

Living Trusts, sometimes referred to as Family Trusts:

⌚ In 1995, the Forest Service Chief issued a letter stating that “recreation residence permits can be held by a living trust. However, an individual must be named as the trust representative and holder of the term permit. This individual would agree to act in behalf of the trust and to be responsible for the conditions imposed on the trust under the term permit's provisions. This can be a person specifically named in the trust as having the responsibility of the recreation residence.”

⌚ The Term Special Use Permit for Recreation Residences states, on Page 2 of 14:

D. PERMITS ISSUED TO A LIVING TRUST. For permits issued to a living trust, if the grantor's immediate family will not be occupying the recreation residence, the trustee shall notify the authorized officer which immediate family will be occupying the recreation residence. The permanent address of this immediate family shall be provided to the Forest Service. The trustee shall update the identification and permanent address of this immediate family as necessary. The trustee warrants that the trustee has the authority to bind the trust to the terms and conditions of this permit. The trust is liable for compliance with all the terms and conditions of this permit. “

F. CHANGE IN ADDRESS, OWNERSHIP OF THE RECREATION RESIDENCE, OR THE TRUSTEE. The holder or the holder's executor or personal representative shall immediately notify the authorized officer of a change in the holder's permanent address or a change in the ownership of the recreation residence. If the permit is issued to a trust, the trustee shall immediately notify the authorized officer of a change in the trustee or revocation or termination of the trust.

The following is an 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.

Revocable Trust

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.

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.
2. Trustors are the owner of the recreation residence located thereon and hereby transfer and deliver to the Trustees the recreation residence. Trustee 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 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 accumulated or held for the payments of fees, assessments, maintenance, repairs, improvements etc. relating to the continued occupancy or use of the recreation residence.
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.
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.

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.

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:

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 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.]

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 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 _____

_____ [insert successor trustee(s)].

[signature lines and notary blocks]

INFORMATION ABOUT THE TRUST

Review of Trust by the Forest Service-The Forest Service must review the entire Trust to ensure the interests of the United States are protected. If the property is a single asset (Recreation Residence) trust, the other private/sensitive assets, distributions, etc., will not have to be provided to the Forest Service.

Property Transferred to the Trust The trust must demonstrate that the recreation residence (personal property) was transferred to the trust. There must be a statement in the trust stating that the Holder(s) is/ are transferring ownership of the recreation residence to the trust. Many times the recreation residence will be listed as a trust asset in Schedule A of the trust.

Successor Trustee Provisions should be made so that the Forest Service is notified of the death of the trustor/trustee, or of any change of trustees. The permit terminates under its own terms when the permit holder dies or changes. The new owner or trustee is responsible for contacting the Forest Service and making application for a new permit.

A successor trustee shall not be a corporation, such as a bank, because Forest Service policy does not provide for issuing authorizations to a corporate entity, even as a trustee.

Discharge or Resignation of a Trustee. Upon either of these occurrences, the Forest Service must be notified and the new trustee must make application to the Forest Service for a new permit.

Trustee Powers

Occupancy of Residence In the case of the recreation residence, occupancy is limited by the terms of the authorization.

Discretionary Dissolution of Trust- Upon dissolution of the Trust, the special use permit will terminate under its own terms. The Forest Service must be notified and an application for a permit submitted to the Forest Service by the owner of the improvement.

Distribution of Trust Assets - By Forest Service policy, a permit for a recreation residence can only be held by an individual, husband & wife, or in trust. The distribution of the trust, as it pertains to the recreation residence, cannot have the recreation residence divided among more than one person, unless it is a husband & wife.

Charity If a trust provides for distribution of the recreation residence to a charity, this would be inconsistent with Forest Service policy in that only an individual or husband and wife could hold a permit for a recreation residence.

Permit Holder - A permit holder or Trust can only own one recreation residence on National Forest System lands.

Fee Payment and Upkeep - Trust should provide for the payment of the fee to the Forest Service and for upkeep of the recreation residence while it is in the trust prior to distribution.

Status of the Recreation Residence- The recreation residence is personal property, not real property as the underlying land is owned by the United States.

Permit- The use of National Forest System lands is allowed through a special use permit, not lease.

Trustee- The trustee(s) are subject to the terms of the permit, including liability and indemnification, when the permit is vested in their name as trustee.

Many trusts do have provisions for their continuation up to 21 years after the death of the Trustors/Grantors. The Forest Service should not place a permit in the name of the Trustee of a trust that provides for long term continuation after the death of the last of the Trustors/Grantors.

FOREST SERVICE MANUAL DIRECTION ABOUT HOLDERS OF RECREATION RESIDENCE SPECIAL USE PERMITS

The following direction, from the Forest Service Manual 2700 – Special Uses Management (Chapter 2720 – Special Uses Administration 2721.23a) relates specifically to issuance and administration of special use permits for recreation residence:

- ⌚ Issue special use permits for recreation residence in the name of one individual or to a husband and wife. Upon issuance of a new permit that continues the use or amendment, revise authorizations that are not issued to an individual or to a husband and wife, so that the responsible person is identified.
- ⌚ Issue no more than one recreation residence special use permit to a single family (husband, wife, and dependent children).
- ⌚ Do not issue special use permits for recreation residence use to entities such as commercial enterprises, nonprofit organizations, business associations, corporations, partnerships, or other similar enterprises, except that a tract association may own a caretaker residence.
- ⌚ When a recreation residence is included in the settlement of an estate, issue a new special use permit to the properly determined heir, if eligible, for the remainder of the original permit term, updated to reflect policy and procedural changes. Prior to estate settlement, issue an annual renewable permit to the executor or administrator to identify responsibility for the use pending final settlement of the estate. When a recreation residence is sold, issue a new term permit to the buyer, if eligible, for the remainder of the original permit term, updated to reflect policy and procedural changes.