

TRUSTEE INSTRUCTIONS

PART I ~ MANAGING YOUR LIVING TRUST

DISCLAIMER

The information being offered here is purely educational and informative in nature and does not constitute professional, legal, or tax advice. You must take full responsibility for any liability or loss incurred as a consequence of the use and application, directly or indirectly, of any information contained in this pamphlet.

To: **VARIABLE**(Husband), **VARIABLE**(Wife), and Successor Trustees

This concise educational booklet is a modest outline showing the Trustee's rights and obligations in the management of the trust. It relates to the period of time while one, or both, of the original Trustors is/are alive and able to exercise the powers retained by you. In order to accomplish the long range objectives for which this trust was created, it is mandatory that your administration of the trust be consistent with the rules of *fiduciary law* as set forth in the trust instrument and the common law.

As a foreword, it is the ambition of this booklet to inform the Trustee that much of what is done in the initiation and execution of estate planning falls under the umbrella of *fiduciary responsibility*. In some respects, it is difficult to define the word “*fiduciary*” from a technical standpoint. However, defining the term in practical reality and conduct is less difficult. In the simplest of terminology, the *fiduciary obligation* of a person acting as a trustee, executor, or one who holds other forms of authority to act under a power-of- attorney dictates that they function and conduct themselves in such ways as to maximize the benefit(s) for the person(s) whom they are serving. The concept of *fiduciary* is founded in ideas of integrity and reliance. The conduct of the *fiduciary* is measured in hindsight. Hence, *fiduciary* demands a high level of planning, research, and fidelity. *Fiduciary responsibility* may be the most onerous of all obligations imposed upon an individual under common law and the laws of the several States; its violations being punishable by lawsuits, imprisonment, fines, or all three.

Accomplishment of the *fiduciary responsibility* by trustees, executors, or those who receive powers to act in the name of others must be expressed in terms of absolute personal conduct which includes, at a minimum, the following:

(i) Adequate capability and time to perform the services required. One who accepts appointment as the Trustee will own the bare legal title, but the beneficial title - that is, the right to have utilization of the property - is vested in others for whom the Trustee is acting.

(ii) Proper counsel and guidance from legal, accounting, tax, insurance, investment, etc. on an on-going basis. Service rendered by the Trustee must be based on the highest degree of fidelity and principles of integrity. Failure to follow those may result in not only a loss to the beneficiaries, but may also result in significant liability to the Trustee.

(iii) Careful preparation and implementations of binding documents. The concept is for the fiduciary to recognize that, first and foremost, the responsibilities which he or she has undertaken require acting in the best interest of the beneficiaries for their health, education, maintenance, and support.

(iv) Maintenance of quality records and regular reporting. The practice of good, concise, record keeping should be of significant assistance to the family and all those assuming *fiduciary responsibility* within the family, by having clear records of existing documents fundamental to the implementation and administration of estate planning for the family.

(v) Available access to information and disclosure of all relevant documents and information to the beneficiaries on a regular basis. One of the most important requirements for quality estate planning is ready access to relevant information. This organizing should assist in producing, in a succinct way, a simple method of finding relevant information concerning the family, the underlying desires and goals of the family, the estate planning documents utilized and their implementation, and all financial assets and financial statements.

(vi) Preparation and filing of all reports, whether to institutions or government tax agencies. Important records and transactions are to be kept in the trust minutes. Accurate records of what you have done will make the tasks of your successor trustee(s) much easier.

The instructions outlined below are very general in nature and are drafted to assist you in answering questions you may have concerning the trust of which you are a Settlor, and perhaps the Trustee, or Successor Trustee.

Trusts In General & Revocable Trusts _____

When you signed your trust instrument, you created a new legal relationship. That legal relationship is a bundle of rights and duties (*fiduciaries*) called a trust. There are three primary people, groups of people, or entities in a trust relationship, even though the same person, groups of people, or entities may occupy two or more positions. A trust is often defined as a legal relationship created by one person, group of people, or entities (*the Trustor/Creator*) in which one person, group of people, or entities (*the Trustee/Fiduciary*) holds legal title to assets and manages the assets for the benefit of one person, group of people, or entities (*the Beneficiary/Heirs/Assigns*). As the initial Creators of this trust agreement, both husband and wife will occupy all three positions concurrently unless otherwise specified within the trust document. However, others may be successor trustees or beneficiaries in the future; but you are the only Trustors. Two other people, group of people, or entities also exists; but more on a silent basis than those positions already discussed. They are the Grantor, the person, group of people, or entities who grants (*gifts* or *gives*) property, **real or personal**, to the Settlor, the person, group of people, or entities who properly transfers, assigns, and/or conveys (*funds* or *settles into the Trust*) the assets legally and safely into the trust with minimum or no tax consequences. There is also one more group of persons or entities, the Trustors' designated personal representatives (i.e., *executors, agents-in-fact, guardians, conservators, etc.*).

The first source of your newly created powers, rights, and duties as Trustees is the "trust instrument." You, and your successor trustees, will be able to do things which trustees of other trusts may not be able to do because your trust contains lengthy administrative provisions as found in Article X of the Agreement. All of the powers and provisions are designed to give the Trustee broad powers, controls, and great freedoms to administer the trust in their sole discretion.

