



CALIFORNIA
BANKERS
ASSOCIATION

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**Deposit Accounts and Operations
Bootcamp: Identifying and Documenting
Depositors**

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Introduction

- Introductory Remarks
- Seminar Materials
 - Agenda & Outline
 - Exhibits
- Review Agenda



Objectives

- Understand minimum documentation requirements under FinCEN's customer identification program rule
- Understand types of documentation needed to verify accounts opened for common customers at financial institutions



CUSTOMER IDENTIFICATION PROGRAM



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Customer Identification Program (CIP) Rule

- In 2003, the Financial Crimes Enforcement Network (FinCEN), together with the federal financial institution regulatory agencies (OCC, FRB, FDIC, and NCUA), issued the Customer Identification Program (CIP) regulations in 2003 (68 FR 25090)
- The CIP regulations require financial institutions to adopt procedures for:
 - Verifying the identity of any person (or entity) opening an account
 - Maintaining records of the information used to verify a person's identity; and
 - Determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations
- The CIP regulation apply to “banks” which includes national banks, state-chartered member and non-member banks, savings associations and federal credit unions (among other things)



All Financial Institutions Must Adopt a CIP

- The goal of a CIP is to enable a financial institution to form a “reasonable belief” that it knows the true identity of a new customer
- CIP must be part of an institution’s BSA/AML compliance program



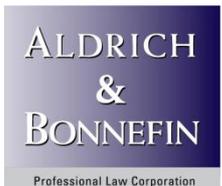
Accounts

- Accounts include a deposit account, transaction or asset account, safe deposit box, credit account, or other extension of credit



Minimum Customer Information

- Exact spelling of individual's or entity's name
- Date of birth (for individuals)
- Physical address
 - Individuals
 - Residential address; or
 - Business street address
 - Persons other than individuals
 - Principal place of business
 - Local office
 - Other physical location



Identification Number

- For U.S. persons, must obtain a taxpayer identification number
 - An account may not be opened for a U.S. person that does not have a TIN
 - For a person without legal capacity, the TIN of the individual opening the account would be sufficient
 - e.g., conservator or guardian



Identification Number

- For non-U.S. persons, one or more of the following must be obtained:
 - U.S. taxpayer identification number
 - Passport number and country of issuance
 - Alien identification card number
 - Number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard



Identification Number

- **NOTE:** When opening an account for a foreign business that does not have an ID number, the institution must request alternative government-issued documentation certifying the existence of the business



Requesting a TIN

- Financial institutions are required to ask each customer for a U.S. TIN
- If a non-U.S. person cannot provide a TIN, then an alternative government-issued document with an identification number may be requested



Exemption Orders Permitting Banks to Seek TINs From Third Parties

- In 2025, the OCC, FDIC, FRB and NCUA, with the concurrence of FinCEN, issued orders providing an exemption from the requirement that institutions must obtain TIN information directly from the customer prior to opening an account (collectively, the agencies' orders are referred to as the "Exemption Orders")
- The Exemption Orders permit institutions to use an alternative collection method to obtain TIN information from a third-party source rather than the customer directly



Exemption Orders - Prerequisites

- In order for the exemption to be available, the Exemption Orders require the institution to still have written procedures that:
 - Enable the institution to obtain TIN information prior to opening an account
 - Are based on the institution's assessment of the relevant risks; and
 - Are risk-based for the purpose of verifying the identity of each customer to the extent reasonable and practicable, enabling the institution to form a reasonable belief that it knows the true identity of each customer



Exemption Orders

- Use of the exemption or alternative collection method is completely voluntary
- Meaning an institution may continue to obtain a TIN directly from the customer
- The exemptions may be particularly useful in the context of non-face-to-face account opening practices (*i.e.* online or mobile account opening)



Verification Through Documents - Individuals

- An unexpired government-issued identification
- Must evidence nationality or residence and bearing a photograph or similar safeguard
 - Examples are a driver's license and passport



Verification Through Documents - Individuals

- Non-governmental issued ID
 - May be used if the institution can form a reasonable belief as to the person's true identity
 - Examples include employee identification card, utility bill or library card
 - Not generally recommended to rely solely on non-governmental issued IDs due to the prevalence and availability of counterfeit and fraudulently obtained documents
- Electronic credentials
 - CIP FAQs: a digital certificate may be used
 - Ensure the third-party used the same level of authentication that the institution would use



Verification Through Documents - Entities

- Documents Showing Legal Existence
- For sole proprietorships
 - The sole proprietor or any other individual with control over the account must be identified
 - May be more practical to simply identify the sole proprietor as with any other individual account



Verification Through Documents - Entities

- For partnerships
 - The partnership agreement
 - If there's no written agreement obtain information about the individual with authority or control over the account
- For corporations
 - Articles of Incorporation filed with the Secretary of State show legal existence
- For LLCs
 - Articles of Organization filed with the Secretary of State show legal existence



Verification Through Documents- Originals vs. Photocopies

- Original documents vs. photocopies
 - The CIP Rule does explicitly require institutions to review original documents
 - However, photocopies of documents are inherently unreliable
 - Institutions should rely on additional documentary or non-documentary verifications methods to confirm the customer's identity



Verification Through Non-Documentary Methods

- If an institution will rely on non-documentary methods to verify the identity of a customer, the CIP must include procedures that describe the non-documentary methods the institution will use
- Verification methods
 - Contacting a customer
 - Independently verifying a customer's identity through information obtained from a consumer reporting agency, public database or other source
 - Checking references with other financial institutions
 - Obtaining a financial statement



Areas to Address

- An individual is unable to present an unexpired government-issued identification
- Institution is not familiar with the documents
- Account is opened without obtaining documents
- Customer opens an account without appearing in person
- Circumstances that increase the risk that the institution will not be able to verify the true identity of the customer



PERSONAL ACCOUNTS



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Authorization Issues

- Confirm that the account owners sign the signature card and authorize the opening of the account
- Options for accounts opened other than in-person
 - Notarized signature card
 - Electronic signature
 - Videoconference with liveness detection
- Issues with joint accounts opened with only one person present



Individual Accounts

- CIP information from account holder
 - Name
 - Date of birth
 - Physical address
 - Identification number



