

## **TRUST AND ESTATES PARALEGAL**

2007 revision and update by Valerie Bohall and Denise Gutierrez, Law Office of Jennifer S. Gormley, P.C. 2007 review by Jennifer S. Gormley, Esq., Law Office of Jennifer S. Gormley, P.C.

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**ALL OF THE BELOW DUTIES ARE ASSUMED TO, AND MUST BE, UNDER THE DIRECTION AND SUPERVISION OF A LICENSED ATTORNEY.**

**THE PARALEGAL MUST DO THE FOLLOWING ON THE ONSET:**

1. Disclose their status as paralegal at the outset of any professional relationship with a client, other attorneys, a court or administrative agency or personnel thereof, or members of the general public.
2. Preserve the confidences and secrets of all clients.
3. Understand the attorney's Rules of Professional Responsibility and these Guidelines in order to avoid any action which would involve the attorney in a violation of the Rules, or give the appearance of professional impropriety.

**PARALEGALS SHOULD NOT:**

1. Establish attorney-client relationships; set legal fees; give legal opinions or advice; or represent a client before a court, unless authorized to do so by said court; nor
2. Engage in, encourage, or contribute to any act which could constitute the unauthorized practice law.

**PARALEGALS MAY PERFORM SERVICES FOR AN ATTORNEY IN THE REPRESENTATION OF A CLIENT, PROVIDED:**

1. The services performed by the paralegal do not require the exercise of independent professional legal judgment;
2. The attorney maintains a direct relationship with the client and maintains control of all client matters;
3. The attorney supervises the paralegal;

4. The attorney remains professionally responsible for all work on behalf of the client, including any actions taken or not taken by the paralegal in connection therewith; and

5. The services performed supplement, merge with and become the attorney's work product.

**IN THE SUPERVISION OF A PARALEGAL, CONSIDERATION SHOULD BE GIVEN TO:**

1. Designating work assignments that correspond to the paralegal's abilities, knowledge, training and experience;

2. Educating and training the paralegal with respect to professional responsibility, local rules and practices, and firm policies;

3. Monitoring the work and professional conduct of the paralegal to ensure that the work is substantively correct and timely performed;

4. Providing continuing education for the paralegal in substantive matters through courses, institutes, workshops, seminars and in-house training; and

5. Encouraging and supporting membership and active participation in professional organizations.

**A. DECEDENTS' ESTATES**

1. Discovery of Information:

a. Locate original will and lodge with appropriate court;

b. Conduct or assist with client interviews for discovery of information and determine if probate, administration or special administration is required; discuss with attorney formal vs. informal administration;

c. Inventory decedent's residence and review decedent's papers and prior income tax returns for pertinent asset information; review decedent's real estate documents to determine if ancillary administration is required;

d. Conduct preliminary valuation of estate assets; refer to the Wall Street Journal or valuation services to value stocks and bonds; and

e. Request O&E information from title companies to confirm ownership and liens against real estate.

2. Administration:

- a. Draft (for attorney review) and e-file all necessary court documents to probate will and/or commence administration;
- b. Prepare ticklers and progress chart of upcoming events and deadlines;
- c. Once court approves documents and appoints Personal Representative, publish Notice to Creditors by publication in appropriate newspaper and e-file proof of publication to court; prepare and mail Notice to Creditors by mail or delivery to known creditors;
- d. Mail or deliver Information of Appointment to interested parties; e-file to court;
- e. Send Personal Representative letter to client showing steps in the probate process;
- f. Prepare and file application for Employer Identification Number and obtain employer identification number and file notice concerning fiduciary relationship;
- g. Establish estate bank and/or brokerage accounts, maintain or monitor all estate records, including collections and payments;
- h. Correspond with banks, businesses, insurance companies, brokerage firms, employers, accountants, creditors or debtors and others to collect asset information and other pertinent information;
- i. Record death certificate with appropriate clerk and recorder's office to transfer property held in joint tenant ownership to joint tenant survivor;
- j. Arrange for and attend inventory of safe deposit box;
- k. Arrange for appraisals and correspond with accountants to obtain financial information on closely-held corporations, partnerships and sole proprietorships, and the review and study of such financial information;
- l. Prepare and review with attorney, interim court pleadings such as inventory, petitions for partial distributions, receipt and release;
- m. Prepare Request and Claim for Exempt Property and Family Allowances and review it with attorney; file with appropriate court;
- n. Correspond with court personnel regarding estate administration; if necessary, appear before the Magistrate in formal proceedings;

