Fair Political Practices Commission

Trust Assets and Blind Trusts Fact Sheet

Disclosure and Conflict of Interest Rules for Form 700 Filers

Introduction

This fact sheet provides a general overview of when assets held in a trust may be reportable on a Statement of Economic Interests (Form 700) and when those assets may create a conflict of interest under Government Code Section 87100. It also summarizes special rules for blind trusts and provides examples based on FPPC advice letters. Trust questions are highly fact-specific; officials should contact agency counsel or the FPPC for advice when a governmental decision may affect trust property, trust investments, or a source of trust income.

Quick Reference

- A trust asset is generally relevant only if the official has a 10 percent or greater direct, indirect, or beneficial interest in the trust.
- A beneficiary usually has an interest only if the beneficiary presently receives income or has an irrevocable future right to income or principal.
- Being only a trustee or successor trustee does not, by itself, create an economic interest in trust assets.
- A blind trust only protects from disclosure and conflict of interest disqualification for replacement assets acquired by an independent trustee after the trust complies with Regulation 18235; original assets remain reportable and potentially disqualifying until disposed of.

A. Why Trust Assets Matter

The Political Reform Act (the “Act”) prohibits a public official from making, participating in making, or using their official position to influence a governmental decision if the official knows or has reason to know the official has a financial interest in the decision. A financial interest exists when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, the official’s immediate family, or one of the official’s economic interests.

For trust assets, the core question is whether the official has a direct, indirect, or beneficial interest of 10 percent or greater in the trust. If so, the official has an economic interest in the official’s pro rata share of the trust’s interests in real property, sources of income, and investments.

B. When does an Official Have an Interest in a Trust?

- **Trustor or settlor.** An official has an interest in a trust if the official is the trustor and: (1) can revoke or terminate the trust; (2) has retained or reserved rights to trust income or principal, or a reversionary or remainder interest; or (3) has retained or reserved a power of appointment, including the power to change the trustee or change who may possess or enjoy the trust property or income.
- **Beneficiary.** An official has an interest in a trust if the official is a beneficiary and either presently receives income from the trust or has an irrevocable future right to receive income or principal.
- **Irrevocable future rights.** A future right generally exists if the trust is irrevocable. However, the official does not have an irrevocable future right if: (1) powers exist to consume, invade, or appoint the principal for the benefit of beneficiaries other than the official and those powers are not limited by an ascertainable standard relating to health, education, support, or maintenance; or (2) under the trust

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terms, someone other than the official can designate who will possess or enjoy the trust property or income.

- **Trustee status alone.** Serving only as trustee or co-trustee does not, by itself, give an official a direct, indirect, or beneficial interest in the trust. However, income received for performing trustee services is income under the Act and may be reportable.

C. What Must Be Disclosed on Form 700?

Use Schedule A-2 to report investments in a trust, including a living trust, if the official, spouse or registered domestic partner, and dependent children together or separately had a 10 percent or greater interest totaling $2,000 or more during the reporting period and the trust is located in, doing business in, planning to do business in, or has done business during the previous two years in the agency's jurisdiction. A trust located outside the jurisdiction is reportable if it holds assets located in or doing business in the jurisdiction.

If the trust is reportable, disclose the trust and the official's pro rata share of reportable investments, real property, and income. If the trust contains reportable and non-reportable assets, disclose only the reportable assets and the value ranges for those reportable assets, not the value of the entire trust.

Do not report a trust that contains only non-reportable interests. Examples may include a personal residence used exclusively as a personal residence, savings accounts, diversified mutual funds, certain government bonds, or other non-reportable interests. A non-reportable property may still be relevant for conflict of interest purposes if a governmental decision would affect the official's property or personal finances.

D. Conflict of Interest Rules Under Section 87100

Aside from reporting obligations on the Form 700, a trust asset may create a disqualifying conflict of interest that prohibits an official from participating in a governmental decision before them. If an official has a direct, indirect, or beneficial interest of 10 percent or greater in a trust, the official may have an economic interest in the trust's real property, investments or sources of income, which could trigger a conflict of interest when decisions involving or affecting those interests come before the official and the official may have to recuse themselves from participating in those decisions.

Common conflict triggers include governmental decisions involving or affecting: (1) real property in which the official has a direct or indirect interest worth $2,000 or more; (2) a source of income of $500 or more to the official within the 12 months before the decision; (3) trust income or trust assets in which the official has a qualifying beneficial interest; or (4) the official's personal finances or immediate family's finances.

E. Blind Trusts

A blind trust is a trust managed by a disinterested trustee who has complete discretion to buy and sell trust assets without consulting or notifying the owner or beneficiary of the trust. When a blind trust complies with Regulation 18235, the official is not required to disclose the pro rata share of the trust's interests in real property or investments, or income from those interests or investments on the Form 700, if those interests or investments are acquired by the trustee after the trust complies with the regulation.

A blind trust does not erase an official's reporting or conflict duties for assets that were in the trust prior to complying with Regulation 18235. An official must disclose those original assets and income from those original assets until the trustee disposes of them. The official also must not take part in decisions that may have a foreseeable and material financial effect on those reportable interests.

In order for the exceptions from reporting and conflicts in Regulation 18235 to apply, the trustee must be a disinterested party and cannot be the official's spouse, child, parent, grandparent, grandchild, sibling, parent-in-law, sibling-in-law, aunt, uncle, first cousin, or the spouse of any such person. The trustee must have complete discretion to manage the trust, including the power to dispose of and acquire assets without consulting or notifying the official. The trustee must notify the official of the date and value at disposition of any original investments or real property interests so the official can report that information on the next Form 700. The trustee may not disclose information about replacement assets except for required disposition information or minimum tax information that lists only totals of taxable items and does not identify the source of any individual income item.

