

ACCOUNTING TIPS FROM THE COURT



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Circuit Court Judge

Marion County Probate Practice Group
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Inquiries Regarding Status Of A Submitted Order

These are a major time problem for court staff. If at all possible, please wait for your confirmation card or conformed copy to come back. If you have OJIN access you can check yourself. Please do not inquire about the status of an order unless a) it has been at least two weeks since it was submitted; or b) it was submitted as an "ASAP" order. If you do need to make an inquiry, please do it by e-mail rather than phone call. That way staff can track down your file and respond without being interrupted. Please remember that we have over 2,000 open files. **You will not get your confirmation card or conformed copy back if you do not provide us with a stamped addressed card or envelope and a copy of the document if you want a conformed copy.**

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Inventory

If the accounting is the first, the court begins its review with your inventory. Therefore, please make sure that your inventory is correct before you file the first annual accounting. If necessary, file an amended inventory with the first annual accounting. The inventory should list all of the assets and their value as of the date the fiduciary was appointed. If the conservator established a conservatorship checking account a week after being appointed, that asset should not appear on the inventory. Similarly, if that conservatorship checking account was funded by closing out a savings account, the savings account should be listed on the inventory. You must provide account identification numbers for all accounts. These may be truncated (last 4 digits).

UTCR 9.160

Pursuant to Marion County SLR 9.161, accountings are required to be in UTCR 9.160 format. The form itself is included in the appendix of forms to the UTCR. Note that the rule requires that type not be smaller than 10 point.

Asset Schedule

The first step in the court's review is to compare the assets listed in the inventory (or last year's asset schedule) with the current asset schedule. The first column of the asset schedule should include the same assets and same values as the inventory, or the ending value of last year's asset schedule. If they don't match, the court will want to know why. The court also looks to see which assets have gone away (we will then review, for example, the closing statement on a real property sale) and which new assets have been acquired.

Receipts & Disbursements

Be sure to itemize receipts and disbursements separately, as required by UTCR 9.160. You must list receipts and disbursements for all accounts, including CDs and investment accounts. Otherwise the court has no way of knowing whether money came out of an investment account. For investment accounts, it is sufficient to show for each month "gain in investment value" or "loss in investment value." The court may request all the brokerage statements for any given accounting period.

List all transactions that occurred during the accounting period, and do not list transactions outside of the accounting period. In other words, if the accounting period ends on May 1, a check written on April 30 should be listed, but a check May 2 should not be listed, even if it is shown on the bank statement that confirms the ending balance on May 1.

Remember that each transaction needs to include an explanation of the source of any deposits and the purpose of any disbursements. UTCR 9.160(3)(b), (c). We need to know the source of deposits to ensure that there is not an asset that should be included in the accounting (such as an additional savings or investment account) or an income source of which the court is unaware and which should be bonded. It should be obvious why we need to know the purpose of any disbursements, but an amazing number of accountings will simply show a payment to "Mary Smith," a name which is nowhere to be found in the petition or the visitor's report, with no explanation of who this person is or why she is being paid money. Also, sometimes there was an explanation entered into the computer, but it does not print due to column width. If the conservator is reimbursing him/herself for expenses paid on behalf of the protected person, the conservator should be prepared to provide receipts if requested.

Transfers

During review, the court tracks transfers to ensure that money removed from one account actually shows up in the other account. This, in addition to the requirement contained in UTCR 9.160(3)(e), is the reason that the sending/receiving account must be identified for any transfers. "Transfer to checking" is not acceptable, especially if there are multiple checking accounts. Instead, please use "transfer to Wells Fargo 1234," where "1234" are the last four digits of the receiving account number. Please ensure that the information is not cut off when the accounting is printed. Often we receive accountings which simply say "transfer to" and the rest is cut off due to column width.

Vouchers

We generally do not want to look at the checks; however they should be available for court review if requested. The court may accept a scanned image of the check, but, depending on the circumstances, may require an original.

