TRUST ADMINISTRATION ESSENTIALS

Understanding Your Duties as a Trustee

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Understanding Your Duties as Trustee

If you've been named as a successor trustee, we send you our congratulations and condolences.

We congratulate you because the trust creator (called the settlor) trusted you to carry out their wishes when they can no longer act in the role of trustee , either due to incapacity or death. This is a compliment to your abilities and personal integrity.

We send condolences because serving in the role of successor trustee can be a time-consuming, challenging, and thankless job. It can seem intimidating at first to learn everything you'll need to know to succeed as a trustee. But we're here to show you how to succeed and support you in your journey.

As a new trustee, one of your first questions might be: What exactly are my duties in this role? Understanding your duties as a trustee serves two critical purposes:

1. It helps you carry out the wishes of the loved one who trusted you to act in their best interest.
2. It helps you avoid litigation, especially with the trust beneficiaries.

Over the centuries, rules have developed which impose duties on persons acting as trustees of a trust. In 1986, the California legislature enacted statutes in the Probate Code that codify many of those duties. Let's take a look at some of the most relevant duties you have as a trustee.

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 agreement. **No matter how good the trustee's intentions, the trustee is not free to administer the trust in some other manner.**

Here's an example: Let's say the settlor left their estate equally to their children outright (meaning with no additional stipulations), but one of the adult children is a drug addict. You might think it would be better to oversee that beneficiary's inheritance on their behalf to prevent them from causing harm to themselves or others.

You may be completely right; maybe the settlor should have requested that the terms of the trust be written differently. However, as this section of the Probate Code explains, you must administer the terms of the trust as written and not as you may believe it should have been done.

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.** Our firm once dealt with a trustee who chose to invest trust funds into their own personal business... which later failed, losing the trust funds. Always keep the beneficiaries' interests as your top priority.

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 themself over another beneficiary.

Observing this duty can be challenging when family dynamics are strained. If you're the successor trustee and you struggle to get along with another family member/beneficiary, be especially careful. You cannot choose to give one beneficiary more of the inheritance than another one (although you can take a trustee fee for your efforts). You cannot favor one sibling with more communication regarding the trust administration while keeping another sibling in the dark. All dealings must be equal.

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 that 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 taking personal loans from the trust, because it would result in the trustee having a conflict between their duties to the trust and their personal interests in profit. Also avoid purchasing or receiving in-kind distributions of real property from the trust. The beneficiaries might view it as self-dealing and placing your interests above theirs.

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 assets and to preserve that property**. If the trust includes real estate and someone else is living in the property when the Settlor dies, the trustee may have a responsibility to remove that tenant and prepare the property to be sold in a reasonable time frame for a fair market value.

Probate Code Section 16007: Duty to Make Trust Property Productive

This statute requires the person managing the trust to **make trust assets productive.** This generally requires you to ensure that assets of the trust are wisely invested, especially when you are acting as a trustee in an ongoing, long-term situation. Weak-performing investments should be reinvested in more profitable ways. It's never a good idea to let trust properties sit stagnantly; as trustee, you must act as a wise steward over them.

If you are acting as a successor trustee after the Settlor has passed away, however, your main goal is to efficiently distribute the assets to the beneficiaries. Make sure you don't delay distributing assets because you want to wait until the real estate or stock market soars.

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. A trustee should not keep personal funds and trust funds in the same bank account. **This mistake of commingling personal assets and trust funds is one of the most common errors we see trustees make.**

Our law firm once had a trustee deposit his personal funds into the trust account. Over time, he couldn't remember which money had been his versus that of the trust. As a result, he had to pay the trust back money that was probably his own in order to account for all of the funds.

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. **Beneficiaries are entitled to a copy of the trust document. If they request a copy of the trust, you must provide it to them.** If you withhold the trust from them, they could sue you – and you would have to pay their attorneys' fees since you breached your trustee duties.

Probate Code Section 16062: Duty to Account to Beneficiaries

This statute requires a trustee to **provide beneficiaries with an accounting and report of their actions and conduct in managing the trust.** These "accounts" are detailed reports 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.

As a trustee, you must report the trust income and income source. You must also report the trust expenses, including to whom they were paid and for what purpose. Finally, the account must include any trust distributions and/or trustee compensation paid during the account period. 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".

One misstep we see some trustees make is failing to be reasonable when dealing with the decedent's personal property. Occasionally, they will sell or dispose of the personal property without considering any special items the beneficiaries may desire to keep. Often the personal property is deeply personal to the beneficiaries. We recommend showing a reasonable consideration for the beneficiaries' wishes when disposing of personal property.

Probate Code Section 16200: General Power of Trustee

A trustee's power (or 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 that 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.

The best way to avoid breaching this duty is to administer the trust under the supervision of an experienced trust attorney. They can coach you throughout the estate administration to prevent any potential breaches of fiduciary duty.

Can I Administer a Trust On My Own?

When the time comes, can you administer the Trust on your own? Do you really need to hire an attorney to coach you through the trust administration process?

The short answer is: **Yes, you are legally allowed to administer a trust without an attorney. But that doesn't mean it's a good idea.**

Why Do People Administer a Trust On Their Own?

The number one reason why some people want to administer a trust on their own is to save the estate money. A typical trust administration may cost $5,000-10,000 or more, depending on the complexity of the work involved. Some Successor Trustees may want to save that money, especially if they're also beneficiaries and feel it would take away from their beneficial share. But as we will explain below, this is one area in which you do not want to skimp.

