Trust Establishment and Termination: Avoiding Common Errors

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Trust Establishment and Termination: Avoiding Common Errors

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What is a Trust?

- In the most basic terms, a "trust" is a mechanism used to transfer property
- It grants a right, enforceable in equity, to the beneficial enjoyment of property, the legal title to which is in another person.
- The most fundamental characteristic of a trust is the separation of legal title, which is held by the trustees, and equitable title, which is held by the beneficiaries.
- A trust is a fiduciary relationship with respect to property subjecting a person by whom the property is held to equitable duties or obligations to deal with the property for the benefit of another person.
- Creating a trust separates the legal and equitable interests in the trust assets; this separation of legal and equitable interests necessarily means that neither interest is equal to the whole.

Types of Trusts – Revocable vs. Irrevocable

- A revocable trust is a trust that can be *revoked*, meaning it can be changed or updated at any given time as long as the grantor is still living and competent.
- Upon the death of the person with the power to revoke the trust (usually the grantor), most revocable trusts automatically become Irrevocable and cannot be changed.
- An irrevocable trust is one that cannot be easily amended, changed, or terminated once its created.
- In most cases, changes to an irrevocable trust must be approved and consented to by all the named beneficiaries.

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Types of Trusts – Testamentary vs. Inter Vivos

- Testamentary trusts are established after the death of the grantor.
- Inter Vivos trusts are established during the lifetime of the grantor.
- Commonly Encountered Testamentary Trusts
  - QTIP Trusts
  - Bypass Trusts
  - Trusts for children, descendants or other beneficiaries
- Commonly Encountered Inter Vivos Trusts
  - Irrevocable Life Insurance Trusts
  - Irrevocable Dynasty-type Trusts
  - Revocable Living Trusts
  - Charitable remainder Trusts
  - Charitable Lead Trusts
  - Asset Protection Trusts

Types of Trusts – Third Party vs. Self-Settled

- Self-settled trusts are those that are funded by the beneficiary's assets (i.e. the beneficiary is the grantor). A trust may be wholly, or partially, self-settled.
- Third-party trusts, on the other hand, are created by and funded with property that belongs to someone other than the beneficiary.
- Generally, the grantor of a self-settled trust cannot protect trust assets funded from the grantor from the claims of his or her creditors.
- Thus, third-party trusts typically provide more protection from creditors than most self-settled trusts.
- Note that asset protection trusts are an exception to this general rule.

Types of Trusts – Grantor vs. Nongrantor

- The grantor trust rules are found in Sections 671-679 of the Code and provide that if a grantor (or spouse) retains certain powers over a trust, the grantor is treated as the owner of the trust property for income tax purposes.
- The powers that cause grantor trust treatment are found in Sections 673-679.
- This type of trust is known as a "grantor trust" for income tax purposes and requires the grantor to include all items of income, deductions, and credits of the trust in his or her personal computation of taxable income as if he or she had received them directly.

Types of Trusts – What is a Gift?

- The term “gift” is not defined by the Code, but § 2512(b) provides that a transfer for less than an adequate and full consideration in money or money's worth “shall be deemed a gift” to the extent of the shortfall.
- The federal gift tax is imposed by § 2501(a) on an individual's transfer of property by gift.
- The estate tax is imposed by § 2001(a) on the decedent's taxable estate.

Types of Trusts – Completed Gift vs. Incomplete Gift

- Until a gift is completed, gift tax will not be triggered. The timing of a gift can be important for a number of reasons.
- The issue rarely comes up in the case of outright transfers of property. It arises most frequently when a transfer is made in trust, and the grantor retains some level of control over the property after the transfer, either in her individual capacity or as trustee of the trust.
- Essential to completion of a gift is the surrender by the grantor of "dominion and control" over the transferred property.

