



DUTIES OF **SUCCESSOR TRUSTEES**

The Estate Planning Portfolio is a complete way of dealing with the trust assets and, when appropriate, transferring them to the named beneficiaries.

As Successor Trustee(s) you have a wide range of powers and responsibilities which become effective upon death or disability or whenever a transfer management of the trust is required. These instructions are aimed at making your job as Successor Trustee as easy as possible.

Whatever the reason you step in as Successor Trustee of the Trust, it is recommend that you meet as soon as possible with the Estate Planning Attorney:

Karen L. Brady
5400 Ward Road V-170
Arvada, Colorado 80002
(303) 420-2863

who has assisted in preparing this Trust and the estate plan. Karen will assist you in understanding what your job as Trustee involves. Also, she will probably want to work with other professionals or members of the estate planning team such as a CPA, an insurance agent, and a financial advisor, since a team approach provides the most benefit.

The operation of a revocable living trust is intended to be a private, cost-effective method of handling the trust affairs without intervention of courts. Still, professional advice and direction will likely be needed from time to time. If you have any specific questions about specific situations, seek professional advice from Karen or another qualified attorney at once to be certain that your action is correct within the context of the trust agreement and applicable law. Always, remember, "*An ounce of prevention is worth a pound of cure.*"

These guidelines apply to successor trustees, who find themselves in charge of a trust. These guidelines do not apply to the Trustmaker as the initial trustee. The information contained in these pages is informational in nature, and does not contain legal advice. You should seek the advice of Karen Brady or another qualified attorney to determine how the law may apply to administration of this trust.

You have been selected as successor because you will take your responsibilities seriously. Your job requires record keeping, and faithful attention to the wishes reflected in this Estate Planning Portfolio. With patience and efforts at being systematic, and with the advice of trained professionals, as needed, you will carry out the wishes contained in this Estate Planning Portfolio.

Thank you for accepting this important responsibility.

Introduction

Regardless of why or how you came to be trustee, all successor trustees should keep a few general ideas and principles in mind.

1. You must always remember that you are handing someone else's property, not your own. This means that your decisions are to be guided by the rules and laws that come generally from two sources. The first source is the trust document. In the document you will find many paragraphs that describe what you are *allowed* to do, what you are *required* to do, and what authority you have to exercise *discretion* in making decisions. The second source is state and federal laws, including agency, contract and tax provisions that apply to this trust.

You should immediately familiarize yourself with the trust document, and any amendments, to be certain that you know what is expected and what is required by way of distributions, reporting, accounting, and any other specific duties that the trust might place on you.

Since the Estate Planning Portfolio is an in depth set of documents, it would be wise to review it with the estate planning attorney, Karen Brady.

2. You will be required to account for, and sometimes to explain your decisions and activities in handling trust property. You will be required to provide an accounting to the beneficiaries of the trust provisions, and you will be required to make certain reports to the tax authorities. Careful record keeping will make reporting a lot easier. For this reason you will want to keep careful and clear records. Your records should include detailed checking ledgers showing all deposits with a breakdown of the source of funds. In addition, the checking ledger should detail the amount, recipient and purpose for all payments.

Be Careful: Beneficiaries will require an accounting, if for no other reason than curiosity, regardless of their relationship to you.

3. Keep a journal or log showing the purpose of major transactions and/or agreements and each should be documented carefully so they do not depend on human memory for interpretation or application at a date in the distant future. A small degree of formality now can avoid a major misunderstanding later when you and the beneficiary may have quite different recollections of an arrangement. Good and continuous communication between you and the beneficiaries may avoid many problems both personally and legally.

There are three situations in which you may have assumed the title of Trustee:

- The *Disability* of the Trustmaker,
 - The *Death* of the Trustmaker, or
 - The *Resignation* of the Trustmaker.
- Be Careful:*** You may be serving as Death Trustee for one Trustmaker and as Disability Trustee for another Trustmaker at the same time.

This guide seeks to provide some general ideas for each of these three situations. These comments apply, also, to situations where you are replacing another successor trustee other than the Trustmaker(s).

If you are taking over as successor after either the initial or another successor trustee, you should create records that form a "snapshot" of all the assets you receive at the time you take over. If a prior trustee made bad decisions, and the cost of those decisions does not become evident until after you have taken over, you want to be certain that you can show that you acted prudently in your handling of the trust, and that any problems arising later are the result of actions by a prior trustee. This is not to say that you should try to pass blame improperly, but you should make a detailed record of the results of your work so that the actions of prior trustees can be distinguished.

Succession Due to Resignation or Disability of a Trustmaker

While the Trustmaker is alive there are several reasons for your becoming trustee:

- **The Trustmaker is healthy and resigned,**
- **The Trustmaker became disabled, and**
- **The Disability Trustee is no longer able to serve.**

Successor Due to Resignation of Trustee

If you become successor trustee, and the Trustmaker is healthy, you have the rare luxury of the Trustmaker being able to provide you with guidance in the administration of the trust. In such a situation, the trust document may contain specific or special instructions for you to follow. A competent Trustmaker can authorize specific actions, clarify intent, or amend the trust to provide for some special situations. This is a luxury that other successor trustees do not enjoy.

If the Trustmaker becomes incompetent after resigning, then the comments under *Succession Due to Disability of Trustee* should be considered. If the Trustmaker passes on after resigning, then the comments under *Succession Due to Death of Trustee* should be considered.

Succession Due to Disability of Trustee

If you have become trustee because the Trustmaker has become incompetent, you should keep the following things in mind, as they apply to your situation.

