

Trusts

The purpose of this article is to inform you of the various factors and issues concerning trusts so that you may make an informed decision as to whether a trust may be of any benefit in your life.

Statutory v. Non-Statutory

The first and most fundamental issue that one needs to understand is the distinction between a **statutory trust** and a **non-statutory trust**. A non-statutory trust is generally referred to as a common law trust. [See [The Law](#) within this site for information on the common law.]

Statutory trusts are those, which like corporations, are established by and through a law created by the legislature of your state. Such trusts are imbued by the legislature with certain “financial advantages” (e.g. exempting certain property from State taxation of one form or another). However, such trusts are 100% within the regulatory control of the State. If the legislature were to change its mind tomorrow and withdraw the trust’s financial advantage, they would be doing nothing wrong and you would have no recourse. When you place property in a statutory trust, you are in effect saying to the legislature, “I agree that this property is within the State’s jurisdiction and it would be really great if you’d treat me fairly in the future”. Placing one’s property within a statutory trust also makes that property ripe for administrative levy and/or seizure in the event that a tax agency makes a claim against the person who established the trust, or against the trust directly.

Conversely, **common law trusts** are **not** created by legislative fiat, but are created in the realm of Equity and under **a Citizen’s unalienable right to contract**. [See [The Law](#) in this site.]

“A pure Trust is non-statutory. The Court holds that the Trust is created under the realm of equity under common law and is not...created by legislative authority.”

Croker v. MacCloy, 649 US Supp 39

[A contractual organization is] “created under the **common law of contracts** and **does not depend upon any statute for its existence**.”

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It is important to know and understand that an organization (such as a common law trust), which has not been created under State authority, generally cannot be regulated, and most State laws (written to effect corporations) have no legal force upon such an organization. [See the [Sales Tax](#) page within this website for a revealing discussion on the term “person”, and corporations.] We say that such a trust cannot “generally” be

regulated, because we wish the reader to understand that there are certain activities that are inherently subject to State regulatory control [e.g. hauling toxic waste on the highway] and if a common law trust were to engage in such an activity, then it would be subject to State regulatory control.

Another advantage of a common law trust is that the trust possesses the same rights, privileges and immunities (speaking in Constitutional terms) as the trustee.

“The fact that a business trust is not regarded as a legal entity distinct from its trustees, if a true trust...may result in this advantage to the trust, which a corporation does not possess: The trust consists of individuals...who are Citizens, and who, therefore, are entitled to certain rights and immunities such as those guaranteed by the privileges and immunities clauses of the Federal Constitution, which do not apply to Corporations.”

Morrissey v. Commissioner of Internal Revenue, 296 US 344 (1935)

This is an important concept that translates into important real-life benefits. Most “organizations” are **statutory** fictions and are subject to virtually every law on the books. They are also obligated to open their “books and records”, upon demand, to allow the government to explore whether or not some violation (of a virtually endless list of laws) has occurred. Statutory entities may also be prohibited from activities from which a Citizen with unalienable rights cannot be prohibited.

Common law trusts are not bound by laws controlling the actions of corporations. Common law trusts are not bound by “public policy” decisions of the legislature that are masquerading as “law”. Common law trusts need not open their books to anyone unless ordered to do so by a true judicial warrant issued by an appropriate court. Common law trusts may freely engage in any activity that any American Citizen may engage in (provided that the trustee is a Citizen of a state of the Union). [See our [Citizenship](#) page for distinctions in the nature of citizenship.]

“These trusts – whether pure trusts or partnership – are unincorporated. They are not organized under any statute; and they derive no power, benefit, or privilege from any statute.”
Hecht v. Malley, 68 L ed 949

A Pure Trust is not subject to legislative control. The Court holds that the Trust is...not subject to legislative restriction as are corporation and other statutory entities created by legislative authority.”

Croker v. MacCloy, 649 US Supp 39

“A Pure Trust derives no power, benefit, or privilege from any statute.”

Crocker v. Malley 264 US 144

So What Does One Use a Trust For?