- o. Assist in processing medical claims;
  - p. Prepare and file claims for life insurance proceeds and death benefits; request Form 712, Statement of Insurance;
  - q. Assist client in address changes, notifying Social Security Administration, canceling credit cards, subscriptions and requesting refunds, notify major credit reporting agencies of decedent's death requesting fraud alert status and freeze on any new credit applications;
  - r. Check for sufficient insurance coverage on estate assets and any special insurance requirements;
  - s. Monitor specific bequests for timely distributions, draft corresponding receipt and release;
  - t. Request register of actions from the court at end of creditors period to determine if any claims have been filed against the estate and confirm status of court filings;
  - u. Prepare disallowance of claims against the estate, documents for sale of assets, *i.e.*, deeds and closing documents, for attorney review;
  - v. Confer with attorney regarding disclaimers of assets and preparation and filing of documents;
  - w. Draft papers to distribute assets for attorney review; transmit papers;
  - x. Prepare accounting;
  - y. Prepare for attorney review, all pleadings to close the estate, formally or informally; and
  - z. Conduct or assist in final conference with the client.
3. Taxes:
- a. Assist with post-mortem tax planning options;
  - b. Provide attorney with information necessary to choose estate's taxable year;
  - c. Request decedents' income tax returns for the last three years (including year of death) for prompt assessment under IRC § 6501(d);

- d. Consider alternative use of deductions on estate and income tax returns and review findings with attorney;
- e. Prepare for attorney review:
  - (i) Gift, federal and state estate tax returns, decedent's final income tax return and fiduciary income tax returns;
  - (ii) IRS forms for early determination under IRC § 2204 and power of attorney; and
  - (iii) Application for extension of time to file or pay estate taxes, if unable to file tax returns and pay estate taxes on time.
- f. Arrange for federal estate tax releases if property is sold prior to IRS acceptance of estate tax return;
- g. Prepare correspondence with tax authorities regarding audits for attorney review and signature;
- h. Prepare, for attorney review, all affidavits, declarations, or statements as requested by the IRS;
- i. Review pertinent documents; research related tax issues;
- j. Prepare for and attend audit conferences with attorney; and
- k. Mail copy of IRS Closing Letter to the Colorado Department of Revenue and request Certificate of Estate Tax Determination.

## **B. CONSERVATORSHIPS AND GUARDIANSHIPS**

- 1. Administration:
  - a. Participate in client interview;
  - b. Review information to determine client's relationship to incapacitated/protected person and discuss the need for temporary guardian/conservator or alternative care arrangements with attorney;
  - c. Review incapacitated/protected person's existing estate planning documents;

