
Successor Trustee Handbook

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This handbook is not legal advice and reliance on any information provided herein is done at your own risk.

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Article One

WHAT TO DO IF THE SETTLOR IS INCAPACITATED

Section 1.01 Determine If the Settlor Is Incapacitated

If you believe the Settlor no longer has the legal capacity to make sound decisions with regard to the trust, or is no longer competent to follow the terms of the trust, it is time to make a determination of the Settlor's capacity. Keep records of all medical opinions and medical records used in making this determination.

The trust should have a section on how to determine the Settlor's incapacity. It may be an opinion by a primary care physician, or the opinion of a Disability Panel. If there is no agreement on whether the Settlor is incapacitated, contact Bielski Chapman, Ltd. regarding getting an adjudication of disability from probate court.

Section 1.02 Review the Terms of the Settlor's Living Trust

Locate the trust terms regarding lifetime distributions to the Settlor. Examine whether the Settlor has directed the trustee to make distributions solely for the Settlor's benefit, or for the benefit of the Settlor and someone else, such as the Settlor's descendants. Make a note of what standard the Settlor has set out. Distributions may be for the Settlor's best interest, or for the Settlor's health, maintenance, education and comfort, or for something else. Locate the trust's list of Trustee's powers, so that you know the extent of what you have the authority to do as Trustee.

Section 1.03 Health Care Decisions

Locate the Settlor's Healthcare Power of Attorney (and his/her Living Will, if the Settlor has one) and take note of the instructions regarding healthcare decisions.

Section 1.04 Make an Inventory

The only property you have authority over is property that has been funded (transferred) into the trust. Your first job is to locate any and all statements or lists of property of the Settlor and determine which assets are in the trust, and which are still in the Settlor's name outright.

If you come across property that is not in the Settlor's trust, call Bielski Chapman, Ltd. We will help you make a determination of whether and how to transfer non-trust property into trust. Without this step, the Settlor's wishes as expressed in the trust will not be properly carried out, and you risk having to go to probate court to distribute asset when the Settlor dies.

Section 1.05 Day to Day Finances

Use the Power of Attorney to take care of the Settlor's day to day financial decisions such as paying the rent/mortgage, balancing bank statements for small accounts that aren't in trust, or transferring larger assets into trust. You can also use the power of

attorney to file taxes, pay caregivers, or file lawsuits.

Section 1.06 Administration of Assets

The trust is a handbook on how the Settlor wishes to manage and distribute property. If the trust is silent, the Illinois Trust and Trustees Act will control. For example, if you are wondering how to manage the Settlor's investments, you should speak with an attorney to determine what your fiduciary duty is with respect to these questions.

Section 1.07 Fiduciary Duty

As Trustee, you have many duties and are held to a higher standard of liability than an ordinary person. If you violate any of these duties, a beneficiary can sue you and if you are found to be in breach of your duty, you will be required to pay any judgment out of your own pocket. Notably, you have a fiduciary duty to act in the best interests of the trust beneficiaries, to avoid self dealing, to avoid comingling property, and to inform and account to the trust beneficiaries.

Article Two

WHAT TO DO AS SOON AS THE SETTLOR DIES

Our condolences on the loss of a loved one.

When you become successor trustee after someone dies, you are taking on a part-time job. Keep a log of your actions so that you can be compensated, so that an attorney can guide you, and so that you can avoid a lawsuit if a conflict arises down the road.

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

- Arrange for the care of children and pets pursuant to the Settlor's will and trust.
- Secure the decedent's home and valuables, changing locks if necessary.
- Locate any memorial instructions left by the decedent and reach out to a funeral home to assist in final arrangements.
- Order 25 copies of Death Certificates from the funeral home. Make a pdf copy for yourself. Black out the social security number on any digital copies that you email to anyone.
- Forward the Decedent's mail to yourself.
- Determine if there is an account with cash accessible to pay for final expenses. Show the bank a Certificate of Trust to prove that you have authority to access the account. If

the account is a joint account, show the bank a death certificate so that they can vest the account in your name.

