

Trust Accounts, Representative Payee and Deceased Accounts



Account Ownership

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- Ownership means the possession of legal title or a beneficial interest in an asset, such as a savings account.
- Three elements of ownership need to be considered when selecting the proper account ownership:
 - Who owns the money?
 - Who will be able to conduct transactions and other activity on the account?
 - What will happen to the money when the account owner dies?



- Trust
- Representative Payee
- Deceased



Trust Accounts



What is a Trust?

A formal agreement or fiduciary relationship where a person (settlor) entrusts ownership rights of one or more assets to someone. That individual (trustee) administers and manages the assets on behalf of another (beneficiary).



Settlor/Grantor:

The *settlor/grantor* is the person who creates and owns the trust. They identify who is in each role, what they can do and which assets are within the trust. This person does not always have access to the trust. The only way they can access this trust is by being named the trustee.



Trustee:

The *trustee* may be an individual or legal entity to which the settlor transfers legal title/ownership to the trust. The trustee manages the assets (funds) within the trust for the benefit of the beneficiaries. It is common that the settlor names themselves as the trustee to retain access to the funds. There can be multiple trustees. Privileges vary from trust to trust and are stated within the document. Distributes the funds according to the instructions in the trust when the settlor passes away.



Successor Trustee:

The *successor trustee* is the person who is named by the settlor/grantor to take over the role of trustee when a current trustee resigns, dies or become incapacitated. When this happens, the successor trustee becomes the trustee. Typically there is more than one successor trustee named either to become a co-trustee or as the second successor trustee.



Beneficiary:

The *beneficiary* is the person who is entitled to the benefit of the trust arrangement. The beneficiary is normally a person; however, could be a company, organization or charity.



REVOCABLE LIVING TRUST

This Revocable Declaration of Trust acknowledged and referred to as the –

SAMPLE FAMILY TRUST

Dated: _____, 2012

is hereby created and entered into by **JOHN SAMPLE-DEMO** being domiciled in the County of Maricopa, State of Arizona, hereinafter referred to as the "Settlor of this Trust and the same. **JOHN SAMPLE-DEMO**, hereinafter referred to as the (original) "Trustee" of this Trust, on this day being the date identified above.

RECITALS

- Declaration of Property Ownership -

A. The Settlor has contemporaneously transferred certain property to Trustee with the signing of this declaration, the receipt of which he acknowledges and may list all of his property to be held in this Trust on Schedule "A", attached herewith.

B. The Settlor shall list all of his tangible personal property on a separate schedule, attached hereto and made a part hereof, in which he hereby directs that, at his death, Trustee shall (first) distribute and deliver such property to the persons described in such schedule referred to as the "Chattel Schedule". *Any such Chattel distributions shall not be deemed as a part of the recipient's portion of this Trust Estate as prescribed in Article Four (infra) and the remainder Trust Estate – remaining after any such specific "Chattel" distributions – shall be distributed as per Article Four.*

C. The Settlor agrees that all property transferred or devised to Trustee is to be administered and distributed as provided in this declaration.

ARTICLE ONE

- Reservation of Rights -

The Settlor reserves the following rights to be exercised at any time and from time to time, to be exercised, during his lifetime without the consent or participation of any other person:

A. To amend this Trust, in whole or in part, or to revoke this Trust declaration in its entirety (by a writing delivered to a Trustee other than himself if such Trustee is serving).

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Revocable

- Can be changed, revoked or terminated by the settlor/grantor at any time.
- Becomes irrevocable upon the death of the settlor/grantor.

Irrevocable

- The settlor/grantor is not to retain any right to amend, revoke, or alter the trust in any way.
- The settlor/grantor cannot retain any right to control the ownership or enjoyment of the property placed in the trust or the income generated by the property.



Best Practices

- Know who has rights to the funds on deposit
- Checks made payable to the name of a Trust
- Lending under a Trust Account
- A way to avoid probate when assets are transferred after the death of the individual who set up the trust.
- A trust is a type of legal entity that is separate from your own personal estate. This legal entity has certain rights and advantages for those engaging in estate planning.



What is a Certificate of Trust?

A Certificate of Trust provides your banking institution, brokerage firm, transfer agent or other third party with necessary information regarding the trust to facilitate this transfer. This document confirms the trustee's authority to act on behalf of the trust.



