

Resulting Trust vs. Constructive Trust

Quick-Take: A *resulting trust* is an equitable judicial remedy that seeks to carry out the settlor's *intent* when his/her trust fails.

Background: Often in estate planning we run across the terms *resulting trust* and *constructive trust*. They are not trusts in the normal sense we use in the estate planning context. Estate planning trusts are normally set up as written contracts. However, there are other trust-like situations that can be enforced by a judge- *resulting trusts* and *constructive trusts*. These trusts are involuntary, which means a court imposes them as a remedy to prevent an inequitable result, when property is wrongfully taken or transferred.

Resulting Trust: As a generalization, a *resulting trust* is enforced where property was transferred, and circumstances show that the transferee or person who received the property was not meant to take the beneficial interest. This usually means the circumstances clearly and convincingly indicate that both parties to the transaction intended the holder of the property to hold it in trust for another. This type of remedy is used for real and personal property. The court will enforce the *resulting trust* so that the inferred intent of the parties can be carried out. The type of relationship a court looks for is between the *resulting trustee* and a beneficiary; the transferee must have received title in good faith, and that title must belong to someone else. By accidentally receiving the property, the transferee becomes the *resulting trustee*. The *resulting trustee* must hold the property for the actual owner's benefit and eventually give the property to the proper owner. The *resulting trustee* ends by merger where the trustee transfers property to the beneficiary, the rightful holder of the property.

Reversion: If a trust instrument fails to identify who takes title to property when the trust terminates, or if the anticipated remainder beneficiaries are not alive, the beneficial interest does not accrue to the trustee, since the settlor did not express any intention to make a gift of the underlying property to the trustee in his/her individual capacity. This situation sometimes then leads to a reversion. [*Scott & Ascher, Section 13.2.2.*] For example, if under the express terms of the trust, the income interest is for life of the beneficiary only, and there is no other disposition of the property upon the beneficiary's death, the trust property returns free of trust to the settlor, or the settlor's estate upon a *resulting trust*, which is the equitable equivalent of a reversion.

Resulting Trust in Estate Planning: A *resulting trust* can be imposed in the following situations: (i) a trust that fails at its outset for perpetuity, uncertainty, lapse, or some other reason; (ii) a trust that is to be declared in the future; (iii) events that were not provided for by the settlor; (iv) unanticipated surplus assets and surplus income; (v) disclaimers, releases or surrender by the beneficiary; and (vi) a trust that is declared as part of an estate or fund. [*Loring a Trustee's Handbook, Section 4.1.1.1, pages 199-200.*]

In sum, a *resulting trust* is an equitable mechanism that moves title from the trustee of an express trust back into the hands of the settlor or the settlor's estate when the trust fails. [*Restatement (Third) of Trusts, Section 8, comment (c)(1).*]

Constructive Trust: A *constructive trust* differs from a *resulting trust* because it is imposed by the court in response to fraudulent behavior. Thus, a *constructive trust* acts as a remedy in response to a wrongful act of a party or to prevent a wrongful act from occurring. A court will impose a *constructive trust* where the acquisition of the property was wrongful and if the holder of the property kept it, he/she would be unjustly enriched. Consequently, courts will look for actions like fraud or breach of fiduciary duty that will entitle the claimant to relief.

Lack of Intent: Unlike a *resulting trust* the court looks for the lack of intent to create a trust. If the evidence clearly and convincingly excludes or lacks any intention to create a trust, a *constructive trust* results. A *constructive trust* will compel the transfer of property from the person wrongfully holding it to the rightful owner.

Recently the Michigan Court of Appeals refused to find a *resulting trust* despite some highly unusual facts.

In re Charlies C Kalbach and Betty J. Kalbach Trust, Michigan Court of Appeals, No. 367392 (May 14, 2025)

Facts: The underlying facts will be summarized because they are complicated and, frankly, difficult to follow. It appears that title to real estate was placed in a joint trust. Later, the surviving settlor executed a ladybird deed naming her two children as joint with survivorship titleholders, subject to the settlor's retained life estate. The real estate, however, was never formally conveyed out of the trust back to the settlor prior to the ladybird deed.] The two children (beneficiaries and ladybird titleholders) died without heirs. The appellant, another of the settlor's children, argued that the deceased settlor's trust instrument had failed to address a contingency of the trust beneficiaries, two of her three children, not surviving her, and thus it 'was a rare instance of the trust having truly failed' which led to a *resulting trust*, meaning that the trust's property should revert to the settlor's estate to be divided equally among the settlor's three remaining children.

Probate Court: The probate judge found that the decedent's trust did not address the situation in which the children found themselves- both named beneficiaries died without any descendants and without ever having received a distribution from the trust, yet with the ladybird deed the surviving child had been the owner of the same property. The result was that there were no beneficiaries to take from the trust and fulfill the settlor's intent. The probate judge determined, however, relying on extrinsic evidence, that the settlor clearly intended the property (that was to be held in the trust but for the ladybird deed) was to pass to one of her two surviving trust beneficiaries. The judge refused to impose a *resulting trust* on the title to the real property and instead awarded the property to the heirs of the child-trust beneficiary who died last, under that deceased child's Will. The excluded living child of the settlor who would have inherited under the settlor's estate appealed.

Court of Appeals: This Court sustained the decision of the probate judge. As to the appellant's claim that a *resulting trust* was appropriate under the circumstances, the Court responded that "*a resulting trust was not the natural consequences of this situation*" [attempted use of a ladybird deed, not the trust, to convey title to two of her children but failing to take title out from the trust.] The Court proceeded to describe the *resulting trust* remedy as follows:

"[A resulting trust] arises where a person makes or causes to be made a disposition of property under circumstances which raise an inference that he does not intend that the person taking or holding the property should have the beneficial interest therein and where the inference is not rebutted and the beneficial interest is not otherwise effectively

disposed of. Since the person who holds the property is not entitled to the beneficial interest, and since the beneficial interest is not otherwise disposed of, it springs back, or results to the person who made the disposition or to his estate, and the person holding the property holds it upon a resulting trust for him or his estate.[Potter v. Lindsay, 337 Mich 404 (1953). This type of situation was not present here. Appellant makes no argument that there was any disposition of trust property under circumstances raising an inference that the person taking the property should not have received the beneficial interest of that property.”

Without directly saying so, the Court seems to say that the use of the ladybird deed in lieu of the trust instrument was a clear indication of the settlor’s intent that she wanted her two children, or the survivor of the two of them under the deed, to receive the property and not have it pass through her probate estate.

Conclusion: A *resulting trust* is a remedy when a trust fails, i.e., when there are no surviving beneficiaries or when the trust instrument does not dispose of the trust property on its termination. The remedy attempts to carry out the settlor’s intent in those narrow situations. If the intent cannot be determined, the remedy can result in a reversion of trust property to the settlor or the settlor’s estate. However, if the court can determine what the settlor ‘would have wanted, had the trust not failed’ then, as with the *Kalbach Trust*, the court will attempt to effectuate the settlor’s presumed intent without imposing a *resulting trust*.

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