

Financial & Estate Literacy

It's Your Estate Fall 2022

Estate Administration

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Someone dies, what happens? Well, it depends.

- If there is a valid living trust, assets are titled in the name of the trust and gross assets titled in a person's name outside of the trust are under \$184,500 – No formal Probate and the **Successor Trustee** will administer the estate
- A Pour-Over Will would move assets titled in a person's name outside of trust into the trust for administration
 - A Pour-Over Will is an emergency document and is a part of many estate plans
 - If gross assets outside of a trust are over \$184,500 – potential probate

Someone dies, what happens? Well, it depends.

- If there is no living trust and gross assets titled in a person's name are greater than \$184,500 in California today – Estate goes to formal Probate
 - **Executor/Personal Administrator** is approved by the court and will administer the estate under the direction of the court
 - A Personal Administrator is assigned by the court if no one is named to be Executor
 - The Executor will report their actions to the court
 - No trust and assets under \$184,500 gross, file a Small Estate Petition
- If there is neither a Will or Living Trust and gross assets titled in a person's name are greater than \$184,500 - Formal Probate using the rules of intestate.
 - Intestate are the State's rules for settling an estate if there is no Will nor Trust

Cost of Probate

- Attorney & Executor fees are set by statute
- 4% of the first \$100,000
- 3% of the next \$100,000
- 2% of the next \$800,000
- 1% of the next \$9,000,000
- So, for a probate estate of \$1,000,000 the cost is \$46,000 in fees
 - \$23,000 in attorney fees + \$23,000 for the Executor. By statute.
 - Plus, court costs and filing fees
 - Plus, probate referee cost

What do the Executor or Successor Trustee do?

• Executor (Probate)

- Locate and value assets
- **Follow court procedures and instructions & Probate Code**
- Pay creditors
- Settle taxes
- Distribute assets
- Provide an accounting
- **Accountable to the court**

• Successor Trustee (Not Probate)

- Locate and value assets
- **Follow the instructions of the trust document & Probate Code**
- Pay creditors
- Settle taxes
- Distribute assets
- Provide an accounting
- **Accountable to the beneficiaries**

What are qualities that make a good trustee?

- ~ Time
- ~ Desire
- ~ Proximity
- ~ Organization
- ~ Ability to Delegate
- ~ Communicative
- ~ Presence
- ~ Transparent

What is the Standard of Care for good trustee?

The trustee shall administer the trust with reasonable care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined by the trust instrument. In other words, you don't have to be an expert! **Probate Code Section 16040(a)**

Things to do when a person dies

(in no particular order, customize to your situation and not necessarily legally required)

1. Notify immediate family and friends
2. Evaluate the emotional impact on the surviving spouse and close relatives and friends
3. Locate and review estate planning documents and notify all individuals named in the will or trust (beneficiaries and contingent beneficiaries)
4. Arrange care for dependents & pets, if any
5. Notify attending physician or coroner
6. Evaluate the need for security at the Decedent's residence
7. Cancel or redirect home deliveries
8. Find & review Decedent's expressed funeral and burial wishes

Things to do when a person dies

(in no particular order, customize to your situation and not necessarily legally required)

9. Arrange for mortuary, cemetery, burial, cremation, as appropriate
10. Have Post Office hold the mail or better yet redirect mail to the Trustee's address
11. Find perishable property (food, plants, etc.) arrange for care or disposal
12. Notify Attorney in Fact under Power of Attorney – terminate at death
13. Notify Agent under AHCD – terminates at death, except for burial instructions
14. Keep records of ALL payments for funeral and other expenses
15. Locate safety deposit box (examine content with an independent person present)
16. Locate & investigate life insurance policies

Things to do when a person dies

(in no particular order, customize to your situation and not necessarily legally required)

17. Advise & investigate Social Security benefits (burial expense, spousal benefit options), Medi-Cal and other agencies as needed
18. Investigate employment (accrued vacation, final wages, retirement plans, deferred compensation, medical reimbursement and others)
19. Investigate veterans or fraternal organization programs
20. Investigate refunds on insurance or canceled subscriptions (phone, cable, etc.)
21. Publish Notice of Petition to Administer Estate in newspaper
22. Investigate investment accounts including retirement accounts and standard brokerage accounts and bank accounts

Things to do when a person dies

(in no particular order, customize to your situation and not necessarily legally required)

23. Meet & retain an attorney regarding estate matters
24. Meet & retain a CPA for tax and accounting matters
25. Meet with life insurance agent to collect proceeds or consider options
26. Obtain Certified Death Certificates (10 to 15) check with attorney to see how many are needed
27. Deal with fire, theft, liability and auto insurance on Decedents property
28. Determine the title on any automobiles and consider retitling as appropriate
29. Prepare an inventory of assets and list debts (executor/trustee has a duty to publish notices to creditors)

Things to do when a person dies

(in no particular order, customize to your situation and not necessarily legally required)

30. Review credit cards and charge accounts, cancel as appropriate
31. DO NOT PAY any debts until the attorney discusses with family or executor/trustee
32. Obtain valuation of assets, as appropriate. This is very important for step-up basis at date of death
33. Arrange for final income and estate tax returns. Retain funds to assure all taxes are paid correctly
34. Determine distribution and arrange for transfer
35. Remember, all valuables look valuable. Make sure of their true value
36. Keep the beneficiaries informed regardless of legal duties to do so

What about first spouse to die?

