# MISSING BENEFICIARIES AND OTHER HARD-TO-FIND INDIVIDUALS: PRACTICAL STRATEGIES FOR TRUSTEES AND ADMINISTRATORS

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## THE PROBLEM OF THE DISAPPEARING BENEFICIARY

Pooled Trusts see beneficiaries move, changing relationships, death of caregivers, change of providers or representative payees. They didn't tell the Trust or someone on their behalf didn't. The Trust has been sending the statements to the provider, they don't bother to update the Trust, they just keep filing it away. You aren't notified that the beneficiary actually died or moved to another provider years ago.

Sometimes it's because the beneficiary doesn't have access to the ways you contacted them. The Trust is still sending the email but the beneficiary can't remember their passwords to their email, they lost the phone and phone number that was associated with the account and have no way to retrieve it. They forget to update the Trust, forgot they had a trust or just don't need to use it.

There were small breadcrumbs you could follow, but now that so many processes are electronic like SSA "checks" are no longer checks, bank and bills are electronic. Most beneficiaries don't own property or have a public footprint to follow.

Now the trust administrator can't find the beneficiary.

## WHY FINDING THEM MATTERS – THE FIDUCIARY AND LEGAL ISSUES

Here are a few of the issues to consider when making the decision to locate missing beneficiaries:

1. The trust has an obligation to administer the trust
2. Duty to keep beneficiaries informed
3. Potential liability for not trying to properly locate a beneficiary
4. Making sure that payments are appropriate
5. Determining if the beneficiary is alive or dead
6. And more…

Every trust has its obligations outlined in the document, and all have an obligation to administer the trust according to its terms. The terms and trust law determine the potential liabilities that the trustee and administrator face. State and federal law may also impose duties on the Trustee and Administrator.

When a beneficiary cannot be located, a trustee and administrator should determine what obligations and liabilities arise within their trust documents, applicable law and fiduciary duties. At a minimum, the Trust should consider what reasonable efforts are appropriate to locate your beneficiaries while continuing to administer the account.

## IS THE BENEFICIARY ACTUALLY MISSING?

Sometimes beneficiaries are not able to be located, but that doesn't mean that they are "missing". Some beneficiaries are just inactive, others a location can't be determined, and others can't be determined to be alive or dead. Then you have the beneficiary is legitimately missing, no one can locate them and police are involved.

Consider creating categories of beneficiaries who don't have appropriate contact information.

**Quiet Beneficiary**– You have tried to reach out but they do not respond. No return mail or other indication that the person is not at their last known address. They continue to receive communication but do not respond. This does not mean they are or are not missing.

**Unable to Contact** – they just may be hard to locate right now. These are the beneficiaries you know will reach out, but they only do so occasionally. You believe that they will reach out but don't have current contact information.

**Whereabouts Unknown** – Attempts to locate have been made but no current location can be verified.

**Status Unknown** – Cannot determine if this beneficiary is living or deceased.

Use these or similar categories when determining next steps within the search framework.

## CREATE A SEARCH PROTOCOL

While I will talk specifically about beneficiaries here, this information can be used to locate anyone that is associated with the Trust or a specific Beneficiary.

Every trust should have a protocol in place for locating missing beneficiaries and/or their representatives. Think about when and how your trust is able to search. Think about what parts of this process you do in house vs. what you outsource.

### *Step 1 – Internal Records*

Start with your CRM/Database and look at:

- Prior disbursement requests are often one of the best places to find information on locating a beneficiary. Invoices, utility payments, electronic payment information, ACH or bank information, True Link or similar card activity;
    - Look where payments have been made, who submitted the invoice and who provides care or services to the beneficiary.

    - Shipping Addresses- Look at where items are shipped on the amazon, Wal-Mart of other online purchases
- Joinder Agreement and supporting documents like court orders or other information included with the enrollment information;
- Current and prior: addresses, telephone numbers, email addresses;
- Prior tax documents; and
- Notes in CRM and correspondence.

***Step 2 – Direct Contact***

Reach out directly to the beneficiary and/or their representative.

- Call every known number for the beneficiary at different times of day.
- Text where permitted.
- Email every known address.
- Mail to current and prior addresses. Send certified mail when appropriate.
- Send correspondence marked "Address Service Requested" or use another USPS address-correction service when available.

***Step 3 – Contact others in the Beneficiary's Orbit***

Contact others who may have information about the Beneficiary's whereabouts. This is where the additional information gathered in step one is really utilized. Start using that information to find the Beneficiary. I recommend starting with the people who would have the most reliable information first and work your way down. That will look different depending on the person and their situation.