Trusts are used primarily for four purposes:

- Protection of assets
- Generational preservation of assets
- The conduct of business
- Privacy

[Editor's Note: *For the balance of this article, the word "trust" shall mean a common law trust, unless otherwise indicated.*]

Privacy – Common law trusts can provide privacy in a manner that no statutory entity can. Whenever the State is a party to a business arrangement, such as establishing a corporation or other statutory entity, the State requires the particulars from all the associated parties and that information becomes a part of the public record and is generally accessible.

By contrast, a common law trust is traditionally held in the strictest privacy, with no one but the settlor and the trustee knowing all the details of the trust and the identities of those involved.

Generational Preservation of Assets – Many people would prefer to avoid a situation in which inheritance taxes would be owed on property after their death. By placing property (real or personal) in a Family Preservation Trust, the "owner" of the property (the trust) never dies, and therefore no "inheritance" takes place. Despite the fact that the property belongs to a trust, current and future generations of family may make unfettered use of the property under the terms of the trust. This form of trust arrangement should always be an irrevocable trust (which will be addressed shortly).

Protection of Assets – We live in a society that is increasingly complex. Legislatures are pumping out laws faster than the average Citizen can keep track of them, while at the same time recourse to the courts to solve every little grievance is on the increase. We know that there are laws firms in existence today that conduct research to see what companies are in the best financial position to be sued. Add to that a government that is hungry for any excuse (lawful or otherwise) to seize one's property and this is likely the most precarious time in American history for a Citizen to own property of any significant value.

For these reasons and others, Americans are now protecting their assets through trusts on an ever-increasing basis. Done correctly, a settlor may retain the use and benefit of the property while no longer being the actual owner. This form of trust arrangement should always be an irrevocable trust (which will be addressed shortly).

Business Trusts – This trust activity may be the least used, and is certainly the one with the most untapped potential. A common law Pure Trust Business Organization is a phenomenal corpus from which to conduct the private business operations of the average enterprise.

“One of the objectives of a business Trust is to obtain for the trust associates, most of the advantages of corporations, without the authority of any legislative act and with the freedom from restrictions and regulations generally imposed by law upon corporations.” 13 Am Jur 2d, page 379, Paragraph 51

When a trust conducts business, it enjoys privacy, freedom from most State regulation, separation of personal assets from business assets, and the officers of the trust are shielded from the liability of business (unless fraud or wrongful death are involved). That last benefit is similar in concept and operation to what corporate officers call, “the corporate veil”. Here is what the federal courts say about the protections afforded to the trustee(s), managing agents, and the trust.

“The fact that the trustees hold property, does not mean the trustees own personal property. Trust property cannot be held under attachment nor sold upon execution of trustees’ personal debt...Trustees and beneficiaries cannot be held liable for debts incurred by the trust. If, in fact, a true trust had been created, the certificate holders [the true owners of the Trust property] are not liable on obligations incurred by the trustees or managing agents appointed by the trustees.
Hussey v. Arnold, 70n N.E. 87; Mayo v. Moritz, 24 N.E. 1083

“Trust property cannot be held under attachment nor sold upon execution, for the trustee’s personal debts.”
Clew v. Jamison, 182 US 461, 21 S Ct 645

As you can see, a trust affords the very same type of protection for, and from, the trustee(s) and managing agents as a corporation does for its officers.

Pure Trust Business Organizations also have the added advantage of incurring no federal or State tax liability. The IRS has confirmed this in writing. Original Intent possesses a determination letter from the IRS, which states:

“According to our National Office a Pure Trust Organization (an unincorporated business trust) is an organization that has no return filing requirements and is a nontaxable organization. Therefore, your Pure Trust Organization doesn’t need an EIN.” [EINs are used in place of TINs for trusts]

It should be noted that when the IRS makes a written determination from its National Office, the determination is a product of their legal staff, issued after significant review and consideration. The IRS has not reversed their position since it was confirmed on

1960. The IRS cannot reverse this position because it is controlled by Constitutional principles.

Revocable v. Irrevocable

All trusts, common law or statutory, come in two flavors – “revocable” and “irrevocable”.

Revocable means that the trust can be readily dissolved and the property within the trust reverts to the sole ownership of the “grantor” (the former owner). These trusts are often referred to as a “Grantor’s Trust”. Such trusts do not afford much asset protection. In most cases, the law considers such trusts to be little more than an “alter-ego” of the grantor. Many courts have declared revocable trusts to be nothing more than a “dba” of the grantor.

