

The LIVING TRUST

A CURE FOR THE AGONY OF PROBATE

**Protect Your Children's
Inheritance and Eliminate Costs,
Delays and Publicity of Probate**

**Complete with Forms and Instructions
to Create, Implement and Dissolve a
Revocable Living Trust**

VIJAY FADIA

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What Is Probate?

1

History

In medieval England, land was the basis of all wealth and power. According to the feudal law of primogeniture, upon the death of the estate owner, the land passed to the eldest son. Since the inheritance of land was a matter connected with wealth and power and, as such, of direct political concern to the king, the process of passing the title was supervised in the King's Court, also known as "common law" court. These proceedings were technical, formal and costly.

On the other hand, transfers of personal property, which was of little political concern, were handled through the church ecclesiastical courts, and required little formality. As newer forms of property like stocks, bank accounts, and vehicles evolved, they were handled by "equity" courts. These also required little formality.

When the United States became independent, it adopted in large measure the traditional British system of "common law." The process of transferring property from one generation to the next was renamed "probate," and thanks to the efforts of our legal profession, required every form of property, real and personal, to pass through it.

Definition

Probate is defined as that period of time that starts with a person's death. During this period, the person's estate is administered under the supervision of a court to assure that various obligations imposed by law are discharged appropriately. As part of probate, the person's will is "proved," and anyone having any claim against the estate, including creditors and various persons related to the decedent, get an opportunity to be heard by the court.

Who Needs Probate?

All this sounds good and reasonable. But is it necessary?

By one estimate, the legal fees for probate in this country probably exceed \$2 billion per year. On top of that, you can add almost an equal amount for executors' fees. The amount

of time taken by probate, before the heirs can claim the property which is technically theirs, would stagger your imagination. The minimum period is about eight months, but it's not uncommon for an estate to be in probate for two years or more. You hear of cases where an estate has remained in probate till the heirs have died.

Probate is very lucrative - for attorneys, administrators, appraisers, everyone except the heirs. The legal profession has trained people in this country to the point where most people think there's no other way to pass property to the next generation.

But is probate necessary?

In all but a few instances, absolutely not. The legal profession feels that it's entitled to extract from 4% to 12% of the assets as they move from one generation to the next. The biggest advocates of our probate system are lawyers. Many of them have built a thriving practice probating estates, and have a stake in keeping the system as it is.

In the next three chapters, we'll examine various aspects of probate, why it costs so much and then explore various ways to avoid probate.

- 1. Probate is simply a method or process, if you will, of transferring assets to your heirs as provided in your will. If you die without a will, your assets will be transferred to your heirs in accordance with the state law.**
- 2. The process of probate allows the title to the assets held in the decedent's name to be changed to the heirs. Community and quasi-community property must be probated if it is left by will to someone other than the surviving spouse. There are a few properties that escape probate; they include: (a) assets held in joint tenancy; (b) life insurance policy proceeds, where the proceeds are not paid to the estate of the decedent; (c) death benefits from qualified retirement trusts, Keogh plans and IRAs, where the designated beneficiary is named in the account; (d) assets held in a trust created during the lifetime of the estate owner, i.e., an inter vivos or living trust.**
- 3. If the decedent has left a valid will, the will will be offered on his death for probate, and the court will appoint an executor. If there is no will, the court will appoint an administrator to serve. As part of the probate process, the executor or administrator gathers information about the assets of the decedent, collects those assets that are subject to probate, pays income and death taxes, gives notice to creditors and prepares inventory and appraisals of various assets. He then makes an accounting of these assets to the court and petitions for their distribution to the creditors, decedent's heirs or other individuals and organizations named in the will. Upon approval of the court, he makes the final distribution of the assets.**
- 4. In most states the fees charged by executors and their attorneys are determined by state law.**
- 5. An estate, while it is open, is considered a separate tax entity, files an estate tax return and pays taxes on the probate assets until they are distributed or until the estate is closed.**
- 6. The usual duration of probate is from 9 months to 2 years. The size and complexity of the probate estate determines the duration of probate.**

7. The executor or administrator works at all times under the supervision of probate court. All distributions and expenses of the probate have to be approved by court. While an estate is in probate most decisions concerning the assets of the estate come under the scrutiny of the court. On final distribution and transfer of all probate assets the court discharges the executor or administrator.

8. The advantages of probate are: (a) The heirs and beneficiaries of the estate are protected by the court. (b) The assets are transferred in an orderly and open manner, as approved by court. There would be no question regarding the validity of the transfer of the title. (c) Questions and disputes regarding the distribution of the estate are settled under the supervision of the court. (d) Probate puts a limitation on the time during which the creditors can make claims against the estate of the decedent. This time period varies from 2 to 6 months depending on the state of your domicile, after which the claims of the creditors are cut off. (e) While the estate is in probate it is considered a separate tax payer entity, and by some skillful planning certain tax savings can be realized. (f) The costs of probate are deductible for income tax or death tax purposes.

9. The disadvantages of probate are: (a) Probate is an extremely costly manner of transferring assets to the heirs. (b) Probate is a time -consuming process; it simply takes too long. (c) Probate court proceedings are inherently inflexible. (d) Probate proceedings are a matter of public record. There is no privacy when an estate goes through probate.

Cost of Probate

3

The greatest controversy surrounding our probate system is the enormous cost involved in the process of probate, a simple function of which is to transfer property from the decedent to the beneficiaries. This is an area commonly fraught with frustration, confusion and, unfortunately, deception.

Probate Is Expensive

Consider these real life examples:

Marilyn Monroe's estate had received over \$1.6 million in income, mostly from movie royalties since her death in 1962. In 1980 when the probate was completed, \$101,229 remained in the estate for distribution to the heirs. Probate in her case cost over a million dollars and took 18 years. An Ohio postman died leaving \$22,864; an administrator appointed by probate court got \$2,077 out of it, and an attorney hired by the administrator got \$3,500. Helen Keller left an estate of \$164,161 and it had to pay administrative expenses of \$8,097 before it was settled. The family of Clark Gable, with an estate of \$2,806,526 had to pay administrative expenses of \$337,887.

In all these cases one wonders how the probate did its job of protecting either the heirs or the creditors of the estate. Unfortunately, the plain truth is that except in rare cases, lawyers and executors are the only ones who benefit from probate.

Generally, the cost of probate will depend on the size, type and location of the assets constituting the estate, any tax complications, simplicity or complexity of the disposition of the estate, the extent and type of debts, and any potential litigation during the probate administration. In this chapter, we'll look at various players and factors that escalate the cost of probate in what would seem to be a relatively straight forward process.

Cost of Bond Premium

A significant portion of probate cost is the cost of posting an executor's bond. A well-drawn will would waive the posting of bond requirement of the executor. However, if the bond is not waived in the will or is not waived by all the beneficiaries, an individual appointed as executor or administrator must post bond.

Depending upon various state requirements, if a bond is given by a surety company, the amount must be equal to the value of the personal property, plus the value of the estimated annual income of all the estate property. On the other hand, if a bond is given by an individual, the amount must be twice the value of the personal property, plus twice the value of the estimated annual income of the estate's real property. Surety bond premiums cost about \$2.50 to \$5.00 per \$1,000 property depending upon the total amount. As you can see, the cost of posting a bond during the probate process can take a hefty chunk out of your estate.

Probate Referees

Another area where probate incurs cost is in the appraisal of various assets of the decedent's estate. The probate referee appraises various assets and submits these appraisals to the probate court. By way of an example, California Probate Code sets the probate referee's fee at 1/10 of 1% of the total value of the assets he appraises with a minimum fee of \$75 and a maximum fee of \$10,000. However, the court may allow a fee in excess of the maximum if it determines that the reasonable value of the referee services exceeds such amount.

The fees may vary depending upon the state where the probate is administered; however, California fees are generally considered to be representative of those prevailing in the rest of the country.

In addition to the commission set by the law, each probate referee is entitled to receive the actual and necessary expenses allowed by the court.

The probate referee normally appraises the assets of the decedent subject to probate administration. However, in some instances, a referee may be called upon to appraise property passing outside of probate, either in joint tenancy or a trust, for estate tax purposes or for establishing evidence of cost basis at death. In the case of an on-going business, this task could become enormously complicated. The referee would be called upon to appraise various business assets, such as receivables, inventories, payables, and other liabilities. It is obvious that in such a case the probate appraiser's fees could constitute a significant portion of the total probate cost.

Statutory Executor's Commissions and Attorney's Fees

Executor's commissions and attorney's fees constitute the bulk of the total cost of probate.

As is the case in practically every state, the commission of the executor or the administrator is set by law, and is usually referred to as statutory commission. Additional compensation is generally allowed for extraordinary services rendered.

California as an Example

To give you an idea as to what probate would cost in your state, we've taken California as an example. California's rates are among the lowest in the nation, so it would be safe to assume the probate costs elsewhere would be at least what they are in California and, in some cases, may even be higher.

Under the California Probate Code, an executor or administrator is allowed out of the estate necessary expenses for the care, management and settlement of the estate. For his services, he is allowed statutory commissions by the court based upon the amount of estate accounted for by him. The sliding scale of his compensation goes like this: for the first \$15,000, at the rate of 4% (\$600 maximum); for the next \$85,000, at the rate of 3% (\$2,550 maximum); for the next \$900,000, at the rate of 2% (\$18,000 maximum); and for an estate over \$1 million, at the rate of 1%.

California Statutory Fees and Commissions for Executors and Attorneys		
Value of Estate	Executor's Commission	+Attorney's Fees
\$ 15,000	\$ 600	\$ 600
50,000	1,650	1,650
100,000	3,150	3,150
150,000	4,150	4,150
200,000	5,150	5,150
300,000	7,150	7,150
400,000	9,150	9,150
500,000	11,150	11,150
600,000	13,150	13,150
700,000	15,150	15,150
800,000	17,150	17,150
900,000	19,150	19,150
1,000,000	21,150	21,150
1,250,000	23,650	23,650
1,500,000	26,150	26,150
2,000,000	31,150	31,150
3,000,000	41,150	41,150
4,000,000	51,150	51,150

Compensation for Extraordinary Services

Although the will may provide for other compensation the executor may renounce these provisions and claim statutory compensation. Additionally, the probate court may allow the executor or administrator additional compensation for extraordinary services, such as sale

or hypothecating of real or personal property, contested or litigated claims against the estate, preparation of estate income or other tax returns, adjustment or litigation of any of these taxes, handling of the decedent's business affairs pursuant to an order of the court, and other litigation or special services as may be necessary.

The probate court makes all orders for allowance of statutory and extra compensation. The executor or administrator may apply to the probate court for partial allowance of his commissions any time after four months from the date of issuance of letters, testamentary or of administration. Usually, if statutory commissions adequately compensate for the services of the executor or administrator, the probate court will not grant further allowance for what might well be extraordinary services.

In addition to the executor's commissions, you also have to include attorney's fees in the cost of probate. Generally, attorney's fees for conducting ordinary probate proceedings are the same as the commissions to executors and administrators. The probate court may allow an attorney such further amounts as the court deems just and reasonable for extraordinary services. The court determines whether the claimed services are extraordinary and sets the fee for them. An attorney may ask the court for partial payment of the fee after four months from the date of issuance of letters.

Fees and Commissions Based on Gross Value of Estate

The commissions of the executor or administrator and attorney's fees are based "upon the amount of estate accounted for." The value of the estate is determined from the inventory and appraisal of the decedent's property subject to administration by the probate court and is the gross value of the assets before encumbrances such as mortgages or loans. Here is how you can estimate the cost of probate in the areas of executor's commissions and attorney's fees.

Generally speaking, executor's commissions and attorney's fees are calculated by multiplying the statutory rates by the total value reported in the inventory and appraisal of the probate estate, plus gains over appraisal value on sales, plus receipts, less losses on sales, without subtracting encumbrances on property in the estate.

For example, a \$100,000 house with a \$60,000 mortgage on it is valued at \$100,000 for probate cost computation, since encumbrances are not subtracted.

To estimate commissions and fees take a look at the above table. If the probate estate (assuming it is in California) is valued at \$15,000, the executor's commission of \$600 is added to the attorney's fees of \$600 for a total cost of \$1,200. Similarly, for a \$100,000 probate estate, the total of the commissions and fees amounts to \$6,300. Of course, this does not include payment for the extraordinary services described above.

Ways to Avoid Probate

4

There are basically three ways to avoid probate. We'll summarize them here and then discuss the pros and cons of each of them in later chapters.

Joint Tenancy With Right of Survivorship

One easiest way to avoid probate of an asset upon the death of the owner is to own it in joint tenancy with someone else. Most people are thrust into joint-tenancy form of ownership without proper consideration of the consequences. Joint tenancy may be desirable under certain circumstances, but as we'll see later, this form of ownership has many disadvantages that far outweigh its few advantages, one of which is probate avoidance.

Typically, the joint ownership title that allows you to avoid probate reads as "joint tenancy with right of survivorship." This is a form of property ownership between two or more persons where the property is automatically transferred to the survivors upon the death of the first owner. It is the commonest form of ownership between husband and wife. When a property is owned by husband and wife in joint tenancy with right of survivorship, upon the death of one spouse, the surviving spouse becomes the sole owner of the jointly-held property, and the transfer does not involve any probate process.

Although joint tenancy avoids probate it has many pitfalls. As a rule, most experts will advise you against joint tenancy except in the case of a small checking account and probably your residence.

The legal characteristics of joint tenancy may vary slightly depending upon the peculiarities of state law. However, the characteristics described above are fairly typical and results are very similar. In some states, joint tenancy between husband and wife is called tenancy by the entirety.

Proceeds of Life Insurance Policy

The second way to avoid probate is by designating a person or trust to be the beneficiary of your life insurance proceeds. This arrangement avoids probate for the simple reason that you never owned such proceeds, that you only had a contractual right to make them payable to a person of your choice.

A will does not affect such proceeds, because they pass under a contractual designation of beneficiary, and not according to the provisions of your will. In a later chapter we'll discuss various ways of owning your life insurance policy and naming the beneficiary with an eye toward their probate and tax consequences.

Avoiding probate on the proceeds of life insurance is relatively easy and straight forward, but it does not solve our problem of avoiding probate on other real and personal property that you own. For this we turn to:

Revocable Living Trust

A revocable living trust is created by you during your lifetime in which you hold in trust various properties for the benefit of your spouse, children or other heirs. The trust is completely revocable during your lifetime. It can be amended or changed in any manner you desire. Since you have transferred title to your property from yourself as an individual to the trust, you are not technically considered an owner. And upon your death, the property passes to the beneficiaries without probate. The distribution of your assets is done according to the instructions left in the trust instrument.

Living trust without a doubt is the most effective way of avoiding probate of your estate. As we'll see in later chapters, it has all the advantages we are looking for with few, if any, disadvantages.

Introduction

One of the commonest ways of avoiding probate of a property is to hold that property in joint tenancy with one or more other persons with right of survivorship. This form of ownership accords you an undivided equal interest in the property. A joint tenancy is a joint interest owned by two or more persons in equal shares with the express declaration that the title is held in joint tenancy. Probably the vast majority of husband and wife co-ownerships in the United States are held as joint tenancies. In order for the joint tenancy to be valid, the ownership document must spell out clearly the intention of the owners to hold the property as joint tenants. This is usually stated, for instance, as "John Smith and Mary Smith as joint tenants with right of survivorship."

Joint tenancy conveys to each tenant equal and undivided interest in the property. However, if any one joint tenant conveys his or her interest, the joint tenancy is severed, and the parties become tenants in common as to the conveyed interest.

Joint tenancy has one feature that distinguishes it from all other forms of ownership. Upon the death of one of the joint tenants the surviving tenant or tenants become the sole owners of the entire property by operation of law. The decedent's will has no effect on the disposition of a jointly-held property. For example, if three persons own a property in joint tenancy and one dies, the property is automatically transferred to the two surviving owners without probate, each owning now one-half interest in the property rather than the one-third. This is the advantage of joint tenancy. It allows you to avoid probate of the property.

In some states a joint tenancy between husband and wife is presumed to be tenancy by the entirety. This form of ownership is similar to joint tenancy with right of survivorship except neither spouse may sever the tenancy without the other's consent.

Disadvantages of Joint Tenancy

We looked at one advantage of joint tenancy, namely, probate avoidance. For some persons, in certain situations, joint tenancy may be a wise decision. However, in a vast majority of cases, joint tenancy spells major disadvantages. Let's examine some of these disadvantages.

Joint Tenancy Supersedes Your Will

Each of the joint tenants, by entering into a joint tenancy, gives up the right of testamentary disposition. In other words, property owned in joint tenancy passes automatically to the surviving joint tenants even if the deceased joint tenant leaves a will with contrary instructions. Remember, joint tenancy supersedes any provisions contained in your will.

If, after entering into a joint tenancy, you decide to leave the asset to someone other than the surviving joint tenant, you'll have to dissolve the joint tenancy before you can will the asset to someone else. Theoretically, either tenant can dissolve the joint tenancy; but from a practical point of view, this may not be so easy to do. One owner may become incapacitated or may not wish to hurt the feelings of the other joint tenant.

Joint Tenancy Avoids Probate Temporarily

It's true that upon the death of the first joint tenant, property held in joint tenancy will pass to the survivor without probate. However, once the survivor dies, the property will be subject to probate.

More often than not, this is the dilemma faced by most widows and widowers. The surviving spouse becomes the sole owner of the jointly-held property upon the death of the marriage partner, but then the surviving partner does not take steps to create another joint tenancy with a child or other person that would allow the eventual beneficiary to inherit the asset without probate. Many times the spouse does not understand that the "probate wolf" will eventually catch up unless something was done; even when such a result is explained, simple inertia or indecision results into inaction and throws the estate into probate upon the death of the estate owner.

There is one hidden tax consideration involved here. Say the survivor, with an eye toward avoiding probate, puts the property into joint tenancy with someone else. The one-half of the value of the property put into joint tenancy would be considered a gift made by the survivor to the new joint tenant and may be subject to gift tax.

Children's Inheritance Not Guaranteed

As we've observed above, the first of the joint tenants to die gives up all rights to further disposition of his or her share of the jointly-held property. When, for instance, husband dies leaving a share of the joint property to his wife, she's free to dispose of this property in any manner she chooses. In many instances, wife, having inherited husband's share of the joint property, remarries and now has a new husband controlling and managing the entire property. In the end the children, the intended beneficiaries, may have nothing left for them. If, however, husband had set up a living trust naming his children as eventual beneficiaries, the property would have been disposed of according to his stated wishes.

Lack of Financial Management

Joint tenancy doesn't give you any opportunity to plan for your family's future financial welfare. When joint tenancy property goes to a widow she becomes manager of that property regardless of her financial ability, experience, age or state of health. If a particular asset, such as an on-going business, requires sophisticated financial management or experience, you may actually be doing disservice to the surviving joint tenant by leaving that asset in joint tenancy. On the other hand, use of a living trust would allow you to appoint a competent trustee who would manage, conserve and possibly augment the family assets and provide the widow with a regular source of income. She would still enjoy full ownership benefits.

Transfer Not Entirely "Automatic"

Even though joint tenancy comes with an "automatic" right of survivorship, the surviving joint tenant is still required to follow certain legal and administrative procedures to fully transfer the property to his or her name as the sole owner. This often entails additional costs.

Common Disaster

Ironically, joint tenancy with a right of survivorship can cause some unanticipated problems where there's no survivor or it's impossible to determine who in fact is the survivor. This generally is the case in a common disaster where both parties die simultaneously or one party survives the other by a short time, without ever regaining consciousness. Even if your will had a common disaster provision whereby one of the spouses was to be considered the survivor, the property would belong to the estate of the survivor and would have to be probated.

Joint Tenancy Could Wreck Well-Laid Plans

Estate planning based on joint tenancy does not always work out as you had expected. Joint tenancy estate planning could be unpredictable and the problems created by it surface only after your death. Take this hypothetical example:

You want your entire estate to pass to your son and three daughters. Following the advice of an attorney, you duly prepared a will naming your children as equal beneficiaries in your estate. Further, you had heard that joint tenancy avoids probate, so you made your son a joint tenant in all your properties. You trusted the son to distribute the estate in equal portions to his sisters, just as provided for in the will. Your daughters had agreed to this arrangement too. Upon your death the son became the sole owner of all properties. But then the unexpected happened. Before he could distribute the share provided for the sisters, he died in a fatal auto accident. Since he did not have a will, his bride of only a few months inherited the property following the state rules on intestate succession. Being no different than most people in such situations, she was in no hurry to share her newly-found wealth with her sisters-in-law.

Disability or Incompetency

Joint tenancy doesn't allow you to plan for potential disability or incompetency of the joint tenants. As a matter of law, an incompetent person cannot enter into a contract. If your joint owner becomes incompetent, you would need to petition a court for appointment of a guardian or conservator who would make financial decisions for the incompetent. For instance, you are a joint owner of a real property; your joint owner becomes incompetent. You would not be able to hypothecate, lease or sell the property unless a guardian or conservator is appointed by court. Needless to say, such a procedure is costly, time-consuming and takes away your freedom of operation.

Unpleasant Aspects of Joint Tenancy

Then there are some unpleasant aspects of joint tenancy you should know about. If you have a bank account in joint tenancy and become sick, the other joint tenant can withdraw the money with or without your knowledge or consent. If you die, the joint tenant receives every dime in the account regardless of what your will says. If you have a rocky marriage and you hold some securities or real estate in joint tenancy with your spouse, you'll need his or her cooperation before you can sell or dispose of them. In situations where a couple is going through separation, frequently a spouse will watch helplessly the jointly-owned stocks go down in value without being able to sell because the estranged spouse would not consent to the sale.

You Could Become Liable for Your Joint Owner

Joint tenancy can land you in an unexpected legal nightmare for no fault of yours. In many situations, a joint owner is held responsible for the actions of the other owner.

Illustration: Your joint owner has suffered business setbacks and owes large amounts to creditors. The creditors are entitled to satisfy the debt by attaching the debtor's interest in the jointly-held property. The general rule followed by courts is that during the life of a joint tenant, that joint tenant's interest could be reached by his creditors. In other words, without your knowledge or consent you could find yourself owning a property jointly with a complete stranger.

Then, there are the dreadful liability aspects of joint ownership. Not too long ago, there was a story of a grandmother who helped her underage grandson buy his first car. The grandson, after a boisterous party, got into a serious accident while driving home. The injured parties promptly sued the grandson and the elderly, wealthy grandmother. When a judgment was rendered against them, the grandmother as a joint owner of the auto stood to lose all of her life's savings. In this sue-crazy society of ours, joint tenancy can propel you into a costly lawsuit for no fault of yours.

Estate Tax Consequences

Joint tenancy precludes any opportunity for estate planning. Holding assets in joint tenancy prevents either joint tenant from leaving his share of the assets in such a way as to save estate taxes. Upon the death of the first joint tenant, the assets will go outright to the survivor. This will cause the survivor's estate to be increased and, if the assets are income producing, will also cause the survivor's taxable income to be increased.

If the property had not been held in joint tenancy but had been left in a trust, or had been left by the husband in a bypass trust, the wife would receive the benefit of income during her life and, upon her death, this property would go to the children free of federal estate taxes, and also without the costs and delays of probate. If joint tenancy property left to the survivor increases substantially in value during the survivor's lifetime, then upon the death of the survivor estate and inheritance taxes will be greatly increased due to the increased value. If, instead, a trust had been created, there would have been no such taxes upon the death of the survivor, and it would not matter how much the property had appreciated in value.

A similar problem arises when the survivor owns separate property of his own. Coupled with joint property acquired, this greatly increases the estate of the survivor, and resultant death taxes. Either living or testamentary trust can eliminate these additional taxes.

Gift Tax Consequences

The creation of a joint tenancy may involve a gift, if one person puts up all the money to purchase the property but another is listed as a joint tenant. The purchaser is making a gift of half ownership of the property. A gift tax return must be filed and any gift taxes due must be paid. Likewise, if a sole owner of property transfers ownership into joint tenancy, a gift has been made.

By the same token when two parties make an unequal contribution to the cost of property placed in joint tenancy, a gift may have unknowingly been made requiring a gift tax.

Income Tax Consequences

From an income tax point of view, the holding of an appreciated asset in joint tenancy between husband and wife may be unwise. Upon the death of one of the joint tenants, one-half of the property left to the surviving tenant receives a new basis equal to the federal estate tax value of the asset.

Let's say husband owns as his own separate property an asset with a cost basis of \$100,000 that has appreciated to \$250,000 at the time of his death. If this property were to pass to his wife she would receive a cost basis of \$250,000, which is the federal

estate tax value of the asset at the time of the husband's death. However, if this property had been held in joint tenancy, only one-half of the asset would receive the higher basis, because only one-half of the asset would be included in the decedent's estate.

Conclusion

In conclusion, joint tenancy lacks all the benefits of a well-conceived estate plan. It does not qualify for professional management or relieve the survivor of management burdens. It does not qualify for any of the flexibilities that can be built into a trust, nor does it protect you against possible abuses or adventures of your joint tenant.

Does this mean that no one should own any property in joint tenancy? Certainly not. But you must be fully aware of various considerations involved in your decision regarding holding title to property.

Generally speaking, joint tenancy is most suitable for checking accounts between husband and wife, and for holding title to their home. It provides dual access to funds and a simple estate plan for modest estates. For all other assets, a carefully thoughtout estate plan that not only protects the property but also distributes it in the desired manner should be implemented.

Life Insurance and Probate

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Most people buy life insurance for the specific purpose of providing an immediate source of liquidity for their surviving spouse and children. The proceeds of the life insurance policy will provide a ready pool of money to pay funeral costs, death taxes and family's living expenses. Toward this end, it is important that the life insurance proceeds are not subjected to the costly and time-consuming process of probate.

Life Insurance Contract Can Avoid Probate

You can avoid probate of your life insurance by making sure that the proceeds of the policy are made payable to someone other than your estate. In other words, if you've named your wife or children or your living trust as the beneficiary of your life insurance, you'll be able to avoid probate.

Except in rare cases, you should avoid naming your estate as the beneficiary of your life insurance. (One instance where it would be advisable to name your estate as the beneficiary would be where you anticipate substantial probate and tax costs. In such an instance, there will be sufficient liquidity in the estate through the proceeds of life insurance to pay for these costs.)

Life insurance and certain other assets which may be disposed of by contract lend themselves very well to carrying out estate planning objectives without subjecting these assets to probate. When a person during his lifetime enters into a valid contract, providing for benefits to be paid after his death, such disposition is not considered testamentary in character. Hence, if benefits under such a contract are payable to a designated beneficiary, not the decedent's estate or personal representative, they are not subject to probate administration.

(One of the other assets which escapes probate due to its contractual nature is a deferred compensation contract. A deferred compensation contract is one entered into between an employer and an employee providing for payment of compensation after the period in which the compensation was earned. Such arrangements are typically made to allow the employee to defer a portion of his compensation to a year when he would normally be in a lower income tax bracket.)

(In order to avoid probate, such a contract should name a beneficiary other than the estate of the employee to receive the deferred payments in the event of the employee's death prior to his having received full payment. Another asset which is not subject to probate, unless payable to the employee's estate, is the death benefit payable under a pension or profit sharing plan established by the decedent's employer.)

Revocable Living Trust as Receptacle of Life Insurance

Although there are many types of revocable and irrevocable insurance trusts, in a typical arrangement you can name the trustee of your revocable living trust to be the beneficiary of the insurance proceeds payable upon your death. The settlor who is the owner of the life insurance policy continues to pay the insurance premiums during his lifetime. As long as the settlor is alive, the trust is made expressly revocable. The settlor directs the trustee of his revocable trust to collect the insurance proceeds upon his death, invest or administer them or distribute them to the beneficiaries designated in the trust instrument.

This arrangement has many distinct advantages over alternatives where the proceeds are made payable to one or more family members, either in a lump sum or under a settlement option, or making the proceeds payable to the insured's estate or to a trustee under his will.

Advantages

1. By naming your living trust as beneficiary of your life insurance proceeds, you'll be able to avoid probate, and keep such proceeds out of the jurisdiction of the probate court. They will be made instantly available to the trustee for distribution to the beneficiaries.

2. This arrangement provides greater flexibility in handling distribution of the proceeds than income settlement options generally available under an insurance policy. The revocable trust can provide for an overall plan for disposition of such proceeds along with the other assets of the estate owner. In a well-devised plan a trustee could have wide discretion in distributing trust income and principal among the designated beneficiaries. You can also include in the trust instrument restrictions and limitations on the use of funds by the beneficiaries.

If the proceeds are paid in a lump sum to a family member, trust protection generally available through a well-devised trust will not be available. The insurance proceeds also will not have the benefit of professional management or investment. They will be subject to the whimsy of the particular family member.

Similarly, selection of one of the settlement options available under the policy provisions lacks the flexibility that trust provisions can supply, in part because most insurance policies impose limitations on the frequency and the amount of withdrawals or commutations.

Insurance proceeds paid to your estate can become subject to delay in distribution to the beneficiaries and are generally plagued with the same problems as attendant to any probate administration, such as publicity as to the nature, size and disposition of the insured's estate, and to additional attorney's fees and probate expenses.

3. By making the trustee of your revocable living trust the beneficiary of the insurance proceeds, you'll retain the flexibility necessary to meet the particular needs of your family members after your death. During your lifetime you'll retain control of the policy by expressly reserving the right to change the beneficiary or to withdraw the insurance policy from the trust. The trustee's interest in the policy and its proceeds takes effect only at your death.

4. If the insurance proceeds are paid in a lump sum to a family member, the proceeds may become subject to the claims of the creditors of that family member. On the other hand, when your revocable living trust is made the beneficiary of the insurance policy, unless the insurance has been purchased in fraud of the creditors, the proceeds by statute are made exempt from the claims of the insured's creditors. Nor are the proceeds, in the absence of a statute to the contrary, subject to the statutory rights of the surviving spouse.

5. Among the provisions of a living trust, there should be a clause authorizing (though not directing) the trustee to make the cash proceeds of insurance available to the executor of the estate so as to enable him to pay death taxes and administration expenses. This can all be done without subjecting the insurance proceeds to probate fees, or without the intervention of a probate court.

6. Insurance proceeds paid to the settlor's estate are generally subject to state death taxes. However, in many states the proceeds will be exempt from state death taxes if paid to the trustee of an insurance trust, (which can be your revocable living trust) whose terms do not require (or in some states, do not authorize) that they be used for payment of debts, administration expenses or death taxes.

Since the trust is revocable the insurance proceeds will be included in the settlor's gross estate for federal estate tax purposes. When a person dies his life insurance is considered part of his taxable estate, whether it is payable to his wife or to a revocable living trust. When the wife is made the beneficiary, the entire amount of the proceeds will be paid to her and, on her later death, that entire amount will be included in her gross estate for tax purposes. Use of a bypass trust can not only avoid death taxes on the death of the second spouse, but also lower the beneficiaries' income taxes.

7. Here is another advantage associated with the use of a life insurance trust over the selection of a settlement option. In the event the beneficiary designated in your policy becomes incompetent, a guardian or conservator will have to be appointed to collect and manage the settlement option payments. The guardianship or conservatorship proceedings are expensive and inflexible. However, if a trust is used, the proceeds can be applied for the benefit of the beneficiary by the trustee without the appointment of a guardian or conservator.

Similar reasoning applies if one or more of the insured's intended beneficiaries is a minor. If the proceeds are made payable directly to a minor, a guardian will need to be appointed by a court to receive the proceeds. In such a case, the beneficiary will receive the balance of the insurance proceeds as soon as he reaches the legal age, whether or not he is qualified to handle a possibly large cash inheritance.

8. Where a revocable living trust is used, the insured can control the ultimate disposition of the proceeds by designating a remainder beneficiary. On the other hand, if a settlement option is selected, he may lose this control. The policy beneficiary, if he lives long enough, will receive the entire proceeds, leaving no room for alternate planning which may benefit the rest of the family.

Conclusion

Various forms provided in this manual to set up a revocable living trust make provision for it to receive settlor's life insurance as an additional asset. Instructions show you how to make your trust a beneficiary of your life insurance policy. Insurance is too important a part of your estate to leave to the vagaries of probate. Insurance planning should be given the top priority.

Living Trust: Ideal Vehicle to Avoid Probate

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A living trust is your answer to the dilemma of probate, it is your ticket out of the quagmire of probate. A living trust allows you to avoid probate completely. In this chapter, we'll take a closer look at this magical device known as living trust, its history, how it works and how it can help you.

What Is a Living Trust?

A living trust is a legal instrument created for the specific purpose of transferring nominal ownership of your properties to a trustee named in the trust instrument, who holds the properties for the benefit of designated individuals. (We'll examine in detail the role of trustor, trustee and beneficiary in a trust arrangement and inter-relationship among them later in this chapter.)

A living trust is created when a person during his or her lifetime, transfers property, real or personal, to a trustee in accordance with a trust agreement.

The legal name for a living trust is "inter vivos trust," and is Latin for "during life." It is created during your lifetime and, in the case of a revocable trust, can be revoked or changed by you at any time. The term describes the fact that the trust was established and began its legal existence during the lifetime of the trustor. This differs from a testamentary trust which is created in the trustor's will and comes into being only after the trustor's death.

Most people are generally more familiar with wills than trusts, but they both serve the same purpose: Both allow you to distribute your assets to the people or organizations you have selected as beneficiaries of your estate upon your death. A living trust, however, passes the estate without the cumbersome and costly process of probate. A living trust as opposed to a will has many more advantages which we'll discuss later.

Misconceptions About Trusts

Many people are afraid of setting up a trust; to them, a trust means relinquishing control of their property to a bank or trust company. They are afraid that by setting up a trust they'll be dependent upon a bank or some other stranger to dole them out a portion of their money at a time for the remainder of their lives. They have heard of trusts being set up for minor children or for incompetent and older members of the family who are not able to take care of themselves. Then again, many people associate trusts with something that only the most wealthy people such as the Rockefellers and Kennedys set up. But a trust for ordinary people with modest assets?

Well, the truth is you can set up a revocable living trust that accomplishes your principal objective of avoiding probate upon your death and still allows you to own and manage your assets during your lifetime without any interference from anyone. You'll remain in full charge of your affairs, you'll continue to be able to buy, control, manage, sell, liquidate, transfer, or dispose of your property just as before.

In other words, you have the same freedom of action with your financial affairs and asset management in a revocable living trust as you do without it. However, with a revocable living trust you would avoid the costs, delays and headaches of probate.

Various Players in a Revocable Living Trust

Trustor and Trustee

The person who creates the revocable living trust is variously called the trustor, grantor or settlor. You'll see all three terms used interchangeably throughout this manual. A trust can be set up by more than one person; for example, a husband and wife can set up a joint trust and both spouses would be considered grantors or settlors.

A living trust (and for that matter, any trust) has to have a trustee who controls the trust assets and carries out various trust provisions. In a living trust arrangement we're proposing here, you would name yourself as trustee of the trust managing your assets, now in the capacity of a trustee. In the case of a married couple, husband and wife name themselves as joint trustees. Both spouses have joint control over the trust assets while they are alive. Upon death or disability of one spouse, the surviving spouse continues in the capacity of sole trustee. When the surviving spouse has died, the trust assets are distributed to the designated beneficiaries, all without probate. The control and management of your assets is continuous and there's no involvement by a court.

Remember, in a living trust, the trustor or trustors do not own the property; the trust does. The title to the property has been transferred to the trustee. The person or an institution named as trustee owns, manages, and invests the property contained in the trust, not for his own benefit, but for the benefit of some other persons who have been named beneficiaries of the trust.

It is not necessary that trustor, trustee and beneficiary be three different people or entities. For instance, you, as trustor, could set up a living trust, whereby you declare yourself as trustee holding, managing and controlling your own property for the benefit of your spouse or children who are the eventual beneficiaries. In effect, you are acting in the dual role of a trustor and trustee. The forms provided in this manual are specifically designed to allow you to act as trustee of your own revocable living trust.

Successor Trustee and Beneficiary

A successor trustee is someone nominated by you to take over the operation of your trust in the event something were to happen to you (or, in the case of a joint trust, to you and your spouse.)

A successor trustee has all the powers vested in him in the trust instrument. In most states, he is also given the statutory powers of a trustee as enumerated in relevant state codes. A successor trustee can buy, sell, lease, lend or hypothecate assets; he can disburse income to beneficiaries or pay the expenses incurred by them. In general, he follows the instructions laid out by the trustor.

If you were to follow the scheme suggested in this manual in setting up your revocable trust, the successor trustee and beneficiary would be one and the same individual. In fact, the trust document appoints as successor trustee whosoever be the current beneficiary at the time of the settlor's death. The successor trustee simply transfers the trust assets from the trustee's name to his name as an individual and dissolves the trust. He does not need to file a petition with a probate court or get its approval to do this. There's no break in the operation or management of your assets. The entire process is immeasurably quicker, less expensive and more private than probate.

Let's recapitulate the above-described scheme.

Although there are four separate positions specified in the trust (namely, settlor, trustee, successor trustee and beneficiary,) in effect, there can be as few as two individuals filling these four positions - settlor and trustee being the same individual and successor trustee and beneficiary being the other individual.

Termination of Trust

What happens upon the death of the person who created the trust?

As our primary objective in setting up the living trust was to turn over the assets of the trust to the beneficiary as soon as possible after the death of the trustor, the trust instrument specifies that the beneficiary take over as successor trustee, distribute the assets to himself as beneficiary of the trust and then terminate the trust.

It's like taking money out of one pocket and putting it in the other. That simple. The successor trustee withholds sufficient money to pay outstanding debts and taxes but, in all other respects, assumes full ownership, control and management of the transferred assets.

Declaration of Trust

The document setting up the revocable living trust is known as the declaration of trust and it creates a "one-party trust." In this, the creator of the trust (called the "settlor") appoints an individual as trustee, but that individual is himself. Husband and wife can set up a joint trust wherein both act in the capacities of settlors and co-trustees. (In a "two-party trust" the settlor would appoint an individual or an institution to act as trustee.)

In a "declaration of trust," the settlor specifically identifies the trust assets involved and "declares" that he is holding them in trust for a specified beneficiary, who also is named as successor trustee in the event of the settlor's death.

When you set up a “one-party trust,” there is no trustee’s fee, for you are your own trustee. The successor trustee who takes over after you’re gone is the beneficiary, and he’s not going to charge himself a fee.

This manual provides forms and instructions for executing the declaration of trust and for completing the schedule that identifies the trust assets. The declaration of trust must generally be signed and acknowledged before a notary public. There’s no requirement that the declaration be recorded or filed anywhere.

Trust Is Revocable

A living trust can be either revocable or irrevocable. In a revocable trust you can alter the terms, you can change, add or delete trustees or beneficiaries or you can revoke the trust in entirety if you so desire. In this manual, we will be concerned exclusively with the revocable living trust.

Under a revocable trust arrangement, since you retain the power to revoke the trust and transfer the property back to yourself as the owner, such a trust offers no lifetime tax advantages, nor does it offer any disadvantages. The principal purpose of a revocable living trust is to avoid probate of your estate. You are simply interested in passing your assets to your spouse or children or other beneficiaries without the costs and headaches of probate.

What Happens If You Become Disabled or Incompetent?

A major benefit of a revocable living trust is that it allows you to protect yourself against unforeseen circumstances, such as incompetency, incapacity, physical disability, or similar misfortune. In the event of your disability or incompetency, your successor trustee is empowered to take over the operation of the trust and manage the trust assets as per your instructions. The successor trustee has the fiduciary duty to act in your best interests. His functions and powers are described in the trust instrument.

Without a revocable living trust or a durable power of attorney, your family would be forced to petition a court for the appointment of a guardian or conservator who would handle your financial affairs for you. You can avoid probate court, attorneys and guardianship hearings with the help of a revocable living trust.

Upon your disability or incompetency, the successor trustee named in your trust begins to handle your affairs promptly without the fanfare attendant to a public court hearing. Contrast this with a guardianship or conservatorship proceedings. Such proceedings are almost always costly, time-consuming and embarrassing to the family. The conservator appointed by a court may or may not be a person trusted by you or your family. He is required to seek approval of the court for all major expenditures or acquisitions, and his actions are subject to review and

approval of the court. Without a doubt, a conservator or guardian brings a great deal of inflexibility, cost and uncertainty for the family at a rather difficult period in their lives. A living trust is a definite panacea for the problems brought about by disability or incompetency.

The forms provided in this manual allow for the appointment of successor trustee in the event you were to become physically or mentally incapacitated. To discharge his duties as successor trustee, he is entrusted with the necessary powers to manage your financial affairs.

What Happens If You Have Minor Children?

If you have a minor child at the time of your death, a court will appoint a guardian to receive the minor's assets, manage them, and disburse them as per instructions from the court. Obviously, such an arrangement is less than satisfactory. There's no assurance that the guardian appointed by court would be someone you would have picked yourself. By introducing court and attorneys into the picture, you'd bring a great deal of uncertainty, inflexibility and expense to your family. A revocable living trust would avoid all this.

The declaration of trust provides for the appointment of a successor trustee who'll manage the minor's inheritance until such beneficiary has reached the age of 21. The successor trustee is someone handpicked by you, someone whom you know and trust, probably a member of your immediate family, as opposed to someone appointed by court. The successor trustee has broad powers to look after the interests and needs of the minor beneficiary. He will not have to seek court's approval to make necessary expenditures on behalf of the minor child. There are no court proceedings of any nature and there's no requirement for any accounting of the assets or income to be made to any court.

At this point it is necessary to understand the distinction between a trustee that manages your minor child's inheritance and a guardian of the person of the minor child. The trustee and guardian can be one and the same person or two different people. You have the absolute right to appoint a trustee in your revocable living trust who would manage your child's inheritance; court generally would not overrule your choice of trustee. However, when it comes to appointing a guardian of the person of the minor, court has the final say. Unless there are some extenuating circumstances, it would honor your wishes and accept your choice of a guardian.

Living Trusts: A Wave of the Future

Most people are generally familiar with the function of a will. They know a will is designed to pass property from one generation to next. A living trust, on the other hand, is an unknown entity, something only the rich and powerful people use. But things may be changing.

Although living trusts have been around for a long time, it's only recently that they have

become popular and have caught the imagination of the general public. During this same period, abuses of probate and attorneys' scams have received a great deal of notoriety in general press. Many people have become familiar, either as a result of personal experience or through adverse publicity some of these probate scams have generated, with the enormous costs and delays involved in probating an estate. This, in turn, has prompted them to look for an alternative to probate. Much to their delight, they have found that living trusts are an effective solution to the problems of probate.

I often get calls from people who say their attorney has never heard of a living trust, and inquire as to where they should turn to find competent advice. Most lawyers specialize in certain areas of law and not every lawyer would feel confident to furnish advice on living trusts and estate planning. Wills are a little different matter since they are such a basic estate planning tool. Even a lawyer who does not write trusts or practices estate planning may feel competent enough to prepare a simple will. As a result, you are more likely to find a lawyer who'll assist you in preparing a will than a trust.

Secondly, the narrow self-interest of an attorney may come into play. An attorney who does not prepare trusts or centers his practice on estate planning may be reluctant to refer the client to another attorney for the fear that he may lose him forever. This may not happen with most professional attorneys, but occasionally you may find an attorney who'll steer you toward a will as the sole step in planning one's estate. If you happen to encounter such an attorney, my advice is to look around until you find an attorney that's willing to put his client's interests above his.

There are many, many attorneys who earn a substantial portion of their income from our probate system. These are probate attorneys. Since a living trust eliminates probate, there's an inherent conflict of interest that may prevent them from recommending living trusts.

These attorneys are used to milking the probate cow. They are building a "will file;" each will they write, they hope, would ripen into a probate estate. For them, the less you know about living trusts, the better.

Then there are some attorneys who've seen the writing on the wall and have decided to join the bandwagon. They have discovered that helping people set up a living trust can be just as lucrative as probating an estate, especially if you can charge \$595, \$895 or \$1,500 to set up a simple revocable living trust. To drum up business, they advertise free seminars in local newspapers and sign up clients just for such a service.

While doing it, they can portray themselves as heroes. A law firm in Southern California, in its free-seminar advertisement for a living trust, touts itself as "defying the system by placing principle above profit." It is "willing to forego millions of dollars in probate fees in favor of preparing a one-time, foolproof, affordable plan." This just proves the point I've been trying to make here: Probate is a multi-million dollar business and, like the ad says, "you should avoid it like the plague."

As we have pointed out in previous chapters, the biggest expense of probate is attorneys' fees and it can easily run into thousands of dollars for relatively routine work. Human nature being what it is, it would be hard to turn away such profitable business by setting up living trusts. Fortunately, the trend in the country is clearly toward probate reform and, in the absence of any real reform, toward setting up revocable living trusts for the main purpose of avoiding probate. Legislatures dominated by attorneys are reluctant to pass any meaningful reform in our probate system. Until such reforms become a reality, revocable living trusts would be your answer to the probate rip-off.

