

TRANSFERRING ASSETS TO A TRUE PURE IRREVOCABLE TRUST

(Commonly known as an Unincorporated Business Organization or U.B.O.)

The Unincorporated Business Organization (U.B.O.) trust is an organization born out of common law. It is different from a statutory trust in that it is a contractual business contract that has 100% legal ownership of assets vested in the Trust. (the more common statutory trust arrangement usually has legal ownership vested in the Trustee and equitable ownership belonging to the named beneficiaries).

The U.B.O. has Beneficial Interest Certificate Holders rather than beneficiaries—and these Beneficial Interest Certificate Holders have no equitable ownership and only restricted rights under the contract (i.e. they are entitled to a pro-rata share of any trust distributions during the life of the trust and a pro-rata share of any distributions upon the termination of the Trust). However, since the Trustee(s) have total discretionary power (they can decide if and when to ever make a distribution), the Beneficial Interest Certificate Holders can only hold their certificates and wait for such a decision/distribution from the Trustee.

This rather “weak” position of the Beneficial Interest Certificate Holders is very important, because it frustrates the IRS in their attempts to immediately tax exchanges of appreciated capital assets into the U.B.O. (exchanges of assets of certificates). An exchange or sale would normally trigger a taxable event, but the actual date of the event is not yet determined—thus the certificates are used to create an exchange of “equal, but indeterminable value”. That is, the exchange of assets for certificates is deemed an equal exchange, but because there is no public market (i.e.: as a stock market) that can put a value on the certificates for tax purposes—and since the Beneficial Interest Certificate Holder won’t receive any distribution of money or profits until later, at the discretion of the Trustee—the exchange also must be viewed as having an “indeterminable value”. Since the certificates have no marketable value and receipt of any profits is at some unknown time in the future, the IRS is prevented from taxing the Beneficial Interest Certificate Holder on any “profits” at the time of the exchange. In such a case, the IRS must also wait.

Another way to view this issue is that the Beneficial Interest Certificate Holder does not report any gain from the exchange nor does the trust receiving the assets. The tax basis in the property exchanged into the trust is now reflected in the certificates and does cause the certificates to take on a taxable status, but any tax liability can only be determined later—if and when the Beneficial Interest Certificate Holder receives payment from the trust. If payment is never received, there will never be a tax!

There are ample court cases and/or citations to support the tax treatment of the exchange. Burnet v Logan, 283 US 404: “The U. S. Supreme Court ruled that if property received in an exchange has no fair market value, it does not represent taxable gain to the recipient.

American National Bank of Joseph v U.S., 92 F Sup. 403 (1950): “Market Value” for the purpose of internal revenue law is the price at which a seller is willing to sell at a fair price and a

buyer is willing to buy at a fair price, both having reasonable knowledge of the facts in the trade”.

Palmer et. al. v Taylor et. al. 269 S.W.995 (1925): “Organization of a Common Law Business Trust was held to not be unlawful and subscription to trust certificates in such trust was determined not to be a gift, but an investment.

Note: For comprehensive discussion of court decisions regarding Business Trust Organization, consult Volume 13, American Jurisprudence 2nd Edition, under “Business Trusts: and Volume 156, American Law Review 1st Edition, under “Massachusetts or Business Trusts”.

EXCHANGE PROCEDURE

For Conveying Property into the Trust in Exchange for BIC's - (Beneficial Interest Certificates)

When you (or another party) want to transfer property into the Trust Organization in exchange for BIC's, you take on the role of "EXCHANGER", who will do the following:

1. The Exchanger will submit a written proposal to the Managing Director or to the Board of Trustee(s) regarding the property you would like to transfer into the U.B.O., (Unincorporated Business Organization), known as a Common Law Trust, in exchange for a specified number of Beneficial Interest Certificates.

2. The Board of Trustee(s) then meet, evaluate your proposal and either accept it as submitted (agreeing to the requested number of shares, etc.) or the Board requests more information or may make a counter proposal, subject to certain conditions, etc. The Managing Director(s), if submitting such a proposal, shall always get the Board's approval for final acceptance of the proposal.

3. Upon agreement of the potential Exchanger and the Board of Trustee(s), the Exchanger transfers the property to the Trust Organization and receives Beneficial Interest Certificates.

a) If PROPERTY is REAL ESTATE, a QUITCLAIM DEED, (valid in most states) and preferable, or a Grant or Warranty Deed, is applicable. The Exchanger deeds the property as follows:

To: THE GROSSE POINTE TRUST", that Trust created on June 4, 2010, with Jacqueline Marie Channer as the original Trustee.

b) If PERSONAL PROPERTY, create a simple Exchange Agreement (a Bill of Sale) and vest the property in the name of the Trust (same as the real estate vesting above). A Transfer of a Sole Proprietorship is a transfer of personal property.

4. When recording the Real Estate Grant Deed, or Quit Claim Deed in California, you will be asked to file a "Preliminary Change of Ownership Report" for the County Assessor's use. You state that you have placed your property into Trust for your own benefit for estate planning purposes and you have retained Beneficial Interest (see sample). Therefore, the property will not be considered a sale and not subject to reappraisal by the county Assessor.

5. All property exchanged or conveyed into the Trust must be entered on Schedule "A": or on an Addendum to Schedule "A".

PROMISSORY NOTE

\$ _____
Amount

City

State

Date

_____ after date, without grace, I promise to pay to the order of: Term of
Note

Creditor

_____ Amount
for value received, with interest at the rate of _____ percent per annum from date until maturity,
interest payable _____, and if not so paid, the

Monthly or at Maturity

whole of this note, both principal and interest shall forthwith become due and payable without demand at the option of the holder. After maturity, or on default, this note bears interest at the rate of _____ percent per annum until paid. Principal and interest payable in lawful money of the United States. In case suit or action is commenced to collect this Note or any portion thereof, I promise to pay, in addition to the costs provided by statute, such sum as the Court may adjudge reasonable as attorney's fees therein, (including any action to enforce the judgment). Any judgment entered hereon shall bear interest at the rate of _____ percent per annum.

Due _____
Month, day and year of Final Payment

Street Address

City, State & Zip

PRINT NAME(s)

PRINT NAME

Signature

Signature

No. _____

RECORDING REQUESTED BY

AND WHEN RECORDED, MAIL TO:

THE UNDERSIGNED GRANTOR DECLARES:
DOCUMENTARY TRANSFER TAX IS \$0.00

This is a *bonafide gift* for estate planning purposes,
and the grantor received nothing in return

Revenue and Taxation Code

Township of _____

Assessors Parcel # _____

GRANT DEED

THE GRANTOR, _____, states, for \$1.00 and other valuable consideration, conveys and quit claims the following described land, situated in San Bernardino County in the State of California, including any interest which Grantor may herein acquire to THE GROSSE POINTE TRUST a True Pure Irrevocable Trust, all of his Sovereign Allodial Rights, Title, and Interest in and to the following described private land and buildings located in San Bernardino County, California described as follows:

Signed under seal this ___ day of _____, _____. Signed under seal this ___ day of _____, _____.

Grantor

Grantor

STATE OF CALIFORNIA
SAN BERNARDINO COUNTY

On _____ before me, _____
Date Name of Notary

personally appeared _____, and proved to me on the basis of satisfactory evidence to the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person or the entity upon behalf of which the person acted.

Notary Public: commission expires ____-____-_____

BILL OF SALE OF PERSONAL PROPERTY

KNOW ALL MEN BY THESE PRESENT, that I, _____ of _____ CALIFORNIA, hereinafter called Seller(s), do give, grant, bargain, sell and convey to THE GROSSE POINTE TRUST, a True Pure Irrevocable Trust Organization,

All tangible personal property normally kept at residence of Seller(s) including, but not limited to, furniture, furnishings, dishes and china, tableware, computers, printers, associated software and books, sporting goods, boats, trailers, guns, books, paintings, other art objects, jewelry and collections of personal property, lawn furniture, tools, machinery and maintenance equipment, and items attached to the residence, but not considered real estate, all insurance policies on said tangible personal property and the proceeds from said policies resulting from claims therefrom; and the following additional tangible personal property:

_____.

Seller warrants that all said tangible personal property is owned by the Seller free and clear of all claims or liens and all said tangible personal property can be transferred by the seller.

Dated: _____

Seller

Dated: _____

Trustee for THE GROSSE POINTE TRUST

ACKNOWLEDGMENT FOR NATURAL PERSONS

We, the undersigned witness this day that the one(s) known to us to be the avowed signatories appeared before us this day and acknowledged that they signed and delivered the above and foregoing "Bill of Sale of Personal Property" for the uses and purposes therein set forth. We also understand that this document, when witnessed by two or more people, becomes a legal binding document under the law of the land.

Executed this _____ day of _____, _____.

Witness: _____ Witness: _____

Printed Name: _____ Printed Name: _____

BILL of SALE

To: THE GROSSE POINTE TRUST

From: _____

IN EXCHANGE FOR _____ BENEFICIAL INTEREST CERTIFICATES, receipt of which is hereby acknowledged, the undersigned Exchangers trade, exchange, convey and deliver the following described property to the above named Board of Trustee(s).

To wit:

1. The real property located at:

2. All the personal property located at the above address.

3. A sole proprietorship business engaged in the business of:

4. The following tangible assets (attach additional pages if needed):

_____.

5. The Good Will of the sole proprietorship:

6. Unknown, unaudited liquid assets in the bank(s).

7. Other:

_____.

Witness my (our) hand(s) this ____ day of _____, _____.

Exchanger

Exchanger

Acknowledged as received by the Board of Trustee(s) _____

PROPOSAL

To Exchange Property for Trust Beneficial Interest Certificates

To: The Board of Trustee(s) of: THE GROSSE POINTE TRUST

From: _____

Telephone: _____

Address: _____

City, State, Zip _____

Re: _____

Dear Board of Trustee(s):

After considering the benefits of transferring property into the above named trust, I have concluded that an exchange of certain property for Trust Beneficial Interest Certificates holds a promise of attractive future benefits. This offer is, therefore, submitted for your consideration.

I herein propose to exchange the following property for a minimum of _____ Trust Beneficial Interest Certificates. Further, it is understood that such an exchange would be neither a gift nor a sale, but a tax deferred exchange. If this meets with Board approval and if, indeed the Board feels that such an exchange would create future profits for the organization, please reply with directions on how to proceed.

Description of Property:

_____.

Existing liens against the property (if any)

_____.

The "basis" in the property for tax consideration is unknown. If you need further clarification respecting the above, additional information will be made available at your request.