Section 2.02 Initial Tasks to be Done Within the Next Few Weeks

- File the Decedent's original will with the Circuit Court Clerk in the county where the Settlor resided.
- Meet with an Attorney.
- Locate all bills. Reach out to the vendor to cancel service. You may need to send a death certificate.
- Make an inventory of all property, including anything in a safe deposit box.
- Organize the Decedent's paperwork and order the Decedent's last 3 tax returns from IRS.gov to assist in an inventory.
- Monitor the Decedent's mail, looking for mail from any institution that might have a death benefit (pensions, annuities, life insurance, etc.)
- Contact an accountant to determine whether taxes need to be filed.
- Notify Social Security Administration, the VA, and the Illinois Department of Health and Human Services to terminate any auto-payments to the Decedent.
- Keep all property insured, stored and protected.
- Open a trust account.

Article Three SUCCESSOR TRUSTEESHIP AFTER THE SETTLOR HAS DIED

Taking care of affairs after the settlor of a trust dies is called "Trust Administration." It is highly recommended to have an attorney on retainer to advise you on timelines, and who you can call to ask questions and make sure that you are complying with the trust and the Illinois Trust Code.

The basic framework of trust administration is as follows:

Section 3.01 Notices

Contact an attorney so that the required notices under the Illinois Trust Code can be sent immediately. These notices close the window on the time frame for anyone to bring a trust or will contest against you as trustee. It is important that you include the correct language in these notices to make them effective.

Namely, you must notify each beneficiary of your acceptance of office of Trustee within 90 days after accepting, including your name, address, and telephone number.

You are further required to notify all beneficiaries within 90 days of the trust becoming irrevocable:

- (a) Of the trust's existence;
- (b) Of the beneficiary's right to request a complete copy of the Trust;
- (c) That the beneficiary is entitled to annual accountings; and
- (d) That there is a 6-month period allowed for commencing a proceeding contesting the validity of the Trust.

You must notify beneficiaries of any change in your address, telephone number, or other contact information no later than 90 days after the change goes into effect.

Section 3.02 Inventory

For the first 6 months, search the Settlor's house, online records, keys, business or partnership agreements, and mail for clues as to what the Settlor owned. Make a list of any property that is outside of the trust and any property that is in the trust. If property outside of the trust totals more than \$100,000 or includes real estate, you will need to speak with an attorney about transferring this property into the trust through a court proceeding called probate.

Section 3.03 Collection

Marshall everything you inventory. Collect death benefits from life insurance companies, annuities, pensions, etc. Obtain an EIN number for the trust and transfer all cash accounts into a single trust account (or estate account if you are in probate).

Section 3.04 Valuation

You must obtain date of death values of everything on the inventory. This value will become the asset's basis for tax purposes, minimizing and often eliminating taxable gain when you liquidate the asset. The value of stocks are readily available on the internet. Contact an appraiser for any asset that you determine can be appraised. Keep records of all appraisals.

Use your discretion; some furniture may be monetarily valuable while other furniture may have sentimental value only.

Section 3.05 Determine your estate tax strategy within 9 months

The trust may be subject to estate taxes. Contact an attorney to determine whether this is the case and what, if any, strategies they can employ to reduce or eliminated taxes. Do not delay on this. The IRS has strict timelines to make elections.

Section 3.06 Liquidation

Liquidate any illiquid assets such as real estate or vehicles that aren't specifically distributed to a beneficiary. Keep the proceeds in the trust account.

Section 3.07 Keep track of all expenses.

As trustee you are allowed to pay advisors such as realtors, attorneys, CPAs and appraisers. You are allowed to pay storage fees, mortgages, real estate taxes, and any other expense that will enable you to preserve the trust estate. Make sure you are keeping diligent records and that all your expense are justifiable. Unless you have a specialty degree, do not “hire” yourself as an expert in any areas that someone who is licensed would be a better fit.

Section 3.08 Accounting

As trustee you have a duty to account. Start with the inventory, add in all the receipts, subtract all your expenses, and you will be left with an amount to distribute. You must send an annual accounting until you are ready to distribute. Keep sending accountings annually until all taxes have been filed and paid before you send an accounting to beneficiaries to sign off on their distributions.

