COMMON LAW BUSINESS TRUST ORGANIZATION

or, the

PURE TRUST

Prepared by:

Blue Ridge Group

David L. Miner, General Manager

DMiner@FreedomSite.net

www.FreedomSite.net

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INTRODUCTION

If you act on what this booklet tells you, you can save more money than you ever imagined. If you do not act, then there is no other way for you to escape the fate of so many millions of others. Has the following happened to you or someone you know? A friend or relative passed away and his estate was thrown into time-consuming probate -- enormous inheritance taxes, high estate taxes, and large legal fees drastically reducing the estate. Did the Internal Revenue Service rule adversely on stocks, paintings, antiques, or other personal property? Did the family business have to be destroyed in order to pay these hefty costs? Did the heirs have little to inherit after it was all over?

When you pass on, your family may have to go through the same needless waste of money and time. If your total estate can be valued above $600,000, at least 30 and sometimes 50 percent or more of your estate will be taken by taxes, and many thousands of dollars in legal fees and probate costs will usually be taken out on top of the taxes. The financial security you promised your family might be destroyed when you die.

Now there is no need for your family to do without. You can legally avoid every dollar that your family would have paid due to the probate process. You can use a tool that could save you the cost of legal fees, executor and administrative fees, probate costs, inheritance taxes, estate taxes and gift taxes.

Since you have accumulated assets throughout your life, it is only right that when you pass on, your family should receive the full benefit -- the full use of those assets. Now they can control those assets intact without a cent of probate or tax costs -- and without a moment's hesitation.

WHAT IS THIS METHOD? A little known and rarely used instrument based on common law called the *COMMON LAW CONTRACT*, also know as the *UNINCORPORATED BUSINESS TRUST ORGANIZATION* or the *PURE TRUST ORGANIZATION*.

HOW DOES IT WORK? You and your family form your own trust organization through properly prepared contracts, trust organization minutes, and a trust organization indenture. Oversimplified, you exchange (not give) your assets with the Pure Trust Organization. The trust organization then owns the assets outright, and manages those assets through its trustees. No gift taxes are paid because no gift was made. You and family members may, under certain limited circumstances, be appointed trustees who manage, control, and direct the desired benefits of the trust organization assets. As you and succeeding trustees pass on, no death taxes or probate costs

are incurred on the trust organization assets. The trust organization does not end when you pass away. It ceases only when the trustees decide it should.

CAN ANYONE USE IT? Anyone with large or moderate assets who wants to save money can use it to reduce or avoid probate costs and other legal problems involved in the distribution of an estate after his/her death.

OTHER ADVANTAGES OF THE PURE TRUST ORGANIZATION

The Pure Trust Organization acts in many ways like an individual -- buying, owning, selling, spending, and earning.

It is private. You do not have to register the Pure Trust Organization, its assets, or its functions with any city, state or federal body.

The Pure Trust Organization can be used in place of both business and personal transactions.

The assets of the Pure Trust Organization may not be touched by probate or divorce proceedings or by personal creditors.

Why have you not heard of this estate planning tool before now? That question has too many different answers to get a good response in these pages. But there are a number of reasons that might play a role in this information not getting out to those who could use it.

First, you must understand the difference between common law and statutory law. "Common law" is that set of commonly acknowledged rules that everyone should know and obey out of common sense and common decency. It has often been said that common law makes common sense to the common man. Common law has been slowly and informally collected into a set of beliefs that are accepted as *the way things should be* by most western European people. It is sometimes called English Common Law because the British legal system was built on it. Statutory law is the legal structure created by those who want or need to govern people. Common law is simple; the common man can and will understand it. Statutory law is complex; sometimes only attorneys and legislators can understand it. Common law is based on the belief that there is a God and he has given man certain rights which should not be abrogated by any government. Statutory law is based on a belief that man must be limited if he is to live in association with others. Common law has as its goal maximum individual freedom. Statutory law has as its goal the common good, or that which is expedient, in order to ruffle the fewest feathers and hurt the fewest feelings. Another way of saying it is, Common Law is based on what is right and wrong, and statutory law is based on what is legal and illegal. While common law and statutory law can and should coexist peacefully, they do have at their roots different presuppositions, goals and purposes.

Most trusts are statutory trusts, created by legal edict to restrict or to grant limited license to activities that otherwise would be illegal. The tax breaks and limited liability granted to statutory trusts would be illegal if it were not for the laws that create that kind of trust. A common law trust, or pure trust, is based on the common law principles of property ownership.

As a result, liability is limited by common sense in common law ("You can't sue me, the car doesn't belong to me!"). Liability is limited by legal technicalities in statutory law ("You can't sue me, I have been given the license to incorporate! You can only sue the corporation."). Because statutes are constantly changing, and judges tend to change their interpretations of laws over time, most lawyers are totally consumed with statutory law. And their understanding of common law and Constitutional Law is almost totally lacking today.

One reason for this deficiency is that most common law courses taught in the law schools were dropped from the curriculum in the 1920's and 1930's. This fact is very distressing, because our whole law system is based on the English "common law" except for one state (Louisiana). The United States Supreme Court has ruled that common law is just as much a part of the State law as are statutes passed by the state legislatures, and that statutes are often nothing more than declarations of common law. Yet, a considerable number of persons in the legal profession would lead you to believe that the United States Constitution is outdated, and that common law principles are of no importance in this day and age. Since you cannot learn common law principles in most law schools, the only alternative is to study on your own and become self-educated on the subject.

Surprisingly, not many attorneys know that the Pure Trust Organization actually exists, even though there are United States Supreme Court cases, district court cases and others where the "pure trust" form of business organization is specifically mentioned. Several years ago, I was involved in a discussion on the Legal Forum of CompuServe where an attorney told me that he had never heard of an unincorporated business trust organization, or a Pure Trust Organization. Based on the fact that he had never heard of it, he proclaimed to all on the forum that it must be illegal and invalid. How wrong can one be? I have seldom had someone proclaim his ignorance so boldly and aggressively.

