Trust Basics

Trusts and Trust Proceedings, Session 1

Catherine Wilson, Assistant Professor, UNCSOG

January 29, 2026

1

On today's agenda…

FIVE SESSIONS

1. What is a trust? How do they work?
2. How do trusts interact with wills? With decedents' estates? What level of supervision does the clerk have over them?
3. Trust proceedings and the clerk's role.
4. What is a special needs trust? What do clerks need to know?
5. How do trusts interact with guardianships?

2

Why does a clerk need to know anything about trusts?

- You will encounter them in your practice.

Decedents' Estates | Guardianships | Trust Proceedings

- You might be required to supervise a trust.
- You might be asked to
  - Intervene in a trust
  - Create a trust
  - Send money or property to a trust (guardianships, single transactions/protective arrangements)
  - Review what's happened in a trust (approve accountings)

3

Why does a clerk need to know how a trust works?

…because you will not have the whole picture.

- You will encounter a trust in bits and pieces, at different points in the trust's lifetime.
- If you don't understand the basics of how a trust works, you'll be lost.

UNC SCHOOL OF GOVERNMENT

4

…and, even with a full day of training…

We're only scratching the surface.

TODAY'S GOAL: Give you a basic level of trust literacy.

- Learn the fundamentals
- Know where to look for answers
- Understand what your role is as the clerk

UNC SCHOOL OF GOVERNMENT

5

What is a trust?

UNC SCHOOL OF GOVERNMENT

6

"A property interest held by one person, at the request of another, for the benefit of a third party."

BLACK'S LAW DICTIONARY (7TH ED.)
DEFINITION OF TRUST

7

A trust has 3 parties:

- Settlor
- Trustee
- Beneficiary

UNC SCHOOL OF GOVERNMENT

8

Settlor

DEFINITION

"A person, including a testator, who creates, or contributes property to, a trust." G.S. 36C-1-103

- Also referred to as a ***Grantor*** or ***Trustor***.
  - Decides who the Trustee is.
  - Decides who the Beneficiaries are.
  - Creates the rules that the Trustee and Beneficiaries must follow.

9

Trustee

DEFINITION

"One who, having legal title to property, holds it in trust for the benefit of another and owes a ***fiduciary duty*** to that beneficiary." *Blacks' Law Dictionary* (7^{th} Ed.)

- Includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court. G.S. 36C-1-103(22)
- Does not include trustees in mortgages and deeds of trusts. G.S. 36C-1-103(22)

UNC SCHOOL OF GOVERNMENT

10

Beneficiary

DEFINITION

"A person who has a present or future beneficial interest in a trust." [G.S. 36C-1-103(3)]

- The interest can be vested or contingent.
- Can be present or future.
  - *Example:*
    Settlor creates a trust for the lifetime of A and at A's death, for the lifetime of B.
    Both are beneficiaries, but A is the present beneficiary, B is the future beneficiary.

Settlor → *Creator*

Trustee → *Person in Charge*

Beneficiary → *Person who benefits*

Let’s Create a Trust

UNC SCHOOL OF GOVERNMENT

13

Example

THE ABC TRUST

Lisa creates a trust called the Anyone But Catherine (ABC) Trust. The ABC trust is for the benefit of “*every person other than Catherine Wilson who attends the SOG trusts class on January 29, 2026*.” For reasons not entirely clear, Lisa puts Catherine in charge of the trust.

- Who is the Settlor?
- Who are the Beneficiaries?
- Who is the Trustee?

UNC SCHOOL OF GOVERNMENT

14

How does Lisa create the trust?

- She signs a document called a ***trust instrument***.
  - Identifies the Trustee and Beneficiaries.
  - Contains the rules of the trust.
    - Typically includes successor trustees, distribution instructions, powers of the trustee, rules for accountings, access to information, etc.
  - 10 to 60+ pages long.

UNC SCHOOL OF GOVERNMENT

15

What does Lisa do with her trust?

The trust is a legal entity (like a business). ***It can own things***.

- Lisa can put her assets into the trust.
- How?
  - During her lifetime – by changing title to each asset.
  - At her death – by using a will to transfer everything she owns into the ABC Trust (this is known as a ***"pour-over" will***).
- The process of placing assets into the trust is called ***funding the trust***.

