

Trusts & Estates

The newsletter of the Illinois State Bar Association's Section on Trusts & Estates

Ethics corner

BY JENNIFER BUNKER SKERSTON AND COLLEEN SAHLAS

It is with the utmost gratitude that we thank Richard W. Kuhn for the many engaging, substantive, and helpful articles that he has contributed to our Ethics Corner. We look forward to his future contributions and are sure that our readers feel the same!

We also welcome others to submit

articles to the newsletter concerning ethics and other aspects of the practice of trusts and estates. Questions, comments, and submissions can be directed to either Jennifer Bunker Skerston at Jennifer@reillylawofficecreator.com or to Colleen L. Sahlas at Colleen@sahlas.com. ■

Ethics corner

1

Grantor trust administration in Illinois: A primer

1

Why file the last will and testament?

9

A summary of the Trusts & Estates Section's February 2019 business meeting

9

Grantor trust administration in Illinois: A primer

BY COLLEEN L. SAHLAS

This is Part 1 in a Series of 3 Parts. Stay tuned in future issues for Parts 2 and 3.

One of the greatest misconceptions by the public is that trust administration is “simple” after the grantor passes away, as opposed to probate which is more time consuming and complex. Trust administration is all-too-often believed to be “no administration required,” rather than a private, pared down administrative process.

Every misconception has a kernel of truth, however. Trust administration can be easier than probate estate administration.

It does not have a requirement to be “open” for a minimum of 6 months after publication to creditors. And a trustee can more quickly and easily gain authority over trust assets and start paying trust expenses and maintaining/preserving trust assets. Unlike a probate estate, a trustee does not have to file a petition to open probate, wait for a court date and be at the mercy of the Judge to order the issuance of Letters of Office in order to gain authority over the decedent's assets and start paying estate expenses. Rather, the successor trustee can simply show that

the original trust names them as successor, and show the decedent's death certificate in order to gain authority over trust assets. On the flip side, some probate matters may seem fairly straightforward compared to trust administration matters which may have numerous assets, complicated trust provisions, payouts over time and sub-trusts that spring to life.

But all too often, a successor trustee will come to an initial consultation and erroneously believe their only function as trustee is to simply to get the trust monies

Continued on next page

Grantor trust administration in Illinois: A primer

CONTINUED FROM PAGE 1

and dole them out to the beneficiaries. A trust is not a P.O.D. (pay on death) contract which merely pays out lump sums to beneficiaries after the grantor passes away. Even “simple” trust administration with outright distributions requires an administrative process that can take months, and sometimes years. A trust may have beneficiaries who do not get along or who contest the trust provisions; it may own complex assets which aren’t easily valued or easy to liquidate; it will have an obligation to pay the decedent’s creditors and trust/estate expenses; and may even have trigger dates for payout of future trust funds or sub-trusts that spring to life upon the death of the grantor.

That being said, let’s delve into the “how to” portion of the article: what to do when you represent the successor trustee of a grantor trust and the grantor has either passed away or resigned or been declared disabled for purposes of acting as trustee. This is a primer for those who are new in this area of law. But the article can also double as a comprehensive checklist for trust administration for those who are well versed in this practice. And you can certainly pass it on to your younger associates or staff members to use as a training tool.

A great cross-reference to this article is one recently published by the American Bar Association it provides definitions, guidance and a basic framework of trusts and estates, entitled, “Guidelines for Individual Executors and Trustees,” published on April 1, 2019 in its “Real Property, Trust & Estate Law” member group, under Section Resources: Estate Planning Info & FAQs.

Gather Information and Records

The Trustee should gather information/records and produce them to the attorney:

- Death certificates (order from the funeral home)
- Original will & trust (and any nuptial agreements)
- Clean out safety deposit box. Collect

all items & close out with bank. Make a simple inventory of what you collected/found and provide to attorney.

- Asset information (bank statements, financial statements, copies of real estate deeds, stock certificates, vehicle titles, business interest ownership, etc.)
- Names & addresses of all trust beneficiaries
- Information on any creditors, credit cards, loans, debts, expenses, bills, etc.
- Copies of any leases, contracts, nursing home buy-in agreements, etc.

Read the Trust

- IDENTIFY THE BENEFICIARIES: INCOME BENEFICIARIES, PRINCIPAL BENEFICIARIES, PAY ON DEATH BENEFICIARIES, ETC.
- WHAT ARE THE TRUST TERMS? TRUSTEE TO CARRY OUT THE TRUST TERMS
- In other words, do what the trust says. The trustee must carry out the terms of the trust and not deviate from any of its provisions, unless it is impossible to carry out those terms (such as the trust lacking sufficient assets to pay certain distributions, etc.).
- IDENTIFY OTHER TRUST FIDUCIARIES OR TRUST PROTECTORS
 - Look for any directing party (persons to whom the trust gives authority) and notify them of death and abide by their direction as per the trust language and powers given them:
 - Trust protector
 - Investment trust advisor (aka directing trustee)
 - Directed trustee (aka excluded fiduciary)
 - Distribution trust advisor

Trusts & Estates

This is the newsletter of the ISBA’s Section on Trusts & Estates. Section newsletters are free to section members and published at least four times per year. Section membership dues are \$30 per year.

