THE INSIDER'S GUIDE TO CALIFORNIA PROBATE AND TRUST ADMINISTRATION

(What Every Californian Should Know About Probate and Trust Administration after the Death of Your Loved One)

Who is behind this book and why should I listen to you?

You've done yourself a huge favor by getting this book. The information in this book will be of enormous assistance to you if you are the trustee of a trust or the administrator or executor of an estate. This book will also help you if you are the beneficiary of a trust or an estate. I personally guarantee it.

There's a lot of misinformation, misunderstandings, and ignorance floating around out there about how to administer a trust or probate an estate. There are trustees, executors, and administrators who have no idea what they're doing. There are trustees, executors, and administrators who hide their heads in the sand because they don't know what to do. And there are a few trustees, executors, and administrators who try to take advantage of their position to benefit themselves.

I wrote this book so that each of you acting as the trustee, executor, or administrator who wants to do a good job will know what you need to do to carry out your responsibilities in an honest, transparent, and efficient manner. I also wrote this book to benefit the beneficiaries of trust and estates so that they could understand the process and have realistic expectations about the information they'll receive and the actions they can expect from the trustee, executor, or administrator.

This book is not meant for people who believe the trust that's been administered or the will that's being offered for probate doesn't reflect their loved ones true intentions. If you believe

that the trust or will was produced as a result of fraud, undue influence, lack of capacity, coercion, duress, or mistake then order my book on trust and will litigation. You can order my book on trust and will litigation by going to www.grossmanlaw.net or calling 866-540-0000.

Many, many families are told two bald-faced lies when they do their estate planning. The first lie is that if you have a living trust then there's almost no work that needs to be done after you die. The second lie is that a probate will take years and years and consume an enormous part of your estate. I can't help you if you believe that there's no work to be done after your loved ones died and their trust is to be administered. The simple fact is that to properly administer a trust takes some amount of work. Trust administration, done correctly, is more efficient and less expensive than probate, but is not something that happens overnight and without expense. As you read further in this book you will find out exactly what needs to be done as the trustee of the trust and have some sense of how long this is likely to take. If you believe probate will take years and years then this book will be of enormous assistance to you because you'll find out that an efficient probate can be closed in less than a year and will consume only a few percent of the value of the estate.

My name is Scott Grossman and since 1995 I have been practicing law in California. During that time, I have represented individuals, private fiduciaries, and banks in probate and trust administration. I have also represented individuals in will and trust litigation. So believe me when I say, I know how to make things go right and how to avoid having things go wrong.

Why Did I Write This book?

Simple. I'm tired of seeing trust administration turn to trust litigation because a well-intentioned trustee didn't have the information he or she needed to properly administer the

trust. I'm tired of seeing probates that drag on and on and on because the executor or administrator didn't know what to do and didn't know who to turn to for help. I am also tired of misleading lawyer advertising that makes it sound like probate or trust administration should be an add-on to some other type of practice. If you are the trustee of a trust or the executor or administrator of a will, what you need is useful information that you can trust so you can carry out your responsibilities. Respond to some ad for a lawyer who says he does probate or trust administration and you may wind up in the hands of someone who has little or no idea what they're doing.

Stop right now! Put down this book and pick up your yellow page telephone directory. Flip through the attorney section and count the number of lawyers who advertise they do probate or trust administration. I promise you, many of them will simply assign the case to a paralegal and never touch it again. Look at how many of these lawyers practice in completely unrelated areas like personal injury, bankruptcy, family law, real estate, business law, and the list goes on. What do any of these practice areas have to do with trust administration or probate? Nothing.

I wrote this one-of-a-kind book so you would have good, honest, useful information to review and study in the comfort of your own home. No hype. No pressure.

Frankly, this book also saves me time. My firm gets calls all the time from people asking us to represent them in a probate or trust administration. I've packed a ton of information into this book in order to dispel the myths, rumors and outright lies concerning probate and trust administration. I can't take every case, and not every case requires an attorney. Writing this book gives me a chance to talk to you about what you need to know about probating an estate and administering a trust so that you can make an informed decision about what steps to take

with your case. Even if I cannot accept your case, I would like you to be educated about the process. So you don't fall victim to the common mistakes so many people make.

The Book Is Not Legal Advice

I am not allowed to give legal advice in this book. I can offer suggestions and identify traps, but don't take anything in this book to be legal advice about your case until you agree to hire me and I have agreed, in writing, to accept your case.

Why Is This Book About Both Probate And Trust Administration?

Because so often when clients first call me, they tell me about the will and trust their mom or dad left behind. So often, my client uses the words “trust” and “will” interchangeably. Trusts and wills are not the same thing, but both are used after a loved one has died. Rather than write a book about probate, and then have you find out what you really need is a book on trust administration, or vice versa, I've decided to combine these topics in one book. And as you'll see in the following pages, though probate and trust administration are different and separate processes, they have many similarities.

The other reason I decided to combine probate and trust administration in one book is because most people have no idea what they're dealing with after their loved ones died. Sometimes they find only a will. Sometimes they find only a trust. Sometimes they find both and sometimes there are no documents at all. If there are no documents at all, you have to do a probate. If you have only a will, then you will have to do a probate. If you have a trust, then you'll probably have to do trust administration, but as you'll learn, you may have to do both a trust administration and a probate. If you learn about both probate and trust administration at the same time, you'll save you time and the entire process will make more sense.

What Is Probate?

Probate is a court supervised proceeding to transfer ownership of the assets of the decedent to his or her heirs. In other words, you need a court order to transfer whatever property your loved one owned out of your loved one's name, and into the name of whoever is supposed to inherit the property.

The way you know whether you have to probate or not does not depend simply on whether your loved one had a trust or a will. You know you have to do probate if you need your deceased loved ones signature in order to transfer their property. Let me give you an example. If your mother died and she owned her home in her own name then you would have to put her home through probate in order to transfer it. Another example would be where your father had a bank account or a brokerage account in his name alone. If your father did not designated beneficiary for the account in the account will have to go through probate so that the bank or the brokerage would the brokerage knows where the funds go.

What Is Trust Administration?

Trust administration is the process of transferring assets to the named beneficiaries of the trust according to the terms of the trust. Trust administration does not require the trustee to go to court and obtain a judge's signature in order to transfer assets. Rather, the trustee is empowered to take all actions on behalf of the trust without any judicial oversight.

The trustee controls all the assets in the trust. The trustee cannot exercise any control over assets that are not in the trust. In order for an asset to be under the trustee's control it must be titled in the name of the trust. For example, in order for John Smith to put his home into his trust he would have to sign and record a deed stating he has conveyed his property from John Smith to John Smith, trustee of the John Smith Trust. When John Smith passes away, John

Smith doesn't own the property, the John Smith Trust does. That means with John being dead, the successor trustee named in his trust has the authority to take control over his former home and pass it to the named beneficiaries in his trust on the terms stated in John's trust.

To find out if John transferred his bank account or brokerage account or mutual fund account into his trust, you'll need to look at the statements for the account before John died. On the statements you'll see something like "John Smith, Trustee," or "John Smith Family Trust." As long as there's some indication that John has moved the property into the trust, it's practically certain that in fact, the trust is the owner of those accounts. If the account statements simply have John's name without any reference to his trust, you now have to contact the bank or brokerage or mutual fund company and find out if John made the transfer into his trust or not.

