



TRUST ADMINISTRATION COURSE NOTES

(an in-depth summary of the course material)

GETTING STARTED

BEFORE WE DIVE IN

Trust Administration is the area of law that deals with overseeing and managing a person's Trust.

What we'll cover in this course:

- How to size things up and figure out whether you should take the job
- How to think like a Trustee by knowing what rules you're supposed to follow, traps to avoid, and what will help you be successful
- How to assemble a team to help you
- How to get organized
- Detailed checklist of tasks that need to be done
- How to invest Trust assets
- How to provide accountings
- How to pay taxes
- How to distribute property
- How to terminate the Trust when it comes to an end

Important:

- All Trusts are different
- This course will give you a general overview of the Trust administration process
- Laws vary by state and can change
- We'll let you know when you might need to look up something specific

BEFORE YOU COMMIT

SIZING THINGS UP: SHOULD YOU TAKE THE JOB?

Being appointed as a Trustee is an honor. It is also a lot of work. A simple Trust can take 3-6 months to administer. Complex Trusts can take years to administer. You do have the right to decline. If you take on the job, it's important to know what you're taking on. In the sessions that follow, we'll talk about the things you should know before you agree to serve. This can help you make an informed choice.

WHAT IS A TRUST AND HOW DOES IT WORK?

For this session we'll pretend YOU are setting up the Trust. The person who sets up the Trust is called the Grantor (sometimes called the 'Settlor' or 'Trustor'). A Trust is like an imaginary bucket that contains your stuff. The bucket has a rulebook that spells out how everything in the bucket is to be managed and what happens to it when you die. The rule book = the Trust Document (also known as the Trust Agreement, or simply as 'The Trust').

As the Grantor you will:

- put someone in charge of managing the stuff in the bucket (known as the Trustee- you will serve as Trustee while you are alive. You will name a successor Trustee who will take over management of the Trust when you die)
- name people who benefit from the property in the bucket (called beneficiaries. You will be the beneficiary while you are alive. The Trust document will spell out the rules for who the new beneficiaries are when you die—who gets the stuff left over in your bucket)

Setting up the Trust is a 2-part process:

- First: create the Trust document
- Second: move things you own into the bucket (usually by changing the title or by updating a beneficiary designation)

WHAT DOES A TRUSTEE DO?

In a nutshell, you'll do 6 basic things as Trustee:

- Get the big picture: Identify the beneficiaries, what property is owned, how it's owned, what the property is worth, who gets what... round up documents that distribute property and study them carefully
- Round up the assets and keep them safe: Identify where each asset is, ensure assets are protected and preserved
- Provide notice to the beneficiaries and keep them informed: let them know you're the Trustee, keep meticulous records, provide them with regular accountings
- Pay debts and expenses: determine outstanding debts and pay them; work with an accountant to file taxes
- Distribute Trust property to the beneficiaries: could be all at once or over time
- Terminate the Trust

OTHER THINGS YOU MIGHT END UP DOING

Be the EXECUTOR of the Will.

- Wills distribute property that is held in a person's individual name.
- The person who is put in charge in a Will is called an executor.
- Property distributed through a Will is overseen through a court supervised process called 'Probate'
- If there is no Will, this is known as dying 'intestate'. In this case, property held in the Grantor's individual name is distributed according to state law

If Grantor has not died but is incapacitated, you may manage assets for a time during Grantor's incapacity.

- The Trust document gives you the authority to manage assets that are titled in the name of the Trust
- A Durable Power of Attorney appoints an agent, who manages property that's held in a person's individual name while the person is alive

SIX THINGS TO CONSIDER BEFORE SAYING YES

- 1) The Trust Document: What type of trust is it? Simple... Complex?
- 2) The Beneficiaries: Who are they? Do you know them? Are they easy to get along with?
- 3) The Grantor: Is the Grantor deceased or alive?
- 4) The Trustees: Will you be working alone or with someone else (co-Trustee)?
- 5) The records: Are they organized... disorganized... missing?
- 6) The assets: Are they all in the name of the Trust?

WILL YOU BE PAID FOR YOUR TIME?

Yes. Most documents state that the Trustee is entitled to compensation. (Some even spell out how much. Usually it is for 'reasonable compensation'). Even if a Trust document is silent on this issue, state laws typically allow a Trustee to be paid for their work. Most often, Trustees are allowed 'reasonable compensation'.

What is 'reasonable compensation'? Boils down to several factors:

- Where is the Trust being administered?
- What tasks will you be performing? Administrative/record keeping vs. something specialized like running a business

Let beneficiaries know in advance what you'll be charging and how you arrived at that figure

Keep careful records

It's common for some Trustees to waive their fee

- fees are taxable income; inheritances are tax free
- family dynamics (something to consider)

CAN YOU BE HELD PERSONALLY LIABLE?

Yes. You can be held personally liable. However, you can only be held personally liable if you have violated your fiduciary duties. (To act with the utmost honesty and integrity in protecting Trust assets and carrying out the terms of the Trust). Beneficiaries can take you to court, get you fired, and require you to pay for any losses of the Trust. As long as you are honest and careful you won't be putting yourself at risk.

WHAT TO DO WHEN YOU DECIDE TO ACCEPT... OR DECLINE

To accept: Sign an affidavit in front of a notary. Keep it on hand since third parties will want proof that you have the authority to manage the Trust. Also make copies of key pages of the Trust (first page, signature page, page that names you as Trustee)

Affidavit should include:

- Name of the Trust
- Date Trust was created
- Name of Grantor
- Statement that the Trust names you as the successor Trustee
- Proof of the Grantor's death
- Statement that you are now acting as Trustee

To decline: Sign a 'Trustee declination'; Formally states you decline to act as Trustee and states who is named in the Trust document as the next successor trustee. Notify the beneficiaries and next successor Trustee. Certified mail is best. If Trust document doesn't name another successor Trustee or the successor doesn't want the job, look to the Trust document for guidance. If the Trust is silent or ambiguous, contact an attorney.

IF YOU WANT TO RESIGN

If you've taken on the job and you need to resign: sign a 'Trustee Resignation' and mail to beneficiaries/successor Trustee. Should state that you are resigning and who the next Trustee will be. Ensure that a successor Trustee has accepted the job.

THE RULES OF THE ROAD

GETTING YOUR HEAD IN THE GAME: THINKING LIKE A TRUSTEE

You can't just start making decisions or handing out property. As a trustee you are bound by certain rules. The sessions that follow will cover:

- Your fiduciary duty
- The secret to being successful
- Some common traps Trustee's experience
- Liability insurance that can protect you

YOUR NUMBER ONE RULE: THE FIDUCIARY DUTY

When you step into the role of Trustee you take on a 'fiduciary duty'. This means you will always act in the best interest of the Trust and its beneficiaries, regardless of your own personal interests.

Four specific duties:

- Duty of Good Faith and Loyalty
 - o Act with honesty and integrity
 - o Manage the Trust according to its terms
 - o Remain impartial among beneficiaries
 - o You will not profit from the Trust (other than receiving reasonable compensation for your work)
 - o You will not allow your personal interests to conflict with the Trust
- Duty to Use Reasonable Skill and Diligence
 - o Act competently
 - o Use the same level of effort and care that would be expected from any reasonable person

- Duty to Render Personal Attention
 - o Make sure everything that needs to be taken care of gets done
- Duty to Maintain and Render Accounts
 - o Safeguard the assets by making sure they are protected and wisely invested
 - o Maintain accurate records
 - o Keep beneficiaries informed

WHAT CAN HAPPEN IF YOU GO ASTRAY?

You can face 2 types of liability:

- Civil liability: gives a person the right to seek recompense from another person who has in some way injured them
 - o Usually happens when the beneficiaries get angry (you have violated fiduciary duties and beneficiaries are harmed)
 - o Beneficiaries can:
 - 1) remove the Trustee: Trust can spell out details, or a judge can replace Trustee
 - 2) sue the Trustee: can be ordered to personally pay for losses
- Criminal liability: gives the government the right to punish an individual who violates the law
 - o Government steps in; can remove the Trustee, impose a fine or sentence to time in jail

THE SECRET TO SUCCESS: EFFECTIVELY WORKING WITH BENEFICIARIES

Communication... Communication... Communication!

