

# 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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