1. You should locate all trust assets and property and make certain that title is held by the trust.
2. Review the management instructions in the trust document with the estate planning attorney, Karen Brady.
3. If the Trustmaker owns property that has not been transferred to the trust, you or one of the persons named in a funding power of attorney should complete the asset transfer immediately. *Before completing transfers*, you should review any funding instructions you find in the trust document, and consult with the estate planning attorney, Karen Brady, to be certain the transfer is consistent with your duties as trustee and with the estate plan.

A qualified retirement account, such as an IRA or a 401k should not have the ownership transferred into the trust. You should consult with the estate planning attorney, Karen Brady, and the Trustmaker about who the primary and contingent beneficiaries should be: the trust or an individual. Such a transfer, without proper advice, might result in unnecessary taxes for the individual or the trust, and should only be completed after very careful consideration.

4. One of your responsibilities will be to determine and provide trust funds for the care and other needs of the Trustmaker. You will need to coordinate decisions about investments, placement of funds, liquidity, and rates of return with the needs of the Trustmaker.

5. You will be responsible for taking care of the day-to-day finances. This includes such things as paying living and other expenses, and seeing that income tax returns and payments are prepared and filed when due.

Be Careful: You may be required to file individual as well as trust income tax returns. Consultation with the estate planning attorney, Karen Brady, is very important.

6. The Trustee's responsibilities include overseeing any financial investments of trust property. Your duty is to manage the trust property under the terms of the trust instructions.

Be Careful: You do not own the trust assets or property and may not use them for yourself or others unless it is authorized in the trust document.

7. If long term care (nursing home or other skilled care facility) becomes necessary you will need to review the trust document very carefully to identify any special instructions. If the trust instructions are not clear, you should consult with the estate planning attorney, Karen Brady, to determine what your duties and options are in this situation.

Succession Due to Death of a Trustmaker

If you are taking over as Successor Trustee because of death, you are urged to meet with the estate planning attorney, Karen Brady, as soon as possible to discuss the details of administering the Trust. At this meeting the attorney will explain the items that need to be completed, the order in which to complete them and any deadlines or timeframes required by law. The trust's lawyer will normally take the primary responsibility for seeing that many settlement and administration tasks are accomplished.

These tasks will normally include the following:

- 1. REVIEW THE ESTATE PLANNING PORTFOLIO**, to clarify the exact instructions for management of the trust, eventual distribution AND look for funeral or memorial instructions. Understanding your obligation to distribute, or to hold trust property, begins with a careful reading and a good understanding of the instructions in the trust document. Those instructions should outline what you are required to do and when you are required to act. Understanding and following the instructions is your best course of action for preventing problems in your administration of the trust, and for accomplishing the Trustmaker(s) objectives. Also, you will need to make two or three copies of the trust agreement.

Be Careful: You are required by law to follow the trust instructions. A violation of your duties may result in court action.

- 2. FUNERAL EXPENSES** may need to be paid immediately, so make sure there is enough money available in the trust checking account. You can gain access to this account with a copy of the death certificate and a Successor Trustee Affidavit prepared by the estate planning attorney, Karen Brady.
- 3. DEATH CERTIFICATES** will probably be needed to obtain the proceeds of any life insurance policies and for other transfers. Order five or six certified copies of the death certificate. These can be ordered through the funereal home or from the local county health department. As long as you, as Successor Trustee, have a copy of the Successor Trustee Affidavit and a certified copy of the death certificate, you can manage the trust property.
- 4. SECURE ALL PROPERTY** including the home by changing the locks. All other property should be stored in a safe place, to protect from possible theft or loss or destruction.
- 5. INVENTORY ALL THE ASSETS** begins by taking all bank books, savings, checking, certificate of deposits, mutual fund/brokerage statements, stock or bond certificates, deeds, car titles, savings bonds, life insurance policies, retirement plan or annuity statements, business agreements, safe deposit box information, and any personal property of high value to the estate planning attorney, Karen Brady. This includes collecting of all credit cards or outstanding bills that can be located.

6. **CHANGE MAILING ADDRESS** to your address so you may begin gathering creditor and outstanding bill information.
7. **WORKING TOGETHER**, you, as trustee, and the estate planning attorney, (Name of Attorney) will need to do the following, remembering there are *time constraints that result in penalty and interest if not filed timely*:
- Review all business agreements, contracts, stock certificates, or partnership agreements with business partners, institutions, and others;
 - Notify and prepare forms required by institutions holding assets;
 - Open probate if all assets are not owned by the trust; (note; probate and trust assets must remain separate);
 - Review all bills and claims which are owed or due;
 - Determine date of death values and alternate valuation;
 - Review current investment strategy, possibly consolidate accounts or reinvest, determine if some assets need liquidated for payment of outstanding liabilities or distribution;
 - Pay all outstanding bills or obligations;
 - Communicate with beneficiaries through out the entire process and until final distributions are made;
 - Apply for Federal Identification Number(s)
 - File the required personal and trust income tax returns for federal, state and city;
 - File the required federal and state estate tax returns and any disclaimers;
 - Prepare accounting(s);
 - If real property is owned of the state in which the decedent lived, prepare any documentation required by that state (normally requires the retention of an attorney in that state);
 - Distribution of all assets as provided in the trust agreement including any amendments or memoranda of instruction
 - Personal assets
 - All other assets

There will be many other tasks to be done in the administration of the trust, many of which involve legal, financial, or tax issues. This is why the trust lawyer and the other members of the planning "team" such as the CPA, the insurance agent, and the financial advisor are on board. Because of the Living Trust centered estate plan, your job as a Successor Trustee will be much easier and quicker than if you had to open a probate with the probate court. A well-maintained plan reduces but does not eliminate all costs on death. Legal services and other professional advisors will still have a critical role to play in winding up estate affairs.