You May Have To Do Both Probate and Trust Administration

It's absolutely possible to have a probate and trust administration. This happens for a very simple reason, some or all of the assets were never put into the trust or assets in the trust were taken out of the trust. This happened to a client of ours quite recently. Our clients mother passed away before she died she created an estate plan. Her estate plan included both a will and a trust. Even though she created an estate plan our clients mother never transferred her home into her trust. So our client first had to do a probate of his mother's home. Because her will was a "pour over" will, at the conclusion of probate the court ordered her home to be transferred to the trustee of her trust. Our client, who had just completed probate now had to begin trust administration.

We also see this occur when people refinance their homes. What happens during the refinance is your toll that your home, has to be in your name. So, you take it out of your trustee do the refinance. What the lender never tells you is, now that you've completed the refinance. It

is time to convey your house back into your trust. When this happens, and the borrower dies, the house will need to go through probate, and if there is a pour over will, then go back into the trust and be administered according to the terms of the trust. The same thing happens with liquid assets like bank accounts and mutual funds. People who have an estate plan, and then close one account and open another one don't always remember to open the new one in the name of their trust, rather than their names as individuals.

When Probate Is Not Necessary

Probate can be avoided in California under certain circumstances. The first of these is when the estate holds only that's worth $100,000 or less. In that case 40 days after the death of the decedent you can provide an affidavit and death certificate to whomever is holding that personal property and receive the property without going through probate. The second situation is when the state holds real and personal property that's worth not more than $100,000. In this situation will have the same 40 day waiting period from the date of death. Here you'll have to file a petition or affidavit with the probate court and an inventory appraisal will have to be completed by probate referee and submitted to the court. The third situation is when the estate holds only real property worth not more than $20,000. In this situation there's a six-month waiting period from the date of death. Like the second situation you'll need to complete an affidavit, provide an inventory appraisal, and file these documents with a probate court. Finally if you state holds property passing only to a surviving spouse than probate can be avoided . There is no waiting period in this situation. When the surviving spouse is the only person who'll be receiving property from the probate estate pleadings will need to be filed with a probate court. The spouse is not required to file an inventory appraisal. However, the surviving spouse would be willing via

as to complete an inventory appraisal in order to establish a new tax basis in the property for federal and state income tax purposes.

When Trust Administration Is Not Necessary

Trust administration is not necessary when the trust is only one beneficiary and that beneficiary is also the trustee. The reason for this is, I think, obvious. If you are in charge of the trust and the only person is going to receive the assets of the trust is you then there is no need for you to engage in formal trust administration in order to prove to yourself that you've done the right things for the right reasons.

What Is A Successful Probate?

My firm defines a successful probate as one that takes less than a year, cuts off unfounded creditors, and gives clear title to the beneficiaries or heirs. Many people wonder, why is it that a successful probate is one that takes less than a year? Isn't that a long time? Well the reason is there are a number of different notices and waiting periods in a probate.

To begin probate your attorney has to draft pleadings that you review and sign before their filed with the court. Your attorney then submits them to the local probate court to set a first hearing date. That first hearing date will be set anywhere from 6 to 12 weeks from the date the probate pleadings are filed. Assuming your petition for probate is granted at the first hearing. You then began a four-month creditor claims period. When that four-month creditors claims period has ended, your attorney can then file a petition to distribute the estate's property and close the estate. That hearing will be held 6 to 12 weeks after the pleadings are filed. So, if everything went exactly right. And every pleading was filed on the first day it could be filed. Then your probate case would take a minimum of seven months.

This assumes that everything goes exactly according to plan. But in probate's it's not uncommon for something to go wrong. Failure to give notice to everyone who's entitled to notice will result in a delay of the case. If creditors claim is filed that creditors claim will have to be addressed back and lead to a delay in the case. If you haven't made all the necessary allegations either in the petition for probate or the petition to close the probate estate then that will lead to a delay. If the notice of publication isn't done just right and in the proper time frame then that will lead to a delay in the probate.

It is also becoming more and more common in my firm's spearheads to see beneficiaries sue the executor or demonstrator of the estate. Beneficiaries have become increasingly aware that they don't have to simply accept what they are told. So are seeing more of them hire their own attorneys to make sure that the executor or administrator is doing the right thing for them. If the beneficiaries are told, rightly or wrongly, that the executor or administrator has made a mistake they won't hesitate to sue to make sure that they get everything they were supposed to. And if the beneficiary is successful, then it's the executor or administrator that will personally have to pay them in order to make sure they are made whole.

Another reason we are seeing more and more litigation is the size of probate estates has grown over time as, generally speaking, different kinds of assets have increased in value. We all know that from year to year the stock market goes up and it goes down. The real estate market goes up, and it goes down, but generally speaking, when you look at what people are worth over the course of time that number keeps going up. Generally speaking, the value of their assets have gone up over time and where there's more money it is more likely there's going to be some kind of litigation along the way.

What Is A Successful Trust Administration?

You can only define successful trust administration by knowing what type of trust. You're in charge of. Most of the trust that we see call for the outright distribution of the assets upon the death of the trust settlors. In other words, if your parents set up a trust then when both of them have died that's when the trust is going to pay out all the property to the beneficiaries of the trust. In my firm we call that a distribution trust. Trust administration for a distribution trust, that doesn't have to pay estate taxes, is successful if we conclude it in less than seven months with our client, the trustee, having no future liability. If the distribution trust does have to pay estate taxes then there is no way administration will hand in less than nine months and will probably last about 18 months.

Many people are under the belief that administering a trust is unnecessary. That the trust is some sort of self-executing document like a beneficiary designation on a bank account. Lots of people believe that they simply present the death certificate and everything happens automatically in the trust. There's no work to be done, and so they really believe that everything happens in just a matter of days and all the money will be distributed. While it's possible for a trustee to do that, it's also a good way for a trustee to get sued. When administering a trust there aren't any of the time constraints that you have in probate. But that doesn't mean the smart trustee will do everything immediately and bring the trust administration to a close because that's a good way for trustee get himself or herself into some trouble.

Our advice to every trustee that we represent when they first come into our office and tell us the beneficiaries want to know when distributions are going to be made is to tell them: "I'm not sure what I'm doing just yet. I'm going to talk my attorney, and after I talk my attorney all let you know." About the biggest mistake any trustee can make is to simply distribute trust property, right away, because a beneficiary has asked for something.

You should always have the trust reviewed by your attorney. Some trusts are written in plain English and are easy to understand so when you speak with your attorney you'll probably be told what you already knew. But probably isn't good enough, which is why you have to have your attorney review the trust for you. If you administer the trust on the mistaken belief then you have to expect the beneficiary of the trust, who didn't get what he or she was entitled to, is going to come back to you and hold you responsible. Plenty of trusts are not written in plain English. When that's the case, it is particularly important that your attorney reviews the trust and tells you what it says. You want to be sure that you, as the trustee, know who was supposed to get what and on what terms. If you go forward without knowing this then you have to expect you are going to get sued by an unhappy beneficiary.