Supporting Documentation

- Driver's license
- Passport
- Secondary identification
 - Birth certificate
 - Social security card
 - Consular identification card



Joint Accounts

- CIP information from each account holder
- Supporting documentation
 - Same as for individual accounts
- Forms of joint ownership
 - Joint tenancy
 - Automatically includes right of survivorship
 - Each party to the account has an undivided interest in the entire account
 - Should include the following model language
 - *This account or certificate is owned by the named parties. Upon the death of any one of them, ownership passes to the survivor(s).*



Tenancy in Common

- Each party to the account has an undivided interest in the entire account but there is no right of survivorship between account owners
- Upon death of either party, the account typically passes to the surviving party (unless there is clear and convincing evidence of a different intent)
- Should include a clear statement in the account agreement and/or signature card that the owner's interest passes to his or her estate
 - *This account or certificate is owned by the named parties as tenants in common. Upon the death of any party, the ownership interest of that party passes to the named pay-on-death payee(s) of that party or, if none, to the estate of that party*



Community Property

- Held by a married couple or registered domestic partners
- Each person's one-half ownership interest goes according to California's community property laws
- If a joint account is intended to be held as a community property account, include the following language in the signature card:
 - *This account or certificate is the community property of the named parties who are husband and wife. The ownership during lifetime and after the death of a spouse is determined by the law applicable to community property generally and may be affected by a will*



Informal, Statutory Trust Accounts

- These should be treated as individual accounts
- Get CIP information from the account trustee(s)
- Examples:
 - Totten Trust Accounts
 - POD Accounts



Totten Trust Accounts

- Account with a designated beneficiary (or beneficiaries) who is not entitled to the funds in the account until all trustees die
 - ITF: “in trust for”
 - ATF: “as trustee for”
 - Example: “John in trust for Mary” or “John as trustee for Mary”



Payable On Death (POD) Accounts

- POD accounts are treated the same as Totten trust accounts
- Beneficiary has no interest or rights in the funds in the account until all the account holders die
- Example: “John payable on death to Mary” or “John POD Mary”



Totten Trust and POD Accounts

- Identification information for beneficiaries?
- Use the TIN of the trustee/account holder
- Do not use the TIN of the beneficiary on the account



ESTATE ACCOUNTS



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Authorization Issues

- Identify the representative appointed by the court
- The representative acts in place of the person they represent
- The authority to act can be limited by the relevant probate Letters or a court order
- Do not add additional (authorized) signers



Estate – Executor/Administrator

- Certified copy of death certificate
- Probate Court Letters (Exhibit A)
 - Letters Testamentary from executors
 - Letters of Administration from administrators



| | |
|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) _____ ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: ESTATE OF (Name): _____ | TELEPHONE AND FAX NOS.: _____ <div style="border: 2px solid red; padding: 5px; color: red; text-align: center; font-weight: bold;"> To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished. </div> |
| DECEDENT <input type="checkbox"/> TESTAMENTARY <input type="checkbox"/> OF ADMINISTRATION WITH WILL ANNEXED | CASE NUMBER: _____ <input type="checkbox"/> OF ADMINISTRATION <input type="checkbox"/> SPECIAL ADMINISTRATION |

LETTERS

1. The last will of the decedent named above having been proved, the court appoints (name):
 - a. executor.
 - b. administrator with will annexed.
2. The court appoints (name):
 - a. administrator of the decedent's estate.
 - b. special administrator of decedent's estate
 - (1) with the special powers specified in the Order for Probate.
 - (2) with the powers of a general administrator.
 - (3) letters will expire on (date):
3. The personal representative is authorized to administer the estate under the Independent Administration of Estates Act with full authority with limited authority (no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).
4. The personal representative is not authorized to take possession of money or any other property without a specific court order.

WITNESS, clerk of the court, with seal of the court affixed.

| | |
|--------|--|
| (SEAL) | Date: _____ |
| | Clerk, by _____ _____ (DEPUTY) |

AFFIRMATION

1. PUBLIC ADMINISTRATOR: No affirmation required (Prob. Code, § 7621(c)).
2. INDIVIDUAL: I solemnly affirm that I will perform the duties of personal representative according to law.
3. INSTITUTIONAL FIDUCIARY (name):

I solemnly affirm that the institution will perform the duties of personal representative according to law. I make this affirmation for myself as an individual and on behalf of the institution as an officer.
(Name and title): _____
4. Executed on (date): _____
at (place): _____, California.

(SIGNATURE)

CERTIFICATION

I certify that this document is a correct copy of the original on file in my office and the letters issued the personal representative appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

| | |
|--------|--|
| (SEAL) | Date: _____ |
| | Clerk, by _____ _____ (DEPUTY) |

Estate – Executor/Administrator

- CIP is for the decedent estate but still obtain the executor or administrator's identification
 - Typically the address of the executor or administrator is used for the estate
- Use EIN of the decedent's estate (not the decedent's SSN)



Guardianship

- Estate vs. person
 - To open a guardianship account must be guardianship of the estate
 - Guardianship over just the person is not sufficient



Guardianship

- Letters of Guardianship (Exhibit B)
- CIP is applied to the guardian so get the guardian's CIP information
- Use the minor's SSN for tax reporting purposes



| | | |
|--|----------------|--------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name): | STATE BAR NO.: | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | | |
| GUARDIANSHIP OF (name): | | |
| LETTERS OF GUARDIANSHIP <input type="checkbox"/> Person <input type="checkbox"/> Estate | | CASE NUMBER: |

LETTERS

1. (Name): _____ is appointed guardian of the person estate
of (name): _____
2. The appointment of (name): _____ as guardian of the person of
(name): _____
is extended past the ward's 18th birthday as of (date): _____
3. Other powers have been granted and conditions have been imposed as follows:
- Powers to be exercised independently under Probate Code section 2590 are specified in attachment 3a (specify powers, restrictions, conditions, and limitations).
 - Conditions relating to the care and custody of the property under Probate Code section 2402 are specified in attachment 3b.
 - Conditions relating to the care, treatment, education, and welfare of the ward under Probate Code section 2358 are specified in attachment 3c.
 - Other powers granted or conditions imposed are specified on attachment 3d specified below.
4. The guardian is not authorized to take possession of money or any other property without a specific court order.
5. The guardianship of the person terminates by operation of law on (date): _____
6. Number of pages attached: _____

