



## HAWAI'I COMMUNITY FOUNDATION

### LEGACY 102: LESSONS LEARNED IN TRUST AND ESTATE ADMINISTRATION

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#### **SPEAKERS:**

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#### **Audience Questions and Answers:**

Question #1: If an entity retained as trustee for the trust administration is no longer in business what happens to the trust/estate?

Answer: A new trustee will need to be appointed. This could require court approval if a successor trustee is not named in the Trust document.

Question #2: I had a trust set up by a local firm. What assistance will they give my mainland trustees?

Answer: It depends. Local counsel is not obligated to provide assistance, but they might. Please inquire with the local firm.

Question #3: Please confirm if Hawai'i Community Foundation accepts bequests of real estate or closely held entities (and deal with other part owners of R/E or LLC).

Answer: HCF accepts real property and closely held business interests on a case-by-case basis. There is significant due diligence that must occur, and acceptance is determined by our Gifts Acceptance Committee. Our ultimate goal is to liquidate the asset so if there are any barriers to that, it will be challenging to accept the gift.



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Question #4: A California resident set up a trust there and owns Hawaii property. The California trust assigns all assets to the trust. Settlor died. No Deed of Hawaii property. Do we have to open a probate even if California court has determined that the trust owns assets assigned?

Answer: We recommend that you speak with a Hawai'i real property or probate attorney on this matter.

Question #5: Where real property is held in a joint trust with husband and wife, when the first spouse dies will it become necessary to retitle any of the properties in the name of the surviving spouse's trust in order for them to pass to the beneficiaries or can the properties be left in the name of the joint trust?

Answer: Even when spouses establish a married joint trust, there is usually some amount of trust administration that must occur when the first spouse dies. The type of trust administration required will depend on the terms of the trust and the assets owned by the trust. Some married joint trusts require that a survivor's trust be created and funded at the death of the first spouse. Other married joint trusts make the creation of the survivor's trust optional. If the married joint trust owns real property, a petition (Land Court) or affidavit (Regular System) is submitted to the Bureau of Conveyances to note the death of the first spouse. These documents will also note if the surviving spouse is continuing as trustee of the trust or if there is a co-trustee or successor trustee accepting appointment.

Question #6: What are your recommendations for keeping written trust instructions and back-up plans (i.e. where the safe deposit key is held or what is the code to unlock a safe)?

Answer: Keep written instructions in a safe and secure place in your home (desk drawer, filing cabinet, etc.). Let your loved ones know where to find these documents.

Question #7: Who would you recommend to take an estate account when the assets are running out and there is no family?

Answer: The current executor/trustee is responsible for winding down the trust estate when funds are being depleted.



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