

Guide for Successor Trustees

How to navigate the estate settlement process

Being appointed as a successor trustee for a deceased individual's trust means taking on a great responsibility. And like many individuals in this position, this may be your first experience. This brief guide will help you understand what to expect and what you may be required to do.

An individual may include a trust as part of his or her estate plan for any number of reasons—one of which may be that it allows assets to be transferred to beneficiaries outside of the probate process. If you have been named successor trustee for a trust established by a now-deceased individual, you need to be aware of the following:

- A trustee has a fiduciary duty to beneficiaries to administer the trust according to the terms of the document.
- You should find an estate planning attorney for guidance on how to administer the trust and to determine your duties as trustee.
- If the deceased's Social Security number was the trust's tax identification number (TIN), you will need to obtain a new TIN. This should be obtained as soon as possible. This is a simple task your attorney or tax advisor can complete. You can apply for a TIN for the estate using IRS Form SS-4 or applying online at [irs.gov](https://www.irs.gov) to expedite the process.
- If you are the successor trustee of a revocable trust, the trust usually becomes irrevocable upon the death of the trust's grantor. The trust has special terms that apply on the grantor's death that require trust property to be distributed either outright to beneficiaries or to new trusts (credit shelter trust, marital trust, trusts for children, etc.) for the beneficiaries. These new trusts' terms are included in the original trust agreement. Each of these new trusts will need TINs when they are established. The attorney and tax advisors can offer guidance regarding which assets would be most appropriate to fund each trust and whether certain assets should be sold.
- Unless you are also the personal representative (executor), you do not have authority over probate assets, which are assets the deceased owned solely in his or her name. However, under the trust's terms, you may have a duty to work closely with the personal representative in paying the bills and in other matters regarding settling the estate. Also, probate assets may

eventually “pour over” (transfer) into the trust. Similarly, a trustee does not have formal authority over assets that will pass by beneficiary designation (unless the trust is the named beneficiary). Nevertheless, as a courtesy, fiduciaries sometimes do help with the practical aspects of distributing assets outside of the trust itself.

- You’ll need to uncover trust assets:
 - Work with the personal representative and the person closest to the deceased to obtain information. You can find a great deal of information by checking the deceased’s mail, reviewing checkbook registers and prior tax returns, going through desk drawers and files of the deceased, and examining the contents of his or her safe deposit box. The law varies between states and between financial institutions with respect to who may be allowed access to a safe deposit box and under what circumstances. If you have difficulty, notify your attorney.
 - Create a contact list of people at various institutions with whom you are working. Get each person’s contact number and direct extension, if available. You will find that it will be helpful to ask for the same individual each time you call.
 - Notify the personal representative of probate assets that you run across.
- Some states require notice to beneficiaries that they are trust beneficiaries. Consult your attorney for guidance.
- The attorney will guide you on how to administer the trust and how to distribute the assets. The trust agreement will tell you how and when income and principal should be distributed to beneficiaries. You will also want to work with the attorney and tax advisor to obtain detailed advice on the tax aspects of administering the trust.
- If a trust checking account has not been opened, you will need to do so or obtain checkwriting features on existing bank or brokerage accounts. Life insurance proceeds and other checks paid to the trust can be deposited into this account. If there are probate assets but they are insufficient or inappropriate to pay the deceased’s bills, the bills may need to be paid from the trust checking account. Also, certain cash bequests and other payments to beneficiaries may be made from this account.
- Before assets are distributed from the trust (either to new trusts or outright to beneficiaries), you will want to determine an appropriate amount to hold as a cash reserve to pay expenses, fees, and taxes. Once the assets are distributed to beneficiaries, it may be difficult to get assets back to pay these items.
- An income tax return will need to be filed for the trust each year until it terminates. In some cases, it may be possible to combine reporting for the trust and the probate estate in one tax return. Your tax advisor can assist you in determining if this is appropriate for your situation.