Scenarios of Complete vs. Incomplete Gifts

- Joint Account: Gift is incomplete until money withdrawn by non-transferor at which point it the amount withdrawn becomes a completed gift.
- Revocable Trust: Gift is incomplete until a distribution is made to a non-transferor at which point the amount distributed becomes a completed gift.
- Irrevocable Trust: Generally, the gift is complete when transferred to the trust, but not always. Transfers to certain types of trusts, including domestic asset protection trusts and incomplete nongrantor trusts (ING), will remain incomplete until the death of the grantor or a distribution is made to a non-grantor beneficiary.

Types of Trusts – Notable Combinations

- Self-settled i.v. revocable grantor trust
  - Grantor trust
  - Incomplete gift
- Self-settled i.v. irrevocable asset protection trust
  - Grantor trust
  - Complete or Incomplete gift

Types of Trusts – Notable Combinations

- I.v. non-grantor incomplete gift trust (self-settled or third party settled)
  - Also known as “ING” Trusts
- Third party settled i.v. grantor completed gift trust
  - Grantor transfers assets into trust for the benefit of others
  - Grantor trust
  - Complete gift
  - Includes trusts such as Irrevocable Life Insurance Trusts (“ILITs”) and Spousal Lifetime Access Trusts (“SLATs”)
- Testamentary non-grantor trusts for spouse and/or descendants

Types of Trust – QTIP Trusts

- A QTIP trust enables the grantor of the trust to provide for a surviving spouse while also maintaining control of how trust assets will be distributed once the surviving spouse passes away.
- One of the benefits of the QTIP trust is that trust assets are included in the surviving spouse's taxable estate, and therefore receive a step up in basis on the survivor's death, enabling heirs to avoid capital gains taxes.
- QTIP trusts may also contain a power of appointment, adding additional flexibility, which can be structured to limit a class of appointees to retain some level of control over how assets pass upon the death of the surviving spouse.

Types of Trust – QTIP Trusts

- Some of the requirements for a QTIP trust include:
  - The surviving spouse is the sole lifetime beneficiary of the trust;
  - All income must be distributed to the surviving spouse every year at a specified interval; and
  - No person has a power during the surviving spouse's life to appoint any part of the property to any person other than to the surviving spouse.
- Additionally, the deceased spouse's executor must make an election to treat all or a specified portion of the trust property as qualified terminable interest property.

Trust Situs – Definition and Importance

- The situs of a trust is essentially where the trust resides and is managed.
- Sections 267, et seq., of the Restatement (Second) Conflicts are regularly referred to in case law, the Uniform Trust Code (UTC), and in other areas as determining situs issues.
- The UTC, and states that have adopted the UCC, use the term “principal place of administration,” rather than “situs.”
- Situs is a fluid concept depending upon the facts and circumstance existing at any given time, as trustees move or get replaced, often leading to unanticipated consequences for the unwary.
- Situs can affect which state’s income tax applies (although a number of factors which vary from state-to-state will also be relevant in that analysis), is a factor in determining what law governs the administration of the trust, and often determines where a trustee or beneficiary might seek judicial relief.

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Trust Situs – How it is Determined

- Under the UTC, the default rule is the trust's principal place of administration is where the trust is administered with reference to:
  - Where all or part of trust administration occurs;
  - Where trust records are physically maintained; and
  - Where trust assets are located (by deposit or physical presence).
- In the case of co-trustees, special rules may apply.
- Otherwise, in the absence of a corporate or professional co-trustee, principal place of administration is generally the place of residence of any of the individual trustee.

Trust Situs – How it is Determined

- However, the default rules under the UTC don't apply if the grantor has designated a principal place of administration in the trust instrument itself.
- The grantor's designation of a particular place of administration will control if either
  - the trustee is located in the designated location;
  - all or a portion of the trust's administration occurs in the location; or
  - trust assets are located in the state.

Trust Situs – How it is Determined

- Certain state statutes set out specific factors, which if present, the trust is deemed to be sitused in that state under the statute.
  - Alaska - AK Stat § 13.36.035
  - Delaware - 12 DE Code § 3340
  - Nevada - N.R.S. § 164.045
  - South Dakota - SDCL § 55-1-56
  - Tennessee - T. C. A. § 35-15-107
- These states are often desirable for trust situs, and ass such, many planners will want to review and consider what factors are required to result in the statutes applying.