To join a section, visit www.isba.org/sections or call 217-525-1760.

OFFICE

ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITORS

Jennifer L. Bunker
Colleen L. Sahlas

PUBLICATIONS MANAGER

Sara Anderson
✉ sanderson@isba.org

TRUSTS & ESTATES SECTION COUNCIL

David C. Thies, Chair
Susan T. Bart, Vice-Chair
Raymond W. Prather, Secretary
Robert W. Kaufman, Ex-Officio
Nora Baker
Sean D. Brady
Jennifer L. Bunker, Newsletter Co-Editor
Jim F. Dunneback
Zisl Taub Edelson
Michael L. English
Neil T. Goltermann
Janet L. Grove
Dennis J. Jacknewitz
Edward Jarot, Jr.
Justin J. Karubas
Philip E. Koenig
William R. Kuehn, CLE Coordinator
James M. Lestikow
Michael R. Lucas
Heather A. McPherson, CLE Committee Liaison
Oana Lavinia Militaru
Steven M. Novak
Joseph P. O’Keefe
Katherine M. Oswald
Patrick D. Owens
Kerry R. Peck
William A. Peithmann
Tiffanie B. Powell
Colleen L. Sahlas, Newsletter Co-Editor
George L. Schoenbeck, CLE Coordinator
Kathryn S. VanEeuwen
Sarah J. Woollen
Sarah M. LeRose, Board Liaison
Melissa L. Burkholder, Staff Liaison

DISCLAIMER: This newsletter is for subscribers’ personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

- Administrative trustee
- See (760 ILCS 5/16.3) Sec. 16.3. Directed trusts.
- DETERMINE TRUST DURATION
 - Does the trust provide for outright distributions after death? In such a case, the trust administration would be short term.
 - Does the trust create new trust(s) that may continue for several years? For example, the trust may provide for installments or percentages of payments over a period of years, or upon trigger dates, or require that trust funds to be held until a certain date, such as when a child turns age 21, 25, 30, or a specific age. If so, then the trust will be a long term trust.
 - Are there subtrusts? Who is designated to be the trustee of the subtrusts?
 - If the trust will be long term, or if subtrusts spring at the death of the grantor (or other trigger), then consider:
 - Are there sufficient trust funds to carry out the trust terms over the duration of the trust?
 - Is the trustee willing to act as trustee for the length of the trust (or subtrust), or would they consider declining to serve and have the next successor step in?
 - Consider whether trust severance, trust consolidation (for many subtrusts), small trust termination, or appointing a co-trustee may be appropriate

Who Is Entitled to a Copy of the Trust?

- **A trust is a private document**, and it is not required to be filed on public record.
- **All of the initial beneficiaries named in the trust agreement**, i.e. those who are entitled to either an immediate and outright distribution or the right to receive immediate income and principal from the trust. This allows them to understand what they're getting and how and when

they're getting it.

- **Trust asset holders** can be given a certification of trust in lieu of a copy of the trust.
- **The estate representative** concerning the decedent who was also the trust grantor.
- **The bank where the trustee opens a trust account** may be presented with the original trust and provided with a copy of the same, or in lieu of the trust, may be presented with a certification of trust.
- **Creditors are not entitled to a copy of the trust** but may be given a certification of trust. It is not required, as third parties are entitled to assume the trust is in full force, and the trustee is authorized to act and has powers necessary for dealings. Sec. 8. Relation with Third Persons. Anyone dealing with the trustee is not obliged to inquire as to the trustee's powers or to see to the application of any money or property delivered to the trustee and may assume that the trust is in full force and effect, that the trustee is authorized to act and that his act is in accordance with the provisions of the trust instrument.
- **Accountants** should be provided a copy of the trust to analyze tax language and considerations.
- **A party in a judicial proceeding concerning the trust is not prohibited from receiving a copy** Sec. 8.5. Certification of Trust. (i) This Section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.
- **The Attorney General's Charitable Trust Bureau** if there is a charitable beneficiary of the trust.
- **What is a certification of trust?**
 - “Sec. 8.5. Certification of trust. (a) Instead of furnishing a copy of the trust instrument to a person other than the beneficiary, the trustee may furnish to the person a certification of trust containing the following information”
 - “(c) A certification of trust

must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(d) A certification of trust need not contain the dispositive terms of a trust.

(e) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.”

