

**A COMPREHENSIVE
INTRODUCTION TO THE
UNINCORPORATED BUSINESS ORGANIZATION**
(I.R.S. CODE § 301.7701)

The trust that is not a trust . . . it's a contract cast in the form of a trust.

Presented by:

The Baldwin Trust Group
6966 Sunrise Blvd., #246
Citrus Heights, California 95610
(916) 722-0667 ● Fax (916) 729-7468
Pager (916) 450-8922

In cooperation with:

Torrance Financial & Insurance Services Ltd.
Brian E. Torrance
3400 Watt Avenue, Suite 205
Sacramento, CA 95821
(916) 679-1032 ● Fax (916) 481-1143

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FOREWORD

In the January 1996 American Bar Association Journal, an article appeared stating that America's lawyers are lining up, protecting their own assets from the hazards of litigation by setting up Asset Protection Trusts (APT) for themselves; e.g., contractual unincorporated organizations. As one attorney quoted in the article put it: "I do not want someone doing to me what I do to them all day in court."

"It may be said that the Constitution executes itself. This expression may be allowed; but with as much propriety. These may be said to be laws which the People have enacted themselves, and no laws of Congress can either take from, add to or confirm them. They are rights, privileges or immunities that are granted by the People, and are beyond the powers of Congress or State Legislatures. It may be laid down as a universal rule, Admitting to no exception, that when the Constitution has established a disability or immunity, a privilege or a Right, these are precisely as that instrument has fixed them, and can neither be augmented nor curtailed by any act or law either of Congress or a State Legislature. We are more particular in stating this because it has sometimes been forgotten both by Legislatures and Theoretical expositors of the Constitution." Bouvier's Law Dictionary. 1870 pp 622-625

"The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void and ineffective for any purpose, since its unconstitutionality dates from the time of its enactment...In legal contemplation, it is as inoperative as if it had never been passed...Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no right, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it... A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby. No one is bound to obey an unconstitutional law and no courts are bound to enforce it.' 16 Am Jur 2d 177, late [Am Jur 2d 256. Norton v. Shelby County, 118 US 178.](#)

"... A regulation which is inconsistent with the law is invalid ... because a statute may not operate in derogation of the Constitution." [Title 5 U.S.C. 301, 559 C1. 2](#)

[13 Am Jur 2d, pg. 379, Paragraph 51](#) "One of the objectives of Business Trusts is to obtain for the Trust associates, most of the advantages of corporations, without the authority of any legislative act and with the freedom from the restrictions and regulations generally imposed by law upon corporations."

The main problem with sham trust providers, charlatan preachers, bad insurance agents, auto salesmen, CPAs, Attorneys, and the lot is that when you find out what category they are in ... it's usually too late! You're the loser. "Study to show yourself approved."

PREFACE

The following question was posed to Don L. Wood, author of *Tax Free! How the super rich do it!* and was posted on the internet at www.passpostsociety.org. It was such an honest and succinct response that we decided to reprint the Q & A here. Please visit the site above and order this remarkable book for yourself. Everyone who wants to protect themselves must have this book in their library.

Q: [Don,] What's the difference between "pure trusts" and "common law trust organizations", and how can you determine the difference?

A: [Doug,] So called experts don't know the difference. I'll offer an answer that is far too simple, but the only other version would easily take a semester in law school. All trusts . . . (how many does that leave out?) . . . are creatures of equity.

Equity is a legal system developed in England during the 7th Century when the crown converted to Christianity. The king established a new court system whose leadership (Chancellor) was also the head of the church of England. Therefore, it is in every consideration an ecclesiastical court where the "judges" (chancellors) try matters of conscience! Many of its terms, for example, are religious in nature; "prayer for relief", "invoking equity", even the term "chancellor". The term "chancellor" being corrupted from its original hard "ch" sound as today's letter "k" sounds, and which we would spell today as cancellor, was one who cancelled sins. As the head of the church of England, he had the power to remit sins. Courts of Equity have jurisdiction over all statutory trusts.

In England and her colonies, the two courts, the courts of law and equity, were merged so that today's "judge" is both judge and chancellor, i.e.; the cancellor of sins. The United States followed suit in the 1920's. In only a few of the Commonwealth States is law and equity still practiced separately. Unless one knows the difference he may easily take his claim to a chancellor rather than to a judge. Chancellors have the power to interpret matters of conscience as might a priest. Judges, on the other hand, only referee the parties and interpret the law.

Chancellors interpreting matters of conscience in today's moral climate gives me the shivers. When the President of the United States finds it convenient and expedient to lie — *even when he knows everyone knows he's lying* — and the people forgive him even though he's asked for no forgiveness, anything corrupt can and will happen. (Somehow, Americans want a good government without being good themselves, and the two are not as separable as they would

like to imagine. Corruption is as common at the top as it will be at the bottom.)

A court and a judge which have "equitable powers" gives me goose pimples. I have never been able to understand why someone would write a contract and then permit the opportunity for that type of judicial review of deciding what the parties meant or should have meant! Instead of the rigidity of common law, that contract is as flexible and flimsy as the paper it's written on!

Pure trusts, and 99% of the other so called common law trusts will invoke equity jurisdiction even though there never needed to be any. Therefore, the judge is given the power to interpret the spiritual aspects of a pure trust, and as I said, with today's moral climate being what it is, I surely wouldn't write a contract and then permit equity to interpret it for me. Common law trusts organizations prevent that. That is something 99.9% of the rest of the so called "trust practitioners" haven't even thought about yet. Further, because it's so easy to step into that arena by accidentally invoking equity somewhere or some other way, it should make your blood run cold.

[END OF Mr Wood's QUESTION & ANSWER]

The most important landmark case handed down by the United States Supreme Court concerning common law trusts is Hale v. Henkel, 201 U.S. 43(1906). It has been used since 1906 more than 1,600 times. On the persuasive side in Hale v. Henkel, it was the United States Supreme Court which was speaking the "Law of the Land." How much more persuasive can a case be? The never overturned opinion of the court as stated at page 89 is as follows:

"The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to incriminate him. He owes no duty to the State, since he receives nothing therefrom, beyond the protection of his life and property.

"His rights are such as existed by the Law of the Land (Common Law) long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution.

"He owes nothing to the public so long as he does not trespass upon their rights."

[Emphasis Added.]

COMMON LAW versus **STATUTORY LAW**
(rights) vs. (privileges)

THE HISTORY OF [AMERICAN] COMMON LAW

Our *American form of Common Law* possesses a glorious and rich ancestry; tracing its' spiritual pedigree to the biblical "*Seven Laws of Noah*" as recorded in Chapter 9 of the Book of Genesis; and perhaps beyond. The modern day [American] *Common Law* was sired from the loins of the "*Magna Carta*" as granted by King John at Runnymede on June 15, 1215. This Great Charter of English Liberty was re-enforced by the "*Mayflower Compact*," being penned and signed on November 11, 1620 and later presented to King James. On October 19, 1765, the "*[First] Declaration of Rights*" was signed by the assembled In Congress and delivered to The [British] Crown and the House of Commons. A second, and more severe indictment, the "*[Second] Declaration of Rights*" was signed by the assembled In Congress, at Philadelphia, on October 14, 1774, being delivered to the British Parliament. Again, Common Law was upheld as the law of the land within "*The Unanimous Declaration of the Thirteen United States of America...*" as presented to King George in that great document we hold so dear to ourselves, "*The Declaration of Independence*" as adopted by the assembled In Congress on July 4, 1776. On November 15, 1777, in the second year of the independence of the united States, the "*Articles of Confederation*," being initially signed by those assembled In Congress at Philadelphia on July 9, 1778, and formally ratified by all the States on March 1, 1781. Under Federal Convention, in the twelfth year of the independence of the States, on September 17, 1787, "...by the unanimous consent of the states present...", the "*Constitution of the United States*" was signed, being ratified by the last of the thirteen original States on May 29, 1790.

Following suit, the State of California petitioned for Statehood via the “*Act for the Admission of California Into the Union*” submitted to the assembled Joint Congress of the United States of America on September 9, 1850 and approved on September 28, 1850 as evidenced in Volume 9, Statues at Large, page 521.

Most Americans are unaware that they have a choice to decide which set of laws, *Common* or *Statutory*, they want to invoke to manage their personal and/or business affairs!

First and foremost, *Common Law* is CONTRACTUAL RIGHT which is incapable of revision or modification, and cannot be statutorily abridged: To most Americans, including both American and California Bar Association members, Attorneys, Lawyers, Judges, Legislators, and Members of the executive branch of our government: “*Common Law* ^A is not important and has no authority as compared to the thousands of statutory laws and regulations created by legislators and government administrators each year...”

“... [A] trust organization, consisting of a U.S. Constitutional right of contract which cannot be abridged. The agreement when executed becomes a Federal organization and not under the laws passed by any of the several legislatures,” [Crocker v. MacCloy](#), 649 U.S. Supp. 39 at 270

^A "Even Admiralty and maritime jurisdiction, when brought inland, is subject to the Common Law remedy, the same as Equity; and cannot supersede the sovereign citizens' God endowed/given unalienable/inalienable rights, and these same rights as secured in and under the Constitution of the United States of America." Title 5 U.S.C., 559, cl.2; Title 28 U.S.C. 2072; [Miranda v. Arizona](#), 384 US 436 at 491 (1966)

Defined by law dictionaries and the courts, “**Common Law** consists of those principles, usages and rules of action applicable to government and security of persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislator.” [Bishop v. D.C. Tex., 334, F. Supp. 415, 418.]

Article 6, Section 2 of the Constitution of the United States declares that the United States Constitution is the SUPREME LAW of the Land ^B and the Constitutional provisions and laws of any state to the contrary is not withstanding; unenforceable!

The Great State of California reaffirmed the supremacy of the United States Constitution as written in its’ State Constitution in Article III, Section 1, which states “The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land.”

On the other hand ...

Statutory Law binds the procedural structure and creates entities that arise out of privilege(s) derived ONLY from the State: Federal, State and Local Statutory and Regulatory authority is created by corporate United States or State Constitutional, Mandate, or the Charter of a municipality to regulate the government and to create the guide lines for the governments limitations with regard to the protected civil rights of private citizens.

^B "This Constitution and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land; and the judges in every State shall be bound thereby...The Senators and representatives and members of the State legislatures, and all executive and judicial officers of the United States and the several States, shall be bound thereby.." Constitution for these United States, Article VI, § 2, Cl. 1

Within the United States Constitution, the authority for Congress to create statutory and regulatory laws is authorized under Article 1, Section 8. This authority is limited to implementing the delegated powers listed in Article 1, aforementioned, regulating elected or appointed officials, administrative agencies, courts and the Military.

