

## LIVING TRUSTS - POST MORTEM ADMINISTRATION

You may have been named as the successor trustee of a Living Trust. The creator of the Living Trust is called the Settlor or Trustor. The Settlor may have informed you that you were named as successor trustee. Once the Settlor dies, there are numerous steps to take, in order to properly administer such a Trust. This process is called post-mortem administration. Below is a summary of the most common tasks for the successor trustee to perform.

### Initial Considerations

The Trustee is obligated to administer the trust assets in accordance with the terms of the written trust documents. You should obtain a copy of the trust documents, including any amendments, and study them carefully.

You should identify exactly who is the trustee of the Living Trust. It is the prerogative of the person named as trustee to accept or reject the nomination. If he accepts, the Trustee should certify this by signing certificates before a public notary. See the forms posted below. Copies may then be provided to any party needing proof of the trustee's authority.

If it becomes necessary to admit the decedent's will to probate, confirm that it nominates you as the first choice to serve as personal representative (i.e. executor). It is common in estate planning to name the same person as trustee and personal representative. Of course, there will be no personal representative if there is no need for probate.

### Overview of Trustee Responsibilities

Under the terms of the trust, generally the trustee is to: 1) account for trust property, 2) ensure the payment of the debts and taxes of the decedent's estate, and 3) separate and administer the assets of the trust in accordance with the terms of the trust. Most trusts provide for compensation for services rendered as trustee, unless you voluntarily waive such compensation. Such compensation is paid from the assets of the trust. If you are the sole beneficiary of the trust, you should waive any compensation for serving as trustee.

You should identify what is held by the trust. The assets of the trust consist of only those assets which either (i) were transferred to the trust before the decedent's death, or (ii) go through probate after decedent's death. Any assets in the decedent's name alone, or which were otherwise left out of the trust, may pass into the trust only by going through probate. There are some exceptions to this, such as life insurance proceeds, and jointly owned bank accounts.

As trustee, you are entitled to engage an attorney to advise and assist you with trust administration. The fees charged by such attorney are paid from the assets of the trust.

Unless there is a legal challenge to the validity or interpretation of the trust, the trust is not subject to the review of the probate court. The trustee must, however, make sure that all of the debts and taxes of the estate are paid. The trustee may be personally liable for any failure to pay debts or taxes.

## Some Common Trustee Duties

The trustee's duties typically include the following:

- a. Power of Attorney. Obtain and hold the original of any Power of Attorney forms signed by the decedent. By law, a Power of Attorney is no longer valid after the death of the party granting the power. Thus, you are no longer entitled to rely on any Power of Attorney granted by the decedent.
- b. Death Certificate. Verify all information contained on the decedent's death certificate, including social security number, date of birth, date of death, and address.
- c. Life Insurance. Evaluate all possible life insurance, and assert claims for death benefits where applicable.
- d. Assets. Prepare a comprehensive inventory, listing all assets in which the decedent or the decedent's trust owned an interest, including approximate values as of date of death, and indicating whether or not such assets were placed in the Trust. Jointly owned assets should be listed separately. Be careful to not overlook anything of value. Even if a probate is not necessary, a complete list of all assets will be critical, for income tax reporting (including basis calculations), and estate tax reporting. Assets which have a readily ascertainable value, such as bank accounts, marketable securities, etc., need not be appraised. However, all material assets not having a readily ascertainable value should be appraised right away, to establish values as of date of death.
- e. Safe Deposit Box. Promptly inventory the contents of the safe deposit box, if any, noting the approximate value of each item as of the date of death.
- f. Benefit Payments to Decedent. Promptly give written notice of decedent's death to all parties from whom the decedent received benefit payments such as social security, annuities, pensions, etc. Payments received for post-death periods must be returned to the payor.
- g. Decedent's Debts. Promptly list and pay all debts and expenses which are uncontested, including expenses of last illness and burial/funeral expenses. You should also pay all legitimate charges on credit cards and credit accounts, all of which should be promptly closed. The trustee should also ascertain whether there are any disputed claims against the estate, and engage an attorney to help resolve the disputed amounts.
- h. Personal Income Taxes. The final state and federal joint income tax returns for the decedent and the decedent's spouse are due by April 15 of the year after the year of decedent's death. You should

coordinate with decedent's accountant, for preparation of these returns. Such tax returns will be the final joint returns, and the surviving spouse will file under "single" status for future years.

