



## Successor Trustee Handbook

TO: The Successor Trustees

You are probably now taking over as the Successor Trustee for the Trustmaker. We have prepared this handbook to give you some general instructions and ideas of the job you are undertaking. The position of Successor Trustee is not to be undertaken lightly as it is a very responsible position.

This Handbook is not all inclusive and will not cover every situation. For special situations, you need to contact us. Should you have questions or need help, please feel free to contact us at Keystone Law Firm:

(480) 418-8448

[Team@KeystoneLawFirm.net](mailto:Team@KeystoneLawFirm.net)

KeystoneLawFirm.com

2701 W. Queen Creek Rd., Ste. 3

Chandler, AZ 85248

Also, you will probably want to work with the other members of the Trustmaker's estate planning "team" such as the CPA, the insurance agent, and the financial advisor.

In the Estate Planning Portfolio, the Trustmaker of this living trust has provided you a very simple and complete way of dealing with the assets of the Trustmaker and, when appropriate, transferring them to the named beneficiaries.

As the Successor Trustee, you have a wide range of powers and responsibilities, which become effective upon the death or incapacity of the Trustmaker or whenever management of the trust is transferred to you. These instructions are aimed at making your job as Successor Trustee as easy as possible.

In this Handbook, the word "Trustmaker" refers to the person who created the trust. Also, we update this book from time to time as the need arises. This edition was published in March, 2010. Please call us to see if this book has been updated since then.

Sincerely,

Francisco P. Sirvent

Attorney & Problem Solver at Law™

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## **Article One**

### **WHAT TO DO IF THE TRUSTMAKER IS DISABLED**

#### **Section 1.01 Determine If the Trustmaker Is Disabled**

If you are taking over as Successor Trustee because the Trustmaker is not able or willing to continue to act as his/her own Trustee; the primary responsibilities you will have include the following:

**(a) Determination of disability**

Call Keystone Law Firm at the number given above. The law firm needs to know when a disability is about to be determined so that it does not prepare any further legal documents for the client and so that it can assist the family with the process.

**(b) Review test for disability.**

The Article on Disability of the trust contains the test for disability. The Trustmaker may have named a Disability Panel who can determine if the Trustmaker is unable to act as Trustee without the necessity of going to Probate Court.

**(c) Obtain a Certificate of Disability.**

This form can be obtained from Keystone Law Firm. Individual certificates must be signed by all the members of the Disability Panel of physician(s).

#### **Section 1.02 Review The Terms Of The Trustmaker's Living Trust**

Look carefully at the provisions for taking care of the Trustmaker's maintenance and support, which direct you to spend whatever is needed of the trust assets to take care of him/her and perhaps others. Be sure you read Article 4 of the trust, which deals with disability issues. This will inform you as to who is to receive benefit from your loved one's assets while he or she is disabled, and in what priority they should be provided for. Also, review the provisions for Trustee's powers, so that you know the extent of what you as Trustee have the authority to do.

#### **Section 1.03 Health Care Decision Making.**

Follow instructions. You will find his/her Healthcare Power of Attorney (and his/her Living Will, if the Trustmaker has one) in the portfolio under the appropriate tab.

#### **Section 1.04 Determine What Assets Are In The Trustmaker's Trust**

You will be responsible for managing the Trustmaker's financial affairs, at least to the extent of the property in his/her Trust, and the first step is to determine what those various assets are and where they are. Most or all of the assets should be noted in the last section of the Portfolio Binder.

### **Section 1.05 Determine The Status Of All Assets**

Double check for all reports located behind the green "Asset" tab in the Portfolio Binder. Make sure the list of assets is complete and funded. If you have questions about this, or if you are aware of an asset which is NOT listed, call our Asset Transfer Coordinator. Ensuring that all assets are properly funded (controlled by the trust) will avoid probate and will carry out your loved one's wishes as to how those assets are handled. Thus, it is vital that if any are not funded, they must be funded during the time of disability by the agent(s) named under the Durable Power of Attorney. If any property needs to be transferred into the Trustmaker's trust, contact Keystone Law Firm.

### **Section 1.06 Take Care Of The Trustmaker's Regular Financial Affairs**

You will be responsible for taking care of the Trustmaker's day-to-day finances. This includes such things as paying his/her regular monthly bills for living expenses and other such expenses, and seeing that his/her income tax returns are prepared and filed when they are due.

### **Section 1.07 Review The Trustmaker's Investments**

The Trustmaker's Trustee's responsibilities include overseeing any financial investments of trust property. Your duty is to manage the trust assets as a reasonable and prudent person would with his or her own property, with a view towards security rather than speculation.

### **Section 1.08 Manage Property**

Follow the instructions. If the disabled loved one has left any instructions as to how he or she wants property to be managed, follow those wishes.