Your immediate response will be appreciated. Thank you.

Sincerely,

_____ Date _____

_____ Date _____

INDEPENDENT WORKER AGREEMENT

TO ALL PERSONS, be it known, that this Independent Worker Agreement is by and between, THE GROSSE POINTE TRUST (Trust), herein after known as the Principal, and Jacqueline Marie Channer, herein after known as the Managing Director, hereby agrees to the following terms, conditions and obligations of the Agreement and Contract WHEREAS:

SPECIFIC LIMITED AUTHORITY

The Principal authorizes the Managing Director to undertake, commit and perform only the following acts on behalf of the Principal:

- A. Provide general management services of any business in which the Principal may be engaged. Manage the day to day business of the Principal's books and records.
- B. To conduct financial affairs of the Principal in an orderly manner with respect to deposits, withdrawals, loans and escrow arrangements.
- C. To open and maintain one or more checking, savings or other thrift accounts in the name of the Principal in any Financial institution and shall be the signatory of said accounts.
- D. To rent, lease, buy, sell, exchange, or convey any type of real estate in the name of the Principal and sign for same, on behalf of the Principal.
- E. To provide any additional services as directed by the Board of Trustee(s) of the Principal.

GENERAL PROVISIONS

- A. Managing Director is to provide equipment, tools and supplies necessary to fulfill the obligations of this Agreement and Contract. Should the Managing Director require equipment, tools and supplies not currently available to the Managing Director to fulfill a specific task, the Principal agrees to make said equipment, tools and supplies available to the Managing Director for rental. The Principal agrees to rent required equipment, tools and supplies for Ten Dollars (10.00) United States Silver Coin, for the length of time required to complete specific task(s).
- B. The Managing Director under the terms, conditions and obligations of this Agreement and Contract is an independent Contractor.
- C. The Managing Director may be presented to the General Public as an independent Contractor for other work or Contracts at the discretion of the Managing Director, who may advertise his/her services to the general public using any medium, including the use of business cards.
- D. It shall be understood that this Agreement and Contract is not exclusive and that the Principal has no right or authority to discourage or inhibit the Managing Director's right to enter into any other contracts as desired by the Managing Director.
- E. The working schedule required to fulfill the terms, conditions and obligations of this Agreement and Contract shall be exclusively set and maintained by the Managing Director. The Managing Director shall, after receiving the initial details and instruction from the Principal on the Duties and Responsibilities of the Managing Director, fulfill the terms, conditions and obligations of this Agreement and Contract absolutely free of any supervision of the Principal for the full and complete term of this Agreement and Contract.
- F. The Managing Director may be removed only upon unanimous vote of the Principal's Board of Trustee(s) on a complaint filed by the Beneficial Interest Certificate Holder and a finding of guilty of fraud, malfeasance or cause by a common law court and jury of competent jurisdiction.
- G. The Managing Director may not release the Principal's books or records currently managed by the Managing Director to any person, Organization, or Government Entity of any jurisdiction, including courts of law that may issue subpoena or court orders without unanimous written approval signed and notarized by the current Executive Trustee.
- H. The Principal's Board of Trustee(s) shall initiate, prosecute and defend any and all disputes that may arise between the Principal and any Person, Organization, or Government Entity. The Managing Director shall not be held liable for any disputes of the Principal. The Managing Director shall not at any time, receive service from any court on behalf of the Principal. In the case of a dispute between the Principal and any Person, Organization, or Government Entity, the Managing Director may only reveal that the Principals documents and information regarding the Board of Trustee(s) is of Public Record in the United States of America.
- I. The Managing Director shall be responsible for all personal applicable Local, State or Federal Taxes. The Managing Director shall be responsible for personal liability, medical, dental, life, or any other desired insurance coverage. The Managing Director shall hold the Principal harmless of liability for nonpayment of any of the Managing Directors obligations in this section.
- J. The Principal shall convey property to the Managing Director as follows: All Housing costs, Auto expenses, Transportation and all other reasonable expenses incurred by the Managing Director while fulfilling the terms, conditions and obligations of this Agreement and Contract.
- K. The term of this Agreement and Contract shall be from day to day until the Managing Director's resignation, demise or removal by the Principal's Board of Trustee(s) as per section F.

CONSIDERATION

A. The Principal agrees to compensate the Managing Director for services rendered under the terms, conditions and obligations of the Agreement and Contract, not to exceed the Sum of One Thousand Dollars (\$1,000.00) per month in property, plus any other expenses approved by the Principal Board of Trustee(s).

PROTECTION OF LAW

The authority of the principal and the Managing Director to enter this agreement and contract and to execute the duties under the terms conditions and obligations of this agreement and contract is protected under the provisions of 1:10, 1: 4:2: 6:2: 7: 4, 5, 6, 7, 9, 10, & 14: of the U. S. Constitution, the Supreme Law of the Land, wherein “no state shall pass any laws impairing the obligation of contracts”. The Principal, Managing Director, and the terms, conditions and obligations of this Agreement and Contract are not subject to Federal or State Legislative or Regulatory Control. See Hale v. Hinkle, 201 U.S. 43: U. S. v Dickerson, 413F 20 116; Hill v. Philpott, 445 F2nd 144, 146; Stuart v. U.S. 416 F2nd 450; U.S. v. Klackner, 273 F Supp 251.: Mattos v. U. S., 158 U.S. 237 at 243.; U.S. v. Wong Kim Ark. 169, 18 S. Ct. 456; State v. Simmons, 2 Spears 761, 767 (1884) Justice O’neil.; Talor v. Porter, 4 Hill 140, 146(1843) Justice Bronson.; Marbury v. Madison, 2 Cranch (5U.S.) 137, 176, 177 1803).; Fred Scott v. Sanford, 19 How. 393.; Reid v. Convert 354 U.S. 1(1957), 1 1, Ed. 2nd, 1148.; Miranda v. Ariz. 384 U.S. 436 at 491 (1966). USC 5 sec. 301 533 Note 3, 556, 566(d), 558(b).; USC 28 sec. 2072 at clause 2.; Standard v. Olsen, 74 S. Ct. 768. 48 Am.Jur 2nd Sec. 2 at pg 80.; Cophage v. Kansas, 236 U.S. 1, at 14.; Elliot v. Freeman 20 U.S. 178 (1911); Butchers Union Co. v. Cresent City Co.; Smith v. Morse, 2 CA 524.; Cooper v. Aaron, 358 U.S. 1. NOTICE: Any person, Federal or State Administrative Agent(s). Law Enforcement Officer(s), Legislator(s), Judicial Officer(s), who by act or omission or under color of law impair or abridge any or all of the terms conditions or obligations of this Agreement and Contract or impair the actions of the Principal or Managing Director named herein or their successors, while in the performance of their duties stated herein Under USC 18 Sec. 241 & 242 shall be subject to a fine up to \$10K and imprisonment up to 10 years, as well as Civil penalty under USC 42 Sec. 1983, 1985, 1986. SEE: Hafer v. Melo, No. 90-681, P. 4001 (Nov. 1991)

ACCEPTANCE & RATIFICATION

The Managing Director named herein accepts the position of Managing Director subject to the terms, conditions and Obligations of this Agreement and Contract and agrees to act and perform in said fiduciary capacity with the Principal’s best interest as the Managing Director’s discretion deems advisable. The Principal thereupon ratifies all acts carried out by the Agreement and Contract.

Signed this _____ . Signed this _____

THE GROSSE POINTE TRUST (Trust), Principal,
MANAGING DIRECTOR _____

by: TRUSTEE _____

RECORDING REQUESTED BY

AND WHEN RECORDED, MAIL TO:

*

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

**CERTIFICATION OF EXECUTION OF IRREVOCABLE, TRUE, PURE,
IRREVOCABLE TRUST ORGANIZATION AGREEMENT:**

KNOW ALL PEOPLE BY THESE PRESENTS: That the undersigned Trustee(s) have executed a True Pure Irrevocable Trust Organization under the name of: THE GROSSE POINTE TRUST as described in 13 AM JUR 2d, on this 4th day of June 2010.

That this agreement contains specified conditions and terms any and all of which are made a part hereof as fully and completely as if herein specifically set forth in full. The True Pure Irrevocable Trust Agreement (contract), explicitly states and provides that:

1. THE TRUSTEE(s) shall have all rights necessary to fulfill the purpose of this Irrevocable True Pure Irrevocable Trust and to conduct any legal business not specifically prohibited by this indenture.
2. THE INITIAL TRUSTEE(s) and Successor Trustee(s) shall serve without bonds of any nature being required.
3. THE TRUSTEE(s) shall, in the capacity of Trustee(s) and not individually assume only such liability as may attach to said Trust property assets. This Trustee liability shall not in any manner jeopardize their individual or personal holdings. If a Trustee should suffer a loss for any reason through services to the Trust, he shall be reimbursed from the Trust property, assets or income, to the same extent as would non-interested persons.
4. NOTICE IS HEREBY GIVEN to all persons, (companies or corporations) extending credit to, contracting with, or having claims against this True Pure Irrevocable Trust or the Trustee(s) thereof, that they must look only to the funds and property of the True Pure Irrevocable Trust Organization for payment or for settlement of any debt, tort, damage, judgment, decree, or for any indebtedness which may become payable hereunder.
5. TRUSTEE(s) POWERS shall be construed as general powers and Rights upheld under the Constitution for the united states of America as Citizens of these united states of America to do anything any Citizen may do in any state or country. They shall, but not be limited to, continue in business, conserve the property, commercialize the resources and extend an established line of business in industry or investment as herein specially noted, at their discretion for the benefit of the Trust such as: buy, sell or lease land for surface mineral rights; by or sell mortgages, securities, bonds, notes, commodities, trade credits, leases of all kinds, contracts or credits of any form, patent, trademarks or copyrights; buy, sell or conduct mail-order business, or branches thereof; operate stores, shops, factories, warehouses, or other trading establishments or places of business of any kind, allocate funds derived from any source for charity, religion, education, research, accumulation, or other purposes, whether for immediate or future application, to be managed by specified Trustee, or buy, sell, lease, or rent any type of real estate, improved or unimproved; advertise different articles or business projects; borrow money for any project,

pledging the Trust property or the payment thereof; hypothecate assets, property, or both; own stock in, or entire charters of corporations, or other properties, companies or associations as they may deem advantageous.

