

CHAPTER 20 TRUSTS

Rule 4.20.1

Testamentary Trust Accounts

A. Unless the testator provides otherwise in the will or the court specifically orders otherwise, a trust created by will executed on or after July 1, 1977, is not subject to the continuing jurisdiction of the court, and the court will require an accounting and report only when the same has been requested by someone beneficially interested in the trust.

B. Testamentary trust accounts and related proceedings must be filed in the estate case, but an inter vivos trust must be filed as a new proceeding, even if it is the beneficiary of a pour-over will.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. 7/1/2003; Renum. 1/1/2006; Rev. & Renum. 1/1/2007; Rev. 1/1/2011; Renum. 1/1/2014)

Rule 4.20.2

Petition to Determine Title in Trust Matters (Probate Code section 850-Heggstad)

In trust matters filed with the court to determine the title to property under Probate Code section 850, the following allegations and documentation must be set forth in the petition:

A. The vesting of each asset at all relevant times;

B. Evidence that each asset was placed in trust;

C. Evidence of every transaction affecting title to each asset in question during the relevant time;

D. Where a transaction takes legal title to an asset out of the trust or occurs when title is not held by the trustee, evidence to overcome the inference that the trustor intended that the transaction be considered a non-trust transaction.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Renum. 1/1/2014; Rev. 1/1/2016; Rev. 1/1/2018)

Rule 4.20.3

Identification of Persons Entitled to Notice

In addition to the requirements of Probate Code section 17201 and California Rules of Court, Rule 7.902, to state the names and addresses of each person entitled to notice of a trust petition, the petition must also contain the relationships of those persons to the trustor(s). The trustee and petitioner will likewise be identified by name, address and relationship to the trustor(s).

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2011; Renum. 1/1/2014; Rev. 1/1/2018)

Rule 4.20.4

Trusts Established Before Decree of Distribution

A. Probate Code section 6321 provides that a decedent may designate as beneficiary of a life insurance policy a trustee named in decedent's will. The statutes also apply to certain employment and other benefits which may be payable to such a trustee.

B. A trustee named in a will admitted to probate may be appointed before the decree of distribution is made, upon the filing of a petition and proper notice pursuant to Probate Code sections 17200 and 17203, and rule 4.20.4.

C. Where a vacancy exists in the office of the trustee before distribution, a trustee not named in the will may be appointed upon the filing of a petition and proper notice pursuant to Probate Code sections 17200 and 17203, and rule 4.20.4.

D. The order appointing the trustee must contain all the terms of the trust, and the trustee must have all the powers and duties in respect to the trust corpus set forth in the order.

E. Any matters governing the trust not specifically covered by these sections must be governed by the provisions of Probate Code section 15000 et seq.

F. If no trustee claims the trust corpus or can qualify to receive the same and there is no indication in the will as to where the proceeds are to be distributed, a petition to determine heirship may be filed to determine to whom distribution shall be made.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2012; Renum. 1/1/2014)

Rule 4.20.5

Trust Created or Funded Pursuant to Court Order

A. Trusts created or funded by court order, including trusts created pursuant to Probate Code sections 2580 et seq. ("substituted judgment"), 3100 et seq. (relating to particular transactions for disabled spouses or registered domestic partners), and 3600 et seq. (relating to the compromises of claims of minors and persons with disabilities) are governed by California Rules of Court, rule 7.903. All such trusts must include provisions for protection of the trust assets

against misuse and continuing supervision by the court, except as provided in subsections H and I, or unless the court otherwise orders.

B. With respect to Special Needs Trusts and Discretionary Trusts presented for establishment pursuant to rule 2.4.6, subsection C, or otherwise, the following must be included in the proposed trust:

1. A payback provision upon termination of the trust Medi-Cal or any other Medicaid agency which has paid benefits to the beneficiary shall receive all amounts remaining in the trust up to an amount equal to the benefits paid (42 U.S.C. § 1396p(d)(4)(A)). The Department of Health Services provides general guidelines regarding special needs trusts, and the guidelines can be obtained by contacting that agency.

