Trust and Estate Administrations: General Considerations and the Selection of Trustees

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What We Will Cover Today

1. Different Rolls: Trustees, Executors, Attorney-in-Fact, & Agents
2. Trustee Types, Compensation and Choice
3. Should I Act as a Successor Trustee?
4. What Type of Estate Plan is it?
5. Estate & Gift Tax Rates
6. What are My Duties as a Successor Trustee?
7. Trust Allocation of Assets at the First Death
8. What Happens to the Assets that are Not in the Trust?
9. Probate Fees
10. A Sample Trust Distribution Agreement

Different Roles

Estate Administration After Death or Incapacity:

- Trustee of a Trust
- Executor (nominated through the Decedent's will) or Administrator (appointed via probate) of the Estate

Incapacity: the "Bills and the Pills"

- Attorney-in-Fact under a Power of Attorney
- Agent under an Advance Health Care Directive

Types of Trustees

Layperson:

- This is probably you.
- Usually, a family member or friend.

Private Fiduciaries:

- Small companies or solo agents who are licensed by California to serve as fiduciaries.
- Similar to a small accounting firm or law office.

Trust Companies and Banks:

- "Executive-level" services, which are often combined with asset management.
- Liquid asset minimums range from $2 million to over $15 million.

Trustee Compensation

Layperson:
- Generally, $50 to $100 per hour.
- Rarely a percentage: 0.05% to 1%
- Special Skills (accountants or attorneys): Depending on skillset, they can receive a higher fee.

Private Fiduciaries:
- Hourly rate in excess of $200 per hour or a percentage.

Trust Companies and Banks:
- Expensive but worth it for big estates.

Choosing a Type of Trustee

Layperson:
- Small Estates.
- **No conflict.**
- Short-term administration.

Private Fiduciaries:
- Small estates with conflict.
- Medium to large estates.
- Long-term administration.

Trust Companies and Banks:
- Big money.
- Long-term administration.

Should I Serve as Trustee

The Lawyer's answer: It depends.

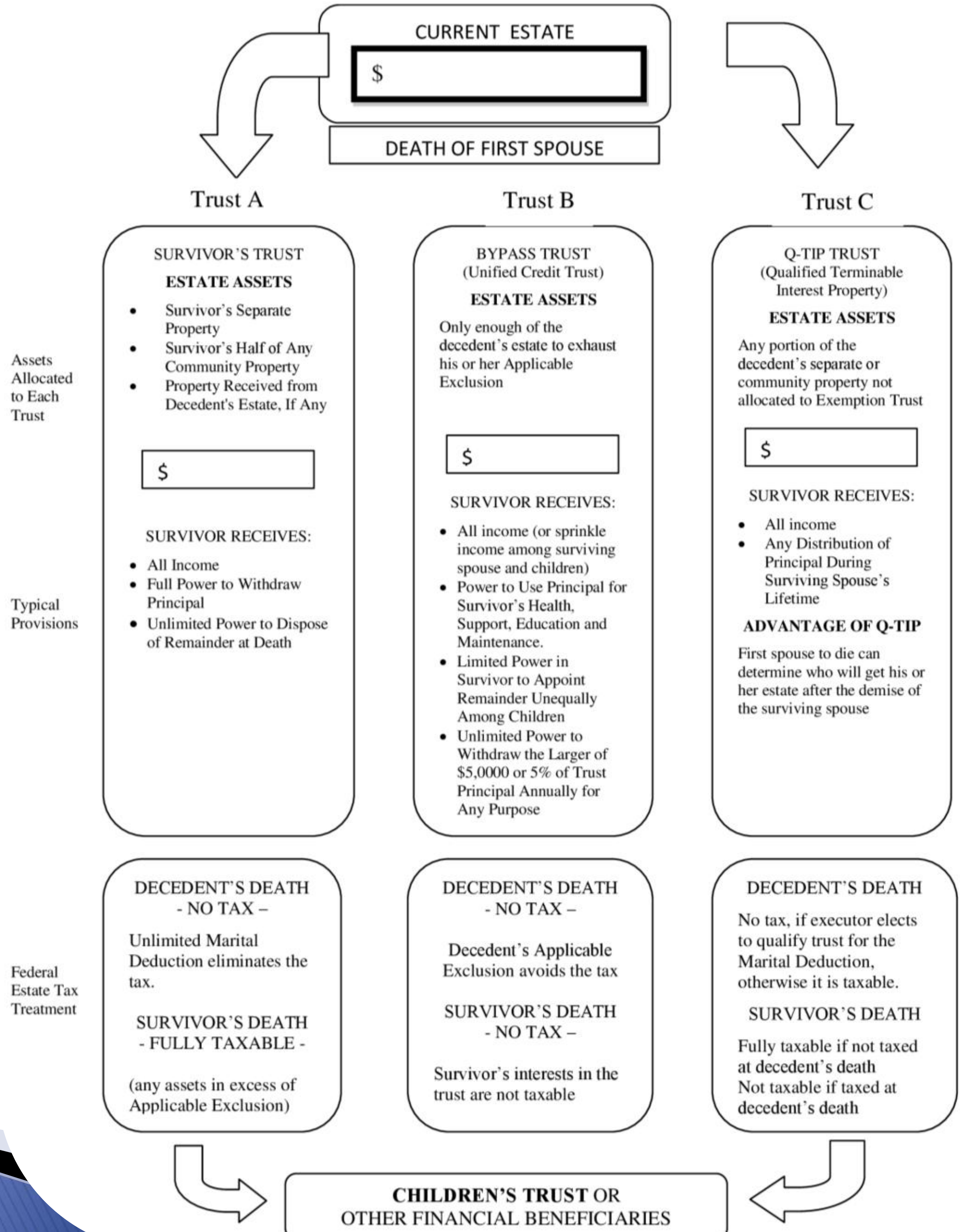
Yes, if it is a straightforward administration and you hire an estate attorney to help.