The courts have ruled that entities created under the jurisdiction of Statutes or Regulations such as corporations, associations, statutory trusts (*e.g.*; *revocable inter vivos living trusts*), sole proprietor businesses, partnerships, etc., do not have *common law* rights such as the individual.

Statutory Law entities are [hideous] creatures of the [mad scientist] State and owe their existence and charter power to the State. A State chartered or sanctioned entity can make no contracts not authorized by its Charter license. **These Statutory Chartered entities are presumed to have been created for the benefit of the public.. not for private enterprise.** [[Hale v. Henkle, 201 U.S. 43 at 74\(1906\)](#); [Pinkerton v. Verberg, 78 Mich. 573, 584](#); [State Ex. Real Cities Service Gas v. Public Service Commission](#), S.W. 2d 890]

Most people today feel that, or act as if, they MUST ask the State, County, City, the I.R.S., their attorneys, accountants, doctors, religious leaders, etc. what to do in their private and personal affairs. We are scared-to-death to make decisions on our own!

It seems that consciously, or unconsciously, many people believe they need to get permission from an external authority for practically every thing they are going to do. Thomas Jefferson, our third President, stated it very succinctly:

“If a nation expects to be ignorant and free in a state of civilization, it expects what never was and never will be ... If we are to guard against ignorance and remain free; it is the responsibility of every American to be informed.” ~ President Thomas Jefferson

This principle is known today as The “Ashwander Doctrine”:

“... Anyone [or *entity*] who partakes of the benefits or privileges of a given statute ^C, or anyone [or *entity*] who even places himself into a position where he may avail himself of those benefits at will, cannot reach constitutional grounds to redress grievances in courts against the given statute.” [[Ashwander v. T.V.A., 287 U.S. 288, 56 S. CT 466](#)]

The traditional probate avoidance revocable *inter vivos* Living Trust is a perfect example of a **Statutory Law** creation of the State. It is called a *living trust* because someone’s life is connected to, or associated with, the creation and termination of the trust. The entire life span of the *living trust* is linked to the creator who can gift real or personal property to the trust by a written agreement who’s structure and content is governed by the State. While the grantor is alive, all he puts into the *living trust* is a gift and the matter of ownership is clear and concise; thus avoiding our antiquated probate system.

^C An example is the term “remedy.” Remedy is the means used or employed to force a right. If you are in contract, you no longer have the court available to you to enforce that right. Remedies do not apply to those who have alienated their property right by conveyance (a transfer of property). **E.G.;** House Joint Resolution 192 was passed on June 5, 1933. It said; When you pass a Federal Reserve note to purchase or buy anything, you transfer your rights with that note (contract), and, put yourself under obligation to the IRS and/or Federal Reserve. *They legally own what you purchased with their note.* [Julliard v. Greenman](#), 110 U.S. 421 (1884).

However, *living trusts* CANNOT operate businesses! They are strictly a vehicle for transferring an estate from one generation to another. Upon the death of the creator, these **Statutory Law** trusts avoid probate fees and time delays BUT they do not eliminate capital gains taxes, estate or death taxes, generation skipping taxes, appraisal fees, challenges in court, governmental controls, lawsuits, etc. They also die with the death of the creator or are allowed to die a slow death by the State.

Living trusts are also usually revocable by their creator which allows him to “take back” the property at will, to amend, revoke, or terminate the trust arrangement, and therefore allows others through legal procedures to do the same. These **Statutory Law** trust arrangements have specific I.R.S. code that pertains to their taxation and therefore the assets are even accessible to them.

All is not lost on living trusts! Properly drafted “fully funded” *living trusts*; along with their pour over wills, durable powers of attorneys, medical healthcare directives with right-to-die decisions and treatment preferences, guardianship appointment letters, deeds, etc., solve many major issues of your estate in an efficient manner:

- ◆ Elimination of Probate Court interference.
- ◆ No lengthy time delays – estate settled in days, not months.
- ◆ Allows total control during lifetime and control transfers to your successors upon your death.
- ◆ Easy to administrate even after death.
- ◆ No court interference during a period of disability.
- ◆ Creates no new tax forms.
- ◆ 100% “step-up in valuation” of all assets in the estate at date of death of the first spouse or unmarried person solves the Gift and Capital Gain Tax problems.
- ◆ Double exemption from the Federal Estate Tax for couples.
- ◆ Provides for heirs of blended families to keep what’s theirs and not lose it to a surviving step-parent’s heirs.
- ◆ Allows for times distribution to heirs, disinherit heirs or ex-spouses, and ensuring your heirs do not inherit a dime if they are on drugs, alcohol, etc.
- ◆ Prevention of your heirs losing their estate due to a judgment creditor.
- ◆ Uneven inheritances within the same family unit.
- ◆ Elimination/reduction of capital gains taxes.

INTRODUCTION TO THE CONTRACT BUSINESS TRUST

"The Trust that is NOT a trust!"

The survival of your estate - personal and/or business - IS dependant SOLELY upon fact ... not uninformed, incomplete, and incompetent advice disguised as fact. **FEAR** (*False Evidence Appearing Real*) is the single deadliest enemy of the common man and the greatest ally of the ignorant professional, or neighborhood know-it-all lawyer and/or accountant. Until you demand a complete accounting of evidence that will support someone's advice ... all that you have worked for ... or ever intend to acquire ... will continually be exposed to **REAL** (*Readied Enemies About to Lunge*), not imagined, asset threatening predators. Bottom line ... allowing irresponsible opinions to influence any decision ... could mean that you have volunteered to become a potentially unwitting victim!!!. Always demand **ALL** the facts before making a decision of this nature!

Common Law trusts are really NOT TRUSTS!!! They are most commonly referred to as a Massachusetts Business Trust (MBT); but is also known as either a Contractual Business Organization (CBO), an Illinois Land Trust (ILT), an Unincorporated Business Organization (UBO), a Business Trust Organization (BTO), a Common Law Trust (Colato), a Pure [or Pure Equity] Trust, a Blind Trust, an Express Trust, or a Contractual Company (CC) but they are not trusts.

The most all inclusive phrase to describe the type of business organization detailed below is to call it ... "the pure or true" (Hecht v. Malley, 265 US 144 (1924)) type and "un-associated and non-equitable" (Bouchard v. First People's Trust, 148 NE 895 (1925) cf Lyndon B. Johnson's Foundation) "Massachusetts common law business trust contractual organization." A common law contract in trust form!

THE IMPORTANCE OF YOUR BUSINESS

Q. How important is your business?

Q. How important is it that your business be well organized to offer the best protection (*from liability, harassment, judgments, etc.*) and the greatest benefits?

The combination of an established, concise business goal coupled with personal estate planning represents your lifetime building of that business and estate. Protecting and preserving your accomplishments should be your number ONE priority.

A BASIC BUSINESS DECISION

Every person, or group of persons, planning to enter into business must make a basic decision at the outset. This decision will determine such things as the benefits to be enjoyed, the risks to be assumed (*and shared?*), the problems to be avoided (*or created!*), and much more, including the treatment of your business for estate purposes.

This decision concerns the form of business organization, and it should **NOT** be made quickly or taken lightly!

There are, in actuality, four basic forms of business organizations (*and numerous variants*) used in the United States today.

The **first form**, and by far the most numerous, is the Individual or Sole Proprietor[ship]. According to the 1988 Annual Report of the Internal Revenue Service (IRS); there were some 5,303,000+ Individual business or Sole Proprietor tax returns (*Form 1040*) filed for the taxable year of 1987.

The **second form** most common and widely recognized form for conducting business in 1987 was the “C” Corporation with some 1,976,500+ corporate tax returns (*Form 1120*) filed. Some 892,000+ American opted for the “S” Corporations (*Form 1120S*) variant corporate returns for 1987.

A **third form** of business organization is the Partnership, limited or general. In 1987, the IRS received 1,702,700+ Partnership tax returns (*Form 1065*) from business and/or family partnerships.

Not considering Sole Proprietors; the IRS Compliance Research 1994 Update Doc 6186 for tax year 1993, the IRS received some 2,127,400+ “C” Corporation returns (*or 24.9%...i.e., 2nd place*); an additional 1,905,800+ small business “S” Corporation returns (*here’s 22.3%...i.e., 3rd place*); and business Partnerships came in with another 1,567,200+ returns (*and then 18.3%...i.e., 4th place*). But what’s the *1st place* desired form of business in 1993?

The above mentioned three forms of business organizations; the Sole Proprietor, Corporation, and Partnership are widely recognized and used by the business community, their accountants, their attorneys, and their consultants.

But there is a **fourth form** of business organization that is also widely used, but is not well known among business professionals: the **“1041 Contract Business Trust”**.

In 1987, some 2,336,000 plus fiduciary tax returns (*Form 1041*) were filed with the IRS, including those of the Magellan Mutual Fund, Kempler Insurance, Nuveen Funds, Edward Hines Lumber Company, Sears Roebuck and Co. and the Sears Tower, and of most importance **“Meditrust”**; whose 8,000,000 shares of “certificates of beneficial

interest” trade on the New York Stock Exchange. Other significant contractual business trusts include Massachusetts Electric Companies, North American Pulp & Paper Company, Adams Express Company, The McKay Company, American Express Company, American Trust Company, Chicago Elevated Railroads, Chicago City Railway Company, Central Mfg. District of Chicago, American Express Company, Postal Telegraph Company, Associated Simmons Hardware Companies, Amoskeag Mfg. Company, Pepperell Mfg. Company, and R. G. Dun & Company.

Likewise; on October 1, 1996, the Crabbe Huson Group, Inc., and again on August 18, 1997, the Marcum Natural Gas Services, Inc. (Nasdaq - MGAS), both announced their restructure from corporations to Contractual Business Trusts to the business world.

In comparison, 1993 saw a 26% increase over 1987 in the number of Business Trust tax returns being filed to more than 2,950,200+ fiduciary returns (*an incredible 34.5% ... i.e., 1st place*).

As a form of business organization; the Contract Business Trust is not unusual. For the average business professional, along with his attorney, his accountant, and/or his consultant, business trusts are simply unknown! See Smith v. Anderson, British High Court (1880) as a “point of law” that has cited several times in U.S.

[See *American Jurisprudence (Am Jur)*, 2d, Volume 13, “Business Trust”, pages 371-468; and *California Jurisprudence (Cal Jur)*, 3d., Volume 15, §§ 551-563 for detailed legal definitions.]

WHAT IS A TRUST?