> "A Trust, for probate avoidance, is a lawful, irrevocable, separate legal entity." *Harwood vs. Tracy,* 118 MA 631.
>
> "It is established by legal precedent that pure trusts are Lawful, valid business organizations." *Baker vs. Stern*, 58 A.I.R. 462
>
> "Trust or trust estates is a legal entity for most all purposes, as are common law trusts." *Burnett vs. Smith*, S.W. 1007 (1920)

It is also surprising how little most lawyers know about other types of trusts or organizations that they are drafting for clients. I have yet to meet one (beyond the handful of lawyers who specialize in pure trusts) who could adequately explain the difference between a common-law contract organization and an inter vivos (living) trust, although I know there must be some that would research the subject (for a fee and enough time).

Of course, volumes of information are printed today on the vast subject of estate planning devices, such as establishing and maintaining trusts and organizations. These books deal largely with testamentary and/or living trusts, which have many limitations. Yet these same estate planning experts seldom if ever discuss the Pure Trust Organization, which avoids many of the

pitfalls of the more common types of trusts. Pure Trust Organizations are not widely used for they are not widely known, but this tool is seldom challenged in the courts and has rarely been broken by courts of equity. Hence, very little information is in print on how they are established and maintained, and on their official status before the law. Pure Trust Organizations do definitely exist and, in fact, are widely used by those of sufficient knowledge and financial acumen to know how they can be put to far-reaching advantage. It is very difficult to determine who these people are, because one of the main functions of the Pure Trust Organization is to maintain the complete privacy of the financial and legal information of the organization and its activities. The documentation of the Pure Trust Organization is not a matter of public record as are charters of trusts and articles of incorporation.

There is another reason why so few of the American people know anything at all about these trust instruments – radical revenue reduction!. ***Plain and simple, these trusts get in the way of attorneys making money.*** First, they totally avoid probate, which is one of the most profitable and most sacred of revenue generators for judges and lawyers. Second, they totally avoid federal reporting requirements (no federal forms to file!), which reduce the income made by attorneys and CPA's in their services to businesses. And third, any person with knowledge of these issues can create a business trust – it does not require an attorney like statutory trusts. So, it is possible that some attorneys are hesitant to discuss these options with their clients since that discussion would result in a radical decrease in the revenues they will ultimately receive from those clients. Attorneys and CPA's often make half or more of their fees from providing the services that are not needed by business trusts.

We are not suggesting, as many have, that the legal profession is consumed with making money to the exclusion of an honest presentation of options. But, of the legal professionals we have discussed these issues with, most have been aware of business trusts but have never discussed these trusts with clients. Of course, there is always the comment that they are not totally familiar with all the issues concerning business trusts, and therefore they would not feel comfortable discussing these instruments without first knowing more about them. However, not one of the attorneys who have made these comments ever took it upon themselves to learn more about what they already knew would cost them money should it become common knowledge, not even when we offered large amounts of legal research to those attorneys for free.

This publication attempts to present some of the issues involved with a business trust, or pure trust. It is simple, general and incomplete. Yet it presents more solid information on this issue than most attorneys or CPAs have seen. In reading this publication, you have become the expert, not your attorney. On the other hand, you would be best served if your attorney or CPA would read this and then do a little research on his/her own. Some will; many will not. You will need to decide what you should do if your tax and estate professional will not take the time to learn this information and become proficient in the legal technicalities of the business trust. The professional who listens, reads and then studies these issues will ultimately have a powerful new estate planning tool to use in providing an essential service to his/her clients. But the good news is, the common man can use the common law to accomplish uncommon estate planning and leave an uncommon estate for his/her heirs. And he/she can do this totally without the use of an attorney. Read on, to your financial health.

A SHORT HISTORICAL ANALYSIS OF THE PURE TRUST ORGANIZATION

The Pure Trust Organization is, in legal terms, an entity not new to the world or the United States. Springing from equity procedures, the first Pure Trust Organizations were known in the Roman Empire -- going back as far as 800 AD or earlier. It became the preferred method of establishing equity of ownership and management in the Middle Ages on the European Continent. The States of the Union (United States) adopted the common law of England as an entire system, including the principles of equity then enforced by the courts of chancery in England.

> "The Unites States adopted the Common Laws of England with the Constitution." *Caldwell v. Hill*, 176 S.E. 383 (1934)

These early English trust organizations were modeled after the ancient German legal receiver called the "salman." The "salman" was a person to whom land was transferred in order that he might make the conveyance according to the former owner's wishes. Although this might seem a devious and inefficient way of transferring property, a review of the conditions in medieval times should show the reasons for this procedure.

In England, many burdens and conditions fell upon the holder of legal title to real estate. For example, the lord of the land was entitled to relief or money payments when the land was passed to an heir of full age. The lord was entitled to wardship fees when the son of the former owner was a minor. The lord was also entitled to aid or additional taxes to pay for the marriage of the lord's daughter or the knighting of the lord's eldest son. In addition, the owner of the land was usually prohibited from selling the land or dividing the land among his children or grandchildren. Also, if the owner of the land was convicted of a crime he forfeited all he owned to the lord or king, thereby leaving his family impoverished. In addition, landowners could never will or give the land to their daughters.

These were the major restrictions. There were nearly 100 other taxes and limitations on the owners of lands.

To avoid these restrictions under the law, the trust organization was developed. It works as follows: The owner contracted with two trustees to convey the property to a trust for the beneficial use of another person (the beneficiary). This fourth person was generally the owner's son or the person to whom the owner wished to sell the land. The trustees were literally trusted with the proper use of the property.

