Successor Trustee's Handbook

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Introduction

There is an abundance of information on creating a revocable living trust. There are seminars, classes, newspaper and magazine articles, and books on the subject. But what happens when it is time to *settle* the trust after a death? There is very little information available on the settlement and administration of trusts.

The Law Firm of Bezaire, Ledwitz & Borncamp has more than 6,000 clients with revocable living trusts. We felt it was time to provide a practical guide for the Successor Trustees of all of those trusts.

The Successor Trustee is the person who is named in the trust document as the successor to the Initial Trustee. The Successor Trustee assumes control of the trust when the Initial Trustee passes away. More often than not, the Successor Trustee is the spouse or child of the Initial Trustee, although the Successor Trustee could be anyone. Some people even choose a bank as their Successor Trustee. (Usually, the person who creates a revocable living trust names himself or herself as the Initial Trustee and continues to act as trustee until his or her death.)

Since every trust estate is unique and there are literally hundreds of potential issues in settling any trust estate, it is impossible to determine in advance exactly what will need to be done when an Initial Trustee passes away. To keep this handbook brief, interesting, and practical, we have limited the scope of this booklet to only the most common trust settlement issues. Please note that there are many issues that we could not discuss at all and some of the ones we chose to discuss are not necessarily discussed in depth. **Therefore, this handbook should not be used without also consulting a qualified trust settlement attorney.**

It is important for the Successor Trustee to read the entire handbook before beginning the settlement process. The issues are not necessarily discussed in the order that they are to be performed.

It is possible that an item towards the end of the handbook may need to be done very early in the trust settlement process.

Settling a trust is substantially less expensive than a probate and takes dramatically less time than a probate does. Nevertheless, a trust settlement can still be overwhelming for the Successor Trustee. We hope that you, the Successor Trustee, will find this handbook helpful.

A complete Trust Settlement can be divided into five general phases:

1. WRAPPING UP THE DECEDENT'S FINANCIAL AFFAIRS
2. COMPILING THE INVENTORY AND APPRAISEMENT
3. FILING TAX RETURNS
4. FILING LEGAL NOTICES AND OTHER DOCUMENTS
5. TRANSFERRING TITLE TO ASSETS.

Each of these phases is addressed in this handbook, although not in any particular order.

It is crucial that all requirements of a Trust Settlement be completed properly. The ramifications of an incomplete or improper settlement can be staggering, and may not be discovered for many years.

We offer a FREE initial consultation at no charge to the Successor Trustee. Please call our office at (310) 316-2400 to schedule an appointment.

Contents

UNDERSTANDING GRIEF

Usually, the Successor Trustee is a family member or close friend of the decedent and therefore will be experiencing grief. Grief is a very powerful and unpredictable emotion. Sobbing, numbness, confusion, inability to concentrate, insomnia, anger, and apathy are all common symptoms of grief. Meanwhile, the Successor Trustee still needs to undertake their duties, meet with attorneys, accountants, appraisers, and other family members. He or she will need to follow instructions, learn new procedures, and make major decisions about the estate of someone with whom they shared a close relationship.

It is important to recognize and accept that you are grieving, so that your expectations of yourself are not unrealistic. Your memory may not be perfect, so be sure to take notes during important telephone calls and meetings. Your ability to concentrate may be weakened, so don't hesitate to ask questions if you don't fully understand. You may have trouble sleeping, so try not to schedule too many things in one day.

The trust settlement process is not necessarily overwhelming, but it may seem overwhelming to you because of the grief you are experiencing. A simple problem can seem insurmountable when you are grieving. Therefore, it is very important that you feel comfortable with the attorney and paralegals you have chosen to help you settle the trust. A good professional settlement team will guide you through the trust settlement process, alleviate your fears, listen to you patiently, gently remind you, and otherwise understand that you are grieving.

Best Wishes,

Kamila Ledwitz

Kamila Ledwitz, MFT

Funeral Arrangements

It is possible that the decedent made funeral arrangements in advance, so look for documents indicating this. "Documents" may mean either notes by the deceased indicating his or her desires (for example, burial or cremation), or receipts indicating that the deceased had prepaid (for example, purchased a burial plot). If arrangements were not made in advance, you must make the decisions.

