

## **5. THE TRUST COMMITTEE**

### **Introduction**

Within the Seventh-day Adventist denomination, the corporate entity typically serves as the trustee of trusts, personal representative/executor of wills, or fiduciary for specific responsibilities as requested by church members or donors. In some jurisdictions an individual employee may be named, but it is in their capacity as an employee of the church organization that they carry this responsibility. It is impractical for decisions regarding the creation and management of gift plans to be left to the corporate entity which may meet only every one, three, or five years. Therefore, it is common practice for the corporate constituency to select a Board of Directors to make corporate decisions in between constituency meetings. Even though the Board of Directors may meet frequently, denominational entities typically name an “in-house” sub-committee and delegate to it specific responsibility and authority to manage the organization’s gift plans including trusts. Usually the Board of Directors retains decision making authority regarding the opening of trust/estate bank or brokerage accounts, the conveyance of real estate or other asset title, and the designation of signors for certain documents.

This sub-committee is generally a standing or permanent committee of the corporate Board of Directors whose duties and authority include consideration of new trusts and other gift plans, overseeing management of existing agreements and monitoring the process of trust or gift plan maturity and termination. As such it acts on behalf of the Board of Directors and is accountable to it.

The committee may be known as the Trust Management and Acceptance Committee, Trust Management Committee, Planned Giving Committee, or Trust Committee. Committee membership is generally determined by the Board of Directors. It is typical for corporation or association officers, as well as the director and associate director(s) of the planned giving and trust services department, to serve on the committee. In many cases all certified staff serves on the committee. Other members may also be named by the Board of Directors. An institution, such as a college, university, or hospital may vary from this basic format depending on its corporate structure.

The Trust Committee provides part of the corporate due diligence in actions related to its fiduciary duty applicable to gift planning. The committee also provides an important check and balance to individual employee action involving a gift plan. The organization, through the Trust Committee, oversees its liability and manages its risk. The sense of corporate responsibility is expressed through the Trust Committee as it considers all manner of actions for a trust, estate or other gift plan.

The Trust Committee provides an important forum for internal communication pertaining to the organization’s gift planning ministry. Committee meetings facilitate communication with administration while keeping the circle of communication compact to protect donor privacy. It also broadens input beyond department staff providing additional perspective to a given situation.

All actions of the Trust Committee should be recorded in minutes taken by the committee recording secretary and maintained as permanent committee records. Since the Trust Committee is an extension of the corporate Board of Directors, some organizations may include the Trust Committee's minutes in its own permanent corporate records.

### **Basic Trust Committee Actions**

The Trust Committee generally performs six actions or functions in fulfillment of its role. It generally recommends, authorizes, acknowledges, discusses, receives reports, and records actions. Sometimes several of these activities are included in an individual action. It is a best practice for the organization's legal counsel to review and advise on the format used for the various types of committee actions.

1. **Makes Recommendations.**

Depending on what powers are granted to the Trust Committee, there may be certain actions that must be taken by the corporate board. Generally only the corporate board authorizes signatures on new accounts, account closures or the signing of deeds. The Trust Committee discusses the transaction and recommends to the Board of Directors that it authorize certain persons to execute the needed action. For example, "It is voted to recommend to the Board of Directors that corporation officers be authorized to execute and deliver all documents necessary to convey real estate held by the corporation as trustee of Revocable Trust No. \_\_\_\_ dated \_\_\_\_ to the trustors pursuant to a revocation of trust notice dated \_\_\_\_\_."

2. **Authorizes Actions.**

Many organizations create Terms of Reference for committees listing committee responsibilities and powers (a sample copy follows at the end of this chapter). Trust committees are typically empowered to decide if a trust or gift plan is acceptable. The committee action would therefore exercise this power by "authorizing" the particular action. The committee action might read, "It is voted to authorize the acceptance of a new Revocable Trust No. \_\_\_\_ for a husband and wife \_\_\_\_ and \_\_\_\_ years of age for which the conference association will serve as trustee and which names the family (\_\_\_\_%) and the conference (\_\_\_\_%) as beneficiaries."