Comparison at a Glance

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	No Will	With Will	With Revocable Living Trust
At Your Death	When you die intestate (i.e., without a will,) probate court appoints an administrator for the estate. He is required to post a bond, has to make an accounting to the court; he's ordered to pay debts, taxes and other expenses, and your remaining estate is distributed to the heirs according to the state law.	The executor nominated in your will will admit the will for probate. He'll have to hire an attorney to represent the estate in the court. Your debts and taxes will be paid by your executor and your estate will be distributed as provided for in your will.	The living trust will avoid probate altogether. The beneficiaries who also happen to be the successor trustees will take over the assets, transfer them from the trust to their individual names and inherit the possessions.
Costs	Your heirs pay all court costs and attorneys' fees ranging from 5% to 15% of the gross value of your estate. Administrator may or may not be someone you know and trust.	Costs will generally be the same as in the case of no will, the only saving may occur where you have waived the requirement of a bond of the executor.	Minimal; only transfer fees may be necessary.
Flexibility and Control	When you die without a will you lose all control over who will inherit your assets. The distribution is made strictly according to the state	A will does give you a limited amount of control over who would inherit your assets. You have the ability to name the beneficiaries in your will. With a will,	You have complete control over the disposition of your estate. You can change or revoke your trust for any reason and you maintain full control over the assets

	No Will	With Will	With Revocable Living Trust
	law, generally under a mathematical formula. Someone whom you don't even know may inherit all or part of your estate.	you have the ability to nominate the executor of your estate. You can also change your will at any time. However, your heirs have no control over probate costs and delays.	transferred to the trust while you're alive.
Time Delays	Time to probate an estate ranges from 1 to 3 years, with 18 months being the average.	Time to probate an estate with a will also would range anywhere from 1 to 3 years.	Armed with the estate owner's death certificate and a copy of the trust instrument, the successor trustee, who also happens to be the beneficiary, can transfer the assets to his name immediately. Time delays for the beneficiaries to receive their inheritance are very minimal.
Privacy	There is no privacy when an estate is probated. Probate proceedings are a matter of public record.	An estate that is probated has no privacy. Same as no will.	Living trusts are not a matter of public record. Successor trustee does not have to reveal the contents of the trust or its provisions to anyone (or, to a limited number of people on a "need to know" basis, in the strictest confidence.)
In the event you become disabled or incompetent	If you become disabled or incompetent so that you are unable to manage your financial affairs, your family may be forced to petition a probate court	In the event of disability or incompetency, a will will not permit you to escape conservatorship or guardianship proceedings. Consequences are	Your revocable living trust allows your successor trustee to take over the management of your finances and assets in the event you become disabled or incompetent.

	No Will	With Will	With Revocable Living Trust
	<p>for the appointment of conservator or guardian. The court-appointed conservator or guardian will manage your financial affairs for you for as long as you are incompetent. He'll make accountings of his actions to the court, and will have to seek approval for all expenditures. The conservatorship or guardianship proceedings are a matter of public record. They are time-consuming, embarrassing, and very expensive.</p>	<p>the same as with no will.</p>	<p>He will act as per your instructions in the trust instrument. There's no need for any probate court proceedings. When you do recover, you'll resume control and management of your finances. There are no costs involved under this arrangement. The successor trustee is someone whom you know and trust.</p>
Minor child	<p>If at the time of your death you are survived by a minor child, court will be asked to appoint a guardian of the assets of the minor as well as the person of the minor. This guardian will be responsible to manage the child's inheritance and will be responsible to make all decisions regarding the well-being of the child. At all stages he will be required to seek court's approval for his actions and will be accountable for his</p>	<p>A will permits you to nominate a guardian or trustee who'll manage your child's inheritance till the age of emancipation. This guardian will make all financial decisions in his behalf. In your will, you may also nominate a guardian of the child's person. And the court in all probability will honor your wishes. In all events, however, your will has to be probated first, and court proceedings for the appointment of guardian are necessary.</p>	<p>Your revocable living trust provides for the appointment of a successor trustee to act as minor's guardian in the event you are survived by a minor child. The successor trustee manages the child's assets according to the instructions you've left behind and will be responsible for his medical care, education, maintenance, etc. There is no probate involved. Court must approve guardian of the child's person, but cannot overrule</p>

No Will	With Will	With Revocable Living Trust
<p>actions to the court. You'll have no control over who the court will appoint as the guardian of your minor child. Invariably, attorneys get involved in these proceedings, which can become time-consuming, expensive and heart-rending. All court costs and attorneys' fees are paid from your child's inheritance.</p>	<p>As a result, there are court costs and attorneys' fees involved.</p>	<p>your choice of trustee. And it has no control over the child's inheritance.</p>

Advantages of a Revocable Living Trust

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The advantages provided by a revocable living trust are quite numerous. The following is a brief discussion of these advantages.

Avoid Costs and Delays of Probate

As we've emphasized over and over, the principal benefit and purpose of a living trust is to avoid probate. The assets that are placed in a living trust can pass to the beneficiaries without any probate proceedings. With a living trust, upon the death of the trustor, the successor trustee, who in most cases is also the beneficiary of the trust, turns the assets over to himself and terminates the trust.

He does not have to wait for a year or two or even more for the probate court to certify that he now is the legal owner of the assets. He simply walks into the bank with a copy of the declaration of trust and the death certificate and walks out with the money left to him. He sends the same papers to the securities broker and has the securities transferred to his name. If there is any real estate involved, the successor trustee files with the county recorder's office a quitclaim deed transferring property from the successor trustee to the beneficiary, and becomes the legal owner of the property.

With the avoidance of probate, you also have avoided attorneys, executors, guardians, court proceedings and all expenses associated with them. We've seen what probate costs, anywhere from 2% to 10% of the gross estate. Savings provided by the living trust will now go directly to your beneficiaries.

Avoid Publicity of Probate

Probate has another major drawback. It invites publicity. When an estate goes through probate, all estate records become public knowledge. Details about the assets and liabilities of the decedent, the value of each item, and who is to inherit what - all this information is available to anyone who asks to see the probate file at the county courthouse. Widows and inexperienced heirs become inviting targets for unscrupulous investors.

If a business is involved in probate proceedings, there is even a greater potential for damage. All the inside information about the business - its value, its assets and liabilities, its inventories, partners' interests, its products, and its income and future plans - is available to the competitors to glean and profit from. Probate is often known to deal a mortal blow to a business.

However, when you place your assets in a living trust, it's an entirely different matter. A revocable trust appeals to a person who doesn't want the disposition of his property to be a matter of public record. The trust instrument is not recorded anywhere and no one is privy to its contents. When the trustor dies, the assets of the trust are immediately transferred to the beneficiary without any court proceedings. Living trust is a boon to those who seek privacy.

On the other hand, wills and other documents involved in the administration of an estate are matters of public record. The press delights in publishing juicy details of the wills of prominent individuals. For instance, a section in *Trusts and Estate* magazine highlights "wills of the month."

In practice, a revocable inter vivos trust may not be able to achieve absolute privacy. In some jurisdictions, the public has access to the state death tax file of an individual decedent, which would include a copy of any revocable trust created by the decedent. Also, the trustee may be asked to provide a copy of the trust to a stock broker or transfer agent in order to transfer securities held in the trust. However, such a request may be satisfied without providing a copy in entirety, transmitting instead only the applicable pages of the trust document. You may also furnish a letter from a lawyer or notary public certifying that the trust is validly created and is revocable by the grantors and that the trustees have the requisite powers. When a trustee attempts to sell trust securities or real property, he may be forced to divulge the contents of the trust document to some extent.

Avoid Ancillary Probate

Normally, when a person dies, his estate is probated according to the laws of the state of his domicile. If he happens to own some real estate in another state, additional probate, called ancillary probate proceedings, will be necessary in the other state. If he had created a testamentary trust in his will, a trustee will be appointed in each of the states where real property is located. All of this translates into additional drain of money and time for your family.

However, if you had placed all of your property, wherever situated, in a living trust, there would be no probate in any state. The successor trustee named in the living trust can look after the assets in each of the states affected without any court proceedings.

Avoid Contests

Wills are often successfully contested by disgruntled heirs and the heirs named in the will do not always receive their inheritance. The very fact that a will has to be probated and is a matter of public record invites the attention and interest of people however remotely connected. All that a person contesting a will needs to do is to put in a formal pleading alleging lack of mental capacity or undue influence. He may not even need to hire an attorney to initiate such a contest. An executor facing the prospect of an expensive, time-consuming, full-scale public trial, and the legitimate heirs, who are desperately in need of money, often will pay off the contestant, regardless of the merit of the claim.

A revocable living trust on the other hand is a completely private matter. No one needs to know the disposition of your assets spelled out in your living trust, nor does the contents of the trust instrument become a matter of public record. Immediately upon your death, the designated beneficiaries, armed with the death certificate and declaration of trust, transfer the assets to their individual names and terminate the trust.

A person wishing to contest a revocable trust faces the daunting task of suing each of the beneficiaries after the fact, since the assets have already been distributed. It may also be more difficult to challenge a revocable trust that has been in active operation for a period of time prior to the settlor's death, as compared to the contest of a will. As a result, a revocable living trust is almost never successfully contested.

Avoid Guardianship Proceedings

A major benefit of the revocable living trust is that it allows you to protect yourself and other family members against unforeseen contingencies, such as incompetency, incapacity, physical disability or similar misfortune. In the event the settlor becomes incompetent or is otherwise unable or unwilling to manage his property, the living trust would provide for the successor trustee to take over the management of the trust assets while providing sufficient income for the comfort and welfare of the settlor.

In the absence of a living trust or a similar arrangement, conservatorship proceedings are necessary in a probate court. Under such proceedings court is petitioned to appoint a conservator to manage the incompetent person's financial affairs. Such proceedings tend to be relatively expensive and cumbersome. Court authority is required for either purchase or sale of assets. Periodic court accountings are mandatory. The probate court will require the conservator to post a bond even if the conservator is the sole heir at law and conservatee waives the requirement of a bond.

A revocable living trust is a desired alternative to such conservatorship proceedings. Since it is a private arrangement the revocable trust avoids the publicity of court proceedings. It also avoids most of the delays and expenses associated with any court proceedings. Moreover, it has the virtue of flexibility which allows it to be adapted to the needs of a particular situation. For example, the trust instrument may grant the trustee the power to buy and sell assets without prior notice to or approval of any other person. This would be impossible with a court-appointed conservator.

The forms provided in this Kit allow you to act as trustee of your revocable trust and manage your affairs for as long as you are competent and are able to do so. In the event you become disabled and are not in a position to handle your financial affairs, the successor trustee appointed in your trust would take over the management of the assets. Since the successor trustee is someone handpicked by you and not by a court, he is more likely to give personal and loving attention to your affairs and welfare. You can also grant him broad fiduciary powers that a court-appointed conservator could not have.

The powers pass to the successor trustee under carefully defined circumstances, as for example, upon certification by a qualified physician that the settlor is no longer competent. The determination of incompetency should not be left to a court decree which would defeat the purpose of the trust.

A durable power of attorney (which is now legal in all fifty states) can also serve as an effective substitute for a guardianship if the power is broad enough. However, a trust offers more comprehensive protection and greater flexibility than a durable power of attorney. The two devices can be combined to provide for the creation of a revocable trust if the principal does in fact become incompetent. For example, a durable power can authorize the attorney in fact to transfer the principal's property to the trustee of a revocable trust in the event of the principal's incapacity.

A revocable trust is not a universal answer to property management needs of the incompetent or disabled. However, in most cases, a revocable trust arrangement is greatly preferable to any other arrangement by virtue of its flexibility, privacy and low cost.

See Your Will in Action

A funded revocable trust permits a trial run of the trust during the settlor's lifetime. If he's not fully satisfied with the trust's operations he can change trustees or the administrative provisions, or make such other changes as experience dictates. Although the forms provided in this manual are specifically designed to permit you to act as trustee of your revocable trust, it is possible to name an independent trustee of your trust. You may decide to do this if you think that your children may be minor or incompetent at the time of your death, and the trust

may have to be continued after your death for the benefit of the minor children.

The revocable living trust gives you an unusual opportunity to test out a trustee. A testamentary trust comes into operation too late to make any changes. Rather than just placing your property in a testamentary trust and hoping that the trustee will perform up to your expectations, you can install the trustee now through your living trust and observe his actions, his management ability in the handling of your assets and, most important, his interaction with the beneficiaries. This way, you'll be able to supervise, correct and perhaps even replace the trustee if he does not measure up to your expectations. This potential benefit is often described as a way of "seeing your will in action."

A trial run may be particularly valuable when the chief asset of the trust is an on-going business, because the trustee has an opportunity to become familiar with the business problems while the settlor is still available for advice and consultations.

Professional Management

There is one other overriding reason for setting up a revocable living trust, and that is to obtain professional management of the assets. For instance, a person may have inherited a large sum of money and is too inexperienced to handle it, or a person has reached an age where he simply doesn't want to get involved in the day-to-day management of his assets and business. Or, he feels that a professional manager can look after his affairs better. A revocable living trust would be an answer in such a situation. You can delegate the responsibility of managing your assets to a professional trustee and still retain the power to revoke the arrangement if you so desire later.

The professional management of the trust property by an independent trustee may also appeal to a mobile settlor - someone who moves around the country or globe and is unavailable for protracted periods. A revocable trust centralizes management and places authority and responsibility with the trustee while reserving the final word to the settlor through the powers of trust amendment and revocation.

Protection for Inexperienced Heirs

A revocable living trust is often an answer for a person who wants to protect his wife or children against their inexperience in business matters or handling of financial affairs. A revocable trust would also protect minor children from making imprudent expenditures or gifts, or where there is fear that they may live beyond their means. A revocable trust allows a settlor to protect his assets from the claims of creditors of his heirs, or of a divorced spouse of a family member.

Trust as Sole Distributing Medium

By making your revocable trust the ultimate receptacle of all your assets - real, personal, life insurance, pension and death benefits - you'll greatly simplify the management and disposition of your assets under the terms of one single instrument and, thereby, reduce the possibility of conflicting or duplicative distributive schemes under two or more plans.

A revocable inter vivos trust can be used advantageously as a receptacle for the residuary estate under a will since most states have adopted the Uniform Testamentary Additions to Trust Act, or similar legislation. It may also be used as a receptacle for life insurance proceeds and for benefits payable under pension and profit sharing plans. A revocable trust makes possible unified management of assets and provides greater flexibility in their disposition after death of the settlor than otherwise would be possible under separate and uncoordinated administration of insurance benefits, retirement plans and a will.

Flexibility

A living trust gives you the ultimate flexibility in your estate planning with regards to the disposition of trust income and principal. Various members of your family may have differing needs for support, education and comfort. Often these needs change. You can set up your living trust to meet and adapt to these needs by giving the trustee discretionary powers over distribution of income and principal.

The flexibility of a revocable living trust is readily apparent where the trustor wishes to employ "A-B" trust arrangement. Such an arrangement calls for the trust estate to be divided into a marital deduction trust and a non-marital trust at the grantor's death. Under such a plan, it is possible to retain all trust assets in a single interim, complex trust until the trustees are in a position to make the final allocation between the marital and non-marital shares. This trust can continue until all administration expenses and taxes have been paid while providing the trustee with the discretion to partially fund the two ultimate trusts. Meanwhile, all income belonging to the marital trust would either be currently distributed to it, or directly distributed to the surviving spouse.

Avoiding Court Supervision

An estate in probate and all testamentary trusts are subject to continuing court supervision in most states. Such court supervision carries with it burdensome and expensive requirements to file annual reports and accounts with the court. A revocable living trust avoids court supervision either during the settlor's life or thereafter.

One may argue that such court supervision is beneficial for prompt resolution of disputes or to preserve the integrity of inventorying and settling of accounts for the benefit of heirs and creditors. However, from a practical point of view, the advantage of court supervision in most trusts in this regard is very minimal. In the unlikely event that court jurisdiction is necessary it can be invoked through alternative civil actions.

Continuous Smooth Operation

When you set up a revocable living trust you are setting up a separate on-going entity. It keeps on operating even after you die without any disruption from the probate process. There is no need to petition a court and ask for its approval to continue the business, nor is there any requirement that the creditors, purchasers, and other individuals be informed of the decedent's death. Smooth, continuous management of trust properties is thus assured. This is vitally important in the case of an on-going business. Employees, customers or creditors of the business need not feel the slightest impact of the death of the owner.

Avoid Double Death Taxes

Let's take the case of a husband and wife with an estate over \$1.2 million who wish to accomplish two objectives through estate planning. First, they wish to avoid probate. Second, they seek to eliminate the estate tax on the death of the first spouse to die, and also to minimize such tax on the death of the surviving spouse. They will not achieve both of these objectives unless they use a funded revocable living trust. Such a trust is typically known as "A-B" trust plan.

The trust generally provides that upon the death of the first spouse it becomes irrevocable and is divided into two separate trusts, Trust "A" and Trust "B". Trust "A" will contain the assets belonging to the surviving spouse plus that portion of the decedent's estate which equals the optimum marital deduction. The balance of the estate (i.e., the non-marital deduction portion of the decedent's estate which will approximately be the amount of the equivalent exemption) will go into Trust "B". When the surviving spouse dies, any unused assets left in Trust "A" will be taxed, but will not be subject to probate; the assets of Trust "B" will not be subject to either death taxation or probate.

Funding the Trust for a Specific Purpose

In some situations you can use the trust to set aside particular assets, proceeds or payments for administration and distribution pursuant to a court decree or by agreement of the parties. For example, a living trust can be funded with an insurance policy on the husband's

life for the benefit of his children, pursuant to a divorce decree or by agreement with his wife.

Maintaining Separate Character of Property

A living trust can also be used to maintain the separate character of assets owned by each spouse. In community property states as well as common law states, it's important to prevent any commingling of premarital and marital assets. This is especially true in the case of a person entering a second marriage.

Living Trusts and Remarriages

A living trust can help solve a nagging problem for those who are in their second or third marriage and have children from previous marriages. A person in such a situation wants to leave a certain portion of his estate to the children from the previous marriage and wants to provide for the current spouse and children as well. You can set up a separate living trust for each one of these beneficiaries and specify exactly what you want each of them to inherit. The mechanism of living trust allows you to divide your estate in desired portions and name a beneficiary for each one of these portions. You do not have to worry about the consequences of joint ownership whereby your joint tenant will inherit the entire property that was owned jointly, leaving nothing for the other beneficiaries.

Take, for example, a husband and wife, both in their second marriage. Each party can set up a separate living trust for the benefit of respective children from the previous marriage, and fund the trust with separate property accumulated prior to the marriage. They can also set up a joint trust for their mutual benefit and for children from their second marriage. This way, they are able to keep their various properties separate and provide for respective beneficiaries in an effective manner, without losing control over any of their assets. If the circumstances change in the future, they are free to alter or revoke the arrangement as necessary.

One additional thought: Chances of contests from disgruntled heirs are greater in cases where there are children from different marriages. A living trust has an inherent advantage in avoiding such contests.

Living Trust Can Be Used as a Prenuptial Agreement

Prenuptial agreements are designed to keep premarital property of each spouse separate from property to be acquired subsequent to the marriage. You can use a living trust for this purpose by funding it with your separate property accumulated prior to the marriage and the property will retain its separate character.

Such a living trust arrangement makes sense from a practical standpoint too. By setting up a living trust for property acquired before the marriage and a separate trust for property acquired during the marriage, you will not inadvertently commingle these assets which may cause problems in the future.

Protection Against Creditors

A revocable living trust offers, under certain circumstances, another important bonus advantage, exemption from attachment. Depending upon the applicable state law the trust assets may be protected against the claims of the settlor's creditors even though he has reserved the power to revoke the trust, the right to receive the trust income and other rights and powers. In many states the settlor's creditors may not reach the trust assets in satisfaction of their claims unless the transfer in trust had been made with an intent to defraud creditors, or the settlor had retained both a life estate and a general power of appointment as to the remainder, a combination of interests deemed equivalent to substantial ownership of the trust assets, or unless the trust had been created for the sole benefit of the settlor.

In at least ten states, however, there are statutes which provide that a settlor who retains an unlimited power of revocation is to be deemed the absolute owner of the trust property insofar as creditors and purchasers are concerned. For example, in Ohio a revocable trust is valid as to all persons even though the creator of the trust reserves the requisite powers to amend or revoke, except that any beneficial interest retained by the creator is reachable by his creditors, and a creditor can compel the exercise of settlor's power of revocation in court proceedings. In Michigan the statute provides that if the grantor dies without exercising his power of revocation, his personal representative on behalf of his creditors can reach the trust assets if (a) a claim is filed and allowed, and (b) probate assets are insufficient to pay the claim, except that no creditor has the right to obtain insurance or employee benefit proceeds. (The list of ten states mentioned above includes Alabama, Indiana, Kansas, Michigan, Minnesota, Ohio, Oklahoma, South Dakota, Wisconsin and North Dakota. A more thorough discussion of this subject matter is provided elsewhere in this manual.)

Choice of State Law

A revocable living trust allows you to select the law of one state over another to govern the validity, administration and disposition of your assets. Sometimes you may find that the laws of a state other than the one where you currently live are more favorable. In such a case, your living trust can stipulate that the laws of that particular state would govern the administration of your trust.

For instance, a settlor may be domiciled in a state that restricts the nature and amounts of testamentary distributions. If so, he can take advantage of a more favorable jurisdiction by stating his intent as to which state's law should govern his revocable trust.

Here are a few other circumstances where the choice of law question may arise:

- (a) The ability of a foreign corporate trustee to act as testamentary trustee within the state.
- (b) Restrictive property rules, such as the rule against perpetuities, and rules limiting the duration of trust.
- (c) Continuing court supervision of testamentary trust following completion of probate.
- (d) Statutory rights granted a surviving spouse.
- (e) Allocations of receipts and disbursements to trust income or trust principal.
- (f) Insulate assets from a will contest.
- (g) Bequeath more to charity than is allowed under local law.

Another reason why you may want to designate the law of state other than the state of your domicile or residence to apply to your revocable trust: If you have lived in a community property state and acquired property that has substantially appreciated in value, you may want to establish a revocable trust in the community property state in order to retain the community character of the property and consequent tax benefit accruing from the stepped-up cost basis valuation available to the surviving spouse.

Most of these matters are generally governed by the laws of the settlor's domicile applicable to the settlor's estate at death and to trusts created by his will. But with few exceptions, the settlor may stipulate the law of a state other than that of his domicile to govern his estate plan expressed in his living trust. This application of a living trust may be important to a person who travels frequently or migrates from one state to another.

Conclusion

Not all of the advantages described above of a revocable living trust would be applicable in every case. Nonetheless, a revocable trust provides you with the most satisfactory way of organizing your estate for the benefit of your heirs. The creation of a revocable trust and transfer of your assets to the trust are relatively simple processes in most cases.

The purpose of this Kit is to provide you with standard legal forms with step-by-step instructions to accomplish this objective. The cost and headaches of setting up a living trust are rather insignificant when compared to the advantages offered by it. But before proceeding further, let's take a look at some of the disadvantages of the revocable living trust, too.

Disadvantages of a Revocable Living Trust

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We've examined several benefits of setting up a revocable living trust. Now let's look at some of the disadvantages.

Disadvantages

Living Trust Involves Work

A major disadvantage of a living trust, if you can call it a disadvantage, is that it requires some action on your part. You actually have to sit down and draft an estate plan for the disposition of your assets upon your death. The process of creating the trust involves preparing the trust instrument and formally transferring the assets from your name as an individual owner to you acting as trustee of the trust.

As opposed to setting up a revocable living trust, one can prepare a simple will or may even choose not to have a will and ignore the problem of disposition of his assets after his death altogether. Needless to say, such a plan has little merit.

Cost of Creating the Trust

As a general rule, the legal cost of preparing a revocable living trust is higher than that of preparing a will. This is due in major part to the greater complexity of the revocable trust. In addition, the trustee's fees can also be a factor, at least where there is a professional trustee. However, as recommended in this Kit, if you were to act in the dual capacity of settlor and trustee, there would be no trustee's fees incurred.

These costs are offset somewhat by the fact that the cost of establishing and operating a revocable trust is usually deductible for income tax purposes. On the other hand, the cost of preparing a will is a nondeductible personal expense.

Record Keeping

In the case of a will, no pre-death formalities are required other than the preparation of the will and its proper execution. A will can be readily modified by a codicil or a new will can be prepared which will revoke a prior will. Thus, it is generally easy to change your disposition plans when only a will is involved.

Creation and operation of a revocable trust, on the other hand, entails considerably more paper work and meticulous record keeping. It also involves the transfer of assets to the trustee's names. The assets of the trust should be transferred from the settlor to the name of the trustee of the particular trust. In order to handle receipts and disbursements of the trust and to deal efficiently with the trust assets, you need to open bank and brokerage accounts in the name of the trustee.

The trustee must operate the trust as a legal entity separate and independent from the settlor. The trustee must also maintain separate records of all trust transactions. There can be no commingling of assets or income between the settlor and the trust accounts. If the settlor is acting as trustee of his own revocable trust, there is no requirement to file a separate federal income tax return for the trust. However, if an independent trustee is chosen, he must file a federal informational income tax return showing income and available deductions and credits, if the gross income of the trust is \$600 or more.

The extent to which the administration of the revocable trust will be a problem depends partly on the choice of the trustee. The overall accounting and bookkeeping requirements can be overwhelming for an inexperienced family member acting as trustee. If a bank or professional trustee is selected, the administrative functions can be carried out smoothly; however, there would be added costs involved. In moderate to large trust estates, the cost of an independent trustee or custodian to handle the administrative details of the trust will vary from 1/10th of 1% to 1/4 of 1% per annum based on the gross value of the estate.

Loss of Income Splitting

Where a funded revocable living trust is used, a potential income tax advantage incident to having a probate may be lost. The probate estate is a separate income tax entity so that all income earned by the estate which is not currently distributed is taxed to the estate. If the estate is in a lower income tax bracket than the beneficiaries who may receive the estate income, there is a tax advantage in having a probate because the income will be taxed at a lower rate during the probate period.

The period of probate administration may continue for tax purposes only for such time as is actually required by the executor to perform the ordinary duties of administration. IRS may consider an estate closed for tax purposes even though it may still be under probate court jurisdiction.

During normal administration the income of a probate estate is taxable to the estate except the distributions actually made to the beneficiaries which are then taxable to them. The executor of the estate, by timely income distributions, can affect the income tax liabilities of the estate and its beneficiaries. However, a trustee of a trust may not be able to do so because trust income that must be distributed to beneficiaries currently is taxable to them, whether it

is actually distributed.

In addition, distributions of trust income accumulated in prior years may be taxed to the beneficiaries under the throwback rules. But these throwback rules do not apply to a probate estate, unless the estate is continued for an unreasonable period, in which case it may be considered closed for tax purposes. In short, there is less flexibility in income tax planning in the case of a trust and its beneficiaries than for an estate and its beneficiaries.

Settlement of Accounts

In most states the executor of a probate estate and the trustee of a testamentary trust are required to file periodic court accountings and can be discharged from personal liability for actions approved by the court. The trustee of a revocable living trust does not have such an avenue open to him. As a result he is apt to choose a course of action that is risk-free and conservative, and less likely to expose him to personal liability, in place of an action that might be more aggressive and possibly more rewarding to the heirs.

Summary

Notwithstanding the above-described disadvantages of a revocable living trust, it still is the most attractive vehicle to avoid probate. For a vast majority of people, a revocable trust may be the only and possibly the most cost-effective estate planning technique available.

If you were to follow the plan suggested in this manual, you, as the settlor of the trust, would be acting in the capacity of the trustee, too. In that case you would not have to worry about the annual trustee's fees and the necessity of filing a separate income tax return for the trust. Also, unless your estate exceeds \$1.2 million (assuming a married couple,) reducing your estate taxes through more sophisticated estate planning would generally not be a consideration.

The standard legal forms provided in this manual coupled with step-by-step instructions make the task of creating the trust relatively simple. Once the trust has been set up and property transferred to the trust, the actual operation of the trust and management of the trust assets is not significantly different than, let's say, without the trust. The trust has no impact on your ability to buy, sell, transfer, assign or hypothecate your assets in the normal course of business.

Hopefully, you'll agree with this assessment and find that the myriad benefits of a revocable living trust far outweigh a few disadvantages. In the final analysis, it is still the best way of transferring property to your heirs without the enormous costs, delays and frustrations of that archaic process called probate.

Community Property, Dower and Curtesy Rights **11**

There are eight states in the United States that have enacted “community property” laws. These states are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. If you live in any one of these states, all the property acquired during your marriage is considered community property. This is true regardless of whose earnings were used to buy the property or how the title to the property is held. In a community property, both the husband and wife own an undivided one-half interest. Under the law, after the death of one spouse, the surviving spouse has a legal claim upon all the property acquired during the marriage.

In all the remaining states, known as “common law” states, the surviving spouse has a legal claim upon the real property in the event of the other spouse’s death. This right, in legal terms, is called “dower” in the case of a widow, and “curtesy” in the case of a widower.

In either case, whether you live in a community property or common law state, if you’re married and you wish to transfer an asset held in your name to a beneficiary who is not your spouse, your spouse must join you in signing the declaration of trust. In other words, you can’t give away an asset to someone else without your spouse’s consent.

A space for this purpose is provided on the declaration of trust forms for your spouse to sign. It’s important that you obtain this signature in the event you’ve named a third party as the primary beneficiary of your trust.

Revocable Living Trust and Community Property

More on Spousal Consent

In a community property state, if both spouses have a vested interest in the community property, it is advisable to name both spouses as settlors or at least to require the other spouse’s consent to the creation of the trust. If a husband sets up a trust without his wife’s consent and the trust becomes irrevocable after the husband’s death, in some states (for instance, Washington and California) she may set aside the trust as to her one-half community interest. In other community property states (Arizona, Louisiana and Nevada) the law is not entirely clear and the ability of the wife to set aside the trust as to her half may depend on whether the transfer was made in fraud of the wife. In Texas, the rights of the wife depend in part on the

type of property transferred to the trust. Her consent is required for homesteaded property, her sole management community property, personal earnings, income from separate property and mixed community property subject to the joint control of both spouses. As to other community property, she may still attack a transfer made without her consent on the ground that it was in fraud of her rights or that it was illusory.

Keeping these restrictions in mind, the forms provided in this Kit routinely ask for the other spouse's consent in the creation of the revocable living trust wherever there is a single settlor.

Tax Considerations

While setting up a revocable living trust in a community property state it is important to preserve the tax benefits available from holding the property in community. An asset owned as community property acquires two beneficial tax characteristics. First, on the death of either spouse only one-half of the community asset is includible in the decedent's estate and, due to the unlimited marital deduction available, even this one-half is not taxed if it passes to the surviving spouse. Second, upon the death of either spouse, both halves are deemed to be acquired from the decedent and receive a new basis equal to the federal estate tax value of the property. In other words, the entire community property receives a new cost basis.

Obtaining a new basis on both halves is advantageous to the surviving spouse where an asset has appreciated in value. Assume the adjusted cost basis of a community property asset prior to the decedent's death is \$40,000, and the federal estate tax value (which would approximate the current market value) of both halves is \$100,000. Even though only one-half of this value, i.e., \$50,000, is included in the gross estate of the decedent, the entire community asset, including the one-half of the asset owned by the surviving spouse, receives a new cost basis. In this example, the surviving spouse will receive the benefit of stepped-up cost basis from \$20,000 to \$50,000.

If the property were held in joint tenancy, only the decedent spouse's one-half would acquire the stepped-up cost basis of \$50,000; the value of the surviving spouse's one-half would remain at \$20,000. Whether the entire property acquires the new stepped-up cost basis or not would determine the extent of gain and the tax on the gain in the event the surviving spouse decides to sell the property.

The community property character of assets transferred to the trust is preserved if the trust satisfies the following requirements: (1) The transfer to the trust must be made by both husband and wife. (2) Both spouses must have the power to alter, amend or revoke the trust as long as both are alive. (3) The trust must specify that any property withdrawn from the trust will retain its community character. If the above requirements are met, the tax benefits of community property will be retained.

Caution: In preparing your Schedule A which is a part of the trust instrument, it is important to designate the character of each of the assets transferred to the trust, whether it is a separate, joint or community property.

Trustee of Your Revocable Living Trust

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Trustee

A trust, whether revocable or irrevocable, living or testamentary, generally has four separate positions:

- Settlor or trustor
- Trustee
- Successor trustee
- Beneficiary

This would mean that the trust would need four separate individuals to serve in each one of these capacities. However, if you were to follow the scheme suggested in this manual in setting up your revocable living trust, your trust would have only two individuals serving in four different capacities. As a person setting up the trust, you would be the settlor or trustor. You'll also act as trustee of your trust. If you're married, you and your spouse will probably be joint trustees.

A settlor is not prohibited from acting as trustee. In fact, there are definite advantages in having the settlor act as trustee. By acting as trustee of your own revocable living trust, you would maintain full control of your property; you would be able to manage it and distribute the income generated to yourself. This arrangement also results in lower administration costs and greater flexibility in investment and other trust decisions. In short, creation of the living trust will have minimal effect on your ability to make management and investment decisions concerning your property.

Caution: Whenever the settlor acts as trustee it is important to maintain separate accounting for the trust and segregate trust income and trust assets from the settlor's personal income and assets.

Successor Trustee

What are the functions of a successor trustee?

In the event you were to become disabled or incompetent, the successor trustee you have designated will step in your shoes and manage the trust assets for you. Upon your death, the successor trustee follows your instructions to disburse the assets to the beneficiaries and dissolves the trust.

The trust forms provided in this manual automatically appoint the beneficiary under the trust to serve in the capacity of successor trustee. In other words, the two separate positions of successor trustee and beneficiary are merged into one for all practical purposes. If you have designated one beneficiary in your trust, that beneficiary will take over as successor trustee upon your death or in the event of your physical or mental incapacity. If your trust is a joint trust set up with you and your wife as joint trustees, the successor trustee will take over his functions only after the death or incompetency of the survivor of the two spouses. If your trust calls for multiple beneficiaries, the forms provided in this manual appoint the individual beneficiaries in the successive order listed to act as successor trustee.

A question often arises whether you should have more than one successor trustee. Some parents want their adult children to act in concert as successor trustees. Of course, such a plan has the advantage of treating all children equally. But it may also produce disagreements and discord, which may eventually have to be settled in a court of law. Most estate planners would advise for the appointment of a single, responsible heir as successor trustee.

Corporate Trustee

The idea of using a bank or corporate fiduciary to act as trustee of your revocable trust should be given careful consideration. There are apparent disadvantages to using a corporate trustee, the foremost being the cost incurred. Most banks would be reluctant to act as trustee unless the estate involved was sufficiently large. You may also be introducing a great deal of inflexibility and an element of bureaucracy when you get away from your own immediate family in the appointment of successor trustee.

Backup Trustee

In the event none of the beneficiaries has attained the age of majority at the time of the death of the settlors, or in the event of their incapacity or incompetency, you should consider appointing a backup trustee to act as successor. The backup trustee would act until the minor beneficiary has attained the age of emancipation. For an incompetent beneficiary, the backup

trustee would act as conservator or guardian of his or her property.

Special Trustee

If a settlor has consistently relied on the investment or management skills of a particular individual, that person may be appointed special trustee, with powers limited exclusively to the investment or management of all or a portion of trust property. Using a special trustee to handle financial matters would permit a family member who is not sophisticated in investments to act as trustee and still rely on the special trustee for advice on such matters, thus avoiding the need for an institutional trustee or co-trustee. You can also require your appointed trustee to act only after consulting an advisory committee in matters involving specific investments or property management.

Comment: If you wish to appoint a corporate trustee or special trustee, you would need to modify the forms provided in this manual and include suitable language for such appointments.

Trustee's Functions

Here is a summary of trustee's functions:

- (1) collect assets of the trust,
- (2) pay expenses of the trust,
- (3) manage and invest the trust fund,
- (4) file trust tax returns and pay taxes,
- (5) keep proper records and accounting of the trust assets,
- (6) pay to or apply for the beneficiaries periodically the trust income (and if the instrument so provides, the principal of the trust),
- (7) exercise discretion with respect to invading principal or accumulating income as provided in the trust instrument.

In the event settlor becomes incompetent or disabled, the successor trustee also takes over the management of the assets in behalf of the settlor. He is empowered to apply the income or principal of the trust for the health, support, and maintenance of the trustors.

Compensation for Trustees

Trustees generally are entitled to receive a reasonable compensation for their services. However, if you act as trustee of your trust during your lifetime and the beneficiaries are appointed as successor trustees, the question of trustee's fees does not arise.

If you were to appoint a bank or corporate fiduciary as successor trustee of your trust, the estate would be charged trustee's fees. You'll have to inquire with such corporate trustees regarding their fee schedule. Most banks or trust departments of title companies have minimum requirements on the size of the trust that they will accept. Generally speaking, an estate less than \$500,000 would be unacceptable to most bank trust departments and may be inappropriate for consideration of appointment of corporate fiduciary due to its high costs.

Various Provisions in Your Trust Instrument

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Your trust instrument should provide for many contingencies and offer you maximum flexibility. It should take into account the impact of various laws on the distribution of your estate, treat tax consequences in a favorable manner and meet certain legal requirements. The standard forms included in this manual contain comprehensive clauses, and here's a brief explanation in plain English.

Introductory Clause

Your intent to establish a living trust is one of the requisites for a valid instrument. The introductory clause identifies you as settlor or trustor and also establishes you as trustee of the trust.

Trust Estate

The assets transferred to the trust constitute the trust estate. The trust estate is described in Schedule A which is attached to the declaration of trust and made a part of it. The Schedule A must list the assets transferred to the trust and identify them with particularity. You do this, for instance, by providing legal description and location of the real estate, location and identity of bank and brokerage accounts, and safe deposit boxes, and by identifying automobile make and model on Schedule A.

The trust instrument expressly permits the trust to receive additional assets, real or personal, in the future. In practice, you do this by adding them to or modifying Schedule A attached to the instrument.

Revocability of the Trust

As we've discussed before, your living trust can be amended or revoked at any time. You can change or add beneficiaries of the trust, or add or delete assets of the trust. The instrument also specifies that, in the event you sell or dispose of a particular asset named in the trust, the trust is revoked with regard to that asset.

Comment: In general, a trust is irrevocable unless the settlor has expressly reserved the power to revoke it. In California, Oklahoma and Texas this rule has been reversed by statute so that in those states a trust is revocable unless expressly made irrevocable. A power to revoke includes all lesser powers of modification and alteration but such powers should be specifi-

cally included anyway.

Payment of Estate Taxes

The beneficiaries are responsible, proportionately, for any estate taxes due upon death.

Simultaneous Death

Many states have adopted the Uniform Simultaneous Death Act, but many others have not. Your trust instrument specifies that, in the event of a common disaster involving you and a beneficiary, the beneficiary is presumed to have predeceased the settlor. In that case, the trust is terminated, and the trust property reverts to your estate.

Rule Against Perpetuities Savings Clause

Under the rule against perpetuities, in effect in almost every state, a trust interest will fail unless it vests within twenty one years after the end of a life in being at the time the trust is created. If an interest will not vest within twenty one years of the death of the settlor, that interest is invalid.

An example of such an interest would be a life estate to the settlor's child, with a remainder to the first grandchild to attain 25 years of age, assuming that the settlor had no grandchildren at the effective date of the trust. The settlor's child could die at the birth of the grandchild, leaving a period in excess of twenty one years between the death of the life in being and the vesting of the grandchild's interest. To prevent the trust interests from being eliminated by the rule against perpetuities, the instrument usually contains a savings clause providing that it will terminate within the period of the rule, as currently in effect or later amended.

Powers of Trustee

The trustee should be given broad fiduciary powers to allow him to carry out your objectives. The powers described in the trust instrument are in addition to the powers under any applicable state law. Your trustee is given maximum flexibility to retain trust property, sell it and reinvest the proceeds, consent to corporate adjustments, manage real estate, allocate receipts and disbursements to income or principal, lend and borrow, settle claims, exercise stock options, distribute property in kind, file tax returns, and generally exercise all powers appropriate to a trustee.

Trustee Conditions and Designation

The trust should also designate a successor trustee (often known as “back-up trustee,”) if the beneficiary would be under twenty one years of age, or if the settlor is incapacitated and cannot function.

In this clause, you also waive the requirement of the trustee’s bond and the trustee’s annual accountings. Accountings can be required by the beneficiaries or the courts in cases of fraud, improprieties by the trustee, or upon termination of the trust.

Comment: Although your trust declaration automatically provides for the appointment of the beneficiary under the trust as successor trustee, you should consider appointing an alternate successor trustee in the event such beneficiary may not have attained the age of majority or is otherwise incompetent. If the trust instrument does not provide for a procedure for the appointment of a successor trustee, a probate court will be called upon to fill the vacancy. Court appointment of a successor trustee requires time and expense and brings the trust under the jurisdiction of court. By appointing the alternate successor trustee in your trust instrument, you’ll avoid just such an eventuality.

It is possible to give the designated trustee the power to name successor trustee - and hope that he will exercise such power. Naming a corporate trustee generally eliminates the requirement for a successor trustee. However, corporate fiduciaries have many inherent disadvantages and may be impossible to obtain if your estate is small.

Spendthrift Clause

The trust instrument provides that the beneficiary cannot pledge or assign the anticipated interest for the benefit of his or her creditors. These provisions are designed to protect the beneficiary from his or her own weakness or financial inabilities.

It should be noted that not all states recognize the validity of a spendthrift clause against the claims of creditors, especially if the transfer was in fraud of creditors. However, it’s considered a good practice to include such clauses in all trusts as a matter of course.

Governing Law

If you want your trust to be interpreted under the laws of a state other than the state of residence or domicile, you must state that preference in the trust instrument.

Signature and Notarization

At the end of the trust instrument, space is provided for the signature of the settlor and trustee along with a notarization. While it's not legally required that the trust instrument be notarized, it is a common practice and will help establish the validity of the signatures should they ever be called into question.

Setting Up Your Living Trust

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Now that we know why we should avoid probate, let's get down to the business of avoiding it by setting up a living trust. This Kit contains forms to fit many different situations and desires. The form you select will depend on whether you're married or single, whether you own the property separately or jointly with your spouse, and your choice of beneficiaries. Use the table on the next page as your guide to selecting the appropriate form.

Selecting the Form

<u>Form No.</u>	<u>Marital Status</u>	<u>Property Owned</u>	<u>Beneficiary Designation</u>
M-1	Married	Jointly	One beneficiary (e.g., you son or daughter, or a relative)
M-2	Married	Jointly	One primary beneficiary with contingent beneficiaries to share equally (e.g., child, primary beneficiary, your parents, contingent beneficiaries)
M-3	Married	Jointly	Several beneficiaries (e.g., children) to share equally
M-4	Married	Separately	One beneficiary (e.g., husband or wife, or a child from a previous marriage)
M-5	Married	Separately	One primary beneficiary with contingent beneficiaries to share equally (e.g., wife, primary beneficiary with children as contingent beneficiaries)
M-6	Married	Separately	Several beneficiaries (e.g., children) to share equally
M-7	Unmarried	Separately	One beneficiary (e.g., your son or daughter, or a relative)
M-8	Unmarried	Separately	One primary beneficiary with contingent beneficiaries to share equally (e.g., minor child, primary beneficiary with a relative as a contingent beneficiary)
M-9	Unmarried	Separately	Several beneficiaries (e.g., children) to share equally

Example: You're married with one minor child and you own property jointly with your wife. Select Form M-2 naming your child as the primary beneficiary and your parents or a relative as the contingent beneficiaries.

Example: You're married and own some separate property. You want it to go to your wife upon your death, and if she does not survive you, you want your children to share it equally. Select Form M-5.

Example: You're unmarried and want your minor child to be the primary beneficiary of your trust. But since he's a minor, you want to name someone else as a contingent beneficiary. Select Form M-8.

Forms M-1, M-2 and M-3 are for married couples where husband and wife serve as joint trustees. Upon the death of one spouse, the other spouse continues to act as trustee for the beneficiaries. Upon the death of the surviving spouse, the trust assets are distributed to the children or other designated beneficiaries.

You may decide to use more than one of these forms to adequately dispose of your estate, naming various beneficiaries to receive different assets. For example, you can set up a trust for the benefit of your children from a previous marriage and simultaneously set up a joint trust with your spouse for the benefit of children from the current marriage. Be sure to obtain your spouse's consent on the separate trust.

You've a fair amount of flexibility in selecting your plan of distribution. Now follow the simple instructions below to complete the declaration of trust and the schedule of assets that fund the trust.

