No State shall ... pass ... Law impairing the Obligation of Contracts ...
Article I, Section 10, Constitution for the United States of America

Pure Common-Law Trusts

A Reference Manual

Sample Pages

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Types of Trusts

A trust is created anytime a person places some kind of property into the control of another person for safekeeping. The property may be anything, such as real estate, money, or even intellectual property.

A Comparison of Trusts

There is literally a different kind of trust for every imaginable legal purpose. This chapter is not an in-depth discussion into all these various trusts but cover a few of them help give you a better understanding of the topic. In attempting to compare trusts it will help to first break down the different types of trusts into broad categories based upon their legal status and construction, and thereafter further define them as to their purpose. We must understand at the outset that there are really only two broad types of trusts, statutory and common law, or contract.

As we have already stated, statutory trusts are those that arise through some government privilege. We define these trusts in precise terms, restricted by statute, bound by procedural structure, and arise by privilege. If this type of trust fails to follow the provided guidelines, it loses its legal strength, and is easily broken in court. Of course, many attorneys draft their statutory trusts so that they become susceptible to failure in court. Sometimes they do this to assure future income, but mostly it is done because their client may someday want to change their mind. This is why the revocable trusts are so common. The grantor may revoke these so-call “living” trusts any time they wish. Because of that, so can the Internal Revenue Service.

The *common-law* trust is sometimes known as contract trust; these trusts arise by right. These common-law, or contract trusts are irrevocable and gain their authority from the protection afforded any other contract. Their strength lies in the protection of Article 1, Section 10 of the United States Constitution, which provides that no state may impair the obligations of a contract. The Supreme Court ruled, in *Berry vs. McCourt, 204 NE 2d 235*, that “A pure trust is not so much a trust as a contractual relationship in trust form.”

For most purposes the Pure Common-Law Trust[1] is superior to other kind of trust because of its flexibility and its irrevocability. It is known as a *pure* trust because it preserves the true intent of a trust, which is the actual separation of direct ownership from the previous owner, to the trust. It has several other names by which it is commonly known, such as some of the following:

- business trust
- Massachusetts trust
- pure trust
- pure common-law trust
- trust estates as business company

1. We use the term Pure Common-Law Trust to when refering to our trust documents, which is an irrevocable common-law trust contract.

- constitutional trust
- irrevocable pure business trust
- unincorporated business organization

The last designation is believed by some not to be a true trust at all, but merely a business organization arising by contract, differing from the business trust in that the holders of certificates do not have a right to distribution, and the trustee makes discretionary decisions regarding distributions solely in the best interest of the business. However, in light of the Supreme Court's definition of a pure trust, it is safe to include the unincorporated business organization with the rest of the terms for an irrevocable business trust.

An *alimony trust* is a statutory trust that secures the obligation of a husband to support his wife after divorce.

An *annuity trust* is a statutory trust where the trustee is required to distribute a certain sum annually to beneficiaries for a specific time, and thereafter transfer the remainder to charity or retain it for later charitable purposes. The sum distributed to the beneficiaries must be not less that 5% of the initial fair market value of the property transferred to trust. If the annuity trust fails to conform to Internal Revenue Code Section 664 then it becomes disqualified.

A *charitable remainder trust* is a special type of statutory annuity trust in which the donors have given cash or other property to be received by them from the trust as income for their joint lives. They receive an income tax deduction based upon their ages at the time the gift was made and the percentage of trust assets paid as income to the donors. At the second death, the charitable beneficiary receives the balance of the trust property.

An *insurance trust* owns an insurance policy and hold the proceeds. Normally those whose assets exceed $600,000 when combined with their life insurance proceeds can use this type of trust to minimize federal estate taxes, and probate. The beneficiaries receive the distribution from the policy.

An *offshore trust* is a trust that moves assets offshore. The assets and trust management are usually located in countries such as British Virgin Islands, Western Samoa, Liechtenstein, or Turks and Caicos Islands, where certain tax-treaties exist between them and the United States. Such trusts are often touted as tax-heavens. However, this may not be correct and the IRS still requires reporting of most assets.

A *simple trust* is one in which all the income is required to be distributed to the beneficiaries regularly and currently. The simple trust does not provide that any amounts are to be used for charitable purposes, and it will not distribute capital or funds allocated to the corpus of the trust.