A sample form is given by Gary Gehlbach in his article “Small Estate Administration Primer,” in the June, 2014 issue of the ISBA's Trusts and Estates Newsletter.

Trustee to Appoint (Hire) Professionals

The trustee not only has the power to, but is strongly advised to hire professionals to assist in the many facets of trust administration—most importantly, the “three legged stool”: an attorney for the trust administration; a financial advisor or wealth manager for the trust investments; and an accountant who is well-versed in fiduciary tax returns and Estate tax returns (many accountants are unfamiliar with a Form 1041 or Form 706).

As stated in the onset of the article, trustees will try to circumvent the need for legal representation, erroneously believing that the trust is merely a safe deposit box of assets that they just pass out to the beneficiaries without any consequences. For example, “grandma” may be the trustee, and in her mind she's merely splitting the monies equally between the grandkids with no further tasks required. It is critical that the trustee hire professional advisors to ensure that the trust terms are properly carried out, and to avoid potential claims by the beneficiaries (such as mismanagement, incompetence, self-dealing, negligence in or deviation from carrying out trust terms,

breach of fiduciary duties, etc.). In my experience, trustees who are mere laypersons are often more inclined to hire professional advisors, while savvy persons who are also professionals may be less inclined to hire outside professional advisors. In addition, it may be prudent to advise the Trustee to hire advisors who are not family members.

Sec. 4. Powers of Trustee. The trustee has the powers specified in the sections following this section and preceding section 5. Sec. 4.09. To appoint attorneys, auditors, financial advisors and other agents and to pay reasonable compensation to such appointees. If the trustee uses reasonable care, skill, and caution in the selection of the agent, the trustee may rely upon the advice or recommendation of the agent without further investigation and, except as may otherwise be provided in subsection (b) of Section 5.1 with respect to investment agents, shall have no responsibility for actions taken or omitted upon the advice or recommendation of the agent.

- **ATTORNEY(S)** to address all questions of managing and dealing with the trust, and to advise on handling trust administration and potential estate administration.
- **ACCOUNTANT/CPA** to file the Fiduciary Return (forms 56 and 1041) and decedent's final income tax return.
- **APPRAISER** to value real estate and personal property.
- **FINANCIAL ADVISORS OR WEALTH ADVISORS** to invest and manage trust securities and investments.

Trustee Must Submit to All Governing Laws

The trustee has a duty to submit to all governing laws, most importantly, the Trusts and Trustees Act at 760 ILCS 5/ et. seq., and the Charitable Trust Act at 760 ILCS 55/ et seq.

Collect & Forward Decedent's Mail

Have all decedent's mail forwarded to the personal representative of the estate, if appointed (or to the trustee if none is appointed), and trust related mail to the

trustee. Often, the decedent's asset statements and letters in the mail are how one discovers what the decedent owned, the identity of the decedent's creditors, and what are the final death related expenses and ongoing estate/trust expenses.

OBTAIN A TRUST FEIN (Federal Employer Identification Number)

- First, ascertain whether or not an EIN already exists to prevent duplicate numbers for the same trust. If the successor trustee became the acting trustee prior to the grantor's death, then there is a good chance that an EIN has already been obtained. **Check with the decedent's accountant and the acting successor trustee to see if this was done. You can also check with financial advisors** who established new accounts in the name of the successor trustee and used an EIN to correlate with that account.
- To avoid duplication and to ensure the form is completed properly, **advise the Trustee and any accountant(s) and financial advisors involved that you will file for the EIN.** I've found that some well-meaning financial advisors will obtain the EIN for the trust but will have provided misinformation to the IRS. Filing it on behalf of the client ensures it is done properly and allows you to decide whether or not to have the trust elect to file as an estate.
- Answer the IRS online questions as follows:
 - **The date the trust was funded is not the date the trust was signed into existence. It is the earlier of these two dates: the date of death of the grantor or the date the grantor was succeeded by an acting successor trustee.** Do not put in the date the trust was signed into effect. Typically, a grantor may use their social security number if they are the trustee of a revocable, living, self declaration of trust. If you put in the date the trust was signed as the date the trust was funded,

you are telling the IRS that there are un-filed tax returns for those years preceding the date you obtained the EIN and the date the trust was established.

- The IRS will ask if the trust is revocable or irrevocable. **If the grantor/settlor of the trust has passed away, it is now an irrevocable trust** (unless it's a joint trust with a surviving co-trustee or another person has the power to amend or revoke the trust).
- If the grantor of the trust had been using their social security number for the trust assets prior to death, then after death an EIN number must be obtained for the trust since the trust can no longer use the decedent's social security number. Obtain a tax I.D. number for Trust (FEIN) with the IRS - an easy way is to apply online with the IRS.
- **Provide the accountant and any financial advisors with the FEIN** and use the new EIN for all new account registrations with the trust.

