

Trust

A relationship created at the direction of an individual, in which one or more persons hold the individual's property subject to certain duties to use and protect it for the benefit of others.

Individuals may control the distribution of their property during their lives or after their deaths through the use of a trust. There are many types of trusts and many purposes for their creation. A trust may be created for the financial benefit of the person creating the trust, a surviving spouse or minor children, or a charitable purpose. Though a variety of trusts are permitted by law, trust arrangements that are attempts to evade creditors or lawful responsibilities will be declared void by the courts.

The law of trusts is voluminous and often complicated, but generally it is concerned with whether a trust has been created, whether it is a public or private trust, whether it is legal, and whether the trustee has lawfully managed the trust and trust property.

Basic Concepts

The person who creates the trust is the settlor. The person who holds the property for another's benefit is the trustee. The person who is benefited by the trust is the beneficiary, or *cestui que trust*. The property that comprises the trust is the trust res, corpus, principal, or subject matter. For example, a parent signs over certain stock to a bank to manage for a child, with instructions to give the dividend checks to him each year until he becomes 21 years of age, at which time he is to receive all the stock. The parent is the settlor, the bank is the trustee, the stock is the trust res, and the child is the beneficiary.

A fiduciary relationship exists in the law of trusts whenever the settlor relies on the trustee and places special confidence in her. The trustee must act in Good Faith with strict honesty and due regard to protect and serve the interests of the beneficiaries. The trustee also has a fiduciary relationship with the beneficiaries of the trust.

A trustee takes legal title to the trust res, which means that the trustee's interest in the property appears to be one of complete ownership and possession, but the trustee does not have the right to receive any benefits from the property. The right to benefit from the property, known as equitable title, belongs to the beneficiary.

The terms of the trust are the duties and powers of the trustee and the rights of the beneficiary conferred by the settlor when he created the trust.

State statutes and court decisions govern the law of trusts. The validity of a trust of real property is determined by the law of the state where the property is located. The law of the state of the permanent residence (domicile) of the settlor frequently governs a trust of Personal Property, but courts also consider a number of factors—such as the intention of the settlor, the state where the settlor lives, the state where the trustee lives, and the location of the trust property—when deciding which state has the greatest interest in regulating the trust property.

As a general rule, personal property can be held in a trust created orally. Express trusts of real property, however, must be in writing to be enforced. When a person creates a trust in his will, the resulting testamentary trust will be valid only if the will itself conforms to the requirements of state law for wills. Some states have adopted all or part of the Uniform Probate Code, which governs both wills and testamentary trusts.

Private Trusts

An express trust is created when the settlor expresses an intention either orally or in writing to establish the trust and complies with the required formalities. An express trust is what people usually mean when they refer to a trust.

Every private trust consists of four distinct elements: an intention of the settlor to create the trust, a res or subject matter, a trustee, and a beneficiary. Unless these elements are present, a court cannot enforce an arrangement as a trust.

Intention The settlor must intend to impose enforceable duties on a trustee to deal with the property for the benefit of another. Intent can be demonstrated by words, conduct, or both. It is immaterial whether the word *trust* is used in the trust document. Sometimes, however, the words used by the settlor are equivocal and there is doubt whether the settlor intended to create a trust. If the settlor uses words that express merely the desire to do something, such as the terms *desire*, *wish*, or *hope*, these precatory words (words expressing a wish) may create a moral obligation, but they do not create a legal one. In this situation a court will consider the entire document and the circumstances of the person who attempted to create the trust to determine whether a trust should be established.

The settlor must intend to create a present trust. Demonstrating an intent to create a trust in the future is legally ineffective. When a settlor does not immediately

designate the beneficiary, the trustee, or the trust property, a trust is not created until the designations are made.

