

## FREQUENTLY ASKED QUESTIONS

The Trustee or successor Trustee of a Trust estate has taken on quite a job. He or she must organize the decedent's affairs and administer the Trust estate in an efficient manner, while complying with all state and federal laws. Trustees are accountable to the decedent's creditors, including the IRS, and the beneficiaries. In addition, there is often pressure from beneficiaries to quickly make distributions. Usually, the Trustee is unschooled in these matters and must look to competent guidance. The law office you choose is one of the most important decisions you will make as Trustee.

### ***What is the initial Trust Administration?***

Initial Trust Administration is defined by Florida law and means Administration of a "Living Trust" during the period which begins with the death of the grantor (settlor) and ends upon the final distribution of Trust assets outright or to continuing Trusts created under the Trust agreement. This initial period is not intended to include continued regular Administration of the Trust.

### ***What does the initial Trust Administration involve?***

Initial Trust Administration is similar to, but not the same as, a probate Administration. It is a systematic set of local, state, and federal rules designed to pay the obligations of the Trust, such as debts of the decedent and taxes owed, file all necessary tax returns, cooperate with the personal representative of the probate estate (if one will be appointed), value the Trust assets, and make proper distributions to the beneficiaries of the Trust or to continuing Trusts. For a detailed description of the matters to be considered and which might have to be done, see the attached pages and our Standard Employment and Fee Agreement.

### ***How long does the initial Trust Administration take?***

The initial Trust Administration process itself is straightforward if handled competently. It takes approximately five to six months from beginning to end. However, other matters unrelated to the Trust Administration may cause delays. For example, the decedent's affairs may have been left in disarray by failing to properly plan for death, or he or she may have an unusually complex estate. Beneficiaries may be dissatisfied with their inheritance or lack thereof, there may be the necessity of filing a federal death tax return, or there could be more creditors than assets, etc. The Trust Administration process itself does not cause such delays.

### ***Are assets tied up in this Trust Administration?***

No. Once the successor Trustee is appointed (about 3 to 5 business days after the decedent's death, quicker if needed), he or she has full authority to marshal and distribute the assets of the estate. Most Trust estates make immediate partial distributions, holding in reserve, money sufficient for the payment of administrative expenses, taxes, etc.

### ***How does the successor Trustee choose a Trust Administration attorney?***

Carefully. Most attorneys will take on Trust Administration matters even though Trust Administration and probate is not what they normally do. What will happen, since the routine matters are easier and more pleasant, the “normal” work gets done first and the Trust Administration and probate work get relegated to a secretary or the “back burner.” These delays cost the estate money and cause the Trustee and personal representative headaches.

### **Choose an attorney that does Trust Administration and probate for a living and not as a sideline.**

Also, be careful of who you choose because Trust Administration with “living Trusts” is relatively new and not well understood. The laws are trying to “catch up” to the present frequent use of “living Trusts.” Local, state and federal laws and regulations are in a constant state of change, and will be until a workable system of laws is in place to guide Trustees and beneficiaries through the initial Trust Administration period.

For example, the concept of “initial Trust Administration” is new in Florida, being created by statute in 1995. This indeed is an area of the law in great flux.

### ***Why should you choose us as your attorney?***

You should choose us because we do nothing but estate planning, Trust Administration and probate related matters. We gear this whole office to do your Trust Administration and probate cases quickly and efficiently. And, we’ve been doing that here in Tampa for 10 years. Your case will be managed by an attorney and by a legal assistant that only does Trust Administration and probate related matters. Simply put, we will not waste your time or the time of the beneficiaries, and we will make your responsibilities as easy for you as possible.

Just as important, since this office prepared the Trust, we are already familiar with the decedent and are in the best position to carry out his or her intent. *As a Family Protector™ Member, the trustmaker has a signed fee guarantee agreement with us capping the settlement cost at 1%.*

### ***What about the preparation of the federal estate tax return?***

For gross estates (Trust assets, probate and non-probate assets) that exceed \$2,00,000 (as of 2007), Florida law provides that if the attorney for the Trust prepares the federal estate tax return (Form 706), a fee of 1/2 of 1 percent up to a value of \$10 million and 1/4 of 1 percent on the value in excess of \$10 million of the gross estate, is presumed to reasonable compensation for the attorney for this service. These fees include services for routine audit of the return, not beyond the agent level.

***What are reasonable fees for acting as successor Trustee?***

There is presently no statutory fee for individual Trustees. A reasonable fee will be paid based upon all facts and circumstances.

***What about tax returns and accounting fees?***

Yes, those too. There will be the decedent's final Form 1040 and the Florida intangible tax return to file. In addition, there is the Florida death tax return and, if the gross estate (Trust estate, probate and non-probate assets) exceeds \$2,000,000 (as of 2007), there is the Federal death tax return, even if no estate taxes are owed. Finally, usually the Trust estate must file its own income tax return, Form 1041.

Usually the decedent's accountant prepares the Form 1040 and the intangible returns, at their normal rates. This office prepares the Florida and federal death tax returns, and the Trust estate's income tax return, for *additional* costs (reasonable). However, in most situations, if the family has a CPA, we will turn to the CPA to file Estate Tax Returns.

***A final word.***

The Trustmaker has worked hard to create and implement a plan to carry out their wishes. We urge you to continue your education and conversations with them to ensure you can continue their plan.