



**WHAT DO TRUSTEES DO?
A HANDBOOK FOR
TRUSTEES**

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Introduction

Being appointed Trustee of a trust is a great honor and responsibility. This appointment makes you a fiduciary, thereby obligating you to follow the Trustmaker's instructions in the administration of the trust. It obligates you to follow state law in all of your official activities.

This booklet is designed to help you navigate through the administration process. It explains the basic concepts, terms, and tasks you will need to perform while serving as Trustee. Please read the handbook carefully. We invite you to take notes for future reference, and encourage you to contact us at any later date with questions you may have.

Please be assured that **we do not recommend that successor Trustees act alone**. It is our strong belief that successor Trustees should seek professional guidance from a competent estate planning attorney while discharging their duties. We believe our assistance to these Trustees greatly reduces their stress, expense, and opportunity for error during the discharge of their duties. We also encourage and help successor Trustees to obtain the services of other financial advisors and accountants.

Please do not be overly concerned by the responsibility of being a Trustee. We strongly believe that serving as Trustee will be a less time consuming, less expensive, and a more rewarding experience than being named a personal representative of a will or the guardian during incapacity.

As always, if you have any question relating to this handbook, this program, or any other matter, please do not hesitate to contact my office. The team at Ross Estate Planning is here to serve you.

Robert A. Ross, Ross Estate Planning

The Trust

What is a Trust?

In its simplest form, a trust is an agreement that provides for the management of property. A trust involves at least three parties:

The ***Trustmaker***, sometimes referred to as the settlor or grantor, is the person who creates the terms or rules of the trust;

The ***Trustee*** is the person who agrees to accept the Trustmaker's property and manage it as the trust directs. A trust can have more than one trustee at a time. Each ***cotrustee*** must decide for himself or herself how best to carry out his or her fiduciary duties. Beware that a cotrustee **can be held responsible for another cotrustee's breach** of a fiduciary duty. Thus, it is important that all cotrustees **pay close attention** to everything that is done in the administration of the trust. If there is any question or problem, that should be communicated to the other cotrustee or cotrustees immediately. and;

The ***Beneficiary*** is the person who receives the benefit of the property held in the trust. Typically this is the Trustmaker during his lifetime and the children of the Trustmaker when the trust terminates (death).

The Revocable Living Trust Document

It may be easiest to think of a trust as a holder or carrying case for property that comes with an instruction book written by the trustmaker. A well-drafted living trust contains instructions for the care of loved ones. The instructions tell the Trustee how to care for the beneficiaries. The instructions are detailed enough to cover both expected and unexpected events that might occur. Not only do these instructions tell the Trustee how to use the money

and property to care for the beneficiaries, but will frequently guide the Trustee as to why the Trustmaker has left those instructions.

A revocable living trust is a trust document created during the Trustmaker's lifetime. A revocable living trust is often referred to as an *inter vivos* trust, which means *during life*. The trust is revocable due to the Trustmaker's ability to end (terminate) or change (amend) the trust.

The Trustmaker generally names himself as both Trustee and beneficiary of the trust during his lifetime. The Trustmaker also names backup Trustees to act for his benefit in the event of his disability and death.

After a Trustmaker has signed a revocable living trust, the Trustmaker then needs to fund his trust. Funding is the process through which the individually owned assets of the Trustmaker are retitled and transferred into the trust. Once the revocable living trust has been funded, the Trustee will control all of the assets in the Trust's name. It is important to remember that a Trustee cannot control assets not titled in the name of the Trust.

Wisconsin is a community property state, and generally, married couples in our state create a joint revocable living trust. The married couple will then retitle their property into the name of their joint trust.

Retitling is performed in different fashions for different assets. One of two methods are used. Either ownership is directly changed to the name of the Trust or a beneficiary designation naming the Trust as primary or contingent beneficiary is completed. An example of a change of ownership to trust would be a checking account held in the name of John and Mary Sample. It will be funded into the Sample's Revocable Living Trust by retitling the account in the name of "John Sample and Mary Sample, Trustees of the Sample Living Trust, dated (the date the trust is signed)."

