

Terminating and Ending Your Trust

Trusts are designed to terminate after the purpose of the trust have been fulfilled. For example, the trust agreement may state that it terminates upon the death of a named person, or when its assets fall below a certain dollar amount, or upon the expiration of a set date or after all trust assets are distributed. In this memo Takacs McGinnis Elder Care Law provides a list of steps to end or terminate your trust.

Terminating a trust early is different than closing or ending a trust that has already been administered and will require working closing with your attorney, accountant, and financial advisors.

Where to Start

The trust document will contain language that applies to ending the trust. Trust language is also very important when you are considering the termination of a trust because it provides insight regarding the intent of the Grantor.

Ordinarily a Grantor retains the right of revocation of a revocable trust provided the Grantor is alive and has sufficient capacity. Look to the terms of the trust agreement to understand the circumstances under which a revocable trust becomes irrevocable.

Under state law an irrevocable trust may be terminated if all interested parties' consent to the termination. Absent complete agreement by all parties, court intervention would be necessary to end an irrevocable trust early.

Natural Trust Termination

Upon the Grantor's death, or within a reasonable amount of time after the death, the Trustee will begin the process of complete distribution and termination of the trust.

Upon the occurrence of some other event, such as reaching a terminating age, the terms of the trust may require termination.

Other Termination Triggers to End Trust Early

If the assets of the trust have diminished greatly in value since its creation, the trust may be terminated.

A trust can simply become too small to administer (i.e., if the trust pays out more than it earns from investments over time or if the trust is unable to pay a beneficiary), which may frustrate the original purpose of the trust.

A divorce may justify the need to terminate or modify a trust agreement created while the Grantors were married.

Distributing Assets

When a trust has assets other than cash, trust distributions can be a bit more involved. Real estate requires a deed that would be signed by the Trustee and the Beneficiary and then recorded in the county register of deeds office. Of course real estate can be sold and the proceeds distributed to the trust beneficiaries. While this may be more convenient or efficient, depending on the number of trust beneficiaries, there could be tax implications related to the sale of real estate in the name of the trust.

Stocks and bonds can also be transferred out of the trust without being sold. The trustee can set up new brokerage accounts and instruct that all stocks and bonds be transferred “in kind.”

Every asset has a way of being transferred. A trustee does not have to sell every asset to make a distribution unless the trust directs all assets to be liquidated prior to distribution.

Termination or ending steps

- 1) Read the trust for guidance regarding provisions for terminating the trust.
- 2) Consult with an estate planning attorney. Court approval may be necessary for early termination.
- 3) Pay all debts and expenses of the trust, including taxes. Consult with your accountant.
- 4) Your accountant may file a final tax return and complete any required filing with the IRS. Form 1041, K-1 forms, etc.
- 5) Close trust accounts and transfer title of trust assets to named trust beneficiaries.
- 6) Notify beneficiaries in writing by first class or certified mail of the status of the trust and expected timeline of distribution. Provide a final accounting. Beneficiaries may agree to waive accounting (example form attached).
- 7) Prepare a Final Distribution Letter and include payment of final distribution amount, and any deed, change of ownership forms, etc. Have beneficiaries sign a statement of receipt of distribution. This may be as simple as depositing a check or as formal as a distributee statement.
- 8) Store all records securely for future reference.

Example Waiver of Final Accounting and Consent to Distribution

Full Name of Beneficiary _____

Address: _____

I, the undersigned, being a Beneficiary of the *insert Legal Name of the Trust Agreement*, dated _____ ("Trust") hereby waives the preparation and/or filing of a final accounting and fully consents to the immediate distribution to the beneficiaries.

Further, I hereby acknowledge and agree that, upon the Trustee receiving a signed Waiver of Final Accounting and Consent to Distribution from each beneficiary of the Trust, I shall receive

_____ as my distributive share of the Trust, except for my share of the cash reserve, if any. This distribution represents a full and complete satisfaction of my interests in the Trust.

I, the undersigned, do release and forever discharge _____, as Trustee of the Trust, of and from any claim(s) for distributive share, and of and from all actions, claims, and demands whatsoever, for or by reason thereof, or of any other act, matter, cause, or thing whatsoever arising out of the aforesaid Trust, the Estate or the administration thereof, as well as his/her agents, attorneys, accountants and/or other representatives. I understand that I have the right to obtain the advice of independent legal counsel, but I waive that right at this time.

I affirm under penalty of perjury that the foregoing is true and correct on this the _____ day of _____, _____.

Signature of Beneficiary

Return to:

Example Final Trust Distribution Letter

Via Certified Mail, return receipt requested

Date:

Full name of Beneficiary
address

Re: legal name of trust

Dear Beneficiary,

This is a final distribution letter for the *Legal Name of the Trust*, hereinafter the "Trust". The purpose of this letter is to provide you with information regarding the termination of the Trust.

Enclosed with this letter is the final distribution to you from the Trust.

Optional *additional paragraph– In anticipation of any final costs, professional fees, trustee compensation, expenses, debts that may be owed by the Trust, I am retaining a reserve amount in the Trust to pay such final expenses. To the extent any funds remain in the Trust after all final expenses are paid, those funds shall be distributed to the beneficiaries in the same manner. In the event no amounts remain in reserve after the payment of final expenses, no additional distributions will be made.*

The trust is being dissolved as mm/dd/yyyy. I am resigning as trustee of the trust effective on the same date. If you have any questions regarding the trust termination I can be reached at

Sincerely,

Trustee

Enclosures:

Example Distributee Statement

I, **Click and type name**, Beneficiary of the **Click and type name** Trust, the/a residuary beneficiary of this trust estate do hereby acknowledge and state that I am a distributee of this trust estate and that I waive any and all requirements that the trustee make any accountings. I further acknowledge and state that the trust estate has been properly administered and properly distributed and I further acknowledge final receipt of any and all interest I may have in this trust estate and do hereby fully release the trustee from any and all liability in connection with this trust.

this, ____ day of _____, 20__.

I certify under penalty of perjury that the foregoing is true and correct.

name
address

State of _____

County of _____

Sworn to and subscribed before me, this _____

day of _____, 20 _____.

Notary Public
My commission expires: _____