

# WESTERN WAKE LAW GROUP

## ATTORNEYS AT LAW

202 New Edition Court ♦ Cary, North Carolina 27511

♦ Phone | 919.677.9900 ♦ E-facsimile | 888.742.2095

♦ Website: [www.WesternWakeLawGroup.com](http://www.WesternWakeLawGroup.com)

### ADDITIONAL ESTATE PLANNING INFORMATION

#### RESPONSIBILITIES OF THE FIDUCIARIES

##### THE EXECUTOR

An executor of an estate carries out the wishes of a deceased person as expressed in his or her will. One may appoint any United States citizen who is over the age of 18 and who has not been convicted of a felony to serve as Executor. A properly drafted will generally provides a successor Executor in case the first-named Executor is unwilling or unable to serve. One should choose someone who has the ability and willingness to do the job as well as someone who is able to keep the peace among family members.

The Executor's function is primarily administrative. The following list will give an idea of the things an Executor may need to do:

- Apply to appear before the probate court;
- Notify beneficiaries named in the will;
- Arrange for publication of notice to creditors and mail a notice to each known creditor;
- Send notices of your death to the post office, utilities, financial institutions, credit card companies; and other known creditors;
- Inventory all assets and have them appraised, if necessary;
- Collect debts owed to the estate;
- Check with decedent's employer for unpaid salary, insurance and other employee benefits;
- File for social security, civil service or veteran benefits;
- File for life insurance and other benefits;
- File city, state and/or federal tax returns;
- File state death and federal estate tax returns;
- Pay valid claims against the estate;
- Distribute assets and obtain receipts from beneficiaries;
- File documents to finalize and close out the estate.

##### THE TRUSTEE

The Trustee is the person who manages any trusts which have been established under a trust agreement or trust provision in one's Will. Depending on the assets that will be administered under the terms of the trust or will, one may wish to consider the appointment of a corporate Trustee, such as a financial institution trust department, or a trusted family advisor. One should choose someone who has proven he or she has sound financial and common sense judgment and the ability and willingness to do the job.

The Trustee must:

- Exercise care and diligence in making, retaining, disposing or changing the trust's investments in accordance with the terms of the trust agreement and state law;
- Carry out the administration of the trust loyally and in good faith and comply with the terms of the trust;
- Refrain from self-dealing, private use, application or appropriation of trust property;
- Insure the assets of the trust;
- Keep assets of the trust properly invested and productive, exercising discretion reasonably, prudently, soundly, and in good faith;

- Make distributions of income and principal of the trust to its beneficiaries as required by the terms of the trust agreement or will;
- Keep and render to the beneficiaries of the trust full and accurate records and accountings;
- Pay various income tax liabilities, including the payment of estimated tax payments and the filing of income tax returns for the trust.

## CHOOSING A GUARDIAN FOR YOUR CHILDREN

### THE GUARDIAN

You may use your will to recommend a guardian to raise your children if they are minors when you die. This, however, is a recommendation only, and the Court will determine what is in the best interests of the children. The Court typically presumes that a guardian named in a parent's will is in the best interests of the children. If your children have a surviving parent he or she will almost always be assigned as their guardian. When choosing a guardian for your children, you should consider the following factors:

- Consider the person's ability to love and nurture your children, as well as a willingness to take on this formidable responsibility.
- Choose someone who shares your values and beliefs.
- Keep in mind that raising children requires energy, patience and good health. Aging parents or older relatives may love your children the most, but in the long run, they may not be up to the job physically.
- Consider the prospective guardian's financial resources. You can help in this regard by ensuring that you provide for your children financially with life insurance or other assets.

If you fail to name a guardian, the Court will consider your closest relatives. As long as there is a blood relative willing to take on the task, non-relatives are unlikely to be appointed as your children's guardian.