WITNESS, clerk of the court, with seal of the court affixed.

| | |
|--------|-------------------------|
| (SEAL) | Date: _____ |
| | Clerk, by _____, Deputy |

Guardianship

- Notice to court regarding guardianship account (Exhibit C)
 - Take possession or control of an asset of the minor
 - Open or change the name of an account or a safe deposit box



| | |
|----------------------------|--------------|
| GUARDIANSHIP OF (name): | CASE NUMBER: |
|----------------------------|--------------|

NOTICE TO INSTITUTIONS AND FINANCIAL INSTITUTIONS

(Probate Code sections 2890–2893)

When these *Letters of Guardianship* (Letters) are delivered to you as an employee or other representative of an *institution* or *financial institution* (described below) in order for the guardian of the estate (1) to take possession or control of an asset of the minor named above held by your institution (including changing title, withdrawing all or any portion of the asset, or transferring all or any portion of the asset) or (2) to open or change the name of an account or a safe-deposit box in your financial institution to reflect the guardianship, you must fill out Judicial Council form GC-050 (for an institution) or form GC-051 (for a financial institution). An officer authorized by your institution or financial institution must date and sign the form, and you must file the completed form with the court.

There is no filing fee for filing the form. You may either arrange for personal delivery of the form or mail it to the court for filing at the address given for the court on page 1 of these Letters.

The guardian should deliver a blank copy of the appropriate form to you with these Letters, but it is your institution's or financial institution's responsibility to complete the correct form, have an authorized officer sign it, and file the completed form with the court. If the correct form is not delivered with these Letters or is unavailable for any other reason, blank copies of the forms may be obtained from the court. The forms may also be accessed from the judicial branch's public website free of charge. The Internet address (URL) is www.courts.ca.gov/forms.htm. Select the form group *Probate—Guardianships and Conservatorships* and scroll down to form GC-050 for an institution or form GC-051 for a financial institution. The forms may be printed out as blank forms and filled in by typewriter (nonfillable form) or may be filled out online and printed out ready for signature and filing (fillable form).

An *institution* under California Probate Code section 2890(c) is an insurance company, insurance broker, insurance agent, investment company, investment bank, securities broker-dealer, investment advisor, financial planner, financial advisor, or any other person who takes, holds, or controls an asset subject to a conservatorship or guardianship other than a financial institution. Institutions must file a *Notice of Taking Possession or Control of an Asset of Minor or Conservatee* (form GC-050) for an asset of the minor or conservatee held by the institution. A single form may be filed for all affected assets held by the institution.

A *financial institution* under California Probate Code section 2892(b) is a bank, trust (including a Totten trust account but excluding other trust arrangements described in Probate Code section 82(b)), savings and loan association, savings bank, industrial bank, or credit union. Financial institutions must file a *Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe-Deposit Box* (form GC-051) for an account or a safe-deposit box held by the financial institution. A single form may be filed for all affected accounts or safe-deposit boxes held by the financial institution.

LETTERS OF GUARDIANSHIP**AFFIRMATION**

I solemnly affirm that I will perform according to law the duties of guardian.

Executed on (date): _____, at (place): _____

(TYPE OR PRINT NAME)

(SIGNATURE OF APPOINTEE)

CERTIFICATION

I certify that this document, including any attachments, is a correct copy of the original on file in my office, and that the Letters issued to the person appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

| | |
|--------|-------------------------|
| (SEAL) | Date: |
| | Clerk, by _____, Deputy |

Conservatorship

- Estate vs. person
 - Must be appointed conservator of the estate
 - Conservatorship over just the person is not sufficient



Conservatorship

- Letters of Conservatorship (Exhibit D)
- CIP is applied to the conservator so get the conservator's CIP information
- Use the conservatee's SSN for tax reporting purposes



ATTORNEY OR PARTY WITHOUT ATTORNEY (name, address, and State Bar number):
 After recording return to:

TEL NO.: _____ FAX NO. (optional) _____
 E-MAIL ADDRESS (optional): _____
 ATTORNEY FOR (name): _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

STREET ADDRESS: _____
 MAILING ADDRESS: _____
 CITY AND ZIP CODE: _____
 BRANCH NAME: _____

FOR RECORDER'S USE ONLY

CONSERVATORSHIP OF (name): _____ CONSERVATEE _____ CASE NUMBER: _____

LETTERS OF CONSERVATORSHIP

Person Estate Limited Conservatorship

FOR COURT USE ONLY

1. (Name): _____ is the appointed
 conservator limited conservator of the person estate
 of (name): _____
2. (For conservatorship that was on December 31, 1980, a guardianship of an adult or of
 the person of a married minor) (Name): _____
 was appointed the guardian of the person estate by order dated
 (specify): _____ and is now the conservator of the person
 estate of (name): _____
3. Other powers have been granted or conditions imposed as follows:
 - a. Exclusive authority to give consent for and to require the conservatee to receive
 medical treatment that the conservator in good faith based on medical advice
 determines to be necessary even if the conservatee objects, subject to the limitations
 stated in Probate Code section 2356.
 - (1) This treatment shall be performed by an accredited practitioner of the religion whose tenets and practices call
 for reliance on prayer alone for healing of which the conservatee was an adherent prior to the establishment of
 the conservatorship.
 - (2) (If court order limits duration) This medical authority terminates on (date): _____
 - b. Authority to place the conservatee in a care or nursing facility described in Probate Code section 2356.5(b).
 - c. Authority to authorize the administration of medications appropriate for the care and treatment of dementia described in
 Probate Code section 2356.5(c).
 - d. Powers to be exercised independently under Probate Code section 2590 are specified in Attachment 3d (specify powers,
 restrictions, conditions, and limitations).
 - e. Conditions relating to the care and custody of property under Probate Code section 2402 are specified in Attachment 3e.
 - f. Conditions relating to the care, treatment, education, and welfare of the conservatee under Probate Code section 2358
 are specified in Attachment 3f.
 - g. (For limited conservatorship only) Powers of the limited conservator of the person under Probate Code section 2351.5 are
 specified in Attachment 3g.
 - h. (For limited conservatorship only) Powers of the limited conservator of the estate under Probate Code section 1830(b) are
 specified in Attachment 3h.
 - i. Other powers granted or conditions imposed are specified in Attachment 3i.

