

LEARNING MADE EASY



2nd Edition

Estate & Trust Administration

for
dummies[®]
A Wiley Brand



Navigate estate and trust processes with ease

Find simple explanations to help comply with tax regulations

Make sense of unfamiliar administration terms

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Estate and trust attorney



Estate & Trust Administration

2nd Edition

**by Margaret Atkins Munro, EA,
and Kathryn A. Murphy, Esq.**

**for
dummies®**
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Estate & Trust Administration For Dummies®, 2nd Edition

Published by
John Wiley & Sons, Inc.
111 River St.
Hoboken, NJ 07030-5774
www.wiley.com

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Published by John Wiley & Sons, Inc., Hoboken, New Jersey

Published simultaneously in Canada

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Library of Congress Control Number: 2018955187

ISBN 978-1-119-54387-9 (pbk); ISBN 978-1-119-54397-8 (ebk); ISBN 978-1-119-54385-5 (ebk)

Manufactured in the United States of America

10 9 8 7 6 5 4 3 2 1

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Introduction

This country is aging. Fewer babies are being born, and people are living longer and longer. They're also managing to accumulate more and more wealth. Wealth is relative; two generations ago, a middle-income family owned a house and maybe a car and perhaps even had a little money in the bank. Today, that scenario has become much more complicated. Many who would never consider themselves wealthy now own more than one home and have investments in the stock market, retirement accounts that continue on after death, and debt up to their eyeballs.

With this increased complexity in financial affairs comes a parallel complexity in transferring all these accumulated assets to the next generation(s), either at death or before. In the past, heavy-duty trusts were only for the very wealthy; today, they've become part of the legal landscape for ordinary Americans. And because ours is a do-it-yourself society in so many aspects, that I-can-do-it-myself attitude has carried over into trust and estate administration. Why, many people ask, should they pay someone else to do work that they themselves can perform just as well for a fraction of the cost?

And that's why we wrote the second edition of this book. Between the two of us, we have more than 60 years of estate and trust administration experience. In that time, we've come across some unusual situations in our careers and devised ways to avoid standard pitfalls that await the unwary. We wrote this book to share with you some of this accumulated wisdom — and to help you avoid the mistakes that we've made (or narrowly avoided).

About This Book

Estate & Trust Administration For Dummies, 2nd Edition, is the practical reference for those who find themselves appointed as executor, administrator, or personal representative of an estate, or as trustee of a trust. In these pages, you can find advice on what to do — and what to avoid — as you acquire, manage, and dispose of assets that belong to the estate or trust you're administering.

The world of estate and trust administration is one that can baffle you before you ever get out of the starting gate. You're asked to make decisions literally before you've had the opportunity to process that your friend or family member has died. In those first days after a death, when so much of the world seems like it's at sixes and sevens, you need to decide about the funeral, collect house keys, find the decedent's last will — the list seems endless, and so are the opportunities to have seemingly innocuous items fall through the cracks.

That's where this book comes in. We designed it to explain how you can administer an estate or trust by yourself. It gives you guidelines on what aspects of the work you can undertake on your own and which areas you really want to ask for an expert to help you.

Simply put, this book allows you to create and follow a road map toward successfully completing your appointed task without ripping out your hair and running into the streets screaming. You can use this book in a couple of ways:

- » **As a reference:** Everything's here, whether you have questions about probate, taxes, or how to plan a funeral. The world of trusts and estates can seem complicated, but it's all governed by common sense and rules (and plenty of them).
- » **As an advisor:** Some problems may seem unsolvable when you first confront them, but rarely is that truly the case. This book can help you find what questions you need to ask and who you should look to for answers. It gives you solid advice that you can literally take to the bank and lets you know when you would be better served by seeking professional advice.

We try to give you as complete information as possible, but trust and estate administration covers a lot of ground, much of it very complex. Still, we have to warn you that every situation is different, and periodically having a professional check your progress in administering any estate or trust is never a bad idea. At best, he or she will confirm that you're doing a brilliant job; at worst, the pro will catch any mistakes you may be making before they have a chance to become really serious.

Conventions Used in This Book

To help you navigate this book, we use the following conventions:

- » *Italic* highlights words or terms that are being defined. (We also use it occasionally for emphasis.)

- » **Boldface** indicates keywords in bulleted lists or the action parts of numbered steps. It also flags the names of specific tax documents so you can find them easily in any discussion.
- » `Monofont` tells you that you're looking at a Web address.