A similar action will be taken in regard to all of their other assets, such as real estate, automobiles, boats, investment accounts, securities, and any other asset with a title. Assets that do not have titles will be transferred into the trust by an assignment of personal

property. An assignment of personal property is merely a document which memorializes the Trustmaker's act of transferring all of his property without title into his revocable living trust.

A well drafted Revocable Living Trust will not only include direction on how to manage property, but also give instructions for how the Trustmaker or the Trustmaker's family and loved ones are to receive the benefits of the trust. The trust also makes provisions for how the Trustmaker is to be cared for in the case of the Trustmaker's incapacity.

What may a Trust do?

Trusts can be tailored to achieve a variety of objectives. Two basic estate planning goals that apply to everyone are property management during a Trustmaker's incapacity and transfers of the Trustmaker's property to other loved ones at death. A Revocable Living Trust can be used for both of these functions.

One of the most important features of a Revocable Living Trust is its ability to provide instructions for the care of the Trustmaker while he or she is alive but disabled. A Revocable Living Trust is valid and operational the day it is signed. If the Trustmaker becomes ill or incapacitated, the living trust controls the Trustmaker's property for his benefit or for the benefit of others without the intervention of the court. The Trust will replace the use of a durable financial power of attorney for all trust property. The Trust is usually a better tool for this purpose because it is more reliable than a power of attorney and it can safely contain more detailed written guidance to the successor Trustee.

For death transfers, a fully funded Trust will avoid probate, which should reduce the delay and costs of distributing property upon death normally associated with probate. A trust is also an excellent tool for management of property for the benefit of a beneficiary for whom outright property ownership is inappropriate, burdensome, or impossible. Trusts also are established to give lifetime use of property to a person (or a group) while ensuring that others eventually will inherit the remainder of the property.

This can be particularly effective if the Trustmaker has the goal of protecting assets for beneficiaries and avoiding estate taxes.

Avoiding Living and Death Probate through a Revocable Living Trust

A fully funded and properly executed revocable living trust avoids both living and death probate. It is generally accepted that avoiding probate is beneficial to the family.

A living probate occurs when a person can no longer handle his own affairs. Upon incapacity, an interested party can petition the court to authorize a guardian to take control of the person and his property. The court then appoints a guardian to make decisions about the person's well being and to guard their property. Court supervision, which includes annual reports to the court, continues until the person recovers or dies. Since it is a process which involves no planning, there are occasional family disagreements about who should serve as guardian and what should be done. Even when the family agrees that the parent is incapacitated and who will serve as guardian, it is a costly and time-consuming process to have a guardianship created. More importantly, the court will limit the help available for family members such as adult children or aging parents.

A revocable living trust eliminates the need for a living probate. If a Trustmaker is found to be incompetent (as defined by the Trustmaker), the disability Trustee steps in to act in his place. This relieves the probate court of any need to name a guardian to make decisions for the disabled party or guard the disabled party's property. Unlike a guardianship, the disability Trustee has the flexibility to carry out instructions for the benefit of the Trustmaker as well as his family, without court supervision or court proceedings.

Probate at death is a court supervised process for the transfer of property at death. Probate is required for all property which is solely owned or does not have a beneficiary designation. Property transfers which bypass the probate court can reduce the expense and time delays of that process. A revocable living trust is one way to avoid this process, by allowing solely owned property to be

converted to trust ownership without sacrificing lifetime control over the property.

Clients that utilize a revocable living trust do not have to file their trust documents in a public forum. Probate files are public records and subject to public scrutiny. Parties that utilize a will or die intestate (without a will) must file an inventory with the court which includes a description and valuation of all of their assets, a list of their debts and creditors, and to whom all of their property is to be distributed. Clients with a fully funded revocable living trust, may keep all this information private.

We also find that our clients, who create and fund revocable living trusts, are motivated to organize and document their estates while they are living and able. This information and organization is greatly appreciated by their successor Trustees who must carry out the direction of the trust. Oftentimes in a probate proceeding, the greatest challenge for the personal representative and attorney is to track down the deceased person's property and debts. As you may imagine, this process is quite difficult when the owner of the property is no longer available to answer questions about what he owns and whom he owes.

