

Your Guide To Trust Administration

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Trust administration is a necessary process that can often appear complicated and daunting. You've just lost your loved one and have been chosen to be their successor trustee which requires administering their trust and will and all of their assets within their estate plan. Working with a trust administration attorney can help alleviate the burden from you and ensure proper administration. Should you try to administer the trust on your own, we've provided some key steps to help get you started. And remember, we're here if you need us.

Where To Begin

The road of trust administration starts with notice to all trust beneficiaries and heirs. California Probate Code Section 16061.7 mandates that notice is sent within 60 days of the death of a settlor and the recipient must have notice that they are allowed to request a copy of the trust. Once notification occurs, the recipient has 120 days from the date of mailing to file a trust contest, if not the recipient may forfeit their right to file a contest. If the recipient does not receive a notice because it was not mailed, the statute of limitations is much greater, up to at least four years.

CAUTION: Often successor trustees who handle trust administration without consulting an attorney skip this very important step.

What is Required of Successor Trustees?

The requirements of successor trustees in **California Probate Code Section 16061.7** has several steps, each one of which must be met in order for the notice to be effective. These requirements include the following:

- Notification is required to be served to each beneficiary and each heir.
- The notification must be served by mail to last known address or by personal delivery.
- The notification must contain specific information for it to be valid.

The required notice can be extremely complex and there's much more to the notice requirement than appears at first glance. If you have any hesitation or want to ensure the trust is executed properly, a trust administration attorney, estate planning attorney, or estate litigation attorney can give you guidance. It is also important that the decedent's original will be lodged with the court as California law requires that all decedents' wills be lodged with the court even when probate is not planned.

Managing Real Property and Other Trust Assets

Real Property

When the trust holds real property, which



happens often, a special set of steps must be followed to vest title in the successor trustee. This is done so that the property can be managed, sold, or distributed as part of the trust administration.

The steps are as follows:

- Record an **Affidavit of Death of Trustee** and **Consent of Successor Trustee** against any real property held in the **Living Trust**. A certified copy of the death certificate needs to be recorded with the Affidavit. This will result in the changing of the title of the property from the trustee (who has passed) into the names of the new trustee(s).
- A **Preliminary Change of Ownership** form must be completed as well and recorded simultaneously.
- Certain exemptions may be available depending on the circumstances. Working with an attorney will ensure the exemptions are identified and applied if applicable.

Dealing With Other Trust Assets

After the real property has been transferred, the other trust assets need to be identified. Assets, like bank and investment accounts etc., will need to have the title transferred into the name of the successor trustee.

CAUTION: It is imperative that successor trustees obtain a **federal tax identification number** specifically for the trust. **DO NOT** use your own social security number as an identification number when administering another's trust. You could find yourself liable for tax on income earned by the trust. Providing the trust with its own federal tax ID so any income earned from trust is reported correctly.

Form 706 (Rev. August 2019) Department of the Treasury Internal Revenue Service		United States Estate (and Generation-Skipping Transfer) Tax Return ► Estate of a citizen or resident of the United States (see instructions). To be filed for decedents dying after December 31, 2018. ► Go to www.irs.gov/Form706 for instructions and the latest information.		OMB No. 1545-0015		
Part 1 — Decedent and Executor	1a Decedent's first name and middle initial (and maiden name, if any)	1b Decedent's last name		2 Decedent's social security no.		
	3a City, town, or post office; county; state or province; country; and ZIP or foreign postal code	3b Year domicile established	4 Date of birth	5 Date of death		
	6a Name of executor (see instructions)	6b Executor's address (number and street including apartment or suite no.; city, town, or post office; state or province; country; and ZIP or foreign postal code) and phone no.				
	6c Executor's social security number (see instructions)					
	6d If there are multiple executors, check here <input type="checkbox"/> and attach a list showing the names, addresses, telephone numbers, and SSNs of the additional executors.					
	7a Name and location of court where will was probated or estate administered				7b Case number	
8 If decedent died testate, check here <input type="checkbox"/> and attach a certified copy of the will. 9 If you extended the time to file this Form 706, check here <input type="checkbox"/> 10 If Schedule R-1 is attached, check here <input type="checkbox"/> 11 If you are estimating the value of assets included in the gross estate on line 1 pursuant to the special rule of Reg. section 20.2010-2(a)(7)(ii), check here <input type="checkbox"/>						
Part 2 — Tax Computation	1 Total gross estate less exclusion (from Part 5—Recapitulation, item 13)	1				
	2 Tentative total allowable deductions (from Part 5—Recapitulation, item 24)	2				
	3a Tentative taxable estate (subtract line 2 from line 1)	3a				
	b State death tax deduction	3b				
	c Taxable estate (subtract line 3b from line 3a)	3c				
	4 Adjusted taxable gifts (see instructions)	4				
	5 Add lines 3c and 4	5				
	6 Tentative tax on the amount on line 5 from Table A in the instructions	6				
	7 Total gift tax paid or payable (see instructions)	7				
	8 Gross estate tax (subtract line 7 from line 6)	8				
9a Basic exclusion amount	9a					
b Deceased spousal unused exclusion (DSUE) amount from predeceased spouse(s), if any (from Section D, Part 6—Portability of Deceased Spousal Unused Exclusion)	9b					
c Restored exclusion amount (see instructions)	9c					
d Applicable exclusion amount (add lines 9a, 9b, and 9c)	9d					
e Applicable credit amount (tentative tax on the amount in line 9d from Table A in the instructions)	9e					
10 Adjustment to applicable credit amount (May not exceed \$6,000. See						

