PROFESSIONAL FIDUCIARY SERVICES

BEING A FAMILY MEMBER TRUSTEE

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WHAT IS A PROFESSIONAL FIDUCIARY

WWW.TrusteePro.com

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PFB DEPARTMENT OF CONSUMER AFFAIRS
PROFESSIONAL FIDUCIARIES BUREAU

OUR MISSION

To protect consumers through licensing, consumer education, and enforcement of the Professional Fiduciaries Act and promote and uphold competency and ethical standards across the profession.

https://www.fiduciary.ca.gov

- License Verification
- What You Should Know Before Hiring A Professional Fiduciary
- What Is A Professional Fiduciary?
- Public Record Act Requests

Complaint Information

- File a Complaint Against A Professional Fiduciary

SAMPLE INTERVIEW QUESTIONS WHEN HIRING A PROFESSIONAL FIDUCIARY

Hiring a professional fiduciary is an important decision. Depending on the type of services you need, this person will have access to personal and financial information and you and/or your family members. You want to make sure you thoroughly vet the person being considered to receive the best possible service.

The Professional Fiduciaries Bureau (licensing agency for Professional Fiduciaries) recommends interviewing at least three potential candidates before selecting a fiduciary. Here are some sample interview questions to ask before becoming a client.

- What type of services do you provide?
- Are you insured for errors and omissions?
- What credentials do you have?
- What are your office and telephone hours? Are you accessible by text and/or email?
- How long should I expect to wait to receive a response from you to a communication?
- If there is an emergency after hours, how do I reach you or your staff?
- What are your internal controls like? How is my confidential information protected?
- What happens to me if something happens to you? What is your succession plan?
- Do you have a disaster recovery plan for my data?
- What fees to you charge and when?
- If you use other professionals (CPA's, attorney, caregiver, etc.) what are their fees?
- Do you work alone or do you have a staff?
- If you have a staff, what types of services do you delegate to them?
- What is the fee for services provided by your staff?
- How often will you provide me with an accounting?
- Can you provide me with references of past or current clients or other professionals you have worked with who I can contact?

For more information or assistance in finding a professional fiduciary, contact the PFAC office at 844.211.3151 or email PFACadmin@pfac-pro.org.

Fiduciary Roles

- Living Trust - Successor Trustee
- Pour over Will - Executor
- Power of Attorney - Finance - Agent
- Advance Health Care Directive - Medical - Agent
- Legal Authority to Act in the Best Interest
- Fiduciary Duties and Liabilities

LANGUAGE TERMS AND DEFINITION

- Trustor, Settlor, Grantor - owner of the Trust
- Trustee, Successor Trustee - managing, controlling trust property, holds legal title
- Beneficiary - entitled to receive income and/or principal - Settlor, Grantor, Trustor
- Remainder Beneficiary - distribution of trust assets after passing of Settlors
- Specific Bequest vs Percentage Beneficiary - priority to specific bequest

Advance Health Care Directive

- Provide, withhold, or withdraw artificial nutrition and hydration and cardiopulmonary resuscitation and other forms of health care.
- Selection and discharge of health care providers and institutions
- Approval or disapproval of diagnostic tests, surgical procedures and programs of medication
- Dignified Death - communicate with agent
- "Your Way" booklet www.help4srs.org
- POLST - Physician Orders for Life Sustaining Treatment
- Funeral Plans - burial, cremation, ceremony event

Power of Attorney for Finance

- Effective during lifetime and during incapacity
- Usually requires note of incapacity from doctor to activate - springing
- Legal authority of "personal" financial assets - bank accounts, investment accounts, retirement accounts - IRA's and 401(k)'s, automobiles
- Agent has no authority of Trust assets

Duties of Trustee

- List of Duties from Probate Code(PC 16000's) of California
  - Duty to Administer Trust According to its Terms
  - Duty to Follow Written Directions from Trustor
  - Duty of Loyalty to Beneficiaries
  - Duty of Impartiality to multiple beneficiaries
  - No Self-Dealing

Duties of Trustee(cont.)

