



OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL

CHARITIES BUREAU

Issue date: November 2021

INFORMAL ACCOUNTINGS FOR CHARITABLE ESTATES AND TRUSTS

Practical Guidance on Submitting Fiduciary Accountings to the Attorney General's Office for Review

Introduction

The Charities Bureau of the New York State Attorney General's Office (OAG) presents this guidance to assist fiduciaries of estates and trusts with charitable interests, and their advisors, seeking the OAG's review and approval of informal accountings required pursuant to Estates, Powers and Trusts Law (EPTL) § 8-1.4(d) and (g) and 13 NYCRR § 92.1 *et seq.*

An accounting is a detailed, written statement by a fiduciary (an executor, trustee or administrator), sworn to under oath, showing how the property entrusted to the fiduciary has been administered over a specified period of time (the accounting period). Accountings typically include schedules showing principal received, income collected, realized gains and losses, expenses of administration charged to principal and income (including compensation to the fiduciary), unpaid administration expenses, distributions of principal and/or income to beneficiaries, new investments, exchanges and stock distributions, and principal and income remaining on hand that will be available for distribution. Accountings provide beneficiaries of bequests of unspecified amounts (for example, a percentage of the estate) a basis for determining whether they will receive the correct amount due to them under the terms of the will or trust.

The fiduciary presents the accounting to the beneficiaries and other interested persons, including the Attorney General, when there are estates and trusts with charitable interests (defined below), along with a request that the accounting be approved and the fiduciary discharged from liability for all actions disclosed in the accounting.

Although executors, administrators and trustees are entitled to have their accounts settled in court, it is common practice to forego a court proceeding in the interest of reducing cost and avoiding delay. Fiduciaries may instead seek to settle their accountings “informally” by providing the accounting to all beneficiaries with a request that they sign a receipt and release. Pursuant to EPTL § 8-1.4(e)(1)(D) and Surrogate’s Court Procedure Act (SCPA) § 2210(5), the OAG is a necessary party to judicial accountings for charitable estates and trusts; informal accountings for such estates and trusts must also be submitted to the OAG for review.

This guide provides practical information for submission of informal accountings by executors, administrators, and trustees to the OAG, including a checklist of required items. It is intended as a practical aid and is not a substitute for legal advice from a private attorney.

The Attorney General’s Role in Charitable Estates and Trusts

In trust and estate matters, including fiduciary accountings, the OAG represents the beneficiaries of dispositions for religious, charitable, educational or benevolent purposes. EPTL § 8-1.1(f). In discharging this responsibility, the OAG does not act as the attorney for any named charitable organization; rather, it represents the interests of the members of the public who benefit from the activities conducted by those charities, sometimes called the “ultimate charitable beneficiaries.” The named charities are entitled to separate representation by counsel of their choosing. This distinction is important in the context of fiduciary accountings, because the OAG is not authorized to approve an accounting on behalf of any named charity. Likewise, the approval of an accounting by any or all named charities is not a substitute for review by the OAG.

Typically, a fiduciary seeking approval of an informal accounting asks the named charitable organizations and other beneficiaries to sign a receipt and release discharging the fiduciary from liability. The OAG, however, does not provide a release upon reviewing an informal accounting. Rather, if the accounting is satisfactory, the OAG issues a written Notice of No Objection. If the OAG and the fiduciary are unable to resolve the issues presented in the informal accounting, the fiduciary will be required to file the accounting judicially, on notice to all interested persons, including the OAG, who may then file objections to the accounting.

Registration with and Reporting to the Charities Bureau

Charitable estates and trusts are required to register with the OAG, and the fiduciary thereafter has a reporting obligation. EPTL §§ 8-1.4(f)(1), 8-1.4(d) & (g); 13 NYCRR § 92.1 *et seq.* Trusts with a charitable interest must register within six months after any trust property or income therefrom is required to be applied to charitable purposes. EPTL § 8-1.4(d). Estates with a charitable interest must register within six months after the earlier of the date on which letters testamentary or preliminary letters testamentary are issued. 13 NYCRR § 92.2(a)(3).

