



FUNDAMENTALS OF TRUST LAW

I. INTRODUCTION TO TRUSTS

A. Definition of Trusts

A relationship, not an entity (IRS considers a trust an entity for tax purposes)

B. Key Parties of Trust Relationship

1. Settlor/grantor/donor

2. Trustee

- a. Initial**
- b. Successor**
- c. Designated versus appointed**

3. Beneficiaries

- a. Current vs future**
- b. Mandatory vs discretionary**
- c. Also a trustee**

C. Trust versus Trust Instrument

D. Types of Trusts

1. Inter vivos versus Testamentary

2. Revocable vs Irrevocable

3. Terminating versus Continuing

4. Specialized based on tax attributes – These concepts are outside the scope of a basic level course:

- a. Marital**
- b. Charitable**
- c. GST exempt versus GST non-exempt**
- d. SLATs**
- e. GRATS**
- f. Community Property Trusts**

5. Oral trusts
- E. Creation of a revocable trust
 1. Legal Requirements
 2. Execution Requirements

II. REVOCABLE TRUST INSTRUMENTS

- A. Drafting considerations
- B. Selecting a trustee
- C. Common trust provisions
- D. Funding the trust/Schedule A
- E. Amending the trust instrument

III. ADMINISTRATION OF TRUSTS

- A. Real Estate Owned by Trustees
 1. Title in Trustee, not in trust
 2. If non-Florida RP is in trust, contact attorney in that other state
 3. Homestead issues
 - a. Restriction Devise
 - b. Pros and cons of transferring homestead to a trustee
 - c. Management of homestead RP in administration phase
 - d. Continuing trust vs. terminating trust (form Petition and Order for terminating Trust)
 - e. Direction to sell
- B. Duties and Responsibilities of Trustees - concept of fiduciary duties
 1. Initial notice requirement

2. Record keeping during administration
3. Accountings, including duty of disclosure
4. Investments
5. Dealing with Beneficiaries
 - a. Ethical considerations
6. Prohibition of self-dealing/duty of loyalty

C. Qualified beneficiaries

D. Issues when trustee is also beneficiary

E. Taxes

F. Distributions

1. Interim
2. Final (In kind vs cash)

G. Termination of trust

1. Pursuant to terms of trust instrument
2. Wind up period

IV. TRUST MODIFICATIONS, REFORMATION, AMENDMENT, ETC.

A. Why might trust instrument need to be modified or reformed

B. Various ways and different grounds for each, but mechanics of each is beyond scope of this basic course.

V. LITIGATION

A. Why might you be in litigation

1. Validity of trust
2. Breach of Fiduciary Duty

3. Disputes among Beneficiaries
4. Modification

B. Procedural Considerations

Probate and Trust litigation is a specialized area – find someone with experience to assist you!

VI. TYPICAL SITUATIONS

- A. In connection with administration of estate
 1. Pour over Will (Slide with Will pouring into Trust)
 2. Revocable Trust – uses
 3. Obligation to fund expenses of administration and pay creditors

VII. BEST PRACTICES AND TIPS

- A. Practical advice for trust preparation
- B. Strategies for effective trust administration
 1. Notice of six month period
- C. Avoiding common pitfalls in trust administration