

Construction, Road Blocks, and Speed Bumps: A Trustee's Road Map to Court Created Trusts

TARRANT COUNTY BAR PROBATE SECTION

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Why Construct a Management Trust?

1301:

1. Least Restrictive Alternative
2. Family Dynamics
3. Guardian Unable to Post Bond
4. Complicated or Sizable Assets
5. Minor
6. Cost Effectiveness
7. Incapacitated Person

142:

1. No Guardian
2. Guardian Unable to Post Bond
3. Minor
4. Protect Assets from potential spouse
5. Incapacitated Person



Why Construct a Management Trust?

142 Definition:

“a person who is impaired because of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or any other cause except status as a minor to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.”

1301 Definition:

“a minor, an adult because of physical or mental condition, is *substantially* unable to: provide food, clothing, or shelter for himself or herself; or care for the person’s own physical health; or manage the person’s own financial affairs; or a person who must have a guardian appointed for the person to receive funds due the person from a governmental source.”

Who Can Create a Management Trust?

142 Trusts:

1. Next Friend
2. Guardian Ad Litem
3. Attorney Ad Litem (possibly)

1301 Trusts:

1. Guardian of a Ward
2. An attorney ad litem or guardian ad litem for ward
3. A person interested in the welfare of an alleged incapacitated*
4. Attorney Ad Litem/Guardian Ad Litem*
5. A person who only has a physical disability



*** If there is no guardian**

Who Can Be a Trustee?

142 Trusts:

1. Financial Institution
2. Individual if less than \$50,000
3. Individual if *no financial institution is willing to serve and in best interest*

1301 Trusts:

1. Financial Institution
2. Individual if less than \$150,000
3. Individual if *no financial institution is willing to serve and in best interest*

Considerations when Selecting a Trustee

1. Nationally Chartered vs. State Chartered
2. Capital Surplus vs. Assets Under Management
3. Specialty Assets
4. Experience in Court Created Trusts
5. Account Load and Average Size
6. Distribution Process



Contents of Order

1301 Trusts

1. Direct any person or entity holding property that belongs to the person for whom the trust is created or two which that person is entitled to deliver all or part of that property to a person or corporate fiduciary appointed as trustee of the trust
2. Terms of Trust (attach trust agreement)
3. Date of termination (if minor's trust otherwise terminates at 18th birthday)
4. *Approval of Trustee Fee Schedule (if possible)*
5. *Revocation of Power of Attorney (if no guardian is appointed)*
6. *List of Specific Assets to be collected (if known)*
7. *Authority to Sign Beneficiary's 1040 (if needed)*

142 Trusts – Only Requires Terms of the Trust

Trust Agreement

Required language:

1. Sole Benefit
2. HEMS
3. Reinvest Income
4. Date of Termination (if minor)
5. Corporate Trustee Shall Serve Without Bond
6. Trustee Compensation
7. Notice Language (only 142)

Trust Agreement

Suggested language:

1. Funeral Expense
2. Income Taxes and CPA Fees
3. Attorney Fees (only 1301)
4. Authority to Sign Beneficiary's 1040 (only 1301)
5. Ability to Collect Additional Funds (only 1301)
6. Legal Obligation of Parents
7. Retirement Accounts (only 1301)



Opening an Account

What Do You Need to Open a Trust Account?

1. Photo ID
2. W-9
3. Current Statements
4. Current Deeds
5. Obituary
6. Death Certificate
7. Cost Basis
8. Order and Trust Agreement
9. Patience



Funding of a Trust

What Assets Can Fund a Trust?

1. CASH
2. Investment Accounts
3. Deposit Accounts
4. Annuities – not really
5. Life Insurance - depends
6. Real Estate - depends
7. Minerals
8. Closely Held - depends
9. Unclaimed Property



Funding of a Trust

What Assets Can NOT Fund a Trust?



Nail Salons

Gas Stations

Mechanic Shops

Tire Stores

Administration of Management Trusts

1. Grantor Trusts
2. Discretionary Distributions
3. Monthly Expenses
4. Sale of Assets
5. Trustee Compensation
6. Initial and Annual Accounting



Termination of Management Trusts

1. When to Terminate
2. Final Tax Return and Account Closing
3. Final Account
4. Final Attorney Fees
5. Beneficiary's Final 1040
6. Distribution of Assets
7. Receipts
8. Application and Order to Discharge

Questions?

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