When you reach out, the communication should be – "Hi we are trying to locate Julie Smith. Can you have her reach out to us?" or "Do you know where Julie Smith is or how we can contact her?"

DO NOT SAY "Julie Smith has a trust worth $150,000 and we need to discuss her account" or anything of the sort. Do not indicate that she has a trust or that there are funds for her. Your goal is to locate the beneficiary, not explain to a third party why you are looking for them.

Reach out to current and former:

- Landlords, caregivers, residential providers, representative payees, guardians, case managers, pharmacies or medical providers identified on prior requests, prior attorneys or other vendors often provide breadcrumbs that lead to the beneficiary.

***Step 4 – Internet, Social Media and Public Records***

If the above options aren't working, then start looking at the internet, social media and public records. Each beneficiary will have different potential to have information in different locations, but it is a worthwhile place to look.

- Internet and Social Media
    - Google or other search engines. Search their name, known locations, obituary or death.
    - Social Media of the beneficiary on Facebook, Instagram, TikTok, Pinterest, etc.
    - Social Media of the contact or friends connected to the Beneficiary on Facebook, Instagram, TikTok, Pinterest, etc.
- Public Records
    - Property records: county appraisal or tax records; deed/property records;
    - Court Records: probate, guardianship, marriage, divorce, suits affecting the parent child relationship;
    - Voter registration (where publicly accessible);
    - Business filings or professional licenses;
    - Jail and prison searches or federal inmate locator; and
    - State death records.

***Step 5 – Commercial Search, Private Investigators and other Creative Tools***

Commercial search tools can be useful, but not all are available to find a person's location. Before using a commercial search product, understand what information the service provides and any restrictions on its use. Not every search product or source of consumer information can be used for every purpose. Some commercial search products and information may be subject to the Fair Credit Reporting Act (FCRA) or other restrictions. Make sure you understand the permissible uses before conducting the search.

- People Finder or White Pages;
- Ancestry.com to create a family tree and locate relatives;
- LexisNexis Accurint;
- CLEAR;
- TLOxp;
- TransUnion investigative tools;
- other permissible-purpose people-location products.

***Step 6 – Death Search***

If the trust believes the person to be deceased, then a death records search is necessary. Depending on your state and their vital statistics rules, you may be able

to get confirmation of death, such as a death verification letter, but not a death certificate.

- Social Security Death Master File;
- state vital statistics;
- obituaries;
- funeral homes;
- probate filings;
- county records;
- family;
- Medicaid estate recovery information;
- Funeral Insurance Plans or Trusts.

***OTHER – Places that may have the information but won't give it to you.***

There are plenty of organizations that MAY know where your beneficiary is but have no obligation—or legal ability—to give that information to you. That doesn't mean they are useless. Sometimes they can confirm limited information, forward a message, or provide another breadcrumb. What they can disclose will depend on the agency, applicable privacy laws, and your authority to receive the information. If you are listed as a representative, then they may, but otherwise they are probably roadblocks with some breadcrumbs.

- SSA, Medicaid, Banks, Hospitals, Doctors or IRS

Pooled trusts may consider working with some of these agencies, such as Medicaid or SSA, to create policies that allow pooled trust the ability to locate beneficiaries.

**SEARCHING BUT HAVEN'T LOCATED**

While you are searching for your beneficiary, you should continue to administer the trust as you do the rest of the pool. Reviewing all disbursements during this process is key.

1. Continue to administer the Trust with continued searches. Until you have confirmed the beneficiary's death or another legal basis to change the administration, the sub-account remains active. This generally includes continued investment management, administrative fees, tax administration and other appropriate trust administration.
2. Consider things that you SHOULD NOT continue to do
    a. Recurring payments and if they should continue. Look at what distributions are being sent out and if they are appropriate to continue regardless of the location of the beneficiary.

b. Consider pausing all discretionary distributions until correct contact information is obtained and the distribution can be confirmed that it is still for the benefit of the beneficiary.
c. Suspend or limit access to cards or other trust controlled funds until the beneficiary's circumstances are confirmed.

## HOW LONG AND HOW MUCH TO SEARCH IS DUE DILIGENCE?

When looking for a beneficiary you must consider several factors when determining if due diligence is appropriate. Consider things like:

- account balance;
- length of time missing;
- beneficiary's circumstances;
- last known contact and available leads;
- cost of additional investigation;
- statutory obligations and trust provisions;
- likelihood beneficiary is deceased.