Send Trust Beneficiaries an Introductory Letter

- Notify the beneficiaries that the trust grantor has passed away and that you have been retained as legal counsel representing the trustee and carrying out the terms of the trust.
- Advise the beneficiaries that you do not represent their interests in the trust administration and they have the right to obtain separate legal counsel.
- Advise that no trust funds will be distributed until all expenses are ascertained and accounted for, and a current or final accounting is prepared.
- Send a copy of the Trust and inventory to any beneficiary who requests it.
- Whereabouts unknown.

Charitable Beneficiaries

WITHIN (APPROX.) 60 DAYS OF

DECEDENT'S DEATH:

As required by law (where applicable), TRUST ATTORNEY WILL NOTIFY IN WRITING THE IL ATTORNEY GENERAL'S OFFICE of any Charitable Contributions from the trust or will and fulfill all procedure required with their office including producing and filing all necessary documents and forms.

Applicable Statute: Charitable Trust Act at 760 ILCS 55/1 et. al.

Administrative Code Rules: TITLE 14: COMMERCE; SUBTITLE B: CONSUMER PROTECTION

CHAPTER II: ATTORNEY GENERAL; PART 480 CHARITABLE TRUST ACT

480.30 Registration

- 480.40 Organizations and Activities Exempt from Registration
- 480.50 Annual Reports

IL Attorney General Charitable

Trust Bureau's Website: <http://www.illinoisattorneygeneral.gov/charities/index.html>

WHEN APPLICABLE:

- Any trust which has a charitable bequest in excess of \$4,000.00 (i.e. a specific gift to a charity is over \$4,000.00).

DEADLINES:

- Within six (6) months of the date of death for non-probate estate or trust;
- Within six (6) months after the claims period has passed in a probate estate;
- Make bequest within one (1) year of the date of death or else additional requirements below must be carried out.

Sec. 6. (a) Every trustee subject to this Act who has received property for charitable purposes shall file and register with the Attorney General, within 6 months after any part of the income or principal is received for application to the charitable purpose, and prior to disbursements, a copy of the trust agreement, articles of incorporation or other written instrument, if any, providing for his title, powers or duties. In the event a trustee subject to this Act is holding property for charitable purposes under no such written instrument, such trustee nevertheless shall file, in lieu of such instrument, a statement

in writing setting forth his title, powers and duties with respect to the property he is so holding.

NOTIFICATION REQUIREMENTS:

Provide the Attorney General with the following information:

1. The name of the donor;
2. The name and address of the fiduciary;
3. The charitable beneficiary;
4. The amount of the gift;
5. When the gift is expected to be distributed;
6. A copy of the trust (pertinent provisions) IF the trust results from a pour-over will;
7. A copy of the charity's signed receipt AFTER the distribution is made.

ADDITIONAL REQUIREMENTS:

WHEN THEY APPLY:

- if the specific bequest is not made within 1 fiscal year (from date of death) OR
- if the bequest is made from the RESIDUE of an estate or trust.

The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as herein provided, shall be filed not later than one year after any part of the income or principal is authorized or required to be applied to a charitable purpose.

WHAT THE REQUIREMENTS ARE:

Submit to the attorney general the following:

- Copy of the trust agreement and all amendments;
- Inventory of trust assets;
- For both Estates and Trusts, submit to the Atty General the following (download forms on their website):
 - Form CO-1, "Charitable Organization - Registration Statement Form;
 - Form CO-2, "Charitable Organization Financial Information Form (or 3 years of prior federal tax returns);
- For trusts with assets in excess of \$25,000 or receiving more than \$25,000 in revenue during a fiscal year, file form AG 990IL (Annual Report);

- Pay the \$15 registration fee (and late fee if applicable);
- Notify the Attorney General of the completed bequest and file a final financial report for the estate or trust with the Atty General.
 - “ . . . In addition, every trustee registered hereunder that received more than \$25,000 in revenue during a trust fiscal year or has possession of more than \$25,000 of assets at any time during a fiscal year shall file an annual financial report within 6 months of the close of the trust's or organization's fiscal year, and if a calendar year the report shall be due on each June 30 of the following year. Every trustee registered hereunder that did not receive more than \$25,000 in revenue or hold more than \$25,000 in assets during a fiscal year shall file only a simplified summary financial statement disclosing only the gross receipts, total disbursements, and assets on hand at the end of the year, on forms prescribed by the Attorney General.”