In the twelfth and thirteenth centuries there were no legal methods to enforce the trust contract. If the trustees during these years decided to use the property for themselves, there was nothing the former owner could do. Eventually, however, the courts began to enforce these contracts.

Because the contracts were not sales, they were not illegal transfers of land. Because the contracts were not wills, they were not improper transfers to children or grandchildren. Further,

they could be kept secret. The king did not have to know of the transfer, and the laws, the taxes and other limitations could be ignored.

The trust organizations had other advantages. For example, if the transferor of property placed in a trust organization was convicted of a crime, he would not forfeit the property since he no longer owned it. His family as beneficiaries of the trust would continue to enjoy the property. Also, since beneficiaries of a trust organization were not limited in number, a man might distribute the benefit of the property to all of his children. (Under the law at the time, he could pass it by will only to his eldest son.)

The trustees and beneficiaries in each of these trusts controlled the land, planted it, reaped the harvest, sold or used the results for profit and by law, could ignore almost all other restrictions on the use of the land. The trustees usually did not participate in this use but allowed the beneficiaries to do as they wished, since the property would ultimately go to them anyway. The beneficial or equitable interests in these trusts could be sold at will with no change in the trustees and usually without taxation. Normal sales of property had to be made public and were usually accomplished by elaborate procedures. Beneficial interests in trust organizations could be created and transferred secretly.

Early in the fifteenth century the king's chancellor began to enforce such trusted contracts and agreements in the king's own court. The relief offered by the chancery court was usually in the form of an order to keep the trustees from committing some act, such as evicting the beneficiary or laying waste to the land. By the sixteenth century the concept of the trust organization was well developed.

The king, having lost many of his former rights to the lands held in trust organizations, publicly criticized them. There were probably many abuses of the trust organization which led to this criticism; for example, religious orders which had pledged themselves to poverty often held hundreds of thousands of acres of land in trust organizations and enjoyed their use, even though the priests themselves did not "own" a thing. However, since the nobility was being severely pinched with respect to their traditional rights and powers, one can identify with them more easily. So kings generally resisted or refused to discuss pure trusts.

In 1535 the Statute of Uses was passed to prohibit the use of certain trust instruments, but this statute did not address trust organizations. The law required that the beneficiary of certain trusts would be considered the legal owner whenever such a trust was made and that the trustees would be considered mere conduits or passive parties. The preamble of this law set out the "evils" that had been possible through the use of the trust.

Among these "evils" were privacy of transfer, legal avoidance of taxes and other regulations, preservation of the estate of convicted criminals, and (most significantly), the loss of revenue to the lords.

The common law judges of England who had sole jurisdiction over legal estates were faced with the task of interpreting the Statute of Uses. They had to determine which trusts were legal and which should be dissolved. The judges decided to restrict the application of the Statute

of Uses to limited circumstances. Only one trust out of five was found to be illegal and the rest were enforced. Within five years, the Statute of Uses was all but out of use.

Suffice it to say that the Statute at the hands of the common law judges did not achieve what the king and his nobles had hoped. A large number of trust organizations were left unaffected by the Statute and were recognized and enforced by the Court of Chancery. It is these interests and trust organizations, which were preserved in spite of the Statute of Uses, which traveled to America with the English Colonies and which formed the very basis of the trust organizations of today.

The advantages of the ancient trust organizations are obvious: The trust organization enabled a person to enjoy privacy under a system that usually demanded disclosure. The trust organization enabled a person to avoid some of the burdens of special taxes. The trust also enabled individuals to "sell" land and to pass it to those they wished. Obviously, the same goals are desirable today. Our present tax system, however, has imposed certain burdens and many restrictions on the citizens of our country that are comparable to the burdens and restrictions that limited the citizens of ancient England.

In general, the definition of a "trust" is ***a right of property, real or personal, held by one party for the benefit or another***. From this broad definition numerous types of trusts are derived, because a trust can be created for any purpose which is not illegal or against public policy.

One of these various types is an "express trust" created or declared in express terms, usually in writing, as distinguished from one inferred by law. Another necessary qualification that is placed on the express trust is that it must be "active," where the trustee has authority to manage the property of the estate and to pay the net income to legatees or beneficiaries. Such express trusts were quite prevalent in England from the fifteenth century to date, for the purpose of estate management and preservation. They were so widely used that they became part of the common-law, and Courts of Equity were set up to handle them.

Exactly at what time in history the term "common-law trust organization" was applied to these express trusts is unknown, but the term was used in some of the earlier trust organizations set up in the United States of America. Since we adopted the English common law as the basis of our legal system, the term "common-law trust organization" was most descriptive of the instrument.

During the eighteenth century, the term "pure trust organization" was used on occasion in place of "common-law trust organization" to denote that it was simple and free from defects or fault. Late in the eighteenth century, common-law trust organizations were used to vest a business, real, or personal property in a group of trustees who managed it for the owners of beneficial shares. This practice, although used occasionally in other states all the way back to about the seventeenth century, became predominantly accepted in the state of Massachusetts. (This was true not so much because Massachusetts was the only state to recognize these trusts as valid, but because of the large number of very wealthy Massachusetts families that used these trusts to avoid taxes and maintain privacy.) Thus, the term "Massachusetts trust" was used in place of common-law trust organization. Still later (in the earlier part of the nineteenth century),

when a greater number of businesses were vested in a common-law or Massachusetts trust, the term, "business trust" was applied.

In the 1920's "pure trust organizations" were legally defined by the Supreme Court of the United States of America. One of the reasons for the legal definition was that some of the common-law (or Massachusetts or business) trusts were being operated more like a partnership than they were a trust-like relationship. The "Pure Trust Organization" then became the more modern form connected with the old common-law trust organizations. The partnership-like form of trust organization was not invalidated, but recognized as another form of common-law or business trust along with the Pure Trust Organization. The partnership-like business trust is a special form of trust arrangement used when investors are involved. Both forms have been used extensively throughout the United States up to the present time for estate management and preservation of a business, real estate, or personal property.

