

ESTATE ADMIN

What Remains: Closing
the Post Death Admin &
Opening the Ongoing
Trust Management

About me



Leah Del Percio, Esq.

Founder and CEO,  trustate

- Settled **hundreds** of estates, nationwide.
- Administered over **\$50B** via estate administrations.
- **12+ years experience** as estate attorney (JD & LLM) with multi-jurisdictional estate/trust admin practice.
- Learn more: trustate.com





Welcome!

Objectives

- ✔ Educate trustees on the responsibilities and tasks after the funding of beneficiary subtrusts.
- ✔ Provide practical tips and best practices for ongoing trust administration.



A photograph of a group of people in a meeting. A man with grey hair and a beard is speaking, gesturing with his hands. A woman with curly hair is listening. Another person is partially visible in the foreground. The image is overlaid with a blue gradient.

Introduction to Trust Adminis- tration

Definition of Trust Administration: Estate Administration and Revocable Trust Administration - used synonymously here as both are “post-death administration”

A crucial role of trust administration is preserving the trust’s integrity and ensuring beneficiaries’ interests are protected



Payments, Taxes, and Accountings

Prior to closing administrative trust and/or estate

- ✓ Paying any outstanding taxes or debts, including income taxes and estate taxes.
- ✓ The executor will also have to file the final income tax returns of the deceased, as well as prepare and file an estate tax return if necessary.

FOR DECEDENTS



IRS Form 1040

FOR ESTATES



IRS Form 1041

IF THERE IS A REVOCABLE TRUST OR POUR OVER WILL



645 Election



Things to keep track of

- ☐ Asset inflows and outflows
 - ☐ Underlying investment performance
 - ☐ Disbursements
 - ☐ Distributions
 - ☐ Payments of expenses
- ☐ Regular Accounting and Reporting
 - ☐ Prepare periodic accountings to keep track of trust assets and transactions
 - ☐ Required reports for beneficiaries and tax authorities
 - ☐ Look at your state law, see what is required of the Trustee / Fiduciary both (1) during ongoing administration and (2) at close
- ☐ Tax Obligations and Considerations
 - ☐ Understanding trust tax returns and filing requirements
 - ☐ Strategies for minimizing tax liabilities





Estate and Inheritance Taxes

	Estate Tax	Inheritance Tax
	A tax on your right to transfer property worth over a certain amount at your death.	A tax on your relationships with the beneficiaries of your estate.
Who pays?	The executor pays.	The beneficiary pays.
Federal Taxes	Federal Estate Tax - Levied on any assets in an estate over \$13.61mm for people dying in 2024.	None.
State Taxes	State Estate Tax - Some states have it, some don't.	State Inheritance Tax - Some states have it, some don't.

*Note on Portability: If you are working on a higher net worth estate that is “below the threshold” where the decedent left a surviving spouse, you may want to file an estate tax return to transfer the decedent’s remaining estate tax exemption to the survivor.

Income Tax

For beneficiaries

The transferees of wealth **do NOT** pay income taxes on assets received.

Gifts received	→	not income taxable
Inheritance received	→	not income taxable

However, post-transfer, they will bear the tax burden of any income generated by the asset received. More to come on this...

...THIS INCLUDES DISTRIBUTE TRUSTS

JAKE'S TRUSTS

Jake files Form 1040

Jake dies

Jake's Estate**

- Takes title to any property owned in Jake's name.
- Taxed like Non-Grantor Trust. Files Form 1041.

Jake's Revocable Trust

- Grantor Trust
- Reports income on Jake's Form 1040

Jake's Revocable Trust**

- Non-Grantor Trust ---> splits into distributee trusts
- Irrevocable after death
- Files its own Form 1041 --->each new trust has its own EIN and files its own 1041

Dad's Trust for Jake

- Non-Grantor Trust
- Files Form 1041

Dad's Trust for Jake

- Non-Grantor Trust
- Continues filing Form 1041

**** Personal Representative of Jake's Estate may be able to file a single Form 1041 for the Estate & Revocable Trust collectively. See § 645.**

Fiduciary Accounting Income (FAI)

FAI categorizes receipts and distributions as either "Principal" or "Income."

Principal	Income
Includes essentially everything transferred to a trust or estate	Includes interest, dividends, rents, etc. generated by the assets of a trust or estate
Increased by capital gains and additional transfers	
Decreased by capital losses and expenses allocated to capital	



Generate instant accountings with trustate.