As trustee of the trust, you have an obligation to take control over all of the trust assets to determine what liabilities, if any, the trust has and preserve those assets for the benefit of the beneficiaries. At a minimum, this means you'll have to investigate, which assets are actually in the trust. If you find out there are assets that were supposed to be in the trust, that it looks like some effort was made to transfer the asset into the trust what the asset never did get funded into the trust. Then you may need to have your attorney go to court to get in order to transfer that asset into the trust. You'll also have to determine what liabilities the trust has. For example, if the trust owns real estate to real estate may be mortgaged. As trustee it's your responsibility to make sure that mortgage gets paid so that real estate stays in the trust instead of getting foreclosed.

The trustee also has to deal with all creditors. You have to determine if there are creditors. And if there are creditors then you have to determine if they are really owed money or if they're trying to rip-off the trust. One very effective way of doing this is using an optional

creditors claim procedure in the administration of the trust. This is a powerful way of cutting off any creditor who doesn't act quickly to assert their claim. It is also very effective in flushing out all creditors during the early part of trust administration.

As the trustee, you have to determine how long you believe you will be administering the trust. The reason this is so important is because as trustee you have a duty to invest the trust assets. The way you go about investing those assets will in large part be determined by how long you are going to have those assets before they get distributed. It is very common in my experience to see trustees who have never considered this. As a result it is usually the easiest mistake to make and the easiest this mistake to avoid. Your attorney isn't going to help you make investment decisions, your attorney will discuss with you your fiduciary duties as trustee and help you to determine how much help you need and whether you need to bring in a professional advisor to assist you in investing trust assets.

To conclude the administration of the trust you will need to prepare, with the help of your attorney, a report and account. The report will tell the beneficiaries, what it is you've done while you've been the trustee. The account will show the beneficiaries, what assets were in the trust, what assets have come into the trust, what's been paid out of the trust, and what's left to distribute to the beneficiaries. Determining the value of the trust assets at the time you take over as trustee is something best done by a neutral third party. Your attorney will help you to figure out who should be providing these values.

What I've described above is the bare minimum that has to occur during the administration of the trust. Some trust administrations are a great deal more complex, and some are quite straightforward. What every trustee has to keep in mind is using the correct process

and the relying on the right advisers will keep the administration process moving efficiently, and keep you from being sued.

How Do I Find A Qualified Probate or Trust Administration Attorney?

Finding attorney who is qualified to assist you with probating a will or administering a trust means doing more than reading their advertisement. You see once an attorney passes the bar exam and is licensed to practice law, an attorney can claim to practice in any field of law. An attorney can practice in any field but that doesn't mean the attorney is competent to practice in that field.

It is pretty common to find attorneys advertising that they do probate or trust administration in addition to two, three or four different other practice areas. Almost always these practice areas have nothing at all to do with probate trust administration. If you look at the ads in the Yellow Pages it's easy to find an attorney that says they do some combination of personal injury, family, real estate, business, and bankruptcy law. None of these practice areas has anything to do with probate or trust administration. In fact none of these areas even require those attorneys to go into probate court!

On the other hand you won't find an attorney who does only probate or only trust administration. What you will find, if you look carefully, are attorneys who draft estate plans (that means wills and trusts) and do probate or trust administration. Estate planning and probate or trust administration are really two sides of the same coin. If you create a plan then you should be able to help someone use that plan. In my firm we like to joke that we cook, eat our own cooking, and eat other peoples cooking too.

You want an attorney who focuses their practice on the creation *and* use of wills and trusts. This means an attorney whose practice is dedicated to some combination of estate

planning, probate and trust administration, and will and trust litigation. Too many attorneys only dabble in these fields. As a result it is very, very common for their probates to take more than a year and for their trust administration cases to drag for who knows how long before the administration is brought to a close.

You will also want an attorney who actively litigates will and trust disputes in addition to doing transactional work. That's because any probate and any trust administration case can unexpectedly turned nasty and degenerate into litigation. If your attorney doesn't do litigation then you're going to have to change attorneys midway through your probate or trust administration. You want someone who's going to be with you from beginning to end.

Not everyone will and trust is well written. During the course of a probate or trust administration you may discover that the terms of the will or trust are ambiguous. How your document gets interpreted can have a very big impact on the beneficiaries. Rather than run the risk of simply taking action on your round as the executor, administrator, or trustee, it is often better to go to court and petition a judge to instruct you on how to interpret the will or trust.

This situation often arises where there is a disabled beneficiary. We often see wills and trusts were you can tell the parents were making some effort to take care of their disabled child but either through their ignorance or their attorney's ignorance the will or trust they created wasn't clear. Interpreted one way the will or trust may cost that child their public benefits, interpreted another way those public benefits can be preserved. It is very important in this type of situation to make sure that your attorney knows enough to go to court to get a ruling that is helpful, rather than harmful, to the beneficiary.

The mistake people to want to make is choosing an attorney who does probate or trust administration as a sideline. These attorneys either lock up or blunder forward causing real

problems for their client and the beneficiary. Knowing how to address these sticky situations only comes from the experience gained by dealing with them before and the willingness to go to court when necessary.

You've probably heard the old is a jack of all trades master of none. One way to find out if your attorney practices probate and a number of unrelated fields is by looking at their ad in the Yellow Pages or their website. If the ad shows the attorney practices in number of unrelated fields then you have a jack of all trades. If the attorney you were thinking of hiring does have an ad in the Yellow Pages and make sure you flip through other sections of the Yellow Pages would attorney ads because some attorneys advertise in only one practice area per section. If the same attorney has an ad for family law in the family law section, personal injury in the personal injury section, and probate in the probate section then you have a jack of all trades. You want to go on to another attorney who focuses on probate and trust administration

You should also ask the attorney you are thinking of hiring in what other fields they practice besides probate and trust administration. If the answers you're getting are anything other than estate planning or trust litigation or will litigation then you've got a jack of all trades. Keep searching until you find someone who focuses only on these areas.

You may also want to ask the attorney you are thinking of hiring whether that attorney has produced anything to educate their clients about probate and trust administration. Find out if they have written a book or created DVD or anything else that helps their clients to understand what is going to happen during the process and what they should expect. You should expect your attorney to provide you with an education so that you can make informed decisions as your case progresses.

What do past clients of the attorney you are interviewing have to say? An attorney practicing for any length of time should have testimonials from satisfied clients. You should never take the testimonials as proof that your case will go smoothly because each case is different. But an attorney whose past clients don't have something nice to say is a sign there may be a problem.

You should also look at who the attorney has represented. An attorney who has represented banks or trust companies, private fiduciaries, and individuals is probably a good choice. If the attorney has only represented banks, trust companies, or private fiduciaries then an attorney may have some really lousy social skills and be unable to talk to ordinary people. An attorney who has only represented individuals may not have the knowledge, skill, or experience that a bank expects from their attorney. Banks can afford to be choosy and they are. They've got deep pockets and are targets for liability. Banks choose the best attorneys for their jobs in order to protect themselves.