In a death probate the court imposes supervision over the property of a deceased person. This is done so that creditors may be paid, property may be protected for the benefit of disabled parties, and/or distributed to the heirs of the deceased. Probate is necessary due to the fact that the deceased party no longer has the ability to give his assets to his heirs, to pay his debts, or to guard an asset for a disabled loved one. After a person has died, the court must then carry out these duties pursuant to the decedent's will or the intestacy statute. If a person dies without directly owning property, such as when it has been previously retitled into a trust, there is no need for probate.

Trusts, unlike trustmakers, do not die. For this reason, assets placed in a revocable living trust never need pass through a probate process. A revocable living trust avoids probate by providing a means for paying a deceased party's creditors, protecting assets for loved ones, and distributing assets to the heirs. The successor Trustee is given instructions on how to

handle these tasks. In summary, a Trustmaker has entered into an agreement with the successor Trustee to perform the tasks performed by the probate court, and therefore, no probate court proceeding is necessary. The probate process is eliminated in its entirety, including its time delays, court appearances, and many extra administrative costs.

What Is the After-Death Cost of a Living Trust-Centered Estate Plan?

Some living trust critics argue falsely that the after-death costs of administering a trust are equivalent to the average probate costs. The results of extensive research published in Esperti and Peterson's *The Living Trust Revolution* indicates just the opposite. Probate costs typically run 5-7% of the estate. A properly funded revocable living trust can often expect post-death administration costs of about one half of a probate.

In our experience, the after-death costs for larger estates that utilize a fully funded living trust plan are nearly always closer to 2%. Not only does all of the evidence show that a living trust-centered plan is usually more effective than will planning/probate, it conclusively proves that fully funded revocable living trusts cost significantly less than will-centered planning using the probate court process.

The Trustee

Who may be a Trustee?

Most often individual Trustees are chosen because of their relationship to the Trustmakers. Individual Trustees often do not charge fees while also receiving the benefits of the trust as beneficiaries. Usually individuals are a better choice when there are unique assets such as a closely held family business or a farm.

The Trustee, as the name suggests, must be someone in whom the Trustmaker has great faith and trust. The Trustmaker must be comfortable leaving the Trustee in charge of his property. A Trustmaker may name his spouse, children, grandchildren, nieces, nephews, or friends, to be Trustees.

What is the Trustee's responsibility?

The law does not demand absolute perfection from you. However, it does demand absolute **loyalty**, absolute **honesty**, and complete and accurate **disclosure**, even if that disclosure could cast you in an uncomfortably negative light. When you agree to act as Trustee you become a "fiduciary." This means you have a legal duty, created by accepting the job of Trustee, to carry out the terms of the trust. You are responsible for managing and holding the property within the trust for the beneficiaries.

As Trustee, you have the powers and duties provided in the trust document, as well as those provided in your state's statutes. The statutory powers include the power to sell, mortgage or lease property in the trust and the power to vote stock that is part of the trust.

What should I do when I become a Trustee?

Read the Trust Agreement from beginning to end. Concentrate on the powers and administrative duties of the Trustee. If in doubt about your powers, discuss it with your Trust Attorney.

Your first actions as Trustee should be to:

1. Contact an experienced estate planning attorney (Trust Attorney) for help in understanding the post-death administration process, the meaning of the Trust, and what actions you need to take. Your Trust Attorney will perform many of the tasks listed below for you.
2. Sign the "Successor Trustee Affidavit."
3. Make sure all property is titled in the name of the Trust. If not, consult your Trust Attorney for further direction.
4. Prepare an application for a federal identification number from the IRS. This number commonly is called an employer identification number. For the trust, it is the equivalent of your personal Social Security number. It is used as your Trust identification number on all future tax returns and by corporate stock transfer agents. While the Trustmaker IS alive, his Social Security number IS used for the trust.
5. Obtain an inventory and any necessary appraisals of Trust property.
6. Ask your trust attorney to assist you in making claims for death benefits or cashing checks made payable to the deceased Trustmaker, a surviving spouse or to a Trustee.
7. Open a checking account in the name of the trust at a bank or credit union where deposits are federally insured.

8. Open a set of accounting records to record the trust's assets, cash received, checks disbursed and other transactions such as the purchase or sale of assets. Your Trust Attorney should be able to provide sample accounting records. If the transactions become many and complicated, you should not hesitate to retain professional accounting assistance. The expense of the accountant can be paid from the trust assets.
9. Trustmakers often provide that more property can be put into the trust after its creation. You should consult with your Trust Attorney about these transfers. Transfer documents may be required.
10. Keep copies of all documents you sign as trustee.