All of the funeral costs should be paid from the decedent's estate and not by you personally. If trust cash is not immediately available, anyone may pay for the funeral and then be reimbursed from the estate as soon as the trust's cash is available. If nobody is able to pay for the funeral, you can ask the funeral home, florist, and other funeral professionals to bill the estate. The funeral bills are usually the first expenses paid when the estate's cash becomes available.

If any conflicts arise over the funeral arrangements, the following is the list of those who have priority: (1) The person designated by the deceased, (2) spouse, (3) child(ren), (4) parents, and (5) the legal representative of the estate (such as the Executor, Trustee, etc.)

Death Certificates

The company you make the funeral arrangements with will ask you how many certified copies of the Certificate of Death that you will need. Since it is impossible to know in advance how many you will need, we recommend that you initially order ten copies.

Mail

If you did not live with the decedent, you should have his or her mail forwarded to your address, so that you do not have to go to decedent's home daily to pick up the mail. You will need a certified copy of the Certificate of Death to forward the mail.

Even if you lived with the decedent or decide that you will go pick up the mail daily, make sure that the decedent is receiving mail regularly. If not, contact the Post Office immediately. There are dishonest individuals who read the obituaries and go to the Post Office to forge a decedent's signature on a mail forwarding request. Why would someone want the decedent's mail? Because checks will start coming by mail as you settle the estate.

SUBSCRIPTIONS/MEMBERSHIPS

Cancel the decedent's subscriptions to newspapers, magazines and other periodicals or any organization memberships (Rotary, Kiwanis, health clubs, etc.) Be sure to ask if the estate is entitled any refund. Many trustees commonly overlook online-based subscriptions—either to email lists or websites. Remember to cancel these services as well!

CLOSING SAFE DEPOSIT BOXES

Empty out and close any safe deposit boxes that decedent may have owned. If your name is also on the box, all you need to bring is the key.

If your name is not on the box, you must bring (1) the key, (2) a certified copy of the Certificate of Death and (3) a copy of the will and trust. If the will and trust are in the safe deposit box, a bank officer will go into the box with you and review the will and trust to make sure you are in fact the person named therein.

CONSULT WITH AN ATTORNEY

It is very important that you consult with an estate planning attorney. Different attorneys will request different documentation, but generally, the following are the documents that the attorney will need to help you settle the estate:

1. Certified copies of Certificate of Death;
2. Original Will, Trust, and Estate Organizer;
3. Deed to each parcel of real property;
4. Property tax bill to each parcel of real property (any year);
5. Bank book or most recent statement for each bank account;
6. Stock certificates and bonds, or most recent statement of each brokerage account;
7. Life insurance policy;
8. Automobile, boat, motor home, mobile home, and/or airplane registrations;
9. Promissory Notes and Deeds of Trust;

10. Any document that proves ownership and identifies beneficiaries of an IRA, pension, or annuity;

11. Lease(s);

12. Income tax returns for past three (3) years;

13. Gift tax returns;

14. A list of heirs and beneficiaries, including the name, age, relationship, address, telephone number, and social security number of each;

15. Name, address and telephone number for each bank, stockbroker, accountant, life insurance company, and creditor, if not already provided above.

If you cannot locate any of the above documents, they likely do not exist. If, however, you believe they exist, mention this to the attorney, because there may be alternative ways of obtaining the necessary information.

INVENTORY AND APPRAISEMENT

A formal Inventory and Appraisement is required by law for probate estates, but it is not mandatory for trust settlements. Even though there is no legal requirement to do so, it **should** be done for the trust settlement process as well.

The Inventory and Appraisement is a single document that lists every single asset with the decedent's name on it, whether or not it is in the trust. Invariably, decedents with revocable living trusts also have assets that they did not transfer to the trust, either intentionally or unintentionally.

For each asset, the following information is listed: (1) description of the asset, (2) type of ownership of the asset (joint tenancy, in the trust, As Trustee For (ATF) or Pay on Death (POD), etc.), (3) beneficiary designation (e.g. on IRAs, life insurance, etc., and (4) value, as of the date of death.

Not only should an Inventory and Appraisement be prepared, but all of the supporting documents that were used to create the inventory should be gathered, in case the estate is audited.

A complete Inventory and Appraisement is necessary for the following:

1. To determine the amount of federal estate tax due, if any.

2. To establish the beneficiaries' income tax basis.

3. To determine who (or which trust) is to receive each asset.

4. To determine what method of transfer will be used.

5. To identify whether the property is separate or community property, if the decedent was married.

It is important to keep in mind that the decedent may have owned assets that do not initially seem like assets – such as loyalty rights, patent rights, oil, gas, or mineral rights, pending law suit proceeds, or benefits that are paid only as a result of the death, such as a lump sum burial benefit from Social Security. Reviewing all of the decedent's records and incoming mail should be sufficient to find all items.

