

Selling Guide

Published December 19, 2017

[Guide Table of Contents](#)

[Search guide content](#)

[BACK TO PART B](#) ➤

B2-2-05: Inter Vivos Revocable Trusts (10/31/2017)

This topic contains information on *inter vivos* revocable trusts, including:

[Overview](#)
[Inter Vivos Revocable Trust as Eligible Mortgagor](#)
[Lender Requirements](#)
[Trust and Trustee Requirements](#)
[Eligible Property and Occupancy Types](#)
[Underwriting Considerations](#)
[Title and Title Insurance Requirements](#)
[Loan Delivery Data](#)

Overview

Except as expressly provided elsewhere in the *Selling Guide*, Fannie Mae only accepts individuals as credit-qualifying borrowers. In addition, Fannie Mae normally deems property in which no borrower has an ownership interest as ineligible collateral. However, to accommodate the use of *inter vivos* trusts as an estate planning tool, Fannie Mae provides an exception for property held by *inter vivos* revocable trusts created by credit-qualifying borrowers.

Inter Vivos Revocable Trust as Eligible Mortgagor

An *inter vivos* revocable trust is a trust that

- an individual creates during his or her lifetime;
- becomes effective during its creator's lifetime; and
- can be changed or canceled by its creator at any time, for any reason, during that individual's lifetime.

Fannie Mae will accept an *inter vivos* revocable trust that has an ownership interest in the security property as an eligible mortgagor (a party to the security instrument) for all transaction types, provided it complies with the requirements in this topic.

Note: A trust must meet Fannie Mae's revocability and other eligibility requirements at the time the loan is delivered. Trust eligibility is not affected if the trust documents contain a provision that the trust will, in the future, become irrevocable upon the death of one of the settlors. However, such a change in the trust structure after delivery of the mortgage loan may affect the eligibility of the trust as a mortgagor in a subsequent loan transaction.

Lender Requirements

A lender delivering a loan that has an *inter vivos* revocable trust as mortgagor is responsible for:

- determining that both the trust and the mortgage satisfy Fannie Mae eligibility criteria and documentation requirements;
- determining under the laws of the states in which it does business that it can originate mortgages to validly created *inter vivos* revocable trusts that meet the terms and conditions specified by Fannie Mae; and
- completing a review of the mortgage documentation, applicable state law, and the trust documents to ensure that title insurers provide full title insurance coverage without exceptions for the trust or the trustees for *inter vivos* revocable trusts in that state. (See *Title and Title Insurance Requirements* below for additional information.)

Legal document requirements are described in B8-5-02, *Inter Vivos Revocable Trust Mortgage Documentation and Signature Requirements*. Also see E-2-05, *Signature Requirements for Mortgages to Inter Vivos Revocable Trusts*, for signature requirements under different *inter vivos* revocable trust scenarios.

Trust and Trustee Requirements

The *inter vivos* revocable trust must be established by one or more natural persons, solely or jointly. The primary beneficiary of the trust must be the individual(s) establishing the trust. If the trust is established jointly, there may be more than one primary beneficiary as long as the income or assets of at least one of the individuals establishing the trust will be used to qualify for the mortgage.

The trustee(s) must include either:

- the individual establishing the trust (or at least one of the individuals, if there are two or more); or
- an institutional trustee that customarily performs trust functions in and is authorized to act as trustee under the laws of the applicable state.

The trustee(s) must have the power to mortgage the security property for the purpose of securing a loan to the individual (or individuals) who are the borrower(s) under the mortgage or deed of trust note.

Note: In the event the originally named trustee is unable or unwilling to serve, and the trust instrument has a mechanism for appointment of a successor trustee, the trust can properly act through the successor trustee.

Eligible Property and Occupancy Types

All property and occupancy types are eligible. For properties that are the borrower's principal residence, at least one individual establishing the trust must occupy the security property and sign the loan documents.

Underwriting Considerations

The loan must be underwritten with at least one individual establishing the trust as borrower. Additional individuals, including other individuals establishing the trust, may also be considered co-borrowers if those individuals' credit will be used to qualify for the loan.

