

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