A business trust is a hybrid type of business organization. As Judge Magruder has pointed out, "It is the offspring of a union between the unincorporated joint stock company and the trust." The shield of a trust is used to protect the shareholders from personal liabilities, similar to a corporation. The trustees of a business trust really correspond to the board of directors of a corporation. These trustees are acting for the shareholders and are designated by some common name (the name of the trust), which is recognized as a separate business and also as a legal entity. On the other hand, the trustees also hold some of the features of a shareholder of a corporation, in that the trustees are absolute owners of the trust assets. Although the shareholders of a corporation are not absolute owners of the assets of the corporation, they are the legal owners of the entity, as are the trustees of a trust.

The Case for Privacy of Family Affairs

One of the advantages of the Pure Trust organization is privacy. In what way can privacy be helpful and why is it important to you and your family? Let us look at it this way: A man may keep secret the contents of a will he has made as long as he lives, but when he dies and the documents governing the disposal of his estate are filed in court as the law requires, they are for all the world to see. Granted, members of the general public are not in the habit of meandering through the recording offices and browsing through the wills on file, but there are always reporters as well as certain specialists who make a job of combing files containing wills. People compile mailing lists, for instance, of widows and other heirs and legatees, for one sort of solicitation or another.

We must keep in mind that wills of people of reputed means, and of social, business or professional prominence in their communities, are rated as news -- not as scandalous news, but as news that satisfies the curiosity of many -- friends, neighbors, and strangers. Tidbits as to the wealth of people they know or have heard about, as to who is going to get what, or who is being cut off, are choice pieces of news. Consequently, the court where wills are filed in "probate" is on the court reporter's route. Some newspapers, generally in the smaller communities, faithfully report wills filed for probate, naming the beneficiaries and citing such estimates of worth as may be gleaned from the documents. It may be only the high spots that are covered. Should anything out of the ordinary be revealed, some headlines might certainly be expected.

How the Pure Trust Organization Helps

In most of us, there is a deeply felt, though rarely voiced, urge to map out areas in terms of space and thought in human relations that we can call our own -- we have our private individual worlds and instinctively defend them.

"For a man's house is his castle," wrote Sir Edward Coke, in the pedantic fashion of three centuries ago. This is popularly misremembered as "The Englishman's home is his castle." Because Coke was writing of the English common law, there is a certain appropriateness here that he helped to formulate. It is particularly relevant due to the fact that out of the English system of common law the Pure Trust Organization was developed, which can truly be a castle of refuge in time of need to a man, his family and all that he holds dear. A Pure Trust Organization can be created during a lifetime, thus readily distinguishable from the testamentary trust, the terms of which are stated in a "Last Will and Testament." The Pure Trust Organization is a now and forever trust organization. It comes into existence when the trust organization indenture, which states its terms, is signed. At that point, the ownership of property to be owned by the trust organization is conveyed to the trust. The creator of the trust may be someone outside of the family, not related by birth or marriage. Since he may appoint the first trustee and this trustee may appoint the second and those two may appoint others, on the death of any trustee the trust may be continued and usually is. Since the members of the family can be trustees, they may draw salaries. Family members may also be beneficiaries, and often are. Since the trust need never die, the property it holds may continue to grow and pay benefits to the beneficiaries. By

renewing the life of the trust, the trustees may extend its life indefinitely, as has been the case in several trusts in the United States.

The Important Part

Here is where the element of privacy comes in: There is no process of probate that is to be gone through, no routine spreading of trust agreements in public records for every Tom, Dick and Harry to peruse. There is no required process of notification to people who may consider themselves neglected or unfairly dealt with -- no exposed invitation to come into court and challenge the agreement. The Pure Trust Organization is a private contract between the creator of the trust and the one(s) with assets or an estate to protect (known as the grantor). After the death of the grantor, the only persons to whom the trustee owes duties are the beneficiaries of the trust -- the holders of Beneficial Certificate Units. To these the trustee owes the duty of absolute undiluted loyalty and confidentiality.

In truth, we should point out some exceptions to the sweeping claims we have just made. The Trust Certificate holders conceivably may have some dissatisfaction with the terms of the trust organization. While litigation can expose the trust organization to public gaze, it is difficult and extremely unusual for this to happen. Thus, it becomes clear that the Pure Trust Organization is an instrument that contributes greatly to those who desire privacy for themselves and their loved ones.

And remember, the trust is “owned” and managed by the trustees. They are accountable only to requirements and limitations of the trust indenture, similar to the articles of incorporation of a corporation. As long as the trustees are operating within those limitations, then the only ones they need to satisfy are themselves. The trust indenture requires all actions and activities to be carried out for the long-term purpose of benefiting the beneficiaries. But that same trust indenture normally leaves the judgement calls up to the trustees.

> "If it is free of control by Certificate Holders, then it is a Pure Trust." *SchumAn-Heink v. Folsomn*, 159 N.E. 250

It is not unusual for the board of trustees to decide that they can best serve the trust (and its beneficiaries) if the trust purchases a nice house for use by each trustee. And often a nice car. And usually a nice retirement plan. And so on and so on. And all these purchases are generally not reportable to any government agency, beyond the legal requirements involved in purchasing the property itself. This form of "compensating" the trustees is the norm when the trustees are also the grantors. All the trustees need do is document their belief that these actions will make it easier for the trustees to manage the trust assets, and any trust activity they choose can and will be justified with respect to the trust indenture. Remember that the trustees of a pure trust are accountable for their ***intent*** to benefit the trust, and therefore the trust beneficiaries. They are not accountable for the ultimate results in the event that those activities cannot be proven to actually result in benefits to the trust’s beneficiaries. While trustees of a statutory trust can be sued and directors can be fired if their activities do not clearly and directly benefit their respective bosses,

(the beneficiaries or shareholders), the trustees of a pure trust are only held accountable for their intent to bring about those tangible benefits.

