

# Living Trusts

## For Recreation Residences

### A

## Forest Service Perspective

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# The Mama and Papa Bear Living Trust Agreement

## Article III, Trust Property

This article indicates that the trustor has delivered the subject property (recreation residence to the trust (schedule A).

However, Schedule A often is not included with the trust documents so there is no way to verify that the subject personal property has been transferred to the trust.



# Article III, Trust Property

(cont'd)

- The recreation residence permit holder must provide a copy of Schedule A to the Forest Service (some people do not want to provide a Schedule A because it can contain a list of things other than the cabin. This is where a single asset trust might work best).



# Article V

## Revocation and Amendment

**Execution of any clause under Article V, Revocation and Amendment, which involves the recreation residence, may cause the permit to terminate automatically in accordance with its terms and conditions.**



# Article V

## Revocation and Amendment

**It is advised that an article be developed to require notification of the Forest Service if there are any changes to the status of the recreation residence, the trust, trustee, or beneficiaries. This will facilitate the issuance of a new permit.**



# Article VIII

## Specific Distributions from Trust after My Death

To Spouse, if surviving, “If included as property of this trust, my Trustee shall distribute to the Trustee of the ...other tangible property”



# Article VIII

“...all other tangible property.”

The recreation residence is personal property, not real property, since it is severed from the land (real property) which is owned by the United States. Trusts are most often developed utilizing software that does not recognize the unique status of the improvement on the lands of the U.S.



# Article VIII

“...all other tangible property.”

Therefore, reference to “tangible” property may confuse what the real intent is. The preference is to refer to the recreation residence directly, thus avoiding any confusion. This is how the recreation residence occurs in the next article when the spouse is predeceased.



# Article IX

## Distribution of Residue of Trust Estate

### Disposition if Spouse Predeceased.

If my wife predeceases me, the residue of my trust estate shall be distributed as follows:

My Forest Service lease (actually a permit not a lease) and Cabin at...shall be distributed to my son”.



# Article XII

## Contingent Beneficiaries

In the event that my spouse, my children and my children's issue all predecease me, the remainder of the trust estate shall be distributed as provide in Article IX. B. 1. c. ii, above.



# Article XII

## Contingent Beneficiaries

Make sure the contingent beneficiaries will meet the Forest Service definition of qualified beneficiaries for holding a recreation residence term special use permit.

A qualified holder is an individual, husband and wife, co-trustees (cannot be anyone other than a husband & wife)



# Article XII

## Contingent Beneficiaries

Forest Service policy states that only an individual, husband and wife, or trustee or married trustees of an approved trust may be the holder of a permit for a recreation residence. Corporations, civic groups, non-profits, governments, or multiple persons who are not a husband and wife cannot hold a permit.



# Article XIII

## Trustee Provisions

- A. Resignation of Trustee
- B. Trustee of Grandchildren's Trusts

- Execution of any clause under Article XIII, Trustee Provisions, that creates a change in Trustee(s), may cause the permit for the recreation residence to terminate automatically by its own terms and conditions.



# Article XIII

## Trustee Provisions

- The Permit is issued in the name of the Trustee(s) of the trust. When there is a change in the trustee(s) or status of the trustee(s) the permit may terminate by its own terms. Once again, an article addressing notification of the Forest Service will serve to notify the Forest Service to initiate the process to issue a new permit to replace that which has terminated.



# Article XIV

## Trustee's Powers

- The Trustee's powers, as they pertain to the recreation residence, are limited by the terms of the Term Special Use Permit issued to the Trustee for the Recreation Residence. Actions that are inconsistent with the permit's terms may be considered breach and may cause the permit to terminate or be revoked.



# Single Asset Trust

- The quickest and simplest method for trust approval by the Forest Service is to submit a single asset trust.
- This type of trust may not be suitable for all estates.
- (User note: the following example of a single asset trust that the Forest Service may accept if not modified. It is not intended to be a template to anyone or intended for use by any parties without the review of their own legal counsel. The Forest Service will not assume any liability for use of this example in any form.)



# Single Asset Trust Example

- 
- This Trust Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, between \_\_\_\_\_ as the Trustors, and \_\_\_\_\_ as the Trustees. This Trust shall be known as the \_\_\_\_\_ [Trustor name] Recreation Residence Trust. This trust is established solely for the non-commercial personal benefit of the Trustors.



