

NOW WHAT DO I DO? The Lament of the Successor Trustee by Nancy R. Larson

"Now what do I do?" The fact that you are the Successor Trustee of a Revocable Living Trust means you will not have to go through PROBATE. This will save you a great deal of time and money. That is the good news!

After the initial flattery fades of having been entrusted with carrying out the last wishes of a dear friend or family member, you will have to roll up your sleeves and get to work. You are entrusted with settling the estate by paying debts, taxes, and then distributing the trust assets to the beneficiaries. You are authorized by the trust to obtain professional help you may need to carry out the terms of the trust. In our office, we find some trusts to be simpler to administer than others for reasons ranging from family dynamics to unknown heirs and assets.

At its most basic level, a trust is a set of instructions that is to be carried out by the successor trustee upon the disability or death of the creator of the trust. Unlike a Last Will & Testament that goes through the probate court, a trustee does not have a judge looking over his/her shoulder. So, a trustee is on his own without the time frames set by the Probate Laws of the State of Illinois.

Probate has the reputation of "taking forever" and costing a lot. One of the advantages of having a trust is bypassing the probate procedure thereby saving time and money. But without clear direction a trust can take as long, if not longer, to administer than a Will. Unlike the executor appointed in a Will, a non-motivated or unfocused trustee does not have a judge to prod him into action.

Initially, the Successor Trustee will assist in the funeral arrangements. The trustee will request certified copies of the death certificate from the funeral director and ask that he inform Social Security of the death. This begins the process of terminating the Social Security number. After death, all trust accounts will use a Federal Employer Identification Number (FEIN) that will be used to report income to the IRS. It is important to obtain an FEIN in order to set up a trust checking account for payment of funeral bills, utilities, and other outstanding bills that may be time-sensitive.

Next the trustee will advise the beneficiaries in writing that provisions were made for them in the trust. The trustee will advise them that there will be no need to go to court, but that there are tasks that need to be completed before the distribution can take place, i.e. creditors need to be paid, any monies due need to be collected, bills need to

be paid, an inventory and property appraisal should be completed, titles to real estate should be cleared, and tax returns need to be prepared.

Marshalling the assets is the set of tasks that the Successor Trustee performs in determining whether or not assets are held by the trust. It is critical to define just what the trust assets consist of and determine the date-of-death value of each asset. An appraiser may be needed in determining the date-of-death values of real estate and some tangible personal property. In larger estates, a six-month alternate valuation is considered for estate tax purposes if there has been a fluctuation in values of assets within the six months of death.

It is important to comply with the instructions of the trust in distributing assets. A trust may direct that assets are to be sold/liquidated or it may direct that in-kind distributions are made directly to the beneficiary.

Only assets titled in the name of the trust will be administered under the terms of the trust. Some assets pass outside of the trust, such as joint accounts, "payable on death" accounts, and beneficiary designated accounts. If assets have not been titled into the trust before death and do not fall into the categories mentioned in the preceding sentence, it is possible to still have to go through probate. In Illinois, any assets that cumulatively exceed \$100,000 in value that are not titled in the name of the trust may have to go through probate. That is why titling of assets is of great importance in using the capacity of a trust to the fullest extent.

Meeting tax deadlines is important. The trust will file its own income tax return. Larger estates also file a U.S. Federal Estate Tax Return on Form 706, and an Illinois Inheritance Tax return on the IL706 within nine months of the date of death.

Further, as Successor Trustee you will prepare a final accounting of all receipts and disbursements received or made. Things are winding down when a written consent has been received from each beneficiary acknowledging their distribution and approving the final accounting and the last tax return has been filed.

This is certainly not an exhaustive list of tasks, but it does provide a general outline for administering a trust. Roll up your sleeves and get started in your role as Successor Trustee, but remember you do have the authority to call for back up. Don't hesitate to call your estate planning attorney for support in carrying out the duties of Successor Trustee.

Nancy R. Larson is an attorney with Harter, Larson & Dodd LLC
with offices in Belleville and Mascoutah.

The firm has an emphasis on intergenerational planning for estates of
people of all ages, and for the concerns of elders and their families.
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