The Probate Process

The probate process, at its most basic level, requires the following things to happen. The decedents will, if there is a will, must be filed with the probate court. A petition for probate must be filed with the court, a hearing date will be set for the petition, and notice must be given to all the beneficiaries under the will and all the heirs of the decedent. Notice must be published in a local newspaper stating that probate petition has been filed at a hearing date and time has been set. At the hearing on the petition if everything has been done correctly, and there are no objections, then the petition will be granted, and the will is admitted to probate, if there was one. If there was no will then probate of an intestate estate will be ordered by the court. The executor

or administrator will have their letters issued by the clerk of the court. Letters may be delayed if bond has to be posted.

Once the probate is open the executor or administrator must have the estate's assets inventoried and appraised. The inventory and appraisal is sent to the probate referee, the probate referee provides values for the states non-cash assets, and the inventory and appraisal is filed with the probate court.

Investment management of probate assets is rather straightforward. The executor or administrator or has the authority to keep the assets of the probate estate as they are and simply pass them out to the beneficiaries at the end of the probate. If the executor sells an asset of the probate estate than the executor needs to take the net proceeds from the sale and put it in interest-bearing account. The executor or administrator does not have the option of engaging in any sort of sophisticated asset management, it's simply not permitted by the probate code.

Whether the executor or administrator has the authority to sell real estate will depend on the authority granted to the executor or administrator by the probate court. The sale of real estate is not permitted, without prior court approval, if the executor or administrator was granted limited authority under the Independent Administration of Estates Act (IAEA). If the executor or administrator was granted full authority under the IAEA then he or she can sell real estate without prior court approval. That's not to say that selling real estate outside of a court supervised proceeding is necessarily a good idea. It is always our recommendation to our clients that the sale of real property gets discussed with us, their attorney, before they decide and implement a course of action.

Also, after the estate is opened, the creditor's claim period begins. During this four-month period creditors of the decedent may file claims with the executor or administrator

for payment of the debt owed to them. The executor or administrator may prove the claim, denied the claim, or approve the claim in part and denied the claim in part.

When the creditor's claim period comes to a close, the executor or administrator can then file a petition to approve a first and final account, distribute the estate's assets, pay the executor or administrator and the executor or administrator's attorney, and close the estate. Notice of the hearing on this petition is also given to all the beneficiaries and heirs. There will be a hearing on this petition and if everything is done correctly and there are no objections then the petition will be granted. Your attorney will get a copy of the order and if there is any real estate that is being conveyed to the beneficiaries than the order may be recorded with the County recorder's office for that purpose.

Finally, once the beneficiaries have received all of their property, the executor or administrator has been paid, and the executor or administrator's attorney has been paid, and ex parte petition for discharge is filed with the court. When this petition is granted the probate has come to a close and the executor or ministry or is discharged.

What's described above is the bare minimum that occurs in a probate. You could be involved in creditor's claim proceedings. You may need to sell a piece of real estate or may need to save a piece of real estate from foreclosure. Inside the probate you may need to litigate the recovery of an asset that rightfully belongs to the probate estate. It is also possible to probate estate may be a party to litigation in regular civil court. (If you think that you will need to litigate on behalf of the probate estate can call my office at 866-540-0000 or visit our website at www.GrossmanLaw.net and ask us to send you a copy of our book *Trust And Will Litigation In California*.)

The Trust Administration Process

Trust administration has some similarity to probate. It's not exactly the same thing of course. During trust administration there may never be a reason to go to court, there may be only one action that takes place in court, or a substantial part of the process may occur under court supervision. Whether any part of trust administration takes place in court or outside of court is usually up to the trustee. However, it's possible that outside events will force the trustee's hand and require the trustee to perform some or all of the ministration process under court supervision.

Before I get into the trust administration process, it's important that you wish trustee understand some of the underlying dynamics of trust administration. What I'm about to discuss has very little to do with legal issues and has a great deal to do with the psychology behind administering a trust. In most cases when it's time to administer a trust the beneficiaries will have a lot of questions for the trustee and are prone to make lots of demands. It is almost always a good idea for the trustee, at the beginning of the trust administration process, to respond to all the questions and all of the demands by telling the beneficiaries "I'm not sure what I'm going to do yet. I'll get back to you after I talk to my attorney." There is no reason for the trustee to commit himself or herself to any particular course of action until you understand what you need to do and how it is to be done.

What you should know is trustee is that all of the beneficiaries named in the trust and all the heirs of the decedent are entitled to a copy of the trust and its amendments just by asking. So, there is nothing wrong with providing a copy of these documents to the beneficiaries and heirs. In fact, is usually a good idea to provide these documents very early in the administration process so that everyone knows what they should and should not expect.

As trustee your initial responsibilities include collecting information on the assets owned by the trust, obtaining data death values for all the assets in the trust, collecting information on

any liabilities of the trust, providing all of this information to your attorney, providing your attorney with the addresses for all the beneficiaries and mayors, and keeping a log of all your activities as trustee. Your log should include the date you performed work as the trustee, a description of the work you performed, and the amount of time spent on that work. A sample format for a trustee's log is provided in appendix 1 to the book.

Collecting asset information requires you to determine what assets are actually owned by the trust. This usually means getting copies of account statements for bank accounts, mutual funds, and brokerage accounts. For real estate, it means obtaining a copy of the most recent deed for each parcel of property you believe is owned by the trust. The purpose of doing this is to see if title to each of these assets is actually in the name of the trust. If you see the name of the trust on the account statements or you see the decedent's name as trustee (for example, John Smith, trustee) then you know the trust holds legal title to those assets. The same analysis applies to real estate. If you don't see the name of the trust board of trustees name followed by "trustee" on account statements and you have to check directly with the institution holding the account to see if there was ever a change of title from the decedent to the decedent's trust. If you don't see the name of the trust where the decedent's name followed by "trustee" than the real property was not titled in the name of the trust. You're checking on title for two reasons. First, to see what the trust owns and what you as trustee therefore control. Second, to see if there's property outside the trust that may need to go through probate.

You need to collect liability information on the trust assets in order to determine if there were any outstanding debts. For example, real estate owned by the trust may have an outstanding mortgage. As trustee you're going to want to use trust funds to keep that mortgage current.

Where there are debts that don't have to be paid immediately you may want to subject those debts to the optional creditors claim procedure which is discussed later in the book.

You absolutely want to keep a log of your activities as trustee from the time you start as trustee. Keeping a log of your activities will help you to get paid for your work as trustee, assuming you want to be paid, and will help to protect you from claims by unhappy beneficiary that you failed to perform your duties as trustee.

The trustee is required by law to give notice to each beneficiary and heir when they take over as trustee due to the death of the decedent. This is a critically important step for the trustee and is usually carried out by their attorney. By properly giving notice of trust administration, in this statutorily required format, you will cut the statute of limitations for any trust contest down to 120 days from three years. It is a good idea, though not required by law, to provide a copy of the trust and its amendments to the beneficiaries and heirs when providing this notice.

A trustee who fails to give this notice to the beneficiaries and heirs leaves open a three year window for a beneficiary or heir to file a trust contest. If fraud is alleged by an unhappy beneficiary or heir they may have even longer than three years to file their trust contest.

