

Living Trusts

For Recreation Residences

A

Forest Service Perspective



Why does the Forest Service have to review the trust?

- All trusts are complex and individually unique
- To ensure that a valid trust was established
- To establish that the trustee had the power to enter into a permit that would bind the trust
- To ensure the terms of the trust are not inconsistent with the terms of the permit

Why does the Forest Service have to review the trust?

- Unless the trust documents make the trustee individually responsible and/or unless the permit provides that if the trustee changes, the permit terminates, it would be harder for the agency to administer a permit held by a living trust because it would be more difficult to track and control selection of the person responsible for the permit.
- The person(s) or entity that creates the trust (the settlor) could select a corporation as trustee or the settlor could revoke the trust and select another trustee who might not be liable for the permit entered into by the previous trustee.

Authorization for a Recreation Residence

- Recreation residences are authorized by a Term Special Use Permit
- Recreation residences are NOT authorized by a lease
- The Term Special Use Permit is not Transferable or Assignable
- The Term Special Use Permit has no value and cannot be sold

Trust Agreements

Article - Trust Property

- This article is one method that indicates that the trustor has delivered the subject property (recreation residence to the trust (Schedule A))
- You must provide a copy of this Schedule or other form of documentation that the cabin has been transferred to the trust

Trust Property

(cont'd)

- **However, a common problem is that permit holders do NOT include the Schedule A with the trust documents for review**
- **This results in the Forest Service being unable to verify that the subject personal property has been transferred to the trust**

Revocation, Amendment, or Change in the trustee

- **Any change in the status of trust, trust property, or trustee may cause the permit to terminate automatically in accordance with its terms and conditions.**
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Revocation, Amendment or Change in Trustee

- **It is advised that a trust article be developed to require notification to the Forest Service if there is any change in the status of the trust, trust property, trustee, or the beneficiaries.**
- **This will allow the Forest Service to initiate the issuance of a new permit.**

Many “standard” trusts make reference to “...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 often developed utilizing software that does not recognize the unique status of the improvement on the lands of the U.S.

“...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.

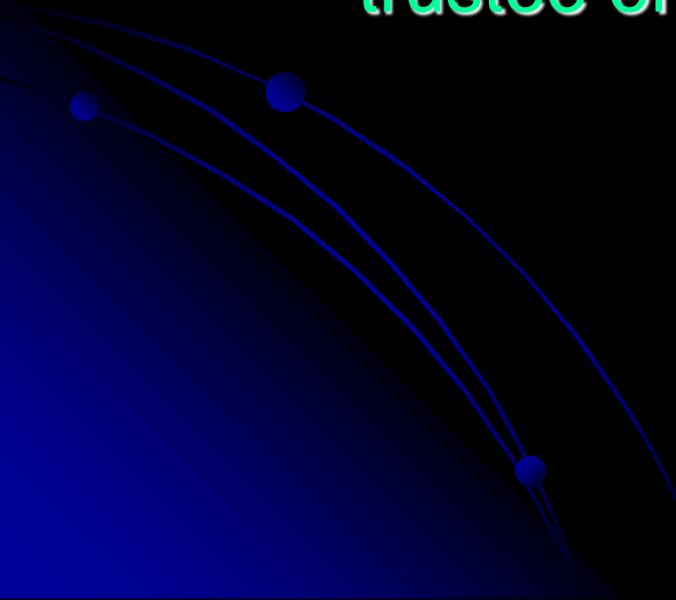
Beneficiaries

Forest Service policy states that only an individual, married couple, or trustee 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.

Ensure that your beneficiaries are “qualified to hold a Term Special Use Permit for a recreation residence.

Beneficiaries

- The division of the ownership of the recreation residence into shares may result in not having a qualified holder for the special use permit. Forest Service policy states that qualified permit holder can only be an individual, married couple, or the trustee of a trust.
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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.

Rule Against Perpetuities

- It is not the intent or desire of the Forest Service for a permit to a Trustee to continue past the death of all the original Trustors.
- Upon the death of the last Trustor, the permit must be distributed within 1 year and a permit be vested in an individual, or married couple, or in the name of a Trustee of a new Trust.