Title and Title Insurance Requirements

The lender must retain in the individual loan file a copy of any trust documents that the title insurance company required in making its determination on the title insurance coverage.

The following requirements apply to title and title insurance:

- Title held in the trust does not in any way diminish Fannie Mae's rights as a creditor, including the right to have full title to the property vested in Fannie Mae should foreclosure proceedings have to be initiated to cure a default under the terms of the mortgage.
- The title insurance policy ensures full title protection to Fannie Mae.
- The title insurance policy states that title to the security property is vested in the trustee(s) of the *inter vivos* revocable trust.
- The title insurance policy does not list any exceptions with respect to the trustee(s) holding title to the security property or to the trust.
- Title to the security property is vested solely in the trustee(s) of the *inter vivos* revocable trust, jointly in the trustee(s) of the *inter vivos* revocable trust and in the name(s) of the individual borrower(s), or in the trustee(s) of more than one *inter vivos* revocable trust.

Loan Delivery Data

Only the information related to the individual(s) establishing the *inter vivos* revocable trust whose credit is used to qualify for the loan should be provided at the time of loan delivery, such as the borrower name and Social Security number. The name of the *inter vivos* revocable trust cannot be included within the loan delivery data.

A loan that has an *inter vivos* revocable trust as a mortgagor must be delivered with Special Feature Code 168 (in addition to any other special feature codes that may also be applicable to the transaction).

Related Announcements

The table below provides references to the Announcements that have been issued that are related to this topic.

Announcements	Issue Date
Announcement SEL-2017-03	October 31, 2017
Announcement SEL-2013-01	January 17, 2013

Stay Connected

Suppliers

Careers

Contact Us

Legal

Privacy

Site Map

Freddie Mac Single Family / Single-Family Seller/Service Guide / Single-Family Seller/Service Guide / Selling / Series 5000: Origination and Underwriting / Topic 5100: Determining Borrower Eligibility / Chapter 5103: Special Borrower Eligibility / 5103.5: Living Trust (11/09/16)

5103.5: Living Trust (11/09/16)

The Seller warrants and represents that the Living Trust meets Freddie Mac's revocability and all other eligibility requirements as of the Delivery Date and the Funding Date.

A Living Trust is an eligible Borrower for a Home Mortgage if it meets all of the following conditions:

1. Special underwriting requirement

The Mortgage applicants must include an Underwritten Settlor (or at least one Underwritten Settlor if there is more than one Settlor)

2. Trust requirements

- The Settlor (or each Settlor, if there is more than one) is the primary beneficiary of the trust
- The trustee(s) must be the Settlor (or at least one Settlor if there is more than one), or a Settlor and one or more co-trustees. A financial institution customarily engaged in trust functions in the applicable jurisdiction may serve as a co-trustee.
- The trustee(s) must be specifically authorized to:
 - Borrow money for the benefit of an Underwritten Settlor
 - Purchase, construct or encumber realty to secure a loan to an Underwritten Settlor

3. Property type, occupancy and ownership requirements

- The Mortgage is secured by:
 - A 1- to 4-unit Primary Residence occupied by an Underwritten Settlor, or
 - A second home occupied for some portion of the year by an Underwritten Settlor, or
 - A 1- to 4-unit Investment Property
- If a Living Trust is a Borrower, then:
 - The occupancy of the property/Mortgaged Premises by an Underwritten Settlor of that Living Trust will be considered to be occupancy by the Borrower of the property/Mortgaged Premises
 - The Underwritten Settlor is an individual who is deemed to be the owner of the property/Mortgaged Premises

4. Title and title insurance

- **Title**

The title to the property is vested in the trustee(s) on behalf of the trust (or in such other manner as is customary in the jurisdiction for Living Trusts)

- **The title insurance policy**

- States that title to the Mortgaged Premises is vested in the trustee(s) on behalf of the Living Trust (or in such other manner as is customary in the jurisdiction for Living Trusts)

