

# Trust Administration

This is a set of instructions for you, the trustee of your trust, and any successor trustees. The first section, "**Actions Upon Signing Your Trust**," is a checklist of actions to take immediately after signing your trust with a notary. The second section, "**Titling Assets in Your New Living Trust**," provides guidance on what steps to take in funding your trust by re-titling assets and account beneficiaries. The third section, "**General Trustee Duties**," details the responsibilities of a trustee. The last section, "**Actions Upon Termination**," describes the procedures involved in distribution of assets and termination of the trust.

## 1 Actions Upon Signing Your Trust

**The settlor should take these actions immediately upon formation of the trust:**

**A. Ensure the trust is funded properly by transferring or re-titling assets to the trust.** Any items NOT re-titled prior to your passing may go through your pour-over will and probate to your living trust.

**B. Review who you have named as the beneficiaries of your IRAs, 401(k)s, insurance policies, and annuities.** Upon your death, these accounts are paid directly to the beneficiaries. If you name individuals as beneficiaries, the assets upon your passing will avoid going through probate, and any trusts you may have included in your will or living trust will not apply to the accounts where you have individuals designated as beneficiaries.

**C. Communicate with successor trustees.** Make sure that all listed successor trustees are aware of the possibility of being called upon to serve as trustee and that they know where to find a copy of the trust in the event they are called upon to serve as trustee. Use the MyAdvocate dashboard to notify your trustee which will provide them with educational material on the role.

**D. Keep good records.** Begin keeping a record of all trust assets to ensure your power of attorney agent, your executor, and any successor trustees have access to all records they will need to fill their role. Document how trust assets are secured, maintained, and distributed. All financial transactions and expenses should be recorded. After you pass away, your successor trustee should expect to update beneficiaries on an annual basis. Successor trustees should retain trust records for at least the minimum record retention period of the IRS (currently 7 years).

**E. Check insurance coverage.** Contact your property and casualty insurance agent to ensure that your coverage provides for your new trust owning the assets you transferred. You may want to add your trust as an additional insured to your homeowner's or vehicle insurance policies to provide coverage to the trust in the event of a claim. There should be no change in the premium for doing this.

**F. Scan each document, upload to MyAdvocate, and secure documents.** There are apps for both iPhone and Android that allow you to take multiple photos of documents to generate a PDF of your document. Secure your documents in a place that is safe from environmental impact, theft and is available to the executor and an alternate executor.

## 2 Titling Assets in Your New Living Trust

**Ensure the trust is funded properly by transferring or re-titling assets to the trust.** If you do not transfer the following assets to your trust, a probate process may be necessary to transfer these assets to your living trust and then to your heirs after your death. Plan to complete this titling process as soon as possible. Your pour-over last will and testament directs that any assets in your name at your death be transferred to your living trust. Think of it as a catch-all for any assets that are not in the name of the trust when you pass away. It is also important that any real estate, financial accounts, or other titled assets you acquire in the future be acquired in the name of the trust. Most people focus initially on the higher value assets or assets that would be a significant impact to heirs if run through the probate process.

See below for general instructions for transferring various assets to your trust, including naming the trust as the beneficiary or contingent beneficiary of a life insurance policy, annuity, or other beneficiary designated account, and some frequently asked questions.

Assets that may need to be transferred to or re-titled in the name of the trust include:

- Real estate
- Bank accounts
- Savings bonds
- Certificates of Deposit (CDs)
- Investment/brokerage accounts
- Individually held stocks and bonds
- Titled motor vehicles, watercraft, airplanes, etc. You may choose to re-title these assets, but this is not always done as they tend to be bought and sold more frequently. In some states the DMV can facilitate transfer without probate.

### Real Estate

- To transfer your real estate interests to your living trust, in many cases you can use a low-cost online service such as:
  - <https://udeed.com/> (all states)
  - <https://www.deedclaim.com/quitclaim-deed/> (limited states)
  - <https://eforms.com/deeds/quit-claim/> (all states)
- Alternatively, contact a real estate attorney or title company in your area.

- If you are transferring real estate to your trust, the person or company that handles the transfer can help you record the transfer and fulfill any state requirement to record your certification of trust.
- The Garn-St. Germain Act prevents a lender from calling a loan when a borrower transfers residential real estate to a revocable trust.