Res or Subject Matter An essential element of every trust is the trust property or res. Property must exist and be definite or definitely ascertainable at the time the trust is created and throughout its existence. Although stocks, bonds, and deeds are the most common types of trust property, any property interest that can be freely transferred by the settlor can be held in trust, including Patents, copyrights, and Trademarks. A mere expectancy—the anticipation of receiving a gift by will, for example—cannot be held in trust for another because no property interest exists at that time.

If the subject matter of a trust is totally destroyed, the trust ends. The beneficiary might have a claim against the trustee for breach of trust, however, if the trustee was negligent in failing to insure the trust property. If insurance proceeds are paid as a result of the destruction, the trust should be administered from them.

Trustee Any person who has the legal capacity to take, hold, and administer property for her own use can take, hold, and administer property in trust. Nonresidents of the state in which the trust is to be administered can be trustees. State law determines whether an alien can act as a trustee. A corporation can act as a trustee. For example, a trust company is a bank that has been named by a settlor to act as trustee in managing a trust. A partnership can serve as a trustee if state law permits. An unincorporated association, such as a Labor Union or social club, usually cannot serve as a trustee.

The United States, a state, or a Municipal Corporation can take and hold property as trustee. This arrangement usually occurs when a settlor creates a trust for the benefit of a military academy or a state college, or when the settlor sets aside property as a park for the community.

The failure of a settlor to name a trustee does not void a trust. The court appoints a trustee to administer the trust and orders the person having legal title to the property to convey it to the appointed trustee.

If two or more trustees are appointed, they always hold the title to trust property in Joint Tenancy with the Right of Survivorship. If one joint tenant dies, the surviving joint tenant inherits the entire interest, not just her proportionate share.

A trustee cannot resign without the permission of the court unless the trust instrument so provides or unless all of the beneficiaries who are legally capable to

do so consent to the resignation. The court usually permits the trustee to resign if continuing to serve will be an unreasonable burden for the trustee and the resignation will not be greatly detrimental to the trust.

The removal of a trustee is within the discretion of the court. A trustee can be removed for habitual drunkenness, dishonesty, Incompetency in handling trust property, or the dissipation of the trustee estate. Mere friction or incompatibility between the trustee and the beneficiary is insufficient, however, to justify removal unless it endangers the trust property or makes the accomplishment of the trust impossible.

Beneficiary Every private trust must have a designated beneficiary or one so described that his identity can be learned when the trust is created or within the time limit of the Rule against Perpetuities, which is usually measured by the life of a person alive or conceived at the time the trust is created plus 21 years. This Rule of Law, which varies from state to state, is designed to prevent a person from tying up property in a trust for an unlimited number of years.

A person or corporation legally capable of taking and holding legal title to property can be a beneficiary of a trust. Partnerships and unincorporated associations can also be beneficiaries. Unless restricted by law, Aliens can also be beneficiaries.

A class of persons can be named the beneficiary of a trust as long as the class is definite or definitely ascertainable. If property is left in trust for "my children," the class is definite and the trust is valid. When a trust is designated "for my family," the validity of the trust depends on whether the court construes the term to mean immediate family—in which case the class is definite—or all relations. If the latter is meant, the trust will fail because the class is indefinite.

When an ascertainable class exists, a settlor may grant the trustee the right to select beneficiaries from that class. However, a trust created for the benefit of any person selected by the trustee is not enforceable.

If the settlor's designation of an individual beneficiary or a class of beneficiaries is so vague or indefinite that the individual or group cannot be determined with reasonable clarity, the trust will fail.

To provide accommodation, food, cloths, free education to orphans The beneficiaries of a trust hold their equitable interest as tenants in common unless the trust instrument provides that they shall hold as joint tenants. For example, three beneficiaries each own an undivided one-third of the equitable title in the trust

property. If they take as tenants in common, upon their deaths their heirs will inherit their proportionate shares. If, however, the settlor specified in the trust document that they are to take as joint tenants, then upon the death of one, the two beneficiaries will divide his share. Upon the death of one of the remaining two, the lone survivor will enjoy the complete benefits of the trust.