Trust Situs – Changing Situs

- The trustee usually has the discretion to relocate the trust situs.
- The trustee typically should notify the qualified beneficiaries of the proposed transfer at least sixty days prior to transferring, giving the beneficiaries the opportunity to object to the transfer.
- If there are additional concerns around the proposed transfer or objection are raised, the trustee may need to seek judicial approval.
- However, assuming no objections are raised, the trustee may proceed without court approval and relocate the trust.

Selecting a Trustee - Generally

- "Serving as an executor or trustee is neither an honor, nor a game for beginners to play. Acting as an executor or trustee requires technical skills, experience, and an ability to deal with the family members involved. Nevertheless, clients often choose an executor and the trustee without fairly evaluating the needs of the estate or trust against the named fiduciary's abilities to meet those needs."
- Schlesinger, Edward, Fifty-Two Questions to Ask Before Choosing Your Executor and Trustee, Successful Estate Planning Ideas and Method Service (1986)

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Selecting a Trustee – Attributes to Consider

- Judgement and Experience
- Impartiality/Objectivity
- Investment Sophistication and Track Record
- Permanence and Availability
- Sensitivity to Individual Beneficiaries' Needs
- Accounting, Tax Planning, and Record-Keeping
- Fees

Selecting a Trustee – Corporate vs. Individual

- Individual Pros
  - Often easier to form and fund trust
  - Lower management cost
  - Typically less formal communications and requirements such as for distributions
- Individual Cons
  - No limited liability, trustee could be held personally liable
  - Lack of experience in trust management and knowledge of fiduciary and tax law
  - The role of trustee will need to be transferred to another individual or entity if the individual trustee dies or resigns
  - Can be too emotionally invested in the situation/beneficiaries and not make the most objective decisions
  - Can result in record keeping and report negligence

Selecting a Trustee – Corporate vs. Individual

- Corporate Pros
  - Objective third party
  - Assets are typically managed more stringently due to regulatory scrutiny or internal policies
  - Records and reporting requirements are usually well maintained
  - Less likelihood of needing to find successor trustee since legal entities do not die/lose capacity
  - Limited liability
  - Experienced in managing trusts in varying circumstances
- Corporate Cons
  - Additional set up/management costs
  - More procedural requirements, such as for distributions

Selecting a Trustee – Tax Considerations – Completed Gift

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- If any distributions may be made to or for the grantor's benefit, there must be an independent trustee making the distribution decision, and there cannot be an ascertainable standard (health, education, maintenance, and support) that allows the grantor to compel a distribution.
- Furthermore, the grantor cannot be a co-trustee participating in such decisions unless the other co-trustee has a substantial adverse interest in the disposition of the transferred property. Treas. Reg. § 25.2511-2(e).
- Even if there is an independent trustee or a co-trustee with an adverse interest, the trust should be located in a jurisdiction that recognizes spendthrift protection for self-settled trusts to assure that the retained discretionary interest does not cause the transfer to be treated as an incomplete gift because of the ability of the grantor's creditors to reach the trust assets.

Selecting a Trustee – Tax Considerations – Estate Tax Inclusion

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- If the grantor has the power, either as trustee or otherwise, to add beneficiaries, change the disposition among beneficiaries, accumulate or distribute income, invade corpus, or revoke the trust, Sections 2036 and/or 2038 will include such assets in the grantor's taxable estate.
- Estate inclusion also occurs if the grantor has the right to appoint himself as trustee, either currently or upon the occurrence of a future contingency even if the contingency is out of the grantor's control (such as a vacancy in the office of trustee.)
- Sections 2036 and 2038 apply whether the grantor serves alone or as a co-trustee, or if the grantor just has a veto power, or may act only subject to another person's veto power.
- Sections 2036 and 2038 apply if the grantor keeps the dispositive power in any capacity (for example, as director of a private foundation that receives a gift from the grantor), not just as trustee.
- Estate inclusion will not occur if the dispositive power is subject to an ascertainable standard.