- Legally, the personal representative has the duty to file the federal/state estate tax return; however, you will need to cooperate with the personal representative to ensure that this is done. Make sure you discuss estate tax issues with your attorney.
 - Appraisals may be needed to determine values for estate tax purposes.
 - You’ll need to work with the personal representative to determine if the deceased has any unused exclusion amount left that could be transferred to a surviving spouse. Talk to your tax advisor about whether it would be a good idea to file an estate tax return to make a “portability election” that will increase the exclusion amount available to the surviving spouse.
 - In general, assets held in the deceased’s revocable trust are deemed to be owned by the deceased, and therefore, such assets get a cost basis equal to the date-of-death value and are deemed to be held long-term regardless of when the deceased acquired them.

If you are the trustee of a trust that is not the deceased’s revocable trust, these assets may not be entitled to a new basis. (For example, a credit shelter trust established for the deceased by his or her spouse does not get a new basis upon the second spouse’s death.) Consult your attorney regarding whether the assets receive a new basis.
 - If the estate is large enough to be assessed an estate tax, ask your attorney and/or tax advisor about the six-month alternate-valuation date and whether it is applicable to your situation. It may result in a lower estate tax if the value of the estate at six months after the date of death is less than its value on the date of death. Keep in mind that probate assets are included in the gross estate value.
- Talk with your attorney about requirements in the trust agreement regarding the investment of trust assets. Certain investments may be more appropriate for some trusts/beneficiaries than others.
- Consider consolidating multiple trust accounts for the same trust for ease of management.

Dealing with different types of assets/accounts

Assets with the trust as beneficiary. You will need to show the institution that holds the assets that you are the new trustee. Typically, this requires a copy of the death certificate and a Trustee Certification of Investment Powers. Other documents that may be required are Associated Person Forms, Affidavits of Domicile, and Inheritance Tax Waivers, if applicable to your state. You will also have to supply the institution with the trust’s TIN. Some institutions may ask for the entire trust document. A document drafted by your attorney certifying the existence of the trust and signed by you as trustee or a Trustee Certification of Investment Powers will usually suffice.

TOD/POD accounts

- If the trust is the transfer-on-death (TOD) or pay-on-death (POD) beneficiary, you should notify the institution where the account is held of the account owner's death. The institution will provide documentation to complete, which should be sent to the institution along with a death certificate.
- If the trust is not named as the TOD/POD beneficiary, it is not the trustee's responsibility to transfer these assets. If you wish, you may notify the TOD/POD beneficiary of the designation or supply the institution with the beneficiary's contact information.

Assets with beneficiary designations

• **Life insurance**

- If the trust is the beneficiary of the policy, you will have to file a claim. The life insurance company will send a check made payable to you as trustee, which can then be deposited into the trust's checking account.
- If the trust is not named as the beneficiary, it is not the trustee's responsibility to transfer these assets. If you wish, you may notify the beneficiary of the designation or supply the institution where the account is held of the beneficiary's contact information. The insurance company will send the claim form to the beneficiary.

- **Annuities and qualified retirement assets.** For annuities and retirement assets, such as 401(k) plans and IRAs, notify the institution where the assets are held as of the deceased's death and find out what documents they require. There are special IRS tax rules that govern how assets are to be paid from such accounts. Contact your attorney to evaluate the available choices and ensure you are complying with tax requirements.

- **Take care when dealing with required minimum distributions.** If the deceased was older than age 72, notify your attorney to ensure that any required minimum distributions (RMDs) from qualified retirement plans and traditional IRAs for the year of death and subsequent years are handled properly. If an RMD is not distributed as the law requires, a steep penalty could be assessed.

Assets held at financial institutions in the trust's name. Again, you will need to show the institution that you are now the trustee by completing a Trustee Certification of Investment Powers. You will also need to provide the TIN and instructions regarding how to retitle the account and whom to pay the assets to when the time comes to distribute them. Other documents you may be required to fill out are the Affidavit of Domicile and Inheritance Tax Waiver.