May I hire people to assist me?

Yes. You should get the help you need to carry out your duties as Trustee. For instance, if there are many trust assets, it is common to hire an investment advisor or even make arrangements with a trust department to manage the investments through a custodial account. You should get legal and accounting advice as needed. The reasonable costs of these services are expenses of the trust and can be paid from the trust assets.

When may I distribute property after the death of the Trustmaker?

Do not distribute or sell trust assets without your Trust Attorney's advice. There can be tax and other serious problems if property is sold or distributed too soon. Your advisor can advise you as to when it is appropriate to make a distribution. The Trustee should obtain receipts from beneficiaries who receive property from the trust.

What fees may I charge for my services?

You can charge reasonable fees for your services, unless the trust document specifies otherwise.

In deciding what is reasonable, you should consider:

- what the customary fees are for such services;
- any unusual skill or experience you have that you are using as Trustee for the benefit of the trust;
- the amount of risk and responsibilities you have assumed as Trustee;
- the amount of time spent by you as Trustee;
- the character of the trust work, whether routine or involving skill and judgment; and
- any fee estimate you gave in advance.

Your Trustee fees are reportable on your income tax returns and can be deducted by the trust as an expense. If there is a dispute about your fees, a court may decide what is fair compensation. The court can reduce or deny fees to you if you don't carry out your duties following the law and the terms of the trust.

You are not required to take fees and can waive fees that are established in the trust agreement.

How must I act as a Trustee?

You must act in the highest good faith toward the beneficiaries of the trust. "Good faith" means not taking advantage of another, even through technicalities of law. You must follow the instructions of the Trust Agreement and use ordinary care and diligence even if you are not receiving any compensation for your trustee services. You must invest the funds of the trust properly to preserve the principal and earn a reasonable rate of return. Get advice from your Trust Attorney and investment advisor as to what investments are prudent for this trust. Remember foremost that you are carrying out the wishes of the Trustmaker throughout the process.

The Trustee may be required to provide all beneficiaries with interim reports during the term of the trust, and a final report when the assets are distributed and the trust is terminated. The trust agreement may also require regular reports to the beneficiaries by the Trustee if irrevocable trusts are established after the death.

Are there things I must not do?

Yes. There are several things you must not do.

1. You may not deal with the trust property for your own benefit or for any purpose not connected with the trust's purpose. This means, unless the trust specifically says you can, you cannot buy property from the trust or make loans, gifts or donations to yourself, your friends or your relatives. This includes gifts or donations to churches or other charities.
2. You cannot do anything that would give you an advantage over a beneficiary or take part in any transaction against a beneficiary unless the beneficiary gives you permission after knowing all the facts.
3. You cannot mix your property or money with the trust property or money. In other words there should not be any of your money in the trust checking account. Property should be clearly identified so that there is no question whether it belongs to the trust or to you.

Trust Operation at Death

There is a great deal of similarity between probating an estate under a Will and settling your Living Trust. The major difference is that a Trust settlement takes place outside of the court system. This makes it faster and less expensive.

When someone dies, and they have a Living Trust, the Trustee is required to do a number of things to properly administer the Trust.

Trust administration or termination is not automatic. We do not recommend you attempt to do this yourself, without the assistance of professionals. Generally, the services of a Trust Attorney and CPA will be required. If you would like us to complete the Trust termination for you, please give our office a call and we will be happy to take care of the legal work quickly and efficiently.

This is only a convenient guide. It is general in nature and should not be relied upon as a substitute for professional tax and legal advice.

INFORMATION AND DOCUMENTS NEEDED

The following is a list of documents and information we will need to assist you in carrying out your duties as successor trustee:

1. Originals of all Wills and Codicils.
2. Originals of all Trust and Amendments established by decedent.
3. Copies of any Trust of which decedent was a trustee or beneficiary at the time of death.
4. Certified copies of death certificate.
5. Most recent bank statements for accounts on which decedent's name appears as either sole or co-owner in any capacity and copy of signature card for each account. Copies of statements on a monthly basis.
6. All passbooks and savings certificates on which decedent's name appears.
7. A list of all safe deposit boxes on which decedent's name appeared, by bank and branch, and an inventory of the contents of each.
8. All mortgages, notes, or accounts receivable representing payments owed to decedent.

