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What is Required of a Successor Trustee?

A Successor Trustee is the person responsible for managing the administration of a deceased or incapacitated Trustor who set up a trust and was previously managing a trust as Trustee. Being the Successor Trustee of a trust is not a task to take lightly. The time and effort involved in properly administering a trust varies with the size and type of assets in the trust or payable to the trust and the complexity of the trust provisions. Even if you are the Successor Trustee of a small Trust you have important duties that must be performed correctly or you may be liable to the trust or the trust beneficiaries for any loss resulting from your action or failure to act.

You do not have to accept the position of Successor Trustee even if you are named in the trust. If you do accept the position, then you are responsible for administering the trust properly in accordance with all applicable federal, state and local laws and the terms of the trust.

Following are some of the duties you may have to perform as Successor Trustee.

- **Locate documents.** If there is a trust, but you don't already know where the trust documents are located, you may need to find them among the trustor's belongings. If all you have is a copy of the trust directives, you may need to contact the attorney who drafted them for assistance in locating the originals. You need to be sure that you have located the most recent estate planning directives as they may have been revised, amended and restated over time. You also need copies of the decedent's death certificate, which can usually be ordered and obtained by the funeral home handling arrangements for the decedent.

- **Employment of professionals and others.** You are not expected to be an expert in all fields or to undertake work for which you are not personally qualified or which you are simply unable or unwilling to perform. You may use trust funds to employ professionals, such as an attorney, a tax preparer, an appraiser and others such as contractors. You may delegate certain of your responsibilities to others, although you are still responsible for choosing competent advisors, reviewing their work and making your own decisions. You may use trust funds to pay for necessary services, such as security systems for homes, costs of marketing and selling trust assets.

You are not required to hire professionals such as an attorney, tax preparer, financial advisor or appraiser, but trust administration can be very complex and mistakes can be expensive to the trust and to you. You may be personally liable if the trust unnecessarily suffers a loss as the result of your action or failure to act. The employment of professionals, such as an attorney and tax preparer can help you make sure all the proper steps are taken and deadlines met.

- **Notify interested parties.** You must give written notice and certain information to certain beneficiaries of the trust.

The person setting up the trust may have property outside of the trust, such as retirement accounts and life insurance policies. Retirement account and life insurance policy disposition following the owner's death is usually controlled by the person's beneficiary designations on record with the institution that administers each account. A Successor Trustee should identify such accounts, determine the beneficiaries and assist the beneficiaries in claiming their interest in each account, if the owner has passed away. If the beneficiary of an account is the Trust, then the Successor Trustee must collect the proceeds of the account.

- **Contesting Validity of Trust.** In order to reduce the length of time that any person may have to file a court proceeding to contest the validity of a Trust, the Successor Trustee, in the Trustee's sole discretion may send to any person who may commence a judicial proceeding to contest the validity of this Trust a copy of the Trust instrument and a notice informing the person of the Trust's existence, of the Trustee's name and address and of the four month time following notice which is allowed for commencing a proceeding. A.R.S. Section 14-10604, Limitation on actions contesting validity of revocable Trust; distribution of Trust property provides that the right of any person to file a judicial proceeding to contest the validity of this Trust terminates four months after the Successor Trustee sent the person a copy of the Trust instrument and the notice.

- **Inventory, manage, protect and insure trust property.** Look for and collect cash, jewelry, collectibles, real property deeds, vehicle titles, stock certificates, bond certificates, savings bonds, insurance policies, financial account statements, promissory notes, financial account statements, loan and other debt statements, tax returns, other tax records and any other records of the decedent's and the trust's assets and liabilities.

You need to prepare a written inventory of trust assets and liabilities with date of incapacity or death values. You may need to collect any property in the hands of other people.

You must determine whether the Trustor owned assets outside the trust that must be collected into the trust, sometimes through a court probate proceeding if the owner has passed away, or with a Financial Power of Attorney if the owner is incapacitated.

You must protect the property from loss, assuring that the property is kept safe and is adequately insured. The decedent's insurance may or may not continue to provide coverage following the decedent's death. You are responsible to obtain and maintain adequate insurance.

You may also need to hire an appraiser to find out how much any property is worth. If the trust owns a business, you may have to make sure the business continues to run and is properly wound up or distributed to trust beneficiaries.

- **Notify known creditors and advertise for unknown creditors.** If the Trustor has passed away, you may place an advertisement for unknown potential creditors in a newspaper in the county where the deceased lived in order to reduce the amount of time that an unknown creditor has to submit a claim to the trust from two years to four months from the first publication date, after which claims of unknown creditors are barred by law. A.R.S. Section 14-6103. Notice of death of settlor; filing claim against Trust estate.

- **Identify and pay valid creditor claims.** Once the creditors are determined, you need to pay the trustor's debts from the trust's funds. The Successor Trustee is not personally liable for the Trustor's debts unless the Successor Trustee is also the spouse of the Trustor or has otherwise assumed personal responsibility for payment, such as guaranteeing the decedent's or incapacitated person's debt when it was incurred. After the Trustor passes away, the law prescribes the order in which creditors are paid. Payment of creditors out of order if there are not enough assets to pay all bills in full may result in the Trustee being personally liable for the debt.

