



# Estate Administration

## Financial & Estate Literacy “It’s Your Estate” - Fall 2022

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## Estate Administration - Basics

Estate Administration	Trust Administration
<ul style="list-style-type: none"><li>• An Estate is property, assets, and liabilities a person leaves behind after they die.</li><li>• Estate administration is the process of managing and distributing a person’s property after death.</li><li>• Supervised through Probate Court.</li></ul>	<ul style="list-style-type: none"><li>• A Trust is a Contract in which one party (the Trustor/ Grantor/ Settlor) gives a second party (the Trustee) the right to hold title to property or assets for the benefit of a third party (the beneficiary).</li><li>• Trust Administration is the process of managing and distributing <u>Trust</u> assets.</li><li>• Ideally administered without Probate Court involvement.</li></ul>

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# Someone dies, what happens?

No Trust with Gross assets > \$184,500	Valid Trust - any value
<ul style="list-style-type: none"><li>• Estate goes to Probate</li><li>• Executor appointed by the court will administer the estate</li><li>• Executor will report to the court along the way</li></ul>	<ul style="list-style-type: none"><li>• No Probate (potentially)</li><li>• Successor Trustee Administers Trust</li><li>• Reporting to Beneficiaries as required</li><li>• Assets outside the trust in the deceased individual's personal name may transfer to trust through:<ul style="list-style-type: none"><li>○ Small Estate Affidavit</li><li>○ Heggstad Petition</li><li>○ Full formal probate</li><li>○ Other means</li></ul></li></ul>
<ul style="list-style-type: none"><li>• Small Estate Affidavit - certificate to release assets and property to the individuals entitled to said assets and property</li><li>• Other nonprobate transfer documents could be involved</li></ul>	



# Costs of Probate

- Attorney & Executor fees are set **by statute** (Probate Code § 10800-10814)
  - (1) Four percent on the first one hundred thousand dollars (\$100,000).
  - (2) Three percent on the next one hundred thousand dollars (\$100,000).
  - (3) Two percent on the next eight hundred thousand dollars (\$800,000).
  - (4) One percent on the next nine million dollars (\$9,000,000).
  - (5) One-half of 1 percent on the next fifteen million dollars (\$15,000,000).
  - (6) For all amounts above twenty-five million dollars (\$25,000,000), a reasonable amount to be determined by the court.
- So, for a probate estate of \$1,000,000 the administration cost is \$46,000+
  - \$23,000 in Attorney "ordinary" fees
  - \$23,000 in Executor/Administrator "ordinary" fees
  - + Court costs, filing fees, probate referee costs, "extraordinary" service fees



# What does the Executor/Administrator or Successor Trustee do?

Executor/Administrator (Probate)	Successor Trustee
<ul style="list-style-type: none"><li>• Administer the Estate</li><li>• Follow Probate Code and instructions in Will</li><li>• Locate, Marshall, Account, and Distribute Assets</li><li>• Manage Liabilities</li><li>• COURT SUPERVISED</li><li>• After death</li></ul>	<ul style="list-style-type: none"><li>• Administer the Trust Estate</li><li>• Follow Probate Code and instructions in Trust document</li><li>• Locate, Marshall, Account, and Distribute Assets</li><li>• Manage Liabilities</li><li>• PRIVATE, NON-COURT SUPERVISED (ideally)</li><li>• While Trustor/ Grantor/ Settlor is alive, or incapacitated, or after death</li></ul>



# Would a Successor Trustee ever go to Court? YES

- If assets outside the Trust exist that need to pass into the Trust and probate is required.
- A Beneficiary or Interested Party can “Petition” and make a request of the Court:
  - If a Beneficiary of the Trust feels the Successor Trustee is not acting properly, they can ask the court to intercede.
  - Any other reason
- A Successor Trustee can “Petition” or make a request of the Court:
  - Petition for Instructions
  - Responses to other Petitions



## Estate and Trust Administration - Major Steps

- Appointment and "Powers" Document Setup
- Tasks related to a Death
- Locate Important Documents / Beneficiary Evaluation
- Engagement of Professionals
- Notices and Notifications
- Marshalling, Inventory, Appraisal
- Consolidation
- Final Distribution / Allocations / Discharge / Closing

\*There are many tasks related to an Estate or Trust Estate Administration. The following slides include some of the most important, noteworthy, and overlooked steps. Each Administration is unique.



