



SELLING PROPERTY FROM A TRUST



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BASICS OF TRUSTS & REAL ESTATE



WHAT IS A TRUST?

TESTAMENTARY DOCUMENT

- Created To Hold Property In Name of Trust
- Named Beneficiaries

SMITH FAMILY TRUST



Harry

Wendy



Child 1



Child 2



Child 3



WHY CREATE A TRUST?

AVOID PROBATE

MANAGE

- Distribution of Assets
- Beneficiaries
- Trustee's Duties

TAX BENEFITS



BASIC REQUIREMENTS

VALID TRUST MUST HAVE:

- Named Trustee with Duties
- Settlor Manifest Intent & Capacity to Create Trust
- Trust Property
- Valid Purpose (Not Illegal)
- Definite Beneficiary

Division 9, Trust Law Part 2, Chapter 1



PROVISIONS OF A TRUST

REVOCABLE VS. IRREVOCABLE

- A Trust is a Revocable “Living Trust” Unless Expressly Made Irrevocable
 - *Probate Code 15400*



PARTIES IN A TRUST

SETTLORS

- Those Who Create Trust, Own Trust Property

TRUSTEES

- Those Who Administer Trust Based on Terms

BENEFICIARIES

- Those Who Benefit From Trust



PARTIES IN A TRUST

SETTLOR AND TRUSTEE

- At Creation of Trust, Settlor and Trustee Are Same Person
- Upon Settlor's Death/Incapacity, Successor Trustee Will Administer the Trust
 - *Division 9: Trust Law, Part 3, Chapter 1*



RIGHTS & POWERS

SETTLOR'S RIGHTS

- Treat Property Normally (Buy/Sell/Trade/Etc.)
- Beneficiaries Have No Claim to Trust Assets

UPON SETTLOR'S DEATH

- Successor Trustee Granted Specific Duties & Powers
- Acquire, Dispose, Manage, Develop, Repair, Alter, and Lease
 - *Division 9, Part 4, Chapter 2*



HOW PROPERTY IS PUT IN TRUST

1) SCHEDULE A

- List Property in a Schedule Attached to Trust
- Could Have Multiple Schedules (Community Property & Separate Property)
- Itemizes List of Every Item, or Generic List



HOW PROPERTY IS PUT IN TRUST

2) DEED

- Quite Claim Deed Or Trust Transfer Deed
- Record Deed with County Recorder's Office
- Transfers Title from Original Owner to Trustee of the Trust
- Normal to Transfer In & Out Multiple Times
 - Refinance Home Loan
 - Check with Financial Institution



HOW PROPERTY IS PUT IN TRUST

3) POUR-OVER WILL

- All Assets Not in Trust “Poured” Into Trust by Will
 - Catch-All for Personal/Real Property Left Out of Trust
- Executor Has to Probate Estate Prior to Distributing Assets to the Trust
- Should Still Update Trust with Amendments
- Revocable Trusts Can Be Revoked, Totally or In Part

SCENARIOS FOR SELLING PROPERTY OUT OF A TRUST



SCENARIO 1: ALL SETTLORS ALIVE

REVOCABLE TRUST

- Complete Flexibility
- No Different Than Selling Property Held by Individual
- Can Execute CAR/PRDS in Either Capacity
 - Individual
 - Trustee

NOTE:

Contract **MUST MIRROR** how the property is held



SCENARIO 2: 1 SETTLOR DIES 1 SURVIVING SETTLOR

TRUST BECOMES IRREVOCABLE

- Surviving Settlor Still Trustee
- Usually Terms Allow Principal and Income from Trust to Continue Normal Lifestyle
 - May Sell If Money is Needed
- Cannot Transfer Into Individual Name, Must Sell as Trustee

NOTE:

Beneficiaries still have no right to Trust Assets unless specifically stated in the Trust



SCENARIO 3: ALL SETTLORS DEAD

TRUST IS IRREVOCABLE

- Successor Trustee administers the Trust
- Terms of the Trust Could Instruct Trustee to Liquidate & Distribute, or Distribute In Kind
 - Trust Agreement Dictates Ownership Shares of Beneficiaries
 - Successor Trustee Cannot Determine Beneficiaries interest



MECHANICS OF SELLING OUT OF A TRUST



ADMINISTERING TERMS OF THE TRUST

REVIEW TRUST TO LEARN POWERS & TERMS

- Whether Allows for Liquidation or In-Kind Distribution or both

DETERMINE DISTRIBUTION PLAN

- Discuss Distribution Options with Beneficiaries
- If Agree to Liquidate, Proceed with Sale



PROCESS:

SELLING PROPERTY FROM TRUST

1. PREPARE CERTIFICATE OF TRUST

- Show Successor Trustee Has Power & Authority to Sell
- Do Not Have to Provide Copy of Trust
- Attorney for Successor Trustee Should Prepare
 - *Probate Code 18100.5*



IMPORTANT!

Any person who acts in reliance upon the certificate of trust without actual knowledge that the representations contained are incorrect are **NOT LIABLE.**

- *Probate Code Section 18100.5*



PROCESS:

SELLING PROPERTY FROM TRUST

2. HIRE AN AGENT/BROKER

- If Successor Trustee is a Broker, they **Should Not** Conduct the Sale Themselves
 - Could Be a Breach of Duty to Avoid Conflict of Interest because it would be Dealing with Trust Property for Their Own Profit
 - *Probate Code 16004*

3. PREPARE PROPERTY FOR MARKET & SALE

- Trustee May Authorize Repairs & Cosmetic Changes
- May Use Trust Funds to Pay



PROCESS:

SELLING PROPERTY FROM TRUST

4. DUTY TO DISCLOSE

- CAR Trust Advisory Form
 - So Buyer is Aware Trustee Doesn't Have Same Disclosure Rules
- Duty to Disclose Not Altered Depending on Frequency Successor Trustee Visited the Property
- If Successor Trustee Completes Disclosure Forms, Will Be Held to Same Standard as Home Owner
 - *Civil Code Section 1102*



PROCESS:

SELLING PROPERTY FROM TRUST

4. DUTY TO DISCLOSE (CONTINUED)

- Disclose Only If Successor Trustee Knows Material Facts That Affect Value & Desirability

NOTE:

Trustee STILL HAS COMMON LAW DUTY TO DISCLOSE. Review forms and disclosure checklist to trigger memory.



PROCESS:

SELLING PROPERTY FROM TRUST

5. DISCLOSURE EXEMPTIONS

- Real Estate Transfer Disclosure Statement **(EXEMPT)**
- Seller's Property Questionnaire **(EXEMPT)**
- Natural Hazard Disclosure Statement **(EXEMPT)**
- Earthquake Guide **(EXEMPT)**

More Exemptions Listed on CAR Trust Advisory Form



DUTY OF SUCCESSOR TRUSTEE'S AGENT

INFORM ALL PARTIES: SALE OF TRUST PROPERTY

- Notify Potential Buyer that Trustee is Not the Owner
- Certain Disclosures Will Not Be Provided

INSPECTIONS

- Get Extensive Inspections Completed



CLOSING THE SALE

ESCROW AGENT INSTRUCTIONS

- Direct Funds to Trust's Bank Account
- Trust Attorney Can Help Open Trust Bank Account
- Attorney Also Help Distribute Funds According to Terms of the Trust



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QUESTIONS?



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