A *complex trust* is any other type of trust which does not qualify as a simple trust. In other words, it is one in which the trustees have a great deal more discretionary power in making determinations regarding distributions of both income and capital to the beneficiaries. The trustees have discretion as to whether to distribute and the amount they want distributed, based upon what is in the best business interests of the trust. One advantage of a complex trust for the businessman is that he may make a determination in advance of exactly how much taxes they will pay in a particular year. The Trustee/businessman does this by determining in advance the amount of taxes they desire to pay, and at the end of the year they distribute all money save that

Why Create a Pure Common-Law Trust

> "A Trust in relation to real and personal property, or either of them, may be created for any purpose or purposes for which a contract may be made."

That means that you can create and operate a Pure Common-Law Trust for any reason you want. Remember that it is strictly a contract – an agreement between the Trustees and the Manager. It draws its authority from the unlimited right to contract guaranteed by the United State Constitution. It is not subject to statutory regulation.

A Pure Common-Law Trust can own a business. A Pure Common-Law Trust can also own property, such as a house, vehicle or rental property. You can transfer (exchange) ownership of your property to a Pure Common-Law Trust, and the trust can manage that property and other investments that you intend to leave to each of your children (or siblings, good friends, remote relatives, etc.). A Pure Common-Law Trust can conduct business activities you don't want intermixed with your profession. A Pure Common-Law Trust can do just about anything you can think of.

Origin and Basis for Development

> "Hostility to, and unreasonable regulations of, corporations also have had their part in the development of the pure trust . . ." *Goldwater vs. Oltman, 229 P 621, 210 Cal 408 71 ALR 871*

> "... Except as statutes may restrict the use of a Trust to specified objects, and except as statutes may permit corporations only to engage in certain types of business, a pure trust may be organized to engage in any business in which individuals or corporations may lawfully engage." *Wagoner Oil and Gas Co. vs. Marlow, 278 P 294, 137 Okl. 116; Weber Engine Co. vs. Alter, 245 P 143, 120 Kan, 46 ALR 158*.

What Is a Pure Common-Law Trust?

In this manual the term "Pure Common-Law Trust "refers to a particular form of Common-Law contract that creates a trust, also called a "pure trust."

Definition of Trust: Property held by one person for the benefit of another. The Pure Common-Law Trust is a particular kind of trust. It is based on the United States Constitution, Common Law, and extensive case law, including many Supreme Court decisions.

The Pure Common-Law Trust provides these basic benefits:

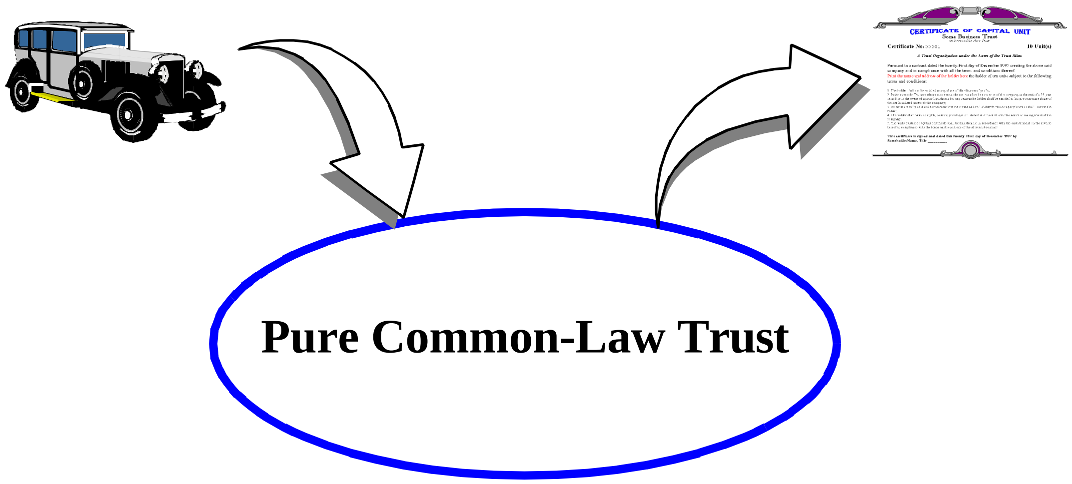
- Privacy
- Asset Protection
- The ability to engage in any lawful business anywhere
- Diversification of assets and activities into separate "watertight compartments"

- Rendering yourself virtually judgment-proof
- Elimination of probate and estate taxes
- Reduction or elimination of attorneys' and accountant's fees.
- Reduction of other taxes
- Reduction of time-wasting, bureaucratic reporting.

