You are the successor trustee — now what?

Here is an (incomplete) guide for the first-time fiduciary.

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When a taxpayer dies, their executor or trustee (the “fiduciary”) is responsible for handling all aspects of their estate. This entails finding and dealing with their assets and liabilities, making all required notifications, paying bills, filing tax returns, and making distributions to the heirs.

If the fiduciary is a family member, they are likely undertaking this job for the first and last time. The process can be confusing even for a professional.

The executor or trustee has a fiduciary duty to act in the trust’s best interest. They must act with a higher level of care, loyalty, and good faith compared to normal business relationships, and they must avoid self-dealing. They are the legal owner of the property who must protect the beneficial owners, the heirs (“beneficiaries”).

What needs to be done depends on the terms of the will and trust and state law, the value of the property, the types of assets and liabilities, the title to property, and the number and type of beneficiaries.

Administration

The fiduciary must do the following (and more):

- Take possession of the decedent’s property and keep accurate (current) records of all transactions including income, expenses, sales, and distributions;
- Protect the assets and make prudent financial and investment decisions, acting in the best interests of the beneficiaries;
- Comply with all laws including probate, legal, tax and accounting reports, and filings;
- Communicate with consultants, creditors, courts, beneficiaries, and many others;
- Make distributions to the heirs, including to charity or to trust(s); and
- Seek professional advice when needed.

This article focuses on nonspouse fiduciaries, who often have less information than the spouse who may already be a co-trustee or have access to bank accounts, credit cards, etc.

A successor trustee, such as a child, sibling, or friend, may not have as much information and must prove to a bank and others that they are the new fiduciary who has the legal authority to deal with the decedent’s property.

What needs to be done immediately

The fiduciary steps into the shoes of the decedent. They must figure out what needs to be done and what can be delegated to outsiders.

Very soon after becoming the fiduciary, it's time to find the will and trusts, including the trust amendments. These will state who is the successor trustee and name the heirs. There is often an appendix that lists which assets were originally transferred into the trust.

Read the will and trust to find out who gets what because there may be specific bequests and multiple beneficiaries who may not share equally.

It's also time to locate everything the decedent owned or owed and to gain access and control over the bank accounts, financial accounts, and personal and real property.

Order multiple death certificates, and find the car "pink slip," insurance policies, trust deeds, and names, addresses, and Social Security numbers of all heirs.

Finding everything is tough unless there is already a list of names, addresses, account numbers, passwords, legal documents, safe deposit boxes and keys, combinations, e-mail accounts, etc. If there isn't a list, contacts and e-mails on cellphones and computers are a great place to start to create a list or update an existing list (unless they are password protected).

The prior-year tax return and source documents (1099s, etc.) is another place to look. These documents will include the name of banks, stock brokers, rental property, businesses, flowthrough entities, employers, pension or IRA accounts, home mortgage, etc.

Hard copies of bank or credit card statements and other bills also provide clues to create a list of income and expenses. Go back a year because some items occur annually.

The decedent's wallet will have auto and health insurance cards and credit cards. Most importantly (if access is available), check past and future e-mails for clues as well as future USPS mail.

The decedent's advisors, lawyer, accountant, financial advisor, insurance agent, and others may also provide invaluable clues in locating assets and liabilities, if you can find them. Check the cell phone and e-mail contacts.

Even after you locate some of the assets and liabilities, electronic access to bank, brokerage, and credit card accounts may be password protected. You may also have to prove that you are the executor or successor trustee. All of this just takes time.

Seek advice

If you have questions, seek the assistance of experts for legal, accounting, financial, and other advice. Which ones need to be contacted depends on the fiduciary's knowledge and experience and the complexity of the will, trust, and possible legal challenges by heirs or creditors. Talk to the attorney, CPA, financial advisor, insurance agent, and others. They are a great source of information.

A short (incomplete) list of the questions you might ask an expert includes:

- What needs to be done and when?
- Who are the beneficiaries, what do they get and when?
- Do trusts need to be set up?
- Is an inventory required?
- What tax returns, income, estate, payroll, etc., are required?
- Is (family) tax planning still possible?
- If there are co-trustees, how are disagreements settled?
- Is probate required or recommended?
- Should you notify the courts, creditors, beneficiaries, Veteran's Administration, Social Security, pensions, or others?
- Does state law or the trust require an annual financial statement, and who must it be sent to?
- Are appraisals required?
- Does property need to be retitled (and possibly reassessed by the county)?

Administration

While still in the process of finding things, the fiduciary can start:

- Paying the bills;
- Investing the assets;
- Raising cash (if needed) to pay creditors, taxes, or beneficiaries;
- Cleaning up the home; and
- Canceling unneeded insurance or subscriptions.

Check if auto-payment of ongoing bills will continue after death. If estimated tax payments were scheduled, should they be continued or cancelled, and should new payments be prepared for the administrative trust?

Check with the attorney to see if probate is required or recommended to settle legal liabilities. In California, for example, probate must be filed with the court within 30 days after the fiduciary learns of the death if the "probate property" has a gross value over $184,500. (California Probate Code §890) This includes property owned solely in the decedent's name, but not for most accounts containing beneficiary designations such as IRAs and pensions and some brokerage accounts or property held as joint tenancy, community property with rights of survivorship, or property transferred prior to death into the decedent's trust.

Also find out if you must give notice to the beneficiaries. For example, in California, if there is a trust, the trustee must give notice to the beneficiaries within 60 days of death. (California Probate Code §16061.7(f))

Tax returns

Form 1040, U.S. Individual Income Tax Return: A final year federal or state individual income tax return is required if the decedent earned more than the standard deduction prior to death:

	2023	**2024**
Single	$13,850	$14,600
Single and over age 65	$15,700	$16,550
Married filing joint	$27,700	$29,200
Married filing joint and both spouses over age 65	$30,700	$32,300

Even if a return is not required, seek advice about filing a return to start the statute of limitations running, or if you should notify the IRS of a change of address, of the fiduciary relationship (Form 56), to seek prior-year tax clearance, to make elections, etc. Only income received prior to death is included on the final return.

