

TRUSTS AND ESTATES LAW

Expert Analysis

## Accounting for Fiduciaries' Actions

A fiduciary, whether an Executor, Administrator, or Trustee, at one time or another will have to account for their actions to the beneficiaries, often in the form of an "Accounting." An accounting is a detailed record of the fiduciary's management of the estate or trust, and may be provided to the beneficiaries informally, through an informal schedule and receipt and releases, or judicially, through court-prescribed forms and a decree from the court.

At the conclusion of the administration of an estate (or trust), the fiduciary should provide an accounting to the beneficiaries prior to distribution of estate assets. Many estates conclude with an informal accounting, where the fiduciary provides an informal schedule of the income, expenses, and proposed distributions. The beneficiaries review this



By  
**Raymond  
Radigan**



And  
**Lisa  
Fenech**

informal schedule and may ask the fiduciary questions regarding the transactions or to review records supporting the accounting. Once approved by the beneficiaries, the fiduciary will request each beneficiary to execute a receipt, release, refunding, and indemnifi-

As with all other fiduciary duties, accounting is an integral part of being a fiduciary of an estate or trust, and must be handled with due care to protect both the fiduciary and the beneficiaries.

cation agreement before they can receive their distribution. This document states the beneficiary approves the accounting as provided, releases the fiduciary from liability for their estate-related actions, agrees to refund the fiduciary if liabilities surface and the

fiduciary does not hold sufficient assets to pay them; and indemnifies the fiduciary on behalf of the beneficiary and their heirs. Ensuring that all beneficiaries execute a document of this kind prior to receiving distributions is one of the most important aspects of the administration of the estate, as it protects the fiduciary from litigation over their estate-related actions.

An estate fiduciary may also account for their actions through a judicial accounting in the Surrogate's Court. This may be done voluntarily, if the fiduciary wants the Surrogate's Court to issue a decree approving the accounting to dispel future litigation, or compulsorily, if the Surrogate's Court orders a judicial accounting on its own or upon petition of an interested party. An interested party may file a Petition for a Compulsory Accounting and the court may order an accounting if it determines it is in the best interests of the estate. The court will order an accounting if the estate has languished for some time or the beneficiaries are unable to obtain an informal accounting. After the

C. RAYMOND RADIGAN is a former Surrogate of Nassau County and of counsel to Ruskin Moscou Faltischek, P.C. He also chaired the Advisory Committee to the Legislature on Estates, Powers and Trusts Law and the Surrogate's Court Procedure Act. LISA FENECH is an associate at the firm.

court issues an Order to Account, the accounting must be prepared on the required court forms, which contain various schedules for all assets and expenses, among other information.

Thereafter, the fiduciary files their accounting with a Petition for Judicial Settlement of Account, asking the court to issue a decree approving the accounting. The court may require the fiduciary to make changes to the form of the accounting before the court will cause citation to issue (e.g., if the accounting does not balance or if the incorrect forms are used), and the fiduciary must comply with the court's direction. If a fiduciary does not comply, depending on the circumstances, a party may bring a Petition for Contempt asking the court to hold the fiduciary in contempt for not complying with the Order to Account. SCPA §§606, 607. Once the court accepts the accounting for filing, and citation issues, a party may then formally object to the accounting. If there are no objections, the court will issue a decree approving the accounting and the proceeding ends. Only parties who have a pecuniary interest in an estate have standing to object to the accounting, i.e., a beneficiary, creditor or co-executor. In *Matter of Estate of Rapaport*, the Queens County Surrogate's Court held a co-executor had standing to object to his co-executor's accounting. N.Y.L.J., Aug. 13, 2021 (Sur. Ct. Queens Cty.). The objecting co-executor argued his standing rested in his

capacity as beneficiary of the estate of a post-deceased residuary beneficiary; however the court found that unavailing, as the fiduciary of the post-deceased beneficiary's estate is the party with standing to object, and not its beneficiaries. Nevertheless, the court found his position as co-executor provided him standing to object, despite that he had not rendered his own accounting as directed by the court. Taking into account his own dereliction of his duties as co-executor, the court directed him to account within 30 days or his objections would be dismissed.

With respect to trusts, which may continue for many years, there are generally three instances where a trustee may account. The first is pursuant to the language of the trust. The trust document may direct the trustee(s) to account at certain times or in certain intervals during the term of the trust. However, the trust document cannot relieve a trustee from accounting as "accountability is an essential element of all fiduciary relationships which cannot be waived." *In re Shore*, 19 Misc.3d 663 (Sur. Ct. N.Y. Cty. 2008). Further, it is against public policy to render a fiduciary entirely unaccountable. *Id.*; see also EPTL §11-1.7(a)(1). The second is at the conclusion of the trust, whether revoked or terminated, or when a trustee resigns or is removed. When a trustee resigns or is removed, the outgoing trustee must account for their actions as fiduciary.

The third time at which a trustee should account is in response to a petition for a judicial accounting of a trust, similar to an estate judicial accounting as discussed above.

Although a trustee may not be required to account on a regular basis, it is prudent for a trustee to account at regular intervals, such as every three years. Although accounting for the trust's activity every three years may appear burdensome, it could be very beneficial to trusts with long terms. For example, a beneficiary may petition for a judicial accounting of a 20-year-old trust claiming mismanagement of the trust assets. If the trustees periodically accounted, there would be numerous, approved, accountings to shorten the period for which the beneficiary may claim mismanagement of the trust. Additionally, it would be substantially easier to account for the time between the last accounting and the petition, rather than the whole trust term, i.e., 20 years.

As with all other fiduciary duties, accounting is an integral part of being a fiduciary of an estate or trust, and must be handled with due care to protect both the fiduciary and the beneficiaries.