

A GUIDE TO

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# BEING A CALIFORNIA TRUSTEE



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# ***SYNOPSIS***

**D**ealing with the passing of a loved one is enough to handle as is. Having to also act as a trustee for the estate may feel like a daunting task, especially for a non-professional. This guide will cover the basic responsibilities and duties of a trustee in California, the procedural steps in trust administration, and what you can do to ensure that your working relationship with trust attorneys is effective and cost-efficient.

# WHAT IS A TRUST?

A trust is a useful tool in estate administration law that allows a person (the “Trustor” or “Settlor”) to appoint another individual (the “Trustee”) to manage designated assets and property in accordance with the person’s wishes. The people who will be receiving the assets and properties in the trust are called “Beneficiaries.”

Depending on how the trust is drafted, the **TRUSTEE** manages and distributes these assets and property:

■ After the Settlor’s death

■ When the Settlor can no longer make their own decisions because of illness, injury, or age, for example

■ Both

Anyone can be appointed Trustee, but in most cases, the Trustee is the Settlor’s surviving spouse, adult child, relative, or a friend. The Trustee could also be another third party the Settlor trusts. Sometimes a Settlor will appoint an attorney, trust company, or another estate administration professional. A trust is created through a written document that fulfills the legal requirements in the Settlor’s state and gives legal ownership of assets and property to the Trustee – but only to help in the management of these assets and property.



# **TRUST**

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# *WHY CREATE A TRUST?*

The main purpose of a trust is to allow the Settlor to maintain control of what ultimately happens to their assets and property, especially if there are beneficiaries who may be under 21. It becomes the Trustee's responsibility to maintain and protect the contents of the trust until beneficiaries turn 21 and can receive what is in trust for them.

**The trust will delineate who the *BENEFICIARIES* are, as well as:**

■ **Which assets and/or property each one gets**

■ **How assets and/or property are to be divided among them**

A trust can be a precaution to avoid fighting among beneficiaries, but also for the designated assets and property to avoid the probate process, which involves the court and has its own legal requirements as to how someone's estate is to be distributed and to whom. Without the guidance of a will or a trust, there is no guarantee that the Settlor's wishes will be followed – or even who will be in charge of the estate.

Note that even if the deceased had a comprehensive will or trust, the court might still need to step in if there are any disputes about the trust itself or the way it is being administered. In this case, the Trustee will be the representative of the estate in the proceedings.



# *DUTIES AND RESPONSIBILITIES OF A TRUSTEE*

**B**eing a Trustee is a serious endeavor – something you should not take lightly. You could be held legally liable if you don't fulfill your duties properly. Not only do you have to avoid any conflicts of interest, but any appearance of conflict of interest.

Trustees can't delegate important trust duties. Even if you seemingly transfer authority to another person, you are legally liable for any losses that might occur – not just losses that occur as a result of how this person manages the trust. Unless specifically prohibited by the trust, you are allowed to hire lawyers, accountants, and other professionals to help you administer the trust most effectively and efficiently – but ultimately, you are the one on the hook if something goes wrong.

# AS PART OF YOUR RESPONSIBILITY TO --- BENEFICIARIES, TRUSTEES MUST:

Never run any part of the trust for your own benefit or advantage – for example, putting up property for sale and then buying it for yourself or someone else, or doing any business with the trust.

Remain impartial and fair with the beneficiaries and distribute according to trust requirements – for example, you can't favor one beneficiary over the others or give bigger shares to beneficiaries you like better.

Keep beneficiaries informed about what is going on with the trust, including important meetings about the trust and any important information beneficiaries need to protect their own interests in the trust.

Never mingle your personal assets with trust assets, or vice versa – for example, keep a separate bank account for the trust.

Enforce the rules of the trust and defend claims made against the trust – for example, if someone tries to argue that the trust isn't valid or otherwise brings a legal challenge, you are responsible for defending the trust in court or to hire a lawyer to do it.