Selecting a Trustee – Tax Considerations – Grantor Trust Status

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- A “grantor trust” is a trust for which the grantor is treated as the owner of the trust assets for federal income tax purposes by virtue of the inclusion of certain provisions in the trust instrument.
- In other words, if the grantor of a trust retains (or certain other persons are granted) specific powers over or benefits in the trust, then the income of the trust is taxable to the grantor rather than to the trust, and the trust is disregarded for income tax purposes.
- It generally is desirable, when creating a grantor trust, to ensure that the grantor is treated as the owner as to the entire trust, as it is possible that a grantor is treated as the owner only of a portion of the trust.
- Keep in mind that just because the grantor is taxed on the income of the trust doesn’t mean that he will receive distributions.

Selecting a Trustee – Tax Considerations – Grantor Trust Status

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- If the grantor serves as trustee, grantor trust status is typically triggered due to a number of powers held by the trustee (such as certain administrative powers).
- Certain powers held by an adverse party, or requiring an adverse party's consent, can avoid grantor trust status.
- For example, in an ING trust, having a distribution committee of adverse parties ensures that grantor trust status is not triggered even thought the grantor and/or spouse are beneficiaries.

Selecting a Trustee – Tax Considerations – Powers that Cause Grantor Trust Status

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- The various powers, rights, or provisions that will cause a trust to be deemed a grantor trust for income tax purposes are outlined in Sections 673-677 and 679.
- Power to Revoke
- Power of Substitution
- Income for the Benefit of the Grantor's Spouse
- Power to Pay Life Insurance Premiums
- Power to Add Beneficiaries
- Power to Borrow Trust Assets without Adequate Security

Funding a Trust - Generally

- Funding a trust refers to moving ownership of assets that are titled in the grantor's name or in joint names with others.
- Such assets are retitled into the name of the trust, usually via a deed, assignment, or similar transfer document.
- Funding a trust can also involve taking assets that require a beneficiary designation and naming the trust as the primary or secondary beneficiary of those assets.
- Many transfers can be set up to occur on the death of the grantor, while still passing outside of the grantor's probate estate (payable on death bank accounts, transfer on death deeds, beneficiary designations, etc.).

Funding a Trust - Sales

- There are a plethora of reasons to sell assets to a trust, depending on how the trust itself is structured.
- Sales between grantors and grantor trusts are especially popular because no income is recognized for income tax purposes, even though the transfer is typically respected for gift and estate tax purposes.
- With respect to closely held businesses, sales to trusts are often an essential part of an estate plan and are centered around removal of appreciation in value and certain valuation discounts available on the sale.

Funding a Trust – UFTA/UVTA

- The Uniform Voidable Transactions Act (UVTA), and its predecessor the Uniform Fraudulent Transfer Act (UFTA), codifies the legal doctrine of "fraudulent conveyance" which defines the limits of a debtor's right to deal with its property in relation to its creditors.
- The UVTA renders voidable any transfer of property by a debtor made with intent to hinder, delay, or defraud creditors.
- The UVTA, while potentially applicable upon any transfer to a trust, should especially be considered when there is a transfer to a self-settled trust such as an asset protection trust.
- Many states have adopted Asset Protection Trust statutes that provide, some of which specifically address fraudulent transfer issues and provide modifications to default law in that context.

Funding a Trust – Testamentary Trusts

- Often with testamentary trusts, there is more than one trust which can potentially be created and funded.
- Two popular approaches for allocating assets among the trusts for maximum tax benefits are the use of an A/B formula and a Clayton QTIP election.
- A Clayton QTIP gives the decedent's executor or personal representative the discretion to determine how much of the estate should pass to a QTIP trust, with the remainder typically passing to a credit shelter trust.
- Similarly, the A/B formula specifies how assets should be allocated among the trusts, typically by giving an amount equal to the decedent's exclusion amount to the credit shelter trust and the remainder passing to a marital trust to minimize estate taxes.