PRIVILEGED AND CONFIDENTIAL

Jane Doe's Estate Balance Sheet

 Client Details  Find Accounts  Calculations  Hide Column  Account Summary  Estate Dashboard  Estate Vault  Beneficiaries  Share




Assets

 Asset Type	 Asset Desc
Real Property	802 E. Whiting
Bank Account (Liquid)	Bank of Americ
Investment Account	Merrill Lynch A
Life Insurance	Metlife Policy #
Outright Stock	Computershare
Bank Account (Liquid)	JP Morgan Cha
Pension	Boeing Pension
Retirement Account	Fidelity Investm
Businesses	22% Interest in
Bank Account (Liquid)	Chase Bank

Total Assets	\$ 25,501,967
Total Liabilities	\$ 27,728
Total Deductible Liabilities	\$ 27,728
Probate Assets	\$ 130,989
Non-Probate Assets (Taxable)	\$3,370,978
Non-Probate Assets (Non-Taxable)	\$ 22,000,000
Gross Estate For Estate Tax Purposes	\$ 3,501,967

Federal Exemption for Year of Death	\$ 12,060,000
Exemption used per last Form 709	\$ 4,244,661
Exemption Available	\$ 7,815,339

Non-Exempt Taxable Estate	\$ 0
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 Value Date	 Appreciation	 Distribution Type
		Non-Probate
		Non-Probate
		Non-Probate
1/3/22		Non-Probate
1/3/22		Probate
1/3/22		Probate
		Non-Probate
1/3/22		Non-Probate
1/3/22		Non-Probate
1/3/22		Probate



A photograph of two men sitting at a table in a modern office setting. The man on the left, with grey hair and a beard, is wearing a light blue shirt and is gesturing with his right hand while holding a document. The man on the right, who is bald with a grey beard and glasses, is wearing a dark blazer over a light blue shirt and is holding a document. They are both looking at the documents. In the background, there are office chairs and a plant. The image is partially covered by a dark blue overlay on the left side where the title is located.

Investment Management

- ✓ Developing and maintaining an investment strategy.
- ✓ Balancing growth, income, and risk according to the trust's goals and beneficiary needs.

Regular Updates and Reports

- ✓ Schedule for providing updates to beneficiaries.
- ✓ Contents of regular reports (financial status, distributions, etc.).



Income Taxes

For decedents	For estates	If there is a Revocable Trust / Pour Over Will
IRS Form 1040	IRS Form 1041	645 Election
<p>Final for year of death -- may be needed even if decedent died on Jan 1 -- look at filing thresholds. Good idea to file anyway to have "final."</p> <p>If you don't have prior returns and aren't sure if decedent was up to date in filing taxes, order IRS Transcripts manually using IRS Form 4506-T or automatically using other tech products.</p>	<p>If income came in for decedent after the date of death- this needs to be reported on estate tax return.</p>	<p>Possibly needed and legal decision.</p> <p>Merits of 645 Election include:</p> <ul style="list-style-type: none">• fiscal year selections• charitable permanent set aside• additional allowable losses• increased personal exemption• extended payment deadlines• extended S Corp stock holding periods



Issues with Interested Parties

✓ Addressing Beneficiary Concerns

- Effective communication strategies.
- Methods for handling disputes and disagreements

✓ Managing Trust Modifications and Terminations

- Process for modifying or terminating a trust.
- Legal requirements and beneficiary consent.





Distributions

- ✔ Distributing the assets to the beneficiaries according to the terms of the will or state laws if there is no will.
- ✔ This phase may also include preparing and executing any necessary deeds or documents to transfer assets to the beneficiaries.
- ✔ In the context of estate administration, preliminary distributions and final distributions refer to the distribution of assets to the beneficiaries of the estate at different stages of the process.

Preliminary Distributions & Advances	Final Distributions
The distribution of assets to the beneficiaries before the estate is fully settled and closed.	The distribution of assets to the beneficiaries after the estate has been fully settled and closed.
<ul style="list-style-type: none">• These distributions may be made for the purpose of paying off debts or taxes, or to provide funds for the beneficiaries to cover living expenses while the estate administration is ongoing.• These distributions are generally made after the probate process and the asset discovery phase.• The executor will have to get the court's approval before making preliminary distributions.	<ul style="list-style-type: none">• These distributions are typically made after all taxes and debts have been paid and all necessary documents have been filed.• The final distributions are made according to the terms of the will or state laws if there is no will.• Final distributions are usually made after the completion of the estate closure and settlement phase, which means that the estate administration process is complete and the executor can be released from his/her responsibilities.

In summary, preliminary distributions are made before the estate is fully settled and closed, usually to pay off debts or taxes, or to provide funds for the beneficiaries, while final distributions are made after the estate is fully settled and closed, according to the terms of the will or state laws, and the process of estate administration is completed.



PRO TIP

✓ Releases, Waivers of Accounting, Indemnification Agreement

- Make each distributee sign an *informed* waiver, release, and indemnification agreement to minimize the future liability of the executor (and you), even where not required by state law.

✓ Virtual Representation

- Make sure they sign on behalf of heirs, assigns, minor, and unborn (!) children

✓ What does informed mean?













- Distributees need to have enough information about your client's activities as executor and the estate itself for such a release to be valid.
- Inform them of their right to counsel.