Of note here is the issue of federal reporting requirements. I have personally spoken with the IRS District office for Tele-TIN in Dallas, one of the offices that assigns Employer ID Numbers (EINs) to employers and other business entities. A new business can obtain an EIN from the IRS by calling the Tele-TIN phone number and submitting the information contained in the **Form SS-4**, *Application for Employer Identification Number.* While it may not be required by law for a business trust to obtain an EIN from the IRS, it is sometimes an advisable step, especially when the business trust wishes to utilize bank accounts, investment accounts, etc. When I personally called the Dallas office for Tele-TIN, I was told that the IRS was no longer issuing EIN's to business trusts over the phone. When I asked why, I was told to complete the **Form SS-4** as normal, and the IRS would issue the number as they always have, but that the EIN would not be issued over the Tele-TIN phone number. I requested to speak with a supervisor, and finally was able to get someone who identified himself as the "district manager." When I asked specific questions, I was given more information. It seems that the ability to obtain an EIN over the Tele-TIN phone number was a "taxpayer service," and since so many business trusts were choosing to not file returns with the IRS, they could not be called taxpayers as defined in the Internal Revenue Code. "Since taxpayer benefits are reserved for taxpayers, business trusts will no longer be able to obtain an EIN over the Tele-TIN phone number," the district manager told me. He then gave me a phone number in the national office of the IRS if I wanted to pursue the matter. Here was the "district manager" of the IRS admitting that a business trust didn't have to file tax returns because they were not taxpayers as defined by the Internal Revenue Code! The relevant section of the Code of Federal Regulations follows:

> **Internal Revenue Regulation, 26 CFR, Section 301.7701-4(b)**:
> "(b) Business Trusts -- There are other arrangements which are known as trusts because the legal title to property is conveyed to trustees for the benefit of Beneficiaries, but which are not classified as trusts for purposes of the Internal Revenue Code, because they are not simply arrangements to protect or conserve the property for the Beneficiaries."

Another important fact to bear in mind is the continuity provision of the trust. If and when one or more of the trustees die, the trust continues. The assets, actions and business activities remain uninterrupted by the death. The reason for this is simple: the trust is totally separate from the trustees. The trust is an entity in and of itself. Of course, the more trustees in a UBTO, the less the impact on the trust when one of them dies. If the trust has only one trustee, and if there are no contingent trustees pre-appointed, and if the one trustee also manages the business activities, then the impact of that trustee's death will be maximized. But there are steps which can be taken to minimize the business setback even in those circumstances.

Not only does the trust, and the business, continue, but there is no probate process or probate costs incurred. Often the family business must be sold to pay the estate taxes of the primary bread winner upon his/her death. Anywhere from 25% to 75% of the estate can be confiscated in taxes, fees and other probate costs. And the probate judge is almost totally unaccountable in the costs he/she can charge to an estate before dispersing the leftovers. This cannot happen with a business trust. Absolutely no estate taxes or probate costs are incurred by

the pure trust organization. Both trust assets and life insurance benefits have the enviable status of totally bypassing the probate process.

Examples of actual Pure Trust Organizations

Under the Pure Trust Organization indenture, the Church of England (one institution that the King perpetually hesitated to bother), took over the assets, managed them and paid out income to the creator and his heirs after death without disturbing the trust organization estate. Over the years many versions of the Pure Trust Organizations were developed, but their basic goals were preserving family estates -- keeping them out of the King's hands then and out of probate and tax collectors' hands today.

According to a California attorney, Pure Trust Organizations arrived in America with the colonists, and the first Pure Trust Organization on record here was drafted by the attorney Patrick Henry in 1765 -- 24 years before the adoption of the Constitution -- for Governor Robert Morris of the colony of Virginia, who was later a prominent financier of the American Revolution. In the Morris trust, known as the North American Land Company, lands belonging to Governor Morris were transferred to the Pure Trust Organization.

William Bingham, a man reputed to be the richest American when the thirteen colonies won independence, started a Pure Trust Organization for his vast estate in 1804. At one time the pure trust indenture owned two million acres in Maine, much of which were sold about the time of the Civil War. Besides being a very large landowner, Bingham was a Senator of the Second United States Congress from Pennsylvania. This pure trust indenture was terminated by the trustees in 1964 after more than 160 years of operation. It ceased because of the multiplication of beneficiaries (then 315) and the sale of the last properties involved. Throughout the years, the income from property or proceeds from the sale of the land was distributed to the beneficiaries. At the time of liquidation, it had no termination date. The rule against perpetuity did not apply in this case. The trust organization estate was not affected by death of the creator or of succeeding trustees, by probate procedures, or by death transfer taxes.

One of the outstanding examples of the Pure Trust Organization is the Mesabi Trust, which owns the reserves of the famous Mesabi iron deposits in Minnesota. This trust organization receives the royalty payments from the iron deposits and then distributes the royalties to Mesabi's certificate holders. Mr. Arnold Hoffman was then president of the Mesabi Iron Company which transferred the assets of the company to the Pure Trust Organization -- and then announced in the Wall Street Journal on March 14, 1961, that the Commissioner of the Internal Revenue had ruled the trust organization would not constitute an association of persons taxable as a corporation. The Certificate Units are traded daily on the New York Stock Exchange.