Most likely to get in trouble if the beneficiaries feel you are:

- being secretive
- talking down to them
- being defensive
- being neglectful
- not explaining what distributions you're making or why

Increase the likelihood of having a good experience if you are:

- respectful
- transparent
- sincere

Other things that can foster a positive relationship:

- get in touch early on
- educate the beneficiaries about your role
- provide beneficiaries with a copy of the Trust (depending on what your state law requires)
- set realistic expectations about how long Trust administration will take

TRUSTEE QUICKSAND: COMMON TRAPS AND HOW TO AVOID THEM

Common scenarios that land a Trustee in trouble:

- Quicksand #1: Failing to communicate with beneficiaries
- Quicksand #2: Taking unauthorized shortcuts
- Quicksand #3: Making payments from the wrong bucket
- Quicksand #4: Personally benefitting at the expense of the Trust
- Quicksand #5: Investing recklessly or irresponsibly

ERRORS AND OMISSIONS INSURANCE

Errors and Omissions Insurance is a special insurance policy that will protect you for errors you make as a Trustee. Can be purchased from an insurance company. Cost can be deducted as a Trust expense.

Some errors an E&O policy can protect you from are:

- Mistakes made by professionals you've hired

- Negligence for not hiring professionals to assist in the Trust administration
- Negligence for not following the Trust terms
- Unwise investment decisions or mismanagement of Trust assets
- Co-mingling Trust money
- Conflicts of interest
- Lawsuits from beneficiaries who feel they didn't get their expected share of the Trust

Cost for a policy varies. Underwriters will typically want to know:

- Who the Trustees are
- What type of assets the Trust holds
- The total value of the assets
- Who the beneficiaries are / if you're one of them
- Whether you've hired any professionals to assist you

YOU'RE NOT ALONE

GETTING HELP: ASSEMBLING YOUR TEAM

When administering a Trust there are some things you shouldn't do on your own. It is important to have a team of experts who can help you. Most Trust documents give Trustees the authority to hire experts. If yours doesn't, state law steps in to fill in that missing piece. The costs of hiring someone are an expense of the Trust and are a tax-deductible expense.

The 6 professionals who can be invaluable in helping you do your job are:

- Attorney
- Tax professional
- Investment advisor
- Estate organizer/liquidator
- Appraiser
- Real Property (real estate) professionals

If you hire someone to help, you are still ultimately responsible for Trust property. So be sure to:

- stay engaged
- meet regularly
- document your meetings and conversations

When hiring someone:

- look into their experience and credentials
- make sure their fees are in line with what others are charging
- document who you've interview and why you hired that person

ATTORNEY

An attorney may be the most valuable person on your team. Even if you think you can administer the Trust on your own it would be wise to have an attorney in your corner. You should determine what role you want your attorney to play in the administration of the Trust (help as needed... or handle most of the Trust administration). Clearly define the scope of the responsibilities she'll be handling.

How do you find a good attorney?:

- Personal references
- Other professionals
- County or state bar associations
- Attorney search engines
- Attorney's website

Once you've narrowed your search down to a few lawyers, meet with each of them. Confirm in advance what you'll be charged. Some questions to ask are:

- What experience have you had administering Trusts?

- Will you work with me if I want to administer much of the Trust myself?
- What are your fees?
- Do you do all the work?—or does a paralegal or legal secretary do some of it? If so, how do you bill for their time?
- How long does it usually take for you to respond to clients?
- How do you usually communicate with clients? (monthly meetings, email, phone, in person...)
- How long does it take to administer a relatively simple Trust in your geographic area?
- Do you prepare accountings or tax returns?

As you interview them, look for other things like:

- Does the lawyer seem to be listening to your questions?
- Does she give you clear, concise information?
- Is she respectful and polite?

Once you choose an attorney they will most likely ask you to sign an engagement letter, which will define:

- the scope of your relationship (what the attorney's responsibilities will be)
- fees
- costs
- how often you'll be billed

Just because you hire an attorney doesn't mean you have to continue using that attorney. You have the right to change any time.

TAX PROFESSIONAL

You'll be responsible for filing at least one, and possibly several, tax returns as Trustee. This is a specialized task. So, you should hire a tax professional.

Two types of tax professionals:

- ENROLLED AGENTS (EAs)
 - o Provide tax advice and file tax returns
 - o Have a wide range of knowledge in tax related subjects (income, estate, payroll and inheritance taxes)
 - o Can represent individuals and trustees in tax return filings, audits, etc.
- CERTIFIED PUBLIC ACCOUNTANTS (CPAs)
 - o Have a more expansive repertoire
 - o Deal in many different areas in the tax world (can act as auditor, financial planners, corporate accountants, tax consultants)

Important: what expertise do they have in preparing Trust tax returns. When interviewing, ask approximately how many Trust tax returns he has filed

How do you find a good accountant:

- Personal referrals
- American Institute of Certified Public Accountants (AICPA)
- National Association of Enrolled Agents (NAEA)
- Society of Certified Public Accountants

EAs and CPA typically charge by the hour or based on the type and number of tax returns they file. Establish fee details in advance.

INVESTMENT ADVISOR

If you're managing an ongoing Trust, you should get some guidance from an investment expert. This area is not heavily regulated. Nearly anyone can hold themselves out as an investment consultant, financial planner, wealth manager, etc.

Despite government regulation there are 3 common credentials you should look for:

- CERTIFIED FINANCIAL PLANNER (CFP)
 - o Have met rigorous training and experience requirements established by the Certified Financial Planner board of standards

- Have passed a rigorous exam
- Held to high ethical standards
- Confirm credentials at www.CFP.net
- CHARTERED FINANCIAL CONSULTANT (ChFC)
 - Meets rigorous requirements established by the American College for Financial Services
 - Must be a practicing financial advisor
 - Must complete 9 intensive classes on a variety of financial planning subjects & pass comprehensive exam
 - Bound by high standards of professional conduct
- PERSONAL FINANCIAL SPECIALIST (PFS)
 - Governed by the American Institute of Certified Public Accounting
 - Is a CPA with additional experience that qualifies them to offer financial planning services
 - Required to have 3,000 hours of financial planning experience
 - Must earn a minimum of 75 hours of continuing professional development
 - Must pass comprehensive exam
 - Confirm credentials at www.napfa.org

An additional resource: www.investor.gov

- Government created website
- Has a searchable database that will enable you to learn about an investment professional's background and status with the SEC or their state's securities agency

Investment advisors are typically paid in one of three ways:

- COMMISSION ONLY: Advisor earns money when he recommends certain products (like a mutual fund or annuity). You pay the commission upfront to the advisor.
- FEE ONLY: 4 ways the fee might be arranged
 - Hourly fee: Advisor earns a per/hour fee based on the amount of time he spends working with you/on your case
 - Flat fee: You choose the services you need. Advisor will charge a flat fee for those services
 - Retainer fee: You pay a fee up front for an estimated amount of services or time (regardless of what services you may need)
 - Percentage Fee Based on Assets Under Management: Advisor will charge a percentage based on the total assets he is managing
- FEE BASED: combination of commissions and fees

You're responsible for knowing what fees you're paying and how you're being charged. One of the most important questions to ask is how they earn their fees.

Other questions:

- What experience do you have advising Trustees?
- What investment products do you offer?
- How do you work with your clients?
- Who else might be involved with my account?
- How often do you communicate with your clients? And by what means?

ESTATE ORGANIZER/LIQUIDATOR

One of your responsibilities will be to sort through the personal belongings of the Grantor. You'll follow the Trust instructions to distribute property. Remaining items will be sold/donated/disposed of. This task can be daunting.

