

THE BENEFITS OF A CORPORATE EXECUTOR

One of the most important decisions you will make during the estate planning process is choosing an executor to settle your estate after your death. For some, the first person that comes to mind to fill that job is a family member or a close friend. When considering the selection of an executor, it is important to have a clear understanding of the full scope and complexity of an executor's duties and obligations. Once the duties and obligations are more fully understood, people often recognize that serving as an executor is not just an honorary title, but also a complex job that requires special expertise and skill that a professional can provide.

Duties of an Executor

The duties of an executor¹ will vary depending upon both the jurisdiction in which you reside and the complexity of your assets and estate plan. These duties often include:

- *Navigating Probate Matters* – locating and filing the will with the appropriate probate court; providing notice to beneficiaries; securing appointment as executor; opening an estate account; preparing and filing an inventory and estate accountings showing all assets, income and disbursements; notifying creditors and settling claims against the estate; meeting with heirs, explaining the probate process and setting expectations for disposition of estate assets; and conducting ancillary probate proceedings in another state if the decedent has property located there.
- *Collecting and Valuing Assets* – opening an account for the estate to handle receipts and disbursements; locating and securing all estate assets; collecting bank accounts, investment accounts and life insurance policies; obtaining medical, long-term care, homeowners or other insurance refunds due the estate; obtaining survivor pension or annuity benefits; arranging for date of death valuations and appraisals of tangible assets, real estate and investment assets; and overseeing the transfer or rollover of the decedent's retirement accounts.
- *Tax Matters* – preparing the decedent's final income tax return, estate income tax return, and federal and state estate tax returns; responding to audits of these returns (note that an estate tax return reporting a tax due generally is more likely to be audited than the average income tax return); and making post-mortem tax elections such as the election to use an alternative valuation date for estate assets, the qualified

terminable interest property election for assets passing to a spouse, and selecting a fiscal or calendar year for the estate income tax return.

- *Asset Management* – overseeing the investment of estate assets during the period of administration; selling or otherwise disposing of real estate assets; and selling or otherwise disposing of tangible assets.

As a result of the breadth and complexity of the duties outlined above, the estate administration process is a lengthy one, with a sophisticated estate taking 18 to 36 months to settle. In addition, it's important to understand that an executor is legally responsible for carrying out the decedent's wishes and complying with all applicable laws and tax reporting obligations. Depending on the location of the decedent's assets, this can require knowledge of estate, inheritance or other taxes in multiple jurisdictions.

Choosing an Executor

The duties outlined above give some indication of the complexity of an executor's role in the estate settlement process. A family member or friend named as executor most likely will have to hire professionals to perform services such as appraising assets; selling real estate, art and tangibles; handling probate filings; managing investments; and preparing tax returns. To ease this burden, the family member or friend might hire a professional to act as his or her agent for coordinating the overall administration of the estate. In this role, the agent will perform those services for which it has the expertise and retain other professionals as needed.

Alternatively, during the estate planning process one might name a professional to serve as the executor or co-executor with a family

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¹ Under the recently enacted Massachusetts Uniform Probate Code, in Massachusetts an executor will be referred to as "personal representative" of the estate beginning in 2012.

WHEN THE TIDE GOES OUT

Last winter we wrote that the global economy would decelerate starting this summer and the slowdown would deepen as we got into the fall. This summer there were signs of optimism still extant, such as a strong uptick in insider buying as the market sold off in early August. Spots of economic strength remained in some of the export-related industries in the upper Midwest as shown by Caterpillar's earnings numbers. Oracle reported surprisingly strong earnings, demonstrating corporate demand for their productivity-enhancing technologies. But headlines about the European financial crises, the U.S. deficit problems and the slowdown in the emerging markets eventually drowned out these positive news items. As the economic tide now ebbs, what ugly truths will be exposed about corporate and bank balance sheets as well as sovereign solvency? How will the spreading recessions in Europe affect other regions in the European Union (EU) and elsewhere?