Irrevocable trusts offer the strongest asset protection possible. Like a corporation, irrevocable trusts are considered a separate legal “person” from the settlor and/or the grantor(s). Irrevocable trusts generally exist for eternity – or until some specified event occurs, requiring the termination of the trust. However, unlike a corporation, a common law pure trust may exercise all the rights, privileges and immunities of the trustee. If the trustee is a Citizen of a state of the Union, that’s a significant advantage over other business forms.

It should be understood that property conveyed into an irrevocable trust becomes the sole property of the trust and will generally not be returned to the previous owner. Once property is conveyed into trust, it is “held in trust” by the trustee and administrated in the best interest of the trust, in accordance with the trust indenture. This is one of the essential reasons that property within such a trust is so secure – there can be claim made that the property still belongs to the former owner (grantor).

Proper Trust Administration

Over the years, folks within the Patriot movement have made some serious mistakes. Improper trust administration is certainly one of the most notable areas where Patriots have gotten into trouble and brought quite a bit of pain upon themselves.

Patriots are always looking for the “fastest” way to solve a problem. We think that is only natural because often times a Patriot is already under attack from a government agency and is trying desperately to find a way to thwart the aggressive actions of the government. In most cases we have seen, the Patriot is morally and legally in the right, but does not have the expertise to prevail over a fleet of government lawyers, or the Patriot has taken the proper steps and the agency is simply steamrolling the Citizen – and the rights of every American in the process – because if you plow over the rights of one Citizen, you are plowing over the rights of all Americans. Nevertheless, if in haste we make poor choices, we will likely feel the consequences of those poor choices in the future.

Adding to the problem is the plethora of Patriot “gurus”, who learn just enough to be a danger to themselves, and then begin to tell others “how it is”. These “gurus” have done as much to injure the Patriot movement as anything the government has done over the past 30 years. There are few things more discouraging than finding out that your own side laid the foundation for your failure! We have spoken to many **former** Patriots who have left the movement because they felt that the movement didn’t know what it was doing. There’s certainly some truth to such observations. Trust administration is clearly one of those areas.

A trust is administrated by a trustee, or a board of trustees. That’s the long and the short of it. There is no other proper and lawful way for a trust to be administrated. Anyone who tells you otherwise is ignorant or lying to you.

Many in the Patriot movement have been fond of conveying property into trust, becoming Managing Agents (or whatever term they use as an equivalent) of the trust, and then having the trustee delegate complete authority to them. They then wonder why several years later the IRS (or some other government agency) is able to take “the trust’s” property from them. The reason is simple, the trustee acted in manner which vitiated the credibility and legal protections of the trust.

Another huge mistake made by Patriots is the unfounded belief that you can avoid an income tax (if legitimately owed) by conveying the income into trust prior to paying the taxes. The IRS nails Patriots on this stupid mistake all the time. Let’s be clear on this: A trust can do nothing to alleviate any legitimate tax liability that you may have. If you owe the tax, you must pay it! However, if you don’t owe a tax on the money (or other property) that you receive, then conveying it into trust may well protect it later from an attack by an unlawful and money-hungry government. [See [Federal Income Tax](#) and [State Income Tax](#) to help you determine if you owe income tax.]

Patriots have probably made as many trust mistakes, as there are inexperienced and unqualified trustees in the Patriot movement. We cannot address all the errors that we have seen. What we can say with absolute certainty is this: ***If you establish a trust, make sure you acquire a qualified and professional trustee.*** To do otherwise is to place everything at risk.

[For professional trustee services, [Contact Us.](#)]

The Business Trustee

Having a professional trustee is even more essential if a trust is involved in business activities. Trusts that merely hold property have very few dealings with other people, but a business trust will generally be an active part of the business community and will interact with numerous people, entities, and government bureaucrats. For this reason it

is essential that a business trust have a trustee (or trustees) who is knowledgeable in various areas.

