



TRUSTS

Introduction and Creation Overview



Chapter Outcomes

- Define a trust
- Name the parties to a trust
- Compare the methods of creating a trust
- Describe the different kinds of express and implied trusts

The Trust Arrangement

- Trust
 - Settlor gives property to a trustee to hold in trust for the benefit of a beneficiary
 - Beneficiary also known as cestui que trust
 - Property held in trust known by several names
 - Trust res, trust corpus, trust principal, trust property, trust fund

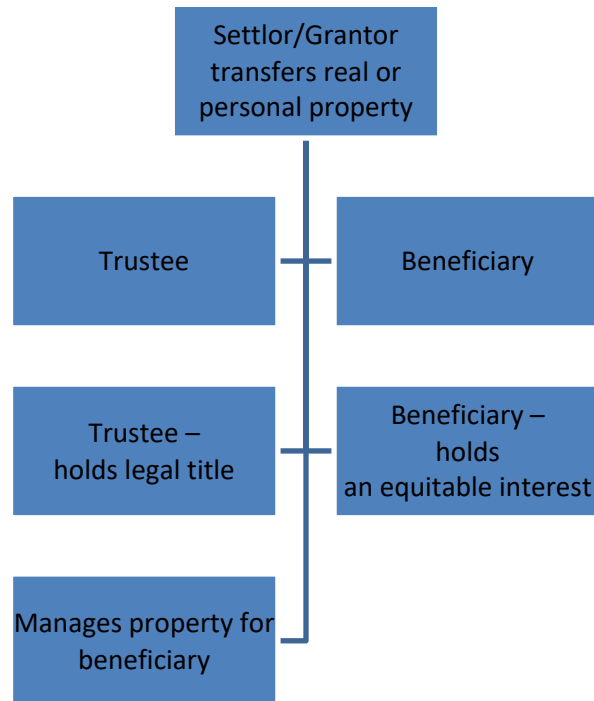


The Trust Arrangement

- Five elements for valid trust
 - Trustor (also called settlor or grantor)
 - Trust property
 - Valid trust purpose
 - Trustee
 - Beneficiary

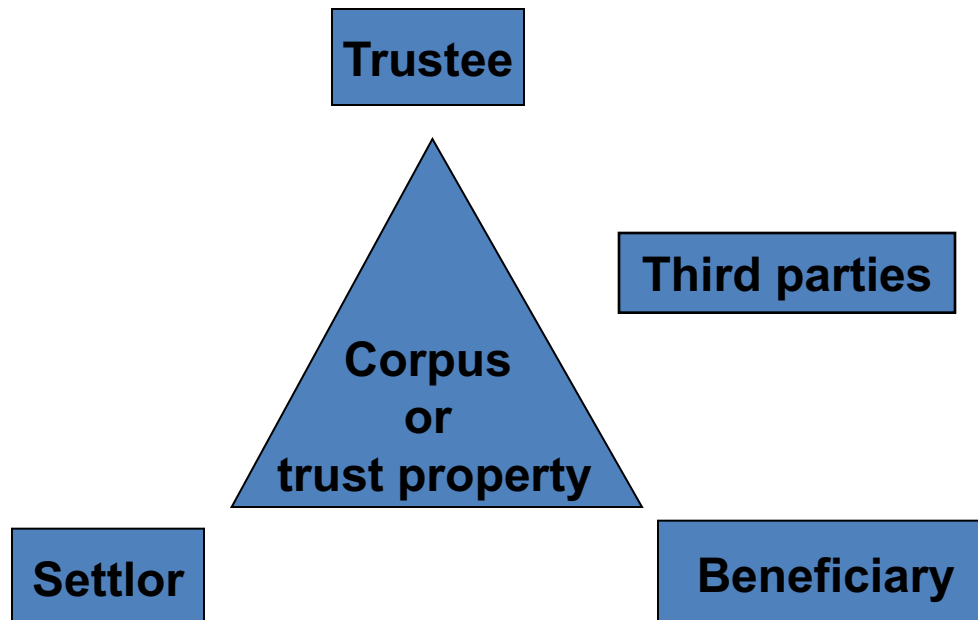
The Trust Arrangement

- Creation of a Trust



The Trust Arrangement

- Structure of the trust





Parties to a Trust

- Settlor
 - Creator of a trust
- Trustee
 - A person of trust who holds property in trust for the benefit of one or more beneficiaries
 - A fiduciary (trusted person) required to perform all trust duties according to the terms of the trust and law with loyalty, honesty, and good faith
- Beneficiary
 - Person for whose benefit trust was created



Settlor

- A person who creates a trust by making the property transfer that divides title and imposes duties; also called the trustor, the grantor, or the donor.
- Title is Settlor, Grantor, Trustor, Transferor. Settlor and Grantor most commonly used.