Europe

The European crisis stems from an underlying structural problem of the EU. The EU monetary union was established in the late 1990s with the introduction of the euro. But fiscal union was never created. While the 1997 Stability and Growth Pact established EU-member guidelines for levels of debt and deficits relative to a country's GDP, every country except Finland has violated these limits. Italy and Greece have multiples of the debt to GDP ratio stipulated by the Pact. The budget deficits of Greece, Spain and Portugal, as percentages of GDP, all exceed 9%. Even the major growth engines of Europe, France and Germany, have debt to GDP ratios approaching 90%, above which historical analyses suggest a country's growth rate begins to diminish to an anemic 1% to 2% per year due to the debt burden.

As evidenced by the stock and bond markets, Portugal, Ireland, Italy, Greece and Spain (the PIIGS) are in financial trouble and Greece is close to default. Even if tiny Greece, small as it is, were to default, it would send shock waves through major EU banks. These banks hold more than \$188 billion in Greek, Irish, Portuguese and Spanish sovereign debt. Germany alone holds more than \$50 billion in Greek debt. The European Central Bank has never required reserves for a bank's holding EU sovereign debt, so these banks loaded up their balance sheets with this questionable paper. If appropriate "haircuts" to banks' capital were to be taken on this sovereign debt, many of these major and second-tier banks might be bankrupt.

The EU, the European Central Bank (ECB), the International Monetary Fund (IMF) and individual countries are all scrambling to determine a politically acceptable strategy for resolving these issues. Should Greece be allowed to default and thereby leave the EU? In that case, EU banks would need to be nationalized to keep them

solvent. But it would be cheaper, perhaps, than continuing the bailouts of Greece and potentially other PIIGS countries. As an example of how distorted Greek markets are, real Greek wages need to fall by 30% in order to be competitive. Bailouts allow this discrepancy to continue. A default might also instill more market discipline for the other EU countries to clean up their sovereign balance sheets through austerity and privatization. Paying bailout money to Greece and others might buy time and calm the markets, but its cost puts at risk the solvency of even the strongest EU members.

The Emerging Markets

China and India have clamped down hard on growth as a way to fight their own domestic inflation. We now think they have possibly overstayed their tight monetary and fiscal policies. Shipments of raw materials into China have fallen, as have prices paid for these goods. Current copper prices, which peaked last February above \$4 per pound, are now trading in the low \$3 range and suggest a widespread and serious deceleration that will adversely affect China's and India's suppliers. Taiwan, Korea and Australia are three such markets.

Focus on the U.S.

As the U.S. economy slows to a crawl, it becomes vulnerable to external shocks that can shake consumer, investor and company-management confidence and tip the economy into a recession. Examples of such shocks can include natural disasters, labor strikes, oil price increases or growing uncertainty about government policy directions. We have been aware that we were reaching this window of vulnerability as August turned to September, but we remained hopeful that the economy would remain resilient.

While we cannot pinpoint one specific event that might tip the U.S. economy into recession, the Economic Cycle Research Institute's (ECRI's) leading indicators show increasingly ominous indicator trends over the past two months. Consider some of the events over the summer that could have sapped consumer confidence and worried business leaders: the potential for the U.S. to default on its debt; the ongoing worries of deficits; and the unresolved solvency issues in Europe and how these could adversely impact European banks and, ultimately, the U.S. financial system. Policy responses have been short-term in nature, adding to investor uncertainty. Underlying issues remain unresolved. We now see ourselves on a track to recession in this country.

Traditionally, taking on more debt has powered an economy out of recession, since borrowing can represent consumption today at the expense of future growth. This is no longer a viable answer to grow our economy. The table on the next page, from Ned Davis Research, shows the decreasing marginal effect of additional debt to the U.S.



economy over the past 60 years. Since World War II, we have had to borrow more and more to stimulate our economy, getting less and less in future return. Such diminishing returns on increased debt means we must use other strategies to grow and stimulate our economy.

