

Trustee Resignation Under California Law

1. **Summary** – A trustee can't simply walk away; Cal. Prob. Code § 15640 provides only four exclusive resignation methods, and resignation doesn't erase liability for prior conduct. Six recurring problems are flagged, with courts having broad remedial power under § 17200.
2. **Statutory Framework for Trustee Resignation**
 - § 15640's four exclusive resignation methods (trust instrument, revocable-trust consent, irrevocable-trust beneficiary consent, or court order)
 - § 15641: resignation doesn't release liability for prior acts/omissions
 - § 15644: duty to deliver trust property to successor/receiver
 - § 17200: broad probate court authority over trustee transitions
3. **Resignation Without Following Proper Procedures**
 - *Raff v. Belstock* (ERISA): informal/undocumented resignation is ineffective; duties (and liability) persist
 - California parallel: duty of loyalty (§ 16002) and conflict-of-interest duty (§ 16004) continue until valid resignation
4. **Bad Faith Resignation and Coercive Use of the Resignation Threat**
 - *Vale v. Union Bank*: even a contractual right to resign must be exercised in good faith; coercive resignation threats breach fiduciary duty and can trigger exemplary damages
5. **Failure to Deliver Trust Property and Records to the Successor**
 - *Schwartz v. Labow*: predecessor can't withhold records via attorney-client privilege (per *Moeller v. Superior Ct.*); risks suspension/surcharge
 - *Bixby v. Hotchkis*: continuing duty to protect trust estate and vet a trustworthy successor before final discharge
6. **Absence of a Willing Successor Trustee**
 - *McCarthy v. Poulsen*: no one can be compelled to serve as trustee; court may appoint a receiver instead; cy pres doctrine as a charitable-trust option
 - Former trustee remains responsible for property until actual delivery (§ 15644)
7. **Continuing Liability for Pre-Resignation Breaches**
 - § 15641 forecloses the "resignation erases liability" argument
 - *Donovan & Schuenke v. Sampsell* and *Barker v. Am. Mobil Power Corp.* (ERISA statute of limitations runs from the breach, not the resignation date; concealment exception is narrow)
 - 29 U.S.C. § 1109(a)–(b) and *Fernandez v. K-M Indus. Holding Co.* on successor liability for known predecessor breaches
8. **Failure to Ensure Adequate Successor Management (ERISA Context)**
 - Duty to select a suitable, conflict-free successor under the prudent-man standard (29 U.S.C. § 1104(a)(1)(B))
 - *Raff v. Belstock* revisited on co-trustee monitoring duties
9. **Practical Implications** – Practical takeaways: follow § 15640 exactly, document ERISA resignations in writing, ensure a suitable successor, and expect continued exposure for bad faith, abandonment, or improper handoff (breach of contract/fiduciary duty, surcharge, punitive damages).

Points with published case authority:

- **Resignation without following proper procedures** — *Raff v. Belstock*, 933 F. Supp. 909 (N.D. Cal. 1996) (informal/undocumented resignation held ineffective under ERISA)
- **Bad faith resignation / coercive use of the threat to resign** — *Vale v. Union Bank*, 88 Cal. App. 3d 330 (Ct. App. 1979)
- **Failure to deliver trust property and records to the successor** — *Schwartz v. Labow*, 164 Cal. App. 4th 417 (2008); *Moeller v. Superior Ct.*, 16 Cal. 4th 1124 (1997) (on the privilege issue); *Bixby v. Hotchkis*, 58 Cal. App. 2d 445 (1943)
- **Absence of a willing successor trustee** — *McCarthy v. Poulsen*, 173 Cal. App. 3d 1212 (Ct. App. 1985)
- **Continuing liability for pre-resignation breaches** — *Donovan & Schuenke v. Sampsell*, 226 F.2d 804 (9th Cir. 1955); *Barker v. Am. Mobil Power Corp.*, 64 F.3d 1397 (9th Cir. 1995); *Fernandez v. K-M Indus. Holding Co.*, 585 F. Supp. 2d 1177 (N.D. Cal. 2008)
- **Failure to ensure adequate successor management (ERISA)** — supported mainly by *Raff v. Belstock* again (co-trustee monitoring duty); the "prudent man standard" liability-for-selecting-a-bad-successor point is attributed only to unnamed "district courts have held," with no case actually cited

