

The Responsibilities of Trustees after a Death

John C. Martin, Esq.¹

Revocable living trusts have become one of the most popular testamentary devices in California. There are numerous reasons why individuals choose to execute trusts, including the avoidance of probate fees, the increase in privacy, and the ability for trustees to manage assets during the lifetime of the settlor (the person who first executed the trust). While trusts do achieve these and other objectives, they do not eliminate the need for a trustee to properly administer the trust upon the death of the settlor. Once the settlor passes away, trustees are often in a quandary as to what their duties include. This is not a situation where one should be left in the dark. If trustees fail to observe their numerous responsibilities, this can open the door to a petition to be removed from their position, or worse—personal liability.

1. Observation of Numerous Deadlines

First, successor trustees of living trusts need to be aware that there are numerous deadlines that need to be observed when administering the trust. In California, the decedent's will must be "lodged" with the local probate court within 30 days of the date of death. This is true even if the decedent had a revocable trust. Also, beneficiaries and heirs must be notified within 60 days. The notice must adhere to strict legal requirements, and any failure in this regard could give the beneficiaries an extended right to challenge the trust. Often, identifying and locating heirs and beneficiaries will be a challenge. In addition, an application for an employer ID, personal and fiduciary income tax return filings, and possibly estate tax filings must be made within strict time limitations. There are numerous other deadlines, so please consider this just a list to get you started.

2. Funding the Trust

Second, successor trustees may need to fund the trust, depending upon the existence of a "pourover will" executed by the decedent. In that case, if more than \$100,000 of assets are left outside of the trust, and those assets would otherwise pass by probate, a limited probate procedure may be required to fund the trust. The successor trustee will usually need to establish a separate account for the trust with the tax ID number they acquired. They will also need to invest or preserve the assets in the trust according to the specifications of the trust. If the trust is silent, they will need to follow the rules under the Uniform Prudent Investor Act. Often, trustees work with investment professionals to help properly invest trust assets.

3. Preparing for the Final Accounting

¹ John C. Martin is a business formation and estate planning attorney in Menlo Park, California. His law office provides small businesses, families, and individuals with wills and trusts and business lawyer services throughout the San Francisco Bay Area. For more details, visit his Silicon Valley law office website at: <http://www.johnmartinlaw.com>.

Third, trustees need to maintain detailed records of all money in and out of the trust to prepare for a final accounting to beneficiaries. Under the California Probate Code, a final accounting must be sent to beneficiaries upon termination of the trust. The trust may opt out of this requirement, but in some cases the trustee may be required, or decide to produce an accounting in any event. This is because the preparation and delivery of an accounting will trigger a time period after which a beneficiary will no longer be able to sue for allegedly improper trust management. The trustee can keep these records by hand, but can also use accounting software or a third party accountant.

Keep in mind that trustees have numerous other responsibilities which, if not followed will open the door to litigation. Also, the trust document must be interpreted to determine whether there are any deviations from the Probate Code's default rules. Following a period of grieving, it's a good idea to then consult with an attorney to determine your particular duties and responsibilities under law.

*

* *

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

General Disclosure: This article is intended to provide general information about trust administration and should not be relied upon as a substitute for legal advice from a qualified attorney.