

Common Sense Definitions

--Trustees are Not Legal Owners

The term “legal owner” is often used in the law to refer to a trustee: “one recognized by law as the owner of something; especially one who holds legal title to property for the benefit of another.” (See *Black's Law Dictionary, legal owner, trust ownership*). This may make sense to an attorney reading legal dictionaries. But the definition is a classic tautology (a fault of style and circular logic). The definition essentially says that a legal owner is one who holds legal title: “a legal owner is a legal owner.”

Putting aside faults in logic and style, to refer to a “trustee” as the “legal owner” is unfortunate in terms of plain common sense, because it gives a layperson the sense that a trustee owns something (even *legally owns* something) that he in fact does not own. Common sense and common sense use of language says that a trustee’s rights are more appropriately termed legal management rights or legal fiduciary rights—not legal ownership rights.

A trustee is more like a member of a board of directors, not a shareholder with ownership rights—thus the term “legal owner” to refer to a trustee is problematic (from a common sense point of view). Again, trustees are directors, not owners. A trustee (like a director, or an agent in a power of attorney) has legal rights to manage (sell, purchase, convey) property, but only in compliance with trust provisions. A director in a corporation, or an agent in a power of attorney, does not legally own property. And neither does a trustee in a trust legally own property—from every common sense and most legal definitions of the terms *own* and *ownership*.

Further, the very term “trustees” only has significance in relation to the trust. Without the trust, the trustee is just a 70% bag of water--another human being or an entity. Finally, the trustees can die, resign, or be removed, and the Full Owner (See *Black's*) can be long-deceased, and the actual “legal owner” of the assets lives on. It is the Trust, created by law and embodied in a document, that should be referred to as the legal owner of Trust assets or property.

Based on common sense, we define a client’s trust (not the trustees) as the legal owner of the client’s trust assets.