UNC SCHOOL OF GOVERNMENT

16

How to think about a trust:

UNC SCHOOL OF GOVERNMENT

17

Funding Lisa’s Trust

HOW IT WORKS

Asset	Method of Transfer
Stocks – Hershey's, Mars Wrigley, Inc.	Update stock certificates, Computershare
Home	Deed (Lisa as grantor, Trustee as grantee)
Duck Farm - business	Update LLC paperwork to show Trust as the new owner
Duck Farm - land	Deed
Bank accounts	Update ownership (signature card), or POD/TOD designation on account
Life Insurance & Retirement (IRA, 401K, 403B)	Name trust as beneficiary
Assets Lisa may own in the future	Pour-Over Will, or The strategies outlined above

UNC SCHOOL OF GOVERNMENT

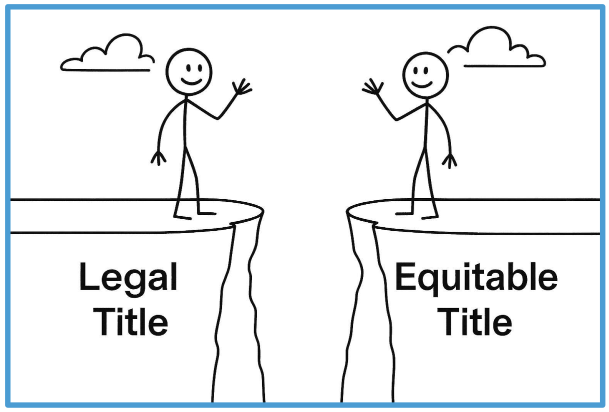
18

Legal Title vs. Equitable Title

HOW A TRUST OWNS ASSETS

- Trustee owns legal title to trust assets.
- Beneficiaries own equitable title to trust assets.

- This means that…
  - The Trustee has control of the assets.
  - But the beneficiary must receive the benefit.



Trust Administration

DEFINITION

- ***Trust administration*** - The process of administering the trust by the trustee.
- Will last as long as the trust is in existence.
  - Could be a long time:
    - Until a child turns 25 *(…or 30, or 45, or 50…)*
    - For the lifetime of a beneficiary.
    - For multiple generations.
- Includes:
  - Making distributions to the beneficiaries, paying expenses of the trust, paying and filing taxes, preparing accountings.

What are the Trustee's duties?

FIDUCIARY DUTY 101

- Duty to administer the trust in good faith
- Duty of loyalty (solely in interests of beneficiaries)
- Duty of impartiality among two or more beneficiaries
- Duty to administer the trust prudently
- Duty to incur only reasonable costs
- Duty to use any special skills and expertise

Example

THE ABC TRUST - DISTRIBUTION

The terms of the ABC Trust instrument state that "***the Trustee shall distribute to each Beneficiary, a portion of the trust assets of that Beneficiary's choosing. The distribution shall occur at such times as the Trustee, in her sole and absolute discretion, shall deem appropriate, but in any event the distribution shall occur no less than two times***."

- Can the Trustee choose which asset the Beneficiary receives?
- Who must make the trust assets available for selection?
- Who must do the selecting?
- Who decides when the distribution will occur?
- Could the Trustee allow the Beneficiaries to choose 6 different times? Only 1 time?

Could Lisa have created the ABC Trust in her will?

Yes.

- This would be called a ***testamentary trust***.
- Would only be effective when Lisa's will is effective (upon her death, when the will is probated).

UNC SCHOOL OF GOVERNMENT

23

To recap…

Settlor

G.S. 36C-1-103(17)

Creates or contributes property to a trust

Trustee

G.S. 36C-1-103(22)

Holds legal title to property for the benefit of another

Beneficiary

G.S. 36C-1-103(3)

Person for whose benefit trustee holds property

UNC SCHOOL OF GOVERNMENT

24

Governing Law

What law applies to a trust?

Chapter 36C, *The North Carolina Uniform Trust Code* *(the "UTC")*

- Governs:
  - Duties and powers of trustees,
  - Relations among trustees,
  - The rights and interests of beneficiaries.
- Effective Jan. 2006.
- Applies to all trusts, regardless of when they were created.

The UTC is a “Default Statute”

- Only applies if the trust instrument is silent.
- Terms of the trust can override the rules in the UTC.
- *Exception*— Mandatory rules under G.S. 36C-1-105.

UTC’s Mandatory Rules

THE TRUST INSTRUMENT CANNOT OVERRIDE…

1. The requirements for creating a trust.
2. The duty of a trustee … to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.
3. The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.
4. The power of the court to modify or terminate a trust.
5. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust in Article 5.
6. A trustee’s liability if the trustee acts in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.
7. Certain rights of a third parties in Article 10.
8. Periods of limitation for commencing a judicial proceeding.
9. The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of justice.
10. The subject-matter jurisdiction of the court and venue for commencing a trust proceeding.
11. The requirement that a POA agent shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.
12. The power of a trustee to renounce an interest in or power over property.

What's missing from the mandatory list?

COURT SUPERVISION

"A trust is not subject to continuing judicial supervision, except as provided in G.S. 36C-2-208 and G.S. 36C-2-209, unless ordered by the court."

