



Financial Experts Network
Trustee Training - Rights
and Responsibilities

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Overview

- Causes of Family Dysfunction, Estrangement
- Choice of Trustee
- Legal Duties, Rights, and Responsibilities of Trustee
- Trust Settlement Process
- Collaborative Approach





Causes of Family Dysfunction, Estrangement

- Perception of family members and others: “it’s never about what it’s about”
- Family History
- Societal Dynamics
 - Blended families
 - Cultural differences

Causes of Family Dysfunction, Estrangement (Cont.)

- Dissipation of the ‘glue’
 - Sibling Rivalry
 - Spouses, Significant Others, Friends, etc.
 - Financial Problems
 - Greed
 - Ill suited to be a trustee
 - *Unsophisticated*
 - *irresponsible*
 - *Too busy*
- Children acting as co or joint trustees

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Choice of Trustee

- Nomination (Must be an acceptance)
 - Individual
 - *Fixed vs. “Reasonable” compensation*
 - Joint Trustees
 - Corporate
 - *Fee Schedule*

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Trustee Rights and Responsibilities

1. Choice of Trustee
2. Trustee Compensation
3. Trustee Duties
4. Trustee Powers
5. Trustee Liability
6. Our Process
7. Collaboration



Trustee Duties

- Immediate Duties
- Overall Duties



Immediate – Near Death Trustee & Agent Duties

- Review Health Care Directive
 - Anatomical gifts
 - Health Care Decisions
- Review memorial instructions and make funeral arrangements
- Contact relatives and close friends
- Notify newspaper
- Locate military papers (VA provides certain benefits, including an American Flag and sometimes Color Guard)



Immediate Trustee Duties Shortly After Death

- Locate ALL Planning Documents
 - Trusts, Wills, Property Agreements, Business Agreements, Financial Agreements, etc.
- Contact Attorney
- Make decedent's residence secure
- Obtain Death Certificates
- Forward Mail
- Contact
 - Social Security, Veteran's Administration, Pension Administrators



Trustee Duties - Overall

- Understand the nature, details, and time involved in Trust Settlement
- Review and Interpret all documents
 - Wills, Trusts,
 - Marital or Property Agreements
 - Contracts, Leases, etc.
 - Business documents
- **Gather** (inventory) all assets
- Review Title/Ownership
 - Trust
 - Individual
 - Tenants-in-common
 - Joint Tenancy
 - Other
 - Beneficiary Designations
 - Jurisdiction



Trustee Duties (Continued)

- Characterize Assets
 - Community or Separate Property?
- Value Assets (Date of Death Value)
- Safeguard Assets (check insurance)
- Keep Careful Records
 - Account
 - Trustee Compensation
 - Do NOT “Commingle” Funds



Trustee Duties (Continued)

- Trustee Authority
- Keep Cash Flowing
 - Obtain EIN from IRS
 - Open Separate Trust Bank Account(s)
- Notify Creditors (“Known or reasonably ascertainable”)
 - Secured
 - Unsecured
 - Pay ongoing bills or make arrangements
 - Negotiations



Trustee Duties (Continued)

- Taxes
 - CPA/Accountant/Enrolled Agent
 - Cost/Tax Basis
 - Income Taxes & Estate Tax Deductions
 - *Decedent's final income tax return*
 - *Trust/Estate income tax return(s)*
 - *Other Income Returns?*
- Estate Taxes
 - Federal Estate Tax Return
 - State Estate Tax Return
 - Lifetime Gifts?



Trustee Duties (Continued)

- Notices/Filings
 - Government Agencies
 - *Social Security*
 - *Franchise Tax Board and IRS*
 - *Veteran's Administration*
 - *Dept. of Health Care Services*
 - *County Assessors - Property Tax (Prop 13 & Prop 19)*
 - *Credit Reporting Agencies*



Trustee Duties (Continued)

- **Notices/Filings** (Continued)
 - Beneficiaries & Heirs
 - Lodge (File) Original Will with Court
 - Court petitions – if needed
 - *Characterization of property not in trust, Small Estates, etc.*
- **Accounting**
 - Period between Date of Death and Distribution
 - Transparency

Trustee Duties (Continued)

Uniform Prudent Investor Act

Trustee owes a duty to beneficiaries of the trust to comply with the “**prudent investor**” rule.

