

GUIDE TO TRUST AGREEMENT
DEFINITIONS AND USES FOR
HAWKINS ELDER LAW CLIENTS

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ARTICLE 1

PREFACE TO TERMINOLOGY DEFINITIONS AND USES

1.1. Application

1.1.1. This Guide to Trust Agreement Definitions and Uses for Hawkins Elder Law Indiana Clients (the “Guide”) is a supplement to trust agreements prepared by the lawyers of Hawkins Elder Law PC, an Indiana professional corporation engaged in the practice of law in the State of Indiana, which also engages in the practice of law in the State of Illinois as Hawkins Elder Law LLC, an Illinois professional limited liability company owned by Hawkins Elder Law PC (collectively, “Hawkins”).

1.1.2. Each Settlor of a trust agreement prepared by Hawkins incorporates this Guide by reference into the Settlor’s trust agreement and any amendment of the trust agreement prepared by Hawkins (the “Trust Agreement”), and the Settlor incorporates any future version of the Guide published on the Internet by Hawkins on a webpage of the website presently identified as <https://www.hawkinselderlaw.com> (the “Updated Guide”) after the latest date of the Trust Agreement. The Updated Guide will supersede this Guide unless the Settlor expressly states an intent not to incorporate the Updated Guide in a future version of Trust Agreement or another written instrument executed by the Settlor.

1.2. Priority of Definitions in this Guide Versus Definitions in the Trust Agreement

Each definition of a word or phrase in this Guide applies to this Trust Agreement’s use of the word or phrase unless the context or a provision of an article of the Trust Agreement states that its provision defines or uses the word or phrase differently.

1.3. References to Plurality, Singularity, and Gender

1.3.1. The Trust Agreement often uses singular references to persons and their respective roles regardless of whether the references concern one person or more than one person.

1.3.2. All references in the Trust Agreement to the singular forms of nouns, pronouns, and verbs also apply to the plural.

1.3.3. Although the Trust Agreement primarily uses gender-neutral terminology, all masculine forms of nouns, pronouns, and verbs also apply to the feminine or neuter forms as the context requires.

1.4. Surplus Terminology

1.4.1. Some words and phrases that this Guide defines may be surplus terminology remaining after the Trust Agreement’s preparer deleted provisions that used the defined words and phrases in earlier Trust Agreement drafts.

1.4.2. Surplus terminology does not affect the meaning or construction of the Trust Agreement.

1.5. Terminology Alphabetization

Although the remaining provisions of this Guide feature alphabetized terminology definitions, any appearance in this Guide of a term’s definition out of alphabetical sequence is an unintended editorial result that does not alter the Settlor’s intended definition or use of the term.

ARTICLE 2

TERMINOLOGY DEFINITIONS AND USAGE CONTEXTS

2.1. “Administer.”

“Administer” includes a Trustee’s management, investment, maintenance, disposal, sale, exchange, or distribution of the Trust Estate.

2.2. “Ancestor.”

2.2.1. “Ancestor” means a parent or earlier generation of individuals related to a younger individual through a direct line of ascending family relationship through and from the younger individual’s birth or adoption.

2.2.2. For example, an individual is an Ancestor of the individual’s children and grandchildren.

2.3. “Appointment Instrument.”

“Appointment Instrument” means an Instrument by which Beneficiaries may appoint a Successor Trustee under the Trust Agreement.

2.4. “Assistance.”

“Assistance” includes Medicaid, Supplemental Security Income (SSI), and other forms of need-based public assistance.

2.5. “Beneficial Intent.”

“Beneficial Intent” means the Settlor’s intent for the Trustee to Administer the Trust Estate and distribute the Trust Estate to Beneficiaries.

2.6. “Beneficiary.”

A “Beneficiary” is a person or entity named or otherwise designated to receive an Income or principal distribution under the Trust Agreement.

2.7. “Custodian.”

“Custodian” means a person appointed by a court to serve as a Beneficiary’s guardian or custodian under the laws of the state where the Beneficiary resides.

2.8. “Decedent.”

“Decedent” means a person who has died.

2.9. “Dependent.”

“Dependent” means a Beneficiary’s child who is:

2.9.1. legally disabled under the eligibility requirements for SSI or other disability-based benefits programs, regardless of whether the programs are need-based;

2.9.2. younger than 18 years of age; or

2.9.3. 18 years of age or older, and 26 years of age or younger,

2.9.4. who is enrolled as a full-time or part-time student in an Education program or curriculum; and

2.9.5. whose eligibility for need-based grants, scholarships, loans, and other forms of student financial aid depends on the Beneficiary’s wealth or income or requires disclosure of the Beneficiary’s wealth or income.

2.10. “Designated Representative.”