No, if it is a difficult administration and you must deal with difficult beneficiaries. Check trust terms to see if you have the power to nominate a private fiduciary or corporate trustee.

What Type of Estate Plan is It?

TYPE OF PLAN	Taxes Saved?	Probate Avoided?	Guardianship Avoided?	Conservatorship Avoided?	Fee is Tax Deductible?*
1. Intestate No Plan; No Will	No	No	No	No	No
2. Holographic Will: "Do-it-yourself Special"	No	No	No	No	No
3. Simple, All-To-Your-Spouse Will: "Mom and Pop" Will	No	No	No	No	No
4. Simple, Revocable Living Trust: Probate avoidance only	No	Yes	Yes	Yes	Maybe
5. Simple Trust and Disclaimer: Probate avoidance and tax savings	Yes	Yes	Yes	Yes	Maybe
6. Standard, Revocable Living Trust: Probate avoidance and tax savings	Yes	Yes	Yes	Yes	Maybe
7. Protection Trust: Probate avoidance and tax savings for three (3) generations	Yes	Yes	Yes	Yes	Maybe

The A-B-C Type Trust Arrangement



2025 Estate & Gift Tax Rates & Exemption

Calendar Year	Highest Estate Tax Rate	Lifetime Exemption Amount	Highest Gift Tax Rate	Gift Tax Exemption
2024	40%	$13,610,000	40%	$13,610,000
2025	40%	$13,990,000	40%	$13,990,000
2026	40%	$7,000,000*	40%	$7,000,000*

*Estimated

- Gift Tax Exclusion 2023 $17,000
- Gift Tax Exclusion 2024 $18,000
- Gift Tax Exclusion 2025 $19,000

What is Your Fiduciary Duty as a Trustee?

- Fiduciary duty is all about the beneficiaries.
- You must keep all the beneficiaries informed at all times.
- You can be sued.
- Have your beneficiaries sign the trust distribution agreement to avoid future misunderstandings.

Working with Beneficiaries

- Communicate well and often.
- You must share the trust document with the beneficiaries and heirs.
- What do the beneficiaries need to know?
- Beware that unhappy beneficiaries can be a problem.
- Is this an ongoing trust or a terminating trust?

