

What Is A Trust?

When trustee holds title to property for benefit of beneficiary. Settlor creates trust and puts property in the trust. Settlor, trustee, and beneficiary can be different people, but one single person could be settlor, trustee and beneficiary. One person may create trust and put property in it, make himself trustee, and use property for his own benefit. In that case, he would be settlor, trustee and beneficiary simultaneously.

What Is Trustee?

Trustee is person who holds legal title to the property that is in the trust. Trustee's job is to manage property in the trust for the benefit of the beneficiaries in the way the settlor has asked.

What Powers Does Trustee Have?

Trustee has all powers listed in the trust, unless they conflict with California law or unless court order says otherwise. Trustee must collect, preserve and protect trust assets. To do this, trustee can make reasonable repairs, insure property, sell assets, make prudent investments, pay administrative bills and expenses, and make distributions and payments to beneficiaries according to the trust.

What Duties Does Trustee Have?

- Do what the trust document says as long as it is legal;
- Do only things that benefit beneficiaries;
- Do not favor one beneficiary over another;
- Avoid conflicts of interest with beneficiaries;
- Never use trust property or trustee's powers for personal benefit, unless trust authorizes it;
- Keep trust property separate from property owned by anyone else;
- Not delegate to others what they can do themselves (if trustee delegates duties, must supervise);
- Administer and invest trust assets with reasonable care and skill to protect trust and accomplish trust purposes as determined from the trust;
- Diversify investments unless under the circumstances it would not be prudent to do so;
- Keep detailed records, PC §16060—16069;
- Provide accountings to beneficiaries, PC §1060—1064;
- Determine income v. principal when trust requires different distributions PC Code §16320 - 16375.

When Settlor Dies, Trustee Has Other Duties:

- If settlor was acting as trustee of own trust, successor trustee should sign Acceptance of Trusteeship confirming they accepted nomination by settlor to act as successor trustee.
- Successor trustee may also find it helpful to sign Certification of Trust under PC §18100.5.
- Either of these may be used in effect as successor's "license" to act on behalf of trust, used to prove to financial institutions or other third parties that person has authority to act as trustee.

Notice To Beneficiaries & Heirs

If trust is irrevocable when settlor dies, trustee has 60 days after becoming trustee or 60 days after settlor's death, whichever happens later, to give written notice to all trust beneficiaries and to each decedent's heir. The notice must provide following information:

- Settlor's name and date the trust was signed;
- Name, address and telephone number of each trustee;
- Address where trust administration will take place;
- Additional information required by the trust;
- That recipient can ask for and receive complete trust copy from the trustee;
- Recipient has 120 days after receiving notice, or 60 days after copy of trust is mailed or served upon recipient, whichever is later, to object to the trust. CA Probate Code §16061.7.

Notice to Assessor's Office

If trust property includes real estate or manufactured/mobile home subject to CA property tax, trustee must give written notice to Assessor's Office of the county where such property is located within 150 days of settlor's death. CA Revenue & Taxation Code §480(b).

Notices to Victim Compensation Board & Director of Health Services

If settlor received health care benefits from California (Medi-Cal), trustee must give written notice of Settlor's death to Director of Health Services within 90 days after settlor's death [PC §215](#).

Prison or Correctional Facility

Further, if any of the any settlor's heirs (trust beneficiaries) are confined in a prison or other correctional facility, trustee must give written notice to Director of the California Victim Compensation and Government Claims Board within 90 days of settlor's death [PC §216](#).

Inventory & Determine Value Of Assets

If there is no court-appointed executor for the estate of deceased settlor, trustee must make an inventory and determine value of all settlor's assets as of date of death (whether or not assets were in trust). This may require formal appraisals of assets that do not have a readily determinable value, such as real estate or business interests. Trustee does this to see if federal and/or state estate tax returns need to be filed. If they do, trustee needs to ensure return(s) get filed and that any taxes owing get paid within 9 months of settlor's death. The inventory and valuation of trust assets are also important to fulfil trustee's duty to prepare and submit to beneficiaries an accounting. [PC §16062—16064](#).

Follow Trust Instructions

Trustee also must do anything the trust instructs (unless what is instructed might be against the law). Often, trust says successor trustee will take care of paying for settlor's funeral expenses and settlor's outstanding debts (recent medical expenses and credit card bills), and then distribute what is left to trust beneficiaries. Sometimes, beneficiaries can get most or all their inheritance through the trust within days or weeks of settlor's death. In other cases, trustee may delay distributing property to:

- Sell property to pay settlor's final bills or taxes,
- Calculate distribution required by trust, or
- Determine if there will be other debts or taxes to pay at a later date.

Some trusts say trustee cannot distribute assets for number of years, or until death of someone else. In these cases, trustee is responsible for investing trust assets, perhaps making periodic distributions to the beneficiaries (if allowed or required by trust), until all assets of the trust are distributed to beneficiaries.