We do require bank statements confirming the opening and closing balances for each account. See UTCR 9.180(2). We require that the closing statement show the balance on the closing date of the accounting. If the closing balance on the depository statement is not the same as the closing balance in the accounting, provide a reconciliation explaining why (e.g., a check that did not clear).

Bank statements showing deposits of transferred funds or liquidated assets (EG car sold) are also helpful and may be required on a case-by-case basis.

Please note that a screen print showing account balances through online access to the account will not be accepted in lieu of a statement from the financial institution. If the financial institution does not provide statements (as is common with certificates of deposit), request that the financial institution fill out and sign a "Certification of Funds on Deposit" form. This form was developed by a group probate judges in conjunction with the Oregon Bankers Association, and the bankers have committed that their member institutions will comply with requests to provide the form. You may download the form at: http://courts.oregon.gov/Marion/docs/Services/certification_of_assets_3.pdf. You will need one for both the opening and closing dates of the accounting period (or opening/closing of the account).

Remember that for real estate transactions, a copy of the closing statement from escrow is required. UTCR 9.160(3)(d).

Narrative

The narrative is required by UTCR 9.160(4). Please use the narrative to explain any transactions that are not otherwise obvious. For example, the sale of an asset such as a house or car should be described and there should be a reference to the exhibit where the court will find the corresponding deposit or closing statement. If a CD was cashed in early to pay for care and an early withdrawal penalty resulted, the narrative would be the place to explain that. If personal property such as a classic car or jewelry is sold for substantially less than the item was valued in the inventory, please explain why (e.g., the 1963 Camaro wasn't in such good condition after all).

Required Disclosures

Please comply with UTCR 9.170 regarding transactions which must be disclosed in the narrative of the accounting. This includes ALL GIFTS unless they were previously approved by the court, even if the gift did not require prior court approval.

Transactions Which Require Prior Court Approval

Remember we are only human and do not have total recall of all files. If the court previously approved a transaction which requires court approval (eg, gift over statutory amounts, payment of fiduciary or attorney's fees, sale of the protected person's residence, creation of a trust...) it is extremely helpful if the listing of the transaction

includes a reference to the date of the order approving the transaction. This saves us much time searching through the file.

Be sure you know which transactions require prior approval; if you find in preparing the accounting that one of these has inadvertently occurred, file a motion asking for approval with the accounting and provide an explanation of why the transaction occurred without prior approval. The most common ones we see are: payments to the fiduciary or the attorney for the fiduciary (ORS 125.095(3)); gifts of over \$250 in a calendar year to one individual or exceeding an aggregate total of \$1000 in a calendar year (ORS 125.435); sale of the protected person's residence (ORS 125.430); payment of room and board to a conservator who is also the guardian (ORS 125.320(2)); and creation of trusts (ORS 125.440(2)). Other limitations are listed in ORS 125.440.

NSF Charges

The fiduciary is charged with properly managing the protected person's finances. Absent some unusual situation like fraud or the protected person continuing to access accounts without the fiduciary's knowledge, there should not be bank fees for bounced checks, late payment fees, etc. The fiduciary will be expected to explain any such charges and will generally be required to reimburse the protected person for them unless due to circumstances beyond the fiduciary's control.

Amended/Corrected Accountings

The court may not approve attorney's or conservator's fees for responding to the court's inquiries concerning an accounting, or filing a corrected or amended accounting. If the need for additional information, correction, or amendment, is due to an obvious error or omission (e.g., gift over limits made with no order approving; NSF charges; accounts don't balance) the court's view is that the fiduciary, not the protected person, should bear the cost of correcting the mistake. Alerting your client to this possibility may motivate the fiduciary to do a better job of getting you the information in the first place.

Anything Else We Want

Please keep in mind that ORS 125.475(2)(f) provides that an accounting must include any other information the court requires. From time to time, based on the particular circumstances of the accounting in question, we may request other information or documents.