



**What Do I Do Now?:
A Special Seminar for
Successor Trustees**

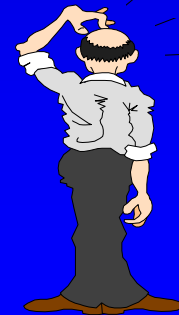
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What is a Trust?

“a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it.”

Restatement Second of Trust §2



What is a Trust?

➤ Trustmaker

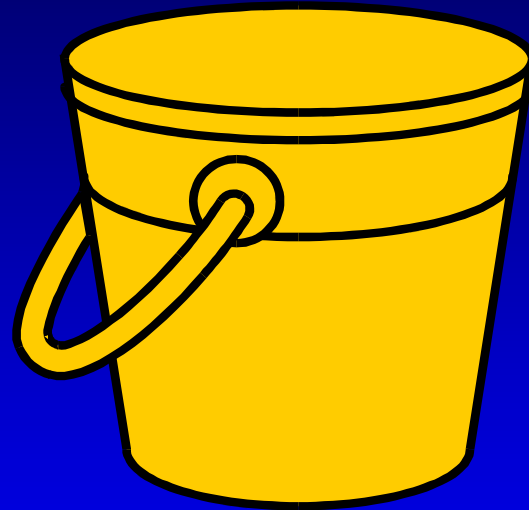
➤ Settlor

➤ Trustor

➤ Grantor

➤ Trustee(s)

➤ Beneficiary(ies)



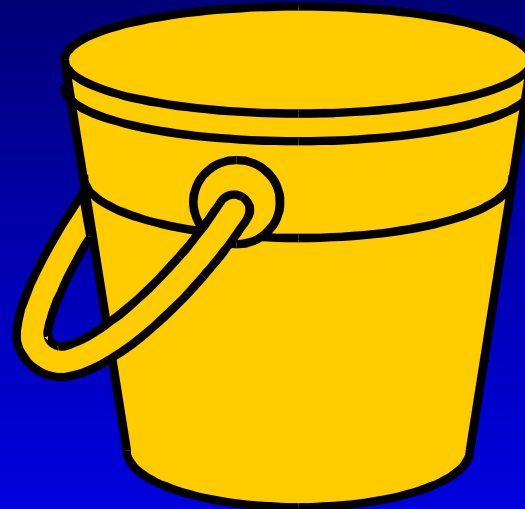
What is a Trust?

➤ Living

➤ Testamentary

➤ Revocable

➤ Irrevocable



What's in a Trust?