Diminishing Returns from Total-Market Debt Financing by Decade
12/31/1949 - 6/30/2011

Date Range	Decade Change in Debt (Billions of Dollars)	Decade Change in GDP (Billions of Dollars)	Change in Debt/ Change in GDP
12/31/1949 - 12/31/1959	\$337.6	\$248.0	1.36
12/31/1959 - 12/31/1969	\$752.1	\$491.3	1.53
12/31/1969 - 12/31/1979	\$2,785.2	\$1,654.9	1.68
12/31/1979 - 12/31/1989	\$8,562.8	\$2,922.3	2.93
12/31/1989 - 12/31/1999	\$12,549.7	\$4,026.0	3.12
12/31/1999 - 12/31/2009	\$26,957.9	\$4,479.7	6.02
12/31/2005 - 6/30/2011 *	\$11,273.5	\$2,095.4	5.38

* Last 5.5 years using most recent data available

Source: Ned Davis Research

We are in a period of compressed market and economic cycles that will have anemic rebounds punctuated by frequent slowdowns and recessions. An important potential by-product of more frequent recessions is the higher probability of deflation. This becomes a devastating outcome because consumption falls as consumers wait for cheaper prices. Japan has faced this as it has struggled through almost two decades of low to no growth. We already see this condition causing a severe contraction in the housing market here in the U.S. Yet the emerging market middle class will consume more and more, keeping upward pricing pressure on global raw materials such as oil and copper. Well-managed companies will be able to navigate these complexities, providing themselves with important competitive advantages.

Our Investment Response

We now see a business-cycle rebound, led by manufacturing, developing towards the middle of next year. Investors will become aware of this future bright spot as 2012 progresses. But in the near term, we face more difficult economic times. As a global recession becomes more likely, exports and manufacturing will be hurt. Financials will feel further effects of the EU crisis. If asset prices correct globally, as we expect they will, we will look for attractive opportunities to arise. These may show up in Europe and in the emerging markets where stocks have already started selling off. We have chosen international equity managers and bond managers who continue to sift through the markets to find attractive investment opportunities. Similarly, we see many corporations, especially in the U.S., with healthy balance sheets and large cash reserves. These companies, which are more efficient than they were even two years ago, may become attractive to buy as well. As recessionary conditions spread, we realize that we must help protect our client portfolios through diversification. U.S. and international equities and bonds, commodities and low-volatility hedge funds are all part of this equation. Balancing the ingredients in this potpourri is the final part of what we do to maintain competitive returns while working to protect client wealth. ■

NEWS AND NOTES

○ | **Jennifer DeSisto, CFA, Joins the Fiduciary Team**

We are pleased to announce that in August, Jennifer DeSisto, Chartered Financial Analyst, joined Fiduciary Trust as Vice President and Investment Officer. Jennifer brings with her 15 years of financial industry experience, most recently as a portfolio manager at Batterymarch Financial Management.

○ | **United Way Project**

For more than 15 consecutive years, Fiduciary Trust has participated in the annual United Way's Community Care Day. In September, a team of Fiduciary Trust employees, led by Howie Cowan, volunteered at the Revision Urban Farm in Dorchester, where they spent the day gardening, weeding, harvesting vegetables and composting.

○ | **Fiduciary Officers in the News**

In July, Bob Holdway was quoted in the *Boston Business Journal* in an article about the expiration of Bush-era tax cuts. In August, *Massachusetts Banker* included quotes from Randy Kinard in a feature on challenging times for wealth management. In September, Mike Mullaney discussed economic issues on *Bloomberg* and *Yahoo Finance* websites as well as in a radio interview.

