

## Trust Administration Basics

### 1. Parties to a Trust

1.1 Settlor: the person that establishes the trust. The settlor goes by several other names: donor, grantor, trustor, and trust-maker.

1.2 Trustee: the person, bank, or entity that holds legal title to the assets of the trust and administers the trust assets in accordance with the trust.

1.3 Beneficiary: the person(s) or entity(s) for whom the trust is created and for whose benefit the trust assets are being held. The trustee has a fiduciary duty to manage the trust assets in the best interests of beneficiaries.

1.4 Multiple parties. Trusts can have multiple beneficiaries, including lifetime, as well as remainder beneficiaries. There can be more than one settlor and/or trustee. The settlor, trustee, and/or beneficiary can be the same person.

### 2. Creation of the Trust

2.1 A written document known as the trust agreement or trust instrument governs the terms of the trust. No particular or specific words are required in the trust agreement to create a trust. To create a trust, the following elements should exist:

(a) **Settlor.** The settlor is generally any individual and must have the mental capacity to form a contract.

(b) **Delivery.** The trust property must be transferred to the trustee for delivery to be valid. This means the trustee must take legal title to the assets. A trust has no effect on assets that are not properly transferred to the trust. A pour-over will is effective to capture any assets not properly transferred to the trust.

(c) **Property.** Trust property can be either real or personal property.

(1) **Real Property:** must be conveyed by deed or other conveyance.

(2) **Personal Property:** can be transferred to a trustee by a written assignment. Titled property, such as vehicles, stocks, and bank

accounts need to be formally transferred to the trust.

(d) Trustee. The Trust should name a trustee.

(e) Beneficiaries. A trust must have definite and identifiable beneficiaries.

(f) Valid Execution. A trust document must be properly executed.

**3. Successor Trustee Appointment.** A trustee has authority to act as trustee as soon as he/she has complied with the terms of the trust document regarding appointment. Generally, to become a trustee, a person must:

3.1 Sign a Certificate of Trust which states that they acting trustee and affirm that will follow the terms of the trust instrument.

3.2 Attach to the Certificate of Trust a copy of: (a) the predecessor's death certificate; (b) the predecessor's resignation; or (c) declaration from a physician stating that the predecessor is incapacitated to the point that he/she can longer act as trustee.

3.3 Record the Certificate of Incumbency in the county in which the trust is considered located and in each county in which real property owned by the trust is located.

3.4 Although not required, the probate court can confirm the appointment of a trustee when there is a dispute regarding the trustee's appointment or qualifications, or if there is a challenge from beneficiaries.

**4. Collection and Management of Assets:** A trustee's primary duties are to:

4.1 Take possession of trust assets;

4.2 Manage and properly invest trust assets;

4.3 Direct the payment of debts, claims, taxes, and other expenses; and

4.4 Direct distributions to the beneficiaries as provided in the trust instrument.

**5. Administration of Trust:**

5.1 Notice to Creditors. When the trustee's appointment is the result of the settlor's death, a Notice to Creditors should be executed and published. The notice should be mailed to known creditors.

5.2 Inventory. The trustee must determine the trust's assets and prepare an inventory. The inventory must include the net value of each item. An appraisal by

independent appraiser should be obtained for real estate, valuable jewelry, and other special collections.

5.3 **Protecting Assets: Limiting Liability.** The trustee has a duty to preserve and protect the trust assets. Accounts at financial institutions belonging to the trust should be held in a federally-insured trust account. Trust assets should be adequately insured against damage, theft, loss, and personal injury claims.

5.4 **Investments:** Unless proscribed by the trust instrument, a trustee can invest the trust assets. Speculative investments are not permitted, and due diligence must always be a key element in the trustee's selection of investments. If a trust is not going to continue and requires immediate distribution, it is generally best to liquidate the investments and prepare for distribution (unless the beneficiaries desire to receive the investments as par of their share instead of cash).

5.5 **Trustee's Accounts.** Until a trust is fully distributed, a trustee should prepare an annual account and provide it to each beneficiary.

5.6 **Distribution:** The ultimate goal is to distribute the trust assets to the beneficiaries pursuant to the terms of the trust. The trust instrument may provide for distributions upon the settlor's death, or for periodic distributions until a particular date or particular event.

(a) Distributions made upon the settlor's death can be made as soon as the trustee determines that there are sufficient assets to meet the trust's obligation to other beneficiaries and the debts of the trust.

(b) Some trusts allow for payments "for" a beneficiary, as well as "to" a beneficiary. This means that a trustee can pay a beneficiary's bills directly, buy assets for a beneficiary's use, and/or provide services to a beneficiary without directly making payments to the beneficiary.

6. **Anticipating Disputes:** If a trustee anticipates a challenge from beneficiaries, or if some trust provisions are ambiguous requiring court interpretation, a trustee can use the following methods to reduce the potential for controversy:

6.1 A trustee may obtain a written consent from affected beneficiaries. This option may not work when there are minor or unborn beneficiaries.

6.2 A trustee may provide each beneficiary of the trust a formal Notice of Proposed Action. If no beneficiary objects to the proposed action within a certain amount of time, the trustee may proceed without liability as if each beneficiary consented to the proposed action. If a beneficiary objects, the trustee can either not proceed with the proposed action, or petition the court for approval or instruction.

6.3 If either option is not available or advisable, a trustee may seek court approval for an action. This option provides the beneficiaries an opportunity to voice their concerns for the judge to consider when issuing a ruling.

***Note: This memo is made available by Lee Kiefer & Park, LLP for educational purposes only as well as to provide a general understanding of the law, not to provide specific legal advice. Please contact an attorney to obtain advice with respect to any particular issue or problem.***