PRESENTED AT

The University of Texas School of Law
21st annual Estate Planning, Guardianship and Elder Law Conference

August 1-2, 2019
Moody Gardens, Galveston, Texas

TROUBLE WITH ACCOUNTINGS:
FROM CHECKLISTS TO TRAPS

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INTRODUCTION TO ACCOUNTINGS

The trouble with accountings is they are trouble. The process of keeping good records in real time for the benefit of another person is a challenging job for most people. The old saying, "the devil is in the details" is so true with accountings. When tackling accountings, the recommended approach is to begin with the code sections in mind, and to communicate requirements and expectations with your client as early as possible.

The Texas Estates Code and Texas Property Code provide the statutory requirements for accountings when a fiduciary duty is present. A fiduciary could be an executor, dependent administrator, trustee, guardian, or agent under a durable power of attorney. In each of those capacities, the fiduciary owes the duty of full disclosure and accounting to persons interested in the estate. The interested person might be a beneficiary of the estate, a ward, or principal with a durable power of attorney. Below is a summary of the types of accountings required on an annual basis, on account for final settlement (final accountings) and upon demand by an interested person.

The type of accounting and exact duty owed by the fiduciary will determine the requirements. Generally, the applicable statutes require the fiduciary to fully disclose the details and status of the management of the estate to the persons who are entitled to such information. Part of this fiduciary duty is to provide the information and supporting documentation necessary for full disclosure of the estate's condition. This rather administrative act is one of the hardest for fiduciaries to meet and requires meticulous record keeping by the fiduciary. If there is a problem, it is most often the lack of "maintenance" that will cause the client trouble. E.g. did the client keep the assets properly invested, diversified, preserved, not co-mingled, and obtain all necessary court authorizations?

How to Prepare from the Beginning. When approaching the first annual accounting, review the Inventory, Appraisement, and List of Claims filed in the case for mistakes, errors or changes in property. Keep in mind it may be necessary to file an amended Inventory to provide an accurate starting point for your first annual accounting. If the annual accounting is the second or greater, do review the previous accounting for changes or possible issues. Since the fiduciary will be required to balance back to the last ending balance on the Inventory, Appraisement, List of Claims, or last Annual Accounting, it is prudent to start with the last report.

Meet with your client and give the client detailed instructions as to what is necessary to provide an accurate accounting. Best practice includes having the annual accounting discussion well before the deadline. Consider having this discussion when the fiduciary is first appointed. Remind the client of what acts can be done with and without court approval as well as the need to keep good records.

PRACTICE POINT: Often, it is necessary to formally request records from the financial institutions. Consider having the client sign a letter of authorization providing the law firm

Title search: The Trouble with Accountings: From Checklists to Traps

First appeared as part of the conference materials for the
21st Annual Estate Planning, Guardianship and Elder Law Conference session
"The Trouble with Accountings: From Checklists to Traps"