(SEAL)

4. The conservator is **not** authorized to take possession of money or any other property without a
specific court order.

5. Number of pages attached: _____

WITNESS, clerk of the court, with seal of the court affixed.

Date: _____

Clerk, by _____, Deputy

This form may be recorded as notice of the establishment of a conservatorship of the estate as provided in Probate Code § 1875.

Conservatorship

- Notice to court regarding conservatorship account
 - Take possession or control of an asset of the conservatee
 - Open or change the name of an account or a safe deposit box



| | |
|----------------------------|--------------|
| CONSERVATORSHIP OF (name): | CASE NUMBER: |
| CONSERVATEE | |

NOTICE TO INSTITUTIONS AND FINANCIAL INSTITUTIONS
(Probate Code sections 2890–2893)

When these *Letters of Conservatorship* (Letters) are delivered to you as an employee or other representative of an *institution* or *financial institution* (described below) in order for the conservator of the estate (1) to take possession or control of an asset of the conservatee named above held by your institution (including changing title, withdrawing all or any portion of the asset, or transferring all or any portion of the asset) or (2) to open or change the name of an account or a safe-deposit box in your financial institution to reflect the conservatorship, you must fill out Judicial Council form GC-050 (for an institution) or form GC-051 (for a financial institution). An officer authorized by your institution or financial institution must date and sign the form, and you must file the completed form with the court.

There is no filing fee for filing the form. You may either arrange for personal delivery of the form or mail it to the court for filing at the address given for the court on page 1 of these Letters.

The conservator should deliver a blank copy of the appropriate form to you with these Letters, but it is your institution's or financial institution's responsibility to complete the correct form, have an authorized officer sign it, and file the completed form with the court. If the correct form is not delivered with these Letters or is unavailable for any other reason, blank copies of the forms may be obtained from the court. The forms may also be accessed from the judicial branch's public Web site free of charge. The Internet address (URL) is www.courts.ca.gov/forms/. Select the form group *Probate—Guardianships and Conservatorships* and scroll down to form GC-050 for an institution or form GC-051 for a financial institution. The forms may be printed out as blank forms and filled in by typewriter or may be filled out online and printed out ready for signature and filing.

An *institution* under California Probate Code section 2890(c) is an insurance company, agent, or broker; an investment company; an investment bank; a securities broker-dealer; an investment advisor; a financial planner; a financial advisor; or any other person who takes, holds, or controls an asset subject to a conservatorship or guardianship other than a financial institution. Institutions must file a *Notice of Taking Possession or Control of an Asset of Minor or Conservatee* (form GC-050) for an asset of the conservatee held by the institution. A single form may be filed for all affected assets held by the institution.

A *financial institution* under California Probate Code section 2892(b) is a bank, a trust, a savings and loan association, a savings bank, an industrial bank, or a credit union. Financial institutions must file a *Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe-Deposit Box* (form GC-051) for an account or a safe-deposit box held by the financial institution. A single form may be filed for all affected accounts or safe-deposit boxes held by the financial institution.

LETTERS OF CONSERVATORSHIP
AFFIRMATION

I solemnly affirm that I will perform according to law the duties of conservator limited conservator.

Executed on (date): _____, at (place): _____

(TYPE OR PRINT NAME)

(SIGNATURE OF APPOINTEE)

CERTIFICATION

I certify that this document, including any attachments, is a correct copy of the original on file in my office, and that the Letters issued to the person appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

| |
|--------|
| (SEAL) |
|--------|

Date:

Clerk, by _____, Deputy

Guardianship and Conservatorship

- Letters of Temporary Guardianship or Conservatorship
- Refer to Exhibit E



ATTORNEY OR PARTY WITHOUT ATTORNEY (name, address, and State Bar number):
 After recording, return to:

TEL NO.: _____ FAX NO. (optional): _____

E-MAIL ADDRESS (optional): _____

ATTORNEY FOR (name): _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____

STREET ADDRESS: _____

MAILING ADDRESS: _____

CITY AND ZIP CODE: _____

BRANCH NAME: _____

FOR RECORDER'S USE ONLY

TEMPORARY GUARDIANSHIP CONSERVATORSHIP MINOR CONSERVATEE

OF (name): _____

CASE NUMBER: _____

LETTERS OF TEMPORARY **GUARDIANSHIP** **CONSERVATORSHIP**

Person **Estate**

FOR COURT USE ONLY

LETTERS

1. (Name): _____
 is appointed temporary guardian conservator of the person
 estate of (name): _____

2. Other powers that have been granted or restrictions imposed on the temporary
 guardian conservator are specified in Attachment 2.
 specified below.

3. These Letters shall expire
 - a. on (date): _____ or upon earlier issuance of Letters to a general guardian or conservator.
 - b. on other date (specify): _____

4. The temporary guardian conservator is not authorized to take possession of money or any other property without a specific court order.

5. Number of pages attached: _____

WITNESS, clerk of the court, with seal of the court affixed.

(SEAL)



Date: _____

Clerk, by _____, Deputy

This form may be recorded as notice of the establishment of a temporary conservatorship of the estate as provided in Probate Code section 1875.

| | |
|--|--------------|
| TEMPORARY <input type="checkbox"/> GUARDIANSHIP <input type="checkbox"/> CONSERVATORSHIP | CASE NUMBER: |
| OF (name): | |
| <input type="checkbox"/> MINOR <input type="checkbox"/> CONSERVATEE | |

NOTICE TO INSTITUTIONS AND FINANCIAL INSTITUTIONS
(Probate Code sections 2890–2893)

When these *Letters of Temporary Guardianship* or *Letters of Temporary Conservatorship* (Letters) are delivered to you as an employee or other representative of an *institution or financial institution* (described below) in order for the temporary guardian or temporary conservator of the estate (1) to take possession or control of an asset of the minor or conservatee named above held by your institution (including changing title, withdrawing all or any portion of the asset, or transferring all or any portion of the asset) or (2) to open or change the name of an account or a safe-deposit box in your financial institution to reflect the guardianship or conservatorship, you must fill out Judicial Council form GC-050 (for an institution) or form GC-051 (for a financial institution). An officer authorized by your institution or financial institution must date and sign the form, and you must file the completed form with the court.

