

Termination of family trusts with elder as settlor-beneficiary

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This report addresses two issues regarding the termination of family trusts with elder as settlor-beneficiary.

The first issue is whether the adult guardian of a settlor-beneficiary can terminate a trust that the settlor-beneficiary has established. Although an adult guardian has the power to terminate a trust in order to return assets to the adult ward, who is both the settlor-beneficiary, if the adult guardian terminates a trust inappropriately, this may be in breach of the guardian's duty of care.

Unless the settlor-beneficiary has made clear his or her intention to terminate the trust, the adult guardian must first maintain the trust established by the adult ward, supervise it, exercise the beneficiary's claims on its behalf, and, if necessary, consider dismissing the trustee. However, if it is necessary for the adult ward's living expenses, the adult guardian can/should exercise his or her power to terminate the trust in order to return assets to the adult ward, regardless of the contents of the trust.

The second issue is the vesting of residual assets after the trust is terminated when the terms of trust specify that the death of the settlor-beneficiary is one of the grounds for terminating the trust. Because, there are cases where the settlor-beneficiary does not wish for this to happen and would prefer that the residual assets be distributed according to the provisions of inheritance law or that the heirs decide among themselves.

The residual assets will belong to a person designated by the terms of trust as the beneficiary for residual assets or the holder of a vested right, or, if the terms of trust contain no clause, in accordance with the rules of trust law. Whether the terms of trust designate as the beneficiary for residual assets or the holder of a vested right, the heirs of the settlor-beneficiary or the deceased settlor, it is generally considered that the vesting of the residual assets will be determined by these terms of trust, not by inheritance law.

In response to this, one theory suggests that in a trust in which the settlor is designated as the holder of a vested right, upon the settlor's death, the settlor's rights as the holder of a vested right are passed on through inheritance. We will need to consider what rights we have as the holder of a vested before the trust is terminated. It is also proposed that, rather than terminating the trust upon the death of the settlor-beneficiary, the beneficiary's beneficial interests be inherited upon the settlor-beneficiary's death.