



Understanding Modern Trusts & Trust Structures



Agenda

1. Background
2. Trust Basics
3. Modern Trust Designs

Background

- The Settlement Agreement will requires that the compensation be deposited into a Trust and used for the long term benefit of the Nation.
- Canada will not place restrictions on ***your*** Trust Agreement.




Trusts - Why have Them?

- Trust are good vehicles in and of themselves:
 - They offer protection from creditors
 - They preserve the capital and provide long term cash flow
 - A way to turn a non renewable resource into a renewable resource
- Stops the fear that the funds may not be used for the purpose for which they were intended



What is a Trust? It's a Legal Relationship!

SETTLOR	TRUSTEES
	<ul style="list-style-type: none">• Corporate Trustee• Citizen Trustees• Hybrid (combination of the 2)
<p>BENEFICIARIES Citizens Represented by Chief and Council</p>	

Modern Trust Structures

Most First Nation Trusts are set up as Financial Vehicles because:

- They are designed to work with the best interest of the community
- They are designed to ensure that there is a solid communication plan between the Trustees and Council, and the Trustees and Citizenship



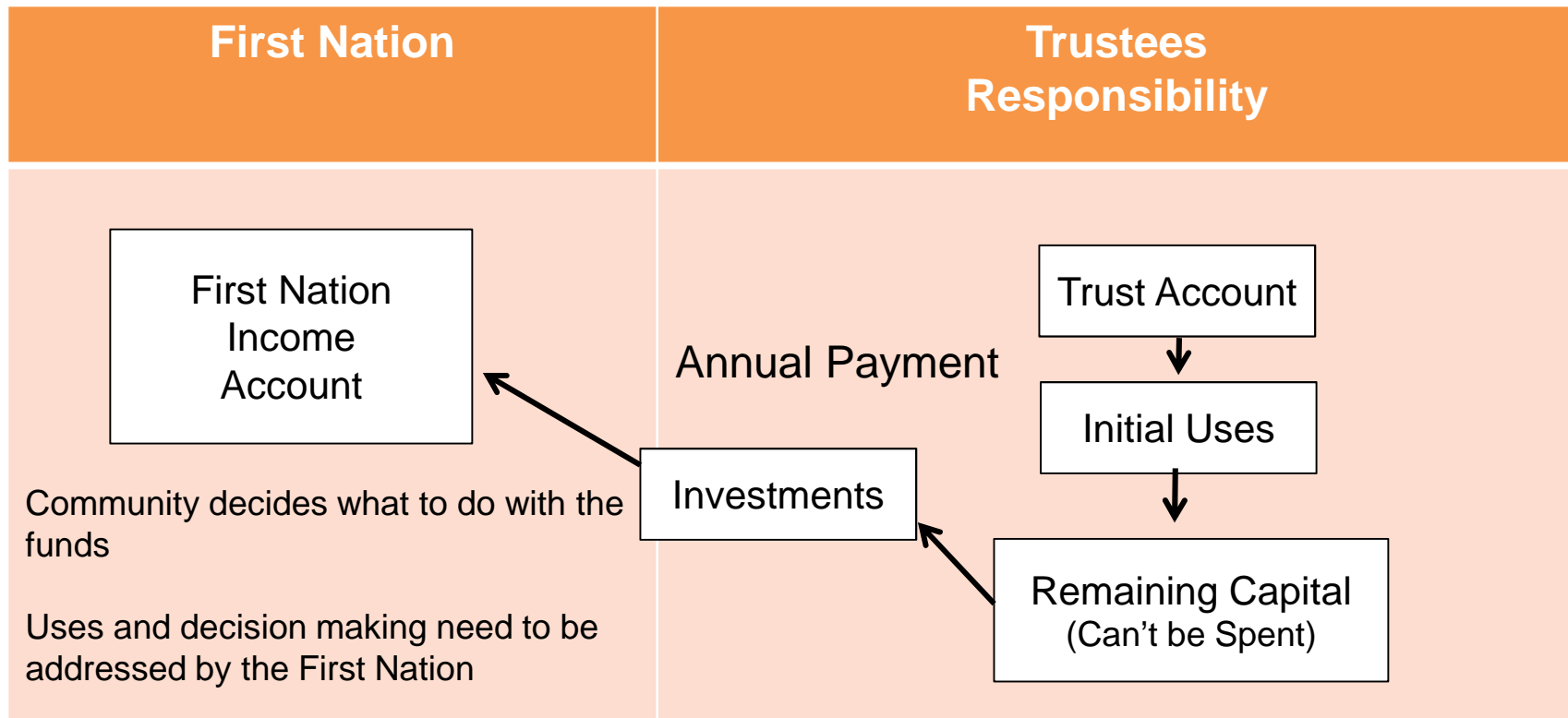
A Trust as a Financial Vehicle

- The function of the Trust and the role of the Trustees are limited to the following:
 - Receiving the money
 - Investing the Trust Property
 - Making an annual payment to the First Nation

A Trust as a Financial Vehicle

- The Trustees have no role or responsibility in determining how the funds are spent in the community.
- The decision to determine how to spend the annual payment is left up to the community – which will need to be dealt with separately.

