

Probate & Trust Administration Overview

The members of the Probate and Trust Administration Practice guide executors and trustees through the process of administering property in estates and trusts. They handle court filings, tax analysis and tax return preparation, creditor issues, retirement plans and IRAs, life insurance and the many other aspects of making sure that the intentions of the individual who established the estate plan or trust are carried out.

When a client takes on the responsibility of serving as an executor or trustee following the death of a family member or friend, the task can seem overwhelming. The members of our practice area work to lift this burden from the client to the greatest extent possible.

A typical engagement in the estate context begins with one of our probate lawyers meeting with the executor and family (if desired) to discuss the process and steps to take. These steps typically include determining what property is in the estate. This might include "probate" property, which generally is property titled solely in the deceased person's name. This probate property will pass under the will and go through the probate court process.

The estate typically includes "non" probate property as well, such as jointly held property, trusts that were funded before the individual died, and IRAs and life insurance. This non-probate property does not pass under the will.

Members of our practice will explain this to the executor and trustee so they have a firm grasp of how the estate's documents (such as the will, trusts, and beneficiary forms) will actually work. Our lawyers, working with highly skilled paralegals, advise on valuation of assets, tax elections, and estate and income tax issues, payment of expenses and handling of creditor claims, and funding of



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trusts and advising on trustees' responsibilities under the Ohio and Indiana Trust Codes and other pertinent law. They draft the necessary court documents, including appointment of the executor, court inventories, and court accounts, as well as prepare the estate tax returns and any needed income tax returns for the estate and related trusts.

The probate attorneys also advise on techniques that can be used after an individual has died to reduce taxes or otherwise adjust a plan where appropriate. An example of such a technique is a "disclaimer" that is used when a beneficiary decides not to accept a bequest and allows that property to pass to the next in line under the will or trust. This might be done for tax planning or because the beneficiary does not need the property and wants to see his or her children or grandchildren, for instance, receive the property instead.

The practice also administers trusts that have been created under a will ("testamentary" trusts) or by trust agreement during a client's lifetime ("intervivos" or "living" trusts). Trustees frequently have questions, particularly when they have taken over responsibility for a trust, about what they can and cannot distribute to beneficiaries, what the law provides as to investment of trust assets, and tax payment responsibilities.

Typical trusts administered by the group include irrevocable life insurance trusts, gifting trusts for the benefit of children and grandchildren (the latter are also called "generation skipping" trusts) and "credit shelter" (also called "A/B" trusts). Throughout their representation of executors, trustees, and other fiduciaries, the group's members understand that they have been privileged to handle a family's most sensitive personal and financial matters. They know that they often are doing so at a very painful and sometimes profound time for their clients. This sensitivity in working with clients is a hallmark of the group.



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