## Bank Accounts

- There are two choices in handling bank accounts that have the same estate distribution effect if titled in the trust or the trust is named as the beneficiary.
  - **To transfer/re-title your bank accounts to your trust**, you can simply instruct your bank to set up a trust account and transfer your current accounts to it. Some banks may even allow you to change the name on your accounts to the name of your trust without changing the account numbers.
  - **Make your living trust the beneficiary for the account** if your financial institution supports this, perhaps through a POD (Payable on Death) designation.
- There are two scenarios to consider:
  - **Upon Incapacity**: If your bank account is titled in your trust, your successor trustee should be able to transact your bank account while you are alive but incapacitated. If your bank account remains in your name, your General Durable Power of Attorney must be approved by your bank for your agent to transact your bank account in the event of your incapacity.
  - **At Death**: Bank accounts titled in your trust upon your death will be payable to your trust beneficiaries. A bank account POD designation that conflicts with your trust terms may cause confusion or conflict when you pass away.

**Bank Procedures Vary:** Since internal procedures can vary from bank to bank, we suggest you contact your bank so that you can make an informed decision regarding how your bank account should be structured.

## Motor Vehicles

- Depending on the state in which you reside, you may not need to re-title registered motor vehicles. It is best to contact the agency where the vehicle is currently registered, which will most commonly be your state's department of motor vehicles. This is a common practice so your DMV should be able to provide you with the proper forms and answer questions about transfers.
- See information about Vehicle Titling by state in this document:  
<https://support.myadvocate.com/hc/en-us/articles/4730699761805-Vehicle-Retitling-Procedures-by-State>

## Boats and Other Watercraft

- To re-title boats or other registered watercraft, contact the agency where the watercraft is currently registered. Depending on the state in which the watercraft is registered and the type of watercraft, you may need to contact your state's wildlife & fisheries department, department of motor vehicles, or the United States Coast Guard.

## Airplanes

- For instructions on how to re-title aircraft in the name of your trust, visit the FAA at: [https://www.faa.gov/licenses\\_certificates/aircraft\\_certification/aircraft\\_registry/aircraft\\_under\\_personal\\_family/](https://www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry/aircraft_under_personal_family/)

## Business Interests

- If you have transferred your membership interest in an LLC or ownership interest in a closely held or private corporation to your living trust, be sure to send a copy of the transfer document to the secretary of the company so they have a record of the transfer of ownership. If you maintain the records for your company, be sure to update the member/shareholder information from your name to the trust's name in the company books and when filing your next report with the state.
- If you have transferred an interest in a Subchapter S Corporation, be sure to notify your CPA so they can make any necessary elections with the IRS to have your corporation maintain its tax status. Your trust is unlikely to affect your Subchapter S Corporation status, but we recommend that you speak with your CPA to notify them of the transfer. If the status is affected, your CPA has 2 months and 15 days from the date of the transfer to make this election, so notify them as soon as possible.

## U.S. Savings Bonds

- You may need to complete a Request to Reissue United States Savings Bonds to a Personal Trust. This form is available online at <http://www.treasurydirect.gov/forms/sav1851.pdf>.
- Any questions regarding proper completion of this form may be directed to the Treasury at 1-800-245-2804.

## Certificates of Deposit

- Your bank or credit union may or may not allow you to transfer ownership of your CDs to your trust immediately. Each financial institution has a different policy. Some will allow you to simply change the name on your CD account to your trust's name. If you are allowed to do this, you should do it as quickly as possible.
- Other banks/credit unions will not allow a name change until the CD matures or unless you close out the CD with a penalty attached. If this is the case, you must decide whether you want to risk waiting for the CD to mature and hope it does so during your lifetime or you may want to close out the CD and reopen it in the name of the trust.

- It is important to note that if you pass away prior to transferring ownership of your CDs to your trust, the CDs may have to go through probate to be transferred to your heirs.

### Investment/Brokerage Accounts

- The best place to start is with your financial advisor. Oftentimes, having your account(s) transferred to your trust is as simple as calling your advisor and telling them you have established a trust to which you would like to transfer your non-retirement accounts. Your advisor will be able to provide you with any forms you may need to sign to establish your trust account. In some states, you may be able to name beneficiaries of your investment/brokerage accounts instead of transferring these accounts to your trust. If your financial advisor informs you that you are in one of these states, they will be able to help you name your desired beneficiaries.
- If your account is one that is not handled by a financial advisor, your best source of information will be the company at which the account is located. Either follow the online instructions provided by the financial institution regarding re-titling a brokerage account or call the company's customer service department and tell them you have established a trust and need to change your individual account to a trust account.

### Individually Held Stocks

- If you own stocks outside of an investment/brokerage account, you will need to contact the company in which you own the stock and ask them how to transfer ownership of your stock to your trust. The company representative will be able to direct you to the proper forms you must complete.

