

CHAPTER 5-7: ALLEGATIONS INVOLVING LOSS OF ESTATE ASSETS BY A PRIVATE TRUSTEE OR AN EMPLOYEE OR AGENT OF A PRIVATE TRUSTEE

5-7.1 GENERALLY

The loss of estate assets or the inability to account for estate assets is a serious matter, and its expeditious resolution is a top priority. Allegations of the loss of estate assets by a trustee or anyone employed or retained by the trustee, regardless of the source, must be promptly investigated. When the United States Trustee believes that a trustee or an employee of a trustee is unable to account for estate assets, the procedures detailed in the following paragraphs must be followed.

5-7.2 PRELIMINARY ASSESSMENT AND REPORT TO THE EXECUTIVE OFFICE

The United States Trustee must immediately notify the Assistant Director for Review and Oversight and make a preliminary assessment of the likelihood of actual loss.

5-7.2.1 Actions if No Loss Has Occurred

If the preliminary assessment determines that no loss of estate assets has occurred, the United States Trustee should prepare a recommendation to the Assistant Director for Review and Oversight to terminate the inquiry. The United States Trustee should detail any action taken or to be taken to rectify any problems identified in the assessment. Upon concurrence of the Deputy Director, the inquiry shall be terminated.

5-7.2.2 Actions if Loss Has Occurred

If the preliminary assessment indicates a loss (including funds taken, advanced without order of the court, or borrowed and later repaid by the trustee) of estate assets, the United States Trustee shall immediately forward a written report to the Assistant Director for Review and Oversight. The report should contain, at a minimum, the following information:

1. The name and location of the trustee.
2. Whether the trustee is active or inactive.
3. The number of open cases presently being handled by the trustees.
4. The names of any persons suspected of improper conduct in the handling of estate funds.
5. The number and location of bank accounts involved.
6. A factual narrative of the circumstances that can be verified as a result of the preliminary assessment.
7. The United States Trustee's recommendation of proposed action concerning the trustee and the estates under the trustee's administration.

In addition, certain situations, such as where there is evidence that the trustee mishandled estate assets or failed to take adequate precautions to safeguard the loss of estate assets, warrant

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immediate termination of future case assignments.

5-7.3 DISCUSSIONS OR NEGOTIATIONS REGARDING LOSSES

When there is a suspected loss of estate assets or an inability to account for those assets, there shall be no settlement negotiations, discussions, or agreements initiated or entered into regarding the return of funds, compensation, or resolution of the matter, absent the written approval of the Deputy Director.

5-7.4 ADDITIONAL ACTIONS IF TRUSTEE RESIGNATION OR REMOVAL MAY BE SOUGHT

If it appears likely that the United States Trustee will seek to remove the trustee from pending cases or initiate a criminal referral, or both, the United States Trustee should immediately notify the Deputy Director, to be followed by a written memorandum on the matter. Copies should simultaneously be provided to the Assistant Director for Review and Oversight and General Counsel.

Prior to requesting the trustee's resignation or instituting removal action in pending cases, the United States Trustee shall consult on the matter with the Deputy Director. If removal or resignation is initiated, consideration must be given to the appointment of a successor trustee or for the United States Trustee to serve as the trustee pending a further review of the case files.

5-7.5 INVESTIGATION OF A TRUSTEE'S FINANCIAL RECORDS

When the preliminary assessment indicates that assets cannot be accounted for or that embezzlement has occurred, an investigation of the trustee's case files and financial records will be initiated, with the approval of the Deputy Director. The Assistant Director for Review and Oversight, in consultation with the United States Trustee, will coordinate and oversee the selection of an investigation team, the determination of the type and amount of work required, and the nature and extent of records that must be gathered to carry out the investigation.

To facilitate the investigation, the United States Trustee should:

1. Prepare a list, reconciled with court records, of all open cases under the administration of the trustee.
2. If the trustee refuses to resign from assigned cases, prepare and file appropriate pleadings to remove the trustee from all cases. All motions to remove trustees must be reviewed and approved by the General Counsel.
3. Upon removal or resignation, request the court to order the suspension of further hearings pending a completion of the reconstruction. If the court does not grant the request, determine upcoming court hearings and section 341 meetings for the cases and arrange for coverage.
4. Obtain all of the trustee's case files and financial records, by court order if required, and secure them in the United States Trustee's office.
5. Compare the trustee's case files to the open case list to identify any missing case files and undertake reconstruction of any missing cases.
6. Compile the trustee's latest 180-day report forms.
7. Determine the location of all financial accounts with estate funds and obtain court orders freezing those accounts. Determine how the bank should handle outstanding checks (e.g., process through a particular date or call the United States Trustee for approval before processing). New accounts should be opened in the name of the successor trustee. Once new

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accounts are open, the balances from the frozen accounts may be transferred to them. Pending completion of the reconstruction, the successor trustee may be the United States Trustee.

8. Obtain copies of all docket cards or sheets on all open cases and place them in the case file.
9. Place all information concerning either blanket or individual bonds in each case file.
10. Contact professionals, such as auctioneers, to determine if funds are due to any estates, and advise the professional that no disbursements of funds should be made without the approval of the United States Trustee. If the trustee is removed or resigns, notify the computer vendor.
11. Review case files and document any missing records (bank statements, canceled checks, deposit slips, certificates of deposit, cashier's checks, etc.) relating to estate financial records.
12. The Office of Review and Oversight will coordinate all bank requests and may, in certain circumstances, initiate the request for copies of all missing financial records from the appropriate financial institutions.

The format and distribution of the investigative report will be prescribed by the Deputy Director. Because the reports may serve both civil and criminal purposes, no single format can be set.

Absent the approval of the Deputy Director, no case files, financial records, or other estate documents may be furnished to a successor trustee, other than the United States Trustee, until reconstruction is complete. Further, without approval of the Deputy Director, no disbursements should be made in any estates until the reconstruction is complete.

5-7.6 CRIMINAL REFERRAL

A criminal referral concerning a trustee or anyone employed by the trustee is a sensitive, high priority matter. It demands communication and close coordination between the United States Trustee, the Executive Office, and the United States Attorney. See USTM 5-3 for further information on referrals to law enforcement agencies.



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