

SUCCESSOR TRUSTEE GUIDE

These instructions provide a rough idea of what successor trustees should know. These pages are not providing legal advice. You are strongly advised to contact the preparer of the living trust you are serving.

MAKE THE PROCESS EASY FOR YOURSELF

1. To prevent you from being liable of the trust's obligations, always add the word "Trustee" after your name when signing for the trust.

Example: For trust transactions, John Smith should sign his name
"John Smith, Trustee"

2. You are legally required to follow the Trustor's instructions to the best of your abilities. You are not judged by the performance of the assets, only by your conduct. Your conduct is based on what a reasonable person would do in a reasonable situation. Keep accurate records of all transactions. Make conservative decisions and don't be afraid to use advisors.
3. The trust has explicit instructions to be followed. Your state's revised statutes cover areas not spelled out in the trust. Common law decisions from the state Supreme Court and Court of Appeals can help provide guidance on how to proceed in unusual situations. Consult a legal professional if you need assistance with the trust's instructions.
4. Treat all people named in the trust with respect.
5. Trusts typically indicate how Successor Trustees are compensated and there are federal guidelines.
6. Hire professional help if needed, such as accountants, financial advisors and attorneys. The trust will pick up the cost.

You can resign as Successor Trustees if overwhelmed. It is likely Successor Trustees are listed after you. If not, a corporate trustee can be appointed.

WHAT A SUCCESSOR TRUSTEE SHOULD KNOW

You were chosen because the Trustor believes you pay attention to details and can act in a fair and honest manner. Always remember to keep accurate records of all transactions and activities and never make decisions benefiting you and not the beneficiaries.

The creators of the trust (the **Trustors**) often name themselves the initial managers of the trust (the **Trustees**) and you are inactive until they resign, are incapacitated or are deceased. Once you are active, follow the trust's instructions.

Prior to an incapacitation or death, the Trustors should review their trust's instructions with the Successor Trustees and a list of assets and liabilities. It is not necessary to disclose asset values at this time unless estate taxes are a concern.

Here are answers to common trust questions:

1. **What is a trust?** Picture a trust as a box to hold assets. It is a legal entity like yourself or a business and it does not terminate when its creators (the Trustors) pass. It terminates when the trust no longer holds any assets.
Need to know: The tax ID of the trust is often a Trustor's social security number.
2. **Why put assets in a trust?** Trusts can make management of assets during a resignation or an incapacitation easier for a financial power of attorney. After the Trustors' passing, the trust can control distributions for young beneficiaries, help assets avoid probate, reduce the likelihood of someone contesting the estate and minimize potential estate taxes.
3. **What assets are in a trust?** You will typically find a home, bank accounts, autos, life insurance payouts and personal property. Assets such as IRAs, 401ks and annuities typically are not in the trust for tax reasons. If the Trustor owned business, it typically will not be in the trust but there may be an assignment of interest allowing the Successor Trustee to manage those assets as well.
4. **How will you know if an asset is in the trust?** Assets such as bank accounts and property will have the trust name listed as the owner.
Example: John and Sally Doe's titled assets would show the owner as:
The JS Doe Family Living Trust Dated January 8, 2008
5. **What roles are there in a trust?** **Trustors** (also known as Grantors or Settlers) create the trust. Trustors are the only ones able to change trust language. Trustors often appoint themselves as the initial Trustees. **Trustees** manage trust assets for the beneficiaries. **Beneficiaries** receive income and assets from the trust. While he or she is living, the Trustor(s) is the beneficiary of the trust. When no more Trustors are living, the beneficiaries normally are family, friends and / or charities. At this point, beneficiaries have a right to see the accounting and a copy of the trust.

DURING AN INCAPACITATION OR RESIGNATION

What to Understand

- **Successor Trustees act like financial powers of attorneys.** They have control of all trust assets and must act only in the Trustor's interest, not beneficiaries who may inherit the estate when the Trustor passes
- **Once the initial Trustee is healthy again, you become inactive.**

Initial Things To Do

- **Ensure the Trustor is receiving quality care.**
- **Contact family members,** employers and friends.
- **Get copies** of health care power of attorneys and directives to the primary physician.
- **Get a note of incapacitation from the doctor(s)** or note of resignation from the initial Trustee(s).

What To Do Next

- **Review the Grantor's insurance coverage** and limits for health, disability and long-term care policies.
- **Search for a list of assets and liabilities.** Gather all financial statements, insurance information and property deeds.
- **Apply for disability benefits** through the Trustor's employer, social security, private insurance and veteran's services.
- **If there are dependents,** you will need to look after their care. A court may appoint a guardian if the incapacitation will be lengthy.
- **Contact the preparer of the trust** or similar advisor for additional advice.

Ongoing

- **Pay the bills.** Identify bills / payments payment due dates.
- **Keep track of all medical expenses** during the Trustor's incapacitation
- **Keep accurate records** of all your activities.

