A FREE GUIDE FROM THE ROBBINS GROUP

The Trustee's Guide: Selling a Home Held in Trust in California

Your fiduciary duties, your authority, and how to sell trust property without personal liability.

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Important: *This guide is general information and is not legal, tax, or financial advice. For your specific situation, always consult a qualified attorney and CPA. We're real estate professionals who specialize in this work, we'll happily refer you to trusted professionals if you don't already have them.*

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You've been named successor trustee.

Maybe a parent passed and the trust they put in place years ago is now active. Maybe a family friend asked you to serve. Either way, you're now a fiduciary, which means the law treats your decisions about this trust property with a higher standard than your decisions about your own assets.

That's not meant to scare you. It's meant to explain why the rules feel strict. The good news: trustees who follow a clear process almost never run into trouble. The trustees who do, they're the ones who treated it casually, didn't document things, or tried to handle major decisions without professional help.

This guide is the calm, plain-English version of what to do when the trust property includes a home you'll need to sell.

THE THREE PROTECTIONS EVERY TRUSTEE NEEDS

1) An experienced California estate planning attorney. 2) A CPA familiar with trust tax filings. 3) A real estate team that has handled trust sales before and will work with your attorney. The cost of all three combined is dramatically less than the cost of getting it wrong.

Step One: Confirm Your Authority

Before you do anything else with the property, you need to confirm two things: (a) that the trust is now active and you are the acting trustee, and (b) that you actually have the authority to sell the home.

Read the trust document.

Yes, all of it. Yes, twice. Look specifically for:

- **The successor trustee provisions**, confirming you, not someone else, are now in charge.
- **The trustee powers section**, does it explicitly authorize you to sell real property? (Almost all modern California trusts do; older ones occasionally don't.)
- **Specific distribution instructions** for the real property, does the trust say 'sell and distribute proceeds,' or does it require you to deed the home to a specific beneficiary?
- **Trust protector or co-trustee provisions**, is there someone else whose consent you need before selling?

Get a Trustee's Certification.

Under California Probate Code §18100.5, you can prove your authority to third parties (escrow companies, title insurers, banks, the IRS) with a short notarized document called a Certification of Trust. It contains the essentials of the trust, your authority, the trust name and date, the powers granted, without disclosing private terms like specific beneficiary distributions. Have your attorney prepare this. You'll need it.

Was the home actually placed in the trust?

This is where many trust plans fall apart. The home only avoids probate if the deed was actually re-titled into the trust's name during the trustor's lifetime. Pull the current deed. If it shows the home owned by 'Jane Smith, Trustee of the Jane Smith Living Trust', you're good. If it shows it owned simply by 'Jane Smith'. The home is **not** in the trust, and you may need a small probate (a 'Heggstad petition' or Probate Code §850 petition) to get it in.

> **DO NOT SKIP THIS CHECK**
>
> We've seen trustees list, market, and accept offers on homes, only to discover at escrow that the home was never actually funded into the trust. The deal falls apart. Confirm the deed before you list.

Step Two: Notify the Beneficiaries

Probate Code §16061.7. The 120-Day Notice

Within 60 days of the trustor's death (or when you become trustee, whichever is later), California law requires you to send a specific written notice to every trust beneficiary and to every legal heir of the deceased. This isn't optional, and it isn't a courtesy letter, it's a statutorily prescribed notice that starts a clock.

The notice must include specific information:

- The identity of the trustor and trustee
- The date of execution of the trust
- Your name, address, and phone number as trustee
- Information about how the beneficiary can request a copy of the trust
- A specific warning about the 120-day statute of limitations to contest the trust

Why the 120-day clock matters

Once a beneficiary receives a proper §16061.7 notice **and** a copy of the trust, they have 120 days to file a lawsuit contesting the trust. After that window closes, their right to contest is generally gone. This is one of the strongest protections you have as trustee, it allows you to move forward with confidence after 120 days. **If the notice was not sent correctly, the clock never started.**

Practical tips on notice

- Send by certified mail with return receipt. Keep the receipts permanently.
- Send to every beneficiary AND every legal heir under California intestacy law, even ones the trust disinherits. A disgruntled person you didn't notify is your biggest litigation risk.
- Your attorney should draft the notice. Don't use a template you found online.
- Don't sell the home before the 120 days expire if you can avoid it. If a contest is filed mid-sale, the deal usually unwinds.

