



TRUST AND ESTATE ADMINISTRATION

RUSSO LAW GROUP, P.C.

Estate Planning, Elder Law & Special Needs



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LAW FIRM

MEMORANDUM REGARDING TRUST AND ESTATE ADMINISTRATION

This memorandum highlights the various areas of trust and estate administration, including probate, taxes, and the disposition of assets.

PROBATE/ADMINISTRATION PROCEEDINGS

In order for an individual to have the legal authority to access a decedent's assets which were held in his/her individual name, i.e. without joint owners or beneficiaries designated, the individual will have to petition the Surrogate's Court to be appointed the Executor or the Administrator of the decedent's estate. This is accomplished through either a Probate or Administration Proceeding commenced in the Surrogate's Court of the County in which the decedent was domiciled. No one has the legal authority to act on the estate's behalf until an Executor or Administrator is appointed.

Probate Proceeding

A Probate Proceeding is required when the decedent had a Last Will and Testament. The Surrogate's Court will appoint an Executor of the decedent's estate, in accordance with the decedent's Will to handle all estate matters, including distributing the assets in accordance with decedent's Will.

In order to commence a Probate Proceeding, a Probate Petition and appropriate ancillary documents must be submitted to the Surrogate's Court with the original Will and a certified copy of the death certificate.

Estate Administration Proceeding

In the event the decedent did not have a Will, an Administration Proceeding must be commenced. The Surrogate's Court will appoint an Administrator, who is usually the decedent's closest blood relative. The Administrator will have the same duties and responsibilities as an Executor, but the estate will be distributed according to the New York State laws of intestacy, since the decedent did not have a Will.

Small Estate Proceeding

If the value of the assets in the decedent's individual name is \$30,000 or less, a Probate or an Administration Proceeding may not be required. The estate may be administered through a Small Estate Proceeding in the Surrogate's Court whereby the Surrogate's Court appoints a Voluntary Administrator. This proceeding involves significantly less paperwork, time, and Court involvement.

TRUST ADMINISTRATION PROCEEDINGS

If a Living Trust has been set up by an individual, the administration of the trust is the responsibility of the Trustee of the Living Trust. The procedures for estate administration outlined herein would also apply to the Trustee as to the administration of the trust.

ESTATE TAXES

Unlimited Marital Deduction

An unlimited amount of assets may be left to a surviving spouse without incurring any Federal and New York State estate and gift taxes. However, upon the surviving spouse's death, the assets in the surviving spouse's estate will be subject to Federal and New York State Estate Tax.

Estate Tax Rates

The Federal estate tax rates commence at eighteen (18%) percent and graduate to forty (40%) percent. The New York State estate tax rates commence at three (3%) percent and graduate to sixteen (16%) percent.

Unified Credit

Each individual is entitled to pass an estate valued at \$11,400,000 (effective January 1, 2019), during life or upon death, free of Federal estate tax. In New York, each individual is entitled to pass an estate valued at \$5,740,000, (for decedent's dying on or after January 1, 2019, and before January 1, 2020), during life or upon death, free of New York estate tax. These tax exemptions are in addition to the unlimited marital deduction discussed above.

Spousal Exemption

Current law provides for portability of the Federal spousal estate tax exemption (called the Deceased Spouse Unused Exemption Amount or "DSUEA"); that is, if a predeceased spouse does not fully utilize his or her \$11,400,000 (effective January 1, 2019) estate tax exemption, the surviving spouse could elect to utilize the unused exemption of his or her predeceased spouse, subject to certain Federal Estate Tax return filing requirements.

The New York State Estate Tax Trap

The benefits of the increased Federal estate and gift tax exemption and the DSUEA apply only to the Federal taxable estate or taxable gifts. These tax benefits are inapplicable to the New York State taxable estate. However, New York does not have a gift tax law.

In New York, each individual is entitled to pass an estate valued at \$5,740,000, (for decedent's dying on or after January 1, 2019, and before January 1, 2020), during life or upon death, free of New York estate tax.

High net worth clients need to be aware of the differences between the Federal estate tax law and the New York estate tax law and take advantage of estate planning opportunities, such as gifting. The New York State estate tax that may be saved as a result of making large gifts can be significant.

ESTATE TAX RETURNS AND PAYMENTS

Valuation

With regard to Estate Taxes, it is important to determine and value all assets held by the decedent either in his/her name individually, jointly held with another, designating a beneficiary, or in Trust.

Estate Tax Filing Thresholds

Federal and New York Estate Tax Returns are required to be filed when the decedent has a taxable estate or the surviving spouse wishes to utilize the Deceased Spouse Unused Exemption Amount or DSUEA.

The Executor **MUST** file Federal and New York State Estate Tax Returns, if required, within nine months from the date of death.

Estate Tax Payments

Estate Tax payments **MUST** be made within nine months from the date of the decedent's demise.

DUTIES OF THE EXECUTOR AND/OR TRUSTEE

The Executor and/or Trustee are the fiduciaries responsible for the proper administration of an Estate and/or Trust. The following duties also apply to the Trustee of a Living Trust. If there is no probate, then the Trustee is responsible for all of the duties outlined below. If there is a probate and a living trust, then the duties outlined below will be allocated between the Executor and the Trustee, as required by law.

