

A Successor Trustee's Accounting Obligations – An Overview

by Denise Chambliss

Approximately 20% of Americans have living trusts (sometimes called an inter vivos or a family trust). Many trusts are structured so that the eldest child becomes the successor trustee at the passing of the last surviving parent. All too often the successor trustee takes office with little to no information, guidance, or training about his or her fiduciary obligations as trustee. This is a potentially dangerous situation for the newly designated trustee because the trustee could become personally liable for damages to the trust and/or the beneficiary's rights in certain circumstances.

Per the California Probate Code, trustees have accounting obligations, as part of their fiduciary obligations, and failing to comply with such accounting obligations can be a pitfall for the successor trustee. To address the basics of these accounting issues, the following article is a general overview of the successor trustee's duty to account to the beneficiaries of an irrevocable trust, including potential pitfalls and how to avoid them.

Who is Required to Provide An Accounting? The answer depends on whether the trust is revocable or irrevocable, among other issues outside the scope of this article. (Exceptions to this duty, not discussed here, can arise where fraud or breach of fiduciary duties are present such as occurred in the case of *Evangelho v. Presoto* (1999) 67 Cal.App.4th 615.)

In general, the trustee of a revocable trust is not subject to the duty to account. California Probate Code section 16069. This means that the couple (or individual) who started the trust does not have to produce formal accountings. At the death of the final settlor (generally the last surviving parent), two key events occur relevant to the successor trustee. First, a trust becomes irrevocable at that death. Second, the eldest child succeeds the parent by becoming the successor trustee.

Statutory Contents of a Trust Accounting. An accounting is a formal declaration of the trust's assets and liabilities, including income and expenses, for a defined period of time. Probate Code section 16063 contains details of the information required for an accounting, which must include information related to the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particular terms of the trust that are relevant to the beneficiary's interest. A formal accounting is required to be verified, meaning the accounting is subject to the penalty of perjury.

The trustee is required to keep the beneficiaries of the trust reasonably informed about the trust and its administration. Probate Code section 16060. This statutory duty includes the duty to provide accountings. Probate Code section 16062. There are important exceptions to this accounting duty, however. For instance, the accounting may be waived by the trust document, or the accounting may be waived by the Probate Code under limited circumstances. Probate Code section 16064. In practice, most trusts do contain a provision waiving the accounting requirement, but this waiver can be overridden by a beneficiary.

Beneficiary's Authority to Demand an Accounting Despite Trust Waiver. During the term of a trust, beneficiaries will not have detailed information about the trust, its assets, the administration of the trust, or the successor trustee's actions. The Probate Code provides that a beneficiary may override the trust's accounting waiver by making a formal written demand for an accounting to the successor trustee. Probate Code section 16061. After the death of the parents, family members, however, can be quite suspicious and distrustful of the person now serving as the trustee and those family members can have concerns over the management of the parents' assets.

Once served with the beneficiary's written demand for an accounting, the successor trustee has 60 days to prepare and serve the accounting. Probate Code section 17200(b)(7)(C). Because the beneficiary has the statutory authority to demand an accounting, it is critical that a successor trustee maintain the financial records in a professional manner and retain copies of the transactions subject to the trustee's control, even though the trust may waive the accounting. If the beneficiary's accounting demand is ignored, the beneficiary can then petition the court for an order to compel the trustee to provide the accounting. Probate Code section 17200(b)(7)(C).

Oftentimes, the demand for an accounting is a predicate to charges of the trustee's breach of fiduciary duties, misappropriation of assets, self-dealing and co-mingling, and/or demands to surcharge the trustee's distribution from the trust to recover the financial harm to the trust.

Trustee's Need for Proper Financial Records. The accounting is a powerful investigative tool available to the beneficiaries of the trust. For example, the verified accounting may disclose information that the trustee was using the trust bank accounts for his or her personal expenses. A beneficiary may pursue claims of redress, reimbursement, or recovery from the trustee, including a reduction or offset of further inheritance from the trust for monies wrongfully taken or misappropriated by the trustee.

Conversely, an accounting may act as a shield to protect the successor trustee against the beneficiary's allegations of wrongdoing. As a practical matter, maintenance of proper and complete financial records are essential to protect the trustee, especially when addressing a beneficiary's suspicion of a breach of fiduciary duty, misappropriation, self-dealing, and the like. An accounting that provides full disclosure of the acts of the trustee and demonstrates that the trustee is in compliance with its fiduciary duties is invaluable.

Practice Tip. Successor trustees should keep proper records and files of their management of the trust assets, even though there is an accounting waiver in the trust. The trustees will need these records to respond timely and accurately to an accounting demand when requested by a beneficiary.

A successor trustee may consider being proactive by using professional assistance with the financial management, especially if the trust has sizable assets requiring active management, such as rental property. Also, an attorney's legal guidance and assistance in the administration of trust can also be of tremendous value to the newly-appointed successor trustee, and will be necessary to prepare the trust assets for distribution at the proper time.



Word of Caution. This article addresses complex issues and is not a comprehensive dissertation on this subject. You should not rely on the information in this article for your particular situation. You should consult with a knowledgeable professional to address your needs.

About the Author. Denise E. Chambliss handles trust and estate litigation matters, including representation of trustees, beneficiaries, and related accounting issues, as well as providing preventative representation to minimize the risk or impact of trust litigation. Ms. Chambliss is a member of Hoge Fenton Jones & Appel's Estates and Trusts and Litigation/Dispute Resolution practice groups, and practices primarily in their Tri-Valley office.

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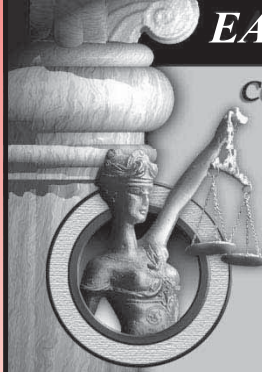
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