

Basics of Estate and Trust Administration

Administering a decedent's estate involves numerous responsibilities, statutes and risks. In order to help guide our clients and advisors, Couzens Lansky reviewed the "Basics of Estate and Trust Administration" during its recent seminar entitled "2016 Critical Legal Developments". Contact one of the Firm's estate planning and administration attorneys at 248-489-8600 to discuss your particular circumstances. Here is a short version of that material.

There are (at least) four ways that people can arrange for ownership of assets to pass to others upon their death: by contract, joint ownership, trust agreement (revocable or irrevocable, inter vivos or testamentary) and Will (which is subject to "probate"). Assets pass through the "probate" process if they do not pass through one of the other methods. Assets owned by a decedent in his or her own name without one of the above arrangements, will pass through probate and be distributed under the State intestacy laws. The extent of court involvement, if any, depends on the nature of the assets involved and the manner in which the assets were owned.

Certain people are entitled to receive priority distributions from an estate. There is a Homestead Allowance (currently \$22,000), a Family Allowance (currently \$27,000), and an Exempt Property Allowance (currently \$15,000). When a person dies leaving a Will, a surviving spouse and Probate Property, the spouse has a right to accept the property that was left to him or her under the terms of the Will, or reject the terms of a Will and take their "elective share". The amount depends on whether the decedent also left other descendants or ancestors.

The Estate and Protected Individuals Code (EPIC), MCL 700.1101 et seq. is Michigan's probate, trust and estate administration law. EPIC provides several different forms of probate administration, including administration by affidavit and small estate administration in certain limited circumstances. Unsupervised administration, supervised administration and summary proceedings are other alternatives. Professional guidance is recommended in making the decision between these choices.

The Michigan Trust Code ("MTC"), MCL 700.7101 et seq., is part of EPIC. The MTC recognizes that many people are using revocable inter vivos trusts as their primary estate planning document. In response to this development, the MTC imposes many of the same obligations on the trustee of a revocable inter vivos trust, as are imposed on the personal representative of a Probate Estate, although, trust administration generally remains free of court supervision. The trustee is subject to specific notice and default accounting requirements. The trustee is subject to probate-like creditor notice requirements. The Trust estate is potentially subject to allowances, but not subject to the spousal elective share.

In the administration of a probate estate, the personal representative has a variety of notice requirements established by law and court rule. A Notice of Appointment and Notice Regarding Attorneys Fees must be served on the interested persons within 14 days from the date the personal representative is appointed. At the same time, each

interested person must be served with a copy of the Order of Formal Proceedings or Register's Statement. If the decedent left a surviving spouse, and the surviving spouse is not the personal representative, the personal representative must serve Notice to Spouse of Rights of Election on the surviving spouse within 28 days after appointment. Within 91 days after appointment, the personal representative must serve an inventory on the presumptive distributees and all other interested persons who request it. Notice to creditors, accounts to interested parties and other notices are required.

In the administration of any trust, the trustee has numerous duties. One of the most important is that within 28 days of death or acceptance with an inter vivos revocable trust, whichever is later, the trustee must notify each trust beneficiary of the following:

- (1) the trust's existence,
- (2) the court in which the trust is registered, if any,
- (3) the trustee's name and address,
- (4) notice that the trustee will provide a copy of the trust's terms that affect that beneficiary and relevant information about the trust assets.

The trustee is also obligated to account to the persons entitled to receive accounts, to assist personal representatives, to notify creditors in some cases and to keep inventory, accounting and time records.

Except in Supervised Estates, EPIC does not require a personal representative to obtain court authority to distribute assets to heirs/devisees. However, distributions should not be made until all creditors, and all other expenses, are known or satisfied. EPIC favors in-kind distribution of assets. EPIC provides a procedure for having a proposed distribution plan accepted by the interested persons, which can help protect the fiduciary involved. EPIC provides for formal and informal procedures for closing an estate.

Although there are no statutorily defined methods to complete administration of a trust, the requirements for preparing and serving accounts noted above, provide the trustee with a process for serving a final account which, if done properly, can preclude any further claims after one year. To avoid having to wait a year, the trustee can ask beneficiaries to sign a release, in which they approve the trustee's account(s).

As is apparent, a fiduciary should keep meticulous records and keep the interested persons or trust beneficiaries informed throughout the process of estate administration. A fiduciary who follows those two cardinal rules will simplify the administration process and minimize the risk of challenges in court by any interested party. Please contact Monica D. Moons or one of our other estate planning and administration attorneys at 248-489-8600, for assistance on any estate administration matter.