If you are unsure as to whether something is an asset or not, bring this to your attorney's attention for further advice— the attorneys at Bezaire, Ledwitz & Borncamp are here to help!

CREDITORS, BILLS, AND EXPENSES

The funeral expenses and bills necessary to preserve the estate (utilities in the decedent's home, homeowner and auto insurance premiums, etc.) should be paid as soon as the trust's cash is available. You should wait before paying all other expenses. Companies usually understand that there is a delay in payment whenever a death occurs.

Before any other expenses are paid, you should first determine that each expense is valid. There are unscrupulous companies that read the obituaries and then quickly send phony bills for things such as prescriptions, medical services, and charitable donation commitments. This makes verifying each expense very important. Once the expenses are confirmed, you should review the available cash.

You should review all of the decedent's financial records and incoming mail to determine whether the decedent had any debts. If you find a document that leads you to believe that there *might* be a debt, you must make reasonably diligent efforts (such as letters, phone calls, etc.) to determine whether this is the case. If you are uncertain, ask your attorney for assistance.

You should *not* make any cash distributions to any of the beneficiaries without first discussing the matter with your attorney. As a general rule, the beneficiaries are paid only after all debts are paid, but there are exceptions.

CANCELING MONTHLY BENEFITS

You should immediately contact any company that is sending the decedent a monthly benefit (Social Security, Veteran's Administration, retirement plan, etc.). Be sure to ask if there is any death benefit.

PRESERVING ASSETS

You have a duty to preserve all of the assets of the estate. This means that you must keep all of the assets insured and maintained. Make necessary repairs to the house. Keep the house and autos insured. Watch to see if any assets are declining in value. If so, consult with your attorney regarding selling or distributing them immediately. Make sure that you do not have more than $250,000 with any one bank; otherwise the excess won't have FDIC insurance.

RECORDKEEPING

It is imperative that you keep track of every transaction you make, because you may need to provide a formal, written accounting. Your attorney or accountant will prepare the accounting for you if one is required, but they must be given adequate records. We suggest that you keep four separate logs: one for income (rent, dividends, interest, refunds, etc.), one for expenses, one for sales, and one for transfers. The following are examples of what each log should look like. There is a full blank page of each type of accounting log in the back of this handbook for you to use and/or copy.

NOTIFYING THE DIRECTOR OF HEALTH SERVICES

You are required to give the Director of Health Services (714 P Street, Room 1253, Sacramento, CA 95814) notice of death. The notice must be given within 90 days of the date of death.

FILING THE WILL WITH THE COUNTY CLERK

Even if there is no probate required, you must file the will with the County Clerk within 30 days of the date of death.

SAMPLE ACCOUNTING LOGS

INCOME

Date	*From Whom*	*Reason*	*Amount*
1/15/14	Bank of America	Interest	$104.45
2/1/14	John Smith	rent	$750.00
2/8/14	AT&T	dividend	$460.78

EXPENSES

Date	*From Whom*	*Reason*	*Amount*
12/15/14	Mitchell Funeral Home	funeral	$3,500.00
12/29/14	DWP	utility	$ 134.23
12/31/14	County Assessor	property taxes	$ 858.33

SALES

Date	*Item Sold*	*Amount*
3/30/14	1234 Cherry Lane, Temple City, CA	$190,000.00
3/30/14	All jewelry	$ 1,038.00
4/15/14	AT&T	$ 20,000.00

TRANSFERS

Date	*From*	*To*	*Amount*
2/18/14	B of A Acct 123-45678	Wells Fargo Acct 87-6543	$10,000.00
3/17/14	T-Bill 4532565	T-Bill 8747621	$50,000.00
3/19/14	American Savings 12345	Wells Fargo Acct 87-6543	$98,432.99

DETERMINING CASH NEEDS

You must determine how much cash you will need and when you will need it. You should do this very early on in the settlement process, because it takes time to sell assets—especially real estate. Keep in mind that it sometimes costs money to sell an asset (real estate agent commission, escrow fees, stock broker commission, etc.).