## Appointment and "Powers" Document Setup

- Locate original wet signature Estate Planning documents (including all amendments and reinstatements)
- Acceptance and Resignation forms for chain of trusteeship/executorship
- Death Certificates (original, certified)
- Obtain Bonding (if applicable)
- Historical Petitions or Declarations (if there was court involvement prior)
- Taxpayer ID Numbers (TIN) / Employer Identification Numbers (EIN)
- Estate "**Letters of Administration**" or Trust "**Certification of Trust**"



## Tasks related to a Death

- Find and review Decedent's funeral and burial wishes
- Notify immediate family and close friends (as appropriate)
- Arrange for mortuary, cemetery, and burial or cremation as wished or pre-arranged.
- Evaluate emotional impact on the family and arrange for support. (Don't forget about pets)
- Prepare or arrange obituary
- Meet with attorney to determine testate (with will) or intestate (without will) court filings.
- Locate Heirs at law for statutory notifications
- File a Notice of Death of Real Property Owner with county assessor's office (if necessary)
- File a Notice of Death to the Department of Health Care Services (Medi-Cal, Estate Recovery Process)
- Notify Payors of death (SSA, Pensions, etc.)



## Locate Important Documents / Beneficiary Evaluation

- Locate and Review:
  - All insurances: (Home, Auto, Medical, Liability, Workers Compensation, Life, etc)
  - Original Death Certificates
  - Bank and Investment Brokerage Statements, Credit Reports, Previous Tax Returns
  - Promissory notes, Partnership Agreements
  - Real Estate Documents, Deeds, Rental Agreements
  - Vehicles, Valuable Collectables, Safety Deposit Boxes, Liabilities, etc.
- Identify **TITLE** to know if it's a Trust or Estate item
- Evaluate Beneficiary's Condition and Care (disability, physical and mental condition, appropriate living situation, financial condition, government benefits, current and future needs and programs, recreational activities, grief counseling)
- Review Beneficiary distribution parameters (Special Needs, HEMS Standard, Discretionary, etc)



## Engagement of Professionals

- Attorney (Probate, Real Estate, Business, etc)
- CPA (and maybe Bookkeeper)
  - Final or continuing Tax Returns. Assistance with Step Up in Cost Basis calculations
  - Form 56 (FED and CA): Notice of Fiduciary Relationship- Initial
- Real Estate Professional / Property Manager
  - Prepare and execute agreements if necessary
- Banking and Investment / Financial Planner
  - Investment and spending plan. CA Prob Code § 16047 Prudent Investor Rule
- Insurance Agent
  - Property, vehicle, umbrella, worker's comp, Errors and Omissions, etc.
- Other Professionals (as necessary)



## Notices and Notifications

- Required IRS Notices
- Probate Code Notices
  - Identify and prepare "Service List" with attorney
  - Probate Code §16061.7 Notice - Irrevocability/Change of Trustee
- County Clerk Notices for any Real Property owned
- Notify all applicable institutions of death or change of trustee
- Notify the V.A. (if applicable) and Department of Health Services of death
- Creditor Notices
- Notice of Proposed Action



## Marshalling, Inventory and Appraisal

- Secure all property (Real and Personal)
- Retitle Checking, Savings, Brokerage Accounts, and Real Property
- Secure income (Social Security, Pensions, Annuities, Insurance Benefits, Rental Income, Annual IRA distributions, other income)
- Obtain valuations of all property at the Date of Death including real estate and business interests
- Identify Creditors and Liabilities (Utilities, Insurance, Real Estate, Credit Cards, Vehicles, Health Care, Other Professionals, Other Vendors). Manage carefully with attorney.
- Prepare Inventory of Personal/Trust/Business Property, accounts, debts (include Title)
- Analyze income and expenses. Put together administration budget.
- **Keep meticulous records of expenses, activity, and decision making processes**



## Consolidation

- Invest and sell securities as necessary or required
  - CA Prob Code § 16047 Prudent Investor Rule
- Arrange for sale or distribution of Assets and/or Personal Property
  - According to the terms of the Will and Trust instructions
  - Obtain and retain signed receipts for anything released
- Secure and manage retained assets
- Carry out instructions from the court (if court involvement)
- Continue carrying out instructions from applicable Will and Trust while adhering to the Probate Code