Step Three: Understand the Tax Picture (Then Talk to a CPA)

Stepped-up basis on a trust home

Like inherited property generally, real estate held in a revocable living trust receives a **stepped-up basis** to fair market value at the date of the trustor's death. The practical implication for sale timing: if you sell shortly after death, the capital gains are minimal (just the appreciation since death). If you wait several years, the property may appreciate significantly and create real capital gains exposure when sold.

The trust's own tax filing

Once the trust becomes irrevocable (which usually happens at the trustor's death), it's a separate taxpayer. You'll need to:

- Get the trust its own EIN (federal tax ID).
- File Form 1041 (the trust's federal income tax return) for any year it has income.
- File a California Form 541 if the trust meets California's filing thresholds.
- Report the home sale on the trust's return, with the stepped-up basis.

Capital gains on the sale

The home's sale price minus selling costs minus the stepped-up basis equals the trust's capital gain on the property. Whether that gain is taxed at the trust level or passed through to the beneficiaries depends on how distributions are structured. **This is exactly the kind of decision your CPA needs to weigh in on before you set a sale timeline.** Distributing in the same year as the sale can have very different tax consequences than distributing the following year.

> **TRUST TAX RATES ARE COMPRESSED**
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> Trusts hit the top federal income tax bracket at a tiny fraction of the income that would trigger it for an individual. Income retained in the trust is often taxed much more harshly than the same income distributed to beneficiaries. This is why timing decisions are not just paperwork, they can cost or save thousands.

Step Four: Selling the Property

Trust sale vs. probate sale. Why this matters

A trust sale is dramatically simpler and faster than a probate sale:

- **No court confirmation required.** You don't need a judge to bless the sale.
- **No probate referee appraisal required.** A standard market valuation is fine.
- **No published notices, no overbid process at the courthouse.**
- **Typical timeline: 30-90 days** from listing to close.

What you *do* need: a clean trustee's certification, a current deed showing the property is in the trust, and an escrow officer experienced in trust transactions. Some San Diego escrow companies handle trust sales every day; others almost never do. It's worth asking.

Disclosure obligations

California requires sellers to make specific disclosures about a property's condition. As trustee, you're often eligible for the **Transfer Disclosure Statement (TDS) exemption** available to trustees who never occupied the property. But you'll still complete a Natural Hazards Disclosure, lead paint disclosure (homes built before 1978), and any locally required disclosures. We coordinate all of this with you.

Repairs and prep

Trustees often ask: do I have a duty to maximize the sale price, and does that mean I have to renovate? Generally **no**. Your duty is to act prudently and in the beneficiaries' best interest. In most cases, modest cosmetic prep (clean-out, light paint, landscaping touch-up) is the highest-ROI play. Renovating is almost always a lose, especially when beneficiaries are waiting for distribution.

When Beneficiaries Disagree

It happens in roughly one out of every four trust sales we handle: two beneficiaries have very different ideas about what should happen to the home. One wants to sell now. Another wants to wait for market conditions. A third wants to keep it in the family.

The trustee's discretion (and its limits)

As trustee, you have authority to make decisions, including the decision to sell , provided you act prudently and in line with the trust's terms. You do **not** need unanimous beneficiary consent. But you also have a duty of impartiality: you can't favor one beneficiary's interests over another's.

Practical playbook when beneficiaries disagree:

- **Document everything.** Email summaries of every conversation. Written rationale for every major decision.
- **Communicate proactively.** Most disputes escalate because a beneficiary felt blindsided. Updates every 2-3 weeks even if there's nothing to report.
- **Consider a buyout offer in writing.** If one beneficiary wants to keep the home, formalize the buyout at a documented market value with the trust attorney.
- **If a dispute is escalating, petition the court for instructions.** This is a feature, not a failure. Trustees can ask the probate court to bless a proposed action in advance. It's the strongest possible protection against later claims of breach.

> **THE RULE THAT KEEPS TRUSTEES SAFE**
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> Never make a major decision in private. Document it, communicate it, and if it's controversial, get attorney input *before* you act, not after.

Trustees: we make this easier.

We work alongside your attorney and CPA, communicate proactively with beneficiaries, and document every step so you're protected. Free consultation, no obligation. We can also refer you to estate planning attorneys and CPAs who specialize in trust administration if you don't already have them.

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