

TRUSTEE DUTIES INCLUDE NOTIFICATIONS TO BENEFICIARIES AND OTHERS

Mary J. Peshel, Esq.

Trustees of California trusts have a general duty to keep the trust beneficiaries reasonably informed of the trust and its administration (Probate Code Section 16060). For trusts created after July 1, 1987, trustees are required to provide annual accountings to the beneficiaries (Probate Code Section 16062). Upon the request of a beneficiary, trustees are required to provide information about trust matters, including assets, liabilities, the acts of the trustee and the terms of the trust (Probate Code Section 16061).

For the past decade, California law (Probate Code Section 16061.7) has also required that the trustee provide notification of certain events, notably: (1) when a revocable trust or any portion of it becomes irrevocable because of the death of a trustor and/or (2) upon the change of the trustee of an irrevocable trust.

In both of these circumstances, notification must be provided to the trust beneficiaries (and to the Attorney General for certain charitable trusts). When the notification is required due to the death of a trustor, the notification must also be given to the heirs at law of that trustor (defined in Probate Code Section 44 as the persons who are entitled to take property of the decedent by intestate succession). This notification appraises the beneficiaries and legal heirs of the existence of the trust and is similar to the notification required in a probate estate.

The notification must be in a prescribed form (described in Probate Code Section 16061.7) which notifies the recipients of the existence of the trust and of his/her right to obtain a copy of the terms of the trust. The notification must be given within 60 days after the death of the trustor or change of trustee.

The statute establishes a 120-day period for persons to contest a trust, but only if the notification is timely and properly sent to all recipients. Should a person entitled to notification request a copy of the trust, the trustee is required to provide a full copy of the trust (and any amendments). The time to contest the trust is then the later of: (1) 60 days following the mailing of the copy of the trust, or (2) the 120-day period.

If the trustee does not make a good faith effort to comply with the notification statute, he/she can be held liable for any damages caused by failure to give the notification.

New sections of the Probate Code now require *estate attorneys*, beneficiaries, personal representatives and those in possession of property of a decedent to inform the California Victim Compensation and Government Claims Board when a deceased person has an heir who is incarcerated in California (Probate Code Section 216). That notice must be given within 90 days

after the death and should provide information as set forth in the statute. Since trustees are persons in possession of property of a decedent, this statute applies to trustees.

A similar statute, Probate Code Section 9202, requires the personal representative of a probate estate to notify the California Victim Compensation and Government Claims Board within 90 days after letters of administration are first issued, if the personal representative or estate attorney *knows or has reason to believe* that an heir is confined in a California prison or similar facility.

The purpose of these laws is to facilitate the collection of restitution orders to crime victims. Because of this special notice, the Victim Compensation and Government Claims Board can pursue satisfaction of a restitution order from the incarcerated beneficiary's share of the estate.

In a probate estate, payment of a restitution order should be straightforward as the incarcerated beneficiary will receive notice of the petition for distribution and can object to having part or all of his/her share distributed pursuant to the restitution order. The personal representative of the estate should obtain a court order which reflects distribution pursuant to the restitution order.

The trustee of a trust may be placed in a difficult position as the trust terms are unlikely to authorize distributions from a beneficiary's share in order to pay a restitution order. Unless the beneficiary approves such payment by the trustee, it may be advisable for the trustee to seek court instruction before making such a distribution.

Professionals who work with trust clients should be mindful of these California notification laws, as trustees often consult accountants or professionals other than attorneys to assist them in the trust administration process. Attorneys need to be familiar with the laws requiring notification to incarcerated individuals, as estate attorneys are specifically listed among the group required to give the notification.

If you have any questions regarding Trustee or Trust Administration matters, please call us at (619) 239-7777 or MaryPeshel@mmpph.com.