WEISS’S

CONCISE TRUSTEE

HANDBOOK

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A GUIDE TO THE ADMINISTRATION

OF AN EXPRESS TRUST UNDER THE

COMMON LAW,

FUNCTIONING UNDER THE

GENERAL LAW-MERCHANT

BY

CARLTON ALBERT WEISS

NACRS Edition

Jan. 2006



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A Guide to the Administration of an

Express Trust under the

Common Law,

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General Law-Merchant

By Carlton A. Weiss

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\*With updates, revisions, additions,

and added sample forms

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INTRODUCTION

THIS HANDBOOK is about the administration of Express Trusts created under the

original American common law and functioning under the General Law-Merchant, i.e.,

the unique system of commerce in the American states, as it stands in twenty-first

century America.

The material presented herein has been reduced from various sources which the

reader is encouraged to examine for his own knowledge and further understanding. The

material herein has been rendered into a concise handbook format, intended to allow

the reader to refer to each section for guidance on decisions regarding the most

pertinent aspects of the administration of an Express Trust. So, only secondary

attention has been given to all other matters.

All in all, the author’s objective by this handbook is to devise a simple guide, with

clearly outlined methods and sample forms, for the effective handling of affairs of

Express Trusts, while also showing the many options for growth and prosperity, and

profound protections afforded by Express Trusts (when created and administered

properly). This book is written in a somewhat unconventional manner in order to

accommodate this objective.

If the reader should find, after examining the sources, that this work has failed in

its objective, then let it be attributed to a fault of the author, not to any supposed

faultiness of the sources or the Express Trust itself, for it will be admitted by all honest

and learned

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lawyers (as it once was when “lawyers” were, by definition, “[any] person

) that the Express Trust, especially one created with proper care to

learned in the law”

2

its trust instrument, is a far superior method of carrying out any voluntary contractual

organization between individuals sui juris.

1

It was the strongly held belief of U.S. Supreme Court Chief Justice Warren E. Burger that seventy-five to ninety

percent of all trial lawyers are either incompetent, dishonest, or both. See 102 Reports of the American Bar

Association, 205-206 (1978).

2

Black’s Law Dictionary, p. 695 (1st ed. 1891).

1



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TRUST BASICS

FIRST, it must be understood that any trust, regardless of the many designations

applied to them, is, in its most basic sense, “a property interest held by one person (the

trustee) at the request of another (the settlor) for the benefit of a third party (the

beneficiary).” The classification applied to a trust is based upon its mode of creation, in

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which it may be created either by act of a party (express or implied), or by act of the law

(resulting or constructive).

Without getting into the various

**Creating a Trust**

*oral*

subclasses of express and implied

trusts, the basic difference between one

created by express act of a party and

one created by implied act of a party is

that the former is stated fully in

language (oral or written), while the

latter is inferred from the conduct of the

parties. These are very generalized

definitions so presented for want of

space, since there are many intricacies

concerning the true meaning of the term

implied. (It has been shown that, in a

sense, the classification of “express”

EXPRESS

written

**BY ACT OF A PARTY**

*IMPLIED*

*RESULTING*

BY ACT OF THE LAW

*CONSTRUCTIVE*

trust can only be applied based on what is “implied” by the language of the instrument

giving rise to the trust.) So, we won’t get into that. Our focus is on a particular written

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express trust type, and even though the above definition is essentially accurate, it does

little to define the Express Trust as it is known in its fullest sense under the protections

of the common law.

EXPRESS TRUSTS UNDER THE

COMMON LAW

THE MOST adequate definition of the Express Trust is to be understood from the

earlier case law which has been eloquently summed up and restated into a clear,

concise definition by Alfred D. Chandler, Esq. in the first of his two papers submitted as

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a report to the Tax Commissioners of Massachusetts on “voluntary associations” as

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3

Black’s Law Dictionary, p. 1513 (7th ed. 1999). An even more basic definition is provided therein as “[t]he right,

enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title[.]”

There are many more sub-definitions, as well as expansions upon the nature of a trust relationship, being a fiduciary

one, but we won’t get into them for want of space.

4

See George P. Costigan, Jr., Classification of Trusts, 27 Harv. L. Rev. 437, 438-439 (1914).

5

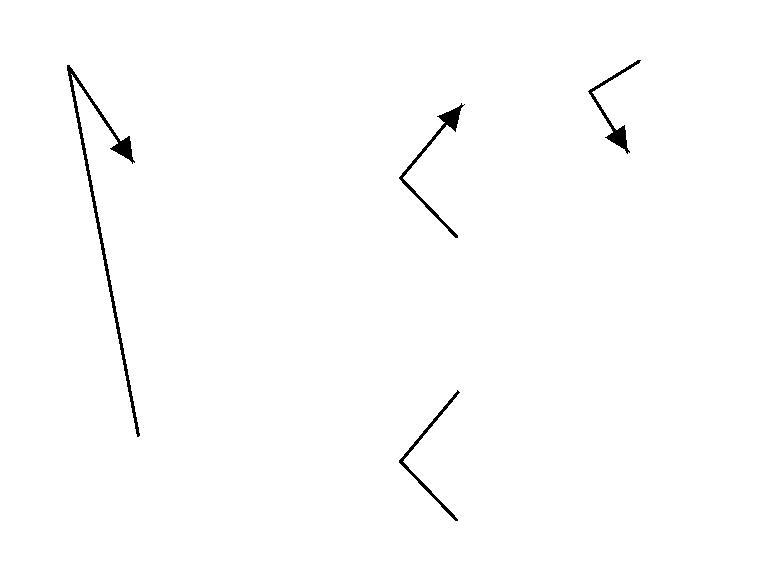
Express Trusts Under the Common Law: A Superior and Distinct Mode of Administration, Distinguished from

Partnerships, Contrasted with Corporations (1912).

6

Mr. Chandler lucidly brought to the attention of the Massachusetts Tax Commission the misapplication of the term

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part of a legislative investigation into their economic effect on the state in 1911. At page

6, he offers the following definition:

Express Trusts . . . put the legal estate entirely in one or more [persons],

while others have a beneficial interest in and out of same, but are neither

partners nor agents. This simple, adequate, common-law right, any person or

group of persons sui juris may exercise, the Trustees issuing certificates of

beneficial [and capital] interest divided into shares, as well as issuing bonds and

other obligations, as freely as they open a bank account, have a pass book, and

draw and circulate checks, or make whatever contractual relations are allowed

to persons as a natural right. [Italics emphasis supplied in original; bold

emphasis and bracket information added.]

What becomes clear from this definition is that the Express Trust is not merely a

property interest held by one for the benefit of another, but rather a private contract for

the holding of a divisible property interest accepted by one at the offer of another,

having full power to do whatever he may naturally do for himself as an individual sui

juris, for the benefit of a third party of his choosing. What has been created here is a

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trust organization, purely sui juris. “As a general proposition, it may be asserted that one

who creates a trust may mold it into whatever form he pleases, and that whatever one

may lawfully do himself he may authorize another to do for him[,]”

benefit, privilege or franchise from any government or other outside-party;

therefore they owe no duty to any government or other outside-party to the extent that

no common-law criminal or civil wrong is the purpose of the contract.10 If this is so,

8

without receiving any

9

and,

then the trust is afforded all the common-law protections ordinarily given to private

contracts, particularly the obligation of them.11 Now, the question is whether the parties

voluntary association to the Express Trust. It is well-settled that “[t]he term ‘association’ for income tax purposes

taxable as a ‘corporation’ embraces ‘business trusts’, and what Congress did not intend to embrace within the term

‘association’ was a pure [express] ‘trust’, that is a trust of traditional pattern where property is conveyed by will,

deed, or declaration to a trustee[.]” Pennsylvania Co. for Insurance on Lives and Granting Annuities v. U.S., 138

F.2d 869 (C.C.A.3 (Pa.) 1943). In Crocker v. Malley, 249 U.S. 223, 63 L.Ed. 573 (1919) the court made it clear that

a pure Express Trust, active and functioning as such, has standing in law as a trust, not an association.

7

See Pres. Woodrow Wilson’s address before the American Bar Association, at Chattanooga, Tenn. (Aug. 31,

1910), entitled The Lawyer and the Community. He says that “Liberty is always personal, never aggregate; always a

thing inhering in individuals taken singly, never in groups or corporations or communities. The individual unit of

society is the individual.” It has long been held that trustees of Express Trusts have greater latitude than ordinary

trustees, simply because such trusts, created by individuals sui juris, may do whatever individuals sui juris may do.

8

Harwood v. Tracy, 118 Mo. 631, 24 S.W. 214, 216; also see Shaw v. Paine, 12 Mass. 293; “The person who

creates a trust may mould it into whatever form he pleases.” Perry on Trusts, I, §§ 67, 287 (4th Amer. ed.); Underhill

on Trusts, p. 57 (Amer. ed.).

9

See Hale v. Henkel, 201 U.S. 43, 74 (1906).

10Lawson on Contracts § 294, p. 381 (3d ed. 1923).

11In Berry v. McCourt, 204 N.E.2d 235, 240 (1965) the court held that the Express Trust is a “contractual

relationship based on trust form”; and in Smith v. Morse, 2 Cal. 524, it was held that any law or procedure in its

operation denying or obstructing contract rights impairs the contractual obligation and is, therefore, violative of

Article I, Section 10 of the Constitution. Because the Express Trust is created by the exercise of the natural right to

contract, which cannot be abridged, the agreement, when executed, becomes protected under federally enforceable

right of contract law and not under laws passed by any of the several state legislatures.

In Eliot v. Freeman, 220 U.S. 178 (1911), the court made it clear that the Express Trust is not subject to legislative

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to the contract are truly acting sui juris, i.e., of their pure, unadulterated common-law

rights, because if the parties have prior contractual obligations which grant an outside

party a vested interest in all their personal relations, then the contract has acquired a

third-party overseer/intervenor.12

DECLARATION OF THE EXPRESS

TRUST13

THE DECLARATION OF TRUST is the trust instrument that constitutes the trust. It has

been noted in trust law that no technical expressions are required to create a valid

declaration, so long as the words used make clear the settlor’s intent to create the trust

or confer a benefit of some sort that would be best carried out by means of a trust.14

A

trust instrument doesn’t necessarily need to be a declaration either, for a trust may be,

and often is, formed out of a simple agreement or even a will.15 But with an Express

Trust, the declaration has been preferred since the beginnings of trusts under the

common law of England. This is where careful attention to detail is most crucial,

because in order to properly construe the intent of the settlor, the objects, property, and

manner in which all is to be carried out, the terms and provisions must be set forth in

unambiguous, precise language so as to particularly create the Express Trust; and

where the intent of the settlor is unclear, under equity, interpretation is required to

construe the intent of the parties, and the trust may, depending on the degree of

ambiguity, be deemed invalid.16 However, when all is done properly, obviously there can

be no lawful impairment of the obligations of contract created thereby.17

Moreover, the declaration, by its terms and provisions, serves to establish the

entire contractual arrangement, including the identities and positions of the parties, the

trust’s name, jurisdiction and situs, and all particulars of administration, all of which the

courts of equity will fully support by the principle that equity compels performance.18 The

control. It went further to acknowledge the right-wise stance of the United States Supreme Court that the trust

relationship comes under the realm of equity, based upon the common-law right of contract, and is not subject to

legislative restrictions as are corporations and other organizations created by legislative authority. To clarify the

equity and common-law distinctions, the basis for Express Trusts under the common law in this instance, is not that

such organizations are creatures of common law, as distinguished from equity, but that they are created under the

common law of contracts and do not depend upon any statute.

12See Lee Brobst et al., U.S.A. The Republic, Is The House That No One Lives In, available at

<http://www.usa-the-republic.com/Lee%20Brobst/USA%20The%20Republic.htm> (last visited Aug. 6, 2005).

13This is sometimes referred to as the trust indenture for the purpose of denoting that it outlines the terms and

conditions governing the conduct of the trustee (referred to in this sense as an indenture trustee) as an indentured

servant to the beneficiary under contractual arrangement.

14See Underhill, supra at art. 3, p. 10; also see Chicago M. & St. PR. Co. v. Des Moines Union R. Co., 254 U.S.

196, 65 L.Ed. 219 (1920).

15Underhill on Trusts, art. 5, p. 19 (Lond. ed. 1878).

16Id. at p. 11.

17See the Constitution for the United States of America, art. I, § 10 (1789): “No State shall . . . pass any . . . Law

impairing the Obligation of Contracts[.]”

18See Clews v. Jamieson, 182 U.S. 461, 21 S.Ct. 845, 45 L.Ed. 1183 (1901).

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ultimate result is the creation of a bona fide legal entity,19 having a separate and distinct

juridical personality,20 standing to sue and be sued21 and to function as a natural

(contrasted with artificial) person in commerce by and through its trust officers. The term

natural person has been applied to Express Trusts by courts of equity because of its

mode of creation and administration, being by way of the exercise of natural rights and

not franchises (i.e., civil rights).22 However, this implied right of contract of the trust is

alienable, whereas its creators’ right of contract is unalienable.23 But it nevertheless

possesses inter alia the right to all enjoyments stemming from the contracts into which it

enters, as well as all the obligations imposed under such contracts. Needless to say, the

Express Trust possesses the ability to own property, engage in business transactions,

and to incur liabilities (including tax liabilities depending on the activity which renders it

liable to pay the tax, which I will get into in a later section).

THE TRUST CORPUS

THE BODY of the trust is the property being held in trust for the beneficiary(s), the

very subject-matter of the declaration. It should be noted that virtually any thing24 may

be held in trust, however, there are certain things which, given their innate traits

recognized in Law, make for better subject-matter, so to speak.

Initially, the legal minds who perfected the Express Trust in America did so to

accommodate for the great obstacles in procuring special charters for corporations

intended to deal in real estate, which trusts eventually came to be known as the

“Massachusetts Land Trusts”. It was when those individuals came to realize the

immense benefits of employing the trusts for the purpose of holding land, that they

19See Burnett v. Smith, S.W. 1007 (1922); and Muir v. C.I.R., 182 F.2d 819 (C.A.4 1950).

20

See Brigham vs. U.S., 38 F.Supp. 625 (D.C.Mass. 1941), appeal dismissed 122 F.2d 792 (reported in Title 26

I.R.C. 31, p. 356).

21See Waterman v. MacKenzie, 138 U.S. 252 (1891).

22The trustee(s) of an Express Trust are protected under the Constitution as “citizens” throughout the continental

United States. The trustee(s) under a will or declaration of an Express Trust are natural persons, “citizens” within

the meaning of Article IV, Section 2 of the Constitution, and are therefore entitled to all the “privileges and

immunities” of same. Paul v. Virginia, 75 U.S. 168 (1868). Even though, in today’s economic situation, the term

“citizen” is presumed to signify the 14th Amendment citizen, the term cannot be applied to the Express Trust which

is specifically created under the original common law. The trust is a natural person because of how and by whom it

was created. And even under common law, the officers having natural rights, acting for a corporation can only do

what they are permitted to do by the state in which they seek to act, because they are not such “citizens” entitled to

those “privileges and immunities,” and hence the foreign corporation statutes of the several states. Corporations, as

artificial persons, are “citizens of the United States,” within the meaning of the 14th Amendment, which should give

the reader an idea of the meaning of the term person as primarily used today. See Santa Clara County v. Southern

Pacific R. Co., 118 U.S. 394, 396 (1886).

23Man’s right of contract is considered so fundamental that even under Roman law, in its system of domestic

slavery, all men, citizen or not, retained this fundamental right ius gentium. It is understood to derive from a man’s

Creator, and therefore is unalienable without his consent/waiver (i.e., a man’s right of contract can only be

contracted away). The trust’s implied right of contract is alienable, i.e., transferable to another person, by the trustee

or a court of equity in the event that the trustee should choose, or by such court should equitable jurisdiction arise.

24The “thing” held in trust is referred to as the trust res, the subject-matter of the trust.

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eventually expanded their utility to include the holding of personal property, which trusts

eventually came to be known as the “Massachusetts Electric Companies,” and their

perfection attributed to one time Attorney General and later United States Secretary of

State Richard Olney;25 but the fact that the Express Trusts were initially, primarily

utilized for purposes of holding and handling real estate is very significant, especially to

our present situation.

The significance derives, in pertinent part, from the integral relationship between

the law and the land. It is a fundamental principle of law that the land and the law go

hand in hand; and, in America, without the 14th Amendment, the Law of the Land is the

Constitution with its common-law principles—and its substance of gold and silver.26

Without getting too deep into the operation of common law, it is this principle regarding

the relationship of land and law that, by its operation, threw up an obstacle to corporate

real estate ownership, for in order to charter a statutory (civil law) entity to handle the

substance of the common law (land), special, if not extraordinary, legal circumstances

must exist, which, prior to the removal of the fixed gold standard in 1933,27 i.e., the

removal of the substance of the law, were nonexistent.28 A statutory entity is inherently

accountable to courts of civil (legislative) jurisdiction, deriving subject-matter jurisdiction

from the corporate charter. Whereas, an Express Trust is obviously inherently

accountable to courts of equity,29 deriving subject-matter jurisdiction from the trust

instrument.

This brings us to today. In the jurisdiction of the 14th Amendment United States

public trust, what is the substance of the common law is merely a commodity. But, back

in the Republic the substance still remains the staple for payment of debts30 (though in

considerably lesser quantity and without a fixed standard upon which to be traded). The

Express Trust under the common law, holding real estate, silver or gold, is holding the

very substance of the law under which it was created, thus ensuring that bond between

law and land, and the powers and guarantees that come with it.31

25See John H. Sears, Declarations of Trust as Effective Substitutions for Incorporation, § 1, p. 4 (1911).

26Referred to in this sense, it is regarded in law as portable land. The basic principle of law is that the land includes

everything extracted from it.

27See House Joint Resolution 192 of June 5, 1933; Pub. L. 73-10. Prior to that, silver had already been

de-monitized, in practice but not in fact, by the Coinage Act of 1873 (commonly referred to as the “crime of ‘73,”

which, it is blatantly obvious, would have been unconstitutional if done in-fact. It is said to have been a tactic of

congress to place in the public mind the perception of the currency as being solely backed by gold, presumably for

the purpose of the eventual passing of H.J. Res. 192, which congress knew would effect a removal of the substance

of law). Silver was later withdrawn from circulation in certain coins by the Coinage Act of 1964, and was removed

entirely by amendment to the Coinage Act of 1964 by the Bank Holding Company Act of 1970. Then, all

silver-backed certificates were discontinued in 1972.

28See Lee Brobst et al., The Law, The Money and Your Choice (2003), available at

<http://www.usa-the-republic.com/Lee%20Brobst/The%20Law.html> (last visited Sept. 29, 2005).

29It should be noted that though the Express Trust is created under common law, it is not a creature of the common

law as distinguished from equity, but rather, it is created under common law of contracts and not dependent upon

any statutes; Equity supplements the common law. See Schumann-Heink v. Folsum,328 Ill. 321.

30See Constitution for the United States of America, art. I, § 10 (1789).

31See Constitution for the United States of America, amend. VII (1791).

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THE CERTIFICATES

WHAT MAY come as a surprise is that any trust may divide its trust property into

shares and issue certificates.32 The power to issue certificates and bonds, and employ

the use of a seal33 never has been restricted to corporations.34 It is well-settled law that

whatever else most corporations possess beyond their artificial entity and right of suit in

the corporate name is a mere incident or consequence of incorporation, and not a

“primary constituent”.35 This may include the power of issuing transferable shares,

limiting liability of its officers, using a seal, making by-laws, purchasing lands and

chattels—all of which are merely the recognition and adoption of natural common-law

rights any person sui juris may exercise without permission (much less a charter) from

the state. The court in Warner v. Beers36 clarified this principle most effectively:

There are several very useful and beneficial accessary [also spelled accessory]

powers or attributes, very often accompanying corporate privileges, especially in

moneyed corporations, which, in the existing state of our law, as modified by

statutes, are more prominent in the public eye, and perhaps sometimes in the view

of our courts and legislatures,[37] than those which are essential to the being of a

corporation. Such added powers, however valuable, are merely accessary.

They do not in themselves alone confirm a corporate character, and may be

enjoyed by unincorporated individuals. Such a power is the transferability of

shares. . . . Such, too, is the limited responsibility [liability]. . . . So, too, the

convenience of holding real estate for the common purposes, exempt from the

legal inconvenience of joint tenancy or tenancy in common. Again: There is the

continuance of the joint property for the benefit and preservation of the

common fund, indissoluble by death or legal disability of any partner. Every one

of these attributes or powers, though commonly falling within our notions of

a moneyed corporation, is quite unessential to the legality of a corporation,

may be found where there is no pretense of a body corporate; nor will they

make one if all were combined, without the presence of the essential quality of

legal individuality[.] [Italics and bold emphasis, and bracket information added.]

The trustee of an Express Trust is empowered by the terms and provisions of the

trust instrument to issue certificates not only of beneficial interest,38 but also of capital

32See Hart v. Seymoure, 147 Ill. 598, 35 N.E. 246; and Venner v. Chicago City Ry. Co., 258 Ill. 523, 101 N.E. 949.

33As a side-note, the right of an individual using a seal has never been challenged, based upon the universal

understanding that it is used as a matter of right. Once the trustee has adopted the seal and has used it, it is

automatically presumed that the use is lawful, until proven otherwise. See Johnson v. Crawley, 25 Ga. 316, 71

Am.Dec. 173; and Mullanphy v. Schott, 135 Ill. 655, 26 N.E. 640.

34See Thompson-Business Trusts § 23; Sears Trust Estate § 105 (2d ed.); and Phillips v. Blatchford, 137 Mass. 510.

35See Wald’s Pollock on Contracts, pp. 126, 296.

3623 Wend. 103, 145-146 et seq.

37I will show you in the conclusion why this is the state of affairs today, as it was back then, and why the principles

interpreted by the court in this case apply now more than ever.

38Also referred to as trust certificates or certificates of trust units.

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interest.39 Generally speaking, beneficial interest is that which is held by the

beneficiary(s) of the trust, who is entitled to a certain proportional share of the trust

profits during the life or at the termination of the trust; while capital interest is that which

is held by the exchanger(s) who has invested property into the trust, and thus becomes

entitled to a certain proportional share of any profits and assets remaining at the

termination of the trust.

As a rule, the terms and provisions of the trust instrument control the manner in

which beneficial and capital interest are to be administered, and determine the rights of

interest-holders, who, incidental to their acceptance of the interest, are bound under the

trust instrument as such.40 But there are certain principles which govern these interests

in construing the fundamental classification of the trust. For instance, it is held that

where the certificate-holders have control over the trust property and/or administration

of the trust’s affairs, the trust arrangement is deemed a partnership, in which the

shareholders become liable for the acts of the trust.41 The basic principle is that if it is

free from the control of its interest-holders, then it is an Express Trust.42 This is

commonly referred to by courts of equity as the “Control Test,”43 in which, control must

ultimately rest with the trustee(s) of the trust in order for it to be properly classified as an

Express Trust. The well-settled principle applied by courts of equity is that interest-

holders, by full legal title and control over the trust property being vested absolutely in

the trustee(s), cannot be considered partners nor agents,44 and therefore cannot be held

liable for the debts of the trust in the manner so done with partnerships and agencies.45

Furthermore, the certificates have no determinable fair market value, and,

therefore, no gain or loss is recognized until the cost or other basis of the property

disposed of has been recovered.46 In Commissioner of Internal Revenue v. Marshman,47

the court held that fair market value is determined by property received by the taxpayer,

39Also referred to as capital certificates or certificates of capital units.

40See Hardee v. Adams Oil Assn., 254 S.W. 602 (1923); Todd v. Ford, 92 Colo. 392; and Weimer & Co. v. Downs,

Inc., 77 Colo. 377.

41

See Rand v. Morse, 289 Fed. 339 (C.C.A.8 (Mo.) 1923); Goldwater v. Oltman, 210 Cal. 408; Schumann-Heink v.

Folsom, supra; First National bank v. Charter, 305 Mass. 316; and Neville v. Clifford, 242 Mass. 124. For examples

of what will constitute a co-partnership see Taft v. Ward, 106 Mass. 518; and Phillips v. Blatchford, supra.

42Id.

43

See Bank of America Nat. Trust & Savings Ass’n v. Scully, 92 F.2d 97 (C.C.A.10 (Colo.) 1937); Rand v. Morse,

Id.; Goldwater v. Oltman, 210 Cal. 408; Schumann-Heink v. Folsom, Id.; First National Bank v. Charter, Id.;

Commercial Casualty Ins. Co. v. Pearce, 320 Ill.App. 221; Rosemaond v. March, 287 Mich. 580 (Rehearing denied,

287 Mich. 270); Nelville v. Clifford, Id.; Carling v. Buddy, 318 Mo. 784 (In re Winter, 133 N.J.Eq., 245); and

Rhode Island Trust Co. v. Copeland, 39 R.I. 193.

44See Mavo v. Moritz, 151 Mass. 481, 484, 24 N.E. 1083 (1890); Mason v. Pomeroy, 151 Mass. 164, 7 L.R.A. 771;

Johnson v. Lewis, 6 Fed. 27, 28 (C.C.Ark. 1881); Taylor v. Mayo, 110 U.S. 330, 334-335, 28 L.Ed. 163, 165

(1884); Lackett v. Rumbaugh, 45 Fed. 23, 29 (C.C.N.C. 1891); and Smith v. Anderson, L.R. 15, Ch. D, 247,

275-276, 284-285.

45See In re Conover, 295 Ill.App. 443; and Greco v. Hubbard, 242 Mass. 37.

46See Master Tax Guide, para. 910. In regard to Capital Certificates, the courts have long upheld the doctrine of

exchange, in that certificates in exchange are not taxable until a realized gain has occurred. See Burnet v. Logan,

283 U.S. 404 (1931); and Trenton Cotton Oil Co. v. Commissioner, 147 F.2d 33 (C.C.A.6 1945).

47279 F.2d 27 (C.A.6 1960).

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not the fair market value of the property transferred by the taxpayer unto the trust.

What’s more is that certificates are considered not necessarily as chattels, but as

documentary evidence of ownership and intangible rights;48 and, in and of themselves,

they are the personal property of the holder,49 not the actual interest or share itself.50

This is contrasted with the certificate of stock, which courts have held may be dealt with

in the market as a “commercial document of value”; but the courts also hold, almost

unanimously, that the presence of a certificate of stock within the jurisdiction gives no

power to take the rights evidenced by the certificate.51 Unlike stock, however, the

interest in an Express Trust, cannot be traded without the prior approval of the

trustee(s) of the trust.

TRUSTEE BASICS

FIRST AND FOREMOST, any person (man, sovereign, trust, corporation, etc.) capable

of taking legal title to property can be a trustee.52 And there is no limit to the number of

trustees who may serve on any one trust. Generally, where there are more than one

trustee, the trustees, with respect to each other, are referred to as co-trustees,53 and

when acting jointly as a collective body are referred to as the Board of Trustees.

Furthermore, there is no law prescribing the character of a trustee, and while it

has been held that a trust cannot be invalidated simply due to the incompetence of the

trustee, the trustee should be a person capable and fit for executing the powers and

duties honorably.54 (This is the basis for the general rule that beneficiaries are not

desirable as trustees, though there is no law to forbid such appointment. Equity will

generally avoid all temptation to a breach of trust.) The trustee should have his

residence within the jurisdiction of the court of equity in which the estate is located, if

indeed the trust corpus is an estate. But where the trust corpus is portable land, the

trustee need not be resident within any single jurisdiction, which non-residency will not

disqualify or preclude the trustee from carrying out his position.55

As far as accepting the appointment is concerned, acceptance should be made

formally, expressly in writing, though it will always be implied “if the individual

intermeddles with the trust property, or performs any act to carry out the trust.”56 Once

48See Goodhue v. State St. Trust Co., 267 Mass. 28.

49See Parker v. Mona-Marie Trust, 278 S.E. 321; and In re Pittsburg Wagon Works’ Estate, 204 Pa. 432, 54 A. 316.

50See Malley v. Bowditch, 259 Fed. 809 (C.C.A.1 (Mass.) 1919).

51See Joseph H. Beale, The Exercise of Jurisdiction In Rem to Compel Payment of a Debt, 27 Harv. L. Rev. 107,

111 (1913), citing Stern v. Queen, (1896) 1 Q.B. 211; Pinney v. Nevills, 86 Fed. 97 (C.C.Mass. 1898); et cetera.

52See Beach’s Commentaries on the Law of Trusts and Trustees, vol. I, ch. III, § 23, p. 30 (1897).

53This term is sometimes used to denote that the co-trustee has less authority than the trustee. In that sense, the

co-trustee is called a passive trustee, and the trustee an active trustee. But Express Trusts usually employ the term

co-trustee simply to denote that there are several trustees of that trust.

54supra. Beach describes this concept as “in such a manner as to subserve the interests of the beneficiary[.]”

55Id. at § 19, p. 28.

56August P. Loring, A Trustee’s Handbook, pt. I, § 3, p. 5 (1898).

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the acceptance has been tendered, no court of equity can prevent the trustee from

holding that office, except for breach of trust57 or good cause dependent upon the merits

of that particular case.58 Removal must be procured pursuant to the provisions of the

declaration, or, where no such provisions are made, by decree of a court of equity.

But the office of trustee is not always a desirable one when the trust instrument

conveys an unreasonable obligation. (Again, this is where careful attention to detail is

most crucial in preparing the trust instrument.) The trustee has a duty of care toward the

beneficiary(s), and must harbor no biases in administration. The best rule is that the

trustee should be given enough discretion to carry out his position to the best of his

ability and responsible creativity. To put it plainly, the settlor must trust the trustee to

carry out his duties, and use his powers justly.

POWERS & DUTIES OF THE TRUSTEE

THE POWERS of a trustee are divided into general, special and discretionary ones.