THE FOLLOWING IS A LIST OF POTENTIAL EXPENSES:

Description	Amount	Due Date
Funeral	$______________________	__________________
Last Illness Expenses	$______________________	__________________
Income Taxes	$______________________	__________________
Property Taxes	$______________________	__________________
Federal Estate Taxes	$______________________	__________________
Debts of Decedent	$______________________	__________________
Attorney's Fee	$______________________	__________________
Appraiser's Fee	$______________________	__________________
Accountant's Fee	$______________________	__________________
Trustee's Fee	$______________________	__________________
Other	$______________________	__________________
Total	$______________________	

SALES

The four most common questions regarding sales are:

1. WHICH TRUST ASSETS *MUST* I SELL?

2. WHICH TRUST ASSETS *MAY* I SELL?

3. *WHEN* DO I SELL THE TRUST ASSETS?

4. *HOW* DO I SELL THE TRUST ASSETS?

What assets you sell and when you sell them can have dramatic consequences on the value of the estate; these decisions should not be taken lightly. You should discuss any sales at length with your attorney.

Do you need to sell an asset because it would otherwise be distributed to two people who do not "get along"? Do you need to sell an asset because the trust directs you to, but it is a really bad time to sell such an asset (for example, at a time when the real estate market is severely depressed)? Do you think an asset should be sold, but the beneficiary wants to retain it? Do you need to sell real estate to pay the federal estate taxes, which are due nine months from the date of death? If so, you'd better list the real estate for sale immediately, because it normally takes several months to secure a buyer and then at least one month to complete escrow.

TAXES

You must file the decedent's final income tax return (Form 1040) for the period of January 1st to the date of death. This return is due April 15th of the year following the death.

You must also file a fiduciary income tax return (Form 1041) for the period of the date of death to the end of the year or the date of distribution, whichever is sooner. This return is due April 15th of the year following the death. Since you cannot use the decedent's social security number on this return and you should not use your own social security number, you must obtain a taxpayer identification number (TIN), also known as an employer identification number (EIN), for the trust.

You must file a federal estate tax return (Form 706) if the decedent's gross estate exceeded the federal estate tax exemption (presently $5.34 million) or if the decedent had an AB, QTIP, or QDOT trust. The 706 return is due nine months from the date of death. **Beware! An extension to file the return is not an extension to pay the taxes. If any taxes are owed, they must be paid within nine months from the date of death, or substantial penalties and interest will be owed.**

If you don't have all of the necessary information to prepare the return within the nine months, ask your attorney or accountant to calculate an estimated amount of federal estate tax and pay the estimated amount within the nine months.

You must continue to pay the property taxes on any trust real estate until the property is sold or distributed. The property taxes are due at the same time as ordinary property taxes.

The tax returns for decedents are different from tax returns for individuals. You are strongly urged to seek the advice and/or services of a Certified Public Accountant who specializes in the preparation of decedent's returns. There are many instances where the incorrect preparation of the tax return can cost an estate tens of thousands of dollars in unnecessary taxes, penalties, and interest.

If you need a referral to a qualified CPA, please call any of our offices.

DISPUTES

More often than not, disputes do *not* arise. Nevertheless, disputes do occur and it is your job as the Successor Trustee to resolve them, if you can. Keep in mind that the parties involved will be having strong, and sometimes negative, emotions due to the grief they are experiencing.

Be patient.

Seek the advice of your attorney regarding possible resolutions. Your power to resolve disputes should be outlined in the trust document. If the trust document is silent on this issue, then the Trust Code (which is part of the Probate Code) applies.

DISTRIBUTION

Distribution is the final step in the trust settlement process. What must be done varies greatly depending upon what the trust document says. Ordinarily, but not always, the following steps need to be done:

Single Man or Woman's Trust

The trust terminates and the assets are distributed to the beneficiaries. Sometimes all or part of the assets remain under the control of the trustee and are not distributed to the beneficiaries—perhaps because the beneficiary is a minor, spendthrift, has a drug or alcohol problem, or has a substantial estate of his or her own and any trust distribution would cause a tax problem.

Basic Trust of a Married Person at Death of First Spouse

The trust does not terminate, and the surviving spouse retains control and benefit of all of the trust assets. No distribution is made at this time. The surviving spouse simply removes the deceased spouse's name from all of the assets. Once completed, the Trust effectively becomes a Single Trust.

