

ACCOUNTINGS BY TRUSTEES

ACCOUNTINGS IN NEW YORK STATE

SURROGATE'S COURT

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WHAT IS AN ACCOUNTING?

- An accounting is a detailed record of all actions taken by a trustee in the performance of its trust
- “An essential element of a trust is accountability of the trustee for its administration. Once a valid trust is created accountability must inevitably follow as an incident.” *Matter of Miness v. Deegan*, 971 N.Y.S.2d 72 (Sur. Ct. Nassau County 2013)



WHAT IS AN ACCOUNTING?

- Typically, courts require detailed schedules for all trustee acts during the life of the trust
 - i.e. Principal received, income collected, administration expenses (funeral costs, legal fees), increases/decreases of assets



WHEN ARE ACCOUNTINGS REQUIRED?

- Generally, there are three scenarios:
 - Pursuant to the language of the governing instrument
 - At the end of the Trust Relationship
 - Petition for Compulsory Accounting



WHEN ARE ACCOUNTINGS REQUIRED?

- **Language of the Governing Instrument**
 - A settlor/testator may direct periodic accountings by the Trustee during the continuation of the trust
 - A settlor may not, however, relieve a trustee from rendering an account
 - EPTL § 11-1.7 prohibits a testator from relieving a testamentary trustee from accounting obligations
 - Courts have found these attempted exonerations to be against public policy and apply EPTL § 11-1.7 to both testamentary and *inter vivos* trusts. *Matter of Shore*, 854 N.Y.S.2d 293 (Sur. Ct. N.Y. County 2008).



WHEN ARE ACCOUNTINGS REQUIRED?

- **End of Trust Relationship**
 - A trustee must account if the trust is terminated or revoked
 - A trustee must also account if the trustee resigns or is removed



WHEN ARE ACCOUNTINGS REQUIRED?

- **Compulsory Accounting**

- A petition to compel a trustee to account may be filed by:
 - A creditor
 - An interested party
 - A public administrator or attorney general
 - A successor trustee or co-trustee
- If it appears to be in the best interests of the estate, the court may order an immediate accounting or make such other necessary orders, such as removal of a delinquent trustee



TYPES OF ACCOUNTINGS

- There are three types of Accountings:
 - Formal
 - Informal
 - Hybrid



FORMAL ACCOUNTINGS

- A trustee may voluntarily file a petition with the court seeking its release and discharge as trustee. SCPA § 2208
- If granted, the court will issue a decision approving the actions of the trustee and releasing the trustee from any claims by potentially interested parties, such as beneficiaries, creditors or co-fiduciaries



FORMAL ACCOUNTINGS

- A trustee seeking to file a formal accounting must include in a petition:
 - Names and addresses of all interested parties
 - Including all persons under a disability
 - A certification that all taxes have been paid or that none were due
 - Detailed schedules of all transactions as trustee
 - Signed affidavit by accounting party affirming the accuracy of the accounting



FORMAL ACCOUNTINGS

- A petition for formal accounting must be served on all interested parties:
 - Unpaid Creditors
 - Beneficiaries
 - Sureties
 - Co-fiduciaries not joining in petition
 - Successor fiduciaries
 - Attorney General's office (for charitable beneficiaries)



FORMAL ACCOUNTINGS

- All interested persons may file objections or consents with the court upon receipt of the accounting
- The court may order a hearing and/or examination of the accounting party to settle any disputes



FORMAL ACCOUNTINGS

- Upon completion of any exams or hearing, a court will issue a final decree:
 - Directing payment to all interested parties and creditors
 - Including commissions/fees to trustee and attorney's fees
 - Approving summary of account
 - Releasing accounting party from any liability



FORMAL ACCOUNTINGS

- The trustee must include a court filing fee based upon the gross value of the principal and income:
 - <\$10,000 \$45.00
 - \$10,000-\$19,999 \$75.00
 - \$20,000-\$49,999 \$215.00
 - \$50,000-\$99,999 \$280.00
 - \$100,000-\$249,999 \$420.00
 - \$250,000-\$499,999 \$625.00
 - \$500,000+ \$1,250.00



BENEFITS OF FORMAL ACCOUNTINGS

- **Finality**
 - Upon resolution of all claims, the court's decree gives finality to the proceeding and protection from liability for all actions taken with regard to the transactions disclosed in account
- **Protection from Claims of Disabled**
 - All claims of persons deemed disabled (infants, incompetents, unknown persons, incarcerated persons) will be resolved and the trustee is protected from any such claims



INFORMAL ACCOUNTINGS

- When the distribution of a trust can be made by agreement of all parties, a trustee may proceed with an informal accounting



INFORMAL ACCOUNTINGS

- Trustee should file with the court a signed instrument from all interested parties approving the informal accounting and distribution, including:
 - An acknowledged receipt of the assets to be distributed;
 - A release from any and all claims arising out of the trustee's actions or inactions;
 - An agreement to indemnify the trustee from any claims from non-signatories; and
 - An agreement to refund any portion of the distribution should it be found that the distributee was not entitled to receive any portion of the distribution



INFORMAL ACCOUNTINGS

- The filing of an informal instrument with the court is *prima facie* proof of the trustee's compliance with its duty to account. SCPA § 2202
- Trustee must include a court fee of \$6.00 per page for the signed instrument



BENEFITS OF INFORMAL ACCOUNTINGS

- **Cost-Effective**

- An informal accountings is typically less expensive than a formal proceeding due to lower court fees, fewer court appearances, and generally less work required by attorneys

- **Speed**

- A formal accounting may take upwards of six to eight months to conclude, versus the relatively quick turnaround of release instruments signed by the interested parties



INFORMAL ACCOUNTING WITH DECREE (HYBRID ACCOUNTINGS)

- If the interested parties are in agreement to the distribution, but the trustee still seeks the protection of a court decree, a trustee may file a petition with the signed instruments and request a decree
- This alters the proceeding into a hybrid of the formal and informal accountings
- Trustee must follow the same procedure as formal accountings, including the court fees
- Since the trustee will be obtaining and filing signed instruments from the interested parties there will be no need to serve a citation



BENEFITS OF HYBRID ACCOUNTINGS

- The principal benefit of a Hybrid Accounting is that the Trustee is given the protection and finality of a court order, but without the need to serve the interested parties or appear for exams or hearings since the interested parties have given their consent



Contact Information & Biographies



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