If you, as Trustors/Creators, maintained the powers modify or terminate the trust relationship, your trust is called a revocable grantor living trust and follows all the provisions in I.R.S. Code §§ 671-678. The trust instrument is **only amendable and/or revocable in its entirety** while both Trustors are alive, competent, and capable of exercising their personal powers to make additions to, amendments to, or terminations of words, sentences, paragraphs, sections, or the entire trust. Upon the death of either Trustor, the deceased Trustor's personal trust (Trust B) and one-half of the Shared/Community Property Trust immediately becomes irrevocable. In other words, no one may change, add to, delete from, or terminate the provisions established by that deceased trustor's personal trust (Trust B) or his/her one-half of the Shared/Community Property Trust.

Selecting Successor Trustees _____

Occasionally people have difficulty in choosing a successor trustee of their living trusts. This section will hopefully outline some of the major issues and help to guide you in your choice. The following choices include your major options and have several advantages and disadvantages:

1) **Naming your children as successor trustees.** This choice is often appropriate when the children are older and very responsible and savvy with money and their own financial situation. It is also appropriate when there is little likelihood of lawsuit or divorce diverting the funds inherited by the children. It has the advantage of giving the children maximum control and saving the trust from incurring outside trustee fees. The children can always hire an accountant to do the tax returns and an attorney should they have legal questions regarding the trust. This is not appropriate, however, when there is a significant chance of lawsuit or divorce affecting the children, as there is greater likelihood of funds being diverted to the creditor or son/daughter in law. It is also inappropriate when children are spendthrifts or immature and would simply "blow the inheritance", or if you would like to insure that some funds be left over for grandchildren. Some liken this choice to "the fox guarding the chicken coop." However, if you do not mind the possibility of the children draining all of the trust assets, this still gives better protection and advantages than if you had simply left the inheritance outright in a will.

2) **Naming a bank or a trust company.** This choice is appropriate if the children are less mature, are spendthrifts, or if you would like to better protect

the children's inheritance from creditors, divorces and the like. It gives the children a relief from responsibility over the management of the trust. Many banks and trust departments have a long history of providing such services to families and this can often be the best choice. Banks and trust companies understand the law and are experienced at interpreting trust documents. They also understand the income tax issues of beneficiaries and trusts. There are several drawbacks, however. Many banks have minimum deposit requirements for a trust. Some will not take trusts under half a million dollars. Also, banks charge an annual trustee fee that is often a minimum fee plus roughly 1% of trusts assets annually. This can be more prohibitive, especially for smaller accounts. Many banks have merged in recent years and they sometimes move the trust departments to San Francisco or even Chicago; thus moving the trust officers offsite and more unavailable for personal contact. Some companies still have trust officers in the local area though. Also, banks are somewhat notorious for being overly conservative with investments and distributions. This is somewhat due, I believe, to prior limitations on investments in trust law, and should be ameliorated in the future due to recent changes in the Uniform Prudent Investor Act.

3) Naming a stockbroker or financial planner. This is usually a poor choice, but may be appropriate in the right family situations. The advantage to such an arrangement is that you have an objective party as an independent trustee. In contrast to a bank, the stockbroker or financial planner may be more aggressive and provide a better return on investment than a bank. However, unlike a bank or attorney, they are not familiar with the law of fiduciary obligations and trusts. They are not typically experienced in interpreting trusts or dealing with trustees or beneficiaries. They might or might not understand the income tax issues and advantages to using trusts. The biggest problem may be that their broker dealer may prohibit them from serving as trustees. The SEC/NASD has restrictions on a planner being trustee and managing money for that same trust. Thus, this is usually a poor choice for trustee. However, under relatively new California laws, you can appoint such a person as the Trust Investment Advisor, effectively directing the trustee to use such a person for investment decisions. This may give you the best of both worlds.

4) Naming an attorney. This may be an appropriate choice sometimes. The attorney understands the rights and obligations of the parties and is experienced at interpreting trust documents and legal issues. An attorney experienced in tax

law (this would not be most attorneys, but only those concentrating in tax or estate planning), would also understand the tax issues and loopholes that beneficiaries can take advantage of. Thus, an attorney has many of the advantages of a bank in these respects, and are usually much less expensive. However, attorneys are often less experienced than banks in day to day trust operation issues and dealing with beneficiary legal issues. Attorneys may also not outlive you, especially if the attorney is the same age as the client. Banks offer greater potential for longevity, although businesses also fail and merge and go out of business as well. Also, if the attorney is the same as the person drafting the document, the bank would provide a more objective, “second opinion”, that the attorney could not provide. However, the attorney is more likely to understand the original intent of the people setting up the trust, since he or she has met and discussed the issues with them.

