

TRUST ADMINISTRATION



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AN OVERVIEW OF ADMINISTRATION OF LIVING TRUSTS

The following guide is provided to give some direction to you if you are a Trustee administering an estate post-death. This guide assumes that you were not acting as the Trustee of the Trust at the time of the Trustor's passing. In other words, you are a successor Trustee, stepping in to administer the estate post-death. This is an overview only and you should consult with legal and financial professionals as you undertake this journey.

While the steps below are presented in a linear fashion, you may find that you undertake some steps in a different order or simultaneously. Because the person who passed away (decedent) had a trust, that means it is highly unlikely that you will need court intervention. You are the person who has authority to make final decisions based on the terms of the trust and the salient law, all without turning to the court for approval.

The first advice is to breath. It is probably the case that you are administering the estate of a loved one. Take time to grieve and know that there are rarely any emergencies you will need to deal with. Once you have allowed yourself that time, you can reach out to a legal professional, if necessary, to help you with estate administration.

So, what do I need to do as a Successor Trustee administering an estate? Here are some basics:

1. Order Death Certificates-This is the one thing you will want to do sooner rather than later. You will use these certificates to give notice to different asset holders of the decedent's passing. You will need to guesstimate the number of death certificates to request from the mortuary. The number needed often depends upon how many financial institutions and real estate holdings are involved.

2. Locate the Assets-You will need to identify and locate the estate assets. Hopefully, the decedent has listed these assets in the Trust to make it easier for you. If not, you may have to go through the decedent's paperwork, look at incoming mail and even try and access the decedent's safety deposit box, if they had one. A power of attorney may give you the right to access the safe deposit box, or if you are a trustee and have a key, California *Probate Code* section 331

allows you to access the box for the purpose of taking inventory of what is there and even removing estate planning documents.

If an account was held in trust, you will need to take the trust and death certificate to the applicable institution. This will give them proof they need that you are now in charge and will be handling the account.

If the account was held jointly by the decedent and a third person, then the last person standing gets the entire account. This type of ownership usually passes outside the trust and you will not have to worry about it.

If an account has a “Payable on Death” or “Transfer on Death” on it, that means beneficiaries should be listed on it and those accounts will pass to the beneficiaries outside of the trust upon proof of the death. Again, as Trustee, you will not have to worry about handling this.

Finally, if there are assets held outside the Trust and in the decedent’s name alone, you may be able to use a document called an “Affidavit of Small Estate” to handle the item outside of probate. This process is available if all the assets remaining total less than \$150,000.00 (the figure at the time this document was prepared). Furthermore, there may be a document called a Pour-Over Will as part of the estate plan that tells the probate court that any assets left outside the Trust, and without beneficiaries listed, is meant to be in the Trust. The judge in probate court should then direct that the assets be “poured over” into the trust.

Note: Some assets may need a date of death valuation for tax purposes. An appraisal establishes a cost basis for real estate or other applicable assets. How the asset is taxed will be determined by the valuation at the time of death. The Trustee is responsible for making sure that the Trust pays taxes properly, so this step is crucial.

3. Ascertain and Pay Off Debts and Administration Costs-So, you figured out the assets (congratulations!), but you are also responsible for figuring out the debts of the estate. This may even include funeral costs. Proceed deliberately and carefully. A creditor may assert that you are personally responsible for the debts. However, unless you were married to the decedent or co-signed on a loan, you are not.

Notify the creditors of the person’s passing. You may be able to do that with a simple letter. If there is no money in the estate to pay debts, you can go ahead and

inform the creditor of the same. If there is money, ask the creditor to mail you a request for payment. Some creditors may forgive the debt or take less than is owed. You may be able to negotiate.

Keep records of expenditures; some may be deductible by the estate. But, also make sure that all debts are legitimate and truly owed.

And, don't forget about the IRS. *You need to hold on to enough money to make sure any taxes due are paid.* A CPA can help you estimate how much money you need to hold on to to cover taxes. You can hold this money in a bank account opened in your name, as trustee of the trust.

In California, there are no estate taxes. However, if the decedent was very wealthy, the federal government will want a piece of the pie. Taxes are levied on sums that exceed an exemption amount. The exemption amount for federal estate taxes has varied over the years. You will want to consult with a CPA regarding this issue. (As of 1/2018 the exemption amount per person was \$11,200,000.00. That amount could change at any time.)