6. NO Beneficial Interest Certificate Holder shall be entitled to any distribution, as a matter of right, either from income or corpus. A True Pure Irrevocable Trust certificate (BIC) owner shall not be entitled to any undivided interest therein, nor to any legal title to or in any Trust property not in the management thereof. Neither the heirs of the Beneficial Interest Certificate Holder, nor the legal representative thereof shall be entitled to any special accounting nor to make any demand against any property of the True Pure Irrevocable Trust. Bankruptcy, insolvency, transfer or death of any Beneficial Interest Certificate Holder shall not act to dissolve this Trust nor shall it have any effect upon the operation thereof.

7. NO PERSON, CORPORATION, ENTITY or another True Pure Irrevocable Trust who purchases any of the property of the Trust, or in any manner deals with the True Pure Irrevocable Trust or with the Trustee(s) shall be required to inquire into the authority, expediency, propriety, validity, or necessity of the Trustee(s) to make or perform any transaction whatsoever, or to account for the application or disposition of any account, nor shall they be in any way responsible for the proper use or application of such funds or properties transferred by them to the Trustee(s) or True Pure Irrevocable Trust under terms of this True Pure Irrevocable Trust.

8. THE NAME and signature of the Creator is: _____
Patricia Martin

NOTICE IS HEREBY SERVED that as of this date, the current Trustee's name and signature of said True Pure Irrevocable Trust is: _____
Jacqueline Marie Channer

IN WITNESS WHEREOF the Trustee(s) asseverate the above and hereunto set his or/their hands and seal this 4th day of June 2010.

California Republic, San Bernardino County

A non-associated True, Pure, Irrevocable Trust

We the undersigned witness this day that the one(s) known to us to be the avowed signatories appeared before us this day and acknowledged that they signed and delivered the above and foregoing TRUE PURE IRREVOCABLE TRUST ORGANIZATION INDENTURE for the uses and purposes therein set forth. We also understand that this document, when witnessed by two or more people, becomes a legal binding document under the Law of the Land.

Executed this _____ Day of _____, 2010.

Witness: _____ Witness: _____

* NOTE: This document does not necessarily need to be recorded but may be, only if necessary, along with real estate transactions.

SUPPORTING INFORMATION

To whom it may concern:

The information contained herein are formal legal opinions and supporting legal citations (case history), on which you may rely for the purpose of responding to specific inquiries concerning the Unincorporated Business Organization (U.B.O.) or Business Trust. However, keep in mind that a “True Pure Irrevocable Trust” is a type of Business Trust, but not all Business Trusts are “True Pure Irrevocable Trusts”.

HISTORICAL BACKGROUND

One of the most important devices by which individuals may combine their resources to operate a business for profit is the so-called “Unincorporated Business Trust”, or “Massachusetts Trust”, which may be comprehensively defined as an Unincorporated Business Organization created by an instrument by which property is to be held and managed by Trustee(s) for the benefit and profit of such persons as may be or may become the holders of transferable certificates evidencing the beneficial interests in the trust estate. Such an organization has been frequently termed a “Common Law” trust, but his phrase is not descriptive of any of the particular characteristics of such organizations.

The basis for the terminology “Common Law Trust” is not that such organizations are the creatures of the common law, as distinguished from equity, but they are created under the common law of contracts and do not depend upon any statute. (*Schulman-Heink v Folsom* 328 111.321, 159 N.E. 250, 58 A.L.R. 485).

Business trusts are excluded from the coverage of the restatement of the law of trusts, wherein it is pointed out that the business is a special kind of business association and can best be dealt with in connection with other business associations. Under the Uniform Commercial Code, the term “organization”, unless the context requires other, is defined to include a business trust. (13 Am Jur. 2d page 375).

The United States Supreme Court has thus defined “the Massachusetts” as a form of business organization, common in that state, consisting essentially of an arrangement whereby property is conveyed to Trustee(s), 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 holders of transferable certificates issued by the Trustee(s) showing the shares into which the beneficial interests are divided.

A trust of this nature is created when several persons transfer the legal title and property to Trustee(s), with power vested in the latter to manage and control the property and business and to pay the profits of the enterprise to the creators of the trust or their successors in interest.

In its typical and characteristic form, such a trust is brought into being by a declaration of trust, by the terms of which persons desiring to invest capital agree to the creation of a governing group of Trustee(s), vest the latter with title to the property of the enterprise and with the control and management of its business, with provisions for transferable certificates evidencing the interest of each beneficiary or member, for the existence of the trust for a certain period, without dissolution or termination by the death, insanity, or bankruptcy of any member and usually for freedom of the members or shareholders from liability to third persons. (156) A.L.R.27)

Basically, a Business Trust Organization is an adaptation of the ordinary trust to the new purpose of carrying on a business enterprise. It is governed by the principals of equity relating to trusts generally, concerning which it has been said “of all exploits of equity, the largest and most important is the

invention and development of the trust. It is an institute of great elasticity and generality; as elastic and general, as contract”.

This method of conducting a commercial enterprise is said to have originated in Massachusetts as a result of inability to secure corporate charters for acquiring and developing real estate without a special act of the legislature. This type of organization has reached its fullest development and most extensive use in that state. Hence, the name “Massachusetts Trust”.

It has been said this type of organization commonly denominated “Massachusetts Trust” originated because of the hostility of some states towards corporations and out of a desire to secure some of the advantages of incorporation, without incurring the burdens and restrictions thereto. Undoubtedly, this consideration is largely responsible for the great development of business trusts. It is no mere coincidence that their widest use and popularity have been contemporaneous with the increase in the regulation and taxation to which corporations have been subjected.

Although the business trust is a characteristic product of the modern industrial era and the jurisprudence on the subject has grown up largely during the last fifty years, the law reports contain several instances of the use of this form of commercial enterprise more than a century ago. (For more information concerning the name of companies operating as Massachusetts Trust or Unincorporated Business Trusts, please refer to Successful Management produced by the Continuing Education Committee of the Association of Independent Business Managers).

LEGAL VALIDITY OF UNINCORPORATED BUSINESS TRUSTS

In the Unincorporated Business Organization Trust, the object is not to hold and conserve particular property, with incidental powers, as in the traditional type of trust, but to provide a medium for conducting business and sharing in business gains. Thus, a trust may be created by which persons become associated for dealings in real estate, the development of trusts for land, the construction of improvements and the purchase, management and sale of properties, for dealings in securities or other personal property, or for commerce or other source of business, where those who become beneficially interested, either by joining in the plan at the outset or by later participation according to the terms of an arrangement, seek to share the advantage of the union of their interest in the common enterprise. (Koenig v Johnson, 71 C.A.2d 739, 163 P. 2d 746).

In *Goldwater v Oltman*, 210C, 408, 292 P. 624 (1930), the California Supreme Court specifically noted: “Generally stated, a trust of this nature is created wherever several persons transfer the legal title in properties to Trustee(s), with complete power of management in such Trustee(s), free from the control of the creators of the trust and the Trustee(s) in their discretion pay over the profits of the enterprise to the creators of the trust or their successors in interest. As thus defined it is apparent that such a trust is created by the act of the parties and does not depend on statutory law for its validity”.

In the absence of controlling authority to the contrary, we can see no reason why such organizations with their limited liability should not be recognized in this state. It is true that the statutes of this state provide for limited liability in the case of limited partnerships and corporation, but we find nothing in these statutory provisions that manifest an intent to limit the type of business organization enumerated. Section 2220 of the Civil Code expressly states that

trust in personality may be created for any purpose for which a contract may be lawfully made. It seems clear in use that the settled legislative policy of this state is to lay no restrictions against the formation of trust and personality, but rather to leave open to such organization the conduct of any lawful enterprise.

The law of trusts is just as much a part of the legislative policy of this state as the law of limited partnerships and corporations. It is true that trusts historically were not used for the purpose of running large business enterprises and were a development of the Equity Courts. The law, however, is not static, but is ever growing and expanding and in recent years this form of handling property has been extended to nearly every field of activity. Just because a new use has been made of the trust does not mean that new principals of law are to be applied in determining the rights of the Trustee(s), cestuis que trust (beneficiaries), creditors of the trust or others that deal with the trust. (See *Goldwater v Oltman*, 292 P. 629).

The *Goldwater* case, although a 1930 case, has stood the test of time and has never been overruled or invalidated by the United States Supreme Court. This case still stands as a seminal case in the recognition of Unincorporated Business Trusts as valid contractual companies in the state of California.

The trust indenture utilized in this program provides that the owners of the beneficial interest certificates hold no legal or equitable title in the trust corpus or assets and thus, the Trust through the Trustee owns title to all trust property in fee simple. These specific arrangements of ownership, in fee simple, of the assets of a trust company by the Trustee(s) was also specifically approved by the United States Supreme Court in *Hemphill v Orloff*, 48 S.Ct. 577, 277 U. S. 537 (1928), wherein the court, in examining the specific trust company at issue in that case, noted that the trust indenture of the trust company provided:

“Trustee(s) shall hold all legal title to, and have the absolute and exclusive control of, all property at any time belonging to this trust subject only to the specific limitations herein contained; They shall have the absolute management and disposition thereof...Shareholders meetings shall be held annually for the purpose of electing Trustee(s). Interest in the estate shall be evidenced solely by certificates for participation shares, to be regarded as personal property. The shareholder’s death shall not operate to terminate the trust or entitle the decedent’s representative to an accounting or to take action in the courts elsewhere against the Trustee(s). Shareholders shall have no title in the trust property or right to call, for a partition, division or accounting”. (See *Hemphill v Orloff*, 48 S.Ct. at page 578).

The *Hemphill* case, like the *Goldwater* case, has never been overturned or invalidated by any subsequent United States Supreme Court finding.

A further review of California Supreme Court and Appellate cases reveals that foreign and domestic Unincorporated Business Trusts, are completely valid and may hold real estate or participate in practically any legal investment scheme. (Please see *Mary Pickford Company v Bayly Brothers, Inc.* 86 P.2d 102 (Supreme Court of California, 1939)”; *Bank of America National Trust & Savings Association v Scully*, 92 F.2d 97 (1937); *Alphonzo E. Bell Corporation v Bellview Oil Syndicate*, 116 P.2d 786 (District Court of Appeal, 1st District,

Division 2, California, 1941); *Dunbar v Redfield*, 61 P.2d 744 (Supreme Court of California 1936).

ASSET PROTECTION FEATURES OF THE UNINCORPORATED BUSINESS ORGANIZATION (U.B.O.)