5) Naming an accountant/tax preparer/CPA. This can also be an appropriate choice. The accountant often knows the family finances and situation as well if not better than the family attorney. Accountants’ familiarity with trust law and taxation varies with the individual, but they undoubtedly understand the tax issues at least. Like the attorney, they have more personal contact with the family and know the situation better, but have less experience and depth in dealing with potential trust issues than an experienced bank. Like the attorney, it is important to consider whether the person is likely to outlive the grantors and be able to help the children. Attorneys and accountants both do not have the investment experience and expertise of the bank, and especially not that of the financial planner. However, the accountant is more personal than the bank, and offers more objectivity than the attorney. Another issue to address is that of liability insurance. Banks have insurance that covers their mistakes or negligence. Attorneys and accountants may have such coverage, but their policies do not typically cover investment decisions (unless a separate policy is purchased). Thus, many will not serve as trustees unless a separate investment advisor is named.

6) Naming other family members. This is not the “fox guarding the chicken coop”, but the fox’s uncle. Much of this choice depends on the personality and experience of the family member. Often people will name a brother or sister. This is a good choice while the children are younger and the brother or sister may also be guardian of the children. It has the advantage of better objectivity than naming the children. Also, the family member will hopefully better

understand the family dynamics and situation better than an outside professional or bank. However, this person is unlikely to know trust or tax law. This might be rectified by hiring an accountant or attorney. The drawback is that your brother or sister may not outlive you, or perhaps not for very long. However, you likely trust this person more than outsiders. Sometimes people name a professional trustee, and then direct that the trustee consult with a family member for distributions from the trust. This gives some contact and involvement for the family member, without the burden and liability associated with it. This type of arrangement may be more appropriate in family situations where the burden on the family member may potentially sour relations among the family. Having an independent party lets the disgruntled beneficiary take it out on an outside trustee and keeps any dispute from further poisoning the family.

7) Naming a family member/bank/professional as trustee, with a financial planner as Trust Investment Advisor. This may give the best of both worlds. It allows the trust to get the financial returns that a professional advisor can achieve, but provides the more personal attention of a professional advisor or family member, or affords the professional management of a bank. Note, however, that many banks are behind the times on this issue and either do not permit this or do not give a discounted trustee fee. Check with your preferred bank.

8) Naming an independent company or individual as trustee and/or trust investment advisor, but make family members the Trust Protectors. This choice gives additional flexibility if non-family members are used as trustees or trust financial advisors. A trust protector is a person (or persons) who has the right to demand accounting and can fire the trustee or financial advisor.

Trust Asset Management

Your living Trust Agreement contains provisions in Article X outlining the various powers granted to the Trustee(s). The general rule for you to realize is that any action a property owner was allowed to take with regard to the property before it went into the Trust, the Trustee may now perform in the capacity as Trustee. Thus, control of the assets has been transferred from you, individually, back to yourselves, as the Trustee, who must now act for the benefit of the beneficiaries (yourselves). The income beneficiary are yourselves during your lifetimes. Simply remember that you are NOW acting as Trustees and have a

fiduciary responsibility to act in a "prudent" manner. Not all trusts allow you as much flexibility and control as this one does; but based upon your particular circumstances and desires, it appeared best to grant very broad powers to yourselves as the Trustees.

Funding Your Living Trust _____

A(n) ir/revocable grantor living trust can only hold property which has been transferred into it by either *assignment, conveyance, or transference*. "Funding" is the term used to describe that transfer process. The process is performed by transferring your assets to yourselves as Trustees of your trust. This funding process is extremely important, since an unfunded trust **will not** avoid probate! Simply having a trust without funding, or transferring your assets into the trust, will defeat one of the most important features and purposes of the trust. Please refer to the "funding" procedures outlined in the first few pages of Schedules A - D, Section 3 of your trust portfolio.

The terms *assignment, conveyance, or transference* mentioned above can cause some great misunderstanding. Simply put, *conveyance* is an absolute change in ownership from yourselves as separate, joint tenant, tenants in common, etc., type of property into the name of the Trust (i.e., Re-titling your real property, stocks, etc. showing the trust as the sole legal owner). On the other hand, *assignment* is nothing more than an inventory of specific assets that are allocated to form the trust fund but ownership has not changed (i.e., listing of bank accounts, savings accounts, promissory notes, etc.). Lastly, *transference* is a re-designation of the "ownership in" and/or "benefit from" the asset when surrendered, cashed in, etc. to the Trust for distribution to the appropriate beneficiaries (i.e., the contingent beneficiary of life insurance policies, pension plans, annuities, etc. should be the Trust).

ASSIGNED:

There is no need for conveyance, instead it is assigned to make the transfer to the Trust. Assignment forms identifying the property or properties are used, executed before a Notary Public, and included in the Trust Portfolio.

CONVEYED:

The legal title of an asset has been formally transferred, and in some cases recorded, in the name of the Trust.

TRANSFERENCE:

Two forms are as follows:

(TRUST BENEFICIARY):

The Trust is to be named as a beneficiary because the asset is set up in a way that legal title to the underlying asset cannot be CONVEYED or ASSIGNED to the Trust without causing adverse tax consequences in most cases.

(CONTINGENT BENEFICIARY):

The Trust is to be named as the Contingent beneficiary because the asset is set up in a way that legal title to the underlying asset cannot be named as the primary beneficiary to the Trust without causing adverse tax consequences in most cases.