# BASIC STEPS AS A TRUSTEE

How long it will take to administer a trust will depend on the circumstances and how

complicated the trust is. For a modest trust for a surviving spouse, it could be as short as a few months. Where there are multiple beneficiaries, different types of assets, or complications that pop up – such as disputes with creditors or beneficiaries, tax problems, and tax issues, to name a few – it will take longer to fulfill your trustee obligations. It's always a good idea to keep beneficiaries updated on things that are happening on these fronts.

**In addition to any specific steps the trust requires you to take, this is what you will be doing as Trustee...**



## Step 1

# GET THE ESSENTIAL DOCUMENTS AND INFORMATION TOGETHER

You will need the originating trust document, of course, but also:

- **Any other estate plan documents**
- **Primary copies of the death certificate**
- **Certified copies of the death certificate from the Coroner's Office**

Most trust administration guides put notifying beneficiaries as the first step, but it's important to gather relevant information and documents and to understand your duties under the trust so your communications are informative and efficient.

Having copies of the Settlor's life insurance contracts, deeds to property, and prior tax returns will aid you greatly.

See what relevant documents are with the personal papers of the Settlor and contact their attorney to find out what they have. Read and familiarize yourself with the trust and estate document. Calculate how much it will cost to administer the trust, both so you know what amount you can claim to fulfill your responsibilities under the trust, but also to advise the beneficiaries for transparency.

Apart from the legal requirements for notice, ask yourself what information you would want if you were a beneficiary to a trust, and try to include that in or with your notice. The more confidence in your abilities to administer the trust you can inspire in beneficiaries early on, the smoother and less hindered your efforts may be. You need the consent of the beneficiaries for things like the distribution plan, so having them on board from the beginning is a smart move.

## Step 2

# *PROVIDE NOTICE TO THE BENEFICIARIES*

- **Mail written notice about the trust administration to all beneficiaries and heirs within 60 days of the Settlor's death**

The law requires you to give formal, written notice by mail about the trust administration to all beneficiaries and heirs within 60 days of the Settlor's death or the event that kicked off the trust administration process. There are standard legal warnings that have to be included. If any beneficiaries request a copy of the trust terms, you must send it to them.

Trust beneficiaries have 120 days from the date of the trust notice or 60 days from when they actually receive the

notice – whichever is the longer period – to challenge or raise issues with the trust. It is crucial to send out the trust notices properly because the timeframe to contest the trust can be extended for up to four years if they are not. This, of course, can drag out the length of time it will take you to finish administering the trust.

If there are no challenges within this contesting period, you can proceed with your duties under the trust when that period is up. Beneficiaries who do not raise issues during this period will not be able to contest the trust later. If one or more beneficiaries challenge the trust within the time limit, however, you cannot move on to other steps in the trust administration until the claims are resolved.

It is smart to notify any creditors at this stage as well so that the claim period can start and end. Any creditors who try to claim against the trust after this period don't have to be paid.

## Step 3

# *IDENTIFY ASSETS AND HAVE THEIR VALUES ASSESSED*

- Take inventory of assets
- Get assets professionally appraised

Since you are legally liable for the protection and preservation of trust assets, you need to know what assets there are and how much they are worth. You will need to get them professionally appraised. Knowing the value of the trust assets is also important for tax purposes – for example, for calculating cost basis adjustments, capital gains, or anything else that could affect the amount of income tax in the future.

As part of the process of identifying and valuating trust assets, you also need to obtain titles for special assets that are

included in the trust, as well as assets that are intended to be in the trust – for example, if they belong in a category identified in the trust.

This includes any income tax debts. You must pay out any valid claims made against the trust before distributing assets or you could be held personally liable for them in court. Where you disagree with the claim, you still must resolve the dispute before distributing or selling assets.