Remember your fiduciary responsibilities. As Disability Trustee, you have the highest duty under the law to responsibly manage the affairs of the disabled person. You must do everything for his or her best interest first. This means that you need to make wise investment and business decisions. You may wish to seek investment advice from a trusted professional. The trust may instruct you to seek the advice of your loved one's trusted financial, insurance, or accounting advisor.

## **Article Two**

# **CHECKLIST OF INITIAL RESPONSIBILITIES FOR SUCCESSOR TRUSTEE**

As Successor Trustee under the Trust, you are authorized and empowered to carry out all duties and responsibilities to wind up the Trustmaker's affairs and thereafter distribute assets. Also, the Will, if it appoints you as personal representative, gives you authority in that capacity to conduct business on behalf of the Probate estate. Be prepared to demonstrate to third parties with whom you deal that you are in fact authorized and empowered to act.

The following actions are a quick, summary guide to help you in the first few weeks of administration:

**Section 2.01 Initial Tasks To Be Done As Soon As Possible**

- Contact the funeral home and accept their help.
- Remember the good times, grieve, cry, and miss him/her as much as you need to and without shame or embarrassment.
- Get the "Portfolio Binder" (estate planning portfolio).
- Review the Anatomical Gift instructions.
- Review the Final Arrangements and make funeral (or other memorial) arrangements.
- Contact relatives and close friends.
- Notify the Newspaper (Funeral Home director may do this for you); provide relevant information.
- Remove valuables from the residence if no one will be living there and store safely. If someone will be living there, be sure the valuables are properly secured.
- Consider changing locks on any property not occupied by the spouse or a primary beneficiary.
- Consider employment of domestic help, security guards, or any other type of assistance that might be required for dependent or beneficiary.
- Determine immediate cash needs for any beneficiary; identify accounts where cash is immediately available; determine if any immediate expense must be paid. (Hint: There are not many).
- Cancel credit cards, charge accounts, and magazine subscriptions and ask for refunds, if possible.
- Call us to schedule a "Trust Administration Meeting."

**Section 2.02 Initial Tasks To Be Done Within The Next Few Weeks**

- Meet with the Attorney.
- Notify the insurance companies and/or agent(s).
- If a safe deposit box is in the name of the trust, you may remove the contents; the box should be inventoried.
- Gather personal records, including checkbooks and statements for at least three years; obtain copies of income tax returns for last three years.
- Contact individuals who owe money to him/her and arrange for continued collection.

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- Gather all life and accident insurance policies; don't forget to check travel clubs, alumni associations, credit cards companies, trade associations, and any organization that might make life insurance available to its members.
- Notify Social Security Administration (at 1-800-772-1213) (have your loved one's social security number with you)
- Contact VA if applicable.
- Hold any Social Security received after date of death so it may be returned to the Social Security Administration.
- Make certain that property and casualty insurance coverage continues on personal effects, automobiles, real estate, and any goods in storage.
- Check for Fire insurance on dwelling (does it cover if dwelling vacant?)
- Do NOT move or close IRA, 401(k), or other retirement accounts or roll over any of them until you get professional advice on this subject.
- Open a new checking account if necessary (see Common Administrative Questions)
- Obtain death certificates (funeral Director may do this for you)
- Call the attorney to set up an initial meeting.
- Notify the Trustmaker's employer personnel department (if applicable)
- Notify all advisors
- Stop all direct deposits and/or payments

#### **Section 2.03    Additional Things To Consider**

- Locate military papers (if applicable)
- VA provides \$150 towards funeral, headstone, and American flag
- Notify utility companies and landlord (if applicable)
- Notify credit card companies — change or cancel accounts; inquire about death benefits
- Notify post office

## **Article Three**

### **AFTER THE TRUSTMAKER HAS DIED**

If you are taking over as Successor Trustee because the Trustmaker has died, you are urged to meet with us as soon as possible to discuss the details of administering his/her Trust. We will explain to you the various things which will need to be done. We can provide you with a list of all the tasks involved and, if you wish, we will take the primary responsibility for seeing that these tasks are accomplished. However, just to give you an idea of what is involved, these tasks will probably include the following:

#### **Section 3.01     Review The Trustmaker's Remembrance and Services Memorandum**

The Trustmaker's Remembrance and Services Memorandum is located in the Memorial Instructions tab of the Portfolio Binder. It contains his/her request for any service or memorial which the Trustmaker would like upon his/her death so everyone may respect his/her wishes to the extent possible.

That form, and perhaps his/her Will, will inform you of whether the Trustmaker prefers to be buried or cremated. If the Trustmaker did not leave explicit written directions, you may need to determine if he/she left instructions with anyone else, including the funeral home.

If the Trustmaker desired to be cremated, there should be a Cremation Authorization form in the Portfolio Binder behind the Memorial Instructions tab.