There are other reasons people consider "do-it-yourself" trust administration. Maybe the estate has dwindled in size and few assets remain so the administration seems simple. Maybe you've been involved in other estate administrations and feel that you know what you're doing.

Occasionally, it may work out fine for an experienced Successor Trustee to administer a very small and simple estate on their own. But this is the exception rather than the rule. Our firm frequently represents trustees who tried to administer a trust on their own or with an inexperienced attorney, made some mistakes, and are now being sued by one or more of the trust beneficiaries.

4 Reasons To Hire a Trust Attorney

#1 They reduce your personal liability.

Did you know that if you administer a trust on your own and make a mistake, even an honest one, that **you can be held personally liable to the beneficiarie**s for damages? Hiring an attorney helps you minimize that personal liability. When you hire an attorney to supervise the trust administration, they have a duty to ensure that you properly observe all of the rules under the Probate Code.

#2 They provide a third party for communication.

Being a Successor Trustee can put you in an uncomfortable position with beneficiaries, especially if they are aggressive or hostile. They may have plenty of questions about when they'll be receiving their inheritance, how much they get, etc. If you hire an attorney, you now have a third party to whom you can direct these questions. If beneficiaries become hostile and aggressive, you can opt to communicate with them only through your attorney.

#3 They help you observe your duties.

Everything you do as a Trustee is governed by the California Probate Code. **Did you know that the Probate Code has around 21,000 statutes?** That's a lot of rules and responsibilities to learn and observe. An experienced trust attorney has probably read the entire Probate Code and should consult it regularly. With this knowledge base, they can offer you critical guidance to ensure you don't violate your duties.

In addition to knowledge, experience makes a huge difference when it comes to trust administration efficiency. Most Successor Trustees are administering a Trust for the first time. Compare that with an experienced trust attorney, who often administers dozens of trusts every year. Chances are, if you have a problem, they've seen it before and know how to resolve it. **Having a coach to guide you through the process is invaluable and saves the estate time and money.**

#4 They help you avoid litigation.

Our litigation team has worked with countless Successor Trustees who tried to administer a trust without an experienced trust attorney and ended up getting sued. Here are 3 real-life examples:

- Trustees who "borrowed" trust funds to purchase luxury items like a sailing boat or a designer coat and got sued by the beneficiaries.
- The Trustee who fumbled around for 5 years, first trying to administer a trust alone and then with the help of a general (non-trust) attorney. Neither of them knew what they were doing and the Trustee eventually got sued by beneficiaries who were tired of waiting to receive their inheritance.
- The Trustee who co-mingled her personal assets with trust funds (which violates her duties under the Probate Code) and got sued by the beneficiaries.

When you administer a trust on your own, you risk making a major mistake or taking so long to figure everything out that the beneficiaries lose their patience and hire their own legal counsel. **Trust litigation can cost tens of thousands of dollars!** If you truly want to save the estate time and money, we recommend finding the best trust law firm possible to oversee the administration process.

How to Keep Records as a Trustee

If you're serving as the Trustee of a Trust, you need to know the right way to keep financial records. Annually, you will need to account to the present beneficiaries of the Trust for all money that came into and went out of the Trust.

If, at the end of the accounting, the money doesn't add up properly, you may be required to reimburse the trust for those funds out of your own pocket, out of your trustee fee, or out of your beneficial share of the estate.

We're going to help you avoid this error by sharing three steps to keeping records as a trustee.

Step 1: Collect Financial Statements

First, obtain a statement from each financial institution to find the starting balance for each account.

If you are a successor trustee over a trust where the settlor has died, you will use the account balance on the date of the settlor's death as the starting balance.

If you're taking over as an acting trustee for a trust where the settlor has resigned or been declared incapacitated, you will use the date of your appointment in that role as the starting balance.

Step 2: Create a Ledger

There are 3 main options when it comes to creating a ledger.

1. Use a handwritten ledger
2. Use a paid accounting software program (such as QuickBooks)
3. Use a simple spreadsheet system (such as Microsoft Excel or Google Sheets)

Of these three methods, no particular method is necessarily superior; it's mostly a matter of the trustee's personal preference. However, you may want to check with the estate planning firm who will be preparing the trust accounting and inquire as to their preference before you begin.

Step 3: Keep scrupulous records of all transactions

A trustee must keep careful records of all transfers of money and property into or out of the trust. Track all disbursements and transactions. Document the decision-making process for all trust investments.

Your records must account for:

- The nature and value of the trust assets when received.
- How much principal and income the trust has received and from where.
- How much principal and income has been disbursed and to whom.
- Any commissions paid.
- The amount and location of any balance on hand.
- Expenditures, gains, or losses of the trust.

Be sure to keep your personal funds separate from the trust's funds. **Never commingle personal and trust funds. Doing so could confuse your records and create the appearance of stealing money from the trust.**

How long to keep records

Keep copies of any relevant vouchers, receipts, and other documentation of disbursements, expenses, and capital transactions. If a beneficiary ever raises questions about the accounting, this evidence will come in handy.

One of the last tasks in a trust administration is filing a final tax return. **Ask the CPA who assists you for advice on how long to keep trust administration records.** Before throwing out any paperwork, you'll want to be sure that the IRS won't be auditing the fiduciary returns. Usually, three years is sufficient, but a period of up to seven years may be advised.

Two Costly Record-Keeping Mistakes

Here's a cautionary tale that illustrates the importance of keeping accurate records. One of our clients, whom we'll call John White, failed to keep accurate records while acting as a trustee. At the end of the accounting year, it was time to prepare an accounting. He tried to piece together what had happened to the trust funds, but his numbers didn't add up properly.