- Duty to Take Control of and Preserve Trust Property. Make Productive
- Duty to Keep Trust Property Separate and Identified
- Duty to Enforce Claims and Defend Actions
- Duty to Apply Full Extent of Trustee's Skills
- Trustee's Duty to Report Information and Account to Beneficiaries

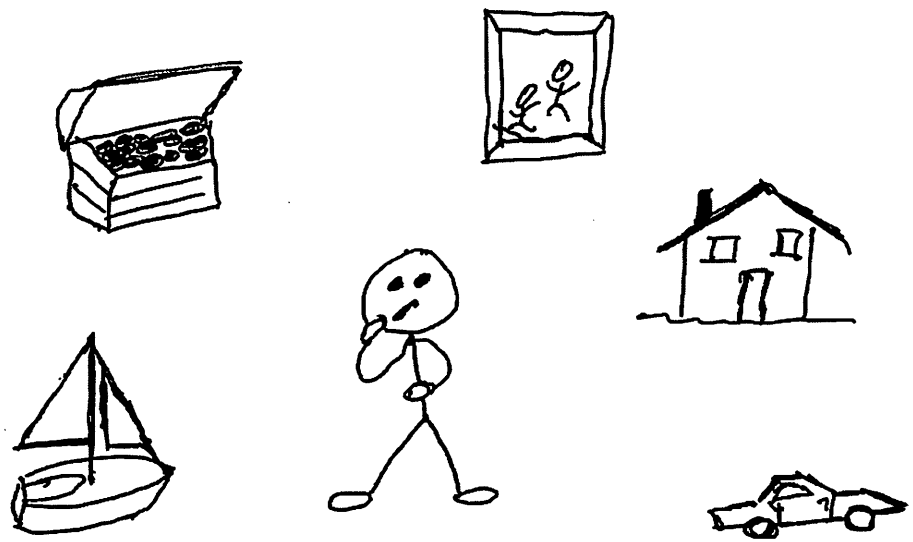
Death of the Trustor - pulling the strings



Trustee Administration Process

- Triggering Event; either Incapacity or Death
- Successor Trustee takes over control for Trustor and/or Trustee.
- Read the Trust and read it again. New language, rules, powers, directions
- Successor Trustee is not the Owner/Settlor, but assumes the responsibility
- Trust outlines the duties, authorities, distributions, powers, provisions
- Trust outlines and creates Special Needs Trusts, SubTrust, AB Trust, etc.

Know the Assets - Title



Trustee Administration Process(cont)

- AB Trust outlines HEMS: Health, Education, Maintenance, and Support - very broad discretion for distribution by Trustee
- Marshal financial accounts - Death Certificate or doctors note for incapacity Present Drivers License and copy of Trust to follow institutions steps
- Change of Address
- Marshal Properties, Utilities, Taxing Authority, Insurance, etc.
- Request Tax EIN number from IRS for Irrevocable Trust
- Select CPA, Trust Tax Returns and Tax Preparation

Trustee Administration Process(cont)

- Create Trust Records of Assets in Trust, showing Liabilities, Cost Basis, Values
- Select Accountant/Bookkeeper with competency for Trust accounting and reporting, administration of expense, and software(Quickbooks)
- Review Assets, Insurance policies
- Distributions of Income and Principal and the Trust rules
- Distributions of SubTrust, SNT, and Beneficiaries
- Separation of Community Property and Separate Property of Spouses
- Separation of AB Trust to Survivor Trust and Bypass Trust

Trustee Administration Issues

- Do not Commingle the Trust Funds with your funds.
- Do not Sell Real Property without MLS offering, No handshake deals
- Use Property Managers, use Business Managers, use Financial Managers, use Bookkeeping and Tax Professionals
- Communicate with Beneficiaries to include on decisions, plans, timeline
- Distribution of Income and Principal
- Trustee's Compensation - .5% to 2% value of trust assets - reasonable

Benefits of Professional Fiduciary

- Neutral third party, no family history, no emotional attachment
- Vast experience in trust administration with knowledge of probate codes and trustee duties
- Quality network of professional services; CPA, financial advisor, property manager, care manager, etc.
- Serve in the incapacity fiduciary positions - Power of Attorney for Finance and Advance Health Care Directive
- Family beneficiaries could be less likely to fight
- Fees - approximately 1% annually during incapacity, 2% after death of surviving spouse - based on value of trust assets