It is helpful to divide all trusts into two very distinct classes - (1) those which are “*birthed from our inalienable rights*” and (2) those “*created by privilege of the State.*”

To state it in the simplest terms, "A trust is a right of property, real or personal, held by one party for the benefit of another."¹ A trust, then, is a contract in which an individual, variously called the Creator, Trustor, Settlor, or Grantor, transfers property, either real or personal, to one or more Trustees, private individuals or professional companies, to be held or managed (*under fiduciary responsibility*) for one or more Beneficiaries.

There are many types of trusts in use today for a variety of purposes. We cannot examine them all, but they include Crummey Trusts, Inter Vivos (*during life*) Trusts, both revocable and irrevocable, Testamentary Trusts, Generation-Skipping Trusts, Spendthrift Trusts, Foreign Trusts, and many, many more.

WHAT IS A BUSINESS TRUST?

The “Business Trust” is a powerful entity by which individuals may combine their resources to operate a business for profit. A “Business Trust” is created when one or more individuals convey/transfer/exchange legal title to assets to the trustees. The trustees have vested power to manage and control all assets to which title was conveyed/transferred/exchanged, and to pay the profits of the enterprise to the persons who hold beneficial interest in the “Trust”.

The type of trust that we want to pursue is the Massachusetts or Contract Business Trust. So what exactly is this Business Trust?

Most [*honest*] attorneys will readily admit that they were never taught the mechanics of “1041 complex trusts” during their average three years in law school. West Publishing Company, a major law book publisher who presently publishes about 60 volumes of “Horn Books” provides less than one volume to the subject of “Trust Law.” Likewise, the “Corpus Juris Secundum” which contains approximately 130 volumes encompassing all major subjects considered important to American attorneys dedicates less than one volume to trusts; and the primary subject matter discussed in that volume is the statutory inter vivos revocable family living trust variety.

In order to clearly and thoroughly answer this question, we will provide several complimentary definitions from authoritative legal sources. We will then examine and explain those definitions.

"The *Massachusetts* or *business trust*, which is also called a common-law or 1041 irrevocable complex trust, is essentially “a contractual business organization” cast in the form (created in the image) of a trust. It is said to have originated in Massachusetts to circumvent a prohibition in that state against the organization of corporations to deal in real estate.”²

"Modern cases support the view that a business trust is an unincorporated business organization created by an instrument by which property is to be held and managed by trustees for the benefit and profit of such persons as may be or become the holders of transferable certificates evidencing the beneficial interests in the trust estate.”³

"The '*Massachusetts Trust*' is a form of business organization, common in that state, consisting essentially of an agreement whereby property is conveyed to trustees, in accordance with the terms of an instrument of trust, to be held and managed for the benefit of such persons as may from time to time be the holders of transferable

certificates issued by the trustees showing the shares into which the beneficial interest in the property is divided. These certificates, which resemble certificates for shares of stock in a corporation and are issued and transferred in like manner, entitled the holders to share in the income of the property, and, upon termination of the trust, in the proceeds."⁴

"The trust is a very comprehensive institution. It is as general and as elastic as a contract. It originated and was reduced to practice under the jurisdiction of courts by the civil law, was expanded and developed in the courts of chancery, and has been employed in nearly every field of human activity. Of late years, it has been and is utilized in the field of commerce and trade as a substitute for the corporation or partnership organization. Such a trust is created by the execution of a declaration of trust by one or more trustees, to whom there has been, or will presently be, transferred [*more correctly exchanged*]^D the property or money which is to constitute the corpus of the trust. When the express trust is used as an agency of commerce, i.e.; having an economic reality along with a business interest, it is commonly known as a Business Trust, and because it finds its basis in the law of contract and does not depend upon any statute for its existence, it is sometimes called a "common-law trust." It may be stated as a general proposition that any one competent to contract may make such disposition of the legal title to his property as he pleases, may annex such conditions and limitations to its enjoyment as he chooses, and may vest it in trustees for the purpose of carrying out his intention. He has the same power to create trusts as he has to alienate the legal title to his property."⁵

^D An "exchange" is a reciprocal transfer of property as distinguished from the transfer of property for money or consideration only". Treasury Regulation 118.39.112(a)1, (e). The case of Stern v. C.I.R., 747 F.2d 555 (1984) is very important in that it relates to and gives several examples of taxpayers exchanging stocks into a "trust" in exchange for projected future income.

"These organizations originated because of the hostility of some states towards corporations, and due to the desire of those organizing the same to secure some of the advantages that would be secured by incorporating without incurring the burdens and restrictions resulting therefrom. The chief advantages of such organizations from the standpoint of those desirous of combining their wealth for business purposes are that until recently they were, in most states, free from regulation and enjoyed freedom from personal liability that is imposed upon partners. This type of organization is nothing more than an attempt to use the old common-law trust for the purpose of carrying on business enterprises."⁶

It is very important to construct the contractual business trust in such a manner that every trustee, officer, manager, banking agent, etc. has a contractual relationship to the trust agreement; otherwise, the protection of the contract is lost. The trustee(s) must be appointed and must accept their position by contract. The business manager(s) must be contracted in the same manner and if they were the “exchangor(s)” cannot have unsupervised control over the trust assets. Every interested party to the trust must have some kind of contractual relationship with the trust.

NECESSARY CHARACTERISTICS OF A BUSINESS TRUST

The legal definitions given above for a Business Trust describe a flexible and efficient business organization. "The flexibility of the business trust admits considerable latitude in adapting the organization to unusual requirements of the particular enterprise."⁷ In fact, the Business Trust was historically such an attractive vehicle for conducting business that John Sears, in his authoritative work Trust Estates as Business Companies, maintained that the Business Trust represented "the ideal toward which much corporate legislation has strived, and will continue to strive, in vain."⁸

[In [IRS Regulation § 301.7701-4\(b\)](#), it states “There are other arrangements...which are often known as business or commercial trusts...which normally would have been carried on through business organizations that are classified as corporations or partnerships...[unless] if, applying the principles set forth in Sections 301.7701-2 and 301.7701-3, the organization more nearly resembles an association or a partnership than a trust.”

Section 301.7701-2(a)(1) clarifies the characteristics of corporations. It states “There are a number of major characteristics ordinarily found in a pure corporation which, taken together, distinguish it from other organizations. These are: (I) Associates, (ii) an objective to carry on business and divide the gains therefrom, (iii) continuity of life, (iv) centralization of management, (v) liability for corporate debts limited to corporate property, and (vi) free transferability of interest.” The remainder of the Section says that “the organization [must] more nearly resemble a corporation than a partnership or trust.” See [IRS Revenue Ruling 75-258](#) and [Morrissey v. Commissioner \(1935\) 296 U.S. 344](#).

Section 301.7701-3(a) also defines the partnership as any group that “includes a syndicate, group, pool, joint venture, or other unincorporated organization...which is not a corporation or a trust or estate within the meaning of the [Internal Revenue Code of 1954](#).”

This type of trust seeks no privileges or benefits from any government or government agency, does not have associates, has been created for an ongoing business, expires after an arranged length of time, deliberately has centralized management in the form of an independent trustee, is totally liable to debts, and under no circumstances allows free transferability of interest. The trust has only three of the six characteristics and not a preponderance of those characteristics; and is certainly not a partnership or corporate “statutory trust,” but a separate lawful entity having its existence under the common law.

We expressly declare this type of entity to be an Organization founded upon the freedoms and rights inherent in the common law of the Republic of these united States of America as set forth by **We The People** in the Constitution of the United States, the Bill of Rights, and the original state constitutions of the several states comprising (the union) of the United States of America.]

But the Contractual Business Trust described within this article is not the same as the traditional "Massachusetts-type" business trust. Due to changes in the tax laws since the 1930s, and the rise of a great deal of statute laws regulating many aspects of both the corporation and the traditional business trusts, the use of the Business Trust described herein has required several modifications in order to achieve all of the desired benefits. A properly constructed Business Trust, of the type described in this article, established for the purpose of operating an on-going business, must possess certain characteristics.

First, a Business Trust must be a non-grantor trust formed under the common-law and Constitutional right of contract (*See Article I, Section*

10 of the Constitution of the United States)^E. A Business Trust is often referred to as a "common-law" trust because "it finds its basis in the law of contract and does not depend upon any statute for its existence."⁹.

This raises the distinction between "*statutory*" trusts (*i.e., those dependent upon a specific statute for their creation*) and "*common-law*" trusts such as the Business Trust described here. Most trusts formed by attorneys today are statutory in nature. This also distinguishes the Business Trust from the Corporation.

"The right to be a corporation and to exercise corporate powers, is derived from the state. **The power which creates has the power to destroy.** The state has the right to limit the period of existence of its creature, the corporation; to provide conditions precedent or subsequent by laws existing at the time of its creation, or by laws subsequently passed to destroy its existence, for such reasons as may seem to the Legislature sufficient."¹⁰.

The Business Trust described in this article is NOT a creature of the state or statute. It owes its existence to the common-law and Constitutional right of contract.¹¹.

Second, in order to have a valid contract there must be: **(a)** a valid offer and acceptance of valuable consideration; **(b)** two or more parties

^E "The opinion of the court after serious deliberation is that this is a contract, the obligation of which can not be impaired without violating the Constitution of the United States... After the revolution, the Constitution of the United States imposed this additional limitation ... that the legislative of a State shall pass no 'law impairing the obligation of contract.' It results from this opinion, that the acts of the legislative of New Hampshire are repugnant to the consti-tution of the United States." *US Supreme Court, Dartmouth College v. Woodward* 17 US 518. Since 1819, [Dartmouth College v. Woodward](#) has been cited by the US Supreme Court over 105 times, and by the lower Federal and State courts over 2,365 times. **It has never been reversed!**

involved; (c) parties who are of legal age and competent understanding; and (d) a termination date.

Third, there can be no division of ownership (*title*) in the trust assets. In the past, traditional business trusts were normally established with the trustee holding legal title to the trust corpus and the beneficiary holding equitable title in the form of shares of beneficial interest.¹² But due to changes in the tax laws, and in order to achieve all of the desired benefits (*to be discussed below*); all evidences of ownership (*both legal and equitable title*) must reside in the trustee. This form of absolute ownership by the trustee is referred to as Fee Simple Absolute. This kind of alodial ownership enables the trustee to manage and dispose of the trust assets in whatever manner he may wish in keeping with the terms specified by the trust document. Furthermore, the trust must be under the administration of an independent, third party trustee. The trust is irrevocable, it is managed by the trustee who may appoint officers or agents.

Fourth, the Business Trust, like all trusts, must have beneficiaries. Some companies selling UBOs ^F try to tell you that their UBOs have something else. But, "a rose is a rose is a rose" no matter what you call it. Units or Certificates of interest are still units or certificates of interest no matter what you call them. Therefore, the receiver of any distribution of a trust is a holder of at least one unit of interest, or a fractional part thereof, ... ALWAYS.