Transferring Assets into an Ir/Revocable Living Trust _____

The trust entity does not have a "name" in the sense that an individual, partnership, or corporation has a name. The reasons for selecting a "name" are as follows: (i) to permit the identification of an asset as an asset of your ir/revocable trust, and (ii) to distinguish your ir/revocable trust from other trusts. Some variation, or abbreviation, in the "name" may be necessary to satisfy financial institutions, or others. Whenever you purchase a significant asset, or change the composition of the Trust assets, you should request the escrow, stock, transfer, insurance, or other responsible individual, or "agent", to title the new asset as follows:

VARIABLE(Husband) and/or VARIABLE(Wife), Trustees,
or their successors in trust, under (U/A) agreement of
The VARIABLE(Label) Living Trust,
and any amendments attached thereto
dated _____.

While this may appear cumbersome at first, it leaves no doubt to a subsequent reviewer that the assets were owned by the Trust. You may thereafter effect transactions concerning the assets with the abbreviated name of the Trustee signer (i.e., John Doe) followed by the word "Trustee," (e.g., John Doe, Trustee). In the case of checking accounts, the term "Trustee" is not necessary. However, some banks may request various compliance methods to satisfy their respective legal departments. Please contact legal counsel if questions arise as to the manner of holding title.

Therefore, this booklet is intended to clarify the methods for transferring assets into your ir/revocable grantor living trust. The name in which an asset is to be held has been approved by you previously; therefore, the material included here will relate to the most common types of assets held either in the name of the Trust, or by having the Trust named as a Beneficiary.

All information contained within may not apply at the present time, or in the future for that matter; however, out of an abundance of caution, you should have the maximum amount of information available to yourselves regarding the transferring of assets into the Trust, or the naming of the Trust as a Beneficiary in appropriate situations.

It is recommended that this material be maintained for future use. In this way, you will have the information available to you to ensure that at the time a new asset is acquired, the acquisition can be made into the name of the Trust, and in accordance with this information.

Above all, be sure to contact your "Agent" if the transferring of an asset appears to be presently unresolved, or appears unresolved in any future acquisitions.

A. REAL ESTATE - HOMESTEAD

The name of the Trust provided is the same wording which should be used in the holding of all real estate. If the documents have not already been provided to your Agent, then a copy of all existing Deeds on your home and other real estate should be sent for expedient preparation of the appropriate transfer documents for your signature. It is recommended that the original Deeds not be mailed. Photocopies are sufficient.

If there is indebtedness on your residence, the transferring of that asset into the Trust will not create acceleration payments to any lending institution or private individual. Acceleration on any outstanding indebtedness by virtue of a transfer to an Ir/Revocable Living Trust is prohibited under Federal Law on your personal residence. Once the document has been prepared, signed, and notarized, it will then be recorded in the County where the property is located.

In addition to providing photocopies of the Deeds, a photocopy of the most recent Tax Bills for each parcel from the County Assessor's Office is also

requested. All Counties now require that some form of identification, such as the Assessor's Parcel Number, be included on the Deeds at the time of recordation. This is simply recording information and has no relevance as to any adverse taxation to the property.

You should anticipate that from the time the new Deed is sent to the County Recorder, processed, and then returned to you will take approximately three (3) to ten (10) weeks.

B. REAL ESTATE OTHER THAN RESIDENCE

When real estate other than a residence is encumbered by indebtedness such as a Mortgage or Deed of Trust, the same procedures for preparing, signing, notarizing, and recording the transfer document will be followed. In those situations where there is an existing indebtedness, it may be necessary to contact the existing financial institution that is the holder of the Mortgage or Deed of Trust to obtain permission for the transfer from you as individuals to you as Co-Trustees. Past experience has indicated that this is not a practical problem. However, failure to obtain that prior approval may result in an acceleration of payments.

C. SAVINGS ACCOUNTS AND CERTIFICATES OF DEPOSIT

It is recommended that any Savings Accounts in Banks and/or deposits in a Savings and Loan Association be held in the name of the Trust.

You will find that the task of transferring this asset to the Trust is quite simple. You simply give the individual handling New Accounts your existing passbook along with either the "Memorandum of Declaration of Trust Agreement" or the Exhibit "A", both documents are found in Section 1 of the Trust portfolio.

Occasionally, Banks and/or Savings and Loan Associations will request a photocopy of the entire Trust Agreement. Try to satisfy their request by providing them the "Memorandum of Declaration of Trust Agreement" or by giving them a copy of the "Title" page and "Signature" page of the Trust (i.e., the first and last page of the Trust contract, *both found in Section 2.*). You can be assured that the Bank and/or Savings and Loan Association will hold the documents in the strictest confidence, and that they are only

attempting to assure themselves that the Trust Agreement is, in fact, in existence.

By virtue of Article IX, Powers of the Trustee, it will be possible for either of you to make withdrawals from a Savings and Loan Account or any other type of bank account which is held in the name of the Trust. Both signatures will not be required; however, it may be necessary for you to specifically point out those Paragraphs to the financial institution to make sure that this has been clarified. It is recommended that you request the institution to mark the signature card in such a way that all Tellers will know that a single signature will be sufficient for any withdrawals and/or deposits.