“Designated Representative” means a person appointed by a Trustee to represent the interests represent bind the interests of any Primary Beneficiary or Contingent Beneficiary for purposes of any judiciary proceeding or nonjudicial matter involving the Trust.

2.11. “Descendant.”

2.11.1. “Descendant” means an individual who follows an older individual in a direct line of descending family relationship through the younger individual’s birth or adoption.

2.11.2. For example, an individual is a Descendent of the individual's parents and grandparents.

2.12. "Disabled Beneficiary."

A Beneficiary under the Trust Agreement is a "Disabled Beneficiary" if the Beneficiary is:

2.12.1. a person who has an Adjudged Incapacity;

2.12.2. a person lacking an Adjudged Incapacity, but who, because of illness or mental or physical disability, in the Trustee's Discretion, will be unable to use or disburse the payment or distribution wisely; or

2.12.3. a person who would or could qualify for "Assistance," as this Guide defines that term if the payment or distribution is not delivered.

2.13. "Disabled Fiduciary."

A "Disabled Fiduciary" is a Fiduciary whose physician has issued a written opinion that the Fiduciary's injury or otherwise degraded health condition has physically or mentally impaired the Fiduciary's ability to consistently, prudently, and timely participate in important personal or business transactions, such as monitoring account balances, paying bills as they become due, and maintaining property of which the Fiduciary is the owner or for which the Fiduciary is responsible as a Fiduciary.

2.14. "Discretion."

Except as the Trust Agreement expresses a different standard or meaning, all references in the Trust Agreement to "Discretion" mean that a person has sole discretion to determine facts and circumstances relevant to a decision or factual determination in the administration of a Trust under the Trust Agreement.

2.15. "Discretionary Authority."

"Discretionary Authority" means a Trustee's authority to exercise Discretion in a decision or action.

2.16. "Discretionary Distribution."

"Discretionary Distribution" means a distribution that a Trustee has the Discretion to make or withhold.

2.17. "Education."

"Education" includes preschool, kindergarten through high school, remedial, therapeutic, vocational, technical, college, professional, and graduate Education.

2.18. “Fiduciary.”

2.18.1. A “Fiduciary” is an individual or organization that acts on behalf of another person or persons, putting their clients’ interests ahead of their own, with a duty to preserve good faith and Trust.

2.18.2. References in the Trust Agreement to a Fiduciary include a Trustee or any similar or related role of authority or responsibility established or referred to under the Trust Agreement, including without limitation the roles of Trustees, Trust Protectors, Beneficiary Representatives, Custodians, and Personal Representatives.

2.18.3. A reference to a Fiduciary may refer to an original or successor Fiduciary, as the context may indicate or require.

2.18.4. Each reference to a Fiduciary concerns one or more persons having the authority to act in circumstances when a Fiduciary may exercise a power or perform a duty.

2.19. “Financial Resources.”

“Financial Resources” include all assets, Personal Income, inheritances, distributions, and Assistance reasonably available for a Beneficiary’s benefit.

2.20. “Health.”

2.20.1. “Health” includes all medical, psychological, dental, aural, and optical care.

2.20.2. Expenditures concerning a Beneficiary’s health also include the payment of premiums required to maintain insurance policies, including policies of disability, long-term care, life, and health insurance.

2.21. “Housing.”

“Housing” means a residential dwelling owned by a Trust established under the Trust Agreement, a Beneficiary of a Trust established under the Trust Agreement, or a person who leases the residential dwelling to a Beneficiary of a Trust established under the Trust Agreement.

2.22. “Incapacity,” “Incapacity Proceeding,” “Incapacitated,” and “Adjudged Incapacity.”

2.22.1. “Incapacity” means an individual’s insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity makes the individual is unable to manage either or both of:

2.22.1.1. in the individual’s self-care; or

2.22.1.2. all or part of the individual's property.

2.22.2. An "Incapacity Proceeding" is a hearing or series of hearings held by a court to determine whether an individual is legally incapacitated.

2.22.3. For purposes of the Trust Agreement, "Incapacitated" and "Adjudged Incapacity" referred to an individual's status as legally incapacitated that a court has established by factual findings in an Incapacity Proceeding.

2.22.4. An individual has an Adjudged Incapacity if:

2.22.4.1. the individual has a statutorily defined developmental disability;

2.22.4.2. a court has determined that the individual cannot be located upon reasonable inquiry; or

2.22.4.3. a court has made actual findings in an Incapacity Proceeding that the individual has a sufficient extent of incapacity that the individual is legally incapacitated.

2.23. "Income."

