

A Trustee's Guide

THIS ARTICLE REVIEWS the practical side of the Trustee's job: tasks the Trustee will perform from the time he or she takes on the job until it ends with the appointment of a successor or termination of the trust.

This is my perspective on the practicalities of the trustee's job. You can find several other well-written articles on the internet that also review this topic in greater or lesser detail. One or more of these sources should answer most of your questions.

While this is addressed to the role of the Trustee, you may find information that also relates to you if you are serving as the agent under the Settlor's durable power of attorney and/or as the Executor of the Settlor's last Will.

You Are The Successor Trustee

If you are your own Trustee, you will be taking care of your own assets and finances as you have done before making your trust. Because you can amend and revoke your trust, the Trustee's job, as you carry it out, is far less structured than for anyone else serving as your Trustee.

The Trustee's role is somewhat different when the Settlor is still living, than after the Settlor's death. When the Settlor becomes incapacitated, your duty is to step in and take over management of the trust assets, pay the Settlor's bills, keep the trust property productive, etc. After death, the Trustee's job includes tasks that are intended to close out the Settlor's financial affairs and, probably, distribution of the trust as soon as the Settlor's estate has been settled. More on these two roles later.

When you take over as Trustee, you will notify the beneficiaries, take charge of the Settlor's assets and financial records, receive the Settlor's income, pay the bills, and keep accurate records.

Probably your most important initial task will be to take ownership of the trust assets. Changing trustees is a formal process because the trustee is the legal owner of the trust assets and this change of personnel must be noted on all assets having some form of title document. If you become the Trustee because the Settlor is resigning, then the Settlor can participate in this documentation of these title changes. If the Settlor is incapacitated, you will need medical certification of that fact which is the basis for your assumption of the job. If the Settlor is deceased, you will need a certified copy of the death certificate to accompany your title change documentation. The principle here is that the world needs to know who has the legal authority to act for the trust. The Settlor's name is on all assets as trustee of the trust. Your name needs to be substituted on all accounts and other assets having some form of title.

I handle these title changes by means of a statement under oath (a notarized affidavit) in which I describe the reason for the change in trustees, acceptance of the job by the new Trustee, and attach the relevant documentation mentioned above. The affidavit format is useful because it may be recorded to effect the name change for the new Trustee on real property in the trust estate, such as the Settlor's residence.

Getting Started

If you are taking over as the successor trustee of an incapacitated person's living trust, you may need to act quickly in getting yourself established with title transfers, notifications, etc. It is likely that your Settlor is receiving medical and prescription bills that need to be paid timely; in addition to the regular bill paying we all have to do on an ongoing basis. In some cases you will need to be sure there is no lapse in the Settlor's medical care and that all medical

providers have copies of the Settlor's Advance Health Care Directive.

If you are taking over a deceased person's living trust, you are not expected to get to work with such haste. Most trust and estate tasks in these situations are not emergencies and can wait a while so that family members can grieve and make decisions about things like memorial services

The transition can occur at a pace that is comfortable to the Settlor and you if you become the Trustee merely because the Settlor has resigned.

That said, you typically would complete your transition into the Trustee's job within the first few weeks or months. Most of what you need to do first involves getting organized. You will take over the Settlor's financial records, contacting creditors, locating the trust and title records for the trust property, etc. Some of these initial tasks can be handled with a phone call; others may require more legwork. Later, when you become established as the successor Trustee, you may consult with professionals regarding good investment decisions, filing tax returns, transferring ownership of real estate, and other Trustee tasks for which you need outside help.

Keep in mind from the beginning that you will be accounting to someone for your acts and transactions as Trustee, so you make this task less of a burden if you begin with good, clear records from the time you assume this role and its responsibilities.

After The Settlor's Death

You are likely to be serving both as the Trustee and as the Executor of the deceased Settlor's Will. If you aren't, then stay in close touch with the executor during the first few months following the Settlor's death. You need to know what the executor is doing and why. Later, when the executor transfers the estate's assets (assets not held in the name of the trust) to the trust, they become your responsibility.

In addition to the transition tasks reviewed above, you will have certain tasks that are

unique to handling a decedent's estate. For example:

There is a formal notification to all beneficiaries required because the trust has become irrevocable as of the Settlor's death. (Prob. C. §16061.7) Your duty to keep the beneficiaries informed begins now. I usually provide a copy of the trust and, if appropriate, the Settlor's will with these notifications.

In addition to changing title to the trust assets, you will make an inventory of those assets and anything not owned in the name of the trust so that they may be added to the trust by appropriate informal or formal means.

The value of the Settlor's assets at date of death is important for tax reasons, so you will be obtaining valuations of all assets having tangible value.

Once the trust becomes irrevocable it becomes a separate entity and will be its own taxpayer. If the trust can be administered and distributed quickly so that no more than \$600 in income is received in this period, you may not need to file tax returns for the trust. (IRS Form 1041/FTB Form 541) Otherwise, you will get a Taxpayer Identification Number from the IRS (online is easiest) and filing fiduciary income tax returns for the trust will become one of your tasks.

Notify all of the Settlor's creditors of the fact of death and resolve all debts owing. Notify insurance companies and agencies providing death benefits. Ask how they prefer to process death claims. They will have their individual forms and procedures.

You may arrange to receive certified copies of the Settlor's death certificate with the funeral home. Additional copies may be obtained from the County Recorder within a few weeks of when the certificate is issued. The number of copies you will need varies with each estate. You will need copies for banks, brokerages, insurance providers, annuity providers, retirement plans having death benefits, and any agencies to which

you will apply for death benefits, such as the Department of Veterans Affairs. You also will need a certificate to record the change of ownership into your name as Trustee for each real property owned by the trust.

