

MGL Chapter 203E Section 402:

Section 402. Requirements for creation

(a) A trust shall be created only if:

- (1) the settlor has capacity to create a trust;
- (2) the settlor indicates an intention to create the trust;
- (3) the trust has a definite beneficiary or is:
 - (A) a charitable trust;
 - (B) a trust for the care of an animal, as provided in section 408; or
 - (C) a trust for a non-charitable purpose, as provided in section 409;
- (4) the trustee has duties to perform; and
- (5) the same person is not the sole trustee and sole beneficiary.

(b) A beneficiary shall be definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class shall be valid. If the power is not exercised within a reasonable time, the power shall fail and the property subject to the power shall pass to the persons who would have taken the property had the power not been conferred.

(d) Notwithstanding the foregoing, a settlor's power to create a trust may be exercised by (1) an agent under a power of attorney only to the extent expressly authorized by the terms of the power of attorney or (2) a conservator as authorized by Article 5 of MGL Chapter 190B.