



SUCCESSOR TRUSTEE GUIDE & CHECKLIST

A Resource for our Clients



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SUCCESSOR TRUSTEE'S DUTIES TO BENEFICIARIES

This section will explain what a Trust is and some of your key duties as Successor Trustee.

Q: What is a Trust?

A: A "Trust" is often described as any arrangement in which property (the "Trust estate") is transferred by someone (the "Settlor") to another person (the "Trustee") for the benefit of a third person (the "beneficiary").

Trusts have existed for hundreds of years in England and the United States. Originally, they were used to place an adult in charge of property which had been inherited by a child who was too young to manage their own affairs.

Q: I've been chosen as a Successor Trustee. What are my duties?

A: Over the centuries, rules have developed which impose duties on persons acting as Trustees. In 1986, the California legislature enacted statutes which codify many of those duties. Here is a brief description of the most relevant statutes. Trustees should be particularly aware of these duties:

Probate Code Section 16000: Duty to Administer Trust

This statute requires a Trustee to administer a Trust according to law and in accordance with the Trust instrument. No matter how good the Trustee's intentions, the Trustee is not free to administer the Trust in some other manner.

Probate Code Section 16002: Duty of Loyalty

Under this statute, a Trustee has a duty to administer the Trust solely in the interest of the beneficiaries. The Trustee cannot use the Trust for their own benefit.

Probate Code Section 16003: Duty to Deal Impartially with Beneficiaries

This statute states: "If a Trust has two or more beneficiaries, the Trustee has a duty to deal impartially with them." A Trustee cannot favor one beneficiary over another. This is particularly critical when the Trustee is also one of the beneficiaries. In such cases, it is a clear violation of the law for the Trustee to favor themselves over another beneficiary.

Probate Code Section 16004: Duty to Avoid Conflict of Interest

This statute requires that Trustees avoid conflicts of interest. This prohibits a Trustee from entering into transactions with Trust property which will result in a profit to the Trustee, or in which the Trustee's interest is adverse to the interests of the Trust or its beneficiaries. For example, a Trustee usually must avoid loaning personal funds to a Trust, because it would result in the Trustee having a conflict between their duties to the Trust and their personal interests in profit.

Probate Code Section 16006: Duty to Take Control of and Preserve Trust Property

This statute requires Trustees to take affirmative action to take and keep control of Trust property and to preserve that property.

Probate Code Section 16007: Duty to Make Trust Property Productive

This statute requires a Trustee to make property productive. This generally requires that the Trustee make sure that property is wisely invested.

Probate Code Section 16009: Duty to Keep Trust Property Separate and Identified

This statute requires a Trustee to keep Trust property separate from property not subject to the Trust. For example, a Trustee should not keep personal funds and Trust funds in the same bank account.

Probate Code Section 16060-16061: Trustee's General Duty to Report Information to Beneficiaries

This statute requires a Trustee to keep beneficiaries informed with respect to matters involving the Trust.

Probate Code Section 16062: Duty to Account to Beneficiaries

This statute requires a Trustee to provide beneficiaries with "accounts". Accounts are detailed statements regarding the financial transactions of the Trust. They are similar to bank account statements in which a bank reports a "beginning balance," an "ending balance," and all the transactions that occurred during the reporting period that "account" for the difference between the beginning balance and ending balance. A Trustee must keep careful records in order to be able to comply with this requirement.

Probate Code Section 16080: Discretionary Powers to be Exercised Reasonably

This statute states that, when a Trustee is given "discretion" with respect to a matter, the "discretion" must be exercised in a reasonable manner. The Trustee is not free to act in whatever way the Trustee wants. This is true even if the Trust documents state that the Trustee's discretion is "absolute" or "uncontrolled".

Probate Code Section 16200: General Power of Trustee

A Trustee's power (legal authority) to take actions pertaining to the Trust is not unlimited, and in some cases may be very restricted. For example, a Trust instrument may limit the kinds of

investments which the Trustee can make with Trust property. This statute provides that the Trustee powers are those conferred by the statute and the Trust instrument. Trustees must be careful to avoid taking unauthorized actions.

Conclusion: Observing these duties is of the utmost importance for Successor Trustees. Failure to do so exposes you to lawsuits and litigation. For that reason, we do not recommend attempting to administer a Trust without the guidance of an experienced Trust attorney.

Our law firm has successfully guided thousands of Successor Trustees like you through both simple and complex Trust administrations. Since we frequently represent Trustees and beneficiaries in Trust Litigation matters, we are well aware of common pitfalls and can help you limit or avoid them.

If you have any questions about administering a Trust or estate, please feel free to contact the Law Offices of Daniel A. Hunt at dhtrustlaw.com or (916) 488-9788.

Disclaimer: This information is intended solely for the purpose of education and should not be construed in any way to represent an attorney-client relationship between the Law Offices of Daniel A. Hunt and the reader.



