



A Florida Law Firm

## Florida Trust

### **BOYER LAW FIRM, PLLC**

Attorneys & Counselors at Law

9471 Baymeadows Road, Suite 404  
Jacksonville, Florida 32256  
United States of America

Tel: +1 (904) 236-5317

Fax: +1 (904) 371-3935

Email: [Office@BoyerLawFirm.com](mailto:Office@BoyerLawFirm.com)  
[www.BoyerLawFirm.com](http://www.BoyerLawFirm.com)

Immigration • Business Law • Estate Planning • Real Estate • Maritime Law • Debt Collection • Foreign Investment

Advising on the laws of Florida and the United States of America

## **FOREWORD**

This memorandum has been prepared for the assistance of those who are considering the formation of trusts in Florida. It is not intended to be exhaustive nor a substitute for proper legal advice but provides a basic guide to the trust concept and an outline of trust law and trust administration in Florida for clients of the Boyer Law Firm.

Clients are advised that they should consider the implications in their home jurisdiction of establishing a Florida trust and should consult with their own legal, financial and other professional advisers as appropriate.

We also recommend that our clients seek legal advice in Florida on their specific proposals before taking steps to implement them.

This memorandum has been prepared on the basis of the law and practice as at the date referred to below.

**Boyer Law Firm, PLLC**  
**Jacksonville, Florida**

January 2009

## TABLE OF CONTENTS

1. Introduction — Planning Uses for Florida Trusts
2. A Legal Fiction: The Trust
  - 2.1 Description of Trust
  - 2.2 The Settlor
  - 2.3 The Trustee
  - 2.4 The beneficiaries
  - 2.5 The [Trust Fund](#)
3. Typical Forms of Trust
  - 3.1 Discretionary Trust
  - 3.2 Fixed Interest Trust
  - 3.3 Charitable Trusts
  - 3.4 Settlor reserved powers
  - 3.5 Special Needs Trusts
  - 3.6 Trusts for Pets – the Honorary Trusts
4. Trustees' Duties and Trust [Administration](#)
  - 4.1 Who May Act As Trustee?
  - 4.2 Trustees' Duties
  - 4.3 Administration of the Trust
  - 4.4 Failure to Act
  - 4.5 Liability to Third Parties
5. “Dynasty” Trusts
  - 5.1 Rule Against Perpetuities
6. Confidentiality

## **1. Introduction- Planning Uses For Florida Trusts**

Florida trusts are employed to achieve a variety of estate, personal, financial, tax or other business planning objectives. These objectives often include one or more of the following:

- provisions for spouses and dependents
- protection of assets from future personal liability
- minimization of estate/inheritance tax, income tax, and capital gains tax
- preservation of family wealth and continuity of family businesses
- efficient and timely distribution of assets upon death
- protection against exchange controls
- creating or making provisions for charities
- establishing pensions or employee stock option plans
- ownership of particular assets or of investments generally
- lender protection in corporate financing transactions

## **2. A Legal Fiction: The Trust**

### **2.1 Description of Trust**

A trust is a legal creation now governed by the Florida Trust Code (“FTC”) whereby property (including real, tangible and intangible) is managed by one person (or persons, or organizations) for the benefit of another. A trust is created by a settlor, who entrusts some or all of his or her property to people of his choice (the trustees). The trustees hold legal title to the trust property (or trust corpus), but they are obliged to hold the property for the benefit of one or more individuals or organizations (the beneficiary), usually specified by the settler.

### **2.2 The Settlor**

The settlor may also be a beneficiary and, in certain circumstances, can act as a co-trustee. The settlor cannot be a sole trustee and a sole beneficiary of his trust. A company may act as settlor if it has the corporate capacity to make a gift of its assets or otherwise to dispose of them for the purpose of establishing a trust.

### **2.3 The Trustee**

The trustee is the person (or persons) who holds the legal title to the trust fund and who is obligated to administer the trust for the benefit of the beneficiaries. The trustee can be a company if it has the corporate capacity to act as a trustee. The trustee stands in a fiduciary position vis-a-vis the beneficiaries and is required to honor certain stringent duties imposed by law (outlined in paragraph 4 below).

## **2.4 The beneficiaries**

The beneficiaries can be individuals, companies and other legal entities. Trusts can also be established to further charitable or non-charitable purposes.

In order for a private trust to be valid, the identity of the beneficiaries must be capable of being established with sufficient certainty. Thus in the case of a trust for groups or classes of persons, the trustee must be able to determine whether any given person is or is not a member of that group or class.

## **2.5 The Trust Fund**

The property constituting the trust fund can be any type of real or personal property (e.g. cash, securities, real estate, personal effects or other tangible or intangible property). The property must be capable of being ascertained in order to be subject to a trust.

# **3. Typical Forms of a Trust**

## **3.1 Discretionary Trust**

The discretionary form of trust often provides the most flexible and efficient structure for the settlor and the beneficiaries.

After establishing the trust, the settlor will normally have divested himself of any ownership interest in the assets held in the trust (unless he retains certain powers). Under the terms of a discretionary trust, the trustee is generally given wide discretionary powers over the trust fund and decides (according to the beneficiaries' best interests as a whole) when and to which beneficiary he should distribute capital and or income of the trust, and in what proportions. For this reason, the beneficiaries are regarded as not having a specific interest in the trust but only a right to be considered when the trustee exercises his discretions. As a consequence a creditor of a beneficiary is in no better position and cannot compel payment from the trustee. Once the trustee has been notified of the creditor by being served with process, the trustee cannot deliver payments to the beneficiary without satisfying the creditor first.

## **3.2 Fixed Interest Trust**

Under a fixed interest trust, primary beneficiaries will normally be granted a right to receive the income and capital of the trust fund and the trustees will have little, if any, discretion over the nature and extent of distributions from the trust fund.

**TO READ MORE PLEASE DOWNLOAD THE FULL LEGAL GUIDE**