Depending on the governing trust document and applicable law, reasonable expenses incurred to locate the beneficiary may be an appropriate administrative expense of the sub-account or perhaps your retained fund. Review your trust document and policies before charging significant search, investigator or legal expenses to the account.

## DOCUMENT

If you searched for them, document it. If you called someone, document it. If a search produced nothing, document that too. The question several years later should not be "Didn't somebody look for her?" Your records should show what was done, when it was done, what was found, and what the next step was.

Look at each stage above and document all the information gathered or not, contacts made and correspondence sent/received. Use your CRM/Database or other prescribed documentation method to track this information.

Consider your timeline and keep track of that as well.

Due diligence does not necessarily mean searching forever or spending thousands of dollars on every account. The scope of the search should be reasonable and proportionate to the circumstances.

## WHEN TO HIRE A LAWYER

When considering hiring counsel to help locate a beneficiary, consider if there is a substantial account balance that warrants the cost of an attorney, if there is suspected death but no documentation, if there is a question as to whether distributions should stop, if there is proposed unclaimed-property treatment, court proceedings or questions involving access to protected records.

## WHEN TO CONTACT APS OR LAW ENFORCEMENT

Most beneficiaries who cannot be located by the Trust are not "missing persons." But if the facts suggest exploitation, abuse, neglect, immediate danger, or an actual missing-person situation, the issue has moved beyond routine trust administration. Consider APS, law enforcement, counsel, or other appropriate authorities.

If you have a beneficiary who has gone no contact for a considerable amount of time and is usually communicating with the trust, think about what would be appropriate given the person, their disability, experience with law enforcement and their situation. This could be as simple as a welfare check or more involved. If contacting law enforcement, be sure to highlight anything that the authorities should know before interacting with the individual, such as a mental health, intellectual or developmental disability that may not be visible. Do not send law enforcement out without taking these things into consideration.

## WHEN CAN WE FINALLY CLOSE THE ACCOUNT?

There is no one answer or one size fits all. The first step is to determine if the beneficiary is living-but-missing or deceased-but-unconfirmed. Before considering terminating the trust, look at the trust termination provisions to determine if that is an option or what that option would look like. Just because you haven't found them doesn't mean they are dead.

Review applicable state law concerning trust termination, unclaimed property, escheat and presumed death. In some states, the assets may remain held indefinitely.

Consult with an attorney and/or the court to determine if court involvement is appropriate and what guidance the court may give and/or order. This may include resignation as trustee, or the appointment of a successor trustee.

In a first party pooled trust, unresolved questions around retained funds provisions and Medicaid payback make consultation with an attorney especially important.

## PREVENTION IS KEY - KEEPING UP WITH THE BENEFICIARY

Having a procedure to keep the trust informed of the beneficiary's contact information is key. This includes a preventative process. Gathering and keeping up to date as much information is imperative. Training and directing staff to update contact information as often as possible. This includes looking at invoices, amazon shipping locations, asking questions and confirming emails, phone numbers and addresses when speaking to a beneficiary.

Some things to consider:

1. At enrollment get as much information as possible.
    a. During enrollment, get not only the beneficiary and representatives information, consider asking for others who are in the lives of the person with a disability or even contacts who will know where the beneficiary is. (see Appendix A: The Arc of Texas Supplemental Information Form)
2. Reach out regularly to request contact updates.
    a. The Arc of Texas sends out an automated email through Salesforce once a year to our beneficiaries and/or representatives and attorneys through email to determine that their information is correct. It is sent 6 months after the beneficiary's birthday. The Arc of Texas sends out a Happy Birthday email to the beneficiary or their representative (depending on whose email is on file). Six months later we send an email with the current contact information and ask for any updates.
3. Create a returned mail procedure
    a. Ensure that returned mail is processed ASAP. Returned mail can often provide insight into the whereabouts of the beneficiary or their representative or if they or their representatives are alive. Often mail has information from the post office directly or someone who returns the mail directly. Look for notes in the automated forward or any handwritten indications on the returned envelope.
4. Pause requested discretionary disbursements until information is updated.
    a. Consider stopping certain recurring payments that have short term impacts. This will make someone reach out pretty quickly!

## YOU'VE GOT THIS

Have a process. Search reasonably. Protect the beneficiary and the account. Document what you did. And know when the situation has become complicated enough to call counsel.