

Florida Trustee's Fiduciary Duties and Powers:

Quick Reference Guide

Practical Tips For the Trustee

in the Administration of a

Florida Trust

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Introduction

You have been named the Successor Trustee of a Florida trust. Now what? What do you do first? What are your duties? This guide is designed to provide practical tips to help you navigate the numerous trustee tasks.



The first important legal tip for the trustee is this: you have no personal liability until you begin to perform transactions on behalf of the trust and/or accept the Trustee duties. You do not have to accept these duties. However, once you accept the duties or begin to perform transactions on behalf of the trust you may be personally liable to the trust beneficiaries and IRS for all your actions – or failure to act.

Trust administration requires strict compliance with the trust terms and often analysis of complex tax requirements. A trustee is a fiduciary and is held to a high standard of care under Florida law. It is important that you follow the advice of an experienced Trust Administration Attorney and experienced CPA. Attorney and CPA expenses, as well as trustee time, are typically considered routine trust expenses that are paid by the trust. Do not take any action until you know the full scope of your duties.

12 Point Summary of Florida Successor Trustee Duties

1. Show Loyalty To All Trust Beneficiaries. Even if the successor trustee is a beneficiary, the trustee has a duty of loyalty to all the other beneficiaries, including the remaindermen. Remaindermen are beneficiaries who have a future interest in the trust.

2. Deal Impartially With Beneficiaries. The successor trustee cannot favor the income beneficiaries over the interests of the remainder beneficiaries unless the trust specifically directs otherwise. Typically, the trustee must walk a fine line that balances the interests of the income beneficiaries against the interests of the remaindermen.

3. Make Trust Property Productive Of Income. Trust assets are expected to achieve conservative growth. Therefore, this duty may be violated if the successor trustee keeps large amounts in a checking account that does not grow in value or if the trustee keeps land that does not produce income, such as commercial land that does not produce rental income in excess of maintenance costs.

Remember: The sole reason for the trust to exist is to serve the beneficiaries. It is not an employment program for the trustee.

4. Follow the Prudent Investor Rule, F.S. §518.11. Generally the trust portfolio should be broadly diversified and invested in conservative investments designed to stay ahead of inflation but not in aggressive growth. Often, it is best to retain the services of a Certified Financial Planner (CFP) experienced in helping manage conservative portfolios.

Note: The successor trustee is obligated to exercise reasonable care, judgment and caution in selecting an investment agent.

5. Account To Beneficiaries And Keep Beneficiaries Informed. Upon commencement the successor trustee must inform all income and remainder beneficiaries of acceptance of the trustee duties. If a beneficiary requests it, the successor trustee is required to provide a complete copy of the trust document, including any amendments as well as relevant information about the assets of the trust and the particulars relating to administration.

6. Keep Trust Assets Separate. The successor trustee must keep the assets of each trust separate and keep her personal assets separate from the trust assets. This requires separate bank accounts, brokerage accounts, and safe deposit boxes for trust assets. If the successor trustee commingles other assets with the trust assets, this is a breach of fiduciary obligations and most likely has subjected these assets to taxation.

7. Avoid Conflicts Of Interest And Self-Dealing. The trustee cannot favor himself as a beneficiary at the expense of any other remainder beneficiary. He cannot make any distribution to anyone or any withdrawals from the trust unless specifically authorized by the trust to do so. The trustee is entitled to a reasonable compensation or as otherwise set forth in the trust for trust services. However, the successor trustee cannot otherwise profit or benefit from the trust unless also a beneficiary. Conflicts of interest and self-dealing is a broad area with many traps.

8. Preserve Trust Assets and Uphold The Trust. The trustee must monitor the performance of equities. When the trust owns commercial real estate, the trustee must monitor that the properties maintain a high occupancy level, the properties are insured, and rents are promptly collected and deposited in a trust account. This may require hiring a property manager.

9. File Tax Returns And Pay Any Tax Due. Each trust has a tax year, which like the personal tax year, ends annually on December 31. The trust must have a taxpayer identification number and file a tax return no later than April 15 of the year following the settlor's death. The best advice here is to use a professional CPA who routinely prepares 1041's. Such an expense is a typical cost paid by the trust.

10. Minimize Income Taxes. The trust has a high tax environment: income not distributed may be taxed at 39.6%. To minimize income taxes, the trustee may need to distribute income out to the income beneficiaries, if the trust terms so allow.

11. Pay Trust Expenses. The administration of the trust necessarily requires certain expenditures. Example of expenses include insurance, real estate taxes, CPA fees, and legal services.

12. Good Record Keeping. The trustee needs to keep accurate records of every dime that comes in and out of the trust. For small trusts, we recommend using QuickBooks or Quicken. If the successor trustee does not know these programs, it is highly advisable to hire a professional bookkeeper.

Checklist of Initial Important Tasks

First Priority Action Items

- ___ 1. Take possession of legal & financial records
- ___ 2. Take possession of all keys or codes
- ___ 3. Lock & secure all real estate & contents
- ___ 4. Engage a trust administration attorney
- ___ 5. Engage CPA or accountant
- ___ 6. Contact decedent's Financial Advisor
- ___ 7. Order minimum of 10 death certificates
- ___ 8. Calendar important deadlines
- ___ 9. Keep track of your time in a notebook

Note: Few beneficiaries will appreciate the time and extensive work of the trustee. It is recommended to keep track of all your time.

Second Priority Action Items

- ___ 10. Open Trust Account
- ___ 11. Set up accounting program
- ___ 12. File Notice of Trust
- ___ 13. Deposit Will with the Clerk of Court
- ___ 14. Advise Post office to forward mail
- ___ 15. Cancel utilities, subscriptions
- ___ 16. Contact homeowner's insurance
- ___ 17. Review insurance for all Real Estate
- ___ 18. Contact homeowners association, if any
- ___ 19. Inventory Safe Deposit Box
- ___ 20. Search records for potential creditors
- ___ 21. Determine if any Employee Benefits
- ___ 22. Provide insurance info. to health care providers
- ___ 23. Contact Social Security Administration
- ___ 24. Determine if any claims for life insurance

Experience Matters

Rarick & Beskin, P.A., has assisted families and businesses for over 20 years. Our attorneys help successor trustees' deal with the complexities of trust administration in Florida. We understand that successor trustees often lack the time, resources or knowledge to personally administer the trust. We look forward to assisting you!

Disclaimer: This is a short summary, not a full review of the law and is intended to address some of the most common questions regarding Florida Trust Administration.