The general are all those inherent in trustees virtute officii, i.e., conferred by law; the

special are all those conferred by the trust instrument; and the discretionary are all

those arising out of necessity of personal judgment by way of circumstance (though

ample discretion may also be conferred by law and under the trust instrument).59

Moreover, it is well-settled law that under a declaration of trust, the trustees have

all the powers necessary to carry out the obligation of that private contract which they

have assumed.60 Furthermore, it is settled that the trustees of an Express Trust are

afforded greater latitude of power and activities than ordinary trustees.61 The trustees

are empowered to control every aspect of the trust according to the trust instrument and

equity, and retain the power to eject even the beneficiary(s) from the premises.62 These

powers include, but are in no way limited to—

y The power to bind the trust in a contract, especially where such obligation is

implied-by-law,63 and the power to contract with the beneficiary(s).

57See In re Tempest, (L.R. 1 Ch. 487), 31, 1431: Lord Justice Turner settled the rule of law that “[f]irst the court

will have regard to the wishes of the persons by whom the trust has been created, if expressed in the instrument

creating the trust, or clearly to be collected from it. . . . If the author of the trust has in terms declared . . . a particular

person . . . [t]he court in those cases conforms to the wishes of the [creator].” A Breach of Trust does not include a

technical breach of trust, e.g., one made through mistake.

58See Loring, supra at § 8, p. 19. The reasons are generally for guilt of willful breach of trust, waste or

mismanagement of trust property, refusal to account to beneficiary, lunacy, drunkenness, bad habits or carelessness

which endangers the trust property, or improvidence.

59See Beach, supra at vol. II, ch. XXI, §§ 427-435, pp. 986-1006.

60See Boyd v. U.S., 116 U.S. 616 (1886); and Silverthorne Lumber Co. v. U.S., 251 U.S. 385 (1920).

61See Ashworth v. Hagan Estates, 181 S.E. 383 (1935).

62See Deven v. Hendershott, 32 Iowa 192.

63See Durkin v. Langley, 167 Mass. 577; Perry on Trusts, supra at § 437, p. 120; Hapgood v. Houghton, 10 Pick.

154; Comp. Law Dak. (1887), § 3946; Rev. Code N. Dak. (1895), § 4289; and Civ. Code Cal. (1885), § 2267.

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y The power to partition, exchange, sell, pledge or mortgage the trust property, either

in whole or in part;64

y The power to lease trust property;65

y The power to issue, change, or otherwise dispose of securities of the trust;

y The power to support the beneficiary(s) in all reasonable manner;

y The power to prosecute and defend in the trust’s name or trustee’s name;

y The power to make gifts out of trust property;

y The power to delegate all unessential powers and duties; and

y The power to exercise personal judgment and every discretionary power not

prohibited by the trust instrument,66 and, as already shown, to do whatever is

allowed to persons as a natural right.

The fundamental principle of law is that for every power there is a correlative

duty. The trustee, as a fiduciary to the beneficiary(s), assumes certain basic duties

outside of the management of trust property, and certain duties aside from whatever

specific duties may be conferred upon the trustee in the trust instrument. These duties

include, but are not limited to—

y The duty to support the beneficiary(s) in any essential needs which it may have, out

the funds which would otherwise be paid to it in distribution. And if such funds are

not available, the duty to accumulate any balance needed;67

y The duty to refrain from taking advantage of peculiar knowledge or position when

dealing directly with the beneficiary(s);

y The duty to exercise the utmost good faith in all concerns of the trust, whether

dealing with the trust property itself, or directly with the beneficiary(s) in matters

concerning the trust,68 including to care for, protect and secure the trust property;

y The duty to preserve, protect and further the trust’s interests, including pressing all

reasonable demands and prosecuting and fending off all claims, and claiming all

available exceptions and taking all available advantages in such matters;

y When delegating unessential powers and duties, the duty to exercise at least a

general supervision of the trust affairs, and to perform any ministerial acts which

require the exercise of discretion or judgment;69

64See Loring, supra at pt. II, § 3, pp. 54-69. It should be noted that even though the trustee may have sold the entire

trust estate, the trust is not necessarily terminated until all obligations of the trust arrangement have been fulfilled,

especially the transferring of the proceeds to the interest-holder(s).

65It is a general rule that the if the trustees lease property outside of the powers granted to them by the trust

instrument, such an act will constitute breach of trust. Again, it all comes back to the design of the trust instrument.

66See James Hill, A Practical Treatise on the Law Relating to Trustees, their Powers, Duties, Privileges and

Liabilities, pt. III, div. I, ch. II, § 3, pp. 471-495.

67See Loring, supra at pt. II, § 4, p. 69. “[The trustee’s] fealty is to the trust, and all his acts must be governed by

strict loyalty to it and the interests of the beneficiaries; and any act which is not in the [best] interest of the

beneficiaries is a breach of trust.”

68Id. at p. 72.

69See Perry on Trusts, supra at § 409, p. 49. It is completely lawful and equitable for a trustee to appoint an

Authorized Representative to act as agent in collecting rents and dividends, keep books and minutes, and, in

general, act for the trustee wherever there is a moral or legal necessity to employ such an agent. (Necessity may be

determined to exist where the ordinarily prudent business man would employ an agent in his own affairs.) See Ex

Parte Belchier, Amb. 219.

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y The duty to keep minutes, and separate accounts of the trust, even if kept in a book

with other accounts, with minutes showing decisions and resolutions reached, and

accounts showing the state of the trust and pertinent details of transactions

(generally in the form of schedules of income received, income paid, additions to

principal, deductions from principal, principal on hand, and changes in investment

consisting of debtor and creditor sides);70

y Upon acceptance of the trusteeship, the duty to accept the trust property and trust

documents;71

y When investing trust funds, the duty to invest them securely, “so that they shall be

preserved intact for the remainderman,” and to invest productively, “so that they

shall yield [at least] the current rate of interest to the life tenant”;72 and

y The duty to concur with all co-trustees, except where authorized to act individually.73

PRIVILEGES & LIABILITIES OF THE

TRUSTEE

IN ADDITION to the powers and duties of trustees, there are certain privileges

(including allowances), rights and liabilities of the trustee. These are all those which are

enumerated in the trust instrument and naturally extended to the trustee of an Express

Trust. As was noted before, certain restrictions placed upon trustees of ordinary trusts

do not apply to the trustee of an Express Trust pursuant to the doctrine of greater

latitude.74 These, aside from those allowed by the trust instrument, include, but are not

limited to—

y The inherent, unquestionable right to full compensation, including reimbursement of

all out-of-pocket and other expenses incurred in the discharge of duties. (And unduly

withheld reimbursement results in a lien on the trust for the amount plus interest);75

y The privilege of residing in the trust estate and allowance of rates and taxes

“although he has the benefit of residing in the house”;76

70This is not required, but the rule of thumb is that the more detail kept, the better the accounting. The trustee is

accountable to the beneficiary(s), and the accounts must ultimately balance out in the end. And an account settled in

a court of equity is final; it cannot be reopened except to correct a mistake or fraud, and its correctness cannot be

questioned in a collateral proceeding in equity or in a court of law. See Stetson v. Bass, 9 Pick. 26, 29; Dodd v.

Winship, 144 Mass. 461; Sever v. Russell, 4 Cush. 513; and Parcher v. Bussell, 11 Cush. 107.

71See Hallows v. Lloyd, 39 Ch. Div. 686, 691; Underhill, supra at p. 219.

72Loring, supra at pt. II, § 4, p. 95. Generally, where it is impossible to comply with the investments required by the

trust instrument, a trustee has recourse to apply to a court of equity for directions. See McIntire’s Adm’rs v.

Zanesville, 17 Ohio St. 352.

73See James Hill, supra at pt. III, div. I, ch. I, § 1, pp. 305-309; Brown v. Donald, 216 S.W.2d 679 (1949); Meldon

v. Devlin, 31 App.Div. 146, 53 N.Y.Sup. 172; Barroll v. Foreman, 88 Md. 188, 40 A. 883; and Appeal of Fesmire,

134 Pa. 67, 19 A. 592.

74See Ashworth v. Hagan Estates, supra.

75James Hill supra at pt. IV, div. II, ch. IV, pp. 570-571. “Such is the rule of courts of equity, and such also is the

rule at common law.” Quoting Lord Cottenham in the case of Att.-Gen. v. Mayor of Norwich, 2 M. & Cr. 406, 424.

Also see Rex v. Inhabitants of Essex, 4 T.R. 591; and Rex v. Commissioners of Sewers, 1 B. & Adolph 232.

76Id. “However a trustee who employs a park-keeper, or other servant, for his own purposes, must pay him himself,

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y The right to employ a solicitor77 for assistance and guidance in the administration of

the trust, and, in the case of any doubt or difficulty, to seek the opinion of competent

counsel, and, in the case where the trust’s accounts are intricate and complicated, to

seek the assistance of an accountant—all to the charge of the trust;

y The right to apply to a court of equity for directions in the execution of the trust, or to

obtain a declaratory judgment in order to establish the meaning and intent of the

trust instrument;78

y The right to carry on in separate business for the benefit of the trust given certain

conditions;

y The allowance of remuneration for loss of time under certain circumstances;

y The right not to be compelled by subpoena or review to produce and show records

or books to outside parties;79

y The right to further limit his liability in particular contracts, even beyond the limitation

made in the trust instrument, i.e., by operation of law;

y The right to relocate, move trust property, or change the trust’s domicile;80 and

y The inalienable right to disclaim the office at the execution, or resign at a later date.

With regard to the personal liabilities of a trustee, they encompass what the

trustee is and is not liable for. Basically, the inherent liabilities (and non-liabilities) are all

those incident to ownership at law81 and imposed or exempted under contract law, for it

is a maxim of law that “le contrat fait la loi.”82 (I will show in a later section the several

methods for limiting one’s liability completely, regardless of how un-limitable the

following may seem, but for now we will entertain the basic liabilities saving those

methods for later.) These include, but are not limited to—

y Liability on all contracts made, whether signing as “trustee” or signing individually;83

and will not be allowed his wages out of the estate. And so a trustee, with the most ample powers of management,

cannot of his own authority keep up a mere pleasurable establishment, such as gamekeepers, &c.”

77This is defined as “[a] person who conducts matters on another’s behalf; an agent or representative.” Black’s Law

Dictionary, p. 1399 (7th ed. 1999).

78See Dunbar v. Redfield, 7 Cal.2d 515.

79See Boyd v. U.S., supra; and Silverthorne Lumber Co. v. U.S., supra.

80See Beach, vol. I, supra at § 19, p. 28; Rice v. Houston, 80 U.S. 66 (1871); Fost. Fed. Pr. Sec. 19; and Story, Fed.

Pr. Sec. 19. Also, in New Orleans v. Whitney, 138 U.S. 595, 34 L.Ed. 1102 (1891) the court said “[w]e have

repeatedly held that representatives may stand upon their own citizenship in the federal courts irrespective of the

citizenship of the persons whom they represent—such as executors, administrators, guardians, trustees, receivers,

[etc.]”

81See Loring, supra at pt. II, § 1, p. 23.

82“The contract makes the law.” See Bouvier’s Law Dictionary, pp. 770-790 (1928). The basic principle is that all

man’s law is contractual in nature, regardless of the particular classification of the law, and can acquire force only

by consent: “Consensus facit legem.”

83See Loring, supra at pt. II, § 3, p. 65. Simply using the title “trustee” will not sufficiently limit liability. That

without express stipulation (such as that which I have provided in the later section) he is personally bound is

well-settled law. See Feldman v. Preston, 194 Mich. 352, 160 N.W. 655; Bried v. Mintrup, 203 Mo.App. 567, 219

S.W. 703; Hussey v. Arnold, supra; Carr v. Leahy, 217 Mass. 438, 105 N.E. 445; and also Knipp v. Bagby, 126 Md.

461, 95 A. 60.

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y Liability of removal for breach of trust, waste, mismanagement, or good cause

shown in an action for removal in a court of equity,84 or according to trust instrument;

y Liability for losses sustained by the trust as a result of negligence;85

y Liability for torts and common-law criminal and civil wrongs;86

y Liability in all cases of co-mingling of trust funds;87 and

y Liability for all mischief of his agents contracted to exercise discretionary powers.88

But, the trustee is not at all liable for any losses sustained in the proper discharge

of their duties,89 and, with the case of other losses due to negligence or tort, the trustee

may be able to be bonded in the manner ordinarily used by trustees, executors and

administrators. Nor, are they liable for—

y Contracts in which liability was properly limited (by the methods to be shown later).

Such contracts may also encompass the codes and statutes of various jurisdictions,

given that all manmade law is, by its nature, fundamentally contractual;

y The debts of the trust incurred requiring the creditor to look solely to the trust for

payment90 (and the trust is not liable for the personal debts of the trustee,91 except to

the extent of attachability of the trustee’s interest in the trust92);

y The independent, non-preventable acts of co-trustees, of which he had no prior

knowledge;93

y The acts of his agents when properly contracted;

y Taxes on income of the trust;94 and

84Any such action would have to be instituted by an interest-holder, as a last resort. And the burden of proof rests

with the party bringing the action.

85See Holmes v. McDonald, 226 Ill. 169, 80 N.E. 714; and Norling v. Allee, 10 N.Y.Sup. 97. But it must also be

noted that this, as with all of the others can be limited. In Fisheries Co. v. McCoy, 202 S.W. 343 it was held that it is

lawful for liability to be limited in certain cases of tort and negligence, except where the relation of master-servant

or passenger-carrier exists.

86See Loring, supra at § 1, p. 26. However, in torts and civil wrongs, limitation of liability is amply available as per

Fisheries Co., supra. But, as it is with corporations, common-law crimes are strictly of an in personam nature, going

against the officer personally.

87Generally, in cases of co-mingling of the trustee’s personal funds with trust funds, courts will follow the trust

property, unless co-mingled beyond separation, in which case the courts will treat the trust as the alter-ego of the

individual acting under the assumed title of “trustee,” and will ignore the trust arrangement completely. See

Gregory v. Helvering, 293 U.S. 465 (1935), XIV-1 C.B. 193; and Helvering v. Clifford, 309 U.S. 331 (1940).

Mixing trust property with personal property is co-mingling. See Perry on Trusts, vol. I, ch. XV, § 447 (6th ed.).

88See Beach, vol. II supra at ch. XXV, § 548, p. 1243; and Winthrop v. Att.-Gen., 128 Mass. 258.

89Equity will always follow the law. And the trustees can never be penalized for properly discharging their duties.

90See Taylor v. Mayo, 110 U.S. 330, 4 S.Ct. 147, 28 L.Ed. 163 (1884); and Frost v. Thompson, 219 Mass. 360, 106

N.E. 1009.

91See Wright v. Franklin Bank, 59 Ohio 80, 51 N.E. 876.

92See Loring, supra at pt. II, § 1, p. 41; Mavo vs. Moritz, supra; and Hussey v. Arnold, 70 N.E. 87 (1904).

93See James Hill, supra at pt. III, div. I, ch. I, p. 309. If the acts were indeed preventable, and he had prior

knowledge, then the trustee is co-liable and accountable for the loss. Also see In re Adams’ Estate, 221 Pa. 77, 70

A. 436; and In re Cozzens’ Estate, 15 N.Y.Sup. 771.

94Again, the trustee must be indemnified by the trust instrument from taxation for trust gains. If the trustee holds

interest in the trust, he is taxable only at the realization of an actual gain, not at the point of investment (see Burnet

v. Logan, supra; and Trenton Cotton Oil Co. v. Commissioner, supra).

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y Lawsuits against the trust.

AUTHORIZED REPRESENTATIVES

AS SHOWN ABOVE, it is well within the power, discretion, and often times duty (trust

instrument notwithstanding), to contract an Authorized Representative or Managing

Agent to deal with certain affairs of the trust. And the basic rule which courts of equity

have laid down is that a trustee may contract an agent to handle all affairs which require

no discretion, be they ministerial or not, and he may not delegate the essential part of a

power given to the agent (unless, of course, permitted by trust instrument).95

In clarifying the discretionary power rule, it must be noted that there is no law

against delegating discretionary powers to agents. The rule is simply that a trustee who

does so, “does so at his own peril,”96 for he is liable for all resulting losses, if any. To

clarify what constitutes the essential and unessential parts of a power, the essential part

is defined as “the exercise of . . . discretion . . . , the [determining of] need[s] of [the

trust], or the appropriateness of [an action].” The unessential part is that “not requiring

the exercise of discretion.” However, there is a simple solution, allowing for greater

flexibility in this rule, which is to “authorize the agent to contract subject to the assent of

the trustee.”97 And if the trust instrument makes provisions for the contracting of an

Authorized Representative or Managing Agent, then the trustee cannot be liable for his

acts.

Now, the method for contracting an Authorized Representative may be either by

formal appointment, execution of a limited power of attorney, letter of authorization, or

even verbal authorization (preferably documented by minutes). The most effective,

secure method of contracting such an agent would obviously be an actual appointment

with written contract setting forth the specific powers authorized, terms of the

arrangement, extent to which the liability of the agent shall be limited by the trustee, etc.

But, a letter of introduction is, for most purposes, sufficient.98 This is the case with all

individuals and organizations, however constituted.

95See Loring, supra at pt. II, § 2, p. 49.

96Id. at § 4, p. 74.

97Id. at § 2, pp. 48-49.

98I have supplied the reader with a sample multipurpose letter of introduction and letter of authorization for opening

a bank account in the sample forms section. All the reader need do is modify the letter to encompass the particular

purpose for which the authorization may be necessary. A sample limited power of attorney is also provided in that

section. I have also provided a sample Authorized Representative contract (which can be used for Managing Agents

as well), specifying the particular authorization, power, and limitation of liability, etc., for said agent. (When used

with Managing Agents, modification to the contract’s language may be necessary.)

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EXPRESS TRUST vs. CORPORATION

FIRST, I must clarify that though I am referring primarily to corporations, included

in the reference are all organizations which owe their existence to legislative acts, not

limited to Limited Liability Companies, Limited Partnerships, Agencies, Co-Partnerships,

etc., which, though not classified as corporations, avail themselves of benefits,

privileges, and franchises of the state for their very creation and existence.

Second, since we have already shown the distinct juridical personality of the trust

as a legal entity,99 we will not reexamine it until we consider its personality under the

Roman civil law of the 14th Amendment in a later section. But it must be noted the well-

settled law that the Express Trust is a lawful,100 legal, valid business organization,101

possessed of the right to hold property and sue in its business name.102 And its uses in

modern business have some of their strongest roots in England, Germany and many of

the United States where it has been recognized for its superiority, and even praised by

such notable authorities as the Ohio Supreme Court for its effectiveness in the business

of life insurance.103

The declaration of trust has been held to be an effective substitute for

incorporation, for its many advantages, which will undoubtedly shine though to the

reader by the following table. I have prepared this table based upon the work by John H.

Sears who, after discussing the impact of the twin landmark cases104 on the grave lack

of profitability of using corporations for, inter alia, dealing in real estate, went to task in

outlining the distinct benefits of Express Trusts, and the works by William C. Dunn,105

Guy A. Thompson,106 and Sidney R. Wrightington.107 Mr. Sears says:108

The decision of the United States Supreme Court . . . holding that the [Express]

Trusts are not subject to the Federal excise tax on corporations, has

emphasized this method of conducting business as compared with corporations. . .

[T]he best legal talent was soon impressed into the service of devising a

means of affording the usual advantages belonging to a corporation without

99See Brigham vs. U.S., supra; and Burnett v. Smith, supra.

100The lawfulness of the Express Trust is obvious, however, the allegation to the contrary has often been made in

the past, and is occasionally made by the ignorant nowadays. Among the long list of precedents confirming its

lawfulness is Palmer et al. v. Taylor et al., 269 S.W. 996 (1925), offered here simply to add to the collection.

101See Baker v. Stern, A.L.R. 462; Reeves v. Powell, 267 S.W. 328 (1924); Weeks v. Sibley, 269 Fed. 155 (D.C.Tex.

1920); Phillips v. Blatchford, 137 Mass. 510 (1884); and Burnett v. Smith, supra.

102See U.S. v. Carruthers, 219 F.2d 21 (C.A.9 (Or.) 1955).

103“There was no class of business, the transaction of which, as a matter of private right, was better recognized at

common law than that of making contracts of insurance upon the lives of individuals.” State v. Ackerman, 51 Ohio

St. 163, 37 N.E. 828, 24 L.R.A. 298.

104Eliot v. Freeman, supra; and Maine Baptist Missionary Convention v. Cotting et al., 220 U.S. 178 (1911).

105Trusts for Business Purposes (1922).

106Business Trusts as Substitutes for Business Corporations (1920).

107The Law of Unincorporated Associations and Business Trusts (2d ed. 1923).

108supra at § 1, p. 3.

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the authority of any legislative act. A method of placing the property into the

hands of trustees, who held the legal title and issued certificates, similar to shares

of stock, to the cestui que trust, showing the interest owned by each, possessed

nearly all the advantages desired. [This excluded the use of limited liability

companies, joint-stock associations, and co-partnerships, which are] organized

under enabling statutes which [merely] enlarge the privileges possessed at

common law, and they are, therefore, subject to State regulations, which may be

equally burdensome to those imposed on corporations. [Italics emphasis supplied

in original; bold emphasis and bracket information added.]

\*Preliminary note: While the mortality rate of corporations and the like have historically

remained high, Express Trusts remained, and indeed to this day, continue to remain

vital.109 But, again, the table will show you why.

Express Trust

Corporation

Life-span of 20-25 years at a time, in order to avoid

rule against perpetuities. Death of grantor has no

effect on life or affairs of trust.

Perpetual or certain number of years, in most

cases legislative requirements govern.

Governed under equity. Trust law is most

well-settled body of law in America.

Governed under statute. Forever subject to

burdens of inquisitorial legislation.

Limited liability of trustee determined by trust

instrument. In any given contract, only property in

hands of trustee is answerable. Remember *Boyd*

and *Silverthorne*—Not subject to subpoena.

Business name protected by injunction. (May use

trade-name or trademark for legitimate

purposes.)111

Corporate officers personally liable for all

ambiguous indorsements. Remember *Enron* and

*Global Crossing*—Must answer in legislative court

for all acts.110

Must apply for and secure fictitious firm name, and

must register all trade-names and trademarks.

109See Chandler, supra at p. 11. The reportedly oldest Express Trust in America is the North American Land

Company, formed by Patrick Henry, with the aid of John Nicholson and James Greenleaf, for Robert Morris of

Virginia (popularly known as the “Financier of the American Revolution,” distinguished from Virginia Colony

Governor Robert Morris), circa 1764, roughly a decade prior to the signing of the Declaration of Independence

(1776) and Mr. Henry’s compelling address to the Virginia Legislature, Give Me Liberty (1775). North American

Land Company was later expanded in 1795, but was dissolved in 1798, at which time its land holdings consisted of

roughly 4 million acres scattered over Georgia, the Carolinas, New York, and the states in between. See Plan of

Association of the North American Land Company: Established February 1795 by Peter Force (1795).

Another, and possibly more noteworthy, Express Trust was the Merchants Bank of New York, formed by

Alexander Hamilton, circa 1810. As an aside, this Express Trust made full use of transferability of shares, i.e.,

certificates, and limited liability (see Hamilton’s Works, Congressional ed., VII, 838), whereas Mr. Morris

ultimately served time in debtor’s prison after the trust revenues from installment sales and share sales did not come

in quickly enough to meet the loan and tax deadlines. George Washington is reported to have had many a dinner in

debtor’s prison with Mr. Morris, where he visited him frequently—the two were good friends.

110Although corporate officers reserve the “right” to “plead the fifth,” they have merely the relative-right to plead

the congressionally interpreted “spirit” of the amendment, not the letter of the law, due to their 14th Amendment

citizenship. Trustees of an Express Trust have the absolute-right to refuse self-incrimination. See Lee Brobst et al.,

supra; Boyd v. U.S., supra; and Silverthorne Lumber Co. v. U.S., supra.

111See People v. Rose, 219 Ill. 46, 76 N.E. 42; YWCA v. YWCA, 194 Ill. 194, 62 N.E. 551; McLean v. Fleming, 96

U.S. 245 (1877); Lane v. Brothers, etc., 120 Ga. 355; Aiello v. Montecalfe, 21 R.I. 496; and Rudolph v. Southern

Beneficial League, 23 Abott’s N.C. 199.

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Trust is Article IV § 2 citizen of the United States

via its trustee, not a 14th Amendment citizen,

unless trust contracts under the amendment.112

Corporation is 14th Amendment citizen,114

regardless of citizenship of corporate officer.

Generally state corporations require officers to be

This citizen is understood in constitutional law as citizens as well. This citizen is inherently public due

the *private* citizen.113

to the nature of the amendment.115

Not required to obtain business license.116

Trustees issue certificates in the manner

prescribed by trust instrument. Certificate holders

cannot transfer without approval of Board of

Trustees.

The opposite is the case.

Must go “public” in order to issue stock.

Stockholders may dispose of shares of stock, but

corporation and stockholder alike are taxed

indirectly in more ways than one can count.

May bring and defend litigation in trust name and

entity, or in trustee name. Same rules as to parties

and procedure at law and in equity are applicable.

Trustees afforded more leverage, and powers are

generally more broad than corporation, as it may

provide for whatever any individual may do. The

sky (nature) is the limit.

May bring and defend litigation in the corporate

name and entity only.

Relatively broad powers, as in the example of

holding companies. But corporation may not do

whatever any individual may do. The statute

(legislature) is the limit.

The opposite is the case, except for state taxes in

certain states. In either respect, all corporations

are taxed indirectly via inflation.117

All Federal excise tax and state organization and

franchise taxes are avoided.

Trustees are not required to file reports with any

authority, and are accountable only to beneficiary,

governed strictly under principles of equity.

Not subject to foreign corporation laws of any

state. Not inherently subject to commercial

regulation, but for income derived from corporate

stock and physical franchises under Article I § 8

Clauses 1 and 3. Express Trust is valid in all

States of the Union.118

Required to file reports, quarterly, etc.

Inherently subject to all foreign corporation laws

and commercial (public policy) regulation.

112See Farmers Loan & Trust Co. v. C. &. A. Ry. Co., 27 Fed. 146 (C.C.Ind. 1886); and Shirk v. City of LaFayette,

52 Fed. 857 (CC.Ind. 1892). For an understanding of the profound superiority of Article IV § 2 citizenship over 14th

Amendment citizenship, see Lee Brobst et al., supra.

113See Hale v. Henkel, supra.

114See Santa Clara County v. Southern Pacific R. Co., supra.

11514th Amendment citizens, under the Roman civil law (private international law/admiralty-maritime law), are

inherently public, with only relative-privacy.

116See People v. Rose, supra. Once trust is executed, it is an existing “express business,” and, unless the trust

instrument requires the trustee to obtain a business license, one is not needed except for new (i.e., heretofore

nonexistent) express business.

117“[I]nflation is a ‘method of taxation’ which the government uses to ‘secure the command over real resources,

resources just as real as those obtained by [ordinary] taxation’. ‘What is raised by printing notes,’ . . . is just as

much taken from the public as is . . . an income tax.’”1980 Annual Report, Federal Reserve Bank of Richmond, p.

10, quoting John Maynard Keynes’ The Economic Consequences of the Peace.

118See Jones v. Habersham, 107 U.S. 174, 27 L.Ed. 401 (1883); Fellows v. Miner, 119 Mass. 541; Sohier v. Burr,

127 Mass. 221; Sewall v. Wilmer, 132 Mass. 131; and Cross v. U.S. Trust Co., 131 N.Y. 330, 349, 30 N.E. 125. A

trust invalid where created, but valid where to be administered will be upheld where made. Hope v. Brewer, 136

N.Y. 126, 143, 32 N.E. 558.

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No legal obligation to maintain the capital and

refrain from paying dividends out of capital. Trust

instrument governs.

The opposite is the case.

Units of beneficial and capital interest in trust are

Shares of stock are personal property in hands of

not personal property of holder, and give holder no owner, and taxes issue on same property against

control over the administration or *res* of the trust.

Trustees have absolute-rights and privileges to

engage in interstate commerce under protection of

the Federal Constitution.119

corporation and then against the stock-owner.

Corporate officers have relative-right and privileges

to do so, and incur more taxability by doing so.

Trustee(s) have exclusive management, except

where Managing Agents are contracted, or a

Board of Directors is elected.

Board of Directors are managers with limited,

defined powers to conduct business, hold regular

meetings, etc.

Interests of the beneficiary(s) well protected by

courts of equity. Power to secure information as to

the actions of the trustees and status of trust fund

is, no doubt, superior to the rights and remedies of

stockholders in corporation.

Protected by the basic impersonal nature of

corporations, yet corporate veil is regularly

pierced.120 The elite attorneys are well aware of

this.

Dissolution or changes may be effected without

formality.

The opposite is the case.

These advantages and more have been and are still seized by some of the

shrewdest, wealthiest individuals and families in America and from abroad. But the

widely perceived, yet absolutely untraceable, wealth of such individuals and families like

the Rothchilds, Rockerfellers, Kennedys, Forbes, and many of the American founding

fathers, plus countless modern day politicians, are strong circumstantial evidence of

this. One may find many articles and information, as well as quotes,121 attesting this.

Given the private nature of the Express Trust, there is virtually no lawful method

by which to pierce the trust without the express permission or implied consent of the

parties, or some unlawful activity on the part of the trust giving rise to a bona fide cause

of action. As a result, virtually no direct evidence of the trust’s existence can be found

unless it is made to be found—and even then it can only be heard by a court of

competent jurisdiction, which, as you shall see in the sections ahead, is very hard to find

nowadays. This is protection at its finest, hiding in plain sight, so to speak; and it is well

understood by the powerful elite that “bene vixit, qui bene latuit.”122 In many ways, the

119Any statute enacted by a state which prohibits this right is in conflict with the Constitution. See Bruant v.

Richardson, 126 Ind. 145, 25 N.E. 807; Robey v. Smith, Ind.Sup. 30 N.E. 1093; and Farmers’ Loan & Trust Co.,

supra.

