



# Trust & Estate Administration

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# Fiduciary Positions in an Estate Plan

## Document

Durable Power of Attorney

Advance Health Care Directive

Will

Living Trust

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Conservatorship

## Fiduciary Position

Agent or Attorney in Fact

Agent

Executor/ Executrix /  
Administrator

Successor Trustee

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Conservator

## Who?

??? (2 to 3 people)

??? (2 to 4 people)

??? (2 to 3 people)

??? (3 people or trust co)

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??? (nominate 1 in AHCD)



# Trustee Status and Succession

|                 | Grantor | Beneficiary | Trustee |
|-----------------|---------|-------------|---------|
| Alive & Kicking | X       | X           | X       |
| Incapacitated   | X       | X           | -       |
| Dead            | X       | -           | -       |

Very important - chose your successor trustee while you are “alive & kicking”

If incapacitated, he/she will:

- 1) Determine where you live.
- 2) Pay your bills.
- 3) Take you to your medical appointments.
- 4) Control your investments.
- 5) Prepare & file your income tax returns.
- 6) Communicate to the rest of your family the status quo.



# What makes a good Executor/Administrator/Trustee

- Time Availability
- Desire
- Proximity
- Organization
- Ability to Delegate
- Communicative

- Transparency
- Presence
- Bondable (if necessary)
- Competent
- Excellent recordkeeping
- Efficiency

- 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



# 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/or distributing <u>Trust</u> assets correctly titled in the trust.</li><li>• Ideally administered without Probate Court involvement.</li></ul> |



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

| Executor/Administrator (Probate)                                                                                                                                                                                                                                                       | Successor Trustee                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Administer the <u>probate</u> 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 <u>trust</u> Estate</li><li>• Follow Probate Code and instructions in Trust document</li><li>• Locate, Marshal, Account for, and Distribute Assets</li><li>• Manage Liabilities</li><li>• PRIVATE, NON-COURT SUPERVISED</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.
  - During the 120 day notice period, a beneficiary may petition the court for a particular reason
- A **Successor Trustee** can “Petition” or make a request of the Court:
  - Petition for Instructions
  - Responses to other Petitions



# 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)
- Obtain 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 at 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
  - Real Estate Professional or Property Manager if necessary
- Banking and/or Financial Planner
  - Investment and spending plan. CA Prob Code § 16047 Prudent Investor Rule
- Insurance Agent
  - Property, vehicle, umbrella etc.
- Other Professionals (as necessary)



# **Notices and Notifications**

- Tax Notices (Form 56, FTB 3534, Form 4506-T, Form 4810)
- Probate Code Notices
  - Identify and prepare “Service List” with attorney
  - Probate Code §16061.7 Notice – Irrevocability & Change of Trustee (60 days from date of death to send then 120 to contest.)
- Notices for any Real Property owned – Affidavit of death of trustee, PCORs, etc
- 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 – only in Probate
- Notice of Proposed Action (if necessary)



# Marshaling, Inventory and Appraisal

- Secure all real and personal property
- Retitle into irrevocable trust all 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. Adjust Cost basis as needed.
- Identify Creditors and Liabilities (Utilities, Insurance, Real Estate, Credit Cards, Vehicles, Health Care, Other Professionals, Other Vendors). Prepare Inventory of Personal/Trust/Business Property, accounts, debts (include Title)
- Analyze income and expenses
- **Keep meticulous records of expenses, activity, activities and tasks to be compensated**
- **Document decision making processes**



# **Consolidation of Trust or Estate Principal**

- Invest and sell securities as necessary or required – fiduciary investing
  - CA Prob Code § 16047 Prudent Investor Rule
- Arrange for sale or distribution of Assets of Personal Property
- Secure, manage and/or sell real property assets
- Continue carrying out instructions from applicable to Will or Trust instructions while adhering to the Probate Code



# **Final Distribution & Closing of Administration**

- Prepare draft final distribution to beneficiaries or subtrusts
- Prepare additional letters to heirs at law and beneficiaries
- Prepare final accounting and tax returns
  - Retain appropriate reserve for any projected future expenses or unknown tax liabilities
- Obtain Judgement of Final Distribution from court (Probate Estate)
- Archive Files



# 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 – probate only, 3 years for trust
  - 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 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



# **What is a California Licensed Professional Fiduciary - CLPF**

- 30 hours of pre-licensing education credits
- Criminal background & fingerprint check, disclose any bankruptcies
- Licensed by the Professional Fiduciaries Bureau – Dept of Consumer Affairs  
– [www.fiduciary.ca.gov](http://www.fiduciary.ca.gov)
- Pass examination – 12 months to pass test
- Experience & education qualifications – 3 professional references
- File annual statements to the PFB disclosing open cases and total assets under fiduciary management to renew license (+\$1,400 fee)
- Professional Fiduciary Association of California (PFAC)  
[www.pfac-pro.org](http://www.pfac-pro.org)



# Services of a Professional Fiduciary

- Manage Assets – both financial and real property
- Maintain financial records for trust or client
- Communicate with beneficiaries
- Coordinate Tax Preparation
- Manage Real Property including the sale/leasing process
- Distribute/dispose real property
- Manage funeral arrangements as needed
- Oversee care management plan for incapacitated clients



# Benefits of 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 like likely to fight