- Does not list any exceptions arising from the trust ownership of the property

- The Seller must verify that:

- Title vested in the trustee(s) on behalf of the trust (or in such other manner as is customary in the jurisdiction for Living Trusts) does not lessen in any way Freddie Mac's interest in the Mortgage, such as Freddie Mac's ability to obtain clear and marketable title to the Mortgaged Premises in the event of a foreclosure of the Mortgage

- The title insurance policy provides full title insurance protection to Freddie Mac

5. Signatures required; forms of signature

Set forth below are the required forms of signatures (Note) and required forms of signatures and acknowledgment (Security Instrument). If the Seller elects to use the Note with signature addendum to the Note ("Signature Addendum") alternative:

- (i) The form of Signature Addendum, and its use, must comply with all applicable laws
- (ii) The use of the Signature Addendum must result in a properly signed and legally enforceable Note
- (iii) The Signature Addendum must not impair Freddie Mac's status as a "holder in due course" or any of Freddie Mac's rights under the Purchase Documents
- (iv) The Seller indemnifies Freddie Mac from any loss or damage Freddie Mac may incur as a result of the use of the Signature Addendum

NOTE	
Loan documents	Required forms of signatures
	(See Exhibit 9A, Note Signature Forms for Living Trusts)
Note	<ul style="list-style-type: none"> • Each Underwritten Settlor individually; and • One or more trustees on behalf of the trust, indicating the complete legal name of the trust, using the form prescribed in Exhibit 9A. An Underwritten Settlor executing the Note both individually and as a trustee must use one of the methods prescribed in Exhibit 9A.
Note with Signature Addendum alternative	<ul style="list-style-type: none"> • May be used if there is not enough space on the Note for the signatures of the trustee(s). The Note must clearly reference the existence of the Signature Addendum.

	<ul style="list-style-type: none"> Each Underwritten Settlor (regardless of whether the Underwritten Settlor also is signing as a trustee) must sign individually in the Borrower's signature lines on the Note itself; only the signature(s) of the trustee(s) may be included on the Signature Addendum
Signature Addendum requirements	<ul style="list-style-type: none"> The Signature Addendum must: <ul style="list-style-type: none"> Be permanently affixed to the Note Clearly identify the Note by referencing the following: <ul style="list-style-type: none"> Name(s) of the Borrower(s) Note Date Property address Original Principal Balance of the Note

SECURITY INSTRUMENT	
Loan documents	Required forms of signatures and acknowledgment (See Exhibit 9B, Security Instrument Signature and Acknowledgement Forms for Living Trusts)
Security Instrument	<ul style="list-style-type: none"> Executed by the trustee(s) on behalf of the trust, indicating the complete legal name of the trust, using the form prescribed in Exhibit 9B Acknowledged by each Underwritten Settlor on the Security Instrument in the form prescribed by Exhibit 9B
Security Instrument with Rider as alternative form of Underwritten Settlor acknowledgment	<ul style="list-style-type: none"> The Security Instrument is executed by the trustee(s) on behalf of the trust, indicating the complete legal name of the trust The Seller may use a rider to the Security Instrument that meets all of the requirements in Exhibit 9B including that the rider: <ul style="list-style-type: none"> Is signed by the trustee(s) of the Living Trust; and Is acknowledged by each Underwritten Settlor of the Living Trust

Note:

The Seller may exclude any institutional trustee and any individual trustee who is not an Underwritten Settlor from personal liability under the Note and the Security Instrument provided that:

- The Seller verifies that such exclusion applies specifically to that trustee, and the Seller excludes only that trustee from liability; and

- Such exclusion does not impair the exercise of any rights and remedies under the Note and/or the Security Instrument

6. Seller review

The Seller must review:

