



ABSOLUTE TRUST COUNSEL

2890 North Main Street, Suite 206
Walnut Creek, CA 94597
P: 925.943.2740
AbsoluteTrustCounsel.com

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Concord, CA 94520
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A PERSONAL NOTE FROM KIRSTEN

Dear Clients and Other Friends,

What a long, strange experience we've all been through! Summer always brings lots of fun events, and I hope you all are starting to get some of the fun things you used to do back into your lives – safely, of course.

Lots of things are changing for us here at Absolute Trust Counsel. Our attorney-to-be, Jessica, is back for the summer. You can read a little about that inside. The big news is we are moving! The even better news is we're just moving down the hall. One thing we learned during the past year is that we don't need so much space, so we are downsizing a little bit. Everything will be the same, same phone, email, even the same suite number. We hope to be moved in completely by September, so come and check us out!

Warmly,
Kirsten

Kirsten Howe, Attorney at Law

**PLEASE RECYCLE, REDUCE AND REUSE BY SHARING THIS
NEWSLETTER WITH YOUR FAMILY AND FRIENDS.**

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ABSOLUTE Advantage

Trust and Estate Law Happening Now

SUMMER 2021

TRUST FAILURES: DON'T LET THIS HAPPEN TO YOU



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AT ABSOLUTE TRUST COUNSEL, IN NEARLY 100% OF THE TRUST ADMINISTRATIONS WE ARE HIRED TO EXECUTE, THERE IS AT LEAST ONE FAILURE THAT COULD HAVE BEEN AVOIDED.

Some of these failures are small and simple to fix. Unfortunately, the majority are much more difficult to rectify. In this context, difficult also means expensive. As a trust grantor, it is vital to review your estate plan regularly, especially if there are significant life changes. Talk to your estate planning attorney and keep your documents up to date to ensure your wishes and promises to your beneficiaries are kept.

now subject to probate. Simply creating an estate plan is not the end, you must properly fund your trust and make sure that everything stays up to date as the years go by.

Even if you create an estate plan and retitle all your assets perfectly, there are still three common situations that cause people with a trust to die with their real estate outside of their trust.

REFINANCE: When you refinance your home, it is common that the mortgage company requires the borrower to take their house out of the trust. Some



The most common failure that we see in our trust administrations is funding, or rather, the lack of funding. Funding is the retitling of your assets (home, bank accounts, etc.) so that the title matches that of your trust. The purpose being that if something happens to you and the assets are in your trust, the trust calls for who the trustee should be upon your death. If you own a bank account and it is not in the trust and you have no beneficiaries listed, that account is

mortgage companies do not lend to trustees of revocable trusts and some do, so this situation is lender specific. If the mortgage company requires the borrower to sign their home out of their trust via a deed to sign the refinance paperwork, there should be another deed to sign putting the house back into trust after the paperwork is signed. That is a big should. Escrow companies do not always ask if that is what the borrower (continued on page 2)

“DO NOT FOLLOW WHERE THE PATH MAY LEAD. GO, INSTEAD, WHERE THERE IS NO PATH AND LEAVE A TRAIL.”
~ RALPH WALDO EMERSON



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wants and it's up to the borrower to make sure that the house goes back into trust. When it does not, we call that "falling out of the trust." And if you die with the house outside of the trust, and either both spouses die or a single owner dies, the house will be subject to probate.

INHERITANCE: Receiving an inheritance is another way that people can end up dying with real property outside of their trust. Often when people inherit real estate, they are inheriting with siblings, meaning multiple people can be on title to the property. This does not mean that you cannot put your share into your trust. This can be done either by a deed drawn up by your estate planning attorney, or you can make sure that when your share of the property is granted to you, it is granted to you as trustee of your trust. Of course, this is also appropriate if you inherit 100% of a property and you do not have co-owners. It is important to speak up to make sure that you are receiving the property with the correct title. You can always change it afterwards with your attorney, but you can also speak up during the administration of the estate to make sure that they distribute your inheritance to you with the proper titling.

NEW PURCHASES: It is common to create your estate plan, make sure it is properly funded and then promptly forget about it and go on with your life while it collects dust on the office shelf. However, if you sell your home and buy a new one, or buy a second property, have you made sure that it is titled in your trust? Any new property you acquire must be titled properly and the escrow company is not going to know how to do that. They will ask you,

probably by email, how you want to "vest" on title. There are many ways for a married couple to hold title to property. If you have a trust, you should provide your title company with a copy of your Certification of Trust which shows exactly how you should hold title to the property. If you are purchasing with a loan, then the same discussion above applies about making sure that if the loan company will not let you make the purchase in the name of the trust, that you execute a deed after the mortgage putting the property into your trust.