If you have any other investment vehicles at a financial institution, such as a Certificate of Deposit, it is recommended that these assets also be held in the name of the Trust. This could be discussed with the same individual handling the transfer of any other type of financial institution asset to the Trust. However, you should be careful to ascertain from the institution that the change from you as individuals to you as Co-Trustees will in no way adversely affect the interest being paid on the investment. On occasion, it has been found that such a change may create some form of a forfeiture. If such is the case, it is recommended that you wait until the Certificate matures and, at that time, change it to the name of the Trust to ensure there is no Financial loss.

CAUTION! The Federal Deposit Insurance Corporation (FDIC) insures accounts deposited within a federally chartered institution. Insurance amounts (*\$100,000 per institution regardless of the number of accounts or funds deposited*) can be doubled, tripled, quadrupled, etc., depending on marital status of trustee(s) and number of qualifying beneficiaries with "vested interest." For further information, get a copy of the FDIC memorandum dated November 30, 1990, titled "FDIC Legal Staff's Interpretive Guidelines on the Insurance of Revocable Trust Accounts" (including Living Trusts accounts). You can download the information at <http://www.fdic.gov/deposit/deposits/deposit/index.html>, request a copy of this memorandum from your bank, or write FDIC Legal Division, Washington, D.C. 20429.

D. STOCKS AND BONDS

When transferring stocks or bonds to your Trust, a different procedure will be used for privately-held stock compared to that used for publicly traded stock on an exchange.

1. Privately-Held Stock or Bonds

The transfer of privately-held security instruments, such as stocks and bonds in a privately-held Corporation, can be accomplished simply by having new Stock Certificates prepared in the name of the Trust and surrendering the prior Stock Certificates. This does not require a permit from a state agency and entails no adverse tax consequence. In the event the Secretary of the Corporation has any problems with this transfer, please have that individual contact your Agent.

2. Publicly-Held Stock

In transferring publicly-held stocks or bonds, it will be necessary to work through a Stockbroker or through the institution from whom the asset was purchased. In the case of publicly-traded stock, the Stockbroker will require you to surrender the Certificates and sign certain transfer documents, which are normal procedures. They may also require a photocopy of the Trust, but, as in the case of the financial institutions, such is required only for demonstrating that the Trust is in existence and will be held in the strictest confidence. The brokerage firm and/or transfer agent through whom the Stockbroker must work may also require a Certification of the Trust. Again, this can be provided through your Agent.

If you have purchased an interest in funds such as a Mutual Fund, it is usually only necessary for you to provide a photocopy of the Exhibit "A" to show how the asset is to be held to satisfy their requirements.

You need not be concerned if the institutions issuing stocks and bonds do not use the exact verbiage recommended in the title. For example, we have found that brokerage firms commonly use the designation "U/A" representing "under agreement" in place of "U/D/T" as recommended previously. This is simply a change in style and has no adverse consequence to you. However, if the designation they insist on using does not seem

within the general parameters of what has been recommended, your Agent should be contacted for appropriate advice.

E. CHECKING ACCOUNTS AND AUTOMOBILES

It is recommended that automobiles and regular checking accounts not be held in the name of the Trust. This recommendation does not apply if very large funds are held on an ongoing basis in a checking account, or if an automobile is not primarily a transportation vehicle but is, in fact, some kind of collectible having unusual value. If either of these unusual circumstances applies, the question of how the asset should be held should be discussed with your Agent so all relevant issues can be thoroughly analyzed.

It is recommended that normal day-to-day checking accounts and vehicles used on an ongoing basis be held in joint Tenancy form. This can normally be accomplished either by having the document of title read in both your names with the phrase "as joint Tenants" included after your names or, in the alternative, simply by having an "or" between your names. Either is a generally accepted joint Tenancy form.

F. OTHER VEHICLES

In the event you own a mobile home or some other unique type of vehicle, the best course of action is to provide your Agent with a photocopy of the document of title to ensure the appropriate state office is contacted to change the ownership name from its present form to the Trust form. Depending on the size of the mobile home or other vehicle, the license and ownership documents may vary greatly.

G. SAFE DEPOSIT BOXES

Ordinarily, the ownership of Safe Deposit Boxes are transferred in the same manner as described above for checking and savings accounts. There are, however, a few banks that restrict Safe Deposit Box ownership to individuals only. If you do business with such a bank, you will either have to comply with its rules, or transfer your Safe Deposit Box to another institution.

While Federal laws no longer require that Safe Deposit Boxes be "sealed" upon the owner's death; a few state laws continue to require that an inventory of the box contents be taken when the bank learns of the owner's

death, and report their inventory to the state authorities and/or county probate court. Assets are not allowed to be removed from the Safe Deposit Box without a probate court order. In those states, the procedure may even be required when the box ownership is held in the name of a revocable trust; however, if the ownership is held in the Trust' name, the surviving Co-Trustee or Successor Trustee should be permitted to access the box after the inventory is taken, without the need for appropriate probate court order. Remember, the I.R.S. considers "all cash" found in a Safe Deposit Box as monies that the appropriate income taxes were not paid on.