Draft releases, waivers, and indemnification agreements with trustate.

Phase 3: Asset & Liability Management

☒ 2 tasks completed

 Task	 Status	 Push to Trustate	 Point Person	
<input type="checkbox"/> Begin estate bookkeeping to record and track assets, liabilities, income, and appreciation.	• Not Started	<button>Yes</button>		...
<input checked="" type="checkbox"/> Notify credit bureaus and SSA of death.	• Completed	<button>Yes</button>		...
<input type="checkbox"/> Obtain appraisals for jewelry/artwork/ other tangible goods and list on estate spreadsheet. <small>Ensure appraisal is qualified if included in the taxable estate if you've determined need to file an estate tax return (state or federal) or inheritance tax return if in a state that requires one.</small>	• Not Started			...
<input type="checkbox"/> Obtain deeds for real property. <small>Have Trustate obtain the deeds for you.</small>	• Not Started	<button>Yes</button>		...
<input type="checkbox"/> Notify employers and request unpaid benefits/survivor benefits. <small>Have Trustate notify the decedent's prior employers of the death, inquire as to any orphaned retirement accounts, unpaid compensation, unpaid employee benefits, or survivor's benefits.</small>	• Not Started	<button>Yes</button>		...
<input type="checkbox"/> Prepare IRS Form 56 and file it. <small>Have Trustate prepare IRS Form 56 for you at the click of a button.</small>	• Not Started	<button>Yes</button>		...
<input type="checkbox"/> Request the date of death value for each asset and/or liability.	• Not Started	<button>Yes</button>		...
<input type="checkbox"/> Counsel client and beneficiaries on whether or not they plan to disclaim anything from the estate to which they are entitled. <small>Though a disclaimer is not always a qualified disclaimer, if an estate beneficiary is making a qualified disclaimer, ensure this gets done within the correct timeframe. Click here for more info on the deadlines for this.</small>	• Not Started			...



The Final 3 Steps

01

Holdbacks

Be sure to hold back a certain amount of money for latent unanticipated expenses or estimated tax liability.

02

Executor/PR's Commission

Calculate commission amount for your client, allow them to make a decision on whether to take or not.

DO NOT FORGET TO INFORM THEM THAT THEY CAN TAKE THIS & EXPLAIN YOUR STATE'S PROCESS FOR DOING SO.

03

Distributions

Once releases signed, make distributions.





Estate Closure, Settlement, and Final Distributions

- ✓ Closing the estate, settling any disputes or claims, and making final distributions to the beneficiaries.
- ✓ Also includes filing the final tax returns and obtaining a release from the executor's responsibilities from all beneficiaries.
- ✓ The executor may also have to prepare and file a final accounting of the estate with the court, and obtain court approval for the distribution of the assets. After the court approves the final accounting, the estate will be closed and the executor can be released from his/her duties.



Estate Closure, Settlement, and Final Distributions

What is a “Holdback”?

In estate administration, a holdback amount refers to a portion of the assets that are being held back from distribution to the beneficiaries until certain conditions are met or certain events occur.

The purpose of a holdback amount is to ensure that there are sufficient funds available to pay for any outstanding debts, taxes, or other expenses that may arise after the preliminary distributions have been made.

- ▶ For example, if there are taxes that will be due at a later date, the executor may hold back a portion of the assets to pay those taxes when they become due.
- ▶ The holdback amount is usually a percentage of the assets or a specific dollar amount, and it is determined by the executor in consultation with the beneficiaries. The executor is responsible for managing the holdback amount and ensuring that it is used for the intended purpose. Once the conditions for releasing the holdback amount have been met, the assets will be distributed to the beneficiaries.
- ▶ It is important to note that the holdback amount is not a permanent withholding of assets from the beneficiaries, but a temporary measure until certain conditions are met, and the executor should release the holdback amount as soon as possible to avoid any delays in the distribution of the assets.



Estate Closure, Settlement, and Final Distributions

How to determine a "Holdback" amount

The amount that is typically advised to be held back in a normal estate administration to pay for potential taxes due at a later date can vary depending on the specific circumstances of the estate.

However, a common practice is to hold back a certain percentage of the assets, usually between 10-20%.

- This percentage is intended to provide a cushion for any potential taxes that may be due at a later date, such as estate taxes or income taxes. The exact percentage will depend on factors such as the size of the estate, the likelihood of taxes being due, and the executor's discretion.
- However, this percentage holdback may not be sufficient to cover all taxes that may be due, and the executor will have to keep in mind the potential for additional taxes or other expenses that may come up. The executor should also consult with a tax professional to ensure that the holdback amount is adequate and to understand the specific tax implications of the estate.
- The holdback amount should be released as soon as the taxes are paid and it should not be kept for a longer period than necessary. This can be done by obtaining a tax clearance certificate from the tax authorities, which confirms that all taxes have been paid and the estate is cleared from any tax liability.



Resources



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