

Modern Compliant Trusts

First and foremost, all commercial transactions are governed by the Uniform Commercial Code, not Common Law. The **Uniform Commercial Code (UCC)**, first published in 1952, is one of a number of uniform acts were put into law with the goal of harmonizing the law of sales and other commercial transactions across the United States of America (U.S.) through UCC adoption by all 50 states, the District of Columbia, and the U.S. territories.

So called "common law and pure trusts" are not recognized by the courts, and the IRS considers them to be something other than legal trusts. Common Law, for the most part, was abolished in 1952 and our courts today operate under Equity/Admiralty consideration and authority.

During the last century, the Congress of the United States and the Legislatures of the several States, as well as judges, have presumed to exercise the authority to merge the procedures of Law and Equity. Today it is nearly impossible to have a case heard in a court of Common Law. There is only one left, to our knowledge, and that is in New York. The bottom line is this; one may claim "Common Law" but, no matter what is claimed, any legal matter will be heard under the UCC in an Equity/Admiralty Court. With this in mind the right to self and property has been superseded by the combination of law so that Equity/Admiralty is the only option for litigation.

With this in mind, District Court and all District Courts of the States are now courts of law and equity with set jurisdictions. All this has been adopted, and there are neither sufficient grounds, nor power to dispute, the complex nature of the legal system of today. No individual has the funds or resources to wage the legal undertaking to prevail. Therefore, it is paramount to operate in an entity that is recognized in the system of today. This being said, a Trust, that will withstand the rigorous tests of law and the Internal Revenue Code, must conform to Scott on Trust Law, the Restatement of Trusts and the Internal Revenue Code.

Today, in our complex world, we operate under Law Merchant which is an independent, parallel system of law, like Equity or Admiralty. It is not a modification of Common Law and occupies a field over which Common Law does not, nor ever did, extend. Common Law deals with money value (gold and silver); while the Law Merchant deals with the law of Bills, Notes and Checks which are negotiable instruments and commercial paper. Law Merchant is closely allied to the Equity system of agreement and contracts, which it uses extensively, because the Constitution of States recognizes Equity Law.

You can very plainly see, that the complex system in which we live and operate in today has drastically changed and requires modifications, inclusions and complexities written in Trusts that are necessary to both defend and claim legal standing in our courts. The IRS considers "pure trusts" to be other than a legal trust. Also the law of perpetuity states that no trust may last more than 21 years, renewable.

To accomplish this and conform to the current laws and regulations, and be totally effective in elimination of liability, the deferral of taxation, and not be subject to capital gains, our Trusts were researched and copyrighted to be:

Non-Grantor, Irrevocable, Complex, Discretionary Trusts, with a Spendthrift provision, to provide the utmost legal protection and tax advantages for all our clients.

1. Our Trusts were written to comply with Scott on Trust Law, the Restatement of Trusts and the Internal Revenue Code. This was done so the Trust Corpus would be protected from turnover orders by any court or judge, with the exception of fraudulent conveyance.
2. The non-grantor designation exempts the Trust from any alter ego status that brings into action the management or beneficial enjoyment by the Settlor. If the creator of a trust has management of the corpus, or is a beneficiary of the trust, it becomes a so called living trust which has limited benefits and no tax advantages or asset protection.

PLAN FOR LIFE

3. In order to have asset protection, the Trust must be Irrevocable and non-grantor. This Trust separates the Settlor or Creator from the corpus of the Trust. When assets are irrevocably transferred to Trust they may never revert to the one who is making the endowment or the Settlor of the Trust. Under these terms and conditions, upon creation, legal separation has occurred and the corpus may not be breached by claimants of the Settlor.
4. In order to serve the Beneficiaries of the Trust and protect the corpus, the Trust must be Complex in nature with terms and conditions that plainly and fully state the powers and limitations of the Trustees. Complex Trusts are governed by terms and conditions that may not be altered or changed by the Trustees and the purpose of the Trust is established once and for all time.
5. The Spendthrift Provision of the Trust is the critical element of the document in that no Spendthrift Trust Corpus may be penetrated to reach the assets of that Corpus. Case law upholds this and has upheld this over the many long years of its existence and will continue to uphold it. No judge or court may issue a turnover orders against a properly constructed Spendthrift Trust. The sole exception to this rule of law is fraudulent conveyance to avoid judgment; and this applies to a Trust created after litigation has been filed, not before.
6. The Discretionary terms and conditions of the Trust are established to insure the absolute and sole discretion power of the Trustee in determining the distribution of the Corpus assets to the Beneficiaries of the Trust. If any single percent of the Corpus is designated to be held, or distributed, to any one or more Beneficiaries, the Discretionary designation of the Trust would be invalid. This in no way would affect the asset protection but, could adversely affect the taxable structure of the Trust. The Internal Revenue Code is explicit and clear with regard to the Discretionary nature of a Trust plainly stating that if a fiduciary has the sole and absolute authority to designate something as Extraordinary Dividends or Taxable Stock Dividends, and that is paid to the Corpus of the Trust, and not subject to distribution, this is not income to the Trust according to Rule 643.

Thus, all of our Trusts were created and are written to be Non-Grantor, Irrevocable, Complex, Discretionary, Spendthrift Trusts and Copyrighted for our use.