

# New Dimensions in Estate & Trust Planning

*An Article to Benefit Clients & Friends  
of*

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*Trust & Estate Planning ♦ Probate & Estate Administration ♦ Business Formation & Planning*

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## **ROLE OF THE SUCCESSOR TRUSTEE in The Revocable Living Trust**

During our Firm's initial planning conference with clients, this question is often asked, "What is the role of my Back-up (Successor) Trustee upon my disability or death?" This excellent question is answered either during the first (initial) conference or at our Presentation/ Signing Conference.

The Successor Trusteeship begins when you—the Trustmaker—can no longer serve as your own Trustee, either upon your disability or death. Let's examine each event.

### **ROLE OF THE DISABILITY TRUSTEE**

When a Revocable Living Trust (RLT) is established, the Trustmaker will always name in the Trust document an individual(s) (for example, the spouse or other family member) or a corporate Trustee (bank or trust company) to serve as the Back-up Disability Trustee. In our RLT, Article Four contains all the important Trustee instructions and provisions. Upon disability, the Trustmaker has already

determined who the Successor Trustee will be, as well as the parameters of their authority, so decisions can be made privately—without court or guardianship proceedings.

In fact, one of the significant benefits of the Revocable Living Trust over other Estate Planning documents (wills or testamentary trusts) is the importance of this disability protection to Trustmakers and the "Peace of Mind" it brings with it. For instance, not only does the Trust contain important disability or incapacity instructions for the Successor Trustee, the RLT is also interfaced with the Trustmaker's Health Care Power of Attorney and Living Will. In short, the RLT manages and safeguards the Trustmaker's assets while the Medical Health Care documents provide for the Trustmaker's health care decisions. Usually, the Trustee and the agent (for health care) are the same parties, except where the Trustmaker has a corporate trustee serving in the RLT.

More specifically, what is the ROLE of the Successor Disability Trustee? Here is the checklist that we provide to clients, which we ask them to share with their Successor Trustee in case of disability:

1. Carefully read the Trust document (especially Article Four) for specific instructions. Have two physicians write a private letter documenting the Trustmaker's disability or incapacity. One physician should be the Trustmaker's primary care physician, if available.

2. Notify the attorney who prepared the Trust document. He/she should be aware of the disability in case the Trustee or a family member needs to call with questions.

3. With the two physicians' letters, have the attorney prepare an Affidavit of Successor Disability Trustee. Several duplicate originals will be made for the Trustee. The Affidavit will provide the Disability Trustee the authority to exercise the fiduciary powers and control over the disabled Trustmaker's assets.

4. Secure and inventory all property, especially real estate and valuable tangible personal property. Make sure you have the house and car keys, take care of any home maintenance items and keep all insurance coverage in force.

5. Check all property (investments, assets, vehicles, real estate, accounts, etc.) titles to make sure the property is owned by the RLT or, in the case of retirement accounts and in some cases life insurance, has the RLT designated as the beneficiary. If you identify any property (by the real estate deeds, car titles, bank account signature cards, investment account titles, insurance policies, etc.) that is owned by the Trustmaker individually, and not owned in the name of the RLT (or payable on death to the RLT), you should promptly seek legal counsel concerning how to transfer such property to the RLT. Having it outside of the RLT ownership is very likely to cause probate upon the Trustmaker's death. There will be a **Power of Attorney** document in the disabled Trustmaker's estate planning portfolio that will

authorize you or someone else to transfer the property to the RLT.

6. Notify the bank or credit union, Trustmaker's professional advisors and appropriate others that you are now the Trustee for the disabled person. They will want to see a copy of the doctors' letters, Affidavit of Successor Disability Trusteeship or pertinent provisions of the Trust and your personal identification.

7. Transact any necessary business or personal finances for the disabled person. For example, you should apply for any disability benefits, pay insurance premiums, receive and deposit funds, pay bills (including mortgage, taxes and other obligations) and, in general, use the disabled person's assets to take care of him/her until recovery (re-certification by two physicians). Always act with the utmost honesty at all times and document MAJOR decisions and actions. There should be absolutely no commingling of Trust assets with your own assets. Keep a ledger of accounts payable and a copy of all statements and receipts.

8. Collect all income due the disabled Trustmaker. Keep a ledger of income received. Keep all check stubs and letters of explanation.

9. Make assets productive, including the checking account. Review Article Seventeen for the Trustee's administrative and investment powers. Always exercise prudence, reasonable care and skill when investing trust assets. If you lack the requisite skill or experience, use the Trustmaker's professional advisors. If necessary, retain a skilled investment advisor.

### **ROLE OF THE SUCCESSOR DEATH TRUSTEE**

As in the case of disability, the Trustmaker, upon signing his/her RLT, will always name a Successor Death Trustee or co-trustees. This individual, sometimes referred to as a "fiduciary," may be the surviving spouse, family member, close friend, corporate trustee or the combination of these acting as co-trustees. Obviously, like the Disability Trustee,

naming a Death Trustee is an extremely important decision and careful thought and advice should always be sought. Always remember that the effectiveness and efficiency of your Successor Trustee is in direct relationship with having your assets and beneficiaries of life insurance and retirement plans appropriately titled (named) to your Revocable Living Trust. For any assets not in the name of the RLT, the "Pour-Over Will" will allow the title to be changed at death into your RLT through probate.