Because of the discrepancy in trust funds, John had to reimburse the trust over $30,000 out of his trustee fee and beneficial share! For John, poor record-keeping was a costly mistake.

Not correcting an imbalance in trust funds can be another expensive mistake. **If the beneficiaries see a deficit in the trust accounting, they may threaten to sue you for breach of your trustee duties.** Did you know that trust litigation often costs tens of thousands of dollars? Keeping fastidious records can be labor-intensive, but it's well worth the time and effort because of the dangers you'll avoid by doing so.

How to Locate Trust Assets

When a loved one dies and you are the named successor trustee or executor, you will need to locate and inventory all of the decedent's assets. If you were already acting as the trustee or under a Durable Power of Attorney prior to their passing, you may already have a decent grip on their financial situation. But if you weren't, creating an asset inventory may feel like a daunting task.

Here are 7 tips to help you conduct a successful asset search during an estate administration.

#1 Review their Estate Planning file for a Schedule "A".

If the decedent created a revocable living trust, they probably also created a document called a **Schedule of Assets or a Schedule "A"**. This is a list of their financial assets on the date they created the trust. These assets may include real property, bank accounts, investment accounts, brokerage accounts, promissory notes, retirement accounts, life insurance, personal property, and more.

Ideally, this document is updated about every 5 years to provide current information that the successor trustee can use to efficiently collect all the trust assets after the settlor dies.

If you can locate copies of the decedent's trust documents or an estate planning file at home, check for a schedule of assets. If you can't find this information, contact the attorney or law firm that prepared the documents and request a copy. A Schedule "A" makes a great jumping-off point in your quest to locate the assets of the trust.

#2 Check all potential paperwork storage locations, including safes, safety deposit boxes, and at-home filing cabinets or desks.

Many people purchase a **fireproof safe** for their home so they can store confidential financial information, valuables, and more. If the decedent had a safe and you don't know the combination to open it, you may need to see a locksmith for assistance.

Another common storage option is a **safety deposit box** at a bank. If you don't have a key to access the safety deposit box, you'll need to wait 40 days after the decedent's date of death, and obtain a death certificate and a Small Estate Affidavit in order to access the contents of the safety deposit box.

Finally, most people have a **filing cabinet, desk, or another place in their home for storing financial paperwork**. Sorting through voluminous paperwork is time-consuming, especially if the decedent kept many years of financial records. But you'll want to review everything to ensure you don't miss any hidden or forgotten assets.

#3 Monitor the mail and check online accounts for financial account statements.

If you have access to the decedent's incoming mail, be sure to **monitor for bank statements**. You can also forward the decedent's mail to your address through the US Postage Service.

If the decedent opted for paperless statements, you'll want to **access their online accounts with each institution**. Ideally, they left you a letter of instruction with a list of passwords to access all of their digital accounts. If they didn't but you have access to their computer, you may be able to access passwords there. If you can access their email account, you can likely reset any other account passwords that you're unable to find.

#4 Check with the decedent's CPA and/or review tax returns.

If you know the name of the decedent's CPA, they may be a good source for past tax returns and the financial information they include. You can also check for folders in the home that may include tax records.

#5 Contact the decedent's most recent employer for retirement accounts or life insurance policies.

Some employers offer retirement accounts and life insurance policies to their employees. You may want to double-check with the decedent's last employer, especially if the employment was recent, to make sure you aren't overlooking any such policies in your asset inventory.

#6 Search the home for valuable personal property.

Some estates include high-value personal property such as **jewelry, coins, and collectible items**. To complicate matters, high-value items may be mixed in with ordinary ones. Be especially careful if the settlor had a tendency to hide money. Like the proverbial Depression-era grandparents who distrusted banks and buried money in jars in the backyard, it's possible that funds were stashed at home for safekeeping.

Case in point: We once had a hoarder client whose residence was filled to the brim with endless piles of junk – but there was more than met the eye. The decedent had randomly hidden cash inside items that appeared to be rubbish. Because of this, the successor trustee had to painstakingly go through each item in the house so as not to inadvertently throw away piles of money.

#7 Conduct an unclaimed property search on the California State Controller's website.

According to California's Unclaimed Property Law, corporations, businesses, associations, financial institutions, and insurance companies must report and deliver property annually to the State Controller's Office after there has been no account activity or owner contact for at least three years. By running a quick search, you can **find out if the decedent had any forgotten accounts**.

How to Communicate with Beneficiaries

"My mother died a year ago. I still haven't heard anything regarding the trust administration from my sister, the trustee. I never received a copy of the trust and I don't know what's going on! What can I do?"

We frequently hear queries like this from bewildered trust beneficiaries. Some have been kept in the dark for months or even years on a trust administration. Many of these beneficiaries choose to hire their own attorney and pursue legal action against the uncommunicative trustee.

If you're a trustee of a trust and you want to avoid being sued, you must learn how to appropriately communicate with the trust beneficiaries.

Duty to Communicate with Beneficiaries

As a trustee, you must always be careful to observe your fiduciary duties and avoid any perceived abuses of power. Under California Probate Code Section 16060, "The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration."

Notifying Beneficiaries of Trust Administration

When a settlor passes away, **California Probate Code Section 16061.7 requires the trustee to notify the trust beneficiaries PLUS all the legal heirs (including disinherited ones) of the death**. If you are working with a trust attorney, they will draft these letters on your behalf. These notices should be sent out within 60 days of the settlor's death.