ESTATE ORGANIZER (full-service) will:

- Sort and inventory the grantors possessions
- Secure any valuables, documents, photos, medication, etc.
- Organize important paperwork and set up a filing system
- Arrange for professional appraisals
- Walk you through your selling options (like an estate sale, private sale, or auction)
- Match donations to the best charities
- Coordinate with family members, realtors, cleaners, home repair vendors and others

Estate Organizers typically charge an hourly fee; Can find one with internet search for “estate organizers” or “professional organizers” in your area. National Association of Productivity and Organizing Professionals has a searchable database. www.NAPO.net

ESTATE LIQUIDATOR: Once personal property has been sorted, some will need to be sold. Can have yard sale or auction online. Some trustees choose to work with an estate liquidator who coordinates all the moving parts of an estate sale

Estate sale is a three-part process:

- Part One- Presale: liquidator appraises and prices the estate’s items; will oversee organizing, marketing, advertising
- Part Two- Sale: liquidator will provide customer service, collect and manage money, manage the sale time line, & ensure process goes smoothly
- Part Three- After the sale concludes: loose ends are tied up: packaging and delivering items to be shipped, dealing with remaining items that weren’t sold, and ensuring everything gets recorded and itemized for tax purposes

Liquidator typically keeps 30-40% of the proceeds of the sale. Some liquidators buy the entire estate for a flat fee.

APPRAISER

Valuable items like jewelry, art, antiques, and real estate will require an appraisal. This is so you can:

- accurately calculate shares
- if property is later sold IRS will need base value to calculate capital gains tax (exception: if home is sold within one year from the grantor’s death the sale value will be used as date-of-death value)

How to find a good appraiser:

- Start with professional who originally sold the property:
- Jewelry: jeweler who sold the piece
- Valuable art: original art dealer
- Antiques: auctioneers from elite auction houses
- Real estate: good real estate agent
- Trust administration attorney may be good resource

IRS has strict requirements for Real Estate appraisers

- see if they are licensed by the state
- ask if appraisals are compliant with Uniform Standards of Professional Appraisal Practice (USPSP)
- make sure appraiser is experienced with the type of property you’re having appraised

REAL PROPERTY (REAL ESTATE) PROFESSIONALS

If the Trust includes real property you’ll need a number of professionals on your team. Can include:

- REAL ESTATE AGENT: will assist through the entire process of selling or renting the property. Can help you make smart decisions and avoid costly mistakes. Often have a network of helpful referrals.
 - How do you find a good real estate agent? Ask around. Look up website. Look at customer reviews. Interview them.
 - Questions to ask:
 - How long they’ve been working as a real estate agent?
 - What kind of training do they have?
 - Will you be working mostly with the agent?—or with their assistant?
 - What sets the agent apart from other agents?
 - How much will the agent be paid?
 - Request references
 - Talk to former clients
 - Will provide you with a market analysis and suggested range for initial asking price. Look at totality of information you’ve gathered—not just highest asking price
- CONTRACTOR: can assist if the property needs some repair. Ask real estate agent or friends/colleagues for referrals. Always do the following:
 - check references

- ask about quality of workmanship, products & customer service
- contact Better Business Bureau
- get multiple bids
- **PROPERTY MANAGER**: can assist if you'll be renting the Trust property. Can help with:
 - Rent: can determine best rent price, collect and manage rent payments, evict tenants due to non-payment of rent
 - Tenants: can help find / screen tenants, manage complaints, enforce lease terms
 - The property: oversee maintenance; schedule repair; conduct inspections; get property restored to rent-ready condition
 - Landlord-Tenant laws: help you understand your rights and duties under state and federal law
- **GROUNDS KEEPER**: can assist with landscape maintenance; personal references, neighbors with nice looking yards, and realtor are good places to look

CONCLUSION

Summary of professionals you should have on your team:

- Attorney: help you navigate state law and help you make sure you're not missing any requirements as you administer the Trust
- Tax Professional: can help you file any necessary tax returns
- Investment Advisor: (if you're managing an ongoing Trust) can make sure Trust funds are invested wisely
- Estate Organizer / Liquidator: help with sorting through and liquidating the Grantor's personal property
- Appraiser: can help you establish the value of the grantor's valuable property
- Real Property professionals: can help with things related to the grantor's real estate. Can include a real estate agent, contractor, property manager, or groundskeeper.

SETTING YOURSELF UP TO SUCCEED

GETTING ORGANIZED

To be successful as the Trustee you have to be organized. One of the first things you need to do is set up a functional filing system. This will help in several ways:

- simplify the process of providing accountings
- when professionals request information you'll be able to provide it quickly
- if beneficiaries have a question all information will be in your filing system
- will protect you from liability

Determine what method to use in keeping your files:

- **ELECTRONIC**: entirely computer based (paperless); stored on computer, in the cloud, or an external hard drive. Advantages include:
 - Can save time and money (no need for ink, printing, and sometimes even postage)
 - Documents can be accessed nearly anytime and anywhere
 - Sending copies can be done with click of a button
- **PHYSICAL**: hard copy, paper documents stored in actual file folder; Advantages:
 - Some people work better with tangible documents
- **HYBRID**: combination of ELECTRONIC and PHYSICAL
 - Important to have clear understanding of which files are located electronically vs. paper file folder

Choose a system that works for you. Be sure to maintain backups of everything

TWELVE FILES that will help you stay on top of all the information you'll be managing:

- **Trust Document**: This file will house the Trust document, along with amendments and restatements. This is also a good place to file the Will and any other documents that distribute property (or create a separate file)
- **Beginning Inventory**: This file will house a list of all the property the Trust started out with, along with the value of each asset as of the date of death of the Grantor
- **Statements**: This is where you'll file regular statements from banks or brokerage firms. Should be filed by year, in chronological order, and subdivided by account within each year

- Expenses or Bills paid: In this file, you'll keep a record for every expense paid by the Trust. Should be filed by year, in chronological order. Can also be subdivided by vendor.
- Accountings: As you prepare accountings for beneficiaries, file them here
- Income Tax Returns: This is where you'll file tax returns. Can be filed in separate folders for each year, or one folder, organized sequentially by date
- Correspondence: ...like letters, emails to and from attorneys, accountants, beneficiaries, and others
- Trustee Log: Can also be called a 'Trustee diary') It is a chronological log of the time you've spent as Trustee and what you've been doing
- Discretionary Decisions: In this file, you'll keep a chronological log of the decisions you make as Trustee. Keep documentation supporting 'why' you made your decisions.
- Directory: Contains contact information for everyone related to the Trust
- Deadlines: This file will keep a running list of critical upcoming dates. (also keep dates on your personal calendar and set up reminders
- Other: This file is where you'll keep anything else that seems important

How long do you have to keep records?: 3 years is a good rule of thumb. Under certain circumstances (in which information was not properly reported) the IRS can perform an audit up to 6 years after the filing of a return.

ADMINISTERING THE TRUST

GETTING TO WORK: A CHECKLIST

In the sessions that follow we'll walk through a checklist you can use as you begin to administer the Trust. This list covers things that you'll be doing in the first few months as a Trustee. (These are required to lay the foundation for administering the Trust). Once these are in place there will be other tasks that remain (like paying taxes, making accountings, making distributions, and terminating the Trust). If you have a simple Trust, you'll do the things on the checklist first, then pay taxes and make distributions... and then terminate the Trust right away. If you have a complex Trust you'll get your checklist nailed down, and then take care of the other things regularly, as the Trust requires. You won't necessarily complete all of these in order. And some will overlap.

ORDER COPIES OF THE DEATH CERTIFICATE

As you deal with people and organizations, they will need proof of the death of the Grantor. This is provided through a death certificate.

2 different types of death certificates:

- Certified Copies
 - o Prepared by local court and vital records office
 - o Have an official government embossed imprint
 - o Cost between \$5-\$30 each
- Uncertified Copies
 - o Copies of the certified version
 - o Nearly any organization you work with will require a certified copy

How do you get certified copies of the death certificate?

