

## Are You A Trustee? Take It Seriously

by Nate Loftin, Esq., Law & Stein LLP



“My father died, and I am named as successor trustee. Now what do I do?”

Most people have had little to no experience administering a trust and typically have many questions as to where to even begin with the administration of the trust. The goal of this article is to help provide a general overview of the duties and tasks of a trustee.

### **The Role of Trustee is Serious Business**

The most important thing to consider in administering a trust is that the role of a trustee carries fiduciary duties. This means that you, as trustee, can be held personally liable if you stray too far from the normal rules of how trusts are governed. If, because of your mismanagement of the trust funds, the beneficiaries lose money, the beneficiaries could sue, and you could be held personally liable.

Many clients believe that trusts can be wrapped up in a month or two. But even the most basic trusts can take a year or more to fully administer. Some trusts are purposefully set up to last many years. It is important to communicate this to the beneficiaries to help manage their expectations.



## Duties of Trustee

Trustees act in a fiduciary capacity and as such, they owe certain legal duties to the beneficiaries. The trustee's basic duties involve collection, management, and investment of trust assets, including:

- Accumulation and distribution of income and principal as described by the terms of the trust
  - It is a fundamental principle of trust law that the trustee be faithful to the interests of the trust and its beneficiaries. Trustees occupy a position of trust and confidence and owe a duty of care to the beneficiaries. Trustees are required to administer the trust solely in the interest of the beneficiaries and to deal impartially with them.
- Prudent Investor Rule: California trustees must also comply with the "prudent investor rule." Basically, trust assets must be managed properly; if a beneficiary can show that a trustee has been making arbitrary investment decisions (for example, purchasing only one kind of asset, such as gold, or purchasing risky assets, like some kinds of stock options), the beneficiary can apply to have the trustee removed.
- Inform Beneficiaries:
  - One of the most important roles of a trustee is to keep the beneficiaries reasonably informed of the trust and its administration. California law gives each beneficiary up to 120 days to request to see a copy of the trust, and to challenge the trust.
  - Trustees must also provide the beneficiaries with certain information upon reasonable request and that give a full accounting and report of all trust transactions not less often than annually or at the termination of the trust or on change of trustee. Check out our litigation attorney, Christina Yee's December 2019 newsletter entitled, Show Me the Money, Accounting of Trust, for more information on how and why a beneficiary can ask for an accounting of the trust from the trustee.

Show Me The Money, Accounting of Trust



## When Do We Get Our Share?

Often, one of the first questions asked by beneficiaries is:

“When will we get our share?”

Most people expect to be able to receive their share within a month or two. Unfortunately, most trust administrations take at least several months to a year to complete as there are a number of tasks that must be performed by the trustee prior to distribution of the assets.

Following the death of the trustor(s), the trust acts as a funnel through which all of the trust assets will pass to the beneficiaries (with the exception of tangible personal property, life insurance proceeds, and other non-trust assets that often pass directly to the beneficiaries outside the trust). It is the trustee’s job to collect and manage the assets of the trust including:

- Appraise trust property
- Pay all taxes and expenses relating to the administration of the trust
- Distribute the trust property according to the trustor’s instructions

Trust distributions will often take place in several stages. After the trustee has obtained all appraisals and can project the expected tax liabilities and expenses with more accuracy, he/she may then distribute more of the trust estate, making certain to reserve sufficient funds to pay income and estate taxes, administrative expenses, attorney and trustee fees, debts and liabilities, etc. The trustee needs to be aware that, if litigation arises concerning the trust, distributions will need to be withheld until such problems have been completely resolved.

For these reasons, it is important for the trustee to quickly and clearly communicate to the beneficiaries the legal duties they, as the trustee, must follow, and the projected time it will take to complete the tasks and wishes of the trust. It is better to be conservative and wait to distribute the assets rather than find out you did something in error or realize you owe taxes and have to go back and ask the beneficiaries to pay their share.

## Paying Estate Taxes

Living trusts do not avoid estate taxes. If it is determined that estate taxes or fiduciary income taxes are payable, the trustee must retain a reserve in the trust after payment of such taxes until all audits are completed or until the period for assessment of a tax deficiency passes. This reserve is for the trustee’s own protection. Any legal fees, accounting fees, and trustee fees incurred in connection with the audit process, and any tax deficiencies which might be assessed by the IRS, are chargeable to the trust. If the trustee has already distributed all of the trust assets, he/she may have to bear these expenses and taxes if the beneficiaries are unwilling or unable to contribute their fair share.

## Summary of Trustee Check List

As trustee, the main tasks that need to be completed are as follows:

1. Notify the beneficiaries and heirs of the trustor(s) and keep them reasonably informed.
2. Inventory all trust and estate assets as well as any debts or obligations of the trust/trustor(s).
3. Obtain appraisals of the trust assets. In particular, it is important to complete the appraisals to calculate any taxes owed as well as to determine any step up in basis in the assets.
4. Obtain a tax identification number for the trust and open a trust account to manage the trust’s cash, pay the bills on behalf of the trust/trustor(s), and to ensure proper record keeping.
5. Pay all outstanding liabilities and any taxes owed.

6. Allocate and/or distribute the trust assets per the terms of the trust.



## Tips To Avoid Inheritance Disputes with Beneficiaries

1. Make sure and follow the trust language and California Probate Code relating to trustee's duties, as well as the management and distribution of the trust assets.
2. Communicate with the beneficiaries. Good communication between the trustee and beneficiaries can avoid a multitude of issues that could potentially arise.
3. Keep good records and provide copies to the beneficiaries.
4. Make sure to withhold enough of the trust estate to ensure final expenses, taxes, etc. are taken care of before making the final distributions.
5. Managing and distributing a trust can be complicated, especially with trusts involving numerous investments, properties, numerous beneficiaries in which case it can prove both emotionally and financially beneficial to seek experienced legal counsel regarding the administration of the trust.

During the difficult time after losing a loved one, an experienced estate planning attorney and trust administration attorney will help alleviate some of the stress by helping with your trust administration needs. Because the administration of a trust can be complicated with several deadlines to meet, hiring a competent trust administration attorney to walk you through the process and avoid potential inheritance disputes down the line.



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T (949) 501-4800

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[info@lawandsteinllp.com](mailto:info@lawandsteinllp.com)

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LAW & STEIN LLP  
2601 Main Street, Suite 1200  
Irvine, CA 92614  
[info@lawandsteinllp.com](mailto:info@lawandsteinllp.com)