The notices usually:

- Identify the trustee and provide contact information
- Inform recipients that they may request a complete copy of the trust document if desired
- Offer an approximate anticipated time frame for the process (without making any promises concerning asset distribution)
- Provide information on the statute of limitations on any trust contests

If you fail to provide these notices as trustee, the Probate Code states that you "shall be responsible for all damages, attorney's fees, and costs caused by the failure unless the trustee makes a reasonably diligent effort to comply with that section".

Keeping Beneficiaries Informed

Make an effort to keep the beneficiaries informed as the trust administration progresses. While it's not necessary to inform them of every single detail, keeping them in the loop on major developments will help you earn their confidence. **As with any relationship, consistent communication is the cornerstone of trust**.

For example, if you're handling a real estate sale, sending an email when an offer is received can let them know that things are moving along. If you experience delays in liquidating a certain account, a brief update helps keep beneficiaries from getting too antsy. When dealing with personal property, check in to see which items they would like to keep before selling or disposing of them.

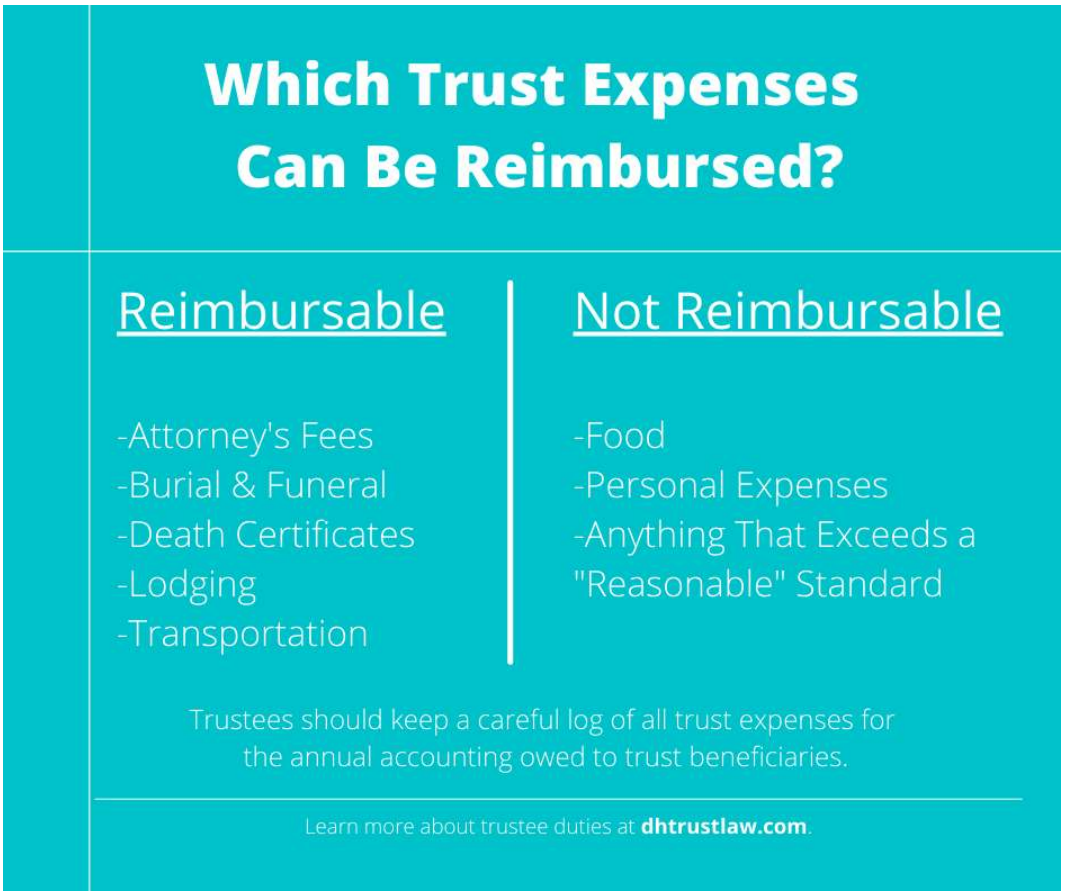
Accounting to Beneficiaries

The Probate Code also requires trustees to provide beneficiaries with an annual accounting and report of their actions and conduct in managing the trust assets. Your accounting must include trust income and income source; trust expenses; and any trust distributions and/or trustee compensation paid during that period. A trustee must keep careful records order to be able to comply with this requirement.

Dealing with Difficult Beneficiaries

Communicating with beneficiaries can be challenging at times, especially when a beneficiary is aggressive, hostile, or verbally abusive. While you do have an obligation to keep each beneficiary informed of the trust administration process, **you may opt to communicate with them in writing only**. Hopefully, you are administering the trust under the guidance of an experienced trust attorney. If so, **you can also choose to communicate with a hostile beneficiary only through your lawyer.**

How to Get Reimbursed as Trustee



Picture this: A family member or friend has passed away. You know they created a Revocable Living Trust and named you as Successor Trustee in the trust document. They trusted you to handle their affairs when they died, and now the time has come to act as trustee.

But there's a problem: you don't have access to any trust assets yet! You probably haven't received death certificates yet to prove to the bank that the decedent has passed. There's a funeral to pay for, household bills that still need to be dealt with, and the trust attorney requires a retainer. How should you handle this situation?

