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# POMS Section SI O1120.201ATL

Table of Contents | Search | Previous | Next

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## SI ATL01120.201 Trust Property

See SI 01120.201

### A. Background

Trusts involving SSI recipients/deemors must be reviewed to determine if they are a countable resource. Several factors must be evaluated, including irrevocability of the trust, and the identity of the grantor and the beneficiary.

Even though the trust document has a provision stating that it is irrevocable, the trust might still be revocable under state law depending on the beneficiary designations.

The beneficiary and the grantor may be the same person in some instances. The actions of a representative payee, legal guardian, a parent, or any other individual legally empowered to act on behalf of the recipient with respect to his/her funds, in establishing a trust with these funds, are the actions of an agent for the recipient. The actions of the agent are equivalent to the actions of the SSI recipient. Thus, in such cases, it may be said that the SSI recipient has established the trust and therefore is both the trust grantor and beneficiary.

### B. Sole Beneficiary Trust

Laws for each state in the Atlanta Region follow the general principle of trust law that if a grantor is also the sole beneficiary of a trust, the trust is revocable regardless of language in the trust document to the contrary.

However, if there is a residual beneficiary properly designated in the trust document, then the trust is irrevocable by its terms and is not a resource for SSI purposes.

### C. Residual Beneficiary

A residual beneficiary, while not a current beneficiary of a trust, is named to receive the benefit of the trust after a specific event occurs, e.g., the death of the primary beneficiary. The trust would no longer be a grantor trust if there is a properly named residual beneficiary and may or may not be revocable according to the language used to name the residual beneficiary.

#### 1. State Laws

State laws differ with respect to the language that must be used to name a residual beneficiary.

#### 2. General

For Alabama, Georgia, South Carolina and Kentucky, the trust must specify a particular person or entity as the residual beneficiary. In these states, if the trust states that after death the trust will go to a specifically named person or entity, or if it states that the trust is to go "to my children, or issue, or descendants", this is specific enough to identify a person and the trust is irrevocable.

If, on the other hand, the trust language says that after death, the trust will go "to my estate" or "to the heirs" of the primary beneficiary (or some other non-specific general term), this is not sufficient. This trust would be revocable by the grantor because this wording is not specific enough to identify persons who, upon his death, may become his heirs.

For Florida, Mississippi, North Carolina and Tennessee, the above general principle is not followed.

### **3. Tennessee**

For Tennessee, as long as the trust names any residual beneficiary, even an unborn child, it is not a sole beneficiary trust and, therefore, may not be revoked by the grantor.

### **4. Mississippi**

For Mississippi, as long as the trust names a residual beneficiary, other than an unborn child, it is not a sole beneficiary trust and, therefore, can not be revoked by the grantor. Where the residual beneficiary is an unborn child or children, and the grantor has no children, examine the file for evidence that the grantor is unable to have children. If such evidence exists in the file, then the trust would be revocable by the grantor and is a resource. Do not question the grantor or seek additional evidence outside of the file concerning their ability to procreate. If no evidence exists in file, the trust is irrevocable.

### **5. North Carolina**

In North Carolina, a specific person or entity may be designated. In addition, wording such as "to my estate" or "to the heirs" (or some other general non-specific term) is sufficient to name a residual beneficiary.

Refer any questionable trust document to the Office of General Counsel through the Assistance Programs Section in the Regional Office.

### **6. Florida**

In Florida, a specific person or entity may be designated. In addition, wording such as "to my heirs," "to my heirs at law," "to my next of kin," "to my distributees," "to my relatives" or "to my family" (or language of similar intent) is sufficient to name a residual beneficiary.

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SI ATL01120.201 - Trust Property - 04/15/2008



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