Form 1041, U.S. Income Tax Return for Estates and Trusts: Income received after death is reported on the fiduciary income tax return. There may be two: one for the estate and one for the trust. Ask about the election to combine them, even if there is only a trust. A fiduciary return is required if gross income exceeds $600. The 37% top federal tax rate starts at $13,451 of taxable income in 2023 ($15,201 in 2024) if not distributed to a beneficiary by year-end or within 65 days of year-end.

Don’t forget to step up the tax basis of the decedent’s assets to fair market value as of the date of death or alternative valuation date. As a bonus, if married, the spouse’s one-half of the community property is also stepped up.

Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return: A federal estate tax return is required if the gross value of the decedent’s property (plus prior taxable gifts) exceeds the exemption amount of $12,920,000 for deaths in 2023 ($13,610,000 in 2024). This is scheduled to revert to about $6,200,000 after 2025.

The 40% tax on the taxable estate, after subtracting the exemption amount, prior gifts, and deducting debts and transfers to a spouse or charity, is payable nine months after death. If married, consider filing an estate tax return to transfer any unused exemption amount to the surviving spouse (aka “portability”).

Almost one-third of the states (and D.C.) have either an estate or inheritance tax that begins far below the federal exemption amount. Check the resident state of the decedent and anywhere they owned real property.

Settling the estate

The fiduciary must do everything to settle the decedent's estate. That entails administering the property as a fiduciary, paying the debts, preparing reports, filing tax returns, etc. The fiduciary will also make the final distributions and close the estate or trust.

At death, the decedent's revocable (living) trust becomes irrevocable. That new administrative trust contains all the assets that were transferred into the trust prior to death. The trust must pay all bills and resolve and pay all claims and liabilities before final distributions can be made.

If property was not in the trust and doesn't pass by operation of law, such as with joint tenancy, community property with rights of survivorship, or designated beneficiaries with pensions, IRAs, brokerage accounts, etc., they become part of the estate, and the will (and probate) controls what must be done and who the beneficiaries are. The will and the trust may have different beneficiaries. Never assume anything. Read the will and trust.

Now that there is a list of assets and liabilities, contact them — it's time to let them know you are the fiduciary. Many require a copy of the death certificate and the trust or will before they will deal with you. (Some accounts may require a Medallion Signature Guarantee.)

Prior to death, the revocable trust had the decedent's Social Security number. You need to set up an administrative trust or an estate and get new taxpayer ID numbers for each and transfer the assets into the new entity. Although you should do this as quickly as possible, this often takes months.

It is not uncommon for the decedent's Social Security number to be on a bank or brokerage account years after their death because title was never changed. This is common when there is a joint trust for the decedent and their spouse. In that case, the new trust isn't usually set up until the assets and liabilities can be separated between the survivor and decedent's trusts. Professional advice is almost always needed for this.

The trustee may need to sell or reinvest assets, combine accounts, and needs to pay current and ongoing bills, such as utilities, insurance, and HOA fees, just to name a few. Many of these will not be sent until months after the death.

When making investment decisions, consider keeping or retaining a financial advisor, as fiduciaries are held to a Prudent Investor status unless the will or trust says otherwise. If there is a term bank CD, some banks allow the trust to close it after death without imposing an early withdrawal penalty.

Consider if some ongoing obligations should be cancelled, such as an apartment rental, cell or landline phones, cable tv, internet, and magazine, newspaper, and other subscriptions. Car, rental, or homeowner's insurance should not be cancelled until the asset has been sold or transferred.

If no one is living at the decedent's abode, consider a change of address with the Post Office. The USPS will forward mail for 12 months, and an additional six, 12, or 18 months can be purchased.

Ongoing information, such as W-2s, 1099s, 1098s, IRAs, and appraisals will be needed for the individual and fiduciary tax returns or the estate tax return. The fiduciary must have them prepared and filed and also must sign them either for or as the taxpayer.

When most or all liabilities have been paid, property sold, contingencies taken care of, and probate (if required) completed, it's time to make the final distributions to the beneficiaries. Some items can be distributed earlier such as small cash or specific bequests or partial distributions if there are sufficient assets and few (small) liabilities. Check with an estate professional if you have questions and if you need assistance with complicated distribution percentages or need assistance to set up or fund one or more trusts.

Check with the estate professional to see if you need to set up and fund a reserve for unknown debts because, as a fiduciary, you may be liable if all the funds are distributed and the beneficiaries won't pay the estate's later-discovered liabilities.

Now it's time to close the estate or trust. Keep copies of all records. Close the bank and brokerage accounts, and provide final reports, if required, to the beneficiaries.

But wait! In many cases, your current job is complete, but you are now the trustee of one or more trusts you just set up. They could be an exemption, marital, qualified terminable interest property (QTIP), special needs, or charitable remainder or annuity trust.

There are many things that need to be done that were not covered. There are numerous books and web articles that provide guidance for executors and trustees. If you have any questions, seek the advice of legal and other professionals.

Checklist of things to do when a client or loved one dies

Download a checklist of things to do when a client or loved one dies, organized by time-sensitivity at [www.caltax.com/files/fdt/1223-Checklist-Things-to-Do-When-Client-Loved-One-Dies.pdf.](www.caltax.com/files/fdt/1223-Checklist-Things-to-Do-When-Client-Loved-One-Dies.pdf)