



ABSOLUTE Advantage

Trust and Estate Law Happening Now

WINTER 2023



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"LEARN FROM
YESTERDAY, LIVE FOR
TODAY, HOPE FOR
TOMORROW."

- ALBERT EINSTEIN

COMMON ISSUES THAT ARISE IN ADMINISTERING A TRUST THAT HOLDS REAL PROPERTY AND HOW TO AVOID THEM

By Madison Gunn

Real property is often the most complicated trust asset for trustees to manage. Trustees want to do the best they can to please the beneficiaries, who are often their siblings or family members, and still follow the terms of the trust. We will discuss three very common scenarios that we see in our trust administrations where real estate is involved and the questions that arise.

To begin this discussion, some background information is required. This is a common scenario in trust administrations.

Harry and Wendy, a married couple living in California, created a revocable trust during their lives as a part of their estate plan. They have three adult children: Susie, Tom, and Michael. When Harry and Wendy die, their trust becomes irrevocable and it holds the house that the children were raised in, a checking account with \$40,000 and a brokerage account with \$300,000. They purchased the house for \$100,000 and its fair market value is \$900,000 as-is and could fetch up to \$1,500,000 if they put \$300,000 worth of deferred maintenance and upgrades into the property. The house is assessed prior to Harry and Wendy's deaths by the county assessor at \$300,000 for property tax purposes.



Harry and Wendy's trust names Susie as their successor trustee and all assets are to be divided equally between the three children. The trust allows for in-kind distributions, meaning the kids can pick and choose what assets they receive as long as they each receive assets adding up to their 1/3 shares. They don't have to split each individual asset three ways.

Issue 1

Tom wants to keep the house owned by the three of them as an investment property, fix it up with trust money and rent it out, and he would like to be the property manager.

This is a common request that results in a lot more questions than answers.

Do all beneficiaries/siblings agree? Is it a good investment for all of their individual circumstances? Is it a good investment overall given the property taxes will be reassessed to fair market value? Does the house have deferred maintenance or is it not up to code for renting? Who is going to front the repair money? What is the cost of doing business? Who will front that money? Will they all get along as co-owners and landlords? Keeping a family home as a rental property is a huge responsibility, and throwing in multiple owners can be a recipe for disaster if it is not done right, and with attention to detail.

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COMMON ISSUES THAT ARISE IN ADMINISTERING A TRUST THAT HOLDS REAL PROPERTY AND HOW TO AVOID THEM (CONTINUED)

Issue 2

Michael wants to buy his siblings out and also maintain low property taxes under Prop 19 by living there.

Here, one sibling wants to take the house as a part of his 1/3 share and add cash to the trust to cover the difference between the amount he is entitled to and the value of the whole house, which is what he wants. This is doable, but can raise some issues.

Is there a way to keep the property taxes low under Prop 19 when outside funds are added to make everyone equal? Can Michael afford a mortgage to make this happen? Can he qualify for a mortgage personally? Is the loan to value ratio of the house too high to obtain a mortgage? These are all questions to consider. Is everyone agreeable to this? Could the property fetch more money for the beneficiaries on the open market? What does that market look like? Does everyone come out equal?

Issue 3

Michael lives in the house with his family, they were taking care of Harry and Wendy before they died. Michael says that Harry and Wendy would have allowed Michael and his family to continue living there as a thank you for helping. Michael and his family do not have the funds readily available to move, so he wants to be able to live there for a couple of years to get on his feet before the house is sold.

This scenario leaves several outstanding questions that can result in some sort of contract between the siblings, or litigation if they cannot come to an agreement.

Who is responsible for all of the home's expenses even though the trust will be the owner for two years? This includes property taxes, insurance, maintenance and upkeep. Do they distribute the house out of the trust, to the three of them as co-owners first, and then seek a written co-ownership or lease agreement? Is Michael responsible for paying rent to Susie and Tom since they own 2/3 of the house? Is that fair market rent? If he doesn't pay rent, is that a reportable gift from Susie and Tom to Michael? Are Susie and Tom okay with delaying the sale of the house, which delays a significant portion of their inheritance? If Susie and Tom say no, will Michael and his family move? Or will Susie, as trustee, now have to hire a landlord tenant attorney to evict Michael, at the expense of the trust, and consequently, at the expense of all three of their inheritances

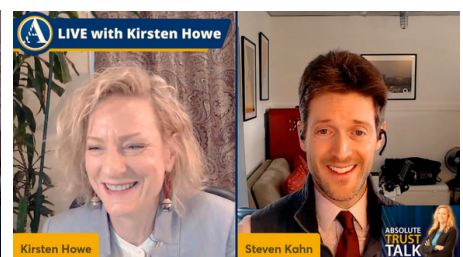
To summarize concerns that arise with real estate in trust administrations, there are a few solutions that settlors and successor trustees alike can use to solve some of these issues. For the settlors/parents, there are two important things they can do to avoid dissension amongst the beneficiaries.