H. PARTNERSHIPS

Partnerships fall into two (2) categories. Those categories are either General Partnerships or Limited Partnerships.

If either Partnership was bought through a public offering, then the institution making the sale should be contacted and given a photocopy of the Exhibit "A" with a request that the name of the ownership be changed to the name of the Trust. On rare occasions, such institutions may also require some type of demonstration as to the existence of the Trust, but, normally, they will tell you exactly what they require.

When transferring a privately-held interest in either a General or Limited Partnership, it is recommended that a photocopy of the Partnership Agreement and/or Certificate be provided to your Agent. This will enable your Agent to thoroughly analyze the Agreement to determine whether there are any prohibitions that would require a special handling of the asset when making the transfer to the Trust.

In the circumstance of a private Limited Partnership where there is an intended transfer of the property from its present form, it is not unusual that an approval be obtained from all Limited Partners. Unfortunately, this type of provision was intended to apply to a situation where individuals attempted to sell their interest to a third party and was not intended to address the question of individuals transferring their interest in the Limited Partnership to a Trust. However, the legal effect may require that when a transfer to a Trust is desired, permission must be obtained. This is normally a simple formality, but failure to follow that formality may invalidate the transfer of the Limited Partnership interest to the Trust.

I. PROMISSORY NOTES AND DEEDS OF TRUST

Where there is an ownership interest in either a Promissory Note, or some other type of debt instrument, you should send a photocopy of the debt instrument along with a photocopy of any security documents, such as a Deed of Trust or a Mortgage, to your Agent so that an appropriate transfer can be made with the documents normally required under State Law. This is a fairly easy procedure, but one which is best handled through your Agent. If there is either a Mortgage or Deed of Trust, the transfer document may be required to be filed with the County Recorder.

J. OIL, GAS, AND MINERAL RIGHTS

Oil, gas, and mineral rights are often the most troublesome assets when transferring them into an Ir/Revocable Living Trust. The reason is that, depending on the location or depending on how the asset came into existence, they may be treated either as an interest in real estate or an interest in personal property. Only through an examination of the document of title will it be possible to determine exactly the method by which such right should be transferred to the Trust. Accordingly, a photocopy of the document of title should be sent to your Agent for review. Appropriate preparation of the necessary document will correctly reflect the jurisdiction in which the interest is located as well as the form it must take after it is determined whether the interest is in the form of real estate, in the form of personal property, or a mixture of the two.

K. COLLECTIBLES

When the Trust Agreement was originally signed, an Assignment transferring all personal property, including furniture, furnishings, and personal effects, was signed and notarized and the original delivered to you. This normally covers most assets of a personal nature. However, if there is, within the family, a collectible asset of significant value, such as a Coin Collection, unusual art, Beanie Baby collection, or the like, it may be appropriate to make a specific Assignment to the Trust. The issue is really one of making sure that there is clear identification of any asset of unusual value. Therefore, interests in Collectibles should either be described in writing and in detail, and/or a discussion be held with us to ensure that a thorough analysis can be made of the options available and a course of action recommended.

L. MISCELLANEOUS ASSETS

Other assets may exist in the Trust Estate other than those listed where consideration should be given to transferring your interest to your Ir/Revocable Living Trust. In this circumstance, if there is a document of title, then it is recommended that a photocopy of the document be provided to your Agent so that a thorough analysis can be made. Also, if there is any interest in the Trust Estate, such as in the circumstance of a family member being the Beneficiary of a Probate presently in process, then that should be personally discussed to ascertain what steps should be taken.

M. LIFE INSURANCE DESIGNATION

It is recommended that the Trust be named as Beneficiary, or Contingent Beneficiary, of all existing and future life insurance policies of a significant size. This same designation may be used not only on life insurance policies but also in any other situation where it is appropriate to name the Trust as a Beneficiary.

As it applies to life insurance, there is one type of policy which may not name a Trust as Beneficiary; policies provided to Veterans. These policies are normally between \$5,000 and \$10,000 in value and, therefore, not significant in terms of the overall Estate Planning. Normally, in this circumstance, the most commonly used Beneficiary designation is the spouse, with the children named as alternate Beneficiaries.

N. LIFE INSURANCE OWNERSHIP

Regarding life insurance, consideration should be given to having the Wife own the insurance policy on the life of the Husband and vice versa, and the Trust named as Beneficiary using the designation given above. You should contact your insurance agent and request that he or she provide you with the necessary forms to change the ownership of the policies and to make the change of Beneficiary as indicated. If your life insurance is already owned as discussed above, you should discuss with your agent the naming of a contingent owner to provide for the eventuality if the wife is the first to die. It may be determined best to name the Trust as a contingent owner.