#### **Section 3.02     Review The Trustmaker's Living Trust**

Review the Trustmaker's Living Trust, particularly the sections dealing with his/her beneficiaries, the distribution of the trust property, and the Trustee's powers. Determine if any of the assets are to be immediately distributed, or if they are to remain in the trust for later distribution to the beneficiaries.

#### **Section 3.03     Order Death Certificates**

Generally, the funeral director will order as many death certificates as you request. At a minimum, you will need an original certificate for yourself, the law office handling the administration, each company carrying life insurance on your loved ones, and each financial institution at which your loved one maintained an account (including both banking and brokerage institutions). **PRACTICAL TIP:** The cost of ordering a few extra certificates that you end up not needing to use is small compared to the inconvenience and delay of having to order additional certificates if you run out, therefore we suggest that you order at least 5 more than you think you will need.

As long as you, Successor Trustee, have a copy of his/her living trust and a certified copy of the death certificate, you can manage his/her trust property just as the Trustmaker did while living.

### **Section 3.04 Check Safe Deposit Box And Checking Account**

If the Trustmaker has a safe deposit box, it should be checked for any instructions, which the Trustmaker may have left for actions to be taken after his/her death. It is also important to prepare an inventory of the contents of the box. You may need a copy of the death certificate and a copy of his/her Certification of Trust, together with the safe deposit key, to gain access to his/her box. Funds may be needed immediately to pay funeral expenses, so make sure that there is enough money available in the trust checking account. You can gain access to this account with a copy of the death certificate and a copy of his/her Certification of Trust which is in the Portfolio Binder.

### **Section 3.05 Arrange A “Trust Administration Meeting”**

We provide a “Trust Administration Meeting” to provide you more information on settling the trust and performing your other duties. Please contact us if you would like to arrange a Meeting.

### **Section 3.06 Prepare An Inventory**

Prepare an inventory of all of the assets in the trust, including their values at the date of death. This is necessary to determine a new cost basis for these assets in order to take advantage of the "step-up" in the basis (that is, the "cost") of the assets which may minimize the taxable gain when the assets are sold. It may be advisable to obtain a written valuation of one or more of the assets. We recommend getting a written opinion on the fair market value of any real estate in the trust. If the real estate has significant value, you may want to obtain an appraisal from a qualified appraiser.

The market value of securities can be obtained by checking the newspapers for the day of death or by calling a stockbroker or by checking the Internet. Many brokers will provide these figures in writing, particularly if his/her trust or the Trustmaker has an account with them. The market value at the date of death becomes the new cost basis. The total value of all property in the trust (including property passing to the trust by virtue of his/her Will) will determine whether it will be necessary to file federal and state estate tax returns. See Article Five for more information on taxes.

### **Section 3.07 Make Sure That The Trustmaker’s Assets Are Held In The Trust Name**

If there are any assets which are not in the trust be sure to discuss this with us. We will be able to determine whether these assets will then require a probate court proceeding. We recommend that most recent federal and state income tax returns be reviewed, since they may provide a clue to assets, which are not in the trust.

### **Section 3.08 Apply For A New Taxpayer Identification Number**

The Trustmaker’s living trust has become irrevocable because of his/her death, so it will be necessary to get a new Taxpayer Identification Number for that trust from the Internal Revenue Service. Use IRS Form SS-4 to get this number. If the trust thereafter has taxable income it may be necessary to file IRS Form 1041 S as the trust's income tax return.

**Section 3.09 Determine If A Disclaimer Is Appropriate.**

It may be appropriate for one or more of the beneficiaries to disclaim an interest in all or part of his or her share, so that the property will automatically pass to the next beneficiary in line. **This absolutely must be done within nine months after the date of his/her death.** We will be able to assist you in determining whether any disclaimer is appropriate. Disclaimers filed of record with the Probate Court must be done within 9 months of the date of death and the beneficiary must not enjoy the benefit of the asset in the meantime

**Section 3.10 Notify All Life Insurance Companies Of The Trustmaker's Death**

This can be done by calling the local agent, if applicable, or writing a letter to the company's main office. Some companies require a certified copy of the death certificate; some companies will accept a photocopy of the death certificate or even a copy of the newspaper obituary notice.

**Section 3.11 Review And Pay Bills**

Review any bills or accounts which it is claimed that the Trustmaker owe and pay the ones which the Trustmaker does owe.

**Section 3.12 Review Business Agreements**

Review any business agreements, contracts, stock certificates, partnership agreements, etc., to which the Trustmaker and/or his/her trust are parties. If the trust property includes a business interest, it will be important to document the value of this interest. To obtain this valuation we recommend hiring a qualified appraiser of business interests or a CPA who is experienced at valuing businesses.

**Section 3.13 File Income Tax Returns And Pay Income Taxes, Both For Him/Her And For The Trustmaker's Trust**

Refer to Article Five for information concerning income and estate taxes.