Attend to Tax Issues

Unless there is a court appointed executor of settlor's estate, trustee is responsible to evaluate whether any estate tax returns must be filed, and to make sure that they are properly and timely prepared and filed, and that any estate taxes owing are paid within 9 months of settlor's death. Also, trustee will likely have the duty to ensure that settlor's income tax returns are filed and prepared, and that any income taxes due are paid. Further, trustee will need to arrange for preparation and filing of trust's income tax returns to properly report income that was earned after settlor died and before trust assets are distributed to beneficiaries. It will usually be necessary to apply for and obtain a new tax ID number for the trust from IRS. That number should be given to financial institutions holding trust's assets so that each will report interest and dividend income on trust's TIN, instead of settlor's or successor trustee's SSN.

What Is Trust "Beneficiary"?

One who by the trust terms has current or future right to have trustee pay out cash or other trust property to him or her. One of the people for whom the trust was established.

What Rights Does Trust Beneficiary Have?

Unless trust is revocable by someone else, beneficiary has these rights, in addition to rights in the trust:

- Right to receive notice of the existence of the trust,
- Right to receive a copy of the trust,
- Right to receive trust accountings and information about their interests in the trust.
- Right to enforce trust terms and to hold trustee accountable for any wrongful acts or omissions that affect that beneficiary's interests.

When Does Trust End?

Unless legally revoked, trust usually ends only when trust document states it will end. Trusts usually end when settlor dies or when one of beneficiaries dies, but sometimes trust ends after certain period of time or after certain event takes place, like when beneficiary gets married or reaches certain age. The trust can end if the terms expire, the trust purpose is fulfilled, the trust purpose is illegal or impossible to fulfil, if the trust is revoked. If trust ends, trustee continues to act until they finish the trust affairs.

Can Trust Be Revoked Or Amended?

Unless settlor made trust irrevocable when created, settlor can revoke or amend it. Even if trust is irrevocable, it can be changed in one of the following situations.

- 1) If All Beneficiaries Agree—If trust must continue in order to carry out trust purposes or if reason for changing or ending trust outweighs interest in carrying out trust purpose.
- 2) If Settlor & All Beneficiaries Consent—they can change/end trust.
- 3) If Any Beneficiary Does Not Consent—to change/end trust, other beneficiaries, with settlor's consent can petition to change/end trust if non-consenting beneficiary's interests are not seriously affected.
- 4) If Trust Has Uneconomically Low Principal—If it is costing more to administer trust than trust is worth, beneficiary or trustee can ask court to end or change trust, or appoint new trustee. If trust principal is worth \$20,000 or less, trustee can end trust.
- 5) Change Or End Trust If Circumstances Change—Court may change/end trust if circumstances have changed and continuing trust would defeat trust.

What If Trustee Won't Tell Me What Is Going On?

Trustee must keep beneficiaries informed about the trust and its administration. If beneficiary makes reasonable request for information, trustee must provide report about assets, liabilities, receipts and trust disbursements, what trustee has done, money paid to trustee, agents hired by trustee, their relationship to trustee and pay they received, and information about your interest, including trust copy. If you waived your right to information, you can withdraw waiver in writing and get most recent report and all future reports. If it has been 60 days or more since written request for accounting and trustee hasn't provided one, file petition to make trustee comply. Even if trust says trustee does not to provide report, Court can make trustee give one trustee violated their duties. If trust is revocable, or if you waived in writing your right to report, trustee does not have to provide information unless trust requires.

Courts Can Remove Trustee for Any Following Reason

- Breach of trust;
- Trustee has more debts than assets or is otherwise unfit to act as trustee;
- Trust cannot be administered because of hostility or lack of cooperation between co-trustees;
- Trustee does not want to be trustee;
- Trustee's payment is excessive;
- The law says some people must be disqualified from serving as sole trustee.
- The people who cannot serve as sole trustee are listed. PC §21360.
- Beneficiary has 3 years from date of receiving trustee's report to ask Court to remove them for any causes for removal that might be revealed by the report. PC §17200.

Can Trustee Resign?

Yes. If trustee wants to resign, they can:

- As explained in the trust;
- If trust is revocable, by getting person who has the power to revoke the trust to consent;
- If trust is irrevocable, by consulting with all adult beneficiaries;
- By getting Court order after filing petition asking Court for permission to resign;
- Unless beneficiaries refuse, trustee must file accounting while acting as trustee.

What Can Court Do If Trustee Is Not Doing Their Job?

Court can remove trustee and make them pay beneficiaries for any loss to trust. Court can remove trustee or suspend their powers while case is pending, if they believe beneficiaries' interests are at risk. Some trust documents say trustee will be liable only for willful misconduct or gross negligence.

What If Acting Trustee Dies Or Resigns Or Can No Longer Be Trustee?

If trustee dies or resigns, is conserved or declared incompetent, or files for bankruptcy, trustee can no longer act as trustee and must be replaced. Some trusts have 2 or more co-trustees and trust may say that remaining co-trustee will be sole trustee, or may say how new trustee will be appointed. If vacancy cannot be filled, trust company may agree to serve if all adult beneficiaries agree. If that fails, any person who has financial stake in trust or person named as trustee can file petition to have trustee appointed. Any beneficiary over 14 years can nominate trustee, even though minor under age 18 is not legally qualified to serve as trustee. Public guardian cannot be appointed trustee of any trust unless Court finds that no other qualified person is willing to act as trustee.