Your Job as a Successor Trustee

- Order death certificates.
- Find and file the original Will within 30 days of the date of death and pay the required $50 fee.
- Notify the Social Security Administration.
- Inventory the trust assets.
- Get the property in your name as the successor trustee.
- Get all the assets appraised, both in the Trust and outside of the Trust
- Hire an attorney to help you administer the Trust

Probate Code Notice

- Within 60 days of the Decedent's death, the Trustee is required to send out a notice to the beneficiaries and heirs of the decedent pursuant to Probate Code Section 16061.7
- This notice starts the 180-day statute of limitations for heirs and beneficiaries to file claims against the trust.
- Incapacity: Similar notice requirements under Probate Code section 15800

- **Warning**: Trustee is subject to liability for failure to send out the notice.

Identify and Value the Assets & Payoff the Debts

- The trustee is required to marshal the assets of the trust
  - Bank accounts, investments, real estate, business interest, retirement accounts, life insurance policies
- The trustee must also value the trust assets
  - Obtain bank statements and hire appraisers for real estate and business interests
- The trustee should identify and payoff all of the decedents' debts

Clear Title to Real Estate & Assets

- Bank Accounts & Investments: Gain access to bank assets by updating title to accounts using a Certification of Trust
- Real Estate: Record paperwork in each county that the decedent owned real estate clearing title to the property and notifying the county of the decedent's death= Affidavit of Death of Trustee

- **Warning**: failure to timely file Prop. 19 and HOE will cause penalties

Obtain a Taxpayer ID for the Trust; File Tax Returns and use your Certification of Trust

- Obtain a taxpayer ID for irrevocable trusts.
- Contact a CPA to file final income tax returns and fiduciary tax returns (1041 + 541)
- Certification of Trust: This document shows that the settlors have passed away and that you are the successor trustee. You will need this document to allow you to marshal the trust assets. You will take this to the bank and it will give you the authority to move the assets into an account owned by you as successor trustee of the trust. From that account you can distribute to the beneficiaries

Distribute the Trust Assets

- Distribution: distribute the assets according to the terms of the trust.
- Agreement: have beneficiaries sign a Trust Distribution Agreement.

- **Warning**: Failure to get a release from beneficiaries can cause future problems and you as the Successor Trustee can be sued!

Taxes

- There is always a tax payer.
- You can be personally liable.
- Tax returns you may have to file.
- The final personal income tax return, Form 1040.
- The trust income tax return, Form 1041.
- The federal estate tax return, Form 706.

- **Warning:** Keep a reserve for unexpected taxes otherwise you will be personally liable.

Assets that Should be in the Trust – But are Not

- Trust assets that are not listed in the trust document.
- What stays out of the trust?
- What does the Will say?
- How to get property into the trust that was omitted. (*Heggstad* Petition)

Retirement Plans, Life Insurance, and Other Assets Outside of the Trust

- Survivorship property.
- Pay on death property.
- IRA’s and 401(k) plans.
- Life insurance.

Statutory Probate Fees

Probate Assets	Probate Fees	Probate Assets	Probate Fees
$10,000	$800	$675,000	$33,000
20,000	1,600	700,000	34,000
40,000	3,200	725,000	35,000
60,000	4,800	750,000	36,000
80,000	6,400	775,000	37,000
100,000	8,000	800,000	38,000
120,000	9,200	825,000	39,000
140,000	10,400	850,000	40,000
160,000	11,600	875,000	41,000
180,000	12,800	900,000	42,000
200,000	14,000	925,000	43,000
225,000	15,000	950,000	44,000
250,000	16,000	975,000	45,000
275,000	17,000	1,000,000	46,000
300,000	18,000	1,100,000	48,000
325,000	19,000	1,200,000	50,000
350,000	20,000	1,300,000	52,000
375,000	21,000	1,400,000	54,000
400,000	22,000	1,500,000	56,000
425,000	23,000	1,600,000	58,000
450,000	24,000	1,700,000	60,000
475,000	25,000	1,800,000	62,000
500,000	26,000	1,900,000	64,000
525,000	27,000	2,000,000	66,000
550,000	28,000	2,500,000	76,000
575,000	29,000	3,000,000	86,000
600,000	30,000	3,500,000	96,000
625,000	31,000	4,000,000	106,000
650,000	32,000	5,000,000	126,000

Trust Distribution Agreement

This agreement is made as of November 29, 2014, by CAROL (hereinafter “Trustee”), of the JOHN DOE SEPARATE PROPERTY REVOCABLE TRUST dated July 2, 2007, (the “Trust”), and JANE, CHARLOTTE, BUCK, BILL & JIM, hereinafter “Beneficiaries” of the Trust.