Generally speaking, the Unincorporated Business Organization (U.B.O.) is a tremendous asset protecting device. The U.B.O. allows the property or business owner to transfer his or her business property into a trust which will be administered by a third party Trustee. Once the property is transferred into the U.B.O., the original owner of the business does not retain any incidence of legal or equitable title of the property. Therefore, no creditor or Internal Revenue agent can penetrate the trust property, due to the fact that the original property owner no longer owns “the property”, but has transferred the subject property to the trust in exchange for which he or she has received trust certificate units. Pursuant to the trust agreement, the trust certificate units do not have any ascertainable value. Furthermore, the trust states that if any creditor (including the IRS), attempts to levy upon these certificate units, the Trust Certificate Units become null and void and can be reissued by the Trustee(s).

Essentially, creditors can breach trust property to the extent that a Grantor has retained the power to revoke the trust. The trust property that is subject to the power of revocation is liable for the claims of creditors. (California Probate Code Section 18200, 18201). Similarly, if a Grantor is a beneficiary of a trust created by the Grantor and the trust instrument provides that the trustee shall pay income, principal or both for the education or support of the beneficiary, or gives the Trustee discretion to determine the amount of income or principal or both to be paid to or for the benefit of the Grantor, a creditor may reach the maximum amount that the Trustee could pay to or for the benefit of the Grantor under the trust instrument not exceeding the amount of the Grantor’s proportionate contribution to the trust. (California Probate Code Section 150304(b).

For the reasons described above, the Unincorporated Business Organization Trust is an irrevocable trust. An irrevocable trust contains language which precludes the original power of the property from maintaining any ownership interest or legal control over the property. With these two essential elements, no creditor can invade the trust corpus of the trust and obtain any ownership interest and trust property.

Two recent cases demonstrate the use of Irrevocable Business Trusts as asset protecting devices. In *DeMaria v Bank California National Association*, 46 Cal Reporter 924 (1965), a widow with two grown children executed an Irrevocable Trust agreement, transferring most of her assets to the bank. The trust provided for the distribution of the entire net income to the widow for life with a remainder upon her death to her two children equally. The Trustee was also given a limited power to apply trust principal for the reasonable support, medical care and comfort of the widow. The court did not allow the widow’s judgment creditor to attach the trust corpus. The reasoning of the court was, “...that a creditor of a beneficiary under a trust has no more rights and can secure no greater benefits from a trust than a beneficiary can obtain for himself”. The Unincorporated Business Organization operates under the same premise. The creditor of the original property owner cannot reach the trust assets due to the fact that the original property owner only has trust certificate units and the property is transferred into trust in exchange for the trust certificate units. Essentially, the creditor can only obtain the interest held by the property

owner. Since the property owner owns only trust certificate units, this is the only “asset” that the creditor can obtain. However, in trusts created by this method, the Unincorporated Business Organization framework, any creditor who attempts to obtain the trust certificate units from the original property owner, shall have said certificate units rescinded and transferred to the Trustee for the Trustee to redistribute. Therefore, the creditor can obtain nothing by way of lawsuit once the property is transferred into the Unincorporated Business Organization Trust.

In the case of *United States National Bank of Omaha v Andrew Kaminski*, Civil Action 77n CV. 2830, District Court of Jefferson County, Colorado, June 16, 1980, the bank alleged that Kaminski owed them \$20,000. Kaminski claimed that he had no personal assets to satisfy the \$20,000 demand. Thereafter, the bank attempted to obtain the \$20,000 through judgment by seizing Mr. Kaminski’s assets held in a pure Unincorporated Business Trust that Mr. Kaminski had set up a few years prior. The bank’s action failed and they were unable to penetrate the trust corpus.

To further illustrate how neither creditors nor the IRS can penetrate an Irrevocable Trust that has been established by the Grantor, at a time when he was personally solvent, the case of Mr. John M. King is an example. In 1969, oil entrepreneur John M. King was worth \$300,000,000. In September 1971, Mr. King testified that he and his wife and four children still lived in an elegant, walled estate in a Denver suburb and had the use of vacation places in Palm Springs and La Jolla, California, as well as property in Vail, Colorado and Maui, Hawaii. Although his personal assets were currently tied up in bankruptcy court, Mr. King was able to utilize these assets because he had placed 80% of his assets into various Irrevocable Trusts. These were trusts established several years before, for the benefit of his children.

Therefore, when creditors with claims of \$42,000,000, including \$5,300,000 already owed to the IRS, tried to collect, they discovered they could not penetrate the trusts which held the assets, which he formerly owned. This case provides further proof than an Irrevocable Trust, properly established, is a separate legal entity from the Grantor. Assets that have been placed in a properly created trust are immune to seizure.

The primary and governing factors that make the irrevocable trust a valid trust and immune to penetration are: (1) continuity of life, (2) centralization of management, (3) limited liability and (4) transferability of interest. If the above four (4) factors are applicable to a trust with equal weight, then the trust would be considered as a corporation for tax purposes.

Overall, the Unincorporated Business Trust is the finest trust program ever created. It incorporates all of the features necessary to create a valid business trust organization which protects individuals and businesses from judgment creditors, while at the same time provides excellent estate planning techniques which legally avoid probate and the usual Federal estate taxes.

DECLARATION OF RESEARCH FACTS REGARDING COMMON-LAW TRUSTS.
FROM THE LIBRARY OF CONGRESS

DECLARATION OF FACT NO. 1.

There are two completely different types of trusts in America today:

1. Statutory Trusts, and,
2. Non-Statutory, Common-Law Trusts, which are also known as: Pure Trusts, True Pure Trusts, and Massachusetts Trusts.

DECLARATION OF FACT NO. 2.

As will be seen below, Common-Law Trusts, are really Trust Agreements and not Trust Organizations. Technically, they are all Unincorporated Business Organizations (UBO's) written in a Trust Format.

DECLARATION OF FACT NO. 3.

The PURE TRUST has been traced back as far as Plato. Plato used a non-profit trust to finance his university in ancient Greece around the time of 400 BC. There is some evidence that Trusts might have been used in the Roman Empire as early as 800 BC. Trusts were utilized in Britain at that time in history and still are in use today.

DECLARATION OF FACT NO. 4.

During the Middle Ages in Europe, abusive taxes, limitations and restrictions were placed on the ownership of land. By using trusts the owner of the land was able to transfer the legal title of the property to the trustee for the benefit of the heirs. The secrecy of this transfer was advantages as many of the taxes and restrictions which applied to the property owner did not attach to the trustee and could, therefore, be ignored.

DECLARATION OF FACT NO. 5.

Over the years, many versions of the PURE TRUST have been developed, but the basic goal has remained consistent: preserve the family estate and business, protect privacy, while keeping it out of the hands of the government. As long as there are governments and corruption

of authority, these goals will remain consistent indefinitely.

DECLARATION OF FACT NO. 6.

Pure Trust organizations arrived in America with the colonists. The first "Pure Trust" of record was drafted for Governor Robert Morris of the Virginia Colony, a prominent financier of the American Revolution, by the famous attorney and patriot Patrick Henry, in 1765, 24 years before the adoption of the Constitution. Known as the North American Land Company, this Pure Trust is still in operation today, over 200 years later.

DECLARATION OF FACT NO. 7.

William Bingham, reputed to be the richest American when the thirteen colonies won their independence, started a Pure Trust for his vast estate in 1804. The Trust owned two million acres in Maine which sold about the time of the Civil War. Bingham, a Senator from Pennsylvania in the Second United States Congress, owned vast land holdings. The Trust was terminated by the Trustees in 1964 after some 160 years of operation. It was terminated because of the multiplication of beneficiaries (total 315) and the liquidation of assets. Throughout the years, the incomes from property and proceeds from land sales were distributed to the beneficiaries. At the time of liquidation, it had no termination date. During its period of existence it was not affected by the death of its Creator, succeeding Trustees, probate procedures, or death transfer taxes.

DECLARATION OF FACT NO. 8.

One of the outstanding examples of the Pure Trust is the Mesabi Trust which owns the reserves of the famous Mesabi iron deposits in Minnesota. This Trust receives the royalty payments from the iron deposits and distributes the royalties to the holders of Mesabi's certificates of beneficial interest. Following the transfer of assets from the company to a Pure Trust, Mr. Arnold Hoffmann, then president of the Mesabi Iron Company, announced in the Wall Street Journal on March 14, 1961, that a ruling by the Commissioner of the Internal Revenue declared the Trust would not constitute an association of persons taxable as a corporation. The shares of beneficial interest are traded daily on the New York Stock Exchange.

DECLARATION OF FACT NO. 9.

Edward H. Hines, a multimillionaire building supplier, established a \$12 million Trust in 1914, and headed his business until his death in 1931. His two sons, Ralph J. and Charles, succeeded the elder Hines as Trustees of the Trust and retained Trusteeship of their father's Trust after a court fight instituted by two nieces, a sister, and a nephew sought to break the Trust by claiming the administration of the family estate had been erroneous. The court ruled that the Pure Trust was not an erroneous method of managing the assets, and was in fact, a valid and legal arrangement for the estate. Ralph J. Hines, the eldest son and head Trustee, died in 1950, and again the family assets held in the Pure Trust were not disturbed by estate and inheritance taxes. The younger brother, Charles, subsequently became the head Trustee, handling the Trust for many years. Preserved, intact, for future generations, the Edward H. Hines Lumber Company is still in operation today.

DECLARATION OF FACT NO. 10.

Another example of the Pure Trust used for a family estate is that of the Joseph Kennedy family. Joseph Kennedy, father of John F. Kennedy, originally established a Pure Trust to own the famous Chicago Merchandise Mart. The Kennedy family is known to maintain several other Pure Trusts for tax shelter purposes as well. One such Trust was reported in the Chicago Tribune. March 22, 1947 with the caption: "Kennedy Divides Merchandise Mart." "A Trust agreement formed several years before, in which Kennedy's wife, Rose F. Kennedy, and a long time friend and associate, John L. Ford, joined as Trustees, helped to materially distribute ownership in the 30 Million Dollar Merchandise Mart, among members of the family. It is said that many of these Trusts are domiciled in the Fiji Islands of the South Pacific."

DECLARATION OF FACT NO. 11.

Things have since gone well for the Kennedys. Do you think they enjoyed any tax benefits from how things were set up or were they just exceptional business managers? The below article was recently released in the Associated Press.

