PARALEGAL SERIES

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Wills, Trusts, and Estates for Legal Assistants

Sixth Edition

Wolters Kluwer

Chapter 19

TRUST CREATION

Wolters Kluwer

Chapter Objectives

- Identify the requirements for an express trust
- Differentiate trusts from other legal relationships
- Define and explain spendthrift provisions
- Discuss the operation of life insurance trusts
- Describe the purposes and attributes of charitable trusts

Express Trust

- Trust created by the express intent of the settlor
- Two categories of express trusts:
  - **Private trust**: trust created for private beneficiaries.
  - **Charitable trust**: trust created for charitable beneficiaries.

Requirements for a Valid Express Trust

- Trust intent
- Capacity
- Statute of frauds compliance
- Purpose
- Property
- Trustee
- Beneficiary
- Rule against perpetuities

Trust Intent

- Title divided into legal and equitable components
- Fiduciary duties imposed on holder of legal title

Active vs. Passive Trusts

- **Active trust**: trustee needs legal title to perform power or duty for beneficiary's benefit; holding property is not merely nominal.
- **Passive trust**: trustee holds legal title without power or duty; holding property is merely nominal.

Merger

- The termination of a trust because the legal and equitable title to trust property become reunited in one person.

Evaluating Legality of a Trust Purpose

- Under the *intent approach*, a trust is illegal if the existence of the trust could induce another person to commit a crime even if the trustee does not have to perform an illegal act.
- Under the *use approach*, the trust would be valid because of the unquestionable appropriateness of providing for the health, education, and support of children who are deprived of their parents' support.

Trustee's Acceptance

- Compliance with method specified in trust
- Written acceptance
- Acceptance implied from acts

Disadvantages of Co-Trustees

- Costly resolution of deadlock
- Additional fees
- Joint and several liability

Spendthrift Restrictions

- A trust provision prohibiting
  1) a beneficiary from transferring the beneficiary’s interest and
  2) the beneficiary’s creditors from reaching the beneficiary’s interest.

Discretionary Trust

- A trust giving the trustee discretion over which beneficiaries to pay and how much to pay each; also called a spray or sprinkle trust.

Pour-Over Provision

- A provision in a will making a gift to an inter vivos trust.

Life Insurance Trusts

- The owner of a life insurance policy may name a trust as the beneficiary of the policy.
- In addition, the owner may transfer the policy itself to the trust.
- The trust property will then consist of the contract right to receive proceeds upon the insured's death or the life insurance contract itself.
- These contract rights are sufficient property to constitute trust corpus.

Categories of Charitable Purposes

- Relief of poverty
- Education
- Religion
- Health
- Governmental purposes

Split Interest Trust

- A trust with both charitable and noncharitable purposes.
- Types of split interest trusts:
  - **Charitable remainder trust**: the settlor or the settlor's family retain benefits until a specified time, after which the remainder passes to a charity.
  - **Charitable lead trust**: a charity obtains benefits for a specified period, after which the benefits return to the settlor or the settlor's family.