Trustee

- The person who holds the **legal title** to trust property and has the fiduciary duty to manage that property according to the settlor's instructions and applicable trust law.



Beneficiary

- The person who receives the **equitable title** to trust property and hence the right to benefit from that property according to the settlor's instructions; also called the cestui que trust, the donee, or the grantee.

Parties to a Trust

TABLE 8-1 Conditions for Trusteeship

<i>Rule</i>	<i>Trustee</i>	<i>Beneficiary</i>
Who May Be a Trustee		
1. One may be a sole trustee for another.	Oneself	Another person or persons
2. One may be a trustee with another for a third person.	Oneself and another person or persons	A third person
3. One may be a sole trustee for oneself and another.	Oneself	Oneself and another person or persons
4. One may be a trustee with another for oneself alone.	Oneself and another person or persons	Oneself
5. One may be a sole trustee for oneself for life if the trust property goes to another at death.	Oneself	Oneself for life; then another person or persons
6. One may be a sole trustee for another for the other's life with the trust property going to oneself at the other's death.	Oneself for another person's life	Oneself at the other person's death
Who May Not Be a Trustee		
1. One may <i>not</i> be a sole trustee for oneself alone.	Oneself	Oneself



Creation of a Trust

- Legal title
 - A form of ownership giving the trustee the right to control and manage the property for another's benefit
- Equitable title
 - The right of the party who holds the equitable title or beneficial interest to the benefits of the trust

Creation of a Trust

- Conveyance in trust
 - Settlor transfers legal title to trustee
 - Settlor may retain or transfer equitable title
- Declaration of trust
 - Settlor transfers equitable title but retains legal title
 - Often called one-party trust



Creation of a Trust

- Trust formalities
 - Usually written documents
 - Parol (oral) trusts dealing with personal property generally are enforceable



Express Trusts

- Also known as voluntary trust
- Created in explicit terms
- Either written or oral
- Must include four elements
 - Competent settlor
 - Provision for trustee
 - Trust res
 - One or more beneficiaries



Express Trusts

- Testamentary trust
 - Trust property is bequeathed or devised in a will to a trustee for the benefit of a beneficiary
 - Takes effect after testator dies
 - Executor gathers assets and pays debt, taxes, and expenses
 - Executor then turns over assets of estate to trustee



Express Trusts

- Living trust
 - Also known as inter vivos trust
 - Becomes effective during settlor's lifetime
 - May be revocable or irrevocable
 - Revocable: settlor has the right to revoke or change the terms of the trust prior to death
 - Irrevocable: cannot be revoked or changed by the settlor



Express Trusts

- Pour-over trust
 - Provision in a will in which the testator leaves a gift (often the residue of the estate) to the trustee of an existing living trust
 - Courts have conflicting views over validity of pour-over trusts
 - To avoid conflict, many states adopted Uniform Testamentary Additions to Trusts Act



Implied Trusts

- Implied trust
 - Also called involuntary trust
 - Operation of law rather than express intent of settlor
 - Has no writing requirement



Implied Trusts

- Two types of implied trusts
 - Resulting trust: trust that is implied from the intentions of the parties that the person holding legal title is holding it for another's benefit
 - Constructive trust: trust that is created by operation of law when someone obtains legal title to property through fraud or other wrongdoing



Purposes and Uses of Trusts

- Provide for and protect beneficiaries
- Flexible distribution of assets
- Protection against settlor's incompetence
- Professional management of property
- Probate avoidance
- Tax benefits
- Avoid conflicts of interest



Overpromotion of Living Trusts

- Despite the tremendous potential benefits, a trust may not be the best tool to accomplish a client's intent.
- Some attorneys heavily promote inter vivos trusts as an estate-planning panacea. They are not.
- Although a trust is an extremely useful technique, a person should not create a trust until the person carefully balances the benefits against the trust's creation, administration, and transfer costs.