- Either (a) the trust agreement for the Living Trust or, (b) an abstract, certification or other summary of the trust agreement if and to the extent the laws of the applicable jurisdiction require or permit a third-party dealing with a trustee to rely on such abstract, certification or other summary. Based on such review, the Seller must determine that:
 - The Settlor (or each Settlor, if there is more than one) has retained the power to revoke or amend the trust
 - There is specific authorization for the trustee(s) to borrow money and to purchase, construct, or encumber realty as more fully described in Section 5103.5(2) above
 - There is no unusual risk or impairment of lenders' rights (such as distributions required to be made in specified amounts from other than net income)
 - The beneficiary need not grant written consent for the trust to borrow money or, if such consent is required, it has been granted in writing for purposes of the Mortgage
 - If the trust agreement requires more than one trustee to borrow money or to purchase, construct or encumber realty, that the requisite number of trustees have signed the loan documents
- The deed conveying the Mortgaged Premises to the trustee or trust to verify that title is vested in the trustee(s) on behalf of the Living Trust (or is vested in such other manner as is customary in the jurisdiction for Living Trusts)

7. The Mortgage file

- In addition to other requirements in the Purchase Documents, when the Borrower is a Living Trust, the Mortgage file also must contain either:
 - A complete copy of the trust agreement
 - An abstract, certification or other summary of the trust agreement if and to the extent the laws of the applicable jurisdiction require or permit a third-party dealing with a trustee to rely on such abstract, certification or other summary

8. Delivery requirements

See Section 6302.9 for special delivery requirements when the Borrower is a Living Trust.

9. Freddie Mac resources

The following are useful Freddie Mac resources related to this section:

Document Custodian Procedures Handbook, Chapter 3, Document Delivery and Processing Procedures, Borrower's Signature
The ULDD information regarding non-individual Borrowers in the following user guides: <ul style="list-style-type: none">• Selling Mortgages to Freddie Mac for Cash• Selling Mortgages to Freddie Mac – Guarantor and MultiLender

Related Guide Bulletins	Issue Date
Bulletin 2016-20	November 9, 2016

U.S. Bank Home Mortgage – Correspondent Clients Certificate of Trust Changes

2017-035 / September 26, 2017

Effective immediately for any new loans or loans in the pipeline, U.S. Bank Home Mortgage is amending our requirements when closing in a revocable trust to allow for a simplified trust certificate when the loan is underwritten by U.S. Bank Home Mortgage.

There is a Certification of Revocable Trust Form that will be utilized for 43 states exclusively. There are seven states in which a trust certificate cannot be used (CO, CT, HI, LA, NY, OK, RI). For those states, please follow our current policy using an attorney's opinion requiring a full copy of the trust. Instructions for trusts in California have been deleted from Underwriting/Credit Policy guidelines, and the new documentation requirements have been updated.

Published in our Seller Guide folder 1100: Exhibits & Forms > 1110: Underwriting are the following:

- **Certification of Revocable Trust Form (1117.1.1)**
- **Certification of Revocable Trust Key** — available to assist in the completion and review of the trust certificate. (1117.1.2)
- **Trust Lending Tool** — a list of states for which a Certificate of Trust can be utilized, clarification on who needs to sign, and whether signatures have to be notarized. (1117.3)

Delegated Correspondents are encouraged to use our Certification of Revocable Trust form, however you may use your own form as long as it contains the same information.

Please refer to these Underwriting/Credit Policy sections in the Seller Guide for complete guidelines:

711.3 FHA – Eligible Borrowers

712.5 VA – Eligible Borrowers

713.5 Agency – Eligible Borrowers

714.1.4 Portfolio – Borrower & Occupancy

Notes:

- **Irrevocable trusts are not acceptable for any product.**
- **Fannie Mae products must have an SCC Code of 168.**

Please contact your Client Support Group or Account Executive for assistance with any questions you may have.

Thank you for your partnership!



Nathan Piwowski

From: James P. Spica <JSpica@dickinson-wright.com>
Sent: Thursday, February 15, 2018 8:48 PM
To: Geoffrey R. Vernon
Cc: Nathan Piwowski
Subject: RE: LDDC - Qualified Trust Beneficiary
Attachments: RE: LDDC - Qualified Trust Beneficiary

Have you got this (the highlighted bit below in light of the attached), Geoff? In addition to our general notice-fix, I think what we had in mind was just adding to MCL 700.7301(c) something like:

"Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 7405(1) that is a material purpose of the settlor.)