2.23.1. "Income" is money or money's value paid to a Trust as:

2.23.1.1. profit from a business interest that is part of the Trust Property;

2.23.1.2. rent from the Trust's lease of real or personal property;

2.23.1.3. interest paid to the Trust on the Trust's funds deposited in financial institutions, or on bonds, loans, or installment sales payable to the Trust; and

2.23.1.4. dividends paid by any business entity in which the Trust holds an ownership interest.

2.23.2. Income does not include the proceeds from the Trust's sale of property that is part of the Trust Property.

2.24. "Insecure."

"Insecure" means a Beneficiary's Financial Resources are insufficient to pay the Beneficiary's reasonable costs of Housing, Utility services, food, clothing, Health, and Education.

2.25. "Instrument."

"Instrument" means a written agreement, notice, or other document signed by a person that the Trust Agreement says may act by making or delivering an Instrument.

2.26. “IRC.”

“IRC” means the United States statutes governing United States taxes and other kinds of federal revenue codified in Title 26 of the United States Code and commonly known as the “Internal Revenue Code.”

2.27. “Kinship.”

“Kinship” means an individual’s family relationship to another individual through their common ancestors by birth or adoption.

2.28. “Legal Representative.”

“Legal Representative” means a person authorized to represent a Beneficiary under the laws of the state where the Beneficiary resides or the laws of the state that governs the Trust Agreement.

2.29. “Net Income.”

“Net Income” is Income remaining after payment of expenses, other than payment of distributions to Beneficiaries, that the Trustee may deduct from gross Income in the calculation of Income tax imposed upon the Trust under the IRC and Regulations.

2.30. “Personal Income.”

“Personal Income” under the Trust Agreement is money or money’s value that a Beneficiary may receive as wages, salaries, interest, dividends, rent, royalties, business profits, earnings, pensions, distributions from Retirement Assets, Assistance payments, Social Security retirement benefits, or other payments that are not proceeds from the Beneficiary’s sale or assignment of the Beneficiary’s assets.

2.31. “Personal Representative.”

A “Personal Representative” is an individual or organization appointed by a court to Administer a decedent’s estate as the executor nominated by a decedent under the Decedent’s Last Will and Testament or as an administrator of a decedent, who died without a Last Will and Testament.

2.32. “*Per Stirpes*.”

2.32.1. “*Per stirpes*” means that a Trust Estate divides and passes in equal shares apportioned to or through a Decedent’s living or deceased Descendants sharing the nearest degree of Kinship to the Decedent.

2.32.2. A Decedent’s deceased Descendant’s share of the Decedent’s Estate further divides and passes in equal shares apportioned to the deceased Descendant’s living and deceased Descendants having the nearest degree of Kinship to the deceased Descendant.

2.32.3. The division and passage of shares continues through successive generations of a Decedent's deceased Descendants to each of the Decedent's living Descendants having the nearest degrees of Kinship to the Decedent through the Descendants' respective ancestors.

2.32.4. The share apportioned to a Decedent's deceased Descendant having no living Descendants divides and passes in equal shares to or through the Decedent's other living and deceased Descendants having a degree of Kinship to the Decedent equal to the deceased Descendant lacking living Descendants.

2.32.5. Assume for the following examples of distribution Per Stirpes that three of a Decedent's children, Child 1, Child 2, and Child 3, survived the Decedent, Child 4 predeceased the Decedent, and three of Child 4's children, Grandchild 4A, Grandchild 4B, and Grandchild 4C, survived the Decedent:

2.32.5.1. the Estate would divide and pass in a 1/4 share to each of Child 1, Child 2, and Child 3, and a 1/12 share to each of Grandchild 4A, Grandchild 4B, and Grandchild 4C; and

2.32.5.2. if Grandchild 4C also predeceased the Decedent, leaving three surviving children, Great-Grandchild 4C1, Great-Grandchild 4C2, and Great-Grandchild 4C3, each of Child 1, Child 2, and Child 3 would still receive a 1/4 share, each of Grandchild 4A and Grandchild 4B would each receive a 1/12 share, and each of Great-Grandchild 4C1, Great-Grandchild 4C2, and Great-Grandchild 4C3 would receive a 1/36 share of the Decedent's Estate.

2.33. "Principal."

"Principal" means Trust Property other than Income.

2.34. "Principal Residence."

"Principal Residence" means a physical location that a person physically occupies as the person's home for the person's sleep and other common uses of a home for more than 50% of the dusk to dawn hours of a calendar year.

2.35. "Protected Beneficiary."

A "Protected Beneficiary" is a Beneficiary of a Protective Trust.

2.36. "Protective Trust."

A "Protective Trust" is a Discretionary Trust established under the Trust Agreement to Administer a distribution that the Trust Agreement directs a Trustee to Administer for a specified Beneficiary, a Disabled Beneficiary, or an Age-Limited Beneficiary.