## Final Distribution / Allocations / Discharge / Closing

- Prepare draft final distribution to beneficiaries or subtrusts
- Prepare letters to heirs at law and beneficiaries
- Prepare final accounting and tax returns
  - Retain appropriate holdback for any outstanding tax liabilities.
- Prepare receipts for distribution checks, property, and personal property
- Obtain Judgement of Final Distribution from court (if applicable)
- Once discharged, file IRS form 56 (FED and CA) Final
- Archive Files



## What makes a good Executor/Administrator/Trustee

<ul style="list-style-type: none"><li>● Time Availability</li><li>● Desire</li><li>● Proximity</li><li>● Organization</li><li>● Ability to Delegate</li><li>● Communicative</li></ul>	<ul style="list-style-type: none"><li>● Transparency</li><li>● Presence</li><li>● Bondable (if necessary)</li><li>● Competent</li><li>● Excellent recordkeeping</li><li>● Efficiency</li></ul>
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- The Executor/Administrator/Trustee is **personally liable** for all actions taken or not taken during the administration of an estate or trust.
- The Executor/Administrator/Trustee must be prepared for the ever-changing legislation and ever more sophisticated tax changes



## Selected Important Trustee Duties from Probate Code

- PC §16000 - Duty to Administer Trust According to its Terms
- PC §16001 - Duty to Follow Written Directions from Trustor
- PC §16002 - Duty of Loyalty to Beneficiaries
- PC §16003 - Duty of Impartiality to multiple beneficiaries
- PC §16004 - No Self-Dealing (or appearance of self-dealing)
- PC §16006-16007 - Duty to Take Control of and Preserve Trust Property. Make Productive
- PC §16009 - Duty to Keep Trust Property Separate and Identified
- PC §16010-16011 - Duty to Enforce Claims and Defend Actions
- PC §16012 - Duty to not delegate unless exercising supervision (does not apply to investment and management under 16052)
- PC §16014 - Duty to apply full extent of Trustee's Skills (Trustee held to standard of skills represented)
- PC §16062 - Trustee's Duty to Report Information and Account to Beneficiaries



## Consider using a Licensed Professional Fiduciary

- Neutral third party – administers in an unbiased manner according to terms of the document
- Licensed and monitored by the Department of Consumer Affairs with regular continuing education on trust and estate administration. Often carry Professional E&O Insurance.
- Flexible & vetted network of professionals – can maintain CPA, financial advisor, property manager, care managers, etc.
- Trust Beneficiaries will have **none of the fiduciary liability** – conflicts can emerge when family member trustee is also beneficiary. Executor/Administrator/Trustee has unlimited liability
- We know the probate codes that govern our duties to ALL beneficiaries
- We will often serve in the incapacity fiduciary positions of Power of Attorney for Finances and as an Advance Health Care Directive Agent for consistency of care and administration



## What happens when the first spouse dies?

- Depends on the Title of assets and language of the Will and Trust
  - If Community Property - each spouse has 50% interest
  - If Community Property with right of survivorship - automatic to surviving spouse
  - If Joint Tenancy - 100% transfer to co-owner upon death
  - There are also Sole Ownership and Tenants in Common title types
- Probate court might need to be involved
  - Spousal Petition - a way to transfer or confirm property to a surviving spouse without a full probate proceeding
- Pay on Death for accounts and Beneficiary Designations can reduce issues.
- Each method of holding title and transfer terms have **tax implications** to consider



## How long is all this going to take?

- It depends on the complexity of the administration and other factors
- If probate is required, probably 2 years+ (lately) assuming no conflicts
- Conflicts between beneficiaries could further delays
- If a Pour Over Will and Trust are in place – probably faster than probate, but still required legal statutory steps can take time
  - 120-day notification of potential beneficiary period
  - 120-day notification of creditors period
  - IRS timelines, unclaimed property timelines, business affairs, subtrust administration, etc could add to the time it takes to fully administer a trust or estate



## What could you do to make the Estate Administration easier?

- Complete your Estate Planning Documents (and keep them updated)
  - POA, AHCD, Will, and Trust
- Inform your representatives about your wishes, accounts, important documents, professionals involved in your life, etc
- Prearrange funeral plans
- Keep organized records and emergency documents handy



# Thank You

## Q&A

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