

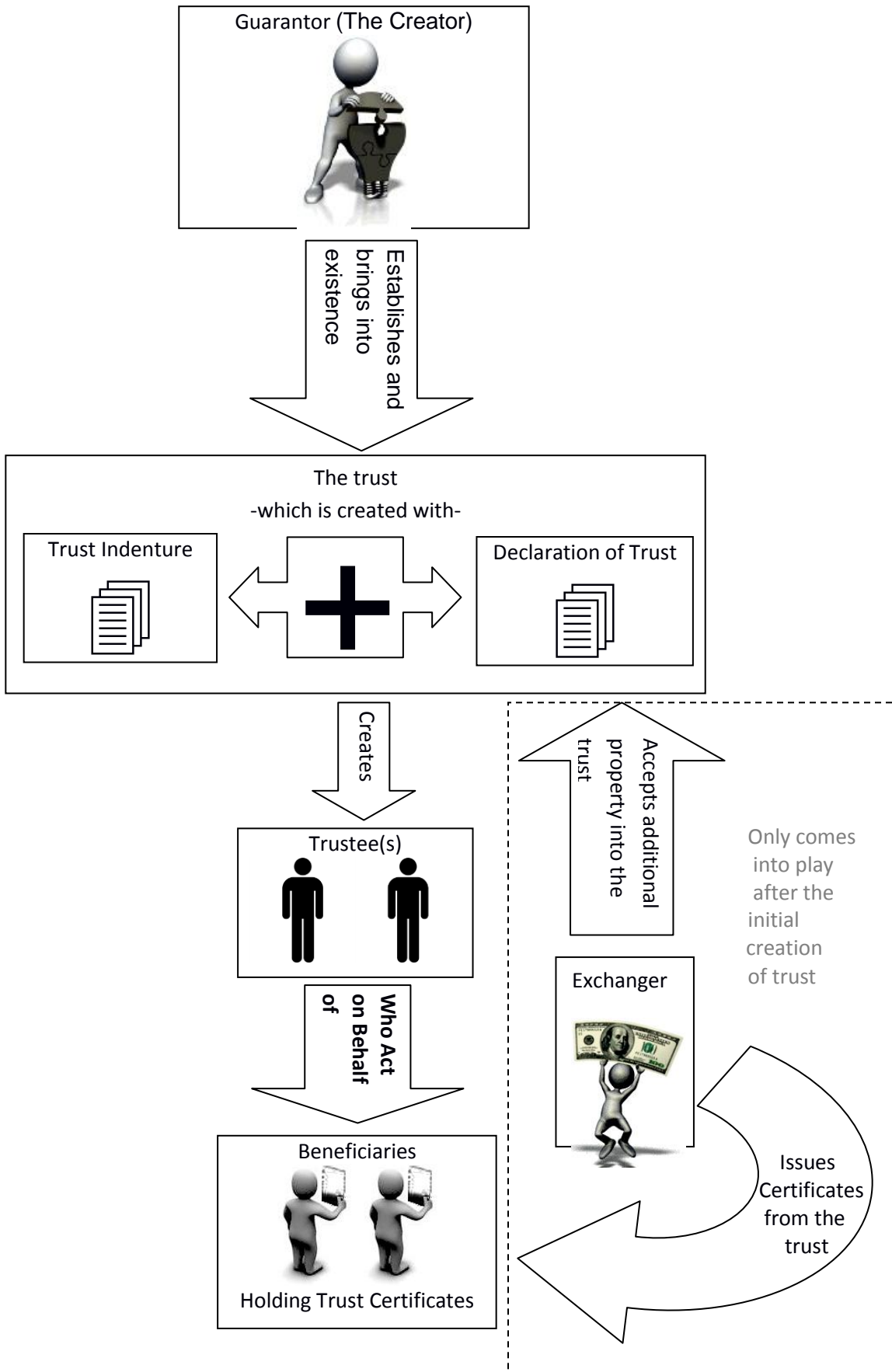
Unincorporated Business Trust! (UBOT)

What is an Unincorporated Business Trust? And what are its advantages?

UBOT is:

- 1) an organization created and managed by "trustees" for the benefit and profit of Beneficiaries who hold or may acquire transferable trust certificates. Trust certificates provide individual holders evidence of interest in the Trust estate (assets/income).
- 2) a powerful entity by which individuals may combine their resources to operate a business for profit without the inherent liabilities of a partnership or the double taxation of corporations. A UBOT. can preserve privacy; protect assets against judgments and lawsuits.
- 3) often called a "Common-law Trust" but this phrase is not descriptive of any of the peculiar characteristics of such organizations. The basis for the terminology "Common-law Trust" is that they are created under the common law of contracts and does not depend upon any statute for its existence. See the United States Constitution, Article 1 Sec. 10, Clause 1.
- 4) brought into being by two basic documents: a Declaration of Trust and a Trust Indenture. These two documents make all the provisions of who is who and who is responsible for what, relative to the Trust activities.
- 5) A great way to avoid tax liabilities of a business, or trust transactions, until money or assets are distributed to the beneficiaries.