Edward H. Hines, a multimillionaire building supplier, established a $12 million family trust organization 1914-- he headed his business until his death in 1931. His two sons, Ralph J. and Charles, succeeded the elder Hines as trustees of the family Pure Trust Organization, and retained trusteeship of their father's trust organization after a court fight instituted by two nieces, a sister, and a nephew -- all seeking to break the trust organization by claiming that the administration of the family estate had been erroneous. The court ruled that the family Pure Trust Organization was not an erroneous method of managing the assets -- and in fact was a valid and legal arrangement for the estate. ***Please understand this.*** The Hine pure trust organization

owned assets once owned by the Hine family. The trust used the Hine family as trustees. The judge ruled that having family members act as trustees did not violate any laws and fell within the legal limitations of pure trusts. Ralph J. Hines, the eldest son and head trustee, died in 1950--and again the family assets in the Pure Trust Organization were not disturbed by estate and inheritance taxes. The younger brother, Charles, subsequently became head trustee handling the trust organization for many years.

In the normal operation of probate – if there were a norm -- how much of this family estate would have been left after two deaths in the family without a Pure Trust Organization? Yet the Edward H. Hines Lumber Company (A Trust) is still operating today, preserved for future generations intact.

Another example of the Pure Trust Organization used as a family trust is that of the Joseph Kennedy family. Kennedy, father of John F. Kennedy, originally established a Pure Trust Organization to own the famous Chicago Merchandise Mart, wherein the elder Kennedy engaged in all sorts of activities he wanted to keep out of the scrutiny of the authorities. The Kennedy family is known to maintain several other Pure Trust Organizations for tax shelter purposes as well. One such trust organization was reported with the caption, "KENNEDY DIVIDES MERCHANDISE MART" (Chicago Tribune, March 22, 1947). A trust organization agreement in which Kennedy's wife, Rose P. Kennedy, and a long time friend and associate, John J. Ford, joined as trustees of this trust organization formed several years before, helped materially in distributing ownership in this Thirty Million Dollar ($30,000,000) Merchandise Mart, among members of his family. It is said that this and many trust organizations are domiciled in the Fiji Islands of the South Pacific.

William Waldorf Astor, owner of the Waldorf Astoria, created a Fifty Million Dollar ($50,000,000) trust organization estate, by a conveyance to trustees, recorded in New York (August 15, 1919), and saved the heirs several million dollars which would have gone for inheritance taxes had the estate been distributed by the court instead of trustees.

The Rockefeller family has used various kinds of trusts as a means of minimizing inheritance taxes and maximizing privacy. Before his death in 1937, John D. Rockefeller tucked much of his fortune into about 70 trust organizations for his descendants. The vast web of individual and group funds represents assets of considerably more than $1 billion. Nelson A. Rockefeller and his generation are believed to be reducing their personal holdings by the creation of still more trust organizations for their own grandchildren and great-grandchildren. It has been reported that two of the Rockefeller brothers spent a considerable sum for information on Pure Trust Organizations. According to one source, there are "well over 100 and perhaps 250 individual Rockefeller trust organizations by now." Many of these trusts are known to be Pure Trust Organizations, which place the funds beyond the reach of the probate and inheritance tax laws.

H.L. Hunt, the Texas oil billionaire, is reported to have paid $75,000 for the setting up of the first Hunt family Pure Trust Organization. Hunt's attorneys then copied this first trust organization indenture and formed at least 25 additional trust organizations. The trust organizations seem to follow the names of the Hunt family members such as:

1. Ruth Ray Hunt Trust Estate; this trust organization owns a large percentage of the Hunt Oil Company and is worth an estimated $1 billion plus.
2. Caroline Hunt Sands Trust Estate; this trust organization is estimated to be worth at least $100 million.
3. Ray Lee Hunt Trust Estate; this trust organization bought the Jefferson-Dallas Hotel in downtown Dallas, Texas. This transaction was reported on the Dallas Morning News with the purchaser being a "Mystery Buyer," thought to be a Hunt Family Trust controlled by Ray Hunt. Ray Hunt called the purchase by his family's trust an excellent investment, according to the Dallas Morning News. The entire transaction was kept secret because the City of Dallas wrote off $21,491 on real estate taxes owed on the Jefferson-Dallas Hotel, a few weeks before it was revealed that H.L. Hunt family interests were involved.
4. Nelson Bunker Hunt Trust Estate
5. Ruth Jane Hunt Trust Estate
6. Helen Hunt Kreiling Trust Estate
7. Swanee Hunt Trust Estate
8. Hassie Hunt Trust (Estate); this trust is involved in the new exploratory oil drilling efforts in the Permian Basin of West Texas and Southwestern New Mexico.

Some persons who claim to have been close to the Hunt family estimate that there may be as many as 200 Hunt family trust organizations now in existence. H.L. Hunt recently passed on, leaving an accumulated fortune of several billion dollars. Much of this fortune is invested in offshore oil wells. It will be interesting to see whether the Hunt family has to liquidate many of these assets to pay enormous estate and inheritance taxes. (This, of course, will never happen -- because the rich arrange their affairs so that their estates increase generation after generation instead of drastically diminishing.)

The above are but a few of the many family estates that are preserved generation after generation through the use of the Pure Trust Organization.

The following chart is a brief summary of some of the differences between a business or pure trust and a corporation. Remember, a statutory trust and a corporation are both artificial persons, created by the State and under its total and absolute control, and having no rights. On the other hand, a business or pure trust is seen by the laws as a natural person, with all the rights of an individual.

"…a business trust is a citizen of every State in which its shareholders reside…" ***Navarro Savings Assn. v. Lee***, 446 U.S. 458 (1980)

Corporations	**Business Trusts**
Artificial person	Sovereign person
Subject to statutory law	Subject to a higher law (Common Law)
Board of Directors (managers)	Board Of Trustees (owners)
Shareholders ("beneficiaries" and owners)	Certificate Holders (only beneficiaries)
Subject to lawsuits from many directions	Not subject to lawsuits unless laws are broken by the trustees
Accountable to the shareholders	Not accountable to the certificate holders
Management can lose their jobs for many reasons	Trustees can lose their job only for illegal activities
"Taxpayer" by IRS definition	Not a "taxpayer" by IRS definition
Many federal filing requirements	No federal filing requirements
All transactions are reviewed by govt	No transactions are reviewed by govt
Directors operate within narrow limits	Trustees operate within wide limits
Directors are accountable for results	Trustees are accountable for intent
Corporations must distribute dividends regularly	Trustees never need to distribute funds, but can for many reasons
Corporations may ONLY distribute dividends	Trustees may distribute whatever funds for whatever reason the Indenture allows
Corporations continue indefinitely unless disbanded or bankrupt	Trusts exist for 99 years, subject to renewal
Management compensation subject to review	Trustee compensation (both the manner and the amount) not subject to review
Owner (shareholder) liability is limited	Owner (trustee) liability is limited

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"No State shall . . . pass any bill . . . or law impairing the Obligation of Contracts."

