

My Client Died What Happens Now?

“Before the Taxes”

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Step 1: Client's Important People

- Family
- Attorney
- You
- Stock Broker

Step 2: Review the Trust

- Revised version
- Amendments
- Changeable during lifetime (wet cement)
- Revocable
- Irrevocable (cement has hardened)

Step 3: Death Certificate

- Date of death
- Years in the County
- Cause of death
- Parents
- Birthday
- Social Security number

Step 4 & 5: IRS cleanup

- Form 56 – paperwork to the right place
- Form 4810 – 18 month statute of limitations
- Without 4810 – 36 months
- Get the audits over with
- Clean up IRS issues before passing out any money

Step 6: New EIN

- SS4 available on line – immediately
- Interview method of fill in
- Social Security number dies with the client
- Social Security number is only for “lifetime”
- Now ask about the 645 election – 1st return determines

Step 6 continues

- Multiple trusts, multiple numbers
- Income from the new entity should go into a bank account set up for that entity
- Expenses for each entity should be paid from the accounts of that entity
- Think “mental” fences, before death/after death

Step 7: List of Assets

- Date of death values
- Good appraisals
- 6 month alternative value – if 706
- Special use value – if 706
- Review previous 3 years of 1040s to find assets

Step 8: How is Title Held

- Look at property tax bills
- Look at bank account statements
- Look at stock brokerage statements

Step 9: “Operation of Law” Assets

- Look only to the title to see the beneficiary
- Named beneficiary
- Joint tenancy with the right of survivorship
- Community property with the right of survivorship
- Payable upon death
- 95% of assets were held this way

Step 10: Probate???

- Decedent's name only
- Not “operation of law”
- No trust
- Court supervision, public records
- Full probate over \$100,000
- Brief probate if under \$100,000

Step 11: Pour Over Will

- Trust in place
- Some assets were not in trust
- New assets, removed for loans, forgotten
- Inheritances, the unplanned for
- Probate with the trust as the beneficiary
- Trust is final determinant

Step 12: Trust Assets

- Look to the individual assets for titling in the name of the trust
- Unfunded trust – the empty box
- Missing appendixes
- Community or separate

Step 13: New Entity – New Accounts

- Remember the “mental” fence separating assets by time or trust
- Poor accounting by the trustee – the poor man’s book keeping
- Fiduciary responsibility requires a concern for accountability, separation
- Fiduciary – “holding for another” (escrow)

Step 14: Fiduciary Accounting

- 1099s are always wrong
- Schedule B nominees
- After death income reported with the social security number nominated to 1041
- 1099 income for the whole year reported with the new EIN – nominated from 1041 to 1040

Step 15: Multiple Trusts???

- “Will substitutes”
- AB – above ground, below ground
- Exemption trust 2 million dollars per deceased
- Qualified Terminal Interest Property QTIP
- QDOT – foreign spouse

Step 16: Funding of the Multiple Trusts

- Administrative trust until ready to separate into new trusts
- New trusts are the beneficiaries of the administrative trust
- AB are the beneficiary of the “family” trust
- When, how much (funding)

Step 17: Advanced Fiduciary Accounting

- Principal – asset
- Capital gains/losses is just a change in type of asset. Goes from stock or real estate to cash. Not income even if income “taxable”.
- Principal and income act is part of the Probate Code
- Principal and income varies by state

Step 18: Now the TAXES

- Final 1040
- Medical, non cash charity
- 1041/541 for the new entity
- Miscellaneous has better treatment on the 1041/541
- Distributions are deductible (K-1s)
- 1041/541 – high tax rates

Important Dates

- 706 – 9 months
- Fiscal year choices
- Disclaimers – 9 months
- Real estate low taxes if parent/child not siblings – need to apply – Prop 58
- Prop 198 (real estate)
Grandparent/grandchild if the middle generation is gone

60 day notice

- A lawsuit waiting to happen
- Trustees have big responsibilities
- Beneficiaries have the right to information
- Heirs are not necessarily beneficiaries
- Don't practice law!!!!!!

Prudent Investor Act

- Diversification
- Another lawsuit waiting to happen
- Self dealing
- Too conservative, too risky
- Surcharged for what should have been

Money, family, high emotions

- Walking on hot coals – step carefully
- Don't take on areas not ready for
- Call for help – CSTC, attorneys
- 1041/541 have more law than 1040s
- Other states have different rules
- Challenging.