Since the Trust Indenture is a contract between the creator and the trustee, the indenture controls the activities, powers and responsibilities of those who administer the Trust. No one has legal authority to change its provisions except those so authorized by the indenture.



Parties and their roles in the UBOT

How many people at the minimum do I need to create a trust, and what are their roles?



Guarantor

The creator

- ✓ The person by whom a grant is made; A transferor of property; the creator of a trust is usually designated as the grantor of the trust.



Trustees

Trustees

- ✓ A person or one of a group of persons appointed to manage the affairs of an individual, institution, business, etc. a person who holds property in trust for another.



Beneficiaries

Beneficiaries

- ✓ One who benefits from act of another. One for whose benefit a trust exists. A person who receives, or is named to receive, money or property from a trust.



Exchanger

Exchanger

- ✓ Whenever you (or another party) want to transfer any property into the trust organization in exchange for certificates, you take on the role of an Exchanger.

Benefits of a UBOT

What are the Benefits and Drawbacks of a UBOT?

The benefits of a UBOT are:

- 1) Privacy*
- 2) Limited liability*
- 3) Not subject to probate*
- 4) No state or inheritance taxes*
- 5) Minimize and/or avoid income taxes*
- 6) Maximize depreciation*
- 7) Reduce capital gains tax*
- 8) Separate investment program*

The Drawbacks of a UBOT are:

- 1) The drawbacks of UBOT are when you create a revocable trust which subjects the trust to all of the opposite benefits stated above.*
- 2) Property put into a irrevocable trust is just that irrevocable. (no take backs)*
- 3) The benefits outweigh any drawbacks to establishing a UBOT*

9 Basic Aspects of the UBOT

1) A UBOT is formed by contract between the parties setting forth the purposes, terms and conditions.

2) A UBOT is a legal entity and an artificial individual, with rights almost equal to a natural person (a human being), able to own property and conduct business like a natural person. It is irrevocable and no one has any reversionary right to its assets.

3) The UBOT's assets are owned and its business activities managed by the trustees who accept such responsibility as fiduciaries on behalf of the beneficiaries.

4) The beneficial interests are divided into Capital Units, evidenced by the issuance of Trust certificates conveying to the holder the limited rights to receive their pro-rate share of any distributions of income or assets that may be made by the trustees.

5) The Capital Units are personal property which conveys neither legal title to the property nor any voice in the management of the business or the selection of trustees.

6) A UBOT is subject to taxation on its distributable net income. The beneficiaries are only taxed on what they receive.

7) The assets of a UBOT are never subject to probate or estate tax because as an artificial person it never dies.

8) The Capital Units become void upon the death of the holder and, thus, have no value to be subject to estate tax or probate.

9) The life of a UBOT can be extended as deemed advisable or terminated at any time by the trustees in accordance with the Trust Indenture (contract).

Statutory Trust vs. Common Law Trust?

A statutory trust is a legislatively created and regulated entity. Statutory Trusts derive their existence from, and is governed and regulated by statutes by which it must conform.

Constitutional Trusts are derived from Constitution in the form of 'contract'. This right of contract is derived from The United States Constitution, Article I, Section X, which states: " No state shall, pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts" (Ex post facto law is defined as 'done or made afterward', from the thing done afterward').

Constitutional Trusts are created and operate under the Law of Contract established through the United States Constitution. The essential elements of the Law of Contract are absent in the creation of Statutory Trusts, but are present in the creation of Constitutional Trusts.

The essential elements are:

- 1) Two or more parties at 'arm's length' (not blood related);
- 2) An offer by one of the parties, and acceptance by the other party;
- 3) Consideration in the form of money or money's value;
- 4) All confirmed 'tied together' by a meeting of the minds or the understanding of the two involved parties;
- 5) Contract is signed willingly by both parties

Basic comparisons between Statutory and Constitutional Trusts are varied, some are displayed in the below charts.

The differences of Statutory trusts vs. Constitutional trusts are:

Statutory Trust

- 1) Merely holds property till death
- 2) Is usually a revocable trust
- 3) Has a statutory termination date
- 4) Protects and conserves property only
- 5) Arises from statutory provision/regulations
- 6) Legal and equity title is split
- 7) Consideration not involved
- 8) Exercise of a privilege

Constitutional trusts

- 1) Owns property in 'fee simple'
- 2) Is always irrevocable trust
- 3) Cannot be terminated by statute & can renewed each 20 years
- 4) Can operate as any business
- 5) Arises from the law of contract
- 6) Legal and equity title not split
- 7) Consideration is involved
- 8) Exercise of a right

Some court cases regarding Trusts.

Elliot vs. Freeman, 220 US 178, A Pure Trust is not subject to legislative control. The United States Supreme Court holds that the Trust relationship comes under the realm of equity, based upon the common law, and is not subject to legislative restrictions as are corporations and other organizations created by legislative authority.