Jim

James P. Spica Member

500 Woodward Avenue Phone 313-223-3090
Suite 4000 Fax 844-670-6009
Detroit MI 48226 Email JSpica@dickinsonwright.com

[Profile](#) [V-Card](#)

DICKINSON WRIGHT PLLC

ARIZONA FLORIDA KENTUCKY MICHIGAN NEVADA OHIO
TENNESSEE TEXAS WASHINGTON D.C. TORONTO

From: Geoffrey R. Vernon [<mailto:gvernon@joslynvernon.com>]
Sent: Wednesday, January 24, 2018 1:38 PM
To: 'Nathan Piwowski'
Cc: James P. Spica
Subject: RE: LDDC - Qualified Trust Beneficiary

Will do. I won't be able to participate in Friday's call as I will be driving up north with kids in the car.

Geoff

Geoffrey R. Vernon
Joslyn & Vernon, PC
200 Maple Park Boulevard
Suite 201
St. Clair Shores, MI 48081-2211
586/773-3323 - Telephone
586/773-1143 - Fax
gvernon@joslynvernon.com
www.joslynvernon.com

Legal Notice: This communication may contain confidential or privileged information (and may constitute inside information). It is intended only for the addressee. Any copying, distribution, or use of this communication by anyone other than the addressee is strictly prohibited and may be unlawful. If you have received this message in error, please immediately notify the sender and delete this message from your computer. Neither this email nor any attachment(s) shall establish an attorney-client relationship, constitute an electronic signature, or provide consent to contract electronically unless expressly so stated in this communication or an attachment hereto.

From: Nathan Piwowarski [mailto:nathan@mwplegal.com]
Sent: Wednesday, January 24, 2018 1:12 PM
To: 'Geoffrey R. Vernon' <gvernon@joslynvernon.com>; 'James P. Spica' <JSpica@dickinson-wright.com>
Subject: RE: LDDC - Qualified Trust Beneficiary

Gentlemen,

I neglected to bring this up at CSP. And Jim gently reminded me. Would you mind putting the recommended addition into the omnibus's existing format, so that we can run it by council next month? I apologize for the inconvenience!

Nathan Piwowarski
McCurdy Wotila & Porteous, PC
120 West Harris Street
Cadillac, Michigan 49601
direct phone line: (231) 577-5246
general office line: (231) 775-1391
fax: (231) 577-1488
email: nathan@mwplegal.com
www.mwplegal.com

From: Geoffrey R. Vernon [mailto:gvernon@joslynvernon.com]
Sent: Thursday, December 28, 2017 9:31 AM
To: 'James P. Spica' <JSpica@dickinson-wright.com>; Nathan Piwowarski <nathan@mwplegal.com>
Subject: RE: LDDC - Qualified Trust Beneficiary

Thanks, Jim. I agree with your thoughts.

As a belt and suspenders approach (in anticipation that our proposed change will become law), I am including in the trust instruments that I am preparing a statement that it is not a material purpose of the trust to benefit the disaster clause beneficiaries – that it is intended to prevent a resulting trust in the unlikely event all the settlor's descendants predecease him or her. I wonder if it makes sense to include similar language in our special power of appointment provision. So doing seems a step too far but I have a fear (that I believe is rational) of having to provide Jim's below explanation to a probate court judge.

Practically, however, I may be considering a solution in search of a problem as it is highly unlikely that the donee spouse is going to raise a fuss when her interest is revocable by the donor spouse (and the exercise could easily be temporarily revoked). And I don't think we would ever include or reference exercise of special powers documents in our pleadings. Our trust instruments require delivery of the exercise document to a trustee but I don't believe the POA Act has a delivery requirement so a trustee may not even be privy to the existence of the exercise.

In any event, I do not believe further changes are needed to our proposed legislation.