120Collections attorneys know this very well. All one need do is look no further than the Global Crossing or Enron

scandals to see how every corporate veil is able to be pierced when the effort is backed with enough incentive. And

when it’s pierced, who bites the bigger bullet(s)? Stockholders—they have no real recourse but to cry in public.

121One such quote is that of John D. Rockerfeller who is reported to have said that the key to true wealth and power

is to “own nothing and control everything.” Your author is confident that the reader will see the self-evidence of this

truth; and the Express Trust throughout the relatively short history of America has served to facilitate this practice.

A search for the assets of the Rockerfeller family will prove the truth of this philosophy.

122“He lives well who conceals [his assets] well.” Ovid, c.43 B.C. - A.D. 18.

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common law itself, with its precious substance, is hiding in plain sight (or is well hidden,

depending on the perspective).

UNDERSTANDING COMMERCE

HERE IS WHERE we begin to address the Express Trust in action. As shown above,

the trust may engage in all manner of trade and commerce,123 but before taking the step

of doing so, the reader would greatly benefit the trust by understanding the nature of

commerce in twenty-first century America. And for my brief explanation of the subtle

intricacies involved, I will rely upon the two works by Lee Brobst et al.124 I will not go into

a detailed explanation of the constitution or the history of commerce for want of space,

but I would suggest that the reader read the works relied upon herein.

When the trustee is engaging in trade or commerce in behalf of the trust, acting

under general common law, the trust is within the jurisdiction over which the literal and

absolute protections of the Bill of Rights extend, and he has no direct contact with the

federal government. And, under right of contract law protected under the Federal

Constitution, the trustee may enter into the 14th Amendment jurisdiction via contract, i.e.,

by willfully availing the trust of benefits like the quasi-corporate privilege/franchise of

limited liability for the discharge of debts with Federal Reserve Notes under H.J. Res.

192. (Contrast this with the payment of debts with standard gold-backed currency under

the original Coinage Act of 1792.) Under this jurisdiction, the federal government

(Congress) has full and direct contact with the trust, “as they see fit, for the benefit of

public policy regulations (known as codes & statutes) of this jurisdiction.”125 This makes

the federal government a third-party intervenor in the affairs of the trust by operation of

law,126 because the trust (as with the 14th Amendment citizens) is being allowed to get

away with not truly fulfilling its commercial contracts as is required under the common

law of contracts. (I will show how this can all be avoided, in a later section.)

The resulting nexus or “confederacy developed under [H.J. Res. 192] . . . is an

affiliation known better as an association[127].” “And the ‘common enterprise’ of this

unincorporated society, is to offer all Americans a so-called ‘privilege,’ in the form of

what is better known as a ‘[quasi-contract],’ to participate in commerce without

123“The words ‘commerce’ and ‘trade’ are often used interchangeably; but, strictly speaking, commerce relates to

intercourse or dealings with foreign nations, states, or political communities, while trade denotes business

intercourse or mutual traffic within the limits of a state or nation, or the buying, selling, and exchanging of articles

between members of the same community.” Black’s Law Dictionary, p. 336 (4th ed. Rev. 1968).

124supra, see footnotes 12 and 28.

125The Law, the Money and Your Choice, p. 3.

126The federal government’s power of regulation in this manner is fully constitutional, deriving its authority from

art. I, § 8, cl. 1 and 8, being one of the general legislative powers. The relationship between congress and the 14th

amendment citizen is controlled under art. IV, § 3, cl. 2 because there is no physical federal or state charter issued to

regulate the relationship.

127Brobst et al., supra at pp. 7-8. An association is defined as “[a]n unincorporated society; a body of persons united

and acting together without a charter, but upon the methods and forms used by incorporated bodies for the

prosecution of some common enterprise.” Black’s Law Dictionary, p. 156 (4th ed. Rev. 1968).

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‘Payment of [D]ebts’ for ‘social security’ purposes. Moreover, this unincorporated

society is outside the literal common-law principle that demands the ‘Payment of

[D]ebts’ as stated in Article 1 Section 10, but is allowed, upheld and protected by Article

1 Section 10 that upholds [the] ‘Obligation of Contracts.’”128 This amounts to a

“federated unincorporated society by operation of law [which] is contractually protected

by the Constitution [in the same way the Express Trust and its trustee(s) are].” And the

trust and/or trustee reserves the right to “domicile themselves in . . . the Union under

Article IV Section 3 [C]lause 1, [and] thus to contract under Article I Section 10 despite

the fact that [they] . . . cannot ‘Pay’ [their] . . . debts. In other words, Congress cannot

compel [the trust or its trustee(s)] . . . to participate in a federal interstate unincorporated

banking association under Article IV Section 3 [C]lause 2 and [H.J. Res. 192] . . . for the

NON payment of debts. The choice of law is up to each person still.”129

With corporations, they are “artificial creations of the state or federal government

under physical charter (franchise) issued via state or federal civil law for commercial

regulation under Article I Section 8 [C]lauses 1 & 3. They are not under the literal

common law because of the charter (franchise). Any legal action against the corporation

is legally called an ‘in rem’ action, because it is against the thing or property (also called

res) of the corporation under charter. The courts have automatic subject[-]matter

jurisdiction, because the physical charter is the subject[-]matter.”130

“Under the letter of the constitutional law there is no commercial regulation, but

[H.J. Res. 192] . . . along with 15 USC brought in a third party for commercial regulation

for the social security public policy. Remember, ‘equity compels performance.’ The law

views unincorporated associations as a danger to the substance of the common law,

because of their debt/credit system. This is because there is no counter[-]balance to the

demands the association puts on the substance of the earth, thus the reason for all the

federal and state regulatory agencies. In other words, there is a presumption by

implication in the civil law that a charter (a metaphysical/abstract/unreal type) exists,

because persons are availing themselves (volunteering) of the privileges pertaining to

[H.J. Res. 192]. Therefore, these persons come under a ‘quasi in rem’ jurisdiction of the

civil law in order to regulate, control (including compel) those that are outside the literal

common[-]law principles.”131

The many participants under this system, especially the 14th Amendment citizens

from each state, together form an unincorporated federation of state associations

operating under interstate commerce as addressed in Article IV § 3 cl. 2, and reinforced

by the landmark Erie R. Co. v. Tompkins132 decision. This is the basis for the federal

government’s, including state governments’, compulsion of persons to its public

international law (i.e., the spirit, not the letter, of the common law mixed with public

Roman civil law, under Law of Nations per Article I § 8 cl. 3 and 10, and Article VI cl. 2)

128Brobst et al., Id.

129Id.

130Id. at p. 9.

131Id. at pp. 9-10.

132304 U.S. 64 (1938).

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nowadays commonly known as codes and statutes (state or federal), to regulate

everything as a matter of commerce.133

Without getting into the history of religion, and speaking purely from an analytical

perspective, the Roman civil law, as a base-model for commerce regulation, was

developed out of necessity of the church to avoid political scrutiny for its handling of

ever increasing amounts of precious metals. It had become a “‘storehouse’ for the

money and property the people were persuaded to give in exchange for limited liability

[in the form of tithing] — [i.e.,] go directly to heaven instead of hell. As the people

became more educated and saw what was really behind the power of religion [in

generating wealth], the Roman Church fell under greater and greater criticism. This led

to the development of a banking system to handle and control church wealth and take

the critical focus [away from the church.]”134

“The bank learned from the church about limited liability. If you could get people

to borrow money beyond their ability to pay back, you could get them to keep

performing [paying interest in one form or another] on a debt (liability) without ever

demanding it [the principal] back, thereby, loaning out that same credit to more than one

individual or company. This meant that the bank was limiting the liability of the borrower

so he was not fully responsible for the debt as long as he continued to perform to paying

the interest. This way[,] real money (gold) became credit (paper money) by loaning to

more than one person. Being involved in this sort of commerce was called ‘private

commerce.’ With the church’s control over wealth, this private commerce became

standard practice in world trade upon the sea — private international or

admiralty/maritime law became known as Roman civil law as it began to figure heavily

in the politics of every city and country it touched through international commerce.”135

By operation of this body of law, all persons subject to its jurisdiction are

regarded as vessels, having a distinct quasi-corporate, juridical personality, capable of

suing and being sued in rem.136 14th Amendment citizens of the United States, whether

state or federal chartered corporations or metaphysical-chartered corporate-colored

public persons, therefore, are public vessels of the United States within the broad

meaning of the Public Vessels Act, and are regulated. The United States, as with the

133This can be better understood from Propeller Genesee Chief v. Fitzhugh, 53 U.S. 443, 451-453 (1851), wherein

the court said that, within the letter of the constitution, “[t]he law contains no regulations of commerce. . . . It merely

confers a new jurisdiction on the district courts; and this is its only object and purpose. . . . It is evident . . . that

Congress, in passing [the law], did not intend to exercise their power to regulate commerce. . . . The statutes do no

more than grant jurisdiction over a particular class of cases. . . . Now the judicial power in cases of admiralty and

maritime jurisdiction, has never been supposed to extend to contracts made on land and to be executed on land. But

if the power of regulating commerce can be made the foundation of jurisdiction in its courts, and a new and

extended admiralty jurisdiction beyond its heretofore known and admitted limits, may be created on water under

that authority, the same reason would justify the same exercise of power on land.”; also see Verlinden v. Bank of

Nigeria, 461 U.S. 496 (1983). Roman civil law is also why the I.R.S. continually refers to income taxes as voluntary

although, to the ignorant, it appears to be the exact opposite.

134U.S.A. The Republic, Is The House That No One Lives In, p. 9.

135Id.

136See The China, 74 U.S. 53 (1868); and The Barnstable, 181 U.S. 464 (1901). Also see Why We Are in Admiralty

(April 18, 2004), available at <http://www.wealth4freedom.com/law/Admiralty.htm> (last visited Sept. 30, 2005).

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Roman Church, is the “ship of state”. The Express Trust, then, is a private vessel of the

united States of America, navigating through the often hostile waters called interstate

commerce (which is international commerce via the United States treaties).

DOING BUSINESS

EVEN THOUGH the Express Trust is technically not a “business trust”137 within the

established meaning of the term, this in no way prevents or inhibits the trust from

engaging in all manner of business the trustee is permitted to under declaration, and it

need only obtain the franchise of a business license if it anticipates doing express

business in the above-described jurisdiction.138 The trust may operate a business,

acquire a business, sell or otherwise dispose of its business, or even contract under the

limited liability system and become a taxable entity—the choice is yours. The only thing

which may bar the trust from conducting a particular kind of business in any certain

jurisdiction is the public policy of that jurisdiction, regarding which, it has been admitted,

most states have not passed upon the subject directly.139

Regardless of the business, there is a due notice rule, which confers a duty upon

the trustee under equity, whenever doing business. The rule consists of two parts:

The first is that he should sufficiently distinguish and represent the nature of the

trust to the party with whom he is doing business. It is of the utmost importance, in the

forming of business contracts, that full disclosure be made—on all letterheads, business

cards, checks, bills and order blanks, papers, etc.—so as to prevent any claims of lack

of disclosure from arising in the future. But prudence recommends that a trustee must

137Pennsylvania Co. v. U.S., supra.

138See People v. Rose, supra.

139No state has ever made any attempt to prohibit Express Trusts (i.e., impair the contract rights of persons sui

juris). However, many states have attempted successfully to prohibit associations, the most notable being the Ohio

Attorney General in State v. Ackerman (supra), against C.F. Ackerman and ninety-nine other persons who were

transacting business of guarantee and accident insurance in the state under the name of the Guarantee and Accident

Lloyds, New York. The Attorney General alleged that they were doing business without having complied with the

laws of the state or receiving proper authority from the state to do business of that kind. The court found that

because the defendants were acting under mere association (as opposed to under declaration of trust), they were an

association unlawfully exercising a franchise within the state, acting as a corporation therein without being legally

incorporated. The court indirectly affirmed the well-understood principle scarcely in need of restatement that

Express Trusts may engage in any manner of business allowed to individuals a natural right. In fact, to restate this

principle over and over again would be “ostentatious.” Chisholm v. Georgia, 2 U.S. 419, 453 (1793).

As public policy is a form of regulation, it should be noted the case of Munn v. Illinois, 94 U.S. 113, 126 (1876) in

which the court expounded on the principle of regulation. Because the trust is of private property, and its business is

private as well, the trust business is not “affected with a public interest.” It does not become affected with a public

interest until the trustee participates in behalf of the trust in the unincorporated interstate banking association,

obtains a business license or other franchise, contracts under it, or conducts the private business of the trust in a

“manner to make it of public consequence, and affect the [14th Amendment] community at large. When, therefore,

one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in

that use and must submit to be controlled by the public [policy] . . . to the extent of the interest he has thus created.

He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the

control.”

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not disclose every immaterial fact regarding the trust, its declaration, and its affairs. The

first part of the due notice requirement can be sufficiently accomplished simply by

employing the designation “An Irrevocable Express Trust Organization,” or “An Express

Trust Organization,” or “A Trust Organization,” or “Organized under Declaration of

Trust,” beneath or next to the trust’s name. It must not be excessively revealing about

the trust (the trustee has a duty to protect the privacy of the trust), but it also must not

be misleading (the trustee has a duty to not compromise the integrity of the trust, though

he is in no way prohibited from exercising the utmost shrewdness).140

The second is that he should stipulate in plain and certain language, in all written

contracts and obligations that the trust only is liable for its obligations and that neither

the trustee nor interest-holders are to be held to any personal liability in the contract.141

He may also wish to cite the provision of the trust which so limits his and/or the

interest-holders’ liability, but this is often unnecessary. And the trustee should always

designate his title either under or immediately next to his name and signature.142

The trustee should obtain a mailing address for the trust, and though he is the

principal and holder of the trust property, I would recommend that he refrain from mixing

the trust’s affairs with his own. He should also obtain all separate business necessities

(telephone service, etc.) for the trust. (I would argue that he should do these things

regardless of whether he is operating trust business or not. He should, for all intents and

purposes, maintain a strict separation of the trust’s identity from his own.)

LIMITING THE LIABILITY OF THE

TRUSTEE

IN ALL CONTRACTS, as we have already noted, though it is best to always apply it,

the trustee’s mere designation of title is not sufficient to limit his liability. Instead, he

must employ the proper language either within the terms of the contract or above or

beneath his signature, or in any proper place where it will appear unambiguously,

indicating something to the effect of—

y “The property and funds of the Trust Organization only are liable for contract

obligations, individual Trustee(s) or interest-holders are not personally liable”;

y “John W. Doe, acting as Trustee under the Declaration of Trust dated October 1,

2005, establishing the Trust Organization therein called ABC123 Training Group and

not individually”;

y “John W. Doe as Trustee and not personally”;

y “As Trustee but not individually”; or

140See McCoy, supra at p. 1.

141Id.

142It has been suggested that whether the trustee designates his title or not, he is in-fact acting as trustee, because the

substance not the form is what controls. However, for security purposes, I would argue that the designation should

be applied in all situations, regardless. Doing so will avoid any superficial confusion.

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y “Without recourse to Trustee”.

Any form of words that will convey in certain, unmistakable language the fact to

the other contracting party that he is dealing with an Express Trust is sufficient notice

under the rule. Whether it is necessary to also cite the provision of the trust instrument

which limits his liability is a decision left to the discretion of the trustee. To quote Mr.

Justice Woods in the case of Taylor v. Mayo:143 “If a trustee contracting for the benefit of

a trust wants to protect himself from individual liability on the contract, he must stipulate

that he is not to be personally responsible, but that the other party is to look solely to the

trust estate.” And in the case of Shoe and Leather National Bank v. Dix144 the court held,

with regard to the promissory note made by the trustees under such limited liability, that

it was not within the power of the court to change the trust liability on the note into a

personal one of the trustees; that liability on a contract must be determined by the terms

of the contract itself; and that a contract entered into under such limited liability (be it a

note, agreement, etc.) cannot be converted into one under personal liability by law. To

do so would be to alter the terms of the contract itself. (Furthermore, any such

stipulation is ultimately subject to the acceptance of the other party in order to gain

validity in the contract.)

OPENING A BANK ACCOUNT

THE TRUSTEE may open any business checking account, financial account, trust

account, etc., which he is authorized by declaration to open, but he must keep in mind

that by doing so, the trust will be participating directly in that unincorporated interstate

banking association with all its limited-liability consequences described above. There is

only one type of account that avoids those consequences: the non-interest bearing

checking account. When utilized in conjunction with the following banking practices,

the trust and the trustee will remain out of reach of the tentacles of public policy. Unless

the trustee intends to play within the system, the trustee should—

y Never contract for any credit cards, and if the trust has already obtained them,

rescind and cancel the contracts;

y Open a non-interest bearing checking account in order to avoid the “privileges and

immunities” associated with interest;145

y When transacting business, use that bank account solely for depositing the checks

and keeping track of the trust funds;

y Never send or allow trust checks to be sent across state lines;

y Instead of writing checks, use postal money orders or the bank’s corporate certified

checks or corporate money orders when sending interstate payments; and

y Use an Authorized Representative to establish the account on behalf of the trustee.

143supra. Also see Mitchell v. Whitlock, 121 N.C. 166, 28 S.E. 292.

144123 Mass. 148, 25 Am.Rep. 49.

145It should be noted that proof of the operation of law in the manner described in the preceding sections is that

banks are not required to obtain a social or tax identification number, and may accept any kind of identification

information they wish— only when opening non-interest bearing accounts.

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When opening the bank account (non-interest bearing as well as any other), the

following must be provided—

1. The original, notarized letter of authorization (or letter of introduction or a limited

power of attorney) if being opened by an Authorized Representative;146

2. A copy of the Affidavit of Trust;

3. A copy of the Trustee Appointment;

4. A copy of the settlor’s acknowledgment of trust or Letter of Introduction

(introducing the trustee). There are usually two introduction or acknowledgment

documents per trustee: one regarding his fiduciary powers specifically addressed to

banking institutions and one regarding his general power to establish all other

accounts;

5. A copy of the recitals and signature pages of the declaration of trust. The bank

will almost always require evidence of a trust agreement, but the other documents

may be sufficient depending on who you are dealing with. If you can open the

account with only a few of the documents, great. Again, this is a non-interest bearing

checking account, so scrutiny is not a priority. Accounts such as this have been

downplayed by banks via advertised interest rates (on the indirect suggestion of the

Federal Reserve via public policy and manipulation of the interest rates), so most

people would rather open accounts that appear to have the prospect of interest

earnings; and

6. Only if necessary to obtain an EIN, a copy of the filed IRS Form SS-4.

Take into the account the state of ignorance of the law which prevails in America

today. Give only the information needed to open the account, but do not arouse

suspicion or fear from lack of understanding on the part of bank employees. If you are

able to befriend someone in the institution who can establish the account more flexibly,

then do it. You must be shrewd in your methods for establishing the account, since,

regardless of which bank you choose, you will be dealing with trained employees who,

usually, are just a few screws and bolts away from being human robots. You should

consult the business tactics of successful negotiators, who will all attest that the

individual who needs the service is at the mercy of the provider, but the individual

whose confidence and attitude subtly convey that his business is in high demand is

given services, gifts, perks, not to mention any kind of account—anything just to get his

business. It is not my intention to state the obvious, for in all business dealings, which a

bank account is, one must be persuasive (and even seductive) to get the desired

results. And don’t be hesitant to shop around—negotiate—bend perception—create

competition.

In the event it becomes unavoidably necessary to the opening of a non-interest

bearing account or if the trustee does see fit to obtain an interest bearing or other

financial account, then he (or an Authorized Representative) must apply to the IRS for

an Employer Identification Number (EIN) for banking purposes. This may be done in

one of the following ways:

146The Authorized Representative should set up a date with the bank for the trustee to come in and sign the bank

card and give identification. The trustee should sign as trustee under limitation of liability if possible.

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y Instantly, via telephone from 7:30 a.m. to 5:30 p.m. (local time only) by calling the

Foreign Business Tax Line at (215) 516-3990;

y Instantly,

online

by

going

to

http://www.irs.gov/EIN.org

(or

http://www.irs.gov/businesses/small/article/0,,id=102767,00.html),

clicking

“Apply ONLINE NOW,” and filling out the online Form SS-4 Application for Employer

Identification Number, and proceeding through the prompts. (Be sure to print all the

pages for the trust’s records); or

y By performing the same steps above, but instead of clicking “Apply ONLINE NOW,”

click “download the form SS-4,” fill it out, print it, then either:

y Send it via mail or carrier to the proper regional office or else the one designated

for “entities with no legal residence, principal place of business, or principal office

or agency in any state”:

Attn: EIN Operation

Philadelphia, Pennsylvania 19255; or

y Fax it to Fax-TIN at (215) 516-3990.

The form should be filled out according to the specifications of the trust. I have

provided an example of how it has been filled out without a problem. In the event that

there is a problem and the filing office needs additional information or clarification, they

will indicate what is needed, either by fax, phone, or by mail, depending on the contact

information given to them.

With both telephone and online applications, the trust will immediately be given a

temporary EIN until the hard-copy application, which will be sent to the trust address for

completion and indorsement, has been returned to that office within 15 days of the

original online application. The EIN is valid 24 hours from the moment the voice or

electronic application is submitted, but if the hard-copy application is not returned within

the 15 days, the temporary EIN will expire, and cannot be used. In fact, it is not

permanently registered into the Federal Tax ID database until the hard-copy has been

processed.

With faxed applications, the trust will be given a temporary EIN by fax within 7

days, which will become permanent once the hard-copy application is sent in via the

mail or carrier. And, with mailed in applications, the application is processed upon

receipt, and an EIN is issued via the mail within 2 weeks. The other EIN application

offices based on region can be found at the IRS internet address given above by

clicking “Where to File” in the side menu.

TRANSFERRING TRUST ASSETS

THERE ARE two principal ways to transfer assets into the trust. It may be done via

sale (in funds) or by exchange (based on the barter system). How it is done in any given

situation makes all the difference, and there are certain guidelines to follow to insure

that the transfer cannot be nullified and voided.

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As a general rule, the trustee, as owner of legal title to the trust property, cannot

purchase the trust property for himself, nor convert it to his own use contrary to the trust

instrument. This is generally regardless of whether the property was purchased at a

public, private or judicial sale, instituted by him,147 for he has the unfair advantage, and

any such sale, absent certain conditions, is deemed voidable ab initio, to be set aside at

the option of the beneficiary(s). The only way the property may be obtained is where it

can be shown that the beneficiary(s) acted intelligently, willfully, and without undue

influence arising from the trust relationship.148 In order to sustain a sale of trust property

by the trustee to himself individually (on the ground that the interest-holder consented

thereto) the evidence must show the good faith of the transaction, the adequacy of the

consideration, a full knowledge of the facts, and an independent consent on the part of

the interest-holder.149 He may, of course, buy trust property in the discharge of his duty

to protect the trust.150 These same principles apply to the selling of the trustee’s

individual property to the trust, as well as to any barter between trustee and trust. (In the

case of exchange there is an additional option which the trust provides, though it is not

usually advisable to do so.) Simply put, if the contract is evidently “fair and reasonable,

untainted by fraud and undue influence, [the] . . . conveyance of . . . property [by the

trustee sui juris to the trust or interest-holder sui juris, or vise versa] will be upheld.”151

The guidelines152 for insuring that any transaction or property transfer between

the trustee (or an agent) and the trust (or interest-holder) is non-voidable are that—

y The seller intends that the buyer shall buy, and the buyer intends that the seller shall

sell, or both parties intend that each shall exchange one item for the other;

y The seller, especially if trustee, discloses to the buyer before the contract is made

every fact he has learned in his fiduciary relation which is material to the sale or

exchange;

y The seller, especially if trustee, exercises the utmost good faith in the transaction;

y No advantage is taken by misrepresentation, concealment of or omission to disclose

important information gained as trustee (or agent); and

y The entire transaction is fair and open on its face.

Furthermore, the contract of transfer need not be a complex document, so long

as the guidelines are strictly followed, with all necessary warranties made in the

documents themselves in order to legitimize the deal. (I have provided a sample bill of

sale and asset purchase agreement in the sample forms section.)

147Since the trustee’s advantage comes by virtue of his office, it has been ruled that he may lawfully buy trust

property at a sale caused by a third party, over which he has no part in procuring and over which he can exercise no

control. See Steinbeck v. Bon Homme Mining Co., 152 Fed. 333 (C.C.A.8 (Colo.) 1907).

148See Swift v. Craighead, 75 N.J.Eq. 102, 75 A. 974.

149See Clay v. Thomas, 178 Ky. 199, 198 S.W. 762; and French v. French, 58 Ind.App. 621, 108 N.E. 786.

150See Hardwicke v. Wurmser, 180 S.W. 455; He may also apply to a court of equity, showing good cause, to obtain

a decree for his purchasing of the property for protection purposes, if necessary.

151Dunn, supra at ch. IV, § 44, p. 78.

152Per Byrne v. Jones, 159 Fed. 321 (C.C.A.8 (Ark.) 1908).

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What’s more, there is an additional method by which the deal may be completed.

This is by way of assignment— either of trustee compensation, venture proceeds or

profits, or even the trustee’s separate employment wages/salary to the trust as value

consideration in the contract of transfer. Whatever the object assigned, that the value

consideration shall be in the form of an assignment should be set forth as an express

term or provision in the documents evidencing the transfer.153 A trustee may issue a

promissory note or bond to the trust, dividing his personal labor into shares of interest in

his trustee compensation, wages, salary, etc., and assigning it to the trust in order to

complete the contract. To do this, in addition to the note or bond, he must execute a

formal assignment, and then give his employer, payor, etc. notice and instructions to

send the instrument (check, money order, bills) to the trust, which is entitled to indorse

the instrument in the name of the individual trustee per the assignment (an authorized

signature). It may also be agreed that the trustee shall accept the payment personally,

then deliver and sign over the instrument to the trust himself (a special indorsement).

The former is akin to a private (quasi) garnishment, in which the employer, payor, etc. is

noticed and instructed to send the payment(s) directly to the trust, or deposit the funds

directly in the trust’s account per the assignment. (I have also provided a sample

assignment and notice of assignment and instructions in the sample forms section.)

ISSUING CERTIFICATES & BONDS

AS DISCUSSED in the earlier section, the trustees may issue certificates of beneficial

or capital interest, or other obligations to any person whom they please.154 There are a

total of 100 units of beneficial interest, and a separate total of 100 units of capital

interest in the trust. The trustees determine the number of units (percentage of total

interest) to be held by any one beneficiary, and may issue the full 100 units (100%) to a

single beneficiary. To issue a certificate of either interest, the trustees must act jointly as

the Board of Trustees, unless there is only one trustee for the trust. They must execute

(draw up and indorse under seal155), then deliver to the interest-holder(s) the actual

certificate(s) evidencing the interest held. The Board should also record minutes of the

meeting(s) in which it was resolved to issue the interest, and then record the act along

with the interest-holder(s)’ identification information in the appropriate schedule.

153It should be noted that such an assignment can be done without any contract of transfer, rendering the object of

assignment a gift. But, given the trustee’s position, this is generally looked upon with great suspicion simply

because of the absence of apparent value consideration for the trustee (the trustee would have to show that he gifted

the thing in the spirit of charity and a warm heart, for instance). It gives the superficial appearance that the actual,

ulterior motive was to avoid the liability of registered ownership, yet retain full and total ownership-in-fact, using

the trust as a device to accomplish this. The property transfer must be a bona fide transfer on its face.

154It should be noted that a beneficial interest-holder, having such an interest in the trust property, has an inherent

right to insist, in proper proceedings, that the trust be maintained and executed according to the terms of the trust

instrument. At law, the trustees are considered the owners of the trust property, yet, in equity, the beneficial

interest-holders are the absolute owners, hence their power to apply for the voiding of a voidable transaction or

transfer of property as mentioned in the preceding section. See Hill v. Hill, 152 P. 1122; Ex Parte Jones, 186 Ala.

567, 64 So. 960; and Cox v. Cox, 95 Va. 173, 27 S.E. 834. And a beneficiary may apply to the court of equity to

enforce their rights. See Bingham v. Graham, 220 S.W. 105.

155All certificates and official documents should be executed under seal. The sealing of an instrument is prima facie

evidence that it has been duly executed. See Johnson v. Crawley, supra; and Mullanphy v. Schott, supra.

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With certificates of capital interest the method is much different, though the

procedure is the same as that for the trust certificates. Capital certificates work based

upon exchange with investors called Exchangers, who may be any person the Board of

Trustees wishes to exchange with. The Board of Trustees determines the number of

units to issue in exchange for the property proposed for investment into the trust. This is

a pure barter between the parties, and whatever number of units is agreed stands as

the value in exchange for the proposed property.156 The exchanger must issue a written

Proposal (an example of which is provided in the sample forms section), which must be

accepted by the Board of Trustees. Any negotiations which take place should be

recorded in the minutes in which it is resolved to either issue the interest or refuse the

proposal. If the Board of Trustees has resolved to issue the interest and make the

exchange, the certificate(s) must be executed and delivered to the interest-holder(s),

and the property(ies) in exchange must be delivered by the interest-holder(s) to the

Board of Trustees. The final act should be recorded along with the interest-holder(s)’

information, and the property inventoried, in their respective schedules.

With bonds, because a bond is merely an obligation or promise to pay money or

to do some act upon the occurrence of certain circumstances, the trust need only issue

the bond according to the particular transaction, e.g., to back the performance of a

particular contract, to raise capital from outside investors in the form of “IOU’s,” etc. The

distinguishing feature of a bond is that the document shows an obligation to pay some

fixed amount of money or services, at a definite time, with stated interest. (I have

provided some samples for various uses in the sample forms section.)