Registrations of wholly charitable trusts, including private foundations in trust form, must be submitted electronically through the Charities Bureau's online registration portal (https://www.charitiesnys.com/charities_new.html). Charitable remainder trusts and charitable lead trusts register by submitting the appropriate form (see below). For estate registrations, please refer to Appendix C to determine the office where your registration should be submitted.

In addition to registering and complying with periodic reporting obligations, fiduciaries must file a final report with the OAG. *See* 13 NYCRR §§ 92.2(c) (estates with charitable interests), 92.3(c) (charitable remainder trusts), 92.4(c) (charitable lead trusts). As indicated below, an informal accounting may serve as the required final report for a charitable remainder or lead trust or an estate with a charitable interest.

- **Estates with charitable interests** are estates that either (1) leave a bequest to an unnamed charity (such as when the executor is directed to choose the charities) or (2) leave an unspecified amount or indefinite property to charities (such as leaving a percentage of the residuary to charitable organizations). The residuary is the property remaining in a decedent's estate after payment of the estate's debts, taxes, and expenses and after all specific gifts of property and sums of money have been distributed as directed by the will. A fiduciary of an estate with charitable interests must register with the Charities Bureau by submitting a Notice of Probate and a copy of the will. EPTL§ 8-1.4 (c); SCPA §1409. There is no registration form; the estate will receive written confirmation of the registration. The sole required financial report is the final accounting, which may be informal or judicial.
- **Charitable Remainder Trusts** are trusts created during lifetime or at death in which a charitable beneficiary has a remainder interest. Charitable remainder trusts include, but are not limited to, trusts that distribute a fixed annuity or variable (unitrust) amount to one or more designated non-charitable beneficiaries for life or a term of years, with the remaining trust assets passing to charity upon termination of the trust. Also included are revocable grantor

trusts that become irrevocable upon the death of the grantor where all or a portion of the remainder is required to be distributed to charity. (A trust with a charitable remainder is obligated to register whether or not it is a “qualified” charitable remainder trust for purposes of the Internal Revenue Code.) The fiduciary of a charitable remainder trust must register on Form CHAR001-RT with the Charities Bureau within six (6) months after termination of the intervening life interest. The sole required financial report is the final accounting, informal or judicial.

- **Charitable Lead Trusts** are trusts created during lifetime or at death that distribute an annuity or unitrust amount to one or more named charities for a period measured by a lifetime or a term of years, with any remaining trust assets passing to designated non-charitable beneficiaries upon termination of the trust. The fiduciary of a charitable lead trust must register on Form CHAR001-LT within six (6) months after the trust is funded. An annual report on Form CHAR004 is required for each year of the trust’s existence. When the trust terminates, in addition to filing a final CHAR004, the trustee must account, informally or judicially, to any named charitable beneficiaries and the OAG.
- **Wholly Charitable Trusts** are trusts in which all of the beneficiaries are charities. These include tax-exempt private foundations in trust form. The trustee of a wholly charitable trust must register with the OAG within six (6) months after the trust is funded. Once a trust is registered, it must submit annual financial reports on Form CHAR500 (“NYS Annual Filing for Charitable Organizations”), which may be filed electronically at https://www.charitiesnys.com/annual_filing.
- In addition to the annual reporting requirement, it may be advisable for the trustees of perpetual charitable trusts to account periodically, whether informally or judicially, to the named charitable beneficiaries, if any, and the OAG. If the trust is terminating, the OAG may require the trustee(s) to account, at least informally, in addition to filing the final Form CHAR500. *If the termination is to be accomplished by distributing the remaining trust assets to charity, the trustee(s) should hold back a reserve sufficient to cover the cost of a final accounting until advised by the OAG whether an accounting will be required.*

For detailed information on registering charitable estates and trusts, including forms, instructions and applicable fees, please consult the Charities Bureau’s website at https://www.charitiesnys.com/trusts_estates_new.html.