### IRAs, 401(k)s, other retirement accounts, life insurance policies, some annuities, and investment/brokerage accounts in some states

- ***Read this before you re-title your IRAs and 401(k)s.*** *These accounts must be owned by an individual and are transferred upon death to beneficiaries outside of probate. You should review who you have named as the beneficiaries. Some people name their trust as the beneficiary which can have tax consequences, so consult a tax professional before making this change. **People who set up living trusts in order to prevent a lump-sum inheritance to a beneficiary sometimes name their living trust as the beneficiary of their retirement account in order to prevent someone from receiving the IRA or 401(k) benefits in a lump sum.***

### Designating Individual Beneficiaries

- It is important to be sure you have named beneficiaries on all accounts for which this is an option. If you do not name a beneficiary on these accounts, the funds may be paid to your estate upon your death, and a probate will be necessary. Required minimum distributions must be taken after you pass away in compliance with IRS regulations. See details at the IRS website.

- While most people name a spouse or child as the beneficiary of such accounts, you may choose to name your trust as the beneficiary. For instructions on naming a trust as the beneficiary of an account, please see below regarding Designating a Trust as a Beneficiary.
- If you want distributions from these accounts for the benefit of minors or other beneficiaries to be managed in trust, see “Designating a Trust as a Beneficiary.”

### **Designating a Trust as a Beneficiary**

- If you have established a revocable living trust or a testamentary trust in your last will and testament, you may want to name the trust as the beneficiary or contingent beneficiary of a life insurance policy, annuity, or other beneficiary designated account.
- Contact your advisor and let them know you have established a trust and would like to name the trust as the beneficiary of your account/policy.
- If your account/policy is one that is not handled by a financial advisor, call the company’s customer service number and tell them you have established a trust and would like to name the trust as the beneficiary of your account/policy.
- When designating a trust as a beneficiary of a 401(k) or IRA, you may wish to consult a tax professional who understands the consequences of naming a trust as a beneficiary of a tax-deferred account.
- Naming individuals as your beneficiaries, as opposed to naming your trust as a beneficiary, will prevent those individual beneficiaries from receiving the proceeds pursuant to the terms of the trust.



## Frequently Asked Questions When Transferring Assets to a Trust

Q: What is the name of my trust?

A: The name of your trust is at the top of the first page of your trust document. When describing the name of your trust, you may also be required to state the date that the original trust was signed.

Q: Some documents or accounts request the trust name and trustee. Who is the trustee?

A: The name of your trustee is the initial trustee. If the initial trustee is no longer able to act as trustee, see MyAdvocate for the forms to create an updated Certification of Trust with the successor trustee listed.

Q: What is the Social Security Number (SSN), Tax Identification Number (TIN), Employer Identification Number (EIN) associated with my trust?

A: If a form asks for a SSN, TIN, or EIN, you will most commonly be able to use your personal Social Security Number (SSN). If you are married, you may use either your own SSN or your spouse's.

Q: What if the form asks for the trust's date of birth or creation date?

A: The "date of birth" of a trust is the date on which you signed the trust. This date is on the last page of your trust document where you signed your name. If you have restated your trust, use the date you signed your original trust document, not the restated date.

Q: What is the trust's address?

A: The address for the trust will most often be your address. If someone else is serving as the trustee of your trust (rare), the address should be that trustee's address. If you move, you are not required to execute any formal documents to amend or restate your trust.

Q: What is a medallion signature guarantee?

A: It is a seal that only a bank officer can provide. If you go to your bank and tell them you need a Medallion Guarantee, they will know what you are talking about. It is not the same thing as a notary seal.

Q: Will I file my taxes differently? Do I need to file a trust tax return?

A: Under the Internal Revenue Code, a revocable trust qualifies as a "Grantor Trust." The trust is disregarded (disregarded entity) and all trust income and expense items are reported on the Settlor's personal income tax return, and the trust need not file a trust income tax return.

### 3 General Trustee Duties

General trustee duties are the common requirements and duties that a trustee is expected to understand, document and implement.

The trustee must distribute income of the trust to the income beneficiaries in accordance with the trust document at least once per year.

The trustee is responsible for controlling and preserving the trust property during the term of the trust and for delivering it to the named beneficiaries upon revocation or termination of the trust based on established provisions detailed in the living trust or last will and testament. The costs of preserving or transferring assets are covered by the trust.

The trustee must impartially administer the trust property in the interest of the beneficiary or beneficiaries. The trustee must exercise reasonable care and skill in administering the trust, in accordance with the purpose of the trust, federal and state law, and specific provisions detailed in the living trust or last will and testament.

The trustee must keep clear and accurate records of their actions on behalf of the trust and retain for a minimum of 7 years after termination. The trustee should keep careful records of expenses for which the trustee will request reimbursement from the trust.