Now, there is no rule against a trustee (or agent) of the trust, exchanging his

individual property for capital interest in the trust. And there is no rule against the trustee

(or agent) holding beneficial interest either, though the holding of beneficial interest is

generally regarded with greater suspicion than that regarding capital interest. The actual

rule is that either transaction will be sustained as non-voidable if it clearly appears free

of fraud, concealment, or undue advantage.157 Any omission by the trustee (or agent) to

disclose any material fact of the deal which is learned by the trustee by virtue of his

office, and any misrepresentation, concealment, or other disregard of condition renders

the issuance, exchange, and contract for it voidable at the option of the beneficial

interest-holder(s). And one can wager that any accusation of invalidity of the trust by an

outside party will be made on those grounds as well—a manifestation of the general

suspicion.

This suspicion, however unreasonable without regard to the particular merits of

the individual situation, stems from the many Express Trusts successfully dismantled

based upon the unscrupulous and often foolish failing of the Control Test by trustees. In

fact, the Express Trust graveyard is mostly populated with the dead corpuses of trusts

who died from this mistake. When a trustee holds all or a majority of interest (beneficial

or capital) in the trust, he is, in effect, an interest-holder exercising control over the

affairs and res of the trust. He derives the sole benefit of his actions, and determines the

156We have already covered the nature of the certificates in that previous section, so we won’t reexamine it here.

157See Murry v. King, 153 Mo.App. 710, 135 S.W. 107; and Mills v. Mills, 63 Fed. 511 (C.C.Or. 1894).

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actions which would cause him to derive that sole benefit. He is owner of the legal title

to the trust property as trustee, as well as owner of the equitable title to the property as

interest-holder. At best, the trust is his alter-ego, hence he may be proceeded against

as though the trust does not even exist. This is why it is recommended that any

transfers between trustee (or agent) and the trust (or interest-holder) be by sale as

prescribed according to the guidelines, through a third party, or by outright exchange,

with all documents in support of the transaction ready to repel the outside party who

might attempt to come in under the guise of the Express Trust’s Grim Reaper.

KEEPING MINUTES

AS MENTIONED EARLIER, it is the duty of the trustee(s) to keep minutes for all

resolutions, decisions, and acts done in the administration of the trust. This is a form of

accounting, and may suffice as the accounting, however, it is recommended that some

separate, more detailed accounting always be kept.

It is generally best to keep minutes upon every Board of Trustees meeting, based

upon the notes or report taken during the meeting, or, if there is only one trustee for the

trust, on a decision-to-decision basis. How often and by what protocol minutes are kept

is, of course, a matter of the trustee’s discretion. The rule of thumb is that at least one

Board of Trustees meeting should be held (and the minutes kept) annually. They should

probably be held (and kept) at least quarterly, in conjunction with all other accounting.

The more often the accounting, the more up-to-date, accurate, and reliable the records

in administering trust business. Everything the trustee does should be clearly reflected

in the minutes, which can be kept using any word-processing software (or even a

typewriter). The minutes are stored in succession in the minutes book section of the

trust binder. (I have provided 15 samples of minutes for various acts and resolutions by

the Board of Trustees. The format and core language is always the same or similar.)

PREVAILING IN LEGAL AFFAIRS

HERE IS WHERE we shall get into legal action, the rare instance of public legal

affairs, such as defending a court action instituted against the trust (or trustee), a private

action against the trust (or trustee), etc., as well as the possible necessity of the trustee

to take a public (however rare) or private (most preferable) action against an outside

party. The reader must keep in mind that the chances of an action being taken against a

trustee who has properly limited his liability without fail are slim to none. And if an action

is taken against him anyway, generally, such cases don’t make it past the crucial phase

of determining jurisdiction. When one examines the definition of jurisdiction,158 the fog

begins to clear.

158It is defined as “[a] government’s general power to exercise authority over all persons and things within its

territory. . . . A court’s power to decide a case or issue a decree. . . . A geographic area within which political or

judicial authority may be exercised. . . . A political or judicial subdivision within such an area.” Black’s Law

Dictionary, p. 855 (7th ed. 1999).

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There are two territorial jurisdictions created by the Constitution: the first is “the

Territory,”159 i.e., that designated portion of the earth’s surface (the imperially extensive

real estate holdings of the nation) over which all power must be exercised within the

strict letter of the Constitution; the second is the “other Property,”160 i.e., a territory

unincorporated (not included) into the Union of states, over which all power may be

exercised strictly according to the mere “spirit” of the Bill of Rights as interpreted by

Congress outside the strict letter of guarantees of the Constitution and Bill of Rights. In

the former, the federal government can have no direct control over the people but by

way of bilateral contracts. But in the latter, the federal government can have full and

direct control over people subject to its jurisdiction, “as they see fit, for the benefit of

public policy regulations (known as codes & statutes) of this jurisdiction.”161

Understanding that most courts currently in business in America are in fact, by

the 1933 change in the operation of law, courts of limited jurisdiction,162 limited to cases

involving subject-matter of the 14th Amendment public trust, it becomes clear that

whether they are distinguished as federal courts or state courts, such is a distinction

without a fundamental difference—they are inherently federal. In order to get at how

such courts may obtain jurisdiction over an Express Trust or its trustee(s) in a legal

action, the nature of jurisdiction should be briefly, but sufficiently examined.

First, a court must have three essentials: jurisdiction to determine jurisdiction,

jurisdiction over the subject-matter of the case (i.e., it must have the power/competence

to decide the kind of controversy involved), and jurisdiction over the parties to the case

(i.e., in personam or personal jurisdiction to compel the parties’ performance). If either

one is lacking in any way, the court is without power to decide the case;163 and any

order, decree or judgment, other than a dismissal, by such a court is void ab initio,164

having only the semblance or appearance of validity,165 and may be attacked directly or

159Art. IV, § 3, cl. 2 in reference to the incorporated “Union” of states incorporated under clause 1 of the same

section. The Articles of Confederation were also incorporated into the Constitution under clause 1, and the Union of

states is also incorporated under the Articles of Confederation by reference.

160Id. This “other Property” is known as “a territory”. Both “the Territory” and “other Property” signify property,

since the language in that section is not “the Territory or Property”—the operative word is “other”. Therefore,

“other Property” must be interpreted to mean “a territory,” as in a governmental subdivision which happened to be

called “a territory,” but which could have been called a “province,” “colony,” etc. It refers to an incomplete state.

See Ex Parte Morgan, 20 Fed. 298, 305 (D.C.Ark. 1883); and O’Donoghue v. United States, 289 U.S. 516, 537

(1933).

161Brobst et al., supra, see footnote 126.

162Such courts are defined as having “[j]urisdiction that is confined to a particular type of case or that may be

exercised only under statutory limits and prescriptions. Also termed special jurisdiction.” Black’s Law Dictionary,

p. 856 (7th ed. 1999).

163See Abelleira v. District Court of Appeal, 17 Cal.2d 280, 109 P.2d 942 (1941).

164See Holstein v. City of Chicago, 803 F.Supp. 205; Lubben v. Selective Service System Local Bd. No. 27, 453

F.2d 645 (C.A.1 (Mass.) 1972); Hobbs v. U.S. Office of Personnel Management, 485 F.Supp. 456 (D.C.Fla. 1980);

and In re Adoption of E.L., 733 N.E.2d 846, (Ill.App. 1 Dist. 2000).

165See Mills v. Richardson, 81 S.E.2d 409 (N.C. 1954).

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collaterally and vacated at any time.166 It is settled law that “a tribunal has jurisdiction to

determine its own jurisdiction,”167 which brings us to the remaining two elements.

Subject-matter jurisdiction is like the hub around which the wheel turns: without

the hub, the wheel cannot turn with any real credibility. It is comprised of two parts: the

statutory or common-law authority of the court to hear the case and the appearance and

testimony of a competent fact-witness (i.e., sufficiency of pleadings). It can never be

waived, and it cannot be obtained by lapse of time, consent of the parties, or any event

other than the sufficiency of pleadings by the party bringing the suit (i.e., the plaintiff

must sufficiently show beyond reasonable doubt that the court has jurisdiction to hear

the cause). However, although it may have been established by the pleadings, it can

still be lost due to, inter alia—

y Fraud upon the court;168

y The judge’s failure to follow proper procedure;169

y The unlawful activity or undisclosed conflict of interest of the judge (e.g., involvement

in a scheme of bribery);170

y The court exceeding its statutory authority;171

y Violation of due process;172

y Improper representation of a party before the court, improper issuance of a

summons, or defective service of process;173

y Proper notice not being given to all parties by the movant;174

y The court basing its order or judgment upon a void order or judgment;175 and

y Violation of public policy.176

And when subject-matter jurisdiction is lacking or lost, the court must discharge

its ministerial duty to dismiss on that ground on its own motion, whether it has personal

jurisdiction or not.177

166See People v. Rolland, 581 N.E.2d 907, (Ill.App. 4 Dist. 1991); People v. Wade, 506 N.W.2d 954 (Ill. 1987); and

In re Marriage of Welliver, 869 P.2d 653 (Kan. 1994).

167Albelleira, supra at p. 302.

168See In re Village of Willowbrook, 37 Ill.App.3d 393 (1962); and Rook v. Rook, 353 S.E.2d 756, (Va. 1987).

169See Armstrong v. Obucino, 300 Ill. 140, 143 (1921).

170See Code of Judicial Conduct; and the Alemann cases, Bracey v. Warden, U.S. Supreme Court No. 96-6133 (June

9, 1997).

171See Rosenstiel v. Rosenstiel, 278 F.Supp. 794 (D.C.N.Y. 1967).

172See Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019 (1938); Pure Oil Co. v. City of Northlake, 10 Ill.2d 241, 245,

140 N.E.2d 289 (1956); and Hallberg v. Goldblatt Bros., 363 Ill. 25 (1936).

173See Janove v. Bacon, 6 Ill.2d 245, 249, 218 N.E.2d 706, 708 (1955).

174See Wilson v. Moore, 13 Ill.App.3d 632, 301 N.E.2d 39 (1st Dist. 1973).

175See Austin v. Smith, 312 F.2d 337, 343 (C.A.D.C. 1962); and English v. English, 72 Ill.App.3d 736, 393 N.E.2d

18 (1st Dist. 1979).

176See Martin-Tregona v. Roderick, 29 Ill.App.3d 553, 331 N.E.2d 100 (1st Dist. 1975).

177See Morris v. Gilmer, 129 U.S. 315, 326-327 (1889). Once a judge has knowledge that subject-matter

jurisdiction is lacking, he has no discretion but to dismiss the action, and failure to do so subjects the judge to

personal liability.

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**Obtaining Jurisdiction Over the Trust**

**(or Trustee)**

Presence

**(know** Pennoyer **&** Burnham**)**

**A. Purposeful Availment of the benefits of the**

**Forum State**

Two Types of

Jurisdiction

**General Appearance**

•

**Registered**

y

y

y

Special **(Limited)**

**Contact itself gives rise to cause of**

Permission/

Consent

**Corporation Agent**

•

**Attorney**

**General**

**action (i.e.: a tort or contract)**

1) Territorial

(Personal in rem)

quasi-in rem

(waivable)

**Contract Clause**

Product Liability **(specific or general)**

**Expectation (purposely directed**

**toward the forum state)\***

4 Ways to Obtain

Personal Jurisdiction

**Traditional Notions**

**of Fair Play &**

**Substantial Justice**

General

2) Subject-matter

(never waived)

**Systematic & Continuous &**

**Substantial (know** Helicopteros **&**

Perkins**)**

Minimum Contacts

**(know** Intern’l Shoe**,**

Helicopteros **&** Perkins**)**

**2-step analysis**

**B. Reasonableness in Exercise of Jurisdiction**

Pennoyer & Burnham

**Presence & Service**

**required. Service by**

**publication not sufficient.**

•

•

•

•

**Burden on Defendant**

**Forum State Interests**

**Plaintiff Interests**

**Interests of Interstate Jurisdiction**

**System**

Domicile **(i.e.: residence with**

**intention to make revenue**

**district domicile of the trust-**

**ZIP Code)**

International Shoe

**Minimum Contacts may**

**establish jurisdiction if**

**systematic & continuous.**

Asahi Metals

**A product is not a registered**

**agent for Service of Process.**

**There must have been an act**

**where the trust purposely**

**availed itself of benefits &**

**services of forum state**

Helicopteros & Perkins

\*It should be noted that the word “toward”

implies a wider target than the word “at”

**When Contacts are unrelated to**

**cause of action, then cause of**

**action must be sufficient that any**

**like defendant would expect to be**

**called into forum state’s court.**

Worldwide Volkswagon

**Trust must have purposely**

**availed itself of benefits &**

**services of the forum state.**

Given the preceding sections on the unincorporated banking association under

H.J. Res. 192, and all of the above regarding the “other Property” nature of the states

today, it is easy to see why these courts are ipso facto courts of limited jurisdiction,

having no jurisdiction over subject-matter in “the Territory”. But assuming for the sake of

explanation that subject-matter jurisdiction did exist, then personal (or personal in

rem)178 jurisdiction over the trust and its trustee(s) can only be obtained in four ways,

either by the trust’s or trustee’s—

y Presence179 (i.e., its/his being served with a copy of the summons and complaint

while physically present in the forum jurisdiction);

y Domicile180 (i.e., residence alone is a basis for exercising jurisdiction. In the case of

corporations, domicile is the state in which they are incorporated, and in the case of

Express Trusts, the place of their situs);

y Permission or Consent181 (i.e., a trustee either personally or on behalf of the trust,

having not been properly served, can nevertheless give the forum court permission

178That is to say, “against the thing” as though it were a person vested with legal rights, as is the case with

proceedings against vessels under admiralty-maritime law. In proceedings in rem, the standards of Int’l. Shoe

regarding fairness and substantial justice that govern in personam actions are applicable. See Shaffer v. Heitner, 433

U.S. 186 (1977).

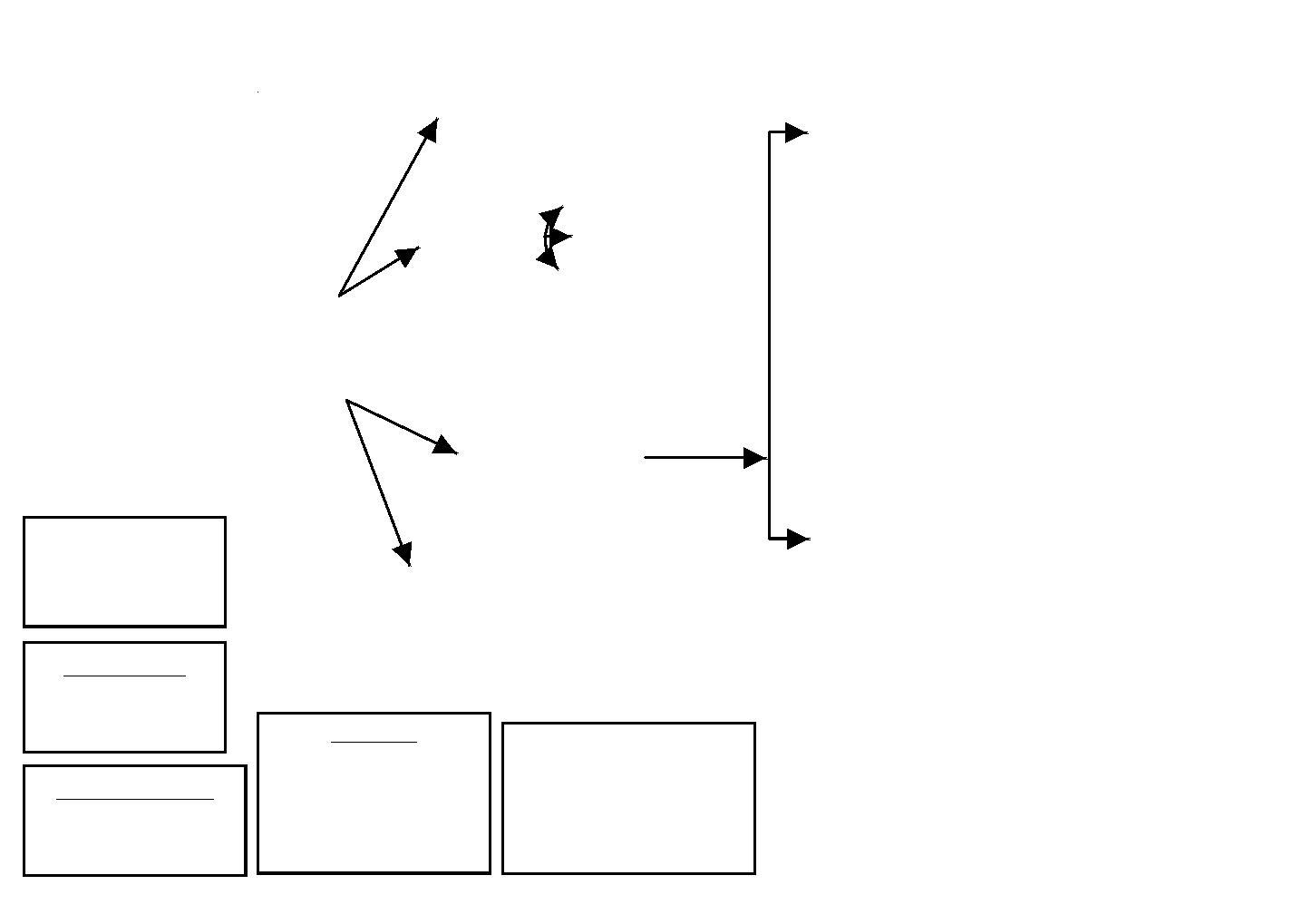
179The physical presence of a defendant in the forum is a sufficient basis for acquiring jurisdiction over him, no

matter how brief his stay might be, as long as it is served while present. See Pennoyer v. Neff, 95 U.S. 714 (1877).

180See Milliken v. Meyer, 311 U.S. 457 (1941).

181See Hess v. Pawloski, 274 U.S. 352 (1927). Under this doctrine, a forum state can legislate that a nonresident

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to exercise jurisdiction. Depending on the act of the trustee, permission can be given

well in advance of any lawsuit filed and the consent can also be implied); and

y Minimum Contacts182 (i.e., having sufficient dealings or affiliations with the forum

jurisdiction which make it reasonable to require the trust/trustee to defend a lawsuit

brought in the forum state. If the state has no contacts, ties or relations with the trust

or trustee(s), personal jurisdiction cannot be obtained in this manner).183 The four

principles regarding minimum contacts are, that:

1. The trust’s or trustee’s activity must be continuous and systematic in the forum

jurisdiction, and the cause of action must be related to that activity;

2. Sporadic or casual activity of the trust or trustee(s) in the forum jurisdiction does

not justify the exercise of jurisdiction in a cause of action unrelated to that

activity;

3. If the trust’s or trustee’s contacts are sufficiently substantial and of such a nature

as to make the exercise of jurisdiction reasonable, then general184 jurisdiction

may be exercised by the forum over the trust or trustee(s); and

4. If the trust’s or trustee’s activity is sporadic or consists only of a single act, then

specific185 jurisdiction may be exercised by the forum only when the cause of

action arises out of that activity or act.

Unlike subject-matter jurisdiction, once personal jurisdiction is obtained, it can

never be lost. And if the trust (or trustee) permits or makes a general appearance, it

cannot be later denied. Contrary to the general appearance which constitutes consent,

the trust or trustee(s) may avoid personal jurisdiction by making a special appearance

for the purpose of attacking the forum court’s personal jurisdiction,186 and may even

attack, so to speak, subject-matter jurisdiction. Generally, a challenge to subject-matter

jurisdiction constitutes consent, a waiver of personal jurisdiction for the purpose of

motorist using its highways be deemed to have appointed a local official as his agent to receive service of process in

any action growing out of the use of the vehicle within the state. But the state must have provided actual notice of

this to the nonresident motorist beforehand. The obvious question is whether the trustee is a motorist, and whether

the automobile is a vehicle— there is a significant difference. Nevertheless, consent comes in the form of a general

appearance.

182See International Shoe Co. v. Washington, 326 U.S. 310 (1945). Under this doctrine, the trust or trustee who has

never set foot in the forum may nevertheless be subject to valid personal jurisdiction so as to be compelled to

defend a lawsuit there provided that it/he has minimum contacts with the forum such that would not offend

traditional notions of fair play and substantial justice.

183The minimum contacts must have been had in the form of purposeful affiliation on the part of the trust or

trustee(s). See Hanson v. Denckla, 357 U.S. 235 (1958).

184This is defined as “[a] court’s authority to hear all claims against a defendant, at the place of the defendant’s

domicile or the place of service, without any showing that a connection exists between the claims and the forum

state.” Black’s Law Dictionary, supra. In order for a court to assert general jurisdiction there must be substantial

forum related activity on the part of the trust or trustee(s). See Helicopteros Nacionales de Colombia v. Hall, 466

U.S. 408 (1984).

185This is defined as “[j]urisdiction that stems from the defendant’s having certain minimum contacts with the forum

state so that the court may hear a case whose issues arise from those [specific] minimum contacts.” Black’ Law

Dictionary, p. 857 (7th ed. 1999).

186See Dickson v. Parker, 212 P. 42, 59 Cal.App. 778 (1922); and Brown v. Riner, 496 P.2d 907.

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arguing the merits, but this doctrine does not apply to cases involving Express Trusts

over which subject-matter jurisdiction clearly does not exist.187

With presence, the trust is created and functioning in “the Territory,” doing

business under the general common law,188 not the private international law of the

unincorporated banking association. Presence can therefore only be construed to exist

where the trust has become a member of the association via residence in a revenue

district (indicated by ZIP code) or is engaged in a particular transaction. Even then, the

trust or trustee(s) must be “present” by membership or transaction in that particular

political subdivision (“State”) and given notice “reasonably certain”189 to reach them (i.e.,

service of process via either personal service, substituted service, or constructive

service) as service by mere publication in a newspaper of general circulation has been

held insufficient in such cases.190 (And, as a side-note, mere physical presence in a

courtroom during some phase or proceeding does not constitute an appearance.)191

With domicile, the situs of the trust is in the united States of America, designating

“the Territory,” the Union of states as the land of which the common law is supreme law.

Unless the trustee(s), in behalf of the trust, adopts a principal place in the “other

Property,” establishes a residence in a place subject to the federal jurisdiction with the

“intention to make it [its] domicile,”192 personal jurisdiction is lacking in this respect. It

must purposely establish an address directly in a revenue district (e.g., via post office

box, or street address) to be liable in this way. But if the trustee(s) contracts with a

private mail service provider or carrier, signing “without prejudice,” then personal

jurisdiction does not attach— this effects an exclusion of any third-party

intervenor/overseer, and reserves the obligation to the course of the common law of

contracts (i.e., bilateral contracts not trilateral ones).

With permission, it may seem tricky but it is rather simple. Any answer to any

presentment from a forum jurisdiction constitutes giving them permission to exercise

authority, unless it is specifically a special appearance for the sole purpose of

challenging their authority (personal jurisdiction). If the trustee(s) do not answer in

general, or subordinate themselves, then consent has not been given. And if the

187A challenge to the subject-matter jurisdiction of the court where it is clear on the face of the record that

subject-matter jurisdiction is lacking is not inconsistent with a challenge to personal jurisdiction. Moreover, since

the court must dismiss on its own motion, an appropriate challenge to subject-matter jurisdiction aids the court in

performing its duty. The defendant should therefore be allowed to point out lack of subject-matter jurisdiction

without making a general appearance. Judson v. Superior Court, 21 Cal.2d 11, 129 P.2d 361 is to the contrary, but it

has often been criticized (see 31 Cal. L. Rev. 342; 1 Witkin, Cal. Procedure (1954), § 76, p. 346) and is overruled.

Goodwine v. Superior Court, 63 Cal.2d 481, 485 (L.A. No. 28464. In Bank. Nov. 4, 1965).

188The general law merchant is embraced under general common law, i.e., the original and unique system of

commercial law in the American states, in which there is no commerce regulation of Express Trusts accept in

connection with income derived from corporate stock and physical franchises under art. I, § 8, cl. 1 and 3 of the

Constitution. See William A. Fletcher, The General Common Law and Section 34 of the Judiciary Act of 1789: The

Example of Marine Insurance, 97 Harv. L. Rev. 1513, 1514 (1984).

189Mullane v. Central Hanover Tr. Co., 339 U.S. 306 (1950).

190See Pennoyer, supra; and Burnham v. Superior Court of California, County of Marin, 495 U.S. 604 (1990).

191See Austin v. State ex re. Herman, 10 Ariz.App. 474, 459 P.2d 753.

192Black’ Law Dictionary, p. 1473 (4th ed. Rev. 1968).

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trustee(s) (presumably under properly limited liability) enter into a contract under a

forum-selection clause, then the forum selected will have personal jurisdiction.

However, there are limitations to what constitute enforceable forum clauses, for if the

clause is expressed in fine print, placed in the contract so as to avoid litigation,193

unreasonable or ambiguous,194 not “fundamentally fair,”195 or if the clause could not have

been disputed without impunity as a part of a freely negotiated contract, then it is

invalid.

And with minimum contacts, the trust must purposely avail itself of benefits and

services of the state196 (e.g., operating a business via license, “owning” property there,

contracting with the government there, availing itself of benefits or services of the legal

system there—court actions, using state property, utilizing police or fire services, etc.—

systematically and continuously, or sporadically but substantially enough so as to

warrant the trust or trustee(s) being compelled to come into the forum).197 I will not get

into diversity of citizenship here, though it is wholly important to subject-matter

jurisdiction in the federal courts, for it is highly improbable that it would even be

necessary to bring it up in such an action, given all of the above “legal weapons” with

which the Express Trust is naturally armed.198

As a final note, when the Express Trust is taking an action against an outside

party, the preferable method is via the Commercial Process, i.e., a private (out of court)

legal action instituted under the fundamental rules of commerce/trade (Business).

Lawsuits should be regarded as a last resort to secure judicial enforcement of a private

administrative judgment, for public suits confer full personal jurisdiction upon the court

(taking a claim to a legislative court avails the trust of several benefits and services of

that forum, and thereby establishes a substantial minimum contact). Even still, any

action for judicial enforcement of a private judgment can be done out of court pursuant

to the Commercial Process. In private actions, the maxims of commerce, the foundation

of all commercial law and western legal systems, govern—

y A workman is worthy of his hire. Exodus 20:15; Lev.19:13; Matt.10:10; Luke 10:7;

and II Tim. 2:6. Legal maxim: “It is against equity for freemen not to have the free

disposal of their own property.”

y All are equal under the Law. Law of God — Moral and Natural Law; Exodus

21:23-25; Lev. 24:17-21; Deut. 1:17, 19:21; Matt. 22:36-40; Luke 10:17; and Col.

3:25. Legal maxim: “No one is above the law.” “Commerce, by the Law of Nations,

193See Johnson and Johnson v. Holland America Line-Westours, Inc., 557 N.W.2d 475.

194See Deiro v. American Airlines, Inc., 816 F.2d 1360, 1364 (C.A.9 (Or.) 1987).

195Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 595 (1991); Hodes v. S.N.C. Achille Lauroed Altri-Gestione,

858 F.2d 905, 908 (C.A.3 (N.J.) 1988); and Shankles v. Costa Armatori, S.P.A., 722 F.2d 861, 866 (C.A.1 (Puerto

Rico) 1983).

196See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980); Asahi Metal Industry Co., Ltd. v. Superior

Court of California, Solano County, 480 U.S. 102 (1987); also see Dick Lancial, Benefits Accepted = Jurisdiction.

197See Helicopteros, supra; and Perkins v. Benguet Consol. Min. Co., 342 U.S. 437 (1952).

198A good case to review regarding the rule of “complete diversity” is Strawbridge v. Curtiss, 7 U.S. 267 (1806).

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ought to be common, and not to be converted into a monopoly and the private gain

of a few.”

y In Commerce Truth is Sovereign. Exodus 20:16; Ps. 117:2; John 8:32; and II Cor.

13:8. Legal Maxim: “To lie is to go against the mind.” Oriental Proverb: “Of all that is

good, sublimity is supreme.”

y Truth is expressed by means of an affidavit. Lev. 5:4-5; Lev. 6:3-5; Lev.

19:11-13; Num. 30:2; Matt. 5:33; and James 5:12.

y An unrebutted affidavit stands as the Truth in Commerce. 1 Pet. 1:25; Heb.

6:13-15. Legal Maxim: “He who does not deny, admits.”

y An unrebutted affidavit becomes the Judgment in Commerce. Heb. 6:16-17.

Any proceeding in a court, tribunal, or arbitration forum consists of a contest, or

“duel,” of commercial affidavits wherein the points remaining unrebutted in the end

stand as the truth and the matters to which the judgment of the law is applied.

y A matter must be expressed to be resolved. Heb. 4:16; Phil. 4:6; and Eph.

6:19-21. Legal maxim: “He who fails to assert his rights has none.”

y He who leaves the field of battle first loses by default. Book of Job; and Matt.

10:22. Legal maxim: “He who does not repel a wrong when he can, occasions it.”

y Sacrifice is the measure of credibility. One who is not damaged, put at risk, or

willing to swear an oath on his commercial liability for the truth of his statements and

legitimacy of his actions has no basis to assert claims or charges and forfeits all

credibility and right to claim authority. Acts 7, Life and Death of Stephen. Legal

maxim: “He who bears the burden ought also to derive the benefit.”

y A lien or claim can be satisfied only through rebuttal by counter-affidavit

point-for-point, resolution by jury, or payment. Gen. 2-3; Matt. 4; and

Revelations. Legal maxim: “If the plaintiff does not prove his case, the defendant is

absolved.”

MAINTAINING PROPER I.R.S.