^F Unincorporated Business Organization - If your Business Trust is properly set up and managed, the beneficiaries, as beneficiaries, **NEVER** have any voice in the operation of the trust. The unit holder stands in the position of simply receiving any distributions made from the trust as a result of either operations or the sale of trust assets.

Fifth, the trust must avoid those "corporate attributes" which would cause it to be treated and taxed like a corporation under statutory provisions regulating corporations. The four "corporation attributes" are:

- (1) centralized management;
- (2) continuity of life;
- (3) limited personal liability of trustees; and
- (4) easy transferability of beneficial interest in the trust.

If the trust possesses any three (3) of these attributes, it will be treated as a corporation.¹³ As long as a Business Trust established to operate a business does not have the "attributes" of a corporation (*or an old-style Massachusetts-type trust*); it will not be treated or taxed like a corporation but rather taxed as a 1041 complex trust.

A Business Trust of the type described here is referred to as a "Pure [Equity or Business] Trust" or a "True Trust".

WHY USE A CONTRACT BUSINESS TRUST?

In general terms, a Business Trust will provide benefits and flexibility not available with other forms of business organization. As a result, it is finding some new and contemporary uses^G. An article in the Wall Street Journal of June 20, 1988, p. 20, illustrates one of the many uses of a Business Trust. Media mogul Rupert Murdoch was confronted with a legal hurdle in owning both a newspaper and a television station in the same market. He solved the problem by placing the station into a business trust. By doing so, Mr. Murdoch divested himself of legal ownership while

^G If you have access to the Internet; using any search engine, type in the following and see that each week dozens of businesses are making public announcement that they are converting to the "business trust" mode of business: "business|trust". Make sure you use the "pipe" key (usually the "Shift" + "\" keys), not a vertical line symbol.

retaining effective control of the assets by means of conditions stipulated in the trust document. Mr Murdock also retained all of the benefits derived from the profitable operation of the trust since his News Corporation was the trust's named "beneficiary" holder of its Capital Units.

In further indication of the growing interest in business trusts, the State of Ohio wrote an entire chapter of their State Code (*see Ohio State Code § 1746*) to recognize the legitimacy of Business Trusts, and the State of Delaware recently up-dated its statutes regarding such trusts. On June 21, 1988, the Delaware General Assembly passed Senate Bill No. 355 which amended Part V, Title 12, of the Delaware Code by adding a new chapter entitled "Chapter 38, Treatment of the Delaware Business Trusts". According to the bill's sponsor, the banking community within the state of Delaware was a major supporter of the legislation.

The proper design and use of a Business Trust will provide at least four important and specific benefits.

Organization. A Business Trust will provide an effective and efficient form of business organization, very similar to a corporation but without the above mentioned corporate attributes and far better than either a sole proprietorships, partnerships, and better than most small corporations, especially closely held ones.¹⁴

Liability Protection. The proper design and use of a Business Trust should provide the highest degree of professional liability protection. It is a fact established at law that "the beneficiary of an ordinary trust is not personally liable to third persons for torts committed by the trustee."¹⁵ With a Business Trust, potential liability claims are limited to the assets of the trust. This protection can be enhanced by separating high-risk assets, equipment, or processes into separate trusts, and then "triple-net" leasing the assets back from the trust. Furthermore, the assets of a Business Trust are exempt, in the absence of a fraudulent

conveyance, within one year prior to a bankruptcy, from the claims and actions of personal creditors.

Tax Management. A properly designed and operated Business Trust can provide the ability to control, manage, and perhaps limit both estate tax and current tax liabilities^H.

[For example, the 1988 Social Security Handbook states (*on page 180, at paragraph 1115*) that "A beneficiary of a trust which operates a trade or business is not engaged in the trade or business because the trust, rather than the beneficiary, is engaged in the activity."]

This means that a trust beneficiary, or the holder of Capital Units, who receives passive income as a K-1 distribution, rather than as W-2 wages, will realize a current (1997) tax savings of 13.02% on self-employment tax or a 15.02% tax savings on the combined corporate rate. Since many business operators pay out more in personal Social Security tax than in personal withholding (*because it is normally computed on net business income before personal deductions*), this can constitute a significant savings!

Furthermore, a properly designed and operated Complex Business Trust is not subject to the corporate tax on dividends. According to the Internal Revenue Code, a trust that distributes all of its income each year to its beneficiaries is allowed to treat such distributions as a deduction to the trust, resulting in no taxable income to the trust. The beneficiaries will be required to declare the income as a taxable income on their own personal returns.¹⁶ If the income of a complex trust is not distributed, then the trust

^H It is recommended, that all of the sections of Title 26 USC be researched thoroughly, so that false or misleading information is not circulated to the prospective client who desires to preserve and protect his estate. See chart at back of handout.

is required to pay the taxes (*see below chart*). This provides a significant advantage over a corporate structure. Simple contractual business trusts are required to pass all income to the beneficiaries every year.

FEDERAL INCOME TAX RATES (1999)

TAX RATE	1041 TRUST	SINGLE/ INDIVIDUAL	MARRIED/ JOINT
15.0%	\$0 ~ 1,750	\$0 ~ 25,750	\$0 ~ 43,050
28.0%	\$1,751 ~ 4,050	\$25,751 ~ 62,450	\$43,051 ~ 104,050
31.0%	\$4,051 ~ 6,200	\$62,451 ~ 130,250	\$104,051 ~ 158,550
36.0%	\$6,201 ~ 8,450	\$130,251 ~ 283,150	\$158,551 ~ 283,150
39.6%	\$8,451 ~	\$283,151 ~	\$283,151 ~

Estate Planning. A Business Trust will provide important estate considerations. Because the business, and its assets, are owned in Fee Simple Absolute, meaning both legal and equitable title together, by the fiduciary trustee; there is no probate, no transfer of ownership, no disclosure of assets (*i.e., privacy is maintained*)^I, and no estate taxes. The

^I "There is a clear distinction between an individual and a corporation, in that the latter has no right to refuse to submit its books and papers for an examination at the suit of the State... The individual may stand upon his constitutional rights as a Citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business or to open his doors to investigation, so far as it may tend to incriminate him.... He owes no duty to the State since he receives nothing therefrom beyond the protection of his life and property... His rights are such as existed by the Law of the Land, long antecedent to the organization of the State, and can only be taken from him by due process of the law and in accordance with the Constitution. He owes nothing to the public so long as he does not trespass upon their rights." *US Supreme Court, Hale v. Henkle* 201 U.S. 43 at 74. Since 1905, [Hale v. Henkle](#) has been cited by the Supreme Court over 144 times, and by the lower Federal and State courts over 1,600 times. **It has never been reversed!**

business itself may continue uninterrupted with a successor operator/manager/agent appointed by the trustee, including a surviving spouse, children, or a hired employee.

The Beneficial, or Capital Units, of the trust are regarded as intangible personal property and can be transferable for estate planning purposes. Should a decision be made to liquidate or sell the business, all proceeds would be payable to the Capital Unit holders. Because a business and its assets can form a large part of an estate, and therefore a significant contributor to eventual estate taxes, the value of a Business Trust in both business and estate planning quickly becomes obvious.

WHY NOT USE A FOREIGN TRUST?

Strategies utilizing foreign situs trusts, trusts domiciled in a foreign jurisdiction, are being used by some individuals in an attempt to protect assets from the claims of creditors and court judgments. Such "asset protection trusts" usually consist of a transfer of the legal title in an asset to a trust formed in a tax-haven jurisdiction such as the Isle of Man or Jersey in the Channel Islands, or the British West Indies. The argument is that such a transfer of title to a foreign entity will make those assets more difficult to reach in the event of a claim or judgment against the grantor.

While such trusts have the potential of protecting assets, they present some potential problems.

First, a foreign situs trust can be expensive to establish and administer. For example, the Caymen Island subsidiary of the Swiss Bank and Trust Corporation Limited requires a \$10,000 retainer, applicable toward fees for trust services, a minimum \$100,000 balance in a Trust Account with the bank at all times, and it prefers to act as trustee for "bankable assets" (*other types of assets considered on a case-by-case basis, but the fees*

double). Annual administration fees begin at \$4,000 per year. In contrast, a Business Trust of the type described and recommended in this article generally costs from \$3,000 to \$8,000 to establish and administer for the first year and from \$600 to \$2,000 per year thereafter depending upon the number of trusts needed.

Second, a foreign situs trust can present a potential problem of ownership, depending upon its design. If the trust is established with a divided title, the trustee holding legal title and the grantor/ beneficiary holding equitable title, and/or the grantor/beneficiary retains the right to revoke the trust and its assets (*i.e., a revocable trust as opposed to an irrevocable trust*), both the property and the income of such a trust will be treated as belonging to the grantor/beneficiary. The result will be two-fold. Under current tax laws ([Internal Revenue Code, Sections 671, 673 and 679](#)), the grantor of a trust who retains a reversionary interest will be regarded as the owner of the trust and will be taxed on the income from the trust, thereby eliminating any potential benefits. Furthermore, although a foreign situs trust can make assets held in trust more difficult to reach, the equitable and reversionary interest of the grantor or beneficiary can be the object of a suit in satisfaction of a legal judgment.

Third, utilizing a foreign situs trust to hold assets used in a domestic trade or business can potentially create difficulties in acquiring or transferring clear title to assets that must be purchased, sold, held, or transferred in the course of doing business (*i.e., Foreign Withholding Tax on any gain from the sale of U.S. assets by a foreign trust engaged in U.S. trade or business*).

Fourth, the transfer of property by a citizen or resident of the United States to a foreign situs trust may trigger the imposition of a 35% excise tax upon any gain recognized by the transferor as determined by [IRC Section 1491](#).¹⁸

While the above mentioned potential problems may not eliminate the need for or the use of foreign situs trusts, they should be carefully weighed and considered when deciding whether to utilize a foreign trust as opposed to a domestic Business Trust.

HOW TO USE A CONTRACT BUSINESS TRUST

Sole Proprietors and Partnerships. These two forms of business basically represent individuals in business for themselves with little or no protection, organization, or benefits. A sole proprietor or a partnership could sell all of the business assets to a trust in consideration for non-voting Capital Units. Such assets, in a simple situation, could include business inventory, business equipment (*computer, photocopier, desk, etc.*), a business vehicle, and even business contracts (*excellent for anyone receiving 1099's as an independent contractor*). The business would now be operated as a Business Trust under contract with the independent trustee.