3. **Acknowledges Instructions or Exercise of Powers By Others.**

Generally the revocable trust document will retain certain powers to the trustor/grantor. The most prominent retained powers are the power to withdraw assets, to give written investment directions and to revoke the trust. Since the trust authorizes the action, the Trust Committee acknowledges the exercise of the power. A revocation action might read, "It is voted to acknowledge the revocation in its entirety of Revocable Trust No. \_\_\_\_ dated \_\_\_\_ and the return of all trust assets pursuant to the Grantor's written notice dated \_\_\_\_\_."

4. **Discusses Items.**

On occasion the committee discusses items relating to a gift plan or departmental issue. While not rising to the level of a committee action it is appropriate to refer to the discussion in committee records. This provides staff and the committee a way to memorialize the discussion for later reference, for example, "Discussed the draft of a new gift acceptance

policy regarding minimum amounts acceptable for creating a new charitable gift annuity.” Additional details may also be included briefly summarizing the discussion. In the event a discussion results in a committee action, then that action would be duly recorded in the minutes, generally following the notation of the discussion.

5. **Receives Reports.**

From time to time staff may be called upon by administration to report on a certain aspect of the planned giving and trust services ministry. Perhaps the staff has researched an issue important to the department or a gift plan and reports its results to the committee. The committee action might read, “Received a report from \_\_\_\_\_ on gift annuity fund investment performance for the period ending December 31, 20\_\_.”

6. **Records Actions.**

The act of writing down committee meeting minutes creates a historical and legal record of the committee and organization. They are a protection for staff and the organization. These records verify authority for an action. They record the corporation, by way of the committee, fulfilling its duty to its constituents, trustors, and donors. The original committee minutes signed by the appropriate committee officer may be kept as a part of the corporate records or in the department vault for safe keeping.

**Trust Committee Responsibilities**

A primary responsibility of the committee is to thoroughly review the various aspects of a proposed trust or other gift plan and the prospect of the organization accepting associated fiduciary responsibilities. (Throughout this process, and the management of any estate or gift plan, it is paramount that the committee protects the privacy of a prospective donor by maintaining confidentiality.) The committee is charged with the responsibility of adhering to the organization’s gift acceptance policies, guidelines for payment or sharing the cost of legal expenses. It should also give careful consideration to the following:

1. The prospective trustor/donor’s current situation based on information received from the donor interview and family information form.
2. The type of estate or gift plan proposed by the attorney as well as the fiduciary’s powers and responsibilities.
3. The nature, type, location, and value of prospective plan assets. Is the corporation equipped to administer the specific trust/estate/gift plan in question? Efficient management may require trust assets be located in the territory of the trustee.
4. The financial viability of a gift plan managed by the organization. The organization must balance serving the donor with being fiscally responsible. There must be sufficient gift or donative intent to warrant the organization committing to the potentially long-term responsibility of trust/gift plan management. While division accreditation standards require a substantial benefit accrue to the denomination when a church organization serves as trustee, that benefit is not further defined, and it is the responsibility of the trustee organization to consider the cost and benefit of accepting fiduciary responsibilities.

## Trust Committee Activities Regarding Trusts

1. Trust Acceptances: Thoroughly review the following:
  - a. A brief background and the current status of the trustor.
  - b. The type of trust.
  - c. Trustee powers and management responsibilities.
  - d. The nature, type, and size of the assets to be placed in the trust.
  - e. The distributive provisions of the proposed trust.
  - f. Compliance with denominational policy and organization's trust acceptance policy.
  - g. Recommendations (if any) from organization's legal counsel.
  
2. Revocable Trust Revocations: Consider and acknowledge revocations. Authorize return of assets and documents according to organization's procedures. It is appropriate to provide the committee with a brief explanation of reason for revocation. Record an action in the committee minutes such as, "Acknowledge revocation of Revocable Trust No. \_\_\_\_\_ dated \_\_\_\_\_ in harmony with trust provisions and pursuant to trustor written instructions dated \_\_\_\_\_."
  
3. Irrevocable Trust Terminations: Give special attention to requests to terminate irrevocable trust's or gift plans as well as to requests by trustors whose mental competence or ability to act free from duress or fraud is in question. There may be unforeseen tax and legal consequences best commented on by legal counsel.
  
4. Trust Amendments: Pay particular attention to requests for:
  - a. Amendments to the distribution provisions that may prove unreasonable or burdensome for purposes of future administration, that incur unreasonable legal liability, or cause a trust distribution to fall below the general requirements for the corporation to act as trustee.
  - b. Amendments requested by trustors whose mental competence or ability to act free from duress or fraud is in question.
  
