

FIDUCIARY DUTY OF CARE

Personal Representative Elevated Duty:

As personal representative, you are required to exercise an elevated responsibility or 'duty of care' to the estate and to everyone who has an interest in the estate. This is a serious responsibility with legal implications.

Please, do not hesitate to consult an experienced probate attorney if you have any questions regarding your duties or actions as the personal representative.

Fiduciary Duty:

A fiduciary duty is a legal duty to act solely in another party's interests. Parties owing this duty are called fiduciaries. The individuals to whom they owe a duty are called principals.

In a fiduciary relationship, one person, in a position of vulnerability, justifiably vests confidence, good faith, reliance, and trust in another whose aid, advice, or protection is sought in some matter. Fiduciaries are not allowed to profit from their relationship with their principals unless they have the principals' express informed consent. Fiduciaries also have a duty to avoid any conflicts of interest between themselves and their principals or between their principals and the fiduciaries' other clients. A fiduciary duty is the strictest duty of care recognized under the legal system.

There are several fiduciary duties you should be aware of as the personal representative in a probate case. Some examples of duties you have to perform include:

- Taking possession of all property the deceased person owned on death
- Paying all expenses of the estate
- Making full and fair payment for all creditor's claims
- Providing appropriate accounting for all actions that have been taken
- Assuring that all tax matters have been satisfactorily resolved

- All necessary reports have been completed and filed; and
- Assuring that the final distribution of remaining funds takes place according to the terms and conditions of the will.

It is important for you, as a representative of the estate, to follow the laws and rules governing probate. Failure to follow the law and rules may result in heirs filing a lawsuit against you for breach of fiduciary duty. It is important to understand that the law may award damages, including attorneys' fees. *See Gillespie v. Seattle-First Nat. Bank*, 70 Wash. App. 150, 173, 855 P.2d 680, 693 (Div. 1 1993), reconsideration filed, (June 18, 1993). In addition, the plaintiff may, "recover fees against the trustee personally." *Matter of Estate of Cooper*, 81 Wash. App. 79, 92, 913 P.2d 393, 400 (Div. 3 1996).

Avoid Self-Dealing and Never Co-Mingle Your Resources with Estate Resources:

When acting as personal representative, the individual serving must do so as a fiduciary for the estate. As a fiduciary, the personal representative must act in the best interest of the estate, its beneficiaries, and its creditors, without giving preference to any one party.

The personal representative must also refrain from self-dealing. Self-dealing consists of the personal representative taking advantage of their position in a transaction and acting in their own interests rather than in the interests of the estate, its beneficiaries, and its creditors.

To successfully act as fiduciary for the estate, the personal representative must not co-mingle his or her own resources with estate resources. When the personal representative opens an estate account, the personal representative should choose a bank with which they do not already have a relationship or account. Doing so prevents the unintentional co-mingling of assets, either by fault of the personal representative or the bank.

Conclusion:

In electing to be appointed Personal Representative you have chosen to serve in a vital and important capacity. It is critical that you follow the law and document all transactions as you

engage in the various activities involved in the probate of an estate. Again, do not hesitate to contact your legal representative, whenever you have questions or concerns.

The materials presented on this site are intended to be for information purposes only. The author emphasizes that these materials are not to be construed as legal advice, under any circumstances. Please consult an attorney experienced in probate matters.

No attorney-client relationship. Michael Whipple of the Whipple Law Group, PLLC. maintains this website exclusively for informational purposes. It is not legal or other professional advice and does not necessarily represent the opinion of the Whipple Law Group, PLLC. Viewing this site, using information from it, or communicating with the Whipple Law Group, PPLC, after viewing this site does not create an attorney-client relationship between you and the Whipple Law Group, PPLC.

Nonreliance. Viewers of the materials, on this site and/or linked to this site, should not act or decline to act, based on content from this site, without first consulting an attorney or other appropriate professional. Because the law changes constantly, this website's content may not indicate the current state of the law. Nothing on this site predicts or guarantees future results. The Whipple Law Group, PPLC is not liable for the use or interpretation of information contained on this site, and expressly disclaim all liability for any actions you take or do not take, based on this site's content.

Please carefully review our [full disclaimer \(link\)](#) before proceeding. (below)