

# Probate Code Sections for Successor Trustees

COMMON PROBATE CODE VIOLATIONS BY FAMILY MEMBER TRUSTEES

BY TREVOR MURPHY AND PETER KOTE – PROFESSIONAL FIDUCIARY SERVICES

# Fiduciary Positions in an Estate Plan

## Document

Durable Power of Attorney

Advance Health Care Directive

Will

Living Trust

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Conservatorship

## Fiduciary Position

Agent or Attorney in Fact

Agent

Executor / Executrix /  
Administrator

Successor Trustee

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Conservator

## Who?

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# Trustee Status and Succession

	Grantor	Beneficiary	Trustee
Alive & Kicking	X	X	X
Incapacitated	X	X	-
Dead	X	-	-

Very important - chose your successor trustee while you are “alive & kicking”

If incapacitated, he/she will:

- 1) Determine where you live.
- 2) Pay your bills.
- 3) Take you to your medical appointments.
- 4) Control your investments.
- 5) Prepare & file your income tax returns.
- 6) Communicate to the rest of your family the status quo.

# Trustee's General Duty to Report Information to Beneficiaries

- ▶ **Probate Code Sections 16060-16061.9: *Trustee's General Duty to Report Information to Beneficiaries:***  
This statute requires trustees to keep beneficiaries informed with respect to matters involving the trust.

# Duty to Administer Trust

- ▶ **Probate Code Section 16000:** *Duty to Administer Trust* : Requires trustee to administer a trust according to law and in accordance with the trust instrument. No matter how good the trustee's intentions, the trustee is NOT free to administer the trust in some other manner.

# Duty of Loyalty

- ▶ **Probate Code Section 16002:** *Duty of Loyalty:* This statute states that the trustee has a duty to administer the trust in the interest of ALL beneficiaries. The trustee cannot use the trust for his/her own benefit.

# Duty to Deal Impartially

- ▶ **Probate Code Section 16003:** *Duty to Deal Impartially:* This statute states “If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them.” A trustee cannot favor one beneficiary over another. This is particularly critical when the trustee is also one of the beneficiaries. In such cases, it is a clear violation of the law to favor himself or herself over other beneficiaries.

# Duty to Avoid Conflict of Interest

- ▶ **Probate Code Section 16004:** *Duty to Avoid Conflict of Interest:* This statute requires that trustees avoid conflict of interest. This prohibits a trustee from entering into transactions with trust property which will result in a profit for the trustee. For example, loaning personal funds to a trust. This action results in a trustee having a conflict between his duties to the trust and his duties to himself/herself.



# Duty to Take Control Of and Preserve Property

- ▶ **Probate Code Section 16006:** *Duty to Take Control of and Preserve Trust Property:* This statute requires trustees to take affirmative action to take and control of trust property and to preserve that property.

# Duty to Keep Trust Property Separate and Identified

- ▶ **Probate Code Section 16009:** *Duty to Keep Trust Property Separate and Identified:* This statute requires a trustee to keep trust property separate from property not subject to trust. For example, a trustee should not co-mingle personal funds with trust funds.

# Duty to Make Trust Property Productive

- ▶ **Probate Code Section 16007:** *Duty to Make Trust Property Productive:* This statute requires a trustee to make property productive. Monies must be wisely invested and diversified.

# Uniform Prudent Investor Act

## Fiduciary Investing

- ▶ Duty to Prudently Administer – CA Probate Code 16047(a)
- ▶
- ▶ Duty to Establish Risk and Return Expectations – CA probate Code 16047(b)
- ▶
- ▶ Duty to Consider “Prevailing Factors” – CA Probate Code 16047(c)
- ▶
- ▶ Duty to Diversify – CA Probate Code 16048
- ▶
- ▶ Duty to Incur Only Reasonable Expenses – CA Probate Code 16050
- ▶
- ▶ Duty to Prudently Delegate – CA probate Code 16052(a)(ii)
- ▶
- ▶ Duty to Independently Monitor the Agent’s Activities – CA Probate Code 16052(a)(iii)

# Duty to Account to Beneficiaries

- ▶ **Probate Code Section 16062:** *Duty to Account to Beneficiaries:* This statute requires the trustee to provide beneficiaries with “accountings”. Accountings are detailed statements regarding the financial transactions of the trust. They are similar to bank account statements in which a bank reports a beginning balance, and ending balance, and all the transactions that occurred during the reporting period that account for the difference between the beginning balance and ending balance. A trustee must keep careful records in order to comply with this requirement.

# Standard of Care

- ▶ **Probate Code Section 16040(a):** *Standard of Care:* The trustee shall administer the trust with reasonable care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined by the trust instrument. In other words, you don't have to be an expert!

# Qualities that make a good trustee

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- ~ Time
- ~ Desire
- ~ Proximity
- ~ Organization
- ~ Ability to Delegate
- ~ Communicative
- ~ Presence
- ~ Transparent

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