SUCCESSOR TRUSTEE CHECKLIST

When a loved one passes away, it is normal to feel overwhelmed by the high volume of pragmatic matters that must be addressed. Remember that your loved one chose you as their Successor Trustee because they trusted you to carry out their wishes. You can do this!

Because of the many responsibilities you have as a Successor Trustee, it can be helpful to use a checklist to ensure that all tasks are completed. **Everything does not need to be done at once!** This step-by-step checklist will help you track common tasks that often must be done after a Settlor dies.

Note: This list does NOT include the detailed steps of administering a Trust. That information can be obtained when you retain an experienced Estate Planning attorney. This information is intended solely for the purpose of education and should not be construed in any way to represent an attorney-client relationship between the Law Offices of Daniel A. Hunt and the reader.

TASKS TO START RIGHT AWAY:

Notify the following people/entities of the death:

- The decedent's Estate Planning attorney
- The decedent's friends, family members, and employer/employees
- The decedent's landlord (if any)
- The decedent's telephone, cable, and utilities services
- The post office (arrange to collect the decedent's mail)
- The home insurance company (update the coverage if the home is now unoccupied)
- The automobile insurance company (update the insurance as needed)

- Notify the funeral home of the death and ensure that burial instructions are followed. Ask them to notify the Social Security office to stop benefits and obtain any death benefit available. Work with them to request copies of the death certificate.
- Arrange for the care of any minor children, elderly people, or pets who depended on the decedent for care.
- Re-key the locks on the decedent's home. (This prevents anyone who may have a key from entering and removing property.)
- Make arrangements for the funeral/memorial service.

- Place an obituary notice in the newspaper if desired.
- If the decedent owned a business, decide if the business will continue to operate or be liquidated. Obtain records from the attorney who handled the corporate books, if applicable.
- Determine if you need to contact any Veteran, pension, or government entities.
- Notify credit agencies of the death to prevent identity theft. (See Resource List)

NOTE ON CASH FUNDS: Immediately after a death, cash may not be easily accessible. You may need to pay certain expenses on the decedent's behalf, such as paying for the funeral or paying the decedent's bills. Once you have a Certification of Trust naming you as Successor Trustee and a death certificate, you can access estate accounts and reimburse yourself. You should receive the death certificates a few weeks after making the request.

TASKS TO START AS SOON AS TIME PERMITS:

- Locate the decedent's Trust and/or original Will. (If the Settlor was a client of our firm, we have copies of our documents on file.)
- Retain an experienced Trust attorney to assist with the Trust Administration (if there was a Trust) and possibly Probate (if any assets were left outside of the Trust). The Law Offices of Daniel A. Hunt offers a no-cost consultation for Successor Trustees to discuss the steps of administering a Trust and explain your responsibilities in this role.
- Retain a CPA to assist with filing tax returns on the decedent's estate. (The Law Offices of Daniel A. Hunt can provide a referral by request.)
- Locate asset and account information by reviewing the decedent's records and files.
- When death certificates arrive, use them and the Certification of Trust to take control of Trust accounts.
- If there is a safety deposit box, locate the key and inventory the contents of the box.
- Locate all insurance policies. Contact each one and request paperwork to make claims on any death benefits.
- Determine any debts owed by the decedent. (See Resource List)
- Collect all personal property and either distribute it according to the Trust or arrange to sell it as appropriate.
- If necessary, determine which assets should be sold to pay for the estate administration costs and taxes owed. If real property needs to be sold, arrange for an appraisal and retain a realtor. (The Law Offices of Daniel A. Hunt can provide a referral by request.)
- Determine if there were any legal actions pending on behalf of the decedent, or if the estate has an action for wrongful death of the decedent.

Conclusion: Serving as a Successor Trustee is a time-intensive, often thankless task. You deserve support as you work to fulfill this challenging role. Please feel free to contact the Law Offices of Daniel A. Hunt for assistance performing your duties at (916) 488-9788.

SUCCESSOR TRUSTEE RESOURCE LIST

Estate Attorney:

Law Offices of Daniel Hunt: <https://dhtrustlaw.com/>

Notify Credit Companies of Death, Determine Estate Creditors:

Annual Credit Report: <https://www.annualcreditreport.com/index.action>

To Obtain Death Certificates:

Sacramento County links: <https://www.saccounty.net/live-visit/PublicRecordsCertificates/Pages/DeathCertificates.aspx>

To Place an Obituary:

Sacramento Bee: <https://www.legacy.com/obituaries/sacbee/obituary-place-an-obituary.aspx>

Social Security:

Survivor Information: <https://www.ssa.gov/benefits/survivors/ifyou.html>

Tax Information:

IRS: <https://www.irs.gov/>

Transfer Title to a Vehicle:

CA DMV: <https://www.dmv.ca.gov/portal/vehicle-registration/titles/title-transfers-and-changes/>

US Postal Service:

Stop or Forward Mail: <https://www.usps.com/manage/mail-for-deceased.htm>

Veterans:

Burial and Survival Benefits: <https://www.usa.gov/veteran-burial-benefits>