## Step 4

# *IDENTIFY AND RESOLVE DEBTS*

- Don't forget income tax debts

## Step 5

# *DO THE NECESSARY TRUST ACCOUNTING*

- **Have a complete accounting of every transaction**
- **File proper tax returns on time**

Again, it is your responsibility as Trustee to manage the trust assets that will ultimately be distributed pursuant to the terms of the trust. As such, you must do so reasonably and prudently, to maintain as much value as you can. Rent out or sell vacant properties and invest liquid funds in ways that will provide reasonable returns with minimal risk.

California law sets out certain requirements for trust accounting, including the fact that beneficiaries are entitled to have a complete accounting of every transaction. You are also, as mentioned earlier, required to file all the proper tax returns in a timely manner. If you file late and the trust incurs debt as a result, you are liable for that amount.

## Step 6

# *INVEST TRUST ASSETS*

- **Maintain value for trust assets**

## Step 7

# *DISTRIBUTE TRUST ASSETS*

- **Distribute the assets to the beneficiaries at the proper times**

Following the Settlor's wishes as they are described in the terms of the trust, as well as any state laws on trust and estate administration, distribute the assets to the beneficiaries at the proper times.

There may be some assets you can transfer sooner than others, for example, if the stated beneficiaries of those assets have already reached the age of majority. Other assets may stay in trust for years,

for example, if the stated beneficiaries of those assets are quite young. If so, you will likely still have to pay out benefits over time.

Distributing the trust assets may include transferring titles, preparing deeds, or any other requirement that has to be fulfilled in order to effect a proper transfer.

When all the trust assets have been distributed to the beneficiaries, you may have fulfilled the requirements of the trust. However, the trust is still a legal entity that you're responsible for until it is dissolved. There are procedures set out by California law that you must follow.

## Step 8

# *DISSOLVE THE TRUST*

- **Dissolve Trust based on California law requirements**



## *SHOULD YOU HIRE A TRUST ATTORNEY?*

*U*nless specifically stated in the terms of the trust, Trustees are not obligated to hire trust attorneys. Some non-lawyers are absolutely capable of administering a trust all by themselves, especially if the trust is relatively simple.

What if you are dealing with a trust that is more complicated, for example, if there are multiple beneficiaries of different ages or many different assets with different legal requirements? Or, maybe you're dealing with a trust that looks like it might be an administrative nightmare?

# IN THOSE CIRCUMSTANCES, IT MAY BE IN YOUR BEST INTEREST AND THE INTERESTS OF THE BENEFICIARIES TO HIRE A LAWYER AND OTHER ESTATE PROFESSIONALS.

- With a trust attorney on board, you can at least have the peace of mind that the trust is being administered according to all the applicable laws and by someone who is trained and experienced to do so. This means less hassle, worry, and wasted time on your part.
- While you are still technically responsible for anything that goes wrong with the trust administration, if you have relied on the services of a professional, there is at least some recourse for you -- whether it is taking them to court for the damage caused to you, or initiating disciplinary action by their governing bodies.
- No matter how smart or competent a person you are, beneficiaries may have more confidence that the trust is being administered properly by a certified professional who is knowledgeable about all the protocols, processes, and requirements involved.
- Dealing with beneficiaries can be exhausting and stressful -- especially when they are friends or family members. Having an impartial third party as a buffer between you and the beneficiaries may be a smart way to preserve your relationships with beneficiaries, and to curb any doubts they might have that you could play "favorites" or let your emotions affect how you distribute the trust assets.
- If any legal claims or court matters come into play, you will likely want an attorney to effectively negotiate and if necessary, make legal arguments before the court. They will also be able to advise you of your rights and legal liabilities under the law. They can also advise you on the best way to defend you or the trust from legal challenges or lawsuits.



# HOW TO HIRE AND WORK WITH TRUST

## LAWYERS

One of the most important relationships you may have in your

lifetime is the one you have with a lawyer you hire. A good working relationship can make the difference between a relatively smooth and cost-effective trust administration process and a drawn-out, stressful, expensive, and inefficient one.