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Determining Final Distributions

- Review trust document, as it provides the overriding guidance regarding final distributions;
- Identify beneficiaries and shares;
- Determine value of trust assets;
- Determine whether distributions can be made in kind or whether assets need to be liquidated and cash distributed; and
- Consider whether to retain a reserve to pay taxes and other administrative expenses.

Terminating Events

As a general principle, a trust ends when its settlor intends it to end. His intention may be specifically expressed in the trust instrument, or it may have to be inferred from the purpose of the trust. For instance, a trust set up to sell real property belonging to a large number of widely scattered heirs does not end until the property is sold and final distributions are made.

Typical Terminating Events

- Death of a beneficiary or a specific person such as the grantor;
- Beneficiary reaching a certain age; and
- Running of rule against perpetuities.

Termination Under the Uniform Trust Code

- Nonjudicial Termination:
  - A noncharitable irrevocable trust may be modified or terminated by a trustee for any reason upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. Unif. Trust Code § 411(a)
  - Even though this method of modification or termination does not require court approval, the trustee may still seek court approval of such modification or termination.

Termination Under the Uniform Trust Code

- Judicial Termination:
  - A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. Unif. Trust Code § 411(b)
  - If not all of the beneficiaries consent to a proposed modification or termination of the trust, the modification or termination may be approved by the court if the court is satisfied that:
    - if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and
    - the interests of a beneficiary who does not consent will be adequately protected.

    Unif. Trust Code § 411(c)

Termination Under the Uniform Trust Code

- Termination of Uneconomic Trust:
  - After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than [$50,000] (varies by state) may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. Unif. Trust Code § 414

Termination Under Local Law vs. Federal Tax Law

- Just because a trust terminates under local law does not necessarily mean it terminates for federal tax purposes, and the general rule that a trust ends when its settlor intends doesn't always hold true.
- If the trustee actually distributes the trust funds to the beneficiaries, that action will mark the end of the trust for tax purposes even if there is some delay in the trustee's final accounting or the trustee has retained a reasonable amount for unascertained or contingent debts to outsiders. Reg § 1.641(b)-3(b).
- State law may end a trust only upon actual final distribution, even though the trust instrument provides for an earlier date of distribution. If so, losses sustained by the trust before the day of actual distribution are taxwise those of the trust and generally are not available to the beneficiary. Swoboda, Gustave T. v. U.S., (1958, CA3) 2 AFTR 2d 5699, 258 F2d 848, 58-2 USTC ¶9824.

Tax Consequences of Trust Termination

Trust Taxation Basics

- Trusts are generally separate taxable entities.
- Trust taxation is generally determined under Subchapter J of Code.
- Trust taxation is neither double taxation nor flow-through.
- Rather, it is somewhat of a mix of individual and entity tax concepts depending on the type and classification of Trust and distributions from Trust.

Tax Consequences of Trust Termination

- Terminating distributions follow same scheme as current distributions re DNI, income, deductions, etc.,
- Distributable Net Income (DNI) determines the maximum amount that can be taken as a Distribution Deduction by the Trust.
- Calculation:

i. DNI starts with Taxable Income before the distribution deduction and is adjusted as follows:

ii. Add back personal exemption.

iii. Subtract capital gains allocated to corpus. (Note: Capital gains may be a part of DNI, in certain situations)

iv. Add capital losses allocated to corpus.

v. Tax-exempt income is net of related expenses. IRC § 643(a)(5).

vi. Foreign Income of a Foreign Trust is included in DNI. IRC § 643(a)(6).

Tax Consequences of Trust Termination

- Other Issues to Consider/Complete:
  - Filing of final tax return
  - Send Schedule K-1 to beneficiaries
  - Reserve to pay taxes, administrative expenses
  - Receipt and Release?
  - Indemnification and/or Reimbursement Agreement?