Geoff

Geoffrey R. Vernon
Joslyn & Vernon, PC
200 Maple Park Boulevard
Suite 201
St. Clair Shores, MI 48081-2211
586/773-3323 - Telephone
586/773-1143 - Fax
gvernon@joslynvernon.com
www.joslynvernon.com

Legal Notice: This communication may contain confidential or privileged information (and may constitute inside information). It is intended only for the addressee. Any copying, distribution, or use of this communication by anyone other than the addressee is strictly prohibited and may be unlawful. If you have received this message in error, please immediately notify the sender and delete this message from your computer. Neither this email nor any attachment(s) shall establish an attorney-client relationship, constitute an electronic signature, or provide consent to contract electronically unless expressly so stated in this communication or an attachment hereto.

From: James P. Spica [<mailto:JSpica@dickinson-wright.com>]
Sent: Wednesday, December 27, 2017 6:28 PM
To: Geoffrey R. Vernon <gvernon@joslynvernon.com>; Nathan Piwowski <nathan@mwplegal.com>
Subject: RE: LDDC - Qualified Trust Beneficiary

P.s.: If it's up to *H* whether *W* has any interest in the trust at all, then I also think that you and your partner ignoring the implausibility of saying that the settlor's material purposes included providing *W* a benefit. The settlor, it seems to me, should be viewed as wanting any of the permissible appointees of *H*'s power to have a beneficial interest in the trust *only if H* wants that—the settlor's material purpose on the point is most likely to allow *H* to please himself. As explained below, I don't think our fix is required to answer the question you've raised, but if it's up to *H* whether *W* has any interest in the trust at all, then I think our fix makes it even easier to get (what I think is) the right answer.

Jim

James P. Spica Member

500 Woodward Avenue Phone 313-223-3090
Suite 4000 Fax 844-670-6009
Detroit MI 48226 Email JSpica@dickinsonwright.com

[Profile](#) [V-Card](#)

DICKINSON WRIGHT P.C.

ARIZONA FLORIDA KENTUCKY MICHIGAN NEVADA OHIO
TENNESSEE TEXAS WASHINGTON D.C. TORONTO

From: James P. Spica
Sent: Wednesday, December 27, 2017 6:06 PM
To: 'Geoffrey R. Vernon'; Nathan Piwowski
Subject: RE: LDDC - Qualified Trust Beneficiary

My thought, Geoff, is that the wife in your situation (*W*) is not a "trust beneficiary" within the meaning of MCL 700.7103(*l*) until the husband's (*H*'s) power to revoke the exercise of his special power terminates (by release or *H*'s death or, perhaps, *H*'s loss of capacity).

By hypothesis, the instrument by which *H* exercised his power in favor of *W* expressly made the exercise revocable. See MCL 556.119. In that case, it seems to me treating *W* as having a "contingent" "beneficial interest" in the trust (within the meaning of MCL 700.7103(*l*)(*i*)) in your situation proves too much: it would mean, for instance, (it seems to me) that someone named as an appointee in the will of the holder of a testamentary special power could be a "contingent beneficiary" of trust property subject to the power before the holder of the testamentary power dies—and that is certainly incorrect.

If the instrument creating *H*'s presently exercisable special power allows *H* to exercise the power revocably, then I think it allows *H* electively to give his power some of the characteristics of a testamentary power. I think MCL 700.7103(*l*) is consistent with that latitude. And to be a "qualified trust beneficiary," one has to be a "trust beneficiary." See MCL 700.7103(*g*).

Jim

From: Geoffrey R. Vernon [<mailto:gvernon@joslynvernon.com>]
Sent: Wednesday, December 27, 2017 5:31 PM
To: James P. Spica; Nathan Piwowarski
Subject: LDDC - Qualified Trust Beneficiary

Jim and Nathan –

I was just speaking to my partner about the proposed change to the definition of qualified trust beneficiary and we pondered the following situation:

A qualified trust beneficiary properly exercised his special power of appointment in favor of his wife - naming her as a substitute trust beneficiary to stand in his stead in the event he predeceases her. The exercise is revocable by the current husband beneficiary (though I don't that fact is relevant). We are concerned that the appointee wife is a qualified trust beneficiary. I haven't thought this all the way through yet but wanted to bring it to your attention as a potential problem that our proposed legislation does not fix.