It helps to find the right lawyer for you at the beginning – not only in terms of cost and experience, but also your “fit”. After all, you may have to work closely with this person through some hectic times. You need to be able to trust your lawyer to look after your interests.

**Here are a few tips for finding the right lawyer for your case...**



- Talk to friends and colleagues and see if they refer you to a good lawyer. If they were happy with the services this lawyer provided, this could be a good sign. If you have a lawyer for an unrelated matter, ask them. They may have a colleague to recommend.
- Do an online search for trust and estate attorneys and go through their bios. This will give you an indication of how experienced and accomplished this lawyer is. Are they on any panels or in important positions in respected organizations?
- Take a look at online reviews if available. This could give you an indication of how the lawyer works and what they're good at. Just remember to take online reviews such as Yelp with a grain of salt. You never know if the review was written by an unreasonable client who just wanted to get revenge for not getting what they wanted or if you're looking at a collection of specially selected reviews. Focus less on the rating and more on what kinds of things – good and bad – past clients have to say.
- Look up how much estate planning and trust attorneys tend to cost so you will at least have a ballpark cost estimate. Find out what you can from the lawyer's office about rates – whether you have to pay a retainer up front and if they offer flat rates, for example. This could help you whittle down your list of prospective lawyers.
- Consult with more than one lawyer before deciding who to hire. Absolutely “comparison shop” for the right lawyer. Remember that it is better to take more time at the beginning to find the right lawyer, rather than hire one in haste only to replace them later. Replacing a lawyer usually costs more time and money, even when you factor in any costs you have paid to meet other lawyers. This is because the new lawyer will have to get up to speed with the case.
- Meet with the lawyer. There are some things you can not glean from websites and other third-person sources: namely, whether the two of you will be a good fit. Someone could look perfect on paper but not inspire confidence when you finally see them face to face. Alternatively, you could have a tie between lawyers but one really explains things in a way you understand while the other uses a lot of jargon. Many lawyers offer free initial consultations. Take advantage of this!

- Be able to give the lawyer a full picture. This means you should be familiar with your legal issue. The more information the lawyer has about the trust terms, beneficiaries, and any quirks in the case, the more accurate the cost estimate you can get. You can find out if this lawyer has had similar cases and what kind of outcomes they have gotten. If you are not sure what you should bring to your first meeting, ask the law office beforehand.

**AFTER YOU DO HIRE A TRUST  
ATTORNEY, THERE ARE A NUMBER  
OF WAYS YOU CAN WORK TOGETHER  
TO MAKE SURE THINGS GO AS  
*EFFICIENTLY AND COST-EFFECTIVELY*  
AS POSSIBLE. NOT ONLY WILL  
THIS SAVE YOU THE HEADACHE OF  
TIME DELAYS, BUT LOWER LEGAL  
COSTS ARE EASIER TO JUSTIFY TO  
BENEFICIARIES. **

- Work out how and when the lawyer will be paid upfront, as well as what services are included. For example, lawyers charge for taking instructions and drafting letters, but you may luck out and find someone who doesn't charge for quick phone calls. Ask them about who they have to bring on board, for example, paralegals or valuation experts.
- Also find out if there are things you can do to bring down costs, such as photocopying materials yourself or filing something at the courthouse instead of having the firm hire a process server or courier.
- Be prepared for every meeting. Bring as many documents and as much information as you can from the outset. This way, you can eliminate meetings that have to be scheduled because the lawyer needs something you didn't think to bring with you to an earlier meeting. It's also very important for the lawyer to know what materials they have, so they can work on getting anything they need but don't have. You also want to be able to ask any questions you have when meeting with the lawyer so you don't incur more cost by asking supplemental questions by email or phone later.
- Go over action items with the lawyer at the end of each meeting. That way, you know what you will need to bring or find out and what to expect from the lawyer by a certain time or by the next meeting.



## About Us

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Whether you are starting a new company for yourself, contesting a tax ruling with the government, or managing your family's estate, we bring exceptional experience and advice to help you overcome even the most complex legal obstacles.



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