- Can order directly from county vital records office
- Easiest way= ask the funeral director to order them for you

How many certified copies should you order?

- Typical recommendation: 6-12
- Estimate how many accounts and assets the Grantor owned and order an equivalent number along with a few extras

FIND THE DOCUMENTS THAT DISPOSE PROPERTY

You probably already have the Trust document. There are likely other documents that distribute property that you'll need to find.

- Trust Property (has been re-titled in the name of the Trust) is governed by the Trust document. Person in charge is the Trustee.

- Property Titled in Grantor's Individual Name is governed by the Will. Person in charge is the Executor named in the Will.
- Other Property that is distributed directly to an individual and doesn't pass through a Trust or a Will. This property has a beneficiary designation. (like a life insurance policy... payment is issued directly from the insurance company to the beneficiary named on the policy)

Your job is to find all the documents that dispose of the Grantor's property, regardless of how it may be titled or distributed.

Documents you should be looking for:

- Trust amendments or restatements
- Will
- Will codicil
- Any document with a beneficiary designation:
 - o Life insurance policies
 - o IRA and 401(k)s
 - o Investment accounts and securities (stocks and bonds)
 - o Banks accounts (sometimes allow account holders to name a pay-on-death beneficiary)
 - o Vehicles (some states allow vehicles to be registered with a 'Transfer on death' designation)
- Deeds
 - o "With right of survivorship" means when one of the owners dies, the remaining owner continues to own the property
 - o "Tenancy by the entirety" means the property was held by a married couple, and the surviving spouse continues to own the property after the first spouse dies
 - o "Pay on death" deed allows a property holder to name a beneficiary to receive the property when the property holder dies
- Marital Property Agreement or Community Property Agreement: allows married couple to say what happens to some or all of their property when one spouse dies
- Any other joint ownership documents (sometimes people co-own cars, bank accounts, with other family members; surviving owner typically retains ownership)

STUDY THE TRUST DOCUMENT

The Trust document is the source of all the rules you'll need to follow. Study it and meet with an attorney to ask about anything you don't understand.

As you study the Trust, ask these questions:

- Who are the beneficiaries—and what do each of them receive?
- What are the terms of the Trust? Does it remain in a single trust, or is it divided into multiple pots for different people or purposes?
- Are there any timelines or conditions that must be met before a distribution can be made?
- How is the property to be invested?
- What powers do you have? (and-- are there any powers that you specifically don't have?)

REGISTER THE TRUST (WHERE REQUIRED)

Trusts are private documents. Typically, the only people who know about the terms of the Trust are the Grantor, the Trustee, and the beneficiaries. Assuming there are no conflicts during the Trust administration, there is no government intervention.

SOME states require a Trustee to register the Trust:

- Does not give the county/state ability to manage the Trust
- Does give the county/state legal authority if any disputes should arise
- Registration does not divulge private details of the Trust
- Information is typically not made public
- Statement filed typically includes:
 - o Your name, address, acknowledgement that you are the Trustee
 - o Name of Grantor
 - o Name of original Trustee
 - o Date the Trust was created

- No penalties for failing to register the Trust. But if required- don't skip this step.

FIND AND INVENTORY THE TRUST PROPERTY

Part of your job as trustee involves tracking and reporting the gains and losses of the Trust. The starting point for being able to do this, is to create a beginning inventory of the Trust Property. Work with the Executor to make sure this is done for property outside the Trust (you may also be the Executor). Once created you'll file this in the "beginning inventory" file.

Beginning inventory should list:

- Type of asset
- Where it's located
- How the asset is titled
- The initial value

The inventory can be further divided into property types:

- Real property (real estate): home, vacation property, rental property, or business property
- Vehicles
- Small businesses- can include sole proprietorship, LLC, partnership, small corporation
- Monetary accounts like bank accounts, investment accounts, IRAs and 401(k)s
- Life insurance policies
- Loans issued by the Grantor
- Valuable personal property like jewelry, art, or collectibles
- General personal property

Where should you look?

- Prior tax returns: can help you locate bank accounts, investment accounts, real property and businesses. Tax returns can be requested by filing IRS form 4506
- Bank and credit card statements: look for payments made to a mortgage company, automatic transfers to a brokerage firm... can also be used to find creditors
- Insurance policies: good place to look for valuable property
- Personal papers: even a box of random old bills could contain important things. Don't throw anything away without first looking carefully at it
- House safe: if you don't have the combination you'll need to hire a professional locksmith. Have a second person with you when it is opened to witness the inventory. Or document the process with a video
- Safe deposit boxes: these can store important documents, jewelry, and valuables. Great way to find deposit box is by checking bank statements for a regular charge to the bank. Take a witness for the initial inventory or document with a video
- Strange locations: make a 'reasonable' search
- Digital assets on computer: if you don't have the password, you might need to hire a professional to gain access. Be sure to back everything up.

VALUE THE ASSETS

As you create the beginning Trust inventory, you'll need to establish a value for each asset. Why?...

- Will give you a starting point from which to calculate any gains or losses of the Trust (which you'll then report to beneficiaries)
- Will come in handy if you're dividing property between multiple beneficiaries
- Capital gains tax...establishes the tax basis that's used if property is later sold
- Estate tax purposes
- If property that lies outside the Trust has to go through the probate process, the court will require a valuation

Remember: valuation date=date of death

How do you establish an asset's value on the date of death? It depends on the property type:

- Bank accounts: look at bank statement for the value on the date of death
- Securities (stocks, bonds, mutual funds):
 - o easiest= contact the brokerage firm

- publicly trades stocks: research history of the stock prices. Find the high and low stock value for the date of death. Calculate the average (add the two values and divide by two). Multiply that number by the number of stocks. If date of death occurred on the weekend, use average sales price on the trading days just before and after the date of death
- mutual funds= closing price on the date of death
- Real estate: qualified appraiser
 - IRS exception: will not require an appraisal if property is sold within one year from the Grantor's date of death (sales value will be the date of death value)
 - Walk through appraisal: appraiser walks through the property, evaluates specific components of the home, compares it to other homes on the market/recently sold, makes adjustments, completed detailed appraisal based on the weighted average of the comparable homes. (use this kind of appraisal)
 - Drive-by appraisal: appraiser bases value on the appearance of the home's exterior; less expensive; typically used by mortgage lenders in limited circumstances
- Life insurance: value ALL the policies held by the Grantor no matter whose life was insured
 - If Grantor was the insured: value=payout value
 - If someone else was the insured: value= cash value
 - Contact insurance company to get the value
- Businesses:
 - If co-owned may have had a buy-sell agreement (places a value on the business in advance)
 - Limited partnership: the partnership agreement can spell out what the partner is entitled to
 - Otherwise, use a qualified business appraiser
- Vehicles: Kelley Blue Book (www.kbb.com)
- Household items and personal property:
 - Fair market value (what a buyer would pay for the items today... not what they originally cost)
 - Household furnishings tend to make up the bulk and are typically valued together as a group
 - Consider using an experienced estate organizer

SECURE AND PROTECT THE TRUST PROPERTY

Your fiduciary duty includes securing and protecting the Trust property. This means making sure it's safe and that it's not wasted.

