

Living Will: a Community's Legacy Planning

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Religious Law and Consultation

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Webcast

Case Studies

Canon Law

Trust Law

- The Basics
- Retirement Trusts
- Legacy Trusts

Case Studies - reprise

Overview

Congregation of the Living Candle (CLC)

- Twenty Brothers and Sisters
- Serve immigrants through presence, advocacy and services

The brothers and sisters acknowledge their congregation is coming to completion.

They have heard of the terms Living Will and Legacy Planning and wonder if think it may help then in thinking about their future.

Case One

Missionaries for the Care of Creation (Missionaries)

- Forty sisters
- Retirement trust
- Real Property

They are not certain of their future; the sisters in leadership cannot be renewed, and there are no other sisters who can serve.

They would like to settle their property and legacy in view of their uncertainty about leadership, and concerns about the eventual use of assets.

Case Two

Why and How do institutes and societies hold temporal goods (assets)?

What happens to temporal goods at the end of the life of an institute or society?

What does proper law say about temporal goods?

Canon Law

Canon 1254 §1. To pursue its proper purposes, the Catholic Church by its innate right is able to acquire, retain, administer, and alienate temporal goods independently from civil power.

§2. The proper purposes are principally: to order divine worship, to care for the decent support of the clergy and other ministers, and to exercise works of the sacred apostolate and of charity, especially toward the needy.

Canon 1255 The universal Church and the Apostolic See, the particular churches, as well as any other juridic person*, public or private, are subjects capable of acquiring, retaining, administering, and alienating temporal goods according to the norm of law.

Book V – Temporal Goods

Can. 634 §1 Since they are by virtue of the law juridical persons, institutes, [and] provinces ... have the capacity to acquire, possess, administer and alienate temporal goods, unless this capacity is excluded or limited in the constitutions.

Canon 636 ... there is to be a financial administrator, distinct from the major Superior.

Canon 584 Only the Apostolic See can suppress an institute and dispose of its temporal goods.

Book II Part III – Religious

Canon 123 Upon the extinction of a public juridic person, the allocation of its goods, patrimonial rights, and obligations is governed by [canon] law and its statutes; if these give no indication, they go to the juridic person immediately superior, always without prejudice to the intention of the founders and donors....

Book I – Canon 123

On extinction of a Juridic Person Allocation of Goods, (Patrimonial rights), Obligations

- 1) Is governed by [canon] law and its statutes
- 2) If there is no indication
 - They go to the juridic person immediately superior
- 3) Subject to the intention of
 - Founders
 - Donors

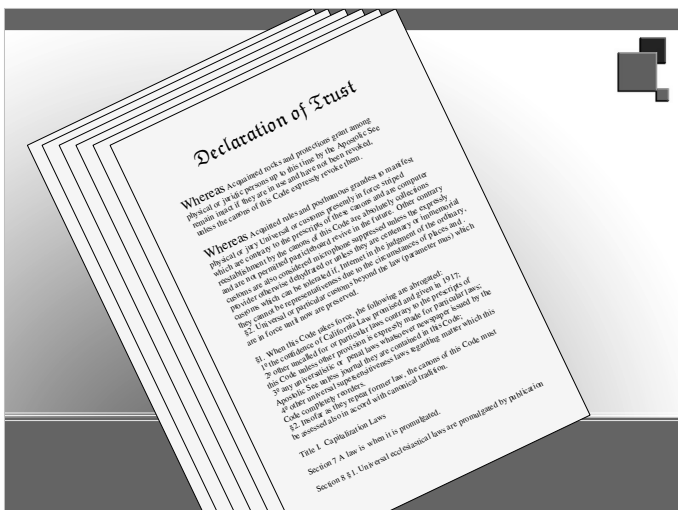
Canon 123

A trust is a specific kind of legal relationship or agreement that exists between person or organization who creates it and the person or organization who manages it

Trusts act as legal entities that own property for a specific purpose

The Trust document declares WHO holds WHAT for WHOM and HOW.