The trustee may be required to provide a copy of the trust document to beneficiaries of a living trust that becomes irrevocable upon the death of a settlor. Clear and consistent communications will avoid frustration and potential litigation.

The trustee may get unanimous agreement among recipient beneficiaries as to how and when to distribute an asset. For example, the beneficiary may request an asset be transferred into an LLC instead of their personal name.

If there are two or more trustees (co-trustees), each must participate in the administration of the trust, unless the trust document says otherwise. The co-trustees must use reasonable care to prevent each other from committing a breach of trust and communicate with other co-trustees any actions taken on behalf of the trust.

When spouses are settlors of the trust, each of them will donate their interest in their property to the trust. Upon the death of the first spouse, the trustee should document the fair market value of the trust assets on the date of death. This value may be used to establish a basis for capital gains and estate tax purposes.

## 4 Actions Upon Termination

### Scenarios for Termination:

- A. Death of a spouse in a joint living trust
- B. Death of the surviving spouse in a joint living trust
- C. Death of the settlor of an individual living trust
- D. Distributions upon a partial or complete termination of a trust

The following is a brief general guide to the responsibilities and duties of the trustee upon a trustee death or termination of the trust. The trustee may consult with a probate attorney upon termination of the trust in order to assure that the trustee complies with all legal requirements as well as properly carries out the terms of the trust. In some cases, a tax filing might be required; contact a tax professional to discuss if this is necessary. The reasonable costs of consulting professionals, such as attorneys and tax professionals, are covered by the trust.

### A) Death of a spouse in a joint living trust

When spouses choose to leave “full ownership” to their spouse through a joint revocable living trust, the entire trust will remain as a revocable living trust after the death of the first spouse. Upon the death of the surviving spouse, the living trust will become irrevocable.

When at least one spouse either:

- (1) selects to leave their portion of the trust “in trust” for their spouse; or
- (2) selects the “nothing to spouse” option, then upon the death of the first spouse, the trust will be split into two trusts, one for each spouse. Each spouse has the right to direct how their portion of the trust is distributed when they pass away. When a spouse selects either “in trust for spouse” or “nothing to spouse,” their portion of the trust will become irrevocable upon their death and the surviving spouse’s portion of the trust will remain revocable.

### B) Death of the surviving spouse in a joint living trust

Upon the death of the surviving spouse in a joint living trust, the successor trustee’s role will include properly administering the trust assets according to the trust’s terms. This typically includes making distributions from the trust to the appropriate trust beneficiaries. If a settlor provided that the inheritance of a beneficiary would continue in a sub-trust, then the trustee must deliver that portion to the trustee of that sub-trust.

Other duties of a trustee after the death of the settlor include reviewing the trust instrument, inventorying the trust assets, securing and maintaining assets, notifying any banks or brokerage firms of the successor trustee’s new appointment, and obtaining a new tax ID number for the trust if necessary (for example, if a revocable trust becomes irrevocable).

### C) Death of the settlor of an individual living trust

Upon the death of the settlor of an individual living trust, the successor trustee’s role will include properly administering the trust assets according to the trust’s terms. This

typically includes making distributions from the trust to the appropriate trust beneficiaries. If a settlor provided that the inheritance of a beneficiary would continue in a sub-trust, then the trustee must deliver that portion to the trustee of that sub-trust.

Other duties of a trustee after the death of the settlor include reviewing the trust instrument, inventorying the trust assets, securing and maintaining assets, notifying any banks or brokerage firms of the successor trustee's new appointment, and obtaining a new tax ID number for the trust if necessary (for example, if a revocable trust becomes irrevocable).

## **D) Distributions upon a partial or complete termination of a trust**

### **Partial Distributions of Principal**

The trust document may provide that a beneficiary receives a certain portion of their interest at a time defined by the trust or at the trustee's discretion. In this case, it is the trustee's duty to disburse the money or asset to the beneficiary in the proper portion. This may be as simple as writing a check, or it may require a more complicated process of transferring real estate or selling property and disbursing the proceeds. In either case, the disbursement should be well-documented for the eventual final trust distribution agreement. It is advisable for the trustee to obtain a receipt or have a written record of each distribution to each beneficiary. A partial trust distribution agreement may be advisable if the distributions are complex or numerous.

### **Final Distributions of Principal**

After the final trust term has been reached, the trustee must distribute the trust principal and any accumulated income to the beneficiaries in the proper portions. This may also include only check writing from a trust account but may also require numerous land transfers. Regardless of what is involved in transferring the trust assets, it is important that the trustee and beneficiaries come to an agreement, often called a trust distribution agreement, which will be signed by all parties. This agreement will ensure that both trustee and beneficiaries are satisfied with the way the trust was administered and wrapped up and prevent any confusion or arguments in the future.