The Most Basic Aspects of the Pure Common-Law Trust

Figure 1: Exchange of Property

You transfer your property to the trust ... In exchange for ... Certificate of Capital Units



A Pure Common-Law Trust can have special characteristics:

- The Pure Common-Law Trust is a contractual agreement. It contains an offer and an acceptance between competent parties of legal age – the Creator and Exchanger, who enter into the basic contract that creates the trust. They also appoint the Trustees.
- Consideration is paid between the Creator and Exchanger.
- The first part of the Pure Common-Law Trust consists of eight Stipulations. These Stipulations provide the basic legal foundation of the Contract, based on the United States Constitution, Common Law, and certain Court Decisions.
- Property can be exchanged into the Trust in return for certificate(s) of capital units. (Though capital units are not shares, they are similar to shares.)
- The Pure Common-Law Trust is irrevocable.
- The Pure Common-Law Trust has a legal object or purpose.
- The Pure Common-Law Trust has a termination date, but is renewable.
- The Pure Common-Law Trust involves no grantors and no gifts.

The Power of the Contract

"My dearest Kay,

> *I have taken my life in order to provide capital for you. The IRS and its liens which have been taken against our property illegally by a runaway agency of our government have dried up all sources of credit for us. So I have made the only decision I can. It's purely a business decision . . . You will find my body on the north side of the house."* – *Alex*

When Kay Council of High Point, N.C. came home that night in June of 1988, this was not what she needed.

After 9 years of battling with the Internal Revenue Service over a disallowed tax-shelter, fighting over $300,000 in taxes, interest and penalties. All of their financial resources exhausted, Alex Council made a business decision. To provide his wife with the funds needed to continue the battle. He took his life. It provided $250,000 to continue the fight.

Mrs. Council eventually won a court ruling that she and her husband owed the Internal Revenue Service nothing.

Mrs. Council, 48, said, "I was cheated of growing old with the man I love."

The decision that Alex Council made was his own. From where I sit, it was a bad decision. But then again, I am not Alex Council, and I am not in the situation that he was in. But the tragic part of the whole situation is that he should have never been put in that situation either.

The Pure Common-Law Trust Solves Problems

If the Councils, had been using a Pure Common-Law Trust, these problems all could have been avoided. The business they managed could have been owned by a Pure Common-Law Trust.

The home they lived in could have been owned and protected by a Pure Common-Law Trust. They could have received a modest salary on which to pay taxes, and they would have had no need for the tax shelter that caused their problem.

Unfortunately this is not an isolated case, many people have to make decisions every day about how to protect the assets that they have worked so hard to accumulate.

The information you are reading will tell you how to avoid the pitfalls associated with asset accumulation and preservation. And will give you details on one of the greatest asset protection and privacy vehicles available today – the Pure Common-Law Trust.

Once you read through this information, you will be responsible for it. That means you will have to make a decision about what to do with it.

Ease of Use and Affordability

The Pure Common-Law Trust is easy to use and most people can afford it. It is now available not only to the super rich, but also to those with more modest assets. It is the best method for increasing privacy and protecting assets I know of.

Advantages of the Pure Common-Law Trust

- Every aspect of it is perfectly lawful, guaranteed by the United States Constitution, Supreme Court decisions, and other court decisions.
- It is protected by the Constitution under the right to contract.
- It is inexpensive to establish, can be maintained by yourself, without an attorney, and involves minimal paperwork. It greatly reduces or eliminates attorney's fees.
- Because it has no reporting requirements to any State or government, it reduces or eliminates accountant's fees.
- Once it has been established, there are no maintenance fees.
- A Pure Common-Law Trust established in one State can operate in any other State.
- It can operate any lawful business anywhere in the world. It provides limited liability protection and most of the advantages of a corporation with none of the disadvantages.
- It is a lawful "individual" in the eyes of the law, with the power to buy, own, and sell property and other assets.
- It can easily change the title of your property, but you may use and enjoy the assets during your lifetime.
- It is made irrevocable to avoid any question as to ownership of the assets.
- It renders assets virtually judgment-proof.
- It can be used to reduce or eliminate the need for liability insurance.
- It continues unaffected upon your death.

Who Benefits Most from the Pure Common-Law Trust:

- Sovereign individuals.
- Business owners.
- Independent contractors.
- Professionals: doctors, dentists, chiropractors, etc.
- Retired people.
- Investors.
- Foreigners.
- Anyone with assets.

Dealing with Bureaucrats

Suppose you use a Pure Common-Law Trust to operate a business and a bureaucrat comes to the business premises to ask questions like:

- Do you have a business license?
- Why haven't you filed such and such a report or return?
- What is your sales tax number?
- How many employees do you have?
- Do you have an OSHA certificate?
- What's your job or position in the organization?
- Etc.