O. PENSION PLANS, KEOGH PLANS, AND IRAs

Because of the present status of Law in those situations where either party is covered under a Corporation or individual Pension Plan, such as a Keogh

Plan or IRA, it is recommended that the primary Beneficiary be the spouse and that the Trust be named as a contingent Beneficiary. Concerning the contingent Beneficiary, it is recommended that the same name be utilized as has been recommended for the designation of the Trust for life insurance purposes.

This is one area where there is often a considerable amount of detail created simply by virtue of the forms used by the Pension Administrators managing the Plans. If there is any confusion regarding the preparation of those Beneficiary designation documents, photocopies should be sent to your Agent so that appropriate recommendations can be made and assistance rendered.

The reason it is recommended the spouse be named as the primary Beneficiary is that failure to name the spouse may require waiver documents, the exact design of which is in much dispute, to ensure compliance with Federal Law. It has been found to be simpler to name the spouse recognizing that there is normally sufficient other assets to fund the Decedent's Trust so that there will not be an adverse tax consequence imposed on the family by virtue of this situation. Also, by naming the spouse as the Beneficiary, there is an absolute guarantee that the one hundred (100%) per cent marital deduction will be in effect. This provision provides that the transfer of any asset to the surviving spouse by virtue of a death is functionally tax-exempt.

P. TREATMENT OF DEBTS

The only transfers to be made to an Ir/Revocable Living Trust are interests which are owned in assets. Debts that have been incurred by the family are not transferred to the Trust.

Q. SOLE PROPRIETORSHIP BUSINESSES

If you own a sole proprietorship business, there will be fewer complications concerning business licenses, workers compensation insurance for employees, and dealing with governmental regulatory agencies, if you take the position that you are still *personally* the owner and operator of the business enterprise, but your *Trust* is the owner of the property, equipment, vehicles, office equipment and supplies, tools, and other assets that you use in connection with the operation of that business.

Your Trust Agreement permits the Grantors to have the use and possession of all Trust personal property during the Grantors lifetimes.

With that arrangement, it will not be necessary to change the business licenses, employer ID numbers, or other governmental filings relating to the proprietorship business, since there has been no change in ownership of the business itself.

A formal Bill of Sale will convey ownership of the business personal property assets to the Trustees of your Trust. This will accomplish most of the probate-avoidance objectives of your Living Trust; since upon the death of the business owner, the Trustee will be the owner of the business assets, and the Trustee can either (i) elect to continue operation of the business using the business assets (business licenses would then need to be changed), or (ii) sell the assets to a purchaser who wants to conduct a similar business.

If you hold real estate, bank accounts, or investments in your own name, "doing business as" or "d/b/a" the proprietorship name, be certain that you change the ownership records of those assets to the Trustee in the same manner as your other personal assets.

R. MISCELLANEOUS INFORMATION

On rare occasions, it has been found that some institutions, because of the peculiarities with which their Charter documents are written, may require a minor modification in the Trust Agreement to accommodate their individual rules. If such is the case, please request that they give you and/or your Agent the verbiage that they require in writing. From that information, an appropriate Amendment can be prepared to ensure that the asset can be properly transferred to the Trust.

Constantly, the question arises "**Are assets transferred into the Trust protected from creditors?**"

The answer is "**Under very few circumstances.**" The Trust instrument was not, and is not, designed for the "protection of assets" from creditors and frivolous or petty lawsuits; therefore, is completely neutral as to any rights which the creditors would have, whether or not you had a Trust. After the death of one spouse, this issue changes and a quasi asset

protection relationship between the Trust and beneficiaries exists at that time; but, your Agent should be immediately contacted to discuss other available asset protection entities such as family corporations, family limited partnerships, family limited liability companies, Massachusetts Business Trusts, Illinois Land Trusts, holding trusts, life estates, Alaska Asset Protections Trusts, off-shore trusts, other aggressive irrevocable trusts, etc. for information and costs.

Also, the question often arises as to whether a Tax Return for a Revocable Living Trust is required to be filed on an annual basis. For many years the filing of Form 1041 was required, but the present status of the Law specifically precludes even the filing for an Employee Identification Number (EIN) and, hence there is no need to prepare or file a Form 1041, Fiduciary Tax Return, until the death of one of the Trustors.

As a practical matter, after the death of one of the parties, it may be necessary that an asset previously transferred to the Trust be probated. An example of such a situation is when there is a cloud on the title of a parcel of real estate. Fortunately, in most jurisdictions, this simply requires using the Probate Court to determine the ownership rights as to that particular asset, and does not require any other assets not in question be subjected to Probate.

S. OTHER QUESTIONS

You are invited to seek advice on any questions which may arise in transferring assets to the Trust, to ensure that appropriate procedures are followed in satisfying the general legal requirements of the transfer of assets to the Trust as well as any special requirements that may come into existence by virtue of the peculiar requirements of some institution.

Revocability _____

If you either elected your Trust to be irrevocable or changed the status after it was established, this section will not pertain to your Trust. Otherwise, your Trust is revocable in whole or in part. Thus, you may remove any asset from the Trust without Trustee approval, you may dissolve the Trust, or you may choose to change or otherwise modify the Trust Agreement. Your instrument was carefully drafted to meet your individual specifications, desires, and needs. It is an

instrument with legal consequences and any major alteration of asset structure you desire should be considered by one familiar with Trust Law.

