



TRUST ADMINISTRATION 101

By Deb L. Kinney

Establishing a trust during life provides protection and ease of asset management during a person's incapacity. A trust also directs the disposition of assets at a trustor's death and generally allows the decedent's estate to avoid the costly, public probate process (assuming the trust is properly funded). However, a decedent's trust must still be administered to insure that the successor trustee properly complies with her/his responsibilities and duties and that the beneficiaries receive their assets in a thoughtful and tax efficient manner.

We at DLKLawGroup^{PC} have over 30 years of combined experience in trust administration and probate. We understand that there are often multiple interested parties and that sensitivity and thoroughness are critical to a successful administration process. We will work closely with each trustee to make sure they are fulfilling their duties completely and responsibly.

The *trust administration* process includes the following steps:

Identifying and advising the successor trustee(s) about

- ◆ the trust administration process
- ◆ the fiduciary responsibilities and liabilities of a trustee
- ◆ a trustee's right to compensation
- ◆ the specific provisions of the subject trust

Preparation and distribution of required notices to beneficiaries and heirs

Filing the "pourover will", as necessary

Identifying, locating, and valuing all assets in the decedent's estate

Identifying all liabilities affecting the decedent's estate

Providing required notices to all creditors

Reviewing and insuring payment of all valid creditor claims

Advising trustee(s) about the need for and implications of selling trust assets

Completing all necessary paperwork to retitle and reregister all property

Providing guidance on tax matters, including

- ◆ estate tax
- ◆ income tax
- ◆ gift tax
- ◆ real property tax

Insuring payment of all required taxes

Maintaining records and providing required and requested accountings

Establishing and administering sub-trusts, as necessary

Overseeing final distribution of trust assets to intended recipients, including

- ◆ finalizing asset collection
- ◆ determining appropriate logistics (timing, distribution amounts) to maximize benefits provided through trust asset
- ◆ preparing all necessary transfer documents and letters of instruction

The following is a more comprehensive explanation of these steps. Due to the complexity of the process and the legal liabilities assumed by the trustee(s), we strongly urge any non-institutional trustee(s) to partner with a team of experienced trust administration professionals, including an attorney and a financial advisor.

Successor Trustee(s)

During a trustor's lifetime, she/he has complete discretion in designating a trustee for her/his revocable living trust. It is often the case that a trustor will act as the sole trustee or a co-trustee for her/his own trust. Upon the

trustor's death, however, it becomes necessary to designate a successor trustee or trustees. In many cases the trustee is a surviving partner, spouse, or child. However, the trustor should be mindful of the responsibilities and liabilities of the position when electing a trustee and may choose a person or institution with professional experience in trust administration.

The terms of a properly drafted trust will normally identify the successor trustee(s). If there is a vacancy, the terms of the trust document will also govern how a successor trustee may be appointed.

The trustee is a "fiduciary officer" and must act reasonably in the management of the trust to insure the best results for both the present and future interest beneficiaries. If the trustee fails to act as required, she/he can be held personally liable and the trust may be deemed invalid by the IRS because of improper administration. Accordingly, we strongly recommend that the successor trustee(s) consult an experienced trust administration attorney who can explain the specific duties and liabilities associated with their position, summarize the distribution provisions created in the trust, and help the trustee(s) successfully navigate the trust administration process.

Beneficiary Notification

The first responsibility of the successor trustee(s) is to notify all *trust beneficiaries* and other appropriate parties pursuant to California Probate Code §16061.7. A *trust beneficiary* is a person who is specifically identified in the trust as a recipient of some trust asset(s). Other parties may include *heirs at law* who are those people who would inherit some portion of the decedent's estate if there was no will or trust directing the disposition of the assets.

The California Probate Code defines the specific information that must be provided to the affected parties, but it is basically a notice that the trust exists and has become irrevocable, that the party has some interest in the trust, and that she/he may obtain a hard copy of the trust for her/his information.

Filing a Will

Although the primary document for estate planning in California is a living trust, every complete estate plan includes a *pour over will*. This is a simple document that acts as a net to "catch" property left out of the trust, either intentionally or unintentionally, at the time of the trustor's death and "pours" it back into the trust. In most cases, property covered by the pour over will is distributed to the trust without going through probate. However, if the value of the certain assets (not including assets held in joint tenancy, vehicles, or assets where a beneficiary is specifically named) outside the trust exceeds \$100,000, those excess assets may have to go through probate before being placed in the trust.

In any case, within 30 days of the date of death the personal representative named in the will, who is usually also the successor trustee, must file a copy of the original will, along with any codicils, with the county clerk in the county in which the decedent resided when she/he died.

Creditor Notification

The trustee is also required to notify all creditors of the decedent pursuant to California Probate Code §§19050 – 19054. Creditors have four months from the date of notification to submit a claim. The trustee must then review and either pay or contest the various creditor claims. Additional challenges may arise if an estate is not liquid so that some negotiation with creditors may be required.

Locating and Valuing Assets

Another important responsibility of the trustee is to locate and value all of the trust assets, including any of the trustor's assets that were not in the trust at the time of her/his death, and those assets with designated beneficiaries, such as retirement plans and life insurance policies. Assets may also include such items as stocks and bond, mutual funds, real property, business partnerships, and automobiles. Tangible personal property, such as furniture and furnishings, are not generally included as a valuable asset unless an item is worth more than \$3,000. The valuation should include all community property assets and any of the trustor's separate property. A trustee must review all of the decedent's personal records, mail, and credit reports to insure that all assets and liabilities are identified.