TUESDAY, JANUARY 27, 1998

Kennedys Sell Last Business AP

CHICAGO, Jan. 26 -- "The Kennedy family said today that it had sold its last operating business, the Merchandise Mart in Chicago, in a \$625 million deal that unloaded a substantial portion of the family's property holdings. The buyer, Vornado Realty Trust of Saddle Brook, N.J., will pay \$465 million in cash, assume \$50 million in debt and offer \$110 million in securities. The deal also includes other properties in Chicago and in the Washington area. The Merchandise Mart, the centerpiece of the deal, was completed in 1930 by Marshall Field & Company, the retailer, and bought for \$12.5 million in 1945 by Joseph P. Kennedy, the family patriarch. The sprawling, 25-story building of limestone and terra cotta is a national center for the home furnishings and design industries, and it remains one of the world's largest commercial buildings. At 4.2 million square feet, the Mart has its own ZIP code and was the world's largest building until the Pentagon was built, in the 1940's. In the deal, the Kennedy heirs will receive a stake in Vornado, one of the nation's largest real estate investment trusts. Most of the Kennedy fortune is in securities, such as stocks and bonds".

DECLARATION OF FACT NO. 12.

William Waldorf Astor created a Fifty Million Dollar Trust estate by a conveyance to Trustees, recorded in New York, August 15, 1991, thereby saving his heirs several million dollars which would have gone for probate costs and death taxes had the estate been distributed by the court instead of Trustees.

DECLARATION OF FACT NO. 13.

The Rockefeller family has used various kinds of Trusts as a means of maximizing privacy. Before his death in 1937, it is reported that John D. Rockefeller tucked much of his fortune into about seventy Trusts for his descendants. This vast web of individual and group funds represent assets of considerably more than One Billion Dollars. Nelson A. Rockefeller and his generation are believed to have reduced their personal holdings by the creation of still more Trusts for their own grandchildren and great grandchildren. It has been reported to one source that there are "well over 100 and perhaps 250 Individual Rockefeller Trusts". Many of these Trusts are known to be Pure Trusts placing the funds beyond the reach of the high cost of

probate.

DECLARATION OF FACT NO. 14.

H.L. Hunt, the Texas oil billionaire, is reported to have paid \$75,000 for the setting up of the first Hunt family Pure Trust. Hunt then created at least twenty-five additional Trusts many of which seem to follow the names of the Hunt family members as follows:

1. Ruth Ray Hunt Trust Estate - This Trust owns a large percentage of the Hunt Oil Company, estimated to be worth in excess of One Billion Dollars.

2. Caroline Hunt Sands Trust Estate - This Trust is estimated to be worth at least One Hundred Million Dollars.

3. Ray Lee Hunt Trust Estate –

This Trust bought the Jefferson Dallas Hotel in downtown Dallas, Texas. Ray Hunt called the purchase by his family's Trust an excellent investment according to the Dallas Morning News.

4. Nelson Bunker Hunt Trust Estate.

5. Ruth Jane Hunt Trust Estate

6. Helen Hunt Krelling Trust Estate

7. Swanee Hunt Trust Estate

8. Hassie Hunt Trust - This Trust is involved in the new exploratory oil drilling efforts in the Permian Basin of West Texas and Southwestern New Mexico.

DECLARATION OF FACT NO. 15.

Some persons who claim to have been close to the Hunt family estimate that there may be as many as 200 Hunt family Trusts now in existence. The death of H.L. Hunt has not affected any of these Trust estates. The family has successfully arranged their affairs so as to increase the estate generation after generation rather than see the estate cut to shreds by the high costs of probate.

DECLARATION OF FACT NO. 16.

Even Ronald Reagan has established such a Trust. Created in 1966, the "Ronald Reagan Trust" has enabled him to enjoy sizable tax advantages. While maintaining a magnificent living standard, Mr. Reagan has, in some years of Trust operation, been free of tax obligations.

DECLARATION OF FACT NO. 17.

These are but a few of the many family estates that are preserved generation after generation through the use of the Pure Trust organization.

**THE BUSINESS TRUST ORGANIZATION BRIEF
A SEPARATE "LEGAL" ENTITY**

DECLARATION OF FACT NO. 18.

The overwhelming evidence of the common law is that the Business Trust has the legal capacity to hold title to property as an entity and to act in many other capacities. Business Trust estates have for centuries been recognized in English jurisprudence as founded on sound principles of equity as stated in General American Oil Co. vs. Wagoner Oil and Gas Co., 247 P. 99. As respect to their fundamental characteristics, Business Trusts have almost universally been held to be valid as reported in Baker vs. Stern, 216 N.W. 147, 58 ALR. 462.

DECLARATION OF FACT NO. 19.

The right to create the Business Trust is based on the common law right to contract by individuals establishing it as held in Gleason vs. McKee, 134 Mass 419. It is not so much a trust as a contractual relationship based on trust form, Berry vs. McCourt, 204 N.E. 2d 235. "No state shall make any law impairing the obligations of contracts." Article 1, Section 10-3, U.S.

Constitution. This is one of the many reasons established by legal precedent that Business Trusts are lawful and valid Business Organizations as held in Claggett vs. Kilbourne, 66 U.S. 346; Coleman vs. McKay, 257 S.W. 733; and Reeves vs. Powell, 267 S.W. 328.

DECLARATION OF FACT NO. 20.

The Business Trust is not a corporation as stated in Darling vs. Buddy, 1 S.W. 2d 1163; 318 Mo. 784. It is not incorporated according to the case of Crocker vs. Malley, 265 U.S. 144. The trust instrument should be considered as analogous to a corporation charter and just as broadly interpreted as held in Bomeisler vs. Jacobson & Sons Trust, 118 F. 2d 261.

DECLARATION OF FACT NO. 21.

The Business Trust derives no power, benefit or privilege from any statute according to Crocker vs. Malley, 264 U.S. 144, Elliott vs. Freeman, 220 S.W. 178; Betts vs. Hackathorn 252 S.W. 602, 31 ALR. 847; Goldwater vs. Oltman, 292 P. 624; Gleason vs. McKay, 134 Mass 419. The few state constitutional provisions that declare "the term corporation" . . . shall be construed to include all associations . . . having the powers of corporations not possessed by individuals . . . has not made the Business Trust illegal as held in State ex. rel. Great American Home Savings vs. Lee, 233 S.W. 288 Mo. 679. There is sound legal evidence to support the fact that a true Business Trust is not an association and would not come under the Missouri Constitutional provision. The U.S. Supreme Court states, "We perceive no ground for grouping the two — beneficiaries and trustees — together, in order to turn them into an association, by uniting their contrasted functions and powers, although they are in no proper sense associated." Hecht vs. Malley, 265 U.S. 144.

DECLARATION OF FACT NO. 22.

The fact that the trustees hold property, does not mean it is the trustees own "personal" property. Trust property cannot be held under an attachment nor sold upon the execution of trustee personal debts as held in Hussey vs. Arnold, 70 N.E. 87; Mayo vs. Moritz, 24 N.E. 1083. The powers and duties of the trustees are set forth in the Indenture and are effectively limited thereby, Morris vs. Finkelstein, 127 S.W. 2d 48.

DECLARATION OF FACT NO. 23.

Succeeding trustees take title to the property subject to the same conditions as in the hands of the original trustees, Bisbee vs. McKay, 102 N.E. 327. In the case of a Business Trust, conveyance of real and personal property amounts to a complete transfer of title, Carpenter vs. White, 80 F. 2d 145.

EXAMINATION OF THE BUSINESS TRUST

DECLARATION OF FACT NO. 24.

It is unfortunate that this instrument is usually referred to as a trust. A more accurate name would be "An Unincorporated Business Organization." The word "Trust" leads to the assumption that the Business Trust retains all the features of the more commonly known trusts, which in fact, are trust agreements and not trust organizations. As a trust agreement, it merely holds assets until a certain event occurs. It is made directly between Exchanger and trustee(s) who take possession of the corpus for a time and is not full ownership of property in fee simple. There are nine basic aspects of the Business Trust Organization requiring an outline to gain understanding of how and why it works legally.

1.It is a contractual relationship, the parties themselves, (not government), create their own trust organization.

2.It provides trust certificate units as evidence of limited rights. The trustees are the managers and fully represent the trust in all aspects, with no one exercising any control over them; and in the event of trustee death, a succeeding trustee fills the vacancy. Trust certificates convey no legal title in the trust property, nor any voice in the management and control thereof. Business is accomplished by trustees and minutes instituted as occasions arise.

3.Even though it is a contract, it is a lawful entity and an artificial individual with rights almost equal to a natural individual. It is irrevocable and no one has any reversionary rights to its assets. It can own property and conduct business like any person. It is a private entity and not a public entity like a statutory trust, corporation, limited liability company or partnership. The public entities must have an attorney-at-law to represent them. Private entities like the Pure Business Trust do not.

4. A person may exchange assets, or any portion thereof, to it for trust certificates. This person is not a "grantor" but merely an "exchanger". This is a tax-free exchange. There is no holding back of any right of interest. Trust certificates never change.

5. Trust certificates can be distributed among family members or others, free of any gift tax. No vested interest is transferred, only the right to receive distributions as directed by the trustees.

6. It pays taxes like an individual on what it does not distribute; the trust certificates holder pays tax only on that which is received or allocated.

7. There is no estate tax simply because there is no estate owned by any person at death. The title is owned in fee simple by the trust organization. Trust certificates have no intrinsic value and cannot be taxed because they are not owned at death.

8. Assets or corpus (principal) of the Business Trust are never probated because you never have a decedent. It is an artificial person that never dies. It is set up in contemplation of life, not death as with a will.

9. The life of the Pure Business Trust can be extended indefinitely or terminated at any time by the trustees in accordance with the trust indentures and by-laws.

DECLARATION OF FACT NO. 25.

The mechanics of setting up an unincorporated business organization are fairly simple. The creator first has in his possession a trust indenture, (contract), and a certain number of trust certificate units, referred to as trust certificates. The creator may then approach the exchanger concerning an equal exchange of all or any portion of his property for the trust certificates and the use of the trust organization. This is an arm's length transaction as the exchanger could reject the offer. If accepted, the obligation or prior arrangement, then retreats from the contract.

DECLARATION OF FACT NO. 26.

The trustees may decide to sell or trade trust assets or corpus to some outside third party. They may offer to trade all or any portion of those assets. The buyer or client may reject or accept the offer. If accepted on an arms length transaction, they would transfer or assign the assets to the buyer on behalf of the organization. The buyer would then give consideration to the trust estate representing the investment interest plus possible appreciation. If the consideration is

cash, the trustees would put it into the trust bank account and control it along with the other assets of the trust estate.

DECLARATION OF FACT NO. 27.

Trustees are entitled to reimbursement for all incidental and direct expenses concerning trust business. The trust organization can purchase many items for business, to which the trustees have access and use.

