

Executing Your Plan

Step-by-Step Instructions on How to Review and Execute your Estate Plan

BEFORE YOU GET STARTED (BEGIN HERE)

Note that you will need a notary to notarize all of the signatures. Notaries charge about \$20 per signature, so it would be a good idea to explore one of the many options for a free notary:

- Banks and credit unions usually offer free notary services for their account holders and members.
- Real estate agents often times are also notaries, and are usually willing to come to your home and notarize documents for free (likely in anticipation of building a professional relationship with you).
- You may have a family member or friend who is a notary who may be willing and happy to help.

If you are unable to find a free notary, FedEx Office, The UPS Store, AAA, and most other mail and shipping stores all have notaries available. There are a number of mobile notaries who will come to you, but they also charge a travel fee which can be unnecessarily costly in most circumstances.

It should also be noted that the Last Will(s) and Testament behind Tab #3 are not notarized in California but are rather witnessed by two, independent witnesses. It is not a legal requirement that you sign in front of the witnesses, but you must at least affirm to them in their presence (and yours) that the signature is yours. The witnesses must be “disinterested,” meaning they cannot have a beneficial interest in the trust. In this regard, it is a good idea to have friends, neighbors, or co-workers who are not mentioned anywhere in the trust to act as witnesses. To be safe, we do not recommend using any family members as witnesses.

As you get started reviewing and executing your trust, be sure to read this entire document thoroughly so as to ensure your estate plan is executed properly. This worksheet has been written in a conversational manner, similar to what it would be like if you were sitting face-to-face with an attorney.

Note that these instructions attempt to reference both single individuals and married couples but use such references interchangeably from time to time. Note that a trust may have joint creators, joint trustees, and joint beneficiaries regardless of any reference to the contrary in this workbook. Please contact us if something is not clear, or if you have any questions.

STEP 1: REVIEW THE OVERALL PLAN AND REFERENCE DOCUMENTS

Your entire estate plan is contained within this book. In very limited circumstances your plan may be contained in multiple books or with detached originals. These are unique cases and we would have addressed this previously if this were the situation.

Behind Tab #1 is a basic introduction covering topics related to storing your estate plan, updating it, and a little more detail about the different types of documents included in your plan. The introduction contains very important information and moving forward it is assumed that you have read it.

Also located behind Tab #1 is a plain English “Summary of Estate Planning Provisions.” Although it starts with the Revocable Living Trust and continues on for many pages, the other documents in the plan are explained toward the end of this summary. Although it is not essential that you read this document now, please feel free to refer to it periodically to help explain, in simpler terms, the meaning of certain paragraphs or documents in your plan.

At this point you may want to take a minute to read the “Introduction.” It is not critical to the execution of your plan, so feel free to read it later, but we recommend that you do read it.

STEP 2: REVIEW AND SIGN THE REVOCABLE LIVING TRUST

Behind Tab #2 is the first, and by far, most critical and integral estate planning document in your plan: the Revocable Living Trust. Every other document in your plan relates to it, works together with it, supports it, protects it, or otherwise interacts with it. Note that the living trust is a “pass-through” and “see-through” document, which means that although it is a separate entity for ownership purposes (e.g., a trust can own real estate), you do not need to file your taxes any differently than you do currently, and any assets owned by the trust will also be considered owned by you for all other purposes other than the administration of your estate (i.e., all trust assets are exposed to the risks of a lawsuit, bankruptcy, divorce, etc.).

The living trust can be thought of as an entity to which you transfer all your assets. We often use the example of a cargo ship with the ship symbolizing the trust and the cargo representing your assets transferred into the trust. Upon signing the trust you are the captain of the ship and you have any and all power and authority to amend, change, or even revoke the entire trust.

Given the trust is considered a separate entity for ownership purposes, banks and financial institutions may ask you for the “EIN” (Employer Identification Number) or “TIN” (Taxpayer Identification Number) of the trust. You would simply give them your social security number. For a joint trust, either social security number will do, but you might want to use one consistently to avoid any confusion.

The trust starts off with a Table of Contents and is then followed by the first page of the actual legal document. There are six articles in the trust and I will briefly explain each article but will go into further detail where appropriate. Please follow along in your own trust document.

PREAMBLE. The purpose of the preamble is to briefly state the facts which make this trust a legally binding document. The “settlor” is the creator of the trust (also known as a “trustor”). The settlor is creating the trust and turning over control and stewardship of the trust to the “trustee,” which happens to be you as well. The trustee manages all of the trust assets per the terms of the trust. As you will note later on in the document, these terms as they relate to you as the initial trustee are 100% flexible and discretionary resulting in you managing your financial affairs just as seamlessly as you did before. **Take a moment to ensure that all names are spelled correctly in this preamble. Contact us immediately if this is not the case.**

ARTICLE 1. RECITALS AND CONVEYANCE. Article 1 is another formality that explicitly states certain requirements for the formation of a trust. Without the issues addressed in Article 1, there is no trust. These requirements date back to Ancient Roman times, upon which modern English and American Trust Law is established.