Corporations. A popular form of business organization among professionals such as physicians, dentists, chiropractors, attorneys, CPAs, insurance brokers/agents, and other professions is the Professional Service Corporation. These are usually small to medium-sized businesses and are usually closely held (*i.e., no publicly offered shares*). We could include in this group many other small-to-medium-sized professional corporations such as Sub-Chapter "S" Corporations, that are closely held. In terms of professional liability protection, estate planning, and tax management, this form of business organization offers very limited benefits. How could such corporations utilize the Business Trust?

First, the corporation could divest itself of all real estate/property (*if, for example, it owns the building in which it resides*) by selling the property to a Business Trust in exchange for Capital Units, and then leasing the property from the trust. As the holder of the Capital Units, the

corporation would receive any benefit derived from the profitable leasing operation of the trust.

Second, the corporation could divest itself of all business equipment and/or office equipment, by selling such equipment to another separate trust, again in consideration for its Capital Units, and then leasing the equipment from the trust. A physician, dentist, chiropractor or other medical professional, for example, might place all professional equipment (*x-rays, ultra-sounds, microscopes, lab equipment, examination tables, etc.*) into a trust for leasing business equipment. He might then place all other office equipment (*desks, typewriters, computers, fax machines, filing cabinets, etc.*) into a separate trust for office equipment.

Finally, the corporation itself could continue to function, receiving payments, hiring employees, paying bills, etc., but would own few assets (*the usual targets of liability proceedings*), leasing its necessary equipment and property from the various independent trusts. Profits generated by the trust through its leasing operations would be passed through to its Capital Unit holders, either the corporation or the principal who owns it. For its part, the corporation would not own any legal or equitable title in the trust or exercise any voting rights or control over the trustee or the activities of the trust.

FLEXIBILITY FOR BUSINESS AND ESTATE PLANNING

This process of separating and divesting assets can be as simple or as expansive as required by each particular business situation. A sole proprietor, partnership, or a sole professional operating as a corporation might require only a single trust. But a dry cleaning business with several locations and a small fleet of vehicles might need to place each location into a separate trust. A hotel, for example, might consider placing the bar, restaurant, pool area, and even its' parking lot into separate trusts (*a strategy in liability management*

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that has been very successful) as a means of either protecting an asset or separating and isolating a potential liability.

In addition to the business planning aspect, the business person could carry this process of separating and protecting assets even further by placing personal assets into other trusts as part of a total estate planning strategy. This could include a land trust (*commonly referred to as an Illinois Land Trust*) for houses, improved or unimproved property, or other real estate (*or notes and mortgages secured by real estate*), and establishing a separate "inter vivos" (*living*) trust for other personal property. The use of the Business Trust along with the land and living trusts contributes significantly to overall estate planning since such trust is unaffected by the death of a beneficiary (*except for "inter vivos" living trust*), and since the shares of beneficial interest are transferable as intangible personal property.

WHO CAN USE A CONTRACT BUSINESS TRUST?

In reality, the list of individuals and businesses that could benefit by using a Business Trust structure is virtually endless. Any business, regardless of its nature, size or current form of organization, is eligible to operate as a Business Trust (*i.e., as mentioned above, the Fidelity Magellan Fund, the largest mutual fund in America, was reorganized as a Business Trust on October 1, 1984*).

The following is a short list of candidates for a Business Trust:

All Sole Proprietors	1099 Independent Contractors
Accountants and CPAs	Manufacturers
Doctors	Dentists
Tax Preparers	Pest Control Companies
Chiropractors	Opticians
Attorneys	Insurance Brokers/Agents
Day Care Operators	Motel/Motel Owners
Franchise Operators	Ministers
Churches	Multi-level Sales People
Business owners	Airline Pilot
Property managers	Real Estate Agencies/Agents
Apartment Building, etc.	Shop Owners
Service Providers	Professional Services
Artists & Writers	Property Owners/Managers
Restaurant Owners	Health Practitioners
Sports & Gun Dealers	Recreational Businesses
Rental Property	Taxi Cab Drivers
Bus Drivers	Veterinarians
Self-employed Business Person	Auto Mechanics
Towing Operations	Lien Companies
Roofers, Plumbers, Electricians, Masons, Carpenters, General Contractors, etc.	

For more information on *fiduciary responsibilities* of the “independent” trustee of UBO’s, please ask for the pamphlet entitled “Fiduciary Responsibilities in the Use of Trusts” available through your “Agent.”

END NOTES and REFERENCES

- ^{1.} John H. Sears, Trust Estates as Business Companies, 2nd Edition, (Kansas City, Vernon Law Book Company, 1921), p. 1, paragraph 1.
- ^{2.} 88 American Law Reports, d., 711, paragraph 2; see also 13 American Jurisprudence, 2nd, 375, paragraph 1; 156 American Law Reports, 27.
- ^{3.} 88 American Law Reports, d., 711, paragraph 2.
- ^{4.} [Hecht v. Malley, 265 U.S. 144](#). An important U.S. Supreme Court decision (1923) acknowledging the legal validity of a Business Trust and defining it in general terms.
- ^{5.} Schumann-Heink v. Folsom, 159 North Eastern Reporter 250; 328 Illinois 321. A 1927 decision by the Illinois Supreme Court acknowledging the validity of the Business Trust and defining it in general terms.
- ^{6.} [Goldwater v. Oltman, 292 Pacific Reporter 624](#). A 1930 decision by the California Supreme Court regarding the nature and validity of the Business Trust.
- ^{7.} 13 American Jurisprudence, 2d, 388, paragraph 13.
- ^{8.} Sears, Trust Estates as Business Companies, p. 7, paragraph 3.
- ^{9.} Schumann-Heink v. Folsom, 159 North Eastern Reporter, 250; see also 13 American Jurisprudence, 2d, 375, paragraph 1 and also note 4 regarding the common law status; see also 13 American Jurisprudence, 2d, 388, paragraph 13.

^{10.} City of New York v. Bryan, 130 Appellate Division 658 (1909), 115 New York Supplement 551, as quoted in Sears, Trust Estates, page 5, paragraph 13.

¹¹ The basis for the terminology “common-law trust,” in this connection, is not that this trust is a creature of the common law, as distinguished from equity, but that this business trust is created under the common-law of contracts and does not depend upon any statute of the state. Brown v. Donald, (Tex Civ App) 216 SW2d 679; Colin v. Paine, 137 Wash 566, 243 P 2, 247 P 476, 46 ALR 165; Schumann-Heink v. Folsom III 321, 159 NE ALR 485.

^{12.} Sears, Trust Estates, page 1, paragraph 1, "It implies two interests, one legal and the other equitable; the trustee holding legal title or interest and the cestui que trust or beneficiary holding the equitable title or interest." See also 156 American Law Reports 102, paragraph 2, "Where (*as is usually the case*) the legal title to the trust property is vested in the trustees, the shareholders have an equitable interest in the property."

^{13.} The most extensive treatment of corporate characteristics as they apply to trusts is found in Outlaw v. United States, 494 F.2d, 1376-1386; see also Morrissey v. Commissioner, 296 U.S. 344-362.

^{14.} 13 American Jurisprudence, 2d, 378, paragraph 5, "One of the objectives of business trusts is to obtain for the associates most of the advantages of corporations, without the authority of any legislative act and with the freedom from the restrictions and regulations generally imposed by law upon corporations."

^{15.} 13 American Jurisprudence, 2d, 405, paragraph 35; see also page 430, paragraph 68; and 156 American Law Reports, 113, paragraph 3.

"It has been held that public policy is not offended by permitting a business to be carried on by trustees who limit their liability to the trust estate, nor under the prevailing view, do statutes authorizing limited

liability partnerships and corporation by implication prohibit the creation of other types of organizations, such as business trusts, enjoying similar immunity by virtue of the common law."

13 American Jurisprudence, 2d, 380, paragraph 6.

¹⁶. Regarding the tax treatment of trusts that distribute current income only; see [Internal Revenue Code, section 651](#), which reads (in part):

"SEC. 651. DEDUCTION FOR TRUSTS DISTRIBUTING CURRENT INCOME ONLY.

(a) Deduction. -- In the case of any trust the terms of which --

(1) provide that all of its income is required to be distributed currently, and

(2) do not provide that any amounts are to be paid, permanently set aside, or used for the purposes specified in section 642(c) (relating to deductions for charitable, etc. purposes), there shall be allowed as a deduction in computing the taxable income of the trust the amount of the income for the taxable year which is required to be distributed currently."

Regarding the tax treatment of trust income received by beneficiaries, see [Internal Revenue Code, section 652](#), which reads (in part):

"SEC. 642. INCLUSION OF AMOUNTS IN GROSS INCOME OF BENEFICIARIES OF TRUSTS DISTRIBUTING CURRENT INCOME ONLY.

(a) Inclusion. -- Subject to subsection (b), the amount of income for the taxable year required to be distributed currently by a trust described in section 651 shall be included in the gross income of the beneficiaries to whom the income is required to be distributed, whether distributed or not."

17. Regarding the imposition of an excise tax upon the transfer of assets by a U.S. citizen or resident to a foreign trust or corporation, see [Internal Revenue Code, section 1491](#), which reads:

"SEC. 1491. IMPOSITION OF TAX.

There is hereby imposed on the transfer of property by a citizen or resident of the United States, or by a domestic corporation or partnership, or by an estate or trust which is not a foreign estate or trust, to a foreign corporation as paid-in surplus or as a contribution to capital, or to a foreign estate or trust, or to a foreign partnership, an excise tax equal to 35 percent of the excess of --

- (1) the fair market value of the property so transferred, over
- (2) the sum of --
 - (A) the adjusted basis (for determining gain) of such property in the hands of the transferor, plus
 - (B) the amount of gain recognized to the transferor at the time of the transfer.

The basis for the terminology “common-law trust,” in this connection, is not that this type of trust is a creature of the common law, as distinguished from equity, but that the business trust is created under the common law of contracts and does not depend upon any statute of the state. [Brown v. Donald, \(Tex Civ App\) 216 SW2d 679](#); [Colin v. Paine, 137 Wash 566, 243 P 2, 247 P 476, 46 ALR 165](#); [Schumann-Heink v. Folsom, 328 Ill 321, 159 NE ALR 485](#).

ADDITIONAL CASE LAW SUPPORTING THE USE OF CONTRACTUAL BUSINESS TRUSTS...