Our law firm handles dozens of estate administrations every year, and we've seen plenty of successor trustees in this challenging position. You're not alone! **Rest assured that expenses that directly benefit the trust estate are reimbursable.** A common solution to the situation described is for you to pay the trust expenses upfront and then reimburse yourself after you gain access to trust assets.

Accounting for Reimbursements

As trustee, it's a good practice to keep a log and carefully track any expenses for which you seek reimbursement. All of these expenses will be reflected in the accounting you must provide to the trust beneficiaries on an annual basis.

Always keep in mind that the trust beneficiaries will view expenses as reducing their inheritance. There is a high probability that the beneficiaries will scrutinize any unnecessary or extravagant expenditures. Try to view all financial decisions through that lens to prevent any risk of future litigation. You may be personally liable for any expenditures that are deemed unnecessary or unreasonable.

Which Expenses Can be Reimbursed?

Reasonable expenses that directly benefit the trust estate can be reimbursed from trust funds. They include:

Attorney's Fees: You'll want to retain an experienced trust attorney to guide you through the trust administration process. Any attorney's fees incurred during the trust administration are reimbursable from the trust estate. (We don't recommend administering a trust on your own.)

Death Certificates: The cost of obtaining death certificates from the county in which the decedent passed is reimbursable from the trust estate.

Burial & Funeral Expenses: This includes the cost of a coffin, embalming, cremation, funeral, etc. All of these costs are reimbursable from the trust estate.

Reasonable transportation: This might include gas for trust-related errands, bus/train fare, Uber/Lyft fees, a necessary flight to handle trust-related business, or a modest vehicle. It would not include buying yourself a new Mercedes-Benz.

Reasonable lodging accommodations: This might include a brief stay in a modest hotel to handle trust-related business. It would not include establishing a permanent residence at the Ritz -Carlton.

Which Expenses Cannot be Reimbursed?

Food: While you will likely need to eat while performing your trustee duties, that doesn't mean that your meals are reimbursable from the trust estate. After all, even if you weren't a trustee, you would need to feed yourself anyway. Don't make the mistake of using trust funds to buy yourself food. The trust beneficiaries will not look kindly on an annual accounting riddled with Burger King and Chick-Fil-A charges.

Charges that are personal: Never use trust funds for personal expenses, even if you consider it a loan. Remember: loans to yourself from trust funds are a conflict of interest.

Charges beyond a "reasonable" expense: As we discussed above, you will be personally liable for any expenses that go beyond what the beneficiaries will consider "reasonable".

What if You Don't Have Enough Money?

But wait – a funeral and an attorney's fee retainer can cost thousands of dollars. What if you don't have sufficient funds to personally cover these costs upfront?

Here you have a couple of options. If the decedent had a life insurance policy the funeral home may accept that as collateral to cover the burial and funeral expenses until you obtain access to the trust assets.

Some law firms may help you get started as successor trustee by meeting with you for a no-cost consultation. If you sign an agreement with them at that time promising to return with a retainer once you've accessed trust funds, they may provide you with a Certification of Trust so you can access trust accounts. Once you've obtained funds, you would need to compensate the firm for the work they performed and provide the retainer for the remaining trust administration work.

How to Take a Trustee Fee

Serving as a trustee can be a time-intensive job. If you're a successor trustee, you may be wondering if you will be compensated. Here are some tips on how and when to take a trustee fee in California.

What is a Trustee Fee?

A trustee fee is compensation available to the acting trustee for their efforts spent administering the trust. This fee is taken out of the available trust funds.

How Much is a Trustee Fee?

California Probate Code section 15680 states that if the trust document outlines rules for taking a trustee's fee, these provisions should be followed. Exceptions may be made for "extraordinary circumstances", such as an extremely complex trust administration that requires an inordinate amount of the trustee's time. If the trust document doesn't specify the amount of a trustee fee, California Probate Code 15681 states that a trustee is "entitled to reasonable compensation under the circumstances".

Many trusts define an acceptable trustee fee as a percentage of the total trust assets. For example, the terms of the trust may state that the trustee is entitled to an annual fee of 1% of the total trust estate. So a trustee administering a $1 million estate could be compensated annually at $10,000.

Another common form of compensation is an hourly fee based on the trustee's time. A reasonable hourly rate for a private trustee is often in the $25-35 per hour range. Trustees should keep a detailed log from the very beginning of all time spent doing trust-related activities, including the task completed and how long it took. Accurately reconstructing time logs can be very challenging. We recommend you start your time log at the beginning of the trust administration and continue until the administration concludes.

Be sure to include your travel time, emails, phone calls/texts, and other easily overlooked time entries. You should also be tracking your reimbursable trust-related expenses. Reimbursements are separate from your trustee fee and not considered taxable income.

Consult the Attorney First

We've seen trustees pay themselves fees that were three times what would be considered "reasonable," simply because they didn't know what they were doing. This brings us to a very important point: Always consult with the supervising trust attorney before taking a trustee fee. An experienced trust attorney can make sure the fee's timing and amount are appropriate, preventing any possible breaches of your fiduciary duty and potential litigation.

When to Take a Trustee Fee

Depending on the circumstances, there are two options for the timing of taking a trustee fee. **You can either take your fee annually at the end of the calendar year or take it in one lump sum at the end of the trust administration.**

We generally recommend taking an annual fee. This strategy often has income tax advantages for the trustee. For longer trust administrations, the beneficiaries may also be less likely to object to several smaller fees over the years as opposed to one enormous fee at the very end of the administration process.