DECLARATION OF FACT NO. 28.

When the exchanger dies, the corpus is not part of his estate because it is owned by the trust organization. When the trust certificates holder dies, any certificate units become void and revert to the trustees. The initial corpus of the trust is in a taxable status but not taxed (if taxable), until it is allocated, distributed or liquidated at final dissolution by the trustees. (This may not occur for several years.) In these cases the trust certificate holders pay any tax due on income or capital gains only after receiving same.

DECLARATION OF FACT NO. 29.

In order to circumvent any appearance of conflict with IRS code concerning retention of the right to income of the trust property, many exchangers upon being appointed trustees, receive compensation from the trust in the form of a trustee fee. Assistant Commissioner of Internal Revenue, Bertrand M. Harding, testified that some of these people (trustees) are being compensated at the rate of 500 dollars per day, and that based upon comparable experience of consulting firms and other professional groups, it is not an unreasonable rate of compensation. See Sub-com. No. 1. hearing, tax exempt foundations, 88th Congress 1964, page 135.

THE INITIAL EXCHANGE IN DETAIL

DECLARATION OF FACT NO. 30.

The tax-free initial exchange can be explained in the process of reviewing court decisions and IRS rulings. On the exchangers side the trust certificates received have no reportable or determinable value to be declared. The trust organization received property at no gain or loss. If

the same property is later sold, only the amount beyond the exchanger basis may be taxable as appreciated value in the assets. The property may be taxed on a taxable status when transferred into the trust organization, but any payment is deferred until distributed from the trust organization.

DECLARATION OF FACT NO. 31.

The courts have defined the meaning "conveyed." The word "exchange" is to be given its ordinary meaning. It means giving one thing for another, requiring the transfers to be in kind and excluding a monetary consideration as a basis of measure. See Trenton Cotton Oil Co. vs. Commissioner, 147 F. 2d 33; and TR 118, Sec. 39. 112(a) - 1, (e).

DECLARATION OF FACT NO. 32.

Sometimes it is wrongly concluded that the trust certificates have minimal or no value since there is no monetary declaration. Trust certificates could easily have a value greater than the property for which they are traded. It is reasonable that income generated from the original corpus will exceed the initial value of the assets. The idea that property has no value because it cannot be expressed immediately is not a consideration in an exchange. Even the "gift tax rules" only exclude love, affection and a promise to marry as an adequate consideration and royalties or trust certificates are not even close to that category in case law.

DECLARATION OF FACT NO. 33.

Great effort is exercised in the initial exchange of property into the trust organization to make sure it has no determinable value at that time. The exchanger considers his portion of the property traded as having a value only equal to the trust certificates that are received and there must be a meeting of the minds on that issue in order for him to accept the trade. The list of property traded is only by inventory, with no appraised value except for insurance and property tax purposes. The real value of the trust certificates only becomes evident when actual distributions are made to the holder and the tax liability is upon what is received. It is further concluded that the trust certificates have no initial determined value, than any completed gift that the exchanger makes of the trust certificates to another person, may also be a gift tax and paid

only when it is due. They may only be taxed when a realized gain occurs, such as allocation or distribution by the trustees.

DECLARATION OF FACT NO. 34.

Before a summary of court decisions in the next section, it is appropriate to mention where a full summary is available to anyone desiring to study the true business organization. The main references are found in volume 13 American Jurisprudence 2nd edition, under the title of Business Trusts: and in volume 156 American Law Review 1st edition, under the title Massachusetts Business Trusts. In these references you will find other citations for such things as how to word trust indentures on specific concepts, and where to find supplementary data that is pertinent to an understanding of the true Business Trust.

SUMMARY OF COURT DECISIONS ON THE BUSINESS TRUST ORGANIZATION

DECLARATION OF FACT NO. 35.

The following court cases are the result of many months of intensive study and research. Most of the case law was decided about 50 years ago, excepting more recent cases bearing on federal tax laws. They have withstood the test of time concerning all of the legal aspects.

VALID & LEGAL TRUSTS

DECLARATION OF FACT NO. 36.

The Massachusetts Trust was upheld by the Supreme Court as a Trust Organization. In this case the court held that the trust was not an association, but was in fact a trust organization, Crocker vs. Malley, 294 U.S. 223 (1924).

DECLARATION OF FACT NO. 37.

It is distinguishable from other express trusts and these trust indentures are held to create true, ("Pure") Business Trusts, if the trustees are the principals and are free from any control by the certificate holders. "The Hecht Real Estate (trust)" was established by the members of the Hecht

family and was primarily a family affair according to the court. Hecht vs. Malley, 265 U.S. 144 (1924).

DECLARATION OF FACT NO. 38.

This type of trust is also sometimes referred to as a "Common-law Trust" because it finds its basis in the law of contract and does not depend on any statute for its existence. Schumann-Heink vs. Folsom, 75 F. Supp. 408 (1927).

DECLARATION OF FACT NO. 39.

The character of trust for income tax purposes is dependent on phraseology of the trust instrument whether it discloses a Business Trust. Hill et. al. vs. Reynolds, 75 F. Supp. 408 (1948).

DECLARATION OF FACT NO. 40.

Supreme Judicial Court of Massachusetts stated that "the declaration of trust in the case at bar is different from any hitherto considered by this court," this Express Trust was established under written declaration. Bouchard vs. First Peoples Trust, 148 N.E. 895 (1925).

DECLARATION OF FACT NO. 41.

The California Supreme Court stated that a "Business Trust is lawful in a state the statutes of which permit trusts to be created for any purpose for which a contract may lawfully be made." (This includes all states). Goldwater vs. Oltman, 292 P. 624 (1930).

EXCHANGE OF PROPERTY

DECLARATION OF FACT NO. 42.

The United States Supreme Court ruled that if property received in exchange has no fair market value, it does not represent taxable gain to the recipient. Burnet vs. Logan, 283 U.S. 404.

DECLARATION OF FACT NO. 43.

"Market value" for purpose of Internal Revenue law, is price at which a seller willing to sell at a fair price and a buyer willing to buy at a fair price, both having reasonable knowledge of the facts will trade. American National Bank of St. Joseph vs. U.S., 92 F. Supp. 403 (1950).

GIFT TAX CONSIDERATION

DECLARATION OF FACT NO. 44.

Organization of Common-Law (Pure Business) Trust was held not unlawful. Subscription to "stock" in Common-Law Trust, was held not a gift but an investment. Palmer et. al. vs. Taylor et. al., 269 S.W. 996 (1925).

DECLARATION OF FACT NO. 45.

Gift tax applies only to transfers by gift with less than full and adequate consideration. Tyson vs. Commissioner, 146 F. 2d 50 (1944).

DECLARATION OF FACT NO. 46.

Even bad bargains in a genuine business transaction are held not to result in taxable gifts. Where the value of stock was in excess of the consideration, the transfers were made in the ordinary course of business and not subject to gift tax. (Leon Jaworski argued this case against IRS.) Est. of Anderson, 8 T.C. 706(A) (1947).

DECLARATION OF FACT NO. 47.

No gift tax applied when property was transferred to a disconnected and isolated entity where consideration was not lacking. Scanlon vs. Commissioner, 42 U.S. Board of Tax Appeals 997 (1940).

ESTATE TAX CONSIDERED

DECLARATION OF FACT NO. 48.

Federal estate tax is an excise on the transfer of interests in property that occurs as a result of death. (Interest in property is transferred to Business Trust before death.) Old Kent Bank & Trust Company vs. U.S., 430 F. 2d 392 (1970).

DECLARATION OF FACT NO. 49.

Rational of federal estate tax is not a levy on property of the estate, but on its transfer at death. Second National Bank of Newhaven vs. U.S., 422 F. 2d 49 (1970).

DECLARATION OF FACT NO. 50.

Property interests terminating on or before death are not proper subjects of federal estate tax. Babb vs. U.S., 349 F. Supp. 792 1972).

DECLARATION OF FACT NO. 51.

Measure of estate tax is value at time of decedent's death of all property then owned by him. (Property owned by Trust Organization.) Inglehart vs. Commissioner, 77 F. 2d 704 (1935).

DECLARATION OF FACT NO. 52.

Transfer tax is determined by value of property or interest transferred at decedent's death. McCaughn vs. Fidelity trust Company, 34 F. 2d 443 (1929).

TAXATION IN GENERAL

DECLARATION OF FACT NO. 53.

Treasure Department regulations, construing laws relating to taxation, are not conclusive. Doubts in taxation statutes are resolved in favor of taxpayer. Also, courts will, if possible, avoid interpreting tax statute to result injustice. Hellmich vs. Hellman, 18 F. 2d 239 (1927).

DECLARATION OF FACT NO. 54.

Taxpayers are not required to continue that form of organization which results in the minimum tax. Raymond Pearson Motor Company vs. Commissioner, 246 F. 2d 509

RULE AGAINST PERPETUITIES

DECLARATION OF FACT NO. 55.

Such trusts do not come within the rule against perpetuities, having no application to such a trust organization. Liberty National Bank & Trust Company, Inc., 25 F. 2d 493.

DECLARATION OF FACT NO. 56.

Such a trust in personality does not fall within the condemnation of the rules where it is terminable at any time by the trust articles. Legal and beneficial interest are vested immediately and the rule against perpetuities has no application to Business Trusts. Baker vs. Stern, 216 N.W. 147.

PURE TRUST ORGANIZATIONS ARE STILL LAWFUL TODAY

DECLARATION OF FACT NO. 57.

The Pure Trust Organizations are very much alive and well today. Most of the following cases decided in the decade of the 1960's and the 1970's on various aspects of this type of trust. Notice that they are as legal and valid today as fifty years ago when the bulk of the case law was decided and established.

DECLARATION OF FACT NO. 58.

"Business Trusts" have been defined as entities which provide a medium for the conduct of a business and the sharing of its gains . . . operating . . . a written instrument or declaration of trust. Entity was organized in Denmark to promote products in the United States. Denmark Cheese Association vs. Hazard Advertising Company, 59 Mis. 2d 182.

DECLARATION OF FACT NO. 59.

Washington State recognizes a Massachusetts Trust as a legal entity. See *Applied Wash. Rev. Code 19.52.080* which expressly includes Massachusetts Trust, along with corporations and other designated entities and persons. Sparkman and McLean Company vs. Govan Investment Company, 478 P. 2d 232, 236.

DECLARATION OF FACT NO. 60.

A [Pure] Business Trust is not so much a trust as a contractual relationship based on trust form, which in result is about half partnership and half corporate. Berry vs. McCourt, 204 N.E. 2d 235.

