

Trustee and Personal Representative Duties

The following is a brief overview of the responsibilities and duties of your appointed Trustee and Personal Representative. It is intended as a general guide only and your representatives should consult with an attorney immediately upon taking over, in order to assure that they comply with all legal requirements as well as properly carry out the directions given by you in your Living Trust, Wills and other estate planning documents.

During the joint lifetimes of both spouses, and assuming they are willing and able to act, they will serve as Trustees of the Living Trust. A successor Trustee will step in only in the event that one or both of the spouses becomes incapacitated or dies. Consult the Living Trust for the order of succession of Trustees and the determination of when it is necessary for a successor Trustee to act.

These instructions should be consulted in conjunction with the other document in this section called "Actions Upon Death or Incapacity."

In general, all Trustees and Personal Representatives (referred to collectively hereafter as "representatives") face similar duties and responsibilities, regardless of the size of an estate. All steps in the administration of the estate are more or less directed toward three goals:

1. Collection and management of assets;
2. Payment of debts, taxes and expenses; and
3. Distribution of the balance of the estate assets to the named beneficiaries

Collection and Management of Assets

The first duty of a representative is to protect and preserve the estate assets. The representative should attempt to put together an inventory of all assets and their values as of the date of death. Refer to the section of the Portfolio entitled "Trust Property." This will indicate to your Trustee that properties are already in the Trust name and subject to its control. The "Location List" section may help identify other assets which have not yet been placed in your Trust and which therefore may be subject to the jurisdiction of the probate court and the Personal Representative.

The next step is for both your Personal Representative and your Trustee to check the powers that they will have over property by referring to your Will and Trust documents. An attorney should be consulted if there are any questions as to the extent of the representative's powers.

"Living with your bags packed!"[®]

Law Office of Robert P. Newman, P.C.
801 Wayne Avenue, Suite 400
Silver Spring, MD 20910
301.892.2713
www.rpnewmanlaw.com

The next step is to collect the various assets. Valuables, such as securities, jewelry and other personal items of substantial value should be kept in a safe place such as a safe deposit box, to which only representatives have access. The "Estate Planning Letter" contained in the Portfolio should be consulted as to the disposition of certain of these valuables. Provided that title of other assets was properly transferred into the name of the Trust, there will not need to be any change of title immediately. However, bank and savings and loan accounts and security brokerage accounts may need to be closed or have their ownership changed to reflect the representative's name. In order to make the change of accounts into the representative's name, the representative may need to use the "Trust Affidavit" provided in the Portfolio. The representatives should thereafter maintain an accurate record of all deposits into and withdrawals from these accounts, reflecting the amount and sources of each deposit and the amount and purpose of each check drawn. Claims may need to be filed in order for the representative to obtain certain properties to which the decedent's estate is entitled, such as life insurance proceeds, employer pension and insurance benefits, Social Security benefits and Veterans' Administration benefits.

Management of assets entails several duties. First, a representative should be sure to maintain adequate insurance on valuable assets by making sure that existing coverages will continue after the decedent's death and making a note of expiration dates on applicable policies, while also checking that coverage reflects current market values. Investment decisions will need to be made. Cash income not needed for other purposes of administration, such as immediate payment of expenses, should be placed in interest-producing investments. The Will and Trust documents should be consulted by the representatives for further direction regarding longer-term investments. In due course, it may be necessary to sell some of the estate's property, either because an item should be disposed of to avoid needless expense or loss through depreciation in value, or to raise cash for payment of expenses, taxes or legacies to beneficiaries. Assets should not be sold before first consulting an attorney to ensure that appropriate authority exists or can be obtained. Holdings in a closely held corporation, partnership or sole proprietorship may pose special concerns and problems -- the representative may be required to continue or windup the business in order to avoid a serious risk of loss to the estate. Again, an attorney should be consulted before the representative acts with regard to any businesses.

Payment of Debts, Taxes and Expenses

Again, the first step is for the representative to consult the appropriate estate planning documents in order to clearly define the representative's duties and powers in this area. Creditor claims may need to be paid and, depending on whether they are paid from a probate estate or from the Trust, the representative may have different

“Living with your bags packed!”®

Law Office of Robert P. Newman, P.C.
801 Wayne Avenue, Suite 400
Silver Spring, MD 20910
301.892.2713
www.rpnewmanlaw.com

responsibilities and latitude. Death taxes may need to be paid and, even if taxes are not due, many estates will nevertheless be required to file a federal estate tax return. **The estate tax return must be filed within nine (9) months of death. Certain elections and disclaimers must be made prior to filing the estate tax return; therefore, in some cases, the failure to file this return promptly may result in adverse tax consequences.** Also, income taxes and returns may be due for the probate estate and the Trust. An attorney or accountant should be consulted. Professional fees may be paid to the attorney, accountant and others, including the Personal Representative or Trustee -- but the Will or Trust must first be consulted. Some of the fees and expenses may not be payable until the probate estate, if any, is ready for distribution to the beneficiaries.

Distribution to the Beneficiaries

Beneficiaries may be entitled to ongoing payments of income and/or principal for a period of time beginning with the death of the decedent, or may be entitled to lump sum payments. The representative may be allowed to distribute property in kind or sell properties and distribute cash. The provisions relating to the distributions to beneficiaries are contained in the Living Trust document. On final distribution of the remaining assets, it is advisable for the representative to obtain a receipt from each beneficiary.

“Living with your bags packed!”[®]

Law Office of Robert P. Newman, P.C.
801 Wayne Avenue, Suite 400
Silver Spring, MD 20910
301.892.2713
www.rpnewmanlaw.com