

Trust Modification and Termination

Termination

The trust automatically terminates when the trust purpose has been accomplished.

Termination

Consent to Termination

- a. A trust can terminate by consent if the settlor is dead or has no remaining interest in the trust, and if all beneficiaries and the trustee consent to the termination.
- b. Trustee herself cannot terminate.
- c. If all beneficiaries want to terminate, but trustee objects, courts will block termination if the trustee shows its contrary to the settlor's intent.
- d. Interested Beneficiaries

Interested Beneficiaries

1) Where the remainder interest is limited to a class and all class members are related to a common ancestor, each beneficiary will have a vested interest that can pass to the estate if that beneficiary should die before the distribution date (under common law).

2) Under the Uniform Trust Code, the issue of a beneficiary who does not survive the distribution date will be the recipient of that interest unless the trust instrument specifies a different distribution.

Therefore, the issue of a deceased beneficiary would have a beneficial interest in the trust and would have to be part of any termination agreement unless their interest can be represented by another

a) Under the Uniform Trust Code, a minor, incapacitated, or unborn individual may be represented and bound by another having a substantially identical interest with respect to the particular question/dispute but only to the extent there is no conflict of interest between the representative and the person being represented.

Then what?

When the beneficiaries properly terminate the trust, they may direct the trustee to distribute the trust property in a manner of their own choosing and a distribution consistent with the beneficiary's direction is not a breach of trust.

Blocking Termination

Trustee can block termination if the trust has an unfulfilled material purpose.

- i. Ex. Settlor provides for successive interests where both present and future beneficiaries must agree for the trust to be terminated.

Revocation by Will

- a. **Traditional Rule:** Trust must provide irrevocability by will.
- b. **Uniform Trust Code:** Trust revocation automatically happens by will unless otherwise stated.

Revocation by Divorce

Currently, spousal interest under the trust is revoked upon divorce (similar to wills)



Court Modification and Termination

- a. Court can modify trust if purpose frustrated,
- b. Court may not alter the rights of beneficiaries due to changed circumstances.
- c. Equitable Deviation
 - 1) Under common law, a court may order equitable deviation from the terms of a trust when an unanticipated change in circumstances would otherwise defeat or substantially impair the accomplishment of the purposes of the trust.
- d. Uniform Trust Code
 - 1) Under the Code, an administrative provision of a trust may be modified if because of circumstances not anticipated by the settlor, modification or termination will further purposes of the trust.
 - 2) A provision is administrative if it relates to the management of trust property instead of the allocation of benefits among the beneficiaries.

Modification

1. Revocation and Modification

- a. If the settlor has the power to revoke, he also has the power to modify or amend.
- b. A revocable trust may be amended at any time prior to the settlor's death and the amendment will apply to probate assets poured into the trust even if the will was executed prior to the date of the amendment.

2. Common Law

- a. Under common law, all trusts were presumed irrevocable unless the power to revoke was specifically reserved in the trust instrument.

3. Uniform Trust Code

- a. Trusts are revocable unless the trust instrument specifies otherwise (minority view)

4. Formalities

- a. Neither the common law nor state statutes require that a trust instrument be executed in accordance with the formalities required for a will.
- b. Uniform Trust Code
 - 1) The only requirements for creating a valid inter vivos trust are intent, specification of beneficiaries, and designation of a trustee.

Removal of a Trustee

1. Remove trustee if purpose of the trust is frustrated by keeping the trustee.
2. Circumstances for removal:
 - a. Trustee can't perform duties
 - b. Trustee materially breaches duties
 - c. Conflict of interest
 - d. Conflict between trustee and beneficiary
 - e. Trust is being poorly run because of trustee's actions