Instructions to Prepare the Trust Instrument

- Step 1:** Select the appropriate declaration of trust form as explained above.
- Step 2:** Type your name (along with your spouse's name, if you're joint settlors) and your current address.
- Step 3:** Type the name(s) and address(es) of beneficiary(ies). If you're naming several beneficiaries to share equally, you must check and initial either "or the survivor of them," or "per stirpes." Under the former, if one of the beneficiaries is dead, the surviving beneficiaries will share the trust equally. If you checked the latter, the dead person's children will inherit in equal parts the share that would have gone to their parent.
- Step 4:** All the forms automatically stipulate that whoever is named the beneficiary at the time of the settlor's death will succeed him as trustee. However, if there's a possibility that any beneficiary will be a minor, you must provide for a guardian to act as successor trustee. This may be someone you trust to look after the interests of the minor. Enter his/her name and address.

Be sure to type the name of the state under whose laws you want the trust to be governed. In most cases, this will be the state where you are residing and own the bulk of property in.

Step 5: Execution of the revocable living trust document

(a) The actual execution of the declaration of trust document should take place in front of a notary public or any other authorized official. You should date the document and sign where indicated as settlor or trustee. If it is a one-settlor trust, only one person will sign; if it is a joint trust, both husband and wife should sign in the spaces indicated.

(b) The notary would then complete the acknowledgment process by filling in the spaces, signing the document, and affixing the notary stamp or seal. The notary may ask you to sign some kind of a register indicating that the notarization has in fact taken place.

(c) After the document has been notarized, be sure to make sufficient copies of the document and store them in a safe place for future use.

Caution: If you are preparing a “pour-over” will, the purpose of which is to have any residual assets to be poured over into the living trust, you must execute the trust document prior to executing the pour-over will. The reason for this is a legal technicality, called a rule of “independent significance.” The essence of this rule is that the documents, such as a will referring to a trust, can only refer to the trust if it is in fact in existence. It cannot be in existence unless it is executed prior to the execution of the will.

Comment: Neither acknowledgment (notarization) nor recordation of the trust instrument is necessary to the validity of the trust. Nevertheless, it is generally desirable to have the trust instrument acknowledged before a notary so as to eliminate any questions regarding the state of mind of the settlor and, further, to make it possible to record the instrument in the future, if the circumstances should ever require such action. You may also find that a notarized document is generally more acceptable to third parties, such as banks, title companies, etc.

Comment: It is preferable not to record trust instruments; recording will make the trust open to public inspection and destroy one of the major advantages of the living trust. Absence of knowledge of trust terms permits third parties to deal freely with a trustee without further inquiry about restrictions contained in the instrument. If title insurance companies, banks or other transfer agents should inquire about the sufficiency of the trustee’s powers, they can be supplied with duplicate originals or copies of the trust instrument verified to be correct by the trustee.

Instructions for Schedule A

1. The particular assets that you'll place in the trust are listed on Schedule A which is made a part of the declaration of trust. A sample Schedule A with various real and personal properties described in detail is shown here. Follow a similar plan. You must describe your trust assets with sufficient particularity so that later there'll be no questions as to what you intended to do.

2. You need to be extra careful with regard to the description of real property you place in the trust. The property must be identified not only with the street address, but also with its full legal description. You'll find this information on your grant or warranty deed, or in the title insurance policy that was issued to you when you bought the property. Copy the information exactly as it is.

3. When a trust is created by husband and wife jointly, it is important to designate on Schedule A the original character of the property transferred to the trust. The property may be the separate property of either husband or wife, joint property or community property. Under each property listed on Schedule A, you should indicate the character of the property, e.g., separate property of husband, or community property, etc., as the case may be. See the sample Schedule A for further illustration.

By listing the source of each property you would preserve the integrity of sole and separate property which was brought into the marriage by either spouse, and rights of either spouse to any property acquired during the marriage would be clearly defined and maintained. Since the character of property has not been changed, any rights of dower and curtesy would not be affected.

In community property states, the community character of the property should be clearly designated so as to retain the benefit of the stepped-up basis provisions of the Internal Revenue Code. By protecting the stepped-up basis, if one of the spouses dies, both halves of the community will receive a new basis which would be the fair market value as of the death of the decedent spouse. The surviving spouse could then possibly sell the asset at the new basis and avoid the capital gains taxes that would have been due had the stepped-up basis not been allowed. For detailed discussion on this matter, see the chapter on **Community Property, Dower and Curtesy Rights** in this manual.

4. As further affirmation of the settlors' intent to maintain the original character of the property being transferred to the trust, it is suggested that the following statement should be typed at the top of Schedule A. This would be applicable to those who are using Form M-1, M-2 or M-3 (i.e., a married couple setting up a joint trust.)

During the joint lives of the Settlers, any property transferred to this Trust shall retain its original character and, in the event of revocation, the Trustee shall distribute such property to the Settlers based on the same property rights they had prior to transfer to the trust.

Schedule A
Sample Trust Estate

1. Real Property

a. Single family dwelling located at 3077 Mariposa Circle, Santa Barbara, CA 93458, and more fully described as:

Lot 43, Tract 11037 of MARIPOSA GROVES ADDITION, as per map recorded in Book 373, Pages 101 to 106 inclusive of Map, in the Office of the County Recorder of Santa Barbara County, State of California.

Source: _____

b. Single family dwelling located at 13755 Farm Ranch Road, Buellton, CA 93488, and more fully described as:

BEGINNING at a point on the northerly line of Lower County Road, distant thereon 82 feet westerly from the westerly line of 41st Avenue; running thence westerly along said line of Lower County Road 25 feet; thence at a right angle northerly 100 feet; thence at a right angle easterly 25 feet; thence at a right angle southerly 100 feet to the point of beginning.

Being a portion of OUTSIDE LAND BLOCK NO. 243.

Source: _____

2. U.S. Treasury H Bonds

M85750814	M44458409	M12085343
M75903420	M56990284	M23874974
M98734745	M73666388	M77298363
M55384949	M74749373	M94746463

Source: _____

3. U.S. E Bonds

C 437-47-114
D 787-000-707
C 437781079E
C 8788212E

Source: _____

4. Motor Vehicle

1984 4-dr Buick Skylark
License Plate: CA 187DTP
Vehicle ID No. A8367147005

Source: _____

5. Bank Accounts

Savings Account #20-074377 at First Fidelity Bank, 100 S. Main Street, Santa Barbara, CA 93458.

Money Market Savings Account #20-44377 at First Fidelity Bank, 100 S. Main Street, Santa Barbara, CA 93458.

Source: _____

6. Brokerage Account (Securities and Mutual Funds)

Account No. 40-37436-337 maintained at Fidelity Brokerage Services, Inc., 4000 Santa Barbara Street, Santa Barbara, CA 93458.

Mutual Funds:

Strong Funds # 210-150-33000755

Strong Money Market Fund
Shares: 4900.00

Source: _____

Strong Opportunity Fund
Shares: 10,500.00

Source: _____

Fidelity Investments #14-038055
Fidelity Magellan Fund
Shares: 12,785

Source: _____

Fidelity Overseas Fund
Shares: 14,801

Source: _____

Fidelity Equity-Income Fund
Shares: 150

Source: _____

7. Safe Deposit Box

Box No. 421 located at First Fidelity Bank, 100 S. Main Street, Santa Barbara, CA 93458.

Source: _____

8. Personal Effects

All of my/our personal effects of whatever kind and nature kept at my/our residence at 3077 Mariposa Circle, Santa Barbara, CA 93458, including:

- a. My entire gun collection
- b. 2 pairs of Barcellona chairs
- c. Tiffany lamp hung in the study

Source: _____

END OF SCHEDULE A

(Settlor sign here)

(Type name here)

(Settlor sign here)

(Type name here)

* Source or the original character of each property should be identified on Schedule A. This could be the (a) separate property of husband /wife, (b) joint property, or (c) community property. Of course, an unmarried person preparing Schedule A would omit identifying the source.

On the next two pages are shown face pages for your prepared trust document. The first one is for a one-settlor trust, the other is for a two-settlor trust. You should fill out the relevant information so that it will be readily available to others. The face page should be attached to your trust document.

One-Settlor
Revocable Living Trust

Name of trust: _____

Date established: _____

Name of settlor: _____

Name of trustee: _____

Successor trustee: _____

Title of all assets in this trust is taken in the name of:

_____.

Trustee under the Declaration of Trust dated _____.

For trust business, always sign name as:

_____.

Trustee under the Declaration of Trust dated _____.

- **Settlor's assets may be transferred to or removed from this trust at any time.**
- **Keep trust transactions separate from your personal transactions.**
- **All income or loss resulting from trust transactions is reported on settlor's individual tax return.**

This Page Is Not a Part of the Trust

**Two-Settlor
Revocable Living Trust**

Name of trust: _____

Date established: _____

Name of settlors: _____

Name of trustees: _____

Successor trustee: _____

Title of all assets in this trust is taken in the name of:

_____,

Trustee under the Declaration of Trust dated _____.

For trust business, always sign name as:

_____,

Trustee under the Declaration of Trust dated _____.

- Settlor's assets may be transferred to or removed from this trust at any time.
- Keep trust transactions separate from your personal transactions.
- All income or loss resulting from trust transactions is reported on settlor's individual or joint tax return.

This Page Is Not a Part of the Trust

Declaration of Trust Forms

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- | | |
|------------------|--------------------------------------------------------------------------------------------|
| Form M-1: | Married, Joint Property, One Beneficiary |
| Form M-2: | Married, Joint Property, One Primary Beneficiary with Contingent Beneficiaries |
| Form M-3: | Married, Joint Property, Several Beneficiaries Sharing Equally |
| Form M-4: | Married, Separate Property, One Beneficiary |
| Form M-5: | Married, Separate Property, One Primary Beneficiary with Contingent Beneficiaries |
| Form M-6: | Married, Separate Property, Several Beneficiaries Sharing Equally |
| Form M-7: | Unmarried, Separate Property, One Beneficiary |
| Form M-8: | Unmarried, Separate Property, One Primary Beneficiary with Contingent Beneficiaries |
| Form M-9: | Unmarried, Separate Property, Several Beneficiaries to Share Equally |

11. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts obligations, liabilities or torts of any beneficiary.

12. If it shall be determined that any provision of the trust created herein violates any rule against perpetuities or remoteness of vesting now or hereafter in effect in a governing jurisdiction, that portion of the trust herein created shall be administered as herein provided until the termination of the maximum period allowed by law at which time and forthwith such part of the trust shall be distributed in fee simple to the beneficiaries then entitled to receive income therefrom, and for the purpose, it shall be presumed that any beneficiary entitled to receive support or education from the income or principal of any particular fund is entitled to receive the income therefrom.

13. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this trust, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

14. To the extent that any such requirements can legally be waived, no Trustee shall ever be required to give any bond as Trustee or qualify before, be appointed by, or in the absence of breach of trust, account to any court, or obtain the order or approval of any court in the exercise of any power or discretion herein given. No person paying money or delivering any property to any Trustee shall be required to see to its application.

15. In addition to any powers granted under applicable law or otherwise, and not in limitation of such powers, but subject to any rights and powers which may be reserved expressly by the Settlor(s) in this agreement, the Trustees of each trust established hereunder are authorized and empowered to exercise the following powers in their sole and absolute discretion:

a. To hold and retain any or all property, real, personal, or mixed, received from the Settlor, the Settlor's estate, or from any other source, regardless of any law or rule of court relating to diversification, or non-productivity, for such time as the Trustee shall deem best, and to dispose of such property by sale, exchange, or otherwise, as and when they shall deem advisable; notwithstanding this provision or any other contained herein, the Trustees shall stand without power to sell or otherwise dispose of any interest in a closely-held business unless they shall have consulted with all of the adult beneficiaries and the legal representatives of all the minor beneficiaries of this trust, and they shall have agreed to such sale or other disposition by an affirmative vote of a majority of such beneficiaries and representatives.

b. To sell, assign, exchange, transfer, partition and convey, or otherwise dispose of, any property, real, personal or mixed, which may be included in or may at any time become part of the trust estate, upon such terms and conditions as deemed advisable, at either public or private sale, including options and sales on credit and for the purpose of selling, assigning, exchanging, transferring, partitioning, or conveying the same, to make, execute, acknowledge, and deliver any and all instruments of conveyance, deeds of trust, and assignments in such form and with such warranties and covenants as they may deem expedient and proper; and in the event of any sale, conveyance or other disposition of any of the trust estate, the purchaser shall not be obligated in any way to see the application of the purchase money or other consideration passing in connection therewith.

c. To invest and reinvest or leave temporarily uninvested any or all of the funds of the trust estate as said Trustees in their sole discretion may deem best, including investments in stocks, common and preferred, and common trust fund, without being restricted to those investments expressly approved by statute for investment by fiduciaries, and to change investments from realty to personality, and vice versa.

d. To lease any or all of the real estate, which may be included in or at any time become a part of the trust estate, upon such terms and conditions deemed advisable, irrespective of whether the term of the lease shall exceed the period permitted by law or the probable period of any trust created hereby, and to review and modify such leases; and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments in such form and with such covenants and warranties as they may deem expedient and proper; and to make any repairs, replacements, and improvements, structural and otherwise, of any property, and to charge the expense thereof in an equitable manner to principal or income, as deemed proper.

e. To vote any stocks, bonds, or other securities held by the trust at any meetings of stockholders, bondholders, or other security holders and to delegate the power so to vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted, and to join in or become a party to any organization, readjustment, voting trust, consideration or exchange, and to deposit securities with any persons, and to pay any fees incurred in connection therewith, and to charge the same to principal or income, as deemed proper, and to exercise all of the rights with regard to such securities as could be done by the absolute owner.

f. To borrow money for any purpose in connection with the administration of any trust created hereby, and to execute promissory notes or other obligations for amounts so borrowed, and to secure the payment of any such amounts by mortgage or pledge or any real or personal property, and to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any trust created hereby, for such periods of time as deemed advisable.

g. To compromise, adjust, arbitrate, sue or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust estate as the Trustees shall deem best and their decision shall be conclusive. The Trustees, however, shall not be required to take any action until indemnified to their satisfaction.

h. To make distributions in cash or in kind, or partly in each, at valuations to be determined by the Trustees, whose decision as to values shall be conclusive.

i. To determine in a fair and reasonable manner whether any part of the trust estate, or any addition or increment thereto be income or principal, or whether any cost, charge, expense, tax, or assessment shall be charged against income or principal, or partially against income and partially against principal.

j. To engage and compensate, out of principal or income or both, as equitably determined, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, clerks, custodians, investment counsel, and other assistants and advisors, to delegate to such persons any discretion deemed proper, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative, provided he or she was selected and retained with reasonable care.

k. To apportion extraordinary stock and liquidating dividends between the income and principal in such manner as shall fairly take into account the relative interests of the beneficiaries and to determine what constitutes such dividends.

l. To hold and administer the trusts created hereby in one or more consolidated funds, in whole or in part, in which the separate trusts shall have undivided interests.

m. To rely upon any affidavit, certificate, letter, note, telegraph or other paper, or on any telephone conversation, believed by them to be sufficient and to be protected and held harmless in all payments or distributions required to be made hereunder, if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

n. To purchase securities, real estate, or other property from the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime under his/her last will in case his/her executors or Trustees are in need of cash, liquid assets, or income-producing assets with which to pay taxes, claims, or other estate or trust indebtedness, or in case such executors or Trustees are in need of such property to properly exercise and discharge their discretion with respect to distributions to beneficiaries as provided for under such bills, declarations, or agreements. Such purchase may be in cash or may be in exchange for other property of this trust, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

o. To make loans or advancements to the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime or under his/her last will in case such executors or Trustees are in need of cash for any reason. Such loans or advancements may be secured or unsecured, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

p. To do all other acts and things not inconsistent with the provisions of this instrument which they may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his or her own property.

16. The Trustees shall receive, hold, manage, invest and reinvest the trust estate and shall collect the rents, interest, dividends, and other income therefrom and, after deducting all proper charges and expenses, shall pay or apply to or for the use of the Settlor(s) during his/her/their life the net income therefrom and all or so much of the principal thereof as the Trustees shall in its sole and uncontrolled discretion determine, irrespective of any other source of income, support, maintenance or benefit of the Settlor(s), and no beneficiary named herein shall have any claim upon any such income distributed to the Settlor(s).

17. In the event one of us is physically or mentally incapacitated, or upon the death of one of us, the survivor shall continue as sole Trustee. In the event of physical or mental incapacity or death of the survivor, or if we both shall die in a common disaster, we hereby nominate and appoint as Successor Trustee hereunder whosoever shall at that time be beneficiary hereunder, unless such beneficiary shall not have attained the age of twenty-one (21) years, or is otherwise deemed legally incapacitated, in which case we hereby nominate and appoint

_____, of
Name

Address City State

to be Successor Trustee. Every Successor Trustee shall have all the title, powers, and discretion herein given the Trustee, without any act of conveyance or transfer.

18. After the Settlor's death, or the death of the surviving Settlor, the Successor Trustee may, in its discretion, make loans with or without security, to the executor or administrator of the Settlor's estate, purchase from such executor or administrator, at such value as may be determined by the Trustee, any property constituting part or all of the Settlor's estate and retain all or any part of such property regardless of risk, unproductivity or lack of diversification.

19. This Declaration of Trust shall extend to and be binding upon the heirs, executors, administrators and assigns of the undersigned and upon the Successor Trustees.

20. This Declaration of Trust shall be governed and construed at all times according to the laws of the State of _____.

Spouse's Consent

21. I, _____, the
Spouse of Settlor

spouse of the Settlor, have read the provisions of the foregoing instrument. I hereby waive all community property, dower or curtesy rights I may have in the said trust estate and give my consent to the provisions of the trust.

Signature of Spouse

9. We reserve unto ourselves the power to designate a new beneficiary should the beneficiaries designated hereunder predecease us. Should we for any reason fail to designate such new beneficiary, this trust shall terminate upon the death of the survivor of us and the trust estate shall revert to the estate of the survivor.

10. The Settlers reserve and shall have the exclusive right at any time and from time to time during their lifetime to amend or revoke in whole or in part the trust created hereunder without the consent of any beneficiary and without giving notice to any beneficiary hereunder. The sale, withdrawal, liquidation, or disposal in any manner by the Settlers of the whole or in any part of the property held in trust hereunder shall constitute as to such whole or part a revocation of this trust.

11. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts obligations, liabilities or torts of any beneficiary.

12. If it shall be determined that any provision of the trust created herein violates any rule against perpetuities or remoteness of vesting now or hereafter in effect in a governing jurisdiction, that portion of the trust herein created shall be administered as herein provided until the termination of the maximum period allowed by law at which time and forthwith such part of the trust shall be distributed in fee simple to the beneficiaries then entitled to receive income therefrom, and for the purpose, it shall be presumed that any beneficiary entitled to receive support or education from the income or principal of any particular fund is entitled to receive the income therefrom.

13. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this trust, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

14. To the extent that any such requirements can legally be waived, no Trustee shall ever be required to give any bond as Trustee or qualify before, be appointed by, or in the absence of breach of trust, account to any court, or obtain the order or approval of any court in the exercise of any power or discretion herein given. No person paying money or delivering any property to any Trustee shall be required to see to its application.

15. In addition to any powers granted under applicable law or otherwise, and not in limitation of such powers, but subject to any rights and powers which may be reserved expressly by the Settlor(s) in this agreement, the Trustees of each trust established hereunder are authorized and empowered to exercise the following powers in their sole and absolute discretion:

a. To hold and retain any or all property, real, personal, or mixed, received from the Settlor, the Settlor's estate, or from any other source, regardless of any law or rule of court relating to diversification, or non-productivity, for such time as the Trustee shall deem best, and to dispose of such property by sale, exchange, or otherwise, as and when they shall deem advisable; notwithstanding this provision or any other contained herein, the Trustees shall stand without power to sell or otherwise dispose of any interest in a closely-held business unless they shall have consulted with all of the adult beneficiaries and the legal representatives of all the minor beneficiaries of this trust, and they shall have agreed to such sale or other disposition by an affirmative vote of a majority of such beneficiaries and representatives.

b. To sell, assign, exchange, transfer, partition and convey, or otherwise dispose of, any property, real, personal or mixed, which may be included in or may at any time become part of the trust estate, upon such terms and conditions as deemed advisable, at either public or private sale, including options and sales on credit and for the purpose of selling, assigning, exchanging, transferring, partitioning, or conveying the same, to make, execute, acknowledge, and deliver any and all instruments of conveyance, deeds of trust, and assignments in such form and with such warranties and covenants as they may deem expedient and proper; and in the event of any sale, conveyance or other disposition of any of the trust estate, the purchaser shall not be obligated in any way to see the application of the purchase money or other consideration passing in connection therewith.

c. To invest and reinvest or leave temporarily uninvested any or all of the funds of the trust estate as said Trustees in their sole discretion may deem best, including investments in stocks, common and preferred, and common trust fund, without being restricted to those investments expressly approved by statute for investment by fiduciaries, and to change investments from realty to personality, and vice versa.

d. To lease any or all of the real estate, which may be included in or at any time become a part of the trust estate, upon such terms and conditions deemed advisable, irrespective of whether the term of the lease shall exceed the period permitted by law or the probable period of any trust created hereby, and to review and modify such leases; and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments in such form and with such covenants and warranties as they may deem expedient and proper; and to make any repairs, replacements, and improvements, structural and otherwise, of any property, and to charge the expense thereof in an equitable manner to principal or income, as deemed proper.

e. To vote any stocks, bonds, or other securities held by the trust at any meetings of stockholders, bondholders, or other security holders and to delegate the power so to vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted, and to join in or become a party to any organization, readjustment, voting trust, consideration or exchange, and to deposit securities with any persons, and to pay any fees incurred in connection therewith, and to charge the same to principal or income, as deemed proper, and to exercise all of the rights with regard to such securities as could be done by the absolute owner.

f. To borrow money for any purpose in connection with the administration of any trust created hereby, and to execute promissory notes or other obligations for amounts so borrowed, and to secure the payment of any such amounts by mortgage or pledge or any real or personal property, and to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any trust created hereby, for such periods of time as deemed advisable.

g. To compromise, adjust, arbitrate, sue or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust estate as the Trustees shall deem best and their decision shall be conclusive. The Trustees, however, shall not be required to take any action until indemnified to their satisfaction.

h. To make distributions in cash or in kind, or partly in each, at valuations to be determined by the Trustees, whose decision as to values shall be conclusive.

i. To determine in a fair and reasonable manner whether any part of the trust estate, or any addition or increment thereto be income or principal, or whether any cost, charge, expense, tax, or assessment shall be charged against income or principal, or partially against income and partially against principal.

j. To engage and compensate, out of principal or income or both, as equitably determined, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, clerks, custodians, investment counsel, and other assistants and advisors, to delegate to such persons any discretion deemed proper, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative, provided he or she was selected and retained with reasonable care.

k. To apportion extraordinary stock and liquidating dividends between the income and principal in such manner as shall fairly take into account the relative interests of the beneficiaries and to determine what constitutes such dividends.

l. To hold and administer the trusts created hereby in one or more consolidated funds, in whole or in part, in which the separate trusts shall have undivided interests.

m. To rely upon any affidavit, certificate, letter, note, telegraph or other paper, or on any telephone conversation, believed by them to be sufficient and to be protected and held harmless in all payments or distributions required to be made hereunder, if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

n. To purchase securities, real estate, or other property from the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime under his/her last will in case his/her executors or Trustees are in need of cash, liquid assets, or income-producing assets with which to pay taxes, claims, or other estate or trust indebtedness, or in case such executors or Trustees are in need of such property to properly exercise and discharge their discretion with respect to distributions to beneficiaries as provided for under such bills, declarations, or agreements. Such purchase may be in cash or may be in exchange for other property of this trust, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

o. To make loans or advancements to the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime or under his/her last will in case such executors or Trustees are in need of cash for any reason. Such loans or advancements may be secured or unsecured, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

p. To do all other acts and things not inconsistent with the provisions of this instrument which they may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his or her own property.

16. The Trustees shall receive, hold, manage, invest and reinvest the trust estate and shall collect the rents, interest, dividends, and other income therefrom and, after deducting all proper charges and expenses, shall pay or apply to or for the use of the Settlor(s) during his/her/their life the net income therefrom and all or so much of the principal thereof as the Trustees shall in its sole and uncontrolled discretion determine, irrespective of any other source of income, support, maintenance or benefit of the Settlor(s), and no beneficiary named herein shall have any claim upon any such income distributed to the Settlor(s).

17. In the event one of us is physically or mentally incapacitated, or upon the death of one of us, the survivor shall continue as sole Trustee. In the event of physical or mental incapacity or death of the survivor, or if we both shall die in a common disaster, we hereby nominate and appoint as Successor Trustee hereunder whosoever shall at that time be beneficiary hereunder, unless such beneficiary shall not have attained the age of twenty-one (21) years, or is otherwise deemed legally incapacitated, in which case we hereby nominate and appoint

_____ of
Name

Address City State

to be Successor Trustee. Every Successor Trustee shall have all the title, powers, and discretion herein given the Trustee, without any act of conveyance or transfer.

18. After the Settlor's death, or the death of the surviving Settlor, the Successor Trustee may, in its discretion, make loans with or without security, to the executor or administrator of the Settlor's estate, purchase from such executor or administrator, at such value as may be determined by the Trustee, any property constituting part or all of the Settlor's estate and retain all or any part of such property regardless of risk, unproductivity or lack of diversification.

19. This Declaration of Trust shall extend to and be binding upon the heirs, executors, administrators and assigns of the undersigned and upon the Successor Trustees.

20. This Declaration of Trust shall be governed and construed at all times according to the laws of the State of _____.

Spouse's Consent

21. I, _____, the
Spouse of Settlor

spouse of the Settlor, have read the provisions of the foregoing instrument. I hereby waive all community property, dower or curtesy rights I may have in the said trust estate and give my consent to the provisions of the trust.

Signature of Spouse

22. We certify that we have read the foregoing Declaration of Trust and that it correctly states the terms and conditions under which the trust estate is to be held, managed, and disposed of by the Trustees. We approve the Declaration of Trust in all particulars and request that the Trustees execute it.

Dated: _____ *(Sign here)* _____
(Type name here) _____, *Settlor/Trustee*

_____ *(Sign here)* _____
(Type name here) _____, *Settlor/Trustee*

STATE OF _____

COUNTY OF _____

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in said State and County by

_____, and
_____, Settlers, party hereto and
was executed and acknowledged by said Settlers to be their free act and voluntary deed.

WITNESS my signature this _____ day of _____, 19_____.

(Notary Seal)

Notary Public

8. If any beneficiary and the Settlor(s) should die simultaneously or under such circumstances as would render it doubtful whether the beneficiary or the Settlor(s) died first, then it shall be conclusively presumed for the purposes of this trust that said beneficiary predeceased the Settlor(s).

9. We reserve unto ourselves the power to designate a new beneficiary should the beneficiaries designated hereunder predecease us. Should we for any reason fail to designate such new beneficiary, this trust shall terminate upon the death of the survivor of us and the trust estate shall revert to the estate of the survivor.

10. The Settlers reserve and shall have the exclusive right at any time and from time to time during their lifetime to amend or revoke in whole or in part the trust created hereunder without the consent of any beneficiary and without giving notice to any beneficiary hereunder. The sale, withdrawal, liquidation, or disposal in any manner by the Settlers of the whole or in any part of the property held in trust hereunder shall constitute as to such whole or part a revocation of this trust.

11. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts obligations, liabilities or torts of any beneficiary.

12. If it shall be determined that any provision of the trust created herein violates any rule against perpetuities or remoteness of vesting now or hereafter in effect in a governing jurisdiction, that portion of the trust herein created shall be administered as herein provided until the termination of the maximum period allowed by law at which time and forthwith such part of the trust shall be distributed in fee simple to the beneficiaries then entitled to receive income therefrom, and for the purpose, it shall be presumed that any beneficiary entitled to receive support or education from the income or principal of any particular fund is entitled to receive the income therefrom.

13. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this trust, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

14. To the extent that any such requirements can legally be waived, no Trustee shall ever be required to give any bond as Trustee or qualify before, be appointed by, or in the absence of breach of trust, account to any court, or obtain the order or approval of any court in the exercise of any power or discretion herein given. No person paying money or delivering any property to any Trustee shall be required to see to its application.

15. In addition to any powers granted under applicable law or otherwise, and not in limitation of such powers, but subject to any rights and powers which may be reserved expressly by the Settlor(s) in this agreement, the Trustees of each trust established hereunder are authorized and empowered to exercise the following powers in their sole and absolute discretion:

a. To hold and retain any or all property, real, personal, or mixed, received from the Settlor, the Settlor's estate, or from any other source, regardless of any law or rule of court relating to diversification, or non-productivity, for such time as the Trustee shall deem best, and to dispose of such property by sale, exchange, or otherwise, as and when they shall deem advisable; notwithstanding this provision or any other contained herein, the Trustees shall stand without power to sell or otherwise dispose of any interest in a closely-held business unless they shall have consulted with all of the adult beneficiaries and the legal representatives of all the minor beneficiaries of this trust, and they shall have agreed to such sale or other disposition by an affirmative vote of a majority of such beneficiaries and representatives.

b. To sell, assign, exchange, transfer, partition and convey, or otherwise dispose of, any property, real, personal or mixed, which may be included in or may at any time become part of the trust estate, upon such terms and conditions as deemed advisable, at either public or private sale, including options and sales on credit and for the purpose of selling, assigning, exchanging, transferring, partitioning, or conveying the same, to make, execute, acknowledge, and deliver any and all instruments of conveyance, deeds of trust, and assignments in such form and with such warranties and covenants as they may deem expedient and proper; and in the event of any sale, conveyance or other disposition of any of the trust estate, the purchaser shall not be obligated in any way to see the application of the purchase money or other consideration passing in connection therewith.

c. To invest and reinvest or leave temporarily uninvested any or all of the funds of the trust estate as said Trustees in their sole discretion may deem best, including investments in stocks, common and preferred, and common trust fund, without being restricted to those investments expressly approved by statute for investment by fiduciaries, and to change investments from realty to personalty, and vice versa.

d. To lease any or all of the real estate, which may be included in or at any time become a part of the trust estate, upon such terms and conditions deemed advisable, irrespective of whether the term of the lease shall exceed the period permitted by law or the probable period of any trust created hereby, and to review and modify such leases; and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments in such form and with such covenants and warranties as they may deem expedient and proper; and to make any repairs, replacements, and improvements, structural and otherwise, of any property, and to charge the expense thereof in an equitable manner to principal or income, as deemed proper.

e. To vote any stocks, bonds, or other securities held by the trust at any meetings of stockholders, bondholders, or other security holders and to delegate the power so to vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted, and to join in or become a party to any organization, readjustment, voting trust, consideration or exchange, and to deposit securities with any persons, and to pay any fees incurred in connection therewith, and to charge the same to principal or income, as deemed proper, and to exercise all of the rights with regard to such securities as could be done by the absolute owner.

f. To borrow money for any purpose in connection with the administration of any trust created hereby, and to execute promissory notes or other obligations for amounts so borrowed, and to secure the payment of any such amounts by mortgage or pledge or any real or personal property, and to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any trust created hereby, for such periods of time as deemed advisable.

g. To compromise, adjust, arbitrate, sue or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust estate as the Trustees shall deem best and their decision shall be conclusive. The Trustees, however, shall not be required to take any action until indemnified to their satisfaction.

h. To make distributions in cash or in kind, or partly in each, at valuations to be determined by the Trustees, whose decision as to values shall be conclusive.

i. To determine in a fair and reasonable manner whether any part of the trust estate, or any addition or increment thereto be income or principal, or whether any cost, charge, expense, tax, or assessment shall be charged against income or principal, or partially against income and partially against principal.

j. To engage and compensate, out of principal or income or both, as equitably determined, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, clerks, custodians, investment counsel, and other assistants and advisors, to delegate to such persons any discretion deemed proper, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative, provided he or she was selected and retained with reasonable care.

k. To apportion extraordinary stock and liquidating dividends between the income and principal in such manner as shall fairly take into account the relative interests of the beneficiaries and to determine what constitutes such dividends.

l. To hold and administer the trusts created hereby in one or more consolidated funds, in whole or in part, in which the separate trusts shall have undivided interests.

m. To rely upon any affidavit, certificate, letter, note, telegraph or other paper, or on any telephone conversation, believed by them to be sufficient and to be protected and held harmless in all payments or distributions required to be made hereunder, if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

n. To purchase securities, real estate, or other property from the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime under his/her last will in case his/her executors or Trustees are in need of cash, liquid assets, or income-producing assets with which to pay taxes, claims, or other estate or trust indebtedness, or in case such executors or Trustees are in need of such property to properly exercise and discharge their discretion with respect to distributions to beneficiaries as provided for under such bills, declarations, or agreements. Such purchase may be in cash or may be in exchange for other property of this trust, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

o. To make loans or advancements to the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime or under his/her last will in case such executors or Trustees are in need of cash for any reason. Such loans or advancements may be secured or unsecured, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

p. To do all other acts and things not inconsistent with the provisions of this instrument which they may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his or her own property.

16. The Trustees shall receive, hold, manage, invest and reinvest the trust estate and shall collect the rents, interest, dividends, and other income therefrom and, after deducting all proper charges and expenses, shall pay or apply to or for the use of the Settlor(s) during his/her/their life the net income therefrom and all or so much of the principal thereof as the Trustees shall in its sole and uncontrolled discretion determine, irrespective of any other source of income, support, maintenance or benefit of the Settlor(s), and no beneficiary named herein shall have any claim upon any such income distributed to the Settlor(s).

17. In the event one of us is physically or mentally incapacitated, or upon the death of one of us, the survivor shall continue as sole Trustee. In the event of physical or mental incapacity or death of the survivor, or if we both shall die in a common disaster, we hereby nominate and appoint as Successor Trustee the individual beneficiaries in the successive order listed above, unless none of the beneficiaries shall have attained the age of twenty-one (21) years or is otherwise deemed legally capable, in which event we hereby nominate and appoint

_____, of
Name

Address City State

to be Successor Trustee. Every Successor Trustee shall have all the title, powers, and discretion herein given the Trustee, without any act of conveyance or transfer.

18. After the Settlor's death, or the death of the surviving Settlor, the Successor Trustee may, in its discretion, make loans with or without security, to the executor or administrator of the Settlor's estate, purchase from such executor or administrator, at such value as may be determined by the Trustee, any property constituting part or all of the Settlor's estate and retain all or any part of such property regardless of risk, unproductivity or lack of diversification.

19. This Declaration of Trust shall extend to and be binding upon the heirs, executors, administrators and assigns of the undersigned and upon the Successor Trustees.

20. This Declaration of Trust shall be governed and construed at all times according to the laws of the State of

Spouse's Consent

21. I, _____, the
Spouse of Settlor

spouse of the Settlor, have read the provisions of the foregoing instrument. I hereby waive all community property, dower or curtesy rights I may have in the said trust estate and give my consent to the provisions of the trust.

Signature of Spouse

22. We certify that we have read the foregoing Declaration of Trust and that it correctly states the terms and conditions under which the trust estate is to be held, managed, and disposed of by the Trustees. We approve the Declaration of Trust in all particulars and request that the Trustees execute it.

Dated: _____ *(Sign here)* _____
(Type name here) _____, *Settlor/Trustee*

_____ *(Sign here)* _____
(Type name here) _____, *Settlor/Trustee*

STATE OF _____

COUNTY OF _____

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in said State and County by

_____, and

_____, Settlers, party hereto and was executed and acknowledged by said Settlers to be their free act and voluntary deed.

WITNESS my signature this _____ day of _____, 19_____.

(Notary Seal)

Notary Public

Declaration of Trust

1. WHEREAS, I, _____
Name

of _____
Address City

County of _____, State of _____

referred to hereinafter as Settlor and/or Trustee, declare that I am the owner of certain property referred to in this instrument as the trust estate and more fully set forth in Schedule A attached hereto and made a part hereof;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I do hereby acknowledge and declare that I have set aside and hold said trust estate and all my right, title and interest in and to said trust estate IN TRUST

For the use and benefit of:

_____ of
Name of Beneficiary

_____ of
Address City State

2. If, at any time, as certified in writing by two licensed physicians not related by blood or marriage to either Settlor or any beneficiary of this trust, I have become physically or mentally incapacitated, the Successor Trustee named hereinafter shall assume active administration of this trust during my lifetime; such Successor Trustee shall pay to me or disburse on my behalf such amounts of income or principal as necessary for my proper health, support and maintenance.

3. Upon my death, unless all the beneficiaries shall predecease me or unless we all shall die as a result of common accident or disaster, my Successor Trustee is hereby directed forthwith to transfer the said trust estate and all right, title and interest in and to said trust estate unto the beneficiary(ies) named herein absolutely and thereby terminate this trust.

4. Anything herein contained to the contrary notwithstanding, if at the termination of the trust established, all or any portion of the principal of the trust shall vest in absolute ownership of any beneficiary under the age of twenty-one (21), the Successor Trustee is authorized and empowered in his/her discretion to hold the property so vested in such a beneficiary in a separate fund for the benefit of such beneficiary and to invest and reinvest the same, collect the income therefrom and, until such beneficiary shall attain the age of twenty-one (21) years, to apply all or so much of the net income, accumulated net income, or principal for the health, support, maintenance, and education of said beneficiary as the Successor Trustee shall deem necessary. The Successor Trustee is hereby authorized to make any such payments of income, accumulated income, or principal to a parent, guardian, or person with whom such beneficiary resides without obligation by the Successor Trustee to look to the proper application or use of any payments so made, or the Successor Trustee may expend such sums of income or principal in such manner in his/her discretion as he/she believes will benefit such beneficiary and may also pay to the beneficiary directly such sums as the Successor Trustee approves as an allowance. The Successor Trustee shall accumulate the balance of said income, if any, until such beneficiary shall attain the age of twenty-one (21), after which time the income and principal shall be paid over to said beneficiary at his or her own discretion until he or she shall terminate the trust. If such beneficiary shall die before attaining the age of twenty-one (21) years, then the principal, together with any accumulated and unexpected income, shall be paid to such person or persons as he or she may appoint by his or her last will and testament, and if he or she fails effectively to make an appointment, then over to his or her estate. The authority conferred upon the Successor Trustee shall be construed as a power only and shall not operate to suspend or prevent absolute vesting of any property in such beneficiary.

5. Each beneficiary hereunder shall be liable for his/her proportionate share of any taxes levied upon the Settlor's total taxable estate upon the death of the Settlor or the death of the survivor of two joint Settlers.

6. The Settlor reserves to himself/herself and for any other person the right to deposit with Trustee or make payable to the Trustee other policies of insurance and also to assign, transfer, convey, devise, bequeath, and deliver to the Trustee such other personal and real property to be held, administered, and disposed of as hereafter set forth in this instrument.

7. Upon the death of any beneficiary, any income then accrued or undistributed shall be held and accounted for, or distributed, in the same manner as if it had been income accrued and received after such beneficiary's death.

8. If any beneficiary and the Settlor(s) should die simultaneously or under such circumstances as would render it doubtful whether the beneficiary or the Settlor(s) died first, then it shall be conclusively presumed for the purposes of this trust that said beneficiary predeceased the Settlor(s).

9. I reserve unto myself the power to designate a new beneficiary should the beneficiaries designated hereunder predecease me. Should I for any reason fail to designate such new beneficiary, this trust shall terminate upon my death and the trust estate shall revert to my estate.

10. The Settlor reserves and shall have the exclusive right at any time and from time to time during his/her lifetime to amend or revoke in whole or in part the trust created hereunder without the consent of any beneficiary and without giving notice to any beneficiary hereunder. The sale, withdrawal, liquidation, or disposal in any manner by the Settlor of the whole or in any part of the property held in trust hereunder shall constitute as to such whole or part a revocation of this trust.

11. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts obligations, liabilities or torts of any beneficiary.

12. If it shall be determined that any provision of the trust created herein violates any rule against perpetuities or remoteness of vesting now or hereafter in effect in a governing jurisdiction, that portion of the trust herein created shall be administered as herein provided until the termination of the maximum period allowed by law at which time and forthwith such part of the trust shall be distributed in fee simple to the beneficiaries then entitled to receive income therefrom, and for the purpose, it shall be presumed that any beneficiary entitled to receive support or education from the income or principal of any particular fund is entitled to receive the income therefrom.

13. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this trust, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

14. To the extent that any such requirements can legally be waived, no Trustee shall ever be required to give any bond as Trustee or qualify before, be appointed by, or in the absence of breach of trust, account to any court, or obtain the order or approval of any court in the exercise of any power or discretion herein given. No person paying money or delivering any property to any Trustee shall be required to see to its application.

15. In addition to any powers granted under applicable law or otherwise, and not in limitation of such powers, but subject to any rights and powers which may be reserved expressly by the Settlor(s) in this agreement, the Trustees of each trust established hereunder are authorized and empowered to exercise the following powers in their sole and absolute discretion:

a. To hold and retain any or all property, real, personal, or mixed, received from the Settlor, the Settlor's estate, or from any other source, regardless of any law or rule of court relating to diversification, or non-productivity, for such time as the Trustee shall deem best, and to dispose of such property by sale, exchange, or otherwise, as and when they shall deem advisable; notwithstanding this provision or any other contained herein, the Trustees shall stand without power to sell or otherwise dispose of any interest in a closely-held business unless they shall have consulted with all of the adult beneficiaries and the legal representatives of all the minor beneficiaries of this trust, and they shall have agreed to such sale or other disposition by an affirmative vote of a majority of such beneficiaries and representatives.

b. To sell, assign, exchange, transfer, partition and convey, or otherwise dispose of, any property, real, personal or mixed, which may be included in or may at any time become part of the trust estate, upon such terms and conditions as deemed advisable, at either public or private sale, including options and sales on credit and for the purpose of selling, assigning, exchanging, transferring, partitioning, or conveying the same, to make, execute, acknowledge, and deliver any and all instruments of conveyance, deeds of trust, and assignments in such form and with such warranties and covenants as they may deem expedient and proper; and in the event of any sale, conveyance or other disposition of any of the trust estate, the purchaser shall not be obligated in any way to see the application of the purchase money or other consideration passing in connection therewith.

c. To invest and reinvest or leave temporarily uninvested any or all of the funds of the trust estate as said Trustees in their sole discretion may deem best, including investments in stocks, common and preferred, and common trust fund, without being restricted to those investments expressly approved by statute for investment by fiduciaries, and to change investments from realty to personality, and vice versa.

d. To lease any or all of the real estate, which may be included in or at any time become a part of the trust estate, upon such terms and conditions deemed advisable, irrespective of whether the term of the lease shall exceed the period permitted by law or the probable period of any trust created hereby, and to review and modify such leases; and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments in such form and with such covenants and warranties as they may deem expedient and proper; and to make any repairs, replacements, and improvements, structural and otherwise, of any property, and to charge the expense thereof in an equitable manner to principal or income, as deemed proper.

e. To vote any stocks, bonds, or other securities held by the trust at any meetings of stockholders, bondholders, or other security holders and to delegate the power so to vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted, and to join in or become a party to any organization, readjustment, voting trust, consideration or exchange, and to deposit securities with any persons, and to pay any fees incurred in connection therewith, and to charge the same to principal or income, as deemed proper, and to exercise all of the rights with regard to such securities as could be done by the absolute owner.

f. To borrow money for any purpose in connection with the administration of any trust created hereby, and to execute promissory notes or other obligations for amounts so borrowed, and to secure the payment of any such amounts by mortgage or pledge or any real or personal property, and to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any trust created hereby, for such periods of time as deemed advisable.

g. To compromise, adjust, arbitrate, sue or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust estate as the Trustees shall deem best and their decision shall be conclusive. The Trustees, however, shall not be required to take any action until indemnified to their satisfaction.

h. To make distributions in cash or in kind, or partly in each, at valuations to be determined by the Trustees, whose decision as to values shall be conclusive.

i. To determine in a fair and reasonable manner whether any part of the trust estate, or any addition or increment thereto be income or principal, or whether any cost, charge, expense, tax, or assessment shall be charged against income or principal, or partially against income and partially against principal.

j. To engage and compensate, out of principal or income or both, as equitably determined, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, clerks, custodians, investment counsel, and other assistants and advisors, to delegate to such persons any discretion deemed proper, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative, provided he or she was selected and retained with reasonable care.

k. To apportion extraordinary stock and liquidating dividends between the income and principal in such manner as shall fairly take into account the relative interests of the beneficiaries and to determine what constitutes such dividends.

l. To hold and administer the trusts created hereby in one or more consolidated funds, in whole or in part, in which the separate trusts shall have undivided interests.

m. To rely upon any affidavit, certificate, letter, note, telegraph or other paper, or on any telephone conversation, believed by them to be sufficient and to be protected and held harmless in all payments or distributions required to be made hereunder, if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

n. To purchase securities, real estate, or other property from the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime under his/her last will in case his/her executors or Trustees are in need of cash, liquid assets, or income-producing assets with which to pay taxes, claims, or other estate or trust indebtedness, or in case such executors or Trustees are in need of such property to properly exercise and discharge their discretion with respect to distributions to beneficiaries as provided for under such bills, declarations, or agreements. Such purchase may be in cash or may be in exchange for other property of this trust, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

o. To make loans or advancements to the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime or under his/her last will in case such executors or Trustees are in need of cash for any reason. Such loans or advancements may be secured or unsecured, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

p. To do all other acts and things not inconsistent with the provisions of this instrument which they may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his or her own property.