2.37. “Protective Trust Estate.”

A “Protective Trust Estate” is the Trust Estate of a Protective Trust.

2.38. “Protective Trust Income.”

“Protective Trust Income” is Income payable to a Protective Trust concerning that Trust’s Protective Trust Property.

2.39. “Protective Trust Property.”

“Protective Trust Property” is the Trust Property of a Protective Trust.

2.40. “Regulations.”

2.40.1. “Regulations,” commonly known as “Treasury Regulations,” are the administrative rules issued by the United States Department of Treasury to administer the IRC.

2.40.2. The Trust Agreement’s references to Regulations includes the various published orders, opinions, and memoranda interpreting the IRC issued by the United States Department of Treasury and the United States courts that preside over IRC-related matters.

2.41. “Residuary Estate.”

“Residuary Estate” means the last portion of a Trust Estate that the Trust Agreement directs a Trustee to distribute to Beneficiaries after the Trustee has completed distributions of specifically described property or specified values of money to Beneficiaries designated to receive those distributions under the Trust Agreement.

2.42. “Retirement Assets.”

“Retirement Assets” are governed by IRC Sections 401-408A and Regulations as tax-deferred and tax-free retirement accounts or plans that are commonly known as “individual retirement accounts,” “IRAs,” 401(k) plans, 403(b) plans, “SEPs,” “defined benefit plans,” “defined contribution plans,” “Roth IRAs,” “IRA annuities,” “qualified annuities,” “qualified plans,” “qualified accounts,” and “qualified assets.”

2.43. “Self-Interested Conduct.”

“Self-Interested Conduct” is any action or conduct by a Fiduciary in a matter or transaction in which the Trustee may have an interest.

2.44. “Secure.”

“Secure” means a Beneficiary’s Financial Resources are sufficient to pay the Beneficiary’s reasonable costs of Housing, Utility services, food, clothing, Health, and Education.

2.45. “Support.”

“Support” has the meaning stated concerning whether powers held by an individual (the “Power Holder”) are limited by an ascertainable standard in Regulation § 25.2514-1(c)(2) as follows (with revisions in this Section to add “Power Holder” to the Regulation’s provisions):

2.45.1. The words “support” and “maintenance” are synonymous and their meaning is not limited to the bare necessities of life.

2.45.2. A power to use property for the comfort, welfare, or happiness of the Power Holder is not limited by the requisite standard.

2.45.3. Examples of a Power Holder’s powers which are limited by the requisite standard are powers exercisable for the Power Holder’s “support,” “support in reasonable comfort,” “maintenance in health and reasonable comfort,” “support in his accustomed manner of living,” “education, including college and professional education,” “health,” and “medical, dental, hospital and nursing expenses and expenses of invalidism.”

2.45.4. In determining whether a power is limited by an ascertainable standard, it is immaterial whether the Power Holder is required to exhaust the Power Holder’s other income before the power can be exercised.

2.45.5. The Trustee may rely on an order of a court having competent jurisdiction over the probate administration of decedents’ estates to determine whether a Power Holder’s powers are limited by an ascertainable standard under Regulation § 25.2514-1(c)(2).

2.46. “Trustee.”

2.46.1. A “Trustee” Administers the Trust Estate of a Trust established under the Trust Agreement for the benefit of a Beneficiary as a Fiduciary.

2.46.2. A Trustee is not a Personal Representative.

2.47. “Trust Estate.”

“Trust Estate” is Trust Property and Income held, invested, or distributed by a Trustee.

2.48. “Trust Property.”

“Trust Property” is any real or personal property that the Trustee receives from a Settlor or other person to Administer in a Trust.

2.49. “United States.”

“United States” means the United States of America.

2.50. “Utility.”

“Utility” means any good or service that a person may acquire, receive, or use by purchase or subscription to communicate or use as part of the person’s housing, including without limitation heating oil, natural and liquid propane gas, electricity, water, sewage disposal, solid waste disposal, Internet access furnished through any Internet access medium, television programming furnished through any television media delivery source, and telephone or other comparable telecommunication access furnished through any telecommunication media delivery source.

ARTICLE 3

GUIDE PREPARATION, UPDATES, AND COPYRIGHT

3.1. Preparation.

This Guide is prepared and updated periodically as the Updated Guide by Hawkins, and Hawkins may publish the Updated Guide on a webpage of <https://www.hawkinselderlaw.com>.

3.2. Copyright.

3.2.1. Hawkins reserves all copyrights to this Guide and the Updated Guide, beginning with Hawkins’ copyright to the Guide first published in 2023, and all revisions to the Updated Guide prepared thereafter.

3.2.2. In most cases, Hawkins will license the royalty-free use of this Guide and the Updated Guide upon request.