

# What You Need to Know When You Become an Estate Trustee, Part I

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A fellow chiropractor and good friend of mine, Harlen Johnson, DC, lost his remaining parent about a year ago. He was named the trustee of his mother's estate. He acquired a wealth of information about being a trustee and kindly agreed to put it down in writing. Though I have condensed his letter considerably, I am deeply indebted to him for permitting me to use this information. Following are some key points that might help the reader realize the sensitivity, complexity and costs of estate trusteeship.

As you know, Mom passed away about a year ago. In that year, I have learned what happens when your last living parent is no longer with you. Besides the great emptiness one feels knowing that a lifetime mentor is no longer available to provide guidance, one is saddled with the responsibility of dealing with the estate, funeral, hospital, etc.

Mom was diagnosed with multiple myeloma. I took her to the hospital after she developed foot drop in her right leg. By the end of the first week, she had lost function of both legs, and her arms were beginning to lose strength. By the end of the second week, she was a quadriplegic and was left with only cranial nerve function. In 20 years of practice, I have never seen a person deteriorate so quickly. She took all of this in stride, and I marvelled at her strength and faith. We cried, we prayed, and we shared important memories together.

As fortune would have it, we had been to an attorney about six months earlier to have a new living revocable trust drawn up. My mother and stepfather had not been getting along for many years. He had been trying to get Mom to sign over her assets to him. She refused. Instead, she separated all her assets and community property from him and purchased his interest in their condominium. Unfortunately, Mom had not signed her new trust documents, durable power of attorney for health care or durable power of attorney for finance.

I got the draft copies, and she directed some changes, but since it was near Christmas, it took almost a week before the new trust and other documents were ready. Mom's ability to use her hands was failing quickly. Locating a notary public on a Saturday was next to impossible. By the time I found one, Mom was so weak that she could hardly hold the pen.

## Point One

Don't end up doing this at the last minute. Had Mom not been able to sign, and had we not been able to find a notary public, we would not have been able to set up the new trust. Her old trust would have been in force.

## Point Two

Make sure that you have a durable power of attorney for both health care and finance. They must be titled durable power of attorney. An ordinary power of attorney is good only until the person on whose behalf it is written becomes mentally incompetent. Once this happens, the power of attorney

is no longer in force, since the person for whom you are acting can no longer direct your actions. A durable power of attorney allows you to continue to act on their behalf even if they should become mentally incompetent. This document is stronger than a living will.

Many people think that once they set up a trust, that's all they have to do. Even though Mom had a trust in the past, it was not funded. Armed with my durable power of attorney for finance and a copy of the new trust, I went to the bank and placed the checking and savings accounts into the trust.

When I got the deed to the condo, I found that my stepfather had placed a "life estate" clause in the new deed. This clause gave him the use of the master bedroom and bathroom of Mom's condo free of charge as long as he was alive. Mom hadn't realized what this meant, and it would have been impossible for us to sell the asset with this clause in place. I consulted with an attorney, and he wrote up another deed sans the life estate clause. After some extended discussions, my stepdad reluctantly signed the new deed. I rushed to courthouse to record this new deed the same day (this item appears as a problem later).

### Point Three

Be sure to fund the trust. Ownership of the assets (bank accounts, real estate and stocks) must be changed over to the trust. If no assets are in the trust, then the estate will have to be probated following the will, if there is one, or the directives of the probate court.

### Point Four

Trusts differ from wills in that they are not subject to probate since the trust owns the assets, not the individual. In most cases, trusts will save both state and federal taxes. With living or revocable trusts, items such as stocks and real estate may be passed to heirs at the value of the item at the time of death rather than the original purchase price. This feature most often eliminates capital gains taxes.

If you have a will but not a trust, federal estate taxes range from 37% to 55% for every dollar above the 1999 \$650,000 exemption. In addition, individual state laws and length of probate vary, adding further costs and complications to the wishes of the deceased. Either way, attorney's fees must be included.

The second part of this important discussion will be published in the April 5th issue of *Dynamic Chiropractic*. Aloha.

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