DECLARATION OF FACT NO. 61

Real estate business or investment trust, commonly known as a "Massachusetts type trust" was neither a "corporation" nor a "trust company" within meaning of certain exemption provisions of Texas Securities Act. Maddox vs. Flato, 423 S.W. 2d 371.

DECLARATION OF FACT NO. 62.

Bank failed to secure transfer of its claim to interest in Business Trust in accordance with requirement of transfer on books of trustees, and hence, bank never obtained such interest. Extension of Business Trust by trustees is pursuant to authorization of trust instrument. Peoples Bank vs. D'Lo Royalties, Inc., 235 So. 2d 257.

DECLARATION OF FACT NO. 63.

New enabling act which recognizes Business trust and their beneficiaries from third parties, is not unconstitutional in Washington State. Pacific American Rlty. Trust vs. Lonctot, 381 P. 2d 123.

DECLARATION OF FACT NO. 64.

In the absence of statutory restrictions, there is nothing inherent in the true trust to prevent it from carrying on any kind of lawful business activities that individuals, partnerships of corporations might engage in as is evident from a consideration of the wide

variety of business pursuits for which pure trusts have been organized. Operating and management of apartment houses — Helvering vs. Coleman-Gilbert Assn., 296 U.S. 369; Oil well development — Helvering vs. Cones, 296 U.S. 375; Real Estate business — Crocker vs. Malley, 249 U.S. 23; Purchasing, improving, holding and selling land and buildings and operating an office building with elevator service, janitor service, etc., — Elliott vs. Freeman, 220 U.S. 178; Liquidation of corporation — White vs. Hornblower (Ca 1 Mass.), 27 F. 2d 777; Production of motion pictures — Goldwater vs. Oltman, 210 Cal. 408; Building and equipping Racing Speedway — Chas. Nelson Co. vs. Morton, 106 Cal. App. 144; Real Estate Business — Schumann-Heink vs. Folsom, 328 Ill. 321.

DECLARATION OF FACT NO. 65.

The principle advantage which Pure Business Trusts have over partnerships are their centralized management, the introduction of large members of participants, the possibility of transferring beneficial interests without affecting the continuity of a shareholder does not terminate the trust, and the immunity of shareholders from personal liability. Morrisey vs. C.I.R., 296 U.S. 344; Spotswood vs. Morris, 12 Idaho 360, 85 P. 1094; Hossack vs. Ottawa Development Assn., 244 Ill. 274.

DECLARATION OF FACT NO. 66.

FACTS concerning Unincorporated Business Organizations also referred to as Non Associated or Associated Business Trusts and/or Common Law Trusts.

—A business or Common-Law Trust, commonly known as a "Massachusetts Trust," is a form of business organization consisting essentially of an arrangement 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 described by the instrument of trust (indenture). U.S. - Gutelus vs. Stanbon, D.C. Mass., 39 F. 2d 621; Cal.-Goldwater vs. Oltman, 292 P. 624, 210 al. App. 588.

—This type of a trust originated because of the hostility of some estates toward corporations and out of a desire to secure some of the advantages of incorporation without incurring the burdens and restrictions thereto. Goldwater vs. Oltman, 210 Cal. 408, 292 P. 624.

—As certain inherent advantages of the Business Trust over other forms of commercial enterprises gained recognition, it was adapted to a wide range of business operations. Many large and well-known concerns have carried on their business under this form of organization, and it is interesting to note that the popular use of the term "trust," in connection with monopolies and combinations in restraint of trade, is traceable to the employment of the Business Trust form of organization by some of the best known of such combinations. *156 ARL. 29 (listing some of these organizations)*. Also the "Standard Oil Trust" was involved in Rice vs. Rockefeller, 134 N.Y. 174, 31 N.E. 907, and in State Ex rel. Watson vs. Standard Oil Co., 49 Ohio St 137, 30 N.E. 279.

The "Sugar Trust" was involved in People vs. North River Sugar Ref. Co. 121 N.Y. 582, 24 N.E. 834.

—One of the distinctive features of the [Pure] Business Trust are indicated in the definition thereof, it is UNINCORPORATED. It is created by the voluntary act of the parties and is based on contract. It is intended for the purpose of carrying on some kind of business or commercial activity for profit. Indeed, the profit making function is one of the most significant characteristic of the Business Trust. **Title to the capital of the organization is vested in the trustees, who manage the affairs of the Unincorporated Business Organization.**

—The Business Trust is a distinct legal entity. National City Finance Co. vs. Lewis, (Cal.) 3 P. 2d 316 reh den 4 P. 2d 163 and 216 Cal. 254, 14 P. 2d 298; Beilin vs. Krenn and Sato, 350 Ill. 284, 183 N.E. 330; Hemphill vs. Orloff, 238 Mich 508, 213 N.W. 867, 58 ALR. 507, 277 U.S. 537, 72 L ed 978, 48 S Ct 577.

A Business Trust has been said to be a quasi-legal entity, separate and distinct from the members who compose it. Brown vs. Bedell, 263 N.Y. 177, 188 N.E. 641, reh den 264 N.Y. 453 191 N.E. 510, Motion den 264 N.Y. 513, N.E. 541.

—Trying to avoid conviction of embezzlement, an employee tried to convince the court that his company was not an entity and could not hold title to property because it was a Common Law Trust Association. The court ruled that a **Common-Law Trust (UBO) is in fact capable of taking and holding title to property** and supported the conviction of its employee for embezzlement. Ridge vs. State, 192 Ind. 637 N.E. 758.

—The Massachusetts of Business Trust (UBO) is a legal entity, National City Finance Co. vs. Lewis, (Cal.) 3 P. 2d 316 reh den 4 P. 2d 163 and 216 Cal. 254, 14 P. 2d 298 and statutes designate or recognize the organizations as a distinct legal entity. American Railway Express. Co. vs. Asher 218 KY 172, 291 S.W. 21.

—Statutes specifically authorizing Unincorporated Business Organizations (UBOs) holding Business Trusts not to be corporations and also recognize the Business Trust as a legal entity — Edwards vs. Belknap, 66 Ida. 639 166 P. 2d 451, also it was said in Williams vs. Schulte, 103 S.W. 2d 543, that a Common Law Trust is regarded as a legal entity.

—The SUPREME COURT OF CALIFORNIA ruled in the ("Goldwater vs. Oltman" et al. L.A., 9754 210 Cal. 408, 292 P. 624 71 ALR. 871) "Referring to Unincorporated Associations and Business Trusts" — But we find nothing in those statutory provisions that manifests an intent to limit the types of business organizations which shall enjoy this privilege to the two types of business organizations enumerated. Section 2220 of the California Civil Code expressly states that trusts in personality may be created for any purpose for which a contract may lawfully be made. It is true that up until 1929 certain limitations were placed upon the purposes for which trusts in real property might be created. Even the restrictions on trusts in real property have been removed by that 1929 amendment to section 2220 of the California Civil Code. It seems clear to us that the settled legislative policy of this state is to lay no restrictions against the formation of trusts in personality, but rather to leave open to such organizations the conduct of any lawful enterprise. The law of trusts is just as much a part of the limited partnerships and corporations.

—California Civil Code Sec. 2220

**"PURPOSES FOR WHICH TRUSTS
MAY BE CREATED"**

DECLARATION OF FACT NO. 67.

"A trust in relation to real and personal property, or either of them, may be created for any purpose or purposes for which a contract may be made. "NOTE THE LATEST AMENDMENT OF 1929 REMOVED THE RESTRICTION OF REAL ESTATE."

—As legal entity: An association, in form of a Massachusetts Trust, which, in absence of constitutional definition of corporation, would constitute a trust and not a partnership, but which, according to trust instrument, possesses powers and privileges characteristic of a corporation, is, by virtue of the definition, a corporation **to the extent that it is a legal entity** distinct from the persons who compose it. Kan-Hamilton vs. Young, 225 P. 1045 116 Kan. 128, 35 ALR. 496.

—A Business Trust has been held to be "an Unincorporated Company" U.S. - In re Associated Trust, D.C. Mass., 222 F. 1012. Kan-Weber Engine Co. vs. Alter, 245 P. 143, 120 Kan. 557, 46 ALR. 158.

DECLARATION OF FACT NO. 68.

Origin and basis for Development: Business trusts (UBOs) developed most extensively in this company, at the beginning, in Massachusetts, growing out of a desire to gain the benefits of corporate organization without the accompanying restrictions and regulations. —Library references Joint Stock Companies and Business Trusts.

DECLARATION OF FACT NO. 69.

Hostility to, and unreasonable regulations of, corporations also have had their part in the development of the Business Trust. Cal.-Goldwater vs. Oltman, 292 P. 621, 210 Cal. 408 71 ALR. 871.

—Except as statutes may restrict the use of a trust to specified objects, and except as statutes may permit corporations only to engage in certain types of business, a Business Trust may be organized to engage in any business in which individuals or corporations

may lawfully engage. Wagoner Oil and Gas Co. vs. Marlo, 278 P. 294, 137 Okl. 116. Weber Engine Co. vs. Alter, 245 P. 143, 120 Kan. 557, 46 ALR. 158.

—Rights and Powers in General: **A Business Trust** has such powers as are conferred by its deed of trust and **has legal capacity to acquire and hold property**. Library References - Joint Stock Companies and Business Trusts. Also the court stated in the case of Hodgkiss vs. Northland Petroleum Consol., 67 P. 2d 811 104 Mont. 328 that "**Failure of a business trust to comply with statutes relating to corporations does not prevent a business trust from holding property where such statutes are inapplicable to business trusts.**"

—Business trusts have been held to have legal capacity to acquire and hold property irrespective of statutes relating to corporations, which limit corporate ownership of land or of stock. Okl. State ex rel. Combs vs. Hopping Inv. Co., 269 P. 2d 997.

—The proceedings of a Business Trust should be afforded the benefit of every permissible inference or presumption of regularity, as there is, in the interest of certainty in business transaction and of security of property interests and titles, every reason for treating such a trust, with respect to the affairs in which it engages, as having the existence, capacity, status, and power which it appears to have. Swartz vs. Sher, 184 N.E. 2d 51, 244 Mass. 636.

—The general rules of contracts apply to contracts of Business Trusts, such contracts being subject to the familiar rules for construing contracts. Dickinson vs. Butt, 278 S.W. 19, 169 Ark. 1211. Also Wm. Lindeke Land Co. vs. Kalman, 252 N.W. 650, 190 Minn. 601, 93 ALR. 1393.

