Oral Trusts

By Yahne Miorini, LL.M.

The VUTC recognize oral trusts. Section 55-544.07 of Virginia Code provides "*Except as required by a statute other than this chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by* ***clear and convincing evidence***."

English common law originally authorized oral trusts. With the enactment of the Statute of Frauds which requires a written document for real estate property transactions, oral trusts were limited to personal property. While certain states prohibit oral trusts others limit it to personal property. However, many states, including states where the Statute of Frauds requires that a trust be written, have recognized land trusts which were created orally but for which a memorandum was signed subsequently.[1] In addition, resulting and constructive trusts need not always to be written.

The IRS has recognized oral trusts also called parol trust in 1931. In *John H. Stevens v. Commissioner of Internal Revenue,*[2] the IRS recognized that the petitioner had created a "parol trust." John Stevens owned 33,450 shares of Stevens Brothers Corporation. In 1905 he created a parol trust for his son and daughter for two-thirds of his shares, but it was never transferred on the books of the corporation. Mr. Stevens informed his children of their new ownership and acted in the capacity of trustee for them. In 1925 the trust was reduced to writing with the declaration that it had previously been done by parol. The IRS recognized that two-thirds of the dividend should be excluded from Mr. Stevens' income.

The Uniform Trust Code Act increases the standard of proof to "clear and convincing evidence." This standard has been adopted by the Commonwealth of Virginia. The UTCA leaves state statutes to limit oral trusts by requiring that a trust be created in writing for certain property, for instance real estate.

The creation of the oral will need to be proven by clear and convincing evidence.

[1] *Scott and Fratcher on Trusts* (5th ed., successor edition to *Scott on Trusts,* 4th ed.) §6.1 (2006)

[2] 24 BTA 52, Code sec(s) 23

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The proof of the intent to create an oral trust is an open door for litigation. In *First Union Trust & Savings Bank, Administrator, v. U.S.,*[3] the intention to create a parol trust "must be plainly manifest and not derived from loose and equivocal expressions of parties made at different times and on different occasions."

In *Klee v. U.S.,*[4] the court held that even though an oral trust is invalid under local law (Kansas law), it did not apply to a "third and intermeddling party" like the government. Although the trust may not be enforced between the parties, it was valid against the government. In this case, Mrs. Studt had conveyed by quit claim deed real property to her children on the basis that it would be advantageous for the children to have title. It would relieve Mrs. Studt of all responsibility in the development and management of the land. In addition, at that time, a civil suit was threatened against Mrs. Studt by reason of injuries suffered by a business invitee who fell while inspecting one of the houses offered for sale. The children, including the plaintiff, did not wish their mother to be named as defendant in a law suit. The children orally agreed to take title to continue to develop and sell the lots of the real property and to account to their mother for the proceeds resulting from such sales. The court held that there was a confident relationship between Mrs. Studt and her children, and that Mrs. Studt had passed on beneficial interest to her children. Oral testimony as to facts and circumstances showed the existence of a confidential and fiduciary relationship, and therefore the existence of an oral trust.

In *Ferguson v. Winchester Trust Co.*, a son who received a two-thirds interest in his mother's estate was permitted to re-convey that interest to his father as executor of the estate while the son was insolvent. The court held that under the theory of oral trust, the conveyance was proper because the deceased and her husband had entered into an agreement, pursuant to which her own property, standing in her name and paid for with the husband's wages, should be held for their joint benefit.

[3] 5 F. Supp. 143, 78 Ct. Cl. 519
[4] 3 AFTR 2d 1140, 3/23/1959

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