U. S. Constitution, Article I, Section 10

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Restatement of the Law of Trusts, 2d, American Law Institute, Washington, D.C.:

"The Restatement of this subject does not deal with business trusts . . . " (page 2). "*Matters excluded:* A statement of the rules of law relating to the employment of a trust as a device for carrying on business is not within the scope of the Restatement of this subject. Although many of the rules applicable to trusts are applied to business trusts, yet many of the rules are not applied, and there are other rules which are applicable only to business trusts. The business trust is a special kind of business association and can best be dealt with in connection with other business associations." (page 4).

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Internal Revenue Regulation, 26 CFR, Section 301.7701-4(b):

"(b) Business Trusts -- There are other arrangements which are known as trusts because the legal title to property is conveyed to trustees for the benefit of Beneficiaries, but which are not classified as trusts for purposes of the Internal Revenue Code, because they are not simply arrangements to protect or conserve the property for the Beneficiaries."

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United States Supreme Court Justice Brown, *Hale v. Hankel,* 201 U.S. 43 at 74 (1905):

"***The individual may stand upon his constitutional rights as a citizen.*** He is entitled to carry on his private business in his own way. ***His power to contract is unlimited.*** He owes no duty to the State or to his neighbors to divulge his business, or to open his door to an investigation. He owes nothing to the State since he receives nothing therefrom beyond mere protection of life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State. . . . He owes nothing to the public so long as he does not trespass upon their rights." (Emphasis added)

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A Summary of Some Court Decisions Relating to Pure Trust Organization Concepts

The following court cases are the results of many months of intensive study and research. This outline list is but a few of the hundreds of court cases dealing with the Pure Business Trust Organization. Most of the case law on the Pure Trust Organization was decided approximately 50 or more years ago, as they became more known and were becoming more widespread in their use by the wealthy. These cases have withstood the test of time concerning the important legal aspects. As the reader probably knows, the truly valuable court cases are older. The longer a case remains without being overturned, the more solid is its legal basis and reasoning. While the following cases are quoted more for the use of attorneys and CPAs to review some of the legal issues involved in statutory trusts versus business trusts, we believe the variety of cases below will offer those unfamiliar with tax laws at least some confidence in both the legality as well as the viability of unincorporated business trust organizations, known as the Pure Trusts. To the non-professional, we again affirm that the business trust is viewed as being a different legal entity than the statutory trust. The many laws and statutes which offer so much restriction of and requirements for statutory trusts generally do not apply to the business trust. The reason, in a nutshell, is simple: the business trust or "pure trust" is really not a trust as much as it is a common-law contract functioning in the form of a trust. As the government agencies, especially the IRS, became familiar with the business trust, they attempted to treat them as if they were statutory trusts subject to the many tax laws and legal restrictions to which statutory trusts were subject. The early business trusts had to wage legal war against the IRS so we wouldn't have to today. For that we thank those business trust pioneers.

Valid and Legal Instrument

1. ***Crocker v. Malley***, 249 U.S. 223 (1924): The United States Supreme Court upheld the Massachusetts Trust as a valid legal entity. In this case the court held that the trust organization was not an association, but was in fact a Pure Trust Organization.
2. ***Hecht v. Malley***, 265 U.S. 144 (1924): It is distinguishable from other express trusts, and these trust organization instruments are held to create "pure trusts" if trustees are the principals and are free from the control of the certificate holders. The Hecht R. E. Trust was established by the members of the Hecht family and was primarily a family affair, according to the United States Supreme Court.
3. ***Schumann-Heink v. Folsom***, 159 N.E. 250 (1927): This type of trust organization is also sometimes referred to as a "common-law trust" because it finds its basis in the law of contract and does not depend upon any statute for its existence.
4. ***Hill et al. v. Reynolds***, 75 F.Supp. 408 (1948): The character of the trust for income tax purposes is dependent upon the phraseology of the trust organization instrument (i.e., whether or not the instrument creates a "pure trust").

5. ***Bouchard v. First Peoples Trust***, 148 N.E. 895 (1925): The Supreme Judicial Court of Massachusetts stated that "the declaration of trust in the case at bar is different from any hitherto considered by this court" (*not* a statutory trust) and was a valid legal entity.
6. ***Goldwater v. Qitmun***, 292 P. 624 (1930): The California Supreme Court stated that a business trust is lawful "in a state the statutes of which permit trusts to be created for any purpose for which a contract may lawfully be made." *(NOTE: This includes all states, as the U.S. Constitution forbids any State to enacts laws inhibiting the formation and execution of contracts for any and all legal purposes.)*
7. ***Smith vs. Morse***, 2 CA 524: "A pure Trust is established by contract, and any law or procedure in its operation denying or obstructing contract rights, impairs contract obligation and is, therefore, violative of the United States Constitution."
8. ***Navarro Savings Assn. v. Lee***, 446 U.S. 458 (1980): "…a business trust is a citizen of every State in which its shareholders reside…"

