

Modern Compliant Trusts

First and foremost all commercial transactions are governed by the Uniform Commercial Code not Common Law. The **Uniform Commercial Code (UCC)**, first published in 1952, is one of a number of uniform acts put into law with the goal of harmonizing the law of sales and other commercial transactions across the United States of America (U.S.) through UCC adoption by all 50 states, the District of Columbia, and the U.S. territories.

So called “common law and pure trusts” are not recognized by the courts and the IRS considers them to be something other than legal trusts. Common Law for the most part was abolished in 1952 and our courts today operate under Equity/Admiralty consideration and authority.

During the last century, the Congress of the United States and the Legislatures of the several States as well as judges have presumed to exercise the authority to merge the procedures of Law and Equity. Today it is nearly impossible to have a case heard in a court of Common Law. There is only one left to our knowledge and that is in New York. The bottom line is this; one may claim “Common Law” but no matter what is claimed any legal matter will be heard under the UCC in an Equity/Admiralty Court. With this in mind the right to self and property has been superseded by the combination of law so Equity/Admiralty is the only option for litigation.

With this in mind District Court and all District Courts of the States are now courts of law and equity with set jurisdictions. All this has been adopted and there are neither sufficient grounds nor power to dispute the complex nature of the legal system of today. No individual has the funds or resources to wage the legal undertaking to prevail. Therefore it is paramount to operate in an entity that is recognized in the system of today. This being said, a Trust that will withstand the rigorous tests of law and the Internal Revenue Code must conform to Scott on Trust Law, the Restatement of Trusts and the Internal Revenue Code.

Today in our complex world we operate under Law Merchant which is an independent, parallel system of law like Equity or Admiralty. It is not a modification of Common Law and occupies a field over which Common Law does not nor ever did extend. Common Law deals with money value (gold and silver); while the Law Merchant deals with the law of Bills, Notes and Checks which are negotiable instruments and commercial paper. Law Merchant is closely allied to the Equity system of agreement and contracts which it uses extensively because the Constitution of States recognizes Equity Law.

You can very plainly see that the complex system in which we live and operate in today has drastically changed and requires modifications, inclusions and complexities written in Trusts that are necessary to both defend and claim legal standing in our courts. The IRS considers “pure trusts” to be other than a legal trust. Also the law of perpetuity states that no trust may last more than 21 years, renewable.

To accomplish this and conform to the current laws and regulations and be totally effective in elimination of liability, defer taxation and not be subject to capital gains, our Trusts were researched and copyrighted to be:

Non-Grantor, Irrevocable, Complex, Discretionary Simple, Trusts with a Spendthrift provision, to provide the utmost legal protection and tax advantages for all our clients.

1. Our Trusts were written to comply with Scott on Trust Law, the Restatement of Trusts and the Internal Revenue Code. This was done so the Trust corpus would be protected from turn over orders by any court or judge, with the exception of fraudulent conveyance.
2. The non-grantor designation exempts the Trust from any alter ego status that brings into action the management or beneficial enjoyment by the Settlor. If the creator of a trust has management of the corpus or is a beneficiary of the trust it becomes a so called living trust which has limited benefits and no tax advantages or asset protection.
3. In order to have asset protection the Trust must be Irrevocable and non-grantor. This Trust separates the Settlor or Creator from the corpus of the Trust. When assets are irrevocably transferred to Trust they may never revert to the one who is making the endowment or the Settlor of the Trust. Under these terms and conditions upon creation legal separation has occurred and the corpus may not be breached by claimants of the Settlor or endower.
4. In order to serve the Beneficiaries of the Trust and protect the corpus the Trust must be Complex in nature with terms and conditions that plainly and fully state the powers and limitations of the Trustees. Complex Trusts are governed by terms and conditions that may not be altered or changed by the Trustees and the purpose of the Trust is established once and for all time. The Trustees may also make income declarations stated further herein.
5. To comply with the law of perpetuity the Trust must also have a Simple provision. This provision states the Trust must end after a period not to exceed 21 years but at the sole and absolute discretion of the Trustee may be renewed for an additional 21 years. It further is defined in the Trust Law the following, "A Trust shall continue until the **date of the Trust agreement made at the time of creation until it reaches 21 years**. At such time the Trust shall terminate and Trustee shall distribute the Trust principal and any accumulated income as the Trustee(s), in his or her absolute and sole discretion, shall determine to be in the best interests of the beneficiaries. The Trustee(s) may, at any time the Trustee(s) elects and can legally do so, and in the Trustee's absolute discretion, extend the term of this Trust for any period of time. Notwithstanding anything in this agreement to the contrary, the Trust herein created shall not continue beyond 21 years after the death of the last of the currently living descendants of those beneficiaries living at the time of the creation of the Trust. On the expiration of such period, the Trust created shall terminate, and the Trust property shall be distributed, in the Trustee's sole discretion, to those persons privileged to receive the income at the time of termination." This is perhaps the hardest provision for attorneys to comprehend.