5. Trust Additions: When accepting assets into the trust, be mindful of assets which may be unduly burdensome to administer, assets which could subject the corporation to unreasonable liability, and the mental competence or ability of the trustor to act free from duress or fraud.
  
6. Trust Withdrawals: When considering requests for withdrawal of assets, beware of:
  - a. A withdrawal that could impair the validity of the trust by removing all property.
  - b. A withdrawal that may permanently reduce the trust estate to a level which would cause the trust to fall below the general requirements for acceptance of the trust, or which would cause the trust to be considered impractical to administer.
  - c. Withdrawal requests made by trustors whose mental competence or ability to act free from duress or fraud is in question.

7. Purchase and Sale of Assets: When trust assets are to be purchased, sold or reinvested, make sure:
  - a. A written request for the purchase, sale reinvestment of revocable trust assets is received from the trustor. Committee action will acknowledge receipt of trustor written instructions and authorize staff to proceed accordingly.
  - b. The decision to purchase, sell, or reinvest the assets held in an irrevocable trust should be based on corporation investment policy, investment policy for the specific trust, the requirements of the trust document, the needs of the trustor, the investment time horizon, and/or applicable state law. Record an action in the committee minutes authorizing all transactions for irrevocable trust assets.

### **Generally Acceptable Trust Assets**

1. Cash
2. Institutional Account
  - a. Savings accounts
  - b. Checking accounts
  - c. Certificates of deposit
  - d. Payable on death (POD) accounts
  - e. Totten trust accounts
  - f. Transfer on death accounts
3. Real Estate
  - a. Residential property
  - b. Undeveloped land, if marketable
  - c. Income producing and rental property provided the lease is acceptable from a trust management perspective. Exercise caution as considerable management may be involved.
  - d. Property, on which the trustor operates a business, provided the form of ownership and type of business activity is acceptable to the trustee. Consult legal counsel, organizational policy and the Planned Giving and Trust Services Manual before accepting such an asset.
  - e. Vacation property, provided that the property is readily marketable. Beware of time share property.
  - f. Before accepting any real estate, the Trust Committee should determine if there is any potential unacceptable liability under the myriad federal and state environmental statutes, regulations, and codes.
4. Mortgages Receivable and/or Deeds of Trust and Contracts, provided they are assigned to the trust. Caution should be exercised, as the trustee is normally responsible for the collection of amounts due and tax reporting.
5. Securities and Unsecured Notes
  - a. Stocks
  - b. Bonds
  - c. Mutual fund accounts
  - d. Revolving fund notes

- e. SDA institutional notes
  - f. Personal notes-**Caution** should be exercised before accepting personal unsecured notes. Personal notes are often very hard to collect and place the church trustee in an awkward position.
6. Insurance
- a. Insurance does not become an asset of the trust unless ownership of the insurance policy is transferred to the trustee which is normally not allowed by the insurer.
  - b. The trust may benefit from insurance, however, when the trustee is named as a beneficiary of an insurance policy. In this case, the insurance benefit is considered a contingent asset. A copy of the policy or beneficiary declaration showing the trust's interest should be included in the trust file. Each contingent asset should be included in the organization's trust accounting system at a nominal value of \$1.00.
  - c. The trustee may wish to store the original insurance policy with the trust papers for safekeeping, even though it is not a trust asset.
7. Gold and Silver
- a. The trustee must have physical custody of gold and silver and deposit such in its bank safe deposit box.
  - b. The trustor and trustee should sign an itemized inventory listing these assets.
8. Mobile Home
- a. The trustee should accept mobile homes only under limited circumstances where there is a likelihood that the home shall remain an asset of the trust estate until the death of the trustor, and usually when the trustor is at an advanced age. Caution should be exercised in the acceptance of mobile homes because they typically depreciate and are difficult to sell.
  - b. Title should be held in the name of the trustee or in a manner permissible under applicable law.
9. Beneficial Interests
- a. Pensions
  - b. Retirement programs

### **Assets That Are Generally Unacceptable Trust Assets**

The following list of generally unacceptable assets for trusts where the organization serves as trustee is not exhaustive, but these are among the most common items offered by donors. These assets may be appropriate for a self-administered trust pending advice from the trustor's legal counsel.

