

PAROL<sup>1</sup> TRUSTS--EXPRESS TRUST IN PURCHASED REAL OR PERSONAL PROPERTY.

The (*state number*) issue reads:

"Was (*identify property*) purchased to be held under an express trust by (*name alleged trustee*)?"

You will note that in this issue I have used the word "trust." A trust is a legal relationship between persons. A trust exists when one person has agreed to purchase certain property and then handle it in a particular way so as to benefit another person.<sup>2</sup> An "express trust" is simply a legal relationship created by an agreement "expressed" between the parties. The agreement can be expressed in spoken words. It can be expressed by definite conduct. It can be expressed partially in writing and partially by spoken words or conduct.<sup>3</sup> It does not matter how the legal relationship involving an

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<sup>1</sup>Parol evidence may be used to prove express trust in purchased real or personal property. *Ellis v. Vespoint*, 102 N.C. App. 739, 741, 403 S.E.2d 542, 544 (1991).

<sup>2</sup>Such agreements generally create fiduciary relationships between the "trustee" and the "beneficiary" of the arrangement and are, thus, valid and binding unless there is some contractual defense available. However, if the agreement violated public policy, the parol trust would be unenforceable. c.f. *Martin v. Underhill*, 265 N.C. 669, 673, 144 S.E.2d 872, 875 (1965) (chilling of bid at public sale). Parol trusts are not subject to the defenses of the Statute of Frauds or that consideration was not given to support them. *Bryant v. Kelly*, 279 N.C. 123, 130, 181 S.E.2d 438, 442 (1971); *Paul v. Neese*, 244 N.C. at 565, 568, 94 S.E.2d 596, 598 (1956).

<sup>3</sup>A trust that is written is not a *parol* trust. However, there may be circumstances where the alleged trust is expressed partially in writing and partially by spoken words or conduct. Written trusts are governed under rules applicable to contracts generally but nonetheless must meet certain requirements. The written words used must be sufficient to create the trust, and the written declaration must identify the trust's subject matter, object and beneficiary with reasonable certainty. *Wachovia Bank & Trust Co. v. Taylor*, 255 N.C. 122, 126, 120 S.E.2d 588, 591 (1961).

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express trust is created as long as the parties have expressed their agreement.

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by clear, strong and convincing evidence,<sup>4</sup> three things:

First, that (name alleged trustee) and (name alleged settlor/beneficiary) agreed that (name alleged trustee) would purchase the (identify property) and later transfer it to (name alleged settlor/beneficiary) when he reimbursed (name alleged trustee) for the amount of the purchase price.<sup>5</sup> No particular words or conduct are necessary to form an agreement. Neither the word "trust" nor any other technical term need be used. A trust does not require that consideration or a thing of value be given to support it.<sup>6</sup> It is sufficient if (name alleged trustee) and (name alleged settlor/beneficiary) agreed that (identify property) would be purchased by (name alleged trustee) and transferred when (name alleged settlor/beneficiary) reimbursed (name alleged trustee) for the purchase price.

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<sup>4</sup>*Graves v. Walston*, 302 N.C. 332, 341, 275 S.E.2d 485, 490 (1981); *Bryant*, 279 N.C. at 130, 181 S.E.2d at 442; *Paul*, 244 N.C. at 568, 94 S.E.2d at 598. See N.C.P.I.--Civil 101.11.

<sup>5</sup>*Bryant*, 279 N.C. at 129-130, 181 S.E. at 442; *Paul*, 244 N.C. at 568, 94 S.E.2d at 598.

<sup>6</sup>*Id.*

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Second, that (*name alleged trustee*) purchased (*identify property*) under the agreement.<sup>7</sup> [A person "purchases" real property [when he signs [a contract to purchase] [an option to purchase] the real property which he can enforce against the seller] [when he pays the requested price and a deed of conveyance is executed and delivered to him].] [A person "purchases" personal property when [a contract to purchase] [an option to purchase] has been executed which he can enforce against the seller] [it is delivered to him]<sup>8</sup> [the documents of

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<sup>7</sup>*Britt v. Allen*, 27 N.C. App. 122, 125, 218 S.E.2d 218, 221 (1975), *aff'd in part rev'd in part*, 291 N.C. 630, 231 S.E.2d 607 (1977), *appeal after remand*, 37 N.C. App. 732, 247 S.E.2d 17 (1978).

<sup>8</sup>Personal property not involving muniments of title.

title are executed and delivered to him].<sup>9</sup>]

Third, that (name alleged trustee) and (name alleged settlor/beneficiary) made their agreement at or before the time (name alleged trustee) purchased the (identify property).<sup>10</sup> A trust does not arise if the agreement is reached after the property has already been purchased.

Finally, as to the (state number) issue on which the plaintiff has the burden of proof, if you find by clear, strong and convincing evidence that the (identify property) was purchased to be held under an express trust by (name alleged trustee), then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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<sup>9</sup>Personal property involving muniments of title.

<sup>10</sup>*Bryant*, 279 N.C. at 130, 181 S.E.2d at 442; *Paul*, 244 N.C. at 568, 94 S.E.2d at 598.