- A. Certificate holders are devoid of legal rights, have no officers, and must remain forever mute:
[Bourchard v. First People's Trust, 253 Mass 351, 148 NE 895](#)
- B. Right to Contract:
[Schumann-Heink v. Folsom, 159 NE 250](#) (1927)
- C. U.S. Supreme Court upholds "due process" clauses of both Fifth and Fourteenth Amendments:
[Patterson v. Bank Endora, 190 US 169, 47 L Ed 1002, 23 S Ct 821](#) (1903);
[Muller v. Oregon, 208 US 412, 52 L Ed 551, 38 S Ct 324](#) (1908);
[Frisbie v. U.S., 157 US 160, 39 L Ed 657, 15 S Ct 586](#) (1895).
- D. Trust contract is for private parties and not registered with state corporation commissioners:
[Hodgkiss v. Northland Petroleum Consolidated, 104 Mont 328, 67 P 2d 811](#);
[Elliott v. Freeman, 220 US 178](#) (1911)
- E. Certificate holders enjoy greater immunity from personal liability:
[Goldwater v. Oltman, 210 Cal 408, 292 P624, 71 ALR 871](#)
- F. Freedom from the burdens, restrictions, and regulations generally imposed on corporations:
[Ashworth v. Hagen Estates, 165 VA 151, 181 SE 381](#)
- G. U.S. Supreme has acknowledges the trust contract as "pure" or "true":
[Hecht v. Malley, 265 US 144](#) (1924);
[Navarro v. Lee, 446 US 458](#) (1980).
- H. Business trusts are found in Corpus Juris Secundum, American Jurisprudence, 2d, pgs 371-468 and California Jurisprudence, 3d., pgs 673-681.
- I. Business trusts are recognized under the term "common law trust":
88 Am Law Rpts d. 704, citing [Schumann-Heink v. Folsom, 328 Ill 321, 159 NE 250, 50 ALR 485](#);
[Burnett v. Smith, 240 SW 1007](#) (1922);
[Baker v. Stern, 58 ALR 462](#).
- J. Internal Revenue Regulations acknowledge Contract Trust Organizations:
Internal Revenue Regulation 301.7701-4(b) vs (a);
[Berry v. McCourt, 204 NE 2d 235, 240](#) (1965)
- K. An "exchange" is (1) a reciprocal transfer of property and (2) the giving of one thing for another in kind and excluding money as a basis of measure:
Treasury Regulation 118.39.112(a)1.(e);
[Trenton Cotton Co. v. Comm., 147 F 2d 33](#) (1945).
- L. The owner of beneficial certificates are not owners as are stockholders, possessing ownership or voice:
[Becker v. St. Louis Union Trust Bank, 296 US 48,50; 80 L Ed 35, 56 S Ct 78](#)
- M. Certificates are personal property, have no ascertainable "fair market value", and therefore convey no interest in the trust property:
[Estate of Anderson v. Commissioner of Internal Revenue, 8 Tax Court 706, 721](#);
[Parker v. Monamaric Trust, 278 SE 321](#);
13 Am Jur 2d, page 395, §23, footnote 9.
- N. No capital gains tax if the transfer, sale or exchange is made at arm's length or if on less than adequate consideration:
Internal Revenue Service "Federal Estate and Gift Taxation Publication," #488;

- Tyson v. CIR, 146 F 2d 50 (1944).
- O. Full and adequate consideration is met by issuance of trust certificates in exchange for property:
Carpenter v. White, CIR 80 F 2d 145
- P. The measure of the gain...of an exchange is the difference between the cost...basis...fair market value...:
Internal Revenue Code 1011 (a), (b);
Parrington v. Attorney General, LRHL 100.122
- Q. No “Equitable Construction” of a tax statute, Code must be strictly construed:
U.S. v. Merriam, 263 US 179 (1923);
Commissioner v. Harrelson, 282 US 55 (1930);
Gould v. Gould, US 151.
- R. Fair market value is the price...between a willing buyer and a willing seller...:
Davis v. U.S., 287 F 2d 168, 82 S Ct 805, affirmed in part and reversed in part on other grounds, 370 US 65, 82 S Ct 1190, 8 L Ed 335, Rehearing denied 371 US 854, 83 S Ct 14, 15 (1961).
- S. Section 111(b) requires...capital gain be measured by “the fair market value”...received by the taxpayer...:
Commissioner v. Marshman, CA6 279 F 2d 27, Cert. den., 364 US 918, 8 S Ct 282, 286; 5 L Ed 2d 259 (1960);
Maxfield v. US, 152 F 2d 593, Cert. den. 2 Cases, 327 US 791, 66 S Ct 821.90.
- T. Internal Revenue Service’s definition of “fair market value” cannot change from one instance to another: i.e.; no tax is assessed on the conveyance of property to a Trust because it constitutes a tax-free trade and exchange for Trust Certificates, which have only a contingent future interest of indeterminable value. Capital gains are not paid until any gain is realized. The tax is not evaded or avoided...it is merely deferred!
Burnt v. Logan, 283 US 404 (1931)
- U. Interest which terminate “on” or “before” death are not a proper subject of the Federal Estate Tax:
Knowlton v. Moore, 178 US 41, 20 S Ct 747, 44 L Ed 969 (1900);
YMCA v. Davis, 264 US 47 (1924), 44 S Ct 291, 68 L Ed 564;
Goodman v. Granger, 243 F 2d 264 (1957);
Babb v. U.S., 349 F Supp 792(1972)
- V. The trust owns the property, certificate holders are not treated as co-owners:
National City Finance v. Lewis, (Cal App), 3P 2d 316, (Rehearing denied) 4 P 2d 163
Beilin v. Krenn & Dato, 350 Ill 284, 183 NE 330;
Hemphil v. Orloff, 238 Mich 508, 213 NE 867, 58 ALR 507, affd 277 US 537, 72 L Ed 978, 48 S Ct 577, Annotation 156 ALR 32;
Goldwater v. Oltman, 210 Cal 408, 292 P624, 71 ALR 871.
- W. The trust does not escape the necessity of having substance and business motives:
Thompson v. Commissioner, 631 F 2d 642, 646 (1980), Cert Denied, 452 US 961 (1981);
Edwards v. Commissioner, 415 F 2d 578, 582 (10th Circuit);
Lewis and Talor Inc. v. Commissioner, 447 F 2d 1074 (1971).
- X. The fact that transactions of business are so arranged that tax consequences are highly favorable affords no license to the government to recast it into a mold of less advantage:
Gyro Engineering , Inc v. U.S., 415 F 2d 578, 582;
Peter Pan Seafoods, Inc. v. Commissioner, 417 F 2d 670;
Weeks v. Sibley, (D.C.) 269 2d 155

- Y. When legal and equitable title, possession and control of property are legally and irrevocably passed from the Trustor to himself as Trustee in legal contemplation, it is as though the Trustee receiving the conveyance is another person:
[Commissioner of Internal Revenue v. St. Louis Trust Bank Co, 296 US 48, 50](#) (1935);
[Hemphill v. Orloff, 48 S. Ct. 577, 277 US 537.](#)
- Z. Property invested in the Contract trust must be fixed and irrevocable:
[Becker, Collector of Internal Revenue v. St. Louis Trust Bank Co, 296 US 48, 50; 80 L Ed 35, 56 S Ct 78;](#)
[Bank of America National Trust & Savings Association v. Scully, 92 F. 2d 97 \(C.A. 10, 1937\).](#)
- AA. Genuine contractual obligations control the substance:
[Estate of Hilton Goodwin, T.C. Memo 1976-238](#)
- AB. Trustees of the trust have the exclusive power to interpret or construe trust indenture intent and direction:
[Cohen v. U.S. Trust Securities Corporation, 40 NE 2d 282](#)
- AC. Statutes may authorize limited liability to partnerships and corporations, but those statutes do not by implication prohibit contract trust for similar immunity by virtue of the Common Law:
[Goldwater v. Olman, 210 Cal 408, 292 P624, 71 ALR 871](#)
- AD. Contract trust trustees and beneficiaries are not associated in a joint action:
[Elm Street Realty Trust, 76 TC No 68](#) (1981);
[Morrisey v. Commissioner, 296 US 34](#) (1935);
[Crocker v. Malley, 249 US 223](#) (1919);
IRS Reg 301.7701-1, 2 (a) 2;
[Schumann-Heink v. Folsom, 159 NE 250](#) (1927), annotations [58 ALR 485;](#)
[Hecht v. Malley, 265 US 144](#) (1924).
- AE. "Person" includes an "unincorporated organization or group":
Uniform Commercial Code, 1201(28), General definitions;
California Civil code, Section 23038 (b);
Internal Revenue Regulation 301.7701-1(a);
[Internal Revenue Ruling 73-254;](#)
RUPA approved by the Nat'l Conference of Commissioners on Uniform State Laws (NCCUSL) as late as November 2, 1992.
- AF. Are these entities taxes as corporations or as trusts:
[Commissioner v. Brouillard, 70 F 2d 154, 157, Cert. den 293 US 574](#) No. 152
- AG. U.S. Supreme Court articulated the standard for determining the above question:
[Commissioner v. Brouillard, 70 F 2d 154, 157, Cert. den 293 US 574](#) No. 152;
[Commissioner v. Shepherd Syndicate, 70 F 2d 154, Cert den. 293 US 574](#) No. 152;
[Commissioner v. Pryor & Lockhart Development Co., 70 F 2d 154, Cert den. 293 US 574](#) No. 152;
[Hemphill v. Orloff, 277 US 537, 48 S Ct 577, 72 L Ed 978](#) cited in Brouillard, [Ibid.](#)
- AH. The income from a foreign trust, not connected with conduct of business or trade within US, is not included in gross income under subtitle A (Income Taxes)
[Internal Revenue Code Sec 7701\(a\)\(31\)](#)
- AI. Transfers of real or personal property not fraudulent conveyances.
[Rosemary Burns v. Commissioner TC Memo 1141](#), 1989 Case;
[Zahra Spiritual Trust 90-2 USTC](#) (1990);
[S.J. Mayors 86-1 USTC](#) (1986);
[J. Miele 87-2 USTC](#) (1987);