Schumann-Heink vs. Folsom, 159 NE 250 , The basis for "Common Law Trust" in this connection, 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 on any statute.

In Burnett v Smith, 240 SW 1004 (1922) the court stated: " A Pure Contract Trust is established by contract, and any law or procedure in its operation, denying or obstructing contract rights, impairs contract obligation and is therefore violative of the United States Constitution".

and; In Berry v McCourt, 204 NE 2d 235(1965) the court stated: "A Pure Contract Trust is a contractual relationship in Trust form" and; In Crocker v MacCoy, 649 U.S. Supp 39 at 270, the court stated: "A Trust organization created under the United States Constitutional right of contract cannot be abridged". [Emphasis added].

*Following are Documents Used In the UBOT
and the proper uses thereof*

RIGHT AND WRONG TRUST PROCEDURES

RIGHT WAY

WRONG WAY

CONVEYANCE OF REAL PROPERTY TO THE TRUST

- 1) transfer the property to Trust by warranty deed. (send copies to be redone not the originals)

- 1) transfer to an individual for value received.

REWARDS

- 1) no taxes
- 2) details kept private.
- 3) not likely to be subjected to pressure from promoters, salesmen etc.
- 4) no disclosure as to values involved when traded (exchanged).

PENALTIES

- 1) disclosed to public; if any gain realized, tax must be filed.
- 2) may subject you to pressure from immoral people.

CONVEYANCE OF PERSONAL PROPERTY TO THE TRUST

- 1) create a detailed list of all properties, personal, etc.
- 2) add it to schedule A as part of your Trust with no value specified.
- 3) Make a second list with replacement values specified and keep it in a separate fireproof safe.
- 4) in the fireproof safe or a lockbox in the same name as the Trust, keep the list of replacement values.

- 1) Listing only most valuable items or making no list of all.
- 2) Specify items at cost value.
- 3) Make this list with all cash values specified as part of your Trust.
- 4) Keep this list in the lock in your name.

REWARDS

- 1) No capital gains recognizable.
- 2) Able to provide a detailed loss to insurance company to collect insurance in case of fire or theft and regain the value of property.
- 3) avoid being taxed personally for property.
- 4) As the Trust is an artificial entity and does not die, the Trust can keep full value of the valuables in it thereby saving tax money for the estate and avoiding probate.

PENALTIES

- 1) capital gains would be evident and taxes payable.
- 2) proof of ownership can be difficult or impossible In the case of fire. Making it impossible to collect fire or theft insurance or make replacement to the losses.
- 3) Capital gains tax (may be levied but can be deferred if reinvested within 18 months).
- 4) lock boxes can be entered by I.R.S. and seized by the bank pending probate in the event of death.

CONVEYANCE OF STOCKS AND SECURITIES TO THE TRUST

- 1) for transfer to the Trust, Stocks and

- 1) Only endorsing the stock and

PROPOSAL

To Invest Funds For Trust Certificates

securities should be "street endorsed" to the Trust. Send this to the transfer agent, as this avoids broker commissions.

REWARDS

- 1) establishes bona fide records as to transfer of ownership to the Trust.

securities over to the Trust.

- 2) Turning them over to your broker for transference .

PENALTIES

- 1) Does not establish transfer of ownership to the Trust, and costs you a commission.
- 2) Will mean the stock may be subject to estate tax because company record still shows in your ownership.

CONVEYANCE OF LIFE INSURANCE TO THE TRUST

- 1) Make the Trust beneficiary
- 2) Make the Trust pay the premium.
- 3) with an irrevocable minute resolution make the Trust the policy owner.
- 4) if possible obtain new policy contracts.

- 1) Making your wife beneficiary.
- 2) Paying premium personally.
- 3) Retaining ownership as an individual.
- 4) Keeping your old policy upon which you have paid.

PENALTIES

- 1) Adds to wife's estate; greatly increasing taxes/liability.
- 2) evidence of ownership creating probable tax liability.
- 3) Increases taxable estate.
- 4) Percentage of premiums you have paid represent the percentage of proceeds which creates a probable tax liability.

REWARDS

- 1) Keeps proceeds out of spouse's estate; can save from 20% to 50% of estate tax.
- 2) Relieves insured of ownership and removes probability of taxing proceeds.
- 3) It will be acceptable proof to I.R.S. that no premium will have been paid by you. This will save taxes.
- 4) see No. 3 above.

CONVEYANCE OF MOTOR VEHICLES TO THE TRUST

- 1) Place vehicles in the Trust name, assuring minimum rates.

REWARDS

- 1) important assets are protected from liability created by vehicles.
- 2) You are personally protected from results of suit. The Trust will pay the operating expense. Use lease fees etc... before-tax dollars.

PENALTIES

- 1) If held in trust with a large amount of other property the other property of the trust can be put in jeopardy if the trust vehicle is in an accident or occurs liability. (we suggest that a vehicle or other object that can incur a large amount of liability be put into a separate trust from other trust assets.)