Please note that trust administrations should be completed in a time-efficient manner in keeping with your fiduciary duties. A trustee should never drag their feet on completing the work in order to continue collecting an annual fee. This mistake would leave you vulnerable to legal action by the beneficiaries.

Is Taking a Trustee Fee Mandatory?

Taking a trustee fee is not mandatory and may be waived if desired. This compensation is considered taxable income for the Trustee. Some trustees choose to waive their right to a fee in order to keep more funds in the trust and avoid unnecessary income tax. If you're concerned about the potential tax consequences of taking a trustee fee, we recommend that you consult your CPA.

Can a Trustee Be Denied Compensation?

Probate Code 16420 states that **if a trustee commits a breach of trust, or has an unreasonable delay in the administration process, the beneficiaries can pursue a court action to reduce or deny the trustee's compensation**. This is one reason it's critically important to understand your trustee duties and preferably administer a trust under the supervision of an experienced trust attorney.

Justifying a Trustee Fee

What if the beneficiaries don't want you to take a trustee fee? It's true: Beneficiaries don't always relish the idea of a trustee cutting themself a check out of the trust funds, even if they are legally entitled to do so. They may view it as self-dealing and reducing their own inheritance. However, **keeping a detailed log of your time and activities as trustee will provide beneficiaries with supporting evidence to justify the fee taken.**

How to Liquidate Personal Property

"What do I do with all this "stuff"?" If you're a trustee or estate executor/personal representative, you may initially feel a bit overwhelmed by the idea of distributing all of the "stuff" that the decedent accumulated over a lifetime. Here are some tips on how to get started in the process of liquidating assets post-death.

What is "Liquidating Assets"?

"Liquidating" assets means converting hard assets (like real property and personal belongings) into cash. Liquidating assets is an essential step in any trust or estate administration that prepares you to distribute funds to the beneficiaries and complete the administration.

Which Assets Must Be Liquidated?

There are 3 main types of property that need to be liquidated after a death:

- **Real Property**: This category includes any real estate the decedent owned, including any partial shares they may have owned with other parties.
- **Tangible Personal Property:** This category includes automobiles, furniture, family heirlooms, clothing, jewelry, firearms, collectibles – basically, all of the "stuff" at the residence.
- **Intangible Personal Property:** This category includes stock certificates, bonds, and CDs.

How to Liquidate Assets

Let's walk through three steps to liquidating assets.

Step 1: Collect and inventory all estate property.

As the trustee or estate administrator, you'll want to change the locks on any real property and make sure that beneficiaries do not take anything from the estate until you have properly inventoried the estate assets. And of course, do not take anything from the estate yourself until the inventory is complete.

Step 2: Verify the value of all estate assets.

As a trustee, you have a duty to manage the trust assets wisely. You don't want to make the mistake of donating a rare, collectible coin worth thousands of dollars to Goodwill. A mistake like that would rob the beneficiaries of a portion of their inheritance.

If you know or suspect that a trust asset is valuable, you should seek to have it appraised by an experienced professional. Here are some tips to help you get started:

Real estate: Hire a real estate appraiser. Find an impartial, licensed professional, rather than using your buddy from the golf course hoping that they will push the numbers in your favor. You may wish to ask your trust/probate lawyer for a referral.

Tangible property: If you believe the estate contains high-value pieces, you should seek out an appraiser specific to the item. For example: find a jewelry appraiser to get an accurate value on grandma's heirloom diamond wedding ring.

Finding the right appraiser: An internet search can be a useful jumping-off point. You can try the ASA Find an Appraiser tool to find the exact appraiser specialty you need.

Step 3: Sell, distribute, or dispose of the assets.

The method you use to liquidate an estate asset will depend on what kind of asset it is. but here's one key thing to remember: **all cash you collect must be deposited into the estate bank account and kept separate from your personal funds at all times**. Keep careful records of all income and any distributions made throughout the estate administration process.

Here's an overview of how to handle each category of property:

Real Estate: You will want to sell any real property through a realtor who has experience in estate administrations. You may wish to ask your trust/probate lawyer for a referral.

Avoid waiting for the real estate market to skyrocket in order to sell. This delays closing out the administration and risks the ire of beneficiaries who are waiting on their inheritance.

If a tenant is currently living in the real property, you'll need to give them notice to vacate the property so it can be prepared for sale. If the tenant resists these requests, you may need to seek the assistance of an eviction attorney. You may wish to ask your trust/probate lawyer for a referral.

If you have one or more beneficiaries who wish to keep a piece of real property as part of their inheritance, you'll need to determine if there are enough assets in the estate to offset in-kind distributions for the property and whether the beneficiaries are open to holding title together.

Intangible Property: You may use a stockbroker to sell stock certificates. Bonds can be cashed out at a bank.

Tangible Property: Distributing tangible personal property can be sensitive. Some items may carry sentimental value for the beneficiaries. Here's how to deal with personal property:

1. Check for a letter of instruction. If the decedent left written instructions regarding who they want to receive specific items, start by carrying out those wishes first.

2. Consult with the beneficiaries. Ask which assets they'd like to keep. Some may want items of a purely sentimental nature, such as family heirlooms or photographs. Others may wish to take items of more significant monetary value as part of their inheritance, such as a vehicle or fine jewelry. If the item taken has a known value, the beneficiary should sign a receipt documenting the transaction.

3. Sell items of value. Once the beneficiaries have taken the items they wanted, consider holding an estate sale or selling items on a website like Craigslist.

4. Donate or give away the rest. When everything of value has been sold, you may donate whatever remains to friends, a charity thrift shop, Goodwill, etc.