Trust Distribution Agreement

1. Successor Trustee: Pursuant to Section 1.02 of the Trust, if the initial settlor/trustee shall fail to serve or cease to act as Trustee, then CAROL shall act as Successor Trustee.

Trust Distribution Agreement

2. Distribution Provisions: Pursuant to Section 3.04, (B), the Trustee shall distribute the income and principal of the Trust Estate as follows:

   (1) The sum of $2500.00 to JANE
   (2) The sum of $2500.00 to CHARLOTTE
   (3) 1/3 of the remainder to BUCK
   (4) 1/3 of the remainder to BILL
   (5) 1/3 of the remainder to JIM

Trust Distribution Agreement

3. Funding at Date of Distribution Values: Assets of this Trust Estate currently on hand are listed in Exhibit “A” attached hereto.

4. Proposed Distribution: The Trustee hereby distributes the property this Trust Estate to the Beneficiaries as in Exhibit “A” attached hereto.

Trust Distribution Agreement

5. <u>Beneficiaries Consent to Distribution</u>: By signing this Agreement, the Beneficiaries consent to the proposed distribution, as well as to the prior and any subsequent transfers of the assets as provided herein above, and agree that the assets constitute all trust assets and that the distribution is proper in all respects.

Trust Distribution Agreement

6. Waiver of Accounting: Under the terms of the trust a full accounting is required by trustee in accordance with the California Probate Code. Beneficiaries hereby waive any accounting except that provided herein and release their Trustee and their attorneys from any liability in connection therewithin.

Trust Distribution Agreement

7. Waiver of Notice: All Beneficiaries and contingent beneficiaries hereby waive the statute of limitations for a trust contest under California Probate Code §16061.7. All beneficiaries hereby consent to the terms of the Trust.

8. Further Documents: Each party hereto agrees to make, execute, and acknowledge such deeds, assignments, bills of sale, stock powers, letters of instruction, and other documents of transfer or conveyance as reasonably required to carry out the distribution set forth in the paragraph immediately preceding and otherwise to carry out the terms of this Agreement.

Trust Distribution Agreement

9. Binding on Successors: This Agreement shall be binding on the heirs, successors, and assigns of the parties hereto, including any successor trustees of any of the trusts referred to herein.

10. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11. Counterparts: This Agreement may be executed in several counterparts.

Trust Distribution Agreement

Executed at Irvine, California, on November 29, 2015

BENEFICIARIES

____
JANE

____
CHARLOTTE

____
BUCK

____
BILL

____
JIM

JOHN DOE SEPARATE PROPERTY REVOCABLE TRUST DATED JULY 2, 2007

____
CAROL, SUCCESSOR TRUSTEE

Trust Distribution Agreement

Exhibit "A"

Trust Asset	Value	Buck	Bill	Jim	Jane	Charlotte
Real Property Santa Ana Home	$415,000	$138,333.33	$138,333.33	$138,333.33		
Cash	$378,780.86	$124,593.62	$124,593.62	$124,593.62	$2,500.00	$2,500.00
Reserve	($15,000.00)	($5,000.00)	($5,000.00)	($5,000.00)		
Total	$778,780.86	$257,926.95	$257,926.95	$257,926.95	$2,500.00	$2,500.00

Key Takeaways

- Send out notice to all heirs and beneficiaries within 60 days
- Have your beneficiaries sign the trust distribution agreement otherwise you have unlimited liability
- Don’t attempt to administer a Trust without the help of an estate attorney.

Schedule Your Complimentary Appointment Today!

Thank you! Emails are always welcome!

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DISCLAIMER: Because of the generality of this presentation, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice.