

**REVOCABLE TRUSTS HANDBOOK FOR ARKANSAS
PRACTITIONERS
2019**

TABLE OF CONTENTS

Introductions

Chapter 1: Trust Basics

Chapter 2: Sample Revocable Trusts and Pour-Over Will

Chapter 3: Funding the Trust

Chapter 4: The Administration of Trusts – The Office of Trustee

Chapter 5: The Administration of Trusts – Investment and Management of Trust Assets

Chapter 6: The Administration of Trusts – Accounting for Trust Assets and Activities

Chapter 7: Administration of Trusts, Income Taxation and Estate Tax Basics

Chapter 8: The Administration of Trusts – Transfer Tax Considerations

Chapter 9: The Administration of Trusts – Creditors' Claims and Other Obligations

Chapter 10: Modification and Termination of Trusts

Chapter 11: Distribution of Trusts

Chapter 12: Ethical Considerations in Trust Practice

Chapter 13: Various Types of Trusts

Chapter 14: Trust Bibliography

Chapter 15: Glossary of Terms

Chapter 16: The Arkansas Trust Code, With Official Comments, Edited for Arkansas

TABLE OF CONTENTS

Introduction

Introduction and Acknowledgments to the 2007 Handbook

Introduction to the 2014 Cumulative Supplement

CHAPTER 1 TRUST BASICS

- 1.1 Elements of a Trust
- 1.2 Requirements for Creating a Trust
- 1.3 Differences from Wills
 - 1.3.1 Formalities
 - 1.3.2 Abatement
 - 1.3.3 Antilapse
 - 1.3.4 Exoneration
 - 1.3.5 List of Tangible Personal Property
 - 1.3.6 Pretermitted Children
 - 1.3.7 Spousal Share
- 1.4 Modification or Revocation of a Trust by the Grantor
- 1.5 Modification or Revocation by Co-Grantors
- 1.6 Modification or Revocation of the Trust or Distribution of Trust Property by Grantor Substitutes
- 1.7 Termination of a Trust
- 1.8 New Law Under the ATC
- 1.9 Essential Provisions of a Well-Drafted Trust
- 1.10 Waivers to Consider
- 1.11 Optional Clauses
- 1.12 The Essential Last Step: Funding the Trust

Forms:

- F-1-1 Revocation of Trust
- F-1-2 Notification and Waiver Letter
- F-1-3 Sample Trust Advisor Provisions
- F-1-4 Client Trust Funding Letter

CHAPTER 2

SAMPLE REVOCABLE TRUSTS AND POUR-OVER WILL

- 2.1 Generally
- 2.2 Revocable Trust Established by a Grantor Who is Presently Unmarried
- 2.3 Grantor Who is Presently Married and Also Has Children
- 2.4 Joint Revocable Trust Established by Two Grantors Who are Married to Each Other
- 2.5 Pour-Over Will
- 2.6 Revocable Trust Basics

Sample Trust 1 – Revocable Trust of an Unmarried Grantor Having an Estate Valued Below the Federal Tax Exemption

Sample Trust 2 – Revocable Trust of a Married Grantor Having an Estate Valued above the Federal Estate Tax Exemption (Often Accompanied by a Mirror or Reciprocal Trust by Grantor’s Spouse)

Sample Trust 3 – Joint Revocable Trust by a Married Couple Having an Estate Valued below the Federal Estate Tax Exemption

Sample Form of “Pour-over” Will Designed to Add Probate Assets to Testator’s Existing Revocable Trust

CHAPTER 3

FUNDING THE TRUST

- 3.1 The Transfer of Assets to the Trust
 - 3.1.1 Taxpayer Identification Number
 - 3.1.2 Transmutation of Separate Property
 - 3.1.3 Complete Financial Statement
- 3.2 Transferring Real Estate
 - 3.2.1 Form of Conveyance
 - 3.2.2 Special Arkansas Considerations Involving Real Estate
 - 3.2.3 Special Considerations with Out-of-State Real Estate
- 3.3 Transferring Personal Property
 - 3.3.1 Securities

- 3.3.2 United States Savings Bonds
 - 3.3.3 Annuities
 - 3.3.4 Partnership Interests and Restricted Securities
 - 3.3.5 Retirement Facility Refunds
 - 3.3.6 Bank Accounts
 - 3.3.7 Promissory and Other Types of Notes
 - 3.3.8 Tangible Personal Property
- 3.4 Designating the Trust as the Beneficiary of Assets
- 3.4.1 Life Insurance
 - 3.4.2 Annuities
 - 3.4.3 Retirement Plans
 - 3.4.4 Other Benefits

Forms:

- F-3-1 – Grantor’s Financial Statement
- F-3-2 – Warranty Deed
- F-3-3 – Short Trust Agreement
- F-3-4 – Letter Regarding Due-on-Sale Clause
- F-3-5 – Reregistration Letter to Bank or Brokerage
- F-3-6 – Sample Stock Power
- F-3-7 – Request to Reissue U.S. Savings Bonds
- F-3-8 – Annuity Change of Ownership Form
- F-3-9 – Assignment of LLC Interest
- F-3-10 – New Post-Transfer Share Certificate
- F-3-11 – Assignment of Retirement Facility Refunds
- F-3-12 – Assignment of Promissory Note and Mortgage
- F-3-13 – UCC Assignment (Financing Statement Amendment)
- F-3-14 – Bills of Sale (Individual and Couple)
- F-3-15 – Letter Requesting Life Insurance or IRA Change of Beneficiary Forms

CHAPTER 4
THE ADMINISTRATION OF TRUSTS - THE OFFICE OF THE TRUSTEE

- 4.1 General
- 4.1.1 Choosing a Successor Trustee
 - 4.1.2 Accepting a Trusteeship
 - 4.1.3 The Trustee’s Bond

- 4.1.4 Declining a Trusteeship
- 4.1.5 Cotrusteeships
- 4.1.6 Vacancy in Trusteeship
- 4.1.7 Additional Trustee or Special Fiduciary
- 4.1.8 Resignation of Trustee
- 4.1.9 Removal of Trustee
- 4.1.10 Compensation and Reimbursement of Trustees

- 4.2 Duties of the Trustee
 - 4.2.1 The Revocable Trust - The Duty to Obey the Grantor
 - 4.2.2 The Mandatory Duty of Administration
 - 4.2.3 The Duty of Loyalty
 - 4.2.4 The Duty of Impartiality
 - 4.2.5 The Duty of Prudent Administration
 - 4.2.6 The Duty to Control and Care for Trust Property
 - 4.2.7 The Duty to Report
 - 4.2.8 The Duty of Confidentiality
 - 4.2.9 The Duty to Administer the Trust in an Appropriate Place
 - 4.2.10 The Duty to Use Reasonable Care to Prevent Cotrustees from Breaching the Trust, and to Obtain Redress if a Breach is Committed
 - 4.2.11 Delegation of Duties

- 4.3 Powers of the Trustee
 - 4.3.1 General Powers of a Trustee
 - 4.3.2 Specific Powers of a Trustee

- 4.4 Liability of the Trustee
 - 4.4.1 Liability to the Beneficiary
 - 4.4.2 Limitation of Action by Beneficiary against Trustee
 - 4.4.3 Exculpatory Clauses
 - 4.4.4 Liability to Third Parties

Forms:

- F-4-1 - Notice of Acceptance of Successor Trusteeship for Formerly Revocable Trust
- F-4-2 - Notice of Acceptance of Successor Trusteeship for Existing Trust
- F-4-3 - Notice of Letter of Resignation of a Trustee
- F-4-4 - Notice of Existing, Formerly Revocable Trust by an Existing Trustee
- F-4-5 - Trustee's Annual Report to Beneficiaries

F-4-6 – Notice of Limitation of Action Contesting Validity of Formerly Revocable Trust

F-4-7 – Notice of Proposed Change of Principal Place of Administration

CHAPTER 5

THE ADMINISTRATION OF TRUSTS - INVESTMENT AND MANAGEMENT OF TRUST ASSETS

- 5.1 Generally
- 5.2 The Rules
- 5.3 Delegation
- 5.4 Trust Language
- 5.5 Conclusion

Forms:

F-5-1 – Questionnaire Identifying Grantor Objectives

F-5-2 – Sample Investment Policy Statement

F-5-3 – Checklist for Reviewing Trust Assets at Inception of Fiduciary Relationship

F-5-4 – Checklist for Periodic Trust Investment Review

F-5-5 – The Intergenerational Transfer of Wealth; Why Fiduciary Status Matters to Asset Managers

CHAPTER 6

THE ADMINISTRATION OF TRUSTS - ACCOUNTING FOR TRUST ASSETS AND ACTIVITIES

- 6.1 An Overview of Trust Accounting and Reporting
- 6.2 Considerations for the Arkansas Trustee
- 6.3 An Overview of the Arkansas Uniform Principal and Income Act (AUPIA)
- 6.4 The AUPIA – Should the Drafter Override It?

CHAPTER 7

ADMINISTRATION OF TRUSTS, INCOME TAXATION AND ESTATE TAX BASICS

- 7.1 The Grantor Revocable Trust While the Grantor is Living

- 7.1.1 Optional Method 1

- 7.1.2 Optional Method 2

- 7.1.3 The Choice Between One and Two
- 7.1.4 Optional Method 3
- 7.1.5 A Fourth Alternative
- 7.1.6 Arkansas Income Tax Requirements

- 7.2 The Grantor Revocable Trust after the Death of the Grantor
 - 7.2.1 Necessity for an EIN
 - 7.2.2 The Effect on Grantor Revocable Trust Tax Reporting
 - 7.2.3 Section 645 Election
 - 7.2.4 Form 1041 - When to File
 - 7.2.5 Form 1041 ES - When to File
 - 7.2.6 Calendar vs. Fiscal Income Tax Filing Year
 - 7.2.7 Trust Income, Deductions & Credits
 - 7.2.8 Who is Taxed - The Trust or the Beneficiaries?
 - 7.2.9 Trust Distributable Net Income and Income Distribution Deduction
 - 7.2.10 Income Taxes - the Trust vs. the Beneficiaries

- 7.3 Arkansas Income Taxation After the Grantor's Death
 - 7.3.1 State Income Tax Computation
 - 7.3.2 State Fiduciary Income Tax Return
 - 7.3.3 State Fiduciary Estimated Income Tax
 - 7.3.4 State Fiduciary Income Tax Rates
 - 7.3.5 State Fiduciary Capital Gains (or Losses)
 - 7.3.6 State Fiduciary Personal Tax Credit
 - 7.3.7 State Fiduciary Return Filing Year
 - 7.3.8 Tax Return Preparation Resources

- 7.4 Estate Tax Filing Requirements
 - 7.4.1 Federal Estate Taxes
 - 7.4.2 State Estate Taxes
 - 7.4.3 Planning for Portability

CHAPTER 8

THE ADMINISTRATION OF TRUSTS - TRANSFER TAX CONSIDERATIONS

- 8.1 Transfers During the Grantor's Lifetime
 - 8.1.1 Generally
 - 8.1.2 Marital Gifts

- 8.1.3 Charitable Gifts
- 8.1.4 The Unified Credit
- 8.1.5 Gifts by the Trustee of a Grantor Revocable Trust
- 8.2 Transfers After the Grantor's Death
 - 8.2.1 Reporting Grantor Revocable Trust Assets on Form 706
 - 8.2.2 Reporting Trust Beneficiary Interests on Form 706
 - 8.2.3 Marital "Zero Estate Tax" Planning with Credit Shelter Trust
 - 8.2.4 Marital "Zero Estate Tax" Planning With Portability
 - 8.2.5 Leaving All Grantor Revocable Trust Assets to a Surviving Spouse; the Pros and Cons
 - 8.2.6 The Necessity of Filing an Estate Tax Return
 - 8.2.7 Election Choices on the Estate Tax Return
 - 8.2.8 Estate Casualty Losses, Theft Losses & Administrative Expenses
 - 8.2.9 Decedents' Medical Expenses
- 8.3 Grantor GST Transfers, During Lifetime or at Death
 - 8.3.1 Which Form to Use
 - 8.3.2 How the Tax Operates
- 8.4 Conclusion

CHAPTER 9

THE ADMINISTRATION OF TRUSTS - CREDITORS' CLAIMS AND OTHER OBLIGATIONS

- 9.1 Overview
- 9.2 Creditor's Rights Against Beneficiaries' Interests in Non-Spendthrift Trusts
- 9.3 Creditor's Rights Against Beneficiaries' Interests in Spendthrift Trusts
- Generally
- 9.4 Exceptions to Spendthrift Immunity
 - 9.4.1 Self-Settled Revocable Trusts
 - 9.4.2 Fraudulent Transfers
 - 9.4.3 Bankruptcy
- 9.5 Exempt Property as a Trust Asset and the Nature of the Homestead Exemption
- 9.6 Asset Protection for Grantors
- 9.7 Creditors' Rights to the Revocable Trust Assets After Death

9.8 Spousal Right of Election to the Revocable Trust After Death

**CHAPTER 10
MODIFICATION AND TERMINATION OF TRUSTS**

- 10.1 Generally
- 10.2 Modification by Grantors
- 10.3 Modification or Termination by Third Parties
- 10.4 Trustees
- 10.5 Trust Advisors and Protectors
- 10.6 Modification of Trusts in Light of the New Arkansas Trust Code

Forms:

- F-10-1 – Notification of Termination of Noneconomic Trust
- F-10-2 – Notice of Proposed Distribution of Noneconomic Trust

**CHAPTER 11
DISTRIBUTION OF TRUSTS**

- 11.1 Generally
- 11.2 Interim Distributions of Trust Estate
 - 11.2.1 Trustee Distributions
 - 11.2.2 Fiduciary Income Taxation – Summary of the Rules
 - 11.2.3 Appointments and Withdrawals of Trust Assets by Power Holders and Beneficiaries
- 11.3 Final Distribution of Trust Estate
 - 11.3.1 Invoking Shortened Periods of Limitation
 - 11.3.2 Notification of Trust Beneficiaries
 - 11.3.3 Tax and Fiduciary Implications
 - 11.3.4 Transfer of Assets
 - 11.3.5 Securing Release of Trustee Responsibility and Liability
- 11.4 Checklist for Distribution of Assets

Forms:

- F-11-1 – Checklist for Termination of Formerly Revocable Trust

- F-11-2 – Certification of Trust
- F-11-3 – Letter to Tax Preparer Regarding Tax Returns
- F-11-4 – Letter to Trust Beneficiaries Outlining Proposed Trust Distribution
- F-11-5 – Proposed Final Distribution of Trust
- F-11-6 – Trustee’s Special Warranty Deed Conveying Real Estate to Beneficiary
- F-11-7 – Receipt and Release of Trust Beneficiary

**CHAPTER 12:
ETHICAL CONSIDERATIONS IN TRUST PRACTICE**

- 12.1 Generally
- 12.2 Scope of Representation
- 12.3 Fees
- 12.4 Confidentiality
- 12.5 Conflicts of Interest
- 12.6 Client With Diminished Capacity
- 12.7 Practice Before the Court and the Internal Revenue Service
- 12.8 Conclusion

**CHAPTER 13
VARIOUS TYPES OF TRUSTS**

**CHAPTER 14
TRUST BIBLIOGRAPHY**

- I. Uniform Trust Code Adopted
- II. Uniform Trust Code Not Adopted
- III. Selected Articles, Restatements, and Treatises

**CHAPTER 15
GLOSSARY OF TERMS**

**CHAPTER 16
THE ARKANSAS TRUST CODE
With Official Comments, Edited for Arkansas**

- Prefatory Note
- Overview of Uniform Trust Code

Subchapter 1 – General Provisions And Definitions

- 28-73-101. Short title.
- 28-73-102. Scope.
- 28-73-103. Definitions.
- 28-73-104. Knowledge.
- 28-73-105. Default and mandatory rules.
- 28-73-106. Common law of trusts – Principles of equity.
- 28-73-107. Governing law.
- 28-73-108. Principal place of administration.
- 28-73-109. Methods and waiver of notice.
- 28-73-110. Others treated as qualified beneficiaries.
- 28-73-111. Nonjudicial settlement agreements.
- 28-73-112. Rules of construction.

Subchapter 2 – Judicial Proceedings

- 28-73-201. Role of court in administration of trust.
- 28-73-202. Jurisdiction over trustee and beneficiary.
- 28-73-203. Subject-matter jurisdiction.

Subchapter 3 – Representation

- 28-73-301. Representation – Basic effect.
- 28-73-302. Representation by holder of general testamentary power of appointment.
- 28-73-303. Representation by fiduciaries and parents.
- 28-73-304. Representation by person having substantially identical interest.
- 28-73-305. Appointment of representative.

Subchapter 4 – Creation, Validity, Modification, and Termination of Trust

- 28-73-401. Methods of creating trust.
- 28-73-402. Requirements for creation.
- 28-73-403. Trusts created in other jurisdictions.
- 28-73-404. Trust purposes.
- 28-73-405. Charitable purposes – Enforcement.
- 28-73-406. Creation of trust induced by fraud, duress, or undue influence.
- 28-73-407. Evidence of oral trust.
- 28-73-408. Trust for care of animal.
- 28-73-409. Noncharitable trust without ascertainable beneficiary.
- 28-73-410. Modification or termination of trust – Proceedings for approval or

disapproval.

28-73-411. Modification or termination of noncharitable irrevocable trust by consent.

28-73-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

28-73-413. Cy Pres.

28-73-414. Modification or termination of uneconomic trust.

28-73-415. Reformation to correct mistakes.

28-73-416. Modification to achieve settlor's tax objectives.

28-73-417. Combination and division of trusts.

Subchapter 5 – Creditor's Claims – Spendthrift and Discretionary Trusts

28-73-501. Rights of beneficiary's creditor or assignee.

28-73-502. Spendthrift provision.

28-73-503. (Reserved).

28-73-504. Discretionary trusts – Effect of standard.

28-73-505. Creditor's claim against settlor.

28-73-506. Overdue distribution.

28-73-507. Personal obligations of trustee.

Subchapter 6 – Revocable Trusts

28-73-601. Capacity of settlor of revocable trust.

28-73-602. Revocation or amendment of revocable trust.

28-73-603. Settlor's powers – Powers of withdrawal.

28-73-604. Limitation on action contesting validity of revocable trust – Distribution of trust property.

Subchapter 7 – Office of Trustee

28-73-701. Accepting or declining trusteeship.

28-73-702. Trustee's bond.

28-73-703. Co-trustees.

28-73-704. Vacancy in trusteeship – Appointment of successor.

28-73-705. Resignation of trustee.

28-73-706. Removal of trustee.

28-73-707. Delivery of property by former trustee.

28-73-708. Compensation of trustee.

28-73-709. Reimbursement of expenses.

Subchapter 8 – Duties and Powers of Trustee

28-73-801. Duty to administer trust.
28-73-802. Duty of loyalty.
28-73-803. Impartiality.
28-73-804. Prudent administration.
28-73-805. Costs of administration.
28-73-806. Trustee's skills.
28-73-807. Delegation by trustee.
28-73-808. Powers to direct.
28-73-809. Control and protection of trust property.
28-73-810. Recordkeeping and identification of trust property.
28-73-811. Enforcement and defense of claims.
28-73-812. Collecting trust property.
28-73-813. Duty to inform and report.
28-73-814. Discretionary powers – Tax savings.
28-73-815. General powers of trustee.
28-73-816. Specific powers of trustee.
28-73-817. Distribution upon termination.

Subchapter 9 – Uniform Prudent Investor Act

28-73-901. Prudent investor rule.
28-73-902. Standard of care – Portfolio strategy – Risk and return objectives.
28-73-903. Diversification.
28-73-904. Duties at inception of trusteeship.
28-73-905. Reviewing compliance.
28-73-906. Language invoking standard of subchapter.
28-73-907. Application to existing trusts.
28-73-908. Uniformity of application and construction.

Subchapter 10 – Liability of Trustees and Rights of Persons Dealing With Trustees

28-73-1001. Remedies for breach of trust.
28-73-1002. Damages for breach of trust.
28-73-1003. Damages in absence of breach.
28-73-1004. Attorney's fees and costs.
28-73-1005. Limitation of action against trustee.
28-73-1006. Reliance on trust instrument.
28-73-1007. Event affecting administration or distribution.
28-73-1008. Exculpation of trustee.
28-73-1009. Beneficiary's consent, release, or ratification.
28-73-1010. Limitation on personal liability of trustee.
28-73-1011. Interest as general partner.
28-73-1012. Protection of person dealing with trustee.

28-73-1013. Certification of trust.

Subchapter 11 - Miscellaneous Provisions

28-73-1101. Uniformity of application and construction.

28-73-1102. Electronic records and signatures.

28-73-1103. Severability clause.

28-73-1104. Effective date.

28-73-1105. Application to existing relationships.