Administrative Code Rules: TITLE 14: COMMERCE; SUBTITLE B: CONSUMER PROTECTION

CHAPTER II: ATTORNEY GENERAL; PART 480 CHARITABLE TRUST ACT

“Section 480.30 Registration

- a) Trustees subject to the Act holding property with a value in excess of \$4,000 must file with the Attorney General a registration statement in the forms set forth in [Exhibits A and B](#) (Form CO-1, Form CO-1 Instructions and Form CO-2) of this Part prior to any disbursement or within six months after property is received for charitable purposes, whichever occurs first.
- b) Trustees who hold property in excess of \$4,000 during any 12 month period are required to register.
- c) Upon termination of, or resignation by, a charitable trustee, the charitable organization shall notify the Attorney General in writing within ten days of such fact.
- d) Each trustee, officer or director is responsible for accurate record keeping and for the timely and accurate filing of financial

reports required by the Attorney General.

Resignation of such trustee, officer or director shall not avoid or diminish these record keeping and filing responsibilities for any period during which such person held office.

e) Each “trustee” has a fiduciary obligation toward: his/her charitable organization; charitable monies; donors; and unknown charitable beneficiaries as described by the charitable organization’s stated purpose or the purpose for which charitable monies were collected.

f) To register, a charitable trust must file a completed registration statement, all required statutory fees and all appropriate attachments, including schedules of assets and investments. All registrations must be accompanied by copies of the instrument under which the property is administered, financial statements for each of the past three years and executed copies of the tax returns and/or reports filed with the Internal Revenue Service for the past three years. Where there is no written instrument, the trustee must prepare an affidavit setting forth the conditions of the trust. The registration must be made by the trustee. In the case of a corporate charitable trust with two or more officers, the president and the treasurer must sign. Additional prior years’ reports and schedules may be required at the discretion of the Attorney General.”

ADDITIONAL DUTIES FOR CHARITABLE TRUSTEES

“Sec. 15. (a) Charitable trustees are subject to certain duties otherwise defined in Illinois statutes and case law, which include but are not limited to the following:

- (1) To avoid “self-dealing” and conflicts of interest;
- (2) To avoid wasting charitable assets;
- (3) To avoid incurring penalties, fines, and unnecessary taxes;
- (4) To adhere and conform the charitable organization to its charitable purpose;
- (5) To not make non-program loans, gifts, or advances to any person, except as allowed by the General Not For Profit Corporation Act of 1986;
- (6) To utilize the trust in conformity with its purposes for the best interest of the beneficiaries;

(7) To timely file registration and financial reports required by this Act; and

(8) To comply and to cause the charitable organization to comply with this Act and, if incorporated, the General Not For Profit Corporation Act of 1986.

(b) Every person subject to this Act shall maintain accurate and detailed books and records at the principal office of the organization to provide the information required in this Act. All books and records shall be open for inspection at all reasonable times by the Attorney General or his authorized representative.”

Ongoing Communications with Trust Beneficiaries

The Trusts & Trustees Act does not specify the required amount of communication with beneficiaries. If they are represented by counsel, then communicate with their legal representative. Advise the trust beneficiaries that any communications with you will be billed at your hourly rate against trust funds (and attorneys’ fees for trust administration are a first class priority for creditor claims). Thus, it is prudent to keep communications brief and infrequent, making them cost effective and preserving trust assets. I have been asked in the past by counsel to copy their client, the beneficiary, on every email concerning the trust administration. This is not only overkill and unnecessary but also impractical. Keep beneficiaries apprised of new developments and provide periodic updates through a summary letter or email directed to them every couple of months or so, or as important developments arise. Provide them with a written inventory, and the required annual accounting and final accounting as required by the Trusts and Trustees Act.

OPEN A TRUST BANK ACCOUNT at a Federally Insured Bank (not savings & loan).

All the liquid, monetary assets owned by the trust should be deposited into a bank account in the name of the Trust. Assets which may be poured over from the decedent’s estate into the trust may also be deposited into this account. The bank account can be opened as follows:

- At a federal bank (not savings and loan).

- **The Ownership Name of the account must be titled with the trustee of the trust as owner**, and be sure to use the title of the trust and date it was signed. For example: “JANE J. DOE, as Trustee of The JOHN H. DOE Trust dated January 10, 2018.” Banks will have limited space to write in the computer, so abbreviate as follows: “JANE J. DOE as TTEE of the JOHN DOE TST dated 01/10/08.”
- Provide the bank with the tax I.D. number, aka a Federal Employer Identification Number (FEIN).
- Show the bank THE ORIGINAL Trust proving the identity of the Trustee (they can make a copy but cannot retain the original).

Advise the trustee that they cannot commingle their personal funds or expenses with trust monies/expenses. The Trustee may advance personal monies on behalf of the trust as necessary and get reimbursed but they must keep good records of these transactions.

