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The Four Steps of Trust Administration

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The Trust Administration process following the death of the settlor or, in the case of a married couple, the death of the last settlor, consists, usually, of four (4) phases: Intake, Transfer of Trustee Duties to Successor Trustee(s), Marshaling of Assets, and, finally, Trust Termination.

Intake

The intake phase generally consists of: (i) a review of the dispositive provisions of the Trust; (ii) a conversation about the family members, whether anyone has been disinherited or if there will be any other potential problems with family members; (iii) discussion of any potential problems immediately known; (iv) discussion of the roles of the successor trustee(s); and (v) discussion of the scope of work by the attorney and signing an engagement agreement.

Transfer of Trustee Duties to Successor Trustee(s)

Once a successor trustee(s) is in place, an Affidavit of Death will be prepared, signed and recorded with the appropriate county recorder in counties where the Trust owns real property. An affidavit of Death clears title to real property so the successor trustee can manage the property. A Trust Notification will also be served in accordance with California Probate Code § 16061.7 (to initiate the period during which claims against, and contests to, the Trust may timely be initiated). A certification of trust will also be prepared to assist the successor trustee with the marshaling other assets, such as bank accounts. A federal tax identification number will also be obtained, if needed.

If there are assets which were not placed into the trust prior to the death of the settlor(s), it may

be necessary to invoke other legal procedures, such as a Probate Code § 13100 Affidavit, Probate, or Heggstad Petition.

Marshaling of Assets

All of the settlor(s)' assets must be identified and valued. Federal estate tax returns must be filed within nine (9) months of the date of death. If there are small cash gifts to be made in accordance with the Trust, preliminary distributions can be made.

Trust Termination

Finally, after all assets are identified, marshaled and valued, and all tax returns have been filed (for the decedent, for the estate, for the trust and federal estate tax returns) then it is likely that all trust assets can be distributed and the trust terminated. A trust distribution agreement will be prepared and sent to the beneficiaries for review and signatures. After all beneficiaries have agreed to the proposed asset distribution, and the assets have been distributed, it may be necessary to prepare and file a final fiduciary tax return on behalf of the Trust. Trust administration is almost always easier and less expensive than probate, as court oversight and approval of trust administration usually is not necessary. However, trust administration is something that is best done with the assistance and advice of counsel.

Please contact Earle Law Offices today if you would like information on, or assistance with creating or administering, a trust.

Earle Law Offices provides trial and appellate litigation, as well as non-litigation, legal services in the areas of

business law, family law, real estate law, tax law, and trusts and estates.

* Mr. Earle is licensed to practice law in all California state trial and appellate courts, the United States Supreme Court, the United States Court of Appeals for the Fourth and Ninth Circuits, federal trial courts in the Northern District of California, and the United States Tax Court. He has also served as a Judge Pro Tempore for the Santa Clara Superior Court. In addition to practicing law, Mr. Earle is also a licensed Real Estate Broker.

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