Social Security. Usually, the funeral home notifies Social Security of the death. If the Settlor received a benefit check or deposit for the month of death, you are required to return it no matter what day of the month the death occurred. Be prepared to return these checks and reimburse if the check was already deposited. If the Settlor used direct deposit for benefits, keep the account to which those deposits were made open until they reclaim those payments. In this case, Social Security will take the active role.

Get Organized

Almost all of your remaining trustee tasks hinge on your ability to organize what you're doing. You will monitor the deceased person's incoming mail to intercept bills and asset statements. You may notify the post office to forward the mail to your address for convenience.

Your recordkeeping system doesn't have to be complicated. If all you need to do is collect the trust assets, pay the settlor's debts, and distribute what's left to the beneficiaries, you won't need to track income and expenses for very long -- probably three to six months, tops. You won't even have to file a trust tax return unless the trust assets generate more than \$600 in income. For a simple trust, you may be able to do a good job with chronologically organized bank and brokerage statements, a trust checkbook, and notebook.

If you are administering a trust that will exist for more than six months, you should consider basic accounting software to track each trust account. At this point automation will avoid mistakes and help make a clear presentation of your accounting and tax return preparation.

Administer The Trust

Let's review the tasks you will perform that are unique to administering the trust after the Settlor's Death.

In addition to collecting all receivables, income, and other moneys due decedent or the trust estate, you will have the duty to protect, preserve and invest the assets of the trust estate. Take advantage of the Settlor's financial advisor(s) to help you with this duty.

Take steps to secure unoccupied real property and contents from vandalism and damage. If anyone is residing in the house, you should determine whether that person has the right to be in possession of the house. If the occupants are tenants, you should review the terms of the lease, if written, and make sure to enforce the provisions. You should notify the tenants in writing that the owner is deceased and that they are to make all future payments under the lease to you as trustee. Rent must be collected and deposited in the trust bank account. If the property has a security system, notify the provider of the situation and whether the property will be occupied or vacant.

Another aspect of protecting the trust property is to keep it insured. Notify existing providers of the death and obtain coverage as necessary.

You will be distributing the trust estate (net whatever bills and costs of administering the trust have been paid or provided for). First read and fully understand the distribution provisions of the trust. The Settlor's lawyer or your own will help you decipher these provisions so the job is done according to the Settlor's wishes.

Distributions to beneficiaries are made after all debts of the decedent and expenses of the administration are paid. If distributions equal to a certain percentage of the estate are called for, then those percentages are calculated based upon the net value of the estate after payment of debts, expenses and taxes.

If you expect a significant delay before the obligations of the decedent and the trust will be fully settled, you may make an estimate of your financial needs for all outstanding obligations and hold back that amount. This is called a “reserve” and your estimate of the size of a reserve you should hold back should be generous to anticipate the unexpected. In this situation, you may proceed with distribution of everything but your reserve, then complete distributions later when you are satisfied that everything has been settled. If you have funds remaining, the probably will be going to the residual or “remainder” beneficiaries in specific proportions. You should give them an accounting of how the funds held back were spent so they can see how their final distribution was determined.

Prepare a receipt for all distributions to deliver with the asset or items distributed and ask the beneficiary to acknowledge receipt of what was sent to them by signing and returning the receipt to you. You may not make distributions contingent on a beneficiary's release of you from liability for your acts and transactions as trustee.

If the trust provides that certain property or a portion of the trust estate is to be held in trust beyond death, then your job as Trustee will continue until the terms of that trust end with final distribution. This may be the case when there are minor beneficiaries, disabled beneficiaries, or beneficiaries with special needs who are receiving certain public benefits they would lose if the trust distributed directly to them.

Do I Get Paid?

Unless the trust says otherwise, you are entitled to be compensated for your work. Some trust provide that family members serving as Trustees will not receive compensation. Usually this provision is made because the Settlor believes that family should volunteer to take care of each other, or the Settlor does not expect the Successor Trustee's job to entail much work.

The trust may specify the method for determining the Trustee's compensation. If

it does not, you entitled by law to a reasonable fee for the work done. Determination of the amount is the result of considering what education, training and experience you bring to the job, the difficulty of the tasks involved, the time used to perform the job, and prevailing rates in the community for a person with your background doing the same job. This is supposed to be an objective method of setting the rate of compensation. You should enlist the help of your lawyer or CPA in weighing these factors and arriving at a rate that seems correct.

What If You Are Overwhelmed

First, if you haven't done so already, hire the help you need. You should use the services of an attorney to help sort things out and assist with what needs to be done. Consider a bookkeeper if recordkeeping is not your thing, or an accountant to consolidate and report data and help with tax returns.

If you become overwhelmed or decide you cannot proceed with the job for any reason, you can resign. This is a volunteer position, you don't have a duty to take or keep the job. However, if you are serving as the Trustee, you do have a duty to arrange for a replacement. You cannot just walk away. If there is a successor named in the trust, then pass the job along to them. If there is no successor, ask the beneficiaries to nominate someone agreeable to a majority of them to take over. You have the option to petition the probate court for help and ask the judge to appoint a successor. In some situations a corporate trustee may be appropriate.

Other Resources

There are many resources available online that are easily accessible to a basic search for what trustees do. You also should be able to find checklists for this role if you find them helpful.

I have listed one or more articles on my website, if you wish to view it. www.phaweslaw.com.