- H. Almassi 92-2 USTC (1992).
- AJ. Transfers to trust constitute no sale to report unsecured transaction.
Sidney & Vera Stern v. Commissioner, TC Memo 1992-374;
Alfred Schwartz et al v. US, 40-1 USTC 9369;
Frank Carpenter et al v. Thomas White, 35-1 USTC 9033.
- AK. Fair market value by buyer - no reportable sale by seller.
Jerry & Edna Hall v. Commissioner, TC Memo 1993-198;
US v. Thomas Davis et al, 62-2 USTC 9509;
Bar L. Ranch Inc v. US, 70-1 USTC 9399;
Raymond Mitchell v. Commissioner, 65 TC 1099;
Tasty Baking Co v. US, 68-1 USTC 9366;
Commissioner v. Homer & Ina Mae Marshman.
- AL. Trust transfers not subject to gift tax.
Estate of Monroe Anderson v. Commissioner, 8 TC 706 (A) (1947);
Letter Ruling 8634004;
Carl Weller v. Commissioner, 38 TC 790;
Eva Hull v. Commissioner, TC Memo 1962-199.
- AM. Bankruptcy cash assets of trust not available to creditors.
Homer & Nancy Lou Wilson v. US, 92-2 USTC
- AN. Single trust valid -- Multiple trusts valid.
Edward Stephenson Trust v. Commissioner, 81 TC 283
- AO. No emergency justifies a violation of any Constitutional Provision.
No National emergency or Executive Order, including but not limited to, The Act of October 6th, 1917, as amended [[12 USCS Sec. 95a](#)] March 9, 1933, shall nullify any of the Constitutional Protections of this "Trust Estate". "No emergency justifies a violation of any Constitutional provision." 16 Am Jur 2nd Ed. 71, 72 "The prohibitions of the federal constitution are designed to apply to all branches of the national government and cannot be nullified by the executive and senate combined." Reid v. Covert, ant, US 1, 1 ~ Ed 2nd 1148 (1951)
- AP A Trust may be molded and given trust whatever shape the trust Creator desires, even for probate avoidance, it is still a lawful, irrevocable, separate legal entity.
Shaw v. Paine, 12 Allen (Mass) 293; Harwood v. Tracy, 118 MA 631. 24 S.W. 214
- AQ. The Trustees of a Trust have all the powers necessary to carry out their obligations which they assume... and their books and records are not subject to review or subpoena.
Smith v. Morse, 2CA 524; Boyd v. US, 116 US 618; Silverthorne Lumber Company v. U.S., 1251 US 385
- AR. A Pure Trust Is Non-statutory.
A Pure Trust is not subject to legislative control. The supreme court holds that the Trust is created under the realm of equity under the common law and is not subject to legislative restrictions as are corporations and other statutory entities created by legislative authority.
Crocker v. MacCloy, 649 US Supp 39 at 270; Elliot v. Freeman, 20 U.S. 178
- AS. All subjects over which the sovereign power of the state extends [i.e. corporations or other statutory entities] are objects of taxation [and regulations], but those over which it does not extend are exempt from taxation [and regulation]. This proposition may almost be pronounced as self-evident. The sovereignty of the state extends to everything which exists by its authority or its permission."
McCulloch v. the State of Maryland, 4 Wheat, 316
Crocker v. Malley, 264 U.S. 144; Gleason V. Mckay 134 Mass 419; Goldwater v. Oltman, 624
- AT. Other cases of interest to read:

[Clagett v. Kilbourne, 66 US 346;](#)
[Coleman v. McKee, 257 SW 328;](#)
[Reeves v. Powell, 267 SW 328 \(1924\);](#)
[Forgan v. Mackie, 232 Mich 476, 205 NW 600;](#)
[Wagoner Oil & Gas Co. v. Marlow, 278 Pacific Reporter 294, 134 Oklahoma 116;](#)
[Weber Engine Co. v. Alter, 245 Pacific Reporter 143, 120 Kansas 557, 46 American Law Reports 158;](#)
[Newhall v. McGill, 212 Pacific Reporter 2d 764;](#)
[Wilmington Trust Co v. Wilmington Trust Co, 186 A 903; Del Ch 183;](#)
[Estate of Comer v. Commissioner of Internal Revenue, 856 F 2d 755.](#)

MONEY LAUNDERING CONTROL ACT

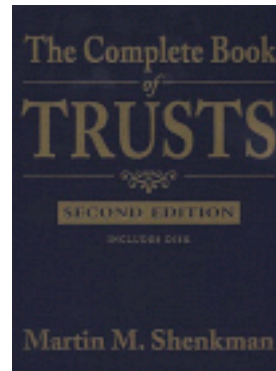
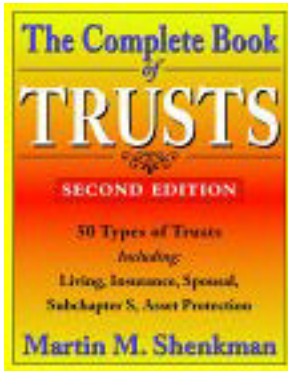
THE MONEY LAUNDERING CONTROL ACT (the "Act") makes it criminal for anyone to conduct, or attempt to conduct, certain financial activities which involve the proceeds of unlawful activities. As the transfer of assets into a limited partnership, trust, or other entity may constitute a financial activity within the scope of the Act, it is necessary that you swear under oath that none of the assets intended to be transferred into such entities was derived from any of the criminal activities specified in the Act.

- (a) The specified unlawful activities under the Act consist primarily of drug-trafficking offenses, financial misconduct and environmental crimes. Drug-trafficking offenses include the manufacture, importation, sale, or distribution of controlled substances; the commission of acts constituting a continuing criminal enterprise; and transportation of drug paraphernalia.
- (b) Covered financial misconduct includes the concealment of assets from a receiver, custodian, trustee, marshal, officer of the court, creditors in a bankruptcy proceeding, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or a similar agency or person; the making of a fraudulent conveyance in contemplation of a bankruptcy proceeding or with the intent to defeat the bankruptcy law; the giving of false oaths or claims in relation to a bankruptcy proceeding; bribery; the giving of commissions or gifts for the procurement of loans; theft, embezzlement, misapplication of bank funds, or funds of other lending, credit, or insurance institutions; the making of fraudulent bank or credit institution entries, loan, or credit applications; and mail, wire, bank fraud, bank, or postal robbery or theft.
- (c) Environmental crimes include violations of the Federal Water Pollution Control Act, the Ocean Dumping Act, the Safe Drinking Water Act, the Resources Conservation and Recovery Act, and similar federal statutes.

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- (d) Other specified crimes include counterfeiting, espionage, kidnaping or hostage-taking, copyright infringement, entry of goods by means of false statements, smuggling goods into the United States, removing goods from the custody of Customs, illegally exporting arms, and trading with United States enemies.

Note: The Internal Revenue Service has become aware of serious widespread tax abuses involving the use of business trust entities. The IRS notes that some promoters argue that business trusts can eliminate **all** self-employment tax and **most of** the individuals income tax, plus take business deductions for expenses which otherwise would be non-deductible personal living expenses of the taxpayer. They go on to quote such cases as [Schultz v. Commissioner, 50 AFTR 2d 82-5562](#); [Holman v. U.S. 5 AFTR 2d 84-862](#); [Schmidt v. U.S. 68 AFTR 2d 91-5005](#); [Zmuda v. Commissioner 53 AFTR 2d 84-1269](#); [Wesenberg v. Commissioner 69 TC 1005](#); and [Smith v. Commissioner TC Memo 1986-487](#) to name a few. It is important to note in the Schultz case, the courts firmly stated that “it is fundamental to our income tax regime that personal consumption expenditures - food, clothing, travel, education, entertainment - do not generate income tax deductions unless they are inextricably linked to the production of income. The trust devices here [Schultz] are a transparent attempt to transfer all of the family activities into trust activities and all the families expenses into expenses of trust administration.” **Make sure that any trust you create is for a legitimate enterprise and not “an extension of your alter-ego!!!!”**



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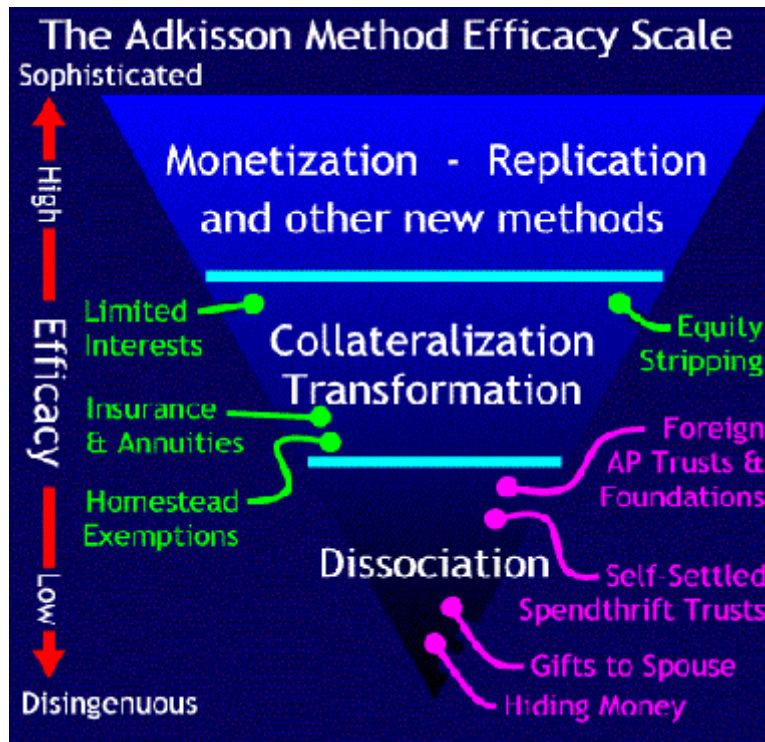
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We all hide within our “comfort zone.” Where is your “comfort zone” based on the above Efficacy Scale? Do you hide money? Would you use an independent trustee? What would you do and at what cost? Asset protection and estate preservation costs!

Chart of Tax Management benefits:

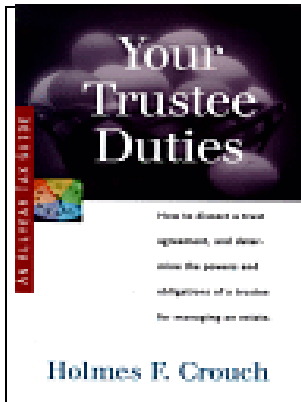
Title 26 §§ of US Code or Code of Federal Regulations	Brief description of Section:
61	Gross Income Tax Defined
245(b)	Certain Dividends Received from Wholly Owned Foreign Subsidiaries
367(a)(1) and (3)(B)(iii)	Foreign Corporations ~ Transfers of Property from the United States ~ General Rule and Exception for Transfers of Certain Property Used in the Active Conduct of a Trade or Business ~ Paragraph Not to Apply to Certain Property
367(c)(1)	Foreign Corporations ~ Transactions to Be Treated as Exchanges ~ Section 355 Distribution
367(d)(B)	Foreign Corporations ~ Special Rules Relating to Transfers of Intangibles ~ in General
643(a)(3) and (6)(C)	Definitions Applicable to Subparts A, B, C, and D ~ Distributable Net Income ~ Capital Gains and Losses and Income of Foreign Trust ~
643(g)(1)(A)	Definitions Applicable to Subparts A, B, C, and D ~ Certain Payments of Estimated Tax Treated as Paid by Beneficiary ~ in General ~ in the Case of a Trust--
644(a)(1) and (2)	Taxable Year of Trusts ~
645(a)	Certain Revocable Trusts Treated as Part of Estate ~ General Rule
651(a)(1) and (2)	Deduction for Trusts Distributing Current Income Only ~ Deduction
652(a) and (b)	Inclusion of Amounts in Gross Income of Beneficiaries Of Trusts Distributing Current Income Only ~ Inclusion and Character of Amounts
661(a)(1)	Deduction for Estates and Trusts Accumulating Income Or Distributing Corpus ~ Deduction
663(a)(1); (2) and (3)	Special Rules Applicable to Sections 661 and 662
667(a)(1), (2), (3); (b)(5) and (c)	Treatment of Amounts Deemed Distributed by Trust in Preceding Years ~ General Rule; Tax on Distribution ~ Multiple Distributions in the Same Taxable Year and Special Rule for Multiple Trusts
668(a)	Interest Charge on Accumulation Distributions from Foreign Trusts ~ General Rule
1.671-1(c)	Grantors and Others Treated as Substantial Owners; Scope
1.671-2(a)	Applicable Principles