There is no filing fee for filing the form. You may either arrange for personal delivery of the form or mail it to the court for filing at the address given for the court on page 1 of these Letters.

The temporary guardian or temporary conservator should deliver a blank copy of the appropriate form to you with these Letters, but it is your institution's or financial institution's responsibility to complete the correct form, have an authorized officer sign it, and file the completed form with the court. If the correct form is not delivered with these Letters or is unavailable for any other reason, blank copies of the forms may be obtained from the court. The forms may also be accessed from the judicial branch's public Web site free of charge. The Internet address (URL) is www.courts.ca.gov/forms/. Select the form group *Probate—Guardianships and Conservatorships* and scroll down to form GC-050 for an institution or form GC-051 for a financial institution. The forms may be printed out as blank forms and filled in by typewriter, or may be filled out online and printed out ready for signature and filing.

An *institution* under California Probate Code section 2890(c) is an insurance company, insurance broker, insurance agent, investment company, investment bank, securities broker-dealer, investment advisor, financial planner, financial advisor, or any other person who takes, holds, or controls an asset subject to a conservatorship or guardianship other than a financial institution. Institutions must file a *Notice of Taking Possession or Control of an Asset of Minor or Conservatee* (form GC-050) for an asset of the minor or conservatee held by the institution. A single form may be filed for all affected assets held by the institution.

A *financial institution* under California Probate Code section 2892(b) is a bank, trust (including a Totten trust account but excluding other trust arrangements described in Probate Code section 82(b)), savings and loan association, savings bank, industrial bank, or credit union. Financial institutions must file a *Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe-Deposit Box* (form GC-051) for an account or a safe deposit box held by the financial institution. A single form may be filed for all affected accounts or safe deposit boxes held by the financial institution.

LETTERS OF TEMPORARY GUARDIANSHIP CONSERVATORSHIP
AFFIRMATION

I solemnly affirm that I will perform according to law the duties of temporary guardian. conservator.

Executed on (date): _____, at (place): _____

(TYPE OR PRINT NAME)

(SIGNATURE OF APPOINTEE)

CERTIFICATION

I certify that this document, including any attachments, is a correct copy of the original on file in my office and that the Letters issued to the person appointed above have not been revoked, annulled, or set aside and are still in full force and effect.

(SEAL)

Date:

Clerk, by _____, Deputy

Guardianship and Conservatorship

- Termination of Temporary Letters
 - At the time the temporary guardian or conservator receives notice that a final guardian or conservator is appointed
 - Thirty days after appointment
 - Such other time as ordered by court
- Letters are required to indicate termination date of temporary appointment



Guardianship and Conservatorship

- Institution should note expiration date
- Block the account on the termination date unless served with new Letters or a court order



CALIFORNIA UNIFORM TRANSFERS TO MINORS ACT (CUTMA)



**ALDRICH
&
BONNEFIN**

Professional Law Corporation

Limitations on Setting up a CUTMA

- Only one custodian and one minor per account
- Obtain the custodian's identification information for CIP purposes
- Use the minor's SSN for tax reporting purposes



Account Title

- “[*Name of Custodian*], as Custodian for [*name of minor*], under the California Uniform Transfers to Minors Act”
- “[*Name of Custodian*], as Custodian for [*name of minor*], until age _____ (age for delivery of property to minor) under the California Uniform Transfers to Minor Act”



Funds Belong to the Minor

- Custodian should only use funds in the account for the benefit of the minor
- Prohibited use includes a custodian using a CUTMA account as collateral for a loan to the custodian
- Institution is not required to monitor the account activity



Termination of CUTMA

- Minor reaches age 18
- For a CUTMA account, a later age provided:
 - Account records identify the later age
 - The age is not older than 21
 - If the account states an age older than 21, the funds will still be deemed payable when the minor reaches 21

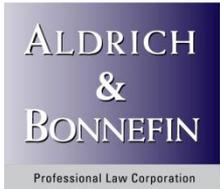


Termination of CUTMA

- Releasing funds to the minor
 - When the minor reaches 18, it is the custodian's obligation to turn the funds over to the minor
 - If the custodian will not turn over the funds, the minor has the right to petition the court
 - An institution should consider the risks of turning over the funds to the minor without custodian direction



BUSINESS ACCOUNTS



Fictitious Business Name Statements

- Every profit-making individual and entity transacting business under a fictitious name must file a “DBA statement”
- Applies to sole proprietorships, partnerships, corporations and any other type of business entity
- Documents that may be obtained
 - Fictitious business name statement certified by the county clerk (Exhibit F)
 - Affidavit from a newspaper publication showing proof of publication



TTX Cert#: _____

THIS STATEMENT IS A PUBLIC RECORD
(SEE REVERSE SIDE FOR LEGAL REQUIREMENTS AND INSTRUCTIONS)

FILING STAMP ONLY

Current: _____

ID MAIL

ABOVE FOR OFFICE USE ONLY

San Francisco County Clerk
City Hall, Room 168
San Francisco, CA 94102-4678
www.sfgov.org/countyclerk

Any alterations, deletions, or other format to this two-page form will not be accepted for filing by the Office of the SF County Clerk.