AFTER THE TRUSTEE OPENS THE TRUST BANK ACCOUNT:

- Deposit into this account any checks payable to the trust.
- Use the account to pay outstanding bills on behalf of the Trust OR the decedent. Most trusts provide whether estate monies or trust monies will be used first to pay final expenses at death. Sec. 4. Powers of Trustee. The trustee has the powers specified in the Sections following this Section . . . Sec. 4.08. To pay taxes and reasonable expenses incurred in administering the trust estate.”
- Checks payable to the decedent’s name alone or decedent’s estate. You may not be able to deposit any money into the account which is made out solely in the decedent’s name or to the Estate of the decedent. In that case, consider drafting a Small Estate Affidavit to direct the check issuer to re-issue the check to the name of the Trust.
- NO “SELF DEALING.” Trustee

CANNOT USE Trust FUNDS FOR Their OWN PERSONAL USES, even if the Trustee is a named beneficiary or the sole beneficiary. Make the distributions as per the trust.

- DO NOT COMMINGLE FUNDS. The trustee has a duty to keep trust funds separate from any other funds owned individually by the trustee or the estate. Funds, for example a dividend check, payable to the Trust will be deposited into the Trust bank account, while assets received from the decedent's estate (for example, a refund check in decedent's name alone) will be deposited into the estate bank account.
- FOLLOW WHAT THE TRUST SAYS. The trustee does not have authority to distribute money such as charitable donations where the trust does not provide for this. The trustee does not have the authority to "forgive" trust debtors from the Trust's funds out of the "goodness of their heart," i.e. making a gift to family members or friends or charities. If the Trustee is also a beneficiary, the Trustee does not have "dibs" on in-kind distributions and trying to swap a more desirable asset for a lesser one.
- KEEP A DETAILED CHECK REGISTER. The trustee has a duty to maintain an accurate and complete check register of the Trust Bank Account and maintain accurate and complete records of each asset collected and all expenses/distributions paid. Include dates and exact amounts, source, purpose, etc., of each deposit/withdrawal/check issued for the Trust bank account. This should be kept separate from any check register for an Estate bank account, and will have a separate EIN from any Estate bank account.

SEND NOTIFICATION OF DECEDENT'S DEATH: (and send death certificates)

- Insurance Agents (not homeowner's insurance or they'll cancel the policy)
- Decedent's Accountant/CPA

- Health Care Providers/Agents (health, dental, vision, medical, etc.)
- Social Security Administration (if applicable)
- Asset Holders and Financial Advisors (Brokerage Firms, Financial Planner or Investment Advisor, retirement Accounts, Pensions, Life Ins. Co.s, banks, credit unions, business partners, etc.)
- Known Creditors:
 - Credit Card Companies (freeze the accounts and cancel the cards)
 - Homeowner/Condominium Associations
 - Other creditors
- Social Security, Veteran's Administration, Railroad Retirement Account
- Membership, Professional or Religious Associations, Clubs, Schools, Unions, Fraternities
- Online Social Media Accounts (cancel & close out).

IDENTIFY AND PRIORITIZE TRUST DEBTS/EXPENSES; AND EITHER PAY, SETTLE, CONTEST, PROSECUTE OR ABANDON CLAIMS

Sec. 4.08. To pay taxes and reasonable expenses incurred in administering the trust estate.

Sec. 4.11. To compromise, contest, prosecute or abandon claims or other charges in favor of or against the trust estate.

Pay Trust Expenses

- Trust expenses should be paid for by Trust monies.
- Trust expenses can't be paid until Trust assets are liquidated and deposited into a bank account in the name of the Trust (with your client as trustee).
- It is advisable have the Trustee pay all Trust expenses by checks, as old fashioned as it seems, to keep an accurate record of to whom the payment was made, when, and how much, and to ensure the check clears. Have the Trustee ask the Bank to provide paper statements with pictures of the checks for accurate and easy balancing of accounts. And this will assist you as the Attorney

when you compare the check register to the bank statements to verify payments and prepare an Accounting.

- Advancing funds for Trust Expenses. The Trustee may choose to advance monies to pay for Trust expenses and be reimbursed once Trust assets are accessible. The Trustee should meticulously retain Receipts for all advances for Trust expenditures and record them in a log, even if it for small items such as postage, or larger expenditures such as making mortgage payments.
- **Examples of Trust Expenses:**
 - Funeral, cremation, burial expenses, and related expenses.
 - Fees to close out a safety deposit box or land trust
 - Real property related expenses such as property taxes, utility bills, homeowner's insurance, assessments, for real estate
 - Attorney's fees, accountant's fees, and Trustee's fees
 - Postage and mailing costs
 - Appraisals
 - Costs to transfer vehicle or boat titles, etc.
 - Final medical bills. Negotiate for a reduction and check for insurance coverage.
 - Credit cards. **Negotiate or pay a final settlement. Get proof of final payment and for payments of larger or contested amounts, get Releases from creditors.**
 - Mortgage(s), lines of credit, home equity loans, private mortgages, etc.
 - Real estate expenses such as utilities, property taxes, assessments, insurance, etc.
 - Government liens or unpaid income taxes.