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member or friend. This approach would relieve family members and friends from the burden of determining the services needed and retaining appropriate providers in the aftermath of a loved one's death. With all of the complexities, and in light of the legal responsibilities and liabilities involved, the choice of a corporate executor to serve alone or along with a family member or friend can be a good one. In addition to expertise, a professional serving as an agent or executor can provide additional benefits.

Continuity & Expertise

The appointment of a corporate executor ensures continuity of service during the entire estate administration process. As noted above, the estate administration process can be a lengthy one to complete. Given this long period of time, the use of a corporate executor can relieve an administrative burden on family members who, at that time, may not be able to adequately cope with financial decisions or estate administrative matters.

In addition, a corporate executor immediately brings to bear its investment, legal and tax expertise so that it can settle the estate more efficiently and with less risk. A corporate executor's knowledge of the legal and regulatory framework governing estate settlement procedures will create a more orderly and efficient estate settlement process. If a problem does arise, such as a tax audit or will contest, a corporate executor has the experience and expertise to protect the integrity of the estate plan.

Independence & Impartiality

The settlement of an estate will often involve multiple family members and sometimes extended branches of the family as beneficiaries and interested parties in an estate. Unfortunately, immediate and/or extended family members may not always agree on certain issues, and communication among family members may not be easy or free-flowing. This, of course, may be exacerbated during difficult times following the death of a family member and when dealing with financial matters. A corporate executor can often alleviate such problems by being the independent arbiter and by demonstrating impartiality during the settlement of the estate. A responsible corporate executor will have regular contact and establish a relationship with interested family members who are beneficiaries of the estate and be available to the beneficiaries throughout the estate settlement to answer any questions and keep them informed on the settlement process. A corporate executor brings independence and objectivity and can administer the estate with fairness.

Family Unity

When naming an executor, you should consider the impact on the individual who is named. The role of executor necessarily requires decision-making, which will affect interested parties in the estate. For example, if real estate must be sold, the real estate broker who is chosen, the marketing plan and the sales price are all decisions that

the executor must make and, accordingly, are subject to scrutiny and/or criticism by the beneficiaries. When tangible assets must be distributed in equal shares among surviving children, for example, while the value of those shares may be required to be equal, it is the executor who often has the discretion as to what specific items beneficiaries will receive. When several people want the same item, such as an individual piece of artwork, furniture or jewelry, the executor must deal with this situation fairly.

Decisions the executor has to make are not always easy, and family dynamics may be negatively affected if one child is chosen to serve as executor and he or she is solely responsible for decisions affecting other children or family members. For some, the answer to the problem is to appoint multiple children to serve together as co-executors. But this may create another set of issues. If siblings are acting as co-executors and disagreements arise, important and time sensitive estate administration decisions may be delayed. And more importantly, family relationships may suffer. Long-standing family issues can sometimes surface after the death of a parent or family member. This can be a difficult time for a group of family members to work together and seek compromise.

An independent corporate executor serving alone or with a family member can be very helpful in these situations and can serve to promote and preserve family unity. The corporate executor is a neutral party who can work with all family members toward a resolution of any issues that may surface.

Post-Death Planning

Since there is such a focus on estate planning prior to death, many don't appreciate that there can be opportunities for planning after death. An experienced and knowledgeable executor can implement some very effective post-death planning. The use of post-death planning and post-mortem elections can serve to reduce estate and income taxes. For example, a "disclaimer" is a refusal to accept a gift or bequest and can be useful in allowing a beneficiary to redistribute estate property without incurring transfer taxes on the redistribution. The preservation of estate assets for the beneficiaries is a primary duty of an executor. An experienced and knowledgeable corporate executor who knows how to implement post-death planning can fully maximize those assets passing in accordance with a decedent's estate plan.

Conclusion

At Fiduciary Trust, our Legal Department provides a full range of estate administration services. In many instances, we serve as an agent for family members and friends who are serving as executor. More often, however, our clients learn about the issues discussed above while considering their estate plans and decide to name Fiduciary Trust as an executor in their wills. ■

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