RELATIONS

LAST BUT NOT LEAST, due attention must be paid to the Internal Revenue Service,

for they are the lawful, legal entity, duly authorized to collect association dues (income

taxes) from 14th Amendment citizens and other persons volunteering and availing

themselves of the nonpayment of debt “privileges and immunities” under H.J. Res. 192,

12 USC § 95a, and 15 USC, ch. 41, § 1602(c)(d)(e). “They are considered as a

debtor/creditor in a social security association (unchartered, unincorporated commune)

whereby each person insures everybody else in the association by agreeing never to

demand payment for debts. [It is] [u]nder this volunteer arrangement [that] these

persons become primarily a U.S. citizen, secondarily a state citizen, ‘subject to’ [C]lause

1 of the 14th Amendment, while the literal 10th Amendment rights are forfeited.”199

Persons under this system have only relative rights to life, liberty, and property,

as they are converted into “privileges and immunities” and “civil rights”. As debtors, they

199Brobst et al., supra.

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have no absolute literal property ownership, for it has thus been converted to mere

privilege of possession.200 Plainly put, IRS taxes serve the function of dues for the

privileges and immunities associated with participating in the “federated unincorporated

interstate banking association for the non ‘Payment of Debts.’”201 What’s more, the

collection of income taxes is crucial to maintaining order within the association, more so

than for any proposed funding of the association.202

But that has no bearing on a properly created and administered Express Trust. It

is well-settled that a trust, created by parties not availing themselves of such privileges

and immunities, is not illegal even if formed for the purposes of limiting or avoiding taxes

altogether.203 Nor is the Express Trust subject to federal excise taxes imposed on

corporations.204 Nor is an Express Trust taxable merely because it possesses all the

accessory powers possessed by corporations.205 Nor can the dignity of its trust

instrument be set aside simply because a “tax benefit” results, whether by design or by

accident.206 Frankly, unless it incurs a tax liability in the United States via a valid forum

clause in a contract, membership in the unincorporated banking association, becoming

an employer, employee, or worker, or corporate entity, deriving income from corporate

stocks or physical franchises, accepting other “privileges and immunities” under the 14th

Amendment, or availing itself of any other services or benefits of public policy invoking

the doctrine of reciprocity, it has nothing to do with the IRS.

However, as it might stand as a beacon of organizational liberty, the IRS has a

reasonable interest in making sure the Express Trust example does not upset

compliance on the part of the participants in the system, and the IRS, thus, takes every

precaution to shoot down trusts of any kind which even hint at having origins lying

outside of its jurisdiction, i.e., the “other Property”. The IRS also takes every opportunity

to construe every instance (however rare) in which such a trust is dismantled in court as

being attributable to some purported inherent unlawful nature of non-statutory trusts,

going so far as to classify all as “abusive trusts,” though any trust (statutory or

common-law, express, implied, resulting or constructive) which abuses the fundamental

200“Debts . . . are not the property of the debtors; they are obligations of the debtors, and only possess value in the

hands of creditors. With the creditor they are property [absolute][.]” Jones v. New Pittsburgh Courier Pub., 364

A.2d 1315, 469 Pa. 157, quoting In re State Tax on Foreign-Held Bonds, 82 U.S. 300, 320, 21 L.Ed. 179 (1872).

Also see Beale, supra at p. 114.

201Brobst et al., supra at p. 14.

202“If . . . government refrains from regulation [i.e., taxes] . . . the worthlessness of the money [i.e., credit] becomes

apparent, and the fraud upon the public can be concealed no longer.” John Maynard Keynes, The Economic

Consequences of the Peace, p. 225 (1920 ed.). It has been argued that in 1930s America, with the outcry for

quick-fixes as opposed to independent recovery, the public requested (democratically) any “fraud” which might be

construed to have occurred, and is therefore a party to it, collaterally.

203See Weeks v. Sibley, supra; and Phillips v. Blatchford, supra.

204See Eliot v. Freeman, supra.; and Maine Baptist Missionary Convention, supra.

205See Phillips v. Blatchford, supra; Gleason v. McKay, 134 Mass. 419 (1883); O’ v. Somerville, 190 Mass. 110

(1906); and Opinion of the Justices, 196 Mass. 603, 627 (1908). Also see The Personality of the Corporation and

the State, 21 L. Qtly. Rev. 365, 370 (Oct. 1905).

206See Edwards v. Commissioner, 415 F.2d 578, 582, (C.A.10 (Okl.) 1969).

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principles upon which equity rests is, technically, abusive. Yet, they never speak of

them. The reader should be keen to know how to discern good information from dis-

and misinformation.

In the event that the IRS takes an action against a purported “common law trust”

or “pure trust,” (a.k.a. “poor trust”) it is generally a lawful action, actually in response to

some unlawful activity on the part of the parties or defect in their relation. And your

author has never seen an action taken against a properly drawn Express Trust, i.e., one

drafted from the perfected language and form of that “best legal talent” to which the

power and superiority of the Express Trust is attributed. Even in those cases, a

thorough analysis of jurisdiction, such as the one treated in the previous section, sheds

light on the blatant limitations of the IRS’s jurisdiction. The fact that they manage to

establish subject-matter jurisdiction and personal in rem jurisdiction attests to the

ignorance of the defendants, and indeed, personal jurisdiction usually would never have

been obtained without the defendants’ unwitting consent.207 It is no secret that all

actions of the IRS are commenced as proceedings in admiralty.208

CONCLUSION

THE ONLY WAY to thrive in twenty-first century America is to “own nothing and

control everything.” And though any trustee is the legal owner of the property in trust,

the trustee(s) of Express Trusts do not experience the incidents of personal ownership

due to properly limited liability via trust instrument and the utter shrewdness of the

trustee(s). It is this limited liability that makes the Express Trust equal to a corporation;

but it is the flexibility of choice of whether to function in the common law venue with

absolute rights in commerce under the general law-merchant or in the Roman civil law

venue with only relative rights in commerce under private international law that makes

the Express Trust, inter alia, far superior and unique. Under the aegis of the Express

Trust, the trustee is clothed in a veil impenetrable but from within. This suit of armor is

the trust instrument, which molds to the trustee in all his good-faith dealings in behalf of

the trust, fully compensating him for his services, privileging his use of trust property,

and enabling his exercise of creativity in business endeavors, all without the excessive

weight of inquisitorial legislation. When one is trustee, he is in a fiduciary position looked

upon with respect for the integrity inherent in the position. This has always been the

case, except where the power has been abused. But even so, history is clear that there

are far more abuses of power via corporations than Express Trusts.209

Given the statistics, and the fact that all governments in twenty-first century

America are corporations themselves, it becomes clear that the extensive recognition

207In fact, Judge Robert H. Bork, from whose name the phrase “bork’d in the senate” was derived, is reported to

have openly acknowledged, during one of his Senate confirmation hearings, that every prisoner in America today is

there because he gave his permission to be imprisoned, in one way or another. (Supposedly, this is the reason why

the Senators “bork’d” him so badly.)

208It is highly recommended that the reader read Are You Lost At Sea (1995), available at

<http://www.friends-n-family-research.info/FFR/Merrill\_AreYouLostAtSea.pdf> (last visited Aug. 10, 2005).

209See Chandler, supra at p. 10, et seq.

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given to corporations by the state is simply because of the special-interest relationship

between the two. In a way, it is the same relationship between the “John” and the

prostitute,210 and it is therefore in the best interest of the prostitute to take measures to

keep the “John” in business in order to indirectly protect her own “job security”. This is

the cause for the general sentiment towards Express Trusts operating in the statutory

world. It is this relationship that has bred the irrational view that “some trusts have been

created independent of statute; some non-statutory trusts are said to have done harm;

therefore public policy demands that hereafter all trusts shall be regulated.” The

irrationality of this line of reasoning will be more apparent if the syllogism is paraphrased

thus: “some lawyers have been Presidents of the United States; some Presidents are

said to have done harm; therefore public policy demands that hereafter all lawyers shall

be prohibited.”

The bottom line is that the Express Trust relation is the most flexible means to

owning nothing and controlling everything, and when utilized shrewdly, affords its

participants with all the ingredients to live well, naturally. It is also true that no matter

how many arguments are made against the Express Trust, the learned reader will

always see through the propaganda and spin, knowing from his own knowledge and

independent study that an Express Trust, in reality, can only fail due to some misgiving

or impropriety on the part of the trustee— the trustee must also trust himself.

210Governor Fernald of Maine, in his address to the Maine Legislature in 1909, referring to reformation of the

corporation laws said, “[w]hile it is true that the State is receiving large revenue from this source, it is also true that,

in a considerable measure, it is the price of prostitution. I hope you will take steps to remodel them, along evident

lines of reform, thus restoring to Maine her self-respect.” [Italics emphasis added.]

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SAMPLE FORMS

Asset Purchase Agreement

Assignment

Authorized Representative Contract

Authorized Representative Introduction Letter

Authorized Representative Letter of Authorization

Authorized Representative Limited Power of Attorney

Basic Management Agreement

Bill of Sale

Bonds

Exchange Proposal

IRS Form SS-4 Sample

IRS Form SS-4 (with instructions)

Lease Proposal

Minutes of Meetings

Motor Vehicle Lease Agreement

Notice of Assignment and Instructions for Payment

Private Property Bill of Exchange Contract

Property Management Agreement

Standard Independent Contractor Agreement

Universal Independent Contractor Agreement

If the trustee wishes to have minutes, forms, special documents,

contracts or agreements pertaining to specific trust affairs prepared for

them, NACRS can do so for a service fee.

For private actions, NACRS offers a ComPro CD-ROM containing the

Commercial Process complete with a 60-minute Macromedia Flash

presentation, step-by-step guidelines, charts, case law, crucial

supplemental materials, and over 100 editable sample forms

in rich text format.

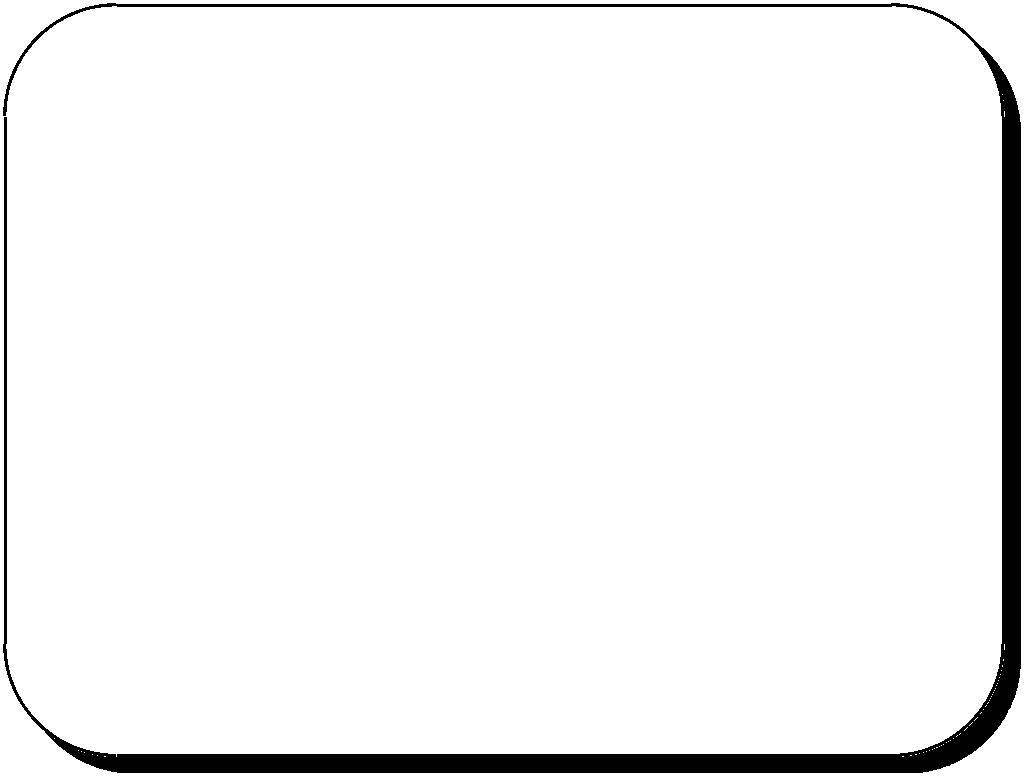
**For more information, visit us online at:**

http://www.nacrs.org

**Or contact us by telephone or e-mail:**

(702) 357-8830 • contactus@nacrs.org

Appendix



WEISS’S CONCISE TRUSTEE HANDBOOK

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered

into as of this 30th day of April, 200X (the "Effective Date") by and between John W. Doe,

individually and in his personal capacity ("Seller") and ABC123 Training Group, an Express

Trust Organization ("Buyer") with the express written consent of Susan Q. Public and Jane A.

Doe, Beneficiaries.

RECITALS:

A.

Seller wishes to sell the personal property, in “as-is” condition

identified in Exhibit A (“Assets”), attached hereto and incorporated by

reference.

B.

Buyer wishes to purchase the Assets in as-is condition.

C.

Seller desires to sell to Buyer, and Buyer desires to purchase from

Seller the Assets on the terms, conditions, and warranties as set forth

herein.

IN CONSIDERATION OF ten and no/100 dollars, the foregoing and the mutual

promises and warranties contained herein, and good and other valuable consideration, the

receipt and sufficiency of which is hereby acknowledged, Buyer, Seller and Physicians agree as

follows:

1.

CLOSING AND POSSESSION. The sale of Assets shall be effected as of

the Closing Date by Seller's execution and delivery of a bill of Sale (the "Bill of Sale") and

other instruments of conveyance and transfer reasonably necessary to effectively transfer to

Buyer all of Seller's right, title and interest in the Assets. At the Closing, Seller shall sell,

transfer, convey, assign and deliver good title to the Assets pursuant to the instruments of

conveyance (i.e., the Bill of Sale), free of all liens, encumbrances, claims, and any other

restrictions whatsoever.

2.

ASSETS TO BE PURCHASED. On the Closing Date, Seller shall sell to

Buyer, and Buyer shall purchase from Seller, the Assets listed on Exhibit "A" attached hereto

and made a part hereof in accordance with the provisions of this Agreement.

3.

PURCHASE PRICE. The total purchase price for the Assets is $750,000.00

payable to Seller (the "Purchase Price") as follows:

[here enter method of payment, e.g., by promissory note, bond, installments, etc.]

4.

REPRESENTATIONS,

WARRANTIES,

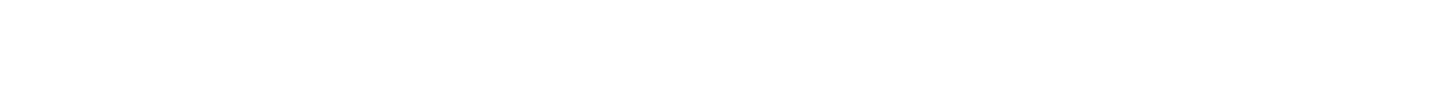
COVENANTS

AND

DISCLOSURES OF SELLER. Seller represents, warrants, convenants, and discloses to

Buyer, and understands that Buyer will rely on such representations, warranties, covenants and

Sample Asset Purchase Agreement — Page 1 of 4



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disclosure of Seller, as follows:

a) Seller has all requisite power and authority to own the Assets, to enter into this

Agreement, and to consummate the transactions contemplated by this Agreement, and

does so willingly and freely. Entering into this Agreement and carrying out the actions

provided for in this Agreement will not cause Seller to be in breach or violation of any

other agreement or legal obligation;

b) Seller, by his position as Trustee of ABC123 Training Group, (hereafter “the

Trust”) has learned of Buyer’s total available funds, which exceed the value of the

Assets. Furthermore, Seller is aware that Buyer is not privy to Seller’s total costs and

profit potential in the transaction contemplated by this Agreement;

c) Seller, in the transactions contemplated by this Agreement, has exercised no unfair

advantage gained by his position as Trustee of the Trust, either by way of

misrepresentation, concealment of, or omission to disclose important information

obtained by his position.

d) Seller is not aware of any liens and incumbrances on the Assets as of the date of this

Agreement, or that any liens or incumbrances are likely to occur against the Assets at

some future point;

e) The fair market value of the Assets being sold “as-is” is no less than the Purchase

Price.

f) Seller has not assigned, transferred or given as collateral to any party other than

Buyer any right or interest of Seller in the Assets;

g) Seller is not aware of any actual or potential claims against the Assets that would

delay the closing of the distribution(s) of the Trust and/or materially reduce Seller’s

Interest;

h) Seller is not and shall not be a party to any agreement or transaction that could have

the effect of impairing Buyer's right to receive distribution(s) from the Trust up to the

full value of the Assets;

i) To the best of Seller's knowledge and belief, the fair market value of the Assets are

as represented in Exhibit "A" and any additional documents provided by Seller;

j) There are no facts or circumstances known to the Seller that may adversely affect

the value of the Assets or prevent or delay the distribution of Trust cash or assets to

Seller;

k) If Seller’s interest in the Assets arises out of a Will, Seller is the individual referred

to in the Will and Seller is not aware of any person(s) who has (have) or may contest

Seller’s entitlement under the Will, the validity of the Will, or the distribution of assets

of that Estate as provided for in the Will;

l) Seller has not entered into this Agreement with any intent or purpose to avoid or

defraud any creditor of Seller;

m) Seller does not now or in the immediate future contemplate filing for bankruptcy

and has not consulted any lawyer or other professional regarding the possibility of a

bankruptcy filing, assignment for the benefit of creditors, or any other insolvency

proceeding. In the event that Seller should file for relief under Title 11, United States

Code, Seller acknowledges that Buyer shall be entitled to enforce all its rights as a

creditor secured by a lien on all of Seller’s distributions from that Estate pursuant to 11

Sample Asset Purchase Agreement — Page 2 of 4



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U.S.C. § 506, including rights to seek adequate protection of such interest as defined by

11 U.S.C. § 361; and

n) Buyer is entitled to rely on each and every of the representations and warranties set

forth in subparagraphs (a) through (m), above.

5.

ADDITIONAL PROTECTION FOR BUYER. Seller grants Buyer a security

interest in all of Seller’s Estate, including Seller’s interest in other estates, as collateral to

secure payment of the value of the Assets and any damages, expenses, costs and fees to Buyer

for any default of this Agreement by Seller. Buyer may at any time file a UCC-1 or other

documents perfecting Buyer’s security interest(s) pursuant to this Agreement. Buyer will

release the UCC-1 when the value of the Assets and, if applicable, damages, expenses, costs

and fees have been paid in full to the Trust.

6.

CLOSING DOCUMENTS AND PROCEDURES. At the Closing, the

parties shall deliver to each other the following:

a.

b.

Bill of Sale. Seller shall sign and deliver to Buyer the Bill of Sale.

Payment. Buyer shall pay the certain amount of $750,000.00, and such

other documents, instruments, and confirmations as the parties may reasonably request to

effectuate and consummate fully the transactions contemplated by this Agreement. [or

whatever documents or payment instruments agreed to in item # 3]

7.

BROKERAGE. No agent, broker, person, finder or firm acting on behalf of

Seller or under its authority is or shall be entitled to any commission or broker's fee or finder's

fee from Buyer or Seller in connection with any of the transactions described in this

Agreement. Seller and Buyer each represent and warrant to the other that they have not dealt

with any broker, finder or other person entitled to any broker's or finder's commission, fee or

other similar compensation in connection with the transactions contemplated by this

Agreement.

8.

MISCELLANEOUS.

a. Complete Agreement. This Agreement and the exhibits hereto contain

the final, complete expression of the understanding among the parties with respect to the

transactions completed by them and supersedes any prior or contemporaneous agreement,

representation or understanding, oral or written, by any of them. The terms and provisions of

all exhibits (as set forth in the table of contents) are incorporated into this Agreement.

b.

Attorneys' Fees and Costs. In any action or dispute, at law or in equity,

that may arise under or otherwise relate to this Agreement, including, but not limited to any

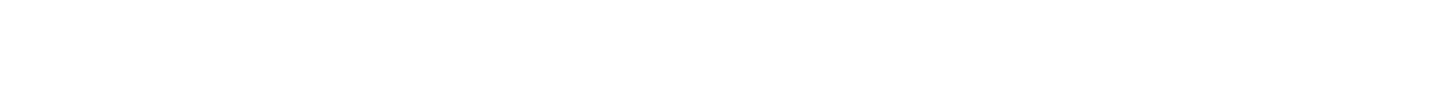
action regarding non-competition, the prevailing party shall be entitled to reimbursement of its

attorneys' fees, costs and expenses from the non-prevailing party.

c.

Assignability; Successors and Assigns. This Agreement is not

Sample Asset Purchase Agreement — Page 3 of 4



WEISS’S CONCISE TRUSTEE HANDBOOK

assignable by any party without the prior written consent of all of the parties, and any

attempted assignment without the prior written consent of the other parties shall be invalid and

unenforceable against the other parties.

d.

Governing Law and Forum. This Agreement is governed by the

general common law of contracts. Any disputes under this Agreement, or any action taken to

enforce or determine the rights and obligations of the parties under this Agreement must be

brought in the appropriate federal or state court located in [state wherein obligation was made].

The parties hereby submit to the jurisdiction, and waive any objection to the venue, of such

courts.

e.

Binding Effect. This Agreement shall be binding on and inure to the

benefit of the parties and their respective successors-in-interest, heirs, successors and assigns.

All parties bound by this Agreement shall take any and all actions necessary or appropriate to

effectuate the Agreement's purposes and provisions.

THE PARTIES HERETO have executed this Agreement on the day and date first written

above.

SELLER:

BUYER:

John W. Doe, As an Individual

ABC123 Training Group

By:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Representative

I/We, Jane A. Doe and Susan Q. Public, as Beneficiaries of BUYER, do hereby consent, freely, willfully,

intelligently, independently, and without undue influence of Seller or Authorized Representative, to the

transaction contemplated by this agreement on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 200X.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Jane A. Doe

Susan Q. Public

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)ss.

County of \_\_\_\_\_\_\_\_\_\_\_\_ )

On this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 200X A.D., before me, a Notary Public, came Jane A. Doe and

Susan Q. Public as the Beneficiaries, John W. Doe as an Individually, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Authorized

Representative, and acknowledged the signing thereof to be their voluntary act and deed. IN TESTIMONY

WHEREOF, I hereunto subscribe my name and affix my notarial seal on the day and date aforesaid.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Notary Public

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(stamp)

(seal)

Sample Asset Purchase Agreement — Page 4 of 4



WEISS’S CONCISE TRUSTEE HANDBOOK

ASSIGNMENT

I, John W. Doe, as an individual, hereafter referred to as “ASSIGNOR,” herewith

unconditionally assign all of my right, title and interest in an expectancy of salary from my

employment as Chief Financial Officer of XYZ Corp. to ABC123 Training Group, an Express

1

Trust Organization, hereafter referred to as “ASSIGNEE,” under the terms and conditions stated

herein for and in consideration of the bill of sale and asset purchase agreement dated (day,

month), 200X I have with ASSIGNEE.

The amount of this assignment (“Assignment Amount”) is $750,000.00 USD. Said assignment is

made without guarantee of specific amounts, if any, to be received in any given pay period.

2

The ASSIGNEE shall withhold and pay, and fully indemnify ASSIGNOR from all applicable

federal, state or other applicable taxes, if any, owed by ASSIGNOR, including sales tax. Upon

request ASSIGNEE shall provide ASSIGNOR with an opinion of counsel acceptable to

ASSIGNOR that such liabilities have been satisfied.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ASSIGNOR:

ASSIGNEE:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Representative

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)ss.

County of \_\_\_\_\_\_\_\_\_\_\_\_ )

On this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 200X A.D., before me, a Notary Public, came John W. Doe as an

Individually, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Authorized Representative, and each acknowledged the signing

thereof to be his voluntary act and deed. IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix my

notarial seal on the day and date aforesaid.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Notary Public

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(stamp)

(seal)

1

Or compensation as trustee of ABC123 Training Group, or the proceeds and profits from my business venture of

(day, month), 200X, etc. It could be whatever.

2

This can be modified to accommodate a situation in which the specific amounts expected are set certain.

Sample Assignment



WEISS’S CONCISE TRUSTEE HANDBOOK

AUTHORIZED REPRESENTATIVE CONTRACT

INDEPENDENT CONTRACTOR AGREEMENT

THIS CONTRACT (“Agreement”) is made on this 30th day of April, 20\_\_, by and

between the Board of Trustees of ABC123 Training Group, an Irrevocable Express Trust

Organization, hereinafter referred to as the “BOARD,” “TRUST,” or “ABC123 Training

Group” and Jim Aaron Dean in care of 1234 Number St., Cleveland, Ohio, near [98765],

hereinafter “Authorized Representative,” and collectively referred to as the “Parties.”

1

WITNESSETH:

WHEREAS, the TRUST has certain duties, responsibilities, and obligations which the

TRUST desires to delegate to another, specifically to the Authorized Representative for a

twenty-five (25) year limited period of time, and on the terms and conditions, and for the

consideration hereinafter set forth; AND WHEREAS, the Authorized Representative is qualified

to provide such management services and desires to provide such services to the TRUST on such

terms and conditions and for such consideration.

NOW THEREFORE, in consideration of the foregoing and the covenants and agreements

contained herein, the receipt and sufficiency of which are hereby acknowledged, and the Parties

hereto, intending to be lawfully and legally bound, agree as follows:

STATEMENT OF AGREEMENT

ARTICLE I

AFFILIATION AND DUTIES

1.1

Affiliation; Effective Date. The BOARD agrees to engage the services of the

Authorized Representative, and Authorized Representative agrees to provide services to the

TRUST, commencing as of the date of this Agreement subject to the terms and conditions of this

Agreement.

1.2

Position.

The TRUST shall engage the services of Jim Aaron Dean in the

position of Authorized Representative. As such, the Authorized Representative shall have the

responsibilities, duties, and authority enumerated under the Articles of Indenture (Trust

Indenture No. 123456789) of the TRUST as well as those customarily pertaining to such

position consistent with such a Trust Organization and such other services as may be requested

of the Authorized Representative by the TRUST.

1.3

Primary Duties and Services.

(i) The BOARD hereby appoints the Authorized Representative to be

the day-by-day manager with respect to any and all dealings, business or

1

This form can be modified for Managing Agents.

Sample Authorized Representative/Managing Agent Contract — Page 1 of 6



WEISS’S CONCISE TRUSTEE HANDBOOK

otherwise, the TRUST may have. The BOARD does so for the purpose of

providing for a day-by-day manager to be solely responsible for any and all

activities of the TRUST.

(ii)

The Authorized Representative agrees to serve in said position and

to perform diligently and to the best of Authorized Representative’s abilities said

duties and services referred to in Section 1.2, and in such a manner as the

Authorized Representative deems advisable within the parameters as established

and acceptable to the TRUST, as well as, such additional duties and services

appropriate to such position which the Parties mutually agree upon from time to

time.

(iii) The Authorized Representative shall have the ability and authority

to perform such duties in accordance with the Authorized Representative’s sole

judgment and discretion.

(iv)

The Authorized Representative shall be solely responsible for

obtaining and maintaining all appropriate information concerning the day-by-day,

as well as business plans and future activities of the TRUST.

(v)

The BOARD does hereby transfer all absolute authority to the

Authorized Representative to manage the business and day to day operating

affairs of the TRUST.

1.4

Other Interests.

During the period of time as set forth in this Agreement,

the Authorized Representative shall have full discretion to devote as much time and effort in

performing his/her duties as the Authorized Representative deems necessary in order to carry out

and maximize Authorized Representative’s performance hereunder. The Authorized

Representative may engage, directly or indirectly, in other related business’ that do not conflict

with the Authorized Representative’s duties hereunder and/or the business of the TRUST. The

foregoing limitations shall not prohibit the Authorized Representative from serving in other

capacities for other organizations, or on the boards of other organizations, provided that the

Authorized Representative’s service in such other capacities for such other organizations and/or

on such boards is not adverse to the interests of the TRUST.

1.5

Independent Status. The Authorized Representative shall be maintained as an

independent contractor for purposes of taxation and liability. The Authorized Representative

shall be solely responsible for any and all withholding of applicable tax, as well as, any and all

other contractor-related expenses.

1.6

Primary Office Location.

The Authorized Representative shall perform his or

her duties at any location which he/she deems appropriate, but shall represent the address of the

TRUST as the Primary Office Location for any and all accounts, transactions, and business of

the TRUST, as well as for all expenses incurred by the TRUST. The Authorized Representative

shall represent the address of the TRUST as his/her official Primary Office Location for all such

purposes.

1.7

Bank and Other Financial Accounts. The Authorized Representative shall have

the ability and authority to open bank and other financial accounts in the name of the TRUST,

and to obtain any and all services with any institutions the Authorized Representative may deem

Sample Authorized Representative/Managing Agent Contract — Page 2 of 6



WEISS’S CONCISE TRUSTEE HANDBOOK

necessary and beneficial to the TRUST. All monies for accounts of the TRUST shall be

maintained by the Authorized Representative.

1.8

Contracting. Authorized Representative has the ability to bind the TRUST in

any manner, and in his/her sole discretion, without prior notification to the TRUST.

1.9

Business and Other Materials.

The Authorized Representative shall have

sole discretion in the production and/or distribution of all such materials representational of the

TRUST’s business and other interests, including but not limited to, any stationary or business

cards representing the TRUST.

ARTICLE II

TERM, DURATION, AND TERMINATION

2.1

Term. The Authorized Representative’s affiliation by the TRUST shall

commence on the effective date as set forth in Article 1, Section 1.1. The Authorized

Representative shall perform his duties for a period of twenty-five (25) years or until termination

by either of the Parties as herein provided. The Authorized Representative Contract is

automatically terminated upon the Authorized Representative’s death, sale of TRUST business,

or all of the TRUST’s assets, leaving the TRUST with nothing of value. This Contract can only

be terminated by a determination of malfeasance by a Judge of a court of competent jurisdiction,

or by a determination of mental incompetence of the Authorized Representative by a recognized

medical authority appointed by such a Judge.

2.2

The Parties’ Right to Terminate.

The provisions of this article are in no way

intended to take away or otherwise waive any rights that the TRUST may have under the law.