Passthrough Tax Deduction Limitations upon Termination

- Despite the conduit approach to trusts and estates, their deductions do not pass directly through to beneficiaries.
- By reducing DNI, deductions reduce the maximum amounts taxable to beneficiaries, but once DNI is reduced to zero, any excess deductions are generally useless to the beneficiaries.
  - Swoboda v. US, 258 F2d 848 (3d Cir. 1958) and Rev. Rul. 57-31, 1957-1 CB 201.
- A trust can use excess deductions in other years if they enter into a net operating loss (NOL) or capital loss carryover, but they are wasted if they do not qualify for a carryover or if the carryover cannot be used for want of sufficient income or gains in years to which it is carried.
- Additionally, Section 642 allows certain excess deductions to be used by the beneficiaries in the year the trust terminates.

Excess Deduction Passthrough: Character and Limits

- Excess deductions on termination of a trust retain the same character in the hands of the beneficiary as the deductions had while in the trust. Reg § 1.642(h)-2(b)(1).
- Thus, individual beneficiaries may have difficulty utilizing NOL excess deductions because they will need to be in the same trade or business as the trust was (not sure on this, or if they can use the income from a different ToB to offset) and capital loss deductions because they can only be used to offset capital gains.
- Excess deductions passed through cannot be carried back to earlier taxable years by the beneficiary, and in determining a carryover's remaining statutory life, the last taxable year of the trust counts as a full year regardless of how short it may be, as does the beneficiary's tax year that includes the end of the trust's last year. Reg. § 1.642(h)-1(b).
- Generally, if excess deductions exceed the beneficiary's AGI for that tax year, the unused amount is lost. Reg. § 1.642(h)-2(a)(2).
- The exception to this rule is NOL and capital loss excess deductions, which can be carried forward indefinitely by individual beneficiaries.
- Exception to the exception – NOLs which would otherwise expire in the year of termination. Reg. § 1.642(h)-2(d).

Excess Deduction Passthrough: To Whom Do They Pass?

- Under § 642(h), carryovers and excess deductions pass only to the beneficiaries succeeding to the property of the trust who bear the burden of any loss for which a carryover is allowed, or of any excess of deductions over gross income. Typically, this means the remainder beneficiaries. Reg. § 1.642(h)-3(a).
- If two or more persons succeed to property of the estate or trust, the passed items are allocated among them, "proportionately according to the share of each in the burden of the loss or deductions." Reg. § 1.642(h)-4.

Other Issues: Liability of Trustees and Beneficiaries

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- 31 USC § 3713 provides that "a representative of a person or an estate paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government.
- This creates potential issues if the trust is included in the taxable estate of the grantor.
- Statutory liability of a transferee for so much of the tax that is not paid when due is imposed upon the trustee and others who receive or hold property. See §6324(a)(2). This applies even if the fiduciary has been released under §2204.
- The liability of a transferee is limited to the value of the property received.
- If the trust property that was distributed was included in decedent's gross estate, the trustee remains personally liable for the amount of the estate tax, up to the value of the trust property as of the decedent's date of death. The beneficiaries receiving the distribution normally will not be personally liable for payment of any part of the tax.

Other Issues: Liability of Trustees and Beneficiaries (Continued)

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- vi. The trustee of an inter vivos trust, the assets of which are included in the gross estate, is not entitled to apply for the discharge from personal liability available to an executor. Rev. Rul. 57-424, 1957-2 C.B. 623.
- Prudent trustees can minimize exposure to personal liability by:
  - applying for discharge under § 6905 (income and gift taxes) and § 2204 (estate taxes);
  - requesting prompt assessment of income, gift, and estate tax liabilities under § 6501(d); and
  - giving prompt written notice of the termination of the fiduciary relationship under § 6903(a).

Receipt, Release, And Reimbursement Agreement

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- Trustees generally owe onerous fiduciary duties to the beneficiaries of the Trust.
- The law regarding Trustee/beneficiary relations is complicated, and the normal rules concerning arms-length transactions may not apply.
- Most jurisdictions provide that beneficiaries who are competent and who have sufficient knowledge of the relevant facts can allow a Trustee to act in a way that may not meet traditional fiduciary duties.