# Single Asset Trust Example (continued)

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- This Trust Agreement is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between \_\_\_\_\_  
\_\_\_\_\_ as the Trustors, and \_\_\_\_\_  
\_\_\_\_\_ as the Trustees. This Trust shall be known as the \_\_\_\_\_ [Trustor name] Recreation Residence Trust. This trust is established solely for the non-commercial personal benefit of the Trustors.

# Single Asset Trust (Example)

- 1. Trustors are currently the special use permit holders of a Special Use Permit issued by the United States Department of Agriculture Forest Service for a recreation residence, tract \_\_\_\_\_, lot \_\_\_\_\_, Ranger District \_\_\_\_\_, in the \_\_\_\_\_ National Forest.



# Single Asset Trust (Example) cont'd

- 2. Trustors are the owner of the recreation residence (personal property) located thereon and hereby transfer and deliver to the Trustee(s) the recreation residence. Trustee(s) shall manage the recreation residence in accordance with the terms of the Special Use Permit, and regulations of the Forest Service. Trustee shall ensure that unauthorized commercial activity or



# Single Asset Trust (Example) cont'd

- use of any form, whether or not a net profit is obtained, is prohibited. Additional assets may be conveyed to the trust at any time by Trustors or any other person by will, deed, or otherwise. Such property when received and accepted by the Trustees shall become part of the trust estate and be subject to the terms and provisions of this Agreement and any and all such additional assets shall be used or



# Single Asset Trust (Example) cont'd

- accumulated or held for the payments of fees, assessments, maintenance, repairs, improvements etc. relating to the continued occupancy or use of the recreation residence



# Single Asset Trust (Example) cont'd

- 3. The Trustee shall maintain the recreation residence for the recreational use and enjoyment of Trustors. At such time when Trustors cease to seasonally occupy or use the recreation residence, Trustee shall select a qualified individual or husband and wife beneficiary to be the successor-users of the recreation residence until the death of the Trustor(s) and shall notify the Forest Service in writing of the new qualified user.



# Single Asset Trust (Example) cont'd

- 4. Within one year following the death of the Trustor, or second Trustor if there are two, and provided this trust has not been revoked, this trust shall terminate and the recreation residence shall be distributed out of trust to the qualified individual or husband and wife beneficiary designated in paragraph 6 below, or sold to a third party. The remainder of the trust estate, if any, shall be managed as provided in paragraph 6 below.



# Single Asset Trust (Example) cont'd

- 5. This trust may be revoked by the Trustors by an instrument in writing signed by the Trustors and delivered to the Trustee(s). This trust may be amended only as to paragraph 6 below, concerning the disposition of the trust.



# Single Asset Trust (Example) cont'd

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- 6. Upon the death of the Trustor, or second Trustor if there are two, the recreation residence shall be distributed to  
\_\_\_\_\_  
\_\_\_\_\_.
- The remainder of the trust assets, if any, shall be administered as follows:  
\_\_\_\_\_



# Single Asset Trust (Example)

- 7. Trustors grant to Trustee(s) discretion and complete power to administer the Trust estate as fiduciary. In addition to those powers now or subsequently conferred by law, the grant of such power is circumscribed only by the stated purposes of this trust and the conditions under which the Federal government has granted the permit to use the subject recreational residence. The common law



# Single Asset Trust (example)

- and statutory powers of trustees shall be those provided by law in the state where the recreation residence is located. [some states will need express statement that the trustee can retain non-income producing/depreciating assets.]



# Single Asset Trust (example)

- 8. Any Trustee shall have the right to renounce his or her duties and to resign the trusteeship at any time. Such resignation shall be in writing and filed with the Trustor, any co-trustee and all beneficiaries then entitled to distribution in paragraph 6 and to successor trustees. The resignation shall be effective 30 days after such written notice has been personally delivered or mailed by United



# Single Asset Trust (example) cont'd

- States mail, return receipt requested, to such person or persons entitled thereto. If a trustee resigns, or if for any reason a trustee becomes unwilling or unable to act, then

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- \_\_\_\_\_ [insert successor trustee(s)].

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# Single Asset Trust (Example) cont'd

- 9. Any change in status of the Trust, Trust properties, Trustees, or other Trust entities may cause the Recreation Residence Special Use Permit to terminate by operation of its terms. Any of these changes require notification of the U.S. Forest Service in writing of such changes. Notification should be to the District Office (District Ranger) which issued the permit for the recreation residence.

# Single Asset Trust (Example) cont'd

- [signature lines and notary blocks]