➤ Lifetime Transfers

➤ Retitle Assets

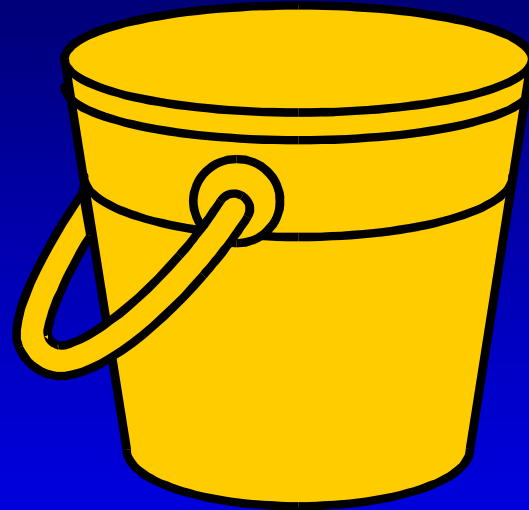
➤ Acquire Assets

➤ Transfers by Agent

➤ Postmortem Transfers

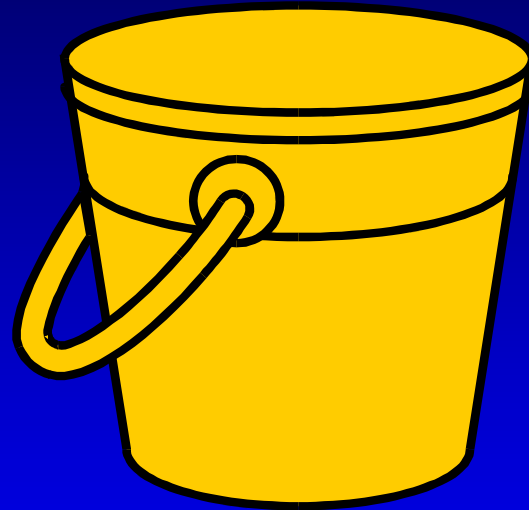
➤ Beneficiary Designations

➤ Pour Over Will



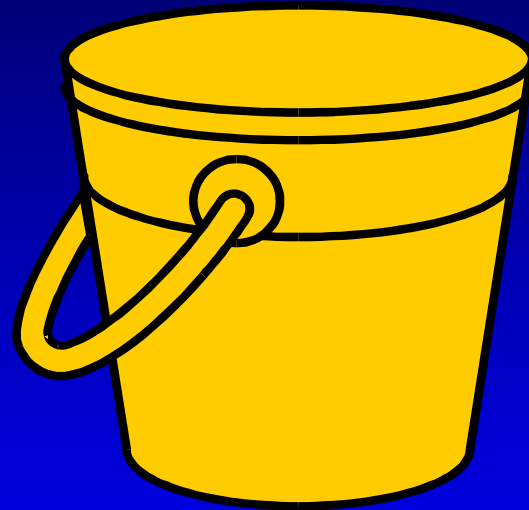
Why in a Trust?

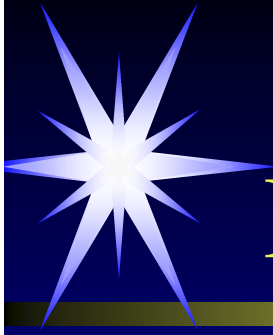
- It plans for your disability
- It plans for your loved ones
- Contains your instructions
- It's private and confidential
- Its good in every state



Why in a Trust?

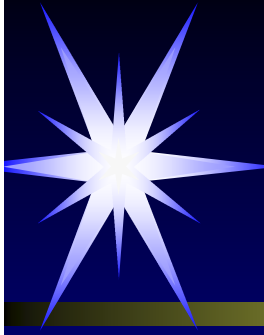
- Outright
 - no protection
- In Trust
 - creditor protection
 - predator protection
 - self protection
 - estate tax protection





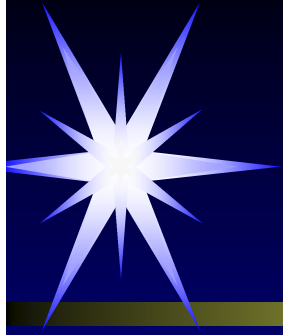
In the Trust Binder or Book:

- Certificate or Affidavit of Trust
- Powers of Attorney
- Trust Document itself
- Documents proving what trust owns
- Personal instructions for burial/anatomical gifts (sometimes found in HCPOA)
- Personal effects memo



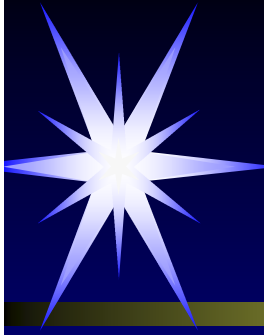
Trust Binder : Operating Manual

- Documents all in one place
 - Hopefully, asset lists will be available
- Personal instructions as well
 - Beyond just distribution provisions, i.e., anatomical gifts, burial, other personal instructions
- Lists of advisors
 - Attorney, CPA, Financial Advisor



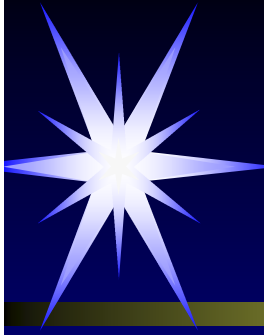
Trust Administration Goals

- Collection and management of assets
 - Payment of debts, taxes, expenses
 - Distribution to named beneficiaries
 - Fiduciary Responsibility



TO MINIMIZE ESTATE TAX

Through successful planning, the methods are in place to avoid excessive estate tax. The successor trustee **MUST** use these tools correctly to achieve the best advantage.



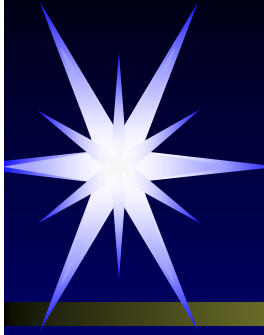
TO MINIMIZE ESTATE TAX

➤ Estate Tax Exemption – Amount you can leave estate tax free:

➤ 2011 – 2012: \$5,000,000.00

➤ 2013 – ? : \$1,000,000.00

What will Congress do?

