

The Fay Law Offices

Sean Nicholas Fay, Esq.

Trusts

and

Who should be assessed

All Trusts in Massachusetts are Governed by the Massachusetts Uniform Trust Code.

- Settlor must have capacity to create Trust
- Settlor must indicate an intent to Create a Trust
- The Trust must have a definite beneficiary
- The beneficiary may be a pet, a charity, a non-charitable entity, or an individual.

Massachusetts Uniform Trust Code- Requirements Continued:

- The Trustee must have duties to perform
- The same person may not be sole Trustee and beneficiary
- The term beneficiary is defined as a person who has a present or future interest.

Why Trusts?

- Avoiding Probate
- Structuring Distributions for Beneficiaries in Need of Financial Management
- Basic Estate Tax Planning
- Asset Management During Incapacity
- Joint Ventures
- Agreements Among Family Members and Other Joint Owners
- Special Needs Trusts
- Medicaid Planning
- Advanced Estate Tax Planning

Trusts Dissected

- Two General Categories of Trusts: Revocable and Irrevocable
- Revocable Trusts May be Amended or Revoked by the Settlers.
- Irrevocable Trusts may not be Amended or Revoked.
- Settlers are Typically NOT Trustees of Irrevocable Trusts.

Revocable Trusts Commonly Used in Estate Planning

- Basic Probate Avoidance Trusts:
 - Single or Joint Settlers
 - Individual or Joint Trustees
 - Name Typically Includes the Term “Revocable” or “Family” Trust
 - Beneficiaries are Found in Trust Terms Not in Separate Schedule.

Revocable Trusts Commonly Used in Estate Planning Continued

- Realty Trusts:
 - Also Called Massachusetts Nominee Trusts
 - Trusts are Created by Trustees
 - Trust Declaration States Trustees Hold Trust Property for Beneficiaries Not Named in Trust
 - Beneficiaries are Identified in Separate Schedule of Beneficial interest

Irrevocable Trusts Commonly Used in Estate Planning

- Typically For More Advanced Planning
- Most Common Type is an Irrevocable Medicaid Qualifying Trusts:
 - Drafting Varies Greatly Among Attorneys
 - Settlor is Usually Not the Trustee
 - Lifetime Beneficiary is Usually Limited to Distributions of Income Only
 - Beneficiaries are Identified in Language of Trust Itself

Transferring Real Estate to Trust

- Trust Document May Still be Recorded
- Most Deeds are Accompanied by Trustee's Certificate Pursuant to M.G.L. c. 184, § 35
 - Certificate Should Identify Name and Address of Trustees
 - Certificate Should Identify Principal Place of Administration of Trust
 - Not all Practitioners Follow Real Estate Bar Association Standards for Trustee's Certificates

Why the Mystery? Why is the Property Owner Confused?

- Lawyers
- Lawyers Who Dabble in Estate Planning
- Lawyers who Don't Ask the Right Questions
- Lawyers who Don't Explain Documents to Their Clients
- Lawyers who Don't Understand the Ramifications of Planning Strategies
- Doctrine of Merger and the Uniform Trust Code
- In Short, Lawyers are the Problem.

Hidden Beneficiaries-Unearth the Truth

- The Settlor is Not Always the Beneficiary
 - Trusts Used as Irrevocable Medicaid Qualifying Trust Alternatives-Out of State Options
 - Trusts Used in Aid and Attendance Planning
 - Powers Reserved to the Settlor
 - Credit Shelter Trust Beneficiaries Change Over Time
 - Drafting Errors and the Old Dog

Where to Look for Clues and Where to Find the Answers

- Look for Specific Terms in Trustee's Certificates
- Review Specific Language of Grantee Clause in Deed
- Check for Homestead Declarations filed for Trust Beneficiaries (Masslandrecords.com)
- For the Vast Majority of Trusts Other Than Realty Trusts, Beneficiaries will be identified within First Four or Five Articles of the Trust-Beware of Document Assembly Programs
- For Realty Trusts, Beneficiaries are identified in the Schedule of Beneficial Interest
- Double Check the Deed for Reservation of Life Estate. Language varies greatly.

Trusts, Assessments, and Eligibility for Personal or Residential Exemptions

- The Party to Be Assessed is a Record Trustee
- Meeting the Underlying Statutory Requirements for the Exemption Alone is Not Enough. Applicants Do Not Understand This and Trust Requirements are Regularly Overlooked by Practitioners.
- Applicant MUST Possess Both a Sufficient Beneficial Interest AND a Record Legal Interest.
- Applicant must be a Trustee.

- Realty Trusts Naming Another Revocable Trust as Beneficiary in the Schedule of Beneficial Interest do not meet Sufficient Beneficial Interest Test.
- Reservation of a Life Estate Solves the Ownership Problems Associated with Trusts
- Reservation of Rights to Income and to Direct distribution of Income May Also Resolve Beneficial Interest Problem

Conclusions

- Lawyers Are the Cause of and Solution to Most of the Problems you will Face with Trusts, but Most Lawyers will Still Blame You
- Many Problems with the Ownership and Beneficial Interest Tests can be solved...next year.
- Many Times the Right Answer is No. Although We Always Try to Help People and Solve Problems, You Did Not Cause Problems With Trusts.
- Start with Classifying the Trust. That will Lead You to the Most Answers.
- Drafting Abilities Vary Greatly and Sometimes Finding the Right Answers Requires Digging Deep.
- You Did Not Make the Rules, You Just Have to Follow Them. That May Make Some People Unhappy.
- Questions