

Practical Tips For The Florida Trustee

Quick Reference Guide



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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 your numerous trustee tasks.



The first important legal tip for the trustee is this: being a Trustee is a time-consuming job; 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. Identify All Qualified Beneficiaries. You need to make a list or family tree diagram identifying the names and addresses of all the qualified beneficiaries. “Qualified beneficiaries” are generally all beneficiaries who are current beneficiaries, intermediate beneficiaries, and first-line remainder beneficiaries, whether vested or contingent. See F.S. 736.0103(16). Even if the successor trustee is a beneficiary, the trustee has a duty of loyalty to all the current beneficiaries, and the more remote remaindermen. Most Trustees need legal assistance in identifying all members of the Qualified Beneficiary group.

2. Transparency. The most common source of conflict in Florida trust administrations is lack of transparency between the Trustee and beneficiaries. Within 60 days accepting the Trustee duties, the Trustee must send a Notice of Trust informing the beneficiaries of (a) the existence of the trust; (b) settlor’s identity; (c) the right to request a copy of the trust agreement; (d) right to a trust accounting; and (d) notice that the fiduciary attorney-client privilege in F.S. 90.5021 applies. Further, the Trustee must file the Will with the Court and file a Notice of Trust with the court. The Trustee has a duty to account to the beneficiaries for all assets in the Trust and all expenses of the Trust. For more information see [5 Key Rights of a Florida Trust Beneficiary.](#)

3. Walk The Fine Line. The 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.

Note: The trust purpose is to fulfill the wishes of the Settlor and 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.

5. 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

6. Keep Trust Assets Separate. The Trustee must keep the assets of each trust separate and keep the Trustee's 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. Watch For Multiple Sub-Trusts. Modern trusts are like a chest of drawers. There may be one big drawer or single Trust during the Settlor's life; upon death this Trust may sub-divide into separate sub-trusts for the beneficiaries. Think of these sub-trusts as additional drawers in the chest. It is the Trustee's duty to make sure the terms for the separate sub-trusts are precisely followed.

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 1041 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. The Trustee is entitled to a fee which may be at the Florida statutory fee or per the terms of the Trust.

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 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. Accept duties of the Successor Trustee
- ___ 2. Take possession of legal & financial records
- ___ 3. Take possession of all keys or codes
- ___ 4. Lock & secure all real estate & contents
- ___ 5. Engage a trust attorney
- ___ 6. Engage CPA or accountant
- ___ 7. Contact decedent's Financial Advisor
- ___ 8. Order minimum of 5 death certificates
- ___ 9. Calendar important deadlines

Note: Keep track of all your time: Some beneficiaries may not appreciate how much time is required.

Second Priority Action Items

- ___ 10. Secure tax ID number & Open Trust Account
- ___ 11. Set up accounting program
- ___ 12. File Notice of Trust
- ___ 13. Send notice to all qualified beneficiaries within **60 days** of acceptance per F.S. 736.0813
- ___ 14. Deposit Will with the Clerk of Court
- ___ 15. Advise Post office to forward mail
- ___ 16. Cancel utilities, subscriptions
- ___ 17. Contact homeowner's insurance
- ___ 18. Review insurance for all Real Estate
- ___ 19. Contact homeowners' association, if any
- ___ 20. Inventory Safe Deposit Box
- ___ 21. Search records for potential creditors
- ___ 22. Determine if any Employee Benefits
- ___ 23. Contact Social Security Administration
- ___ 24. Determine if any claims for life insurance

Experience Matters

Rarick & Bowden Gold, P.A., has assisted families and businesses for over 25 years in trust administration, modification, decanting and termination. We are here to assist 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.