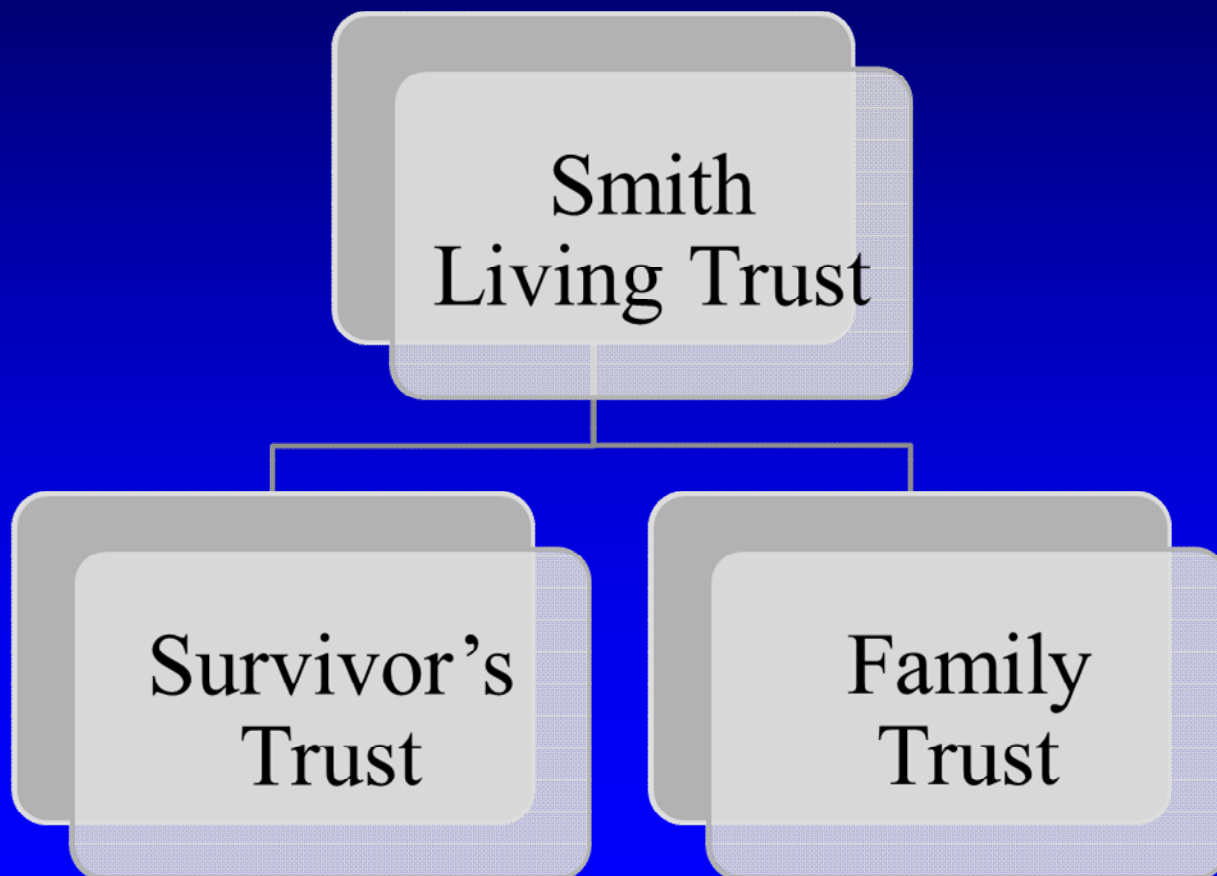


TO MINIMIZE ESTATE TAX

- Does the Trust create an A/B Split?
- Formula clause.
 - Survivor's Trust – Family Trust (Credit Shelter; Bypass; Decedent's Trust)
 - Is there a Marital Election Trust (QTIP)?
 - Joint Trust vs. Individual Trusts?



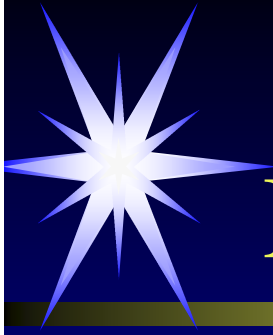
TO MINIMIZE ESTATE TAX





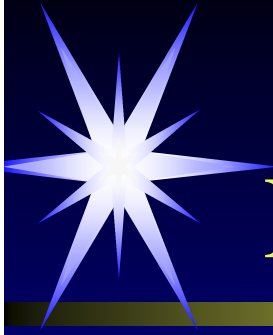
Collecting Assets

- Keep jewelry, securities, personal items of great value in a safe place, to which only trustees have access.
- Use “Location List”, if provided by trustmaker.
- Draw up new Certificate of Trust.
- Close or change brokerage accounts to reflect new trustee. (Use Certificate of Trust)
- Maintain accurate records of all account activity.



