



CALIFORNIA REGISTRATION REQUIREMENTS FOR PRIVATE PROFESSIONAL TRUSTEES

Under certain circumstances, a California individual who is a trustee must register with the California Attorney General, and re-register every three years. Registration is required whenever the individual serves as trustee for the benefit of four or more “persons, families, or a combination of the two.” A “family” is defined as persons related by blood, marriage, adoption, registered domestic partnership, as well as certain cohabiting adults (generally, a marriage-like relationship that would qualify for a registered domestic partnership if the parties were of the same sex or one of them is over age 62.) The number of trust beneficiaries does not matter. There is an additional exception where the trustee and a settlor are part of a “family” as defined above. The penalties for non-compliance are severe. Individuals falling under the rules should be certain to file and pay the \$385 filing fee. Information and forms are available on the Attorney General's website, <http://www.ag.ca.gov/conservator/index.htm>.

An individual falling under these rules is referred to as a private professional trustee (a “PPT”). A PPT who fails to comply with the registration requirements “shall be removed as a trustee by the court” pursuant to Probate Code Section 2851(b). Furthermore, no court may appoint or allow the continuance of the appointment of a trustee subject to the registration requirements who is not registered.

A PPT who does not register is subject to civil fines beginning at \$200 for the first violation. The civil fines also apply to a trustee who provides fraudulent information in registering, or who falsely asserts he or she is registered, or who misrepresents the information in his or her registry file. Additional fines, and possible jail time, may apply for falsifying registration information (discussed below).

Court-appointed and court-supervised professional conservators and guardians are also required to register.

In determining the applicability of this new statute to a typical situation, for example, a person who is serving as trustee of dozens of trusts created by his or her “Uncle Joe” presumably need not register, since the trustee is related by blood to the settlor. Also, if a person serves as trustee for dozens of trusts created by an unrelated person, and all of those trusts are for the benefit of members of a single family, then again registration is not required, since the trusts are not for more than three families.

Left unanswered in the new legislation is exactly how one determines the applicability of the “not more than three people or nor more than three families, or a combination of people and families that does not total more than three.” Suppose an individual trustee is not related to the trust’s settlor, and the trust provides benefits for the members of a single family, but in the unlikely event that all of the family members die, then the trust assets are to be distributed to four different charities. Is the individual trustee required to register immediately, simply because trust funds may eventually pass to more than three “people” who are not related? In other words, do you only count beneficiaries who are entitled to current distributions? We hope that regulations or guidelines will be promulgated soon to answer such questions. For those of you who may be "close to the line" in this regard, we suggest that, at least for now, you follow a conservative path and register if there is any doubt.

What is involved in the registration? Registration is accomplished on-line at the Attorney General’s web site, mentioned above. The following information be provided under penalty of perjury:

- (1) Full name.
- (2) Professional name, if different.
- (3) Business address.
- (4) Business telephone number(s).
- (5) Educational background and professional experience, including verification of any college or graduate degree claimed.
- (6) The names of the current trusts administered by the trustee.
- (7) The aggregate dollar value of all assets currently under the trustee's supervision.
- (8) Whether the trustee has ever been removed for cause or resigned as a conservator, guardian or trustee in a specific case, the circumstances of that removal or resignation, and the case names, court locations and case numbers.

Only part of the information disclosed on the form will be accessible to the public. The Statewide Registry may disclose to a requesting member of the public only the educational background and professional experience data provided by a PPT.

The probate court is required to examine and consider the information in the trustee's Statewide Registry file in any proceeding involving the trustee's appointment or removal. Probate Code Section 2851(c) provides that the Statewide Registry must be made available to the court for this purpose, "but shall otherwise be kept confidential, except as provided by law."

The court clerk is also required to forward to the Statewide Registry, for inclusion in a trustee's file, a copy of any complaint against that trustee which is filed with the court, and found to be meritorious by that court. Since pleadings labeled as "complaints" are not generally filed in probate court matters, it is not clear what is meant by "complaint" in this context. Is it a letter from a disgruntled beneficiary to the judge? a Petition for Removal of Trustee? a Petition for

Surcharge? When does the court find a complaint "meritorious"? at the conclusion of the court proceedings? or when the judge in his own mind makes that determination? The statute provides no answers to these questions. It does, however, provide that "no anonymous complaint may be considered."

A person who knowingly provides false information is guilty of a misdemeanor punishable by imprisonment for up to one year in a county jail, a fine of up to \$2,000, or both! A PPT must refile and pay a new registration fee every three years.

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