16. The Trustees shall receive, hold, manage, invest and reinvest the trust estate and shall collect the rents, interest, dividends, and other income therefrom and, after deducting all proper charges and expenses, shall pay or apply to or for the use of the Settlor(s) during his/her/their life the net income therefrom and all or so much of the principal thereof as the Trustees shall in its sole and uncontrolled discretion determine, irrespective of any other source of income, support, maintenance or benefit of the Settlor(s), and no beneficiary named herein shall have any claim upon any such income distributed to the Settlor(s).

17. In the event I am physically or mentally incapacitated, or upon my death, I hereby nominate and appoint as Successor Trustee hereunder whosoever shall at that time be beneficiary hereunder, unless such beneficiary shall not have attained the age of twenty-one (21) years, or is otherwise deemed legally incapacitated, in which case I hereby nominate and appoint

_____, of
Name

Address City State

to be Successor Trustee. Every Successor Trustee shall have all the title, powers, and discretion herein given the Trustee, without any act of conveyance or transfer.

18. After the Settlor's death, or the death of the surviving Settlor, the Successor Trustee may, in its discretion, make loans with or without security, to the executor or administrator of the Settlor's estate, purchase from such executor or administrator, at such value as may be determined by the Trustee, any property constituting part or all of the Settlor's estate and retain all or any part of such property regardless of risk, unproductivity or lack of diversification.

19. This Declaration of Trust shall extend to and be binding upon the heirs, executors, administrators and assigns of the undersigned and upon the Successor Trustees.

20. This Declaration of Trust shall be governed and construed at all times according to the laws of the State of _____.

Spouse's Consent

21. I, _____, the
Spouse of Settlor

spouse of the Settlor, have read the provisions of the foregoing instrument. I hereby waive all community property, dower or curtesy rights I may have in the said trust estate and give my consent to the provisions of the trust.

Signature of Spouse

22. I certify that I have read the foregoing Declaration of Trust and that it correctly states the terms and conditions under which the trust estate is to be held, managed, and disposed of by the Trustee. I approve the Declaration of Trust in all particulars and request that the Trustee execute it.

Dated: _____ (Sign here) _____
(Type name here) _____, Settlor/Trustee

STATE OF _____

COUNTY OF _____

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in said State and County by

Settlor, party hereto and was executed and acknowledged by said Settlor to be his/her free act and voluntary deed.

WITNESS my signature this _____ day of _____, 19_____.

(Notary Seal)

Notary Public

Declaration of Trust

1. WHEREAS, I, _____
Name

of _____
Address City

County of _____, State of _____

referred to hereinafter as Settlor and/or Trustee, declare that I am the owner of certain property referred to in this instrument as the trust estate and more fully set forth in Schedule A attached hereto and made a part hereof;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I do hereby acknowledge and declare that I have set aside and hold said trust estate and all my right, title and interest in and to said trust estate IN TRUST

For the use and benefit of:

_____ of
Name of Beneficiary

_____ of
Address City State

or if such beneficiary be not surviving, for the use and benefit of:

_____ of
Name of Contingent Beneficiary

_____ of
Address City State

If more than one contingent beneficiary has been named herein, it is stipulated that they share the trust equally.

2. If, at any time, as certified in writing by two licensed physicians not related by blood or marriage to either Settlor or any beneficiary of this trust, I have become physically or mentally incapacitated, the Successor Trustee named hereinafter shall assume active administration of this trust during my lifetime; such Successor Trustee shall pay to me or disburse on my behalf such amounts of income or principal as necessary for my proper health, support and maintenance.

3. Upon my death, unless all the beneficiaries shall predecease me or unless we all shall die as a result of common accident or disaster, my Successor Trustee is hereby directed forthwith to transfer the said trust estate and all right, title and interest in and to said trust estate unto the beneficiary(ies) named herein absolutely and thereby terminate this trust.

4. Anything herein contained to the contrary notwithstanding, if at the termination of the trust established, all or any portion of the principal of the trust shall vest in absolute ownership of any beneficiary under the age of twenty-one (21), the Successor Trustee is authorized and empowered in his/her discretion to hold the property so vested in such a beneficiary in a separate fund for the benefit of such beneficiary and to invest and reinvest the same, collect the income therefrom and, until such beneficiary shall attain the age of twenty-one (21) years, to apply all or so much of the net income, accumulated net income, or principal for the health, support, maintenance, and education of said beneficiary as the Successor Trustee shall deem necessary. The Successor Trustee is hereby authorized to make any such payments of income, accumulated income, or principal to a parent, guardian, or person with whom such beneficiary resides without obligation by the Successor Trustee to look to the proper application or use of any payments so made, or the Successor Trustee may expend such sums of income or principal in such manner in his/her discretion as he/she believes will benefit such beneficiary and may also pay to the beneficiary directly such sums as the Successor Trustee approves as an allowance. The Successor Trustee shall accumulate the balance of said income, if any, until such beneficiary shall attain the age of twenty-one (21), after which time the income and principal shall be paid over to said beneficiary at his or her own discretion until he or she shall terminate the trust. If such beneficiary shall die before attaining the age of twenty-one (21) years, then the principal, together with any accumulated and unexpected income, shall be paid to such person or persons as he or she may appoint by his or her last will and testament, and if he or she fails effectively to make an appointment, then over to his or her estate. The authority conferred upon the Successor Trustee shall be construed as a power only and shall not operate to suspend or prevent absolute vesting of any property in such beneficiary.

5. Each beneficiary hereunder shall be liable for his/her proportionate share of any taxes levied upon the Settlor's total taxable estate upon the death of the Settlor or the death of the survivor of two joint Settlers.

6. The Settlor reserves to himself/herself and for any other person the right to deposit with Trustee or make payable to the Trustee other policies of insurance and also to assign, transfer, convey, devise, bequeath, and deliver to the Trustee such other personal and real property to be held, administered, and disposed of as hereafter set forth in this instrument.

7. Upon the death of any beneficiary, any income then accrued or undistributed shall be held and accounted for, or distributed, in the same manner as if it had been income accrued and received after such beneficiary's death.

8. If any beneficiary and the Settlor(s) should die simultaneously or under such circumstances as would render it doubtful whether the beneficiary or the Settlor(s) died first, then it shall be conclusively presumed for the purposes of this trust that said beneficiary predeceased the Settlor(s).

9. I reserve unto myself the power to designate a new beneficiary should the beneficiaries designated hereunder predecease me. Should I for any reason fail to designate such new beneficiary, this trust shall terminate upon my death and the trust estate shall revert to my estate.

10. The Settlor reserves and shall have the exclusive right at any time and from time to time during his/her lifetime to amend or revoke in whole or in part the trust created hereunder without the consent of any beneficiary and without giving notice to any beneficiary hereunder. The sale, withdrawal, liquidation, or disposal in any manner by the Settlor of the whole or in any part of the property held in trust hereunder shall constitute as to such whole or part a revocation of this trust.

11. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts obligations, liabilities or torts of any beneficiary.

12. If it shall be determined that any provision of the trust created herein violates any rule against perpetuities or remoteness of vesting now or hereafter in effect in a governing jurisdiction, that portion of the trust herein created shall be administered as herein provided until the termination of the maximum period allowed by law at which time and forthwith such part of the trust shall be distributed in fee simple to the beneficiaries then entitled to receive income therefrom, and for the purpose, it shall be presumed that any beneficiary entitled to receive support or education from the income or principal of any particular fund is entitled to receive the income therefrom.

13. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this trust, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

14. To the extent that any such requirements can legally be waived, no Trustee shall ever be required to give any bond as Trustee or qualify before, be appointed by, or in the absence of breach of trust, account to any court, or obtain the order or approval of any court in the exercise of any power or discretion herein given. No person paying money or delivering any property to any Trustee shall be required to see to its application.

15. In addition to any powers granted under applicable law or otherwise, and not in limitation of such powers, but subject to any rights and powers which may be reserved expressly by the Settlor(s) in this agreement, the Trustees of each trust established hereunder are authorized and empowered to exercise the following powers in their sole and absolute discretion:

a. To hold and retain any or all property, real, personal, or mixed, received from the Settlor, the Settlor's estate, or from any other source, regardless of any law or rule of court relating to diversification, or non-productivity, for such time as the Trustee shall deem best, and to dispose of such property by sale, exchange, or otherwise, as and when they shall deem advisable; notwithstanding this provision or any other contained herein, the Trustees shall stand without power to sell or otherwise dispose of any interest in a closely-held business unless they shall have consulted with all of the adult beneficiaries and the legal representatives of all the minor beneficiaries of this trust, and they shall have agreed to such sale or other disposition by an affirmative vote of a majority of such beneficiaries and representatives.

b. To sell, assign, exchange, transfer, partition and convey, or otherwise dispose of, any property, real, personal or mixed, which may be included in or may at any time become part of the trust estate, upon such terms and conditions as deemed advisable, at either public or private sale, including options and sales on credit and for the purpose of selling, assigning, exchanging, transferring, partitioning, or conveying the same, to make, execute, acknowledge, and deliver any and all instruments of conveyance, deeds of trust, and assignments in such form and with such warranties and covenants as they may deem expedient and proper; and in the event of any sale, conveyance or other disposition of any of the trust estate, the purchaser shall not be obligated in any way to see the application of the purchase money or other consideration passing in connection therewith.

c. To invest and reinvest or leave temporarily uninvested any or all of the funds of the trust estate as said Trustees in their sole discretion may deem best, including investments in stocks, common and preferred, and common trust fund, without being restricted to those investments expressly approved by statute for investment by fiduciaries, and to change investments from realty to personality, and vice versa.

d. To lease any or all of the real estate, which may be included in or at any time become a part of the trust estate, upon such terms and conditions deemed advisable, irrespective of whether the term of the lease shall exceed the period permitted by law or the probable period of any trust created hereby, and to review and modify such leases; and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments in such form and with such covenants and warranties as they may deem expedient and proper; and to make any repairs, replacements, and improvements, structural and otherwise, of any property, and to charge the expense thereof in an equitable manner to principal or income, as deemed proper.

e. To vote any stocks, bonds, or other securities held by the trust at any meetings of stockholders, bondholders, or other security holders and to delegate the power so to vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted, and to join in or become a party to any organization, readjustment, voting trust, consideration or exchange, and to deposit securities with any persons, and to pay any fees incurred in connection therewith, and to charge the same to principal or income, as deemed proper, and to exercise all of the rights with regard to such securities as could be done by the absolute owner.

f. To borrow money for any purpose in connection with the administration of any trust created hereby, and to execute promissory notes or other obligations for amounts so borrowed, and to secure the payment of any such amounts by mortgage or pledge or any real or personal property, and to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any trust created hereby, for such periods of time as deemed advisable.

g. To compromise, adjust, arbitrate, sue or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust estate as the Trustees shall deem best and their decision shall be conclusive. The Trustees, however, shall not be required to take any action until indemnified to their satisfaction.

h. To make distributions in cash or in kind, or partly in each, at valuations to be determined by the Trustees, whose decision as to values shall be conclusive.

i. To determine in a fair and reasonable manner whether any part of the trust estate, or any addition or increment thereto be income or principal, or whether any cost, charge, expense, tax, or assessment shall be charged against income or principal, or partially against income and partially against principal.

j. To engage and compensate, out of principal or income or both, as equitably determined, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, clerks, custodians, investment counsel, and other assistants and advisors, to delegate to such persons any discretion deemed proper, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative, provided he or she was selected and retained with reasonable care.

k. To apportion extraordinary stock and liquidating dividends between the income and principal in such manner as shall fairly take into account the relative interests of the beneficiaries and to determine what constitutes such dividends.

l. To hold and administer the trusts created hereby in one or more consolidated funds, in whole or in part, in which the separate trusts shall have undivided interests.

m. To rely upon any affidavit, certificate, letter, note, telegraph or other paper, or on any telephone conversation, believed by them to be sufficient and to be protected and held harmless in all payments or distributions required to be made hereunder, if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

n. To purchase securities, real estate, or other property from the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime under his/her last will in case his/her executors or Trustees are in need of cash, liquid assets, or income-producing assets with which to pay taxes, claims, or other estate or trust indebtedness, or in case such executors or Trustees are in need of such property to properly exercise and discharge their discretion with respect to distributions to beneficiaries as provided for under such bills, declarations, or agreements. Such purchase may be in cash or may be in exchange for other property of this trust, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

o. To make loans or advancements to the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime or under his/her last will in case such executors or Trustees are in need of cash for any reason. Such loans or advancements may be secured or unsecured, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

p. To do all other acts and things not inconsistent with the provisions of this instrument which they may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his or her own property.

16. The Trustees shall receive, hold, manage, invest and reinvest the trust estate and shall collect the rents, interest, dividends, and other income therefrom and, after deducting all proper charges and expenses, shall pay or apply to or for the use of the Settlor(s) during his/her/their life the net income therefrom and all or so much of the principal thereof as the Trustees shall in its sole and uncontrolled discretion determine, irrespective of any other source of income, support, maintenance or benefit of the Settlor(s), and no beneficiary named herein shall have any claim upon any such income distributed to the Settlor(s).

17. In the event I am physically or mentally incapacitated, or upon my death, I hereby nominate and appoint as Successor Trustee hereunder whosoever shall at that time be beneficiary hereunder, unless such beneficiary shall not have attained the age of twenty-one (21) years, or is otherwise deemed legally incapacitated, in which case I hereby nominate and appoint

_____, of
Name

Address City State

to be Successor Trustee. Every Successor Trustee shall have all the title, powers, and discretion herein given the Trustee, without any act of conveyance or transfer.

18. After the Settlor's death, or the death of the surviving Settlor, the Successor Trustee may, in its discretion, make loans with or without security, to the executor or administrator of the Settlor's estate, purchase from such executor or administrator, at such value as may be determined by the Trustee, any property constituting part or all of the Settlor's estate and retain all or any part of such property regardless of risk, unproductivity or lack of diversification.

19. This Declaration of Trust shall extend to and be binding upon the heirs, executors, administrators and assigns of the undersigned and upon the Successor Trustees.

20. This Declaration of Trust shall be governed and construed at all times according to the laws of the State of _____.

Spouse's Consent

21. I, _____, the
Spouse of Settlor

spouse of the Settlor, have read the provisions of the foregoing instrument. I hereby waive all community property, dower or curtesy rights I may have in the said trust estate and give my consent to the provisions of the trust.

Signature of Spouse

22. I certify that I have read the foregoing Declaration of Trust and that it correctly states the terms and conditions under which the trust estate is to be held, managed, and disposed of by the Trustee. I approve the Declaration of Trust in all particulars and request that the Trustee execute it.

Dated: _____ (Sign here) _____
(Type name here) _____, Settlor/Trustee

STATE OF _____

COUNTY OF _____

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in said State and County by

Settlor, party hereto and was executed and acknowledged by said Settlor to be his/her free act and voluntary deed.

WITNESS my signature this _____ day of _____, 19_____.

(Notary Seal)

Notary Public

Declaration of Trust

1. WHEREAS, I, _____
Name
of _____
Address City
County of _____, State of _____

referred to hereinafter as Settlor and/or Trustee, declare that I am the owner of certain property referred to in this instrument as the trust estate and more fully set forth in Schedule A attached hereto and made a part hereof;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I do hereby acknowledge and declare that I have set aside and hold said trust estate and all my right, title and interest in and to said trust estate IN TRUST

For the use and benefit of the following persons, to share equally,

(Check one only, and initial)

_____ or the survivor of them:

_____ per stirpes:

First Beneficiary — Name and Address

Second Beneficiary — Name and Address

Third Beneficiary — Name and Address

Fourth Beneficiary — Name and Address

Others

2. If, at any time, as certified in writing by two licensed physicians not related by blood or marriage to either Settlor or any beneficiary of this trust, I have become physically or mentally incapacitated, the Successor Trustee named hereinafter shall assume active administration of this trust during my lifetime; such Successor Trustee shall pay to me or disburse on my behalf such amounts of income or principal as necessary for my proper health, support and maintenance.

3. Upon my death, unless all the beneficiaries shall predecease me or unless we all shall die as a result of common accident or disaster, my Successor Trustee is hereby directed forthwith to transfer the said trust estate and all right, title and interest in and to said trust estate unto the beneficiary(ies) named herein absolutely and thereby terminate this trust.

4. Anything herein contained to the contrary notwithstanding, if at the termination of the trust established, all or any portion of the principal of the trust shall vest in absolute ownership of any beneficiary under the age of twenty-one (21), the Successor Trustee is authorized and empowered in his/her discretion to hold the property so vested in such a beneficiary in a separate fund for the benefit of such beneficiary and to invest and reinvest the same, collect the income therefrom and, until such beneficiary shall attain the age of twenty-one (21) years, to apply all or so much of the net income, accumulated net income, or principal for the health, support, maintenance, and education of said beneficiary as the Successor Trustee shall deem necessary. The Successor Trustee is hereby authorized to make any such payments of income, accumulated income, or principal to a parent, guardian, or person with whom such beneficiary resides without obligation by the Successor Trustee to look to the proper application or use of any payments so made, or the Successor Trustee may expend such sums of income or principal in such manner in his/her discretion as he/she believes will benefit such beneficiary and may also pay to the beneficiary directly such sums as the Successor Trustee approves as an allowance. The Successor Trustee shall accumulate the balance of said income, if any, until such beneficiary shall attain the age of twenty-one (21), after which time the income and principal shall be paid over to said beneficiary at his or her own discretion until he or she shall terminate the trust. If such beneficiary shall die before attaining the age of twenty-one (21) years, then the principal, together with any accumulated and unexpected income, shall be paid to such person or persons as he or she may appoint by his or her last will and testament, and if he or she fails effectively to make an appointment, then over to his or her estate. The authority conferred upon the Successor Trustee shall be construed as a power only and shall not operate to suspend or prevent absolute vesting of any property in such beneficiary.

5. Each beneficiary hereunder shall be liable for his/her proportionate share of any taxes levied upon the Settlor's total taxable estate upon the death of the Settlor or the death of the survivor of two joint Settlers.

6. The Settlor reserves to himself/herself and for any other person the right to deposit with Trustee or make payable to the Trustee other policies of insurance and also to assign, transfer, convey, devise, bequeath, and deliver to the Trustee such other personal and real property to be held, administered, and disposed of as hereafter set forth in this instrument.

7. Upon the death of any beneficiary, any income then accrued or undistributed shall be held and accounted for, or distributed, in the same manner as if it had been income accrued and received after such beneficiary's death.

8. If any beneficiary and the Settlor(s) should die simultaneously or under such circumstances as would render it doubtful whether the beneficiary or the Settlor(s) died first, then it shall be conclusively presumed for the purposes of this trust that said beneficiary predeceased the Settlor(s).

9. I reserve unto myself the power to designate a new beneficiary should the beneficiaries designated hereunder predecease me. Should I for any reason fail to designate such new beneficiary, this trust shall terminate upon my death and the trust estate shall revert to my estate.

10. The Settlor reserves and shall have the exclusive right at any time and from time to time during his/her lifetime to amend or revoke in whole or in part the trust created hereunder without the consent of any beneficiary and without giving notice to any beneficiary hereunder. The sale, withdrawal, liquidation, or disposal in any manner by the Settlor of the whole or in any part of the property held in trust hereunder shall constitute as to such whole or part a revocation of this trust.

11. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts obligations, liabilities or torts of any beneficiary.

12. If it shall be determined that any provision of the trust created herein violates any rule against perpetuities or remoteness of vesting now or hereafter in effect in a governing jurisdiction, that portion of the trust herein created shall be administered as herein provided until the termination of the maximum period allowed by law at which time and forthwith such part of the trust shall be distributed in fee simple to the beneficiaries then entitled to receive income therefrom, and for the purpose, it shall be presumed that any beneficiary entitled to receive support or education from the income or principal of any particular fund is entitled to receive the income therefrom.

13. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this trust, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

14. To the extent that any such requirements can legally be waived, no Trustee shall ever be required to give any bond as Trustee or qualify before, be appointed by, or in the absence of breach of trust, account to any court, or obtain the order or approval of any court in the exercise of any power or discretion herein given. No person paying money or delivering any property to any Trustee shall be required to see to its application.

15. In addition to any powers granted under applicable law or otherwise, and not in limitation of such powers, but subject to any rights and powers which may be reserved expressly by the Settlor(s) in this agreement, the Trustees of each trust established hereunder are authorized and empowered to exercise the following powers in their sole and absolute discretion:

a. To hold and retain any or all property, real, personal, or mixed, received from the Settlor, the Settlor's estate, or from any other source, regardless of any law or rule of court relating to diversification, or non-productivity, for such time as the Trustee shall deem best, and to dispose of such property by sale, exchange, or otherwise, as and when they shall deem advisable; notwithstanding this provision or any other contained herein, the Trustees shall stand without power to sell or otherwise dispose of any interest in a closely-held business unless they shall have consulted with all of the adult beneficiaries and the legal representatives of all the minor beneficiaries of this trust, and they shall have agreed to such sale or other disposition by an affirmative vote of a majority of such beneficiaries and representatives.

b. To sell, assign, exchange, transfer, partition and convey, or otherwise dispose of, any property, real, personal or mixed, which may be included in or may at any time become part of the trust estate, upon such terms and conditions as deemed advisable, at either public or private sale, including options and sales on credit and for the purpose of selling, assigning, exchanging, transferring, partitioning, or conveying the same, to make, execute, acknowledge, and deliver any and all instruments of conveyance, deeds of trust, and assignments in such form and with such warranties and covenants as they may deem expedient and proper; and in the event of any sale, conveyance or other disposition of any of the trust estate, the purchaser shall not be obligated in any way to see the application of the purchase money or other consideration passing in connection therewith.

c. To invest and reinvest or leave temporarily uninvested any or all of the funds of the trust estate as said Trustees in their sole discretion may deem best, including investments in stocks, common and preferred, and common trust fund, without being restricted to those investments expressly approved by statute for investment by fiduciaries, and to change investments from realty to personality, and vice versa.

d. To lease any or all of the real estate, which may be included in or at any time become a part of the trust estate, upon such terms and conditions deemed advisable, irrespective of whether the term of the lease shall exceed the period permitted by law or the probable period of any trust created hereby, and to review and modify such leases; and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments in such form and with such covenants and warranties as they may deem expedient and proper; and to make any repairs, replacements, and improvements, structural and otherwise, of any property, and to charge the expense thereof in an equitable manner to principal or income, as deemed proper.

e. To vote any stocks, bonds, or other securities held by the trust at any meetings of stockholders, bondholders, or other security holders and to delegate the power so to vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted, and to join in or become a party to any organization, readjustment, voting trust, consideration or exchange, and to deposit securities with any persons, and to pay any fees incurred in connection therewith, and to charge the same to principal or income, as deemed proper, and to exercise all of the rights with regard to such securities as could be done by the absolute owner.

f. To borrow money for any purpose in connection with the administration of any trust created hereby, and to execute promissory notes or other obligations for amounts so borrowed, and to secure the payment of any such amounts by mortgage or pledge or any real or personal property, and to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any trust created hereby, for such periods of time as deemed advisable.

g. To compromise, adjust, arbitrate, sue or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust estate as the Trustees shall deem best and their decision shall be conclusive. The Trustees, however, shall not be required to take any action until indemnified to their satisfaction.

h. To make distributions in cash or in kind, or partly in each, at valuations to be determined by the Trustees, whose decision as to values shall be conclusive.

i. To determine in a fair and reasonable manner whether any part of the trust estate, or any addition or increment thereto be income or principal, or whether any cost, charge, expense, tax, or assessment shall be charged against income or principal, or partially against income and partially against principal.

j. To engage and compensate, out of principal or income or both, as equitably determined, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, clerks, custodians, investment counsel, and other assistants and advisors, to delegate to such persons any discretion deemed proper, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative, provided he or she was selected and retained with reasonable care.

k. To apportion extraordinary stock and liquidating dividends between the income and principal in such manner as shall fairly take into account the relative interests of the beneficiaries and to determine what constitutes such dividends.

l. To hold and administer the trusts created hereby in one or more consolidated funds, in whole or in part, in which the separate trusts shall have undivided interests.

m. To rely upon any affidavit, certificate, letter, note, telegraph or other paper, or on any telephone conversation, believed by them to be sufficient and to be protected and held harmless in all payments or distributions required to be made hereunder, if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

n. To purchase securities, real estate, or other property from the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime under his/her last will in case his/her executors or Trustees are in need of cash, liquid assets, or income-producing assets with which to pay taxes, claims, or other estate or trust indebtedness, or in case such executors or Trustees are in need of such property to properly exercise and discharge their discretion with respect to distributions to beneficiaries as provided for under such bills, declarations, or agreements. Such purchase may be in cash or may be in exchange for other property of this trust, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

o. To make loans or advancements to the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime or under his/her last will in case such executors or Trustees are in need of cash for any reason. Such loans or advancements may be secured or unsecured, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

p. To do all other acts and things not inconsistent with the provisions of this instrument which they may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his or her own property.

16. The Trustees shall receive, hold, manage, invest and reinvest the trust estate and shall collect the rents, interest, dividends, and other income therefrom and, after deducting all proper charges and expenses, shall pay or apply to or for the use of the Settlor(s) during his/her/their life the net income therefrom and all or so much of the principal thereof as the Trustees shall in its sole and uncontrolled discretion determine, irrespective of any other source of income, support, maintenance or benefit of the Settlor(s), and no beneficiary named herein shall have any claim upon any such income distributed to the Settlor(s).

17. In the event I am physically or mentally incapacitated, or upon my death, I hereby nominate and appoint as Successor Trustee the individual beneficiaries in the successive order listed above, unless none of the beneficiaries shall have attained the age of twenty-one (21) years or is otherwise deemed legally capable, in which event I hereby nominate and appoint

_____, of
Name

Address City State

to be Successor Trustee. Every Successor Trustee shall have all the title, powers, and discretion herein given the Trustee, without any act of conveyance or transfer.

18. After the Settlor's death, or the death of the surviving Settlor, the Successor Trustee may, in its discretion, make loans with or without security, to the executor or administrator of the Settlor's estate, purchase from such executor or administrator, at such value as may be determined by the Trustee, any property constituting part or all of the Settlor's estate and retain all or any part of such property regardless of risk, unproductivity or lack of diversification.

19. This Declaration of Trust shall extend to and be binding upon the heirs, executors, administrators and assigns of the undersigned and upon the Successor Trustees.

20. This Declaration of Trust shall be governed and construed at all times according to the laws of the State of _____

Spouse's Consent

21. I, _____, the
Spouse of Settlor

spouse of the Settlor, have read the provisions of the foregoing instrument. I hereby waive all community property, dower or curtesy rights I may have in the said trust estate and give my consent to the provisions of the trust.

Signature of Spouse

22. I certify that I have read the foregoing Declaration of Trust and that it correctly states the terms and conditions under which the trust estate is to be held, managed, and disposed of by the Trustee. I approve the Declaration of Trust in all particulars and request that the Trustee execute it.

Dated: _____ *(Sign here)* _____
(Type name here) _____, *Settlor/Trustee*

STATE OF _____

COUNTY OF _____

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in said State and County by

Settlor, party hereto and was executed and acknowledged by said Settlor to be his/her free act and voluntary deed.

WITNESS my signature this _____ day of _____, 19_____.

(Notary Seal)

Notary Public

Declaration of Trust

1. WHEREAS, I, _____
Name

of _____
Address City

County of _____, State of _____

referred to hereinafter as Settlor and/or Trustee, declare that I am the owner of certain property referred to in this instrument as the trust estate and more fully set forth in Schedule A attached hereto and made a part hereof;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I do hereby acknowledge and declare that I have set aside and hold said trust estate and all my right, title and interest in and to said trust estate IN TRUST

For the use and benefit of:

_____ of
Name of Beneficiary

_____ of
Address City State

2. If, at any time, as certified in writing by two licensed physicians not related by blood or marriage to either Settlor or any beneficiary of this trust, I have become physically or mentally incapacitated, the Successor Trustee named hereinafter shall assume active administration of this trust during my lifetime; such Successor Trustee shall pay to me or disburse on my behalf such amounts of income or principal as necessary for my proper health, support and maintenance.

3. Upon my death, unless all the beneficiaries shall predecease me or unless we all shall die as a result of common accident or disaster, my Successor Trustee is hereby directed forthwith to transfer the said trust estate and all right, title and interest in and to said trust estate unto the beneficiary(ies) named herein absolutely and thereby terminate this trust.

4. Anything herein contained to the contrary notwithstanding, if at the termination of the trust established, all or any portion of the principal of the trust shall vest in absolute ownership of any beneficiary under the age of twenty-one (21), the Successor Trustee is authorized and empowered in his/her discretion to hold the property so vested in such a beneficiary in a separate fund for the benefit of such beneficiary and to invest and reinvest the same, collect the income therefrom and, until such beneficiary shall attain the age of twenty-one (21) years, to apply all or so much of the net income, accumulated net income, or principal for the health, support, maintenance, and education of said beneficiary as the Successor Trustee shall deem necessary. The Successor Trustee is hereby authorized to make any such payments of income, accumulated income, or principal to a parent, guardian, or person with whom such beneficiary resides without obligation by the Successor Trustee to look to the proper application or use of any payments so made, or the Successor Trustee may expend such sums of income or principal in such manner in his/her discretion as he/she believes will benefit such beneficiary and may also pay to the beneficiary directly such sums as the Successor Trustee approves as an allowance. The Successor Trustee shall accumulate the balance of said income, if any, until such beneficiary shall attain the age of twenty-one (21), after which time the income and principal shall be paid over to said beneficiary at his or her own discretion until he or she shall terminate the trust. If such beneficiary shall die before attaining the age of twenty-one (21) years, then the principal, together with any accumulated and unexpected income, shall be paid to such person or persons as he or she may appoint by his or her last will and testament, and if he or she fails effectively to make an appointment, then over to his or her estate. The authority conferred upon the Successor Trustee shall be construed as a power only and shall not operate to suspend or prevent absolute vesting of any property in such beneficiary.

5. Each beneficiary hereunder shall be liable for his/her proportionate share of any taxes levied upon the Settlor's total taxable estate upon the death of the Settlor or the death of the survivor of two joint Settlers.

6. The Settlor reserves to himself/herself and for any other person the right to deposit with Trustee or make payable to the Trustee other policies of insurance and also to assign, transfer, convey, devise, bequeath, and deliver to the Trustee such other personal and real property to be held, administered, and disposed of as hereafter set forth in this instrument.

7. Upon the death of any beneficiary, any income then accrued or undistributed shall be held and accounted for, or distributed, in the same manner as if it had been income accrued and received after such beneficiary's death.

8. If any beneficiary and the Settlor(s) should die simultaneously or under such circumstances as would render it doubtful whether the beneficiary or the Settlor(s) died first, then it shall be conclusively presumed for the purposes of this trust that said beneficiary predeceased the Settlor(s).

9. I reserve unto myself the power to designate a new beneficiary should the beneficiaries designated hereunder predecease me. Should I for any reason fail to designate such new beneficiary, this trust shall terminate upon my death and the trust estate shall revert to my estate.

10. The Settlor reserves and shall have the exclusive right at any time and from time to time during his/her lifetime to amend or revoke in whole or in part the trust created hereunder without the consent of any beneficiary and without giving notice to any beneficiary hereunder. The sale, withdrawal, liquidation, or disposal in any manner by the Settlor of the whole or in any part of the property held in trust hereunder shall constitute as to such whole or part a revocation of this trust.

11. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts obligations, liabilities or torts of any beneficiary.

12. If it shall be determined that any provision of the trust created herein violates any rule against perpetuities or remoteness of vesting now or hereafter in effect in a governing jurisdiction, that portion of the trust herein created shall be administered as herein provided until the termination of the maximum period allowed by law at which time and forthwith such part of the trust shall be distributed in fee simple to the beneficiaries then entitled to receive income therefrom, and for the purpose, it shall be presumed that any beneficiary entitled to receive support or education from the income or principal of any particular fund is entitled to receive the income therefrom.

13. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this trust, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

14. To the extent that any such requirements can legally be waived, no Trustee shall ever be required to give any bond as Trustee or qualify before, be appointed by, or in the absence of breach of trust, account to any court, or obtain the order or approval of any court in the exercise of any power or discretion herein given. No person paying money or delivering any property to any Trustee shall be required to see to its application.

15. In addition to any powers granted under applicable law or otherwise, and not in limitation of such powers, but subject to any rights and powers which may be reserved expressly by the Settlor(s) in this agreement, the Trustees of each trust established hereunder are authorized and empowered to exercise the following powers in their sole and absolute discretion:

a. To hold and retain any or all property, real, personal, or mixed, received from the Settlor, the Settlor's estate, or from any other source, regardless of any law or rule of court relating to diversification, or non-productivity, for such time as the Trustee shall deem best, and to dispose of such property by sale, exchange, or otherwise, as and when they shall deem advisable; notwithstanding this provision or any other contained herein, the Trustees shall stand without power to sell or otherwise dispose of any interest in a closely-held business unless they shall have consulted with all of the adult beneficiaries and the legal representatives of all the minor beneficiaries of this trust, and they shall have agreed to such sale or other disposition by an affirmative vote of a majority of such beneficiaries and representatives.

b. To sell, assign, exchange, transfer, partition and convey, or otherwise dispose of, any property, real, personal or mixed, which may be included in or may at any time become part of the trust estate, upon such terms and conditions as deemed advisable, at either public or private sale, including options and sales on credit and for the purpose of selling, assigning, exchanging, transferring, partitioning, or conveying the same, to make, execute, acknowledge, and deliver any and all instruments of conveyance, deeds of trust, and assignments in such form and with such warranties and covenants as they may deem expedient and proper; and in the event of any sale, conveyance or other disposition of any of the trust estate, the purchaser shall not be obligated in any way to see the application of the purchase money or other consideration passing in connection therewith.

c. To invest and reinvest or leave temporarily uninvested any or all of the funds of the trust estate as said Trustees in their sole discretion may deem best, including investments in stocks, common and preferred, and common trust fund, without being restricted to those investments expressly approved by statute for investment by fiduciaries, and to change investments from realty to personality, and vice versa.

d. To lease any or all of the real estate, which may be included in or at any time become a part of the trust estate, upon such terms and conditions deemed advisable, irrespective of whether the term of the lease shall exceed the period permitted by law or the probable period of any trust created hereby, and to review and modify such leases; and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments in such form and with such covenants and warranties as they may deem expedient and proper; and to make any repairs, replacements, and improvements, structural and otherwise, of any property, and to charge the expense thereof in an equitable manner to principal or income, as deemed proper.

e. To vote any stocks, bonds, or other securities held by the trust at any meetings of stockholders, bondholders, or other security holders and to delegate the power so to vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted, and to join in or become a party to any organization, readjustment, voting trust, consideration or exchange, and to deposit securities with any persons, and to pay any fees incurred in connection therewith, and to charge the same to principal or income, as deemed proper, and to exercise all of the rights with regard to such securities as could be done by the absolute owner.

f. To borrow money for any purpose in connection with the administration of any trust created hereby, and to execute promissory notes or other obligations for amounts so borrowed, and to secure the payment of any such amounts by mortgage or pledge or any real or personal property, and to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any trust created hereby, for such periods of time as deemed advisable.

g. To compromise, adjust, arbitrate, sue or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust estate as the Trustees shall deem best and their decision shall be conclusive. The Trustees, however, shall not be required to take any action until indemnified to their satisfaction.

h. To make distributions in cash or in kind, or partly in each, at valuations to be determined by the Trustees, whose decision as to values shall be conclusive.

i. To determine in a fair and reasonable manner whether any part of the trust estate, or any addition or increment thereto be income or principal, or whether any cost, charge, expense, tax, or assessment shall be charged against income or principal, or partially against income and partially against principal.

j. To engage and compensate, out of principal or income or both, as equitably determined, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, clerks, custodians, investment counsel, and other assistants and advisors, to delegate to such persons any discretion deemed proper, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative, provided he or she was selected and retained with reasonable care.

k. To apportion extraordinary stock and liquidating dividends between the income and principal in such manner as shall fairly take into account the relative interests of the beneficiaries and to determine what constitutes such dividends.

l. To hold and administer the trusts created hereby in one or more consolidated funds, in whole or in part, in which the separate trusts shall have undivided interests.

m. To rely upon any affidavit, certificate, letter, note, telegraph or other paper, or on any telephone conversation, believed by them to be sufficient and to be protected and held harmless in all payments or distributions required to be made hereunder, if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

n. To purchase securities, real estate, or other property from the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime under his/her last will in case his/her executors or Trustees are in need of cash, liquid assets, or income-producing assets with which to pay taxes, claims, or other estate or trust indebtedness, or in case such executors or Trustees are in need of such property to properly exercise and discharge their discretion with respect to distributions to beneficiaries as provided for under such bills, declarations, or agreements. Such purchase may be in cash or may be in exchange for other property of this trust, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

o. To make loans or advancements to the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime or under his/her last will in case such executors or Trustees are in need of cash for any reason. Such loans or advancements may be secured or unsecured, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

p. To do all other acts and things not inconsistent with the provisions of this instrument which they may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his or her own property.

16. The Trustees shall receive, hold, manage, invest and reinvest the trust estate and shall collect the rents, interest, dividends, and other income therefrom and, after deducting all proper charges and expenses, shall pay or apply to or for the use of the Settlor(s) during his/her/their life the net income therefrom and all or so much of the principal thereof as the Trustees shall in its sole and uncontrolled discretion determine, irrespective of any other source of income, support, maintenance or benefit of the Settlor(s), and no beneficiary named herein shall have any claim upon any such income distributed to the Settlor(s).

17. In the event I am physically or mentally incapacitated, or upon my death, I hereby nominate and appoint as Successor Trustee hereunder whosoever shall at that time be beneficiary hereunder, unless such beneficiary shall not have attained the age of twenty-one (21) years, or is otherwise deemed legally incapacitated, in which case I hereby nominate and appoint

_____, of
Name

Address City State
to be Successor Trustee. Every Successor Trustee shall have all the title, powers, and discretion herein given the Trustee, without any act of conveyance or transfer.

18. After the Settlor's death, or the death of the surviving Settlor, the Successor Trustee may, in its discretion, make loans with or without security, to the executor or administrator of the Settlor's estate, purchase from such executor or administrator, at such value as may be determined by the Trustee, any property constituting part or all of the Settlor's estate and retain all or any part of such property regardless of risk, unproductivity or lack of diversification.

19. This Declaration of Trust shall extend to and be binding upon the heirs, executors, administrators and assigns of the undersigned and upon the Successor Trustees.

20. This Declaration of Trust shall be governed and construed at all times according to the laws of the State of _____.

21. I certify that I have read the foregoing Declaration of Trust and that it correctly states the terms and conditions under which the trust estate is to be held, managed, and disposed of by the Trustee. I approve the Declaration of Trust in all particulars and request that the Trustee execute it.

Dated: _____ (Sign here) _____
(Type name here) _____, Settlor/Trustee

STATE OF _____

COUNTY OF _____

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in said State and County by

Settlor, party hereto and was executed and acknowledged by said Settlor to be his/her free act and voluntary deed.

WITNESS my signature this _____ day of _____, 19_____.

(Notary Seal)

Notary Public

Declaration of Trust

1. WHEREAS, I, _____
Name

of _____
Address City

County of _____, State of _____

referred to hereinafter as Settlor and/or Trustee, declare that I am the owner of certain property referred to in this instrument as the trust estate and more fully set forth in Schedule A attached hereto and made a part hereof;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I do hereby acknowledge and declare that I have set aside and hold said trust estate and all my right, title and interest in and to said trust estate IN TRUST

For the use and benefit of:

_____ of
Name of Beneficiary

_____ Address City State

or if such beneficiary be not surviving, for the use and benefit of:

_____ of
Name of Contingent Beneficiary

_____ Address City State

If more than one contingent beneficiary has been named herein, it is stipulated that they share the trust equally.

2. If, at any time, as certified in writing by two licensed physicians not related by blood or marriage to either Settlor or any beneficiary of this trust, I have become physically or mentally incapacitated, the Successor Trustee named hereinafter shall assume active administration of this trust during my lifetime; such Successor Trustee shall pay to me or disburse on my behalf such amounts of income or principal as necessary for my proper health, support and maintenance.

3. Upon my death, unless all the beneficiaries shall predecease me or unless we all shall die as a result of common accident or disaster, my Successor Trustee is hereby directed forthwith to transfer the said trust estate and all right, title and interest in and to said trust estate unto the beneficiary(ies) named herein absolutely and thereby terminate this trust.

4. Anything herein contained to the contrary notwithstanding, if at the termination of the trust established, all or any portion of the principal of the trust shall vest in absolute ownership of any beneficiary under the age of twenty-one (21), the Successor Trustee is authorized and empowered in his/her discretion to hold the property so vested in such a beneficiary in a separate fund for the benefit of such beneficiary and to invest and reinvest the same, collect the income therefrom and, until such beneficiary shall attain the age of twenty-one (21) years, to apply all or so much of the net income, accumulated net income, or principal for the health, support, maintenance, and education of said beneficiary as the Successor Trustee shall deem necessary. The Successor Trustee is hereby authorized to make any such payments of income, accumulated income, or principal to a parent, guardian, or person with whom such beneficiary resides without obligation by the Successor Trustee to look to the proper application or use of any payments so made, or the Successor Trustee may expend such sums of income or principal in such manner in his/her discretion as he/she believes will benefit such beneficiary and may also pay to the beneficiary directly such sums as the Successor Trustee approves as an allowance. The Successor Trustee shall accumulate the balance of said income, if any, until such beneficiary shall attain the age of twenty-one (21), after which time the income and principal shall be paid over to said beneficiary at his or her own discretion until he or she shall terminate the trust. If such beneficiary shall die before attaining the age of twenty-one (21) years, then the principal, together with any accumulated and unexpected income, shall be paid to such person or persons as he or she may appoint by his or her last will and testament, and if he or she fails effectively to make an appointment, then over to his or her estate. The authority conferred upon the Successor Trustee shall be construed as a power only and shall not operate to suspend or prevent absolute vesting of any property in such beneficiary.

5. Each beneficiary hereunder shall be liable for his/her proportionate share of any taxes levied upon the Settlor's total taxable estate upon the death of the Settlor or the death of the survivor of two joint Settlers.

6. The Settlor reserves to himself/herself and for any other person the right to deposit with Trustee or make payable to the Trustee other policies of insurance and also to assign, transfer, convey, devise, bequeath, and deliver to the Trustee such other personal and real property to be held, administered, and disposed of as hereafter set forth in this instrument.

7. Upon the death of any beneficiary, any income then accrued or undistributed shall be held and accounted for, or distributed, in the same manner as if it had been income accrued and received after such beneficiary's death.

8. If any beneficiary and the Settlor(s) should die simultaneously or under such circumstances as would render it doubtful whether the beneficiary or the Settlor(s) died first, then it shall be conclusively presumed for the purposes of this trust that said beneficiary predeceased the Settlor(s).

9. I reserve unto myself the power to designate a new beneficiary should the beneficiaries designated hereunder predecease me. Should I for any reason fail to designate such new beneficiary, this trust shall terminate upon my death and the trust estate shall revert to my estate.

10. The Settlor reserves and shall have the exclusive right at any time and from time to time during his/her lifetime to amend or revoke in whole or in part the trust created hereunder without the consent of any beneficiary and without giving notice to any beneficiary hereunder. The sale, withdrawal, liquidation, or disposal in any manner by the Settlor of the whole or in any part of the property held in trust hereunder shall constitute as to such whole or part a revocation of this trust.

11. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts obligations, liabilities or torts of any beneficiary.

12. If it shall be determined that any provision of the trust created herein violates any rule against perpetuities or remoteness of vesting now or hereafter in effect in a governing jurisdiction, that portion of the trust herein created shall be administered as herein provided until the termination of the maximum period allowed by law at which time and forthwith such part of the trust shall be distributed in fee simple to the beneficiaries then entitled to receive income therefrom, and for the purpose, it shall be presumed that any beneficiary entitled to receive support or education from the income or principal of any particular fund is entitled to receive the income therefrom.

13. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this trust, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

14. To the extent that any such requirements can legally be waived, no Trustee shall ever be required to give any bond as Trustee or qualify before, be appointed by, or in the absence of breach of trust, account to any court, or obtain the order or approval of any court in the exercise of any power or discretion herein given. No person paying money or delivering any property to any Trustee shall be required to see to its application.

15. In addition to any powers granted under applicable law or otherwise, and not in limitation of such powers, but subject to any rights and powers which may be reserved expressly by the Settlor(s) in this agreement, the Trustees of each trust established hereunder are authorized and empowered to exercise the following powers in their sole and absolute discretion:

a. To hold and retain any or all property, real, personal, or mixed, received from the Settlor, the Settlor's estate, or from any other source, regardless of any law or rule of court relating to diversification, or non-productivity, for such time as the Trustee shall deem best, and to dispose of such property by sale, exchange, or otherwise, as and when they shall deem advisable; notwithstanding this provision or any other contained herein, the Trustees shall stand without power to sell or otherwise dispose of any interest in a closely-held business unless they shall have consulted with all of the adult beneficiaries and the legal representatives of all the minor beneficiaries of this trust, and they shall have agreed to such sale or other disposition by an affirmative vote of a majority of such beneficiaries and representatives.

b. To sell, assign, exchange, transfer, partition and convey, or otherwise dispose of, any property, real, personal or mixed, which may be included in or may at any time become part of the trust estate, upon such terms and conditions as deemed advisable, at either public or private sale, including options and sales on credit and for the purpose of selling, assigning, exchanging, transferring, partitioning, or conveying the same, to make, execute, acknowledge, and deliver any and all instruments of conveyance, deeds of trust, and assignments in such form and with such warranties and covenants as they may deem expedient and proper; and in the event of any sale, conveyance or other disposition of any of the trust estate, the purchaser shall not be obligated in any way to see the application of the purchase money or other consideration passing in connection therewith.

c. To invest and reinvest or leave temporarily uninvested any or all of the funds of the trust estate as said Trustees in their sole discretion may deem best, including investments in stocks, common and preferred, and common trust fund, without being restricted to those investments expressly approved by statute for investment by fiduciaries, and to change investments from realty to personality, and vice versa.

d. To lease any or all of the real estate, which may be included in or at any time become a part of the trust estate, upon such terms and conditions deemed advisable, irrespective of whether the term of the lease shall exceed the period permitted by law or the probable period of any trust created hereby, and to review and modify such leases; and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments in such form and with such covenants and warranties as they may deem expedient and proper; and to make any repairs, replacements, and improvements, structural and otherwise, of any property, and to charge the expense thereof in an equitable manner to principal or income, as deemed proper.

e. To vote any stocks, bonds, or other securities held by the trust at any meetings of stockholders, bondholders, or other security holders and to delegate the power so to vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted, and to join in or become a party to any organization, readjustment, voting trust, consideration or exchange, and to deposit securities with any persons, and to pay any fees incurred in connection therewith, and to charge the same to principal or income, as deemed proper, and to exercise all of the rights with regard to such securities as could be done by the absolute owner.

f. To borrow money for any purpose in connection with the administration of any trust created hereby, and to execute promissory notes or other obligations for amounts so borrowed, and to secure the payment of any such amounts by mortgage or pledge or any real or personal property, and to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any trust created hereby, for such periods of time as deemed advisable.

g. To compromise, adjust, arbitrate, sue or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust estate as the Trustees shall deem best and their decision shall be conclusive. The Trustees, however, shall not be required to take any action until indemnified to their satisfaction.

h. To make distributions in cash or in kind, or partly in each, at valuations to be determined by the Trustees, whose decision as to values shall be conclusive.

i. To determine in a fair and reasonable manner whether any part of the trust estate, or any addition or increment thereto be income or principal, or whether any cost, charge, expense, tax, or assessment shall be charged against income or principal, or partially against income and partially against principal.

j. To engage and compensate, out of principal or income or both, as equitably determined, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, clerks, custodians, investment counsel, and other assistants and advisors, to delegate to such persons any discretion deemed proper, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative, provided he or she was selected and retained with reasonable care.

k. To apportion extraordinary stock and liquidating dividends between the income and principal in such manner as shall fairly take into account the relative interests of the beneficiaries and to determine what constitutes such dividends.

l. To hold and administer the trusts created hereby in one or more consolidated funds, in whole or in part, in which the separate trusts shall have undivided interests.

m. To rely upon any affidavit, certificate, letter, note, telegraph or other paper, or on any telephone conversation, believed by them to be sufficient and to be protected and held harmless in all payments or distributions required to be made hereunder, if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

n. To purchase securities, real estate, or other property from the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime under his/her last will in case his/her executors or Trustees are in need of cash, liquid assets, or income-producing assets with which to pay taxes, claims, or other estate or trust indebtedness, or in case such executors or Trustees are in need of such property to properly exercise and discharge their discretion with respect to distributions to beneficiaries as provided for under such bills, declarations, or agreements. Such purchase may be in cash or may be in exchange for other property of this trust, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

o. To make loans or advancements to the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime or under his/her last will in case such executors or Trustees are in need of cash for any reason. Such loans or advancements may be secured or unsecured, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

p. To do all other acts and things not inconsistent with the provisions of this instrument which they may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his or her own property.

16. The Trustees shall receive, hold, manage, invest and reinvest the trust estate and shall collect the rents, interest, dividends, and other income therefrom and, after deducting all proper charges and expenses, shall pay or apply to or for the use of the Settlor(s) during his/her/their life the net income therefrom and all or so much of the principal thereof as the Trustees shall in its sole and uncontrolled discretion determine, irrespective of any other source of income, support, maintenance or benefit of the Settlor(s), and no beneficiary named herein shall have any claim upon any such income distributed to the Settlor(s).

17. In the event I am physically or mentally incapacitated, or upon my death, I hereby nominate and appoint as Successor Trustee hereunder whosoever shall at that time be beneficiary hereunder, unless such beneficiary shall not have attained the age of twenty-one (21) years, or is otherwise deemed legally incapacitated, in which case I hereby nominate and appoint

_____, of
Name

Address City State

to be Successor Trustee. Every Successor Trustee shall have all the title, powers, and discretion herein given the Trustee, without any act of conveyance or transfer.

18. After the Settlor's death, or the death of the surviving Settlor, the Successor Trustee may, in its discretion, make loans with or without security, to the executor or administrator of the Settlor's estate, purchase from such executor or administrator, at such value as may be determined by the Trustee, any property constituting part or all of the Settlor's estate and retain all or any part of such property regardless of risk, unproductivity or lack of diversification.

19. This Declaration of Trust shall extend to and be binding upon the heirs, executors, administrators and assigns of the undersigned and upon the Successor Trustees.

20. This Declaration of Trust shall be governed and construed at all times according to the laws of the State of _____.

21. I certify that I have read the foregoing Declaration of Trust and that it correctly states the terms and conditions under which the trust estate is to be held, managed, and disposed of by the Trustee. I approve the Declaration of Trust in all particulars and request that the Trustee execute it.

Dated: _____ (Sign here) _____
(Type name here) _____, Settlor/Trustee

STATE OF _____

COUNTY OF _____

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in said State and County by

Settlor, party hereto and was executed and acknowledged by said Settlor to be his/her free act and voluntary deed.

WITNESS my signature this _____ day of _____, 19____.

(Notary Seal)

Notary Public

Declaration of Trust

1. WHEREAS, I, _____
Name

of _____
Address City

County of _____, State of _____

referred to hereinafter as Settlor and/or Trustee, declare that I am the owner of certain property referred to in this instrument as the trust estate and more fully set forth in Schedule A attached hereto and made a part hereof;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I do hereby acknowledge and declare that I have set aside and hold said trust estate and all my right, title and interest in and to said trust estate IN TRUST

For the use and benefit of the following persons, to share equally,

(Check one only, and initial)

_____ or the survivor of them:

_____ per stirpes:

First Beneficiary — Name and Address

Second Beneficiary — Name and Address

Third Beneficiary — Name and Address

Fourth Beneficiary — Name and Address

Others

2. If, at any time, as certified in writing by two licensed physicians not related by blood or marriage to either Settlor or any beneficiary of this trust, I have become physically or mentally incapacitated, the Successor Trustee named hereinafter shall assume active administration of this trust during my lifetime; such Successor Trustee shall pay to me or disburse on my behalf such amounts of income or principal as necessary for my proper health, support and maintenance.

3. Upon my death, unless all the beneficiaries shall predecease me or unless we all shall die as a result of common accident or disaster, my Successor Trustee is hereby directed forthwith to transfer the said trust estate and all right, title and interest in and to said trust estate unto the beneficiary(ies) named herein absolutely and thereby terminate this trust.

4. Anything herein contained to the contrary notwithstanding, if at the termination of the trust established, all or any portion of the principal of the trust shall vest in absolute ownership of any beneficiary under the age of twenty-one (21), the Successor Trustee is authorized and empowered in his/her discretion to hold the property so vested in such a beneficiary in a separate fund for the benefit of such beneficiary and to invest and reinvest the same, collect the income therefrom and, until such beneficiary shall attain the age of twenty-one (21) years, to apply all or so much of the net income, accumulated net income, or principal for the health, support, maintenance, and education of said beneficiary as the Successor Trustee shall deem necessary. The Successor Trustee is hereby authorized to make any such payments of income, accumulated income, or principal to a parent, guardian, or person with whom such beneficiary resides without obligation by the Successor Trustee to look to the proper application or use of any payments so made, or the Successor Trustee may expend such sums of income or principal in such manner in his/her discretion as he/she believes will benefit such beneficiary and may also pay to the beneficiary directly such sums as the Successor Trustee approves as an allowance. The Successor Trustee shall accumulate the balance of said income, if any, until such beneficiary shall attain the age of twenty-one (21), after which time the income and principal shall be paid over to said beneficiary at his or her own discretion until he or she shall terminate the trust. If such beneficiary shall die before attaining the age of twenty-one (21) years, then the principal, together with any accumulated and unexpected income, shall be paid to such person or persons as he or she may appoint by his or her last will and testament, and if he or she fails effectively to make an appointment, then over to his or her estate. The authority conferred upon the Successor Trustee shall be construed as a power only and shall not operate to suspend or prevent absolute vesting of any property in such beneficiary.

5. Each beneficiary hereunder shall be liable for his/her proportionate share of any taxes levied upon the Settlor's total taxable estate upon the death of the Settlor or the death of the survivor of two joint Settlers.

6. The Settlor reserves to himself/herself and for any other person the right to deposit with Trustee or make payable to the Trustee other policies of insurance and also to assign, transfer, convey, devise, bequeath, and deliver to the Trustee such other personal and real property to be held, administered, and disposed of as hereafter set forth in this instrument.

7. Upon the death of any beneficiary, any income then accrued or undistributed shall be held and accounted for, or distributed, in the same manner as if it had been income accrued and received after such beneficiary's death.

8. If any beneficiary and the Settlor(s) should die simultaneously or under such circumstances as would render it doubtful whether the beneficiary or the Settlor(s) died first, then it shall be conclusively presumed for the purposes of this trust that said beneficiary predeceased the Settlor(s).

9. I reserve unto myself the power to designate a new beneficiary should the beneficiaries designated hereunder predecease me. Should I for any reason fail to designate such new beneficiary, this trust shall terminate upon my death and the trust estate shall revert to my estate.

10. The Settlor reserves and shall have the exclusive right at any time and from time to time during his/her lifetime to amend or revoke in whole or in part the trust created hereunder without the consent of any beneficiary and without giving notice to any beneficiary hereunder. The sale, withdrawal, liquidation, or disposal in any manner by the Settlor of the whole or in any part of the property held in trust hereunder shall constitute as to such whole or part a revocation of this trust.

11. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts obligations, liabilities or torts of any beneficiary.

12. If it shall be determined that any provision of the trust created herein violates any rule against perpetuities or remoteness of vesting now or hereafter in effect in a governing jurisdiction, that portion of the trust herein created shall be administered as herein provided until the termination of the maximum period allowed by law at which time and forthwith such part of the trust shall be distributed in fee simple to the beneficiaries then entitled to receive income therefrom, and for the purpose, it shall be presumed that any beneficiary entitled to receive support or education from the income or principal of any particular fund is entitled to receive the income therefrom.

13. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this trust, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

14. To the extent that any such requirements can legally be waived, no Trustee shall ever be required to give any bond as Trustee or qualify before, be appointed by, or in the absence of breach of trust, account to any court, or obtain the order or approval of any court in the exercise of any power or discretion herein given. No person paying money or delivering any property to any Trustee shall be required to see to its application.

15. In addition to any powers granted under applicable law or otherwise, and not in limitation of such powers, but subject to any rights and powers which may be reserved expressly by the Settlor(s) in this agreement, the Trustees of each trust established hereunder are authorized and empowered to exercise the following powers in their sole and absolute discretion:

a. To hold and retain any or all property, real, personal, or mixed, received from the Settlor, the Settlor's estate, or from any other source, regardless of any law or rule of court relating to diversification, or non-productivity, for such time as the Trustee shall deem best, and to dispose of such property by sale, exchange, or otherwise, as and when they shall deem advisable; notwithstanding this provision or any other contained herein, the Trustees shall stand without power to sell or otherwise dispose of any interest in a closely-held business unless they shall have consulted with all of the adult beneficiaries and the legal representatives of all the minor beneficiaries of this trust, and they shall have agreed to such sale or other disposition by an affirmative vote of a majority of such beneficiaries and representatives.

b. To sell, assign, exchange, transfer, partition and convey, or otherwise dispose of, any property, real, personal or mixed, which may be included in or may at any time become part of the trust estate, upon such terms and conditions as deemed advisable, at either public or private sale, including options and sales on credit and for the purpose of selling, assigning, exchanging, transferring, partitioning, or conveying the same, to make, execute, acknowledge, and deliver any and all instruments of conveyance, deeds of trust, and assignments in such form and with such warranties and covenants as they may deem expedient and proper; and in the event of any sale, conveyance or other disposition of any of the trust estate, the purchaser shall not be obligated in any way to see the application of the purchase money or other consideration passing in connection therewith.

c. To invest and reinvest or leave temporarily uninvested any or all of the funds of the trust estate as said Trustees in their sole discretion may deem best, including investments in stocks, common and preferred, and common trust fund, without being restricted to those investments expressly approved by statute for investment by fiduciaries, and to change investments from realty to personality, and vice versa.

d. To lease any or all of the real estate, which may be included in or at any time become a part of the trust estate, upon such terms and conditions deemed advisable, irrespective of whether the term of the lease shall exceed the period permitted by law or the probable period of any trust created hereby, and to review and modify such leases; and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments in such form and with such covenants and warranties as they may deem expedient and proper; and to make any repairs, replacements, and improvements, structural and otherwise, of any property, and to charge the expense thereof in an equitable manner to principal or income, as deemed proper.

e. To vote any stocks, bonds, or other securities held by the trust at any meetings of stockholders, bondholders, or other security holders and to delegate the power so to vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted, and to join in or become a party to any organization, readjustment, voting trust, consideration or exchange, and to deposit securities with any persons, and to pay any fees incurred in connection therewith, and to charge the same to principal or income, as deemed proper, and to exercise all of the rights with regard to such securities as could be done by the absolute owner.

f. To borrow money for any purpose in connection with the administration of any trust created hereby, and to execute promissory notes or other obligations for amounts so borrowed, and to secure the payment of any such amounts by mortgage or pledge or any real or personal property, and to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any trust created hereby, for such periods of time as deemed advisable.

g. To compromise, adjust, arbitrate, sue or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust estate as the Trustees shall deem best and their decision shall be conclusive. The Trustees, however, shall not be required to take any action until indemnified to their satisfaction.

h. To make distributions in cash or in kind, or partly in each, at valuations to be determined by the Trustees, whose decision as to values shall be conclusive.

i. To determine in a fair and reasonable manner whether any part of the trust estate, or any addition or increment thereto be income or principal, or whether any cost, charge, expense, tax, or assessment shall be charged against income or principal, or partially against income and partially against principal.

j. To engage and compensate, out of principal or income or both, as equitably determined, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, clerks, custodians, investment counsel, and other assistants and advisors, to delegate to such persons any discretion deemed proper, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative, provided he or she was selected and retained with reasonable care.

k. To apportion extraordinary stock and liquidating dividends between the income and principal in such manner as shall fairly take into account the relative interests of the beneficiaries and to determine what constitutes such dividends.

l. To hold and administer the trusts created hereby in one or more consolidated funds, in whole or in part, in which the separate trusts shall have undivided interests.

m. To rely upon any affidavit, certificate, letter, note, telegraph or other paper, or on any telephone conversation, believed by them to be sufficient and to be protected and held harmless in all payments or distributions required to be made hereunder, if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

n. To purchase securities, real estate, or other property from the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime under his/her last will in case his/her executors or Trustees are in need of cash, liquid assets, or income-producing assets with which to pay taxes, claims, or other estate or trust indebtedness, or in case such executors or Trustees are in need of such property to properly exercise and discharge their discretion with respect to distributions to beneficiaries as provided for under such bills, declarations, or agreements. Such purchase may be in cash or may be in exchange for other property of this trust, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

o. To make loans or advancements to the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's husband's/wife's estate, and the Trustees of any agreement or declaration executed by the Settlor during his/her lifetime or under his/her last will in case such executors or Trustees are in need of cash for any reason. Such loans or advancements may be secured or unsecured, and the Trustees shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

p. To do all other acts and things not inconsistent with the provisions of this instrument which they may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his or her own property.

16. The Trustees shall receive, hold, manage, invest and reinvest the trust estate and shall collect the rents, interest, dividends, and other income therefrom and, after deducting all proper charges and expenses, shall pay or apply to or for the use of the Settlor(s) during his/her/their life the net income therefrom and all or so much of the principal thereof as the Trustees shall in its sole and uncontrolled discretion determine, irrespective of any other source of income, support, maintenance or benefit of the Settlor(s), and no beneficiary named herein shall have any claim upon any such income distributed to the Settlor(s).

17. In the event I am physically or mentally incapacitated, or upon my death, I hereby nominate and appoint as Successor Trustee the individual beneficiaries in the successive order listed above, unless none of the beneficiaries shall have attained the age of twenty-one (21) years or is otherwise deemed legally capable, in which event I hereby nominate and appoint

_____, of
Name

Address City State

to be Successor Trustee. Every Successor Trustee shall have all the title, powers, and discretion herein given the Trustee, without any act of conveyance or transfer.

18. After the Settlor's death, or the death of the surviving Settlor, the Successor Trustee may, in its discretion, make loans with or without security, to the executor or administrator of the Settlor's estate, purchase from such executor or administrator, at such value as may be determined by the Trustee, any property constituting part or all of the Settlor's estate and retain all or any part of such property regardless of risk, unproductivity or lack of diversification.

19. This Declaration of Trust shall extend to and be binding upon the heirs, executors, administrators and assigns of the undersigned and upon the Successor Trustees.

20. This Declaration of Trust shall be governed and construed at all times according to the laws of the State of _____.

Implementing Your Living Trust

17

Steps Necessary to Make Your Trust Legal

There are two basic steps you must take before your revocable living trust can become effective and legally viable.

- Step 1:** You must prepare and execute the declaration of trust instrument, sign it and notarize it.
- Step 2:** Pursuant to the declaration of trust, you must transfer various assets to the trustee. This is the implementation phase.

It is not sufficient to merely prepare the trust document and express your intentions by designating various beneficiaries and preparing the schedule of assets; you must also implement your plan by transferring various assets to the trust.

If you are following the general plan as described in this Kit, you'll be creating a revocable living trust where you'll be acting the dual role of settlor and trustee. In the case of a married couple, husband and wife will be acting as co-trustees of the trust that they have created. For all practical purposes, there's no material change in the way you handle your assets after creating the trust, with one exception: Before, you held title to the property as an individual in your own name, or jointly as husband and wife; after setting up the trust, you'll be holding title as trustee of the revocable trust. In other words, the person setting up the trust is acting as both trustor and trustee, in effect, wearing two hats.

The same concept can be explained a little differently. Before setting up the trust, you had the legal ownership of the property as well as the beneficial or equitable ownership of the property. The legal ownership is represented by the manner in which the title to an asset is held whereas the beneficial or equitable ownership bestows upon the person the right to use the assets for his or her own personal benefit. Having set up the trust, the trustee is now vested with the legal ownership of the property, with the beneficial ownership remaining with the person setting up the trust. In the event that a successor trustee assumes responsibility for the trust, that individual or institution now becomes the legal owner. There then exists a fiduciary relationship between the legal owner and the beneficial owner.

Importance of Transferring assets to the Trust

A trust in order to be valid must have a trust corpus. You can create a valid trust by funding it with only \$100. However, for probate avoidance purposes, only those assets that have been transferred to the trust during the settlor's lifetime will escape probate. The trust that we are recommending in this Kit is a fully funded revocable living trust. The idea is to transfer a majority of your assets to the trust in order to avoid probate on those assets.

Furthermore, if trust assets are commingled with the settlor's personal property, and if trust income is not segregated from the settlor's other income, the legal existence of the trust may come into question. Therefore, it is important that you take steps soon after executing the trust instrument to transfer to the trust the property intended to be trust corpus, and also take steps not to commingle the trust property with personal property. By treating the trust as a separate entity no questions could be raised as to the validity of the trust at a later date. Besides the initial funding of the trust, it is also recommended that you take title to later purchases of other property in the name of the trust.

In this chapter we'll outline the steps that must be taken to implement the trust and provide detailed instructions. While outlining these steps we'll assume that the settlor acts as trustee of the trust he has created and, in the case of a married couple, husband and wife are acting as co-trustees.

Real Property

Real estate constitutes a major portion of anybody's estate. By removing your real property from the process of probate and putting it into a living trust, you'll save yourself a big chunk of attorney's and executor's fees. You must prepare and execute the declaration of trust document and also transfer the recorded title to the revocable trust. You will not avoid probate unless and until the trust carries legal title to your real property. After the transfer, the title would read as, "[Your name,] as Trustee under a Declaration of Trust dated _____."

Instructions

Caution: Real estate transfer forms (such as grant deed, warranty deed or quitclaim deed) differ in style and somewhat in content from jurisdiction to jurisdiction. You must consult local practices and obtain forms that are generally accepted in your area. Such forms are readily available in most stationery stores where legal forms are sold.

- Step 1:** Prepare and execute the declaration of trust as explained earlier.
- Step 2:** If the real estate is held in your name as a single owner, select the Quitclaim Deed - Single Owner form. If the real estate is held jointly, select the Quitclaim Deed - Joint Owners form.
- Step 3:** (a) In the top left space, under Recording Requested By, type your name, and then again, type your name and full address in the space below. After the document is recorded, the recorder's office will return the document to this address.
- (b) Type your name as grantor; if there are two owners (husband and wife), enter both names.
- (c) In the space provided for quitclaim to, type either "[John Smith,] as Trustee under a Declaration of Trust dated _____," or "[John Smith and Mary Smith,] as Trustees under a Declaration of Trust dated _____," depending upon whether the property is owned singly or by husband and wife jointly. Be sure to fill in the date of your declaration of trust.
- (d) Fill in the city, county and state where the property is located.
- (e) Now, in the large, white space provided, type the legal description of the property. You'll find this information on the original grant deed or in the title insurance policy, among the papers you received when you bought the property. If the description is too long, type it on a separate sheet of paper, mark it Exhibit "A", and attach it to the Quitclaim Deed; on the Quitclaim Deed form, type "See Exhibit 'A' attached hereto and made a part hereof." Type the street address of the property at the bottom of the form, where it says "commonly known as."
- (f) On the grant deed or quitclaim deed, you may also want to type in the following sentence: "This conveyance is to a revocable trust created by the grantor(s) and it does not constitute a change of ownership and is not subject to reassessment of property." This would indicate to the assessor's office that the conveyance is made to a revocable trust and is not a sale that may trigger reassessment for property tax purposes.
- Step 4:** Sign the form in the presence of a notary public.

Step 5: Send the completed Quitclaim Deed and the required filing fee to the county clerk or other office where property transfers are normally recorded. After the document is recorded, it will be returned to you.

Notes

1. Generally, a transfer of property to a revocable trust is not a sale nor is it considered a change in ownership. No transfer tax is due because the property has not actually been sold. There should not be a reassessment of property for tax purposes as a result of the transfer to the revocable living trust.

2. The following note applies to California residents in particular but may be applicable in other states as well. The transfer of real property to a revocable trust is excluded from the definition of change in ownership for purposes of property tax reassessment. After recording the deed transferring title to real property to the trust, the trustee may receive a change of ownership statement from the county assessor's office, even though you may have explicitly stated on the deed that the transfer is to a revocable trust and is not subject to reassessment. You should fill out the change of ownership form indicating that the transfer is to a revocable trust. The law specifically exempts such transfers from reassessment for property tax valuation purposes.

The homeowner's exemption available under the law is still available after the settlor's personal residence is transferred to a revocable trust. The trustee may have to reapply for the exemption after the trust has been created.

3. If you own property in another state, you'll need to follow the transfer of real property procedures customary in that state and the grant deed or quitclaim deed must be recorded in the county or the land records office where the property is situated. For example: in Utah it would normally be inappropriate to use a grant deed; the appropriate document is called a warranty deed. It is recommended that you obtain proper transfer papers from local stationery stores.

4. If you own any rental property, you must ask your tenants to make the rent checks payable to the trustee of the trust. There will be no loss of deductions or depreciation by virtue of the transfer of title to a revocable living trust. The Internal Revenue Code very specifically preserves the allowable deductions to the settlor for the benefit of the settlor.

5. While transferring property to the trust, it is important to retain its original character, such as separate, joint or community property. For example, if a separate property of wife is transferred to the trust with both husband and wife acting as joint trustees, the Schedule A that lists the trust assets should identify the property as the separate property of the wife. Further, the transfer document, quitclaim deed or grant deed, should also show that it is the separate

property of the wife that's being transferred to the trust. Similarly, if you're transferring community property, then the community nature of the property should be indicated on Schedule A as well as on the transfer documents.

For specifics, see the sample Schedule A elsewhere in this manual. On the quitclaim deed or grant deed, it would be sufficient to note in the body of the document that, "The said property is the separate property of [wife]," or "The said property is the community property of [husband and wife]," as the case may be.

6. As we've said before, transfer of property to a revocable living trust has no income tax implications. Say, for illustration, the property you have transferred to the trust is your principal residence, and it was later sold by the trust. Any gain on the sale may be deferred under IRS Code 1034. Similarly, you would be able to exclude the gain on sale under IRC 121, if you qualify. In other words, transferring the property to the revocable living trust will not prevent you from deferring or excluding the gain if you could have done it under the individual ownership.

7. A special problem may arise with real property placed in a revocable living trust, when you attempt to refinance it. Some mortgage companies do not like to see the title to the property vested in a trust; they are used to seeing the title in the name of an individual. Their reluctance to deal with trusts is based on the fact that most mortgages are resold to institutions in the secondary mortgage market through Fannie Mae, Ginnie Mae, etc., and they won't buy mortgages in the name of a trust because they are afraid some trusts may have special restrictions preventing a trustee from mortgaging or selling the property. Also, the mortgage company employees you would generally deal with are likely to be unfamiliar with living trusts. Rather than trying to educate them, it may be easier to just transfer the title back to your name temporarily until the loan has been approved and the escrow has closed, and then put it back in the name of the trust.

Accounts in Banks, Savings and Loans and Credit Unions

For most people, their personal checking account should be a joint account, so that in the event of death of one party the funds will go to the survivor without probate. In situations where substantial sums are maintained on deposit in the checking account, it may be advisable to include the checking account as a trust asset. But, savings and loan accounts, certificates of deposit and the like are a different story. They contain the bulk of your cash assets and you should avoid probate of such assets by all means, by transferring them to the trust.

Instructions

- Step 1:** Prepare and execute the declaration of trust as explained earlier.
- Step 2:** Take this declaration to your bank or savings and loan institution and ask to open an account (or change the title of an existing account) as, “[John Smith,] Trustee under a Declaration of Trust dated _____,” or “[John Smith and Mary Smith,] Trustees under a Declaration of Trust dated _____.”

Notes

1. If you already have an account, ask the bank to change the designation on the account in the name of the trustees as shown above. It has been found that most banks and savings and loan institutions are familiar with living trusts and will promptly honor your request for transfer of accounts to the trustees.

2. With regard to a certificate of deposit, you must inquire with the particular institution that the transfer of the certificate to the trust will not be considered a premature withdrawal and incur a loss of interest. If it does create a loss of interest, it may be preferable to simply wait till the certificate of deposit matures before transferring it to the trust.

3. With credit unions, an entirely different problem exists. Most charters for credit unions are written in such a way that accounts may not be held in the name of a trust of any kind or nature. You may nonetheless inquire with the particular institution whether such a transfer can be made. If serious objections are raised, it may be better to leave the account in some form of joint tenancy or with some form of beneficiary designation as may be allowed by the charter of the credit union and leave it out of the trust.

4. After you have transferred your checking or savings account to the revocable living trust, you’d be receiving checks made payable to you as trustee. These should be deposited in the trust account. For convenience, you may want to have a special rubber stamp made for endorsing the checks:

<p style="text-align: center;">FOR DEPOSIT ONLY [John Smith,] Trustee under a Declaration of Trust dated _____ [Account Number]</p>

Stocks and Bonds

If you own publicly held stock and wish to transfer the stock to the trust, you can follow the below procedure.

Instructions

- Step 1:** Prepare and execute the declaration of trust as shown before.
- Step 2:** To transfer and re-register your securities, you'll need an "assignment" form, also known as "stock transfer." You can obtain this form from your stock broker. Fill it out and have your signature guaranteed either by your securities firm or by a commercial bank. This is a necessity in transferring the stock.
- Step 3:** Send a copy of your declaration of trust, the assignment or stock power and the securities or the stock certificates to the transfer agent whose name appears on the stock certificates. For your protection the stock certificates and the rest of the documents should be sent in separate envelopes and you may want to use certified mail or registered mail. Request the transfer agent to re-register the securities as, "[John Smith,] Trustee under a Declaration of Trust dated _____," or "[John Smith and Mary Smith,] Trustees under a Declaration of Trust dated _____."

Notes

1. Most transfer agents and brokerage firms invariably request a certified copy of the trust instrument. As a practical matter, however, they do not want the full and complete trust document, and they'll readily accept only the relevant pages of the trust instrument as sufficient evidence of a trust being in existence: the page identifying the original trustors or settlors creating the trust, the page naming the trustees and successor trustees, the pages enumerating the powers of the trustees, specifically those in regard to stock transfers, and the signature page showing execution and notarization. The transfer agent need not inquire into the details of the trust instrument. The settlors should deposit in the trust account any dividends received after execution of the trust.

2. Publicly traded bonds can be transferred to the trust following the same procedure as outlined above. If you own any bearer bonds, they can also be transferred to the trust. The normal procedure would be to include a copy of such bearer bonds and attach it to an assignment document similar to the one shown below.

Assignment of Bearer Bonds

We, [John Smith and Mary Smith,] do hereby sell, transfer, and assign without consideration all right, title, and interest, which we have in that _____, a copy of which is attached
bearer bonds serial number

hereto and incorporated herein by reference to:

[John Smith and Mary Smith,] Trustees under a Declaration of Trust dated _____.

IN WITNESS WHEREOF, we set our hand this _____ day of _____, 19_____.

[John Smith]

[Mary Smith]

(Notary Seal)

Assignment approach to transfer of bearer bonds is similar to the one used for other types of tangible assets. Most municipal bonds are bearer bonds and are payable to the holder. Such unregistered securities should be kept in a safe deposit box rented for that purpose in the trustees' names. The trust assets, of course, should not be commingled with personal assets.

3. In transferring securities to the trust, you'll need to have your stock power guaranteed either by a securities firm or a commercial bank, because transfer agents have no means of identifying the signatures on the stock power. The guarantor of the signature must be a commercial bank or trust company having a correspondent in the city in which the transfer agent is located or a member firm of a nationally recognized security exchange.

4. If the process of transfer is handled through mail, the stock certificates and the assignment forms should be mailed in separate envelopes so that the instruments are not negotiable while in transit.

Brokerage Account

Instead of holding individual certificates of stocks and bonds, you may own a brokerage account where the stocks and bonds are registered in the broker's or "street" name. In such a case, you should place the entire brokerage account, and not the individual securities held in it, in the living trust.

Instructions

- Step 1:** Prepare and execute the declaration of trust as shown before.
- Step 2:** Send a copy of the declaration of trust to your securities broker, and ask the firm to change the title of the account to, "[John Smith,] Trustee under a Declaration of Trust dated _____," or "[John Smith and Mary Smith,] Trustees under a Declaration of Trust dated _____."
- Step 3:** When you receive dividend checks, you should endorse them as trustee, and deposit them in the trust account set up at the bank. It's very important to keep proper records and not commingle your separate property with trust property.

Restricted Securities

The following discussion applies to securities that are restricted for sale or transfer. The restrictions are normally printed across the face of the certificate as a legend. Despite restrictions, these securities can be transferred to a revocable trust, subject to the same restrictions that existed in the settlor's hands. If the legend does not describe the precise terms of the restriction, you should contact the issuing company and request complete information.

When the certificates are re-registered the trustee should verify that the legend placed on the new certificates has the same terms as the original restriction and that the restriction has not accidentally been extended. If there is an expiration date on sale restrictions, the trustee should have new certificates issued after that date with the legend removed; this will facilitate later sales.

Securities of Nominal or No Value

The settlors may transfer securities of nominal value to the trust; however, the cost of transferring such securities on the issuing company's books may exceed the value of the securities. In such a case, you may not want to incur the expense of transfer and instead hold

the securities with a stock assignment executed by the settlors. Unless the corporation will transfer title on its books without issuing new certificates, title will remain in the settlors' names as far as the company is concerned, and the settlors will continue to receive proxies.

For all practical purposes, the assignment procedure suggested here would be sufficient for transfer to the revocable trust. You can prepare an assignment similar to the one shown earlier in connection with the bearer bonds.

Promissory Notes and Deeds of Trust

Promissory notes can be transferred to the trust by endorsing them over to the trustees. The makers of the notes should be advised of the assignment and requested to make future payments to the trustees.

If you are holding a note secured with a deed of trust on a real property, you can transfer it to your revocable living trust by executing an Assignment of Deed of Trust. In most areas, you'll be able to find pre-printed forms for this purpose. You should use such forms because they would generally be more readily acceptable to the recording office.

Step 1: Prepare and execute the declaration of trust as shown before.

Step 2: A sample Assignment of Deed of Trust form is shown here. In the space provided for trustee(s), you'll type the name of the trustee of your revocable trust, e.g., "[John Smith,] Trustee under a Declaration of Trust dated _____," or "[John Smith and Mary Smith,] Trustees under a Declaration of Trust dated _____." The deed of trust transferred is identified by the date of its execution, and the name of the person who signed the note, also known as trustor in that context, is typed in the next line. In many states, a deed of trust is held by a trustee, usually a financial or banking corporation. You type the name of such trustee in the space provided.

You should further identify the deed of trust by its recording data, such as document number and book or page or other date, if available. The security interest (in the case of real property) will have a legal description which is typed in the body of the form. You can find all this information in the original deed of trust. The assignment form must be signed by you as settlor(s) and notarized and recorded in the county in which the real property is situated.

Safe Deposit Box

People use safe deposit boxes to keep important papers, such as burial instructions, will, life insurance policies, and other documents which are likely to be needed immediately upon death. Normally, a bank would block access to the box upon the death of the owner, and will require a court order to open it. Also, the contents of the safe deposit box may be tied up in the probate process. By placing the safe deposit box in a living trust, you would avoid these problems.

Instructions

Step 1: Prepare and execute the declaration of trust as shown before.

Step 2: Send a copy of the declaration of trust to your bank with a letter asking them to transfer the ownership of the safe deposit box from you as an individual to, “[John Smith,] Trustee under a Declaration of Trust dated _____,” or “[John Smith and Mary Smith,] Trustees under a Declaration of Trust dated _____.”

Partnership Interest

Both general partnership and limited partnership interests can be transferred to the living trust in essentially the same manner. The transfer of partnership interest may create more complications than any other item in your effort to set up a living trust. The process of transferring the partnership interest and substitution of the trust often requires the consent of the individual partners, and sometimes an amendment to the partnership agreement and to a certificate of limited partnership, if applicable.

Before transferring partnership interest to the revocable living trust you must ascertain whether or not there is a prohibition in the partnership agreement for making any type of assignment. You may find that either the permission of the general partner and/or managing partner or all of the limited partners is required. If such a consent or waiver is required, you must obtain that first before proceeding with the transfer of partnership interest.

We have shown below a sample consent to assignment form which can be utilized to obtain the consent of partners which would allow you to substitute the trust in the partnership agreement.

**Consent to Assignment
Partnership Interest**

The undersigned general partner/limited partners of the partnership
_____ waive(s) the provisions of Sections _____
through _____ of the Partnership Agreement dated _____,
19____ and consent(s) to the foregoing assignment and approve(s) the
admission of the _____ to the partnership
Name of trust
as a substituted limited partner, subject to all the terms and conditions of
the Partnership Agreement.

Executed at _____, on
_____, 19_____.

Signature of partner

Signature of partner

Signature of general partner

In most cases you should not have any problem in obtaining such a consent from your limited partners or general partner. Even where the partnership agreement prohibits transfer of partnership interest or requires a prior approval of remaining partners or the general partner, it could be argued that the requirement or prohibition cannot be unreasonably withheld, especially where a party is transferring the interest from himself as trustor to himself as trustee of the revocable living trust, on the theory that the intent of the prohibition clause within the partnership agreement was to avoid a transfer to a third party who may not be acceptable to the other partners. Since transfer of interest to a revocable trust does not introduce a new party to the partnership agreement, there can be no valid reason for prohibition against such a transfer.

A sample form of assignment of partnership interest that can be utilized for the purpose of transferring partnership interest to the trust is shown below.

Assignment of Partnership Interest

For no consideration, _____ and

_____ (settlers/assignors) assign to

Name of trust
all of their right, title and
interest in and to their _____ partnership interest in

Limited/General
_____ dated _____. This
Name of partnership *Date of partnership*
assignment shall be effective as of the date of this instrument. Hereafter,
_____ shall have the right to receive
Name of trust
from the partnership the share of partnership profits, losses and distributions
to which the assignors would otherwise be entitled to, and the right to the
return from the partnership on its dissolution of the assignors' interest in the
partnership.

Executed at _____, on _____, 19_____.

Signature of settlor

Type name here

Signature of settlor

Type name here

As a final step you should attach to the declaration of trust this Assignment of Partnership Interest, Consent to Assignment and a copy of the Partnership Agreement as exhibits.

Tangible Personal Property

If you decide to put your tangible personal property, such as jewelry, antiques, furniture, etc., in a revocable living trust, you should list them in sufficient detail on Schedule A attached to the declaration of trust.

Usually, there's no record of ownership of tangible personal property. Nevertheless, a bill of sale can be used to prove your ownership of these items and effect a transfer to the trustee. This way, it will be beyond question that you not only intended to transfer property to the trust but, in fact, did transfer it to the trust. A typical Bill of Sale form to be used for this purpose is provided in this Kit. Use Form BS-1 for joint settlors, Form BS-2 for a single settlor.

Instructions

Step 1: Prepare and execute the declaration of trust as shown before.

Step 2: Remember, in the living trust created, you're the settlor and trustee at the same time. On the Bill of Sale form, type the date, and, in the spaces provided for settlors and trustees, type your name and your spouse's name, or your name alone, depending on whether there are two settlors or one settlor. Then type the date on which the declaration of trust was created. At the end, sign and type your name(s) again under settlor(s) and trustee(s).

Step 3: Save this Bill of Sale form with declaration of trust and other papers.

Notes

1. With regards to tangible personal properties, the problem arises of furnishing sufficient description that would identify the assets that are being transferred to the trust. In the case of assets such as oriental rugs, antiques or paintings of great value, it's not uncommon to hold an insurance policy and/or a formal appraisal document. If you do have such a policy or an appraisal document, it would contain a detailed description of the objects. You may use this description to sufficiently describe the item being transferred. As a further precaution, you may also include a photograph of the object and attach it to the bill of sale.

2. If you have an insurance policy on a tangible personal property, you should also change the designation of beneficiary in the insurance policy. The trustee of the revocable trust should be named as the designated beneficiary. Forms to effect these changes can be obtained from the insurance company.

Business Interests

If the business is a sole proprietorship, a bill of sale to the trustee of all business assets, subject to all its liabilities, should be executed. If the business is a corporation, the stock certificates should be transferred to the trustee.

Life Insurance

Generally speaking, life insurance policy is a contractual arrangement wherein the insurance company pays the designated beneficiary the benefits upon the death of the insured. Since the insurance proceeds are paid directly to the beneficiary, they are not included in the probate estate of the owner. (This assumes that the estate of the deceased is not the beneficiary.) If life insurance avoids probate automatically, should you still include it in your living trust? You might want to, for three reasons:

1. By making the trust as the sole receptacle of all your property, you would be able to dispose of your assets under the terms of one single instrument and avoid the possibility of conflicting or duplicative schemes.
2. In the event of your disability or incompetency, the successor trustee would be able to borrow against the cash value of the policy if the necessity arose, without a court having to appoint a conservator.
3. Similarly, if your spouse was incompetent at the time of your death, the living trust would permit her to receive the insurance proceeds without the conservatorship proceedings.

After you have properly executed the trust document, you should take steps to change the beneficiary designation on your policy. Your insurance company will have a Change of Beneficiary and Ownership form. You should obtain that form, complete it and return it along with a copy of your declaration of trust and a transmittal letter, a sample of which is shown below, to your insurance company.

A sample form entitled, Beneficiary Designation of Trustees Under Revocable Trust Instrument, is shown on the following pages. You should use this form only if the form prescribed by the insurance company is unavailable.

Some insurance companies require that a copy of the trust instrument be submitted to them or that the policy holder certify that the beneficiary designation in the policy agrees with the trust agreement. The insurance company will usually have a form for this purpose.

**Beneficiary Designation of Trustees Under
Revocable Trust Instrument**

Insured Name: _____

Insurance Company (herein "the Company"): _____

Policy Number(s): _____

All beneficiary designations and settlement option arrangements concerning the Insured under each of the above-mentioned policies are revoked. Each such policy's proceeds shall be paid in a single sum to the following Trustee(s) (herein "the Trustee(s)") of the trust (herein "the Trust") created under the attached Declaration of Trust (herein "the Trust Instrument"):

_____ as Trustee(s)

under the Declaration of Trust dated _____.

If, before payment of the proceeds, the Company receives proof satisfactory to it that the Trust has been revoked or is otherwise not in effect at the Insured's death, the proceeds shall be paid in a single sum to the Owner, if living at the Insured's death, otherwise to the Owner's executors, administrators or assigns.

All rights of ownership in each captioned policy, including the right to change this Designation at any time, are reserved to the Owner, regardless of any contrary provision of the Trust Instrument.

Owner

Date

Spouse's consent:

I consent to this Designation.

Owner's spouse

Date

Assignment of Insurance Policies to the Trust

To: _____, Trustee

under his Declaration of Trust dated _____.

In accordance with the provisions of said Declaration of Trust and the power reserved to me therein, I hereby deposit with _____, as Trustee under said Declaration of Trust, the following insurance policies:

Particulars of insurance policies (e.g., insurance company, policy no. etc.)

These policies have been made payable to _____, Trustee as beneficiary and they shall be held by said trustee in accordance with the provisions set forth in said Declaration of Trust.

Settlor

Settlor

Acknowledgement:

The undersigned hereby acknowledges the receipt of the above policies and agrees to hold them in accordance with the provisions of said Declaration of Trust.

Trustee

Trustee

Notes

1. Handling of life insurance requires special consideration due to its special tax aspects. Many people are under the wrong impression that the proceeds of life insurance are not taxable for either state inheritance tax purposes or for federal estate tax purposes. In order for life insurance to be excluded from the taxable estate of the decedent, the decedent must not own any incidents of ownership at the time of his death. To avoid such incidents of ownership, generally husband applies for the insurance on the life of his wife and he retains the ownership. Conversely, wife applies for insurance on her husband's life and retains the ownership. If such a policy is transferred to the trust, the trust instrument must clearly show that this policy is that spouse's separate property and that, in the event the trust is revoked, the policy would return to that spouse and that, only the spouse transferring the policy retains the right to revoke. If the other spouse is co-trustee, it should be made clear that he has no incidents of ownership in the policy while he acts either as co-trustee or sole trustee.