1. Motor vehicles (automobiles, motorcycles, boats, motor homes, travel trailers, etc.)
2. Household furnishings and supplies; however in some jurisdictions personal effects and household goods may be assigned to the trust
3. Business inventories

4. Personal effects
5. Livestock
6. Equipment
7. Purchase contracts
8. Partnership agreements (professional and investment)
9. Assets not acceptable under the standards of the Church

### **Additional Trust Committee Concerns**

#### 1. Potential Litigation

It may be prudent for the organization to decline to serve as trustee when it is apparent that the relationship with the trustor's family will interfere with the trustee's ability to manage the trust estate, or if the trust would create an obvious potential for litigation. The trustor should consult with independent legal counsel regarding all aspects of the estate plan including family obligations, the potential for litigation and the selection of a trustee. The organization should thoroughly review the matter with its own counsel before accepting any fiduciary duty.

#### 2. Tax Implications

Every effort should be made to determine the adjusted cost basis of non-cash assets. Income producing assets should not be accepted into trust until the tax reporting requirements have been carefully evaluated.

#### 3. Distributive Provisions

The following factors should be considered before accepting the specific distributive provisions requested in a trust.

- a. Do the terms of the trust distribution require an additional lengthy management term for the trust?
- b. Is the distribution of the assets likely to create a conflict of interest between the trustee and the beneficiaries?
- c. Is the distribution of the trust assets likely to create divisiveness and/or create an obvious potential for litigation?

#### 4. Educational Trusts

- a. Preferably, an educational trust should be included in a trust agreement only when a party other than the corporation is named as trustee of the educational trust.
- b. In the event that the corporation is named as trustee, the educational trust provisions should not extend beyond the time when each child would reasonably be expected to complete the baccalaureate degree (approximately 22 or 23 years of age). It is not advisable to become the trustee of educational trusts for grandchildren because of the long time frame involved and the perceived, if not actual, conflict of interest.

c. Educational trusts should clearly spell out what constitutes “educational expense” and investment guidelines.

5. Care for Special Needs Persons

Where the trustor has the responsibility for special needs persons and desires to create a trust to care for those persons, the following should be considered:

- a. The specific needs of each person.
- b. All available government aid.
- c. Other available resources.
- d. The trustee’s ability to perform.

6. Application of Guidelines

- a. Compliance with all of the guidelines set forth in this manual should not mean the automatic acceptance of a trust.
- b. No trust should be submitted to the trustor for signature prior to approval by the duly appointed committee(s).
- c. The size or value of the trust estate should not be the sole determining factor in the acceptance of a trust.

7. Depletion of Assets

When examining the prospective assets of a trust agreement, there are certain concerns that need to be taken into consideration:

- a. An individual’s net worth may be diminished if assets are used for support during retirement and old age.
- b. Some assets, such as receivables which are collected and passed on to the trustor, may have lost their entire value by the time the trust matures.
- c. Trust agreements should be reviewed periodically to determine if revocation is in order. Occasionally, the trust value may decline to a level where it is impractical for the organization to continue serving as trustee. A change in the circumstances or attitude of the trustor may make it necessary for the trustee to terminate the trust agreement. When this occurs, the trustee usually absorbs the expense incurred during the administration of the trust agreement. The longer a trust agreement is in existence, the less likely it is that the agreement will be revoked by the trustor. However, older trustors may be influenced by individuals who wish to alter the carefully laid estate plans of earlier years.
- d. Management costs must be considered when determining the ultimate value of the gift from the trust since management is normally provided free of charge. The church entity receives benefits only after the trustor’s death, by way of distribution from the trust.

8. Guarding Against Depletion of Trust Assets

The probability of trust depletion may be substantially diminished if PGTRS personnel will consider the following when setting up the trust:

- a. The importance of the gift to God’s work.
- b. The relationship of the gift portion to the cost of trust management.
- c. The importance of the potential survivor’s understanding of the trust and agreement with its distribution directives.
- d. Other gifts made to the charitable organization.