Liquidating assets can be a time-consuming process, but once complete, you will be much closer to closing the estate administration. Hopefully, you have hired an experienced trust/ probate law firm to coach you through the process. Check with them before making final distributions.

How to Handle Estate Debts

In 2017, data revealed that 73% of Americans die with debt; the average debt balance (including mortgage debt) was $61,554. When a settlor of a revocable living trust dies, the job of dealing with estate debt and creditors falls to the successor trustee.

Your Duty as a Trustee

First, rest assured that as a trustee, **you are not personally liable for estate debts.** While creditors may make a claim on the estate or trust, if the estate is insolvent (unable to pay debts owed), you will not need to pay the debts out of your own pocket as long as you are observing your trustee duties.

There are a few exceptions to this rule. You could be held liable if you failed to pay a legitimately known estate debt and distributed trust assets to beneficiaries instead. Alternatively, if you paid an estate debt that really wasn't necessary and reduced the beneficiaries' share, they could sue you and seek reimbursement from you personally.

Paying creditors in an estate administration can become extremely complicated, and we strongly recommend seeking the counsel of an experienced trust attorney.

Common Estate Debts

Common debts that many trustees like you encounter include money owed to the government and both secured and unsecured debt. One essential step in every trust administration is sending notices to the California Franchise Tax Board, the IRS, and the California Department of Health Services, informing them of the decedent's passing. Whenever a citizen dies, the government wants to know if they owed any taxes or Medi-Cal payback.

Other common types of debt include secured and unsecured debt. Secured debts are attached to collateral which the lender can seize, sell, and use to pay back the debt if the borrower defaults on payments. Real estate mortgages and car loans are examples of secured debt.

Unsecured debt lacks collateral, like credit card debt and student loan debt. As unsecured debt, they are lower priority creditors in an estate administration.

Which Debts Take Priority?

The estate must pay off debts in a specific order, starting with secured debt first.

California Probate Code Section 11420 lays out the order in which estate debts must be paid, which are summed up below:

1. All expenses related to the estate administration.
2. Obligations secured by a mortgage, deed of trust, or another lien.
3. Funeral expenses.
4. Medical expenses related to last illness.
5. Family allowance (for family members who relied on the decedent for support).
6. Wage claims (unpaid wages to any employees).
7. All other debts, including unsecured debts.

How to Handle Estate Debts

How do you handle estate debts as a trustee? There are 3 basic steps:

1. Trustee notifies creditors. As the trustee, notify any known or potential creditors that the person has passed away. In circumstances when the estate includes a business and/or a high potential of liability, you may want to file a proposed notice to creditors with the court as outlined in California Probate Code 19003.

2. Creditors make their claims. Creditors must follow the procedures outlined in California Probate Code Sections 9000 – 9399 to make a claim on the estate. They must determine how much is owed to them and submit their claim within one year after the settlor's death. This time frame applies even if the creditor was unaware of the death.

3. Trustee approves, rejects, or disputes each claim. When a creditor submits a claim, the trustee must review it and decide whether it seems legitimate and accurate. California Probate Code section 19005 states, "The trustee may at any time pay, reject, or contest any claim against the deceased settlor or settle any claim by compromise, arbitration, or otherwise." For claims that appear correct, you repay those debts using estate funds. For claims that appear fraudulent or incorrect, you can reject or contest the claim. If you reject it, the creditor has 90 days to file suit if they want to pursue the claim further.

Why You Need an Experienced Trust Attorney

Hiring a knowledgeable estate planning/trust lawyer is critical if the estate being administered has creditors and debts. The old saying "you don't know what you don't know" applies here. It can be difficult for a successor trustee to know which claims are legitimate and how to proceed in negotiating with creditors.

An experienced trust attorney will be able to advise you regarding which claims truly must be paid, how to negotiate the debts down and save the estate money, what to do if estate funds are insufficient to pay the debts, and much more.

Here's an example to illustrate this point: A few years back, our law firm assisted with a trust administration where the decedent had significant debt. With skillful negotiation, our legal team successfully reduced the estate debt from $1.2 million down to $400,000, preserving a much greater sum for the beneficiaries. That's the value of having a great trust attorney on your side!

How to Distribute Trust Assets

At some point in the process of administering a revocable living trust, you'll reach a point as a trustee when you'll be ready to distribute trust assets to the beneficiaries. By then, you will have inventoried the trust assets, liquidated hard assets as appropriate, dealt with any estate debts or creditors, and prepared an accounting of all of your actions as trustee. Once you're ready to distribute assets, here's what to do next.

Before Distributing Trust Assets

Before distributing assets, you will want to do the following 3 tasks:

1. **Determine how the trust assets will be distributed.** Most trusts specify a simple "outright" distribution to beneficiaries, without any restrictions. If the trust specifies a staggered or discretionary distribution scheme, consult with your trust attorney for guidance on handling those longer-term scenarios. Here, we'll be focusing on a simple, outright distribution scheme.
2. **Prepare an accounting for the beneficiaries and send them a copy,** or have your trust attorney prepare an accounting on your behalf. The accounting will show the beneficiaries exactly how you arrived at the amount they will be receiving.
3. **Decide who will be making the distributions** – you or your trust attorney. Communicate that information to your trust attorney.

Two Types of Asset Distribution

Consult with the beneficiaries to figure out what kind of distributions will be made. The two main kinds of distribution are:

1. **In-Kind Distributions:** This includes any titled assets that the beneficiaries have chosen to take as part of their inheritance such as an automobile, a piece of real estate, stock, or investment accounts.
2. **Cash Distributions:** This includes funds from all liquidated assets. You can make this distribution using cash, a cashier's check, a wire transfer, or a check written from the trust account.

