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YOUR RIGHTS AS A TRUST BENEFICIARY

(Estate Planning Advisory No. 8)

When a relative holding a trust dies and you are informed that you are a named beneficiary, a myriad of questions arise. Typically, the first question is to wonder how much on money or property you will receive when the trust assets are distributed. Once you have an idea of the value of the trust assets and what your share is expected to be, a number of other questions arise with regard to your rights as a beneficiary.

This Advisory will attempt to address some of those questions and help you understand what your options are if the trustee fails properly to keep you advised on the status of the trust or to make the required distributions provided by the trust. This Advisory is neither exhaustive nor tailored to your specific situation. You should discuss your personal situation with us or with your own attorney. Our representation is only undertaken through a written engagement letter and not by the mere distribution of this Advisory.

Privacy Benefits of a Trust. One of the main advantages of creating a trust is that it is a private document and is not required to be filed with a local court after the death of its creator (the settlor), as is the typical requirement when a person with a will dies. Many of you may have created a trust -- not only to avoid the probate process and fees -- but also to prevent an accounting of your lifetime earnings and assets or the identity of your beneficiaries from being made public. After all, our financial standing and monies or debts are facts that, typically, we want to keep private from disclosure!

While privacy rights are considered a great benefit in creating a trust, if you are the trust beneficiary, this can actually be detrimental if you are having a problem obtaining information about the trust operation or assets. With a will, a beneficiary can go down to the office of the local court clerk and review the court probate file and obtain copies, just like any other public citizen has the right to do. With a trust, however, a beneficiary must rely on the trustee to make disclosures about the activities of the trust administration. This process can be delayed for a time after the settlor's death, perhaps while a successor trustee is trying to understand their responsibilities or ascertain the extent of their duties. If you don't have a good relationship with a successor trustee, there may be other reasons influencing how quickly you receive a response to inquiries.

Many people who are named as a successor trustee will immediately seek the assistance of an estate and trust attorney to guide them in understanding their role as trustee and in fulfilling their duty

Buynak, Fauver, Archbald & Spray, LLP

820 State Street, 4th Floor | Santa Barbara, California 93101 | (805) 966-7000 tel | www.BFASlaw.com
433 Alisal Road, Suite C | Solvang, California 93464 | (805) 688-8090 tel



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to beneficiaries. For others, confusion or grief may result in a delay to obtain procedural knowledge, especially if a close family member is named successor trustee.

If you are a beneficiary and find yourself waiting anxiously for months to hear from the trustee about the status of the trust, what can you do if you are not being kept informed? You may also wonder about your options if the trustee does not make payments that you believe you are entitled to receive. A trustee owes numerous duties to trust beneficiaries, as detailed below.

Trustee's Duties to Beneficiaries. A trustee has a myriad of obligations to trust beneficiaries, including:

1. Duty to Provide Copy of Trust Document

California Probate Code Section 16061.7 requires a trustee to send notice to trust beneficiaries when a revocable trust becomes irrevocable due to the settlor's death as provided by specific trust terms, or when a new trustee has taken over. This notice must be sent within 60 days after the settlor's death or at the time a new trustee takes charge. The notice must include information regarding how a beneficiary may contact the trustee to obtain a copy of the trust. A trustee who fails to serve notice is responsible for all damages, attorney's fees and costs caused by such failure unless it can be shown that the trustee has made a diligent effort to comply with the requirement.

2. Deadline on Date to Contest Terms of a Trust

A beneficiary has only 60 days from the date the trustee mails a copy of the trust to bring an action contesting any of its terms and 120 days from the date the trustee mails or personally delivers the notice (mentioned in paragraph number one above). If a beneficiary wants to contest the trust, due to the settlor's diminished capacity or any alleged undue influence on the settlor, time is limited and requires a quick evaluation of the facts.

3. Duty to Keep Beneficiaries Informed

A trustee has a legal duty to keep beneficiaries of a trust informed of the trust and its administration (California Probate Code section 16060). This means a trustee must be responsive to requests for information, as long as the requests are reasonable and not overly burdensome.