## 9. Specific Considerations

- a. When accepting a trust from a predecessor trustee, a final accounting should be required from the former trustee.
- b. Donors should be encouraged, and in some situations be required, to seek advice from independent legal counsel.
- c. Distributions shall be made in a timely and thoroughly documented manner.
- d. When the organization is named as a successor trustee and the assumption of its duties is determined by the trustor/grantor's mental or physical ability, the organization should consult its legal counsel about the applicability of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to its fiduciary role and, if advisable, obtain the appropriate authorization to access the trustor's protected health information

## **Guidelines for Acceptance of Other Charitable Gift Plans**

### **Charitable Gift Annuity**

1. A charitable gift annuity may be created for no more than two lives.
2. Follow organization's gift acceptance policies pertaining to annuitant's minimum age and minimum and maximum size of the annuity contract.
3. The annuity rate should be no higher than the rate set by denominational policy. This rate is typically the maximum rate recommended by the American Council on Charitable Gift Annuities as voted by the General Conference Corporation.
4. The Trust Committee should determine the minimum amount necessary to fund a charitable gift annuity.
5. The annuity asset should not be the sole or major asset of the donor's estate nor should the transfer reduce the donor's assets to such a level as to make the donor eligible for governmental assistance.
6. The donor should be encouraged to inform his/her close family members (children) of his/her intentions to establish an annuity.
7. The donor should be encouraged, in writing, to consult with his/her own tax and/or legal counsel prior to establishing the annuity.
8. Gift annuities are ideally funded with cash and marketable securities.
9. If a donor proposes funding an annuity with real property:
  - a. Does the real property have an encumbrance?
  - b. Does the donee have a need for the property?
  - c. Is the real property readily marketable?

10. If a local conference desires to accept an annuity funded with cash in excess of \$500,000, or any non-cash asset, approval must be obtained from the appropriate union Trust Services director or the union officers.
11. The organization promoting or issuing gift annuities must comply with federal and state statutes regulating gift annuities and related disclosures.

### **Charitable Remainder Unitrust (CRUT) and Charitable Remainder Annuity Trust (CRAT)**

1. All applications for unitrusts or annuity trusts must be reviewed by the corporation board or the designated subcommittee and/or the Trust Committee.
2. Recommendation should be made to the donor, in writing, to consult with independent tax and/or legal counsel and family members regarding his/her intentions to establish a charitable remainder trust.
3. The appropriate type of charitable remainder trust and trust payout rate should be determined by the donor, in consultation with independent legal counsel, based on the donor's needs and objectives.
4. The trust must meet certain tests, such as the 10% charitable deduction test and the 5% risk of exhaustion test (CRAT only). The trust term and number of life income beneficiaries will be limited by these tests.
5. The organization's legal counsel should be consulted and review documents drafted by donor counsel.
6. Acceptable funding assets for a unitrust include:
  - a. Cash
  - b. Marketable securities
  - c. Unencumbered real property
  - d. Real estate contracts and notes secured by deeds of trust or mortgages with first lien position
  - e. Commercial annuities in certain situations (these typically have negative income tax consequences for the donor)
  - f. Any other assets which are easy to value and readily marketable
7. Acceptable funding assets for an annuity trust include:
  - a. Cash
  - b. Marketable securities
  - c. Real estate contracts and notes secured by deeds of trust, or mortgages with first lien position. Contracts generally create difficulties if they fail to perform.

8. Other considerations

- a. The trust assets should not be the only assets in the trustor's estate.
- b. Trust assets should be readily marketable.
- c. Trust assets must be unencumbered and generate no unrelated business taxable income.
- d. Rental properties, hard to value assets (such as stock in a closely held company or works of art), and tangible or intangible personal property should be carefully evaluated before being accepted as assets of a charitable remainder trust.
- e. The donor is responsible for obtaining a qualified appraisal of the trust assets to determine the fair market value as partial fulfillment of gift valuation and substantiation requirements. If the asset is real property, the donor or trustee should purchase a title insurance policy which names the trust/trustee as the insured.
- f. For trust accounting purposes, charitable remainder trust assets are valued at fair market value as of the contribution date. Under the four-tier system used to characterize income payments for tax accounting purposes, the donor's basis is the initial value of the trust corpus.
- g. If the trust asset is a seller's interest in a real estate contract or a note secured by a deed of trust or mortgage, the trustor should consult legal counsel to determine if transfer into the trust will cause unacceptable income tax consequences.
- h. If non-income producing assets are contributed to a CRUT, the donor must be willing and able to make periodic additional liquid contributions to the trust in order to cover expenses (such as property taxes, insurance, appraisal fees, and other administrative costs) until assets can be sold and re-invested in a balance portfolio designed to meet trust income and growth requirements.