- d. Determine the extent of care that the incapacitated/protected person needs and the authority the guardian or conservator needs and discuss both issues with attorney;
- e. Assemble information re: priority of appointment and venue considerations for attorney review; prepare petition for appointment of guardian and/or petition for appointment of conservator, including list of protected person's assets, income, and list of heirs and interested persons;
- f. Obtain primary care physician's letter;
- g. Prepare and review with attorney, all necessary petitions and other court documents; obtain signatures; e-file with the court and set for hearing;
- h. Arrange for mailing or other service of notice of hearing to all heirs/interested persons, including personal service on incapacitated/protected person;
- i. If the court appoints a Court Visitor, contact the Court Visitor to provide any additional information required and/or arrange visit to incapacitated/protected person;
- j. Contact division clerk to determine judge's expectations as to testimony; assist attorney and client in preparing for hearing;
- k. Following hearing, obtain certified copies of Letters of Conservatorship/Guardianship and Orders;
- l. Inform conservator/guardian of duties and responsibilities;
- m. Obtain information re: value of assets; prepare inventory and financial plan for filing;
- n. Re-title protected person's assets in name of conservator, including recording Letters of Conservatorship in counties where protected person owns real estate, or arrange for sale of assets;
- o. Notify life insurance companies, health benefit companies, property insurance companies, and governmental agencies of appointment and change of address; cancel subscriptions and credit cards, if necessary; file medical insurance claims; arrange for payment of any loans, real estate taxes, income tax estimates, and review automatic deposits and withdrawals to bank accounts;
- p. Prepare and file with IRS notice concerning fiduciary relationship;
- q. Assist the conservator in opening conservatorship estate bank accounts;

- r. Consult with broker or investment advisor in assisting the conservator with investing of the protected person's assets under the Prudent Man Rule;
- s. Establish accounting system and prepare and file conservator's annual accounting and guardians report with the court;
- t. Prepare ticklers and/or progress chart of upcoming events and deadlines;
- u. Notify agents of revocation Power of Attorney;
- v. Review with attorney possible Medicaid concerns including "Utah Gap"/Medicaid Trust arrangements;
- w. Prepare for attorney review and after review, file a protected person's income tax returns, or work with family accountant;
- x. Obtain order approving distributions and change in investments as needed during administration; and
- y. Terminate conservatorship/guardianship estates under Court Clerk's procedure, upon the death of the protected/incapacitated person, the minor reaching majority, the assets are exhausted, or other reasons acceptable to the court; file IRS notice of termination of fiduciary relationship.

2. General Responsibilities:

- a. Arrange for documents to be signed; check for proper execution; arrange for filing of documents with court or other appropriate institution or agency;
- b. Keep timeline on schedule as to not miss filing dates set by the court; and
- c. Prepare all correspondence in connection with conservatorship or guardianship matters.

**C. TRUST ADMINISTRATION**

1. Administration:

- a. Obtain all trust documents and any amendments;
- b. Review trust documents, prior tax returns, and trust assets for familiarization;

- c. Prepare trust registration statement and notice, as required;
  - d. Apply for employer identification number, as required;
  - e. Calendar all deadline dates for trust administration, distributions to beneficiaries, and tax returns;
  - f. Confirm that all assets are in the trust's name; prepare and transmit all necessary documents to transfer any assets to trust as needed; follow up to verify that title transfer is complete and correct;
  - g. Establish accounting system;
  - h. Prepare and provide annual accounting to beneficiaries;
  - i. Calculate distributions required under the trust and arrange for payment;
  - j. Prepare for attorney review and after review, file fiduciary income tax returns, and arrange for payment of fiduciary income taxes and estimates;
  - k. Prepare for attorney review, documents for purchase and sale of assets during the course of trust administration; and
  - l. Upon trust termination, prepare final accounting, schedule of proposed distribution, and documents to transfer assets; follow up to see that transfers are complete and correct.
- 2. Prepare for attorney review, final fiduciary income tax returns with K-1s, and send to beneficiaries.
  - 3. General Responsibilities:
    - a. Arrange for documents to be reviewed and signed; check for proper execution; arrange for filing of documents with court or other appropriate institution or agency; and
    - b. Prepare all correspondence in connection with trust matters.

#### **D. ESTATE PLANNING**

- 1. Analysis of Estate Planning Needs:
  - a. Interview clients on the phone prior to appointment;
  - b. Participate in client interview;



- c. Review and outline current estate plan and advise attorney of results;
- d. Analyze disposition of assets based on current ownership; review all titling documents;
- e. Prepare tax calculations necessary for comparison of various estate plans; check tax issues or requirements associated with proposed plans;
- f. Monitor Colorado law to ensure conformity of plan;
- g. Assist with tracing funds relating to joint assets or community property; and
- h. Review stock transfer agreements, partnership agreements or LLC operating agreements for any restrictions on transfer of stock, partnership interest or membership.