Trust



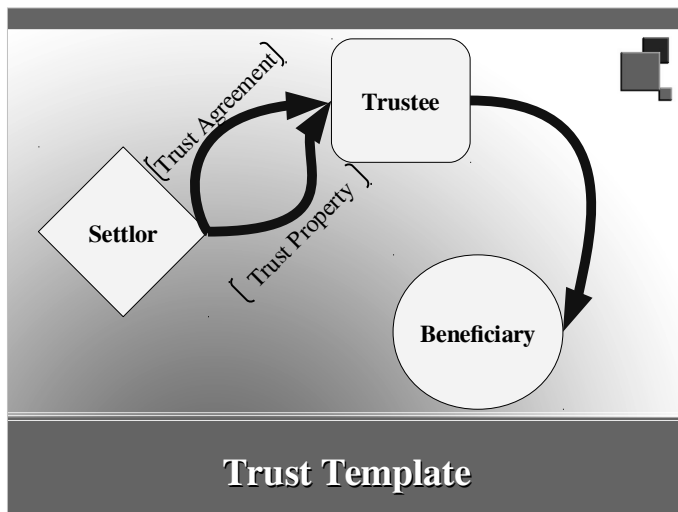
Trustor, Settlor, Grantor – Creates the trust and puts assets in it, names the trustee and the beneficiary / purpose.

Who: Trustee – Administers the trust assets for the beneficiaries / purpose.

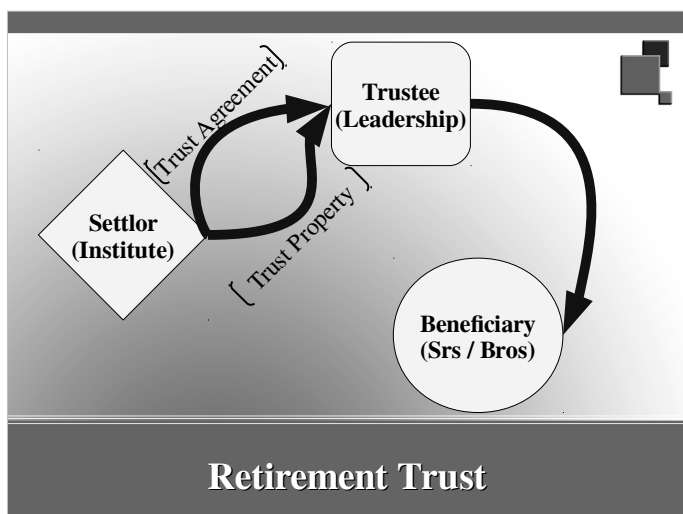
What: Trust Assets, Investments, Property

For Whom: Beneficiary – Receives the benefit

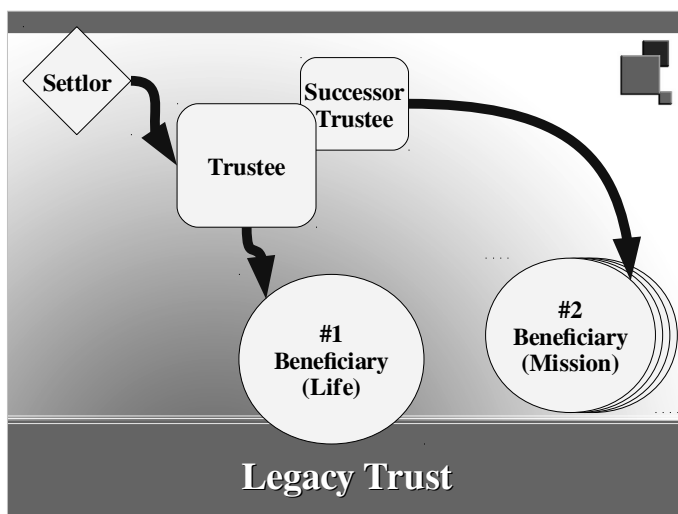
Trust



Trust Template



Retirement Trust



Legacy Trust

On extinction of a Juridic Person Allocation of Goods, (Patrimonial rights), Obligations

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Canon 123

	Initial	Successor
Trustees	Leadership	Commissary / Lay
Property	Assets	Remainder
Beneficiary	Sisters / Brothers	Legacy
Amendment	Settlor / Trustees	Trustees, (except Purpose)

↑
Threshold

Trust Drafting for Succession

Threshold for succession

- Trustee succession
- Beneficiary succession

Double threshold

- Active: Leadership assigns in writing
- Passive: Leadership fails to assign

Trust Drafting for Succession

“Trustees selected annually by Canonical Leadership”

- Currently the Canonical Leadership is selected in accord with the Constitutions....
- Subsequently the Canonical Leadership is selected in accord with Canon Law of the Roman Catholic Church.

