

## **From The Law Office of AMBER RODRIGUEZ**

### **Trustee Duties: I'm a Trustee. Now What? By Amber Rodriguez**

Many people become trustees without knowing what their responsibilities are under California law. Unfortunately, people who act as a trustee often get themselves into trouble because they are unaware of what they should be doing as a trustee. If you are acting as a trustee, you should know some basic facts.

First, if you are acting as trustee of your own assets under a revocable trust, there will be little or no change in how you manage those assets. Essentially, you can continue to manage your finances in the same manner you always have. This changes when either your spouse passes away or you are acting as trustee for someone else's assets.

The most common situation is an adult child taking over as successor trustee when their parents have passed away. This can be a confusing time. Suddenly, you are not just dealing with the loss of a parent, but also a whole new set of responsibilities.

When you are acting as trustee for someone else (including your spouse, if they have passed away or are no longer able to manage their own finances), you are being held to one of the highest duties of care. This is called a fiduciary duty. It means that you are managing those assets for other people and you must do certain things to abide by your legal duties.

In most cases, when you become trustee under these circumstances you must give a type of statutory notice to all of the beneficiaries of the trust. This is called a Probate Code 16061.7 notice. A copy of the trust should be provided to the beneficiaries with this notice.

You must also be prepared to report and account for all of your actions as trustee. At a minimum, you will need to prepare an annual report and account (unless the beneficiaries waive their right to receive this information). The trust property does not belong to you. You are only taking care of it for the beneficiaries of the trust. California law gives those beneficiaries many rights to make sure trustees make careful, reasonable decisions that are in the best interest of all of the beneficiaries. This includes the right to bring a legal action against a trustee who fails to abide by their fiduciary duties.

You must act to the best of your ability and hire agents (financial advisors, accountants; etc.) if you do not have the skills or knowledge to make decisions on behalf of the trust. People I have worked with are continuously surprised by the amount of time and energy required to act as trustee. It is a task you will need to handle in addition to the management of your own finances, professional obligations and family. It can be very overwhelming.

You cannot mingle the trust assets with your own assets. You need to manage the trust separate from your own personal finances, including filing all necessary tax returns and maintaining a separate bank account for any trust funds. Only trust expenses should be paid with trust funds. Any distributions (gifts to the beneficiaries) should be made only as allowed by the trust.

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The experiences one has while acting as trustee can range anywhere from very simple and basic to incredibly complicated. Often the difficulties faced by a trustee have very little to do with the value of the assets they are managing. Some of the most complicated trust estates I have dealt with were under \$500,000 in value.

Most importantly, you should know that help is available. If you choose to consult with an attorney for some guidance about how to manage this important task, the trust funds can be used to pay for the attorney's fees and costs. While many people want to save money by trying to act without legal counsel, the end result is often more costly. Even an hour consultation with an experienced trust attorney can benefit you as you move forward with your task. Most importantly, consulting with an attorney can help prevent you from getting into a situation where you become personally responsible for any damage or loss to the trust.

Many people view acting as trustee as their duty. They are honored that a family member chose them to be responsible for taking care of that family member's assets and final wishes. It is, however, a duty that carries with it a great legal responsibility. Remembering that you are going to be held to one of the highest legal standards of care that exists can help you stay on the right track as you act as trustee.