INVENTORY ASSETS AND APPRAISE FOR DATE OF DEATH VALUES

- Obtain the date of death values for all securities, stocks, bonds, and the like. These can usually be found from a securities statement or by calling the financial advisor and obtain the date

of death value.

- HIRE AN APPRAISER to appraise all real estate, valuable personal property & valuable collections (artwork, jewelry, vehicles, antiques, coins, guns, etc.). Appraisals must be valued as of the date of death, not the date of the appraisal.

MARSHAL TRUST ASSETS

Three (3) things are generally required for the Trustee to gain authority over trust assets:

1. Proof of successorship as trustee (either a death certificate to show the prior trustee has passed away; or a resignation by the prior trustee; or a written determination of disability of the prior trustee)
2. Original trust or certification of trust;
3. The EIN of the trust.

Even if the trust is already shown as the owner, re-register the assets (or liquidate if appropriate) in the name of the successor trustee and use the new EIN:

- Real Estate
 - Family Home
 - Retirement Home buy-ins
 - Vacation Home(s) and/or Land
 - Time Share
 - Real Estate for investment purposes
 - Rental Property(ies)
 - Gas or Oil Leases
 - Burial Plots
- Cash
- Deposit Accounts:
 - Checking
 - Savings
 - Money Market Accounts
 - Certificates of Deposit
 - Bank Accounts
 - Credit Union Accounts
 - Security Deposits
- Investments:
 - Brokerage Accounts
 - Stock Certificates or Book Shares
 - Bonds
 - Margin Accounts
 - Mutual Funds
 - Annuities
 - Viaticals
- Retirement Interests:
 - IRAs

- 401(k)s
- SEPs
- Annuities
- Keogh Accounts
- Profit Sharing Accounts
- Tax Deferred Accounts
- Pensions
- Business Interests:
 - Interest in a closely held corporation
 - Joint Ventures
 - Partnership Interests
 - Stocks and Interest in unincorporated business
- Possible vested benefits from employment:
 - Pension death benefit
 - Payment of accrued vacation or sick leave
 - Deferred compensation
 - Bonuses
 - Commissions
- Possible Refunds, such as a tax refund
- Insurance Policies
 - Life Insurance
 - Accidental Death
- Capital Accumulation:
 - Deferred Salary Plan
 - Cash Bonus Plans
 - Deferred Profit Sharing Plans
 - Short-Term Deferred Income
 - Stock Bonus Plans
 - Stock Purchase Plans
 - Share Unit Plans
 - Stock Appreciation Rights
 - Stock Options
 - Phantom Stock
 - Incentive Growth Funds
- Money Owed to the Decedent
- Loans given to private persons (Notes receivable)
- Beneficial interest in an estate/trust
- Intellectual Property:
 - Patents
 - Copyrights
 - Trademarks
 - Royalties
 - Other intellectual property
- Personal Property:
 - Automobiles, trucks, motorcycles, campers and trailers, boats, planes, farming vehicles,

snowmobiles, other recreational vehicles or other vehicles

- Valuable equipment such as sporting equipment, restaurant equipment, tools, photographic equipment, or equipment related to other vocations and/or hobbies
- Valuable musical instruments, artwork, heirlooms, jewelry, china, crystal, furs, antiques
- Valuable Collections such as guns, art, wine, coins, stamps, books, etc.
- Valuable animals such as pets and livestock
- Furniture and furnishings
- Possible Unclaimed Property held by the State, such as the Treasurer of the State of Illinois. Go to the CashDash website at <https://icash.illinoistreasurer.gov/>.
- Digital Assets. Digital assets will be addressed in Part 2 of the article. A comprehensive explanation including graphs summarizing how to obtain authority over a disabled person's or decedent's digital assets can be found in the November, 2016 edition of the Illinois Bar Journal entitled, "Estate Planning: Managing Your Electronic Estate: The New Digital Assets Act," by Mary D. Casino. ■

Colleen L. Sahlas is a partner with her father, David E. Hoy, of The Law Offices of Hoy & Sahlas, LLC, in Oak Brook, Illinois, and has focused her practice in estate planning, decedent's estates, real estate, and business since 2000. She has been a member of the Illinois State Bar Association's Trusts and Estates Council since 2015 and is Co-Editor of its newsletter. She thanks Neil Goltermann for his editing contributions and assistance with this article.

1. 760 ILCS 5/8.
2. 760 ILCS 5/8.5.
3. *Id.*
4. 760 ILCS 5/4.
5. 760 ILCS 55/6.
6. 760 ILCS 55/7(d).
- 7/ *Id.*
8. 760 ILCS 55/15.
9. 760 ILCS 5/4.
10. *Id.*
11. 760 ILCS 5/4.08.
12. 760 ILCS 5/4.11.