Receipt, Release, And Reimbursement Agreement (Continued)

- One way to accomplish this is to enter into a receipt, release, or reimbursement agreement.
  - A receipt clause is simply the beneficiary acknowledging that they received certain distributions from the Trustee.
  - A release clause states that the beneficiary is relieving the Trustee for liability associated with certain conduct.
  - Example language:
    - The Beneficiaries hereby release, acquit, and forever discharge the Trustee in its corporate, individual, and fiduciary capacity from any and all Claims, liabilities, demands, causes of action, damages, or expenses (including attorney's fees and costs of court) of any kind or character, whether known or unknown, that the Beneficiaries, or any third party claiming by or through them, may now or in the future hold or assert in connection with, arising from, or attributable to [the matters to be released].
  - A reimbursement clause provides that the beneficiary will reimburse the Trustee for certain costs or expenses.
  - The Trustee may also require the beneficiary to indemnify them against a claim by a third-party that may reasonably arise as a result of the distribution.

Receipt, Release, And Reimbursement Agreement (Continued)

- For example, a Trustee can distribute funds to the beneficiaries before the Trust tax returns are finalized, but then ask you for an indemnification in the event the Trustee is sued by the IRS. An indemnification means that you agree to pay for all costs and expenses incurred by the Trustee and cover any tax liability that may arise
- Due to the relative uncertainty in this area, a Trustee can always seek to have a document or agreement blessed by a court.
- The agreement can be invalidated if the Trustee threatens to withhold the Trust distribution until the beneficiary signs the release.

Reasonable Causes to Retain Trust Assets

- The Trustee has the right to withhold a reasonable reserve of Trust assets to pay for anticipated Trust expenses, including taxes, debts, trustee and accounting fees, and other costs of administration. A reasonable reserve will vary depending on the size of the Trust estate and the anticipated expenses.
- A Trustee is allowed to withhold any part of a Trust distribution that is in dispute. If there is a Trust contest lawsuit, or some other lawsuit that puts the Trust assets at risk of being paid to someone else, then the Trustee has the right to retain the disputed property until all court action is finalized.
- The Trustee may retain enough Trust assets to seek court approval of an accounting of trust activities. That means the Trustee can hire an accountant to prepare a Trust accounting, and then a lawyer to prepare an accounting report petition and file it with the court. In other words, the Trustee cannot hold your money pending your signature on a release, but the Trustee can spend your money to seek court approval of a Trust accounting.

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Questions?

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Gray practices in partnership, corporate, and individual tax planning; business transactions including mergers and acquisitions; business planning; tax controversy; estate and wealth transfer planning; probate; estate and trust litigation; asset protection; and charitable planning. Gray has conducted, authored, and directed numerous seminars for professional, academic, and civic groups on taxation, business, asset protection and estate planning. Gray enjoys cooking at home in his outdoor brick oven and spending his spare time on his sailboat with his wife, Macey, and two boys, Charles and Mason, at Sardis Lake or on the Gulf Coast.

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Charles focuses his practice on estate planning, income tax planning, business planning, and probate and estate administration. He counsels clients on the design and implementation of tax efficient estate and business plans, and represents executors in all phases of estate administration, including probate administration, preparation of federal estate tax returns, and the settlement of the estate. Specifically, Charles works with his clients to ensure their goals are met with regard to the disposition of their estate while also maximizing the use of credits and exemptions from federal estate and gift taxes and planning for income taxes. Charles has extensive experience advising, drafting, and administering trusts, as well as in the charitable and non-profit arena. Charles also represents clients with respect to the establishment, operation, taxation, re-organization and restructuring, business succession, and tax reporting requirements of their business as well as advises on business related transactions including the disposition of a business. Charles is a native of the Mississippi Delta. In his free time, he enjoys cycling, hunting, and spending time with his wife Ann Elize, daughters Stella and Clara, and two dogs, Storm and Rebel. Charles also enjoys teaching at his alma mater and serves as an adjunct instructor for the Patterson School of Accountancy at the University of Mississippi.