

Fiduciary Accountings: As Easy as 1,2,3?

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1. Introduction

- a. A fundamental responsibility of a fiduciary is to account to beneficiaries.
- b. A fundamental right of a beneficiary is to receive an accounting from the fiduciary.
- c. A beneficiary who finds fault with the administration by the fiduciary may seek redress from the court.
- d. We will focus on two types of fiduciaries: trustees and personal representatives.

2. Accountings by Trustees¹

- a. A trustee must account to qualified beneficiaries at least annually.²

¹Florida Trust Code §§736.0813, 736.08135

²Florida Trust Code §736.0813(d)

An action for breach of trust based on matters disclosed in a trust accounting or other written report of the trustee or a trust director may be subject to a 6-month statute of limitations from the receipt of the trust accounting or other written report. If you have questions, please consult your attorney.

- i. This requirement cannot be waived in the trust instrument.³
 - ii. But it can be waived by the beneficiary.⁴
- b. An accounting by a trustee must be from the date of the last accounting or from the date on which the trustee became accountable.⁵
 - i. Consider potential for gaps with changes of trustees.
- c. An accounting by a trustee must be reasonably understandable.⁶
 - i. A high bar!
- d. An accounting by a trustee must begin with a statement identifying the trust, the trustee furnishing the accounting, and the time period covered by the accounting.⁷
- e. An accounting by a trustee must show:⁸
 - i. All cash and property transactions;

³Florida Trust Code §736.0105(2)(s)

⁴Florida Trust Code §736.0813(2)

⁵Florida Trust Code §§736.0813(d), 736.08135(1)

⁶Florida Trust Code §736.08135(1)

⁷Florida Trust Code §736.08135(2)(a)

⁸Florida Trust Code §736.08135(2)(b)

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- ii. All significant transactions affecting administration;
 - iii. Compensation paid to the trustee and the trustee's agents;
 - iv. Gains and losses realized during the accounting period; and
 - v. All receipts and disbursements.
- f. To the extent feasible, an accounting by a trustee must:⁹
- i. Identify and value trust assets on hand at the close of the accounting period
 - ii. Contain two values for each asset or class of assets reasonably capable of valuation. The two values are the asset acquisition value, sometimes referred to as the carrying value, and the estimated current value.
 - iii. Identify each known noncontingent liability with an estimated current amount of the liability if known.
 - iv. Show significant transactions that do not affect the amount for which the trustee is accountable, including name changes in investment holdings, adjustments to carrying value, a change of custodial institutions, and stock splits.

⁹Florida Trust Code §736.08135(2)(c)

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- g. When the allocation between principal and income affects the interest of any beneficiary, an accounting must reflect the allocations for receipts, disbursements, accruals, and allowances.¹⁰
- h. A final accounting by a trustee must include a plan of distribution for any undistributed assets.¹¹
- i. As a transitional rule, these requirements govern the form and content of trust accountings rendered for any accounting periods beginning on or after January 1, 2003, and all trust accountings rendered on or after July 1, 2018.¹²
 - i. Less and less likely to be relevant.
- j. An accounting by a trustee is not required to include any particular notice.
 - i. However, for matters adequately disclosed in an accounting by the trustee are subject to a shortened statute of limitations if a limitations notice has been provided.¹³

¹⁰Florida Trust Code §736.08135(2)(e)

¹¹Florida Trust Code §736.08135(2)(f)

¹²Florida Trust Code §736.08135(4)

¹³Florida Trust Code §736.1008

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“An action for breach of trust based on matters disclosed in a trust accounting or other written report of the trustee or a trust director may be subject to a 6-month statute of limitations from the receipt of the trust accounting or other written report. If you have questions, please consult your attorney.”¹⁴

- ii. Generally, a statute of limitations will not begin running for matters not adequately disclosed.
 - iii. However, even for matters not adequately disclosed, the chapter 95 statute of limitations will apply for a final accounting by a trustee if the trustee gives “written notice to the beneficiary of the availability of the trust records for examination and that any claims with respect to matters not adequately disclosed may be barred unless an action is commenced within the applicable limitations period provided in chapter 95.”¹⁵
- k. An accounting by a trustee does not appear to require a signature.

¹⁴Florida Trust Code §736.1008(4)(a)

¹⁵Florida Trust Code §736.1008(1)(b)

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- l. An accounting by a trustee must be provided to qualified beneficiaries.¹⁶
 - i. Representative provisions expressly apply to accountings.¹⁷
- m. The duty of a trustee to account may be waived. However, the waiver must be in writing. A withdrawal of a waiver applies only to future accounting periods.¹⁸
- n. A notice by a trustee must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.¹⁹
 - i. First-class mail, personal delivery, delivery to the person's last known place of residence or place of business, a properly directed facsimile or other electronic message, including e-mail, or certain postings on a secure electronic account or website.

