

865.70 TRUSTS BY OPERATION OF LAW¹ - RESULTING TRUST WHERE
PURCHASE MADE WITH FIDUCIARY FUNDS.²

The (*state number*) issue reads:

"Was (*identify property*) purchased with funds held by (*name alleged trustee*) as a fiduciary for (*name alleged beneficiary*)?"

You will note that in this issue I have used the word "trust". A trust is a legal relationship between persons. A trust exists when one person acquires property under circumstances where *he* incurs a legal duty to handle that property in a particular way so as to benefit another person. A "resulting trust" is a legal relationship which arises when all of the circumstances show that the person acquiring the property is not to benefit from it.

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by clear, strong and convincing evidence,³ four things:

First, that a fiduciary relationship existed between (*name alleged fiduciary*) and (*name alleged beneficiary*). A fiduciary is a person in whom another person has placed special faith, confidence and trust. Because of the trust and confidence placed in *him* by another person, a fiduciary is required to act honestly, in good faith and in the best interests of that person.⁴ A fiduciary relationship may exist in a variety of circumstances. Any time one person places special faith, confidence and trust in another person to represent *his* best interests, a fiduciary relationship exists.⁵ It is not necessary that there be a technical or legal relationship.⁶

(Where a preemptory instruction is justified, continue this element by stating: By law, a fiduciary relationship exists between [attorneys and their clients] [guardians and their wards] [principals and their agents] [partners] [(*describe other fiduciary relationship*)].⁷ (I instruct you that a

fiduciary relationship existed between (*name alleged fiduciary*) and
(*name alleged beneficiary*) as a matter of law.)

Second, that (*name alleged fiduciary*) acquired (*identify property*) in
[*his own name*] [in the name of a [person] [entity] controlled by *him*]. [A
person "acquires" personal property when [a contract to purchase] [option
to purchase] has been executed which is enforceable against the seller]
[it is delivered to *him*]⁸ [the documents of title are executed and
delivered to *him*].]⁹ [A person "acquires" real property when [a contract
to purchase] [option to purchase] has been executed which *he* can
enforce against the seller] [a deed of conveyance is executed and
delivered to *him*].]

Third, that the purchase price of this property was paid with
[money] [*describe other consideration used to purchase*] which (*name
alleged fiduciary*) held in *his* fiduciary capacity for (*name alleged
beneficiary*). [Money] [*describe other property used to purchase*] [is]
[are] held in a fiduciary capacity when [it is] [they are] obtained as a
result of a fiduciary relationship. In other words, [money] [*describe other
property used to purchase*] [is] [are] held in a fiduciary capacity when the
[money] [*describe other property used to purchase*] is obtained because
of a special faith, confidence and trust placed in one person by another.

And Fourth, that the conduct of (*name alleged fiduciary*) has
deprived (*name alleged beneficiary*) of the beneficial interest to which *he*
is entitled in (*identify property*).¹⁰

Finally, as to the (*state number*) issue on which the plaintiff has
the burden of proof, if you find by clear, strong and convincing evidence
that (*identify property*) was purchased with funds held by (*name alleged
fiduciary*) as a fiduciary for (*name alleged beneficiary*), then it would be
your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty

to answer this issue "No" in favor of the defendant.

1 Trusts created by operation of law are classified into resulting trusts and constructive trusts. "[T]he creation of a resulting trust involves the application of the doctrine that valuable consideration rather than legal title determines the equitable title resulting from a transaction; whereas a constructive trust ordinarily arises out of the existence of fraud, actual or presumptive - usually involving the violation of a confidential or fiduciary relation - in view of which equity transfers the beneficial title to some person other than the holder of the legal title. Also, a resulting trust involves a presumption or supposition of law of an intention to create a trust, where as a constructive trust arises independent of any actual or presumed intention of the parties and is usually imposed contrary to the actual intention of the trustee." *Bowen v. Darden*, 241 N.C. 11, 13-14, 84 S.E.2d 289, 292 (1954). See also *Bissette v. Harrod*, __ N.C. App. __, __, 738 S.E.2d 792, 799-800 (2013) (holding that a promise to convey an easement, pending determination of land parcel ownership, does not create an express trust).

2 *Elmore v. Austin*, 232 N.C. 13, 24, 59 S.E.2d 205, 213 (1950); *Owen v. Hines*, 227 N.C. 236, 239, 41 S.E.2d 739, 742 (1947); *Kelly Springfield Tire Co. v. Lester*, 190 N.C. 411, 416, 130 S.E. 45, 48 (1925).

3 *Kelly Springfield Tire Co.*, 190 N.C. at 416, 130 S.E.2d at 48. See N.C.P.I.-Civil 101.11.

4 *Vail v. Vail*, 233 N.C. 109, 63 S.E.2d 202 (1951); *Abbitt v. Gregory*, 201 N.C. 577, 160 S.E. 896 (1931); *Moore v. Bryson*, 11 N.C. App. 260, 181 S.E.2d 113 (1971).

5 *Abbitt*, 201 N.C. at 598, 160 S.E.2d at 906; *Moore*, 11 N.C. App. at 265, 181 S.E.2d at 116.

6 *Moore*, 11 N.C. App. at 265, 181 S.E.2d at 116.

7 *Abbitt*, 201 N.C. at 598, 160 S.E. at 906.

8 Personal property not involving muniments of title.

9 Personal property involving muniments of title.

10 *Leatherman v. Leatherman*, 297 N.C. 618, 622, 256 S.E.2d 793, 796 (1979).