What You're Not to Read

We'd love for you to read every single word we wrote, but we're also realistic and understand that you probably only have time for just the need-to-know information. If you're overwhelmed and want just the essentials, you can skip anything marked with a Technical Stuff icon; all you'll miss is some overly technical gibberish.

Foolish Assumptions

The world of estates and trusts is rife with assumptions, foolish and otherwise. Here are some of the assumptions we made about you:

- » You're not a professional trustee or executor, or a trust or estate administrator already (although even if you are, you should still find the information in this book helpful).
- » You probably have no idea what you bit off when you agreed to act as either an executor or trustee, but you're eager to find out.
- » You're not scared of hard work, both physical and mental, and you're not afraid to delegate. You can do much of what needs to be done in administration yourself, whether it's prying up floorboards in search of the secret money stash or creating a probate account, but you recognize that sometimes paying someone else to do a task you feel unprepared to tackle makes perfect sense.

How This Book Is Organized

It really wasn't difficult to organize this book because it naturally split itself into its component parts: defining a whole lot of terms and types of trusts you may not be familiar with, estate administration, trust administration, and finally transfer tax and income tax issues. The following sections outline the contents of each part.

Part 1: Getting Started with Estate and Trust Administration

What we both discovered when we first landed in law offices and started administering estates and trusts was that lawyers, judges, and just about everyone else involved spoke in code. Not only did they use words such as *whereas* and *hereunder* in general conversation, but they also threw around terms such as administratrix, CRATs, CRUTs, GRITs, and QPRTs like confetti at a wedding. In this part, not only do we give you the terminology that any executor or trustee worth his or her weight knows but we also explain who all the players are in estates and trusts (and, in the case of trusts, exactly what games are being played).

Part 2: Administering an Estate

Administering an estate is a multistep — sometimes simultaneous-step — operation that requires an eye for detail and sometimes a great deal of patience. In this part, we take you from soup to nuts: figuring out what the decedent owned (and owed), locating the necessary documents, figuring out who inherits, shepherding the estate through the probate process (if necessary), distributing what's left after everyone who has a claim against the estate has been paid, and closing the estate for good. It may seem like a monumental task, but taking it one step at a time, even if those steps go in directions you don't want them to, inevitably leads you to your desired conclusion.

Part 3: Operating a Revocable or Irrevocable Trust

Your duties as a trustee are different from the duties of an executor, and the scope of the work is generally less intense, although it takes longer. In this part, we acquaint you with what powers you have as trustee and what duties you're expected to perform. We explore your relationship to the trust's beneficiaries and how to keep it cordial. Plus, we explain how to keep the necessary records and how to terminate the trust after its job is done.

Part 4: Paying the Taxes

Because the IRS considers trusts and estates separate entities, you have the enviable task of making sure that you file all necessary tax returns on time. We walk you through preparation of a simple estate tax return (**Form 706**) and through the annual income tax returns for trusts and estates (**Form 1041**). We also explain what you need to know to prepare the decedent's final **Form 1040**. Finally, we show you how to report to beneficiaries any income you may have distributed to them so they in turn can declare that information on their **Form 1040**.

Part 5: The Part of Tens

What would a *For Dummies* book be without the Part of Tens? In this part, we reveal ten mistakes that are easy to make but even easier to avoid with just a little planning, as well as the ten different types of taxes a trust or estate may be liable for. And, in case that wasn't enough, we've also included two appendixes. The first is a glossary. The second is a state-by-state list of basic rules of *intestacy* (dying without a valid last will), plus current state estate tax rules (and where you can find more information and forms, if necessary). Just a quick note of caution: The intestacy rules are far more complex than what we were able to include in the appendix. If you're administering an intestate estate, be sure to consult with the probate court or a qualified attorney as to the disposition of that particular estate.

Icons Used in This Book

The little pictures in the margins are icons. Here's what they mean:



REMEMBER

So much to remember, so little time: This icon alerts you to important information you really don't want to ignore.



SEEK ADVICE

Of course, you want to manage all the administration tasks yourself. But some you're just not qualified for, and others — take our word for it — you really do want to have someone who knows cast a hairy eyeball over. When you see this icon, you've just come across an item we suggest you don't attempt without assistance.



TECHNICAL
STUFF

Estate and trust administration can get pretty technical. This icon points out specific information regarding rules, regulations, and especially Internal Revenue Code references.



TIP

We've picked up lots of techniques through hard experience, and we're happy to share them with you. This icon points out administration gems that will make your life easier. Remember, though, that not every trust or estate will need every tip that comes your way; make sure that a tip applies to your situation before you use it.