A trust contest is a beneficiary or heir saying that they didn't receive what they were supposed to under the trust. In order to get something more than they're supposed to under the terms of the trust as written that unhappy beneficiary or heir will claim the decedent lacked the mental capacity to create a trust, was subject to undue influence, fraud, duress, coercion, or some combination of these things. The unhappy beneficiary or heir has the burden to prove their case. What you need to understand is that they won't even have a chance to make their case if you as trustee have given them the proper notice and they wait more than 120 days from receiving that notice to file their trust contest. This is why giving proper notice is so very important. You put

the beneficiary or heir in a position of having to make a decision, committing to it, and paying for it in a relatively short period of time. If that unhappy beneficiary or heir waits until day 121 and they have made a fatally flawed decision. They waited too long and as a result their claim will fail.

Having done this you need to have a discussion with your attorney about your fiduciary duties as the trustee. This is a critically important discussion. We've counseled any number of clients who come in with a belief about what it is they're supposed to do as trustee, and they find out that as the trustee they have a very, very different obligation. This is so important because if you make a mistake and breach your fiduciary duty then you will be personally responsible for replacing any money that is lost by the beneficiaries of the trust. I'll discuss your duties as trustee, including your fiduciary duties, at some length below.

The next thing you will do is establish a checking account in the name of the trust, or if one already exists, then you can change the account so that your deceased loved one's name is taken off the account and your name is put on as the current trustee. You'll also need an employer identification number for this account. Getting the employer identification number (EIN) is very important. The EIN is used for tax reporting purposes. Whether there is an existing account or you had to establish a new one, any income earned in that account is attributable to the trust, not your deceased loved one. The EIN belongs to the trust and tells the IRS the income along to the trust, not your deceased loved one.

Getting an EIN is something we can help you with but we prefer that you have your CPA get it for you. It is our philosophy that getting a CPA on board at the beginning of trust administration is in your best interest. The very first tax related task you'll have to address as trustee is getting and an EIN. For that reason, we like to have our clients select a CPA to work

with and have that CPA get the EIN. If you don't have an existing relationship with a CPA then we are happy to refer you to one.

Your next task as trustee will be to retitle all the real estate held by the trust. The real estate in the trust will have the name of the decedent as trustee on title. This needs to be changed in order reflect the change in trustee. This puts any potential lender or buyer on notice that your loved ones passed away and that you, as the successor trustee, or the person empowered to act on behalf of the trust.

You will next have to look at the liquidity needs of the trust. With your loved one having passed away taking care of them using trust assets is no longer an issue. The most immediate issue facing you, as trustee, is how much cash you'll need to maintain the current assets of the trust and pay the costs of trust administration. You'll also need to look at the purpose of the trust now that the seller has passed away. If the trust has an obligation to support one or more people than there may be an increased need to have cash on hand in order to carry out the purpose of the trust. I'll talk more about investment management below but for now you need to be aware of the need to examine the liquidity issue.

You other initial task as trust is to give notice of the settlor's death to the Department of Healthcare Services. This notice is absolutely required by law. The purpose of this notice is to give the Department of Healthcare Services an opportunity to file a claim if they paid for healthcare services for the decedent while the decedent was still alive. When you give notice to Department of Healthcare Services be certain to send them a copy of the decedent's death certificate and to send this by certified mail. Giving notice to Department of Healthcare Services provides them with a limited period of time in which to file a claim. If they fail to file in a timely

manner then you want proof that you actually gave them notice. This notice can act to cut off any claim to Department and a have.

Investing Trust Assets

Investing trust assets is a critical part of properly administering a trust. In our experience, the most common mistake made by nonprofessional trustees is their failure to invest trust assets correctly. And frankly, the single easiest mistake for nonprofessional trustees to avoid is investing trust assets incorrectly. The reason I say non-professional trustees is because my firm has represented private fiduciaries as well as banks. We know the private fiduciaries and banks have experience investing trust assets. It's very unusual to find someone without this experience who knows how to correctly invest trust assets to carry out the purpose of the trust.

Unlike probate which provides limited investment options, trust administration allows for a broad range of investment options. Every California trustee investing trust assets has to comply with the Prudent Investor Rule. The rule requires trustees to make investment and management decisions as part of an overall investment strategy having risk and return objectives reasonably suited to the trust. In other words, the trustee has to consider each asset as part of the mix of assets held by the trust and you have to decide what assets to hold in order to carry out the purposes of the trust.

The prudent investor rule requires the trustee to invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstance of the trust. In satisfying the standard, the trustee shall exercise reasonable care, skill and caution. This puts every trustee on notice that their personal lack of skill, experience, or investment knowledge will not protect them if they fail to correctly manage trust assets. As trustee, you must make certain you obtain any and all professional guidance that you need in

order to make sure you comply with the prudent investor rule. This usually means when you will be administering the trust for an extended period of time you will be best served by hiring a financial advisor to give you advice on how to properly invest trust assets.

It is very important that you understand the prudent investor rule is “process driven." That is you are judged on how you made investment decisions not on the actual outcome of those decisions. You are required to devise an overall investment strategy balancing risk and return. The analysis or process required to do this, can seldom be done without the assistance of a professional investment advisor.

Most individuals are not capable of investing trust assets. In fact, when we’re involved in trust litigation on behalf of a trust beneficiary this is usually the first place we look to find the mistakes that a nonprofessional trustee has made. We know that this is usually a rich source of mistakes. So when we are the trustee’s attorney in a trust administration case, we take investment management very seriously.

The prudent investor rule sets, to the extent relevant to the trust are its beneficiaries the trustee may consider:

- General economic conditions
- The possible effects of inflation or deflation
- the expected tax consequences of investment decisions or strategies
- The role that each investment plays within the overall trust portfolio
- The expected total return from income and the appreciation of capital
- Other resources of the beneficiaries known to the trustee as determined from information provided by the beneficiaries

- Needs for liquidity, regularity of income and preservation or appreciation of capital
- An asset special relationship or special value, if any, to the purpose of the trust or to one or more of the beneficiaries.

You are not required to use each of these factors in making investment decisions. But you must use a factor if it is relevant to the purpose trust or the trust beneficiaries.

As the trustee you are a fiduciary. In other words you are responsible for investing and managing the trust assets solely for the benefit of the trust beneficiaries. Your fiduciary duties include:

- The duty to review the assets and development investment strategy
- The duty to invest and make the trust property productive
- The duty to diversify investments
- The duty to keep the beneficiaries informed, and
- The duty to dispose of unproductive assets.

A trustee can choose to delegate his or her investment and management functions. For any nonprofessional trustee delegating investment and management decisions is the wisest thing you can do. This is why I often suggest to my clients that from the very beginning they hire a financial advisor to help them with investment and management decisions.

Once you've chosen a financial advisor, your advisor will work with you to create an investment policy statement. This draft of the investment policy statement is just that, a draft. You will then review that draft investment policy statement with your attorney to make sure it reflects a careful consideration by you, the trustee, of each of the critical legal criteria. The finished investment policy statement will be written in a clear and understandable manner so that

current and future trustees will understand what has been decided. This has the added benefit of making clear to any court, that may later scrutinize the trustee's investment strategy in a contested counting proceeding, the trustee has engaged in the process of creating an investment strategy.

In addition to the financial advisor, you're going to need a CPA, as I mentioned earlier. You'll need a CPA both for income tax reporting and estate tax reporting (if the trust is large enough that estate taxes are due).