- Putting the Trust property in your name
- Making sure there is insurance in place to protect the property (if already in place, update the policy so you are named as the insured)

There are other things you'll do to secure and protect property. Steps will depend on the type of property:

- Real estate: change the locks; make sure payments are kept current; ensure it is maintained
- Vehicles: collect all the keys; make sure it is safely secured; store in safe place; keep up with regular maintenance
- Investments: your job is not to make the Trust a lot of money. It is to preserve the Trust's money. Choose professionals carefully; monitor their activity, diversify; no risky/volatile undertakings (just be prudent)
- Valuable tangible property: could require putting in safe or safe deposit box (steps taken should be comparable to the value of the item)

Securing and protecting the Trust property boils down to exercising common sense, care and prudence

GET A TAXPAYER ID NUMBER FOR THE TRUST

While Grantor is alive, tax ID number for the Trust is Grantor's SS number. When Grantor dies the Trust becomes irrevocable. Becomes its own legal entity. Requires its own tax ID number. (EIN number)

First must decide what you want the Trust's tax reporting period to be. (fiscal tax year vs. traditional calendar tax year). This is done in 'Section 645 election' within the EIN application. (NOT opting for Section 645=calendar year; MAKING a section 645 election= changes the tax reporting period to a fiscal year); Section 645 election not allowed if Trust will last more than 2 years.

How to apply for EIN: visit www.irs.gov. In the search bar, type 'apply for EIN'

- > Legal Structure: Trusts
- > Type of Trust: Irrevocable Trust

- > Confirm selection
- > Name and SS number of responsible party: Your info
- > If you want to make the Section 645 election, check the box
- > Information about the Trustee: Your name / click box indicating you are the Trustee
- > Mailing address: Your mailing address and phone number
- > Information about Trust: name of Trust; your county and state; date the Trust was funded=Grantor's month of death
- > If you've made the Section 645 election, additional prompt will appear asking for closing month of accounting year
- > Employees?: no
- > EIN confirmation: good idea to opt to receive confirmation letter online

ESTABLISH A BANK ACCOUNT

Part of your job will be to pay debts / expenses and make distributions. You'll need a central checking account.

Each bank has own requirements. Most common things needed are:

- EIN
- List of beneficiaries
- Personal identification
- Proof the Trust exists / you are new Trustee

Name of the account=Name of Trust, with you as Trustee

Certificate of Trust:

- 'short hand' version of the Trust
- usually a page or two long, signed in front of a notary, includes a short recitation of facts that identify the Trust:
 - o Name of the Trust
 - o When it was created
 - o Name of the Grantor
 - o Trustees

Grantor may have already created one. If you create one, some states have specific requirements. Can look up online or ask attorney.

LET THE IRS KNOW YOU'RE IN CHARGE

Let the IRS know you're in charge by filing IRS form 56 "Notice Concerning Fiduciary Relationship"

- Visit www.IRS.gov. Type "form 56" in the search bar.
- This lets the IRS know that from now on they should send the Grantor's tax related information to you
- If you ever stop acting as Trustee, the form will need to be filed again with updated information
- You'll also file this form when you distribute the last of the assets and terminate the Trust

NOTIFY THE BENEFICIARIES

One of your duties is to keep beneficiaries informed. You'll start by notifying them about the death of the Grantor and giving them some basic information about the Trust

Laws vary by state. Have your attorney guide you or do an internet search for state's requirements.

- WHO:
 - o Most states require you to notify all QUALIFIED BENEFICIARIES. This includes:
 - Current beneficiaries (folks you'll be making distributions to right away)
 - Remainder beneficiaries (those who will inherit after a current beneficiary dies)
 - Some states ALSO require you to give notice to LEGAL HEIRS. (people who are entitled to receive property under state law if a person dies without a Will)
- WHAT information should you give the beneficiaries:
 - o Notice in the form of a letter. (Some states require specific language. Others permit a letter in your own words)

Information should include:

- Name of the Trust
- Name of the Grantor / Date of the Grantor's death
- Statement that the Trust is now irrevocable
- Name and address of successor Trustee (you)
- Statement that beneficiaries have a right to request a copy of the Trust document
- Opinions vary about whether to send a copy of the Trust document with the notice.
 - Some say: Wait until a beneficiary requests it
 - Some say: Send pertinent parts
 - Some say: Provide copy of entire Trust
- WHEN should notice be sent:
 - Each state has own timeframe. Usually within 60 days after death
 - Once received, beneficiaries have a certain amount of time to contest the Trust (or assert the Trust is invalid). Usually a couple months. If beneficiaries don't assert their right within time frame, then barred from doing so. (Can still sue you for actions as Trustee)
- HOW should you provide notice:
 - In a way that will provide you with proof it was received. (certified/registered mail. If delivered by hand, get a signed receipt)
 - Where possible, good idea to gather everyone together for informational meeting. Attorney can attend.
- WHY:
 - Trusts used to be shrouded in secrecy. This doesn't go over well with beneficiaries. Laws have changed to ensure beneficiaries are informed.
 - In your best interest to be as transparent as possible. See this as an opportunity to get relationship with beneficiaries off to a great start.

SEND NOTIFICATIONS OF DEATH

Aside from beneficiaries, others should be notified about the death of the Grantor:

- Professionals: including Grantor's attorney, accountant, investment advisor, insurance agent
- Creditors: provide the new address for billing statements
- Utility companies: have bills sent to you.
- Cell phone/internet/cable TV: cancel services
- Landlord (if renting): find out if lease allows for early termination... or ask if landlord is willing to work with you
- Member organizations (country club or fitness gym): cancel memberships
- United States Postal Service: file a change of address form
- Social Security Administration:
 - Easier to go in person to local office
 - Social security number will be retired and flagged with 'deceased' notation
 - If Grantor was receiving SS benefits, will need to return check issued in the month of the Grantor's death (if SS payments are being made via direct deposit notify bank and ask them to return any SS payments made during the month-of-death or later)
- Veteran's Administration (if receiving Veteran's benefits): ask about burial benefits and other benefits available to surviving spouse/children
- State Dept. of Health and Human Services (if receiving Medicaid): Medicaid reimburses itself for services provided when house is sold

Consider creating a form letter that can be modified as necessary. Or take an afternoon to make phone calls. Document your conversations, and file any letters you've sent.

GET PROPERTY TITLED IN YOUR NAME AS TRUSTEE

Property titled in the Trust should be re-titled so your name is listed as the Trustee.

How do you do this?

- Bank/brokerage accounts: each institution has its own rules. Generally you will provide:

- Identification
- Trust EIN
- Certified copy of death certificate
- Proof of the Trust (can use Trust document or Certification of Trust)
- Once information is provided:
 - Title of each account will change- your name will be listed at Trustee
 - Mailing address will change so statements will go to you
 - Tax ID number will change from Grantor's SS number to EIN
 - New checks will be issued (if account had checks)
- Real Estate:
 - File 'Affidavit of Death of Trustee' with county property records office (filed in county in which property is located)
 - Attach certified copy of death certificate
 - Likely will fill out a form (call the property records office for information. Ask if transfer taxes will apply and if you qualify for any exemptions)

DETERMINE WHAT HAPPENS TO PROPERTY OUTSIDE THE TRUST

As you round up the Grantor's property there's a good chance you'll find property that is both inside and outside the Trust. One of your jobs will be to determine what's supposed to happen to property outside the trust.

Determine whether property is INSIDE or OUTSIDE the Trust.

- Property INSIDE the trust will be titled as 'Jane Smith, Trustee of the Jane Smith Living Trust'. This property is managed and distributed according to the terms of the Trust document
- Property OUTSIDE the Trust will fall within one of three categories:
 - Stays outside: This is property that is:
 - Jointly titled (this is distributed directly to co-owner)
 - Has a beneficiary or pay-on-death designation (this is payable directly to the named beneficiary) (Note: if it is payable to the Trust, it will be transferred to you as the Trustee, to distribute according to the terms of the Trust)
 - Goes inside:
 - Look to the Grantor's Will. If there is a pour-over provision, any property in Grantor's own name will be 'poured over' into the Trust (will be done in a process called Probate)
 - Goes somewhere else:
 - If there is no pour over provision in the Will: property will be distributed to the person/people named in the Will (through probate process)
 - If there is no Will at all: state law will govern who receives the property (through the probate process)

OPEN PROBATE (IF NECESSARY)

Quick review:

- Property inside a Trust= governed by Trust document. Person in charge= Trustee
- Property outside a Trust= in Grantor's own name. Governed by the Will. This property is called the 'Estate'. Person in charge= Executor
- You may be wearing both hats... or you'll need to work closely with the executor

To transfer property that located outside a Trust, the executor will need to go through a process called Probate.