G.S. 36C-2-201(b)

- Some testamentary trusts are required to account to the clerk. G.S. 36C-2-209
- Other trusts are not required to account to the clerk unless the trust instrument directs the trustee to do so or the law otherwise requires. G.S. 36C-2-208

…This Is VERY different from decedents' estates.

29

Types of Trusts

30

Types of trusts – When is the trust effective?

Inter vivos Trust

- Also called a **living trust** or **stand-alone trust**.
- Effective when the settlor signs the trust.

Testamentary Trust

- Created in a will.
- Not effective until the settlor's death.

31

Types of trusts – Ability to modify

Revocable Trust

- Settlor reserves the right to right to terminate and recover the trust property.
- Usually includes the settlor's right to amend the trust.
- Rights of beneficiaries are limited while settlor is alive. G.S. 36C-6-603

Irrevocable Trust

- Cannot be terminated or amended (modified) without consent of the beneficiaries and/or court approval.
- Often used for tax or special needs purposes.

32

Back to the ABC Trust…

REVOCABLE VS. IRREVOCABLE

The trust instrument states that it is an irrevocable trust, and Lisa has no right to revoke it. But what if it didn't say anything about being revocable or irrevocable? What kind of trust would it be?

It depends on when it was created

A CHANGE IN PRESUMPTION

- ***Before*** Jan. 1, 2006, trust is presumed **irrevocable** unless document expressly says otherwise.
- ***After*** after Jan. 1, 2006, trust is presumed **revocable** unless document expressly says otherwise.

Why use a trust?

UNC SCHOOL OF GOVERNMENT

35

Why use a Trust?

TRUSTS VS. WILLS

Trusts

- Privacy – document is not a public record
- Avoid probate and probate costs (up to $6,000 + attorney's fees)
- Plan for incapacity (POA alternative)
- Impose conditions on how money is spent (muti generations, minor kids, beneficiaries with disabilities or other concerns – financial, addiction, bad influence)
- Speed up distribution after death
- Professional management of assets
- Tax advantages, special needs planning

UNC SCHOOL OF GOVERNMENT

36

Drawbacks of Using a Trust

TRUSTS VS. WILLS

Trusts

- Complicated – longer document, can be harder to understand and interpret
- Need a competent trustee who understands fiduciary duty
- More rules to follow
- Less/No court supervision
- Funding problems
- Requires time, effort, and money to administer

Trustee's Duties

UNC SCHOOL OF GOVERNMENT

Every Trustee owes a fiduciary duty to their Beneficiary

FIDUCIARY DUTY 101

- Duty to administer the trust in good faith
- Duty of loyalty (solely in interests of beneficiaries)
- Duty of impartiality among two or more beneficiaries
- Duty to administer the trust prudently
- Duty to incur only reasonable costs
- Duty to use any special skills and expertise

See G.S. Chapter 36C, Article 8

The Case of the Misbehaving Trustee

THE ABC TRUST

The ABC Trust instrument does not name Catherine as a beneficiary of the ABC Trust, but Catherine, using her authority as Trustee, removes money from the trust's bank account and gives it to herself. She also sells some of the Hershey's stock at below market value to her mother.

- Is Catherine allowed to do this?
- What duties has Catherine violated?

What if the Trustee violates a fiduciary duty?

- This is called a ***breach of trust***.
- What recourse does a beneficiary have?
- Court action.
  - Trustee removal*
  - Emergency relief*
  - Sue for monetary damages

What about Trustee compensation?

- Trustees can be paid for doing their job.
  - How much?
    1. Whatever the trust instrument says. G.S. 36C-7-708
    2. If trust instrument is silent, in accordance with Article 6 of G.S. Chapter 32.

Review

UNC SCHOOL OF GOVERNMENT

43

Vocabulary

ESSENTIAL TRUST TERMS

- Trust
- Settlor
- Trustee
- Beneficiary
- Fiduciary duty
- Trust instrument
- Trust funding
- Trust administration
- Uniform Trust Code *(Chapter 36C)*
- Pour-over will
- Revocable Trust
- Irrevocable Trust
- Inter vivos Trust
- Testamentary Trust
- Breach of trust

UNC SCHOOL OF GOVERNMENT

44

Concepts

TRUST BASICS

- A trust has three parties – Settlor, Trustee, Beneficiary.
- A trust can own assets.
- The Trustee holds legal title and Beneficiaries hold equitable title.
- UTC is default law for trusts, except for mandatory rules.
- Court supervision of a trust is rare and only required in limited cases.
- A trustee has a fiduciary duty to act in the best interest of the Beneficiaries.
- If the Trustee commits a breach of fiduciary duty, the Beneficiaries may ask the court to intervene.

45

Questions?

Catherine Wilson
cwilson@sog.unc.edu
919-962-0942

46

UNC | SCHOOL OF GOVERNMENT

47