Certificate of Trust

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CERTIFICATION OF TRUST EXISTENCE AND POWERS

_____ Dated _____

PRIMARY ASSET:

1) CURRENT TRUSTEES:

2) SUCCESSOR TRUSTEES:

3) BENEFICIARIES:

4) Each herein named Trustee is qualified to act on behalf of the trust. Trustee is authorized to act for any banking, check, stock, commodity, real estate, escrow, insurance, or other asset. The Trustee may buy, sell, originate, terminate, hold, retain, convey, margin, hypothecate, rent, borrow or lend, put or call, audit, secure, protect, contract, mortgage, pledge, encumber, guarantee, repair, destroy, improve, deduct, insure, expend, extend, pay, incur, expense, invest, engage in business, lease, negotiate, arbitrate, claim, demand, sign, agree, defend or bring suit for any purpose. Trustee may delegate powers to agents or managers, contract for services, employ, hire firms or others, for benefit of the trust.

5) This trust is registered with Guarantee Administrators, c/o Trustee, 668 N. PCH, #400, Laguna Beach, CA 92651, as Protector and Arbitrator. Protector has Power of Appointment, exclusive and absolute power to settle disagreements and disputes between and for all parties to the trust. Protector shall maintain a copy of the trust.

6) The Trustee may freely act without consent of any person or court.

7) All assets, income, and value are managed for the beneficiaries. No asset is owned personally by any Trustee, Beneficiary, or other party to the trust.

8) The trust has not been revoked.

9) ONLY ONE SIGNATURE IS REQUIRED FOR ANY TRANSACTION.

Mail Legal Notices to: _____



Sec. 7913 (1) Instead of furnishing a copy of the trust document, the trustee may provide a certificate of trust containing all of the following information:

- Name and date of Trust and any amendments
- Name and address of current acting trustee
- Powers of the trustee relating to the purposes for which the certificate is being offered
- Revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust
- Authority of co-trustee to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee



Certificate of Trust

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A certificate of trust may be signed or authenticated by the settlor, any trustee, or an attorney for the settlor or trustee. Best practice for a certificate of trust is to have it in the form of an affidavit.

A certificate of trust should state the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certificate of trust to be incorrect.



Why would I only take a Certificate of Trust and not the entire Trust Agreement?

When a Financial Institution takes the entire Trust Agreement, the Financial Institution could become liable for all instructions within it. Should the Trustee do something against the will of the Trust, the Financial Institution runs the risk of being accountable for those actions. When only a Certificate of Trust is received and used to open an account, the liability remains on the Trustee for following all instructions within the document.



Representative Payee



Representative Payee:

A representative payee is a person or an organization appointed by the Social Security Administration (SSA) to receive the Social Security and/or SSI benefits for anyone who can't manage or direct the management of his or her benefits/money.



Beneficiary:

A beneficiary is a person who receives Social Security and/or Supplemental Security Income (SSI) payments. Social Security and SSI are two different programs and both are administered by SSA.



- Benefits based on earnings
- Financed by employer and wage contributions
- No income limit
- No resource limit
- Must have enough work credits
- Medicare
- Benefit Types:
 - Retirement (age 62 & older)
 - Survivor
 - Disability (includes blindness)



Social Security Continued

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- Provides benefits to eligible family members
- Benefit amount based on average lifetime earnings
- Other income does NOT generally affect benefits
- Where you live or who lives with you does NOT affect benefits



- Benefits based on need
- Financed by General Revenues
- Limited income
- Limited resources
- No work credits are required
- Medicaid
- Benefit Types:
 - Aged (age 65 & older)
 - Disability (any age, includes children)
 - Blindness (any age, includes children)



- No family benefits
- Benefit amount based on Federal and State laws
- Other income MAY affect benefits – report any income you receive
- Where you live and who lives with you MAY affect benefits – report all changes



What is the Representative Payee's main duty?

- Act on behalf of the beneficiary
- Responsible for everything related to benefits that a capable beneficiary would do for themselves
- SSA encourages them to go beyond just managing finances – be actively involved in the beneficiary's life



Representative Payee

Required duties:

- Determine beneficiary's needs and use the payments to meet those needs
- Save any money left in an interest bearing account or savings bonds for the beneficiary's future needs after meeting the current needs are met
- Report any changes or events which could affect the beneficiary's eligibility for benefits or payment amount
- Keep records of all payments received and how they are spent and/or saved



Representative Payee

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Required duties:

- Provide benefit information to social service agencies or medical facilities that serve the beneficiary
- Help the beneficiary get medical treatment when necessary
- Notify SSA of any changes in your (the payee's) circumstances that would affect your performance or continuing as payee
- Complete written reports accounting for the use of funds
- Return any payments to which the beneficiary is not entitled to SSA



What Type of Bank Account?