What to Submit with an Informal Accounting

An informal accounting must include all of the information and disclosures necessary for a meaningful review of the administration of the trust or estate. Accountings in judicial format, with schedules, are preferred; accounting forms are available on the New York State Unified Court System website at <http://ww2.nycourts.gov/forms/surrogates/accounting.shtml>. Questions about the format of an informal accounting should be emailed to the Charities Bureau at charities.trusts@ag.ny.gov.

OAG review of an informal accounting cannot begin until all necessary documents and information have been submitted. Please refer to Appendix A for a checklist of required items for an informal accounting. (Additional documents and information may be requested once the review is under way.) To avoid unnecessary delays in review, please ensure that your submissions are complete.

Errors require amendment of the accounting, with attendant delays. Please refer to Appendix B for a list of common mistakes in estate and trust accountings.

Where to Submit an Informal Accounting

The OAG office that reviews informal accountings is determined with reference to the county in which a judicial accounting proceeding would be located. Accountings for all counties of New York's First and Second Judicial Departments are reviewed by the Charities Bureau's New York City office. Accountings for 14 of the counties in the Third Judicial Department are reviewed by the Charities Bureau's Albany Office. Accountings for other counties are reviewed by OAG Regional Offices. Please refer to Appendix C to find the office where your informal accounting should be submitted.

Informal accountings to be reviewed by the Charities Bureau may also be submitted electronically by emailing the accounting, along with a covering letter and all other required items, to charities.trusts@ag.ny.gov. Paper copies of electronic submissions may be requested at the discretion of the Assistant Attorney General assigned to review the accounting.

Conclusion

If you have questions about this guidance or require additional information, please contact the Charities Bureau (email charities.trusts@ag.ny.gov) or the appropriate Regional Office for assistance.

Appendix A
Informal Accountings:
Items Required to Be Submitted to the OAG

All Accountings (Estates and Trusts)

- Accountings submitted to the OAG should preferably be in judicial format. The OAG will accept accountings that are not in a judicial format provided that the substitute format includes all the information necessary for an Assistant Attorney General to conduct a meaningful review of the account. Account statements from financial institutions are not an acceptable substitute for an accounting.
 - State the opening and closing dates for the accounting
- Copy of will and/or trust instrument, and all codicils/amendments thereto
- Copy of closing statement for sale of real estate or co-operative apartment
- Schedule of distributions to beneficiaries, including a breakdown of total amounts distributed to each charitable beneficiary.
- Schedule showing the proposed final distributions to all beneficiaries after deducting all proposed final expenses.
- Receipts and Releases signed by charitable beneficiaries. If Receipts and Releases are not available for review, and if there are no issues with the accounting submitted, issuance of the OAG's Notice of No Objection may await the approvals from the named charities.
- For individual executors and trustees claiming compensation pursuant to SCPA §2307, Commissions of Fiduciaries other than Trustees, and SCPA §2309, Commissions of Trustees Under Wills of Persons dying, or Lifetime Trusts Established, After August 31, 1956:
 - Calculation (not just the amount) of the executor's receiving and paying out commissions.
 - If advance commissions were taken, provide a copy of the order authorizing the advance.
 - If the fiduciary is an attorney-executor, provide SCPA § 2307-a disclosure. Pursuant to § 2307-a, if the disclosure was not executed or is defective, the attorney-executor is only entitled to one-half of a statutory commission.
 - Calculation (not just the amount) of annual and principal paying commission for each period for which commissions were paid or will be paid.
- For corporate fiduciaries claiming "reasonable compensation" pursuant to SCPA § 2312:

- Copies of the fiduciary's published fee schedule(s) applicable to the accounting period.
- Calculation (not just the amount) of annual and principal paying commission for each period for which commissions were paid or will be paid.
- A statement, in Schedule J of the accounting or equivalent, of facts and circumstances essential or relevant to a meaningful review of the accounting.
- Affidavit(s) of Accounting Party(ies), or comparable document signed under oath by all accounting fiduciaries.