A Trust as a Financial Vehicle





Modern Trust Structures

Factors that can influence the type of Trust Agreement:

- Amount of \$
- Uses of the Trust Property
- Decision making
- Costs to administer the Trust



How Does Money Work in a Trust?

Capital	Revenue
<ul style="list-style-type: none">Capital is the money deposited into the Trust Account.  <p>Example:</p> <p>\$50,000,000 deposited</p>	<ul style="list-style-type: none">Is the money made from the investment of capital in the Trust Account. <p>Example:</p>  <p>3% annual payment is \$1,500,000</p>

Rules for Uses of the Funds

Capital	Revenue
<ul style="list-style-type: none">• Trusts have rules on how funds are withdrawn from the capital.• This is called an Encroachment or Dipping into the capital.	<ul style="list-style-type: none">• Trusts have rules on how the revenue payment is issued to the Nation.• This is called the Annual Income.

Uses of Capital



The Trustees receive the settlement funds into the Trust Account.

The responsibility of the Trustees is to grow the capital over time to produce more income for the Community.



Capital Uses – Initial Settlement Cost

All Trusts have initial expenses. Examples of initial expenses are:

- Legal fees, incurred by the Nation in researching, preparing, negotiating and ratifying the settlement claim, to the extent that the same are not previously covered by the Settlement Agreement.
- Personal Cash Distributions (challenges)

Possible other initial uses?



Capital Uses - Emergencies



With the approval of Citizens Council could drawdown up to a certain percentage of the capital, but only for emergencies.



Must exhaust all other avenues first.

Must repay the trust before more can be drawn upon?

Capital Uses – Land Purchases



Council can use up to a certain percentage of the trust money to buy land or for loans from the trust or for a loan guarantee from a bank to buy land.

Capital Uses – Community/ Economic Development



With the approval of Citizens (vote (?)), every set number of years Council could drawdown up to a certain percentage of the capital, but only for community development.

Capital Uses – Loan & Loan Guarantee



CONVENIENCE STORE, GAS STATION AND A&W
MILLBROOK MI'KMAQ FIRST Nation

Council can use up to percentage of the trust money for loans from the trust or for a loan guarantee from a bank.

Loans from a trust can help projects today while savings for future Citizens.

Uses of Revenue

Income is the money made from investments and is paid into the Nations Trust Revenue Account.



The Nation's Trust Revenue Account will be an account of Council. Once funds are paid into this account the Trustees no longer have responsibility for how the funds are spent.

Trust Structures – Council Responsibility

Outside of Trust

1. Financial Policies and Bylaws.
2. Community Comprehensive Community Plan.

Built into the Trust

1. Consults with Citizens at least two times in the spring regarding how the annual payments will be spent.
2. Yearly audit on how the annual payment has been used and provides Citizens with details.

Trust Structures - Trustees' Duties

Trust agreements are good governance documents and should include strict requirements for Trustees to follow. A few samples are outlined below:

Investments	Reporting
<ol style="list-style-type: none">1. Hires Investment Managers2. Develops Investment Policy3. Monitors investment performance4. Monitors compliance	<ol style="list-style-type: none">1. Monthly reporting2. Annual Audit3. Budget of projected expenses4. Review any requests5. Council & Member meetings

RULES OF THE TRUST MUST BE FOLLOWED AT ALL TIMES



Taxation

- A FN Trust is neither a person nor a First Nation and must pay tax on any retained income in the Trust at the end of every year.
- There are ways to avoid paying tax.
- While taxation is important, it should not be the overriding factor in determining the plan for the Trust.

How Long Should the Trust Last?

- No right or wrong answer.
- Many First Nation Trusts are set up to last for 100 years.
- Hard to know what the needs of the Nation will be in 100 years.
- When the Trust ends it can always be rolled into a new Trust.
- Perhaps a shorter period might make sense, say 50 years?



Thank You & Questions



PEACE Hills TRUST

