

Price & Farrington's Estate and Tax Planning FastFacts

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Estate, Tax, Retirement and Family Wealth Planning for Advisors+ Clients

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On the Death of a Loved One: *Instructions to Our Successor Trustees - Part 1*

The death of a loved one is always a difficult, challenging time for the survivors. This makes it all the more important to assist them with issues they need to address following a death, and how best to implement the estate plan the decedent had put in place. Whether it's a *will* to be probated or a *living trust* that requires administration, survivors need help and guidance understanding their role following a loved one's death. We always provide our clients with a memo containing guidelines for their children or other *beneficiaries* to help the survivors better understand the legal obligations and planning opportunities which arise on the death of a loved one. Here's an example of such a memo, involving a married couple who had a living trust in place:

Instructions to Our Successor Trustee

"As the *Trustmakers* of this living trust, we have provided you with a very simple and complete way of dealing with our assets and transferring them to our named beneficiaries. As our *Successor Trustee*, you have a wide range of powers and responsibilities which become effective upon our deaths. These instructions are aimed at making

your job as our Successor Trustee as easy as possible.

When you become our Successor Trustee we recommend that you meet as soon as possible with our *estate planning attorney* who drafted our Trust and estate plan according to our wishes and prepared this letter for us. He will assist you in understanding what your job as our Trustee involves. You will also probably want to meet with our *accountant*, our *insurance agent* and our *financial advisor*, since we have found that this team approach has always provided the most benefits to us. You will find a list of the names and telephone numbers of our advisors in the "Key Advisors" section in our Estate Planning Portfolio.

After We Have Died

I After both of us have died, we urge you to meet with our lawyer as soon as possible to discuss the details of administering our Trust and what will need to be done. Just to give you an idea of what is involved, these tasks will include the following:

1. Review our Living Trust.

particularly the sections dealing with our *beneficiaries*, the *distribution of the Trust property* and the *Trustee's powers*. Determine if any of the assets are to be immediately distributed or if they are to remain in Trust for later distribution to our beneficiaries.

2. Order death certificates.

Death certificates will be needed to obtain the proceeds of any life insurance policies as well as for other transfers. We recommend ordering at least six certified copies of the death certificate to begin with. These can be ordered from the funeral home or from the local county health department. As long as you, as Successor Trustee, have a copy of our Living Trust and a certified copy



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of the *death certificate*, you can manage the Trust property just as we did while we were alive.

3. Check safe deposit box and checking account.

If we have a safe deposit box, it should be examined for any instructions which we may have left for actions to be taken after our death. (Other such instructions might also be found behind the *Burial and Memorial Instructions* tab and other tabs in our Estate Planning Portfolio.) It is also important to prepare an *inventory* of the contents of the safe deposit box. You will need a copy of the death certificate and a copy of our Living Trust, together with the safe deposit box key, to gain access to our box. Funds might be needed immediately to pay *funeral expenses*, so please make sure there is enough money available in the Trust checking account. You can gain access to this account with a copy of the death certificate and a copy of our Living Trust.

4. File our Will.

Even though we have a revocable living trust, our attorneys prepared a *pour-over will* as a back-up in case assets which are sub-



"That get-well card we sent was certainly a waste of time."

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ject to probate weren't in our Trust. In any event, our will(s) must be filed with the Superior Court in the County in which we lived or where a majority of our real property is located. Our lawyers will assist you with this.

5. Notify all life insurance companies of our death. This can be done by calling our insurance agent or writing a letter to the insurance company's main office. Some companies require a certified copy of the death certificate; other companies will accept a photocopy of the death certificate or even a copy of the newspaper obituary notice. Information about our life insurance should be located behind the **Life Insurance** tab in our Estate Planning Portfolio. Also, please be sure to request Internal Revenue Service (I.R.S.) Form 712 (Life Insurance Statement) from the life insurance company.

6. Notify all pension plan administrators/custodians of our death. This can be accomplished by contacting our *financial advisor* or by contacting the plan administrator or custodian.

7. Prepare an inventory of all of the assets in the Trust, including their *values* on the date of our death. This is necessary to determine a new **cost basis** for those assets in order to take advantage of the "step-up" in the basis of the assets which occurs on the date of death. This will minimize the taxable gain when the assets are sold. It might be advisable to obtain a **written valuation** of one or more of the assets. We recommend, in particular, getting a written opinion of the fair market value of any **real estate** in the Trust. If the

real estate has significant value, we recommend obtaining an **appraisal** from a **qualified appraiser**. The fee for this professional service is well worth the value of having written documentation available to provide to the I.R.S. if they request it. You can obtain the market value of **securities** by checking the newspaper published on the date of our death or by calling our financial advisor. The market value of the securities at the date of death becomes the new cost basis. Valuation of our assets is important because the total value of all property in the Trust will determine whether it is necessary to file federal and state **estate tax** returns.

8. Review business agreements. Review any business agreements, contracts, stock certificates, partnership agreements and so forth, to which we and/or our Trust are parties. It will be important to document the value of these interests if a federal estate tax return is required or the business interest will be sold. To obtain this valuation we recommend hiring a **qualified business appraiser** or a certified public accountant who is experienced at valuing businesses.

9. Obtain a new Taxpayer Identification Number from the I.R.S. for any trust which becomes **irrevocable** because of our death (e.g., a family or QTIP trust). Use I.R.S. Form SS-4 to obtain this number. If the irrevocable trust has taxable income it will be necessary to file I.R.S. Form 1041S as the trust's income tax return. We recommend you discuss this with our estate planning attorney or accountant.

10. File notices to creditors and review and pay bills. Provide the notice required by statute to our creditors, if appropriate. Carefully review any **bills** or accounts which it is claimed that we owe and please pay those which you determine we legitimately owe. Our lawyer will assist you in this process.

11. File income tax returns and pay income taxes, both for us and for our Trust. It will probably be necessary to file our final income tax return for the year of our death(s). Our lawyer and C.P.A. can help determine



this. In addition, if the Trust has **earned and/or retained income**, it will probably be necessary to file federal and, in some cases, state income tax returns. If all of the Trust income has been distributed to beneficiaries, they are responsible for including this income on their own income tax returns. However, I.R.S. Form 1041S must still be filed annually until all Trust assets are distributed.

12. Collect all of our credit cards and cancel them.

13. Notify Social Security Administration.

14. Distribute our personal effects. Distribute our personal effects and household furnishings as provided in our Living Trust or in any **Personal Property Memorandum** we prepared.”

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To be continued- and concluded- in next month's (May, 2008) FastFacts... As always, we wish you good planning. Let us know how we can help you. GDP

Friends & Foes

We have fewer friends than we imagine, but more than we know.

In prosperity our friends know us; in adversity we know our friends.

Never speak ill of yourself, your friends will always say enough on that subject.

Friend is sometimes a word devoid of meaning; enemy, never.

No viper so little, but hath its venom.