Don't Forget:

- **Prepare and file tax returns** by April 15th.
- **Pay property taxes.**

AFTER THE TRUSTORS PASS

What to Understand

- **Successor Trustees act like an executor** of a last will and testament. However, if all assets are in a trust or list beneficiaries, the court process of probate is avoided allowing you to work at your own pace.
- **Repay all estate debts prior to distribution.** Otherwise creditors can reclaim money from beneficiaries, which causes more problems if money is already spent.
- **Once the trust has been distributed and accounting is wrapped up, your job is finished.** Some trusts hold inheritances for young beneficiaries or maintain residences for a surviving spouse/children, in which case you remain the Successor Trustee until all the trust's tasks are completed.

Initial Things To Do

- **Order at least 15 death certificates.** These can take over a week to receive and will be needed for many steps. Death certificates are available in the state the death occurred. In Arizona: http://www.azdhs.gov/vitalrcd/death_index.htm
- **Contact the family,** beneficiaries and other Successor Trustees asking if they have any questions as you begin handling the estate.
- **Keep accurate records** of final medical and funeral expenses.
- **Search for a list of assets and liabilities.** Gather all financial statements, insurance information and property deeds, including values at time of death.
- **Make sure anything of value is insured** otherwise you may be personally liable. Start by contacting the Trustor's insurance agent.
- **Estimate the estate size.** Estate taxes are due on estates valued past a state or federal limit. These limits change over time. Research current estate tax limits and contact a professional if this threshold may be passed.
- **Read the trust** and other related documents. Power of Attorney documents are only useful during the Trustor's lifetime so ignore these documents.
- **If probate is needed** for assets outside the trust, contact the executor / personal representative (you are likely serving this role as well - read the will).

Once you have death certificates

- **Be ready** with your ID, death certificates and a copy of the trust.
- **Collect payouts** from life insurance, IRAs, 401k's and other assets listing beneficiaries. If beneficiaries are named on policies, this money may be immediately distributed. If the trust is the beneficiary, deposit the payout into a trust bank account - this money may not be distributed until all debts, liabilities and taxes are paid.
- **Pay all debts & liabilities.** Contact credit card companies, lenders for updated balances. Debts are typically not in the trust's name. Debts are found in the deceased's name.
No need to pay off a mortgage balance if a property is being sold but continue cutting checks for monthly mortgage payments, real estate taxes and insurance on the property.
- **Prepare and file final tax returns**

Things Not to Do

- Prior to distribution, **do not combine trust assets with your own.**
- Prior to distribution, **do not use trust assets for your benefit** unless explicitly directed by the trust.
- If you are managing financial assets, **do not make risky investments.**
- Do not undertake any step you are unsure about doing. Get professional advice or assistance.

Finishing Steps

- **Gather all information** including assets inventories, accounting and taxes and prepare copies for the beneficiaries.
- **Ask the beneficiaries to sign a document** approving your accounting, waiving any claims against you and promising to pay any trust expenses that arise after the beneficiaries have received the trust's assets.

Distribution Tips

- Most trusts have No Contest Clauses disinheriting anyone legally challenging the trust. This clause should make your job easier.
- To settle disputes have beneficiaries prioritize items they would like to inherit.
- Some assets may need appraisal for settling disputes, an estate sale/auction or estate tax calculations.
- Making distributions to young beneficiaries could be one of your biggest responsibilities. Most trusts restrict access to beneficiaries until they meet certain requirements, such as age.

Distributions can be made prior to this age for reasonable health, education, maintenance or support needs – a decision made by the Successor Trustee. Some requests, such as doctor's visits and school supplies, are easy decisions to make. Other requests can be more difficult so ask the Trustor before they pass for examples, such as requests for:

A couple hundred dollars for a trip to Disneyland for a child or backpacking across Europe for a recent grad qualifies as mental "health".

Money for a used car to get to and from a new job or money for a down payment on a house qualifies under maintenance or support.

Out-of-state / out-of-country tuition under "education".

SUCCESSOR TRUSTEE ACCOUNTING RECOMMENDATIONS

- ❑ **Consult an accountant or CPA for advice.** This guide may not be comprehensive depending on the year the Trustors pass.
- ❑ **Prepare an annual accounting report** for the other successor trustees and beneficiaries. Allow them to ask questions.
- ❑ **Inventory all trust assets**, including approximate values, insurance information and relevant information
- ❑ **Gather statements** for all trust bank accounts and investments;
- ❑ **List debts** of the trust
- ❑ **List claims** to the trust and what actions the Trustee has taken
- ❑ **List disbursements** from the trust including whether the disbursement came from principal or income
- ❑ **Gather all receipts**
- ❑ **Gather all tax statements**
- ❑ **Provide details of the trustee's compensation** and the method used to calculate the compensation.
- ❑ **Successor Trustee should have the beneficiaries sign receipts** of a) distributions and b) accounting reports.

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