

# LEGAL EASE



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## **Be sure you can have faith in your trust**

As of November 6, 2006, Pennsylvanians who have already created trusts, or plan to set up trusts, have a new set of rules and guidelines to follow thanks to the adoption of the Uniform Trust Act in this Commonwealth. The new rules will make it both easier and more difficult to administer trusts in Pennsylvania.

Many people do not understand what a trust is. The legal definition is a written document which contains three elements, namely, trust property (usually money but can be real estate, shares of stock, or other investments), a trustee (who holds the property for the benefit of another) and a beneficiary or beneficiaries. A settlor (the trust creator) can establish the trust, and also be the trustee and beneficiary. However, the new law does not permit a trust where the same person is the only trustee and the only beneficiary.

The testamentary trust, or a trust set up in a Will, is familiar to many. This type of trust is often set up to accommodate children or grandchildren who may be too young to inherit a significant sum of money at the Testator's death. Another familiar trust is "in trust for" bank accounts which many parents set up for children. A type of trust which has become more common is a Living Trust or a revocable trust (can be altered or amended), which is established and utilized during a person's lifetime. Trusts can be established for those with disabilities to protect assets when receiving public benefits, for the care of pets, to leave assets to a charitable organization, or to pass wealth onto the next generation. The key points to creating a trust are that it is in writing, that the person or persons establishing the trust have the capacity to do so, and that there is a beneficiary or beneficiaries.

There have been changes in the rules regarding administration of trusts with the new Uniform Trust Act. Probably the most significant of these changes involves the notice requirements. Many people chose Living Trusts as a Will substitute because they wanted the privacy they believed that this document afforded, as probate is then avoided. However, the trustee's duty of notice is an attempt to balance the settlor's privacy needs against that of the beneficiaries who need to have information in order to protect their rights.

The Uniform Trust Act continues to deny beneficiaries trust information while the settlor is still alive (unless the trust instrument requires notice, or the settlor chooses to share this information). However, if the settlor is adjudicated incapacitated or if he dies, the notice provisions become mandatory rules to follow. The reality is that a beneficiary cannot protect an interest in the trust unless he or she knows the trust's provisions and operations.

In addition to following the rules on time frames related to giving notice to beneficiaries, and knowing which beneficiaries require notice, there are regulations regarding the way a notice is given, and the form of the reports to be given to the beneficiaries. Trustees should consult with legal counsel to be sure that they are meeting the standards for trustee actions. Settlers should be sure that the trust they have created, or are about to create, gives sufficient direction to the trustee chosen.

The Pennsylvania Uniform Trust Act is the subject of PCTV Legal Talk, airing through December on Tuesdays at 8:30 pm on Channel 27, and Thursdays at 9:30 pm on Channel 98.