Crucial Tax Information

Obtaining a Federal Tax ID Number for the Trust

If you are working with an attorney, your attorney can obtain the number for you. Getting a tax identification number is fairly simple and with adequate information one can be obtained online from the Internal Revenue Service.

Transference of Trust Accounts

After a federal tax identification number has been obtained, all accounts (that do not have a Payable on Death beneficiary), should be transferred to the successor trustee by utilizing the tax identification number. If the trust is going to be split into multiple share trusts as part of a distribution plan, they each need their own federal tax identification number.

What If Some Assets Are Not in the Trust

Some of the decedent's assets may not have been placed in the trust prior to death, resulting in these assets being subjected to the probate process. This can be remedied using a **will with a "pour-over" provision**. It would allow any asset not placed into the trust during the deceased's lifetime to be put into the trust at death. If the proper documents are in place, a simple petition can be filed and probate can be avoided.

In order to have the assets transferred into your name, your attorney will need to prepare a **Certification of Trust**, establishing you as successor trustee. You will want to present this Certification to any financial institution holding trust assets. The Certification also serves the purpose of how to title the assets and establish their new tax identification number.

Once all the assets are under your control, it is imperative that an **inventory and appraisal** be completed. Assets such as real property should be appraised immediately from the date of death.

CAUTION: Some accounts may have a Payable on Death ("POD") beneficiary. It is important to understand that the bank account will pass to the POD beneficiaries even if the POD account owner had a last will and testament or revocable living trust and regardless of what the will or trust says.

Your Tax Responsibilities

In your role as successor trustee, you are responsible to pay the settlor's valid debts and any tax liabilities owed. Taxes are particularly tricky, as there can be estate taxes owed in addition to income taxes, depending on the size of the estate. In order to determine whether a **federal estate tax return** must be filed, you will need to add up the total value of the decedent's estate, including both trust assets and non-trust assets. If the total value of the estate is more than the current exemption amount, then it will be necessary to file **Form 706 federal estate tax return**. Do note that if gifts were made during the lifetime of decedent, the decedent may have already used up a portion of the exemption amount. It is best to consult an attorney for clarification on the specifics, whether that be to determine if federal estate tax is required or the actual preparation of the return, as both can be complex.

Caution: Filing Tax Form 706

If it is determined that the Form 706 will need to be filed, it must be done within nine months of death. Once an attorney or accountant has calculated any estate taxes owed, it is essential to file the 706 form and pay the taxes within the allotted nine months to avoid penalties and interest.

Estate tax in the process of trust administration is a core issue. Your attorney will help you determine which assets are in the trust, which are outside the trust, and which assets need to go through probate. Then your estate planning attorney, trust administration attorney or accountant will be able to determine what estate tax is owed. It is essential to retain an attorney early on as assets may need to be sold to pay the estate tax liability. An attorney will ensure there is sufficient time to liquidate estate assets in time for the nine month post-death deadline.

Income Tax Returns

Successor trustees are also required to file the last **income tax returns** for the decedent and potentially a **fiduciary tax return**.

