

PRESENTED AT

24th Annual Estate Planning, Guardianship and Elder Law Conference

Terminating Trusts: Ten Common Issues

Written by:

**Christopher D. Jones
Sprouse Shrader Smith PLLC**

Presented By:

Zachary Wiewel

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
Terminating Trusts: Ten Common Issues	1
1. Identify Termination Triggers.....	1
1.1 “Normal” Triggers.....	1
1.2 Termination of Uneconomic Trusts.....	1
1.3 Termination/Modification by Agreement.....	2
1.4 Termination By Powers of Appointment (Proceed with Caution!).....	2
1.5 Judicial Termination.....	3
2. The Windup Process.....	4
3. Identifying Distributees.....	5
4. Addressing Third Party Claims/Debts.....	6
5. Final Income Tax Returns/Holdbacks.....	6
6. Be Wary of SNTs.....	7
6.1 If a distributee participates in “need based” programs.....	7
6.2 If the terminating trust is a self-settled SNT.....	7
7. Pick and Choose Powers.....	8
8. Distributing Real Estate.....	9
8.1 Do not use quitclaim deeds!.....	9
8.2 Wait, what exactly is a quitclaim deed?.....	9
8.3 What deed should be used?.....	9
8.4 Trust Certifications.....	10
8.5 Sample Deed.....	11
9. Disclosure/Release from Liability.....	11
9.1 Duty to Disclose.....	11
9.2 Overcoming the Presumption of Unfairness.....	13
9.3 The Distribution and Release Agreement.....	14
9.4 Judicial Discharge.....	14
10. Judicial Terminations – Trust Code 112.054.....	16
10.1 Jurisdiction.....	16
10.2 Venue.....	17
10.3 Parties to the Action.....	17
10.4 Petition to Terminate a Trust.....	18
10.5 Post-Petition Actions.....	18

10.6	Unopposed Hearing to Appoint a Successor.	19
10.7	Opposed Hearing to Appoint a Successor.	19
10.8	Post Hearing Actions.	20
10.9	Take Advantage of the Judicial Process.	20
Exhibit A	21
Exhibit B	24
Exhibit C	32

NOTE: THIS ARTICLE IS FOR EDUCATIONAL PURPOSES ONLY. NOTHING IN THIS ARTICLE SHALL CONSTITUTE TAX OR LEGAL ADVICE BY THE AUTHOR OR BY SPROUSE SHRADER SMITH PLLC. ANYONE SEEKING TAX OR LEGAL ADVICE SHOULD CONSULT WITH HIS OWN TAX AND LEGAL ADVISORS. ANY INCLUDED SAMPLE PROVISIONS ARE INTENDED ONLY FOR DISCUSSION AND ARE NOT TO BE RELIED UPON BY ANY PRACTITIONER OR FOR ANY OTHER PURPOSE.

TERMINATING TRUSTS: TEN COMMON ISSUES

All good things must come to an end.

-Geoffrey Chaucer

Trusts cannot last forever in Texas. While the new rule against perpetuities bought an extra century or two, every trust must eventually terminate. The purpose of this paper is to identify ten common issues that occur when terminating trusts. Hopefully this paper will save practitioners time addressing these issues and provide practical tips when facing them. Rather than exhaustively discussing a few issues, this paper provides a broad list. Certainly, practitioners may need to dig deeper depending on the circumstances you encounter.

1. Identify Termination Triggers

1.1 “Normal” Triggers.

Identifying a termination date is not always as easy as it sounds. Many trusts simply terminate on the death of a beneficiary or when the beneficiary reaches a certain age. Other trusts terminate upon the death of a third party (e.g, the settlor in a life insurance trust). Additionally, trusts established before the effective date of the new rule against perpetuities was adopted may terminate under the “old” rule against perpetuities.

When representing clients in a trust administration, Practitioners should determine the following:

- a) What events trigger termination?
- b) Does the trust include a savings clause that uses a perpetuities period other than the one contained in 112.036 of the Texas Trust Code?
- c) If the trust is subject to the “old” perpetuities period (or if the trust contains an outdated provision about the maximum term of the trust), who are the lives in being?
- d) If the trust is subject to the “new” perpetuities period, what is the date the trust must terminate?

1.2 Termination of Uneconomic Trusts.

Several other events may trigger termination. Most trusts allow for the termination of an uneconomic trust, and even if the trust is silent, the Trust Code provides for the termination of trusts having a total value of less than \$50,000.00 if the trustee concludes, after considering the purpose of the trust and the nature of the trust assets, that the value of the trust property is insufficient to justify the continued cost of administration.¹

¹ Tex. Trust Code 112.059.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Terminating Trusts: Ten Common Issues

Also available as part of the eCourse

[2022 Estate Planning, Guardianship and Elder Law eConference](#)

First appeared as part of the conference materials for the
24th Annual Estate Planning, Guardianship and Elder Law Conference session
"Top Things to Consider When Terminating a Trust"