You can use several responses:

- “Sorry, Mr. Bureaucrat, I'm not authorized to answer your questions. Please put your questions in writing and I'll pass them on to the principals.” (The principals are the trustees of the Pure Common-Law Trust.) If the bureaucrat wants to know who the principals are, respond: “I believe it's in the public record. The name of the business is . . . (name of Pure Common-Law Trust). I believe you can look it up at the Recorder's Office in Santa Clara County, California.”
- “Mr. Bureaucrat, I've been authorized to provide you with information about the company, subject to the approval of the principals. Please put your questions in writing and I'll submit them to the trustees.” If the bureaucrat later comes back, you say to him, “Sorry, Mr. Bureaucrat, but the principals refused to give their approval.”
- “Mr. Bureaucrat, before I provide you with information, please give me a written undertaking that the information I give you will not be used as evidence against me.”
- “Mr. Bureaucrat, before I can answer your questions, I need to consult with my attorney.”
- Use the “Constructive Notice” on page 115. Get the bureaucrat's name. Fill out and sign the form – preferably in duplicate, so you can keep a copy. Get a witness (if available) to sign it. Hand the original to the bureaucrat.

Use your judgment to choose your response. Consider treating the bureaucrat politely and with respect.

What Bureaucrats Can Do

Bureaucrats have the ability to organize an armed goon squad to raid your home or business and to take away cash, books, records, files, computers, inventory, etc. Sometimes their strategy is to simply perform such a raid with the purpose of wrecking your business and/or life. They have no intention of prosecuting you or taking any legal action; they simply want to wreck your life and/or business. So it's wise to be prepared for such raids. Keep off-site backups of all computer systems and files and other records. You need to be able to continue your business. You may also want to organize your affairs in such a way that you can rapidly move to other

The schemes targeted by the Internal Revenue Service often consist of convoluted, multi-tiered structures, typically involving more than one trust (and other entities as well), each holding different assets of the taxpayer (for example, the taxpayer's business can be owned by one entity, the business equipment by a second entity, the taxpayer's home by a third, and an automobile by a fourth), as well as interests in other trusts. Funds may flow from one trust to another trust by way of rental agreements, fees for services, purchase and sale agreements, and distributions. Some trusts purport to involve charitable purposes. In some situations, one or more foreign trusts may also be part of the arrangement.

IRS Examples of Abusive Trust Arrangements

In Notice 97-24, the Internal Revenue Service classified abusive trust arrangements into the following five types, and further indicated that an abusive arrangement might involve some or all of the arrangements described:

A. The Business Trust. This scheme involves the transfer of a business by its owner to a "trust" (sometimes described as an unincorporated business trust) in exchange for ownership or beneficial interest certificates. The trust makes payments to the holders of these certificates, deducting such payments as either a business expense or a trust distribution, which purports to result in the reduction of the taxable income of the business. Of course, the owner's self-employment income is eliminated because he is receiving distributions from a trust – not income from self-employment. In some cases, the connivance purports to eliminate the owner's estate tax liability through a "self-canceling at death" feature of the trust units (alternatively, by a sale at a nominal price).

B. The Equipment or Service Trust. The equipment trust is formed to hold equipment that is rented or leased to the business trust, often at inflated rates. The service trust is formed to provide services to the business trust, often for inflated fees. Under these abusive trust arrangements, income is drained from the business trust through inflated rentals and/or fees, and those amounts are offset by the equipment trust through inflated depreciation deductions resulting from a sham "purchase" of the equipment by the trust. In addition, the owner ("seller" of the equipment) takes the inconsistent position that the trust units he received in exchange for the sale of the equipment had an indeterminable value, and that he therefore owes no tax on the sale. Both the equipment and the service trust will often utilize distributions to other trusts to further reduce or eliminate trust income.

C. The Family Residence Trust. The owner of the family residence transfers the residence, including its furnishings, to a trust. The goal of this arrangement is to convert nondeductible personal expenditures into "deductible" items. The machinations created to effect the desired result again include the taking of inconsistent positions by the trust and the owner: the trust takes the position that it has acquired the residence in an exchange which resulted in a stepped-up basis with respect to which the trust is allowed a depreciation deduction because it is in the business of renting the property; little or no rent is paid, of course, and the owner takes the position that no gain is recognized on the sale because the trust units he received have no ascertainable value and he and his family can live rent-free in the residence as its caretakers (for the benefit of the trust). In the event the trust were to

Getting Ready

Part II of this manual provides step-by-step procedures for preparing a Pure Common-Law Trust. This section will help you organize people, inventories and records so that you can complete the Pure Common-Law Trust Indenture (trust deed) and various forms needed for each trust.

