



1. All references to available/allowable estate tax exemptions and credits relate only to persons who are U.S. citizens; references to gift tax exemptions/exclusions generally apply to U.S. citizens and U.S. Lawful Permanent Residents (i.e., "green card" holders). While most transfer tax savings techniques discussed can be fine-tuned to benefit non-U.S. citizens, the results will differ and must be addressed on a case-by-case basis.

2. **The 2016 Annual Exclusion** is an aggregate of \$14,000 per donee, from each donor; or \$28,000 per couple, if a husband and wife file a "split gift" Gift Tax Return on gifts made from either of their assets this year. **Medical/Tuition ["ed/med"] Exclusion Gifts** allow a donor to pay an unlimited amount for anyone's medical or tuition expenses (including health insurance premiums), if paid directly to the service provider, without incurring any gift tax or use of their unified credit; and, if properly structured, ed/med gifts should not reduce the \$14,000 amount available to be given to the same person by a donor each year.

This publication is for general information only. It is not legal advice, and legal counsel should be contacted before any action is taken that might be influenced by this publication.

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