Parents can update their trust during their lifetimes to reflect their precise wishes for the house. They can discuss property tax concerns, capital gains issues, and their children with their estate planning attorney. The attorney can expand upon the parents' concerns and wishes by asking questions so the attorney can provide clarity to the trustee while drafting the trust. The attorney's job is to leave no stone unturned, as best they can. Parents can also have the attorney write into the trust that the house must be sold, eliminating the trustee's choice, and more importantly eliminating the children from being able to pressure the trustee into any one of the above scenarios.

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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 monthly to watch Kirsten or Madison interview a featured guest LIVE on Absolute Trust Counsel's Facebook page: 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.



COMMON ISSUES THAT ARISE IN ADMINISTERING A TRUST THAT HOLDS REAL PROPERTY AND HOW TO AVOID THEM (CONTINUED)

Another important thing that parents can do is to sit down with all of their children and discuss what will happen after their deaths. This can be before updating their trust if they want the input of their children, or it can be after in order to avoid surprises later. The children do not have a say in the trust, but some parents may want to know what their children's expectations are, or whether or not the children have a particular interest in the house, before they make their updates.

For real estate in a trust, it is often an ounce of prevention that is worth a pound of cure. Making sure that your trust document clearly outlines your wishes for your real estate and that the family knows what your intentions are will often reduce the hostility in a trust administration. 🕒

2023 ROUND UP

- 2023 saw Absolute Trust Counsel bring on a new attorney, Jessica Colbert. We are so excited that our long-time paralegal has now joined us as our third attorney!
- We attended the Special Needs Planning Symposium in Napa in February 2023 to stay current on benefits for special needs individuals and how proper estate planning can preserve those benefits.
- The Absolute Trust Counsel Team participated in the 2023 Walk to End Alzheimer's in October, held at Bishop Ranch in San Ramon.
- We also attended the California Advocates for Nursing Home Reform (CANHR) conference in Monterey, which highlighted the new and exciting Medi-Cal changes.
- The popular Absolute Trust Counsel Annual Cookie Exchange was held in December, which is always a hit amongst our friends. Who doesn't love to share and receive cookies! 🕒



2024 BY THE NUMBERS



Every year the IRS updates the federal estate and gift tax exclusion amounts. For 2024, the new amounts are:

- Estate and lifetime gift tax exemption – Increased from \$12,920,000 to \$13,610,000
- Annual gift tax exclusion – Increased from \$17,000 to \$18,000 per person

Medi-Cal for Long Term/Nursing Home Care

- Asset Test: Eliminated! There is no longer an asset limit (it was previously capped at \$2,000 of non-exempt assets, and was raised in July 2022 to \$130,000 of non-exempt assets). However, Medi-Cal may still request verification of any property transfers made before January 1, 2024 (within the 30 month look back period).
- Income: At or below 138% of the federal poverty level (\$1,676.67) = qualifies for Medi-Cal. For an individual in a nursing home, they can keep \$35 a month with the rest of their income going to the facility; for most home and community-based alternatives, the individual can keep \$600 with the rest of their income going to the program they are enrolled in. Income above 138% of the federal poverty level may qualify with a higher share of cost. Some programs, including some Home and Community Based Alternatives, such as the Assisted Living Waiver, do not allow a share of cost, thus the income limit is capped at 138% of the federal poverty level to qualify. We can still assist married couples if the spouse needing care has too much income, schedule a Medi-Cal Consultation today! 🕒

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PERSONAL NOTE FROM KIRSTEN

Dear Clients and Other Friends,

I hope you all enjoyed the holiday season as much as I did. Christmas is so much fun with a grandchild!

The new year is traditionally a time for making resolutions. Unfortunately, almost half of all new years' resolutions are abandoned by the end of January, and less than 10% of us are successful in sticking to our resolutions for the long term.

The trick, it seems to me, is to take action on your resolution as early in January as you can, before you become a negative statistic. And if one of your resolutions is to (finally) get your estate plan up to date, taking action is as easy as picking up the phone and calling us. We'll take it from there.

Resolutions or not, I wish us all a peaceful and prosperous 2024!

Kirsten Howe
Attorney at Law



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