6. The Spendthrift Provision of the Trust is the critical element of the document in that no Spendthrift Trust Corpus may be penetrated to reach the assets of that Corpus. Case law upholds this and has upheld this over the many long years of its existence and will continue to uphold it. No judge or court may issue a turnover orders against a properly constructed Spendthrift Trust. The sole exception to this rule of law is fraudulent conveyance to avoid judgment; and this only applies to a Trust created after litigation has been filed not before.
7. The Discretionary terms and conditions of the Trust are established to insure the absolute and sole discretion power of the Trustee in determining the distribution of the Corpus assets to the Beneficiaries of the Trust. If any single percent of the Corpus is designated to be held or distributed to any one or more Beneficiaries the Discretionary designation of the Trust would be invalid. This in no way would affect the asset protection but could adversely affect the taxable structure of the Trust. The Internal Revenue Code is explicit and clear with regard to the Discretionary nature of a Trust plainly stating that if a fiduciary has the sole and absolute authority to designate something as Extraordinary Dividends or Taxable Stock Dividends, and that is paid to the Corpus of the Trust, and not subject to distribution, this is not income to the Trust according to Rule 643.

Thus all our Trusts were created and written to be Non-Grantor, Irrevocable, Complex, Simple, Discretionary, Spendthrift Trusts and Copyrighted for our use. Paul Rosen Attorney at Law is the sole owner of the Company that sells the Copyrights so that it is legal to offer the documents under his law license.

With regard to income, and capital gains the IRC is extremely clear on these subjects. Most people fail to fully understand this part of the code due to the very nature of the way the Trust must be written to comply. In order to understand the nature of this simply think of the corpus of the Trust as an escrow account, because when anything is placed in Trust it has no equitable title but his held in Trust for the benefit of beneficiaries. Until value passes from the Trust to a Beneficiary there is no taxable event at all when the Trust is written as described above herein.

When an asset is placed in a Trust it is a “thing” and has no basis value because it is not valued in the Trust therefore when the code says **“Capital gains and losses (3) Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus and are not (A) paid, credited, or required to be distributed to any beneficiary during the taxable year, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642(c). Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of gains from the sale or exchange of capital assets which are paid, credited, or required to be distributed to any beneficiary during the taxable year.”** Our Trusts are structured as outlined whereby no percent of the corpus of the Trust is or can be assigned to any one beneficiary therefore property sales in Trust are not subject to the Capital Gains Tax. Since there is

no gain or loss and the property is held in the Trust Corpus the 1041 merely states there is no taxable income. The Code States:

According to the Internal Revenue TITLE 26, Subtitle A, CHAPTER 1, Subchapter J, PART I, Subpart A, Sec 643, STATUTE (3) and (4) and (7)(b) that states: "**Capital gains and losses (3) Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus** and are not (A) paid, credited, or required to be distributed to any beneficiary during the taxable year, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642(c). Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of gains from the sale or exchange of capital assets which are paid, credited, or required to be distributed to any beneficiary during the taxable year. The exclusion under section 1202 shall not be taken into account. (4) Extraordinary dividends and taxable stock dividends for purposes only of subpart B (relating to trusts which distribute current income only), there shall be excluded those items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, does not pay or credit to any beneficiary by reason of his determination that such dividends are allocable to corpus under the terms of the governing instrument and applicable local law. (7) Abusive transactions The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes. If the estate or trust is allowed a deduction under section 642(c), the amount of the modifications specified in paragraphs (5) and (6) shall be reduced to the extent that the amount of income which is paid, permanently set aside, or to be used for the purposes specified in section 642(c) is deemed to consist of items specified in those paragraphs. For this purpose, such amount shall (in the absence of specific provisions in the governing instrument) be deemed to consist of the same proportion of each class of items of income of the estate or trust as the total of each class bears to the total of all classes. (b) Income for purposes of this subpart and subparts B, C, and D, the term "income", when not preceded by the words "taxable", "distributable net", "undistributed net", or "gross", means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. **Items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law shall not be considered income.**"

The Complex nature of the Trust permits the Trustee to make the declaration in the taxable year about the nature of the income. Any gross income (rents, royalties, endowments, stock dividends or portfolio incomes of all kinds and the like) the Trustee

declares to be Extraordinary Dividends or Taxable Stock Dividends paid to the corpus of the Trust is not income so the Trust files a 0 tax return.