

The Forensic Accountant's Role in Estate and Trust Matters

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Forensic accountants are educated, highly-trained, experienced and credentialed professionals who employ investigative techniques and provide detailed analysis of financial information in conjunction with a variety of activities. They are often engaged in disputes and litigation matters. However, forensic accountants typically have expertise in business valuation and can also be engaged to provide conclusions supporting asset values.

Estates and trusts are fiduciary relationships that provide one party, the Executor of an estate or the Trustee of a trust, the right to hold title to assets and manage, invest and distribute income and assets for the benefit of third-party beneficiaries. The will and trust documents establish the terms, authority and responsibilities by which the Executor and Trustee are to manage the estate and trust. As illustrated in the following examples, forensic accountants are especially well-suited to handle a variety of estate and trust matters.

All assets held in an estate or trust are required to be valued when contributed to the estate or trust. Forensic accountants can perform a valuation of various assets including interests in closely-held businesses and partnership interests in real estate and other business ventures.

During the period of the administration of an estate and the management of a trust, the Executors and Trustees manage investments, business interests, buy and sell assets, pay expenses and determine distributions of income and assets to beneficiaries. Often, during the administration phase, the actions of the Executor and Trustee are questioned by the beneficiaries who ultimately receive the income or assets distributed. Often beneficiaries' interests and those of the Executor or Trustee are misaligned. Diverging interests on the part of those named in the trust documents often lead to mistrust and disputes.

A somewhat common estate challenge involved the spouse of a decedent and the children from a prior marriage of the decedent. Although the surviving spouse was entitled to an elective share (1/3) of the deceased spouse's probate estate, the children from the prior marriage sought to disinherit their "step mother" from receiving any assets. The estate included numerous active business interests and real estate entities that owned warehouses, retail shopping centers, hotels and apartment complexes. As forensic accountants, our charge was to determine the value of the operating businesses and the value of the partnership interests in the numerous real estate entities which became part of the decedent's estate. The businesses were operated by the children from the prior marriage who, not surprisingly, were uncooperative in providing information and documents.

Our forensic analysis included the review of intercompany transaction activities between entities as well as agreements between the related parties for rents, compensation, and loans. Part of the analysis was to determine if the transactions between the entities had true economic substance or whether they were personal discretionary payments made by the owner and family members. The Executor claimed the estate value was \$35 million. However, our detailed forensic analysis and valuations supported an estate value of \$75 million, which was significant in arriving at the surviving spouse's 1/3 elective share interest.

Another estate challenge matter involved the deceased mother of four siblings. The inheritance was to be administered and then divided according to the will and trusts. The father, who predeceased the mother, had disinherited the two older sons. When the father passed, he left his assets in trust for the two younger siblings who were to manage the assets for the benefit of their mother. Upon the mother's death, the two younger siblings were to receive the assets from the father's trust. However, the mother did not disinherit her two older sons and in her will left 25 percent to each of the four children. The two older brothers contested the will and the estate and challenged the administration of the trust established on the father's death as well as the compensation and business transactions managed by the younger siblings of the active business interests held in trust until the mother's death. The older brothers claimed that the trusts

holding their father's business interests that were managed by the younger siblings should have distributed more income and assets to their mother. If the distributions were higher, they would have inherited more from their mother's estate.

As forensic accountants, our analysis supported the younger siblings' proper management of the businesses in accordance with the will and trust documents. We found that the siblings were fairly compensated by the companies owned in trust which passed from the father's estate. Our analysis found that the younger siblings had distributed over 100 percent of income from the trusts to their mother. Ultimately, our report and conclusions found that the two older brothers were not entitled to additional assets other than those solely owned by their mother in accordance with her will.

There have been a multitude of cases involving decedents who owned an interest in real estate partnerships with family members. During their lifetime, family members established a partnership to invest and manage rental real estate, whether industrial, commercial or apartments. Over the years as the families grew, usually only the children from one of the family members remained involved in the business operations. When one of the founders dies, their children expect to be paid the value of the ownership interest that their parent held in the partnership. However, those managing the business operations seek to pay as little as possible and often would rather have them remain as silent inactive partners rather than provide a buy-out. As forensic accountants, we have been retained on both sides of these types of cases assisting the attorneys by providing forensic investigation and analysis of the business operations and then to determine the value of the ownership interest. Our analysis will support the positions and often document the related party transactions and business purpose or lack thereof, job descriptions of key employees and management, owner and management involvement in the business operations, financing, contracting, vendor involvement and internal accounting and reporting.

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Estates and Trusts deal with assets and their ultimate disposition. Therefore, as the size of the values increase so does the lack of trust of the parties involved. The services of the experienced forensic accountants of PKF O'Connor Davies, LLP are retained to assist attorneys, beneficiaries, trustees and executors in addressing the many issues raised. For more information, contact the partner in charge of your account or partner Keith S. Balla at kballa@pkfod.com.

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