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Estate Planning & Elder Law

Trust Administration

When the settlor of a revocable living trust, who was also serving as trustee of the trust, dies or becomes incapacitated, a new trustee must take over management of the trust and administer the trust according to its terms. This process, called "trust administration," involves multiple steps, the most basic of which are summarized here. (The rules governing the administration will appear partly in the trust instrument itself and partly, but not exclusively, in Division 9 of the California Probate Code (sections 15000 – 19403).)

1. Accept trust and recognize trustee duties

Generally, the trust will name its successor trustee. If that person is able and willing to act as trustee, he or she will generally sign a simple statement accepting the duties and responsibilities of the trust and agreeing to administer the trust according to its terms. At this point, the trustee accepts the fiduciary duties outlined in Probate Code sections 16000 et seq. and the responsibilities defined under the trust. If the person named in the trust is not able or willing to serve, then generally the next named successor may serve. If no one named in the trust is able or willing to serve, then the trust may provide a means for the appointment of successor trustees. If not, it will be necessary for a court to appoint a successor trustee.

Once a trustee is in place, he or she must become very familiar with the terms of the trust, get acquainted with the beneficiaries, consider any inherent conflicts between the terms of the trust and the needs of the beneficiaries, and how to resolve those conflicts, if appropriate, employing professionals as needed.

2. Notify all necessary parties

The beneficiaries of the trust and various other entities are entitled to notice of the administration of the trust and/or the death of the settlor. Generally, the trustee of the trust is also the executor under the decedent's will. If not, the trustee and the executor will need to coordinate their efforts to give all proper notice.

All of the following are entitled to notice of the death of the settlor: Social Security, the Department of Health Care Services (DHCS), pension providers, annuity payers, the Department of Motor Vehicles, beneficiaries, and creditors. The timing and the form of notice to the beneficiaries and the DHCS is specifically prescribed by law (Probate Code sections 215, 16061.7).

Anyone in possession of the decedent's will is obliged to provide the will to the executor and to deliver the will to the superior court of the county in which the estate of the decedent may be administered. (Probate Code section 8200).

An attorney may be very helpful in assuring that notice requirements are met.

3. Locate all necessary documents, collect and inventory assets, take title of trust assets

In addition to the decedent's will (discussed under paragraph 2, above), the trustee must locate and take possession of all trust documents, deeds to real property, statements for all accounts subject to the trust, and all insurance and retirement accounts payable to the trust. If the trustee is also the executor of the decedent's will, that individual will also collect the same information for all assets not titled into the trust. If the trustee and executor are not the same person, they must coordinate their efforts in marshaling assets, considering, among other things, whether the settlors intended assets to be included in the trust that were never titled into the trust.

To obtain this information, the administrators must review files of the decedent, check the decedent's safe deposit box and take charge of the decedent's mail.

A procedure for accessing the safe deposit box of a decedent is provided at California Probate Code Section 331. However, if there is any danger of a will or trust contest, or of a conflict between executor, trustee, family or beneficiaries, DO NOT go to a safe deposit box without the involvement of an attorney experienced with estate administration.

Investigate social security benefits, life insurance benefits, union death benefits, veteran's burial allowance and other benefits, employee benefits, including accrued vacation pay, death benefits, retirement plans, deferred compensation, final wages, and medical reimbursements.

Investigate refunds on insurance or canceled subscriptions.

Investigate Keogh and IRA accounts.

Investigate business, partnership and investment arrangements.

Review credit cards and charge accounts; cancel as appropriate.

Based on findings, above, work with attorney and/or CPA to prepare an asset inventory, list of accounts and debts owed at death. The list should identify the manner in which assets were owned (e.g., sole ownership, joint tenancy, community property, trust, "in trust for", "pay on death", etc.)

4. Value Assets

Each asset of the estate must be valued as of the date of death. This is important for both estate taxes and income taxes (capital gains avoidance through "step-up" in basis). Obtain qualified valuations where appropriate.

House appraisals

House appraisals should be performed by a professional real estate appraiser who is familiar with the area that the real property is located. The appraiser must be very familiar with the housing market and requirements of the area. Many attorneys rely on appraisals.