Geoff

Geoffrey R. Vernon
Joslyn & Vernon, PC
200 Maple Park Boulevard
Suite 201
St. Clair Shores, MI 48081-2211
586/773-3323 - Telephone
586/773-1143 - Fax
gvernon@joslynvernon.com
www.joslynvernon.com

Legal Notice: This communication may contain confidential or privileged information (and may constitute inside information). It is intended only for the addressee. Any copying, distribution, or use of this communication by anyone other than the addressee is strictly prohibited and may be unlawful. If you have received this message in error, please immediately notify the sender and delete this message from your computer. Neither this email nor any attachment(s) shall establish an attorney-client relationship, constitute an electronic signature, or provide consent to contract electronically unless expressly so stated in this communication or an attachment hereto.

The information contained in this e-mail, including any attachments, is confidential, intended only for the named recipient(s), and may be legally privileged. If you are not the intended recipient, please delete the e-mail and any attachments, destroy any printouts that you may have made and notify us immediately by return e-mail.

Neither this transmission nor any attachment shall be deemed for any purpose to be a "signature" or "signed" under any electronic transmission acts, unless otherwise specifically stated herein. Thank you.

CONFIDENTIALITY NOTICE: This e-mail and any attachments are confidential and may also be privileged. If you are not the named recipient, please notify the sender immediately and delete the contents of this message without disclosing the contents to anyone, using them for any purpose, or storing or copying the information on any medium. This e-mail was swept for computer viruses. However, we cannot guarantee that the integrity of this e-mail has been maintained in transmission and do not accept responsibility for the consequences of any virus contamination

The information contained in this e-mail, including any attachments, is confidential, intended only for the named recipient(s), and may be legally privileged. If you are not the intended recipient, please delete the e-mail and any attachments, destroy any printouts that you may have made and notify us immediately by return e-mail.

Neither this transmission nor any attachment shall be deemed for any purpose to be a "signature" or "signed" under any electronic transmission acts, unless otherwise specifically stated herein. Thank you.

Nathan Piwowarski

From: Geoffrey R. Vernon <gvernon@joslynvernon.com>
Sent: Friday, January 12, 2018 8:16 AM
To: James P. Spica; Nathan Piwowarski
Subject: RE: LDDC - Qualified Trust Beneficiary

It does Jim. My apologies for not replying.

Geoffrey R. Vernon
Joslyn & Vernon, PC
200 Maple Park Boulevard
Suite 201
St. Clair Shores, MI 48081-2211
586/773-3323 - Telephone
586/773-1143 - Fax
gvernon@joslynvernon.com
www.joslynvernon.com

Legal Notice: This communication may contain confidential or privileged information (and may constitute inside information). It is intended only for the addressee. Any copying, distribution, or use of this communication by anyone other than the addressee is strictly prohibited and may be unlawful. If you have received this message in error, please immediately notify the sender and delete this message from your computer. Neither this email nor any attachment(s) shall establish an attorney-client relationship, constitute an electronic signature, or provide consent to contract electronically unless expressly so stated in this communication or an attachment hereto.

From: James P. Spica [mailto:JSpica@dickinson-wright.com]
Sent: Thursday, January 11, 2018 8:40 PM
To: Geoffrey R. Vernon <gvernon@joslynvernon.com>; Nathan Piwowarski <nathan@mwplegal.com>
Subject: RE: LDDC - Qualified Trust Beneficiary

Does what's written below satisfy you, Geoff, or are you inclined to think we need a fix for discretionary charitable distributees?

