

Liza Horvath, Senior Advocate: Reasonable trustee fees

By Monterey County Herald

Friday, May 16, 2014

If your daughter, Joan, acts as your trustee — distributing your estate to herself and your son — should she be paid a fee for her work? If so, how much of a fee? How is the fee determined?

The question of trustee fees comes up with some regularity and, unlike an executor in a probate, the answer is not printed in the California Probate Code. First, some background: if you die with a will there may be a probate, depending on your assets, and an executor is appointed by the court to handle the administration. The executor is paid according to the probate code, which payment is approved by the court. If you die with a trust, the court is not normally involved — your named successor trustee, in this case your daughter, Joan, steps in to administer your trust. Unless your trust states how much Joan should pay herself, she would be entitled to "reasonable fees" for her work as trustee. But what are "reasonable fees?" How are they calculated and what work does a trustee do to earn fees?

As trustee, Joan has many important and time-sensitive duties. She must gather information on the assets you held at death, including how they are titled. They may be trust assets or they could be held in joint tenancy or have named beneficiaries like life insurance policies, retirement plans and pay-on-death bank accounts. Joan pays your final bills, files your final income taxes and takes care of any taxes due from the trust. She may sell property, if appropriate, and then Joan can distribute assets to the beneficiaries.

A trustee has a duty to keep beneficiaries informed of her actions and provide an accounting of the assets for which she is responsible. The work is detailed so it is important that your daughter seek the guidance of an attorney because along with Joan's appointment comes personal liability. Before Joan distributes assets, she must be sure that your debts and the debts of the trust are paid. If Joan distributes assets and leaves creditors out in the cold, those creditors can come after Joan for payment.

In Joan's case, when she does this work, she is entitled to "reasonable fees" which generally range from 0.5 percent to 1 percent of the value of the trust assets. Can Joan include insurance, retirement plans or pay-on-death accounts which are not trust assets? Not likely. In one estate, a daughter — who was not an appointed executor or trustee — coordinated the funeral, paid the outstanding debts of her father and then claimed she was entitled to 1 percent of his assets — all of which passed to family members by way of pay-on-death accounts. This daughter may be entitled to some payment for the work she did, but most likely not one percent of the accounts that went directly to her siblings. Hopefully this daughter and her siblings can reach an agreement as to what is fair. If not, they may need assistance from the court.

A trustee takes on liability and is accountable to the beneficiaries so a trustee should be paid. Just make sure your trustee understands the payment must be "reasonable."

Liza Horvath has over 30 years' experience in the estate planning and trust fields and is the president of Monterey Trust Management, a financial and trust management company. This is not intended to be legal or tax advice. Questions? Email liza@montereytrust.com or call 646-5262. **URL:**

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