This manual includes the forms and deeds for three trusts: A Management Trust, A Organizational (Business) Trust, and A Holding Trust. It provide explanations on how to deal with a variety of cases, and how to implement and formalize your trusts. Each trust that you compile will contain three parts: the Declaration (deed and contract of trust), Trust Records (contracts, minutes and letters), and Trust Schedules (property, certificates holders, and references – Trust Citations).

Where To Begin

A. Make extra copies of all of the provided forms.
B. Obtain one three-ring notebook binder for each trust. A one-inch binder will serve well at the beginning, but you will probably need a larger binder latter.
C. Label each binder appropriately and place the trust deeds along with their schedules into their respective notebooks.
D. Divide each trust record book with index tabs into the following sections:
   1. Trust Deed
   2. Trust Records
      a. Letters, Minutes, Certificates, Contracts, Exchanges, and Appointments
   3. Trust Schedules
   4. Citations, Schedule H
   5. Forms (government and trust)
E. Only keep trust records of one trust in each notebook. If more than one trust or other material is in a notebook, it may inadvertently tie them all together as one.
F. Keep this manual, which is your instruction book separate from your worksheets (charts, lists) and other trust records.

Assets Inventory

Copy and complete the asset list shown on page 136 and complete an inventory of all of the assets and property that will be placed into the Pure Common-Law Trust. The asset list will help you organize everything and the inventory will become Schedule A (See “Schedule A” on page 260) when it is finally completed.

If finding and listing all of the asset and property is difficult, you might begin by listing all of those things that come to mind. A detailed inventory is not important until you begin to finalize

Organizing

Decide what assets belong to which trust before actually completing any transfers. Make flow charts to divide up the assets and use connecting lines to show services and cash flow. Although a complicated, it might also be helpful create various drafts of the all of the documentation to see how everything interrelates. Do this several times, or as often as necessary to determine the cash flow, responsibility, benefits provided, and ownership. While doing this over and over is a hassle, it will give you the best understanding for all of the intricacies and will help to construct the most rewarding arrangement.

The Process of Transferring Assets

Transferring or exchanging assets into a Pure Common-Law Trust requires little more than completing and filing of paperwork. To simplify this process, we have attempted to reduce this task to completing one or more of the following forms:

- Proposal to Exchange, see page 312.
- Bill of Sale, see page 344.
- Bill of Exchange, see page 345.
- Trust Minutes, see page 312.
- Schedule of Property, see page 343.
- Letters of Introduction, see page 300.
- Letters of Appointment, see page 295.
- Quit Claim Deeds, see page 338.
- Liens
- Mortgages, see page 334.

These forms are used and filed in various ways while you transfer all of your assets to Pure Common-Law Trust. Through this process we will retitle vehicles, real estate, and other property. Regardless of who you are dealing with, neatly complete formal documentation always makes it easier.

Proposal to Exchange

A Proposal to Exchange, such as the example shown on page 350 and the form provided on page 312, is simply a letter indicating the desire and willingness of a person (an Exchanger) to exchange an item of their property for Certificate Of Capital Units.

The proposal describes the following:

- The offered property, and if necessary makes reference to more descriptive documents.
- The item that will be accepted for the exchange.

The proposal is addressed to one or both of the Trustees of the Pure Common-Law Trust that believe is most appropriate for receiving and hold the kind of property that you are offering.

Declaration

and Contract

of Trust

This Document Is to Be Interpreted and Executed under the Right of Contract Law, with the Original Situs in the

State of California
County of Santa Cruz

This Indenture Authorizes its Trustees to Perform under the Name

an Irrevocable Pure Trust

Certificate of Beneficial Interest

Some Business Trust

an irrevocable Pure Common-Law Trust

Certificate No: 00001 **10 Unit(s)**

A Trust Organization under the Laws of the Trust Situs

Pursuant to a contract dated the twenty-First day of December 1997 creating the above said company and in compliance with all the terms and conditions thereof: _Print the name and address of the holder here the holder of ten units subject to the following terms and conditions:

1. The holder shall not be entitled to any share of distribution of profit;
2. In the event the Trustees elect not to renew the contract for the existence of the company at the end of a 25 year period or in the event of a prior liquidation for any reason the holder shall be entitled to his proportionate share of the net liquidated assets of the company;
3. All units are fully paid and nonassessable when issued and no liability for the company's action shall inure to the holder;
4. The holder shall have no rights, powers, privileges or interest in or control over the assets or management of the company;
5. The units evidenced by this certificate shall be transferable in accordance with the endorsement on the reverse hereof in compliance with the terms and conditions of the aforesaid contract.

This certificate is signed and dated this twenty-First day of December 1997 by SomebodiesName, Title __________