- Court oversees executor as he accounts for the assets and distributes them according to the terms of the Will
- No Will?: property is distributed according to state law

How much will this cost? Most estimates say between 4-6% of value of the estate. But realistically, for many estates this percentage is inaccurately too high.

- Costs can be broken down into 3 fees:
 - Court fees: range from \$50-\$250
 - Attorney fees:
 - hourly rate (\$250-\$500/hr)
 - flat fee (several thousand dollars or more)
 - percentage of gross value of the estate
 - Other fees:

- Notice to beneficiaries and creditors
- Professional fees for tax preparation and appraisals
- Cost of obtaining a bond

How long is this going to take?

- depends on number of beneficiaries, whether someone contests the Will, if there's a business, or home
- for simple estate, time frame is 6-12 months

What you can expect from the probate process:

- Process is very detailed. A lot of paperwork
- Procedures vary widely by state. Some states are user friendly, others are not.
- Start by calling county clerk's office. Ask what information they have available to help you (you may decide to go it on your own, have your attorney coach you... or decide its best for her to handle the entire probate)

GENERAL OUTLINE of the probate process:

- Determine where you should file probate:
- Open a probate
- Initial hearing will be scheduled
- Provide notice to all interested parties, beneficiaries and legal heirs
- At the hearing:
 - o Prove the Will is valid
 - o Judge will determine whether you are required to post bond
 - o Court will issue 'Letters Testamentary'
- Inventory all the estate assets and establish their value
- Provide notice to creditors
- Get a Tax ID number for the Estate
- Make sure creditors get paid
- Request a final hearing (once taxes have been filed and all creditors have been paid)
- Provide notice to all beneficiaries and legal heirs
- At hearing- get permission to distribute property
- Transfer assets to new owners and get signed receipts
- File the receipts with the court and ask to be released as Executor
- Court will formally close probate

How do you know if you should tackle probate on your own?

- Your state has a simplified probate process (see if your state has adopted the Universal Probate Code- UPC)
- Your local court is known to be helpful to executors
- You're the sole beneficiary (or one of only a few)
- The estate does not include a lot of assets
- Does not include any property that could be troublesome
- The estate is small enough that it will not owe any federal estate taxes

USE A PROBATE SHORT-CUT (IF THE ESTATE QUALIFIES)

Some states have enacted laws that allow executors a way to avoid probate entirely or at least have a simplified probate process. Called a 'small estate procedure'. States typically offer one of two options (or both):

- Small estate affidavit process
- Simplified probate
- If you have a choice between the two, an affidavit procedure is simpler)

FIRST- determine if the estate you're working with qualifies as a 'small estate'

- Most states impose a flat dollar amount (some states look at gross value... some look at net value)
- If the estate includes real property it is automatically disqualified as a small estate
- Be sure you're including the right kind of property in your calculation (Trust property, beneficiary property, jointly held property... not included)
- Possible for Grantor to die owning a lot of property and still qualify for a small estate procedure

SMALL ESTATE AFFIDAVIT PROCESS:

- Affidavit= sworn statement that says:
 - Decedent has died
 - The value of the probate estate does not exceed the state's requirement
 - The beneficiary is entitled to the decedent's property under the Will (or under state statute)
- Beneficiary presents the affidavit, along with certified copy of death certificate, to the institution that possesses the property
- Institution releases property directly to the beneficiary
- Who's allowed to use the form?: beneficiaries or close relatives (depending on state law)
- Most states have waiting period (usually 30-60 days after death)
- If a probate has been filed, small estate affidavit cannot be used
- Where to get an affidavit?: Start with institution where property is held. They may have pre-printed forms. Sometimes state statute will provide fill-in-the blank form

SIMPLIFIED PROBATE PROCESS:

- File petition with the court
- Give written notice to beneficiaries and creditors you know about. May also be required to publish notice in a local paper
- Wait certain length of time for creditors to make claims
- Once that time has passed, court will give you an order authorizing distribution
- Order will allow you to get any assets and distribute them to beneficiaries
- Get signed receipts from beneficiaries
- File a closing statement with the court

How do you know if a simplified probate is something you can do on your own?: Boils down to how easily you can find help (fill-in-the-blank forms...etc.)

COLLECT PAYABLES: BENEFICIARY & PAY-ON-DEATH PROCEEDS

When someone dies, any property that has a beneficiary or pay-on-death designation needs to be collected. This may or may not be your job. If Trust is listed as beneficiary- you will claim the asset on behalf of the Trust. If assets are payable to an individual- they may look to you for help.

Six types of beneficiary/pay-on-death assets you may need to collect on:

- Life insurance
- Annuities
- Pensions
- Tax deferred retirement plans
- Roth IRAs
- Pay-on-death assets

LIFE INSURANCE

Life insurance payout goes directly to the named beneficiary. The type of policy determines when and how the payout is made at death.

FIVE TYPES of insurance policies:

- **TERM LIFE:** insures people for a period of time. If the insured dies during the term, the death benefit is paid to the beneficiaries. Some situations in which the benefit is not paid:
 - Term has expired
 - Premiums were not paid
 - Suicidal deaths within a certain period after the policy begins
 - Policy was obtained by fraud
- **WHOLE LIFE:** insures a person for their entire lifetime.
 - Premiums are higher
 - Policy builds cash value

- If the holder borrows against the policy, it will lower the payout amount (so although you may discover what looks like a sizeable whole life insurance policy, it may not have the value you think)
- UNIVERSAL LIFE: similar to whole life but allows the policy holder more flexibility
 - If premiums go unpaid, may not necessarily cause the policy to lapse
 - Sometimes insurers will use the cash that is built up to convert the policy into a term policy, or
 - Use the cash to pay the remaining premiums but reduce the death benefit
- ACCIDENTAL DEATH: pays a death benefit if the cause of death is an accident. Pays out as long as:
 - Premiums have been paid
 - Cause of death falls within the scope of the policy
- CREDIT PROTECTION INSURANCE: pays off some or all of a loan if you die
 - Death benefit does not go to an individual beneficiary
 - Paid directly to the company that extended the credit

HOW do you claim life insurance proceeds?: Call the insurance company directly—confirm the payout amount and the beneficiaries

OPTIONS for receiving the money:

- Lump sum payment: death benefit is paid out all at once
- Annuities: pay a fixed amount of income over time to the beneficiary
- Retained asset account: like a checking account that's run by the insurance company. Beneficiary gets a checkbook. Accrues interest. Beneficiary can write checks
- Installment payments: beneficiaries don't have the option of choosing this. The insured chooses this option for the beneficiaries before death.

ANNUITIES

Usually used for retirement purposes to help ensure individuals don't outlive their savings. When you buy an annuity you pay a lump sum up front or over time.

- Insurance company pays out a steady amount of cash over time starting at a specified date in the future
- Can last for specified period of time or until you die
- Some have death benefits—others don't
- Call investment advisor or annuity company to claim
- Can be distributed in lump sum or broken up over time
- Taxed as income when they are inherited

PENSIONS

Called "defined benefit plans". The employer guarantees that the employee will receive a certain monthly payment amount after retirement.

- Most pension plans end when the employee dies
- They can be set up to continue to provide for spouse or dependents
- Taxed as income

TAX DEFERRED RETIREMENT PLANS

These have largely replaced pensions. Known as IRAs, 401(k)s—or 'defined contribution plans'.

- Employee offers incentives to encourage employees to save money into these accounts (usually by matching contributions)
- Government allows people to save money in these accounts before it is taxed. When the money is withdrawn it is subject to income tax.
- Once a person dies, these are highly complex!
- Can take payout as a lump-sum. However, this could push the beneficiary into a higher tax bracket. Also removes the perk of the money being able to grow tax free.
- IRS has rules about how long you can wait to withdraw the money (subject to some exceptions)
- To claim account and schedule withdrawals, contact retirement company directly. But enlist the help of an investment advisor or tax professional!

