



United States
Department of
Agriculture

Forest
Service

Washington Office

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Route To:

Subject: Living Trust as Holders of Special Use Authorization

To: Regional Foresters

The issue of whether a living trust can be the holder of a special use authorization has been raised recently. These inquiries have focused on small, family owned, recreation-based businesses, such as outfitter/guides and resorts. As Federal tax and probate laws continues to change, this question will likely be asked more frequently.

In a March 7, 1995, letter to the Regional Foresters (copy enclosed) this office stated that, for recreation residences, authorizations could be issued to a living trust subject to certain conditions. This remains in place.

For other special uses (which include primarily commercial uses), it will continue to be the Forest Service's position not to allow special use authorizations to be held by a living trust. Issuance of a permit to a living trust has certain tax, estate planning, and probate advantages for the trustee (in this case, most likely the person or entity operating the business governed by the permit). However, issuance of a permit to a living trust poses several countervailing problems for the Federal government.

All trusts are complex and individually unique. The Forest Service and the Office of the General Counsel would need to review the trust documents to ensure that a valid trust was established, that the trustee had the power to enter into a permit that would bind the trust, and that the terms of the trust are not inconsistent with the terms of the permit. Unless the trust documents make the trustee individually responsible and/or unless the permit provides that if the trustee changes, the permit terminates, it would be harder for the agency to administer a permit held by a living trust because it would be more difficult to track and control selection of the person responsible for the permit. The persons or entity that creates the trust (the settlor) could select a corporation as trustee or the settlor could revoke the trust and select another trustee who might not be liable for the permit entered into by the previous trustee. Third, every state has different trust laws, which would prevent complete standardization of the process and its review.

Should you have any questions, please direct them to the Lands or Recreation Special Uses program managers.

/s/ Rick Prausa (for)

TOM L. THOMPSON
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Enclosures