If the estate exceeds $5.34 million or could exceed $5.34 million in the future, make sure to discuss disclaiming assets with your attorney. *A disclaimer must be done within nine months of the death of the first spouse and before the surviving spouse takes control of the trust assets.*

A-B, Disclaimer, or Individual QTIP Trust of a Married Person at Death of First Spouse

The joint trust terminates and distributes to two new trusts, Trust A and Trust B. The deceased spouse's name is removed from all of the assets, and all of the remaining assets are re-titled as "(Surviving Spouse) as trustee of the (Last Name) Trust dated (date), *sub-trust A"* or "(Surviving Spouse) as trustee of the (Last Name) Trust dated (date), *sub-trust B."* Trust A used the surviving spouse's social security number and Trust B used the new taxpayer identification number that has been obtained.

A-B-C or QTIP Trust of a Married Person at Death of First Spouse

Same as for the A-B trust, except there is a third trust, Trust C. Trust A receives all of the surviving spouse's assets plus one half of the Trust assets, Trust B receives the deceased spouse's assets plus one half of the trust assets, up to the federal estate tax exemption (presently $5.34 million), and Trust C receives the deceased spouse's excess assets, if any.

QDOT Trust of a Married Person at Death of First Spouse

Same as for the A-B-C trust, except Trust C has a different trustee (other than the surviving spouse) or an additional trustee (with the surviving spouse).

TRANSFERRING ASSETS

When and how assets are transferred is extremely important. Each asset is transferred individually, and how an asset is transferred depends on the requirements of the institution that holds it (such as a bank, brokerage firm, insurance company, etc.). You will need to check with each institution to know how a particular type of asset should be transferred.

You should know all of your options regarding each asset: payment method, time restrictions, who can take title, how title can be taken. Again, you should check with each institution that holds the assets. Find out what the tax ramifications are to the Beneficiary and to the Trust Estate when title is transferred.

Here are some general guidelines for transferring different types of assets:

Real Property

To transfer real property, you need an Affidavit of Death to remove the Decedent's name from the property; you also need to file a Quitclaim Deed and a Preliminary Change of Ownership Report to transfer the property to the proper legal title. Transfers from parents to children require the filing of a Proposition 58 form to avoid having the property reassessed by the County Assessor. Transfers to a surviving spouse do not result in reassessment.

Bank Accounts

Bank accounts can normally be changed by a letter outlining the new proper legal title and giving the tax identification number to be used. You may be required to fill out a new signature card and to bring a copy of the Articles of the Trust, naming the Successor Trustee and defining his or her Powers.

Brokerage Accounts

Again, depending on the requirements of the particular institution, a brokerage firm will most likely require a letter outlining the proper legal title, a copy of the Articles of the Trust, a certification of the Trust by the attorney, and the tax identification number of the Successor Trustee. Also, an Affidavit of Domicile is required to transfer title.

Stocks

Stocks that are individually held must be returned to be reissued with the new title. Have your broker handle the transfer or contact the transfer agent for each security you own. It is easier to simply open an account in the name of the Trust at your broker's office and deposit all of your securities into that account.

Insurance Policies

Insurance companies have their own Claimant and Change of Beneficiary designation forms. Once you notify the company in writing or by telephone, the claims process will begin. The company will send you a letter outlining their requirements, and the necessary forms to process the claim. This might include providing a certified Certificate of Death and a copy of the Articles of the Trust.

Retirement Accounts (IRAs, 401Ks, Keoghs, Tax Deferred Annuities)

Transferring title on retirement accounts will have an income tax impact. Check with the individual institution that is custodian of the account for your options and the amount subject to income tax. Do not order any distribution or transfers until you have met with your attorney and/or accountant for options and analysis.

U.S. Treasury Securities (Bills, Notes, Bonds, U.S. Savings Bonds)

The Federal Reserve Bank has forms with which to change the name on your securities. Your signature must be certified by an officer in a banking institution.

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Remember that every trust estate is unique, each with its own potential issues to be settled. This booklet is an overview of the most common trust settlement issues – i**t should not be used without consulting an attorney.** At the time of the death of a trustor, the Successor Trustee is entitled to an initial consultation with one of our attorneys at no charge or obligation. We strongly encourage you to take advantage of this opportunity to discuss your individual trust settlement.

ACCOUNTING RECORDS

INCOME

Date	*From Whom*	*Reason*	*Amount*

EXPENSES

Date	*To Whom*	*Reason*	*Amount*

SALES

Date	*Item Sold*	*Amount*

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