Do's and Don'ts of Asset Distribution

Here are a few Do's and Don'ts to keep in mind when distributing trust assets.

Do:

- Check-in with your trust attorney before you start distributing assets.
- Ask each beneficiary how they would prefer to receive their distribution, such as whether they would prefer a check versus a wire transfer.
- Request (but don't require) the beneficiaries to sign a Receipt and Release document when they receive their inheritance. This document acknowledges that the beneficiary has received and accepted the property distributed. It also releases you as the trustee from future liability after a certain amount of time has passed.
- Consider keeping a small reserve account of trust funds for handling the final tax return and tying up any loose ends in the trust administration.

Don't:

- Don't try to force a beneficiary to sign a Receipt and Release in exchange for giving them their inheritance. This is against the law.
- Don't make distributions that are not authorized by the trust document. This includes increasing or decreasing the amount of the distribution as stated in the trust. All trustees have a duty to administer the trust instrument as written and not in any other manner.

How to Handle Final Tax Returns

They say that the only certain things in life are death and taxes. But did you know that dying doesn't excuse you from paying taxes? It's true: when a settlor of a trust dies, the successor trustee is responsible for handling the decedent's unfinished tax business. In total, there are 4 main types of tax returns that trustees have a responsibility to prepare and file.

4 Types of Tax Returns

1. **Decedent's final income tax return:** Internal Revenue Code section 6012(b)(1) states, "If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent."

As a trustee, you'll be responsible for filing the decedent's final tax return and paying any taxes due. If the decedent was married and the surviving spouse is still alive, consult with a CPA about possibly filing a joint return with the surviving spouse if this would be advantageous for the estate.

2. **Final income tax returns for estate:** As trustee, one of the last tasks you will likely perform in your role is filing the final tax return. Form 1041, Income Tax Return for Estates and Trusts, must be filed for "every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income" (Internal Revenue Code section 6012(b)(4)).

Form 1041 asks the trustee to report:

- The income/deductions of the trust.
- The income that is either being held for future distribution or currently distributed to the trust beneficiaries.
- Any income tax liability of the trust.
- Employment taxes on wages paid to household employees.

In general, the beneficiaries will be taxed on any paid income or distribution they receive from the trust, while the trust is taxed on retained income. If the trust has income exceeding $7,900, it will be taxed at the maximum federal rate of 39.6%. If this is a concern, you may wish to consider distributing income to the beneficiaries before the estate is closed, since they will ultimately be receiving it anyway and this could save the estate money.

3. **Federal estate tax return:** If the gross estate, adjusted taxable gifts, and specific exemptions exceed $11.7 million in 2021 (or $11.58 for deaths in 2020), then the trustee will need to file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

As a trustee of the trust, you are personally liable for filing the estate tax return and paying any tax due. When you file your return, you can protect yourself from this liability by requesting early determination of the tax and discharge from personal liability under Internal Revenue Code section 2204.

4. **Generation-skipping tax return:** Trustees must report generation-skipping transfers and pay any taxes due. These transfers include:

- Taxable termination: Termination of an interest in a trust that results in a distribution to a skip person (IRC section 2612[a]).
- Taxable distributions: Any distribution from a trust to a skip person (section 2612[b]).
- Direct skip: A transfer, subject to federal gift or estate tax, of a property interest to a skip person (section 2612[c]).

A “skip person” is someone who is two or more generations below the transferor, most commonly the transferor's grandchild. If the decedent made any direct skip transfers before they died that were not previously reported, then the trustee must file Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. If any generation-skipping transfers are occurring after the decedent’s passing under a trust, the trustee must also report those on Form 706.

If any generation-skipping transfers are occurring after the decedent’s passing under a trust, the trustee must also report those on Form 706.

Determining Final Tax Liability

Even if you don’t believe that the final Form 1041 will have any income tax liability, you may still have outstanding tax obligations. This could come from a prior year’s tax return, a state or local government, or even unpaid real estate taxes.

In order to determine the trust's final tax liability, be sure that you have completed returns for each year of administration and that you have no knowledge of any open issues regarding any of them. Before making any distributions to beneficiaries, be sure to set aside a reserve account with sufficient funds to cover any taxes you think the trust may owe and cover the CPA fee.

Filing a Short-Year Return

Before terminating the trust, you will need to ensure that it has reached zero taxable income and zero tax liability. If the trust terminates before the end of a calendar year, you may consider filing a short-year return.

A short-year return can be useful when closing out a trust administration because for most people, you'll probably be ready to complete the trust administration before December 31, making it a "short year" (less than 12 months) for tax purposes. A short-year return allows you to complete the trust administration sooner than if you waited out the full remainder of the year.

Prepare a short-year return as you would any other return, with two differences: You should fill in the dates of the short year at the top of the return. If the current year's form isn't available yet, you may use the prior year's tax form and superimpose the correct year over the printed prior year. Don't forget that a short-year return is still due 3.5 months after the end of the year you've chosen. So if you choose to end the year on June 30, your short-year return would be due on October 15 (not April 15).

Any questions? Contact us.

Every trust administration is a unique journey; no two are exactly alike. If you have any questions, **please feel free to contact the Law Offices of Daniel A. Hunt and claim your no-cost consultation at dhtrustlaw.com**. We're here to offer personalized coaching and support throughout your trustee journey.

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