Minority interest investments, closely held business interests and other, more complicated or not publicly traded assets may need to be valued by an expert. A properly supported appraisal often provides an opportunity for discount valuations for estate inclusion/valuation purposes.

If the trust was previously irrevocable and there has only been a change in trustee, the successor trustee is responsible for obtaining the updated tax information including the cost basis of the trust assets and the current value of each asset.

This step is critical in the trust administration process because whether and how much estate and income taxes an estate will pay depends entirely on the value of the assets.

Taxes

There are three potential tax liabilities that the trustee must be concerned with during a trust administration. These include estate taxes, the decedent's final individual income taxes, and fiduciary income taxes.

Estate Taxes: The trustee must complete the valuation of the trustor's assets, including those in and out of the trust, to determine whether a federal estate tax return must be filed. If the total value of the trustor's assets exceeds the exemption amount (\$2,000,000 for 2007), the trustee must file a federal estate tax return within nine (9) months of the date of death, unless the trustee has obtained a six (6) month filing extension. In either case, the actual or estimated estate taxes must be paid within nine (9) months of the date of death or penalties for late payment will be imposed.

Although California does not levy an estate tax *per se*, whenever an estate is large enough to necessitate a federal estate tax return, there is a corresponding State tax return which must be filed.

Individual Income Taxes: The trustee must also insure that the decedent's individual Federal and State income tax returns for the year of death are submitted and that any taxes due are paid. These returns will generally reflect all of the income earned and received by the decedent between January 1 and the date of death, and are due by April 15th of the year following the death of the taxpayer.

Fiduciary Income Taxes: Finally, the trustee must file an annual income tax return for any income generated by the trust itself during the administration period (from the date of death until the date the trust assets are actually distributed).

A trustee may complete the tax forms herself if she is qualified to do so, or she may hire an accountant, enrolled agent, or tax preparer to file the required tax returns. When filing any tax return or otherwise administering the trust, the trustee must use a Tax Identification Number (TIN) in place of the decedent's social security number.

Reregistering Assets

Once all of the assets are located, the successor trustee must reregister the assets in her/his name as the trustee. For instance, if Mary Smith establishes a living trust and then Mary dies, leaving Jane Doe as the successor trustee, Jane must reregister all of the assets in the name of "Jane Doe, Trustee of the Mary Smith Living Trust." The process for re-registration differs for real and personal property assets.

Real Property: If the trustor owned any real property in California that is included in the trust, the trustee must file a *Death of Real Property Owner – Change of Ownership* form to provide notice of the death to the County Assessor's office for each county in which the trustor owned real property at the date of death. This form will alert the assessor that a change in ownership is to occur (from the trustor to the successor trustee) and will provide the opportunity for reassessment if required.

The successor trustee must also record an *Affidavit – Death of Trustee* form and submit a corresponding *Preliminary Change of Ownership Report* for each parcel of real property in the trust.

A *Change of Ownership* form must also be filed if the trustor owned real property outside of California and that property was included in the trust. Any such property that was not included in the trust may require an ancillary probate proceeding in the state in which the property is located.

Personal Property Assets and Investments: The trustee must provide a certified copy of the death certificate and *trust certification* to every party or institution that holds title to a trust asset. These include entities such as banks, stock brokers, and certain business partners.

The trust certification is a written statement that provides a summary of pertinent details about the trust. These include information about the identities of the trust itself and the trustee(s), the powers of the trustee(s), and the trust's TIN. The document must be signed by the successor trustee(s) and notarized.

Upon receipt of the death certificate and the trust certification, each entity will transfer any affected assets into the name of the successor trustee(s) so that she/he has the ability to distribute according to the terms of the trust instrument.

Record Maintenance and Accounting

The trustee has a general duty to keep all beneficiaries reasonably informed about the trust administration. The trustee must also provide accountings at least annually to current beneficiaries, and, at the termination of the trust or upon a change of trustees, to each beneficiary to whom income or principal is required or authorized to be distributed currently. Furthermore, upon a reasonable request, the trustee must provide an accounting to *any* beneficiary about the particulars of the trust and the trust administration as they relate to that party's interest.

Accordingly, it is the trustee's responsibility to insure that adequate records are maintained so that the required information and accounting can be provided.

At DLKLawGroup^{PC}, we can administer an entire estate or assist with only a specific part of an estate. We work closely with accountants, real estate and business appraisers, and financial advisors to ensure that the trustee has the necessary support and information to fulfill her duties, the trustor's wishes are followed, and the beneficiaries' interests are protected.

Deb L. Kinney is the principal attorney at DLKLawGroup^{PC}, a law firm specializing in estate planning, trust administration, beneficiary representation and probate. DLKLawGroup^{PC} provides realistic solutions that reflect the goals and desires of each client from our offices in San Francisco, Santa Rosa, and Palm Springs. If you would like to find out more about how to protect yourself and your loved ones, please visit www.dlklawgroup.com, or call 415.693.0550.