ARTICLE 2. DECLARATIONS. This article can best be thought of as various lenses through which the rest of the trust should be viewed. There are no specific distribution provisions or trust powers in this article, but rather various clauses and elements which set the stage for the rest of the trust. There are a few sections here that merit further attention:

Section 2.A. This is the legal name of the trust. All of your assets from here on out need to be titled in this name (with very few exceptions, which we will discuss later). **Please be sure that the trust name is spelled correctly.**

Section 2.B. This satisfies the legal requirement of stating the familial status of the creator. **Please ensure that all names are spelled correctly, and that all birthdates and/or ages, if any, are also correct.**

Section 2.C. This section appoints successor trustees to manage trust assets per the terms of the trust. Note that you are the initial trustee, and these successors only act in the event that you are unable or unwilling to so act. **Please review these successor trustee names and structure and verify that all is correct.**

The rest of Article 2 primarily consists of provisions that are necessary to the structure, compliance, and protection of the trust. Although I would not consider this language “boilerplate,” there is not much here that should be altered—the provisions included are consistent with your specific situation, but the language is in compliance with a number of statutes and case law. Don’t feel like you need to concern yourself too much with the specifics of these sections. However, Section 2.K. merits some review:

Section 2.K. This section gives the trustee limited discretion to withhold distributions in very specific situations even if the trust otherwise requires the trustee not to so. These specific situations include excessive substance abuse, cognitive impairment, or spendthrift situations of a beneficiary. The intent with this section is to allow the trustee to protect a beneficiary from him/herself.

For example, if the trust states that a beneficiary is entitled to receive their inheritance at age 25 but the beneficiary is completely dependent on drugs or alcohol (not just an addiction, but complete dependency resulting in significant impairment), the trustee would be able to withhold distribution until the beneficiary is able to improve their situation. Under this section the trustee even has the power to use this beneficiary’s inheritance to pay for rehab or provide just enough to keep him/her off the streets.

ARTICLE 3. TRUSTEESHIP. This article covers the policies and procedures for the acting trustee. Note that this only applies to the successor trustees as you have complete flexibility in freedom with how you want to manage your finances and assets. Article 3 addresses what sort of reports need to be maintained, who the trustee should share information with, how the trustee interacts with third parties, etc. Most of this information addresses actions which are either statutorily required or simply common sense. Regardless, it is convenient and helpful for the successor trustee to have this information all in one place.

ARTICLE 4. TRUSTEE POWERS. Until now we have described the successor trustee’s responsibilities to act pursuant to the terms of the trust. Article 4 spells out these powers and authorities you are granting to the successor trustee to so act. This article is intentionally broad as we want the successor trustee to do anything that is necessary to properly take care of you should you be incapacitated, or to administer the estate upon your death. These powers include things like the power to open and close bank accounts, buy and sell investments, enter into contracts on behalf of the trust (i.e., act as a landlord to rental property owned by the trust), etc.

ARTICLE 5. SETTLOR'S RETAINED POWERS. Article 5 simply clarifies that you, as the creator of the trust, are retaining all power and authority, and that you are not restricting yourself in any way by creating this trust (as opposed to an *irrevocable* trust which is very restrictive and serves very limited purposes).

ARTICLE 6. DISPOSITION OF TRUST FUND. Article 6 discusses how all trust assets are to be managed and ultimately distributed. There are a few sections in Article 6 which merit additional review:

Section 6.B. So long as the creator of the trust is still alive and well, disposition of the trust funds are at the sole and absolute discretion of the creator without any restrictions.

Section 6.C. Upon incapacity the successor trustee begins to take over, but only to the extent that they use your assets to take care of you (or protect for further use).