4. Obtain a Tax ID Number for the Estate- Once the person dies, if their trust was revocable, it becomes irrevocable and needs its own tax ID number (or employment identification number) for the trust. This is necessary because some assets may accrue interest and a tax return may need to be filed on behalf of the estate. A social security number will no longer work, since the person it belongs to is deceased. You can go on the IRS website or call them to obtain the ID number. An attorney or CPA can also help with that.

5. Give 120 Day Notice- This notice has to be given to the heirs/beneficiaries of the estate. It is basically a letter that introduces you as the Trustee, provides them with a copy of the Trust, or advises of them of their right to a copy of the Trust, and tells them of their right to challenge the trust within 120 days. If no challenges are made after notice, the time for challenge has expired and you may proceed.

6. Distributing Personal Property- Personal property includes all the decedent's "stuff." Items like furniture, jewelry, art, clothing, and even cars, are included. You are responsible for protecting that property and making sure it is distributed per the decedent's wishes as indicated in the Trust. The decedent may have left a memorandum advising that he/she wished that certain items go to certain people, which you must honor. Perhaps, the decedent tagged certain property with individual's names, which can help guide you if a memorandum was not provided.

If there are items left over that have not been specified to go to named individuals and the Trust does not indicate whom any left-over items are to go to, you may eventually hold an estate sale and add the proceeds to those that are ultimately to be distributed per the Trust or even donate items to charity.

7. Accounting to the Beneficiaries-As a Trustee, you are a fiduciary to the Trust beneficiaries and have a duty to keep them informed of your actions. Typically, the Trust document will tell you how often you need to report to the beneficiaries of the Trust. You can report informally or formally, depending on the situation you find yourself in, but, the beneficiaries definitely need to be kept in the loop.

Formal accounting requires an annual report to beneficiaries with information as specified in California *Probate Code* sections 16062-16063. This is expensive and time consuming but, may be necessary in some situations. The preferred route, an informal accounting, would involve a letter to the beneficiaries, right before you intend to make distributions, providing a summary of the estate and the following: (1) How much money was in the trust when the decedent passed away, (2) what assets/accounts were there, (3) what checks were written and why, (4) what expenses were incurred and why, (5) how much is left in the trust, (6) how much you're setting aside for taxes, (7) how much you might be taking for your trustee fee, (8) any attorney fees that were incurred, and finally (9) proposed distributions. You can then ask that each beneficiary sign and return the letter, leaving you free to make distributions. It is possible for all of the beneficiaries to waive accounting.

8. Distributions of the Trust Assets: Only after the all the debts and obligations, including taxes and fees, have been paid in full, should you go ahead and distribute Trust assets per the terms of the Trust. You may still want to retain a part of the trust assets for a year to make sure you can cover any unexpected expenses or debts that show up during that time.

Most trust documents give the Trustee wide discretion as to the exact manner that the Trust is to be distributed. The idea is to prepare and obtain agreement on a distribution plan that minimizes taxes and expenses that the Trust must pay. If the only way to split the assets equally is to sell some non-cash assets, make sure the beneficiaries are on board as to what should be sold. If you cannot reach agreement, hire an attorney to be paid by the Trust.

If you do need to sell real property, in order to have the authority to act, you will need to substitute in as the Trustee on the property. That means you will have to file

an Affidavit of Death with the county recorder, along with the official death certificate.

Make sure and obtain signed receipts from all the beneficiaries upon making distributions to them and also obtain a waiver of further accounting from each of them.

9. Trustee Fees-The Trust documents typically address compensation to the Trustee and usually allow for “reasonable” compensation. The question then becomes what is that? For a non-professional trustee, it is typically 1% of the assets being handled per year.

If you are simply reimbursing yourself for an expense, such as gas, there is no income tax that you will have to pay. But if you are paying yourself for your time, that is income and you will have to report that on your income tax.

While this overview may not cover every contingency that will arise, it should give you a good general idea as to what expect as far as your duties are as a Trustee involved in trust administration.

Please note: This informational packet is not legal advice. Each person's matter is different and facts and circumstances should be evaluated by an attorney versed in estate planning.

For an appointment, please call the McNamara Law Firm, PC, at (661) 287-3260, or visit www.themcnamaralawfirm.com.