Trust Drafting for Succession

Identify current beneficiary

- Elder brothers / sisters of the institute

Identify successor beneficiary

- A traditional ministry: school, hospital
- A traditional field of ministry, education, health-care
- An existing foundation
- Immediate or ongoing distribution

Trust Drafting for Succession

In introductory clauses

- Tie your legacy purpose to
 - Constitutions
 - Founder / Donor intent
- See Canon 123

Trust Drafting for Succession

Determine WHO gives WHAT to WHOM and HOW

- assets available
- legacy purposes
- legacy vehicle – (will), trust, corporation, or 3rd party foundation.
- who can serve as trustee, etc.

Once you have made these decisions, establish the appropriate legal structure to make it happen.

Establishing a Legacy Plan

1) List potential beneficiaries / stakeholders

- 1) Initial: Brothers / Sisters
- 2) Successor: Traditional ministries, other potential beneficiaries

2) List assets

3) Make a plan for distribution of assets

4) Name executor / trustee

- 1) Initial
- 2) Successor

Model on Secular Estate Planning

Inc		Approximate Value	Primary Purpose	Dissolution (Secondary Purpose)
	Operating			
	Investments			
	Land/Bldg			
Retirement Trust				
Retirement Facility				
Ministries				
	1.			
	2.			
	3.			

Current Asset Structure

Congregation of the Living Candle (CLC)

- Twenty Brothers and Sisters
- Serve immigrants through presence, advocacy and services

The brothers and sisters acknowledge their congregation is coming to completion.

They have heard of the terms Living Will and Legacy Planning and wonder if it may help them in their planning.

Case One

The congregation has served across the region in social service, education and advocacy, but has never established their own ministries.

As part of their mission, they have frequently given asylum to immigrants at risk.

Today they believe in the importance of their continued presence and accompaniment as immigrants feel increasingly vulnerable in our country.

Mission

The brothers and sisters live in immigrant neighborhoods and elder-care facilities. This continues to be an important value.

The CLC have always served in poor communities of new immigrants and have not saved adequately for retirement. More recently, with the help of NRRO, they have begun to focus on their elder-care needs. They are 40% funded for retirement and make use of all benefit programs for which they are eligible.

Eldercare

The CLC have a few members who have served as treasurer and have handled the community's finances. There are several immigrants they have served in the past who are now professionals and help the community on a volunteer basis.

The CLC have approached another community in the region to discuss the possibility of assisting with administration and financial leadership as the community ages.

Administration and Leadership

Could a congregational Living Will or Legacy Planning help the CLC with their planning?

What are their options?

What other information do you need?

What challenges might they face?

Questions

Missionaries for the Care of Creation (Missionaries)

- Forty sisters
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- Real Property

They are not certain of their future; the sisters in leadership cannot be renewed, and there are no other sisters who can serve.

They would like to settle their property and legacy in view of their uncertainty about leadership, and concerns about the eventual use of assets.

Case Two

The Missionaries established the Garden of God, an ecological and spirituality center as their sole congregational ministry. Most sisters have worked there and contributed to its success. Missionary presence continues to be important at the Garden.

The Garden is separately incorporated and the Missionaries have relinquished all reserve powers. The Missionaries still own the land and buildings on which the center operates; it was their former mother-house. The Garden is viable without ongoing support from the Missionaries, but it would benefit from receiving the land and buildings, which it currently leases for a nominal fee.

Sponsorship

The Missionaries live in a continuum-of-care facility sponsored by several area religious communities. Five sisters live elsewhere.

They are 80% funded for retirement. Most of their retirement assets are in a retirement trust. Missionaries use government benefit programs as much as possible.

Eldercare

The Missionaries' business and administrative services are provided by an inter-community finance office that serves several communities in the area.

The Missionaries are exploring transitioning canonical leadership to someone outside the community, e.g., a commissary, when the current leadership term expires.

Administration and Leadership

The Missionaries would like to settle their property and legacy in view of external leadership, and concerns about eventual use of assets.

What are their options?

What other information do you need?

What concerns might they have moving forward?

Questions

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