Since unknown creditors can submit a claim until publication is properly completed and until the four month creditor claim period has elapsed, you may withhold payment of claims and withhold distribution of trust assets to trust beneficiaries until the creditor claim period has elapsed and you know if there are sufficient assets to pay all claims.

- **File tax returns and pay taxes when due.** If the Trustor is incapacitated, you need to make sure that any required federal and state income tax returns are filed on time and any taxes paid on time. If the Trustor has passed away, you need to make sure that any required decedent's final federal and state income tax returns are filed on time and any taxes paid on time. You need to be sure that all required federal estate tax returns are filed on time and any estate tax paid on time. You need to be sure that all required federal and state trust fiduciary income tax returns are filed on time and that any income tax is paid on time.

- **Liquidation of trust assets.** The trust may require that you liquidate certain trust assets or you may have to liquidate trust assets in order to satisfy creditor claims.

Determine if assets need to continue to be held in trust and administered over time for any trust beneficiary.

You may have to set up any beneficiary sub trusts required by the trust that are going to hold trust assets and continue to be administered over time for the benefit of one or more beneficiaries. These may include sub trusts established to minimize the amount of estate taxes otherwise payable to the federal government or to protect certain trust assets from claims of creditors of other trust beneficiaries.

These may also include a sub trust for a beneficiary who is given a life estate in a home or other trust property, a minor child who cannot legally receive substantial trust assets, a legally incapacitated beneficiary, a special needs beneficiary who might lose government benefits and health insurance if assets are distributed directly to the beneficiary or a beneficiary who the Trustor may have determined to need assistance in managing assets to prevent them from being wasted.

- **Administer the trust assets for the benefit of the Trust beneficiaries and distribute trust assets or for the benefit of the trust beneficiary.** If the Trustor has passed away, when the creditors' claim period has expired and approved claims are paid in full, the Successor Trustee is

responsible for making sure that the trust assets are properly administered for the benefit of the trust beneficiaries.

- **Distribution Plan.** After the Trustor has passed away, you may prepare and distribute to the trust beneficiaries a distribution plan of what trust assets are going to be held in trust and how they will be administered. Trust beneficiaries who receive such a distribution plan and who are properly notified of their right to object to the plan of distribution must notify the Successor Trustee within 30 days following receipt of the distribution plan or are barred from objecting at a later time.

- **Sub-Trusts.** After the Trustor has passed away and following completion of the administrative matters described above, the Successor Trustee may be authorized to and directed to establish Sub-Trusts and to allocate and distribute the property of the Trust to those Sub-Trusts according to the terms of each of those Sub-Trusts.

- **Keep accurate records.** It is very important to keep accurate records of everything you do. A contemporary written accounting including receipts, expenses, gains, losses and distributions must be maintained from the date of the decedent's death or the date when you assumed responsibility of the trust for an incapacitated trustor until the administration of the trust is completed and all trust assets have been distributed from the trust. Certain trust beneficiaries are entitled to periodically receive copies of each accounting.

- **Successor Trustee Compensation.** A Successor Trustee is entitled to reasonable compensation for work necessarily performed in administering the trust. Compensation is counted as taxable income, so you need to declare it on your personal income tax returns.

- **Successor Trustee reimbursement for reasonable out of pocket expenses.** A Successor Trustee is entitled to be reimbursed for out of pocket expenses necessarily performed in administering the trust. Reimbursement of out of pocket expenses is NOT counted as taxable income.

- **Seeking Court Approval of Successor Trustee Actions.** A Successor Trustee and other interested parties, such as a creditor or a trust beneficiary have the right to ask the court to resolve any disagreements among interested parties or to give instructions to the Successor Trustee which protects the Successor Trustee from later complaints or liability for carrying out court orders.

- **Duty to inform and report.** A.R.S., Section 14-10813.

A. Unless the trust instrument provides otherwise, a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless the trustee determines that it is unreasonable under the circumstances to do so, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

B. A trustee:

1. On request of a beneficiary, shall promptly furnish to the beneficiary a copy of the portions of the trust instrument that are necessary to describe the beneficiary's interest.

2. Within sixty days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address and telephone number.

3. Within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified

beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the trustee's name, address and telephone number, of the right to request a copy of the relevant portions of the trust instrument and of the right to a trustee's report as provided in subsection C.

4. Shall notify the qualified beneficiaries at least thirty days in advance of any change in the method or rate of the trustee's compensation.

C. A trustee shall send to the distributees or permissible distributees of trust income or principal and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. On a vacancy in a trusteeship, unless a co-trustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

D. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

E. Subsection B, paragraphs 2 and 3 apply only to a trustee who accepts a trusteeship on or after January 1, 2009, to an irrevocable trust created on or after January 1, 2009 and to a revocable trust that becomes irrevocable on or after January 1, 2009.