- i. Trust Income Taxes. There is often a requirement to file separate income tax returns for the trust itself, for the period of post-mortem trust administration. If the trust will have material income between the date of death and final distribution of trust assets, income tax returns are usually required. In order to file such tax returns, a federal tax identification number must be obtained. To obtain one, your attorney or accountant should prepare IRS Form SS-4, to apply for a federal tax identification number. You should sign and submit this form as soon as possible. Quarterly estimated income tax payments by the trust may also be required. Again, you may need to coordinate with your accountant for preparation of such returns.
- j. Death Tax Returns. A federal estate tax return, and state inheritance tax return, must be prepared and filed within nine (9) months from the date of death. All state and federal death taxes owing by the estate must be paid within nine (9) months from the date of death. Return preparation should begin right away, even though no taxes may be owing. In many cases, there are numerous complicated steps which must be taken prior to the filing of such returns, including elections, disclaimers, and asset allocations. For more information on these issues, see the author's separate article: State and Federal Death Taxes.
- k. Notice to Beneficiaries. Under the Uniform Trust Code, the Trustee is required to give notice of certain information to all qualified beneficiaries. See the sample Notice to Beneficiaries posted below.
- l. Beneficiary Information. The Trustee must identify all beneficiaries, and obtain all pertinent information regarding each beneficiary including address, Tax ID number, and date of birth.
- m. Prudent Manager. As Trustee, it is your obligation to manage all assets of the trust. You should immediately secure all tangible property. Residential property owned by the trust should be protected by functioning locks on all doors and a functioning alarm system if available. Property taxes, monetary encumbrances, and insurance premiums should be kept current. Personal items of significant value (jewelry, artwork, antiques, guns, tools, etc.) should be moved to a secure location pending distribution or other disposition. All financial resources must be prudently managed, and you should confer with qualified professional advisors regarding necessary adjustments to existing investments. You are legally obligated to do more than just maintain the status quo, whether or not the decedent or decedent's advisors engaged in active financial management in the past.
- n. Record Keeping. You must be able to provide a detailed accounting of all income and expenses of the trust, and all financial resources of the trust. It is critical that you maintain one or more separate bank accounts in the name of the trust for receipt of income, and payment of expenses. You must never co-mingle trust monies with your own personal resources. It is often advisable to establish financial bookkeeping systems using popular computer software (i.e. Quicken, Quick Books, Peachtree, etc.). In any event, well-organized, detailed record-keeping is critical.

- o. Preliminary Distributions. Early in the trust administrative process, the Trustee may begin distribution of specific trust assets. In particular, personal property items mentioned in the trust may usually be distributed right away. Be sure to check the trust for any mandatory waiting periods, as most trusts impose a 30 day survival requirement, or other time period beyond which a beneficiary must live in order to receive a trust distribution.

## Additional Resources

The foregoing comments will address the majority of issues that initially arise in trust administration. However, there is no uniform procedure for trust administration because each trust is different, and holds different assets. Numerous other rules and procedures may come into play in the administration of a specific trust. For additional information on these issues and other rules and procedures, numerous articles and other information are available at various websites. For the most reliable advice, you should confer with an experienced estate planning attorney.



For more information or questions, please contact Steven R. Bennett at 503-228-8588 or by email at [srb@pmblaw.com](mailto:srb@pmblaw.com). Email inquiries are welcome; Initial consultations are provided at no charge and no obligation.

*Copyright © 2009 Powers McCulloch & Bennett. All Rights Reserved. (Revised 12/1/09)*

*The contents of this article are intended for general information only and should not be construed as legal advice or opinion on specific facts and circumstances.*

### **Powers, McCulloch & Bennett, LLP**

*PMB Law is a Portland, Oregon law firm representing and advising individual and business clients throughout Oregon. Our firm was founded in October of 1973 and we have over eighty-five years of combined legal experience. Visit our Web site at [www.pmblaw.com](http://www.pmblaw.com) for more information about our offerings and ways we can help you.*