**Section 3.14 Collect All The Trustmaker's Credit Cards And Cancel Them**

Collect all of his/her credit cards and contact the issuer to cancel them unless the surviving spouse uses the cards.

**Section 3.15 Distribute The Trustmaker's Personal Effects**

Distribute any personal effects and household furnishings as provided in his/her living trust, including the Personal Property Memorandum or any other written memorandum or instructions which is usually in the Personal Property Distribution section of the Portfolio Binder.

**Section 3.16 Review Investments.**

Make sure that the current investments retained in the trust are appropriate for the income and growth objectives of the trust, which will depend on the projected future needs of the trust.

We recommend that you review the investments **at least quarterly** to determine whether, as a prudent investor, some reinvestments are necessary.

### **Section 3.17     Review The Allocation And Distribution Of The Remaining Trust Property Allocation Of Assets**

After all his/her bills and the expenses of administering his/her Trust have been paid, the final step is to distribute the remaining trust property. Pay careful attention to the distribution and allocation of assets to insure that this is done in accordance with his/her wishes. It may be appropriate to sell some assets and distribute the cash to facilitate equal division among his/her heirs, provided this is in accordance with the trust. If any beneficiary wishes to receive a distribution of property in kind, rather than a distribution of cash, be sure the trust allows such a distribution. Each trust created under his/her trust must have its own EIN number.

## **Article Four COMMON ADMINISTRATIVE QUESTIONS**

Many clients have common questions or concerns which arise shortly after the passing away of their loved one. In order to assist you during this interim period between now and the time you are able to meet with an attorney, we have put together some of these questions and answers. We hope this will help ease your mind during this time.

### **Is there anything I need to do immediately?**

The first step is to locate your loved one's Estate Planning Portfolio (red leather 3 ring binder). In that portfolio, your loved ones may have left instructions for their Final Arrangements (see "Memorial Instructions" tab). In addition, your loved one may have left a list of individuals you need to contact regarding the funeral or other memorial service (see "Memorial Instructions" tab).

### **What should I do with any Social Security checks which arrive after his/her loved one has passed away?**

Any normal monthly Social Security payment received after the date of death must be immediately forwarded back to the Social Security Administration and must not be deposited or cashed.

### **What do I do with life insurance checks or other checks made payable to his/her loved one?**

Hold onto the checks until you meet with the attorney. The Attorney will discuss this issue during your meeting. However, if you are uncomfortable holding on to the checks, you may call the law office.

### **(For surviving spouse) How am I supposed to deal with his/her own personal income and expenses?**

Any expense of your own (and not related to a debt or asset of your loved one or his or her trust) needs to be paid from an account titled in the name of your own trust. If you do not currently have a checking account owned in the name of your trust, you will need to set one up. It is very important that you keep your income and personal expenses separate from your loved one's account.

**Should I be getting appraisals for any of the assets?**

Until you have the settlement meeting with us, there is no rush on securing appraisals on your loved one's assets. However, eventually we will need a quoted value in writing on the value of any real estate, residential personal property, vehicles, and business interests. The "formality" of the appraisal or valuation will depend on the type of asset.

**Should I be dividing up any of the personal property among surviving loved ones?**

NO. You should not be dividing up any of the personal assets of your loved one among the beneficiaries until you have had sufficient opportunity to assess the value of the items for tax reporting purposes. All distribution of your loved one's property should be postponed until after the settlement meeting with us and after the property has been properly valued.

## **Article Five**

### **TAXES AND TAX RETURNS**

It will probably be necessary to file the Trustmaker's final income tax return. His/her lawyer and CPA can help determine this. In addition, if the trust has earned and/or retained income it will probably be necessary to file federal and state income tax returns. If all of the trust income has been distributed to beneficiaries, then they are responsible for including this income on their own individual income tax returns. However, Form 1041 S must still be filed annually until all trust assets are distributed.

**Section 5.01     Income Tax Returns**

If the Trustmaker's spouse survives him/her and they have been filing jointly, then a final joint 1040 is to be filed by the Trustmaker's surviving spouse. After that, the surviving spouse will file a 1040 every year until his/her own death.

During the period of administration of the Trust after his/her death, until the trust assets are all distributed, a Form 1041 is to be filed for the Trust using its own tax identification number which you got following the direction of Section 3.08. This form will cover the period from the date of death until assets are transferred from the Administrative Trust into the Family or Marital or Other Trusts.

If a Family or Marital Trust is set up, a Form 1041 is to be filed every year until Survivor's death

**Section 5.02 Federal Estate Tax Return 706**

When this letter was written, there was no Arizona Estate Tax in existence and the Federal Estate Tax exemption amount is over \$5,000,000 per person. You will need to check with Keystone or the CPA to determine the need for filing for this tax return.