

**Is This Irrevocable Trust Really Irrevocable?  
How to Fix Poorly Drafted or Ineffective Trusts**

**Table of Contents**

- I. Introduction
  - A. The Challenge
  - B. Particular Areas of Concern
- II. Dealing With Mandatory “Income Only” Trusts
  - A. Background
  - B. Illinois Total Return Statute
  - C. Other Factors To Be Considered
- III. Using the Virtual Representation Statute
  - A. All Primary Beneficiaries Must be Adults
  - B. Primary Beneficiary
  - C. Limitation of Use
  - D. Uses of Statute
- IV. Severance and Consolidation
  - A. Applicability
  - B. Merging Trusts
- V. Small Trust Termination
- VI. Unique Issues Related to Irrevocable Insurance Trusts
  - A. What is an Irrevocable Insurance Trust?
  - B. “Problem” areas specific to irrevocable insurance trusts
  - C. Issues to consider
- VII. Trust Protector
  - A. Fiduciary

- B. Presumption of Fiduciary Status
  - C. Example - Sample Trust Protector Provision Form
  - D. Exculpation Language
- VIII. Disclaimers
- A. Post 12/31/76 Transfers
  - B. Pre-1977 Transfers
  - C. Practical Problem with Disclaimers of Pre-1977 Transfers
- IX. Family Settlement Agreement
- A. Requirements for Enforceable Family Settlement Agreement
  - B. Restrictions on Family Settlement Agreements
- X. Court Proceedings to Construe or Reform the Trust
- A. Changed Circumstances
  - B. Construction Actions
  - C. Achieving Desired Tax Result
  - D. Termination of Trust
- XI. Generation-Skipping Tax Aspects of Reformation or Construction Actions and Other Modifications of GST Exempt Trusts
- A. GST Regulations
  - B. Scrivener's Error
  - C. Modifications in Settlement of Litigation
  - D. Transfer of Trust Assets to A New Trust With Different Spendthrift Provision
  - E. Transfer of Trust Assets to an LLC and By-Laws' Amendment
  - F. Modification to Remove Investment Restriction
  - G. Change in Situs of Trust: Rule Against Perpetuities

**For more information on this speech, please contact:**

**Jonathan W. Michael  
Dykema Gossett PLLC  
Chicago, Illinois  
Telephone: (312) 627-2170  
E-Mail: [jmichael@dykema.com](mailto:jmichael@dykema.com)**

**© Copyright 2008 by Jonathan W. Michael– All rights reserved**