9. All stock certificates, bonds, or other securities.
10. Most recent statements for all mutual fund and stock brokerage accounts. Copies of statements on a monthly basis.
11. All IRA and qualified pension benefit documents, including beneficiary designation forms and plan descriptions.
12. Certificates of title (“pink slips”) for all automobiles, recreational vehicles, boats, trailers, motorcycles, airplanes, etc, in which decedent had any ownership interest.
13. All life insurance policies and annuity contracts, including beneficiary designation forms.
14. All deeds to real property in which decedent had any interest, and copies of any notes or mortgages to which such properties are subject.
15. All leases for al real property on which decedent was either the landlord or tenant.
16. Most recent personal income tax return.
17. Copies of all gift, estate, and/or generation-skipping transfer tax returns ever filed by the decedent’s spouse at any time in the past.
18. Most recent financial statements and tax returns for any partnership or other closely held business.
19. A list of tangible personal property items which, individually or as a group or collection, have a fair market value in excess of \$3,000 (eg. jewelry, art, antiques, or coin, stamp, book, gun, or wine collections).

20. Copies of any partnership agreements, buy-sell agreements, and corporate records for any partnership or closely held corporation.
21. Copies of all bills for expenses of last illness, such as hospital and doctor bills, and an itemized list of all funeral and related expenses.
22. A list of any known debts, liabilities, pending lawsuits, or other claims of or against decedent.
23. Any other documents that you believe may be important to our understanding of the decedent's personal and financial affairs.

Successor (Backup) Trustees

Instructions for Successor Trustees

If you have been named as Successor Trustee for someone, you are probably wondering what you should do when that person dies.

Be aware that **THERE IS TIME** to consult with an attorney, accountant, and other advisors. Take first things first:

- As soon as you are ready, make an appointment to see your Trust Attorney for help.
- Please realize that a surviving spouse is often not in the best frame of mind to address the necessary financial issues immediately after a death.
- Inform the family of your position and assist them as needed: funeral arrangements, flowers, cemetery marker, announcement in paper, special wishes for service, notifying friends, relatives, employer, etc.
- Order at least 12 certified death certificates (you can usually get these from the funeral home). You will need these to transfer titles, etc.

Now you are ready to meet with your attorney, your financial planner, and/or accountant for advice and guidance for:

- How to inventory assets and make claims for death benefits.
- Preparation of the necessary forms 1040, 1041, and 706.

- A final income tax return (1040) is due by April 15 of the year following the Trustmaker's death or 6 months after death. This tax return covers the period from January 1 to the date of death.
- A fiduciary return (1041) will also be required. This return reports any income earned by the trust between the time of the Trustmaker's death and the close of trust administration.
- A federal estate tax return (706) must be filed 9 months of the date of a Trustmaker's death if the total gross estate exceeds the unified credit amount (currently \$5,000,000 federal). Payment of any federal tax owing is due at that time.

After your first meeting with the Trust's Attorney you will start the following additional tasks:

- Notify the bank so you can start writing checks. The bank will probably want to see a certified death certificate, an affidavit of successor Trustee (similar to the affidavit used for disability) and some form of personal identification.
- Notify Social Security, pension funds, and any other associations who may provide a death benefit.
- Make claim for life insurance proceeds payable to the trust.
- Secure and inventory property, especially real estate. Make sure you have keys, make arrangements to keep the utilities on (or turn them off), insurance is in force, mortgage is paid, etc.
- Make a list of all assets, and their approximate date of death values.

- Make a list of all liabilities, and then pay all valid debts.
- Start a ledger of accounts payable and income received.
- Distribute property to the trust's beneficiaries.

Special Note: Property should be distributed in this order (make sure you get a receipt signed by each beneficiary stating that he/she has received the property):

1. Specific bequests; specific property given to one person.
2. Remaining personal property
3. Residue: Divide cash and transfer titles of property according to trust instructions.

We hope that you have found the information contained in this booklet to be valuable and instructive. Please remember that our office is always here to provide guidance and assistance for you as you fulfill your duties as a Trustee.