

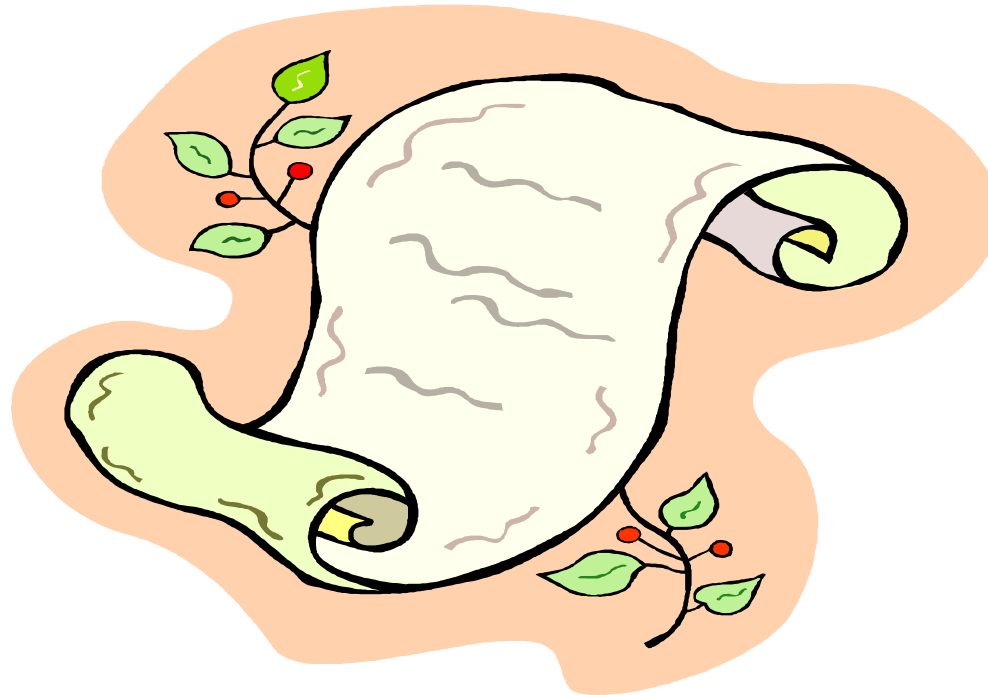
Trust Primer

By

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Formation of a Trust

☛ Requirements:

- in writing – statute of frauds: a trust in either personal/real property is enforceable if the trust terms are in writing and signed by the settlor/ authorized agent. Tex. Prop. Code § 112. 004.
- One exception – Blind Trusts.



Formation

- **funded/trust property** – a trust cannot be created unless there is trust property. Tex. Prop. Code § 112.005.
- Property can be placed in the Trust with a deed or by mentioning it as property held in Trust in the trust agreement.

Parties to a Trust

- *Settler/Grantor/Trustor* = a person who establishes the Trust.
- *Trustee* = a person holding trust property for the benefit of another.
- *Beneficiary* = a person for whose benefit the trust property is held.

Trustees

➤ Who can be a trustee?



- Any person having legal capacity to take, hold and transfer the trust property.
- A corporation can serve as Trustee if it is authorized to do so in Texas.
- The Settlor or Beneficiary may also serve as Trustee. (BUT, the trust will terminate once legal and all equitable title goes into one person.)
- If the person named as Trustee does not accept, is dead or does not have the capacity to serve as Trustee, then the person named as the alternate Trustee takes over. If no alternate is named, then the court shall appoint one. Tex. Prop Code § 112.009.

Trustees

- General Duties – Tex. Prop. Code §117.001, et seq.
 - Administer the Trust according to its terms in the agreement and the provisions in the Trust Code,
 - Treat all beneficiaries impartially,
 - Preserve trust property,
 - Maintain control of the Trust Property,
 - Make property productive,
 - Not delegate discretionary duties,
 - Diversify investments, and
 - Loyalty to the Trust.

Trustees



☛ Powers of a Trustee

- The powers of a Trustee can be found in **Title 9 of the Texas Property Code Section 113, et seq.**
- **Generally**, a Trustee may exercise the powers in the Code as well as any additional powers that are necessary and appropriate to carry out the purpose of the Trust.

Trustees

- **Specifically**, a Trustee may:
 1. receive additions to the Trust,
 2. acquire remaining undivided interests in property in which the Trust has an interest,
 3. manage and invest the Trust property,
 4. deposit funds in a bank pending investment, distribution of funds or pay debts,
 5. Invest or participate in the operation of a business entity,
 6. Exchange, subdivide, improve, partition, vacate, plat, or manage real property,
 7. Contract to sell real or personal property,

Trustees

8. Lease real or personal property,
9. Enter into mineral transactions,
10. Purchase insurance,
11. Pay taxes levied against the trust,
12. Borrow money,
13. Manage securities,
14. Hold stock in a corporation,
15. Employ attorneys, accountants or other agents for the Trust,
16. Settle claims,
17. Abandon worthless/burdensome property,
18. Make distributions to a minor or incapacitated beneficiary.

Trustees

☛ Self-dealing



- A Trustee cannot use the trust property for his own benefit.
- A trustee cannot, in its fiduciary capacity, deal with itself in its individual capacity.
- The trustee cannot take part in any transaction concerning the trust in which the trustee has interest adverse to that of the trustee's beneficiary without permission of the beneficiary after full disclosure.
- Neither can the trustee convey or mortgage trust property to itself or to its spouse.
- Company approval must be obtained prior to issuance of a policy involving self dealing

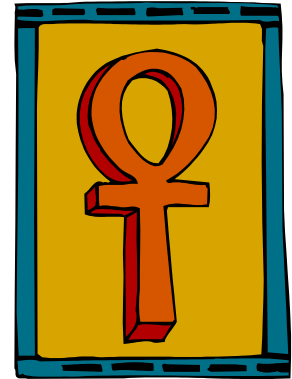
Powers of Attorney

- Unless the Trust specifically provides that a Trustee can delegate his powers through a power of attorney, one cannot be used in transactions.
- The Texas Trust Code does not authorize a Trustee to use a Power of Attorney.