IRA And Keogh Accounts

IRA and Keogh accounts should be handled in the same manner as life insurance. Make your living trust the designated beneficiary of these accounts. Savings banks or brokerage houses where you might be maintaining such accounts will have the necessary forms to effect the change.

Motor Vehicle

Since most people buy a new vehicle every three or four years, it's generally more convenient to purchase the vehicle in trustee's name and register it under trustee's name. If, however, you wish to transfer to the trust a vehicle you currently own, follow the procedure described below.

Instructions

Step 1: Prepare and execute the declaration of trust as explained earlier.

Step 2: Send to the Department of Motor Vehicles, the vehicle ownership certificate and a copy of the declaration of trust, and ask it to transfer the ownership to, "[John Smith,] Trustee under a Declaration of Trust dated _____," or "[John Smith and Mary Smith,] Trustees under a Declaration of Trust dated _____."

Conclusion

In general, most of a settlor's assets can be transferred to the revocable living trust with the minimum of legal issues or other problems. Your major obstacle in transferring assets to the trust would be in the form of resistance from certain institutions or individuals within that institution, since many of them might be unfamiliar with the nature of a revocable living trust. While dealing with such individuals or institutions, you may need to use persistence and inform them of the true nature of your transaction.

On occasion a transfer agent or other party involved in the transfer of assets to the trust will require evidence of the trust's existence and the trustee's authority to act before proceeding with the transfer. In such instances you do not need to release a copy of the entire trust instrument. Submitting the first page, the pages showing the trustee's appointment and powers, and the signature and acknowledgement pages should be sufficient. After all, one of the reasons for setting up the revocable living trust was to preserve the privacy of your disposition of your assets.

Forms

- Form QCD-1:** Quitclaim Deed - Joint Owners
- Form QCD-1:** Quitclaim Deed - Joint Owners
- Form QCD-2:** Quitclaim Deed - Single Owner
- Form QCD-2:** Quitclaim Deed - Single Owner
- Form BS-1:** Bill of Sale (Tangible Personal Property) - Joint Settlers
- Form BS-2:** Bill of Sale (Tangible Personal Property) - Single Settlor
- Form ADT-1:** Assignment of Deed of Trust

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

Name
Street
Address
City &
State

SPACE ABOVE THIS LINE FOR RECORDER'S USE

QCD-1

QUITCLAIM DEED

(Joint Owners)

_____ and
Name of Grantors

Name of Grantors

the undersigned grantors, for no consideration, do hereby remise, release and forever quitclaim to

the following described real property in the City of _____

County of _____, State of _____

and commonly known as _____

IN WITNESS WHEREOF, we have hereunto set our hands the _____ day of _____, 19_____

STATE OF _____

COUNTY OF _____ SS.

On this _____ day of _____, in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____

and _____

personally known to be or proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to this instrument and severally acknowledged to me that they executed the same.

Witness my hand and official seal.

Notary Public in and for said State.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

Name
Street
Address
City &
State

SPACE ABOVE THIS LINE FOR RECORDER'S USE

QCD-1

QUITCLAIM DEED

(Joint Owners)

and

Name of Grantors

Name of Grantors

the undersigned grantors, for no consideration, do hereby remise, release and forever quitclaim to

the following described real property in the City of _____;

County of _____, State of _____;

and commonly known as _____

IN WITNESS WHEREOF, we have hereunto set our hands the _____ day of _____, 19_____

STATE OF _____

COUNTY OF _____ SS.

On this _____ day of _____, in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____

and _____

personally known to be or proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to this instrument and severally acknowledged to me that they executed the same.

Witness my hand and official seal.

Notary Public in and for said State.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

Name
Street
Address
City &
State

SPACE ABOVE THIS LINE FOR RECORDER'S USE

QCD-2

QUITCLAIM DEED

(Single Owner)

Name of Grantor

the undersigned grantor, for no consideration, does hereby remise, release and forever quitclaim to

the following described real property in the City of _____,
County of _____, State of _____:

and commonly known as _____

IN WITNESS WHEREOF, I have hereunto set my hand the _____ day of _____, 19_____.

STATE OF _____ }
COUNTY OF _____ } SS.

On this _____ day of _____, in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____

personally known to be or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged to me that he/she executed the same.

Witness my hand and official seal.

Notary Public in and for said State.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

Name
Street
Address
City &
State

SPACE ABOVE THIS LINE FOR RECORDER'S USE

QCD-2

QUITCLAIM DEED

(Single Owner)

Name of Grantor

the undersigned grantor, for no consideration, does hereby remise, release and forever quitclaim to

the following described real property in the City of _____
County of _____, State of _____:

and commonly known as _____

IN WITNESS WHEREOF, I have hereunto set my hand the _____ day of _____, 19_____.

STATE OF _____ }
COUNTY OF _____ } SS.

On this _____ day of _____, in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____

personally known to be or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged to me that he/she executed the same.

Witness my hand and official seal.

Notary Public in and for said State.

Bill of Sale
(Tangible Personal Property)

This instrument, dated _____, by and between

Names of Settlers

hereafter called Settlers and,

Names of Trustees

_____ hereafter called Trustees, under their

Declaration of Trust dated _____.

Settlers assign and transfer to Trustees all their right, title, and interest in and to all their tangible personal property. The term "tangible personal property" refers, without limitation, to such items as furniture, furnishings, silverware, objects of art, china, clothing, jewelry, sporting equipment, automobiles, books, collections of tangible personal property, and other tangible personal property normally kept at Settlers' residence. The term "tangible personal property" includes any insurance policies on this tangible personal property and any proceeds of these policies. The term "tangible personal property" excludes cash and other items of intangible personal property, even if represented by tangible documentation of ownership, and also excludes tangible personal property used by us in a trade, business, or profession; gold bars; bars of other metals; and, any other tangible property of an investment nature.

Settlers (Sign Here) _____
(Type Name Here)

(Sign Here) _____
(Type Name Here)

Trustees (Sign Here) _____
(Type Name Here)

(Sign Here) _____
(Type Name Here)

Bill of Sale
(Tangible Personal Property)

This instrument, dated _____, by and between

Name of Settlor

hereafter called Settlor and,

Name of Trustee

_____ hereafter called Trustee, under his/her

Declaration of Trust dated _____.

Settlor assigns and transfers to Trustee all his/her right, title, and interest in and to all his/her tangible personal property. The term "tangible personal property" refers, without limitation, to such items as furniture, furnishings, silverware, objects of art, china, clothing, jewelry, sporting equipment, automobiles, books, collections of tangible personal property, and other tangible personal property normally kept at Settlor's residence. The term "tangible personal property" includes any insurance policies on this tangible personal property and any proceeds of these policies. The term "tangible personal property" excludes cash and other items of intangible personal property, even if represented by tangible documentation of ownership, and also excludes tangible personal property used by me in a trade, business, or profession; gold bars; bars of other metals; and, any other tangible property of an investment nature.

Settlor *(Sign Here)* _____
 (Type Name Here)

Trustee *(Sign Here)* _____
 (Type Name Here)

When recorded mail to:

Space above this line for recorder's use

Assignment of Deed of Trust

FOR VALUE RECEIVED, the undersigned grants, assigns and transfers to:

Trustee(s) of Revocable Trust

all beneficial interest under that certain Deed of Trust dated _____

executed by _____, Trustor to _____

_____, Trustee and recorded on _____,

as document No. _____, in Book _____, Page _____

of Official Records in the office of the _____, of _____

Recorder

County/Lands Records

_____ County, State of _____, describing land therein as:

Legal description of secured property

TOGETHER with the note or notes described or referred to, the money due and become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated: _____

Settlor

Settlor

(Notary Seal)

Revoking or Amending Your Living Trust

18

You created the living trust with the express provision that you may revoke it or amend its terms at any time without the permission of or notification to any beneficiary. On the following pages are provided forms to revoke and to amend the trust for a single settlor and for joint settlors.

Revocation and Amendment Forms

- Form RV-J:** Revocation of Trust - Joint Settlers
- Form RV-S:** Revocation of Trust - Single Settlor
- Form AM-J:** Amendment to Declaration of Trust - Joint Settlers
- Form AM-S:** Amendment to Declaration of Trust - Single Settlor

Instructions to Revoke

Revocation of Trust

- Step 1:** Select the appropriate form. Use Form RV-S (single settlor) or Form RV-J (joint settlors) for revocation.
- Step 2:** Type the date the declaration of trust was created, and type the names of beneficiaries under the trust. In the space provided, describe the trust asset which was placed in the living trust. You may attach a copy of your Schedule A here, and type "See Schedule A attached hereto and made a part hereof." Type the date on which you're revoking the trust, and sign your name. Have the signature notarized.
- Step 3:** Now you must take steps to transfer the property from the trust to yourself. These steps are similar to the ones you took when you placed the property in trust, except in reverse. For real property, you must prepare and file a quitclaim deed. Use the same forms provided earlier.
- Step 4:** It would be a good idea to recover any copies of the original declaration of trust you may have given to others, and destroy them.

Instructions to Amend

Normally, your declaration of trust is amended to reflect your change of beneficiary or successor trustee designation. Use Form AM-S (single settlor) or Form AM-J (joint settlors) for this purpose. (Remember, on all trusts in this manual the beneficiary is also the successor trustee; the change in successor trustee designation referred to here is the “back up” trustee you’ve named to act if any beneficiary is a minor at the time of your death.)

Change of Beneficiary or Successor Trustee Designation

- Step 1:** Select the appropriate form depending on whether you’re a single settlor (Form AM-S) or joint settlors (Form AM-J).
- Step 2:** Type the date the declaration of trust was created, and type the names of beneficiaries under the trust. In the space provided, describe the trust asset which was placed in the living trust. You may attach a copy of your Schedule A here, and type “See Schedule A attached hereto and made a part hereof.”
- Step 3:** Check the appropriate beneficiary designation, and below it, type the name(s) of new beneficiary(ies). If you do not wish to change beneficiary designation, simply type N/A in the spaces.
- Step 4:** If you want to change successor trustee designation, check the appropriate space, and type the new successor trustee’s name and address. If you do not want to change the successor trustee designation, check the space marked “we affirm the original designation.”
- Step 5:** Type the date on which you’re amending the trust and sign your name. Have the signature notarized.
- Step 6:** Be sure to write “Amended on _____, see attached” across the part of the original declaration of trust which you are changing and initial it. Attach Amendment to Declaration of Trust form to the original declaration.
- Step 7:** You must now file, register, or deliver this amendment to appropriate authorities in the same manner as the original declaration of trust.

Addition or Deletion of Trust Assets

Often you would want to add new assets to your trust, or delete assets from the trust. You can do this by simply amending the Schedule A which is attached to the declaration of trust. If the changes are extensive, simply prepare a new Schedule A, sign and notarize it, and attach it to the original declaration of trust. Be sure to cross out the old Schedule A, and initial the deletions.

When you sell or dispose of a trust asset, you need to do nothing; the trust, as far as that particular asset is concerned, is automatically revoked. If you buy a new asset after having set up the trust, you should buy it in the name of the trust. This would eliminate the necessity of transferring it to the trust later.

Revocation of Trust

RV-J

WHEREAS, we created a written revocable inter vivos trust by a Declaration of Trust dated _____, naming following individuals as beneficiaries:

Names of Beneficiaries

Names of Beneficiaries

Names of Beneficiaries

Names of Beneficiaries

WHEREAS, a beneficial interest was created in the following trust estate:

Describe the Trust Property
_____;

WHEREAS, pursuant to the terms of the said Declaration of Trust we reserved unto ourselves the exclusive right to amend or revoke at any time the trust created thereunder without the consent of or notice to any beneficiary; NOW THEREFORE, pursuant to the aforesaid right of revocation, we do hereby revoke in its entirety the trust created by us by the aforesaid Declaration of Trust, and now we hold the former trust property free and discharged of all the terms and provisions contained in the aforesaid Declaration of Trust.

IN WITNESS WHEREOF, we have hereunto set our hand and seal this ____ day of _____, 19____.

(Settlor sign here) _____
(Type name here)

(Settlor sign here) _____
(Type name here)

Acknowledgment

STATE OF _____
COUNTY OF _____

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in said State and County by

_____, and
_____, Settlers, party
hereto and was executed and acknowledged by said Settlers to be their free act and voluntary deed.

WITNESS my signature this _____, day of _____, 19____.

(Notary Seal)

Notary Public

Revocation of Trust

RV-S

WHEREAS, I created a written revocable inter vivos trust by a Declaration of Trust dated _____, naming following individuals as beneficiaries:

Names of Beneficiaries

Names of Beneficiaries

Names of Beneficiaries

Names of Beneficiaries

WHEREAS, a beneficial interest was created in the following trust estate:

Describe the Trust Property

WHEREAS, pursuant to the terms of the said Declaration of Trust I reserved unto myself the exclusive right to amend or revoke at any time the trust created thereunder without the consent of or notice to any beneficiary;

NOW THEREFORE, pursuant to the aforesaid right of revocation, I do hereby revoke in its entirety the trust created by me by the aforesaid Declaration of Trust, and now I hold the former trust property free and discharged of all the terms and provisions contained in the aforesaid Declaration of Trust.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ day of ____, 19_____.

(Settlor sign here) _____
(Type name here)

Acknowledgment

STATE OF _____
COUNTY OF _____

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in said State and County by

Settlor, party hereto and was executed and acknowledged by said Settlor to be his/her free act and voluntary deed.

WITNESS my signature this _____, day of _____, 19_____.

(Notary Seal)

Notary Public

Amendment to Declaration of Trust

AM-J

WHEREAS, we created a written revocable inter vivos trust by a Declaration of Trust dated _____, naming following individuals as beneficiaries:

Names of Beneficiaries

Names of Beneficiaries

Names of Beneficiaries

Names of Beneficiaries

WHEREAS, a beneficial interest was created in the following trust estate:

Describe the Trust Property
_____;

WHEREAS, pursuant to the terms of the said Declaration of Trust, we reserved unto ourselves the exclusive right to amend or revoke at any time the trust created thereunder without the consent of or notice to any beneficiary;
NOW THEREFORE, pursuant to the aforesaid right to revoke and amend, we do hereby revoke the aforesaid beneficiary designation and amend the terms of the said Declaration of Trust so that the aforesaid beneficial interest shall henceforth vest in:

(check one)

- _____ the following individual
- _____ the following individuals, to share equally
- _____ the following individuals as primary and contingent beneficiary respectively

Names of Beneficiaries

Names of Beneficiaries

Names of Beneficiaries

Names of Beneficiaries

FURTHERMORE, in the said Declaration of Trust, we designated an individual to serve as Successor Trustee. With respect to that designation:

_____ we affirm the original designation
_____ we hereby revoke such designation, and we now designate

_____, of
Name

Address City State

as Successor Trustee.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this _____ day of _____, 19____.

(Settlor sign here) _____
(Type name here)

(Settlor sign here) _____
(Type name here)

Acknowledgment

STATE OF _____
COUNTY OF _____

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in said State and County by

_____, and

_____, Settlers, parties hereto and
was executed and acknowledged by said Settlers to be their free act and voluntary deed.

WITNESS my signature this _____, day of _____, 19____.

(Notary Seal)

Notary Public

Amendment to Declaration of Trust

AM-S

WHEREAS, I created a written revocable inter vivos trust by a Declaration of Trust dated _____, naming following individuals as beneficiaries:

Names of Beneficiaries

Names of Beneficiaries

Names of Beneficiaries

Names of Beneficiaries

WHEREAS, a beneficial interest was created in the following trust estate:

Describe the Trust Property

Describe the Trust Property

WHEREAS, pursuant to the terms of the said Declaration of Trust, I reserved unto myself the exclusive right to amend or revoke at any time the trust created thereunder without the consent of or notice to any beneficiary;

NOW THEREFORE, pursuant to the aforesaid right to revoke and amend, I do hereby revoke the aforesaid beneficiary designation and amend the terms of the said Declaration of Trust so that the aforesaid beneficial interest shall henceforth vest in:

(check one)

- _____ the following individual
- _____ the following individuals, to share equally
- _____ the following individuals as primary and contingent beneficiary respectively

Names of Beneficiaries

Names of Beneficiaries

Names of Beneficiaries

Names of Beneficiaries

FURTHERMORE, in the said Declaration of Trust, I designated an individual to serve as Successor Trustee. With respect to that designation:

- _____ I affirm the original designation
- _____ I hereby revoke such designation, and I now designate

_____, of
Name

Address City State

as Successor Trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 19____.

(Settlor sign here) _____
(Type name here)

Acknowledgment

STATE OF _____
COUNTY OF _____

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in said State and County by

_____,
Settlor, party hereto and was executed and acknowledged by said Settlers to be their free act and voluntary deed.
WITNESS my signature this _____, day of _____, 19____.

(Notary Seal)

Notary Public

What Steps Should Your Successor Trustee Take? **19**

The declaration of trust forms included in this manual provide for the successor trustee to take over the trust upon the death of the settlor. At this time, the successor trustee, who in most cases would be the designated beneficiary, should transfer various trust assets to his name as an individual owner. The steps he would take are identical, except in reverse, to the ones initially taken to transfer the assets to the trust.

Real Property

Caution: Real estate transfer forms (such as grant deed, warranty deed or quitclaim deed) differ in style and somewhat in content from jurisdiction to jurisdiction. You must consult local practices and obtain forms that are generally accepted in your area. Such forms are readily available in most stationery stores where legal forms are sold.

- Step 1:** Select the Quitclaim Deed Form QCD-2 from this manual.
- Step 2:**
- (a) In the top left space, under Recording Requested By, type your name, and then again, type your name and full address in the space below. After the document is recorded, the recorder's office will return the document to this address.
 - (b) Under Grantor, type the name of the trust, either "[John Smith,] as Trustee under a Declaration of Trust dated _____," or "[John Smith and Mary Smith,] as Trustees under a Declaration of Trust dated _____," depending on whether the trust set up was a one-settlor or two-settlor trust.
 - (c) In the space provided for quitclaim to, type the name of the beneficiary or beneficiaries. If there's more than one beneficiary, depending upon your particular circumstances and desires, the title may be taken either as "Joint Tenants with Right of Survivorship," or "Tenants in Common." For a single beneficiary, the title may be taken as his/her "Sole and Separate Property."
 - (d) Fill in the city, county and state where the property is situated.

(e) Be sure to enter the full legal description of the property just as it appears in the official records.

Step 3: Sign and notarize the form. (The successor trustee would sign the form in his capacity as trustee of the trust.)

Step 4: Send the completed Quitclaim Deed and the required fee to the county clerk or other office where property transfers are normally recorded. After the document is recorded, it will be returned to you.

Bank Account (Checking or Savings)

Step 1: You, as successor trustee, should present to the bank the death certificate of the settlor (both death certificates, if there were two settlors, e.g., husband and wife) and the declaration of trust, and ask it to re-register the account in your name. If you wish the account closed, ask the bank to forward you the proceeds.

Stocks and Bonds

Step 1: You, as successor trustee, should forward to the issuer of the securities or the transfer agent a copy of the death certificate(s), a copy of the declaration of trust, the "stock power" or "assignment" with your guaranteed signature, along with the stock or bond certificates. Use certified or registered mail for transmittal of these papers. You must ask the issuer or transfer agent to re-register and re-issue these securities in your name as an individual.

Brokerage Account

Step 1: Forward to the broker where the account is maintained a copy of the death certificate of the settlor and a copy of the declaration of trust, and ask the firm to transfer the account to your name as an individual.

Safe Deposit Box

Step 1: You, as successor trustee, should present to the bank where the box is situated a copy of the death certificate(s) and a copy of the declaration of trust and ask them to transfer ownership of the box to you.

Partnership Interest

Step 1: After the death of the settlor(s), the successor trustee should negotiate with the remaining partners and/or general partner for substitution of partnership interest in his or her name as an individual. In some instances, it may not be possible to restore partnership interest to a successor trustee. For example, if the settlor was an active partner in a dental practice, after his death, the successor trustee may not be able to continue the partnership interest in the dental practice. The successor trustee would have to liquidate the interest at that point.

Tangible Personal Property

Step 1: In connection with tangible personal property, after the settlor(s) death, the successor trustee should prepare a Bill of Sale (similar to the one shown in this manual) for transfer of property from the trust to himself as an individual owner.

Motor Vehicle

Step 1: Forward to the Department of Motor Vehicles a copy of the death certificate of the settlor and a copy of the declaration of trust, and ask it to re-register the vehicle in your name.

Revocable Living Trust to Avoid the Second Tax 20

A-B Trust

Generally speaking, a revocable living trust has its main application in probate avoidance. However it can also be used as an excellent estate planning tool, specifically to avoid the second tax.

Illustration: Assume that husband has an adjusted gross estate of \$1.2 million dollars; he has made no lifetime gifts and he dies in 1987. His wife has no estate in her own right. Let's analyze the tax consequences. First, due to the unlimited marital deduction, there will be no federal estate tax on the husband's death. On the wife's subsequent death (after the unified credit, but ignoring the state death tax credit) federal estate tax will be levied in the amount of \$235,000. The total taxes paid on the estates of both spouses, therefore, will be \$235,000.

In a situation like this an "A-B" trust plan in the form of a revocable living trust (which becomes irrevocable upon the death of the first spouse) can be used to reduce death taxes and maximize the amount which will eventually go to the children.

In a typical A-B trust plan, upon the death of the husband the portion of the husband's estate which equals the optimum marital deduction goes into A trust and the balance of the estate (that is, the nonmarital deduction portion of the husband's estate) goes into B trust. Let's discuss in further detail the application of A-B trust plan.

Under the current law due to the unlimited marital deduction, a person can leave his entire estate to his spouse and escape federal estate tax on his or her death but, as the above illustration pointed out, such an outright bequest of the entire estate to the surviving spouse does not result in minimizing the total estate tax paid upon the death of both spouses.

The lowering of the overall estate tax by using an A-B trust arrangement can be shown by the following example.

Say, the husband's estate is \$1.35 million. By utilizing the unlimited marital deduction, if the entire estate were to go to his wife, there will be an estate tax imposed upon the wife's subsequent death in the amount of \$298,500. However, if an A-B trust plan were to be used, this tax could be reduced substantially. Under one plan, if the optimum marital deduction bequest is used, the equivalent exemption of \$600,000

would be allocated to the B trust, and the balance of the estate, i.e., \$750,000 (\$1.35 million minus \$600,000) would be allocated to the A trust. Under this estate plan there will be no estate tax on the husband's death, and a tax of only \$55,500 on the wife's subsequent death.

The assets contained in Trust A will be included in the wife's estate upon her death, but the Trust B assets will pass to the eventual beneficiaries (say, children) without further taxation. Wife can have the lifetime benefit of Trust B assets, including the right to receive all the income during her lifetime, and the power to invade the assets under certain circumstances.

The A trust can be structured in one of several ways. In a typical arrangement the A trust could provide that the wife is to receive all of the net income, have the unlimited right to withdraw principal at any time during her life, and have upon her death a general testamentary power of appointment which, if not exercised, will result in the remainder passing to the B trust. The part of the total estate going into Trust A will not be taxable on the husband's death because of unlimited marital deduction; whatever remains of these assets on the wife's subsequent death will be included in her estate for death tax purposes.

(In the above discussion we have assumed that the husband is the first spouse to die and the wife is the survivor. However, the results would remain the same if the order of death was reversed.)

In order for the B trust to qualify as a bypass trust, the wife may be given substantial rights and benefits, but she may have no general power of appointment over the principal. The following discussion applies to the structuring of Trust B.

Structuring of Trust B

In a bypass trust arrangement, the assets of Trust B pass to the ultimate beneficiaries without being taxed in the estate of the surviving spouse. In a qualifying bypass trust, the wife may be given substantial benefits and rights and yet not have Trust B included in her estate. The following is a summary of such rights.

1. She can receive all the income during her lifetime.
2. The trustee can spend any amount of principal necessary for her reasonable support, medical care and maintenance.
3. She can withdraw on a noncumulative, annual basis, the greater of \$5,000 or 5 per cent of the trust.

4. She can be given a special power of appointment which will allow her to leave the trust property to anyone except herself, her estate, her creditors or the creditors of her estate.

The following discussion will amplify these rights.

Power to Invade Under an Ascertainable Standard

The wife may have a right to invade principal, limited by an ascertainable standard relating to her support, maintenance, health or education. Such a power is considered a special or limited power of appointment which does not cause taxation in the wife's estate. Precise language should be used in the drafting of the power so as to avoid it being construed as a general power of appointment. Here are some suggestions:

- "My wife shall have the right to invade, for the purposes of her health, education, support and maintenance in her accustomed manner of living" is okay.
- "My wife shall have the right to invade for her comfort, welfare or happiness" is not okay.
- A power to invade for the holder's "accustomed manner of living" is not okay, but a power to invade for the holder's "support in her accustomed manner of living" is okay.
- The power to invade "in cases of emergency" will not pass the test.

\$5,000 or Five Per Cent Power

The wife may also be given the power to invade principal for any purpose (without being limited to an ascertainable standard) so long as the right is limited to the greater of \$5,000 or 5 per cent of the principal per calendar year, on a noncumulative basis.

Under the "five and five" power, the most that will be included in the wife's estate will be the value of the unexercised right in the year of her death. All the amounts which had lapsed in the preceding years will not be included in her estate.

Special Power to Appoint to Third Parties

In addition to her other powers, the wife may be given a special power of appointment allowing her to dispose of the assets in Trust B to anyone except herself, her creditors or the creditors of her estate either during her life or upon her death. The estate owner may limit the permissible donees by the provisions of the trust to a class of beneficiaries, such as the couple's children or he may give the wife broad powers to appoint the property to anyone she chooses.

What Is a Bypass Trust?

A bypass trust is simply a means of transferring property so that it will escape taxation upon the death of the transferee. For example: a married person's estate can be structured by using a bypass trust so that the surviving spouse will receive the benefit of a portion of the deceased spouse's estate, but it will not be included in the surviving spouse's estate.

A qualified terminable interest property ("Q-TIP") trust is the most popular and effective way to accomplish this result. The trust property is includible in the surviving spouse's estate only to the extent an election is made to claim the marital deduction in the estate of the first spouse to die. The balance of the property bypasses the surviving spouse's estate. A QTIP trust is one form of a bypass trust. The surviving spouse is commonly given a life income interest in the trust and may be given a limited power to invade corpus of the trust and a special testamentary power of appointment.

Sample Revocable “A-B” Trust Agreement

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A sample revocable living trust agreement using an “A-B” trust plan appears in this chapter. It is designed for a married man whose wife and children are living. The plan allows him to split his total estate into Trust A, known as marital deduction trust and Trust B known as residuary credit shelter trust. Here are the salient features and benefits of such a plan.

1. This particular revocable trust agreement provides for the appointment of a trustee who is not the settlor himself. The main reason for this is that this trust is intended to continue after the death of the settlor. The trust is revocable during the life of the settlor but becomes irrevocable after his death.

2. The opening paragraph establishes the trust estate consisting of the property listed on Schedule A which is attached to the trust document and made a part thereof.

3. Settlor gives the trustee authority to receive additional property by gift, will or otherwise from persons other than the settlor.

4. The settlor reserves the right to alter and revoke the trust at any time without the consent of the trustee or any beneficiary. At the same time, upon the settlor’s death the trust becomes irrevocable and cannot be altered, amended, changed or terminated.

5. During the lifetime of the settlor all the income of the trust is paid to the settlor; any income not paid to the settlor is added to the principal. In the event the settlor becomes incapacitated or incompetent the trustee is authorized to pay the entire income to the settlor during the period of incapacity. The settlor also reserves unto himself the right to invade the principal of the trust as necessary for himself and his family.

6. After the settlor’s death, the corpus is divided into two trusts. Trust A is designed to qualify for the marital deduction in the settlor’s estate, and is generally known as marital deduction trust. Trust B is designed to escape taxation in the wife’s estate, and is known as residuary credit shelter trust. This plan is employed to achieve maximum federal estate tax economy.

7. All the income from Trust A is payable to the wife during her lifetime. She also has the right to invade the principal of Trust A for her support and maintenance. Upon the wife’s death she has the general power of appointment on the principal and all the accumulated income of Trust A. She can dispose the assets of Trust A through her will in any manner she

wishes. In the event she dies without exercising this power of appointment the assets of Trust A are merged with the assets of Trust B and are disposed of in the manner described below. In addition, the wife has a limited lifetime power of appointment over the assets of Trust A. She receives each year \$5,000 or 5% of the total value of the principal, whichever is greater from Trust A.

8. With regards to Trust B, the settlor's wife receives income from it during her lifetime. She also has the right to invade the principal of Trust B for her support, maintenance or health. This is in addition to her right to invade the assets of Trust A. However, she cannot invade Trust B assets until the assets of Trust A have been exhausted. Further, she receives from Trust B each year, \$5,000 or 5% of the total value of Trust B assets, whichever is greater.

9. The purpose of Trust B is to establish a trust for the benefit of the children. Hence upon the death of the settlor's wife, trustee is directed to pay the principal of the trust to the settlor's then-living children, in equal shares. The trust document also provides for gradual distribution of these assets to the children in the event that they have not reached the age of 30 at the time of the death of the wife.

10. If the children have not reached the age of 30, trustee is directed to pay necessary amounts for the education, support, maintenance or health of each of such child from the net income of the trust. The trustee can also provide for discretionary distribution of net income. Any balance of the income is accumulated along with the balance of the principal.

11. When a child reaches the age of 25, he or she will receive a portion of the trust principal and will receive the next share upon reaching the age of 30. If the settlor has two children under the age of 25, each would receive 1/4 of the trust assets upon reaching the age of 25 and the other 1/4 of the assets upon reaching the age of 30. The total trust is divided equally between the two children. The trust is terminated when the youngest child attains the age of 30.

12. The trust also contains a survivorship clause. If the order of death of the settlor and his wife cannot be established by proof, his wife shall be deemed to have survived the settlor. This provision enables settlor's estate to take a marital deduction; it may also result in an overall tax saving depending on the size of both estates.

13. The trust also provides for payment to the guardian of the minor or any person having care or custody of the minor, in lieu of paying to the minor.

14. The trust contains the customary spendthrift clause which prohibits the beneficiaries from pledging the assets of the trust against creditors' claims or other assignments.

15. The trustee's powers are spelled out in detail and these powers are granted in addition to the powers granted under any applicable state law. The settlor expressly waives the requirement of posting a bond of the trustee.

16. The trust document provides for the appointment of a successor trustee in the event the trustee refuses to serve or is unable to serve for any reason. Finally, the trust document provides for the trust agreement to be construed and governed under the laws of a state of your choice.

Caution: Drafting of an "A-B" revocable living trust requires complex estate planning and tax considerations and must be done by a qualified professional. Read carefully the basic application and benefits as described here, then consult with a professional your personal situation before proceeding.

Sample Revocable Living Trust Agreement

THIS TRUST AGREEMENT, made and executed this _____ day of _____, 19____, by and between _____, of _____, herein called "Settlor," and _____, hereinafter referred to as "Trustee."

WITNESSETH:

The Settlor hereby assigns, transfers and delivers to the Trustee the property listed in Schedule A, attached hereto and made a part hereof, receipt of which is hereby acknowledged by the Trustee, to have and to hold, the same, together with all other property which the Trustee may hereby receive subject to the trust, in trust for the uses and purposes and subject to the terms, conditions, and provisions hereinafter set forth.

ARTICLE I
(Additions to Trust Estate)

Additional property may be added to the Trust Estate at any time by the Settlor, or by any person or persons, by inter vivos or testamentary transfer. All such original and additional property is referred to herein collectively as the Trust Estate, and shall be held, managed and distributed as herein provided.

ARTICLE II
(Revocation by Settlor)

The Settlor shall have the right at any time during his lifetime to alter, amend, or change any of the provisions of this trust agreement, or of any amendment thereto, or to revoke this trust in whole or in part, by a written instrument executed and delivered to the Trustee without the consent of the Trustee or any beneficiary hereof. Upon the Settlor's death, this trust shall become irrevocable and thereafter shall not be subject to alteration, amendment, change, or termination.

ARTICLE III
(Dispositive Provisions During Settlor's Lifetime)

A. *[Life Income for Settlor]* During the lifetime of the Settlor, the Trustee shall pay or apply to or for his benefit so much or all of the net income as he may, from time to time, request in a written instrument executed and delivered to the Trustee, and accumulate any remaining income.

B. *[Incapacity of Settlor]* If the Settlor should become incapacitated through illness,

age or other cause, the Trustee shall pay or apply to or for his benefit the entire net income until the termination of such incapacity. For this purpose, the existence and termination of any such incapacity shall be determined by the Trustee after obtaining a written opinion of a licensed physician selected by the Trustee, or if the Settlor is then a Trustee as selected by the Successor Trustee.

C. *[Invasion of Principal for Settlor and His Family]* During the lifetime of the Settlor, the Trustee may from time to time pay or apply to or for him, his wife, _____, and their issue, such amounts out of principal as the Trustee shall determine to be necessary for their education, support, maintenance, or health, without equality of treatment.

ARTICLE IV

(Dispositive Provisions After Settlor's Death)

A. *[Dispositive Provisions After Settlor's Death]* Upon the death of the Settlor, if his wife survives him, the Trustee shall divide the Trust Estate into two parts, each of which shall be held and administered as a separate trust for the uses and purposes and subject to the terms, conditions, and provisions hereinafter set forth.

B. *[Formula Pecuniary Marital Deduction Provision]* One part, called "Trust A" shall be an amount equal to the maximum marital deduction allowable to the Settlor's estate for federal estate tax purposes, less the total value for such tax purposes of all other interests in property which qualify for the marital deduction and which pass or have passed to the Settlor's wife under the provisions of his Will, or otherwise than under this Trust; provided however, the amount for Trust A hereunder shall be reduced by the amount, if any, needed to increase the Settlor's taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will not result in a federal estate tax being imposed on the Settlor's estate. The term "maximum marital deduction" shall not be construed as a direction by the Settlor to exercise any election respecting the deduction of estate administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws, only in such manner as will result in a larger allowable estate tax marital deduction than if the contrary election had been made.

C. *[Selection of Assets]* The Trustee, in its sole and absolute discretion, may pay over and distribute to Trust A such amount wholly or partly in cash or property.

D. *[Intent of Pecuniary Provision]* It is the Settlor's intention under this provision that, to the extent possible, Trust A shall receive a fixed sum and not a fractional share of this Trust.

E. *[Nonmarital Residue]* The remaining part, called "Trust B" shall be an amount equal to the remainder of this Trust Estate.

F. *[Predecease of Wife]* If the Settlor's wife predeceases him, this entire Trust Estate shall be held and administered in the same manner and under the same terms, conditions, and provisions as provided for Trust B in Article VI as if it had been an original part of Trust B.

G. *[Division of Funds Based on Estimates]* Since the exact amount of the marital deduction allowable to the Settlor's estate cannot be determined until his federal estate tax return has been audited or closed, the Trustee is authorized, in its sole and absolute discretion, to initially estimate the amount of such marital deduction and make an initial division of the Trust Estate between Trust A and Trust B on the basis of such estimate; and as soon as practicable after the final determination of the amount of the marital deduction, the Trustee shall withdraw from or add such property and income therefrom to Trust A and Trust B as shall be necessary to adjust the property and income therefrom in Trust A to an amount equal to such finally determined marital deduction.

ARTICLE V
(Disposition of Trust A for Wife)

The income and principal of Trust A shall be paid and distributed as follows:

A. *[Life Income to Wife]* During the lifetime of the Settlor's wife, the Trustee shall pay or apply to or for their benefit all the net income at least quarter-annually, in as nearly equal installments as practicable, beginning as of the date of the Settlor's death.

B. *[Invasion of Principal for Wife]* The Trustee may pay or apply so much of the principal of Trust A, from time to time, as it shall determine to be necessary for the support, maintenance, or health of the Settlor's wife. The Trustee need not inquire as to any of her other income or property and shall disregard the interests of any potential remainderman, and the Trustee shall make payments hereunder, if any, until Trust A is exhausted before making any similar payments out of Trust B.

C. *[General Testamentary Power of Appointment to Wife]* Upon the death of the Settlor's wife, the Trustee shall pay the principal and all accumulated or undistributed income of Trust A, as she may appoint by her Last Will and Testament, specifically referring to and exercising such power. Such power in Settlor's wife to appoint shall be exercisable in favor of her estate, her creditors, the creditors of her estate, or any other appointee without limitation. In default of such appointment by Settlor's wife, upon her death the Trustee shall pay the principal and all accumulated or undistributed income of Trust A in the same manner and under the same terms, conditions, and provisions as provided for Trust B in Article VI as if it had been an original part of Trust B.

D. *[Limited Lifetime Power of Appointment to Wife]* In addition to the payment of income and principal under this Article, the Trustee shall pay to the Settlor's wife, beginning in the year in which the Settlor's death occurs and each year thereafter, such amounts from principal of Trust A not exceeding the greater of \$5,000 or 5% of the total value of the principal of Trust A, based on the year-end value of such principal, as she may from time to time appoint in a written instrument executed and delivered to the Trustee. Such power of appointment in Settlor's wife shall be exercisable in favor of herself, her estate, her creditors, the creditors of her estate, or any other appointee without limitation, but it shall not be cumulative, and any part of the permissible amount not appointed in any year shall not be subject to withdrawal in any subsequent year.

ARTICLE VI

(Disposition of Trust B for Wife and Issue)

The income and principal of Trust B shall be paid and distributed as follows:

A. *[Life Income to Wife]* During the lifetime of the Settlor's wife, the Trustee shall pay or apply to or for their benefit all the net income at least quarter-annually, in as nearly equal installments as practicable, beginning as of the date of death of the Settlor.

B. *[Invasion of Principal for Wife and Issue]* The Trustee may pay or apply so much of the principal of Trust B, from time to time, as it shall determine to be necessary for the support, maintenance, or health of the Settlor's wife, and his issue. The Trustee need not inquire as to any of their other income or property, and shall disregard the interests of any potential remainderman, but payments hereunder for the Settlor's wife, if any, shall not be made until after Trust A is exhausted.

C. *[Limited Lifetime Power of Appointment to Wife]* In addition to the payment of income and principal under this Article, if and after Trust A has been exhausted and from time to time thereafter, the Trustee shall pay to the Settlor's wife, each year such amount from principal of Trust B, not exceeding the greater of \$5,000 or 5% of the total value of the principal of Trust B, based on the year-end value of such principal, as she may from time to time appoint in a written instrument executed and delivered to the Trustee. This power of appointment in Settlor's wife shall be exercisable in favor of herself, her estate, her creditors, the creditors of her estate, or any other appointee without limitation, but it shall not be cumulative, and any part of the permissible amount not appointed in any year shall not be subject to withdrawal in any subsequent year.

D. *[Further Sprinkling Trust for Children]* Upon the death of the Settlor's wife, or if she does not survive him, then upon the Settlor's death, the Trustee shall pay the principal of the trust to the Settlor's then living issue, in equal shares, per stirpes; provided that any share of said principal payable to a child of the Settlor who has not then reached age 30 shall be

retained and held by the Trustee IN TRUST, as a Further Trust (hereinafter at times "Further Trust") for the benefit of the Settlor's said children and the income and principal thereof shall be paid as follows:

[Income for Issue] Until the termination of this Further Trust, the Trustee:

(i) *[Sprinkling Income]* shall pay or apply to or for the benefit of each of the Settlor's children from time to time living so much of the net income, in such proportions and such amounts whether equal or unequal as the Trustee, in its sole and absolute discretion, shall determine to be necessary for the education, support, maintenance, or health of each such child;

(ii) *[Discretionary Income]* may pay or apply to or for the benefit of each such child such additional amounts of remaining net income, in such proportions and such amounts whether equal or unequal, as the Trustee, in its sole and absolute discretion, shall determine; and

(iii) *[Accumulation of Balance of Income]* shall accumulate any remaining net income.

E. *[Principal to Children]* The Trustee shall pay or apply to or for the benefit of each of the Settlor's children who survive him and are from time to time living after the creation of this Further Trust, from the then principal thereof one part, as hereinafter defined, upon such child's reaching 25 years of age, and one part, as hereinafter defined, upon such child's reaching 30 years of age. As used herein, the term "one part" shall mean, at the time of distribution, a fraction of the then principal of the Further Trust of which the numerator is one (1) and the denominator is two (2) times the number of the Settlor's children living at the time of his death and subtracting the number of parts previously distributed. Thus, for example, if the Settlor's four children survive him, his oldest child would receive one-eighth of the then principal upon reaching 25, and each successive distribution thereafter to his children would be one-seventh of the then principal, one-sixth of the then principal, one-fifth of the then principal, one-fourth of the then principal, one-third of the then principal, one-half of the then principal, and the final distribution to his youngest child would be all the then remaining principal and any accumulated or undistributed income of this Further Trust. Upon the completion of the payments provided for in this paragraph, this Further Trust shall terminate.

E.1 *[Past-Due Distributions]* If any of the Settlor's children has reached any of the respective distribution ages above at the date this Further Trust is created, the Trustee shall then pay to each child such part as is directed to be paid to such child upon his or her reaching such respective age or ages, in the order in which such children have attained such age or ages.

E.2 *[Post-Death Distributions]* If any child of the Settlor who survives him is not living at the time when such a part would have become distributable to such child, the part which such child would have taken if such child then had been living shall be paid to the then

living issue of such child, in equal shares, per stirpes, and in default of any such issue, to the Settlor's then living issue in equal shares, per stirpes.

F. *[Termination of Trust]* Notwithstanding any other provisions herein this Further Trust shall terminate upon the attainment of 30 years of age by the youngest of the Settlor's children who shall be living at the date of the Settlor's death and shall also survive the creation of this Further Trust, or upon the earlier death of the survivor of such children.

G. *[Invasion of Principal for Issue]* Notwithstanding any other provisions herein to the contrary, the Trustee may pay or apply so much of the principal of this Further Trust, from time to time, as it, in its sole and absolute discretion, shall determine to be necessary for the education, support, maintenance, or health of the Settlor's issue without equality of treatment.

ARTICLE VII *(Survivorship Presumption)*

If the Settlor and his wife shall die simultaneously, or under circumstances in which there is insufficient evidence to determine who predeceased the other, the Settlor's wife shall be conclusively presumed to have survived the Settlor for the purpose of this Agreement.

ARTICLE VIII *(Payments to Persons and Minors)*

The Trustee, in making any payment or distribution hereunder to or for the benefit of any person including minors, may make such payment or distribution directly to the person, to the parent of any minor, to the guardian of any such person, or to a person having care or custody of any such person or to a custodian under a Uniform Gifts to Minors Act, and the Trustee shall not be required to see to the application or use of any payment or distribution so made; and the receipt of the person to whom the payment has been paid or delivered shall constitute a complete release and discharge of the Trustee.

ARTICLE IX *(Spendthrift Provision)*

The interest of any beneficiary hereunder, to the extent permitted by law, shall be held and possessed by the Trustee in trust upon the condition that it may be paid over by the Trustee to each beneficiary only as provided for in this Agreement, and that the same shall not be subject to his or her liabilities or creditors' claims or to alienation, assignment, or anticipation by any such beneficiary.

ARTICLE X
(Rule Against Perpetuities)

If it shall be determined that any provision of any trust created herein violates any rule against perpetuities or remoteness of vesting now or hereafter in effect in a governing jurisdiction, that portion of the trust herein created shall be administered as herein provided until the termination of the maximum period allowed by law at which time and forthwith such part of the trust shall be distributed in fee simple to the beneficiaries then entitled to receive income therefrom, and for that purpose, it shall be presumed that any beneficiary entitled to receive support or education from the income or principal of any particular fund is entitled to receive the income therefrom.

ARTICLE XI
(Trustee's Powers)

In addition to any powers granted under applicable law or otherwise, and not in limitation of such powers, but subject to any rights and powers which may be reserved expressly by the Settlor herein, the Trustee of each trust established hereunder are authorized and empowered to exercise the following powers in their sole and absolute discretion:

A. To hold and retain any or all property, real, personal, or mixed, received from the Settlor's estate, or from any other source, regardless of any law or rule of court relating to diversification, or non-productivity, for such time as the Trustee shall deem best, and to dispose of such property by sale, exchange, or otherwise, as and when the Trustee shall deem advisable; notwithstanding this provision or any other contained herein, the Trustee shall stand without power to sell or otherwise dispose of any interest in a closely-held business unless the Trustee shall have consulted with all of the adult beneficiaries and the legal representatives of all the minor beneficiaries of this trust, and they shall have agreed to such sale or other disposition by an affirmative vote of a majority of such beneficiaries and representatives.

