

Happy Holidays! Best wishes for a  
Happy and Healthy 2013!

You can't escape that the "fiscal cliff" is big news this week, and since there's no concrete info on where we're headed, I've put no Estate Tax news in this issue. As soon as Obama signs a bill, I will send a Newsletter to those of my clients that I think will be impacted by the change in the law. If you would like to be included in that email, please let me know.

I've also created an email list for my LGBT clients to disseminate information about how the legal challenges to Prop. 8 and DOMA could affect their estate plans. If you would like to be included in that email, please let me know as well.

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## Professional Fiduciaries

Professional Fiduciaries are paid individuals who can act

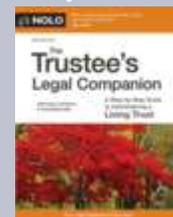
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as successor trustees, conservators, agents under a power of attorney, and executors. They routinely safeguard and invest assets, as well as manage the expenses and personal care of elderly and incapacitated people. They can hold assets for the benefit of minor and disabled beneficiaries, and distribute funds according to the terms of a trust. Many Professional Fiduciaries have accounting, legal, financial, and counseling backgrounds and need to utilize all of those skills on a day-to-day basis.

Professional Fiduciaries often come into the picture when families have either mismanaged a trust, probate estate, or conservatorship, or are battling with each other over the assets or care of a deceased or disabled person. In these instances, they must work with difficult people and in difficult situations. A neutral fiduciary can help avoid problems associated with greedy beneficiaries who feel entitled to money without regard to procedures or the needs of other family members.

Their job is not easy. Professional Fiduciaries charge fees for their services that reflect the challenges their job entails. Recent Mercury News articles have implied that many Professional Fiduciaries and their attorneys harm the beneficiaries of the trusts they administer by charging high fees, delaying distributions, and ignoring the specific needs of the beneficiaries. I think that characterization is unfair.

Most Professional Fiduciaries I know truly have their beneficiaries' needs in mind. They bend over backwards as trustees and conservators, often giving out their private cell phone numbers to beneficiaries and keeping tabs of every dime spent in the administration of their accounts. Keep in mind that these professionals are only typically hired in the most difficult of situations, when no family member could be reasonably expected to keep everyone happy. While it can be costly to hire a Professional Fiduciary to act as trustee or conservator, it is often less expensive than the legal costs of family fights.



Professional Fiduciaries are licensed by the State of California ([www.fiduciary.ca.gov](http://www.fiduciary.ca.gov)) and many are members of a fiduciary advocacy group ([www.pfac-pro.org](http://www.pfac-pro.org)). If you are considering naming a Professional Fiduciary as a successor trustee or agent, I highly suggest that you meet with a few of them, research their qualifications, and see if any will meet your expectations both for you and for your beneficiaries.

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## **Posthumously Conceived Children**

What if a husband dies and two years later his wife uses his stored sperm to conceive a baby? Or what if a husband uses his deceased wife's stored eggs in a surrogate? Is this baby, conceived and born years after the biological parent's death, entitled to inherit from the parent? Can the baby receive Social Security survivor's benefits from the parent's account?

While it may not be common, there are a growing number of children who are conceived after one biological parent has died. And the inheritance laws regarding these children are different in every state. In California, under Probate Code Section 249.5, for a posthumously conceived child to inherit from a deceased parent who died without a will (intestate), the parent must have given a written authorization for the use of the genetic material for post-death conception and the child must be conceived and in utero within two years of the deceased parent's death.

The Supreme Court recently ruled that a posthumously conceived child may receive Social Security survivor's benefits if the intestacy law of the state where the deceased parent was living would allow it. In Florida, where this case was based, a child is only entitled to inherit from a parent who died intestate if he was conceived

during the parents' lifetimes. A baby conceived by post-death in vitro fertilization would not be a legal heir in Florida and therefore would not be entitled to Social Security death benefits. In California, however, if the deceased parent complied with the rigorous requirements of the Probate Code, the benefits would be applicable.

If you have stored your genetic material and wish to allow a spouse or partner to conceive a child after death, you should certainly put your wishes in writing. You should also amend your will and trust to change the definition of children to include those conceived posthumously. However, like the California rule, I suggest a two-year time limit on permissible conceptions. Otherwise, if you leave your trust assets to your "children" those distributions could be indefinitely delayed as long as the genetic material is viable.

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## **Intentional Interference with Expected Inheritance**

In a recent case, the California Supreme Court recognized "Intentional Interference with Expected Inheritance" as a new tort. The fact pattern is very sad: a very ill man wanted to execute a will leaving half of his estate to his somewhat estranged sister and half to his long time romantic partner. Due to the sister's stalling tactics, the man died without having executed a will. The sister, as the man's only living relative, was then appointed administrator of the estate and inherited everything.

Although the partner tried to object during the probate proceedings, he had no standing because he wasn't a relative or a creditor. The partner then sued the sister in

civil court for Intentional Interference with Expected Inheritance and the Court allowed the tort, but with limited usability. It requires a showing that the plaintiff not only legitimately expected to receive an inheritance but that the defendant intentionally acted against the dying person to prevent the gift or inheritance from being completed. The particular case has been sent back down to the trial court to see if the partner can prove that the sister acted intentionally against both the ill man and his partner.

There are other torts that may also apply in an inheritance setting, such as Elder Abuse, Breach of Fiduciary Duty, or even Intentional Infliction of Emotional Distress. It's no surprise that money makes some people do bad things. While I do not personally handle this type of litigation, it is an important issue. If you feel a challenge to a gift or inheritance is warranted, I would be happy to refer you to someone who can competently assist you.

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## **Trustee's Legal Companion**

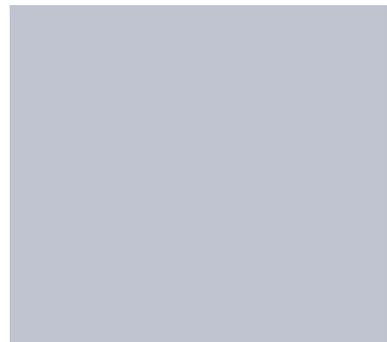
You may have noticed that the book on the right has changed from a green background to an orange one. That's because we're now on the second edition of our book!

The Trustee's Legal Companion aims to be a helpful guide (in plain English) to trust administration. I'm so happy to hear that many people have found this book helpful in understanding trusts, avoiding delays, and even minimizing attorneys' fees. It can be found at local bookstores, libraries, and on Amazon.com.

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This Newsletter is for information and discussion purposes only. Before any action is taken, professional advice, based on your specific situation, should be obtained.



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