- without parents, helpless boys and girls of depressed.
- To render all possible help for the blind, deaf and dumb boys and girls, whenever they approach and seek help for education according to their constitution and learning capacity.
- To provide children kindergarten education by conducting classes and to promote art, literature and education.
- To start schools, colleges, and professional institutions for the poor, destitute & down trodden.
- Educational service for the upliftment of the society without the discrimination of caste, religion and language.
- Establishing the environmental institutes, laboratories and documentation centers, industrial training centers for the self-employment schemes.
- Children's home orphanages, Mercy & Aged homes. To render all possible helps for the street children and abused children.
- To create awareness among the people for the protection of the environment and provide educational facilities for displaced persons and to assist them in obtaining such facilities in educational institutions.
- To propagate Indian languages like Tamil, Sanskrit, Hindi etc., and foreign languages like English, French, Japanese etc., and to raise fund from Government, Inland and Foreign countries to teach the above languages.
- To establish, maintain, run, develop, sponsor schools, technical training schools, teacher's training schools, colleges, research institutions, universities, institutions for scientific research, statistical research, polytechnics, professional institutions, industrial schools, medical and medical research foundations.
- To construct, buy or acquire lands and buildings for the above institutions, institutions for carrying on a programme of conservation of natural resources or rural development or for afforestation. To provide hostels for students studying in the above institutions.
- To organize and conduct lectures, seminars, symposiums and workshops for students and other beneficiaries.
- To carry out or attend to such objects or purposes which are of charitable nature without any discrimination of caste, creed or religion or sex.

- To provide relief and aid to the public affected by natural calamities like earth quakes, cyclones, floods, famines, tsunami, fire etc., and also to provide for education and maintenance of poor and needy widows irrespective of caste, creed, religion or sex.
- Construction of dwelling units for the economically weaker sections and to construction of low-cost latrines for rural sanitation.
- The trust will help the students for their education in graduate and postgraduate levels. The trust will help the graduates, post graduates and technically qualified persons in getting suitable jobs in private and Government organisations. Further the trust will help the self-employed persons in getting loans and other necessary assistance.
- To arrange literacy classes for drivers and adults on traffic rules and regulations. To make use of audio-visual aids to support the literacy activities.
- To provide prevention to the public for contagious diseases and undertake all activities to relief contagious disease and to arrange medical camps , other necessary facilities.
- To educate and maintain medical students and nurses and other paramedical personnel by way of classes, seminars, lectures, symposiums and workshops, etc., in the prevention treatment to the diseases. To provide yoga meditation activities.
- To educate poor people on health, nutrition, sanitation and personal hygiene, to develop methods and techniques for the delivery of health care services.
- To conduct blood donation camps, health camps for the benefit of poor and deserving community.
- To take active interest in the civil, social and normal welfare of the youth community without any restrictions as to the caste or community or creed and to provide them the bare-necessary.
- To arrange for reading, provide free cloths, environmental hygiene water booths and all welfare measures to uplift the dalits, downtrodden and weaker sections of the society and the trust has intention to work for the dalits, downtrodden poor women and children.
- To establish schools, colleges, technical and other institutions, professional colleges, for imparting general, academic technical or professional education to students at large scale as under laws and rules in force.
- The trust will give stipend to the children of socially affected women. It also draw some useful welfare schemes for the divorced women, socially backward women, women affected by some chronic incurable diseases.
- To purchase lands, agricultural lands or acquire lands, buildings or to take lease of lands, buildings etc., to run the above activities.

- To identify the socio-economic conditions and needs of the vulnerable sections, labourers in organized and unorganized sectors, consumers, women, children, orphans, aged sick, physically, visually and mentally challenged and all uncared section of Indian society.
- To conduct programmes to abolish child labour and also provide free education.
- To provide shelter, food, cloths and medical assistance for the aged people, unwed mothers and baby subject to case to case basis.