B. To sell, assign, exchange, transfer, partition and convey, or otherwise dispose of, any property, real, personal or mixed, which may be included in or may at any time become part of the Trust Estate, upon such terms and conditions as deemed advisable, at either public or private sale, including options and sales on credit and for the purpose of selling, assigning, exchanging, transferring, partitioning, or conveying the same, to make, execute, acknowledge, and deliver any and all instruments of conveyance, deeds of trust, and assignments in such form and with such warranties and covenants as the Trustee may deem expedient and proper; and in the event of any sale, conveyance or other disposition of any of the Trust Estate, the purchaser shall not be obligated in any way to see the application of the purchase money or other consideration passing in connection therewith.

C. To invest and reinvest or leave temporarily uninvested any or all of the funds of the Trust Estate as said Trustee in its sole discretion may deem best, including investments in stocks, common and preferred, and common trust fund, without being restricted to those investments expressly approved by statute for investment by fiduciaries, and to change investments from realty to personality, and vice versa.

D. To lease any or all of the real estate, which may be included in or at any time become a part of the Trust Estate, upon such terms and conditions deemed advisable, irrespective of whether the term of the lease shall exceed the period permitted by law or the probable period of any trust created hereby, and to review and modify such leases; and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments in such form and with such covenants and warranties as the Trustee may deem expedient and proper; and to make any repairs, replacements, and improvements, structural and otherwise, of any property, and to charge the expense thereof in an equitable manner to principal or income, as deemed proper.

E. To vote any stock, bonds, or other securities held by the trust at any meetings of stockholders, bondholders, or other security holders and to delegate the power so to vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted, and to join in or become a party to any organization, readjustment, voting trust, for consideration or exchange, and to deposit securities with any persons, and to pay any fees incurred in connection therewith, and to charge the same to principal or income, as deemed proper, and to exercise all of the rights with regard to such securities as could be done by the absolute owner.

F. To borrow money for any purpose in connection with the administration of any trust created hereby, and to execute promissory notes or other obligation for amounts so borrowed, and to secure the payment of any such amounts by mortgage or pledge or any real or personal property, and to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any trust created hereby, for such periods of time as deemed advisable.

G. To compromise, adjust, arbitrate, sue or defend, abandon, or otherwise deal with and settle claims, in favor of or against the Trust Estate as the Trustee shall deem best and its decision shall be conclusive. The Trustee, however, shall not be required to take any action until indemnified to its satisfaction.

H. To make distributions in cash or in kind, or partly in each, at valuations to be determined by the Trustee, whose decision as to values shall be conclusive.

I. To determine in a fair and reasonable manner whether any part of the Trust Estate, or any addition or increment thereto, be income or principal, or whether any cost, charge, expense, tax, or assessment shall be charged against income or principal, or partially against

income and partially against principal.

J. To engage and compensate, out of principal or income or both, as equitably determined, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, clerks, custodians, investment counsel, and other assistants and advisors, to delegate to such persons any discretion deemed proper, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative, provided he or she was selected and retained with reasonable care.

K. To apportion extraordinary stock and liquidating dividends between the income and principal in such manner as shall fairly take into account the relative interests of the beneficiaries and to determine what constitutes such dividends.

L. To hold and administer the trusts created hereby in one or more consolidated funds, in whole or in part, in which the separate trusts shall have undivided interests.

M. To rely upon any affidavit, certificate, letter, note, telegraph or other paper, or on any telephone conversation, believed by them to be sufficient and to be protected and held harmless in all payments or distributions required to be made hereunder, if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

N. To purchase securities, real estate, or other property from the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's spouse's estate, and the trustees of any agreement or declaration executed by the Settlor during his/her lifetime under his/her last will in case his/her executors or trustees are in need of cash, liquid assets, or income-producing assets with which to pay taxes, claims, or other estate or trust indebtedness, or in case such executors or trustees are in need of such property to properly exercise and discharge their discretion with respect to distributions to beneficiaries as provided for under such bills, declarations, or agreements. Such purchase may be in cash or may be in exchange for other property of this trust, and the Trustee shall not be liable in any way for any loss resulting to the Trust Estate by reason of the exercise of the authority.

O. To make loans or advancements to the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's spouse's estate, and the trustees of any agreement or declaration executed by the Settlor during his/her lifetime or under his/her last will in case such executors or trustees are in need of cash for any reason. Such loans or advancements may be secured or unsecured, and the Trustee shall not be liable in any way for any loss resulting to the Trust Estate by reason of the exercise of this authority.

P. To do all other acts and things not inconsistent with the provisions of this instrument which the Trustee may deem necessary or desirable for the proper manage-

ment of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his or her own property.

ARTICLE XII

(Direction to Pay Executor if Residuary Estate is Insufficient for Taxes, Debts, Funeral and Administration Expenses)

The Trustee shall pay over to the executor of the Settlor's last will, out of Trust B, or, if the Settlor's wife does not survive the Settlor, out of the Trust Estate, such amount as the executor shall certify to the Trustee as the amount by which the residuary estate passing pursuant to the Settlor's last will shall be insufficient for the payment of all the taxes imposed on the Settlor's estate and all the expenses of the administration of the Settlor's estate and all debts and funeral expenses payable by the Settlor's estate, provided, however, that no asset of the Trust Estate shall be paid over to the executor if such asset is not includible in the Settlor's gross estate for federal estate tax purposes. The Trustee shall have no duty or obligation to inquire as to the correctness of any amount so certified by the executor, and the payment of such amount to the executor shall be a full and complete discharge to the Trustee with respect to such payment. The Trustee may, but shall have no duty to, take part in the preparation of any death tax return or in any negotiation or proceeding to determine the amount of any death taxes.

ARTICLE XIII

(Waiver of Bond)

The Settlor hereby directs that no Trustee shall be required to file any type of bond, surety or undertaking in any jurisdiction for the faithful performance of its duties hereunder, nor shall any such Trustee be required to file annual accountings to any beneficiary or court.

ARTICLE XIV

(Successor Trustee)

In the event that _____ shall cease to serve for any reason, the Settlor appoints _____ to serve as Successor Trustee.

Every Successor Trustee shall have all of the powers given the originally named Trustee. No Successor Trustee shall be personally liable for any act or omission of any predecessor. With the approval of a beneficiary or a majority in interest of the beneficiaries entitled to receive or have the benefit of the income from the trust, a Successor Trustee may accept the account rendered and the property received as a full and complete discharge to a predecessor Trustee, without incurring any liability for so doing.

ARTICLE XV
(Definitions)

Whenever used in this Agreement, unless the context requires otherwise:

A. The term personal representative includes executor, executrix, and administrator with or without the will annexed as well as the substitutes and successors.

B. The term trustee means the singular or multiple trustees appointed herein, as well as the substitutes and successors.

C. The term support maintenance or health shall mean the maintenance and support of the income beneficiaries in accordance with their accustomed manner of living.

D. The term net income shall mean net income after the payment of all trust administration expenses, trustees' fees, and taxes, other than beneficiary income taxes.

E. The term medical care shall mean to include medical, dental, hospital, drug, convalescent and nursing costs as well as any costs of medically necessary equipment and travel.

F. The term issue shall be limited to lawful issue and shall include descendants by blood and persons conceived, but not yet born.

G. The term child and children shall mean Settlor's descendants, by blood of the first degree.

H. Legally adopted children shall be deemed to be natural born children of their adoptive parents in terms of kinship or descent used here and shall be construed accordingly.

I. The singular includes the plural, and the plural includes the singular.

ARTICLE XVI

(Situs)

This trust and Agreement shall be construed and governed under the laws of the State of _____.

IN WITNESS WHEREOF, the Settlor and Trustee have hereunto executed this Trust Agreement on the day and year first abovewritten.

SETTLOR:

TRUSTEE:

STATE OF _____

COUNTY OF _____

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in said State and County by

_____.

Settlor, party hereto, and was executed and acknowledged by said Settlor to be his/her free act and voluntary deed.

WITNESS my signature this _____ day of _____, 19_____.

(Notary Seal)

Notary Public

SCHEDULE A TO TRUST AGREEMENT

(List of Assets Transferred to This Trust)

Revocable Life Insurance Trust

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Generally speaking, irrevocable life insurance trusts are popularly used for the twin purpose of avoiding probate and to remove the proceeds of the life insurance from the gross estate of the decedent. However, the creation of the irrevocable trust will cause you to lose control over the policy. If you're not willing to part with the "incidents of ownership" over your life insurance policy, you might want to consider using a revocable life insurance trust.

By using a revocable trust, you'll continue to retain the power to change the beneficiary designation in the event the future needs or suitability of the beneficiary should change. You'll also be able to use the policy as security against a loan should the need arise. Although the insurance proceeds will be included in your gross estate for federal estate tax purposes, you'll nonetheless avoid probate on them.

Funded or Unfunded Revocable Trust

Revocable life insurance trust can be either funded or unfunded. The funded revocable life insurance trust contains both the policy and cash or securities required to pay the premiums. An important purpose of funding the revocable trust during lifetime is to insure that the trust assets, in this case the life insurance policy, escape the cost and delays of probate.

An unfunded revocable trust is one that is established with only a nominal amount placed in the trust during the estate owner's lifetime, but with a provision to "pour over" assets passing under the will into the trust after the estate owner's death. The unfunded revocable life insurance trust contains only the beneficiary designation. The unfunded revocable trust does not receive its assets until the estate owner dies, at which time the property contained in it would be disposed of according to the trust instructions.

Of course, an unfunded revocable trust does not allow the estate owner's assets to escape probate. Nor does it provide other benefits that a trust normally offers, such as protection against the estate owner's incapacity during his lifetime, or the opportunity to observe the quality of property management by a trustee before his death. Such a trust, unfunded as it may be, does however work as a vehicle for flexible disposition of the estate under the terms of the trust and can also be used as a receptacle for non-probate assets, such as life insurance and retirement plan benefits.

In some states, an unfunded life insurance trust is invalid because it lacks a present corpus, and in these states it is advisable to place some other assets in the trust, though not necessarily enough to provide for future premium payments. It is recommended that, an unfunded revocable trust be funded with, say, one hundred dollars in asset.

Advantages of Revocable Life Insurance Trust

The inter vivos revocable life insurance trust also has a side benefit of safe guarding the policy against possible future incompetency of the insured. If the insured were to become incompetent at a future date, it would be difficult to change beneficiary designation or use the policy as security against a loan or exercise any other incidents of ownership. However, if the policy is held in a trust, even if the trust is revocable, the successor trustee can exercise such incidents of ownership in favor of the trustor.

You can use the revocable inter vivos life insurance trust to ensure prompt payment of debts, expenses and claims against the estate after your death. The proceeds of life insurance will provide instant liquidity to the trust for payment of such expenses.

Here's another benefit. By designating the revocable life insurance trust as the beneficiary of your life insurance policy, you'll be able to avoid state inheritance taxes. Under the present law, if the insurance proceeds are payable to a beneficiary other than the decedent's estate, they are immune from such taxes regardless of policy ownership.

In a revocable life insurance trust there are no estate tax savings, because the grantor retains the power over the policy during his lifetime, and the trust property will be included in his gross estate. Nor are there any income tax savings; if the trust is funded, all income derived from the trust assets is taxable to the grantor.

Summary

We can summarize several non-tax advantages of a revocable life insurance trust.

1. The expenses and publicity of probate are avoided;
2. The need for a guardianship or conservatorship proceedings is avoided;
3. The trustee can collect the life insurance proceeds much faster after the settlor's death, because the trustee will not have to wait for the will to be probated;
4. A revocable living trust gives the settlor the opportunity to see how the trust is operating while he is alive; if he doesn't like it, he can change it or revoke it;

Non-Tax Benefits of Revocable Life Insurance Trust

There are many non-tax benefits in naming a revocable living trust as beneficiary of a life insurance policy. These benefits are:

1. Flexibility. The trustee of the living trust can be given greater flexibility in paying out or accumulating income and principal for the benefit of beneficiaries than is normally available under life insurance settlement options. The trustee can have the power to sprinkle income among beneficiaries, accumulate income, pay out principal to meet the special needs of certain beneficiaries, etc. Also, the trustee can be given broad investment powers, which may result in greater income to the beneficiaries.

2. Providing for Liquidity in the Estate. Life insurance proceeds can be used to pay estate settlement costs, debts, claims against the estate and taxes. The trustee can be authorized to lend money to the estate or buy assets from it to provide the necessary cash.

3. Unified Administration. A revocable living trust that is funded with insurance policies has the advantage of ensuring uniform administration of the proceeds. The revocable living trust can be used as a receptacle for all other properties after the estate owner's death, including employee death benefits. This is the so-called "pour over" arrangement. In addition, the surviving spouse can have his or her assets paid to the same trust upon death.

4. Spendthrift Provisions. The trust document can provide for specific spendthrift provisions, which would make sure that the beneficiaries do not spend the money foolishly, or that the proceeds be subjected to the claims of the creditors of the beneficiaries. It is much easier to include spendthrift provisions in a trust than it is under an insurance settlement option.

5. Avoiding Guardianship Proceedings. If insurance proceeds are left to a minor or incompetent, a guardianship will have to be set up under court supervision to administer the money. Such proceedings are without exception cumbersome, expensive, and incur great delays. A trust can avoid the need for guardianship proceedings and would also avoid the continued supervision by probate court.

6. Better Management. If insurance proceeds are paid directly to a beneficiary under a settlement option, there is no possibility of capital appreciation. However, when the proceeds are left in a trust, the trustee can invest these proceeds in a high-grade financial or commercial investment instruments, with the possibility that the assets will increase in value.

Sample Revocable Life Insurance Trust

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Salient Features of Revocable Insurance Trust

Below is a summary of salient features included in the revocable inter vivos life insurance trust that allows for a marital deduction trust and family trust. A sample trust document follows.

- 1. Trust Estate.** The settlor states in the trust instrument that he has made certain insurance policies payable to the trustee upon his death. The proceeds of such policies, together with other property shown on Schedule "A", and any other property which may later become payable or be transferred to the trustee by settlor, under the settlor's will or otherwise, constitutes the trust estate.
- 2. Additions to the Trust.** Settlor gives the trustee authority to receive property by gift, will, or otherwise from persons other than the settlor.
- 3. Settlor's Reserved Powers.** Settlor reserves all rights over the policies and reserves the right to alter and revoke the trust.

Note: By reserving these powers to himself, the proceeds of the policies will be included in the settlor's gross estate for federal estate tax purposes. If the settlor wants to exclude the proceeds of these policies from his gross estate, he must give up all incidents of ownership and make the trust irrevocable.

- 4. Payment of Premiums.** The trustee has no responsibility to see to it that the premiums are paid on the policies.
- 5. Collection of Proceeds.** After the death of the settlor, the trustee is authorized to collect the proceeds of life insurance proceeds and, in this regard, make any compromises with the insurer. The insurer is also released from any liability in its dealings with the trustee or any duty to see to the application of the insurance proceeds by the trustee.
- 6. Marital Trust.** During the lifetime of the settlor, the trustee is to accumulate all the net income of the trust, adding it to the principal. After the settlor's death, the trust estate is divided into Trust A and Trust B. The marital deduction trust is designed so as to minimize the federal estate tax. The surviving spouse is to receive all the income

from Trust A and the right to invade the principal for her benefit. She is given a general testamentary power of appointment.

7. Non-Marital Trust. The trustee is authorized to expend as much of the net income of Trust B as he deems necessary for the settlor's spouse for his or her support, maintenance and health. In addition, after exhausting the assets of Trust A, the spouse can also invade the principal of Trust B.

After the death of the settlor's spouse, Trust B and any remainder of Trust A assets are divided equally among the settlor's children per stirpes, if they have attained the age of twenty five. If any of the children are under the age of twenty five, the trustee will hold and administer such child's share and expend the income of the trust share for the child's support, comfort and education. In the case of a minor beneficiary, the trustee is to hold his trust share till he reaches the age of majority, with the power to distribute the income to the beneficiary.

8. Simultaneous Death. If the order of death of the settlor and his wife cannot be established by proof, his wife shall be deemed to have survived settlor.

This provision enables settlor's estate to take a marital deduction. It may also result in an overall tax-saving, depending on the size of both estates.

9. Spendthrift Clause. Except for the wife's general testamentary power of appointment over the principal of the marital deduction trust, the interests of the beneficiaries are inalienable.

10. Provisions Concerning Trustee. The trust instrument contains provisions concerning the resignation of the trustee, the appointment of a successor, the bond of the trustee, the accounting requirement and the specific and general powers of the trustee.

Sample Form
Revocable Insurance Trust

THIS TRUST AGREEMENT made this _____ day of _____, 19____, by and between _____, of _____, hereinafter called "Settlor," and _____, of _____, hereinafter referred to as "Trustee."

Article I
(Trust Estate)

A. Settlor has caused certain policies of insurance on his life, as shown on Schedule A, to be made payable to Trustee upon his death. The proceeds of such policies, together with other property shown on Schedule A, and any other property which may hereafter become payable or be transferred to Trustee by Settlor, under Settlor's Will or otherwise, shall constitute the trust estate, all of which shall be held, administered and disposed of by Trustee in accordance with the provisions set forth in this Agreement.

B. With the consent of the Trustee, Settlor or any other person may, at any time and from time to time, increase the principal of the trust estate by adding thereto insurance policies, cash, securities, or other property. Such additions to the trust estate shall be subject to the terms of this Agreement in the manner and to the same extent as if they had been delivered to the Trustee by the Settlor as part of the principal of the trust estate at the time of the execution of this Agreement.

Article II
(Settlor's Reserved Powers)

A. During Settlor's lifetime, all rights of every nature over the policies of insurance on his life shown on Schedule A, or other policies of insurance owned by the Settlor which may hereafter be made payable to the Trustee, are reserved to him, to be exercised in accordance with the terms of the respective policies. If, while Settlor shall have such rights, the consent of Trustee to the exercise of any of them is necessary at any time, Trustee undertakes to give such consent forthwith, and such consent shall be binding on all beneficiaries of the trust. By way of illustration, but not of limitation, Settlor reserves the following powers:

- (1) To add the proceeds of other policies of insurance to the trust by making such policies of insurance payable to the Trustee;
- (2) To receive or apply dividends, disability benefits, surrender value, or the proceeds of matured insurance policies;
- (3) To obtain and receive from the respective insurance companies such advances or loans on account of policies as may be available;
- (4) To exercise any option, right, or privilege granted in a policy;
- (5) To sell, assign, or pledge a policy;
- (6) To change the beneficiary of a policy;
- (7) To withdraw a policy from the trust in order to exercise a reserved power or for any other purpose;
- (8) To change the beneficiaries under this Agreement, their respective shares, and the plan of distribution.

B. If any policy is surrendered or if the beneficiary of any policy is changed, this trust will be revoked with respect to that policy, and the Trustee shall have no right to receive any payments, dividends, benefits, or privileges of any kind that may accrue.

Article III *(Revocation and Amendment)*

The Settlor during his life may at any time revoke this trust in whole or in part, or may alter or amend any of its provisions and any amendment may be similarly cancelled or amended; provided, however, that the duties and responsibilities of the Trustee shall not be substantially changed without the Trustee's written consent.

Article IV *(Payment of Premiums)*

The Trustee shall have no responsibility to pay the premiums with respect to any policy of insurance on the Settlor's life, and the Trustee shall not be obligated to engage in litigation to enforce payment of any policy unless he is indemnified to his satisfaction against any resulting expenses and liability. The Trustee shall sustain no liability to anyone if the policies, or any of them, shall lapse or otherwise become uncollectible through the act or default of any party other than the Trustee.

Article V
(Trustee's Duties Concerning Policies)

A. The Trustee undertakes to safeguard any policies of life insurance which may be entrusted to its custody during the term of the trust.

B. Upon the death of the Settlor, the Trustee shall collect the net proceeds of any policies of insurance upon the Settlor's life payable to it and shall hold such proceeds as Trustee hereunder. The Trustee shall have full authority to make any compromises or settlements with respect to such policies that it may deem expedient, and to give to the insurer releases and discharges of its liabilities under said policies.

C. The Trustee may take such steps as it shall deem necessary to enforce the payment of any such policy, but shall be under no duty to incur any expense or engage in any litigation to enforce the payment of any such policy unless it is indemnified to its satisfaction against all expense and liability.

Article VI
(Protection of Insurance Companies)

Payments by the insurer to the Trustee and the receipt of and release by the Trustee shall constitute a full release and discharge of the liability of the insurer, and no insurer need inquire into the application of any such payments.

Article VII
(Provision During Settlor's Lifetime)

During the lifetime of the Settlor, the Trustee shall accumulate all net income of the trust, adding the same to the principal.

Article VIII
(Marital and Non-Marital Trust)

After the Settlor's death, the Trustee shall hold, apply and distribute the net income and corpus of the trust in the following manner and upon the following terms and conditions:

If the Settlor's spouse, _____, survives the Settlor, the Trustee shall divide the trust property and hold in Trust "A" property of a kind that will qualify for the marital deduction and equal in value to that fractional share of the residuary estate of the Settlor at the values finally determined for federal estate tax purposes that will equal the unlimited estate tax marital deduction, allowable in determining the federal tax on his (her) gross estate, less the aggregate amount of marital deductions, if any, allowed by

reason of property passing to the spouse of the Settlor under his (her) will, or otherwise than under terms of this Article, less any amount disclaimed by her (him) by written notice to the Trustee, and less an amount equal to the largest amount, if any, that can pass free of federal estate tax by reason of the unified credit and the state death tax credit (to the extent that use of the state death credit shall not increase state death taxes payable by the Settlor's estate) but no other credit. The Trustee shall administer the same in all respects so that it will qualify for the federal estate tax marital deduction, and the Trustee shall hold in Trust "B" the remainder of said trust property. If the Settlor's spouse does not survive the Settlor, the Trustee shall hold the entire trust property in Trust "B" and administer the same in accordance with the provisions of Article X.

Article IX
(Disposition of Trust A)

A. During the life of the Settlor's spouse, the Trustee shall:

1. Pay to her (him) all of the income of Trust "A", in convenient installments, quarterly; and
2. Pay to her (him) so much of the corpus of Trust "A" as the Trustee determines necessary for her (his) support, comfort, and well-being without being required to give consideration to other funds available to her (him) for such purposes.

B. Upon the death of the Settlor's spouse, the Trustee shall:

1. Distribute the trust estate of Trust "A" to such persons or to the Settlor's spouse's estate upon such conditions, in trust or otherwise, in such manner, and at such time as she (he) appoints and directs by will by specifically referring to this general power of appointment.
2. If such power of appointment is not so exercised, as to any part or all of the trust estate of Trust "A", to add to and administer the same as property held in Trust "B" under the provisions of Article X.

Article X
(Disposition of Trust B)

After the Settlor's death, the Trustee shall hold, apply, and distribute the net income and principal of all of the trust property in Trust "B" in the following manner:

A. During the life of the Settlor's spouse, if she (he) survives him (her), the Trustee may, in its sole and absolute discretion, apply for her (his) benefit so much of the net income, and after exhaustion of Trust "A" such amounts of principal, whenever the Trustee determines

that the income of the Settlor's spouse from all sources known to the Trustee is not sufficient for her (his) support, comfort, and well-being, as the Trustee deems to be required, and the Trustee shall accumulate and add to principal any net income not so applied.

B. Upon the death of the Settlor's spouse, or if she (he) predeceases the Settlor, upon the Settlor's death, the Trustee shall divide the trust property of Trust "B" and any trust property of Trust "A" that passes by reason of default of appointment by the Settlor's spouse, into equal shares and distribute such share to those children of the Settlor that shall have attained the age of twenty five years, absolutely and per stirpes. If any of Settlor's children shall not have attained such age at that time, the Trustee shall hold and administer such child's share as a separate trust and distribute the net income and corpus of each such trust in the following manner:

1. During the minority of the beneficiary, the Trustee shall use so much of the income as the Trustee determines to be necessary for the support, comfort, and education of the beneficiary;

2. After the beneficiary attains his or her majority, the Trustee shall pay all the current net income to him or her;

3. Whenever the Trustee determines that the income of any beneficiary from all sources is insufficient for the beneficiary's reasonable support, comfort, and education, the Trustee shall pay to him or her or use for his or her benefit, so much of the principal as the Trustee determines necessary;

4. The Trustee shall distribute any or all of the principal any time and from time to time to any beneficiary upon written request after he or she reaches twenty-five years of age;

5. Upon the death of any beneficiary, the Trustee shall distribute the trust property as the beneficiary may by will expressly appoint by referring to this power of appointment, and in default of such appointment, to his or her descendants then living, per stirpes; however, if there are no descendants of his or her then living, then to his or her estate. If any of the descendants of a beneficiary is a minor at the time he or she is entitled to receive a share, such share shall vest in him or her indefeasibly, but the Trustee may, in its discretion, hold such descendant's share in trust for his or her benefit until he or she reaches 21 years of age. The Trustee shall use so much of the income and principal for his or her support, comfort, and education as the Trustee determines necessary for these purposes.

Article XI
(Termination of Trust)

Notwithstanding anything to the contrary, this trust shall terminate upon the death of the last survivor of the Settlor, his (her) spouse, and his (her) descendants living at the date hereof or when the last minor beneficiary hereunder not living at the date hereof reaches majority or sooner dies, whichever time is later. Upon such termination, the Trustee shall distribute the corpus and accumulated income in the proportions in which the beneficiary share in the income of the trust.

Article XII
(Successor Trustee)

Any Trustee acting hereunder may resign at any time by written notice to the Settlor, if living, otherwise to the adult beneficiaries then entitled to the income from the trusts or, if none, to the parent, guardian, or conservator of any income beneficiary of the trusts who is under a disability. In the event of the resignation, refusal, or inability to act of any Trustee acting or appointed to act hereunder, the Settlor, if living, otherwise the adult beneficiary or a majority in interest of the adult beneficiaries, as the case may be or, if none, the parent, guardian, or conservator of a beneficiary under a disability, may appoint a successor Trustee to administer the trusts.

The successor Trustee shall have all the duties, rights, titles, and powers, whether discretionary or otherwise, as if originally named as Trustee. No successor Trustee shall be liable or responsible in any way for the acts or defaults of any predecessor Trustee, but the successor Trustee shall be liable for only his (her) or its own acts and defaults with respect to property actually received by him (her) or it. With the consent of the person or persons making the designation of the successor Trustee, the successor Trustee may accept the account rendered and the assets and property delivered to him (her) or it by the predecessor Trustee as a full and complete discharge to the predecessor Trustee, and shall incur no liability or responsibility to any beneficiary under this Agreement by reason thereof.

Article XIII
(Powers of Trustee)

In addition to any powers granted under applicable law or otherwise, and not in limitation of such powers, but subject to any rights and powers which may be reserved expressly by the Settlor herein, the Trustee of each trust established hereunder are authorized and empowered to exercise the following powers in their sole and absolute discretion:

A. To hold and retain any or all property, real, personal, or mixed, received from the Settlor's estate, or from any other source, regardless of any law or rule of court relating

to diversification, or non-productivity, for such time as the Trustee shall deem best, and to dispose of such property by sale, exchange, or otherwise, as and when the Trustee shall deem advisable; notwithstanding this provision or any other contained herein, the Trustee shall stand without power to sell or otherwise dispose of any interest in a closely-held business unless the Trustee shall have consulted with all of the adult beneficiaries and the legal representatives of all the minor beneficiaries of this trust, and they shall have agreed to such sale or other disposition by an affirmative vote of a majority of such beneficiaries and representatives.

B. To sell, assign, exchange, transfer, partition and convey, or otherwise dispose of, any property, real, personal or mixed, which may be included in or may at any time become part of the trust estate, upon such terms and conditions as deemed advisable, at either public or private sale, including options and sales on credit and for the purpose of selling, assigning, exchanging, transferring, partitioning, or conveying the same, to make, execute, acknowledge, and deliver any and all instruments of conveyance, deeds of trust, and assignments in such form and with such warranties and covenants as the Trustee may deem expedient and proper; and in the event of any sale, conveyance or other disposition of any of the trust estate, the purchaser shall not be obligated in any way to see the application of the purchase money or other consideration passing in connection therewith.

C. To invest and reinvest or leave temporarily uninvested any or all of the funds of the trust estate as said Trustee in its sole discretion may deem best, including investments in stocks, common and preferred, and common trust fund, without being restricted to those investments expressly approved by statute for investment by fiduciaries, and to change investments from realty to personality, and vice versa.

D. To lease any or all of the real estate, which may be included in or at any time become a part of the trust estate, upon such terms and conditions deemed advisable, irrespective of whether the term of the lease shall exceed the period permitted by law or the probable period of any trust created hereby, and to review and modify such leases; and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver any and all instruments in such form and with such covenants and warranties as the Trustee may deem expedient and proper; and to make any repairs, replacements, and improvements, structural and otherwise, of any property, and to charge the expense thereof in an equitable manner to principal or income, as deemed proper.

E. To vote any stock, bonds, or other securities held by the trust at any meetings of stockholders, bondholders, or other security holders and to delegate the power so to vote to attorneys-in-fact or proxies under power of attorney, restricted or unrestricted, and to join in or become a party to any organization, readjustment, voting trust, for consideration or exchange, and to deposit securities with any persons, and to pay any fees incurred in connection therewith, and to charge the same to principal or income, as deemed proper,

and to exercise all of the rights with regard to such securities as could be done by the absolute owner.

F. To borrow money for any purpose in connection with the administration of any trust created hereby, and to execute promissory notes or other obligation for amounts so borrowed, and to secure the payment of any such amounts by mortgage or pledge or any real or personal property, and to renew or extend the time of payment of any obligation, secured or unsecured, payable to or by any trust created hereby, for such periods of time as deemed advisable.

G. To compromise, adjust, arbitrate, sue or defend, abandon, or otherwise deal with and settle claims, in favor of or against the trust estate as the Trustee shall deem best and its decision shall be conclusive. The Trustee, however, shall not be required to take any action until indemnified to its satisfaction.

H. To make distributions in cash or in kind, or partly in each, at valuations to be determined by the Trustee, whose decision as to values shall be conclusive.

I. To determine in a fair and reasonable manner whether any part of the trust estate, or any addition or increment thereto, be income or principal, or whether any cost, charge, expense, tax, or assessment shall be charged against income or principal, or partially against income and partially against principal.

J. To engage and compensate, out of principal or income or both, as equitably determined, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, clerks, custodians, investment counsel, and other assistants and advisors, to delegate to such persons any discretion deemed proper, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative, provided he or she was selected and retained with reasonable care.

K. To apportion extraordinary stock and liquidating dividends between the income and principal in such manner as shall fairly take into account the relative interests of the beneficiaries and to determine what constitutes such dividends.

L. To hold and administer the trusts created hereby in one or more consolidated funds, in whole or in part, in which the separate trusts shall have undivided interests.

M. To rely upon any affidavit, certificate, letter, note, telegraph or other paper, or on any telephone conversation, believed by them to be sufficient and to be protected and held harmless in all payments or distributions required to be made hereunder, if made in good faith and without actual notice or knowledge of the changed condition or status of any person receiving payments or other distributions upon a condition.

N. To purchase securities, real estate, or other property from the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's spouse's estate, and the trustees of any agreement or declaration executed by the Settlor during his/her lifetime under his/her last will in case his/her executors or trustees are in need of cash, liquid assets, or income-producing assets with which to pay taxes, claims, or other estate or trust indebtedness, or in case such executors or trustees are in need of such property to properly exercise and discharge their discretion with respect to distributions to beneficiaries as provided for under such bills, declarations, or agreements. Such purchase may be in cash or may be in exchange for other property of this trust, and the Trustee shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of the authority.

O. To make loans or advancements to the executor or other personal representative of the Settlor's estate, the executor or other personal representative of the Settlor's spouse's estate, and the trustees of any agreement or declaration executed by the Settlor during his/her lifetime or under his/her last will in case such executors or trustees are in need of cash for any reason. Such loans or advancements may be secured or unsecured, and the Trustee shall not be liable in any way for any loss resulting to the trust estate by reason of the exercise of this authority.

P. To do all other acts and things not inconsistent with the provisions of this instrument which the Trustee may deem necessary or desirable for the proper management of the trusts herein created, in the same manner and to the same extent as an individual might or could do with respect to his or her own property.

Article XIV
(Trustee to Deal With Settlor's Estate)

The Trustee is hereby authorized, in his (her) or its absolute discretion, without regard to whether the Trustee may also be serving as a personal representative of the Settlor's estate, to purchase on behalf of the trust estate any property, real or personal or mixed, tangible or intangible, and wherever situated, belonging to the estate of the Settlor or to make loans or advancements, secured or unsecured, to the personal representative of the estate of Settlor in order to provide funds with which to pay claims, taxes, administration expenses, or other indebtedness of such estate. Any such purchases, loans, and advancements shall be made upon such terms and conditions as the Trustee in its discretion deems appropriate. The Trustee shall not be liable for any loss to the trust estate by reason of acting in accordance with this Article, except only for its own negligence.

Article XV
(Annual Accounting)

The Trustee shall render an annual accounting to the beneficiary(ies) of the trust not more than one hundred twenty (120) days following the close of the fiscal year of the trust.

Article XVI
(Bond Waived)

No Trustee or successor Trustee shall be required to give any bond or other security for the faithful performance of his (her) or its duties.

Article XVII
(Trustee's Liability)

The Settlor hereby directs that the Trustee, whether appointed under this Agreement or otherwise, shall not be held liable for any loss of damage sustained by this trust or any of its beneficiaries, or any person or persons having or claiming any rights under or against the trust, except for actual and intentional malfeasance, and regardless of whether the act, omission, or conduct with respect to which liability may be claimed shall be within or without the provisions of this Agreement or the authority or powers of the Trustee.

Article XVIII
(Spendthrift Clause)

The interest of the beneficiaries in the principal and/or income of the trust shall not be subject to the claims of their creditors or others, nor to legal process, and may not be voluntarily or involuntarily alienated or encumbered.

Article XIX
(Simultaneous Death)

If the Settlor and his wife shall die simultaneously, or under circumstances in which there is insufficient evidence to determine who predeceased the other, the Settlor's wife shall be conclusively presumed to have survived the Settlor for the purpose of this Agreement.

Article XX
(Applicable Law)

This trust shall be administered and governed by the laws of the State of _____.

Article XXI
(Attestation)

IN WITNESS WHEREOF, the Settlor and Trustee have hereunto executed this Trust Agreement on the day and year first above-written.

SETTLOR:

TRUSTEE:

STATE OF _____

COUNTY OF _____

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in said State and County by

Settlor, party hereto, and was executed and acknowledged by said Settlor to be his/her free act and voluntary deed.

WITNESS my signature this _____ day of _____, 19_____.

(Notary Seal)

Notary Public

SCHEDULE A TO TRUST AGREEMENT
(List of Assets Transferred to This Trust)

Do You Still Need a Will?

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Let's say that you've set up a revocable living trust using one or more of the appropriate forms found in this manual. You've placed your real property, your securities portfolio, your savings account and some other personal property in the trust. All this, let's say, constitutes 90% of your total assets. You've accomplished your primary objective of avoiding probate on the assets placed in the living trust.

But you still own some other assets that you find are not convenient to be placed in the trust. Such assets may be your checking accounts, your personal effects, your collection of guns, your antique chair. How are you going to dispose of these assets?

You need a will for that purpose.

You may have left out of your trust some assets, either on purpose or inadvertently. Often, it's hard to inventory every little asset you own and place it in the trust. You need a will to cover such "forgotten" assets.

You need a will to cover contingencies beyond the realm of normal planning. If you were to die in an air crash or some such disaster, your estate may become a recipient of the proceeds of a lawsuit or some other cash settlement.

If you don't have a will, all the assets that weren't covered in the living trust would be distributed according to the state law on intestate succession. In other words, if you don't have a will, the state will write one for you. And that may not be what you had in mind. For example, if you die without a will, in many states one-half of your marital property goes to your children while your spouse receives no part of it. This may pose great hardship on your spouse. In certain instances, your estate may go to someone you hardly even know, let alone like.

Do-It-Yourself Family Will Kit

Your will may be a fairly simple document, but it should contain certain important clauses. A complete discussion about wills and how you can write one is beyond the scope of this manual. However, a DO-IT-YOURSELF FAMILY WILL KIT is available from this publisher. This Will Kit has standard formal will forms with step-by-step instructions for you to follow. It has forms for single, married, or divorced people with or without children; there's a right form for every one of these situations.

In addition, the forms contain the required language to help you save money and safeguard your estate against unforeseen contingencies.

- **Executor's Costs:** Eliminate unnecessary costs of administering your estate after your death. The Kit shows you how you can exonerate your personal representative from posting a bond.
- **Will Contests:** Discourage disgruntled heirs from starting a legal battle over the terms of your will. The Kit shows you how.
- **Simultaneous Death:** If you and your spouse or a heir died simultaneously in an accident, this particular provision in your will can help reduce death taxes. The forms contain the required language.
- **Guardians of Minor Children:** How can you be certain that your children's interests will be taken care of by someone you trust, and not by someone appointed by court? The Kit shows you how.
- **Maximum Flexibility:** Allow your executor (in most cases, your spouse, your son or daughter, or your trusted friend) to manage and distribute your estate to the beneficiaries with minimal interference from the courts. This way, they'll collect more of what you've left behind...much faster. Again, this key clause in your will can pave the way for a smooth transition.

The Family Will Kit has everything you need to write your will. Please use the order form provided here to order your Will Kit. In any case, it's imperative that your entire estate is covered by either a declaration of trust or by a properly prepared and executed will.

Do-It-Yourself Family Will Kit

1989
Revised
Edition

The Do-It-Yourself Family Will Kit is designed for use whether you're married, single, separated, divorced, or widowed. Different sets of forms are provided depending on whether you've children or not. You can distribute your estate according to your wishes in various ways to your spouse, children, parents, relatives or friends.

Twelve Formal, Printed Wills

These wills are designed to fit practically every situation and desire. They contain statutory language and features that will save you and your heirs money and frustration. The forms are comprehensive and all you need to do is to fill in the blank spaces.

Here are some of the things you'll be able to do:

- Appoint an executor and an alternate executor of your estate.
- Require no bond of your executor.
- Avoid any contests over your will.
- Reduce death taxes in the event husband and wife die simultaneously in an accident.
- Empower your executor to manage your business and assets after your death without court interference.
- Appoint a guardian and an alternate guardian for your minor children.

Additional Sample Wills

The Will Kit contains examples of additional wills. They will allow you to customize your will to take care of extraordinary situations not covered in the standard will forms.

Holographic Will - Is It For You?

Many states recognize holographic wills and the Will Kit shows you how you can write a valid holographic will.

How To Appoint An Executor For Your Estate

This step alone, if done correctly, can save your estate hundreds of dollars. Without a will, the court will appoint an administrator and require him to post a bond — and that's costly. Besides, the administrator will need court's approval every step of the way while managing or distributing your assets. The Will Kit shows you how you can free your estate of such costly and cumbersome controls.

How to Change or Revoke Your Will

Remember, circumstances will change in your life as children are born, get married, or new needs arise. The Will Kit shows you how you can keep your will up-to-date in an effective, legal manner.

How To Customize Your Will

What if you wanted to leave some money to a distant relative, or forgive a debt, or donate specific personal items to individuals or charities? The Will Kit shows you how you can "customize" your will to fit your individual needs and desires.

Witnessing Your Will

The execution of your will is an extremely serious business. There is an established procedure that must be strictly observed. The Will Kit shows you how you can make your will perfectly legal in all 50 states and insure it against future challenges.

Living Will

In recent times, more and more people have become alarmed at the extreme measures taken to keep a person alive by artificial means — long after meaningful life, in any sense of the word, has ceased to exist. A Living Will allows you to express your wishes for such times when you would not be capable of making decisions for yourself.

Asset Inventory Form

A must for orderly transition of your estate. Here you list all the important information that your executor should know: life insurance, bank accounts, credit union, stocks and securities, safe deposit box, real estate, and last but not least, where your will is located. An accurate indexing of your assets will enable your executor to dispose of your estate in a timely manner to your heirs.

Glossary of Legal Terms.

This takes the mystery out of writing your will. You don't need a lawyer to insert complicated legal jargon to make your will more legal. A will is simply an expression of your wishes and the Kit shows you how you can do it yourself while saving hundreds of dollars.

An estate plan that utilizes a combination of a living trust and a pour-over will has become increasingly popular. A settlor would normally set up an inter vivos trust that is funded during his lifetime with his major assets, such as his real and personal property, insurance policies on his life, etc. On the assets that are transferred to the living trust during his lifetime, the settlor would avoid probate. At the same time, the trust is made beneficiary of the settlor's residual assets to be "poured over" after his death. This is accomplished through the means of a simple pour-over will.

Why a Pour-Over

The major advantage of such a pour-over provision is that all assets are administered under a single governing instrument, namely the inter vivos trust, and ultimate disposition of these assets is done in accordance with the instructions laid out in the trust document. Of course, the assets poured over into the living trust after the estate owner's death will not escape probate. But if proper planning was employed, the assets poured over would constitute only a small portion of the settlor's total estate, and probate would pose no significant hardship.

The pour-over will device also allows you to dispose of any property that was inadvertently left out of your living trust. Without a will, such "forgotten" property would be subject to your state's laws on intestate succession and you would have no control over its disposition. The catch-all pour-over will will funnel the property into your living trust to be distributed according to instructions laid out in the trust instrument.

Validity of Pour-over

Under the Uniform Testamentary Additions to Trust Act adopted in most states, a devise or bequest under a pour-over will to a living trust, even if unfunded, is valid, provided the trust is identified in the testator's will and its terms are set forth in a written instrument executed before or concurrently with the execution of the testator's will. Moreover, the devise or bequest is not invalid because the trust is amendable or revocable or even because the trust is amended after the execution of the will or, for that matter, even after the death of the testator.

In other words, you must prepare your pour-over will, which identifies the trust instrument into which the assets of the will will be poured over after you have prepared and executed your trust instrument.

The pour-over arrangement avoids duplication of trust provisions in two instruments and provides for unified trust administration of the settlor's assets under the terms of one instrument, namely his living trust, without subjecting the trust to court supervision and the requirement of filing of bonds, inventories and accounts sometimes required of testamentary trusts.

However, in a few states, there are statutory restrictions applicable to the living trust - pour-over will arrangement. In New York, for instance, the trust instrument and all amendments thereto must be executed and acknowledged in the same manner as you would convey any real property. (This generally means that the trust document must be signed and notarized before an authorized officer.) In several states, the testamentary bequest or devise is valid only where the trustee of the living trust could qualify as testamentary trustee in the state or where at least one trustee is a resident or authorized to do trust business in the state. In most circumstances, this should pose no problem. In Missouri, it appears that the testamentary bequest or devise will be upheld only if the living trust was not amended after execution of the pour-over will. In short, to insure validity of the pour-over, the requirements of the particular statute which authorizes the pour-over must be observed.

We have provided a sample provision for pour-over from the estate of a decedent to a living trust below. This can be used as a will and it must be executed, witnessed and notarized in the same manner as any other will.

Provision For Pour-Over From Estate To Trust

I GIVE, DEVISE and bequeath all of the rest, residue and remainder of my estate, real, personal and mixed, whatsoever and wheresoever situated, of which I may die possessed, or which I may have the power to dispose of at my death, to that person or to those persons, including any corporation or corporations, that at the time of my death are serving as Trustee or Trustees under that instrument of Trust executed by me on _____, 19____ at _____, (and further identified as _____.)

This gift, devise and bequest is to be added to the property then held in that Trust and shall become part of the corpus thereof. It is to be held in accordance with the terms and conditions of that trust as now written and as hereafter amended, and to that end, I direct this gift, devise and bequest to be interpreted by reference to that Trust instrument.

IF FOR ANY REASON that Trust is not in force at the time of my death, or if this gift, devise and bequest to the then-Trustee of that Trust is held invalid, then I direct that this gift, devise and bequest shall be held and managed in exactly the manner described in the instrument of Trust now in existence and by the same Trustee, and for that purpose only, I hereby incorporate that instrument of Trust, as it now stands, by reference to this, my LAST WILL AND TESTAMENT.

(Notary Seal)

Testator

Witness

Witness

Witness

Sample Pour-Over Will

The sample pour-over will shown on the next pages transfers tangible personal property to the surviving spouse, residuary estate to the trust (which, incidentally, has the husband and wife serving in the capacity of trustees) and provides for minors' share of property to be held in trust by the executor.

WILL OF

I, _____ [name], of _____
_____ [address], _____
_____ County, State of _____, declare this
to be my Last Will and Testament, and hereby revoke all other wills and codicils previously
made by me.

ARTICLE ONE

(Payment of Debts, Expenses)

I direct that all of my just debts, including expenses of my last illness, and funeral expenses be paid as soon as practicable after my death.

ARTICLE TWO

(Tangible Personal Property)

I give all my tangible personal property, including but not limited to my household furniture, furnishings, and other articles of household use or ornament, works of art, jewelry, personal effects, and automobiles and their accessories and equipment, and all insurance policies relating to that property to my wife, _____
_____, or if she predeceases me, then to my issue who survive me, in equal shares, per stirpes.

