

McManus
&
McManus, P.A.

Attorneys at Law

R. Bruce McManus, President
Board Certified Wills, Trusts and Estate Lawyers
Fred J. McManus 1904-1983

Mary McManus Taylor

Living and Dying with a Living Trust

In order for assets to become subject to the terms of a Living Trust, there must be a properly written and executed trust document and the assets must be registered in the name of the Trustee. This is true of all assets, including bank accounts, securities and real estate. When a Settlor named John Smith (SS#555-12-1234) is the Trustee of his own Trust, a correct registration would be: **John Smith, Trustee, John Smith Trust dated May 1, 1988, I.D. #555-12-1234.**

Whenever someone other than the Settlor or maker of the Trust is named Trustee, the Trustee will have to obtain a tax ID number from the IRS, rather than using the Grantor's SS# as the I.D. number. This is done by application to IRS on Form SS-4.

Whenever the Trustee is someone other than the Settlor, the Trustee must file a 1041 income tax return. Where the Settlor is Trustee of his own Trust, the Trust income may be reported on the Settlor's personal 1040 income tax return.

Where the Settlor/Trustee of a Revocable Living Trust dies or becomes incapacitated, the Successor Trustee must:

1. Take possession of the assets.
2. Pay all legal obligations.
3. File tax returns and pay all taxes that are owed.
4. Identify the beneficiaries.
5. Make distributions in accord with the provisions of the Trust.
6. File in the probate court, in the county where the Settlor lived, a Notice of Trust, Acceptance of Trust and Affidavit of No Estate Tax Due, where the asset value is under \$2 million. Where the estate value exceeds \$2 million, a Federal Estate Tax Form 706 must be filed.

A Trustee is a fiduciary and, as such, has a responsibility to the beneficiaries to see that they get what they are entitled to. However, the Trustee also has a duty to see that creditors are paid and Uncle Sam gets any taxes that are owed.

People appointing Trustees and people accepting appointment as Trustee must be aware of these responsibilities.