

FINANCIAL AND ESTATE LITERACY

TRUST & ESTATE ADMINISTRATION

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WHAT MAKES A GOOD EXECUTOR/ADMINISTRATOR/TRUSTEE

- | | |
|---|--|
| <ul style="list-style-type: none">● Time Availability● Desire● Proximity● Organization● Ability to Delegate● Communicative | <ul style="list-style-type: none">● 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

FIDUCIARY POSITIONS IN AN ESTATE PLAN

Document	Fiduciary Position	Who?
Durable Power of Attorney	Agent or Attorney in Fact	???
Advance Health Care Directive	Agent	???
Will	Executor/ Executrix / Administrator	???
Living Trust	Successor Trustee	???
Conservatorship	Conservator	??? (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.

ESTATE ADMINISTRATION - BASICS

Estate Administration	Trust Administration
<ul style="list-style-type: none">● An Estate is property, assets, and liabilities a person leaves behind after they die.● Estate administration is the process of managing and distributing a person's property after death.● Supervised through Probate Court.	<ul style="list-style-type: none">● 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).● Trust Administration is the process of managing and/or distributing <u>Trust</u> assets correctly titled in the trust.● Ideally administered without Probate Court involvement.

SOMEONE DIES, WHAT HAPPENS?

No Trust with Gross assets > \$184,500

- Estate goes to Probate
- Executor appointed by the court will administer the estate
- Executor will report to the court along the way

No Trust with Gross assets < \$184,500

- Small Estate Affidavit –notarized document to release assets and property to the individuals entitled to said assets and property
- Other nonprobate transfer documents could be involved

Valid Trust - any value

- No Probate (potentially)
- Successor Trustee Administers Trust
- Reporting to Beneficiaries as required
- Assets outside the trust in the deceased individual's personal name may transfer to trust through:
 - Pour over Will
 - Small Estate Affidavit
 - Heggstad Petition
 - Full formal probate
 - Other means (POD, TOD, etc)

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 (CA Prob Code § 10801)

WHAT DOES THE EXECUTOR/ADMINISTRATOR OR SUCCESSOR TRUSTEE DO?

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

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
- Engagement of Professionals
- Notices and Notifications
- Marshaling, 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

- 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 to send then 120 to contest.)
- 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

MARSHALING, 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. Adjust Cost basis as needed.
- 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 additional 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. Form 5495 Release
- Archive Files

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

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
- Pass TWO examinations – one specific to CA trust & estate law, one that is national in scope – 12 months to pass both tests
- Experience & education qualifications – 3 professional references
- File annual statements to the PFB disclosing open cases and total assets under fiduciary management to renew license (+\$700 fee)
- Professional Fiduciary Association of California (PFAC) 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

THANK YOU

Q&A