2. Notice requirements upon death of the trust beneficiary, termination of the trust, additions to the trust or changes of trustee.

3. Established for a disabled individual under the age of 65. The disabled individual is the sole beneficiary of the trust.

4. The Trust is irrevocable.

5. Dispositive provisions after reimbursement to all State Agencies required by title 42 of the United States Code section 1396p(d)(4)(A).

C. All petitions to establish a special needs trust must be “short set” by the Probate Business Office on the next available miscellaneous calendar. The petition will be set at a shortened date and time to allow 15 days’ notice to parties so entitled. Notice must include the notice required by Rule 4.5.2.B.

D. A copy of the order directing settlement proceeds to be placed in a Special Needs trust must be filed with the petition to establish the Special Needs Trust.

E. The proposed Trust must include a schedule A or a schedule of assets that will be used to fund the trust upon approval of the court.

F. The order establishing the special needs trust must set forth the provisions of the trust entirety.

G. After the petition to establish a Special Needs Trust or Discretionary Trust is approved, a copy of the executed trust must be filed if the matter remains under court supervision.

H. Third Party Special Needs Trusts need not be presented for court approval or include the requirements listed in listed in rule 7.903 of the California Rules of Court and as set forth in subsection B (1-4) above.

I. Unless otherwise ordered by the court, for good cause shown, this rule does not apply to trust instruments or trusts that have a total asset value of \$20,000 or less.

(Adopted 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2011; Rev. & Renum. 1/1/2012; Renum. 1/1/2014; Rev. 1/1/2017; Rev. 1/1/2018; Rev. 1/1/2020)

Rule 4.20.6

Fees and Commissions in Trusts

See Chapter 16 regarding fees and commissions generally.

(Adopted 1/1/2007; Rev. 1/1/2009; Rev. 1/1/2010; Rev. & Renum. 1/1/2011; Renum. 1/1/2014)

Rule 4.20.7

Petitions for Modification or Termination of Trusts

A. Petitions seeking the amendment of a trust must set forth in the petition and in the prayer the portion of the trust to be amended by designating language to be deleted in strikeout format, and language to be added by underlining.

B. Petitions seeking authority to terminate a trust pursuant to Probate Code section 15403 must affirmatively allege that the trust is not subject to a valid restraint on transfer of the beneficiary’s interest as provided in Probate Code section 15300 et seq.

C. Petitions seeking to amend the provisions of a trust relating to the identification of a successor trustee must contain a provision requiring a trustee’s bond unless the petition contains allegations upon which the court may make the finding required by Probate Code section 15602, subdivision (b).

(Adopted 1/1/2008; Rev. & Renum. 1/1/2014; Rev. 1/1/2018)

Rule 4.20.8

Petitions for Appointment of a Successor Trustee

A. Petitions requesting appointment of a successor trustee must include related documents, such as declination to act, resignation, nomination, or consent; said documents must be filed, not lodged.

B. Petitions seeking to amend the provisions of a trust relating to the identification of a successor trustee must contain a provision requiring a trustee’s bond unless the petition contains allegations upon which the court may make the finding required by Probate Code section 15602, subdivision (b).

C. Petitions seeking to amend the provisions of a trust relating to the appointment of a successor trustee must contain a provision requiring a trustee’s bond unless the petition contains allegations upon which the court may make the finding required by Probate Code section 15602, subdivision (b).

(Adopted 1/1/2014; Rev. 1/1/2016)

Rule 4.20.9

Uniform Trust Decanting Act

A. If a petition to appoint a guardian ad litem is filed pursuant to Probate Code section 19507(d) or (e), notice must be given to the parties listed in Probate Code section 19507(c).

B. If a petition is filed pursuant to Probate Code section 19509 the following must be filed with the court:

1. A copy of the notice of intent to exercise the decanting power, as specified by Probate Code 19507(c).
2. Copies of the first trust instrument and all second trust instruments, in compliance with rule 4.3.3.J.

(Adopted 1/1/2020)