4. Duty to Provide an Accounting

A trustee is required to provide to each beneficiary at least an annual accounting listing all the trust's assets and liabilities, its receipts and disbursements and the actions of the trustee (California Probate Code section 16062). A trust may contain language that waives the trustee's requirement to report but, even in this situation, a beneficiary can compel the trustee to report information if it is reasonably likely that a material breach of the trust has occurred. (California Probate Code Section 106064)

5. Duty to Provide Written Report Upon Request

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If a beneficiary has not received a report or accounting on the trust activities, the beneficiary may ask the trustee for that information. A request should be made in writing in order to document the unresponsiveness of the trustee. If the trustee fails to comply with the request, a beneficiary can file a petition pursuant to California Probate Code Section 17200(b)(7) for an order requiring a report or accounting; however, that right is limited to one report or accounting every six months, and may only be brought 60 days after a written request is made.

6. Duty to Safeguard Trust Property

A trustee has a duty to take reasonable steps to take and keep control of trust property and to preserve it for the stated trust purposes.

7. Duty to be Loyal, Impartial and Fair to Beneficiaries

California Probate Code Sections 16002 and 16003 require a trustee to administer the trust solely in the interests of the beneficiaries and impose a duty upon the trustee to deal impartially with all beneficiaries in investing and managing the trust property. It is a breach of a trustee's duty if one beneficiary is favored over another, unless the terms of the trust specifically so provide or give a trustee the discretion to make payments to a beneficiary based on their particular needs. Because a trustee may also be a beneficiary, it can be difficult to show impartiality or fairness, but that is subject to court review. A violation can be excused by the informed consent of the beneficiaries and many trusts give trustees power to allocate to themselves discretionary payments, but a trustee may not require a beneficiary to relieve the trustee of any liability, as a condition for making a trust distribution to a beneficiary.

8. Conflicts of Interest

A trustee has a duty not to use or deal with trust property for the trustee's own profit, or take part in a transaction in which the trustee has an interest adverse to the beneficiary.

9. Duty to Invest Trust Assets Prudently

A trustee has a duty to make the trust property productive under the circumstances of the trust and to further its purposes (California Probate Code Section 16007). If the trust provides that a beneficiary is to receive all the income of the trust until the beneficiary's death, the beneficiary can seek court review of the trustee's investment choices so as to produce the greatest income, but also to preserve another beneficiary's right to receive the principal after the income beneficiary's death. This can be a tricky balancing act but a trustee is required to act prudently to manage and invest the assets for all beneficiaries of the trust (under Uniform Principal and Income Act at California Probate Code, beginning at Section 16320). This Act sets out requirements for a trustee in making discretionary decisions

Taking Action Against a Trustee. A beneficiary may file a petition for a court to review the operation of a trust and to address any unfairness that may have occurred. Beneficiaries have certain rights, but if one fails to act quickly, those rights can be lost.

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One of the most common trust disputes between a trustee and a beneficiary arises from the interpretation of the trust terms. A beneficiary may hesitate to file a petition regarding a dispute with a trustee because the “no contest” provisions of a trust may provide that a beneficiary will lose distribution rights if he or she contests the administration of the trust. This requires a close review of the trust provisions, because a petition to clarify interpretation of a trust terms or to address a trustee’s possible breach of fiduciary duty is not considered a contest and will not jeopardize a beneficiary’s rights.

When a beneficiary files a petition with the court regarding interpretation of a trust terms or a breach of a trustee’s actions, the court can form a remedy for that breach. These may include 1) further instruction of the trustee 2) removing the trustee from his or her responsibilities; or 3) requiring personal payment made by the trustee to any beneficiaries for compensation of any losses that might have occurred as a result of the trustee’s action. Frequently, many people choose to decline acting as successor trustee of a trust because of this potential personal liability.

Costs incurred for filing fees and attorney’s fees are initially the responsibility of the beneficiary. However, the petition can ask the court to require the trust or the trustee to personally pay for costs and fees, if the petition is based on a breach of the trustee’s duties. If a petition is found to lack merit, the court may decline to have the trust or the trustee reimburse the beneficiary for the fees, so a beneficiary must be prepared to absorb any costs.

As always, you should be sure that additional legislation has not been enacted or court decisions have been rendered that would change the above advisements. This advisory is neither exhaustive nor is it tailored to your specific situation. If you have questions or concerns, you should discuss your individual situation with us or your own attorney.

Stacie D. Nyborg
Estate Planning and Tax Attorney

This Advisory is one of a series of estate planning and tax advisories prepared by the attorneys at Buynak, Fauver, Archbald & Spray, LLP. Should you have further questions regarding the information provided in this Advisory, please contact the author listed above.

Buynak, Fauver, Archbald & Spray, LLP provides legal services to individuals, business owners and families including for estate and tax planning, long-term legacy and charitable gifting and business exit and wealth preservation strategies.

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