Tangible property

Prepare a list of tangible property and their values having them formal appraised if needed. Automobiles will fall in this category.

Formal Inventory & Appraisal

A formal Inventory and Appraisal may be recommended.

5. Protect assets

Deal with fire, theft, liability and auto insurance on decedent's property. Trustees should report to their attorney any problems on extending insurance.

6. Set up accounting system to track time, expenses, and costs

The administrator is responsible to the beneficiaries to identify all assets of the estate and then to account for all income and distributions so that, at the end of the administration, all property received and all income received during the administration equals to the penny the amount of assets on hand (and ultimately to be distributed) minus the expenses of administration. The transactions of administrator must include the date of the transaction, the payor, the purpose of the income or disbursement (e.g., "interest on Savings Account No. xxxx-1245" or "2010 property taxes, second installment"), and the exact amount.

Linda provided Stephen, Scott and Susan forms for tracking income and expenses on 3/22/11.

The administrators are also advised to keep careful records of time they devote to managing and administering the estate, e.g., meetings, phone calls with banks, attorneys or accountants, appraisers, or other advisors, etc. Time should be recorded to within the quarter of the hour.

When they assume responsibility, many non-professional trustees do not intend to charge for their services; however, many change their minds part way through the process. In some cases, it may be advantageous from a tax perspective for the trustee to collect payment for fees. Unless the governing document prohibits compensation to the administrator or provides for payment of a set amount or a percentage for administration it is generally necessary to have time records to justify payment.

7. Lodge will

The original will of the decedent will need to be lodged with the court. Generally the attorney will handle this detail.

8. Obtain taxpayer identification number

The decedent's social security number functions for tax reporting of income earned only until the date of death. Therefore, a special tax identification number must be obtained for the trust and sometimes also for the decedent. The attorney can assist in obtaining necessary tax identification numbers.

9. Retitle trust assets in name of successor trustee(s)

The trustee cannot distribute or sell estate assets if he or she does not have title to those assets. Therefore, the trustee must transfer title of assets that have legal title, like many bank or investment accounts and all real property, from the decedent to the trustee before the trustee can distribute the assets. Sometimes a court procedure may be necessary or appropriate to take title of certain assets.

10. Consider transfer methods

The property transfer method for an asset depends on the type of asset, how it was owned, whether beneficiaries were named, and the value of assets included in the "probate estate." Methods include direct survivorship, small estate affidavits, spousal property petitions and probate. Also consider the use of "disclaimer."

11. Consider investment strategy

If there are substantial investment assets and the trustee or executor doesn't have a good investment advisory, your attorney should be able to recommend a reliable firm to provide the support needed.

12. Pay Debts

Do not pay any of the decedent's debts until you discuss the decedent's financial status with an attorney. However, assuming the estate is solvent, arrangements must be made to deal with the decedent's debts directly, through probate or otherwise.

13. Taxes

If an estate tax return is required, a Form 706 must be filed within nine months after the date of death. Also, income tax returns often must be filed. Keep payment of property taxes current.

14. Distribute assets and obtain receipts from beneficiaries

Each asset must be transferred to the heir(s) or beneficiary(ies) following the property transfer method for that asset. Heirs and beneficiaries are determined based on existing documents (wills, trusts, ownership form, etc.) or, if no such documents exist, then the rules of intestacy created by the state legislature.

Where a trust is to be divided into shares (typically on the death of a first spouse or where beneficiaries are young or have disabilities), obtain advice from an attorney and/or CPA to allocate assets to the various shares to be sure that income and expenses of each share are properly reported for income tax purposes.

It is prudent to have each beneficiary sign a receipt for each distribution of property they take possession of or receive on distribution.

Note: Beneficiaries may need to update their own estate plans because of the receipt of an inheritance or on the death of the beneficiary.

15. Calculate trustee fees, if any

Many non-professional trustees do not charge for their time in administering an estate. In some cases, it may, however, be advantageous for the trustee to receive payment for fees.

16. Final Accounting

Prepare the final accounting. The attorney will assist in preparing the accounting or, if all beneficiaries consent, a waiver of a final accounting.

17. Terminate Trust

Depending on the circumstances, you may wish formally to terminate the trust after distribution of assets.