A new trust account may need to be established for tax reporting purposes. In general, two federal income tax returns will need to be filed for revocable trusts to reflect trust income in the year in which the deceased died. (Check with your tax advisor on state filing requirements as well.) If a new account is established after the deceased's death, a 1099 will be issued for the new account in addition to the original trust account. This is known as split tax reporting and will aid in the preparation of tax returns.

Personal residence. If the trust assets include the deceased's personal residence:

- Check the trust document for specific directions.
- Determine who has keys.
- Change the locks, if appropriate.
- Arrange for continuation of utilities.
- Maintain the property.
- Maintain homeowners insurance.
- Pay real estate taxes.
- Locate the deed, mortgage, and loan information.
- Get an appraisal, if necessary.

Other real estate. If the trust owns real estate other than the personal residence:

- Check the trust document for specific directions.
- If the trust leaves no specific direction, decide how to dispose of the real estate. Questions that need to be addressed include:
 - Does diversification, needs of the beneficiaries, or need for liquidity suggest a sale?
 - Is it practical for the beneficiaries to own the property together? Are they interested in owning the property? Does one beneficiary wish to own the property?
- Other issues you may need to deal with include:
 - Who is the property manager? Should a professional be hired/engaged?
 - Are there leases to the property? If so, how should they be handled? Talk to your attorney about how lease terms affect what could/should be done.

Closely held businesses, partnerships, and other business interests. These assets are complex, and the after-death management of such assets is often subject to agreements made between co-owners. Your attorney and/or tax advisor can help you deal with these assets. Some steps to take are:

- Check the trust agreement for specific direction regarding what to do with the business interest.
- Notify other business partners of the death.
- Locate stock certificates and other evidence of ownership.
- Locate the buy-sell agreement, if any, associated with the business interest.
- Determine if an insurance policy was obtained on the life of the deceased.
- Find the organizational documents for the business, such as the articles of incorporation, bylaws, operating agreement, or partnership agreement.
- Locate financial statements.

- Address questions such as:
 - If the business was solely owned by the deceased, who should continue the business or is it to be sold?
 - Who has voting control/voting shares? Who is in charge of operations?
 - Is the short-term cash flow sufficient for operations?
 - Is an appraisal needed?
 - Are there outstanding business loans/personal guarantees?
 - Are there business leases? What rights/obligations does the estate have under the lease?

Digital assets and accounts

Gather information about digital assets and accounts (for example, online accounts, social media accounts, email, domain names, and in some cases, online businesses or other activities that produced income). Secure devices such as computers, laptops, storage drives, and phones that may hold important (and possibly sensitive) information. If the decedent left a list of usernames and passwords, those should also be secured.

Laws governing these digital assets are developing and changing, so executors or trustees should work closely with an experienced attorney to determine whether, and how, to properly access digital information and accounts. It's important to understand that federal laws regulating computer security and privacy are very strict. In most cases, it probably would not be permitted for a fiduciary to transact business or send communications if he or she is signed on as the deceased user. It may be okay for a fiduciary to monitor incoming communications, but even that is unclear due to inconsistencies between state and federal laws. Generally, a fiduciary should establish his or her own authorized access through the service provider. If you have any questions about what is appropriate, ask your attorney for help.

Other issues to consider

If there are minor children, you should work with the guardian to determine the children's needs and distribute trust income or assets accordingly while following the trust agreement's terms.

If the deceased had a special needs child:

- If applicable, notify the trustee of any trust for the benefit of the special needs child of the death.
- Be careful making any distributions directly to a special needs child; consult an attorney. A special needs trust may need to be established.
- The court may need to appoint a guardian or conservator for an adult special needs child if he or she does not have legal capacity to make decisions.

Questions that may need to be addressed include:

- What services, help, or support did the deceased parent provide to the child?
- Is there an alternate caregiver who can take on these roles?

Finding answers to these questions may not be part of your duties as trustee but are practical issues that surviving family members need to think about.

Consult your tax advisor and estate planning attorney

This information is designed to provide general information regarding the estate settlement process, but it is not exhaustive. We encourage you to work closely with your tax advisor and estate planning attorney during this difficult time.

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