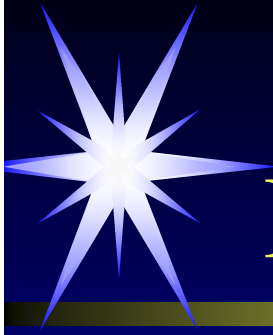
Managing Assets:

- Maintain adequate insurance coverage for homeowners, fire, flood, liability.
- Use interest-producing investments to “grow” the assets not needed for expenses.
- Don’t sell assets without consulting an attorney. (especially partnerships, etc.)



Paying Debts and Taxes:

- Trustees and Personal Representatives may have *different* responsibilities in regard to taxes.
- Get professional assistance with the estate tax return.
- Remember federal estate taxes are due 9 months after death (even if file 6 month automatic extension).



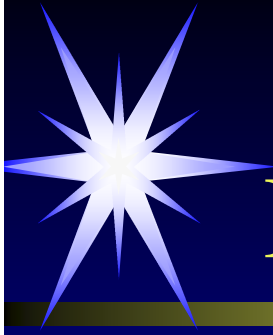
If Disability Occurs

“Disability” can be temporary -

Extended trips away from home

Working on a full-time project

Short term hospitalization



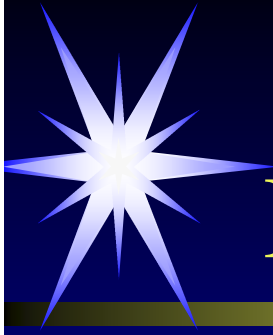
If Disability Must Be Determined

Check the trust document for who may determine disability

Two doctors?

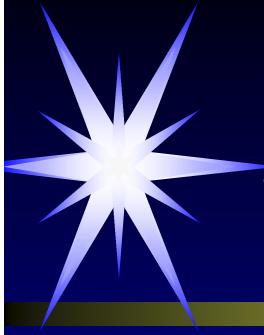
Doctor and Spouse?

Private Disability Panel?



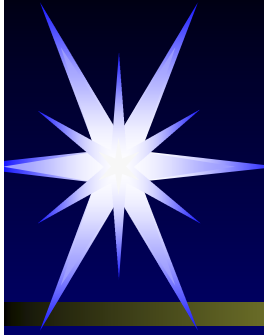
Before Disability Transition:

- Make sure Family Doctor has copies of Health Care Powers and Living Will
- Discuss, before death, any concerns the trustmaker may have
- Have trustmaker tell family doctor who will speak for them



When Disability is Permanent

- Get new Certificate of Trust naming successor Trustees.
- Locate trust document and all ancillary documents.
- If the disability may lead to death, consult an attorney for estate planning purposes.
- Do not enter any risky or long-term business ventures unnecessarily.
- Keep good records.



When the Trustmaker Dies

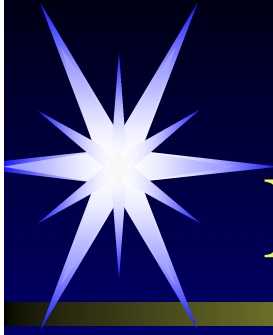
First, you grieve.

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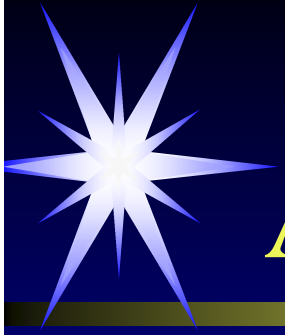
Stop. Determine Burial Wishes

- Has an anatomical gift been made? (check driver's license, too)
- Are cremation/burial locations purchased or planned?
- Can his/her wishes be followed reasonably?



For Spouses, Children, Friends:

- Call a friend to stay with you.
- Notify authorities - medical examiner, funeral home.
- Contact immediate family/friends.
- Use trust binder information.
- Arrange care for family during next few days.



After The Funeral - Begin Slowly

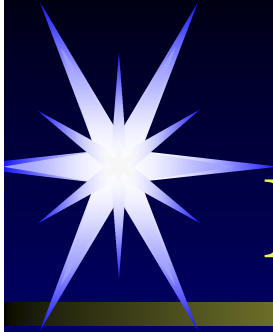
- Locate assets
- Gather and determine if the trust owns the assets or is beneficiary
- Keep a list of money spent, especially for the funeral and last illness.



