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MATSUMURA LAW FIRM

Wills, Trusts, Probate
And Estate Planning

“The Trustee Protects the Trust Assets for the Beneficiaries”

What Are The Duties of a Successor Trustee?

What You Should Know If You Are Named as a Successor Trustee of Another’s Revocable Living Trust

A trustee of a trust is the “manager” of the trust’s assets. If you are named as the successor trustee of another’s living trust, the most important thing to remember is that **you are not the owner of the assets**—instead, you are person who is responsible for safeguarding the trust assets for the

3. **Invest trust assets prudently.** You must make sure that assets are preserved, and are invested in a way that will provide reasonable growth with minimum risk.
4. **Keep beneficiaries informed.** As trustee for the benefit of the beneficiaries, you need to report trust activities (income, expenses, etc.) to the beneficiaries and inform them about the trust.
5. **Distribute trust assets for the benefit of the beneficiaries only.** You cannot use the trust assets for your own benefit .

other persons - the grantor or creator of the trust (while the grantor is living) and the trust beneficiaries (after the grantor passes away).

Trustee Responsibilities

As a trustee, first and foremost, you need to abide by the instructions in the trust document. Besides the terms of the trust, the California Probate Code imposes other duties upon a successor trustee. For example, a successor trustee must do all of the following:

1. **Maintain separate records for the trust.** You cannot mix trust assets with your own personal assets. The trust must have its own separate checking and brokerage accounts, apart from your personal accounts.
2. **Treat all beneficiaries equally.** You cannot favor one beneficiary over another (unless the trust authorizes). Even if you are also a beneficiary of the trust, you must act impartially as to your own personal interest in the trust.

If any of these duties are breached, the beneficiaries can sue the successor trustee for damages. To minimize liability exposure, a successor trustee should have professionals assist with the accounting and investing. The successor trustee may also need the assistance of an attorney, from time to time.

Successor Trustee During Grantor’s Incapacity.

The trust document usually contains instructions for a successor trustee to determine whether the grantor (i.e., trust creator) is incapacitated. The trust document may require one or more doctors to provide a written opinion as to the grantor’s inability to handle his or her financial affairs.

If incapacity should occur, and you need to step in as successor trustee, you should begin by find-

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What Are The Duties of A Successor Trustee? (cont'd)

ing and reviewing the trust document. An estate attorney will be able to assist you with any questions and help with locating, inventorying and managing the grantor's trust assets and other assets for the grantor's benefit.

The next step is to determine whether an asset is owned by the trust. If all assets have been transferred to the trust, then you can step in as successor trustee fairly seamlessly. If any trust assets are not titled in the name of the trust, you should locate the grantor's durable power of attorney for asset management. This

Successor Trustee Duties Upon The Grantor's Passing

In general terms, when a grantor passes away, the trustee is responsible for gathering all of the trust assets and liabilities, paying valid debts and distributing net assets to the beneficiaries according to the trust document. This process is called "trust administration".

Even though a trust has been set up, a successor trustee should still consult with an estate attorney to go over the trust document and for legal advice in handling the estate and beneficiaries, and protecting himself or herself from trustee liability. In addition, some

"The Family Trust can eliminate the publicity of a court process if you become incapacitated"

document may authorize an agent to transfer title to the trust so that you can manage them and allow the grantor's estate to avoid probate.

Next, you should add your name to the title of the trust as trustee. Once you are on title as trustee, you will have authority to manage the trust assets.

You should become familiar with the trust finances—i.e., the trust assets and values, as well as the grantor's income sources and ongoing expenses. You may wish to compile a budget for the trust to assist you with distributions. If the grantor recovers from his or her incapacity, the grantor resumes his role as trustee.



estate, income and property tax issues must be handled and legal steps will need to be taken with regard to the estate.

The first step for any successor trustee will be to safeguard the grantor's home and its contents, which may involve a locksmith coming to the property. The successor trustee should also arrange for mail to be forwarded. Then the successor trustee should gather a list of all assets owned by the grantor as of date of death as well as a rough list (and receipts, if available) of the estate debts and expenses. With this information, an estate attorney will be able to provide a guidance with regard to the trust administration. ✪

About Me

I graduated cum laude from the University of the Pacific in Stockton, California with a Bachelor's in Science (B.S.) degree in Business Administration. I received my law degree (J.D.) from King Hall School of Law at U.C. Davis, and was admitted to the California State Bar in 1993. I completed my Masters in Taxation (LL.M.) at Golden Gate University in San Francisco in 1998.

I have practiced exclusively in the area of estate planning, probate and trust administration for approximately nine years.

I live in Pleasanton and I enjoy supporting the San Francisco Giants and University of California Athletics (**GO BEARS!**).

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Advance Health Care Directives