How Can I Find Out If Someone Has Trust?

If you have legal access to their papers, see if there are any trust documents, or references to trust. Look for deeds, bank or securities account statements that name trust as owner. Look for papers that name attorney, and call to see if they have record of trust. Visit [County Clerk-Recorder's Office](#) or contact [County Assessor's Office](#) to see title on real estate owned by person to see if held in name of trust.

How Do I Know If Particular Asset Is In Trust Or Not?

Go to [Clerk-Recorder's Office](#) or contact Public Service Unit of [County Assessor's Office](#). It is not easy to trace ownership of bank accounts, brokerage accounts, and personal property. Only owner has right to get copies of statements from bank or other institution.

What Happens If Settlor Dies Without Having Put Some Assets In Trust?

If settlor listed property on a schedule when they created trust, showing their intent to put property in the trust, but die without changing title to the property, trustee can petition to include property as part of the trust. PC §17200.

What If Settlor Or Trust Beneficiary Owes Me Money?

- If trust says beneficiary's share of trust income or principal cannot be transferred, you can't get money owed until income or principal paid to beneficiary. But you can petition Court to order trustee to pay you from trust assets due to beneficiary. Probate Code §15300.
- If settlor owes you money and settlor has power to revoke trust in whole or in part, you can make a claim against property during settlor's lifetime.
- You can make claim against settlor for maximum amount available to settlor under terms of trust, up to all of the property contributed by the settlor to the trust. Probate Code §18200.
- If deceased settlor of revocable trust owes you money, and there is not enough money in estate to pay claims, you must make claim against estate. If you win, claim paid from the property in the trust.
- If no probate petition has been filed with Court, and trustee has not filed Notice To Creditors and published it, you can file your own petition to open probate estate and file your claim in Probate Court.
- If trustee filed Notice to Creditors, and sent copy of Notice to creditors trustee knows or should know about, you must file claim with court within 4 months after publication of Notice, or within 30 days after Notice is mailed or personally delivered to you, whichever is later.
- Also, mail copy of your claim to trustee. If trustee rejects claim, you will have to file lawsuit against trustee to get your money. There are time limits for you to file. Probate Code §19255.
- Statutes of Limitations may prevent you from successfully pursuing your claim if you wait too long. For example, unless extended by timely filed claim pursuant to creditor's claims procedures stated above, there is a general time limit of 1 year from decedent's death to file suit against decedent's estate or trust (Code of Civil Procedure §366.2.) Consult with lawyer about other possible time limits.
- Trustee has right to allow or reject claim. After claim filing period ends, trustee can file petition to ask Court to allow compromise, settle claims that have not been rejected, or to allocate claims if 2 or more trusts may be liable for claim.
- If you do not file claim during claim filing period and do not obtain court approval to file late claim, or you do not file objection to trustee's petition to approve claims, you will not be allowed to take any further action to collect debt.
- Court's order will be binding on all claimants and beneficiaries who had notice of the petition.

Can I Challenge Or Contest Trust?

Yes. But, first read trust carefully and talk to attorney. If you challenge trust and lose, you may lose your right to receive property from trust. Here are common reasons to challenge a trust:

- You believe settlor was pressured into creating or signing trust;
- You think settlor was not competent when they signed trust.
- The person, other than settlor, who helped set up the trust will benefit from the trust.

Can Court Answer Questions About Proper Trust Interpretation Or How Trustee Managing Trust?

Unless trust is revocable, trustee or beneficiary can petition court about trust or to ask if trust exists to:

- 1) Determine validity of trust terms;
- 2) Identify beneficiaries and determine who gets property;
- 3) When they get it, if trust does not specify that information;
- 4) Settle accounts and review acts of trustee.
- 5) Tell trustee to do something, like report about the trust or account to the beneficiary.
- 6) Grant powers to trustee;
- 7) Determine or review a trustee's pay;
- 8) Appoint or remove a trustee;
- 9) Accept trustee's resignation;
- 10) Make trustee pay for losses to the trust or to a beneficiary that are trustee's fault;
- 11) Approve/direct change in trust, or end trust;
- 12) Approve or direct combining or dividing trusts;
- 13) Change trust to make estate qualify for charitable estate tax deduction under Federal law;
- 14) Authorize transfer of trust or trust property to or from another state or country;
- 15) Direct transfer of testamentary trust from one county to another;
- 16) Approve removal of a testamentary trust from court supervision;
- 17) Determine the reasonableness of payments for legal services.
- 18) You can petition Court for other reasons, too. See California Probate Code [§17200](#) .

Trustee Or Any Interested Person Can File Petition

- Trustee or another person holds title to real/personal property and they make claim against all/some of that property. PC [§17200.1](#)
- Creditor of settlor makes claim against trust. PC [§850](#)