2. Preparation of Documents:

- a. Wills:
  - (i) Draft wills for attorney review;
  - (ii) Send drafts to client with explanation of tax planning issues; and
  - (iii) Docket a planned follow-up date to contact client if no response by that date.

b. Trusts:

- (i) Draft trust agreements for attorney review:
  - (1) Revocable Trusts;
  - (2) Irrevocable Trusts;
  - (3) Life Insurance Trusts;
  - (4) Grantor Protective Trusts;
  - (5) Minor's 25038 Trusts;
  - (6) GRATs, GRITs, GRUTs, CRATs, and CRUTs;

(7) Personal Residence Trusts; and

(8) "Crummey" Trusts.

(ii) Send drafts to client with explanation of tax planning issues; and

(iii) Docket follow-up date on which to contact client if they fail to respond before then.

c. Other Estate Planning Documents:

(i) Draft living will, medical powers of attorney, tangible personal property memorandum, last wishes declaration, appointment of guardian form, general durable power of attorney, Colorado statutory power of attorney, nominee partnership agreement and nominee assignments, deed, affidavit of trust, trade name affidavit, general assignments, stock or bond transfer documents, Form SS-4 application for employer identification number, trust registration statement, withdrawal notices for Crummy trusts, and client's closing notebook, for attorney review;

(ii) Send drafts to client with explanation of tax planning issues;

(iii) Docket follow-up date on which to contact client if they fail to respond before then; and

(iv) Meet with clients to review and finalize the draft documents.

3. Execution and Implementation of Estate Plan to Achieve Desired Disposition of Assets:

a. Supervise or witness execution of wills, trusts, living wills, powers of attorney and other estate planning documents; review these documents to ensure all necessary signatures;

b. Re-title real property by recording of deed;

c. Record affidavit of trust;

d. File trade name affidavit;

e. Process beneficiary designation forms and/or change of ownership forms with life insurance company or other death benefit providers (*i.e.*, IRAs and annuities);

f. Transfer ownership of assets by processing assignments of bank accounts, stocks, bonds, LLC memberships, and partnership interests; complete any additional requested documentation to effectuate transfer;

g. Obtain taxpayer identification number;

h. File trust registration statement with the Court and send notice to beneficiaries;

i. Obtain from life insurance company Form 712 or other statement of current policy value for gift tax purposes;

j. Process withdrawal notices for Crummy trusts; and

k. Follow up to see that transfers are complete and correct.

4. Finalize the Estate Plan:

a. Prepare closing book or notebook of will, trust and other estate planning documents, including all transfer documents; and

b. Draft letter to client transmitting original documents (or confirming location of original documents) and/or closing notebook; letter should: explain any changes of ownership and re-titling of assets; summarize estate planning documents; with attorney's direction, inform client regarding titling of future assets; or destroying all previous original wills and estate planning documents as appropriate; inform client to review estate plan periodically.

5. Gift Tax Returns:

a. Docket any gift tax return filing deadlines;

b. Review and revise analysis of gift tax consequences of estate plan, including gift taxes associated with joint tenancy;

c. Prepare gift tax returns for review by attorney; and

d. Arrange for execution and filing of returns.

6. General Estate Planning:

a. Draft all correspondence;

b. Maintain office's estate planning form files, including drafting new forms or new provisions in compliance with changes in state or federal statutes or tax laws;

c. Maintain notebook of unusual provisions for estate planning documents for future reference; and

d. Perform any research required.

#### **E. BILLING BY PARALEGALS**

Billing occurs whenever a paralegal does the work an attorney would usually do but has asked the paralegal to do under the supervision of the attorney. This would include the following:

1. Interviewing clients.
2. Drafting document.
3. Reviewing documents.
4. Telephone calls with clients.
5. Analyzing documents.
6. Preparing for trial, reviewing file, updating attorney on status of matter.