The trustee of a common law business trust should be knowledgeable in the following areas:

- **Constitutional law** – A common law trust relies on the rights of the trustee, which are secured by and through his state Constitution and the US Constitution. It should be manifestly obvious that a trustee cannot assert his rights, and thus those that are operational for the trust, if he has little knowledge of the his own rights, privileges, and immunities, as well as the remedies that are available to secure those rights from abridgement.
- **Trust law** – It should be plainly obvious that one cannot administrate what one doesn't know or understand.
- **Contract law** – It will fall within the duties of the trustee to execute agreements in the name of the trust.
- **Tax law** – Although **a Pure Trust Business Organization has no tax payment or reporting requirements**, the trustee must know how to preserve that position.
- **General Business Law** – Although a trustee should not be involved in “running the business”, he cannot properly undertake his trustee duties if he does not have a firm grasp of fundamental business practices.

We feel compelled to make one disclaimer concerning business trusts. If you believe that you will need to acquire a significant amount of investment capital from investors in order to achieve your business goals, a business trust is likely not the proper business form to establish. Although there is no practical reason that investors cannot invest in the business activities of a trust and receive the same returns and assurances, investors are inexperienced with business trusts and will virtually always insist that their capital go into a corporation.

The Government Lies (Again)!

As common law trusts have experienced a resurgence of popularity, the government and its cronies (i.e. financial institutions, tax attorneys, CPAs, the media, etc.) have embarked on a campaign of lies intended to undermine the growth and expansion of common law trusts – especially business trusts.

Over the last 2 years we've seen articles published in periodicals for the financial industry, as well as in other more mainstream publications, which assert that common law trusts are not real – that they do not actually exist – and that promoters of such trusts are merely charlatans who are preying upon the ignorance and naiveté of an unwitting public.

Many of these articles have been written by attorneys who **know** that they are lying. In one recent case, after reading an article in which the author (an attorney for the Trust department of bank) stated that there is no such thing as a “common law trust” we contacted the editor of the well-known financial publication that printed the article and provided him with numerous federal court decisions concerning common law trusts. We asked him how he could run an article in which it was stated that common law trusts don’t exist, when the federal courts have been verifying their existence for 225 years. We pointed out that since it would have been a simple task to check the author’s allegation, the editor must have either been remiss in his duties, or intentionally chosen to publish the lie. We asked that a retraction be printed. What was his response? Silence. We never heard back from him and no retraction was printed.

Accountants are routinely sent information from the IRS telling them to be on the lookout for “abusive” trusts. These publications frequently contain the words “common law trust” in the warning.

For a full and detailed examination of the IRS’ “smear campaign” against common law trusts, see [Debunking IRS Lies](#) on this site.]

Summary

We hope that this article has given you some useful information concerning common law trust. We also hope you will visit [Debunking IRS Lies](#) so that you won’t be intimidated by the carefully crafted statements from the snakes (oh...sorry...we meant “attorneys”) at the IRS. Once you understand the word games the government is playing, you will have a good laugh at their expense.

Here is what we’ve covered in this article:

- 1) Common law trusts are established under the unalienable right of Citizens to contract with one another.
- 2) A contract of a particular form (a “trust indenture”) creates a trust.
- 3) Trusts may be used for various purposes.
- 4) No matter what purpose you have in mind for a trust, increased privacy will always be one of the benefits.
- 5) These purposes may be advantageous to you and/or your family.
- 6) Trust can be revocable or irrevocable. **Irrevocable** is generally a better choice.
- 7) If you owe income tax on your earnings or income, it must be paid **before** you convey money or property into trust.
- 8) If you have paid the tax, or don’t owe a tax, conveying property into trust can protect your assets from a future unlawful attack by the government.
- 9) **A professional trustee is essential to the proper operation of a trust.**
- 10) In the business arena, common law trusts offer many of the same advantages as statutory entities, but without the government “strings” attached.
- 11) **A Pure Trust Business Organization has no tax payment or reporting requirements.**

- 12) Common law business trusts are not the best vehicle with which to seek investment capital.
- 13) Reading how the government attempts to misrepresent common law trusts will assist you in understanding how the IRS generally misrepresent a myriad of issues to the public.

Obviously, the area of trust law, and its proper administration, is far too large and detailed to fully address within this article. If you would like **additional information**, or would like to **establish a trust**, or are **seeking a professional trustee**, please [Contact Us](#).

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