Types of Trusts

- inter vivos trusts

- A trust created during the lifetime of the settlor and to become effective in his lifetime.
- Examples: Family Trusts.



☛ testamentary trusts

- A trust created by a Will which takes effect only on the Testator's death.
- The trust must satisfy the requirements for creating a valid trust AND a valid will.
- Will that sets up the Trust should be probated.



☛ Charitable Trusts

- A trust in which property held by a trustee must be used for charitable purposes.
- Charitable purpose is defined as relief of poverty, advancement of education, advancement of religion, protection of health, governmental or municipal purposes, and other varied purposes that are beneficial to the community. Bank of Carthage v. U.S., D.C. Mo., 304 F. Supp 77, 80.
- New legislation allows “pet trusts” to go from an honorary trust to an actual trust.



☛ constructive trusts

- A trust created by operation of law against one who has committed a crime and has obtained rights to property which he should not due to the nature of the crime.
- Must have a conviction before a constructive trust can be imposed.
- Example: a man who murders his mother and is heir to her estate will like have a constructive trust imposed though a wrongful death suit.



Termination of a Trust

- by agreement – all parties to the Trust agree in writing to terminate the Trust or if the Trustee can terminate the Trust if given the power to do so.
- by operation of law
- by terms of the trust – agreement sets out the date or event when the Trust is to terminate.
- by a judge – a trustee or beneficiary can petition the court to terminate the trust with a court order.

Underwriting Guidelines

- In general, we require a copy of the trust agreement to determine authority.
- Some Trustees/Beneficiaries wish to keep their trust agreements private, and may not want to show you the agreement.
- As a fiduciary, you are required to keep personal information private, but also need to look at the trust agreement to determine who has authority to sign.
- This can be accomplished by keeping a copy of the trust in your file, sending the copy back to the Trustee and making a note that you saw it or keeping a memorandum of trust in the file.
- There must be proof in the file that you looked at something to determine authority.



- **vesting of title**

1) **Inter vivos or Living Trusts**

_____, trustee under the (declaration of trust) (trust agreement) dated _____, made by _____, settlor, (for the benefit of _____), (and recorded in Book _____, Page _____).

2) **Testamentary Trusts**

_____, trustee under the trust created by the last will and testament of _____, deceased, and recorded in Book _____, Page _____.

***** The TRUSTEE holds title to the property FOR the beneficiary.**

Common issues associated w/ Trusts

☛ **co-trustees**

- A power vested in 3 or more trustees must be exercised by a majority of the trustees, unless otherwise provided in the trust agreement. Tex. Prop. Code §113.085.
- If 2 trustees are appointed, both must act unless the Trust agreement says otherwise.
- Look at the Trust agreement to determine if one or both co-trustees must act in a particular transaction.



☛ death of a trustee

- Look to the trust agreement to see what it provides regarding replacement of the Trustee upon death.
- If no successor Trustee is named or no process defined in the Trust Agreement for this event, then the court must appoint a new Trustee or terminate the Trust.



👉 blind trusts

- A blind trust arises where property is conveyed or transferred to a trustee but the conveyance or transfer does not disclose the trust or identify the beneficiaries.
- When title to property is held in this manner, the trustee may convey, transfer, or encumber the title of the property without the necessity of inquiry as to any trust agreement or proof of authority to convey the property.
- Ex. Deed says “John Smith, Trustee.”, but not “John Smith, Trustee of Alice Smith Family Trust.”



🔑 Homestead

- Like corporations, partnerships and limited liability companies, Trusts cannot hold out property as homestead.



However, Tex. Tax Code Ch. 11:

(j) For purposes of this section:

(1) "Residence homestead" means a structure (including a mobile home) or a separately secured and occupied portion of a structure (together with the land, not to exceed 20 acres, and improvements used in the residential occupancy of the structure, if the structure and the land and improvements have identical ownership) that:

(A) is owned by one or more individuals, either directly or through a beneficial interest in a qualifying trust;

(B) is designed or adapted for human residence;

(C) is used as a residence; and

(D) is occupied as his principal residence by an owner or, for property owned through a beneficial interest in a qualifying trust, by a trustor of the trust who qualifies for the exemption.

(2) "Trustor" means a person who transfers an interest in residential property to a qualifying trust, whether by deed or by will, or the person's spouse.

(3) "Qualifying trust" means a trust:

(A) in which the agreement or will creating the trust provides that the trustor of the trust has the right to use and occupy as the trustor's principal residence residential property rent free and without charge except for taxes and other costs and expenses specified in the instrument:

(i) for life;

(ii) for the lesser of life or a term of years; or

(iii) until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

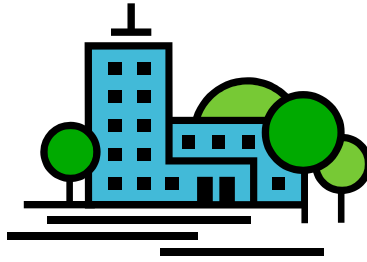
(B) that acquires the property in an instrument of title that:

(i) describes the property with sufficient certainty to identify it and the interest acquired;

(ii) is recorded in the real property records of the county in which the property is located; and

(iii) is executed by the trustor or the personal representative of the trustor.

Exception: There is a chance the property in the Trust may become homestead at a later date. It's best to get the beneficiaries to sign individually -- just in case.



- trust acting as a business
 - require the trust agreement to determine who has authority to sign.