Points without case support (statute/secondary-source only):

- **Statutory Framework** section — built entirely on Cal. Prob. Code §§ 15640, 15641, 15644, and 17200; no case is cited here (the cases supporting these statutes appear later, in the topic-specific sections)
- **Practical Implications** — a synthesis paragraph, no new case cited
- **Related Issues** — these are posed as open questions, explicitly unresolved; no case answers them
- **Commentary on This Question** — sourced to secondary treatises only: Bogert's *The Law of Trusts and Trustees* §§ 511, 527, and 201 Am. Jur. Proof of Facts 3d 179 — no cases
- **Raff v. Belstock**, 933 F. Supp. 909 (N.D. Cal. 1996) — confirmed. The court did hold "a trustee must resign or be removed by a written document," and did discuss a co-trustee's duty to monitor and intervene under 29 U.S.C. § 1105. Facts (unauthorized withdrawals, unfiled amendments) and the \$7,500 IRS penalty match.
- **Vale v. Union Bank**, 88 Cal. App. 3d 330, 151 Cal. Rptr. 784 (Ct. App. 1979) — confirmed. Bad-faith resignation threat, \$7,779 forced-liquidation loss, and the good-faith/fair-dealing holding all match.
- **Schwartz v. Labow**, 164 Cal. App. 4th 417, 78 Cal. Rptr. 3d 838 (2008) — confirmed. Predecessor couldn't assert privilege against successor per *Moeller*; suspension affirmed; the ~\$1.3 million figure matches.
- **Moeller v. Superior Ct.**, 16 Cal. 4th 1124, 947 P.2d 279 (1997) — citation confirmed and correctly used as the source for the "privilege is inherent in the office, not the individual" rule.
- **Bixby v. Hotchkis**, 58 Cal. App. 2d 445, 136 P.2d 597 (1943) — confirmed. Note: it applies former Civil Code § 2260, which was later recodified into the Probate Code —

the case is still good law and still cited for this principle, but be aware its own statutory citation is superseded (the document doesn't cite Bixby for the statute, just the duty, so this isn't an error, just a vintage-source flag).

- **McCarthy v. Poulsen**, 173 Cal. App. 3d 1212, 219 Cal. Rptr. 375 (Ct. App. 1985) — confirmed, including the landslide facts, receiver alternative, and cy pres discussion. No overruling found.
- **Donovan & Schuenke v. Sampsell**, 226 F.2d 804 (9th Cir. 1955) — citation confirmed. One nuance: this is a corporate-officer-in-bankruptcy case (a company president's fiduciary duty to creditors), not a trust case — the document accurately labels it as "the bankruptcy context," so this is a fair analogical use, not a misrepresentation, but it's worth knowing it's not a trustee-resignation case per se.
- **Barker v. Am. Mobil Power Corp.**, 64 F.3d 1397 (9th Cir. 1995) — confirmed, including the § 1113 limitations holding and the narrow fraud/concealment exception (concealment must be by the specific defendant).
- **Fernandez v. K-M Indus. Holding Co.**, 585 F. Supp. 2d 1177 (N.D. Cal. 2008) — confirmed. Successor can't be vicariously liable but can be independently liable under § 1105(a)(3) for failing to remedy a known predecessor breach; limitations mechanics match.

Sources:

- [Raff v. Belstock, 933 F. Supp. 909 \(N.D. Cal. 1996\) - Justia](#)
- [Vale v. Union Bank - Justia](#)
- [Schwartz v. Labow - CourtListener](#)
- [Moeller v. Superior Court \(Sanwa Bank\) - Justia](#)
- [Bixby v. Hotchkis - Justia](#)
- [McCarthy v. Poulsen - Justia](#)
- [Donovan & Schuenke v. Sampsell, 226 F.2d 804 \(9th Cir. 1955\) - Justia](#)
- [Barker v. American Mobil Power Corp. - FindLaw](#)
- [Fernandez v. K-M Industries Holding Co., Inc. - CourtListener](#)