- If a will and trust are in place and the surviving spouse is the beneficiary, rapid clearing of the estate
- If only a will, then the probate court would probably be asked under a Spousal Petition to assign surviving spouse as the beneficiary. Time depends on the court's schedule.
- If no will, probate. Estate is intestate. Community property titling, Pay on Death for accounts and beneficiary designations can reduce issues.

How long is all this going to take?

- In reality, it depends
- If probate is required, probably 24 months or more assuming no conflicts
 - Conflicts between beneficiaries could further delays
 - Complexity of the estate
- If a will and trust are in place – probably faster than probate, but still legal steps can take time
 - 120-day notification of potential beneficiary period
 - 120-day notification of creditors period
 - Complexity of the estate

What could you do to make the estate administration easier?

- Complete and sign a POA, AHCD, Will, Trust and Beneficiary Designations
- Inform your representatives about your wishes
 - Consider writing a letter to your family
- Prearrange funeral plans
- Tell your Executor/Successor TRustee about your documents, accounts ...
- Create a contact list for recommended estate lawyer, accountant, trust and investment advisors, life insurance agent, friends and family to contact and other individuals
- ...
- Don't buy overly ripe bananas (just kidding)

Why consider using a Professional Fiduciary?

- Neutral third party – no emotional attachment to money or property
- Not our first rodeo – vast experience in trust administration
- Flexible & vetted network of professionals – can maintain CPA, financial advisor, property manager, care managers, etc.
- Trust Beneficiaries get 100% of the benefit with none of the fiduciary liability – conflicts can emerge when family member trustee is also beneficiary
- We know the probate codes that govern our duties to ALL beneficiaries
- We will serve in the incapacity fiduciary positions - Power of Attorney for Finances and Advance Health Care Directive
- Your beneficiaries are likely to fight

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Thank you for spending part of your Fall
of 2022 with us.

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Appendix

Probate Code References

Trustee Duties with Probate Code reference

- Duty to Administer Trust According to its Terms (PC §16000)
- Duty to Follow Written Directions from Trustor (PC §16001(a))
- Duty to Account (PC §16062)
- Duty to Furnish Information (PC §16060- §16069)
- Duty of Confidentiality (Trustor's intent for privacy)
- Duty Not to Delegate non-investment & non-management functions (PC § 16401, §16052 & §16247).
- Duty of Loyalty (PC §16002) No Self-Dealing (PC §16004) violation of duty of loyalty.
- Duty of Impartiality (PC §16003)
- Duty to Take Control of and Preserve Trust Property – PC §16006
- Duty to Make Trust Property Productive – PC §16007
- Duty to Keep Trust Property Separate and Identified – PC §16009

Trustee's General Report Information to Beneficiaries

Probate Code Sections 16060- 16061.9:

Trustee's General Report Information to Beneficiaries: This statute requires trustees to keep beneficiaries informed with respect to matters involving the trust.

Administer Trust

Probate Code Section 16000: *Administer Trust* : Requires trustee to administer a trust according to law and in accordance with the trust instrument. No matter how good the trustee's intentions, the trustee is NOT free to administer the trust in some other manner.

Duty of Loyalty

Probate Code Section 16002: *Duty of Loyalty:*

This statute states that the trustee has a duty to administer the trust in the interest of ALL beneficiaries. The trustee cannot use the trust for his/her own benefit.

Deal Impartially

Probate Code Section 16003: Duty to *Deal Impartially*: This statute states “If a trust has two or more beneficiaries, the trustee has a deal impartially with them.” A trustee cannot favor one beneficiary over another. This is particularly critical when the trustee is also one of the beneficiaries. In such cases, it is a clear violation of the law to favor himself or herself over other beneficiaries.

Avoid Conflict of Interest

Probate Code Section 16004: *Duty to Avoid Conflict of Interest:* This statute requires that trustees avoid conflict of interest. This prohibits a trustee from entering into transactions with trust property which will result in a profit for the trustee. For example, loaning personal funds to a trust. This action results in a trustee having a conflict between his duties to the trust and his duties to himself/herself.

Take Control Of and Preserve Property

Probate Code Section 16006: Duty to *Take Control of and Preserve Trust Property*: This statute requires trustees to take affirmative action to take and control of trust property and to preserve that property.

Keep Trust Property Separate and Identified

Probate Code Section 16009: *Duty to Keep Trust Property Separate and Identified:* This statute requires a trustee to keep trust property separate from property not subject to trust. For example, a trustee should not commingle personal funds with trust funds.

Make Trust Property Productive

Probate Code Section 16007: Duty to *Make Trust Property Productive*: This statute requires a trustee to make property productive. Monies must be wisely invested and diversified.

Uniform Prudent Investor Act

Fiduciary Investing – Duty to: ...

- Prudently Administer – CA Probate Code 16047(a)
- Establish Risk and Return Expectations – CA probate Code 16047(b)
- Consider “Prevailing Factors” – CA Probate Code 16047(c)
- Diversify – CA Probate Code 16048
- Incur Only Reasonable Expenses – CA Probate Code 16050
- Prudently Delegate – CA probate Code 16052(a)(ii)
- Independently Monitor the Agent’s Activities – CA Probate Code 16052(a)(iii)

Account to Beneficiaries

Probate Code Section 16062: *Account to Beneficiaries*: This statute requires the trustee to provide beneficiaries with “accountings”. Accountings are detailed statements regarding the financial transactions of the trust. They are similar to bank account statements in which a bank reports a beginning balance, and ending balance, and all the transactions that occurred during the reporting period that account for the difference between the beginning balance and ending balance. A trustee must keep careful records in order to comply with this requirement.