



# ABSOLUTE *Advantage*

## Trust and Estate Law Happening Now

SUMMER 2023



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**"YOU CANNOT ESCAPE THE RESPONSIBILITY OF TOMORROW BY EVADING IT TODAY."**

**-ABRAHAM LINCOLN**

## TRUSTEE TOOL: NOTICE OF PROPOSED ACTION

By Madison Gunn

What is a Notice of Proposed Action? A Notice of Proposed Action (NOPA) is a legal document that a trustee of a trust sends to the beneficiaries of the trust informing them of an impending action and giving them the opportunity to object or consent. A common example that we see is when a trustee wishes to use the trust's cash reserves to fix up a house for sale. Some beneficiaries might not be agreeable to spend \$50,000 of their inheritance to fix up a house without knowing for certain if the Trustee will recoup the investment upon the sale of the house. A Notice of Proposed Action would require that the Trustee send the beneficiaries all of the pertinent information regarding the proposed action so that the beneficiaries could make an informed decision about their inheritance.

Notices of Proposed Actions in trust administrations are not required for the normal situations that trustees find themselves in. The trusts usually give the trustee's full authority to act on behalf of the trust and most trustees will never need to complete a NOPA; however, the NOPA is a great tool in unusual situations where trustees will find it easier to ask permission rather than beg forgiveness if a beneficiary objects later.

Here are some key aspects of the role of Notices of Proposed Actions in trust administrations:

**Purpose:** The purpose of a NOPA is to keep beneficiaries informed about actions that the trustee wants to take that may impact their interests. It ensures that the beneficiaries are kept apprised of trustee actions and allows them to respond to the notice.

**Content:** The NOPA must contain a description of the action proposed to be taken



(or not taken) and an explanation of the reasons for the action or inaction, and the date on or after which the proposed action may be taken or is effective. The notice should provide sufficient information to allow beneficiaries and interested parties to understand the potential impact of the proposed action.

**Notice Period:** California law requires that the NOPA be sent to all beneficiaries and interested parties a certain period of time before the proposed action can be taken. The notice period is 45 days from the delivery or receipt of the NOPA.

**Objection and Response:** Beneficiaries have the opportunity to object or consent to the proposed action within the specified notice period. If objections are raised, the trustee may need to address them, modify the proposed action, or seek court approval before proceeding. Failure to respond within the notice period may limit the ability to contest the action later. A beneficiary that does not respond to the NOPA is considered to have consented to the action.

Notices of Proposed Actions play a crucial role in ensuring transparency and fairness in the trust administration process. By providing beneficiaries and interested parties with the opportunity to review and respond to proposed actions, it helps protect their rights and interests in the trust, as well as protect the Trustee's liability in their actions as Trustee.

## DO YOU NEED TO PLAN FOR AN UNKNOWN RELATIVE?

By Kirsten Howe & Madison Gunn

Imagine this scenario: Jane's cousin, David, dies without an estate plan here in California. He had no children or further descendants. He has no living siblings, parents, grandparents, or aunts or uncles, but he does have Jane, his only first cousin, on his dad's side of the family. Jane petitions the court to open a probate of David's estate and is appointed administrator. Just as she is about to complete her duties and asks the court to allow her to distribute the entire estate to herself, as David's sole heir, someone claiming to be a cousin named Judy files an objection to the distribution, claiming that she is entitled to half of the estate as David's other first cousin, on his mom's side. She is not a blood relative and was never adopted into the family. She was abandoned by her birth parents when she was two, and raised by Charles, David's mom's brother, and Charles's wife. Charles, David's uncle, would have been his heir, but he is deceased and has no children, other than Judy, who, again, he never adopted. A few more facts: Judy was raised in Indiana, which is where Charles lived and died. Jane never met Judy nor, apparently, did her deceased cousin David.

This was a recent California case. The parties argued over whether Judy should be treated as a cousin and heir even though she was not legally adopted into David's family. The issue in the case was which law applies – California or Indiana? Indiana law is very simple and clear: Judy would not be considered Charles's child or David's heir because Charles was not her biological father and he did not adopt her through the courts. California law is a little more flexible: a legal parent and child relationship can be established, without adoption, by clear and convincing evidence that the parent has openly held out the child as that parent's own, provided that parent did not ever disavow the child.

Jane argued that Indiana law should apply because that is where the "parent and child" relationship between Charles and Judy was created and existed. Judy argued that California law should apply because that is where David lived and died and where the estate is being probated, and that she met the "clear and convincing" standard because Charles held her out to be his daughter and never disavowed her. Charles was listed on her marriage certificate as her father, she was listed on Charles's death certificate as his daughter, Charles enrolled her in school as her father, and so on. The court held that, because David's estate is being probated in California, California parentage laws apply and Judy does get to inherit half of David's estate. *Wehsener vs. Jernigan* (86 Cal.App.5th 1311).



It may seem far-fetched that some person in your family, who you didn't actually think was related, legally, and maybe that you have never met, or even know about as a family member, could inherit from your estate. This is the law in California. Even if you don't like the holding in the case, the good thing about this case is that we now know how to plan around it. What does this mean for our estate planning clients?

## WATCH US LIVE ON OUR ABSOLUTE TRUST TALK PODCAST

The Absolute Trust Talk Podcast is a resource to help you make informed planning decisions for today and tomorrow. Each episode delivers relatable interviews and easy-to-consume insights with actionable steps allowing you to move through your unique journey in life with intention. Tune in every other Thursday at 11:00 AM PST to watch Kirsten or Madison interview a featured guest LIVE on Absolute Trust Counsel's Facebook page: [www.facebook.com/AbsoluteTrustCounsel](https://www.facebook.com/AbsoluteTrustCounsel). If you miss the Facebook Live interview, you can listen to the podcast version on our Absolute Trust Talk podcast page: [www.AbsoluteTrustCounsel.com/Podcast](https://www.AbsoluteTrustCounsel.com/Podcast).