Throughout the rest of the article the trust addresses the administrative necessities upon your passing: issues relating to taxes, debts, etc. This language tends to be more technical than other language in the trust as there are multiple tax opportunities to take advantage of (and pitfalls to avoid) during this time—especially after the death of the first spouse to die in the case of a married couple. However, the very last section addresses distribution of trust assets upon the final death:

Section 6.F (for individuals), **Section 6.K** (for married couples). This article lays out the ultimate distribution of the trust estate. It is impractical to go over every possible distribution plan as each client's wishes are unique. **As so, it would be well worth your time to read this section in its entirety.**

On the last page or two of the trust you will find the signature lines and the notarization section. You will note that the creator must sign once as the creator, but also again as the trustee (acknowledging acceptance of both roles). Although we have only touched on some of the highlights of your trust, signing where noted acknowledges you have read and agree to the trust in its entirety. **Go ahead and sign, date, and notarize where indicated.**

Behind the trust document is the **DECLARATION OF TRUST**. This document could be considered a corollary document and not part of the trust, but recent case law has frowned upon this document not being included with the trust. The purpose of this document is to support the trust in the fact that you intend all of your property to be owned by it. This does not substitute the need to properly fund your trust but can help out as a near-last resort to probate. **Go ahead and review the Declaration of Trust and sign, date, and notarize where indicated.**

Last, behind Tab #2 is the **PERSONAL PROPERTY DISTRIBUTION** form, which allows you to specify to whom you want certain items of your personal property distributed. You can update and amend this on your own. Note that these distributions should not be inconsistent with anything explicitly stated in the trust. The purpose of handling the distribution of personal property in this manner is that incidental personal property bequests can be made, amended, and changed throughout your life without having to incur the cost of hiring an attorney to make such changes.

Note that the trust references this document in the first sub-paragraph in the distribution paragraph of the trust (Section 6.F for individuals and Section 6.K for married couples). You should take the time to review that paragraph to properly understand how this document works with the rest of your trust. There is no need to fill it out and sign it now, but you will certainly want to do that as you begin to want to add items and beneficiaries to it.

STEP 3: REVIEW AND SIGN YOUR POUROVER WILLS

In California, the Pouover Will serves two purposes: First it is the proper document in which to name guardians for your minor children. **Review Section 2.C in Article 2 to ensure that any guardians listed reflect your intent.**

Second, the Pouover Will serves the purpose of acting as a safety net if an asset was not properly transferred into the trust prior to death. Although there are some strategies one can explore prior to having to resort to probate to posthumously make the transfer, there are situations where an asset would need to go through probate. If such a scenario were to occur, the pouover will would be the accompanying document. Near the end of the probate process the will then “pours over” the asset into the trust, where after the asset is then distributed per the terms of the trust. Given this configuration, the pouover will only names one beneficiary—the trust; and the executors of the will are typically the same individuals as the trustees. **Please review the document thoroughly, and sign in the presence of two disinterested witnesses as noted on the last page or two (See below). Note that each spouse in a married couple with have their own Pouover Will.**

****It should also be noted that the Last Will(s) and Testament behind Tab #3 are not notarized in California but are rather witnessed by two, independent witnesses. It is not a legal requirement that you sign in front of the witnesses, but you must at least affirm to them in their presence (and yours) that the signature is yours. The witnesses must be “disinterested,” meaning they cannot have a beneficial interest in the trust. In this regard, it is a good idea to have friends, neighbors, or co-workers who are not mentioned anywhere in the trust to act as witnesses. To be safe, we do not recommend using any family members as witnesses.*

STEP 4: REVIEW AND SIGN YOUR POWERS OF ATTORNEY

The Power of Attorney appoints agents to act specifically on your behalf should you be incapacitated or otherwise unable to make decisions. Although the trustee will be the individual handling most of the affairs upon your own incapacity, agents appointed by a power of attorney will be able to address all affairs not related directly to trust assets. These affairs include issues such as signing tax returns, cancelling a cell phone contract, making decisions related to a 401(k), IRA, etc. **Review the document to ensure the named agents are correct (Page 1). You also need to initial in one or more places in the middle of the document. Last, sign, date, and notarize where noted toward the end.**

STEP 5: REVIEW AND SIGN YOUR ADVANCE HEALTH CARE DIRECTIVES

The Advance Health Care Directive is similar to the power of attorney in that it allows you to appoint an agent to act on your behalf should you be incapacitated. However, the agent appointed in an Advance Health Care Directive can only make decision related to your health care and other associated medical decisions.

Something different about the advance health care directive is that the principal (you) make multiple decisions ahead of time with the agent's role being to simply carry them out. The most common decisions are whether to withdraw life-sustaining support should you be in a persistent vegetative state, and whether you are an organ donor (or would like to be). However, you are free to make as many or as few decisions ahead of time as you like. Any decisions not made by you would be made by your agent.

Please review the agents appointed and the health care decisions made in this document. Sign, date, and notarize where noted. Note that you also may need to initial in a few places throughout the document.

