

Trusts and Wills

Trusts

- A trust is a fiduciary relationship in which legal title to property (trust corpus) is held by one or more parties (the trustee) for the use, enjoyment, and benefit of another (the beneficiary).

Trusts

- Settlor (Creator)
- Trust Property
- Trustee
 - has legal title for benefit of beneficiary
- Beneficiary
 - has equitable title

Express Trusts

- A trust established by voluntary action by the creator (settlor); usually in writing, although it may be oral.
- Testamentary Trust - a trust in a will; it becomes effective after the settlor's death.
- Inter Vivos Trust - a trust established during the settlor's lifetime.

Types of Express Trusts

- Required to protect the buyer's interest against third parties; consists of delivery of a duly executed and acknowledged deed to the appropriate recorder's office.

Types of Express Trusts

Charitable Trust - a trust that has as its purpose the benefit of humankind.

Spendthrift Trust - a trust designed to remove the trust estate from the beneficiary's control and from liability for his individual debts.

Totten Trust - a tentative trust consisting of a joint bank account opened by the settlor (creator of a trust).

Implied Trust

- A trust created by operation of law.
- Constructive Trust - an implied trust imposed to rectify fraud or to prevent unjust enrichment.
- Resulting Trust - an implied trust imposed to fulfill the presumed intent of the settlor.

Trustee

- Anyone legally capable of holding title to and dealing with property may be a trustee.
- Duties - the three primary duties of a trustee are to (1)carry out the purposes of the trust, (2)act prudently, and (3)act with utmost loyalty.
- Powers - generally established by the trust instrument and State law.

Termination

- The general rule is that the trust is irrevocable unless a power of revocation is reserved in the trust instrument.

Wills

- Definition - a will (or testament) is a written instrument, executed with the formalities required by statute, whereby a person makes a disposition of his property to take effect after his death.

Formal Requirements

- A will must be (1)in writing, (2)signed, and (3)attested to by witnesses.
- Testamentary Capacity - for a will to be valid the testator must be sufficiently competent to intend the document to be her will.
- Conduct Invalidating a Will - a will that is the product of duress, undue influence, or fraud is invalid and of no effect.

Revocation

- A will is revocable by the testator and under certain circumstances may be revoked by operation of law.
- Destruction or Alteration - revokes a will
- Subsequent Will - revokes prior wills to the extent they are inconsistent.
- Codicil - an addition to or revision of a will executed with all the formalities of a will.
- Marriage - generally revokes a will executed before the marriage.

Revocation 2

- Birth of a Child - may revoke a will at least as far as that child is concerned.
- Renunciation by Surviving Spouse - surviving spouse may elect to take under laws of descent.
- Special Types of Wills - generally binding only in specific situations and may have limitations upon their use.

Intestate Succession

- Intestate - condition of person who dies without a valid will.
- Course of Descent - each State prescribes rules for the passage of property not governed by a valid will; as a general rule the property passes in equal shares to each child after the widow's statutory or dower rights have been settled.

Per Stirpes and Per Capita

- Per Stirpes
 - Lineal descendants of predeceased children take property by representation of their parents (split deceased parent's share)
- Per Capita
 - Lineal descendants share equally along with others

Administration of Estates

- Probate - the court's supervision of the management and distribution of the estate.
- Executor or Administrator - a person who is responsible for collecting the assets, paying the debts, and disbursing the remainder according to the will or intestate statute.
- Executor - the person named in the will and appointed by the court to administer the will.
- Administrator - person appointed by the court to administer the estate when there is no will or if the person named in the will fails to qualify.

Administration of Estates

- Probate
- Executor or Administrator
