

Court Fiduciary Surety Bond

TRAVELERS CLAIM SERVICES GUIDE

It is critical that as a fiduciary you understand your duties and the laws of the state in which you are appointed. In order to maximize your efforts and reduce your personal liability, Travelers has prepared this guide to provide tips to help you succeed as a fiduciary and to answer some frequently asked questions.

What is a fiduciary?

A fiduciary is a person who has entered into a relationship of trust where he/she acts on behalf of, and in the best interest of, another person or entity. Executors, administrators, guardians and conservators are all examples of fiduciaries.

Executors are individuals that handle the estate of someone who died (a decedent) with a will. An executor identifies and takes control of estate assets, distributes the property according to the will and files final tax returns.

Administrators are very similar to executors but perform their duties when a will does not exist. The administrator distributes the property of the estate as instructed by state law, which will identify who receives certain percentages of the estate (often close relatives).

Guardians look after persons when they become “incapacitated,” or unable to care for themselves. Incapacitated persons may be minors or someone suffering from mental or physical injuries. A guardian is responsible for the care, education, health and well-being of that person. Oftentimes, they must report to the court on the condition of the person who they are supporting.

Conservators manage the property of an incapacitated person. These duties will often include the collection of assets, investment of money, selling of property and payment of bills and taxes. Conservators are typically required to file periodic reports, often called “accountings,” identifying money/assets coming into and leaving the conservatorship in that period.

What is an estate?

An estate consists of all of the assets and possessions of an individual referred to as an “incapacitated person” or “ward.” An estate is managed by the fiduciary for the benefit of the ward, generally by guardianship or conservatorship.

In the case of a decedent, the estate generally consists of all of the deceased person’s assets and possessions and is subject to distribution to heirs and beneficiaries through the probate process.

What is probate?

Broadly defined, “probate” refers to the entire process of court-supervised administration of an estate.

What is a probate bond?

A probate bond is a type of financial instrument that is required by law when a person is appointed as a fiduciary. The purpose of the bond is to guarantee the fiduciary’s honest accounting and faithful performance and to provide security in the event the fiduciary mishandles the estate. The bond does not provide protection for the fiduciary, but rather is protection for others from the fiduciary’s actions.

Keys to success as a fiduciary

Seek professional guidance.

Ongoing legal and financial assistance can help relieve the stress and anxiety of understanding complex laws and court procedures. Attorneys or accountants may help with the preparation of annual accountings, and financial advisors may help with investment decisions and financial transactions. Fees charged by professionals are often chargeable to the estate.

Keep receipts.

There will be expenses associated with your duties as a fiduciary. You must keep all receipts to prepare an accurate accounting. If you do not keep receipts, the court may not allow the expense(s) and may require you to personally pay money back to the estate.

Keep accounts separate.

The estate bank accounts must remain separate from all other bank accounts, including your personal account. Debit and ATM cards should be refused when establishing the accounts in order to eliminate access by other parties.

File all required accountings.

You must comply with the court imposed deadlines for filing accountings. These reports are often required to ensure that the assets of the estate are being used and distributed properly. You may be required to prepare an itemized statement of all receipts and disbursements during the accounting period along with a detailed statement of all assets at the end of the accounting period. Failure to do so may result in costly penalties against you or you could be removed as the fiduciary.

Seek court permission before making expenditures.

If you are unsure whether spending estate money for a particular purpose is allowable, particularly where it is large or unusual, you should obtain permission from the court **before** spending such funds. You are responsible for estate assets and you may incur penalties if you do not use estate money for an acceptable purpose. The expense must be in the best interest of the estate and for its benefit. Careful fiduciaries will seek court approval for these types of expenses for their own protection.

Timely close the estate.

As a fiduciary, you have a duty to administer the estate and close it in a timely manner. Estates that remain open for an unnecessarily long time are often challenged as being wasteful to estate assets. Be prepared to provide regular updates to beneficiaries in a timely manner, and no less often than may be required by local rules.

Additional suggestions for success

- Do not use estate funds to pay for anything that can be viewed as being for **your** benefit without prior authorization from the court. Make an effort to avoid any conflicts of interest or self-dealing, so that someone cannot later accuse you of making a decision that was primarily to benefit you in some way. For example, hiring a family member for any role in the estate is unwise without prior court approval.
- Do not open a credit or debit card on an estate account, as it will be difficult to keep accurate receipts.
- Do not pay estate expenses with your personal funds and then reimburse yourself with a check from the estate.

- Never ignore the court if it requires your presence at a hearing or other proceeding. You could ultimately be removed from serving as a fiduciary.
- If you do not understand your duties, obligations and the law, you should immediately seek guidance in order to avoid making costly errors that could result in legal action against you and Travelers.
- Be sure to send copies of your accountings to your agent, who will forward them to Travelers.
- **Reminder:** The bond is **not** an insurance policy and is **not** intended to protect you. The primary purpose of the bond is to protect the estate.

If the court orders your removal from serving as a fiduciary, you may face unpleasant consequences, such as giving up your commissions or being ordered to personally pay money back to the estate.

What should I do if a claim is made on the bond?

Immediately notify your agent or broker when a claim is made against you or the bond.

To notify Travelers directly, please contact:

Telephone: 800.842.8496

Fax: 888.460.6622

Email: BSIclaims@travelers.com

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