- Set up so fees are minimized
- Enables clear records – checking account
- Account title must show beneficiary's ownership of the funds and show representative payee as the financial agent
- Neither representative payee or another 3rd party can have any ownership of the account
- Beneficiary must never have direct access to the account
- Must be titled so that it is clear that the money in the account belongs to the beneficiary
 - “(Beneficiary's name) by (Rep Payee Name), representative payee”
 - “(Rep Payee Name), representative payee for (beneficiary's name)”



Representative Payee

If the beneficiary dies:

- Any saved benefits belong to the estate
- Must be given to the legal representative of the estate, or the savings must be handled according to state law
- Social Security benefits - No check is payable for the month of death, even if he/she dies on the last day of the month
- Social Security benefits - Any check must be returned that is received for the month the beneficiary dies
- SSI – is payable the month of death
- SSI – any checks received after the month of death must be returned



Representative Payee

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- Power of Attorney, being an authorized representative or having a joint bank account with the beneficiary is not the same thing as being a “payee”.
- These arrangements do not give legal authority to negotiate and manage a beneficiary’s Social Security and/or SSI payments.
- In order to be a representative payee, a person or organization must apply for and be appointed by SSA.



Deceased



General Accounts

- Need proof of death
- Joint Accounts with Survivorship
 - Joint member can keep account if they qualify for membership
- Beneficiaries Named on account
- No Joint Member or Beneficiaries named
 - Probate paperwork with named executor of the estate
- Will presented for account disbursement
- Checks made payable to the deceased
 - Proper endorsement
 - Checks payable to an Estate



Trust Accounts

- Revocable Trust becomes an Irrevocable Trust upon Death of grantor
- Successor Trustee now becomes Trustee, if no other current trustee
- Change in Beneficiaries – Person(s) named in trust documents to inherit assets become the new beneficiaries
- Assets pass to the Beneficiaries similar to the way if they were being distributed with a Will
- Assets placed in generally do not have to go through Probate
- The Trust would be closed out or dissolved



Representative Payee

- Contact the Social Security Administration
- Determine if any funds on deposit need returned
- Saved funds become an asset of the Estate



Power of Attorney



What is a Power of Attorney?

A power of attorney is a legal document giving one person (called an “agent” or “attorney-in-fact” the power to act for another (the principal). The agent can have broad legal authority or limited authority to make legal decisions about the principal’s property and finance.



General Power of Attorney

- Gives broad powers
- Powers include handling financial transactions
- Used in the event someone is ill or disabled
- Effective tool when the principal can't be present to sign necessary legal documents for financial transactions



Power of Attorney (POA)

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- If you accept POAs, it is critical that you read the entire document to determine what powers the agent has
- Know if the POA is in effect
 - May have a starting and expiration date
 - May be considered “springing” POA
- Ceases immediately upon death of the Principal - person who granted the powers



Power of Attorney (POA)

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- POA and Trust
 - POA document must reference the Trust
 - Trust Agreement/Document must reference the POA
- If you question the Power of Attorney document, seek legal advice



Power of Attorney (POA)

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AGENT'S CERTIFICATION AND ACCEPTANCE OF AUTHORITY

I, _____,
(insert name of agent)
certify that the attached is a true copy of a power of attorney naming the undersigned as agent or
successor agent for _____
(insert name of principal)

I certify that to the best of my knowledge the principal had the capacity to execute the power of
attorney, is alive, and has not revoked the power of attorney; that my powers as agent have not
been altered or terminated; and that the power of attorney remains in full force and effect.

I accept appointment as agent under this power of attorney.

This certification and acceptance is made under penalty of perjury.*

Dated: _____

(Agent's Signature)

(Print Agent's Name)

(Agent's Address)

*(NOTE: Perjury is defined in Section 32-2 of the Criminal Code of 1961, and is a Class 3 felony.)



Certification and Acceptance of Authority

This document attests to the best of the agent's knowledge it is still in effect and they are still the Attorney-in-Fact



DeAnne M. Ramos
Planning and Innovation Strategist
517-490-6647
deanne.ramos@cusolutionsgroup.com