Behind your advance health care directive is a document referred to as a **HIPAA AUTHORIZATION** which, if executed, makes it significantly less complicated for an acting health care agent to access and use medical records consistent with your wishes in your advance health care directive. **Please review this document and sign, date, and notarize where noted.**

STEP 6: REVIEW AND SIGN YOUR CERTIFICATION OF TRUST

The Certification of Trust (or “Certificate of Trust”) is an executive legal summary of certain provisions in your trust. The primary purpose of this document is to provide a requesting third party (such as a financial institution) only the relevant information about your trust such as the name, signing date, successor trustees, trustee powers, etc. without requiring divulgence of the more personal portions of the trust such as distribution of assets. **There is reference to the signing date of the trust on Page 1; fill in the date of the signing of the trust if not already done so. Sign, date, and notarize where noted.**

STEP 7: REVIEW TRUST FUNDING INSTRUCTIONS AND SIGN DEED(S)

The document behind Tab #7 is a reference document and does not need to be signed. It is a good idea to review this document thoroughly and often, as it is imperative that all of your assets are properly transferred into the trust (with limited exceptions). Use this reference also as a checklist to make sure that each of the mentioned assets have been transferred pursuant to those instructions, and that you continually ensure that all appropriate assets remain in the trust.

Included with the trust book should be deeds to any real estate that you own. Note that it is your responsibility to execute and properly record these deeds. You can walk them in to the County Recorder's office for recording (they will give the recorded documents back to you right then and there), or you can mail them in (expect 4-6 weeks for the recorded documents to be mailed back to you). Note there is no reassessment for property tax purposes and the recording of a deed is not a taxable transaction. **On top of the deed should be a coversheet entitled, "Real Property Recording Instructions." Follow those instructions carefully to execute and record the deeds.**

STEP 8: REVIEW AND SIGN YOUR MARITAL PROPERTY AGREEMENT

The purpose of the Marital Property Agreement is to clarify that regardless of who owns which item of property, or whoever is on title to whatever item of property, that all property, for estate planning purposes only is to be considered part of the trust estate and administered according to its terms. When a client does have an item of property they are intending to keep separate for a specific beneficiary, we still want the Marital Property Agreement in force, but we specifically address that item of property and beneficiary in the actual trust document. Contrary to common thought, this document has nothing to do with the community property / separate property character of an asset and is not a prenuptial or postnuptial agreement. **Please review the entire Marital Property Agreement and sign, date, and notarize where noted.**

STEP 9: REVIEW AND SIGN YOUR ASSIGNMENT OF PERSONAL PROPERTY

Technically, the trustee only has authority to manage property that is owned by the trust. Any property that is not titled, assigned, or recorded listing the trust as the owner is outside the “jurisdiction” of the acting trustee. This assignment of personal property is a formal transfer of ownership of your personal property and effects into the trust. Similar to a quitclaim deed for your real estate, this document changes ownership of everything from your furniture to your art, clothes, and jewelry to the trust.

Review this document and sign, date and notarize where noted.

STEP 10: REVIEW AND SIGN YOUR PERSONAL DISPOSITION INSTRUCTIONS

Although it is not essential to an estate plan in the traditional sense, many clients do ask about where they include how their final wishes are to be carried out. As so, I have taken advantage of the provision in the California Probate Code which allows for an individual to appoint others to specifically act on their behalf to arrange memorial services and final disposition. **Please review the spelling of your health care agents at the bottom and sign and date. You are free to fill out the rest of the form with your wishes at your leisure.**

Note that after the death of a loved one, planning memorial services tends to be a higher priority than locating and reading one's estate planning documents. Realize that this document may not be reviewed until after your service and disposition. As so, it is a good idea to keep an open line of communication with your family or loved ones relating to how you would like these decisions to be made, and even periodically remind them of the presence of this document.

STEP 11: REVIEW AND STORE YOUR ESTATE PLAN

Take another few minutes to review each document page by page to be sure everything is initialed, signed, witnessed, or notarized properly. Once all the above is completed, your estate plan is in full force and effect and should be kept secure. It is not necessary for you to have your trustees and/or beneficiaries review your estate plan, but some clients feel a need to ensure that others understand the estate plan as well. Our general advice is to simply inform your trustees that you have an estate plan and where it is located. Informing beneficiaries of the particulars of the distribution of the trust is not always a good idea as those provisions may change potentially causing confusion during administration.

Last, you should keep your plan in a secure location and inform us immediately if it becomes misplaced. Note that we do not keep an executed copy at our office. And of course, please do not hesitate to contact us should you have any questions.

CONGRATULATIONS!

**YOUR ESTATE PLAN SHOULD BE PROPERLY EXECUTED.
PLEASE REACH OUT TO US SHOULD YOU HAVE ANY QUESTIONS.**