CAUTION on income tax consequences:

Assets owned by the deceased are valued at the date of death, despite the value at the time of purchase. Most assets receive a "step-up" in basis for tax purposes if held by the settlor at death. For instance, if a stock was purchased for \$10, but reached a value of \$100 at the time of death, there would have been a capital gains tax on the \$90 profit if sold prior to death. After death, the stock is revalued so the beneficiary can sell the stock for \$100 without incurring capital gains tax. Contrary to income tax consequences, a higher estate tax valuation is more beneficial for the beneficiary.

Depending on the amount of income the settlor made in the year of death, income tax may be owed on Social Security benefits.

The liabilities of acting as successor trustee and potentially being held personally liable for unpaid taxes would logically motivate a successor trustee to work with their estate planning attorney and accountant to make sure that all tax liabilities are fully satisfied prior to distributing the trust assets to beneficiaries.

Accounting Duties

A trust becomes irrevocable after the settlors lose capacity or pass away. A trust is only revocable when the person or people who



created the Living Trust are alive and have capacity. California Probate Code requires successor trustees to keep accounting of their administration of that trust.

Detailed accounting records require that successor trustees:

- Keep track of trust money spent while winding up the decedent's final affairs
- Keep track of all deposits and disbursements from the trust
- Review the trust document to see what method of accounting is stated as required

Sometimes, trusts will explicitly require accounting while others waive accounting. Even when trust documents waive accounting, the law may still require it. An attorney will be able to make that determination for the successor trustee. It is also advisable to keep detailed accounting for one's own protection in the event litigation occurs.

After assets have been identified and transferred to successor trustee, debts paid, tax returns determined and satisfied, and accounting prepared, the successor trustee will be able to distribute the remainder to the beneficiaries.

Identify Beneficiaries

On occasion, a trust will directly distribute assets to beneficiaries, other times, a sub-trust will need to be established for those beneficiaries. Common sub-trusts include:

- Share trust for a minor
- Bypass trust
- Survivor's trust

4 REASONS YOU NEED A TRUST ADMINISTRATION ATTORNEY

- #1 To minimize your personal liability.
- #2 To serve as a third party for communication.
- #3 To help you observe all of your duties.
- #4 To avoid expensive trust litigation.

Sub-Trusts and Preserving Tax Protection

In the case of married couples, tax planning is often done through a living trust utilizing an **AB or ABC trust**. It allows the assets to be sheltered from future estate taxes by having the deceased spouse's assets remain available for the surviving spouse outside of the survivor's estate. While alive, the couple will have a **Joint Trust**. After the first death, the trust is split into two or three sub-trusts, a **Survivor's Trust**, a **Family Trust**, and, potentially, a **Marital Trust**.

In order to ensure the tax protection created by these sub-trusts, the **A, B and C trusts** must be properly funded. It is highly recommended for the funding process of sub-trusts that you consult with an estate planning

attorney prior to making any allocations of assets or distributions to any beneficiaries.

Minimizing Risk of Future Litigation

After confirming the beneficiaries and funding of any sub-trusts, if applicable, a **Trust Distribution and Termination Agreement** should be drafted. It is recommended that a trust administration attorney is retained for the preparation of the document as the purpose is to protect the successor trustee while creating an agreement among the beneficiaries for final distribution. This type of agreement is very useful to avoid the threat of trust litigation.

To minimize risk of future litigation it is recommended, when there is the possibility of contention among the beneficiaries or with the successor trustee, that the successor trustee seek court approval of their actions. By choosing to obtain court approval, a beneficiary who does not object to the court proceedings will typically not be allowed to object later about the administration of the trust. To properly disclose actions, the successor trustee would propose their distribution scheme and prepare a formal accounting of their actions. If a successor trustee chooses not to obtain court approval, the beneficiary has three years to contest the trust administration after the close.

Trust Administration can be overwhelming and complicated. When additional factors like emotions of grieving beneficiaries or beneficiary family dynamics come into play, the process can morph into expensive trust litigation. Fortunately, working with an experienced trust administration attorney can alleviate stress and ensure proper administration.

We are here to be a resource, feel free to contact us for guidance you can trust.



We look forward to serving you & wish you the best

We are here to provide you with legal guidance you can trust while placing safety and health as a priority. We are happy to meet in person or to accommodate other needs, including Facetime, SKYPE and ZOOM for virtual, face-to-face connections. Contact us directly to speak with someone who can help answer your questions.

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Or send us a private email at the link below and we will respond promptly:

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