THE COMMON THREAD WITH ALL THREE OF THESE SCENARIOS IS COMMUNICATION.

It is ok to be vocal that you have a living trust and that you want to make sure that your assets are titled properly. If any employee of a financial institution or a mortgage lender, or escrow officer does not know what to do, there is likely someone else in the office who does, so it is ok to push a little. It is also up to you to make sure that they are doing what you ask of them.

It is very important to make sure that your real estate, even that vacant lot you inherited a long time ago, is properly titled in your trust. Do not assume that you own it in joint tenancy where your siblings will inherit your share if you die, that is not a default title in California. There is never any harm in checking the deeds to your real estate and making sure that they are properly funded. Real estate is a large reason that people with trusts still end up doing a probate. Check your real estate titling today and make sure your trust is properly funded!

ABSOLUTE TRUST TALK - NOW LIVE ON FACEBOOK

If you need something new to listen to or watch while you are at home, our podcast show "Absolute Trust Talk" has gone LIVE on Facebook. Every other Thursday at 11:00 am you can tune in to watch me and my featured guest on my Facebook page for a LIVE, 20-30 minute interview on current and helpful topics. Below are just a few of my recent shows:

- *Financial Planning for Women in Transition*
- *What You Need to Know About the Latest COVID scams*
- *Financial Planning for Young Families*
- *Reverse Mortgages as a Financial Tool*

You can find these shows and more on our website AbsoluteTrustCounsel.com under the Podcast tab. Not

only will you have access to our LIVE shows, our 30+ podcast interviews are all there, too. If you have any topics you would like to learn about, please let us know. We are more than happy to accommodate your interests.



DO YOU HAVE A SAFE DEPOSIT BOX?

If you answered “yes” to the above question, read on. If you answered “no” you may want to read this just in case you know someone who does.

Under California law, a financial institution that holds a safe deposit box in the name of a deceased person, or deceased persons, may open the box for a third party if they possess a key and provide adequate identification and proof of their relationship to the decedent as well as a certified copy of the decedent's death certificate.

THE FINANCIAL INSTITUTION IS REQUIRED TO:

- Keep a record of the identity of the person accessing the safe deposit box.
- Allow the authorized person to open the safe deposit box under the supervision of an officer or employee of the financial institution, and to conduct an inventory of the contents.
- Photocopy all wills and trust instruments from the box. Keep the photocopy in the box until the contents are removed by the legally authorized person. The financial institution may charge a reasonable fee for photocopying.
- Permit the legally authorized person to remove the instructions for the disposition of the decedent's remains, and, after a photocopy is made, to remove the will and trust documents.

Anyone given access to a decedent's safe deposit box is required to deliver all wills found in the safe deposit box to the clerk of the superior court, and mail or deliver a copy to the person named in the will as executor or beneficiary. However, the contents of the box may not be removed until letters testamentary have been issued by the probate court. This means the family has to open a probate even if the decedent created a trust in order to avoid probate!

What should you do? Have one of your children listed as a signer or authorized user on the safe deposit box or arrange with the bank for the safe deposit box to be owned by your trust. Also, don't forget to tell someone where you keep the key!



WELCOME BACK, JESSICA!

Woo Hoo! Absolute Trust Counsel is so pleased to announce the return of **Jessica Colbert**, as our summer intern. You may remember her. Jessica joined our team in 2015 as our Administrative Assistant. Shortly thereafter, while spending her days working with us full-time, she attended the paralegal studies program at CSU East Bay in the evenings, quickly graduated and moved right into the role of paralegal.



Soon after mastering her paralegal position, she decided that law was a huge interest to her and she wanted to pursue a career as an attorney. She studied for the LSAT, performed well on the exam (we knew she would), and was accepted into UC Hastings College of the Law. She has now completed her first year, finishing her first semester with straight As. We can't be more proud of her!

If you get a chance to work with her this summer, just know you are in good hands. We are very lucky to have her back.

THE EASIEST WAY TO STAY INFORMED

Social media can be very helpful to stay informed and educated on recent changes and events happening in our industry. If you haven't already, please “like” or “follow” us on our social media Facebook, Twitter and LinkedIn by typing Absolute Trust Counsel and Kirsten Howe in the search box and click on “Like” or “Follow.” It's that easy. You will have quick access to our blogs, announcements, events and much more.