WARNING

This icon tells you what to avoid when administering a trust or estate.

Beyond the Book

In addition to what you're reading right now, this book comes with a free access-anywhere Cheat Sheet. To get this Cheat Sheet, go to www.dummies.com and search for "Estate & Trust Administration For Dummies Cheat Sheet" by using the Search box.

Where to Go from Here

This book isn't intended as a must-read-cover-to-cover sort of tome, nor will you be able to pass a trusts and estates course in law school just because you read it. You may choose to read only what interests you and ignore the rest. You can get in and get out wherever and whenever you choose. If important information relating to a particular topic is located elsewhere, the text will send you there, so you never need to worry that you're missing basic information because you skipped a portion of the book. Of course, you may discover that it's just a page turner, and every topic fascinates you, in which case you may want to apply to law school posthaste (after you finish the book, of course).

1

Getting Started with Estate and Trust Administration

IN THIS PART . . .

Find out what's involved in being an executor, administrator, personal representative, or trustee, including the terminology, who's who, and the basics of your responsibilities.

Discover the difference between what constitutes an estate for probate and for estate tax purposes, what to do if there is — or isn't — a will, and how to figure out who can inherit.

Get up to speed on the different kinds of trusts, how to identify them, and their purposes.

Start assembling your administration support team, if necessary, including attorneys, accountants, and other experts.

IN THIS CHAPTER

- » **Becoming comfortable with the terminology surrounding estates and trusts**
- » **Encapsulating estates and taking care of trusts**
- » **Preparing and filing tax returns for trusts, estates, and decedents**

Chapter **1**

Operating in a Fiduciary World

You may have known for a while that someone close to you has named you as the executor of his or her will, as the trustee of a trust he or she's created, or even as both. That knowledge may make you feel extremely honored while that person's alive and kicking and still able to look after his or her assets.

Those warm and fuzzy feelings may come crashing to a halt, though, the day you hear that your friend has passed away, and you're now in charge of the show. All eyes will be on you as you pick up the reins and try to keep this buggy called an estate or trust moving along at a steady clip, while keeping all the promises written down during your friend's lifetime. The responsibility is huge, but so is your potential satisfaction, as you honor his wishes after he is no longer around to appreciate your actions.

This chapter is a jumping-off point for understanding what an estate administrator or trustee actually does: assumes control of someone else's affairs in a way that's both sensitive to family dynamics and responsive to family needs. Mishandled, estate and/or trust administration can cause permanent family rifts; on the other hand, competent and careful management helps keep family memories happy and purpose intact.

Identifying the Players

Administering a trust or estate isn't rocket science, but it does have its own language. One of the biggest stumbling blocks you run across, especially as you're beginning in your new role, is figuring out who all the players are and what roles they all play. The following sections point out some important basic lingo you need to know as you start your journey. Refer to the other chapters in Part 1 for more on your responsibilities as an administrator or trustee.

Determining an estate's fiduciaries

Several kinds of *fiduciaries* (people or organizations who hold and administer assets of one person, either living or deceased, for the benefit of that person or another) may be involved in estate administration, depending upon whether a will exists and who the heirs are. You may not even be the only fiduciary; in that case, you and the other(s) must act in unison. And one person or group can fulfill multiple fiduciary roles, such as when one person is named both executor and trustee. The following are types of fiduciaries you may be named:

- » **Executor:** The *executor* is the person named in the will to "execute" the will — to carry out the wishes of the person making the will, including disposing of the property according to the will. A female executor is sometimes referred to as an *executrix*, although we don't make that distinction in this book. A named executor may decline to act, although we hope this book gives you the confidence to embrace the role.
- » **Administrator:** The *administrator* is a person appointed by the probate court to administer the decedent's estate when the decedent left no valid will. A female administrator may be referred to as an *administratrix*.
- » **Personal representative:** The *personal representative* is a general term for both the executor and the administrator. In some states, this term is used in place of executor or administrator.
- » **Guardian:** A *guardian* is the person appointed by the probate court to take care of the person and the property of another person who is considered incapable of taking care of his or her own affairs because of his or her age (often a minor) or for other reasons such as mental disability, physical incapacity, or illness.
- » **Conservator:** A *conservator* is similar to a guardian, but with less restrictive rules than those for a guardian. For example, the probate court may appoint a conservator for someone who can't properly care for his or her property due to mental disability or physical incapacity, or for a person missing in action or a prisoner of war.



