



# Missouri

## *Ag Law Brief*

### **Introduction to Trusts**

Trusts are a growing yet still not widely used tool for business and estate planning. This may be due in part to the reputation which Trusts have developed as a confusing and complicated legal process used primarily by the very rich to avoid taxes or take advantage of other opportunities not available to the average person. Despite its reputation and whether that reputation is true or false, Trusts can be used by anyone even if for a very simple purpose. It is not required that a Trust be a complicated web of legal documents. A Trust may be established merely for the purpose of providing a regular payment for the care of an underage child.

Understanding what a Trust is in its basic form may be most useful in determining an application in the farm business or estate plan. With this goal in mind it may be useful to first review some of the other basic tools used in estate planning allowing their comparison to a Trust. A person's Will, for example, specifies the wishes of the testator as to the final disposition of the testator's assets after her death. The Will starts a process after the death of the testator by which title or ownership of land and personal property is transferred from the estate of the deceased to someone they have designated – the Beneficiary. This is generally done as a permanent transfer of ownership with the idea that the testator believes, or trusts, that the gift will be used in a prudent manner by the Beneficiary and not wasted.

Of course, there is no guarantee that a Beneficiary of the testator's property will in fact use that property in the manner in which the testator might have hoped but the testator can no longer influence the Beneficiary's actions as they are no longer living when the transfer of ownership is made. Certainly, the testator may place some restrictions on the Beneficiary's use of the gifted property but these are very difficult to enforce without someone with authority watching over the Beneficiary's activities. Further, the Will is generally used as a tool to transfer property without restrictions and its use is therefore a sign of the testator's trust that the Beneficiary will use the property at least somewhat in alignment with the way that the testator would have wished.

A Trust allows the Settlor of real or personal property to retain a greater level of control over how her assets are either distributed to a Beneficiary or how they are later used by the Beneficiary; control which the Settlor realizes she will no longer have after her death if she uses only a Will. The Trust provides an alternative by authorizing a "trusted" person to oversee how a Beneficiary receives and/or spends their gift. The basic requirement for establishing a Trust is that a Settlor, Trustee, and Beneficiary be identified in the Trust document. The person who is leaving property for the benefit of someone else is the Settlor. The person or persons who benefit from the property being placed in a Trust are Beneficiaries.



The Trustee is the person in whom the Settlor places responsibility with and grants authority to carry out her wishes in terms of how property is to be distributed to the Beneficiaries. Once these requirements are met, the specific provisions which may be included in the Trust document are literally limitless. There are many types of Trusts and among those an infinite number of possible variations. Some of the more common Trusts include: Revocable living or Grantor Trusts, Marital Trusts, Minors Trusts, Special needs Trusts, Perpetuity Trusts, Credit shelter or tax savings Trusts, Irrevocable Trusts, Discretionary Trusts, and Incentive Trusts.

Variations in the type of Trust generally come from the type of restrictions the Settlor wishes to place on the assets to be distributed to the Beneficiaries. The Settlor might wish to have money from the Trust distributed to a Beneficiary on a periodic basis rather than as a lump sum. This type of distribution may arise because the intended Beneficiary is a minor or perhaps is known to be wasteful with their money and the Settlor fears that a large lump sum of money in the hands of an irresponsible Beneficiary may also be quickly wasted.

However, that Beneficiary may be one of the children of the Settlor and the Settlor wants to make sure that the Beneficiary receives the assets that are left to their benefit but wishes to add a level of safety by slowly distributing the assets so that the Beneficiary cannot squander their entire inheritance and save nothing for their future. The Settlor simply sets up a provision, called a spendthrift clause, which provides the Trustee with some guidance as to how the Settlor wishes money to be distributed to that particular Beneficiary. A similar provision might be used by a Settlor who wishes a certain amount of money be

reserved for use by the Beneficiary for only a specific reason, such as attending college or to help purchase their first home after they are married. Again, the Settlor instructs the Trustee in the Trust document how they wish the money to be distributed to the Beneficiary. There are many other types of “controls” which can be included in the Trust document as direction to the Trustee and may be unique to each Settlor.

There are mechanisms which help reassure the Settlor that her wishes will be carried out faithfully and others which protect the Beneficiary from dishonest Trustees. These mechanisms come from Missouri State Law, Federal Tax Laws, and from the provisions in the Trust document itself. Missouri Statutes provide a set of rules which must be followed by Trustees to protect the Trust assets. Missouri Statutes also create a set of fiduciary responsibilities which guide how the Trustee manages and reports the financial activities of the Trust. With the exception of limitations imposed by State or Federal law, the Settlor has substantial latitude in establishing the rules about how the Trust will be operated by the Trustee and how the assets will be distributed to the Beneficiaries. This latitude given to the Settlor is that which makes possible Trust variations limitless.



Author: Vern Pierce, Ph.D., J.D.  
Agricultural and Biotechnology Law  
Extension Specialist  
PierceV@Missouri.edu