Charitable Remainder Trusts

- For unitrusts, calculation (not just the amount) of the unitrust amount for each year covered by the accounting.
- For annuity trusts, calculation (not just the amount) of the annuity payment, including adjustments for any assets added to the trust after inception.

Charitable Lead Trusts

- For unitrusts, calculation (not just the amount) of the unitrust payment for each year covered by the accounting
- For annuity trusts, calculation (not just the amount) of the annuity payable to charity each year and documentation sufficient to show that such amount was paid in full for each year of the lead period.

Wholly Charitable Trusts

- List of time periods of any prior accountings, judicial or informal, or if none, so state.
- Copies of OAG's Notices of No Objection, if any, with respect to prior periods.

Appendix B **Common Mistakes in Fiduciary Accountings**

The following mistakes are frequently encountered in estate and trust accountings. Avoiding them will help expedite the OAG's review of the accounting.

Estate Accountings

- Including the value of specific bequests (money or property, real or personal) in the base amount used to calculate the executor's commission (commission base). SCPA § 2307(2). Such bequests are not included in the commission calculation.
- Including the gross value of real property in the commission base (only the net proceeds are commissionable). *See, e.g., In re Mack*, N.Y. L.J., Feb. 27, 1998 (Sur. Ct. Westchester County 1998). In addition, if the real property has not been sold but rather was transferred in kind, it is not commissionable.
- Charging the estate for expenses incurred by or on behalf of the executor which are compensated by the executor's commission or otherwise not allowable. Examples include postage, overnight delivery charges, local travel and meals.
- Charging the estate for storage, insurance and shipping costs relating to specifically bequeathed property unless the will expressly allows such costs as expenses of administration.
- Failure to take all applicable charitable deductions on fiduciary income tax returns thereby necessitating the filing of amended tax returns and delaying the resolution of the accountings. (*See* IRC § 642(c).)

Trust Accountings

- Incorrect calculation of annual commissions for trustees who did not take their commissions on a current basis every year. Unpaid commissions must be backed out from the principal value of the trust in subsequent years when calculating the annual commission for those years. Also, see SCPA § 2309(3) to determine whether the trustee must forfeit any portion of the annual commission that is chargeable to income due to insufficient income on hand for that trust year.

Appendix C
Informal Accounting Reviews: OAG Offices

Counties	Location
Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester	New York State Attorney General Charities Bureau 28 Liberty Street New York, NY 10005 212-416-8401
Albany, Columbia, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, and Washington	New York State Attorney General Charities Bureau The Capitol Albany, NY 12224-0341 518-776-2160
Livingston, Monroe, Ontario, Seneca, Steuben, Wayne, and Yates	Rochester Regional Office 144 Exchange Boulevard Rochester, NY 14614-2176 585-327-3240
Broome, Chemung, Chenango, Delaware, Otsego, Schuyler, Tioga, and Tompkins	Binghamton Regional Office 44 Hawley Street, 17th Floor Binghamton, NY 13901-4433 607-251-2770
Cayuga, Cortland, Madison, Onondaga, and Oswego	Syracuse Regional Office 615 Erie Blvd. West, Suite 102 Syracuse, NY 13204 315-448-4800
Allegheny, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, and Wyoming	Buffalo Regional Office 350 Main Street Suite 300A Buffalo, NY 14202 716-853-8400
Herkimer and Oneida	Utica Regional Office 207 Genesee Street, Room 504 Utica, NY 13501-2812 315-864-2000
Jefferson, Lewis, and St. Lawrence	Watertown Regional Office 317 Washington Street Watertown, NY 13601-3744 315-523-6080
Clinton, Essex, and Franklin	Plattsburgh Regional Office 43 Durkee Street, Suite 700 Plattsburgh, NY 12901-2958 518-562-3288