## DO YOU NEED TO PLAN FOR AN UNKNOWN RELATIVE? (CONTINUED)

1. It is important to remember that this was a case of intestacy. David did not have an estate plan, so Judy only inherited because the court determined her to be an intestate heir. If you have a written estate plan, you will not die intestate, so this case is not likely to be relevant.
2. However, even if you do have a written estate plan, it is possible that some portion of your estate could be designated for your heirs at law. This is often the language in our “worst-case-scenario” provisions: what happens to your estate if all of your children and grandchildren die before you do.

If this case seems a little unfair or not the outcome you would want, your trust or will should include a clear statement excluding from your heirs at law all persons who are not blood relatives or legally adopted by a blood relative.

## KNOW SOMEONE THAT NEEDS HELP GETTING STARTED WITH THEIR ESTATE PLANNING?

We're pleased to share the launch of a new monthly webinar series we began in June, Estate Planning Basics: It's Not About What You Have, It's About Being Prepared. Once a month, Associate Attorney Madison Gunn will be going live to talk about the fundamentals of estate planning, so attendees know exactly what is needed to build a plan that truly brings peace of mind. Our goal is to help people overcome the ‘what ifs,’ the decision-making, the fear of mortality, and even strained relationships that can be a roadblock to putting a plan in place that protects them and their loved ones – so they can stop getting stuck and just get started. The next webinar will be held on July 12th at noon. If you know someone who would be interested, please feel free to share a link to our registration page: <https://bit.ly/ATCJulyWebinar>.



SCAN TO REGISTER!

## THE EASIEST WAY TO STAY INFORMED

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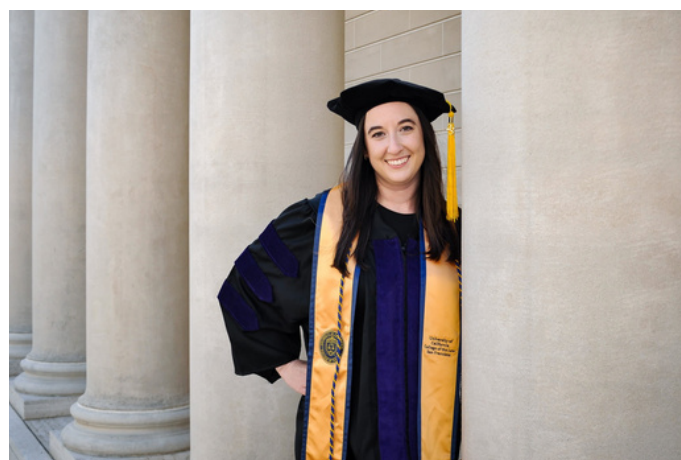
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## ATC WELCOMES FORMER TEAM MEMBER AND NEW LAW GRAD. JESSICA COLBERT BACK TO THE FIRM

Meet Jessica Colbert, former Absolute Trust Counsel Paralegal who stepped away from her position here to work towards obtaining a law degree. We are excited to announce that she has just graduated with honors from the University of California College of Law, San Francisco (formerly UC Hastings). Jessica is now studying to take the July 2023 California Bar Exam and will rejoin the Absolute Trust Counsel team in serving our clients and community with all their unique trust and estate-related needs.

Before pursuing her J.D., Jessica graduated from Cal Poly San Luis Obispo with a Bachelor of Arts in History and a minor in Political Science.

“I’m thrilled to have Jessica back on the team,” Kirsten stated. “She’s always been a hard worker who takes great pride in her work and cares deeply about clients. We’re all very proud of her important accomplishments and are happy to see her smiling face back in the office!”



## THANK YOU, KATELYN!

Please join us in sending best wishes and a fond farewell to Absolute Trust Counsel Case Manager Katelyn Meehan. Katelyn will leave us this month to move with her family to Canada. We appreciate all the hard work she has done for us and our clients during her time here. While we are sad to see Katelyn leave, we are excited about her future in Canada and all opportunities that await her. Our current Administrative Assistant, Cameron Klotz, has been promoted to the Case Manager position and is very excited to get started. “Thank you to Katelyn and the entire Absolute Trust Counsel team for this opportunity. It’s an honor to serve the members of Walnut Creek and surrounding communities with such a caring and compassionate team.”



# ABSOLUTE TRUST COUNSEL

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## PERSONAL NOTE FROM KIRSTEN

Dear Clients and Other Friends,

Yay summer! We hope this finds you in good health and high spirits!

A good friend, who is in his seventies and very fit and healthy, recently had a scary incident that felt like a cardiac event. After a bunch of tests, the conclusion was that it was probably dehydration. He is fine, but this leads to an important lesson for all of us.

When it is hot (summer!) our bodies work hard to keep our temperature within the optimal range. This hard work requires a lot of water. Even if you are not exerting yourself and not sweating, your body is working hard, so especially in the summer be sure to drink lots of water. This is particularly important for those whose bodies are not as good at thermoregulation - the very young and those who are "of a certain age".  
Have a healthy, happy summer with whoever makes your life fun!!

Kirsten Howe, Attorney at Law

**PLEASE RECYCLE, REDUCE AND REUSE.**  
**SHARE THIS NEWSLETTER WITH FRIENDS AND FAMILY.**  
**TO UNSUBSCRIBE, EMAIL US AT**  
**INFO@ABSOLUTETRUSTCOUNSEL.COM.**

