



FITZWATER

LAW

6400 SE Lake Road, Suite 440 | Portland, OR 97222
503.786.8191

Trusts Group

[Jonathan P. Bacsalmasi](#)

[Wesley D. Fitzwater](#)

[Shauna M. Haney](#)

[Theresa Hollis](#)

[Emily Pringle](#)

[Christopher L. Ray](#)

How does a trust work after death?

How Does a Revocable Living Trust Work After Death?

A Revocable Living Trust is an estate planning document that allows a person's assets to be managed and distributed in the manner they desire, both during their lifetime and upon death. It is referred to as a 'living' trust because it is established during lifetime and, in most cases, goes into effect immediately. It is a 'revocable' trust because the person is free to revoke or amend the trust during their lifetime.

The person who signs a trust is called a grantor. The successor trustee is the person in charge of the trust assets at the incapacity or death of the grantor. The successor trustee has the authority to take over management of the Trust and follows the instructions as spelled out in the Trust.

What are the Steps in Administering a Trust?

Notify Beneficiaries: Oregon law requires the successor trustee to provide written notice to the trust beneficiaries within a reasonable time after the grantor's death. It is often a good idea to include a copy of the trust with this notice.

Gather Assets: One of the first jobs of the successor trustee is to gather information about the grantor's assets. They should make a complete list with the name, account number, and value of every asset owned by the grantor. Once the successor trustee has a complete asset list, they will need to gather actual documents of title for each asset to verify trust ownership, beneficiary instructions, pay on death designations, etc.

Obtain EIN: The successor trustee's attorney or CPA will help them apply for an Employer Identification Number (EIN) for the trust from the IRS.

Pay Creditors: The next job of the successor trustee is to collect and pay all known creditors. They must continuously review all mail for bills or other indication of debt the grantor may have had.

Manage Real Estate: If the trust owns real property, including a home, the successor trustee will check with the tax assessor to determine that property taxes are paid current. They also need to make sure the home is properly insured and that any mortgage payments are being made. The successor trustee may need to sell the real estate depending on the specifics of the trust.

File Taxes: The successor trustee is responsible for filing the grantor's final income tax return as well as any estate tax returns that might be required and paying any tax owed.

Prepare Trustee Report: At least annually, or upon termination of the trust, the successor trustee will send the beneficiaries a trustee report. The report includes a listing of trust property and liabilities, and must show the



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market values of trust assets, if feasible. The report must reflect all receipts and disbursements of the trust, including the source and amount of the trustee's compensation.

Distribute the Trust: Once all required time periods have passed, all creditors are paid and all required tax returns are filed the successor trustee will follow the instructions in the trust for distributing the trust assets. Usually at that point the trust will end.

Court Proceedings to Determine Creditor Claims

Sometimes it is beneficial to have a Court Order determining the grantor's creditors. If the grantor was ever self-employed, worked in a profession with significant liability (such as doctor, lawyer or architect) or if there is a reason for concern that the grantor may have unsettled or unpaid claims, the successor trustee may wish to consider filing a court action for the limited purpose of determining and extinguishing creditor claims.

Will I Need a Probate?

One important reason many people choose a Revocable Living Trust is to avoid probate. Probate is the court process to determine who receives assets owned by someone who has died. The court appoints a personal representative (or executor) to take charge of the estate, pay all debts and taxes and, ultimately, distribute the remaining assets to the heirs. Assets that are owned by the Trust will avoid probate entirely. However, if an asset is not titled in the name of the trust and does not have joint owners or a beneficiary named, it is possible that a probate will need to be filed to administer that asset.

Trustee vs Executor/Personal Representative

A trustee and a Personal Representative share similar duties, such as collecting and managing assets, paying creditors, and making distributions. Both roles are fiduciaries and must act in the best interest of the beneficiaries. The difference is that a trustee manages a trust, while a Personal Representative is appointed by the Court to manage a probate estate. Trustees often do not have Court oversight of their actions in the same manner as Personal Representatives. This can help minimize expenses and time, and is often the reason why people choose to create revocable trusts to avoid the probate process. Despite not having the same Court involvement and some of the same legal formalities as a probate, trust administration still requires several necessary steps and careful management of funds by the trustee. Trustees also carry very similar legal liabilities if they do not fulfill their duties correctly. Trustees should seek legal counsel to advise them on their role and make sure they are fulfilling all their fiduciary requirements.

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