FILING FEE: (See website for methods of payment)

\$47.00 For 1st Business Name and 1st Registrant

\$11.00 For each additional business name or each additional registrant (owner) on SAME statement

ITEMS #1 THROUGH #6 MUST BE LEGIBLE AND FULLY COMPLETED; SUBMIT FORM IN DUPLICATE

FICTITIOUS BUSINESS NAME STATEMENT

1. Fictitious Business Name(s): _____

2. Street Address, City, State and Zip code of Principal Place of Business (P.O. Box **NOT** allowed) MUST ENTER COUNTY OF FBN ADDRESS:

| | |
|---|--|
| <p>3. Full name of registrant #1 (If Corporation or Limited Liability Company, also indicate State of incorporation or organization, e.g. (CA), (DE), etc)</p> <p>Residence Address (P.O. Box NOT allowed)</p> <p>City, State and Zip Code</p> | <p>Full name of registrant #2 (If Corporation or Limited Liability Company, also indicate State of incorporation or organization, e.g. (CA), (DE), etc)</p> <p>Residence Address (P.O. Box NOT allowed)</p> <p>City, State and Zip Code</p> |
| <p>Full name of registrant #3 (If Corporation or Limited Liability Company, also indicate State of incorporation or organization, e.g. (CA), (DE), etc)</p> <p>Residence Address (P.O. Box NOT allowed)</p> <p>City, State and Zip Code</p> | <p>Full name of registrant #4 (If Corporation or Limited Liability Company, also indicate State of incorporation or organization, e.g. (CA), (DE), etc)</p> <p>Residence Address (P.O. Box NOT allowed)</p> <p>City, State and Zip Code</p> |

4. The business is conducted by: an individual a general partnership a corporation a limited partnership an unincorporated association other than a partnership a trust co-partners a married couple joint venture a limited liability company state or local registered domestic partners a limited liability partnership

5. The registrant commenced to transact business under the fictitious business name or names listed above on: (enter EXACT date OR if future date, enter "not applicable") ▶

6. I declare that all information in this statement is true and correct. (A registrant who declares as true any material matter pursuant to Section 17913 of the Business and Professions Code that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).)

| | |
|--|---|
| <p>If registrant other than Corp. or LLC, sign below</p> <p>Signed _____</p> <p>Printed Name _____</p> | <p>If registrant is a Corporation or Limited Liability Company, sign below</p> <p>Corporation or LLC Name: _____</p> <p>Signature _____</p> <p>Printed Name & Title _____</p> |
|--|---|

This statement was filed with the San Francisco County Clerk on date indicated by the file stamp above.
NOTICE—IN ACCORDANCE WITH SUBDIVISION (a) OF SECTION 17920, A FICTITIOUS NAME STATEMENT GENERALLY EXPIRES AT THE END OF FIVE YEARS FROM THE DATE ON WHICH IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK, EXCEPT, AS PROVIDED IN SUBDIVISION (b) OF SECTION 17920, WHERE IT EXPIRES 40 DAYS AFTER ANY CHANGE IN THE FACTS SET FORTH IN THE STATEMENT PURSUANT TO SECTION 17913 OTHER THAN A CHANGE IN THE RESIDENCE ADDRESS OF A REGISTERED OWNER. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THE EXPIRATION. THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE).

CERTIFICATION
I hereby certify that the foregoing is a correct copy of the original on file with the San Francisco County Clerk.

Fictitious Business Name Statements

- DBA Statement remains effective for five years
- Caution:
 - There is no statewide database to determine whether more than one business is using the fictitious business name



Sole Proprietorship

- Identification of the individual owner
 - Same as individual accounts
- Definition
 - Does not include the surname of the individual or a name that suggests the existence of an additional owner(s)



Sole Proprietorship

- Fictitious business name statement
- Only one person may file a fictitious business name statement as sole proprietor



Sole Proprietorship

- Exception: a married couple
 - Sole proprietorship
 - Treat as a joint account
 - Obtain CIP information for both spouses
 - Partnership under Corporations Code
- Obtain either the EIN or SSN of the account holder



Corporations

- Articles of Incorporation (Exhibit G)
 - Identify the legal name of the corporation
 - The account title should be consistent
 - Copy of Articles of Incorporation
 - Certified copy from the Secretary of State
 - Electronic copy from the Secretary of State of website





Secretary of State
Articles of Incorporation of a
General Stock Corporation

ARTS-GS

Processing Fee: \$0 - The processing fee is waived for submissions submitted July 1, 2022 - June 30, 2023.

Certification Fee (Optional) - \$5.00

Note: The annual minimum \$800 tax to the California Franchise Tax Board remains due and is not subject to the processing fee waiver. For more information, go to ftb.ca.gov.

This Space For Office Use Only

1. Corporate Name (Go to www.sos.ca.gov/business/be/name-reservations for general corporate name requirements and restrictions.)

The name of the corporation is _____

2. Business Addresses (Enter the complete business addresses.)

| | | | |
|---|-------------------------|-------|----------|
| a. Initial Street Address of Corporation - Do not list a P.O. Box | City (no abbreviations) | State | Zip Code |
| b. Initial Mailing Address of Corporation, if different than item 2a | City (no abbreviations) | State | Zip Code |

3. Service of Process (Must provide either Individual **OR** Corporation.)

INDIVIDUAL – Complete Items 3a and 3b only. Must include agent’s full name and California street address.

| | | | |
|---|-------------------------|--------------------|----------|
| a. California Agent’s First Name (if agent is not a corporation) | Middle Name | Last Name | Suffix |
| b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box | City (no abbreviations) | State CA | Zip Code |

CORPORATION – Complete Item 3c. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent’s Name (if agent is a corporation) – Do not complete Item 3a or 3b

4. Shares (Enter the number of shares the corporation is authorized to issue. **Do not** leave blank or enter zero (0).)

This corporation is authorized to issue only one class of shares of stock.
 The total number of shares which this corporation is authorized to issue is _____.

5. Purpose Statement (Do not alter the Purpose Statement.)

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

6. Read and Sign Below (This form must be signed by each incorporator.)

_____ Signature

_____ Type or Print Name

Statement of Information

- Must be filed within 90 days after the Articles of Incorporation are filed - (Exhibit H)
- Provides the names of the corporate officers (CEO, CFO and Secretary)
- Confirm that the corporate name on the Statement matches the Articles of Incorporation
- Obtain a certified or electronic copy





**Secretary of State
Statement of Information**
(California Stock, Agricultural
Cooperative and Foreign
Corporations)

SI-550

This form is due within 90 days of initial registration and every year thereafter.

Fees (Filing plus Disclosure) - \$25.00

Certification Fee (Optional) - \$5.00

1. Corporation Name (Enter the **exact** name of the corporation as it is recorded with the California Secretary of State. Note: If you registered in California using an assumed name.)