Follow the trust’s instructions on how to distribute property. Have every beneficiary agree in writing on the accounting before you distribute any funds.

Section 3.09 Distribution

The decedent may have left a memorandum with instructions regarding their personal effects. Follow the memorandum’s instructions and have everyone sign a receipt as to what they received. Same goes for any specific distributions in the trust or the will.

For any monetary distribution, make sure the beneficiary has signed off on an accounting. We recommend having an attorney prepare a receipt that releases you from liability at this point. Have the beneficiary sign the receipt, and keep it for your records.

Section 3.10 Maintain further Trusts

Oftentimes a trust will leave property to others for their benefit in a further trust. You should get an EIN number for each trust and open an account to deposit their distribution. Make sure you are following the instructions in the trust for when to make distributions to the beneficiary, and prudently investing the funds.

Article Four TRUSTEE DUTIES

Section 4.01 Duty to Administer the Trust

Upon acceptance of a trusteeship, you must administer the trust in good faith, in accordance with its purposes and the terms of the trust, and in accordance with the Illinois Trust Code.

Section 4.02 Duty of Loyalty

As trustee it is your duty to always act in the best interests of the beneficiaries. Anything you do that benefits you to the detriment of the trust beneficiaries is voidable by a beneficiary

affected by the transaction as long as it was not authorized by the trust. You must disgorge to the trust any profit from such transaction if voided.

Section 4.03 Duty of Impartiality

If a trust has 2 or more beneficiaries, you must act impartially in investing, managing, and distributing the trust property giving due regard to the beneficiaries' respective interests. You must treat the beneficiaries equitably in light of the purposes and terms of the trust, including any manifestation of an intention to favor one or more beneficiaries.

Section 4.04 Duty of Prudent Administration

You must administer the trust as a prudent person would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, you must exercise reasonable care, skill, and caution.

Section 4.05 Duty of Recordkeeping and Identification of Trust Property

You must keep adequate records of the administration of the trust and keep trust property separate from the trustee's own property.

Section 4.06 Duty to Control and Protect Property

You must take reasonable steps to take control of and protect the trust property. If a corporation is acting as co-trustee with one or more individuals, the corporate trustee shall have custody of the trust estate unless all the trustees otherwise agree.

Section 4.07 Duty to Enforce and Defend Claims

You must take reasonable steps to enforce claims of the trust and to defend claims against the trust. It may be reasonable for a trustee not to enforce a claim, not to defend an action, to settle an action, or to suffer a default, depending upon the likelihood of recovery and the cost of suit and enforcement.

Article Five FAQ's

Can I be compensated for acting as Trustee?

Trustees are entitled to reasonable compensation for their responsibilities. If you have a specialization such as an attorney or a tax professional license, you will be entitled to more compensation than you would otherwise.

What should you do with checks which arrive after death?

If you receive payments from the government, return them. If you receive any other payment, you may try to endorse it as trustee and deposit it into the trust account. If your bank will not

honor the check, you may have to send the check back with a Small Estate Affidavit and instructions on how to re-issue the check. An attorney can assist you with this step.

Can I be reimbursed if I make out of pocket expenses before the trust account is set up?

Yes. Keep all records of what you spent, and when the trust account is opened, you may reimburse yourself.

How soon should I contact a lawyer?

The post-death legal process is very slow. Take time to grieve, to be with loved ones and family, and to get through funeral and memorial services. If you wait to contact an attorney until 60-90 days post death you will be on the ball.

Do I have to share the trust with anyone?

Yes. You have requirements under the Illinois Trust Code to give notices to certain parties in the trust. The notices must contain specific language, so it is important to seek out an attorney to assist you in complying with Illinois law.

But other than that, trusts are private documents. You do not have to share them with advisors such as bankers or financial advisors. Anyone who asks for a copy of the trust is legally bound to rely on the 2-page Certificate of Trust your lawyer prepares for you, rather than demanding the entire trust.

What if I do something wrong?

The reason we encourage you to seek legal counsel is that if you breach one of your duties or act in breach of the trust, you can be personally liable for your actions.