ROTH IRAS

Contributions are made using dollars that have already been taxed. So, they are not taxed when inherited. These still have rules. Claim funds by contacting the retirement account company directly. First enlist the help of a qualified investment advisor or tax professional.

PAY-ON-DEATH ASSETS

You may run into other assets that are distributed through a pay-on-death designation (transfer-on-death designation). These are payable directly to the person listed as the pay-on-death designee. The process used to claim these assets depends on the property.

Common pay-on-death assets are:

- Bank accounts: Bank's records will indicate who the pay-on-death designee is. The person claims the funds directly.
- Vehicles: Some states allow residents to register a vehicle with a transfer-on-death title. Car is held in the resident's name during lifetime—upon death title transfers to the beneficiary named on the title.
 - o Present copy of death certificate
 - o Complete title transfer documents
 - o New title in beneficiary's name is issued to new owner
 - o If there was a loan on the vehicle, new owner is responsible for making payments or paying it off
- Real Estate: Some states allow residents to record a deed with a transfer-on-death title
 - o Property is held in the owner's name during lifetime
 - o Upon death property transfers to the beneficiary named on the title
 - o File a record of the transfer with the county property records office (file certified copy of death certificate and an affidavit... start by calling the county records office or a local title company)
- Stocks and Bonds: Transfer agent at each company keeps a record of the people that have purchased stocks or bonds and how much that person owns. The transfer agent also takes care of ownership changes.
 - o If stock is owned through brokerage company, contact the brokerage firm and ask for the transfer agent
 - o If stocks or bonds were issued directly from the company—contact company and ask the same question.
 - o You'll be asked to complete transfer documents. These will require a Medallion Signature Guarantee. (sort of like a notary, but with more requirements)
- US Savings Bonds: depending on the type of bond, beneficiaries have a number of options for claiming—cash the bond in, or have the bond reissued in the name of the beneficiary
 - o Make request from US Treasury Department (visit www.treasurydirect.gov and enter "death of a savings bond owner" in the search bar)

A FEW OTHER THINGS TO KNOW

- If the asset was co-owned the pay-on-death beneficiary can only claim the property after all the owners have died
- If the person named as the beneficiary is an ex-spouse, state law might prohibit the transfer
- Although some states prohibit a transfer to an ex-spouse, this doesn't apply to benefits that have been provided through an employer

PAY DEBTS AND CREDITOR CLAIMS

Before you can distribute to beneficiaries, all debts and creditor claims must be paid.

How do you know what debts and claims to pay?: you really just have to put on your detective hat and find them. Bank and credit card statements are a good resource. Check for automatic or repeated withdrawals. Common expenses to look for include:

- Rent and mortgage payments
- Insurance premiums
- Utility bills
- Cable or satellite TV expenses
- Internet access
- Phone bills
- Property taxes
- Subscriptions and Membership expenses

Once you're confident you've found all creditors, it's time to get them paid.

- Keep a meticulous record of payments you make (date, name of payee, what payment was for, amount)
- Not uncommon for a beneficiary to pay expenses out of his or her own pocket. Ask beneficiary to submit receipts and written request—then pay the beneficiary just like you would any other creditor
- If a spouse of the Grantor is still living, the spouse may be liable for the debts
 - o Some states: if a debt is incurred in a marriage, and that debt will benefit both spouses, the debt belongs to both spouses
 - o Other states: debt belongs to whoever signed the contract

Special circumstances along with some TIPS for handling them:

- Tip number one: If the value of the real property is less than the value of the loan on the property, continuing to make payments could be counterproductive. Beneficiaries and the Trustee are not on the hook if the loan is not paid. The lender forecloses on the home, sells it and receives proceeds as payment. (note: some states will allow a lender to go after other Trust assets for a shortfall after foreclosure). Talk to an attorney about your options.
- Tip number two: Credit card debts—interest stops accruing upon death. If the Trust is short on money to cover balances, there is a good chance you can negotiate the balance down.
- Tip number three: If Grantor was bound under a lease agreement, review the lease terms. Some provide for termination of the lease upon death. Also— it's often possible to negotiate with the landlord.
- Tip number four: if Grantor was subject to court order to pay child support, that doesn't go away (same may hold true for alimony). Be sure to set aside enough money to cover future payments
- Tip number five: If you're concerned you might have missed a debt: some states have enacted creditor's claim procedures (similar to those available in probate). Also, if Grantor was in a profession with a high liability rate, you can invite claims by sending a letter to grantor's clients notifying them of the death. This could help get lawsuits underway.
- Tip number six: If there's not enough money to pay all the debts, the estate is considered insolvent. Beneficiaries and trustee are not liable for the shortfall. Creditors line up in a certain order to get paid. 1) state/federal taxes, 2) expenses of Trust administration, 3) expenses of funeral and last illness, 4) secured property, 5) unsecured debts. Talk to an attorney familiar with insolvent estates.
- Tip number seven: Hold some money in reserve. Here, you can pay creditors, distribute to beneficiaries... then after a certain amount of time has passed, the reserve amount can be distributed to beneficiaries.

WRAP UP

So far we've looked at all the things that are necessary to lay a foundation for administering a Trust:

- Assembling your team
- Getting organized
- Working through your checklist

Once those are in place, what remains is:

- Investing assets
- Providing accountings
- Paying taxes
- Making distributions

If you have a continuing Trust these things will be done regularly. If it's a simple Trust, you'll do them once and then terminate the Trust.

TAKING CARE OF THE MONEY

INVESTING TRUST ASSETS

An investment advisor should be part of your team. But you will ultimately be responsible for ensuring the Trust assets are appropriately invested.

How should you invest the Trust assets? Depends on the goals and objectives of the Trust, and the needs of the beneficiaries. Also look to the Trust document for specific instruction.

GENERAL RULES that Trustees must follow when investing Trust assets:

- Avoid investments that are excessively risky

- You primary objective is not to make the Trust a lot of money. It is to avoid losing money.
- If you take risks, make sure there is an informed and acceptable trade-off for the risk.
- Consider the portfolio as a whole
 - Look at the big picture. Ask 'how does this investment contribute to the entire investment portfolio'.
- Diversify
 - Don't put all your eggs in one basket
- Take into account all relevant factors: Balance different things that could have an impact on your investment decisions:
 - Objective of the Trust
 - Risk and return
 - Effect of inflation
 - Economic conditions
 - Potential tax consequences
 - Needs of beneficiaries
- Keep expenses low: Avoid unnecessary costs...
 - Consider tax consequences of transactions
 - Understand what you're being charged
 - Make sure the Trust is not overpaying for services
 - Make sure cash is held in an account with low (or no) fee

It is your duty to make sure your advisor is doing a good job. Have regular appointments to check in and review performance.

KEEPING EVERYONE INFORMED

PROVIDING ACCOUNTINGS

What is an accounting?: it helps the beneficiaries know what you've been doing with the Trust property during a certain period of time. It helps them understand:

- The different types of property that are in the trust, and where that property is located
- How much principal and income the trust has received and where it came from
- How much principal and income has been dispersed and to whom
- Any commissions, fees, or expenses that have been paid.
- Any other gains or losses of the trust

How often should you give accountings?: Annually is a good practice; Some beneficiaries may waive their right to an accounting (if they do, get their signed consent)

HOW do you prepare the accounting?: Present the information using SIX basic categories (also known as schedules). Use a separate page for each category/schedule. They are:

- OPENING BALANCE SCHEDULE: the starting point of the Trust accounting. When you make your first accounting, the opening balance will be the initial value of the Trust assets when you started as the Trustee. (use the beginning inventory). If you're working with a continuing Trust, opening balance will be the closing balance from the prior year.
- INCOME SCHEDULE: lists any property that comes into the Trust during the accounting period (interest, dividends, rental income, profits from sale of property, etc.)
- PAYMENTS, CHARGES & LOSSES SCHEDULE: lists anything that is paid out of the Trust during the accounting period (expenses and payments to beneficiaries)
- CHANGE IN ASSETS SCHEDULE: use this if you have assets in the Trust that change name or take on a different form
- ENDING BALANCE SCHEDULE: similar to the opening balance schedule, except it lists assets along with their value at the end of the accounting period.
- SUMMARY SCHEDULE: an at-a-glance summary of all the inflows and outflows of the Trust

Compile all the schedules. Make an extra copy of the summary and add a signature line to it for beneficiaries' approval. Put the extra copy of the summary on top. Attach a cover letter.