Gather the Advisors

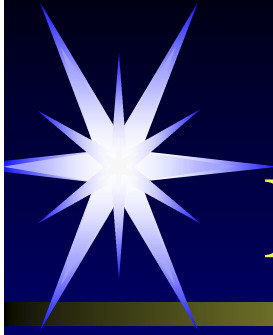
- Estate Planning Attorney
- CPA familiar with estate returns (Portability Issue for 2011 and 2012 – timely filed 706)
- Financial Planner/counselor

Use the advisors the trustmaker used, when possible.



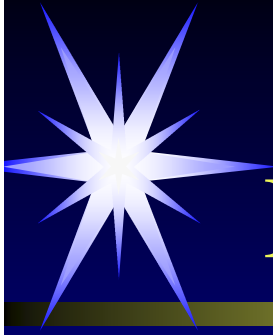
Make appointments early.

- The first deadline is probate opening, if needed for any assets not owned by the trust.
- The most important deadline is the federal estate tax due 9 months after death.
- If you get an extension for the return, the taxes are still due!



Disclaimers: The Final Control

- Disclaimers must be used in a timely fashion (in writing within 9 months – both state and federal requirements).
- They allow an asset to pass to the **NEXT** heir, not the one **YOU** choose.



Benefits and Insurance

- Telephone employee benefits insurance, social security, Medicare offices, with the following:

DECEDENT'S NAME

SOCIAL SECURITY NUMBER

DATE OF DEATH (OR INCAPACITY)

WHETHER DEATH WAS DUE TO ILLNESS OR ACCIDENT

YOUR NAME AND ADDRESS



More Notifications

- Veterans Benefits?
- Club and credit memberships?
- Disability Insurers?
- If Trustmaker lived alone, contact utility companies, homeowners, landlord, arrange for maintenance of home (lawn mowing, etc.)
- IRS - get a new Tax ID # for the trust, or the Decedent's portion of the trust.

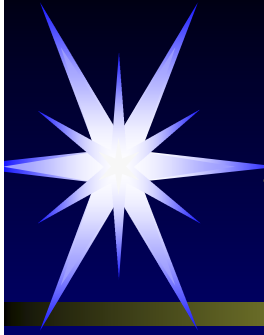


What Is the Trust Called Now?

If John and Mary Smith have the SMITH LIVING TRUST, upon John's death, there might be the SMITH FAMILY TRUST, the SMITH SURVIVOR'S TRUST and, perhaps, the SMITH MARITAL TRUST (ALL DATED FROM THE DATE OF THE ORIGINAL TRUST)

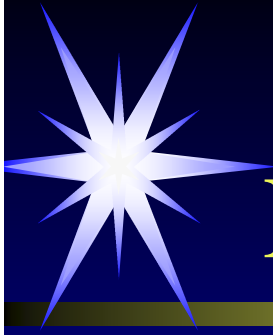
These trusts are created out of the original Trust.

And if a couple has separate trusts?



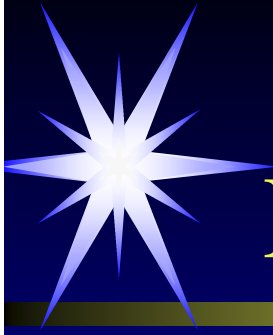
What Is the Trust Called Now?

- The John Smith Living Trust could become as many trusts as needed: The John Smith Marital Trust, the John Smith Family Trust, the John Smith Common Trust - depending on the features of the trust document and what John Smith intended. All the trusts would bear the original trust date, for it is the living trust that created them upon John's death.



For Surviving Spouses

- You can use the survivor's social security number for all assets in the Survivor's Trust. The assets in the Family Trust and Marital Trust, if created, would obtain their own EIN.
- This is noted in your trust in the "formula clause."
- Spouses may have general or limited power to appoint these assets. (The "Second Look")



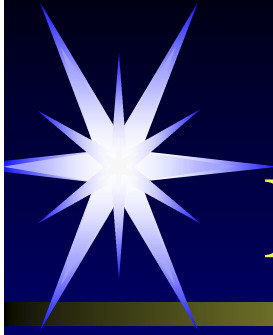
New Tools

See an estate planning attorney for a new certification (or affidavit) of trust that reflects the successor trustee (or trustees). If one was drawn up during the trustmaker's disability, this may be unnecessary.



CAUTION - GO SLOW

- Pension and other retirement elections are tricky - check with an attorney for the best financial outcome
- Don't sell assets until you understand the tax implications of the sale to the trust and its beneficiaries.