ARTICLE THREE

(Residual Estate)

All the rest, residue, and remainder of my estate, both real and personal, of every nature and wherever situated of which I may die seized or possessed, or to or in which I may be in any way entitled or have any interest including, without limitation, all property or interest in property acquired by me or to or in which I may become entitled after the execution of this will, and all property over which I shall have a power of appointment or disposal which I shall not have otherwise exercised, released or refused to exercise, I give and devise to the Trustees under a Trust Agreement dated _____, 19____, known as the TRUST, executed by me as Settlor and myself and my wife, _____, as Trustees, IN TRUST, to be held, administered and distributed in accordance with the terms, conditions, and provisions contained in that Trust Agreement as it may be amended from time to time. If that

Trust is not then in existence or if, for any reason, this bequest is ineffective, I give and devise my entire residuary estate to my wife, if she survives me, or if she predeceases me, then to my issue who survive me, in equal shares, per stirpes.

ARTICLE FOUR

(Simultaneous Death)

If my wife and I should die under such circumstances that it is doubtful which of us died first, it shall be presumed that my wife survived me.

ARTICLE FIVE

(Provisions for Minors)

If pursuant to this will any property (including tangible property) shall vest in absolute ownership in any minor before the minor reaches majority, my Executor then acting may, in his sole and absolute discretion, hold such vested property, or any part thereof, in a separate fund for the benefit of the minor and invest, reinvest, and collect the income thereof and distribute the principal and income therefrom as follows:

Until the minor reaches majority, to pay or apply to or for the benefit of the minor so much or all the net income and accumulated or undistributed income and principal thereof as he shall determine to be necessary for the education, support, maintenance, or health of the minor, and to accumulate, invest, and reinvest the balance thereof.

Upon the minor reaching majority, to pay to the minor the then principal and any accumulated or undistributed income.

If the minor dies before reaching majority, the then principal and any accumulated or undistributed income shall be paid to the minor's estate.

The authority conferred upon my Executor by this paragraph shall be construed only as a power during minority to manage property vested in a minor, and shall not operate to suspend the absolute ownership of such property by the minor, or to prevent the absolute vesting thereof in the minor.

ARTICLE SIX

(Payments to Custodian)

My Executor then acting, in making any payment or distribution hereunder to or for

the benefit of any person, including minors, may make such payment or distribution directly to the person or minor, to a parent of any minor, to the guardian of any such person or minor, or to a person having the care or custody of any such person or minor, or to a custodian under a Uniform Gifts to Minors Act. My Executor shall not be required to see to the application or use of any payment or distribution so made; and the receipt of the person to whom payment has been paid or delivered shall constitute a complete release and discharge of my Executor.

ARTICLE SEVEN

(Appointment of Executor)

I nominate and appoint my wife, _____, Executrix of this will. If she fails or ceases to serve, I nominate and appoint as Successor co-Executors, my children, _____ and _____, or the survivor of them. My Executrix and any successor or appointees shall not be required to furnish bond or other security in any jurisdiction for the faithful performance of their duties. Any reference in this will to my Executors shall be deemed to refer to survivors and successors.

ARTICLE EIGHT

(Powers of Executor)

My Executrix and her successors and appointees shall have all of the powers and authority granted to or conferred upon Executors by law; and in addition to and not in limitation thereof they shall have the power and authority, unrestricted by statute or rules of law regulating investments by Executors, to hold, manage, invest, and reinvest the principal and income of my estate in any proportions, without distinction between principal and income, and in any property, real or personal, regardless where situated, including without limitation, any common trust fund or funds maintained by any bank or trust company, stocks - common or preferred, bonds, notes, debentures, shares or interests in investment trusts, options, puts, calls, straddles, other securities, mortgages, other evidences of indebtedness or ownership, real property, improved and unimproved, regardless of whether the properties represent a large percentage of the total of my estate and any interests in any business which I may own at the time of my death, and regardless of whether any business is a sole proprietorship, partnership, joint venture, corporation or otherwise.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, 19____.

Testator

WE, the undersigned witnesses, do hereby certify and attest that the foregoing instrument was subscribed by the above-named testator, _____, in our presence, and that the said testator, at the time of making such subscription, declared the said instrument to be his last will and testament, and we thereupon, and the request of said testator, and in his presence and in the presence of each other, have signed our names hereto as attesting witnesses.

_____ residing at _____

Witness

_____ residing at _____

Witness

_____ residing at _____

Witness

AFFIDAVIT

STATE OF _____

CITY

or

COUNTY OF _____

TOWN _____

Personally appeared (1) _____ (2) _____

_____ (3) _____

who being duly sworn, depose and say that they attested the said will and they subscribed the same at the request and in the presence of the said testator and in the presence of each other, and the said testator signed said will in their presence and acknowledged that he had signed said will and declared the same to be his **LAST WILL AND TESTAMENT**, and deponents further state that at the time of the execution of said will the said testator appeared to be of lawful age and sound mind and memory and there was no evidence of undue influence. The deponents make this affidavit at the request of the testator.

(1) _____

(2) _____

(3) _____

Subscribed and sworn to before me this _____ day of _____, 19____.

(Notary Seal)

Notary Public

Revocable Living Trust and Your Creditors

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Creditors' Claims

Are the assets contained in a funded revocable living trust at the time of the grantor's death subject to the claims of his general creditors for debts incurred during the grantor's life?

The answer to this question is far from clear. In the absence of statute, most courts have concluded that the grantor's creditors cannot reach the assets of a revocable trust established for others at a time when the grantor was solvent. e.g., *Guthrie v. Canty*, 53 N.E.2d 1009 (Mass. 1944); *Van Stewart v. Townsend*, 28 P.2d 999 (Wash. 1934). Of course, the creditors can reach the assets if the grantor revokes the trust and takes possession of them. Several important states have statutes that allow the grantor's creditors to reach the assets of a revocable trust. They include Florida (Fla. Stat. Ann. 726.08 (West 1969)), Indiana (Ind. Code Ann. 30-1-9-14 (Burns 1972)), Kansas (Kan. Stat. Ann. 58-2414 (1976)), and Michigan (Mich. Stat. Ann. 26.155(118) (1974)).

If the transfer is made in fraud of the creditors, it stands to reason that the creditors may assert their claims against the trust. In *Estate of Heighs v Heighs* 186 CaAp2d 360, 9 Cal 196 (1960), it was held that if the transfer renders the grantor insolvent, the trust assets may be subjected to the decedent's creditors. This may, however, be difficult to establish since the grantor retained the power to revoke the trust and reclaim the trust assets. On the other hand, the *Estate of Camm v Brooks* 76 CaAp2d 104, 172 P2d 547 (1946) holds that where the grantor reserves the lifetime benefits from a trust, such as income, the grantor's creditors may collect their debts after the grantor's death out of the assets which were payable to the grantor, even in the absence of the grantor's fraud or insolvency.

If, under state law, the trust assets are not subject to the decedent's creditors, the payment by the trust to such creditors is not deductible for federal estate tax purposes unless payment is made prior to the time for filing the federal estate tax return (including extensions). I.R.C. 2053(c).

General Power of Appointment

In some states creditors are allowed to reach property of a trust over which the grantor retained a general power of appointment. Others limit their reach to trusts in which the grantor also reserved a life interest. Where the grantor reserved an inter vivos power exercisable in his or her own favor, creditors should be able to reach the assets of the trust a la the Bankruptcy Code.

Other Creditors of a Deceased Grantor

The extent to which the grantor's creditors can reach the assets of a revocable trust following the grantor's death is uncertain in most jurisdictions. Unless the grantor retained a beneficial interest in the trust the creditors may be unable to reach the assets. In *State Street Bank & Trust Co. v. Reiser*, 389 N.E.2d 768 (Mass. App. 1979), the court held that "where a person places property in trust and reserves the right to amend and revoke, or to direct disposition of principal and income, the settlor's creditors may, following the death of the settlor, reach in satisfaction of the settlor's debts to them, to the extent not satisfied by the settlor's estate, those assets owned by the trust over which the settlor had such control at the time of his death as would have enabled the settlor to use the trust assets for his own benefit."

Also, a relatively recent New York decision held that the assets of a revocable trust are subject to claims of the deceased grantor's creditors. In *re Matter of Granwell*, 228 N.E.2d 779 (N.Y. 1967). The decision was based on New York law, under which the grantor of a revocable trust is considered to have retained ownership of the trust assets until death insofar as creditors are concerned.

The possibility that the assets of a revocable trust cannot be reached by the grantor's creditors following the grantor's death is cited by some planners as an additional advantage of establishing a revocable trust. The advantage may be illusory, and costly if the trustee is required to engage in litigation after the grantor's death.

Protection of Death Benefits

In some states, upon death of the estate owner creditors may be able to reach assets in a revocable inter vivos trust that the decedent has established. Even in these states, payment of employee death benefits to a revocable inter vivos trust established by the decedent is not considered the equivalent of payment to the executor, and the employee death benefits are not reachable by creditors. The reasoning behind this is that since the employee death benefits were not reachable by the creditors during the settlor's lifetime, they are similarly not reachable after his death.

"Secret" to Protection of Assets in a Revocable Living Trust

In order to obtain complete protection of assets against judgment creditors, you would need to set up an irrevocable trust which, in essence, cedes the ownership of property irrevocably to the trust. Since you no longer own the property, it cannot be attached by your creditors. This would be true as long as the transfer was not made in fraud of the creditors.

But most people are not prepared to relinquish their assets irrevocably to a trust. They want to retain ownership and control of their assets during their lifetime while ensuring that those assets do not go through the tortuous process of probate. They can accomplish this objective by setting up a revocable living trust as we've observed in the previous chapters. The question that arises is, how immune are these assets against the attacks of judgment creditors? What can be done to achieve even the minimal protection against seizure by creditors of the the settlor?

Let's take the case of a husband and wife where husband, due to his profession or business, faces tremendous exposure to lawsuits and possible loss to judgment creditors. In such a case, it would be advisable for him to set up two separate revocable living trusts, one for himself, the other for his wife. By so doing, the assets in the wife's trust would generally not be reachable by the husband's creditors. Except in situations where the wife acquired her property from her husband in fraud of his creditors, the separate assets of the wife ordinarily be not liable to satisfy her husband's debts, although, but for the transfer, they could have gone to pay his debts. 41 Am. Jur. 2d. Husband & Wife 324.

Revocable Living Trust and Your Taxes

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The use of a revocable living trust as an estate planning technique has no application in the area of taxes. The action has almost no immediate tax consequences and is generally neutral as to taxes for the long run. Since the settlor has retained the power to revoke, he is treated as the beneficial owner of the trust, and therefore the trust income is taxable to him whether or not it is payable to him under the trust terms.

Trust Has No Impact On Your Reporting Requirement

As a settlor who is acting as trustee of his revocable trust, you are also entitled to claim all deductions and credits available to the trust. In fact, you simply report all items of the trust income, deductions, and credits on your personal income tax return Form 1040. You are not required to obtain a separate taxpayer identification number since your social security number is sufficient for all reporting purposes.

In other words, during the settlor's lifetime, the income from the revocable trust property is taxed to the settlor just as it would have been if the trust had not been set up, whether the income is paid to the settlor, retained in the trust, or turned over to someone else. This means that the taxable year of, and the method of accounting used by, the revocable trust should be disregarded, and the gross income from the trust properties should be reported by the settlor as though the trust had not been created.

(Effective for trusts created during 1981 or thereafter, the trustee no longer needs to file a fiduciary income tax return Form 1041 which is merely an information return, and all items of the trust income, deductions or credits are simply reported on the settlor's personal tax return. Trusts in existence before 1981 may adopt similar reporting procedures merely by filing Form 1041 for the trust's current year. This discussion applies to revocable trusts where settlor/trustor and trustee are one and the same individual.)

The transfer of property to a revocable trust generally does not constitute a taxable event or otherwise trigger the realization of gain. For example, IRS has recognized that the transfer of an installment obligation to a revocable trust is not a disposition under its regulations. In contrast, the transfer of an installment obligation to an irrevocable trust of which the grantor is not treated as the owner is a disposition that triggers recognition of gain.

Income Tax Deductibility of Estate Planning Expenses

The legal and accounting costs of establishing and operating the trust and trustee's fees are usually deductible by the grantor for federal income tax purposes, because such fees are incurred for the management, conservation or maintenance of property held for the production of income.

IRS Section 212 provides that all the ordinary and necessary expenses paid for "the production or collection of income," and for "the management, conservation, or maintenance of property held for the production of income" are deductible on a taxpayer's return.

The leading case authority regarding the deductibility of family estate planning fees is *Bagley vs. Commissioner*. In that case, the attorney had reviewed estate plans for the client. These plans were ultimately adopted by creation of inter vivos and testamentary trusts and rearrangement of her insurance policies.

The Tax Court held that these services were deductible as expenses incurred for the management, conservation and maintenance of income-producing property.

Deductibility of Death Expenses

How does a funded revocable living trust compare to a probate estate in terms of tax deductibility of expenses of administration incident to the grantor's death?

Insofar as federal taxes are concerned, the deductibility of death expenses is generally the same whether they are expended by a probate estate or by a funded revocable living trust. In the case of a revocable living trust, such expenses are deductible on the federal estate tax return or on the estate income tax return as elected by the fiduciary. However, for state inheritance tax purposes the expenses of the revocable trust may or may not be deductible at all depending on a particular state. In California, for example, there is no express inheritance tax deduction permitted for trustee's fees. Only statutory probate fees and fees for dissolving joint tenancies and tax work are deductible.

For all practical purposes, if you were to follow the plan recommended in this Kit, whereby the successor trustee happens to be the beneficiary of the estate, and is required to terminate the trust upon the death of the settlor and distribute the assets to himself, it's unlikely that there would be any trustee's fees involved to any appreciable degree. The cost of maintaining and dissolving the trust after the settlor's death would be insignificant.

Gift Tax Considerations

The transfer of property by the settlor to a revocable trust does not have any immediate gift tax consequences. Any gift provided for in the trust is incomplete at the time of transfer, since the settlor has retained the right to revoke the trust in himself. Even in the event when the grantor becomes incompetent and is no longer able to exercise the power to revoke the trust, the gift does not become complete. A gift, of course, takes place when the trust property is distributed to the beneficiary upon the death of the grantor.

Estate Tax Considerations

The transfer of property to a revocable trust is largely unimportant insofar as the grantor's estate tax is concerned. The property of the trust is includible in the grantor's gross estate. In other words, a revocable trust would help you avoid probate, but not necessarily estate tax. However, for estates over \$1.2 million where estate tax would be a factor, see elsewhere in this manual the discussion on "A-B" trusts.

Tax Tip: State death taxes generally are not imposed on life insurance proceeds unless they are payable to the insured's estate. The payment of life insurance proceeds on the death of the insured to a revocable inter vivos trust, established by the insured, is not considered the same as payment of such proceeds to the insured's estate. Therefore, the use of a revocable inter vivos trust, as the recipient of life insurance proceeds rather than the insured's estate, may be advantageous from the standpoint of state death taxes.

Federal Estate Tax Alternate Valuation

The alternate valuation date for federal estate tax purposes is, in the case of property distributed or exchanged or otherwise disposed of within six months after the decedent's death, the date of distribution, sale, exchange or other disposition and is valued as of such date. As to other property, the alternate valuation date is six months after the decedent's death. If property is placed in a revocable inter vivos trust during the lifetime of the settlor, it may have the entire six months for alternate valuation date purposes, whereas if property passes to the decedent's estate and is then distributed to the trust during the first six months following the decedent's death, the alternate valuation date of such assets in the trust will be the date they were distributed by the executor to the trust.

If an estate goes through probate, the personal representative of the probate estate can easily control the time that a distribution from the estate is made, at least during the first six months. He can thereby help achieve a maximum utilization of the alternate valuation

election. However, if a funded revocable living trust is required to distribute assets on the death of the settlor, there may not be any opportunity for utilizing the alternate valuation election, because the alternate valuation date and the date of death would be the same.

Moreover, if the trust provides that upon the grantor's death, the trust becomes irrevocable and the assets are to be divided into two trusts, Trust A and Trust B for instance, the question arises whether this division may be considered a distribution for purposes of the alternate valuation date. However, Internal Revenue Service has indicated that it is the date on which the physical division takes place, which is the date of distribution and not the date of death of the grantor, that would govern. Therefore, in an A-B trust plan no distribution is deemed to take place for alternate valuation purposes until such time as the trustee makes a physical distribution of the assets, as long as there is no unreasonable delay in the administration of the trust and the estate. Therefore, the advantage of alternate valuation election is not lost by the use of a funded revocable living trust.

Cost Basis

Again, the creation of a revocable living trust and transfer of property to the trust does not change the treatment it receives upon the death of the decedent as far as the cost basis of the property transferred to the trust is concerned.

For federal tax purposes, property placed in a revocable trust receives the same treatment as to basis as property of the same character received from a decedent. In other words, the property that a beneficiary acquires from a decedent, including property from a revocable trust, receives a new basis equal to its fair market value at the date of death or its value at the alternate valuation date.

If community property has been transferred to a revocable trust in a manner so that it retains its community character, both the decedent's and the surviving spouse's shares of the community property will receive a new basis for federal tax purposes. If the property has lost its community character, only the decedent's share receives a new basis. It is, therefore, important that property transferred to a revocable trust retains its community character. While setting up the trust, the trust estate as described on Schedule A should indicate whether a particular asset is community or separate asset of a spouse.

One of the first tasks facing an estate owner is compiling all necessary information that will allow him to formulate and then implement an estate plan. On the following pages, we have compiled estate planning worksheets that will make your task immensely easy. These worksheets should form the basis of your estate plan. The worksheets are organized in the following categories:

- **Documents checklist**
- **Personal information**
- **Location of assets and documents**
- **Advisers**
- **Inventory of assets and gifts**
- **Liabilities**
- **Estimating the estate tax**
- **Estate planning questionnaire**

Estate Owner

Date

Documents Checklist

1. Last wills of both spouses _____
2. Trust instruments _____
3. Life insurance policies _____
4. Income tax returns (past five years) _____
5. Gift tax returns for lifetime _____
6. IRA and Keogh plans _____
7. Pension, profit-sharing, stock option and deferred compensation plans _____
8. Evidences of ownership in sole proprietorships, partnership and corporations _____
9. Business agreements _____
10. Buy/sell or stock redemption agreements _____
11. Real estate deeds and mortgages _____
12. Real estate purchase agreements to show cost basis _____
13. Instruments creating spouses' joint tenancies or tenancies by the entireties or separate property in community property states _____
14. Separation and divorce agreements _____
15. Pre- or postnuptial agreements _____
16. Financial statements - income and balance sheet _____
17. Powers of appointment _____
18. Powers of attorney _____

Family Information

1. Personal

	Estate Owner	Spouse
a. Name	_____	_____
b. Home address	_____	_____
c. Phone	_____	_____
d. Employer & business address	_____	_____
e. Birth date	_____	_____
f. Place of birth	_____	_____
g. Social security no.	_____	_____
h. Date & place of marriage	_____	_____
i. Date & place of divorce	_____	_____

2. Children

	Name and Address	Birth Date
a.	_____	_____
b.	_____	_____
c.	_____	_____
d.	_____	_____

3. Grandchildren

Their Parents	Names of Grandchildren	Birth Date
a. _____	(1) _____	_____
_____	(2) _____	_____
	(3) _____	_____
b. _____	(1) _____	_____
_____	(2) _____	_____
	(3) _____	_____

4. Parents

Husband	Wife
Father: _____	_____
<i>Name</i>	<i>Birth Date</i>
_____	_____
<i>Address</i>	<i>Address</i>
Mother: _____	_____
<i>Name</i>	<i>Birth Date</i>
_____	_____
<i>Address</i>	<i>Address</i>

5. Other Dependents

Name	Address	Relationship
(1) _____	_____	_____
(2) _____	_____	_____
(3) _____	_____	_____
(4) _____	_____	_____

Location of Assets and Documents

1. Safe deposit box (location of box, owners, who has access, who has keys):

2. Checking accounts (name of bank, location, owner): _____

3. Savings accounts (name of bank, location, owner): _____

4. Pass books (location): _____

5. Securities: _____

6. Custodial and other managed accounts: _____

7. Real estate I:

a. Location and how owned: _____

b. Deed and title policy: _____

c. Leases: _____

Real estate II:

a. Location and how owned: _____

b. Deed and title policy: _____

c. Leases: _____

Real estate III:

a. Location and how owned: _____

b. Deed and title policy: _____

c. Leases: _____

8. Jewelry and other valuables: _____

9. Current will: _____

10. Powers of attorney - durable or otherwise (copies of the powers,
attorney-in-fact's identity): _____

11. Income tax returns (past five years): _____

12. Life, health, and accident insurance policies: _____

13. Business and other insurance policies: _____

14. Business agreements: _____

15. Trust agreements: _____

16. Cemetery plot deed: _____

17. Funeral directions: _____

18. Birth certificate: _____

19. Marriage certificate: _____

20. Divorce decree: _____

21. Separation agreement: _____

22. Employee benefit statements: _____

23. Employee benefit plan copies: _____

24. Military discharge papers: _____

25. Naturalization papers: _____

26. Passports: _____

27. Adoption papers: _____

Advisers

Names, addresses and telephone numbers:

1. Attorney: _____

2. Accountant: _____

3. Life insurance broker: _____

4. Stockbroker: _____

5. Investment adviser: _____

6. Banker and trust officer: _____

7. Physician: _____

8. Executor: _____

9. Trustee: _____

10. Guardian of the minor children: _____

11. Clergyman: _____

Inventory of Assets

Bank Accounts and Savings Accounts

Bank	Form of Ownership and with Whom	Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Tangible Personal Property

	Fair Market Value
Automobiles, boats, aircraft	_____
Household furnishings	_____
Jewelry	_____
Collections (art, stamps, coins, etc.)	_____
Leaseholds	_____
Partnership or unincorporated business interests	_____
Insurance owned on life of another	_____
Copyrights or patents	_____
Interests in estates or trusts	_____
Other _____	_____
_____	_____
_____	_____
Total \$	_____

2. Address _____

Legal description _____

Owned in names of _____

Form of ownership _____ Fair market value _____

Date of acquisition _____ Cost basis _____

Mortgage amount _____ Mortgagee _____

Date of improvements _____ Costs _____

3. Address _____

Legal description _____

Owned in names of _____

Form of ownership _____ Fair market value _____

Date of acquisition _____ Cost basis _____

Mortgage amount _____ Mortgagee _____

Date of improvements _____ Costs _____

Closely Held Business Interests

Name of business _____ Per cent owned _____

Type of entity: Corporation _____ Partnership _____ Sole Proprietorship _____

Other owners: Spouse _____ Per cent _____

Children _____ Per cent _____

Others _____ Per cent _____

Fair market value of business \$ _____

Buy/Sell or Stock redemption agreement: Yes _____ No _____

Particulars: _____

Brief description on desired disposition of interest: _____

Key-Man Insurance

Employee	Face Value	Cash Value
_____	_____	_____
_____	_____	_____
_____	_____	_____

Life and Accidental Insurance

	Policy #1	Policy #2	Policy #3
Face amount	_____	_____	_____
Type	_____	_____	_____
Policy no.	_____	_____	_____
Company	_____	_____	_____
Insured	_____	_____	_____
Owner	_____	_____	_____
Beneficiary	_____	_____	_____
Contingent beneficiary	_____	_____	_____
Amount of loan on policy	_____	_____	_____
Cash value	_____	_____	_____
Annual premium	_____	_____	_____

General Powers of Appointment

Instrument Conferring Power	Date Power Created	Value of Property Subject to Power
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Note: Obtain copies of instruments creating power.

Retirement, Disability and Death Benefits

Information about pension, profit-sharing, stock bonus, Keogh, IRA or deferred compensation plan:

Company	Type of Plan	Benefits	Beneficiary
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Annuities

Type of Plan	Annuity or Lump Sum Payout	Designated Beneficiary	Estate Owner's Contribution	Approx. Value
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Gift Information

- 1. Trusts created (grantor, beneficiaries, powers and rights retained, value of gift, trustee, term, reversion, present value):**

- 2. Totten trusts created (donor, owner, beneficiary, date of deposit, value of deposit, present value):**

- 3. Existing custodial accounts created (donor, date, custodian, minor, minor's age, value of gift, present value):**

- 4. Other Gifts:**

	Owner	Spouse
(a) Contribution to joint property:	_____	_____
(b) Nominal transfers:	_____	_____
(c) Other gifts over \$10,000:	_____	_____
(d) Gift tax returns filed; indicate what years:	_____	_____
(e) Unified credit used:	_____	_____
(f) Regular non-charitable gifts:	_____	_____
(g) Regular tithing:	_____	_____
(h) Other regular charitable gifts:	_____	_____
(i) Gifts within past 3 years:	_____	_____

5. Foundations created (name, state purpose, motive for creating; obtain charter by-laws and exemption letter):

6. Foundation activities (foundation name, position, compensation, pension information, if any):

Summary of Assets

Use current market values; insert brief description as appropriate; if joint assets are substantial, indicate source of funds; indicate which assets, if any, are held by either spouse for the other; indicate each spouse's community property assets under appropriate column.

	Owner	Spouse	Joint
1. Cash funds:	\$ _____	\$ _____	\$ _____
2. Checking accounts:	\$ _____	\$ _____	\$ _____
3. Savings accounts:	\$ _____	\$ _____	\$ _____
a. Own name:	\$ _____	\$ _____	\$ _____
b. In trust for others:	\$ _____	\$ _____	\$ _____
4. Time deposits:	\$ _____	\$ _____	\$ _____
5. Marketable securities:			
a. Stocks:	\$ _____	\$ _____	\$ _____
b. Bonds:			
(i) Tax exempt:	\$ _____	\$ _____	\$ _____
(ii) U.S. bonds eligible for estate tax payment:	\$ _____	\$ _____	\$ _____
(iii) Savings:	\$ _____	\$ _____	\$ _____
(iv) Other:	\$ _____	\$ _____	\$ _____
c. Mutual fund shares:	\$ _____	\$ _____	\$ _____

- d. Investment club interest: \$ _____ \$ _____ \$ _____
- e. Money market funds: \$ _____ \$ _____ \$ _____
6. Mortgages, leases, copyrights, trademarks, patents, franchises: \$ _____ \$ _____ \$ _____
7. Oil and gas interests: \$ _____ \$ _____ \$ _____
8. Foreign assets: \$ _____ \$ _____ \$ _____
9. Business interests: \$ _____ \$ _____ \$ _____
10. Employee benefits:
- a. Deferred compensation: \$ _____ \$ _____
- b. Group life insurance: \$ _____ \$ _____
- c. Post-death salary compensation: \$ _____ \$ _____
- d. Stock options: \$ _____ \$ _____
- e. Restricted stock: \$ _____ \$ _____
- f. Pension plan contribution: \$ _____ \$ _____
- g. Vested employer's contribution: \$ _____ \$ _____
- h. Profit-sharing plan contribution: \$ _____ \$ _____

i. Vested employer's contribution: \$ _____ \$ _____

j. Savings plan contribution: \$ _____ \$ _____

k. Vested employer's contribution: \$ _____ \$ _____

l. Other benefit plans: \$ _____ \$ _____

11. Tangibles:

a. Cars, trailers, and other motor vehicle: \$ _____ \$ _____ \$ _____

b. Boats and aircrafts: \$ _____ \$ _____ \$ _____

c. Personal effects, jewelry, furs: \$ _____ \$ _____ \$ _____

d. Collections, works of art: \$ _____ \$ _____ \$ _____

e. Household effects: \$ _____ \$ _____ \$ _____

f. Office contents: \$ _____ \$ _____ \$ _____

g. Guns, pets, and other hobby equipment: \$ _____ \$ _____ \$ _____

h. Farm machinery and livestock: \$ _____ \$ _____ \$ _____

12. Real estate (obtain title papers; show value less mortgage): \$ _____ \$ _____ \$ _____

13. Co-op or condominium
(obtain papers; show value
less mortgage): \$ _____ \$ _____ \$ _____
14. Real estate syndicate
investments (obtain
papers): \$ _____ \$ _____ \$ _____
15. Life insurance: \$ _____ \$ _____ \$ _____
- a. Estate tax value of
 policies on self,
 excluding
 group: \$ _____ \$ _____ \$ _____
- b. Cash value of
 policies on
 others: \$ _____ \$ _____ \$ _____
- c. Face amount of
 policies on
 others: \$ _____ \$ _____ \$ _____
16. Union or other death
 benefits: \$ _____ \$ _____ \$ _____
17. Literary and theatrical
 properties: \$ _____ \$ _____ \$ _____
18. Taxable beneficial interests
 in estates and trusts created
 by others (obtain
 instruments): \$ _____ \$ _____ \$ _____
19. Taxable interests in
 self-created trusts: \$ _____ \$ _____ \$ _____
20. Powers of appointments
 (obtain
 instruments): \$ _____ \$ _____ \$ _____
21. Expectancies
 (describe): \$ _____ \$ _____ \$ _____

22. Taxable custodianships:
(under gifts to minor
acts):

\$ _____ \$ _____ \$ _____

23. Cemetery plot: \$ _____ \$ _____ \$ _____

24. Social club bond: \$ _____ \$ _____ \$ _____

25. Property held as
nominee for
others:

\$ _____ \$ _____ \$ _____

26. Other assets (e.g.,
annuities, insurance
settlement proceeds,
private annuities,
charitable annuities,
installment sale contracts,
crops, receivables,
claims, etc.):

\$ _____ \$ _____ \$ _____

TOTAL ASSETS: \$ _____ \$ _____ \$ _____

Liabilities

Indicate amount, creditors, and repayment provisions where appropriate.

	Owner	Spouse	Joint
1. Fixed liabilities:			
a. Taxes accrued:	\$ _____	\$ _____	\$ _____
b. Margin accounts:	\$ _____	\$ _____	\$ _____
c. Bank loans:	\$ _____	\$ _____	\$ _____
d. Installment contracts:	\$ _____	\$ _____	\$ _____
e. Other secured (indicate desired source of payment of insurance loans):	\$ _____	\$ _____	\$ _____
f. Accounts payable:	\$ _____	\$ _____	\$ _____
g. Other unsecured:	\$ _____	\$ _____	\$ _____
h. Leases:	\$ _____	\$ _____	\$ _____
i. Charitable pledges:	\$ _____	\$ _____	\$ _____
j. Notes endorsed:	\$ _____	\$ _____	\$ _____
k. Lawsuits:	\$ _____	\$ _____	\$ _____
l. Guarantees:	\$ _____	\$ _____	\$ _____
m. Judgments against:	\$ _____	\$ _____	\$ _____
Total liabilities:	\$ _____	\$ _____	\$ _____

2. Contingent liabilities: \$ _____ \$ _____ \$ _____

3. Present fiduciary
positions that may impose
liability or accountability
(obtain documents): \$ _____ \$ _____ \$ _____

Estimating the Tax Burden

The following worksheets can now be used to estimate the potential tax liability upon the death of each spouse.

Balance Sheet Summary

Estimated Gross Assets

	Estimated Fair Market Value	
	Husband's Assets	Wife's Assets
Bank accounts & savings accounts	\$ _____	\$ _____
Stocks and bonds	_____	_____
Real estate	_____	_____
Life insurance (face amount)	_____	_____
Business interests	_____	_____
Other assets	_____	_____
Total gross estate	\$ _____	\$ _____

Note: Allocate joint property with rights of survivorship based on actual contribution of each or in such accounts in the names of husband and wife, one-half to each.

Estimated Liabilities

Unsecured notes	\$ _____	\$ _____
Notes secured by mortgages	_____	_____
Notes secured by life insurance	_____	_____
Taxes outstanding	_____	_____
Other liabilities	_____	_____
Total liabilities	\$ _____	\$ _____
Net worth	\$ _____	\$ _____

**Federal Estate Tax Estimate
on the Death of the First to Die**

	Husband	Wife
Total estimated gross assets	\$ _____	\$ _____
Less: Estimated liabilities	\$ _____	\$ _____
Adjusted gross estate	\$ _____	\$ _____
Less: Marital deduction	\$ _____	\$ _____
Taxable estate	\$ _____	\$ _____
Plus: Adjusted taxable gifts (made after 12/31/76)	\$ _____	\$ _____
Tentative tax base	\$ _____	\$ _____
Estate tax on tentative tax base	\$ _____	\$ _____
Less: Credit for gift taxes paid on adjusted taxable gifts	\$ _____	\$ _____
Estate tax before unified credit	\$ _____	\$ _____
Less: Unified credit (reduced by 20% of Gift Tax Specific Exemption claimed for gifts between 9/9/76 and 12/31/76)	\$ _____	\$ _____
Less: State death tax credit	\$ _____	\$ _____
Federal estate tax due	\$ _____	\$ _____

**Federal Estate Tax Estimate
on the Death of the Second to Die**

	Husband	Wife
Total estimated gross assets	\$ _____	\$ _____
Add assets from deceased spouse	\$ _____	\$ _____
Total gross estate	\$ _____	\$ _____
Less: Estimated liabilities	\$ _____	\$ _____
Taxable estate	\$ _____	\$ _____
Plus: Adjusted taxable gifts (made after 12/31/76)	\$ _____	\$ _____
Tentative tax base	\$ _____	\$ _____
Estate tax on tentative tax base	\$ _____	\$ _____
Less: Credit for gift taxes paid on adjusted taxable gifts	\$ _____	\$ _____
Estate tax before unified credit	\$ _____	\$ _____
Less: Unified credit (reduced by 20% of Gift Tax Specific Exemption claimed for gifts between 9/9/76 and 12/31/76)	\$ _____	\$ _____
Federal estate tax	\$ _____	\$ _____
Less: State death tax credit	\$ _____	\$ _____
Federal estate tax due	\$ _____	\$ _____

Summary of Total Taxes

If husband dies first:

Federal estate tax due on his death	\$ _____
State tax on his death	\$ _____
Total	\$ _____
Federal estate tax due on wife's subsequent death	\$ _____
State tax on wife's subsequent death	\$ _____
Total	\$ _____
Total taxes on both deaths	\$ _____

Summary of Total Taxes

If wife dies first:

Federal estate tax due on her death	\$ _____
State tax on her death	\$ _____
Total	\$ _____
Federal estate tax due on husband's subsequent death	\$ _____
State tax on husband's subsequent death	\$ _____
Total	\$ _____
Total taxes on both deaths	\$ _____

Estate Planning Questionnaire

Questions you should ask yourself:

1. Do you want to make a specific bequest of personal effects?

Describe Item	Primary Beneficiary	Contingent Beneficiary
_____	_____	_____
_____	_____	_____

2. Do you want to leave any specific bequests of money or property to friends, relatives or others?

Amount	Primary Beneficiary	Contingent Beneficiary
_____	_____	_____
_____	_____	_____

3. List any charitable bequest you wish to make:

Charity	Item/Amount
_____	_____
_____	_____

4. Do you want to leave any real property to any person? Subject to mortgage?
_____.

Description of Property	Primary Beneficiary	Contingent Beneficiary
_____	_____	_____
_____	_____	_____

5. If you and your spouse were to die prematurely, should the children receive their inheritance at the age of majority or should they wait till they are older? Should the property be kept in a trust to provide professional management?

6. Do any of your children have any special educational, medical or financial needs?

7. Have you made any substantial gifts in the past or placed property in joint names? Do you contemplate making future lifetime gifts?

8. Do you want to leave your body or organs to science or to be used for transplant purposes?

9. Do you own any insurance on the lives of others? Who should be the beneficiaries of this insurance?

10. Who do you want to serve as your executor?

11. Do you want to name a guardian of your minor children if your wife is not alive?

12. Is taking an unlimited marital deduction a desirable option for you? Have you computed your taxes taking into consideration unified credit against federal estate and gift taxes?

13. Do you want to leave the marital deduction share in trust or outright?

14. If it is to be left in trust, what portion of it will be allocated to Trust A (i.e., marital deduction trust)?

What portion of it will be allocated to Trust C (i.e., "QTIP" trust)?

15. Will the executor be directed to elect the Trust C assets as "QTIP" property?

16. If a portion is to be left in Trust C, who will receive the assets of this trust on the wife's subsequent death?

17. If a portion is to be left in Trust A, what type power of withdrawal do you want your wife to have?

\$ _____ or _____ per cent.

18. Do you want your wife's right in Trust B (i.e., equivalent exemption trust) to terminate on remarriage?

19. Do you want the income of Trust B sprinkled among your wife and children or paid only to your wife?

20. After your wife's interest in Trust B terminates, how should its assets be distributed?

21. Do you or your wife own any substantial separate property acquired prior to marriage?

22. Have you or your wife received any substantial gifts or inheritances?

23. Have you lived or owned any property in any community property state (California, Texas, New Mexico, Arizona, Washington, Louisiana, Nevada and Idaho)? List assets brought into this state.

24. Are you or your wife the beneficiary under any trust? Do you or your wife have any powers of appointment?

Administrator The person appointed by a court to administer and settle the estate of a person dying without a will, or the estate of a person whose will appoints an executor who cannot serve; also called a personal representative.

Beneficiary A person for whom a trust is managed and who eventually receives the trust property after the death of the trust grantor. Also, in another context, the recipient of life insurance proceeds, benefit plans or gifts in a will.

Bequests Technically, this term refers to leaving personal property by will. However, under present day terminology, this also refers to leaving all types of property by will.

Bond A guaranty by insurance or similar company agreeing to make up for any loss, negligently or criminally caused by an executor or administrator.

Codicil An amendment to a will. The requirements for execution of a codicil are the same as those for a will. If you're planning to make extensive changes, it would generally be better to execute a new will rather than amend an old will with codicils.

Community property Property acquired during the course of a marriage from the earnings or efforts of either spouse while domiciled in a community property jurisdiction, except property received by inheritance or gift. It is recognized in eight states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington.

Corpus or principal of a trust The assets originally transferred to a trust and their proceeds, as distinguished from the trust income which is the return earned by the assets held in the trust.

Decedent The person who has died.

Devise, legacy, bequest Ancient legal terms used to denote passing property under a will. Devise is associated with a gift of real estate, legacy with a gift of cash, and bequest with a gift of other personal property. In modern usage these terms are used interchangeably.

Distributive share The share of property inherited by a beneficiary when a decedent has died without a will. For example, when a person dies without a will and has no spouse and is survived by only one child, in most states the child inherits the entire estate. This would be the child's distributive share.

Executor An individual or institution named in a will to administer the estate of the person making the will. The executor legally steps into the shoes of the decedent and represents the estate in the probate court. In some states the executor is also called the personal representative.

Fee simple The entire or whole ownership of property unburdened by any future interest or any possibility of losing total ownership. This is the highest form of property ownership. Other forms of property ownership are life estate or lease hold interest.

Fiduciary A person having the legal duty to act primarily for the benefit of the principal. The fiduciary must act in the strictest confidence and trust. A trustee or an agent would be a fiduciary acting in behalf of the principal.

Formal will A typed or printed will which must be witnessed and acknowledged by the testator to the effect that he is executing his or her will.

Grantor The person who establishes a trust, also called a trustor or settlor.

Gross value The value of an estate before debts or encumbrances are paid. Probate fees are generally calculated on the gross value of the estate. For instance, if your estate consists of your residence with a market value of \$150,000 and a mortgage of \$100,000, probate fees would be based on the gross value of the estate which in this case would be \$150,000.

Guardian Someone who is legally responsible for the care and well-being of another person. A guardian is generally nominated in the case of a minor or when a person becomes disabled or incompetent. Guardians generally act under the supervision of a probate court and are responsible for all their actions to the court.

Holographic will This is a will entirely written, dated and signed by the person in his or her own handwriting. It is permitted only in a few states, often under very limited circumstances.

Incapacitated or incompetent Someone who is unable to manage his or her own affairs either due to physical or mental impairment. An incompetent person cannot enter into a contract nor can he set up a trust, or appoint an agent to act in his behalf. In the absence of any suitable planning for disability, a court will have to be petitioned for the appointment of a guardian.

Intestate Having died without a valid will. A person who dies with a will but fails to dispose of all of his property is referred to as having left property by intestacy.

Inter vivos trust A trust established by an individual during his or her lifetime, also known as living trust. Such a trust can be either revocable or irrevocable. As opposed to testamentary trust.

Issue All decedents of a particular person. The term includes children, grandchildren and other direct descendants.

Joint tenancy with right of survivorship Two or more persons holding title to a property jointly with equal rights during their lifetime with the survivor to receive the entire property. In other words, death of a joint owner automatically transfers ownership of the property to the surviving joint tenants. Joint tenancy will supercede any provisions contained in your will. Joint tenancy is different from tenancy in common.

Life estate The right to use and enjoy property during the life of a person, with the property thereafter to go to someone else.

Living will This is a written document containing instructions to a hospital or physician to allow a person to die a natural death without using artificial life-sustaining means when it is determined that the individual is terminally ill and there is no likelihood of recovery. Not to be confused with a living trust. Various laws expressly authorizing the use of a living will have been enacted in a majority of states.

Minor A child under the legal age to be considered an adult. Varies by state, usually under 18 or 21. A minor cannot enter into a contract nor can he make a will.

Per stirpes and per capita These are two methods of distributing property. Per stirpes technically means “by the roots or by representation.” When the per stirpes method of distributing property is used, a group of beneficiaries inherits the share to which their ancestor would have been entitled had such ancestor lived. Per capita means by the head.

It is important to know how each of these two methods of distributing property works. For example, assume you have three children, named Ann, Betty and Charles. Ann and Betty are dead but Ann has four children living at the time of your death and Betty has one child living at the time of your death. Charles has no children. Under the per stirpes method of distribution, Ann’s four children share equally the one-third share that Ann would have received if she had survived you. Betty’s child inherits the one-third share that Betty would have received if she had survived you. Charles inherits the remaining one-third.

Remember, the word issue includes all your descendants, children as well as grandchildren. If you had left all your property to your “issue surviving you per capita,” the result in the above example would have been different. In this case at the time of your death there are six persons living in the group, defined as your issue. These six persons are Ann’s four children, Betty’s one child and Charles. Your property would be divided into six equal shares.

Let’s take the above example one step further. Assume that Charles is alive at the time of your death and has three children. Under the per stirpes method of distribution, the result

would remain unchanged, i.e., Ann's four children would inherit her one-third share equally, Betty's one child would receive the other one-third and Charles would inherit the remaining one-third. Charles' three children do not get anything. However, under the per capita method of distribution the group of issue would consist of Ann's four children, Betty's one child, Charles and Charles' three children. In other words, there are in all nine beneficiaries who would inherit the estate, each of whom would receive one-ninth of the share.

Pour-over will As the name implies a pour-over will is used to transfer property to a living trust that was not transferred to the trust during the lifetime of the settlor. People often fund their living trust with the major assets that they own. However, any residual assets could be transferred to the trust after the settlor's death through the means of a pour-over will. All the assets contained in the living trust prior to the settlor's death will escape probate. The assets poured over through the will will have to be probated. The advantage of the pour-over will is that it provides for a uniform disposition of your property under the provisions of one single instrument, namely the living trust.

Power of attorney This is a legal document giving another person, known as agent or attorney in fact, the full legal authority to act in your behalf in your absence. A power of attorney loses its validity in the event the principal becomes disabled or dies. Most states, however, permit a durable power of attorney which remains valid through the disability or incompetency of the principal. A durable power of attorney can be used in conjunction with a living trust by allowing the agent to transfer any property that wasn't transferred prior to the disability of the settlor to the trust.

Probate This is a judicial proceeding used for transferring a decedent's assets to his legal heirs. It is a process of administering a deceased person's estate. Unless the estate is small, a will generally has to be probated. In the absence of a will the probate court appoints an administrator to handle the decedent's estate. All questions concerning the disposition and the rights of heirs and creditors are determined through probate.

Probate guardianship A judicial proceeding during which a guardian may be appointed by a probate court to manage the financial affairs of a disabled or incompetent person or of a minor. The guardian appointed by the court is required to make accounting of his actions to the court.

Revocable trust A trust that can be amended or terminated by its creator. As opposed to an irrevocable trust, a revocable trust generally has no tax consequences.

Settlor The person setting up the trust. Same as grantor or trustor.

Spouse Husband or wife.

Tenancy in common A form of ownership of property by two or more persons. Different from joint ownership or joint tenancy. Upon the death of a tenant in common, ownership transfers to that person's heirs, not to the surviving owners.

Testamentary trust A trust created in a will that does not come into existence until after the testator's death.

Testate One who dies with a will.

Testator The person who makes the will.

Trust A legal entity in which a person or institution holds or manages property for the benefit of someone else.

Trustee An individual or institution holding and managing property for the benefit of someone else as per instructions contained in the trust agreement.

Will contest Litigation to overturn a decedent's will for lack of testamentary capacity, undue influence or lack of proper execution.

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