

## Title

Does the settlor of a trust have standing to seek its enforcement in the courts?

## Summary

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## Text

As a general rule, any beneficiary of a trust would have standing to seek its enforcement in the courts. The Restatement (Third) of Trusts, see specifically the official commentary to the newly-minted § 94, is in accord:

A suit to enforce a private trust ordinarily... may be maintained by any beneficiary whose rights are or may be adversely affected by the matter(s) at issue. The beneficiaries of a trust include any person who holds a beneficial interest, present or future, vested or contingent... This includes a person who is eligible to receive a discretionary distribution... or who holds a reversionary interest by operation of law, as well as one who has succeeded to a beneficial interest by assignment, inheritance, or otherwise. The holder of a power of revocation or withdrawal... is a beneficiary; so is the donee of a special or general power of appointment, as is an expressed or implied... taker in default of appointment.

The Restatement (Third) of Trusts is sending mixed signals as to whether the settlor of a trust, *qua* settlor, would have standing to seek its enforcement. As noted above, the § 94 commentary confirms that one “who holds a reversionary interest by operation of law” under a non-charitable (private) trust is a beneficiary of that trust. Under classic principles of property and trust law, the settlor of a non-charitable (private) trust retains by operation of law a non-possessory vested equitable reversionary property interest. If the trust eventually terminates in favor of designated equitable remaindermen, then the equitable reversionary property interest extinguishes before the settlor can ever come into possession of the underlying property; if the trust fails in mid-course, then the underlying property becomes possessory via the imposition of a resulting trust. Ergo the settlor, *qua* settlor, is a beneficiary of the trust that he has established, and accordingly would have standing to seek the trust’s enforcement in the courts. There is elsewhere, however, seemingly conflicting official § 94 commentary. Here it is: “Neither the settlor of a private trust nor the personal representative or successors in interest of the settlor can, as such, maintain a suit against the trustee to enjoin or redress a breach of trust or otherwise to enforce the trust, absent contrary legislation.” Perhaps this apparent conflict

can be reconciled if, for the holder of an equitable reversionary property interest to qualify as a trust beneficiary, his interest in the underlying property has to have already ripened into a possessory right.

For an extensive discussion of whether the settlor of a trust, *qua* settlor, should have standing to seek the trust's enforcement in the courts, see §4.1.2 of *Loring and Rounds: A Trustee's Handbook* [pages 267-271 of the 2014 edition].