The Parties shall have the right to terminate this Agreement at any time with sixty (60) days

prior written notice for “Cause,” which for the purposes of this Agreement shall mean (A) the

Authorized Representative’s dishonesty or fraud with respect to the reputation and/or affairs of

the TRUST which materially and adversely affects the business and other relations of the

TRUST, provided the Authorized Representative fails to cure such ill repute within a reasonable

period of time; or (B) a material breach by the Authorized Representative or the TRUST of this

Agreement or any other agreement by and between the Authorized Representative and the

TRUST, provided either party fails to cure such breach, if curable, within thirty (30) days of

receipt of written notice thereof. Upon Termination of this contract for any reason the current or

resigning Authorized Representative can only be replaced by the first in line Successor

Authorized Representative. This shall in no way affect or preclude the consummation of any

transaction, which was effected prior to such termination.

ARTICLE III

COMPENSATION AND MANAGING FEES

3.1

Managing Fee.

The TRUST shall pay the Authorized Representative a

monthly management fee of One Thousand (1,000.00) dollars. This fee is payable upon the

acceptance of this contract and is payable each month thereafter. All checks must be made

payable to the current Authorized Representative. The amount of this fee shall increase in

proportion to the assets in the TRUST, or by written consent and approval of the BOARD.

Sample Authorized Representative/Managing Agent Contract — Page 3 of 6



WEISS’S CONCISE TRUSTEE HANDBOOK

3.2

Expense Reimbursements. During the term of this Agreement, the Authorized

Representative shall be solely responsible for any and all contractor-related expenses. All

expenses, out-of-pocket and otherwise, which are incurred as a result of, as well as in the course

of, carrying out the duties and responsibilities of Authorized Representative shall be reimbursed

to the Authorized Representative; all reimbursements shall be made to the Authorized

Representative separately and aside from the Managing Fee and in a manner agreed upon by the

Parties.

3.3

Termination by the Authorized Representative.

If

the

Authorized

Representative’s affiliation hereunder shall be terminated by Authorized Representative, then,

upon such termination, regardless of the reason thereof, all compensation derived from managing

fees and expense reimbursements shall be paid within thirty (30) days of written notice of

termination.

ARTICLE IV

MISCELLANEOUS

4.1

Assignment and Governing Law.

This contract shall constitute a binding

contract under the general common law of contracts upon acceptance by the Parties. This

contract may not be assigned by either party without the other party’s written consent nor by

operation of law; this agreement shall be binding on the successor(s) and assignee(s) of the

Parties.

4.2

Reservation of Rights.

(i)

to any rights otherwise waived due to any nondisclosure or adhesion.

(ii) Use of a Notary Public in this contract does not constitute any

The Parties do hereby enter into this agreement without prejudice

adhesion in and of itself, nor does it alter the status or domicile of either party.

The express purposes for said Notary Public is acknowledgment and witness only;

not for entrance into any statutory or otherwise foreign jurisdiction.

(iii)

The TRUST in no way relinquishes ownership of any of the

TRUST’s properties.

(iv)

The failure by either Party hereto at any time to give notice of any

breach by the other party, or to require compliance with any condition or

provision of this Agreement shall not be deemed a waiver of said breach or

noncompliance, or of any similar or dissimilar provisions or conditions at the

same, or at any prior or subsequent time.

4.3

Severability. If a court of competent jurisdiction determines that any provision of

this Agreement is invalid or unenforceable, then the invalidity or unenforceability of that

provision shall not affect the validity or enforceability of any other provision of this Agreement

and all other provisions shall remain in force and effect.

Sample Authorized Representative/Managing Agent Contract — Page 4 of 6



WEISS’S CONCISE TRUSTEE HANDBOOK

4.4

Withholding Taxes. The TRUST shall not withhold from any compensation

made to the Authorized Representative, pursuant to this Agreement, any applicable taxes as may

be required pursuant to any law; Authorized Representative is not to be deemed an employee of

the TRUST.

4.5

Headings.

Paragraph headings have been inserted for purpose of convenience

and shall not be used for interpretive purposes.

4.6

Modification. Any modification of this Agreement shall be effective only if in

writing and agreed to by the Parties in writing.

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Sample Authorized Representative/Managing Agent Contract — Page 5 of 6



WEISS’S CONCISE TRUSTEE HANDBOOK

IN WITNESS WHEREOF, the parties hereto mutually and individually agree to the

above enumerated terms and conditions, and do hereby enter into this Contract on the date first

written above.

AUTHORIZED REPRESENTATIVE:

TRUST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Jim Aaron Dean

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John W. Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)ss.

County of \_\_\_\_\_\_\_\_\_\_\_\_ )

On this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ A.D., before me, a Notary Public, came John W. Doe and John

Q. Public (Board of Trustees), and acknowledged the signing thereof to be his voluntary act and deed. IN

TESTIMONY WHEREOF, I hereunto subscribe my name and affix my notarial seal on the day and date aforesaid.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Notary Public

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(stamp)

(seal)

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)ss.

County of \_\_\_\_\_\_\_\_\_\_\_\_ )

On this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ A.D., before me, a Notary Public, came Jim Aaron Dean

(Authorized Representative), and acknowledged the signing thereof to be his voluntary act and deed. IN

TESTIMONY WHEREOF, I hereunto subscribe my name and affix my notarial seal on the day and date aforesaid.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Notary Public

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(stamp)

(seal)

Sample Authorized Representative/Managing Agent Contract — Page 6 of 6

WEISS’S CONCISE TRUSTEE HANDBOOK

ABC123 Training Group

A Trust Organization

(Address)

(Date)

Dear Sir/Madame:

Please accept this Letter of Introduction from the Board of Trustees of this Organization

that as of (day, month), 200X, Mr./Ms. (name of Authorized Representative) has been hired as

1

Authorized Representative of this Organization to conduct its day-to-day affairs. He has been

given all the powers and authority necessary to conduct the business of this Organization with

your company. Mr./Ms. (name of Authorized Representative) has held this fiduciary position

since (date of hire by contract).

If you have any questions, you can contact the Board of Trustees at the address shown on

the letterhead.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John W. Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

In Witness Whereof, I have hereunto subscribed my name and affixed my Notarial seal on the

day and year last above written.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My commission expires:

1

Use this introduction letter for the authorized representative hired under the provisions of the trust instrument. It

can also be modified for any trust officer or agent.

Sample Authorized Representative Letter of Introduction



WEISS’S CONCISE TRUSTEE HANDBOOK

ABC123 Training Group

A Trust Organization

(Address)

(Date)

Dear Sir/Madame:

Please accept this Letter of Authorization from the Board of Trustees of this

Organization, that as of (day, month), 200X, Mr./Ms. (name of Authorized Representative)

1

individually has the authorization to open a non-interest bearing checking account at your

institution on behalf and in the name of this Organization.

Mr./Ms. (name of Authorized Representative) has no other authority or responsibility for

this organization other than the above stated, and is not responsible for any of its debts or

liabilities. This authorization shall continue until notified otherwise, in writing, by the Board of

Trustees.

If you have any questions, you can contact the Board of Trustees at the address shown on

the letterhead.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John W. Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

In Witness Whereof, I have hereunto subscribed my name and affixed my Notarial seal on the

day and year last above written.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My commission expires:

1

Use this letter of authorization for purposes of open a bank account. But it can be modified to serve any purpose.

Sample Letter of Authorization



WEISS’S CONCISE TRUSTEE HANDBOOK

LIMITED POWER OF ATTORNEY

ABC123 Training Group, a Trust Organization, (hereinafter the "principal") of (City, State),

herewith appoints (name of Authorized Representative) of (City, State), as its attorney in fact, to

act in the place and stead and with the same authority as Principal would have to do only the

following acts:

To open a non-interest bearing checking account and conduct any and all business regarding

deposit accounts, loans, safe deposit box, or other banking business in regard to said account at

the First Confederated Bank, of Thomasville, Georgia. This power shall specifically include, but

is not limited to the right to deposit, withdraw, sign checks or drafts, make stop payment orders,

and to conduct any banking transactions necessary or possible in regard to the Organization’s

banking relationship with the First Confederated Bank.

This power of attorney shall be in effect from (day, month), 200X to (day, month), 200X.

ABC123 Training Group, As Principal

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John W. Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

State of \_\_\_\_\_\_\_\_\_\_\_ )

)ss.

County of \_\_\_\_\_\_\_\_\_ )

John W. Doe and John Q. Public, Board of Trustees for ABC123 Training Group

personally appeared before me and acknowledged the execution of this limited power of attorney

for the purposes set forth therein.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

Sample Limited Power of Attorney



WEISS’S CONCISE TRUSTEE HANDBOOK

MANAGEMENT AGREEMENT

This Agreement made and entered into this the (#) day of (month), 200X, by and between

(name of Trust), an Express Trust Organization, located at (address) hereafter referred to as the

“Manager”, and (name of Trust), an Express Trust Organization located at (address) subscribing

this Agreement, at the end hereof, hereafter referred to as the “Client”.

WITNESSETH:

Whereas, the Client is in the business of providing particularly described in Paragraph 1

below, which business the Client wishes to have managed for limited periods of time, and

whereas, the Manager is in the business of providing management services and is willing to

provide such services for the Client upon the terms and conditions hereinafter set forth.

Now therefore, in consideration of the foregoing and in consideration of the covenants

hereinafter set forth, it is agreed by and between the Manager and the Client as follows:

1.

Services: The Client hereby appoints the Manager to be the day by day manager

with respect to any or all of the aforementioned business, property, or articles listed and more

particularly described below: (refer to Sample 3 for format of listing particularities).

2.

Procedure: The Client may transfer all titles, interest, deeds, mortgages, leases or

agreements to the Manager for a period no longer than ten (10) years. Ninety (90) days prior to

the expiration date regarding this Agreement, the parties may agree to extend this Agreement for

another ten (10) years. This agreement may not be extended more than three (3) times.

3.

Duration and Termination: For good cause such as death, sale, or disposition of

any or all of the articles listed in paragraph one, and/or any emergency or crises which may

affect the financial status of the Client, this Agreement may be terminated by either party at any

time with sixty (60) days prior written notice to the other. In the event written notice of

termination is provided, the Manager shall make changes only with the consent of the Client.

Termination of this Agreement shall in no way affect or preclude the consummation of any

transaction which was initiated prior to such termination. All properties and articles described in

Paragraph 1 shall be promptly delivered to the Client, Guardian, Heir(s), Executor, or Personal

Representative after termination, with reasonable delay allowed for recordation of titles, deed

mortgages, or leases.

4.

Powers, Acts, and Omissions of the Manger: In connection with the rendering of

services to the Client as provided herein, the Manager acknowledges with this Agreement to

undertake and effect transactions on behalf of and at the risk of the Client in such a manner as

the Manager deems advisable with prior notice and approval by the Client.

5.

Managing Fees: The Client shall pay the Manager a monthly management fee of

(written amount) (numeric amount in parenthesis) dollars per month. This fee is payable upon

Sample Basic Management Agreement — Page 1 of 2



WEISS’S CONCISE TRUSTEE HANDBOOK

the acceptance of this Agreement and payable each month thereafter. All checks must be made

payable to: (state name).

Should this Agreement be terminated any time prior to the “fee is due” date, there shall

be no credit allowed for the remaining days nor shall the Client receive a refund.

6.

Further Privacy Provisions: This Agreement and all of the trust business shall be

kept protected by the common law privacy rights available in every applicable jurisdiction. The

penalty for the release of any information pursuant to the material contained with the context of

this Agreement or any related material, such person or persons shall be fined or made party of a

tort action in the amount of not less than Three Hundred Thousand ($300,000.00) dollars.

7.

Liability: The Client in no way relinquishes ownership of his businesses or

property(ies). The Manager may not convert any of the property(ies) held in the trust without

the Client’s written consent. The Manager may not be held liable for any actions which he may

perform in his capacity as Manager unless the Manager has been found by a court of competent

jurisdiction to have acted outside his scope of employment, or that he has acted in bad faith in

discharging the duties of this Agreement.

8.

Effective Date, Assignment, Governing Law: This Agreement shall constitute a

binding agreement upon its acceptance by the Manager provided, however, that the Client may

rescind this Agreement without penalty within five (5) business days after the execution date set

forth below. This Agreement may not be assigned by either party without the other party’s

written consent. This Agreement shall constitute a contract entered into and governed by the

laws of (name of state) and shall be binding upon the successors and assignees of the parties

thereto.

This Agreement made and executed by the Manger and Client this (#) day of (month),

200X.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Client

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Manager

Sample Basic Management Agreement — Page 2 of 2

WEISS’S CONCISE TRUSTEE HANDBOOK

BILL OF SALE

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John W. Doe, an individual, referred to as "SELLER", sells, bargains and conveys all of

SELLER'S right, title and interest in:

1

Make: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Model: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Style of the vehicle: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Year of vehicle: \_\_\_\_\_\_\_\_\_\_

VIN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

to ABC123 Training Group, an Express Trust Organization, referred to as "BUYER".

SELLER

acknowledges

receipt

of

a

total

of

$

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_&\_\_\_\_\_/100 Dollars) from BUYER in full

payment of the purchase price of the goods conveyed hereby. SELLER warrants that there are no

liens or encumbrances on the goods sold, and that SELLER's title to the goods is clear and

merchantable. SELLER shall defend BUYER from any adverse claims to SELLER's title to the

goods sold.

The goods herein are not sold by a merchant in the field. THESE GOODS ARE SOLD

WITHOUT UCC WARRANTY OF ANY KIND, including MERCHANTABILITY AND

FITNESS FOR A PARTICULAR PURPOSE. BUYER acknowledges examining the goods sold

herein. This provision may not be applicable, and legal rights may vary between states.

The parties agree to the terms and conditions stated herein:

SELLER:

BUYER:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Representative

I/We, Jane A. Doe and Susan Q. Public, as Beneficiaries of BUYER, do hereby consent, freely, willfully,

intelligently, independently, and without undue influence of Seller or Authorized Representative, to the

transaction contemplated in this bill of sale on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 200X.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Jane A. Doe

Susan Q. Public

1

This form can be modified for any transfers of property from trustee to trust or vise versa simply by altering the

description of the property sold. This document should always be completed in conjunction with purchase

agreement in support.

Sample Bill of Sale



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 1

1

BOND

I/We, John W. Doe and John Q. Public, Board of Trustees in behalf of ABC123

Training Group, an Express Trust Organization of in care of 1234 Number St., Cleveland,

Ohio, near [98765], acknowledge the Organization’s indebtedness to \_\_\_\_\_\_\_\_, of

\_\_\_\_\_\_\_\_[address], \_\_\_\_\_\_\_\_[city], \_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_[state], of $750,000.00, lawful

money of the United States, to be paid to \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_[his or her] legal representatives,

successors, or assigns on or before \_\_\_\_\_\_\_\_[date], with interest at the rate of %\_\_\_\_\_\_\_\_ per

annum from this date, payable at maturity, for which payment I bind myself and my legal

representatives and successors.

I/We, the Board of Trustees, have caused this agreement to be executed at

\_\_\_\_\_\_\_\_[place of execution] on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 200X.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John W. Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)ss.

County of \_\_\_\_\_\_\_\_\_\_\_\_ )

On this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 200X A.D., before me, a Notary Public, came John W. Doe and John

Q. Public (Board of Trustees), and acknowledged the signing thereof to be his voluntary act and deed. IN

TESTIMONY WHEREOF, I hereunto subscribe my name and affix my notarial seal on the day and date aforesaid.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Notary Public

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(stamp)

(seal)

1

Use this form for general bond, as for property purchased on the private credit of the trust, a general

acknowledgment of indebtedness to a single entity.

Sample Bonds — Sample 1



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 2

2

BOND

I/We, John W. Doe and John Q. Public, Board of Trustees in behalf of ABC123

Training Group, an Express Trust Organization of in care of 1234 Number St., Cleveland,

Ohio, near [98765], acknowledge that the Organization is firmly bound to \_\_\_\_\_\_\_\_[obligee], of

\_\_\_\_\_\_\_\_[address], \_\_\_\_\_\_\_\_[city], \_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_[state], for $\_\_\_\_\_\_\_\_ together

with interest at the rate of %\_\_\_\_\_\_\_\_ per annum commencing \_\_\_\_\_\_\_\_[date], to be paid on

\_\_\_\_\_\_\_\_[date], which sum represents the aggregate of sums advanced to me by

\_\_\_\_\_\_\_\_[obligee] as well as drafts, bills, and promissory notes drawn by me and paid by

\_\_\_\_\_\_\_\_[obligee], for which payment I/we bind the Organization, its assignees, firmly by this

instrument.

I/We, the Board of Trustee, have caused this agreement to be executed at \_\_\_\_\_\_\_\_[place

of execution] on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 200X.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John W. Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)ss.

County of \_\_\_\_\_\_\_\_\_\_\_\_ )

On this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 200X A.D., before me, a Notary Public, came John W. Doe and John

Q. Public (Board of Trustees), and acknowledged the signing thereof to be his voluntary act and deed. IN

TESTIMONY WHEREOF, I hereunto subscribe my name and affix my notarial seal on the day and date aforesaid.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Notary Public

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(stamp)

(seal)

2

Use this form for sums advanced to the trust.

Sample Bonds — Sample 2



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 3

3

BOND

ABC123 Training Group, an Express Trust Organization in care of 1234 Number St.,

Cleveland, Ohio, near [98765], ("principal"), and \_\_\_\_\_\_\_\_, a corporation organized and

existing under the laws of \_\_\_\_\_\_\_\_[state], with its principal office located at

\_\_\_\_\_\_\_\_[address], \_\_\_\_\_\_\_\_[city], \_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_[state], and qualified and

authorized to transact a surety business in \_\_\_\_\_\_\_\_[state] ("surety"), are indebted to

\_\_\_\_\_\_\_\_[obligee], of \_\_\_\_\_\_\_\_[address], \_\_\_\_\_\_\_\_[city], \_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_[state],

in the sum of $\_\_\_\_\_\_\_\_, for the payment of which principal and surety bind ourselves and our

legal representatives and successors, jointly and severally.

The condition of the obligation of this bond is that:

1. Principal and \_\_\_\_\_\_\_\_[obligee] are the parties to a contract, a copy of which is

attached, under the provisions of which principal has agreed to \_\_\_\_\_\_\_\_[set forth contractual

obligations of principal].

2. If principal complies in all respects with all terms and conditions of the attached

contract, and performs all acts by \_\_\_\_\_\_\_\_[him or her] to be performed under the contract, and

within the time limits set forth, then this obligation shall be void; otherwise it shall remain in full

force and effect.

Premium: $\_\_\_\_\_\_\_\_.

Each party to this bond has caused it to be executed at \_\_\_\_\_\_\_\_[place of execution] on

this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 200X.

PRINCIPAL:

SURETY:

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John W. Doe, Trustee

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)ss.

County of \_\_\_\_\_\_\_\_\_\_\_\_ )

John W. Doe and John Q. Public, Board of Trustees for ABC123 Training Group (Principal) and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Surety) personally appeared before me and acknowledged the execution thereof to be his

voluntary act and deed.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Notary Public

3

Use this form for bond against non-performance of contract.

Sample Bonds — Sample 3



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 4

4

BOND

ABC123 Training Group, an Express Trust Organization in care of 1234 Number St.,

Cleveland, Ohio, near [98765], ("principal"), and \_\_\_\_\_\_\_\_, a corporation organized and

existing under the laws of \_\_\_\_\_\_\_\_[state], with its principal office located at

\_\_\_\_\_\_\_\_[address], \_\_\_\_\_\_\_\_[city], \_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_[state], and qualified and

authorized to transact a surety business in \_\_\_\_\_\_\_\_[state] ("surety"), are indebted to \_\_\_\_\_\_\_\_,

of \_\_\_\_\_\_\_\_[address], \_\_\_\_\_\_\_\_[city], \_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_[state] ("obligee"), for

$\_\_\_\_\_\_\_\_, to be paid to obligee or obligee's legal representatives, successors, or assigns, for

which payment principal and surety do bind ourselves and our legal representatives and

successors, jointly and severally.

The condition of the obligation of this bond is that:

1. Principal has agreed in writing to convey to \_\_\_\_\_\_\_\_, the above-named obligee, good

title in fee simple by warranty deed in and to real property situated in \_\_\_\_\_\_\_\_ County,

\_\_\_\_\_\_\_\_[state], and more particularly described as follows: \_\_\_\_\_\_\_\_[legal description],

subject, however, to the following: \_\_\_\_\_\_\_\_[set forth all liens, encumbrances, and title defects

excepted from warranty of title].

2. If principal, on or before \_\_\_\_\_\_\_\_[date], or such later date as obligee may specify,

shall execute and deliver to obligee or to obligee's nominee a good and sufficient deed conveying

the described real property, accompanied by assurance of title in fee simple, subject only to the

liens, encumbrances, and defects set forth above, \_\_\_\_\_\_\_\_[by title policy issued by \_\_\_\_\_\_\_\_

Title Company of \_\_\_\_\_\_\_\_(address) in the face amount of $\_\_\_\_\_\_\_\_ or as the case may be],

then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The premium for which this bond is executed is $\_\_\_\_\_\_\_\_.

Each party to this bond has caused it to be executed at \_\_\_\_\_\_\_\_[place of execution] on

this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 200X.

PRINCIPAL:

SURETY:

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John W. Doe, Trustee

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)ss.

County of \_\_\_\_\_\_\_\_\_\_\_\_ )

John W. Doe and John Q. Public, Board of Trustees for ABC123 Training Group (Principal) and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Surety) personally appeared before me and acknowledged the execution thereof to be his

voluntary act and deed.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Notary Public

4

Use this form for a conveyance of real property.

Sample Bonds — Sample 4



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 5

5

BOND

ABC123 Training Group, an Express Trust Organization in care of 1234 Number St.,

Cleveland, Ohio, near [98765], ("principal"), and \_\_\_\_\_\_\_\_, of \_\_\_\_\_\_\_\_[ address],

\_\_\_\_\_\_\_\_[city], \_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_[state] ("surety"), acknowledge our indebtedness to

\_\_\_\_\_\_\_\_[obligee], of \_\_\_\_\_\_\_\_[address], \_\_\_\_\_\_\_\_[city], \_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_[state],

in the sum of $\_\_\_\_\_\_\_\_, for which payment, well and truly to be made, principal and surety do

bind ourselves and our legal representatives and successors, jointly and severally.

The condition of the obligation of this bond is that if principal shall indemnify obligee,

obligee's legal representatives, successors, and assigns, against any and all loss or damage that

may be caused or occasioned by, or that may arise from \_\_\_\_\_\_\_\_[set forth risk or risks for

which indemnity given], and against all liability whatsoever accruing or resulting from such loss

or damage, then this obligation shall be void; otherwise it shall remain in full force and effect.

Each party to this bond has caused it to be executed at \_\_\_\_\_\_\_\_[place of execution] on

this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 200X.

PRINCIPAL:

SURETY:

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John W. Doe, Trustee

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)ss.

County of \_\_\_\_\_\_\_\_\_\_\_\_ )

John W. Doe and John Q. Public, Board of Trustees for ABC123 Training Group (Principal) and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Surety) personally appeared before me and acknowledged the execution thereof to be his

voluntary act and deed.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Notary Public

5

Use this form for indemnification of an obligee for a risk involved in a business venture, transaction, etc.

Sample Bonds — Sample 5



WEISS’S CONCISE TRUSTEE HANDBOOK

PROPOSAL TO EXCHANGE PROPERTY

To: (name of trustee(s))

Board of Trustees of (name of Trust),

an Express Trust Organization.

(Address)

From: John Q. Public, Exchanger

(Address)

Re:

Exchange of (brief identification of property) for Capital Interest in the Organization

1

(Date)

Dear Sir/Madame:

After considering the benefit of transferring property into your organization, I have

decided that an exchange of my property for Capital Interest holds a promise of attractive future

benefits. This offer is, therefore, submitted for your consideration. I hereby propose to exchange

the property described below for Capital Interest.

Further, it is understood that such an exchange would be neither a gift, nor a sale, but an

exchange. If this meets with your approval, please reply.

Description of Property:

[set forth detailed description]

Existing Liens against the property, if any:

None.

Please respond at your earliest convenience. Thank you.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Exchanger

1

Or set forth what the property is to be exchange for.

Sample Exchange Proposal



**SS-4**

Applic a t ion for Employe r Ide nt ific a t ion Numbe r

Form

**EIN**

**(For use by employers, corporations, partnerships, trusts, estates, churches,**

**government agencies, India n tribal entities, certain individua ls , and others.)**

(Rev. December 2001)

Department of the Treasury

Internal Revenue Service

OMB No. 1545-0003

ᮣ

**See separate instructions for each line .**

ᮣ **Keep a copy for your records.**

**1**

Legal name of entity (or ind ivid ua l) for whom the EIN is being requested

**ABC123 Training Group**

**2**

Trade name of business (if different from name on line 1)

**3**

Executor, trustee, “care of” name

**John W. Doe, Trustee**

**4a** Mailing address (room, apt., suite no. and street, or P.O. box) **5a** Street address (if different) (Do not enter a P.O. box.)

**c/o 1234 N. Number Street, #567**

**4b** City, state, and ZIP code

**5b** City, state, and ZIP code

**Cleveland, Ohio 98765**

**6**

County and state where principal business is located

**7a** Name of principal officer, general partner, grantor, owner, or trustor

**7b** SSN, ITIN, or EIN

**n/a**

**n/a**

**8a Type of entity** (check only one box)

Sole proprietor (SSN)

Estate (SSN of decedent)

Plan administrator (SSN)

Trust (SSN of grantor)

National Guard

Partnership

Corporation (enter form number to be filed) ᮣ

Personal service corp.

State/local government

Farmers’ cooperative

Federal government/military

Church or church-controlled organization

REMIC

Indian tribal governments/enterprises

Other nonprofit organization (s pecify) ᮣ

Group Exemption Number (GEN) ᮣ

✔ Other (s pecify) ᮣ **Trust Organization**

**8b** If a corporation, name the state or foreign country State

Foreign country

(if applicable) where incorporated

**to open a bank account**

**9**

**Reason for applying** (check only one box)

Started new business (s pecify type)

✔

Banking purpose (s pecify purpose) ᮣ

ᮣ

Changed type of organization (s pecify new type)

Purchased going business

ᮣ

Hired employees (Check the box and see line 12.)

Compliance with IRS withholding regulations

Created a trust (s pecify type)

Created a pension plan (s pecify type)

ᮣ

ᮣ

Other (s pecify)

Date business started or acquired (month, day, year)

ᮣ

**10**

**12**

**11** Clos ing month of accounting year

First date wages or annuities were paid or will be paid (month, day, ye a r). **Note:** *If applicant is a withholding agent, enter date income will*

*first be paid to nonresident alie n. (month, day, year)*

ᮣ

Agricultural

Household

Other

**13**

**14**

Highest number of employees expected in the next 12 months. **Note:** *If the applicant does not*

*expect to have any employees during the period, enter “-0-.”*

ᮣ

Check **one** box that best describes the principal activity of your business.

Health care &social assistance

Accommodation &food service

Other (specify)

Wholesale–agent/broker

Wholesale–other

Construction

Real estate

Rental & leasing

Manufacturing

Transportation &warehousing

Finance &insurance

Retail

**15**

Indicate principal line of merchandise sold; s pecific construction work done; products produced; or services provided.

**16a** Has the applicant ever applied for an employer id e ntific a tion number for this or any other business?

**Note:** *If “Yes,” please complete line s 16b and 16c.*

**Yes**

✔

**No**

**16b** If you checked “Yes ” on line 16a, give applicant’s legal name and trade name shown on prior application if different from line 1 or 2 above.

Legal name Trade name

**16c** Approximate date when, and city and state where, the application was file d . Enter previous employer id e ntific a tion number if known.

ᮣ

ᮣ

Approximate date when filed (mo., day, year)

City and state where filed

Previous EIN

.

.

.

.

Complete this section **only** if you want to authorize the named individual to receive the entity’s EIN and answer questions about the completion of this form.

**Third**

Designee’s name

Designee’s telephone number (include area code)

**Party**

**Des ignee**

**Jim A. Dean, Authorized Representative**

Address and ZIP code

( **123** ) **456-7890**

Designee’s fax number (include area code)

**4567 S. Letter Street, #890, Cleveland, Ohio 98765**

( **098** ) **765-4321**

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.