UNDERSTANDING TAXES

PAYING TAXES

You should be using a qualified tax professional to help you with this.

When a death occurs it can trigger a number of different taxes:

- Taxes that will be paid by YOU as the trustee
 - o Grantor's personal income tax
 - o Trust's income tax
 - o Estate tax
 - o Real estate taxes
 - o Business taxes
- Taxes that may need to be paid by the beneficiaries
 - o Personal income tax
 - o Inheritance tax
 - o Capital gains tax

TAXES YOU MAY PAY AS TRUSTEE

GRANTOR'S PERSONAL INCOME TAX

- Cover's any income that was made by the deceased during the last year in which she was alive
- Federal filings are due by April 15th of the year after the date of death
- Reported on form 1040; Only required to be filed if the deceased made above a certain threshold amount (known as the standard deduction); Even if deceased did not make enough to warrant a return, she may be entitled to a refund.
- Surviving spouses do get some tax breaks (can file jointly; possible to qualify for widow or widower status if there is a dependent child)
- Required to write the word DECEASED and date of death prominently at the top of the form
- Also make sure taxes have been paid for prior years too. To locate prior year tax returns:
 - o Request a tax return transcript from IRS
 - o Request actual copies of tax returns
- Remember state income tax as well

TRUST INCOME TAX

- Tax that is due on income that is generated by the assets in the Trust
- Reported on IRS form 1041; Only required if Trust generates taxable income above a certain threshold
- If the Trust is being distributed right away- probably won't apply to you
- More complex Trusts:
 - o First two years: IRS doesn't require estimated taxes in advance. After two years- required to pay estimated quarterly taxes
 - o Common for Trustees to pay out income to the beneficiaries quickly. Trustee prepares a Schedule K-1 for each beneficiary which shows interest that was paid from the Trust to the beneficiary. Beneficiaries then report this on their personal income tax returns.
 - o Trust income tax only applies to Trusts that have become irrevocable. (If a married couple is sharing a joint Trust and there is a surviving spouse—surviving spouse treats any income as personal income.
 - o Remember state income tax

ESTATE TAX

- Sometimes called a death tax. Only imposed on high net worth estates. Imposed by federal government and some states.
- Calculate the net value of the entire estate. Compare the net value to the exemption amount. If the net value is below the exemption amount= no tax. If it is above the exemption amount might owe a tax.
- Estate tax exemptions change. You can do an internet search for "Federal Estate Tax Exemption" (do a search for state exemption, too).
- Estate tax return is due nine months after the date of death (can ask for 6 month extension)
- Federal marital deduction can reduce or even eliminate the tax
- Estate tax return is complex. Imperative that you meet with an accountant if the estate may owe an estate tax

REAL ESTATE TAXES

- Be sure to stay on top of paying property taxes

BUSINESS TAXES

- If the Grantor owned a business, be sure to stay on top of paying business taxes (payroll taxes, estimated quarterly taxes)

TAXES BENEFICIARIES MAY PAY AFTER RECEIVING THEIR INHERITANCE

PERSONAL INCOME TAX

- If property that's inherited generates income—the income is taxed
- Tax deferred retirement accounts are taxed

INHERITANCE TAX

- Imposed on people who inherit property
- Only used by a handful of states. Doesn't apply at the federal level.
- Estate tax: paid BEFORE money is distributed to beneficiaries. Inheritance tax: paid by the beneficiary AFTER inheriting

CAPITAL GAINS TAX

- If inherited property is later sold, capital gains tax may be due if the property has increased in value.

WHEN THE TRUST OWNS A BUSINESS

A WORD ABOUT BUSINESSES

This area can be complex. Get representation from an experienced business attorney.

FOUR common business types (and what typically happens when owner dies):

- Sole proprietorship: ceases to operate; debts or assets are part of the owner's estate
- Partnership: look at the partnership agreement. Common for agreement to have a provision that allows the surviving partners to buy out the deceased partners interest
- LLC: often have a written plan in place (called an operating agreement) that says what happens to the LLC when a member dies
- Closely held corporation: stock passes to whomever is named in Will or Trust. 'Who's in charge' is often answered by the corporation's bylaws.

COMPLETING THE ADMINISTRATION

DISTRIBUTING PROPERTY

Now comes the fun part—distributing property. But how do you go about doing it? You'll follow the instructions in the Trust document exactly. Some Trusts direct the Trustee to distribute everything right away. Others require distributions to be made over time. The sessions that follow will help you know how to distribute property along with some other things to know.

PERSONAL PROPERTY

- Trust document may give you specific instructions
- Have each person make a list of the items they would like. If multiple people want the same item:
 - o See if you can work something out
 - o Have a draft

EVERYTHING ELSE

- Follow the Trust document
- For property to be divided into shares:
 - o Can sell the property and distribute the cash proceeds
 - o Can distribute so it is held jointly
 - o Some distributions can be made 'in kind'
 - o Communicate with the beneficiaries about their preferences

MINOR BENEFICIARIES

- Must be distributed to an adult who has legal authority for the property

DISABLED BENEFICIARIES

- If a disabled beneficiary is receiving public benefits and receives a windfall from an inheritance- it can disqualify them from receiving further benefits.
- Inheritance should be distributed to the beneficiary through a Special Needs Trust (complex: see an attorney for help)

HOW TO DISTRIBUTE SPECIFIC TYPES OF PROPERTY

- Bank accounts/money market accounts: write a check to the beneficiary
- Real property: record a new deed with the county records office
- Brokerage accounts/mutual funds: start with a call to the brokerage or mutual fund company (or your investment advisor). Beneficiary will likely need to open a new account...then you will authorize transfer of funds
- Paper stock certificates/bonds: talk to your investment advisor or contact the company's transfer agent. Will need to be re-issued in the name of the beneficiary
- Vehicle: typically held outside the Trust. Fill out forms at Department of Motor Vehicles

KEEPING SOME MONEY IN RESERVE

Common to hold money back in reserve. You'll distribute the Trust property to the beneficiaries—with the exception of the reserve amount. Once you're confident all expenses have been paid, you can distribute what's left of the reserve to beneficiaries.

For simple Trust- hold back what you think you might need, but an additional \$500 or so. Also, ask accountant or attorney

GETTING RECEIPTS FROM BENEFICIARIES

When making distributions, always get signed receipts from beneficiaries. Provides written proof the property was distributed.

CLOSING THINGS OUT

TERMINATING THE TRUST

- 1st: File one final Trust income tax return (IRS Form 1040)
- 2nd: Let the IRS know you're no longer in charge (IRS Form 56)
- 3rd: Distribute what's left of the reserve, along with a final accounting
- 4th: Close the Trust bank account and other accounts that are in the Trust name
- 5th: CELEBRATE!

CONGRATULATIONS!

A FINAL WORD

CONGRATULATIONS! Look at what we've learned!!:

- What a trust is
- How it works
- Whether you should take on the job as a trustee
- How to think like a trustee
- How to assemble a team to help you
- How to get organized in a way that will make your job easier and more efficient
- A checklist of things that need to be done in administering a trust
- How to invest trust assets
- How to create accountings
- What taxes will need to be filed
- How to distribute money to the beneficiaries

YOU'RE READY TO DO THIS!!!