This Space For Office Use Only

2. Secretary of State Entity Number

3. Business Addresses

| | | | |
|--|-------------------------|--------------------|----------|
| a. Street Address of Principal Executive Office - Do not list a P.O. Box | City (no abbreviations) | State | Zip Code |
| b. Mailing Address of Corporation, if different than item 3a | City (no abbreviations) | State | Zip Code |
| c. Street Address of Principal California Office, if any and if different than Item 3a - Do not list a P.O. Box | City (no abbreviations) | State CA | Zip Code |

4. Officers

The Corporation is required to list all three of the officers set forth below. An additional title for the Chief Executive Officer and Chief Financial Officer may be added; however, the preprinted titles on this form must not be altered.

| | | | | |
|-----------------------------------|------------|-------------|-------------------------|-------------------|
| a. Chief Executive Officer | First Name | Middle Name | Last Name | Suffix |
| Address | | | City (no abbreviations) | State Zip Code |
| b. Secretary | First Name | Middle Name | Last Name | Suffix |
| Address | | | City (no abbreviations) | State Zip Code |
| c. Chief Financial Officer | First Name | Middle Name | Last Name | Suffix |
| Address | | | City (no abbreviations) | State Zip Code |

5. Director(s)

California Stock and Agricultural Cooperative Corporations ONLY: **Item 5a:** At least one name **and** address must be listed. If the Corporation has additional directors, enter the name(s) and addresses on Form SI-550A.

| | | | |
|--|-------------|-------------------------|-------------------|
| a. First Name | Middle Name | Last Name | Suffix |
| Address | | City (no abbreviations) | State Zip Code |
| b. Number of Vacancies on the Board of Directors, if any | | | |

6. Service of Process (Must provide either Individual **OR** Corporation.)

INDIVIDUAL - Complete Items 6a and 6b only. Must include agent's full name and California street address.

| | | | |
|---|-------------------------|--------------------|----------|
| a. California Agent's First Name (if agent is not a corporation) | Middle Name | Last Name | Suffix |
| b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box | City (no abbreviations) | State CA | Zip Code |

CORPORATION - Complete Item 6c only. Only include the name of the registered agent Corporation.

| |
|---|
| c. California Registered Corporate Agent's Name (if agent is a corporation) - Do not complete Item 6a or 6b |
|---|

7. Type of Business

| |
|--|
| Describe the type of business or services of the Corporation |
|--|

8. Labor Judgment

| | | |
|---|------------------------------|-----------------------------|
| Does an Officer or Director have an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
|---|------------------------------|-----------------------------|

9. Email Notifications

| |
|---|
| Provide an email address to opt-in to receive entity related notifications, including Statement of Information reminders, by email rather than USPS mail. Note: If no email address is provided, you will continue to receive notices and reminders by USPS mail. |
| Yes, I opt-in to receive entity notifications via email. Email Address: _____ |
| To change your option after filing, you must submit a new complete Statement of Information. |

The information contained herein, including in any attachments, is true and correct.

Date Type or Print Name Title Signature

Resolution of Board of Directors

- Certified by corporate secretary
- This is typically part of an institution's corporate signature card



Certificate of Good Standing

- Certificate of good standing, or
- Search the California Secretary of State website to confirm the corporation exists and is still active



Bylaws

- Many institutions do not require
- Instead, many rely on a certified or electronic copy of the Statement of Information and a corporate resolution
- If there are questions about the authority of officers to act on behalf of the corporation, the bylaws can be helpful



Fictitious Business Name Statement

- Required to be filed if the corporation is doing business under a name which differs in any way from the name on its Articles of Incorporation



Foreign Corporations

- Institutions may not know the local requirements for the jurisdiction
- Certificate of qualification to do business in California if conducting intrastate business in CA
- Certificate of good standing
- Statement of Information
- Verification of foreign country corporate documentation through use of an “apostille”



All Corporations

- Obtain EIN of the corporation
- Cannot use the SSN or EIN of a sole owner of the corporation



Nonprofit Corporations Definition

- Uses surplus revenues to accomplish its objectives rather than distributing as profit or dividends
- States defer to the IRS' designation as to when an organization is eligible for nonprofit status
- Secretary of State's office requires different kinds of nonprofit corporations to file state-issued forms



Nonprofit Corporations Definition

- Secretary of State classifies nonprofit corporations into one of the four following categories:
 - Nonprofit mutual benefit corporations
 - Nonprofit public benefit corporations
 - Nonprofit religious corporations
 - Nonprofit common interest development associations



Articles of Incorporation

- Identify the legal name of the nonprofit corporation
- The account title should be consistent with the name of the nonprofit corporation specified in its Articles



Statement of Information

- The Statement of Information provides the names of the corporate officers (CEO, CFO and Secretary)
- Confirm that the corporate name on the Statement matches the name on the Articles of Incorporation



Resolution

- From the board of directors but certified by corporate secretary
- This is typically part of an institution's corporate signature card



Certificate of Good Standing

- Certificate of good standing, or
- Search the California Secretary of State website to confirm that the corporation exists and is still active



Bylaws

- Many institutions do not require the bylaws
- Instead rely on the Statement of Information and a corporate resolution



Fictitious Business Name Statement

- There is no requirement in California for a nonprofit organization to file a fictitious business name statement



Common Interest Development

- If a nonprofit corporation was formed to manage a common interest development
- The corporation should also provide the most recent Statement of Common Interest Development Association form (SI-CID) that has been filed with the Secretary of State



LLC ACCOUNTS



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Limited Liability Company

- An LLC is a legal entity separate and distinct from its equity holders
- Is run by the **members** or by **managers** who are either appointed by the members or provided for in the operating agreement



Articles of Organization

- The LLC-1 must indicate whether it will be managed by all members, one manager or more than one manager
- Articles of Organization (Exhibit I)
- Obtain a certified or electronic copy



Operating Agreement

- LLC is governed by an **operating agreement**
- In the event of a conflict between the LLC-1 and the operating agreement, the operating agreement controls



Statement of Information

- The LLC-12 must be filed once every two years
- Provides basic information regarding the managers
- Obtain a certified or electronic copy
- Exhibit J



Fictitious Business Name Statement

- An LLC must file a DBA statement if the name used differs in any way from the name in the Articles of Organization