—Subject to compliance with statutory publication and filing requirements⁽¹⁾ (if there are any) business trusts have been accorded the right to bring suit in their trade name,⁽²⁾ without a joiner of either the trustees,⁽³⁾ or of the beneficiaries of the trust.⁽⁴⁾

Moreover, the trustees of a Business Trust may maintain an action on behalf of the trust,⁽⁵⁾ representing both the shareholders and the trust estate,⁽⁶⁾ without the concurrence of any of the beneficiaries.⁽⁷⁾ They have the capacity to sue from the question as to whether the trust is a legal entity.⁽⁸⁾

Cal. — Kadoto Fig Ass'n of Producers vs. Case-Swayne Co., 167 P. 2d 518, 73 C.A. 3d 796.

Shaw vs. Cousins Mortg. and Equity Investments, 236 S.E. 2d 919, 142 Ga. App. 773.

Stevens vs. Sharpe. 82 P. 2d 672, 183 Okl. 312; Wagoner Oil and Gas Co. vs. Marlkko, 278 P. 294 137 Okl. 116; Grenco Real Estate Inv. Trust vs. Brooker, 211 S.E. 2d 33, 215 Va. 413.

Estoppel One executing a contract with a purported Business Trust as an entity, Capable of transacting business as such, and who as a consequence receives from it things of value, is estopped to deny its capacity to sue on contract. General American Oil Co. vs. Wagoner Oil and Gas Co., 247 P. 99, 118 Okl. 183.

3.Michigan Trust Co. vs. Herpolsheimer, 240 N.W. 6, 256 Mich. 589.

4.Continental Supply Co. vs. Adams, Civ. App., 272 S.W. 325. 5.Brickell Const. Corp. vs. Pujol, App., 329 So. 2d 340.

5.Brickell Const. Corp. vs. Pujol, App., 329 So. 2d 340.

6.Jensen vs. Hugh Evans and Co., 115 P. 2d 471, 18 c. 2d 290. Elsom vs. Tefft, 250 P. 346, 140 Wash. 586.

7.Peterson vs. Hopson, 29 N.E. 2d 140, 306 Mass. 597, 132 ALR. 1.

8.Elsom vs. Tefft, 250 P. 346, 140 Wash. 586.

—Certificate holders and **trustees are entitled to have the trust instrument (Indenture) applied according to its terms**, so long as it does not offend the law on public policy. Hamilton vs. Young 116 Kan. 128, 225 P. 1045, 35 ALR. 496; Refon Realty Corp. vs. Adams Land and Bldg. Co., 128 Md 656. 98 A 199. And see Hossack vs. Ottawa Development Assoc. 244 Ill. 274, 91 N.E. 439.

—In the absence of a statute prohibiting it, a Business Trust may adapt and carry on business and make contracts under an assumed name, or trade name, which may be entirely fictitious. Hamilton vs. Young, 116 Kan 128, 225 P. 1045, 35 ALR. 496; Rand vs. Ferguhan, 226 Mass 91, 115 N.E. 286; Hodgkiss vs. Northland Petroleum Consolidated, 104 Mont 328, 67 P. 2d 811. Beilin vs. Krenn and Sato, 359 Ill. 284, 183 N.E. 355.

DECLARATION OF FACT NO. 70.

The adoption and use by a Business Trust of a name indicating its trust character does not violate a statute prohibiting the assumption of a fictitious corporate name. Venner vs. Chicago City R. Co. 258 Ill. 523, 101 N.E. 949; National City Finance Co. vs. Lewis (Cal.

App.) 3 P. 2d 316, reh den (Cal. App.) 4 P. 2d 163; also General American Oil Co. vs. Wagoner Oil and Gas Co., 247 P. 99, 118 Okl. 183.

DECLARATION OF FACT NO. 71.

—Statutes that require persons or partnerships transacting business under a fictitious name to file a certificate giving the name and addresses of those making use of such name do not apply to Business Trusts that are in their nature, pure trusts and not partnerships. National City Finance Co. vs. Lewis, (Cal. App.) 3 P. 2d 316, reh den (Cal. App.) 4 P. 2d 163; General American Oil Co. vs. Wagoner Oil and Gas Co., 247 P. 99, 118 Okl. 183.

—Purpose of Business — The Business Trust has been utilized in many types of business endeavors,(1) including business of considerable magnitude.(2) In the absence of statutory restrictions,(3) there is nothing inherent in the Business Trust to prevent it from carrying on any kind of lawful business activity that individuals, partnerships, or corporations might engage in,(4) as is evident from a consideration of the wide variety of business pursuits for which Business Trusts have been organized.(5)

1.Goldwater vs. Oltman" et al. L.A., 9754 210 Cal. 408, 292 P. 624 71 ALR. 871.

2.Section 2, Surpra.

3.Section 77 ct seq., infra.

4.Annotation, 156 ALR. 79. — "Business trusts are less handicapped with ultra vires problems than corporations." Linn vs. Houston, 123 Kan. 409, 225 P. 1105.

5.Real Estate business: Freeman, 220 S.W. 178, 55 L ed 424, 31 /S Ct 360 (Purchasing, improving, holding, and selling land and buildings, and operating an office building; Schumann-Heink vs. Folsom, 328 Ill. 321, 159 N.E. 250, 58 ALR. 485 (Real Estate Business).

DECLARATION OF FACT NO. 72.

Franchise or Excise Tax: Since a Business Trust has its origin in the common-law right of the parties to enter into a contract and does not spring from a franchise granted by the state, it has been held that constitutional authority to levy excises upon "COMMODITIES" a term including corporate franchises, does not empower the legislative to impose an excise tax upon Business Trusts measured by the value of the shares or certificates. Note: Opinion of Justices, 266 Mass 590, 165 N.E. 904, ALR. 952. Annotation 156 ALR. 192.

—Whether a Business Trust is an association within the meaning of the Internal Revenue Code (26 USC Section 7701 (a)(3) so as to be taxable as in entity separate from the four corners of the trust instrument. (Indenture). Titus vs. United States, (CA 10) 150 F. 2d 508, 162 ALR. 991, cert den 326 US 773, 90 L ed 467. 66 S ct 230.

—Expressed Business Trust Instrument will govern: "the trust instrument presents simply a question of contract augmented by the rules pertaining to those subjects, and the intention of the parties as expressed in the instrument (indenture) will govern. Thomie vs. Soundview Bulp Co. 181 Wash 2, 42 P. 2d 19.

CASES PERTAINING TO TRUSTS, BUSINESS TRUST ORGANIZATIONS AND THE CONTRACTUAL COMPANY

DECLARATION OF FACT NO. 73.

1.Caldwell vs. Hill, 176 S.E. 383 (1934). U.S. adapted Common laws of England with the Constitution.

2.Article 1, Section 10, Constitution (1776). Includes the sacred right of obligation of contract.

3.Article XIV, Bill of Rights. The sacred right to own property.

4.16 AM JUR 2d, Section 365. Property, anything of exchangeable value.

5.Elliott vs. Freeman, 220 U.S. 178 (1911). A [Pure Business] Trust is not dependent on statutory law.

6.Burnett vs. Smith, 240 S.E. 1007 (1922). A Trust is a legal entity.

7.Schumann-Heink vs. Folsom, 159 N.E. 250 (1927). If it is free of control by Certificate Holders, then it is a Pure Trust.

8.Berry vs. McCourt, 204 N.E. 2d 235 (1965). A Pure Trust is a contractual relationship in Trust form.

9.Goldwater vs. Oltman, 292 P. 624 (1930). A Business Trust is lawful wherever contracts are lawful. (Everywhere)

10.Johnson vs. Lewis, 6 F. 27 (1881). Trustees are legal owners of property in Trust (Fiduciary).

11.Bisbee vs. McKay, 102 N.E. 327. Succeeding Trustees do take title.

12. Commissioner vs. Marshman, CA 6 279 F. 2d 27 (1960). Fair Market Value determined by property received by taxpayer and not the F.M.V. of property transferred by taxpayer to Trust.
13. Parker vs. Monarmaric Trust, 278 S.W. 321 (1925). Certificates are personal property and convey on interest in the Trust property.
14. Burnet vs. Logan, 283 U.S. 404. Certificates in exchange are not taxable until a realized gain has occurred.
15. Tyson vs. Commissioner, 146 F. 2d 50 (1944). Gift tax is only on less than adequate consideration.
16. Estate of Anderson, 8 T.C. 706 (A) (1947). Even bad bargains in genuine business transactions don't result in taxable gifts.
17. Old Kent Bank & Trust Company vs. U.S., 430 F. 2d 392 (1970).
18. Babb vs. U.S., 349 F. Supp. 792 (1972).
19. H & R Corporation vs. United States, 255 F. Supp. 870 (1966). Labor contractor is taxable for income paid to it by a third party.
20. General American Oil Co. vs. Wagoner Oil and Gas Co., 247 P. 99, 118 Okl. 183.
21. State vs. Cosgrove, 210 P. 393.
22. Baker vs. Stern, 216 N.W. 147, 58 ALR. 462. Valid business organization.
23. Gleason vs. McKay, 134 Mass. 419.
24. Claggett vs. Kilbourne, 66 U.S. 346;
25. Coleman vs. McKay, 257 S.W. 733;
26. Reeves vs. Powell, 267 S.W. 328. Valid business organization.
27. Crocker vs. Malley, 265 U.S. 144.
28. Harris vs. New Mexico Oil, 204 P. 754.
29. Betts vs. Hackathorn, 252 S.W. 602, 31 ALR. 847;
30. Knemper vs. Welker, 283 P.284.
31. Page vs. Arkansas Gas Co., 5 F. 2d 171.
32. Beilin vs. Krenn and Sato, 359 Ill. 284, 183 N.E. 355.
33. Carpenter vs. White, 80 F. 2d 145.
34. Forgan vs. Machie, 206 N.W. 600.
35. Hecht vs. Malley, 265 U.S. 144 (1924).
36. Edwards vs. CIR, 415 F. 2d 578.

37. Outlaw vs. United States, 419 U.S. 844.
38. Dunbar vs. Broomfield, 142 N.E. 148.
39. CIR vs. Brouliard, 70 F. 2d 154.
40. William vs. City of Milton, 102 N.E. 355. Classic old case on trusts.
41. Hill et. al. vs. Reynolds, 75 F. Supp. 408 (1948).
42. Gallagher vs. Hannigan, 5 F. 2d 171.
43. Smith vs. Anderson British High Court, 1.