

# Trustee Duties to the Settlor of a California Trust Who is Incompetent

*A trustee for an incompetent settlor has the duties to follow the directions in the trust and to comply with California law.*

HUNTINGTON BEACH, CA, USA, April 14, 2022 /EINPresswire.com/ -- In California, trusts are created to avoid probate and to avoid direct distribution of assets to minors or children with special needs. For the top ten-percent, trusts are also used to minimize or reduce estate taxes. When a [settlor of a trust is incompetent](#), the successor trustee has the [duties to care and to protect the assets of the trust](#) for the benefit of the settlor. Those duties are found in the trust and the laws of the state of California.



A trust has three actors: the creator, who is known as the settlor; the trustee, who is responsible to manage assets owned by the trust and beneficiaries, who enjoy access to the assets owned by the trust. There are two types of beneficiaries; those who have an immediate right to assets of the trust (vested beneficiaries) and those whose right is contingent upon the termination of a vested beneficiary's right (contingent beneficiaries).

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A trustee must protect and care for the assets of a settlor who is incompetent.”

*Mark W. Bidwell*

Most trusts in California are created as revocable and the settlor/creator and the trustee are the same person. While the settlor is alive and competent, the settlor's privacy and assets are protected. The only person who has access and control of assets of the trust is the settlor.

A new person becomes the successor trustee when settlor is incompetent. Incompetency is established either by the method specified in the trust, or by a judicial determination such as a conservatorship. Once the settlor is determined incompetent, the successor trustee identified in the trust must take steps in to protect and to manage the assets of the trust on behalf of the

settlor.

The successor trustee also has duties to the contingent beneficiaries of the trust. Contingent beneficiaries are those persons who will receive assets on the death of the settlor. The first duty of the successor trustee to the contingent beneficiaries is to send them a copy of the trust within 60 days from the date that the successor trustee has proof of incompetency. The successor trustee has the ongoing duties to report pertinent information and provide an annual accounting to the contingent beneficiaries.

When a trust is created, the settlor, the trustee and the beneficiary are the same person. On the death or [incompetency of the settlor](#), this unity of actors is severed. The creator remains the same but another individual identified in the trust becomes the successor trustee. The successor trustee has the duties to follow the directions laid out in trust and to comply with California law.

The trustee has no duties as long as the trust is revocable and the settlor is competent and alive. This is because the trustee and settlor are the same person. The trustee has duties once a trust becomes irrevocable because of the incompetency of settlor. Once the settlor is determined incompetent, a new trustee identified in the trust steps in to manage the assets of the trust on behalf of the settlor.

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