Foreign LLC

- Foreign LLC
 - Limited Liability Company Application for Registration (Exhibit K)
 - Certificate of Good Standing from state where company is organized



All LLC's

- Obtain EIN of LLC
- Sole member LLC can use the TIN of that sole member



PARTNERSHIP ACCOUNTS



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General Partnership

- Association of two or more persons to carry on as co-owners of a business for profit
- Partnership agreement
 - Identifies the partners
 - Typically establishes the authority of the partners
- **No** mandated Secretary of State filing requirement



General Partnership

- Signing authority and partnership authorization
 - Generally, all partners should execute the signature card
 - If less than all partners will be signing, establish signing authority from the partnership agreement or a partnership authorization
- Identify and obtain documentary identification of the signing partners



Limited Partnership

- At least one general partner and one or more limited partners
- Certificate of Limited Partnership – (Exhibit L)
 - Required to be filed with Secretary of State
 - Identifies the **general** partners
 - Obtain either a certified or electronic copy



Limited Partnership

- Partnership agreement
 - Since the LP-1 identifies the partners, it may not be necessary to obtain a copy
 - If there are questions over a partner's authority, the partnership agreement can help determine this authority



Limited Partnership

- Signing authority and partnership authorization
 - **General** partners should execute the signature card to open the account
 - If less than all general partners will be signing,
 - Establish signing authority from the partnership agreement or a partnership authorization
 - Identify and obtain documentary identification of the signing partners



Limited **Liability** Partnerships

- California attorneys, accountants and architects are authorized to establish an LLP
- Registered Limited Liability Partnership Certificate of Registration – (Exhibit M)
 - LLP-1 does not identify the partners
 - Obtain a certified or electronic copy
 - Partnership agreement may be necessary to identify the partners



Limited Liability Partnerships

- Signing authority and partnership authorization
 - Generally, all partners should execute the signature card
 - If less than all partners will be signing, establish authority from the partnership agreement or a partnership authorization
 - Identify and obtain documentary identification of signing partners



All Partnerships

- Obtain EIN of the partnership
- Do not use the TIN of one of the partners



UNINCORPORATED ASSOCIATIONS



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Unincorporated Associations

- Definitions
 - Two or more persons joined by mutual consent for a common lawful purpose
 - A club, fraternal benefit association, lodge, religious society or other unincorporated organization
 - A business trust in CA is another example of an unincorporated association



Unincorporated Associations

- Charter, bylaws, governing rules of the organization
- Letter of authorization or resolution of members



Unincorporated Associations

- Fictitious business name statement
 - If the name does not include the surname of each person with an interest in the association, a DBA statement must be filed
 - The DBA statement requirements **do not apply to a nonprofit association**
- Obtain EIN of the association



FORMAL FAMILY TRUST ACCOUNTS



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Parties

- Trustor(s)
- Trustee(s)
- Beneficiary(may also be plural)



How Trusts Operate

- When a trustor conveys assets to a trust they should be re-vested (i.e., titled) in the name of the trust
- If the property (e.g. the CD) is not re-titled, the institution must continue to treat the CD as John and Jane's joint property



Successor Trustees

- If a trustee dies, resigns, or becomes incapacitated, a new “successor” trustee must step in
- **Without any involvement by a court of law**
 - However, if the trust instrument does not name a willing successor trustee, an interested party could petition a court for an order appointing a successor trustee



Legal Survivability

- A trust **survives the death or incompetency** of its trustors or trustees
- Impact of trustee's **incapacitation** is often addressed in the trust agreement
- Upon the **death** of one or more trustors:
 - The trust (usually) survives
 - The trust may split into sub-trusts



Revocability

- Revocable trust
- Irrevocable trust
- Presumption is that trust is revocable
 - The trust agreement may expressly state it is irrevocable



Trustee's Authority to Act

– Powers of trustee

- Does the trustee have the power to engage in the type of transaction he or she is seeking to conduct?
- A typical example is opening account or obtaining a loan



Trustee's Authority to Act

- General authority
 - Probate Code confers general authority on trustees to:
 - Deposit and withdraw funds
 - Borrow money
 - Pledge collateral
 - The provisions of the **trust instrument can override** these general grants of authority



Trustee's Authority to Act

- Cotrustees: Number of signatures
 - How many trustees must sign to validly bind the trust?
 - If there are co-trustees, they generally must all act unanimously, unless the trust instrument provides otherwise



Trustee's Authority to Act

- Trust purposes
 - A trustee only has the authority to bind the trust for a valid trust purpose
 - The purposes of the trust are typically set forth in the trust agreement



Presumption Regarding Trustee's Power

- A third person may assume (without inquiry) the existence and proper exercise of the trustee's power



Certification of Trust

- Certificate required elements:
 - Trust has not been revoked, modified, or amended in any manner which would cause the representations to be incorrect
 - A statement certification is being signed by **all of the currently acting trustees**
 - Signatures of all currently acting trustees
 - An acknowledged declaration
- Certification of Trust appears as Exhibit N



Right to Rely

- A third party may rely on the contents of the Certification of Trust **so long as the third party does not have actual knowledge that the facts are incorrect**
 - If the institution has actual knowledge the trustee is acting outside the scope of the trust, then the transaction is not enforceable



Copy of Trust Agreement?

- May request trustee provide sections of the trust which:
 - Designate the trustee, including succession of trustees
 - Confer upon the trustee the power to act
- This does **not** allow asking for:
 - The dispositive provisions
 - The entire trust agreement



Damages

- A party who demands the full trust instrument can be held liable for damages, including attorneys' fees
 - Must be found to have acted in **bad faith** in requesting the full trust agreement



Signature Authority

- Generally, only the trustee or trustees should be authorized signers
- Caveat regarding **powers of attorney**
 - Trustees have a duty not to delegate to others “the performance of acts that the trustee can reasonably be required personally to perform”
 - However, if the trust agreement expressly so authorizes, a trustee may delegate authority under a power of attorney



Taxpayer Identification Number

- Have W-9 signed by the trustee
- It is never permissible to use the SSN of a deceased person



Questions?





CALIFORNIA
BANKERS
ASSOCIATION

We're adjourned!

Speakers:

Anne M. McEvilly, Esq.

Principal

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John M. Davis, Esq.

Principal

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