Your first decision point is going to come when you see what the purpose of the trust is. Is the trust going to continue for some extended period of time or is it going to require distribution of everything that's in the trust in a relatively short period of time. The trust is a "continuing trust" if by the terms of the trust you expect administration will take over a year. You have a "distribution trust" if by the terms of the trust it is likely all the trust assets will be distributed within about a year. If you are the trustee of a distribution trust then you're going to have to consider liquidating the assets in the trust and putting the proceeds in an interest-bearing account. You may want to do that is to avoid any asset volatility. Remember, one of your fiduciary duties as trustee includes your duty to preserve assets.

Before you do anything with the trust assets in a "distribution trust," let the beneficiaries know what you are considering and ask them if they want the assets sold so they receive cash at the conclusion of trust administration or whether they want to receive their share of the assets, as they are, from the trust. If the beneficiaries want the assets as they are then that's called an in-kind distribution. There is nothing wrong with doing an in-kind distribution but those beneficiaries who want one are going to have to bear the risk those assets may decline in value during the administration of the trust. That means your attorneys needs to draft something for

those beneficiaries to sign saying that they understand they are taking a risk, they are willing to bear the risk and are relieving you as trustee from any responsibility for a drop in value of the assets.

We've had more than one case where the trustee believed they had that conversation and at a later time, after the assets declined in value, the beneficiaries had no memory of any conversation about taking an in-kind distribution. It is not enough to simply have discussions with the beneficiaries. You need your attorney to get any agreement in writing. That's how you protect yourself from whatever it is that may happen at a later time. If a beneficiary becomes unhappy because taking an in-kind distribution turned out to be a bad decision then you need to be certain that you have proof the decision to receive an in-kind distribution was the beneficiaries'.

If you're in charge of a continuing trust then you probably have one of four situations. First, the beneficiaries of the trust are minors. Second, the revocable living trust calls for staggered distributions. For, example the trust calls for the beneficiaries to get a third of the assets when they turn 30, half of what remains when they're 35, and the remainder when they're 40. Third, the revocable living trust holds all the assets in trust for the life of the beneficiary. This usually occurs either to provide asset protection to the beneficiary or because the beneficiary has some condition that causes him or her to make bad decisions so the trustee will be empowered to make decisions for the beneficiary. Fourth, the trust is a retirement plan trust.

If you are the trustee of a continuing trust one of the first things you'll want your attorney to tell you is whether the trust calls for a division into shares for each beneficiary or whether the trust is being administered as a whole. You need to know this because your duties as trustee run to each beneficiary as an individual. If the trust is divided into shares then you may have to

invest each share in a different way for each beneficiary. If you are the trustee of a trust that does not divide into shares, the trust is administered as a whole, then you have a completely different analysis. When administering the trust as a whole you are in essence acting as a parent does for all the children in the family. You'll have a pot of money and need to decide how it will be best invested and spent depending on the competing needs of all the beneficiaries. This can have a profound effect on how the money is invested, how is dispersed, when it is dispersed, and for whose benefit.

You may recall reading above that of probate there is a creditor's claim procedure that's used to pay legitimate debts, deny unfounded claims, and cut off future liability for the probate estate. Trust administration has an optional counterpart. It too has a creditor's claim procedure. The optional trust administration creditors claim procedure is just as effective as the one in probate. The purpose of doing this is to find out what creditors if any see had at the find out what claims to favor making by invoking the creditor’s claim procedure.

If you haven't already done so you want to have another meeting with your CPA to discuss any estate tax issues faced by the trust as well as the sale of any trust assets. Obviously, you'll need help filing an estate tax return. Not so obviously, the sale of trust assets is often attacked sensitive event. You may have control over the timing of the sale and timing the sale to occur during one year were the following year may have benefits for drawbacks to the trust. So, you want to discuss these sales with both your attorney and your CPA.

Assuming you can continue to properly administer the trust you should consider making preliminary distributions during the first year of trust administration. You are not acquired to make culinary distributions. However, there can be tax advantages to doing this (another reason to talk with both your attorney and your CPA) and making a plenary distribution is often a good

way to show the beneficiaries that the ministration of the trust is proceeding, you were serious about conveying the trust assets to them, and gives the beneficiary is a reason to believe your good intentions.

On the first anniversary of your having become trustee or at the time that you're ready to close the trust, whichever comes first, you need to report and accounts to the beneficiaries of the trust. The report and account is a legal pleading that would be prepared for you by your attorney. In the report you'll describe all the significant actions you took during the period of the account. The account itself will list all the assets held in the trust at the time you took over as trustee, the value of all the trust assets, all assets and income received by the trust during the period of the account, all assets and income dispersed and distributed during the period of the account, the assets on hand at the end of the account, and the fair market value of each of the trust assets. The account is like the combined balance sheet and income statement for the trust. Providing the account to the beneficiaries is very important. If you have any concerns as trustee that any of the beneficiaries will have a complaint or concern about what appears in the account than the smartest thing you can do is submit that account to the probate court for approval. By submitting it to the probate court for approval you are giving each of the beneficiaries an opportunity to object to anything and everything that appears in the report and account. If the beneficiaries failed to object then when the court approves your account the beneficiaries are barred from later objecting your account. In other words, their failure to object means they can't sue you a later time. If you believe none of the beneficiaries will have any questions or concerns about your report account and there is no need to go to court. You still have to provide them with the report and account and the report must tell the beneficiaries that they have three years from the time they receive that accounts to file an objection if they wish to do so. This means that when you

don't go to court there is a three-year period after the report is provided to the beneficiaries in which they can sue you. For that reason alone you must be very confident that everybody is satisfied with your work if you are going to decline to petition the probate court to approve your account.

Your duties as trustee include filing income tax returns for the trust. These income tax returns have to be filed each year the trust is administered. You'll have your CPA prepare the trust income tax returns for you. The beneficiaries are not entitled to copies of the trust income tax return. They are entitled to, and you have to timely provide them with, Form K-1. This tax reporting form will also be prepared for you by your CPA. Form K-1 is issued to each of the beneficiaries and tells them what part of the trust income and expenses are attributable to their share. The beneficiaries will use this information to prepare their personal income tax returns. So, it's important they receive these forms in a timely manner.

Concluding Trust Administration

Your final task as trustee is to distribute the trust assets to the beneficiaries. If the trust is simply distributing cash to beneficiaries than you write checks to each of the beneficiaries. If real estate is being distributed to beneficiaries than you'll need to recorded tea for each parcel of real estate conveying that real estate from the trust to the beneficiaries. If the trust is distributing the contents of the brokerage account then you last the beneficiaries to establish their own accounts so you can do what's known as trustee to trustee transfer. When you distribute the property to the trustees you should send with those distributions a closing letter explaining what it is that's happening and also a receipt for each beneficiary to sign acknowledging what they perceive. You want to retain those receipts along with other records of trust administration at least as long as

the statute of limitations remains open. Quite frankly, if you have the room in your home or storage facility to keep those records then you may want to keep them even longer.

What do we do for you in probate?