Applicant’s telephone number (include area code)

( **123** ) **456-7890**

Name and title (type or print clearly)

ᮣ

Applicant’s fax number (include area code)

( **098** ) **765-4321**

Signature

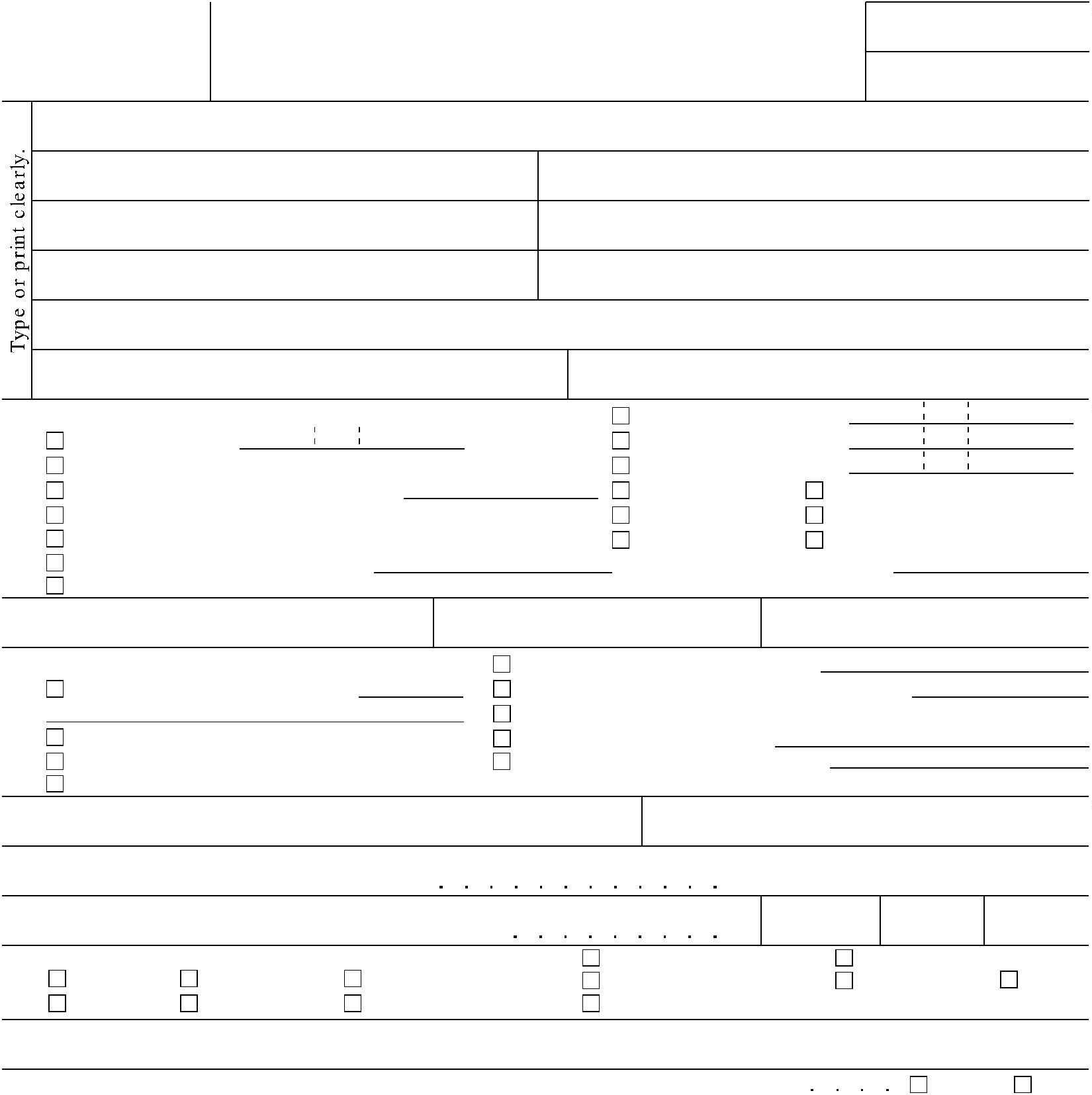
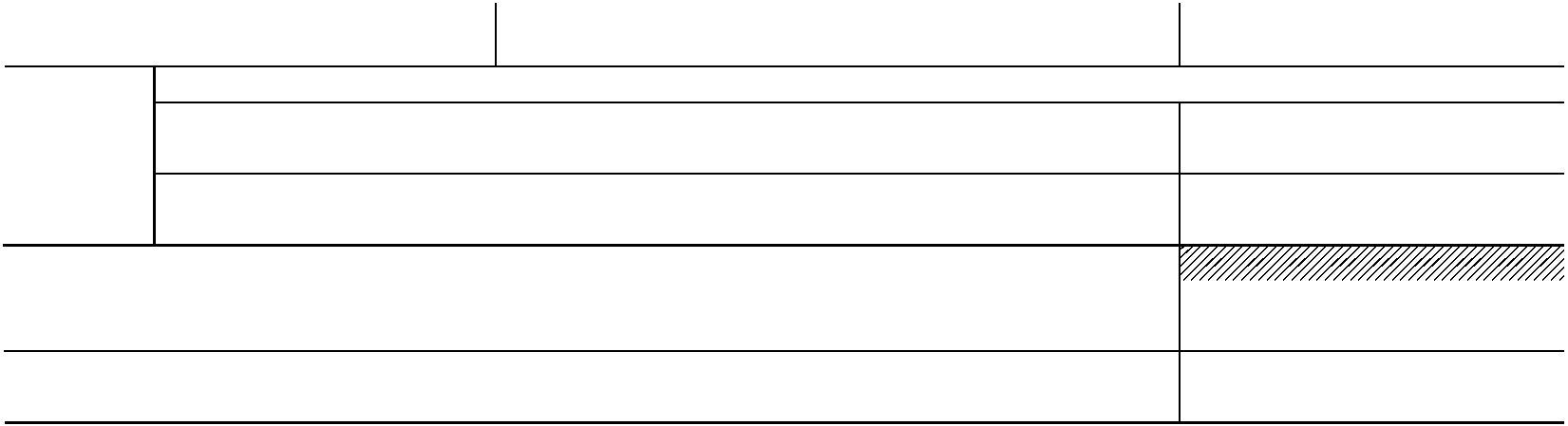
ᮣ

Date ᮣ

**For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.**

Cat. No. 16055N

Form **SS-4** (Rev. 12-2001)



**SS-4**

Applic a t ion for Employe r Ide nt ific a t ion Numbe r

Form

**EIN**

**(For use by employers, corporations, partnerships, trusts, estates, churches,**

**government agencies, India n tribal entities, certain individua ls , and others.)**

(Rev. December 2001)

Department of the Treasury

Internal Revenue Service

OMB No. 1545-0003

ᮣ

**See separate instructions for each line .**

ᮣ **Keep a copy for your records.**

**1**

Legal name of entity (or ind ivid ua l) for whom the EIN is being requested

**2**

Trade name of business (if different from name on line 1) Executor, trustee, “care of” name

**3**

**4a** Mailing address (room, apt., suite no. and street, or P.O. box) **5a** Street address (if different) (Do not enter a P.O. box.)

**4b** City, state, and ZIP code

County and state where principal business is located

**5b** City, state, and ZIP code

**6**

**7a** Name of principal officer, general partner, grantor, owner, or trustor

**7b** SSN, ITIN, or EIN

**8a Type of entity** (check only one box)

Sole proprietor (SSN)

Estate (SSN of decedent)

Plan administrator (SSN)

Trust (SSN of grantor)

National Guard

Partnership

Corporation (enter form number to be filed) ᮣ

Personal service corp.

State/local government

Farmers’ cooperative

Federal government/military

Church or church-controlled organization

Other nonprofit organization (s pecify) ᮣ

REMIC

Indian tribal governments/enterprises

Group Exemption Number (GEN) ᮣ

Other (s pecify)

ᮣ

**8b** If a corporation, name the state or foreign country State

Foreign country

(if applicable) where incorporated

**9**

**Reason for applying** (check only one box)

Started new business (s pecify type)

Banking purpose (s pecify purpose) ᮣ

ᮣ

Changed type of organization (s pecify new type)

Purchased going business

ᮣ

Hired employees (Check the box and see line 12.)

Compliance with IRS withholding regulations

Created a trust (s pecify type)

Created a pension plan (s pecify type)

ᮣ

ᮣ

Other (s pecify)

Date business started or acquired (month, day, year)

ᮣ

**10**

**12**

**11** Clos ing month of accounting year

First date wages or annuities were paid or will be paid (month, day, ye a r). **Note:** *If applicant is a withholding agent, enter date income will*

*first be paid to nonresident alie n. (month, day, year)*

ᮣ

Agricultural

Household

Other

**13**

**14**

Highest number of employees expected in the next 12 months. **Note:** *If the applicant does not*

*expect to have any employees during the period, enter “-0-.”*

ᮣ

Check **one** box that best describes the principal activity of your business.

Health care &social assistance

Accommodation &food service

Other (specify)

Wholesale–agent/broker

Wholesale–other

Construction

Real estate

Rental & leasing

Manufacturing

Transportation &warehousing

Finance &insurance

Retail

**15**

Indicate principal line of merchandise sold; s pecific construction work done; products produced; or services provided.

**16a** Has the applicant ever applied for an employer id e ntific a tion number for this or any other business?

**Note:** *If “Yes,” please complete line s 16b and 16c.*

**Yes**

**No**

**16b** If you checked “Yes ” on line 16a, give applicant’s legal name and trade name shown on prior application if different from line 1 or 2 above.

Legal name Trade name

**16c** Approximate date when, and city and state where, the application was file d . Enter previous employer id e ntific a tion number if known.

ᮣ

ᮣ

Approximate date when filed (mo., day, year)

City and state where filed

Previous EIN

.

.

.

.

Complete this section **only** if you want to authorize the named individual to receive the entity’s EIN and answer questions about the completion of this form.

**Third**

Designee’s name

Designee’s telephone number (include area code)

**Party**

(

)

**Des ignee**

Designee’s fax number (include area code)

Address and ZIP code

(

)

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.

Applicant’s telephone number (include area code)

(

)

Name and title (type or print clearly)

ᮣ

Applicant’s fax number (include area code)

(

)

Signature

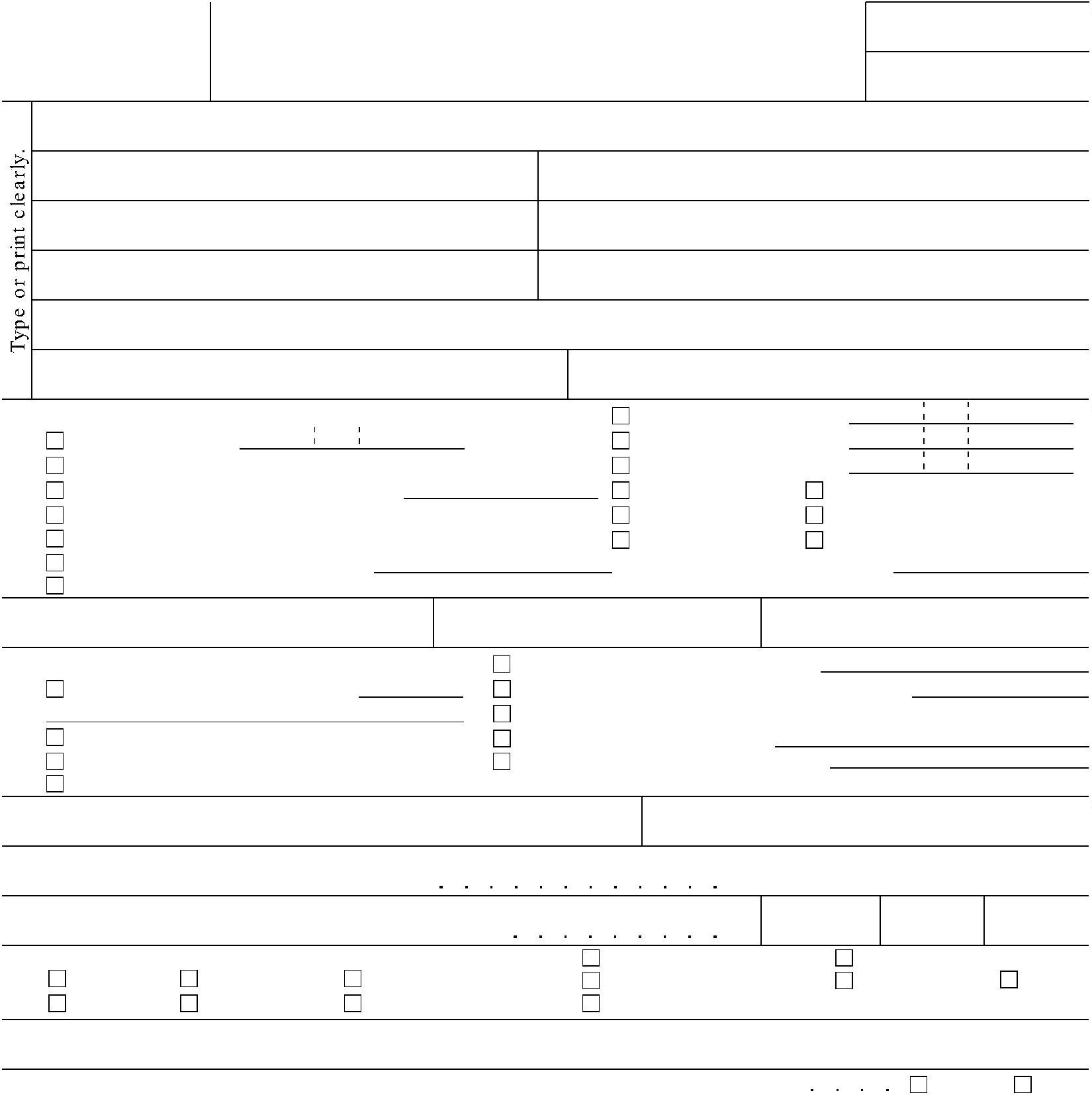
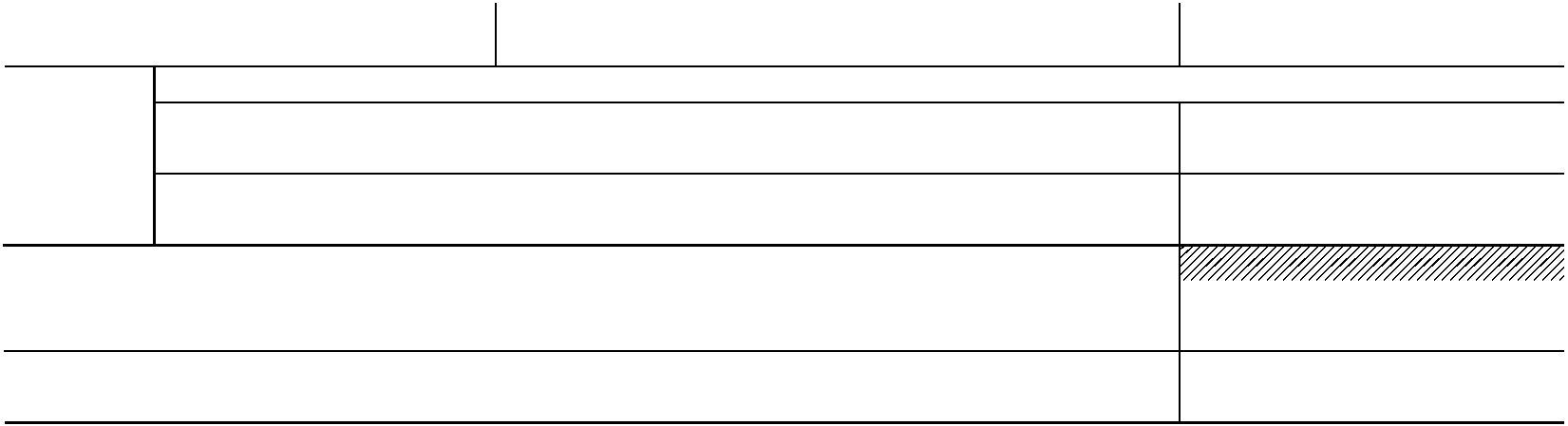
ᮣ

Date ᮣ

**For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.**

Cat. No. 16055N

Form **SS-4** (Rev. 12-2001)



Page

**2**

Form SS-4 (Rev. 12-2001)

**Do I Need an EIN?**

File Form SS-4 if the applicant entity does not already have an EIN but is re quired to show an EIN on any

return, statement, or other document.1 **See also the separate instructions for each line on Form SS-4.**

**IF the applicant...**

**AND...**

**THEN...**

Started a new business

Does not currently have (nor expect to have)

employees

Complete line s 1, 2, 4a–6, 8a, and 9–16c.

Hired (or will hire )

employees, inc lud ing

household employees

Does not already have an EIN

Complete line s 1, 2, 4a–6, 7a–b (if applicable),

8a, 8b (if applicable), and 9–16c.

Opened a bank account

Needs an EIN for banking purposes only

Complete line s 1–5b, 7a–b (if applicable), 8a,

9, and 16a–c.

Changed type of

organization

Either the legal character of the organization

or its ownership changed (e .g., you

incorporate a sole proprietors hip or form a

partne rs hip)2

Complete line s 1–16c (as applicable).

Purchased a going

business3

Does not already have an EIN

Complete line s 1–16c (as applicable).

Complete line s 1–16c (as applicable).

Complete line s 1, 2, 4a–6, 8a, 9, and 16a–c.

Created a trust

The trust is other than a grantor trust or an

IRA trust4

Created a pension plan as

a plan administrator5

Needs an EIN for reporting purposes

Is a fore ign person needing

an EIN to comply with IRS

withholding regulations

Needs an EIN to complete a Form W-8 (othe r

than Form W-8ECI), a void withholding on

p o rtfo lio assets, or claim tax treaty benefits6

Complete line s 1–5b, 7a–b (SSN or ITIN

op tiona l), 8a–9, and 16a–c.

Is adminis tering an estate

Needs an EIN to report estate income on

Form 1041

Complete line s 1, 3, 4a–b, 8a, 9, and 16a–c.

Is a withholding agent for

taxes on non-wage income

paid to an alien (i.e .,

ind ivid ua l, corporation, or

partnership, etc.)

Is an agent, broker, fid uc ia ry, manager, tenant, Complete line s 1, 2, 3 (if applicable), 4a–5b,

or spouse who is required to file **Form 1042,**

Annual Withholding Tax Return for U.S.

Source Income of Foreign Persons

7a–b (if applicable), 8a, 9, and 16a–c.

Is a state or local agency

Serves as a tax reporting agent for public

assistance recipients under Re v. Proc. 80-4,

1980-1 C.B. 5817

Complete line s 1, 2, 4a–5b, 8a, 9, and 16a–c.

Is a single-member LLC

Is an S corporation

Needs an EIN to file **Form 8832,** Clas s ification

Election, for filing employment tax returns, **or** for

state reporting purposes

Complete line s 1–16c (as applicable).

Complete line s 1–16c (as applicable).

8

Needs an EIN to file **Form 2553,** Ele c tion by a

Small Business Corporation9

1

2

For example, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco,

or firearms returns, must have an EIN. **A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club,**

**etc.), or farmers’ cooperative must use an EIN for any tax-related purpose even if the entity does not have employees.**

However, **do not** apply for a new EIN if the existing entity only **(a)** changed its business name, **(b)** elected on Form 8832 to change the way it is taxed (or is

covered by the default rules), or **(c)** terminated its partnership status because at least 50% of the total interests in partnership capital and profits were sold or

exchanged within a 12-month period. (The EIN of the terminated partnership should continue to be used. See Regulations section 301.6109-1(d)(2)(iii).)

3

4

5

6

7

8

9

Do not use the EIN of the prior business unless you became the “owner” of a corporation by acquiring its stock.

However, IRA trusts that are required to file **Form 990-T,** Exempt Organization Business Income Tax Return, must have an EIN.

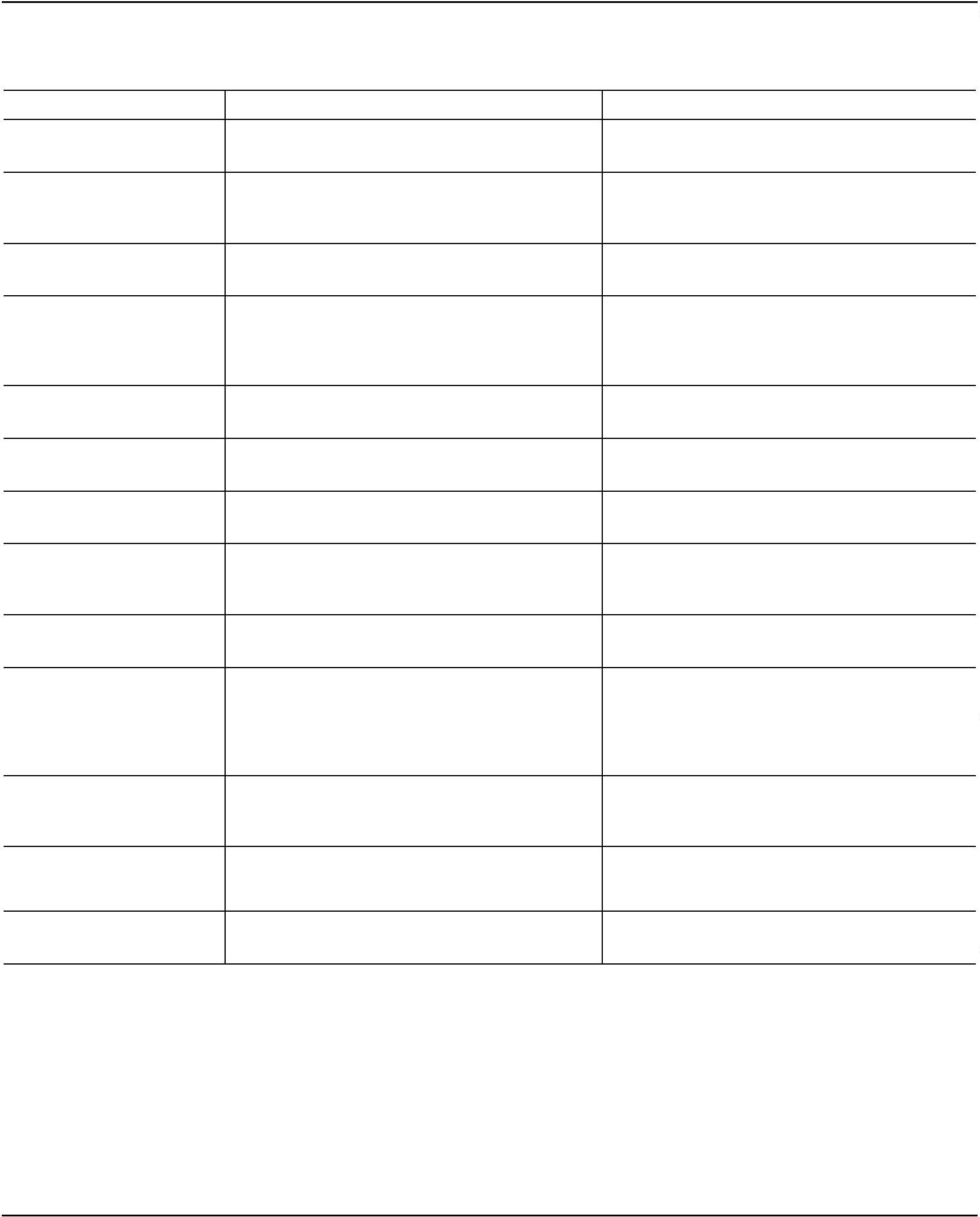
A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.

Entities applying to be a Qualified Intermediary (QI) need a QI-EIN even if they already have an EIN. **See Rev. Proc. 2000-12.**

See also *Household employer* on page 4. (**Note:** State or local agencies may need an EIN for other reasons, e.g., hired employees.)

Most LLCs **do not** need to file Form 8832. See **Limited liability company (LLC)** on page 4 for details on completing Form SS-4 for an LLC.

An existing corporation that is electing or revoking S corporation status should use its previously-assigned EIN.



WEISS’S CONCISE TRUSTEE HANDBOOK

PROPOSAL TO LEASE EQUIPMENT

To: (name of Trustee)

Trustee of (name of Trust),

an Express Trust Organization.

(Address)

From: (name of Trust)

(Address)

(Date)

Dear Trustee:

Having a need for office equipment, furniture, medical equipment, and the like, I herein

propose to lease office space and (list of items) property from your Trust to (name of Trust)

business.

In consideration, I would consider paying an annual lease payment to your Trust for an

amount agreed upon by written lease agreement.

Please respond at your earliest convenience.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lessor

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Trustee or Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

Sample Lease Proposal



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 1

Trustee Minutes

Successor Trustee(s)

1

At this meeting, the Board of Trustees of (Name of Trust), held in (city/state2) on

the (day) of (month, 200X).

1. The first item of business is the Appointment of Successor Trustees for

(name of Trust) Trust Organization. The names of (person’s name) and (2nd person if

desired) were entered as nominees for the successorship.

2.

The Board of Trustees, upon unanimous approval have agreed that

(person’s name) and (2nd person if desired) are duly appointed as Successor Trustee(s)

and will remain as same until their demise, resignation or removal.

3.

It is agreed that the Successor Trustee(s) will sign the independent

contracting agreement and contract with the same terms as entered into by the original

Trustee(s) contained in the Minute Book of this Trust Organization.

4.

Successor Trustee(s).

There being no further business to come before this meeting, on motion duly

made, seconded, and carried, the meeting is adjourned.

All duties in the agreement and contract must be agreed to by the

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

1This format should be used to add Successor Trustees and can be modified for Co-Trustees.

2This should be the city where the meeting was held. It can be the city where the Trustee lives or you can

use the city where the Trustees receive mail.

Sample Minutes of Meetings — Sample 1



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 2

Trustee Meeting

Corrective Action

3

At this meeting, the Board of Trustees of (name of Trust) held in (city/state) on

the (day) of (month, 200X). These minutes while executed this day are effective as of the

(#) day of (month, 200X).

1.

The first item of business is the proposed (enter the proposal) for (name of Trust)

Trust Organization.

2.

The Board of Trustees upon consideration and approval instruct the Trustee to

(enter the order of the Trustees)

3.

Schedule “A”.

(List items to be entered on schedule A)

The Trustee is instructed to place this item onto the inventory of the corpus on

There being no further business to come before this meeting, on motion duly made,

seconded, and carried, the meeting adjourned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

3This format can be used to add or remove assets from the Trust corpus, schedule A.

Sample Minutes of Meetings — Sample 2



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 3

Trustee Meeting

Establishing Outside Investment Funding

At this meeting, the Board of Trustees of (name of Trust) held in (city/state) on

the (day) of (month, 200X).

1. The first item of business is the proposed investment of $XXXXXX with

(name of investment company) for the benefit of this Trust Organization.

2. The Trustees will accept into the trust corpus $XXXXXX from (name of

person contributing the asset) in their personal capacity.

3.

The Authorized Representative is instructed to deposit said funds directly

into (name of investment company) on behalf of this trust and enter the investment into

the corpus records on schedule A.

4.

The Board of Trustees, upon consideration and approval instruct the

Authorized Representative to (describe the action: such as purchase a new air conditioner

with a proposed cost $XXXXXX).

5.

The Authorized Representative is directed to place this investment item

onto the inventory of corpus on Schedule “A”.

The items were considered and passed unanimously, in accordance with the

original Minutes 3, 4, 5, 6, and 7.4 There being no further business to come before this

meeting, on motion duly made, seconded, and carried, the meeting adjourned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

4This allows you to compile Trust Meeting Minutes for bulk consideration by the Trustees. However, if

there was only one item being purchased, you’d only include the Minute Meeting number of that item.

Sample Minutes of Meetings — Sample 3



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 4

Trustee Minutes

Non Real Estate Asset

At this meeting, the Board of Trustees of (name of Trust) held in (city/state) on

the (day) of (month, 200X).

1. The first item of business is the proposed acceptance of (list or describe

the item5) into this Trust Organization.

2.

The Trustees will accept the property into the trust corpus from (name of

person contributing the asset) in their personal capacity.

3.

The Authorized Representative is instructed to enter the description into

the corpus records on Schedule “A”, and prepare a Private Property Bill of Exchange

Contract & Agreement and submit to the trustees for signature.

There being no further business to come before this meeting, on motion duly

made, seconded, and carried, the meeting adjourned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

5

If you intend to list a series of items, modify this example so that the end of the sentence comes after the

list. A sample of the Private Property Bill of Exchange Contract & Agreement has also been included in

this section.

Sample Minutes of Meetings — Sample 4



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 5

Trustee Minutes

Real Estate Assets

At this meeting, the Board of Trustees of (Name of Trust), held in (city/state) on

the (day) of (month, 200X).

1. The first order of business is the authorization for the acceptance of real

property into this Trust Organization.

2.

It is RESOLVED and declared by the Trustees that the Trust Organization

shall accept a deed for real property made out to the name of the Trust for property

located an (street address of property), in the Country of (name of county), in the State of

(name of state). The legal description is as follows: (enter the legal description of the

property).

The deed reflects that the transfer was for $10 and other valuable consideration.

It is RESOLVED and declared by the Trustees that the Organization shall accept

a Quit Claim deed, Grantor deed, or Warranty deed for the title transfer of said real

property and list said property on Schedule “A” of this Organizations Contract of

Indenture. The Authorized Representative is instructed to file said deed with the local

county recorder on behalf of this Organization.

It was resolved and declared by the Trustees that this day’s minutes are to be

made available for disclosure upon request of any party challenging the authority of the

Organization to act in this matter. All items were considered and passed unanimously.

There being no further business to come before this meeting, on motion duly

made, seconded, and carried, the meeting adjourned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

Sample Minutes of Meetings — Sample 5

WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 6

Trustee Minutes

Authorization for Authorized Representative to use a

Trust Asset

At this meeting, the Board of Trustees of (Name of Trust), held in (city/state) on

the (day) of (month, 200X).

1.

The first item of business is the proposed authorization to (describe the

desired action6).

2.

3.

The Trustees accept the proposal identified above.

The Authorized Representative is instructed to (describe the action based

on #1 above7)

There being no further business to come before this meeting, on motion duly

made, seconded, and carried, the meeting adjourned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

6If authorization to use a Trust automobile, then describe it here. Remember to be thorough and include

enough information to identify the item being authorized.

7This is where the Trustees instruct the Authorized Representative to use the Trust automobile in a certain

manner or follow a certain protocol. A single statement is usually sufficient for this portion.

Sample Minutes of Meetings — Sample 6



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 7

Trustee Minutes

Authorization for Authorized Representative to use

specific Trust Assets (Real Estate)

At this meeting, the Board of Trustees of (Name of Trust), held in (city/state) on

the (day) of (month, 200X).

1.

The first item of business is the proposed authorization of a Lease of Real

Property for use by the Authorized Representative.

2.

The Trustees accept a Lease contract in the name of the Authorized

Representative on a month-to-month basis. Said contract is to be funded with

consideration from the Authorized Representative’s existing compensation contract.

3.

The Authorized Representative is instructed to prepare a Lease

Agreement8 and obtain fire/liability insurance naming the Trust as an additional

insured/loss payee and submit the Lease Agreement for execution effective (insert date

the property was titled into the Trust).

4.

The items were considered and passed unanimously, in accordance with

the original Minutes 3, 4, 5, 6, and 7. There being no further business to come before this

meeting, on motion duly made, seconded, and carried, the meeting adjourned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

8A sample of the Lease Agreement has also been included in this section.