REMEMBER

A probate court rarely appoints a conservator for an estate, especially if you've already been appointed as executor or administrator; however, you may find yourself dealing with an already-appointed conservator of an estate beneficiary. Remember, just because you're all working with the same set of assets doesn't mean that you belong to the same team. As executor or administrator, you're only responsible for the property owned by the decedent; a beneficiary's conservator is responsible for that beneficiary's interest.

Knowing who the trustees are

A trust, just like an estate, must have a fiduciary heading up its team: in this case, a *trustee*. The trustee of a trust is charged with the task of investing the trust's assets and balancing the desires of the trust's creator (the *grantor*, also referred to as the *settlor*) with the needs of the *beneficiary of the present interest* (the person or organization entitled to receive the income earned by the trust's assets. Depending on the terms of the trust, perhaps some or all of the trust assets themselves) and the wants of the *remainderman* or *remainder beneficiary* (the person or organization who receives what's left of the trust's assets after the trust period ends). It may sound daunting, but when done properly, everyone should go home happy.



REMEMBER

Because balancing these competing interests can be complicated, many grantors choose two or more individuals and/or corporations to act together as co-trustees, jointly filling these roles, assigning general powers to all and sometimes specific additional powers to certain trustees. In order to differentiate between the trustees, trustees often are designated as either *independent* or *family*. This section discusses these two types of trustees. Chapter 3 goes into more depth about the different types of trusts.

All by themselves: Independent trustees

Independent trustees, or fiduciaries who aren't named in the trust as either grantor, beneficiary, or remaindermen, can be an important cog in keeping the wheels of a trust running smoothly. Whether they're trusted friends of the grantor or are banks, trust companies, lawyers, or accountants, independent trustees owe their primary allegiance to the grantor, who is relying on them to make decisions that best serve the interest of the trust, rather than that of any present interest beneficiary or remainderman.

Frequently, grantors direct an independent trustee to make all decisions regarding discretionary distributions to beneficiaries, especially if one of the trust beneficiaries is also a trustee. And, in the case of testamentary trusts, the probate court often delegates the power to make discretionary distributions to the independent trustee alone so as to remove any semblance of self-serving from a trustee who also has a beneficial or remainder interest in the trust.

For example, one of us acts as trustee for a testamentary trust where the decedent's widow (who is the income beneficiary) and two children (the remaindermen) are also trustees. Only the independent trustee may make decisions regarding distributions of principal to the widow or the children. Distributions to the children prior to their mother's death require either the consent of the independent trustee or the probate judge.



REMEMBER

No independent trustee assumes the responsibilities lightly. As a result, expect to pay for their services, unless the independent trustee is a close friend of the grantor, who may be willing to perform this service out of long friendship and the goodness of his heart. Banks and trust companies most likely have pamphlets that list how they calculate their fees; because they probably have active custody of the trust assets, they usually collect their fees automatically from the trust. Non-institutional professional trustees such as attorneys and accountants bill you for their services. They may charge based on their normal hourly rates, but they're more likely to calculate their fees based on a percentage of the market value of the assets of the trust, as well as a percentage of income collected.

Trusts that mandate an independent trustee typically also include a *line of succession* so that if one trustee is no longer able to act, another is in line to take his or her place. If the trust requires an independent trustee, make sure that any vacancies are filled promptly because it's next to impossible for the trust to function efficiently without one in place.

All in the family: Family trustees

Trust grantors often feel that using only professional trustees (as efficient as they may be) may not account for special family circumstances. In these cases, the grantor may choose to also have a *family trustee*, or a trusted member of his or her family, who knows the players (the present interest beneficiaries and the remaindermen) well and has no difficulty making decisions based on the grantor's wishes.

Family trustees usually have most of the same powers as independent trustees (such as investment powers and the authority to prepare and sign income tax returns and to make scheduled distributions to present interest beneficiaries), but their powers over discretionary distributions are often limited if they have a vested interest in the trust as a present interest beneficiary or remainderman.



WARNING

It's possible for trusts to exist with only a family trustee, although the results are sometimes messy. Somehow, wherever money is concerned, perceptions of appropriate behavior on all sides tend to skew; in our opinion, you're far better off to limit opportunities for self-serving during trust administration by never allowing a family trustee to serve alone. With the addition of an independent trustee, everyone concerned — from the grantor to the present interest beneficiary to the trust remaindermen — can be confident that all the competing interests were considered throughout administration and that the trustees made appropriate and fair decisions.