The following is a checklist we provide to clients to share with their Successor Death Trustee(s) in event of death:

1. Inform the family of your trusteeship and assist them as needed: funeral arrangements, flowers, cemetery marker, announcement in paper, special wishes for memorial service, notifying friends, relatives, employer, professional advisors, etc. Before you begin, make sure you check the Trustmaker's Estate Planning Portfolio (red binder) under these TAB sections for instructions (1) Memorial/Burial and (2) Location Lists (list of key advisors, list of close friends/ relatives, lists of important documents and personal papers).

2. Provide family adequate time for grieving. There is no need to rush into your Trustee duties until the environment has settled. Notify the attorney who prepared the Trust document in case you need to call with questions.

3. Carefully read and understand the Trust document so you will know: (1) who the beneficiaries are; (2) what they are to receive and when; (3) how many years the Trust will be on-going; (4) who, if any, are your co-trustees; and (5) your activities and duties per Trust instructions.

4. Engage an attorney to prepare the Affidavit of Successor Death Trustee for you. An attorney's advice can be very helpful in ensuring that you understand what the Trust provides and your role therein.

5. **PLEASE NOTE: DO NOT** change titles to any of the decedent's assets or make life insurance death claims or rollover decedent's IRA or other pension benefits until you have verified the tax options with a CPA or Estate Tax Planning Attorney. There are important post-death tax planning options (example, disclaimers) available that may be LOST if you act without professional tax advice.

6. Secure and inventory property, especially home, other real estate and valuable tangible personal property. Make sure you have the keys, make arrangements to keep the utilities on, keep all insurance in force, pay the mortgage payments, etc. Start a list of all assets, ownership, beneficiary designations, and determine all debts/liabilities of the deceased.

7. Order at least 12-20 certified Death Certificates. Then, notify the bank or credit union so you can start writing checks. The bank or credit union will want to see a copy of the Death Certificate, your Affidavit of Successor Death Trustee, or pertinent provisions from the Trust reflecting your Trusteeship and your personal identification.

8. Notify the decedent's professional advisors and appropriate others (see List of Advisors in Estate Planning Portfolio) that you are now the Trustee for the deceased Trustmaker. Remind them not to change titles or execute IRA transfers until they receive written instructions from you. Also, you may need to change the home address with the post office.

9. Notify life insurance companies, retirement plans, military affiliations/ associations and any others that will provide a death benefit. Remember, do not file a death benefit claim on the decedent's life insurance, IRA, etc., until you have verified the tax options with a CPA or Estate Tax Planning Attorney. Place death benefit proceeds in an interest bearing account in the name of the Trust until distributed to the beneficiary(s). Keep copies of all forms and correspondence. The Social Security Administration will be notified by the funeral home.

10. Collect all income due the deceased; keep a ledger of income received. Keep all check stubs and letters of explanation. **NEVER** commingle trust/estate assets with your assets.

11. Collect and pay all contractual obligations, bills due, and taxes. Keep a ledger of accounts payable and keep a copy of all statements and all receipts.

12. Make assets productive during the estate/trust administration process. Follow Article Six of your RLT for your Estate Administration procedures. Always exercise prudence, reasonable care and skill when investing Trust assets. If you lack the requisite skills or experience, use the decedent's professional advisors. If necessary, retain a skilled investment advisor.

13. Make sure you keep any co-trustee and Trust beneficiary(s) fully informed from the death of the Trustmaker until the completion of the Trust Administration Process. They are permitted to have a copy of the Trust and supporting documents. Read Article Sixteen for your comprehensive set of instructions regarding general matters and your Trusteeship.

14. Engage a skilled CPA or Estate Planning Attorney for preparation of the decedent's final income tax returns and, if applicable, estate tax return, due nine months from date of death.

15. Begin (within the nine months) the creation and funding of additional sub-trusts within the RLT. For example, there may be Marital and Family Trusts (Articles Eight, Nine and Ten), Common Trust/Elder Parent Trust (Article Eleven), Grandchild Trust (Article

Fourteen), children or other beneficiary(s) Trusts (Article Twelve). Your CPA or Estate Planning Attorney should counsel you on this process since effective estate/income tax saving results can be achieved if done properly.

16. Following the terms of the Trust, distribute the property in this order:

- a. Items set forth on the Memorandum of Tangible Personal Property
- b. Specific Bequests of Cash and Property to individuals or charities (Article Seven)
- c. If spouse survives, retain all assets in the Trust under Article Nine and Ten for estate tax protection
- d. If there is no spouse (or spouse predeceases) and there are minor children, retain assets in Trust under Article Eleven
- e. If there are adult children, adult beneficiary(s) or charities, divide Trust assets into respective Trust shares under terms/conditions of Article Twelve.

## **CLOSING THOUGHTS**

Being selected and then serving as a "Trustee" is one of the most important things you do for a loved one. Indeed, it is a high honor with a lot of responsibility and accountability. With proper help and counsel, you will do a very good job and earn the satisfaction of knowing that you have served the disabled or decedent Trustmaker and the Trust beneficiaries well.

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***This article intended for general information purposes only and does not constitute legal advice. The reader must consult legal counsel to determine how laws apply to their specific situations.***