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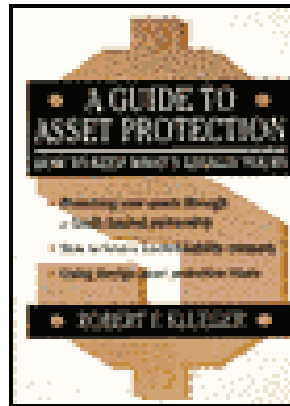
1.671-2(b)(4)	Applicable Principles
1.672(a)-1(b)(c)	Definition of adverse party
1.674(a)-1(b)(3)(c)	Power to control beneficial interest
1.674(b)-1(5)(1)	Excepted powers exercisable by any person
1.674(b)(8)	Excepted powers exercisable by any person
1.674(c)(1)	Excepted powers exercisable only by independent trustees
1.674(d)(1)	Excepted powers exercisable by any trustee other than grantor or spouse.
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864(b)(1)(A) and (B)	Definitions and Special Rules ~ Trade or Business Within the United States ~ Performance of Personal Services for Foreign Employer
864(c)(1)(A); (2); (3); (4)(A), (B), (D)(i)(ii); (5)(B) and (6)	Definitions and Special Rules ~ Effectively Connected Income, Etc. ~ General Rule; Periodical, Etc., Income from Sources Within United States--factors; Other Income from Sources Within United States; Income from Sources Without United States; Rules for Application of Paragraph (4)(B) and Treatment of Certain Deferred Payments, Etc.
872(b)(3)(A) and (B)	Gross Income ~ Exclusions ~ Compensation of Participants in Certain Exchange or Training Programs
2501(b)(2)	Imposition of Tax ~ Taxable Transfers ~ Transfers of Intangible Property
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301.7701-4(b)	Trusts

There are of course other sections which relate to trust income; i.e.: within and without the United States, and connected with a trade or business, Domestic and Foreign/Offshore Trusts. Then there are of course many Court case cites that are available which support IRS Codes, Regulations, and Private Letter Rulings relating to 'Trusts'. For Offshore Trusts and International Business Corporations (IBC's); many of these IRS Codes, Regulations and Private Letter Rulings apply.

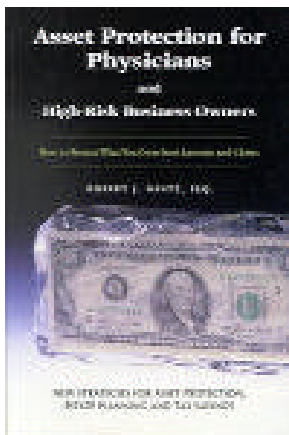
Other Readings:



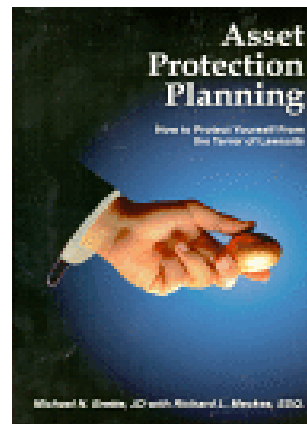
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APPENDIX “A”

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APPENDIX “B”

Types of **Statutory Law** Trust Chart

Trusts are statutory creatures - that means they are created by statutes legislated and regulated by the several states. They are continually under the scrutiny and interference of the states. Trusts also **MUST** split the “*equitable*” and “*legal*” title of the same piece of property. Trustees hold *legal title* while beneficiaries look to and anticipate the *equitable title* sometime in the future. The following chart is only a partial list of all the types of statutory law trusts available in the US. There are a host of other “so-called” trusts with expensive names and fancy labels but when reduced to their basic objectives; fit into one of the categories listed below. In either event; every entity below requires the highest degree of fiduciary responsibility over not only the conservation of the assets but the distribution of assets, income, interest, dividends, etc. Taxes need to be paid, investments must be wisely considered, and books still have to be kept. Please consider the best person, individual or corporate, for the task set before them. If using your children as fiduciaries; select the most competent, not necessarily the first born to fill those shoes and you won’t be sorry.

Type / Name(s) of Trust:	Brief description of what it does:
2503(c)	Protects minor children while still qualifying for maximum gift tax benefits.
\$5000 or 5%	Allows a beneficiary to demand a non-accumative distribution of \$5000 or 5% of the trust assets each year in addition to any others rights to income, interest, dividends, etc.
Alimony	Utilized to pay alimony to your ex-spouse insuring that the ex-spouse pays all income taxes that arise from the trust; not the creator of the trust.
Asset Protection (APT)	Usually a foreign trust created to protect assets. Also referred to domestically as an irrevocable 1041 contractual organization. These are categorized as “common law” trust but they are really not trusts but contracts cast in the form of a trust.
Charitable Lead Annuity	This is a charitable lead trust where the payment is based on an annuity.
Charitable Lead (CLT)	You give \$\$\$ or property to the trust, the charity(ies) receive annuity payments, and your designated beneficiary(ies) get all the principal when the trust ends.
Charitable Lead Unitrust	This is a charitable lead trust where the payment is based on a unitrust payment.
Charitable Q-TIP	A trust for the spouse’s benefit which upon their death is paid to a charity.
Charitable Remainder Annuity (CRAT)	A charitable remainder trust that makes payments to you based on annuity payments (a fixed percentage of the initial value of the funding assets).

APPENDIX “B”

Charitable Remainder (CRT)	This trust is funded with unencumbered but highly appreciated assets such as real estate, stocks, etc. The trustee sells the assets devoid of capital gains taxes. You & your spouse receive annual income and upon death of the principal(s); the charity receives the remainder of the principal, if any exists. Meanwhile, you get the charitable tax contribution based on the present value of the charity’s future interest.
Charitable Remainder Unitrust (CRUT)	This is a charitable remainder trust that makes payments to you based on a fixed percentage of the assets (usually easily valued) owned by the trust each year.
Children’s	Sometimes called a Minor’s Trust ...is for children, grandchildren, or other minors is designed to qualify for the \$10,000 annual exclusion.
Christofoni	This provision is usually coupled with a Crummey trust to allow the same annual exclusions be afforded even to a grantors’ grandchildren.
Complex	Is allowed to accumulate income and not distribute it annually. See Simple.
Credit Shelter (CST)	This trust is more commonly referred to as the “A” trust; Bypass Trust; Unified Credit Trust, etc. is used to double the lifetime exclusion for married couples.
Crummey	This trust contains unique provisions that allow you to make completed gifts for your children that qualify for the annual exclusion amount that can be taken or refused.
Foreign Situs	A trust formed in a foreign county for legal or tax benefits.
Generation Skipping Transfer (GST)	Used to transfer the \$1 million GST tax exemption to the grantor’s grandchildren. It minimized the impact of extremely costly generation skipping tax transfers.
Grandchildren’s	Grandparents establish this trust to provide for the education of their grandchildren.
Grantor Retained Annuity (GRAT)	A gift made now, for which the grantor keeps receiving the income each year based on annuity payments, for any number of years the grantor desires.
Grantor Retained Interest (GRIT)	In this arrangement, the grantor retains an interest (e.g., the right to all income) for a specified period of time. The principal is then given to the beneficiaries.
Grantor Retained Unitrust (GRUT)	For a gift made now, the grantor keeps getting annual income based on the fair market value of the property, for a specified period of time.
Irrevocable Life Insurance (ILIT)	This trust is used to keep large insurance policy proceeds out of your estate. It also protects valuable insurance proceeds from creditors.
Inter Vivos (Living)	This is the stock, standard, “A”, “A-B”, or “A-B-C” family trust setup.
Inter Vivos Credit Shelter	Allows you to use pension or IRA assets to fund a credit shelter trust to utilize your unified credit amount.
Inter Vivos Q-TIP	Permits you to fund a Q-TIP (marital) trust with pensions or IRAs.

APPENDIX “B”

Irrevocable	A trust that cannot be altered, amended, or changed by the creator.
Massachusetts Realty	A real estate holding trust unique to the State of Massachusetts.
Medicaid Avoidance	Keeps your, or your special child’s, assets safe from nursing home/Medicaid claims.
Multiple Children’s	Sets up separate trust for each child. Keeps their assets safe from creditors.
Personal Residence (PRT)	Used to remove your primary/vacation home from your estate at a reduced tax rate.
Pooled Income	You can contribute property and in exchange participate in the investment pool managed by the charity for the term of the trust.
Pot	This is a single trust set up for all your children beneficiaries to be distributed based on the need of each child.
Qualified Domestic (Q-DOT)	Obtains maximum gift or estate tax savings by qualifying a gift or bequest to your spouse who is not a US citizen.
Qualified Personal Residence (QPRT)	A trust used to remove the value of your primary/vacation home from your estate at a discounted gift tax rate.
Qualified Subchapter S (QSST)	A special trust utilized to hold “S” corporation stock without jeopardizing “S” corporation tax benefits.
Qualified Terminal Interest Property (Q-TIP)	Commonly referred to as the “C” trust; it has many uses (e.g., excesses above the first to die grantor’s lifetime exemption is placed inside it for federal tax deferral).
Rabbi	This trust is used to provide a degree of asset protection for compensation benefits.
Revocable	Just the opposite of an irrevocable trust.
Right of Election	Allows a spouse the least amount of assets allowed by law with the most control over where those assets will be distributed upon death.
Special Needs	Gives protection to the assets and provides for a child/beneficiary with special needs.
Spendthrift	A simple provision that prohibits assets from a beneficiary’s creditors.
Sprinkling	Used with flexibility for the trustee to distribute income and assets to beneficiaries.
Unitrust	A type of grantor retained or charitable remainder trust.
Voting	Provides control of stock in closely held or family businesses to assure management and operations as you determine best.
Zero Inclusion	A trust for grandchildren which are planned for GST exemption.