

PRIMER ON AMERICAN TRUST LAW
DAVID M. ENGLISH
Copyright, 2004 - David M. English

Charitable Trusts

What is a charitable trust? A charitable trust is an express trust with a charitable purpose. That does not mean the generic function of "doing good." Rather, the trust must be created for one of the following purposes: the relief of poverty, the advancement of education or religion, the promotion of health, the furtherance of governmental or municipal purposes, or other purposes the accomplishment of which is beneficial to the community.

How are charitable trusts created? The creation of a charitable trust does not differ significantly from that of any other express trust. That is, charitable trusts may be created in a will or by inter vivos transfer or other method. The settlor must have capacity to create a private trust of like kind (testamentary, etc.) and must manifest intent to create a charitable trust. There must be trust property. Where the charitable trust differs from other express trusts lies, first, in can only be created only for a charitable purpose and is valid despite the lack of ascertainable beneficiaries; and, secondly, it is not subject to the rule against perpetuities.

Who are permissible beneficiaries of a charitable trust? A trust is not a charitable trust if it is for the benefit of named beneficiaries, even if the purpose of the trust is to further the beneficiaries' health, education, or economic welfare. A charitable trust must benefit a class of persons and the class must be large enough to be considered of benefit to the community.

Who enforces a charitable trust? It follows that if the charitable trust benefits the community, then the community may enforce it. This is done in the person of the state attorney general who, under the common law, has authority to enforce the terms of the trust. In addition, a beneficiary who can be identified, and who can demonstrate that he is entitled to receive a benefit under the trust, may also sue to enforce the trust, e.g., a trust created to benefit Midwest University may be enforced by the university. The courts tend sometimes to construe liberally the latter standard, finding that anyone who may enjoy the results of the trust have a special interest and are considered to be a beneficiary. (Thus, for example, a gift of land in trust to create a municipal park might be enforceable by one who can show she would use the park for recreation.)

How is a charitable trust modified? If it becomes impossible, impracticable, or illegal to carry out the particular charitable purpose for which the trust is created, it may be possible to reform or terminate the trust under the doctrine of cy pres. That doctrine suggests that where it is not possible to wholly carry out the settlor's intent, then his intention should be carried out to the extent possible - unless, of course, the settlor has expressed the desire to terminate the trust rather than deviate from its express terms. The courts seek to fulfill not the specific charitable purpose but the settlor's general intent to make a gift for charity. The courts must balance the needs of society against the probable intent of the settlor under the circumstances. If to do so would better fulfill the

settlor's perceived intent, the court may apply cy pres to redirect the trustee on how to distribute the trust property or may direct that the trust terminate and its property be distributed to one or more charitable organizations.

If the court concludes that the settlor does not have a general charitable intent, the traditional doctrine of cy pres dictated that the trust fail and its trust property be returned to the settlor or, more likely, settlor's successors. The Uniform Trust Code changes this rule. Unless the trust document provides expressly for distribution to a noncharity, a charitable trust, once created, must be applied to charitable uses regardless of whether the original purpose fails.