If the trust is revoked, or if the official learns of any assets acquired by the trust once the trust complied with Regulation 18235, the official must amend the most recent Form 700, disclose the previously unreported pro rata share of the trust assets or income, and not take part in decisions affecting those assets or sources of income if they may cause a conflict of interest as required by the Act. Those replacement assets are treated as original assets once the official learns of them.

The official must identify the existence of the blind trust, the date it was created, and the trustee's name on the Form 700, and attach a trustee statement signed under penalty of perjury certifying compliance with Regulation 18235.

F. Frequently Asked Questions Based on FPPC Advice Letters

The following examples summarize FPPC advice letters. While instructive, the advice provided in these letters are specific to the requestor and are not precedential. The outcome of any trust question ultimately depends upon the specific facts, including but not limited to the specific trust terms, the official's relationship to the trust, whether the official receives income, and the particular governmental decision at issue.

1. **A public official is named as a beneficiary and successor trustee of a parent's revocable living trust, but receives no income. Does the official have an economic interest in trust property?**

   No. If the trust is revocable by the parents and the official does not presently receive income from the trust, the official does not have a direct, indirect, or beneficial interest in the trust's assets merely because the official is a named beneficiary or successor trustee. Therefore, the trust would not be reportable on the Form 700 and would not be a possible source for a conflict of interest. See *Winterswyk* Advice Letter, No. A-12-062; *Hodge* Advice Letter, No. A-13-002; *Schneider* Advice Letter, No. A-17-280; *Moran* Advice Letter, No. A-26-035.

2. **Does merely living in a residence owned by a parent's revocable trust create an economic interest in the property?**

   No, not by itself. Occupancy alone does not create an interest in real property where the official does not pay rent, has no lease or ownership interest, receives no trust income or distributions, and the parents retain full control and the power to revoke or amend the trust. See *Moran* Advice Letter, No. A-26-035.

3. **A public official is the beneficiary of an irrevocable trust and will receive the trust principal at age 30. The official does not currently know the trust assets. Must the trust interests be reported?**

   Yes, if the official has an irrevocable future right to receive trust income or principal. An exception would only apply if, under the terms of trust, (1) powers exist to consume, invade, or appoint the principal for the benefit of beneficiaries other than the official and such powers are not limited by an ascertainable standard relating to the health, education, support, or maintenance of the beneficiaries; or (2) someone other than the official can designate the persons who shall possess or enjoy the trust property or income. See *Lewis* Advice Letter, No. A-16-159.

4. **A public official is a beneficiary of an irrevocable trust, but receives no income; the trustees may distribute principal to other beneficiaries for any purpose, and another person can change the beneficiaries. Is the trust reportable?**

   No. The official does not have an irrevocable future right to receive income or principal if powers exist to invade principal for beneficiaries other than the official and those powers are not limited by an ascertainable standard, or if someone other than the official can designate who will possess or enjoy the trust property or income. See *Groch* Advice Letter, No. A-26-036.

5. **A public official is the settlor, trustee, and primary beneficiary of a revocable family trust. Must the official report the trust if it has no reportable assets?**

   No. A trust with no reportable assets need not be reported. If the trust contains reportable assets, the official reports the value and identity of the reportable assets, not the entire value of the trust. See *Block* Advice Letter, No. A-17-263.

6. **A public official is a beneficiary of their partner's revocable trust that owns the official's residence, and the official has contributed to mortgage payments for many years. Can that create a conflict of interest?**

   Yes, depending on the facts. In *Gillick*, the FPPC concluded that an official had an equitable real property interest where they were the sole beneficiary of their partner's revocable trust, lived in the residence for nearly 13 years, and regularly contributed to mortgage and housing costs. Because nearby development decisions would have reasonably foreseeable, material financial effects on the residence, the official was disqualified from participating in the decisions due to a conflict of interest. See *Gillick* Advice Letter, No. A-24-136.

7. **If a professional advisor who already works with the official serves as trustee of a blind trust, is the official still exempted from reporting the trust and from possible conflicts per Regulation 18235?**

   Yes, if the advisor is otherwise disinterested, has no beneficial interest in the trust, and is not a prohibited family member. A prior professional relationship alone does not disqualify the person from serving as trustee for purposes of the blind trust exceptions. See *Donovan* Advice Letter, No. A-02-078.

8. **Are additional assets placed into an existing blind trust after the initial funding required to be reported?**

   If additional assets are added, assets which are known to the official are treated as original assets: the official must disclose reportable additional assets and avoid participation in decisions affecting those interests until the trustee disposes of them. See *Donovan* Advice Letter, No. A-02-078.

9. **Can the official limit a blind trustee to broad investment categories or give annual allocation instructions and still be exempted from reporting the trust?**

   No. The trustee must have complete discretion to manage the trust. Restricting the trustee to categories of assets or giving allocation instructions would erode the separation required for the Regulation 18235 blind trust exceptions. See *Donovan* Advice Letter, No. A-02-078.

Index of Regulations and Government Codes

For more information on the Government Code Sections, please view The Political Reform Act.

- *87100, 87103, 87206, and 87207.*

For more information on the regulations, please view the Regulations Index.

- *18234, and 18235.*

Note: This fact sheet is intended as general guidance. It does not address other conflict of interest laws, including Government Code Section 1090 or common law conflict of interest rules, and does not replace formal advice from the FPPC or agency counsel.

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