



**Beneficiary's Trust**  
**(for beneficiaries who are husband and wife)**  
by  
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A Beneficiary's Trust (also known as an "Inheritor's Trust") is an irrevocable Trust established under the direction of one or more Primary Beneficiaries and is designed to receive gifts and inheritances from parents, grandparents and others. In other words, it is written by the Beneficiary's attorney and funded wholly by people other than the Beneficiary. The Beneficiary can be a Trustee of the Trust as long as he or she does not retain a power that will pull Trust assets into the Beneficiary's estate.

Generally, the Beneficiary will manage the investments and other assets in the Trust, and an independent (although sympathetic Trustee) will hold all tax-sensitive powers. When the Trust owns life insurance on the life of a Beneficiary, a special Trustee to make decisions regarding the life insurance is usually appointed.

A Beneficiary's Trust offers the Beneficiaries opportunities for wealth accumulation, access to Trust assets, and asset protection from creditors of the Trust Beneficiaries. These Trusts are often funded with a combination of single-life or survivorship life insurance and other assets.

A Beneficiary's Trust exhibits each of the following attributes:

- I. **Drafted by Primary Beneficiary's Attorney But Executed and Funded by Primary Beneficiary's Parents and/or Others:** A Beneficiary's Trust is designed by a person called the Primary Beneficiary to receive gifts and inheritances from his or her parents or other relatives. Establishing such a Trust requires careful communication and cooperation between the different generations. The Primary Beneficiary would have his or her attorney draft the Trust, which would be executed by his or her parents or other relatives. All future gifts or inheritances could then be directed to the Beneficiary Trust, thus putting the assets in the Trust in a place where they would not be included in the Beneficiary's estate or subject to the claims of the Beneficiary's creditors, including a spouse in a divorce situation. Where a husband and wife are Primary Beneficiaries with joint and survivorship interests in the Trust, the Trustee provides the designated Trust benefits to the Primary Beneficiaries until the survivor of them dies.

- II. **Primary Beneficiary and Successor Beneficiaries Have Direct or Indirect Control of Trust:** In order to keep assets, including life insurance proceeds, from being included in a Beneficiary's estate for estate and generation-skipping tax purposes, the Beneficiary may not possess any tax-sensitive powers. Therefore, the Trust generally has at least two Trustees, one Trustee who holds the right and power to make any and all decisions with regard to Trust administration, including the exercise of tax-sensitive powers, and one Trustee who is a Beneficiary of the Trust and who holds the right and power to make any and all decisions with regard to Trust administration other than those which are tax-sensitive. Tax-sensitive powers may include certain powers of appointment over Trust property, especially life insurance on the power holder's life, and certain powers by a Beneficiary to access Trust assets, including life insurance on the Beneficiary's life. Once the survivor of the Primary Beneficiaries dies, one or more other Beneficiaries will be appointed as a Trustee of the Trust.
- III. **Asset Protection from Beneficiary's Creditors:** Most states permit Beneficiaries of a Trust established by another person to be free from the claims of the Beneficiaries' creditors, including the claims of a divorced spouse. The provision in a Trust that creates this type of asset protection is called a "spendthrift" clause, which prevents the Beneficiary from assigning or pledging his or her interests in the Trust to another person.
- IV. **Special Power of Appointments:** The Primary Beneficiaries, other Beneficiaries or other family members, can be given a limited power to appoint assets to any person other than the Beneficiary or his or her estate or the creditors of either. When the Trust owns an insurance policy on the life of a Beneficiary, that Beneficiary should not have the power to appoint any interest in the life insurance policy to another person. Such a power could be considered an incident of ownership in the policy that could cause the proceeds to be included in the Beneficiary's estate at his or her death.
- V. **Multi-Generational:** The Trust is designed to benefit the Primary Beneficiaries and their descendants for as long as a Trust can exist under state law. In those states, such as Alaska, Delaware, South Dakota and others, where the rule against perpetuities has been repealed, the Trust could last forever.
- VI. **GSTT Exempt and Non-Exempt Sub-Trusts:** To ensure that a multi-generational Trust does not become subject to the generation-skipping transfer tax (GSTT), or if it does, that the GSTT is minimized, the Trustee is given the power to divide the Trusts into separate Trusts that are wholly GSTT exempt and non-exempt.
- VII. **Trustee Empowered to Establish or Merge Trusts:** The Trustee is empowered to divide the Trust assets into one or more separate Trusts for the benefit and varying needs of different Trust Beneficiaries.
- VIII. **Grantor and Non-Grantor Sub-Trusts:** There may be times when it is desirable for a Trust created under the Trust Agreement to be treated as a Grantor Trust with respect to a particular Beneficiary. The Trustee is empowered to create Trusts that are either Grantor Trusts or Non-Grantor Trusts when it is to the Beneficiary's advantage to do so.

This article has been adapted from the Highlights of the Plan of the Beneficiary's Trust document set (for beneficiaries who are husband and wife) contained in Version 16.0 (and higher) of InsMark's Documents On A Disk<sup>®</sup> ("DOD"). Other documents in this set are:

- ✓ Technical Preface
- ✓ Trust Agreement
- ✓ Document Summary Letter
- ✓ Checklist

A separate document set is available in Documents On A Disk for a Beneficiary's Trust with a sole primary beneficiary, i.e., husband or wife.

If you are not licensed for Documents On A Disk and would like more information, please visit <http://www.insmark.com/ProductCenter/DocumentsOnADisk/index.html> or call an InsMark Account Executive at 1-888-InsMark (467-6275).

Corporate accounts should contact David Grant, Senior VP - Sales, at 1-925-543-0513. (A web-based version named Documents On The Net<sup>™</sup> is available to corporate accounts.)

Note: The type of trust discussed in this report was developed by Richard A. Oshins, a member of the law firm of Oshins & Associates in Las Vegas. Mr. Oshins refers to it as an "Inheritor's Trust", a Trademark of Richard A. Oshins, Esq., Steven J. Oshins, Esq. and Noel Ice, Esq.

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