Preliminary Paperwork

The Executor must obtain numerous documents to be provided to the necessary parties. For example, an Affidavit of Domicile (to prove residency) is needed for the transfer of securities. Certified copies of the death certificate must be furnished to the insurance companies, banks, brokers, and the Surrogate's Court. The Executor must attend to filing the Will for probate. In addition, a copy of the

Surrogate's Court order formally appointing the Executor or Administrator, and Certificates of Letters Testamentary or Letters of Administration must be provided as proof of the authority to act on behalf of the estate.

Gathering the Estate

The Executor must identify and locate all of the decedent's assets. This can require a time consuming review of all financial records and tax returns. Typical assets that must be located are bank accounts, CDs, stocks, bonds, real estate, pensions, death benefits, and safe deposit boxes, which must be opened and inventoried. Every item on a list or schedule of assets must be checked for accuracy.

The Executor must locate all insurance policies and send the original policy, along with a certified copy of the death certificate to the insurance company in order to obtain payment of the insurance proceeds to the named beneficiary or the decedent's estate. The Executor also must keep track of payments to policy beneficiaries because insurance proceeds are included in the taxable estate if the insured held ownership rights in the policy.

Valuation of Assets

Property such as cash, stocks, bonds, an interest in a closely held corporation, or partnership must be valued and appraised. The Executor is responsible for making sure the job is done right. In certain circumstances, assets may have to be valued twice - at the date of death and again, six months after death. Reason: The estate may use the later "alternate valuation date" if it produces a lower valuation (and, as a result, a lower Federal estate tax).

Payment of Debts and Administration Expenses

The Executor is responsible to pay any and all outstanding debts and administration expenses of the Estate from the Estate assets. The Executor should set up an estate checking account to make and keep track of these payments.

The Executor must pay expenses such as interest, taxes, medical bills, funeral costs, and other administration expenses. Careful records of those expenditures must be maintained because some may be deductible by the estate. There are other duties that the Executor is obligated to perform, such as the timely filing of the appropriate income and estate tax returns, paying all debts and liabilities, selling, transferring, and distributing the assets.

Accounting of Income and Expenses

The Executor must maintain adequate records as to the assets of the estate and the income received and expenses paid during the estate administration.

Distribution of Assets

The Executor will be able to distribute estate assets after seven months from the issuance of Letters Testamentary/Letters of Administration because the law provides creditors this time period to assert their claims against the estate.

The Executor will distribute the estate assets in accordance with the decedent's Will. The Administrator will distribute the estate in accordance with the intestacy laws of New York State. Receipt, Release, Refunding, and Waiver Agreements should be signed by the beneficiaries at the time of distribution, in order to release the Executor from his/her duties and liability.

Payment of Individual Income Taxes

The Executor must ascertain whether the decedent is required to file final Federal and New York State Income Tax Returns. The Executor may have to file for extensions and arrange for the payment of these taxes, or the Executor may have to file to collect a refund on behalf of the estate.

Payment of Estate Taxes

The Executor must ascertain whether the estate is subject to Federal and New York State estate taxes. The Executor may have to file estate tax returns and arrange for the payment of same.

Payment of Estate Fiduciary Income Taxes

The Executor may have to file Federal and New York State Fiduciary Income Tax Returns as to income generated and distributions made to the beneficiaries during the estate administration

Documents Required

The following are some of the documents required in connection with a probate proceeding, estate administration, and/or estate tax matters:

1. Original certificates of death (with a raised seal);
2. Original Last Will and Testament;
3. Bank, broker, IRA, CD and mutual fund statements, pension information, stock and bond certificates, and any other information to assist in valuing decedent's assets;
4. Funeral bill marked paid in full and any receipts for related funeral expenses, i.e. funeral luncheon, flowers, monuments, church fees, clergy fees, etc.;
5. Bills indicating any debts or liabilities of decedent;

6. Bills and cancelled checks regarding expenses paid by the estate such as maintenance of the decedent's house, payment of property taxes, repairs, etc.;
7. Real estate appraisal form by a certified appraiser for any real property owned by decedent; and
8. Copy of the proceeds check from the life insurance policy and Form 712 ;
9. Copies of deeds and mortgages;
10. Copies of the last three years of the decedent's Individual Income Tax Returns; and
11. Copies of any Federal and New York State Gift Tax Returns.

POST MORTEM PLANNING

It is important to analyze the interrelation of Estate Tax, Individual Income Tax, and Fiduciary income tax issues and laws to implement optimal overall tax planning for the Estate and the beneficiaries of the estate.

A complete review must be made as to whether certain expense items should be reported on the Individual Income Tax Returns, the Fiduciary Income Tax Returns, or the Estate Tax Returns. There may be certain advantages to the timing of these deductions and the return on which the said deduction is reported.

It is also important to implement estate planning for beneficiaries, especially a surviving spouse. A financial analysis of the beneficiary's assets should be considered and in some cases it may be beneficial for tax purposes for the beneficiary to execute a Renunciation/Qualified Disclaimer of his or her interest in the estate. The Renunciation/Qualified Disclaimer must be executed within nine months of the date of death and filed with the Surrogate's Court having jurisdiction over decedent's estate.

NOTE: The above is merely informational and not legal advice. This guide was published in January 2019 and based on New York law. You should contact us for any changes or updates in the law or long term care planning. Future changes in law may render the above information inaccurate. If you have any questions regarding this guide, please do not hesitate to call RUSSO LAW GROUP, P.C. at (516) 683-1717 or contact us at www.VJRussoLaw.com.

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