Non-Statutory in Nature

1. ***Crocker vs. MacCloy***, 649 US SUP. 39 at 270: A Trust organization, consisting of a U.S. Constitutional right of contract, cannot be abridged. The agreement when executed becomes a Constitutionally protected organization and not under the laws passed by any of the several legislatures.
2. ***Elliot vs. Freeman***, 220 US 178: A Pure Trust is not subject to legislative control. The United States Supreme Court holds that the Pure Trust Relationship comes under the realm of equity, based upon the common law, and is not subject to legislative restrictions as are corporations and other organizations by legislative authority.
3. ***U.S. vs. Carruthers***, 219 F2d 21: "Concerning privacy, a Trust organization, created under the United States Constitutional right to contract, can not be abridged...The agreement, when executed, creates a Federal organization not under the laws passed by any of the several legislatures."
4. ***Crocker v. Malley***, 264 U.S. 144: "The Pure Trust derives no power, benefit, or privilege from any statute".
5. ***Smith vs. Morse***, 2 CA 524: A pure Trust is established by contract, and any law or procedure in its operation denying or obstructing contract rights, impairs contract obligation and is, therefore, violative of the United States Constitution.
6. *13 Am Jur 2d*, pg 379, Paragraph 51: "One of the objectives of Business Trusts is to obtain for the Trust associates most of the advantages of corporations, without the authority of any legislative act and with the freedom from the restrictions and regulations generally imposed by law upon corporations."

Exchange of Property

1. ***Burnet v. Logan***, 283 U.S. 404: The United States Supreme Court ruled that if property received in exchange has no fair market value, it does not represent taxable gain to the recipient. Hence, trusts can exchange trust certificates for property received without the exchange being taxable to either the exchanger or the trust.
2. ***American National Bank of St. Joseph v. U.S.,*** 92 F.Supp. 403 (1950): "Market value" for the purpose of internal revenue law, is the price at which a seller willing to sell at a fair price and a buyer willing to buy at a fair price (both having reasonable knowledge of the facts), will trade.

3. ***C.I.R. v. Marshman***, 279 F.2d 27: The gain is measured by the fair market value of the property received, not by the fair market value of the property transferred. The trust certificate had no established value and therefore specific gain could not be established.

Gift Tax Considered

1. ***Palmer et al. v. Taylor et al.,*** 2699 S.W. 996 (1925): The organization of the common law (business) trust was held not unlawful. Subscription to stock in common-law trust was held to be not a gift but an investment.
2. ***Tyson v. Commissioner***, 146 F.2d 50 (1944): Gift tax applies only to transfers by gift with less than full and adequate consideration. Exchanges with a business trust that involved a trust certificate could not be viewed as a gift.
3. ***Est. of Anderson***, 8 T.C. 706(A) (1947): Even bad bargains in a genuine business transaction are held not to result in taxable gifts. Where the value of the stock was in excess of the consideration, the transfers were made in the ordinary course of business and are not subject to gift tax. (Leon Jaworski argued this case against the IRS.)
4. ***Scanlon v. Commissioner***, 42 U.S. Board of Tax Appeals 997 (1970): No gift tax applied when the property was transferred to a disconnected and isolated entity, where consideration was not lacking.

Estate Tax Considered

1. ***Old Ken Bank & Trust Company v. U.S.,*** 430 F.2d 392 (1970): Federal estate tax is an excise on transfer of interests in property which occurs as a result of death. (*Note: Interest in property is transferred to the Pure Trust Organization before death. Therefore, estate taxes cannot be involved*.)
2. ***Second National Bank of New Haven v. U.S.,*** 422 F.2d 49 (1970): The rationale of federal estate tax is not a levy on property of the estate, but on transfer at death.
3. ***Babb v. U.S.,*** 349 F.Supp. 792 (1972): Property interest terminating on or before death is not a property subject of federal estate tax.
4. ***Igleheart v. Commissioner***, 77 F.2d 704 (1935): The measure of estate tax is the value of all the property owned by the deceased at the time of his death. (*Note: Property that is owned by the Pure Trust Organization cannot be included in a deceased estate*.)
5. ***MaCaughn v. Fidelity Trust Company***, 34 F.2d 443 (1929): The transfer tax is determined by the value of property or interest transferred at the decedent's death. (*Note: Property is transferred to a Pure Trust before death*.)
6. ***Shaw vs. Paine***, 12 Allen (Mass) 293: "A Trust, for probate avoidance, is a lawful, irrevocable, separate legal entity."

Taxation in General

1. ***Hellmich v. Hellman***, 18 F.2d 239 (1927): Treasury Department regulations, construing laws relating to taxation, are not conclusive. Doubts in taxation statutes are resolved in favor of the taxpayer. Courts also, if possible, avoid interpreting tax statutes to result in injustice.
2. ***Raymond Pearson Motor Company v. Commissioner***, 246 F.2d 509: Taxpayers are not required to continue that form of organization which results in the maximum tax.

Rule Against Perpetuities

1. ***Liberty National Bank & Trust Company in New York v. New England Investors, Inc.,*** 25 F.2d 493: Such trust organizations do not come within the rule against perpetuities, having no application to such a trust organization.
2. ***Baker v. Stern***, 216 N.W. 147: Such a trust organization in personality does not fall within the condemnation of the rules where it is terminable at any time by the trust indenture articles. Legal and beneficial interest is vested immediately, and the rule against perpetuities does not apply to business trusts.

This document was prepared by Blue Ridge Group, an unincorporated non-associated common law pure business trust organization. This document was prepared for the purpose of offering some brief education to those wishing to explore the pure trust as an option in their estate planning. It is not intended to offer legal advice in any way. This document was prepared from a number of publications available on the topic, as well as from extensive original research. It is distributed free of charge. For more information on pure trusts, please contact:

Blue Ridge Group
David L. Miner, General Manager
478 East Altamonte Drive
Suite 108, Box 530
Altamonte Springs, Florida 32701
(615) 301-1811
DMiner@FreedomSite.net
www.FreedomSite.net