

The Importance of Performing Yearly Inspections of Real Properties under your Supervision

Part of a fiduciary's due diligence is to inspect the properties under their control. The beginning of the year is a great time to accomplish this!

- The trustee has a duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property. (**Probate Code §16006**).
- The Conservator is required to secure the real property, insure it at appropriate level, and protect it against damage, destruction, or loss immediately after appointment. (**Cal Rule of Court 7.1059(b)(10)**).

Let's start with a real-life horror story. During the life of the Trustor, the income of the Trust was held and distributed for her benefit. One of the assets of the Trust was a residential real property with a long-term tenant. The Trustee simply collected rent and made minor repairs initiated by the tenant, never having personally entered the property. After many years, the Trustor died, and it was time to distribute. Upon working with the tenant in an effort to deliver the property vacant, the tenant began making complaints of mold and other environment issues at the residence. When the Trustee finally got into the residence there was fecal matter from ruptured plumbing covering the garage floor, indications of water intrusion and a filthy back yard. The Tenant's spouse subsequently died from a lung illness. As expected, the Trustee was sued. The Tenant alleged the death of his wife was caused by the conditions at the property.

What, if anything, could have been done differently to avoid this situation? The fiduciary (or their agent) should have visited the property annually and could have hired a Home Inspector. While the state of California does not regulate home inspectors, [ASHI](#) (American Society of Home Inspectors) and [CREIA](#) (California Real Estate Inspection Association) do have practice standards and codes of ethics to which their member must subscribe. The CREIA and ASHI prohibit their members from performing or offering to perform, for an additional fee, any repairs to a structure on which the inspector or the inspector's company has prepared a home inspection report in the past 12 months. These home inspections typically cost around \$300-\$500 dollars.

The report will outline deficiencies and conditions that exist at the property. Health and Safety issues like faulty electrical circuits, loose flooring and plumbing leaks will almost always be front and center in these reports. Photographs will be included.

This report helps the fiduciary in a few ways:

- It offers a road map to determine next steps for the issues addressed in the report.
- It also provides an easy Scope of Work to give to vendors to elicit consistent bids. Be sure to stay as close to the report's recommendations as possible as not to spend the client's money unnecessarily.

- In the instance of an insolvent estate with little to no money, a fiduciary can ask an attorney about submitting a Petition for Instruction.

The primary benefit of conducting an inspection is it supplies the fiduciary with a documented report from a professional that establishes the very issues that, if ignored, can create negative outcomes for the fiduciary and client. Additionally, the report is unbiased; Legitimate inspectors will never ask if they can perform the work alluded to in the report. If they do, don't let them. Get bids and have them compete with other vendors.

There may be revelations in the report with more substantial ramifications than minor repairs. There could be structural issues or asbestos, lead or mold related findings. A fiduciary would want to know more about those conditions, as they have a potential to create bigger headaches. For instance, it may be best to replace an aged roof, rather than to discover leaks and ceiling collapses at the next rain.

If you do come across these e larger-impact findings, call us. We can help you navigate the process.

By performing an inspection once a year, a fiduciary establishes a process that enables him to see the asset under his control in a different light AND address issues proactively. Attached is an Annual Inspection Checklist that Fiduciary Real Estate Services utilizes to document the condition of the property.