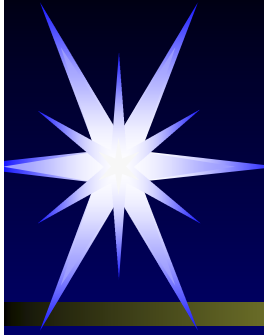
Don't Forget

- Probate may have to be opened in states where real estate is owned, as well as the state of residence.
- Keep excellent records and check with the experts.



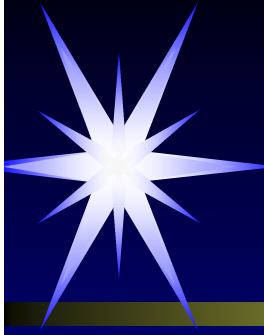
Follow the Trustmaker's Wishes

- The trust document is your **OPERATING MANUAL**. Use it as a guide for what the trustmaker intended.
- Remind advisors to speak to the specific trust plan - not generally.
- Be careful about gifting, other than trust distributions.




Notification Requirements

- When a Trust becomes “irrevocable”:
 - Terms of Trust prevail, except the duty to respond to the request of a “qualified beneficiary” of an irrevocable trust for trustee reports and other information reasonably related to the administration of the Trust.
 - “Qualified beneficiary” includes both current and remainder beneficiaries.




Notification Requirements

- If a Trust does NOT “otherwise provide”:
 - Trustee must “promptly” provide on request a copy of the portions of the trust necessary to describe the beneficiaries interest.
 - Within 60 days from acceptance of Trusteeship, must notify qualified beneficiaries of the acceptance and with the Trustee’s name, address and telephone number.




Notification Requirements (con't)

- Within 60 days after Trustee acquires knowledge of existence of Trust (or date a revocable trust becomes irrevocable), trustee must notify qualified beneficiaries of: (i) the trust's existence; (ii) the identify of the Trust's creator; (iii) the trustee's name, address and phone number; (iv) the right to request a copy of the relevant portions of the trust; and (v) of the right to the "trustee's report".



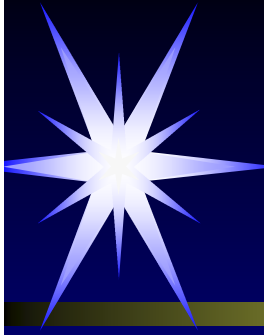
Notification Requirements (con't)

- Trustee must notify qualified beneficiaries at least 30 days in advance of any change in the method or rate of the Trustee's compensation.
- Trustee must send to the “distributees” or “permissible distributees” of trust income or principal, and to other beneficiaries who request it, at least annually and upon termination of the trust, the “trustee's report”



Notification Requirements (con't)

- “Trustee’s Report” consists of a report of all Trust property, all Trust liabilities, all receipts, disbursement and expenses, including the source and amount of the Trustee’s compensation, a listing of the Trust assets and, if feasible, the respective fair market values of each Trust asset. On vacancy of a Trusteeship, the Trustee’s Report must be sent to all qualified beneficiaries, unless a co-Trustee remains in office.



Notification Requirements (con't)

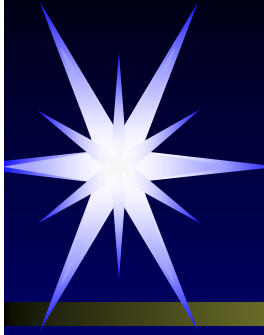
Look to the Trust to determine the notification requirements.

Remember, the Trust itself may waive many of the notification requirements, except for a Trustee's duty to provide the Trustee's report and other information reasonably related to the Trust's administration to qualified beneficiaries.



When is a trust terminated?

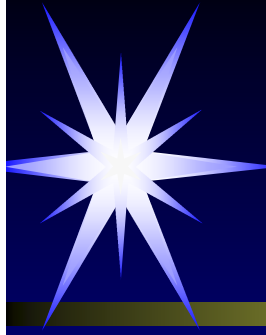
- When the trust says so. *Or*
- When beneficiaries reach a certain age. *Or*
- When certain conditions are met. *Or*
- When administration is too expensive as to become “burdensome” *Or*
- Not for many generations.



Loving Duties

The trustmaker, out of loving concern, made an estate plan to avoid unnecessary taxes and provide for heirs.

The successor trustee, out of love and duty, will honor that plan to avoid unnecessary taxes and provide for heirs.



Thank You

Thank you for participating!

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