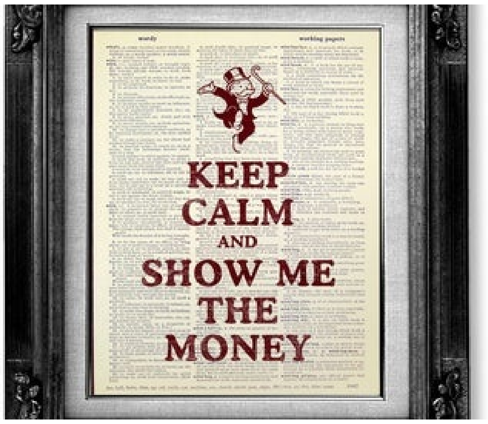


Show Me The Money

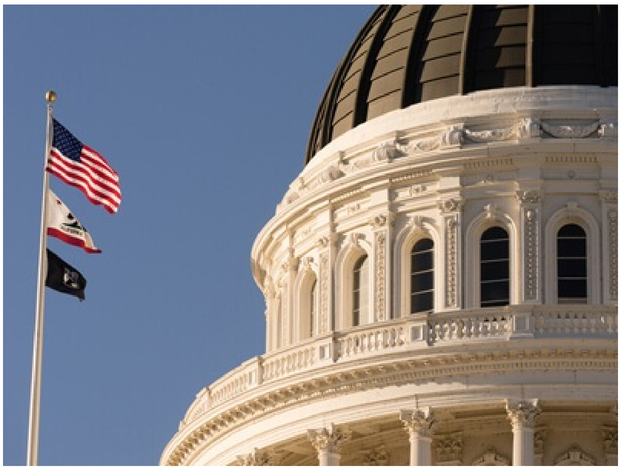
by Christina B. Yee, Esq., Law & Stein LLP

The story always starts the same, “there was supposed to be money, but we don’t know what happened.” For a vast majority of inheritance disputes, compelling the trustee to provide the beneficiaries with an accounting of the trust assets is a vital and mandatory first step. But before jumping in with an accounting of the trust request, it’s important to understand the details of what the accounting entails.

What Does an Accounting of the Trust Tell Us?

The accounting provides a beneficiary with vital information regarding the assets of the trust, and gives a trustee the opportunity to explain how and why the assets of the trust were spent/exchanged/invested. Many times, the accounting can clear up a lot of confusion about how monies were spent and that disclosure of information is enough to prevent a long court battle over an inheritance.

What specifically should be included is laid out in the California Probate Code, which has very specific requirements for how a trustee should disclose the way trust monies were spent. At the same time, what a trustee is required to disclose will depend on what was asked for in the initial demand letter. Generally, the accounting should include the assets and their value on the date the decedent passed away. Imagine the date of death as a snapshot moment in time, that is the starting point. From there each transaction where money was received, or money was spent from the trust should be disclosed on the accounting.

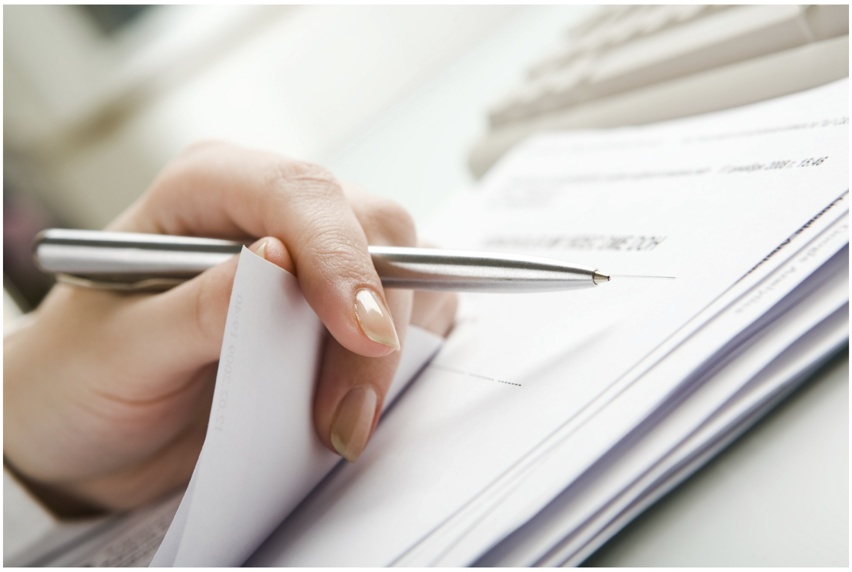


1. How to Get an Accounting

The California Probate Code gives beneficiaries the right to demand a full and complete accounting of the trust’s assets, starting from the date of death of the decedent to the date of demand. A letter, directly to the trustee, making a demand for an accounting is the first step. In some instances, in addition to making a demand for an accounting of the financial assets, a request for an inventory of the personal property of the decedent is also a good idea.

2. What Should You Ask For?

What to ask for depends on how much detail the beneficiaries are looking for, and the time period to be covered in the accounting. If the decedent has only recently passed away, an "accounting" could be nothing more than an overview list of assets and their value on the date of death. The longer the time period from the time the decedent passed away to the date of the demand, the more detail is generally sought. This is because as time goes on, the money of the trust has been spent by the trustee on various expenditures. These are the details that are necessary to determine if the trustee has complied with his/her fiduciary obligations in how the trust monies have been spent.
As for tangible personal property (or as it is more commonly known, "the stuff") it is important to keep in mind that practically speaking, depending on how long the decedent has been gone, much of the personal property has either been sold, lost, donated, distributed to various family members, and therefore it may be impossible to account and inventory personal property. More importantly, with the exception of high value pieces like art, or other collectibles, it may not be economically practical to try to chase down "the stuff" if the decedent passed away some years ago.



3. Complications in Doing an Accounting

While it sounds simple enough, a few key points to keep in mind:
1. Generally, only those beneficiaries entitled to current income distributions are entitled to a full and complete accounting. The farther removed you are to receiving an immediate distribution, the fewer rights you, as beneficiary, have to get a full and complete accounting of the assets.
2. If the trust does not include a list of assets, it may be very difficult to determine what assets should be accounted for. Many trusts will include what is called a "Schedule A." This Schedule is a list of the assets of the trust. Of course assets change, so depending on how up to date the schedule is, it may or may not be helpful.
3. Depending on how far back an accounting is needed, records may no longer be in existence to do an accounting.

4. Trustee's Duty and Obligations

Under the California Probate Code, a trustee has an obligation to keep the beneficiaries of a trust informed of how the administration process is going and the status of the assets of the trust. Failure to provide a beneficiary with information they request, which they are entitled to have, will very likely be seen as a breach of the trustee's duty.

In the end, unfortunately, getting the accounting and analyzing expenditures is usually only the start of a long road ahead. Getting professional legal advice for the next steps ahead is crucial to preserve what assets remain, and pursing what assets are missing.

We look forward to serving you and wish you the best.

Contact us directly to speak with someone who can help and answer your questions:
T (949) 501-4800
Or send us a private email at the link below and we will respond promptly:
info@lawandstein.com
Visit our website for more information and to review our partner and attorney bios:
www.LawandStein.com

The Law & Stein Newsletter is a monthly publication to share useful information with our clients in matters of estate planning, tax planning, inheritance dispute litigation, elder abuse, probate and business litigation, and premises and product liability defense.

LAW & STEIN
2601 Main Street, Suite 1200
Irvine, CA 92614
info@lawandstein.com