Why file the last will and testament?

BY MICHAEL J. MASLANKA

Many clients with whom you consult may be surprised to learn that Illinois law requires that the will of a decedent must be filed with the Clerk of the Circuit Court shortly after the decedent's death (755 ILCS 5/6-1). That provision reads:

Duty to file will — altering, destroying or secreting

(a) Immediately upon the death of the testator any person who has the testator's will in his possession shall file it with the clerk of the court of the proper county and upon failure or refusal to do so, the court on its motion or on the petition of any interested person may issue an attachment and compel the production of the will, subject to the provisions of Section 5.15 of the Secretary of State Act.

(b) If any person wilfully alters or destroys a will without the direction of the testator or wilfully secretes it for the period of 30 days after the death of the testator is known to him, the person so offending, on conviction thereof, shall be sentenced as in cases of theft of property classified as a Class 3 felony by the law in effect at the date of the

offense. The 30-day period does not apply to the Secretary of State when acting pursuant to Section 5.15 of the Secretary of State Act.

You may advise the client to go ahead and file the will, or you may offer to do so for the client. The client may ask why the law requires the filing of the last will and you can respond with some of the reasons given in Illinois court cases.

According to the Illinois Supreme Court in *Boryca v. Parry*, 24 Ill. 2d 320 (1962), the filing of the will promptly can diminish or eliminate the chance of personal gain by someone withholding the last will from being filed. Additionally, the prompt filing of the will of the decedent can diminish or eliminate the chances of defeating the testator's intent, through the possible loss or waste of probate property that was intended to be passed by the will.

In *Nolin v. Nolin*, 68 Ill. App. 2d 54 (3rd Dist.), the third district stated that the filing of the last will promptly is not only required by statute, but is done to help reduce the risk of the original will being altered, which would create a fraud upon the court and defeat the testator's true intent.

Additionally, you may tell your client, that the nominated executor, if he or she does

not promptly file the will, could lose his or her priority to be appointed executor under the will, and such a situation could occur and create problems if there is any family disharmony. (755 ILCS 5/6-3)

Duty of executor to present will for probate

(a) Within 30 days after a person acquires knowledge that he is named as executor of the will of a deceased person, he shall either institute a proceeding to have the will admitted to probate in the court of the proper county or declare his refusal to act as executor. If he fails to do so, except for good cause shown, the court on its motion or on the petition of any interested person may deny him the right to act as executor and letters of office may be issued by the court as if the person so named were disqualified to act as executor.

Years ago, there was a daily penalty for not filing the will promptly. There is criminal liability for altering or secreting the will.

So, when advising the client to get that will filed, even if it is the will of a family member who died months or years ago, you can explain why the law is the way it is. ■

A summary of the Trusts & Estates Section's February 2019 business meeting

BY JENNIFER BUNKER SKERSTON

CLE

The Trusts & Estates Section Council has upcoming programs concerning real estate for older clients and rules of professional conduct as they apply to estate planning and estate and trust administration. Ideas for

future programs include decanting and trust protectors, IRA planning, and how probate administration differs by county/region.

Uniform Electronic Wills Act

Susan Snyder presented. Ms. Snyder described the Act as a 3-part law – 1)

Traditional wills that are electronically executed; 2) remote execution of electronic wills; and 3) changing comity and laws recognizing wills from foreign jurisdictions. She described each of the three parts and pointed out the several changes that were made at the recent Uniform Laws

Commission meeting. Those changes will be posted to the Uniform Act's website later that week. Ms. Snyder also noted that there is a separate Electronic Notarization Act Taskforce created by the Illinois legislature that is intended to explore allowing electronic notarizations.

The ISBA Trusts & Estates Section Council will be addressing the following questions related to the Uniform Electronic Wills Act:

1. Is there immediate action needed for recognizing or not recognizing out of state electronic wills?
2. What role will the Section Council

have in the Uniform Act and its impact on Illinois attorneys?

Susan Snyder will take the Section Council's comments back to the Uniform Laws Commission and will provide some information on the notary taskforce in Illinois.

Legislation

There was discussion concerning the proposed revisions to the Statute of Repose relating to estate planning attorneys. There was also discussion concerning House and Senate Bills including: HB11, HB347, HB836, HB1455, HB1471, and SB182.

Additionally, there was discussion of the Uniform Partition of Heirs Property Act.

New Business

The Section Council voted to approve an amendment to 755 ILCS 5/11a-17(g)(1). ■



Boost your practice IQ @

PracticeHQ

Practice Management and Technology Resources

- ✓ Open a Firm
- ✓ Build
- ✓ Manage
- ✓ Protect
- ✓ Wind Down

[ISBA.ORG/PRACTICEHQ](https://www.isba.org/practicehq)