

# Does Your Successor Trustee Have the Right Stuff?

It's As Easy As



The logo features a stylized red graphic above the text, consisting of two upward-pointing peaks connected by a curved line, resembling a mountain range or a stylized 'N' and 'B'.

# NORTONBASU **LLP**

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**Norton** Basu LLP is a minority woman owned law firm that focuses on estate planning and probate issues throughout the Bay Area, Southern California, and Nevada. Founded by Zakiya Norton and Somita Basu, the firm provides real world advice to clients in order to get real results in the most practical way possible. Ms. Norton and Ms. Basu met while volunteering for a legal aid organization in San Jose, where they discovered a similar common sense attitude towards the practice of law.

In our spare time, we are fans of wine, the Warriors, culinary competitions.

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# Who Or What Is A Successor Trustee

- A successor trustee is the person who takes control of the trust after the original trustees have died or are no longer able to continue in their duties.
- Can be an individual or a professional fiduciary
  - ✓ Doesn't have to be related to you
  - ✓ Professional fiduciaries can be banks, financial institutions, or a licensed individual

# What Does The Successor Trustee Do?

- Makes sure that your wishes are carried out, as laid out in your trust
- Has fiduciary duties under California law to the beneficiaries of your trust
- Duties include
  - ✓ Marshalling all the assets
  - ✓ Settling all debts
  - ✓ Taking care of any taxes as necessary
  - ✓ Arranging for sale of real property, if necessary
  - ✓ Notifying all beneficiaries as well as heirs at law

# What Exactly Is A Fiduciary?



- Fiduciary relationship is
  - Any relation existing between parties to a transaction
  - One of the parties is in duty bound to act with the utmost good faith for the benefit of the other party.
  - Where a confidence is reposed by one person in the integrity of another

# What Exactly Is A Fiduciary?

- Fiduciary must
  - Voluntarily accept or assumes to accept the confidence,
  - Can take no advantage from acts relating to the interest of the other party without the latter's knowledge or consent



*Wolf v. Superior Court (2003) 107  
Cal.App.4th 25, 29 [130Cal.Rptr.2d 860]*

# How Is The Fiduciary Held Responsible?

*“Whether a fiduciary duty exists is generally a question of law. Whether the defendant breached that duty towards the plaintiff is a question of fact.”*



# A Is For Availability

— Your successor trustee should be:

- ✓ Able
- ✓ Willing
- ✓ Local(ish)



## **B** Is For Background

- This doesn't mean that your successor trustee has to be from the same background as you!
- What a successor trustee with the right background does possess is:
  - ✓ Maturity
    - *Withstand competing interest*
    - *Insistent beneficiaries*
    - *Whole bunch of paperwork*
  - ✓ Responsibility
  - ✓ Understanding of the nature of your assets



# C Is For Confidence

- Find someone in whom you have confidence:
  - ✓ Conscientious enough to carry out your wishes, even if they don't agree with your choices
  - ✓ Able to talk to the beneficiaries as needed
  - ✓ Someone who can resolve - and not inflame - conflict



# **D** Is For Don't Worry, There's Help

- Your successor trustee won't have to go it alone.
- It's standard practice for a successor trustee to hire professionals to help with trust administration.
  - ✓ Attorneys
  - ✓ CPAs
  - ✓ Financial advisors
  - ✓ Realtors
- Professional fees are borne by the trust



## **E** Is For Everyone Asks This

- I don't want to upset my two children. Should I appoint them both as Successor Co-Trustees?
- I really don't know anyone I can appoint. Can I appoint my lawyer as my Successor Trustee?
- I don't want my Successor Trustee to know that they aren't getting anything from my estate. What should I do?
- Does the Successor Trustee get paid?
- What if my Successor Trustee takes something from the estate they shouldn't?



# **F** Is For Finally You Can Celebrate

**Celebrate! You've now taken care of your loved ones by picking the right Successor Trustee. You got it together, girl!**

**Sit back and have a glass of wine!**

**You deserve it.**



Your Estate Planners for Life.  
Big Firm Background. Small Firm Care.



Somita Basu: [sbasu@nortonbasu.com](mailto:sbasu@nortonbasu.com)

Website: [www.nortonbasu.com](http://www.nortonbasu.com)

Phone: **408.850.7250**