Sample Minutes of Meetings — Sample 7



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 8

Trustee Minutes

Authorization for Authorized Representative to Provide

Specific Services

At this meeting, the Board of Trustees of (Name of Trust), held in (city/state) on

the (day) of (month, 200X).

1.

The first item of business is the proposed authorization of (Authorized

Representative’s name and describe services9).

2.

The Trustees further authorize the Authorized Representative listed in

item (1) above to select the appropriate institutions with which to contract or obtain

(describe the services (or reiterate what was described above).

There being no further business to come before this meeting, on motion duly

made, seconded, and carried, the meeting adjourned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

9This format could be used to establish utilities in the name of the Trust. An example would be phone

service, mailbox service, etc. Item (1) would be the Trustees name and the service would be “phone

service,” or “mail service,” etc. You might want to include the location of the service for clarity. Item (2)

would be “phone answering/voice message service,” “PMB 123,” etc. It really can be that simple.

Sample Minutes of Meetings — Sample 8



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 9

Trustee Minutes

Revocation of the Beneficial Interest in Trust

At this meeting, the Board of Trustees of (Name of Trust), held in (city/state) on

the (day) of (month, 200X), with all the Trustees being present, by unanimous accord, the

following was affirmed and ratified, vis:

1.

2.

3.

That, the Trustees revoke the beneficial interest of (name of individual).

That, the Trust retains ownership of said property.

That, the revocable status is no longer valid.

There being no further business to come before this meeting, on motion duly

made, seconded, and carried, the meeting adjourned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

Sample Minutes of Meetings — Sample 9

WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 10

Trustee Minutes

Other Property Exchange – Non-Real Estate Assets

At this meeting, the Board of Trustees of (Name of Trust), held in (city/state) on

the (day) of (month, 200X), with all the Trustees being present, by unanimous accord, the

following was affirmed and ratified, vis:

1.

The Trustees have authorized the Authorized Representative to warehouse

the Trust’s non-Real Estate property wherever the Authorized Representative deems to

be the safest and most convenient location to manage said property.

2.

The Authorized Representative is directed or charged to provide the

Trustees with an updated, itemized inventory on Schedule “A” and any revisions to said

schedule within the Trust Minutes Book.

3.

Minutes accepting non-Real Estate property into the Trust requires Board

of Trustees’ acceptance.

4.

5.

On Schedule “A”, enter – BEGINNING INVENTORY.10

Provide a Private Property Bill-of-Exchange Contract and Agreement to

Trustees for all schedule “A” assets exchanged into the Trust by Exchangers.

There being no further business to come before this meeting, on motion duly

made, seconded, and carried, the meeting adjourned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

10It is recommended that you use computer tracking whenever possible if you have a large inventory list.

Also, you should consider using video/digital records whenever possible for insurance purposes.

Sample Minutes of Meetings — Sample 10



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 11

Appointment of a Trustee

Minutes of Meeting of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_11

(An Irrevocable Express Trust Organization)

Time:

Date:

Persons Present:

Business Discussed:

1.

The Trustee(s) met with (name of person) regarding his appointment as

Trustee the Trust.

2.

After discussion, it was mutually agreed that; (name of person) would

accept the appointment as Trustee by contract.

3.

The following action was taken as a result of that agreement.

A

Contractor Agreement was signed, Letter of Acceptance was signed, and these minutes

were entered into the Trust records.

There being no further business to come before the Officers of the Trust, the

meeting was adjourned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

11Name of Trust.

Sample Minutes of Meetings — Sample 11



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 12

General

Minutes of Meeting of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(An Irrevocable Express Trust Organization)

Time:

Date:

Persons Present:

Business Discussed:

After Discussion it was mutually agreed that: (detail what was agreed to).

There being no further business to come before the Officers of the Trust, the meeting was

adjourned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

Sample Minutes of Meetings — Sample 12



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 13

Office Lease12

Minutes of Meeting of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(An Irrevocable Express Trust Organization)

Time:

Date:

Persons Present:

Business Discussed:

1.

The Trustees met with (name of Authorized Representative) regarding his

proposal to lease office space and equipment from (name of Trust13) for use in his

business.

2.

After discussion, it was mutually agreed that (name of Authorized Representative)

and (name of Trust) agreed that the lease agreement would be satisfactory as outlined in

the attached lease agreement.

3.

The following action was taken as a result of that agreement. A Leasing

Agreement was signed14, the Proposal Letter was filed, and these minutes were filed in

the Trust records reflecting the action taken.

There being no further business to come before the Officers of the Trust, the meeting was

adjourned.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Other Trust Officer15

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

12This format is used when one Trust is leasing to a second Trust, but it can be modified for other entities.

13The name of the Trust that is being leased from, goes here.

14A sample of this document has also been included in this section.

15This might appear confusing because, as Trustee, you may be the Trustee of both Trusts involved in the

leasing arrangement. The trustee may delegate the power to an authorized representative to sign for the

Lessee. This method is used to create a throwaway Trust and further minimize liability of the Lessee Trust.

Sample Minutes of Meetings — Sample 13



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 14

Trustee Resignation

Minutes of Meeting of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(An Irrevocable Express Trust Organization)

To Whom It May Concern:

Regarding the Resignation of (name of person), from the Board of Trustees, of

(name of Trust), an Irrevocable Express Trust Organization created on (day) of (month,

200X).

The undersigned herein confirms that he/she has resigned from the Board of

Trustees of said Trust Organization effective on the date shown below.

The Co-Trustee, (name of person), is herein notified of this resignation, and shall

appoint the next Successor Trustee, as may be named in the Trust Organization

Schedules Book. The Successor Trustee shall immediately, upon acceptance of his/her

appointment, become a full member of the Board of Trustees of said Trust Organization

and be fully empowered to exercise all the powers and authorities granted to the Trustees

under the Contract and Declaration of Trust.

Witness our hand this (#) day of (month), 200X.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Resigning Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

Sample Minutes of Meetings — Sample 14



WEISS’S CONCISE TRUSTEE HANDBOOK

Sample 15

Hiring of Treasurer16

Minutes of Meeting of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(An Irrevocable Express Trust Organization)

To Whom It May Concern:

Regarding the hiring of a Company Treasure.

The undersigned Trustee, acting within the powers and authorities granted by the

Board of Trustees, took the following action.

1.

The Trustee, having determined there was need for additional staff to help

with company bookkeeping, accounting, and day-to-day business, appointed (name of

person17) to serve as Company Treasurer.

2.

Further, it was determined that the above named individual shall be paid

from Company funds according to the terms of a contract to be negotiated and executed

between the Trustee and said individual/firm

There being no more business to come before the Trustee at this time, the

Executive Secretary18 was instructed to enter a record of this action in the company

Minute Book.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Wayne Doe, Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Q. Public, Trustee

Treasurer’s Acceptance

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ do understand the duties, powers and limitations of the

Treasurer and do hereby accept this appointment as Treasurer of the above named Trust

on this (#) day of (month, 200X)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Treasurer

16This form can be modified to appoint/hire any other officer as well.

17The name inserted here could be an individual, another trust, or a firm.

18As you can see, this format presumes that an Executive Secretary has been hired to handle the Trust’s

Records. This paragraph can be modified if there is no Executive Secretary.

Sample Minutes of Meetings — Sample 15



WEISS’S CONCISE TRUSTEE HANDBOOK

Public Record Notice

When recorded, return to:

(Address)

File #:

MOTOR VEHICLE PROPERTY LEASE

CONTRACT & AGREEMENT

This contract is dated this (#) day of (month), 200X, by and between (name of Trust) of

(Trust address), hereafter known as “Lessor” and (name of Trust) of (Trust address), hereafter

known as “Lessee”.

The Lessor and Lessee reserve all rights to the Course of the Common Law, without

prejudice, and come together this date in this two party contractual relationship to lease the

following described property. The Lessor does hereby lease to the Lessee the following

described Motor Vehicle with the appurtenances, situated in the State of (name of State).

Property Description

Vehicle Identification Number (VIN): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Vehicle Make: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Model: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Color: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

It is agreed that the lease shall be month-to-month beginning the (#) day of (month),

200X. It is agreed that the lease shall be ($XXXXX) dollars, payable in advance on the (#) day,

of each month, during the term of this lease. It is further agreed that [state additional terms for

payment of lease].

Acknowledgments: The Lessor and Lessee agree and accept the terms and conditions.

Signed this (#) day of (month), 200X Signed this (#) day of (month), 200X

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Lessor) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Lessee)

All rights Reserved to the course of

Common Law, Without Prejudice

All rights Reserved to the course of

Common Law, Without Prejudice

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

by:

Title

by:

Title

Sample Motor Vehicle Lease Agreement — Page 1 of 2



WEISS’S CONCISE TRUSTEE HANDBOOK

State of \_\_\_\_\_\_\_\_\_\_\_ )

)ss.

State of \_\_\_\_\_\_\_\_\_\_\_ )

)ss.

Country of \_\_\_\_\_\_\_\_ )

Country of \_\_\_\_\_\_\_\_ )

Then personally appeared before me

on this (#) day of (month), 200X,

Then personally appeared before me

on this (#) day of (month), 200X,

(name of person) (for) the Lessor, known (name of person) (for) the Lessor, known

to be the person who acknowledged the

foregoing document as a free act

and deed.

to be the person who acknowledged the

foregoing document as a free act

and deed.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public Commission Expires

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public Commission Expires

Sample Motor Vehicle Lease Agreement — Page 2 of 2

WEISS’S CONCISE TRUSTEE HANDBOOK

NOTICE OF ASSIGNMENT

AND INSTRUCTIONS FOR PAYMENT

To: XYZ Corp.

(Address)

From: ABC123 Training Group

A Trust Organization

(Address)

(Date)

Dear Sir/Madame:

PLEASE TAKE NOTICE that for value received the undersigned John W. Doe

(individually or collectively, as the case may be, referred to hereafter as “Assignor”) has

assigned and transferred to ABC123 Training Group, a Trust Organization, its successors and

assigns (“Assignee”), Assignor’s [set forth object assigned, e.g., salary from his employment as

Chief Financial Officer of your corporation], together with presently unspecified additional

amounts as may be added through additional transfers or as the result of Assignor’s default

(collectively, the “Assignment Amount”). Any increase in the Assignment Amount above the

specific amount set forth in the attached assignment shall be deemed effective as of the date of

this notice.

Please contact ABC123 Training Group at (123) 456-7890 to obtain the most current

Assignment Amount.

Payment of the Assignment Amount shall be made directly to ABC123 Training Group at

1234 N. Number Street, Suite 567, Cleveland, Ohio 98765, or as otherwise instructed in writing

by ABC123 Training Group. No payment shall be made to Assignor unless and until the

Assignment Amount is paid in full.

A receipt signed by ABC123 Training Group shall have the same force and effect as a

receipt signed by Assignor personally.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John W. Doe, Assignor

Attachment:

Assignment

Sample Notice of Assignment and Instructions for Payment



WEISS’S CONCISE TRUSTEE HANDBOOK

PRIVATE PROPERTY BILL OF EXCHANGE

CONTRACT & AGREEMENT

This contract is dated this (#) day of (month), 200X, and is between, (name of Trust),

hereafter known as “Party of the First Part”, and (name of Trust), hereafter known as “Party of

the Second Part”.

The Parties named herein reserve all rights to the Course of the Common Law, without

prejudice, and come together, this date, in this two party contractual relationship to transfer

complete, absolute ownership and control, in allodium, over the following described property.

Property Description

See Attached Itemized Inventory List

The Party of the First Part warrants that he/she has full and absolute ownership rights,

and rights of control of said described property and that the property is free of liens and

encumbrances by this unconditional Property Bill of Exchange – Contract and Agreement.

The Party of the Second Part offers Twenty-one (21) Silver Dollars, plus trust Units of

Beneficial Interest, of undetermined value, in exchange for the acquisition of all absolute

ownership and control at-law, of the above, described property, on the condition that it is free

from liens and encumbrances.

The Party of the First Part accepts the tendered offer at-law of the above trade on Party of

the Second Parts condition, warranting that the liens and/or encumbrances have been

extinguished on/or about the (#) of (month), 200X.

The Party of the First Part now delivers, by this instrument, the above described property

to the Party of the Second Part, and the Party of the First Part acknowledges receipt twenty-one

(21) Silver Dollars, plus Units of Beneficial Interest of undetermined value in exchange from the

Party of the Second Part for the absolute ownership and control at-law, of the above described

property.

This Bill of Exchange/Contract and Agreement serves as a public notice to all, that the

Parties named herein are functioning by the Course of Common Law by exercising full and

complete rights of absolute ownership and control over property exchanged. All rights are

reserved to the Course of Common Law, non are waived without prejudice.

Acknowledgments: Both parties agree and accept the terms and conditions.

Signed this (#) day of (month), 200X Signed this (#) day of (month), 200X

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(First)

All rights Reserved to the course of

Common Law, Without Prejudice.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Second)

All rights Reserved to the course of

Common Law, Without Prejudice

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

by:

Title

by:

Title

Sample Private Property Bill of Exchange Contract — Page 1 of 2



WEISS’S CONCISE TRUSTEE HANDBOOK

State of \_\_\_\_\_\_\_\_\_\_\_ )

)ss.

State of \_\_\_\_\_\_\_\_\_\_\_ )

)ss.

Country of \_\_\_\_\_\_\_\_ )

Country of \_\_\_\_\_\_\_\_ )

Then personally appeared before me

on this (#) day of (month), 200X,

(name of person) (for) the Lessor, known

to be the person who acknowledged the

foregoing document as a free act

and deed.

Then personally appeared before me

on this (#) day of (month), 200X,

(name of person) (for) the Lessor, known

to be the person who acknowledged the

foregoing document as a free act

and deed.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public Commission Expires

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public Commission Expires

Sample Private Property Bill of Exchange Contract — Page 2 of 2

WEISS’S CONCISE TRUSTEE HANDBOOK

PROPERTY MANAGEMENT AGREEMENT

This Agreement made and entered into this (#) day of (month), 200X by and between

(name of Trust), an Express Trust Organization, of (address), hereafter referred to as the

“Manager”, and (name of Trust), an Irrevocable Holding Trust of (address), hereafter referred to

as “Owner”.

WITNESSETH:

Whereas, the Owner is in the business of real estate and apartment rental, more

particularly described in Paragraph “A” below, which business the Owner wishes to have

managed for limited periods of time, and whereas the Manager is in the business of providing

management services and is willing to provide such services for the Owner upon the terms and

conditions hereinafter set forth.

Now therefore in consideration of the foregoing and in consideration of the covenants

hereinafter set forth, it is agreed by and between the Manager and the Owner as follows:

A.

Services: The Owner hereby appoints the manager to be the day by day manager with

respect to any or all of the aforementioned business, and hereby grants to the Manager the

exclusive right to rent, lease, operate, and manage real property, more particularly described

below, and to perform management services more particularly described below:

1. To use due diligence in the performance of this Agreement;

2. To manage the property known as: (list name of property);

3. To buy and sell property for the Client;

4. To rent apartments or single family dwelling units;

5. To sign as buyer or seller on any contracts for sale;

6. To make any necessary contracts with a qualified General Manager or apartment

manager;

7. To lease property as lessor or lessee with or without option to purchase or renew for a

term of (state the terms);

8. To keep appropriate business records of Client’s real estate business;

9. To manage both the Client’s property and the Client’s Trust;

10.To option as optionee;

11.To option as optioner;

12.To accumulate profits and deposit, in the name of the Manager, on behalf of the Owner,

those profits in a CD escrow account;

13.To advertise the availability, for rent or for sale, the above described properties, or other

properties subsequently acquired;

14.To renew or cancel leases;

15.To display “For Rent” or “For Sale” signs;

16.To carry, at Owner’s expense, such liability, property damage, and other insurance

adequate to protect the premises, tenants, and Manager, as necessary;

17.To place Realty Board lock box on premises;

Sample Property Management Agreement — Page 1 of 3



WEISS’S CONCISE TRUSTEE HANDBOOK

18.To make, or cause to be made, repairs and alterations, decorations, purchase supplies;

19.To hire, supervise, and discharge all labor or contractors required for the operation and

maintenance of the premises;

20.To contract for gas, electricity, fuel, water, telephone, trash hauling, and other services;

21.To pay debts, property taxes, and special assessments as required by Owner;

22.And to do all else appropriate for the management of a diversified real estate business.

B.

The Owner shall:

Indemnify and hold harmless, the Manager, from any and all costs, expenses, attorney’s

fees, suits, liabilities, damages, or claims for damages, including but not limited to those arising

out of any injury or death to any person or persons, or damages to any property of any kind

whatsoever and to whomsoever belonging, including Owner, in any way relating to the

management of the premises by the Manger or the performance or exercise of any of the duties,

obligations, powers or authorities herein or hereafter granted to the Manager to carry at Owner’s

sole cost and expense, such public liability, property damage, and workers compensation

insurance as shall be adequate to protect the interests of the Manager and Owner, the policies for

which shall name the Manager as well as the Owner as the party insured.

C.

Procedure: The Owner may transfer all titles, interest, deeds, mortgages, leases or

agreements to the Manager for a period no longer than ten (10) years.

Ninety (90) days prior to the expiration date regarding the Agreement, the parties may

agree to extend this Agreement for another ten (10) years. This Agreement may not be extended

more than three (3) times.

D.

Duration and Termination: For good cause such as death, sale, or disposition of any or all

of the articles listed in paragraph one, and/or any emergency or crisis which may affect the

financial status of the Owner, the Agreement may be terminated by either party at any time with

sixty (60) days prior written notice to the other.

In the event written notice of termination is provided, the Manager shall make changes

only with the consent of the Owner. Termination of this Agreement shall in no way affect or

preclude the consummation of any transaction which was initiated prior to such termination.

All properties and articles described in Paragraph 1 shall be promptly delivered to the

Owner, Guardian, Heir(s), Executor, or Personal Representative after termination, with

reasonable delay allowed for recordation of titles, deeds mortgages, or leases.

E.

Powers, Acts and Omissions of the Manager: In connection with the rendering of services

to the Owner as provided for herein, the Manager acknowledges with the Agreement to

undertake and effect transactions on behalf of and at the risk of the Owner in such a manner as

the Manager deems advisable with prior notice and approval by the Owner.

F.

Managing Fees: The Owner shall pay the Manager a monthly management fee of (written

amount) (numeric amount in parenthesis) dollars per month. This fee is payable upon the

acceptance of this Agreement and payable each month thereafter. This fee may be paid out in

profits realized by Manager, and Manager may “pay himself” instead of billing Owner, with

Owner’s prior approval. All checks to Manager must be made payable to: (state name).

Sample Property Management Agreement — Page 2 of 3

WEISS’S CONCISE TRUSTEE HANDBOOK

Should this Agreement be terminated any time prior to the “fee is due” date, there shall

be no credit allowed for the remaining days nor shall the Owner receive a refund.

G.

Further Privacy Provisions: This agreement and all of the trust business shall be kept

protected by the common law privacy rights available in every applicable jurisdiction. The

penalty for the release of any information pursuant to the material contained with the context of

this Agreement or any related material, such person or persons shall be fined or made party of a

tort action in the amount of not less than Three Hundred Thousand ($300,000.00) dollars.

H.

Liability: The Owner in no way relinquishes ownership of any of his businesses or

property(ies). The Manager may not convert any of the property(ies) held in the trust without

the Owner’s written consent. The Manager may not be held liable for any actions which he may

perform in his capacity as Manager unless the Manager has been found by a court of competent

jurisdiction to have acted outside his scope of employment, or that he has acted in bad faith in

discharging the duties of this Agreement.

I.

Effective Date, Assignment, Governing Law: This Agreement shall constitute a binding

agreement upon its acceptance by the Manager provided, however, that the Owner may rescind

this Agreement without penalty within five (5) business days after the execution date set forth

below. This Agreement may not be assigned by either party without the other party’s written

consent. This Agreement shall constitute a contract entered into and governed by the laws of

(name of state) and shall be binding upon the successors and assignees of the parties thereto.

This Agreement made and executed by the Manager and the Owner, this (#) day of

(month), 200X.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Manager

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Trustee of (name of Trust)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Trustee of (name of Trust)

Sample Property Management Agreement — Page 3 of 3

WEISS’S CONCISE TRUSTEE HANDBOOK

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is a contract entered into and executed this (#) day of (month), 200X by

and between (name of Trust), an Express Trust Organization, hereinafter called “User,” located

at (address) and (name of independent contractor), whose address is (address) hereinafter called

“Contractor”.

Whereas, the User is desirous of purchasing the services of Contractor, and whereas, the

contractor is desirous of providing services to user for a fee, therefore, the parties hereto agree as

follows:

1.

Purpose of this Agreement:

This Agreement is a contract by and between the above parties which:

a)

b)

Establishes an Independent Contractor Relationship

Absolutely excludes an employer-employee relationship, and the consequent

“requirements” associated with an employer-employee relationship, including but not limited to

the following:

1.

The contract specifically excludes the User from withholding from the

agreed price of said Contractor’s services or from providing for “Workers Compensation” for the

Contractor, and in so doing, recognizes that Contractor is already covered by Worker’s

Compensation or by his own health insurance.

2.

and all work related injuries and will hold User harmless for all said work related injuries.

3. The Contract specifically excludes the User from withholding FICA and

Income Taxes from the agreed upon price of said Contractor’s services.

The Contractor shall provide proof of Hospitalization coverage for any

4.

The Contract specifically excludes the User from any requirement usually

applied to employee or employee’s pay, since Contractor is not an employee.

c)

Is expressly based upon, recognizes and relies upon, the common law-rights and

freedoms preserved in the United States Constitution (Article 1, Section 10, Paragraph 1)

protecting the right of persons to contract.

d)

Is subject to, and in consideration of, the following terms, conditions, mutual

promises, and understanding of the User and Contractor.

2.

Services to be rendered: During the term of this Agreement, Contractor shall

provide the following services to the User: (list the services to be provided)

3.

Compensation to Contractor: The User agrees to compensate the Contractor at the

rate of (List amount) per (list conditions) based upon the actual services rendered by the

Contractor, which Contractor will document to the User by weekly time card. Compensation is

due and payable at the end of the contract period/accounting period.

4.

Quality Control: The User retains the right to establish standards of Contractor’s

performance, to evaluate effects of said performance, and to approve the results of said

performance.

5.

Expenses and Equipment: The Contractor shall pay for all his personal and related

expenses, and the User shall pay a tool allowance as the need arises, pertaining to all personal

tools, equipment and materials necessary for the performance of Contractor’s services, at a fee

mutually agreed upon between Contractor and User.

6.

Length of Contract: This contract shall run from (date) to (date) otherwise, it shall

run from day-to-day or until the work of the Contractor is completed and approved by the user.

Sample Standard Independent Contractor Agreement — Page 1 of 2



WEISS’S CONCISE TRUSTEE HANDBOOK

7.

Hours during which services may be performed: Contractor agrees to perform the

above-described services on User’s premises during User’s regular business hours.

8.

9.

Termination: Either party may terminate this contract at any time.

Assignment: Contractor shall furnish workers in any status of training, i.e.

student-trainee, apprentice, journeymen-apprentice, journeyman, or master, to perform the

agreed upon services; but only by consent of the User. Neither this Agreement nor any duties of

obligations under this Agreement may be assigned by Contractor without prior written consent

of User.

10.

Place of Work: User agrees to furnish space for use by Contractor while

performing the above-described services.

11.

Entire Agreement of the Parties: This Agreement supersedes any and all

agreements, either oral or written, between the parties hereto with respect to the rendering of

services by Contractor for User and contains all of the covenants and Agreement between the

parties with respect to the rendering of services in any manner whatsoever.

Each party to this Agreement acknowledges that no representations, inducements,

promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on

behalf of any party, that are not embodies herein, and that no other agreement, statement, or

promise not contained in the Agreement shall be valid or binding. Any modification of the

Agreement will be effective only if it is in writing, signed by the party to be charged.

12.

If any provisions in this Agreement are held, by a court of competent jurisdiction,

to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full

force without being impaired or invalidated in any way.

13.

Arbitration: Any controversy or claim arising out of or relating to this Agreement

or the breach thereof will be settled by arbitration in accordance with the rules of the American

Arbitration Association, and the judgment upon the award rendered by the arbitrator may be

entered in any court having jurisdiction thereof.

14.

Governing Law: This Agreement will be governed by the construed in accordance

with the general common law of contracts [or laws of the State of (list the state)].

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Contractor)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(User)

Sample Standard Independent Contractor Agreement — Page 2 of 2

WEISS’S CONCISE TRUSTEE HANDBOOK

UNIVERSAL INDEPENDENT CONTRACTOR

AGREEMENT

This agreement is a contract between (name of Trust), an Express Trust Organization, of

(Trust address), hereinafter referred to as “Contractor,” and (name of Trust), an Express Trust

Organization, of (Trust address) hereinafter referred to as “Contractee”.

1.

Purpose of this agreement: this agreement is a contract by and between the above

parties which 1) establishes an Independent Contractor Relationship; which 2) absolutely

excludes and employer-employee relationship; which 3) is expressly based upon, recognizes, and

relies upon the common-law rights and freedoms preserved in the United States Constitution,

Article 1, Section 10, Paragraph 1) protecting the right of persons to contract; and which 4) is

subject to, and in consideration of, the following terms, conditions, mutual promises and

understandings of the Contractee and Contractor.

2.

Services to be rendered: During the term of this agreement, the contractor shall

provide the following service(s) to the Contractee:

a)

b)

c)

3.

(List the service)

(List the service)

(List the service)

Contractee will provide: During the term of this agreement, the Contractee will

provide the following for the Contractor:

a)

4.

(List of service)

Compensation to Contractor: The Contractee agrees to compensate the Contractor

under the following Schedule:

a)

b)

c)

5.

(List the compensation schedule)

(List the compensation schedule)

(List the compensation schedule)

Quality Control: The Contractee retains the right to establish standards of

Contractor’s performance, to evaluate effects of said performance, and to approve the results of

said performance.

6.

methods of performance shall be used to achieve end results.

7. Facilities: All services by the Contractor shall be performed/provided at the

following location: (address where work is to be performed), Contractor’s offices.

8. Expenses and Equipment: The Contractor shall pay for all of his/her personal and

Method of Performance: The Contractor retains the right to determine which

related expenses, and shall supply all tools, equipment and materials necessary for the

performance of his/her services. Contractee may supply certain materials and equipment upon

the request of Contractor outside this agreement. Such supply by Contractee shall not be

construed to be a waiver of Contractor’s responsibility for his/her personal and related expenses,

tools, equipment, and materials.

9.

Length of Contract: This contract shall run from (date) to (date); otherwise, it

shall run from day-to-day, or until the work of the Contractor is completed and approved by the

Contractee.

10.

Termination: Either party may terminate this contract upon the delivering thirty

(30) days prior, written notice of termination to the other party at the address specified herein.

Sample Universal Independent Contractor Agreement — Page 1 of 3



WEISS’S CONCISE TRUSTEE HANDBOOK

11.

Competition: The Contractor is not restricted in any way from supplying his/her

services to other parties while under this contract, even if such activities are related to or in

competition with the business of the Contractee. The Contractor, however, is herein expressly

restricted from employing the Contractee’s trade secrets, formulas, and the like for his/her own

gain, and from revealing the same to competitors.

12.

Independent Free Agent: The Contractor is a free agent, and herein acknowledges

that He/She offers services to other businesses or to the general public in the ordinary course of

business, and maintains his/her office and principal place of business at the address given below.

Nothing in this agreement shall be deemed or construed to create a partnership, joint venture,

employer/employee relationship, or principal-agent relationship between the Contractor and

Contractee.

13.

obligations of the other party except as expressly set forth herein.

14. Taxes and Insurance: The Contractor and his/her agents or employees (if any)

Liability: Neither party shall be liable for the acts, or omissions, debts, or

affected by this Agreement, shall be liable and responsible for any and all local, state, and

Common Law taxes deemed owed as a result of the performance of services hereunder,

including, but not by way of limitation, Social Security, Unemployment Compensation,

Workman’s Compensation, or any other compulsory taxes, dues, or fees which affect employers

and employees. The Contractor herein agrees to carry his/her own insurance for injury, sickness,

public liability, retirement, etc. as deemed necessary as a consideration for entering into this

Agreement. The Contractor further acknowledges that he/she is not entitled to benefits under

Workman’s Compensation and/or Unemployment Benefits during or after his/her term of

service.

15.

Hold Harmless: The Contractor assumes all risks and liabilities relating to the

performance of services under this Agreement, and herein agrees to indemnify and hold the

Contractee harmless from, and shall defend Contractee from all demands, claims, causes of

action, loss, damages, or liabilities of any and every kind whatsoever, that result from the

rendering Contractor’s services hereunder.

16

Disputes: in the event of any unresolved disagreement between the parties herein,

equity shall supersede prior adjudicated cases. Any question of interpretation or claim shall first

be submitted to binding arbitration under the rules of the American Arbitration Association. The

prevailing party shall be entitled to satisfaction, plus legal fees and costs.

17.

Good Faith: Each party affirms that it has entered into this Agreement in good

faith, and shall endeavor to execute the promises, terms, and conditions herein with diligence

and in the best interest of the other party.

18.

Unenforceable Provisions: If any portion or provision in the Agreement becomes

void, invalid, or unenforceable, the remaining portions shall remain in force and effect.

19.

20.

Additional Terms/Conditions: (List all other terms and conditions)

Entire Agreement: This is the entire Agreement between the parties hereto. No

part of this Agreement is oral. Any amendments, additions, or deletions to the Agreement, or

any modifications of the provisions herein, shall be documented in writing and signed by both

Parties.

//

//

Sample Universal Independent Contractor Agreement — Page 2 of 3

WEISS’S CONCISE TRUSTEE HANDBOOK

Witness our hands this (#) day of (month), 200X.

Contractor: (Trust)

Contractee:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

as Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

as Trustee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

Sample Universal Independent Contractor Agreement — Page 3 of 3