“A trustee shall invest and manage assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.” *Probate Code Section 16047(a)*.

- Consider Using a professional Financial Advisor

Trustee Duties (Continued)

- Trustee Has:
 - Duty to Diversify trust assets (i.e., proper asset allocation)
 - **Ongoing Trusteeship of Irrevocable Trusts** - Duty to prepare or have prepared an “Investment Policy Statement” (IPS) for each trust
 - Duty to incur only reasonable costs during settlement/administration



Trustee Duties (Continued)

- Trustee has **power** to delegate investment and management Functions, but **must** exercise prudence in:
 - Selecting an agent
 - Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust
 - Periodically reviewing agent's overall performance



Trustee Duties (Continued)

Uniform Principal & Income Act

- Trustee **must**, in preparing trust accounting:
 - Distinguish between trust principal and trust income
 - Make sure income beneficiaries and remainder beneficiaries are treated **fairly**



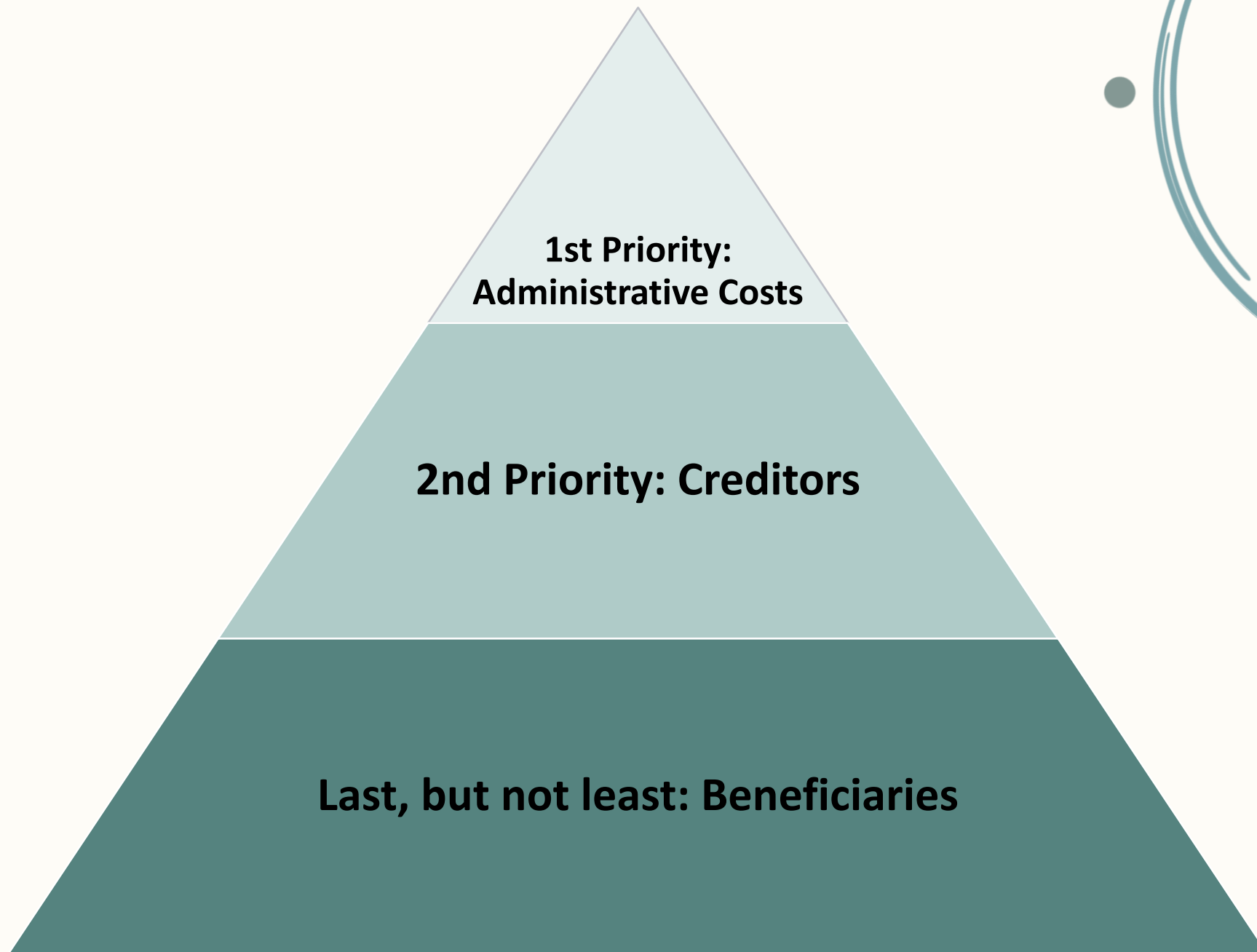
Trustee Duties (Continued)