¹⁶Florida Trust Code §736.0813(d)

¹⁷Florida Trust Code §736.0301(1)

¹⁸Florida Trust Code §736.0813(2)

¹⁹Florida Trust Code §736.0109(1)

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3. Accountings by Personal Representatives²⁰

- a. A personal representative is only required to account when the administration of the estate has been completed.²¹
- b. A personal representative may elect to file an interim accounting at any time.²²
- c. A court may require an interim accounting of a personal representative.²³
- d. An accounting by a personal representative must include:
 - i. All cash and property transactions since the date of the last accounting or, if none, from the commencement of administration; and
 - ii. A schedule of assets at the end of the accounting period.²⁴

²⁰Florida Probate Code §733.604, Florida Probate Rules 5.346

²¹Florida Probate Rule 5.400(a)

²²Florida Probate Rule 5.345(a)

²³Id.

²⁴Florida Probate Rules 5.346(a)

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- e. An accounting by a personal representative must follow certain standards.²⁵ The standards are based upon the Uniform Fiduciary Accounting Principles adopted by the Committee on National Fiduciary Accounting Standards.²⁶ The standards require that the accounting:
- i. Be stated in a manner that is understandable to persons who are not familiar with practices and terminology peculiar to the administration of estates;
 - ii. Begin with a concise summary of its purpose and content;
 - iii. Contain sufficient information to put interested persons on notice as to all significant transactions affecting administration during the accounting period;
 - iv. Contain two values in the schedule of assets at the end of the accounting period, which are the asset acquisition value (sometimes referred to as the carrying value) and the estimated current value;
 - v. Show gains and losses separately in the same schedule; and

²⁵Florida Probate Rules 5.346(b)

²⁶Committee notes to Florida Probate Rule 5.346

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- vi. Show significant transactions that do not affect the amount for which the personal representative is accountable.

- f. As a transitional rule, these requirements are for accountings by personal representatives occurring on or after January 1, 1994.

- g. A model format is provided in an appendix to the rules but that format is not required and is only a suggested form.²⁷

- h. An accounting by a personal representative must be verified.²⁸

- i. The initial accounting by a personal representative must begin with the inventory.
 - i. Of course, the inventory may be amended if necessary to match up with the initial accounting.

- j. The requirements for personal representatives also apply to similar fiduciaries, such as curators.

- k. An accounting by a personal representative is required to include a notice to the beneficiaries.

²⁷Florida Probate Rule 5.346(c); committee note to Florida Probate Rule 5.346

²⁸Florida Probate Rule 5.346(d)

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- i. An accounting by a personal representative other than a final accounting must include a notice that discloses that objections must be filed within 30 days from the date of service of the notice.²⁹
 - ii. A final accounting by a personal representative is generally filed with a Petition for Discharge.³⁰ The Petition for Discharge, not the final accounting, is required to include notice that (i) any objections must be filed within 30 days from the date that service of both the Petition for Discharge and the Final Accounting and (ii) within 90 days after filing the objections a notice of hearing on the objections must be served.³¹
- l. An accounting by a personal representative is required to be verified, which requires a signature.³²
- m. A notice by a personal representative must comply with court rules.³³
- i. First-class mail, personal delivery, e-mail, etc.

²⁹Florida Probate Rule 5.345(b)

³⁰Florida Probate Rule 5.400

³¹Florida Probate Rule 5.400(b)(6)

³²Florida Probate Rules 5.020(e), 5.346(h)

³³Florida Probate Rule 5.41

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4. Potpourri of accounting considerations
 - a. Accounting Period
 - i. When should an accounting period end?
 - b. Timing requirements
 - i. When should an accounting be provided?
 - c. Deceased fiduciaries
 - i. Who has to account when a fiduciary dies?
 - d. Compensation of fiduciary
 - i. When to show on an accounting?
 - e. Financial statements are not necessarily enough
 - i. Unless the trustee is a family trust company.³⁴
5. Practical Practice Ideas

³⁴Florida Trust Code §736.08135(3)

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- a. Narrative report
 - b. Combined accounting for estate and formerly revocable trust
 - c. Uncooperative beneficiary
6. Conclusion

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Appendix 1: Estate and Trust Interim Combined Accounting

Appendix 2: Court Approval of Trust Accounting

2.1 Complaint for Approval of Trust Accounting

2.2 Accounting for Trust as Exhibit to Complaint

2.3 Final Judgment Approving Administration and
Distribution of Trust

Appendix 3: Estate Accounting

3.1 First Interim Accounting for Estate

3.2 Final Accounting for Estate

Appendix 4: Sample Narrative

Appendix 5: Bonus: Sample Trustee Duties Memorandum

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