

## TRUSTEE'S DUTIES TO BENEFICIARIES

A "trust" is often described as any arrangement in which property (the "trust estate") is transferred by someone (the "settlor") to another person (the "trustee") for the benefit of a third person (the "beneficiary"). Trusts have existed for hundreds of years in England and the United States, originally being used to place an adult in charge of property which had been inherited by a child who was too young to manage his/her own affairs. Over the centuries, rules have developed which impose duties on persons acting as trustees. In 1986, the California legislature enacted statutes which list many of those duties. A copy of the relevant statutes is attached. Trustees should be particularly aware of the following:

[Probate Code Section 16000](#): *Duty to administer trust*. This statute requires the trustee to administer a trust according to law and in accordance with the trust instrument. No matter how good the trustee's intentions, the trustee is not free to administer the trust in some other manner.

[Probate Code Section 16002](#): *Duty of loyalty*. This statute states that the trustee has a duty to administer the trust solely in the interest of the beneficiaries. The trustee cannot use the trust for his or her own benefit.

[Probate Code Section 16003](#): *Duty to deal impartially with beneficiaries*. This statute states: "If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them." A trustee cannot favor one beneficiary over another. This is particularly critical when the trustee is also one of the beneficiaries. In such cases, it is a clear violation of the law for the trustee to favor himself or herself over another beneficiary.

[Probate Code Section 16004](#): *Duty to avoid conflict of interest*. This statute requires that trustees avoid conflicts of interest. This prohibits a trustee from entering into transactions with trust property which will result in a profit to the trustee, or in which the trustee's interest is adverse to the interests of the trust or its beneficiaries. For example, a trustee usually must avoid loaning personal funds to a trust, because it would result in the trustee having a conflict between his duties to the trust and his duties to himself.

[Probate Code Section 16006](#): *Duty to take control of and preserve trust property*. This statute requires trustees to take affirmative action to take and keep control of trust property and to preserve that property.

[Probate Code Section 16007](#): *Duty to make trust property productive*. This statute requires a trustee to make property productive. This generally requires that the trustee make sure that property is wisely invested.

[Probate Code Section 16009](#): *Duty to keep trust property separate and identified*. This statute requires a trustee to keep trust property separate from property not subject to the trust. For example, a trustee should not keep personal funds and trust funds in the same bank account.

[Probate Code Section 16060–16061.9](#): *Trustee’s general duty to report information to beneficiaries.* This statute requires trustees to keep beneficiaries informed with respect to matters involving the trust.

[Probate Code Section 16062](#): *Duty to account to beneficiaries.* This statute requires trustees to provide beneficiaries with “accounts.” Accounts are detailed statements regarding the financial transactions of the trust. They are similar to bank account statements in which a bank reports a “beginning balance,” an “ending balance,” and all the transactions that occurred during the reporting period that “account” for the difference between the beginning balance and ending balance. A trustee must keep careful records in order to be able to comply with this requirement.

[Probate Code Section 16080](#): *Discretionary powers to be exercised reasonably.* This statute states that, when a trustee is given “discretion” with respect to a matter, the “discretion” must be exercised in a reasonable manner. The trustee is not free to act in whatever way the trustee wants. This is true even if the trust documents state that the trustee’s discretion is “absolute” or “uncontrolled.”

[Probate Code Section 16200](#): *General powers of trustee.* A trustee’s power (legal authority) to take actions pertaining to the trust is not unlimited, and in some cases may be very restricted. For example, a trust instrument may limit the kinds of investments which the trustee can make with trust property. This statute provides the trustee powers of those conferred by the statute and the trust instrument. Trustees must be careful to avoid taking unauthorized actions.