The first thing we'll do for you is your attorney is lodge the will of the probate court. We'll discuss with you the assets of the estate to find out if there's any immediate action that needs to be taken or if we could proceed with your case in the normal time frames for probate. If you don't have a relationship with the other professionals you'll need to complete the probate and will refer you to those professionals. Next, we will draft the pleadings to file with the court to have the decedent's will admitted to probate. If there is no will then we will draft pleadings to have the court appoint you as administrator of the estate and proceed based on an intestate estate. After your pleadings are filed with the court, the clerk of the court will set a first hearing date on your petition for probate. We will appear at that hearing. You do not have to appear at the hearing. Once the petition is approved we will collect your letters testamentary or letters of administration.

Now that the probate estate is opened, we will draft an inventory appraisal for submission to the probate referee and give notice to the Department of Health Care Services that the decedent has died.. When the probate referee completes the inventory appraisal and returns it to our office we will file the inventory appraisal with the probate court. If anybody has requested special notice and will send a copy of the inventory appraisal to that person. If there were any known creditors then we will send out notices to creditors as part of the creditors claim procedure. If any creditors claims are submitted and will discuss with you whether those claims should be approved, denied, or approved in part and denied in part. We'll then draft the appropriate response and send that out to the creditor. If any real estate needs to be sold during

the course of the probate and we will advise you on which procedure is best to use given your particular situation.

When it's time to close the estate, we will draft your petition for the first and final account. The petition for the first and final account will be filed with the court and when we receive a hearing date we will send a notice of hearing and a copy of the petition and account to the heirs and beneficiaries. We will attend the hearing on that petition for the first and final account. When the account is approved we will devise you what check should be issued, draft any deeds that are necessary to convey real estate to the proper beneficiaries, and advise you how to perform any in-kind distributions that have been ordered. We will also draft receipts for you for each beneficiary to sign when they receive their inheritance. After everyone has been paid, we will draft an ex parte Petition to discharge the probate estate.

What We Do For You in Trust Administration

In trust administration some clients think it's fair to say that what we do is prevent the beneficiaries from badgering them to death. We do the following for you during trust administration:

- we will issue notice to the beneficiaries and heirs that trust administration has begun
- issue a notice that contains all the information required by law in the format required by law
- will discuss with you your fiduciary duties
- Explain to you how it is that you are going to gather the assets in the name of the trust

- draft an affidavit of death of the trustee to re-title real estate into your name as the successor trustee
- will discuss liquidity issues with you
- give notice to Department of Health Care Services
- advise you on how to carry out your fiduciary duties as trustee
- we will give you referrals to make sure that you have competent professionals (e.g. CPA or financial advisor) to help you successfully complete the trust administration process if you don't already have appropriate professionals with whom you work
- will be in communication with your financial advisor concerning investment decisions
- will be in contact with your CPA to make sure the tax reporting is done properly and timely
- we will summarize the trust for you to make sure that you understand what the trust really says and what you have to do to carry out the objectives of the trust
- inform the beneficiaries what you believe the objectives to be and how you intend to carry them out so the beneficiaries understand you're in charge, that you'll be making the decisions and that you are working at a businesslike pace to conduct the administration of the trust
- work with you and your financial advisor to create an investment policy statement
- if you decide to invoke the creditors claim procedure then we will make sure you file the required notice to invoke the creditors claim process

- if any creditors file a claim then we will counsel you on how to respond to those claims address those claims
- We will prepare a report and account for you as the trustee for submission to the beneficiaries and/or the court.

Probate And Trust Administration Fees

Probate fees in California are set by law. For probate cases, but not trust administration cases, attorneys do not have the ability to set their own fees. California law says that both the executor and the attorney for the executor are to be paid the same amount for their ordinary services on behalf of the probate estate. The statutory fee schedule for probate is:

4% of the first $100,000

3% of the next 100,00

2% of the next 800,000

1% of the next $9,000,000

If we have a probate estate that contains a $300,000 home and $200,000 in cash then the estate would pay 4% of the first 100,000 or $4000, 3% percent of the next 100,000 or $3,000, 2% of the next 800,000 or $6,000 for a total of $13,000 in ordinary fees. The executor and the executor's attorneys or each paid $13,000 for total fees of $26,000 for ordinary services.

For any extraordinary services, which in probate usually occur either because there is litigation on behalf of the estate or because real estate by the probate estate, the executor's attorney will be paid on an hourly basis. The attorney has to petition the court for the payment of those fees. Sometimes those fees are quite modest. Sometimes those fees are quite large. In either event, the executor's attorney's extraordinary fees must be approved by the probate court.

Fees in trust administration are usually a fraction of what they are for the probate of the same sized estate. Trustees usually get a lot less than an executor does. Trustees are typically paid on an hourly basis. That's why we advise our clients to keep a log of their work. The attorney for the trustee is typically paid on either an hourly basis or as a percentage of the value of the trust estate. When a law firm is being paid on an hourly basis you can expect to pay the highest hourly rate for the supervising attorney, a lower rate for an associate attorney, and the lowest hourly rate for paralegal services.

Many trustees prefer to know in advance exactly what trust administration will cost. For those trustees of flat fee agreement works best. Under a flat fee retainer agreement the trustee agrees to pay the law firm a set amount of money, usually based on the size of the estate, for all work by the law firm during the course of trusted administration. The trustee gets certainty in the fee charged in the law firm bears the risk about the amount of work involved.

In practice you will find the cost of trust administration is generally one quarter to one third the cost of handling the same sized probate estate.

How To Choose Your Attorney

Attorneys who advertise they take probate cases and the few who advertise for trust administration cases often times only dabble in these practice areas. For many attorneys these areas are a sideline to their main practice. These attorneys mistakenly believe probate and trust administration cases are easy money. They don't understand the complexity that goes into properly representing their clients in these cases. Many of these attorneys have no real intention of handling the cases themselves or even meaningfully supervising them. They simply farm out the work to a paralegal, a legal secretary or some other lawyer in their office who doesn't really understand what is involved in properly probating an estate or administering a trust.

There are good, experienced attorneys in this field, but it's very difficult for a consumer to separate the good from the bad. You need to ask any attorney you interview what part of their practice they devote to probate and trust administration. Find out if they draft estate plans. Ask them about their experience with will and trust litigation. Ask them about what's been discussed in this book. If they seem unfamiliar with the concepts that you now understand or they dismiss them as unnecessary then it's time to find another attorney. Ask the attorney you are interviewing what they do to educate their clients about how to properly probate an estate or administer a trust. Find out if they have written a book or created a DVD on these topics. You will be relying on your attorney for good information and guidance throughout your probate or trust administration. You need an attorney who provides information and guidance to you from the very beginning of your case.

Beware The Attorney Whose Name Appears In The Will Or Trust

Prospective clients sometimes approach us with a will or trust that contains the name of the attorney who drafted the will or trust. The attorney took the liberty of naming himself or herself as the executor of the will or successor trustee of the trust. The prospective client acts, "do I have to use this attorney?" The answer is no.

California law presumes that when attorney who drafted a will or trust is named in the documents as the executor or successor trustee that the attorney was named as the executor or successor trustee for an improper reason. You are not required to use the attorney who drafted the will or the trust to perform a probate of the will or administration of the trust. Usually a written request to the drafting attorney asking him or her to decline to serve is enough to get them off your case. If for some reason the drafting attorney will not agree to get off the case in a petition to the court for their removal is likely to be successful.