Jim

James P. Spica Member

500 Woodward Avenue Phone 313-223-3090
Suite 4000 Fax 844-670-6009
Detroit MI 48226 Email JSpica@dickinsonwright.com

[Profile](#)

[V-Card](#)

DICKINSON WRIGHT LLP

ARIZONA FLORIDA KENTUCKY MICHIGAN NEVADA OHIO
TENNESSEE TEXAS WASHINGTON D.C. TORONTO

From: James P. Spica
Sent: Wednesday, January 03, 2018 11:49 AM
To: 'Geoffrey R. Vernon'; Nathan Piwowarski
Subject: RE: LDDC - Qualified Trust Beneficiary

I think, Geoff, that section 7110's reference to "[a] charitable organization expressly named in the terms of a trust to receive distributions under the terms *of a charitable trust*" (emphasis added) should be understood as a reference to a charitable organization that *would be* a "trust beneficiary" within the meaning of MCL § 700.7103(l) *if* charitable trusts had "beneficiaries" in the ordinary sense. We're looking (it seems to me) for an analogy here, and (it seems to me) a *designated* permissible appointee under a special power of appointment that is held by the trustee of the very trust in question *is* analogous to a "trust beneficiary" within the meaning of the MTC. So, I'd say that if, for example, as of a given time, the trustee is in a position to make a current distribution, if she chooses to, to a given charitable organization that is *named* in the *charitable trust*, that organization has, as of that time, the rights of a "qualified trust beneficiary." MCL § 700.7110(1)(a).

I don't think we can achieve what UTC § 110 is meant to achieve if we don't come to that conclusion. So, I'm not distressed by the result you're grappling with *assuming* you're grappling with a "charitable trust." I'll remind you, though, that we've added to MCL 700.7103(c) that the "charitable purpose described in section 7504(1)" is a "material purpose" of the trust's settlor. So, a "dumping provision" that lists a bunch of charitable beneficiaries as permissible distributees, with the selection and the amount of distributions to be made by the trustee in her sole discretion would *not* yield a "charitable trust" for purposes of MCL § 700.7110(1).

Jim

From: Geoffrey R. Vernon [mailto:gvernon@joslynvernon.com]
Sent: Wednesday, January 03, 2018 8:26 AM
To: James P. Spica; Nathan Piwowarski
Subject: LDDC - Qualified Trust Beneficiary

Jim and Nathan –

I have another query regarding our definition.

I'm dealing with a charitable trust and was reviewing 700.7110. It's interesting that 7110(1) provides that a "charitable trust has the rights of a qualified trust beneficiary under this article if ..." Our definition, then, is not modified to include our proposed amendment to the term "qualified trust beneficiary."

My particular issue is whether a class of charitable beneficiaries that are listed in the trust instrument as permissible beneficiaries, with the selection of the beneficiaries to receive distributions (and the amount of such distributions) being made by trustee in its sole discretion, are qualified trust beneficiaries?

I believe that the phrase in 7110(1) "expressly named in the terms of the trust to receive distributions" takes these permissible charitable beneficiaries out of the class of qualified trust beneficiaries as they are not named to received distributions but only to be eligible to receive distributions. Nonetheless, I worry that such an interpretation would not be made by a court.

Thoughts?

Geoff

Geoffrey R. Vernon
Joslyn & Vernon, PC
200 Maple Park Boulevard
Suite 201
St. Clair Shores, MI 48081-2211
586/773-3323 - Telephone
586/773-1143 - Fax
gvernon@joslynvernon.com
www.joslynvernon.com

Legal Notice: This communication may contain confidential or privileged information (and may constitute inside information). It is intended only for the addressee. Any copying, distribution, or use of this communication by anyone other than the addressee is strictly prohibited and may be unlawful. If you have received this message in error, please immediately notify the sender and delete this message from your computer. Neither this email nor any attachment(s) shall establish an attorney-client relationship, constitute an electronic signature, or provide consent to contract electronically unless expressly so stated in this communication or an attachment hereto.

The information contained in this e-mail, including any attachments, is confidential, intended only for the named recipient(s), and may be legally privileged. If you are not the intended recipient, please delete the e-mail and any attachments, destroy any printouts that you may have made and notify us immediately by return e-mail.

Neither this transmission nor any attachment shall be deemed for any purpose to be a "signature" or "signed" under any electronic transmission acts, unless otherwise specifically stated herein. Thank you.