- Duty to:
 - Distribute
 - *Proposed Distribution*
 - *Preliminary Distributions ?*
 - *Transfer of Assets/Title*
 - *Receipt(s)*



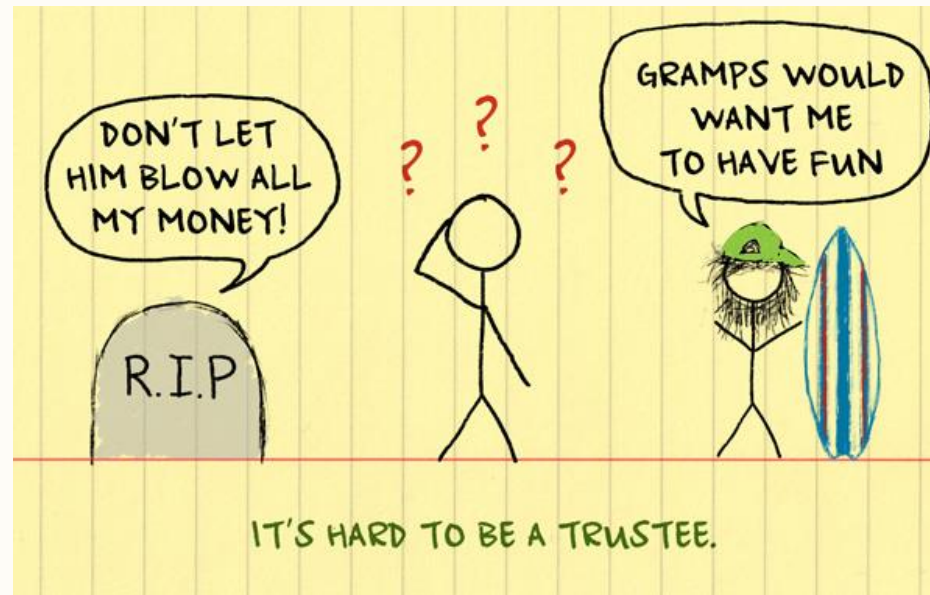
Trustee Duties (Continued)

- Special Situations
 - Death of First Spouse
 - *Notices*
 - *Filing Election for Portability*
 - *Sub-Trusts*
 - Special Needs Trusts
 - Tax-Qualified Assets (Secure Act)
 - Disclaimer? Watch for deadlines



Trustee Duties (Continued)

□ Dealing with Beneficiaries





Trustee Powers

- The Trust Document controls and is “The Law” for that trust
- California Law supersedes the Trust Document only where the Trust:
 - Is silent
 - Is ambiguous
 - Violates the law or public policy
- Boiler Plate in trusts: “Sweater in a Suitcase”
- Trustees Powers include those that are in the Trust, and those permitted by the jurisdiction’s statutes and case law.
- Trust Protector
- Decanting



Trustee Liability

- Failure to Fulfill Duties
- Breach of Fiduciary Obligation
- Removal
- **Personal Liability**
- Etc.

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The Trust Settlement Process

Meeting One:	Gathering the Information
Meeting Two:	Evaluation*
Meeting Three:	Initial Visit, and Understanding the Process
Meeting Four:	Creating Trustee Authority
Meeting Five:	Case Analysis*
Meeting Six:	Presenting the Plan
Meeting Seven:	Building the Plan*
Meeting Eight:	Implementation
Meeting Nine:	Confirmation

* = Trustee/Client Not Present

Some meetings can be by Phone or Zoom

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Your Professional Collaborative Team





Benefits of The Collaborative Approach

- Independent advice
- Long-term trusted relationships
- Centralized fact-finding data
- Interrelated needs evaluated
- Consistent advice for your entire plan

Summary

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Questions?