It's important you have the will work trust reviewed by another attorney to correctly determine whether the drafting attorney is named as an executor or successor trustee or has been nominated to serve in some other capacity. If you have a will, then it is extremely likely the drafting attorney has been named as the executor if his or her name appears in the will. Trust often times present a different situation. The attorney who drafted the trust may be nominated to serve as trust protector or may be given the power to nominate successor trustees. If so, there is nothing obviously improper about that. Still, you would be wise to have the trust reviewed to ensure there is nothing improper about the nomination.

Cases We Don't Accept

Our clients get personal attention because we are selective about the cases we take. We decline cases each year because they are outside are practice areas or to make sure that we can devote our attention to our current clients. We won't pursue a probate unless there is enough value in the assets to make it worthwhile to our client to go through probate.

We don't represent every trustee that comes to us because we are not interested in representing trustees who are not willing to spend the time talking with us so we can understand their case. We are not interested in representing trustees who want to at least consider our advice. We won't work with a trustee who is unwilling to work with the other professionals that are needed to properly administer a trust.

We found that the only way to provide personal service is to decline those cases that do not meet our criteria. Our practice focuses on legitimate probate cases and trust administration cases with cooperative trustees. Therefore, we generally do not accept the following types of cases. For probate we will not accept an estate that has less than $150,000 in assets. For trust administration we will not accept cases with an uncluttered of trustee.

We are reluctant, but not unwilling, to take a case where clients started with another attorney. In our experience, people who want to change attorneys are often difficult to deal with and often cannot be satisfied. However, we recognize that some people are looking to change attorneys because they've had trouble communicating with their current attorney or feel that they have not been getting answers to their questions from their current attorney. If you can convince us that this is your situation then we will consider taking your case.

What Can You Do From Here?

Obviously by requesting this book you've begun your search for an experienced probate and trust administration attorney. Remember, the legal process does take time. You should weigh your options for counsel carefully but you should begin your investigation immediately.

Our Cases

Here is a sampling of some probate and trust administration cases we've been involved in, and the ways in which we've been able to help executors, administrators and trustees. We changed the names of our clients in the cases that follow.

<u>Betty keeps her home</u>

Our client Betty owned her home as a tenant in common with her mother when her mother died. Betty's sister believed that Betty had done something underhanded to get half ownership of the home. Betty's mother had gone to an attorney before her death to have a will drawn up. Unfortunately, the attorney never had Betty's mother sign the will. Betty had no choice but to probate her mother's estate. Believing she had to use her mother's attorney, that he retains him to probate her mother's estate.

Betty's first attorney did a pretty poor job of representing Betty and protecting her from her sister's threats. Betty's sister kept making allegations that Betty had done something wrong ,

while their mother was to live. Betty's sister finally hired an attorney who began sending discover requests to Betty's first attorney. Rather than fight these discovery requests, her first attorney would Simply pass them on to Betty and told her to respond to each and every one of them.

Betty came to us in tears. She was beside herself. She'd cared for her mother. She helped her mother and she watched her mother died from a terrible form of cancer. She couldn't believe that she was being accused of doing anything wrong and she was angry that her sister was attempting to invade her privacy.

After reviewing Betty's file we could see two important things. The first was that her sister's attorney had never filed the proper pleadings to allow him to ask all the questions that he had in discovery. The second thing we saw was that Betty's first attorney had simply made a mess of the inventory and appraisal that he had Betty sign and file with the court. What was happening to her was simply wrong so we got to work on Betty's behalf.

We immediately corrected the inventory and appraisal and had the corrected inventory appraisal filed with the court. The next thing we did was tell her sister's attorney to get lost, that Betty would not be responding to any discovery requests of any kind. Her sister's attorney responded by seeking to have Betty removed as administrator of the estate. He also sought to have the estate pay his fees. This is not something that Betty ever anticipated in the course of what should have been a simple probate. We objected to the petition for removal and the petition to have the estate pay Betty's sister's attorneys fees. We won. Both petitions were denied. The look on the other attorney's face was priceless. He had asked the court for a five figure payday. The court said no and he looked like a man who had just seen a ghost. Shortly afterward her sister's attorney simply got off the case.

We were then able to close the probate estate. That he kept ownership of the house that she shared with her mother, her sister got an equal share of the probate estate and Betty simply never had to deal with her sister again.

Harry learns no good deed goes unpunished

Our client Harry learned the hard way that no good deed goes unpunished. Harry came to us with a rather interesting situation. Harry was a genuinely good guy who looked out for his neighbor in the later years of his life. Harry agreed to act as the trustee of his neighbor's trust after she died. Harry didn't inherit anything under the trust nor did he want anything.

Harry was concerned because one of his neighbor's sons was the domineering, insolent type who would make all of his brothers and sisters lives miserable and would, if he could, take all of his mother's property for himself. Harry had convinced his neighbor to make sure she had a trust drafted before she passed away so that her money would go to her disabled son who really needed it the most.

Harry came to us after he had been acting as trustee for over a year. Harry came in to our office, because his neighbor's son, Nick had accused him of stealing from the trust and mismanaging the trust assets. Harry didn't know what to do. We had Harry collect all the financial records from the trust and immediately petitioned the court to approve Harry's first account and report as trustee. Nick hired an attorney to oppose the petition we had filed. . Nick filed an objection and asked to have Harry removed as trustee. Nick's attorney was unable to point to anything Harry had done as trustee showing he did anything wrong with the money in the trust.

What we noted how fortunate Harry was that makes attorney didn't notice Harry had done an absolutely lousy job of investing the trust assets. It's not that Harry lost any money. He

didn’t. It's that Harry didn’t make any money for the trust, and he should have. We went forward with the petition for the account and report and had it granted by the court. Harry didn’t want to spend the rest of his life trying to defend himself against an absolutely ungrateful child of his neighbor. So, in order to satisfy this ungrateful child and to relieve himself of any further problems, Harry agreed to step aside as trustee and have a local bank be appointed as the new trustee of the trust. Problem solved for Harry and the beneficiary would be protected by a professional trustee.

Sample Trustee Activity Log

	Date	Task(s) Performed	Hours Spent On Task
1.			
2.			
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Glossary of probate and trust administration terms

Administrator - the legal representative of a probate estate when the decedent died without a will.

Beneficiary - the person named in a will or trust to receive some or all of the assets held by the probate estate or trust estate.

Decedent - the person who died.

Executor - the legal representative of a probate estate who was nominated in the decedent's will.

Fiduciary Duty - the legal obligation of an executor, administrator, or trustee to act in the best interest of the beneficiaries.

Heir - a person related by blood to the decedent.

Intestate - the situation that occurs when a person dies without a will or trust.

Settlor - the person who creates and funds a trust.

Trust - a document that creates a separate legal entity holding the settlor’s assets.

Trust Contest - a lawsuit to determine the validity of the trust or trust amendment.

Trustee - the legal representative of the trust. The trustee holds legal title to the trust assets.

Will - a document effective upon the death of the decedent which specifies who is to receive the decedent's property and in what amounts.

Will Contest - a lawsuit to determine the politically of the will or codicil to a will.