It cannot be said enough that your assets inside the Trust are held by you, as trustee, in a "*fiduciary capacity*." This means that as a Trustee, you are holding title to the assets for the benefit of someone else. During your lives, the income of the assets is generated for your use and benefit. The Trustee must turn all income over to you in convenient installments, but at least annually. Upon your deaths, the assets will be distributed in accordance with the instructions given in the Trust document itself.

Accounting Responsibilities _____

As mentioned earlier, you are acting as a *fiduciary* for the beneficiaries. Thus, you owe them the fiduciary duties outlined in the Declaration of Trust. This includes annual accounting duties, distribution responsibilities, and income production. The language in the Trust is explicit and designed to require strict compliance with measures deemed necessary by legislature. While you need not burden yourselves with unnecessary accounting responsibilities, please be certain that good records of income are kept. The Trust will not have to file an annual tax return. The income will be offset by the distribution to you, and the Trust will never pay income tax. The strict compliance measures will also be required of any subsequent Trustees acting in the event of your death and/or incapacity.

Your accountant should indicate on a fiduciary return that all income of the Trust has been given to you and reported under your Social Security number. This will allow your accountant to report your income and expenses exactly as he or she does now with the addition of one non-calculating form.

Management After Death _____

After the death, incompetence, incapacitation, or disabling of either Spouse, the surviving, or well, Spouse preforms almost all of the same functions and duties as if nothing happened. There are a few events that must happen however, such as:

- (1) hire an attorney (if required or believed necessary),
- (2) take the deceased Spouse's Pour-Over Last Will & Testament of the to the County Probate Court for "lodging" within thirty (30) days after the death,

- (3) complete an "Affidavit of Death of a Trustee" and have it recorded at the County Recorder's Office within thirty (30) days after the death,
- (3) inventory assets of the trust and divide the Trust into a revocable "A" Surviving Spouse's Trust, an irrevocable "B" Deceased Spouse's Trust, and any possible irrevocable "C" Q-TIP, children, insurance, etc. trusts, within sixty (60) days after the death,
- (4) pay last expenses of the deceased Spouse within forty-five (45) days of the death,
- (5) manage and invest all the trust funds,
- (6) file the 1041 trust tax returns and pay taxes (if required),
- (7) keep proper records and accounting of trust assets,
- (8) pay to or apply for the beneficiaries periodically the trust income (and if the trust allows, the principal),
- (9) exercise discretion with respect to invading the principal or accumulating income in regards to the "B" Trust as provided in the trust instrument, and
- (10) in the event one of the Spouse is not deceased but became incompetent, incapacitated, or disabled; also take over the management of the assets on behalf of the incompetent, incapacitated, or disabled Spouse,
- (11) consider if any of the requirements listed below require performance at the first Spouse's death...

The powers of the successor Trustee(s) are almost identical before and after your death, incompetency, incapacitation, or disablement with special privileges being reserved by yourselves, the original Trustee(s). The successor Trustee(s) may have many questions concerning trust assets and management. A brief summary of successor Trustee's primary duties include, but is not limited to:

- (1) hiring an attorney (if required or believed necessary),
- (2) taking the second-to-die Spouse's Pour-Over Last Will & Testament of the to the County Probate Court for "lodging" within thirty (30) days after the death,
- (3) inventorying assets of the trust and gather the following within thirty (30) days after the death:
 - a. inventory of safety deposit boxes,
 - b. collect insurance policies, submit claims for death benefits, and consider modes of payment,

- c. submit claims for pension and profit-sharing benefits, and consider mode of payment,
 - d. apply for lump sum Social Security and VA benefits,
 - e. file IRS Form 56 - Notice of Fiduciary responsibility,
 - f. open estate checking and/or savings (as required),
 - g. gather death amount figures in bank accounts from appropriate banks,
 - h. value any securities held by the trust,
 - i. have real estate appraised by an official appraisal office, preferable the County Probate Court if the cost basis and appreciated values differ significantly,
 - j. gather all personal tax returns (minimum last three years) and business tax returns (minimum last five years) and agreements,
 - k. determine all gifts made via U.S. Gift tax returns, along with any "after death" taxable income under I.R.S. § 691,
 - l. obtain evidence of all debts of the estate and costs of administering the estate,
- (4) paying last expenses of the second-to-die spouse within forty-five (45) days of the death,
 - (5) managing and investing any trust funds left "in trust",
 - (6) filing any 1041 estate tax return, gift tax return, and pay taxes (if required) within nine (9) months after the date of the death of the decedent,
 - (7) filing the "final" personal 1040 and state income taxes by April 15 of the year after the year in which the death occurred,
 - (8) keeping proper records and accounting of trust assets,
 - (9) obtaining alternate valuation date values for federal estate tax returns,
 - (10) paying of any estate taxes with flower bonds (if they exist in the estate),
 - (11) considering election for special valuation of farm or business real estate under I.R.S. § 3032A,
 - (12) prepare audit notices and statements of proposed distributions,
 - (13) filing of schedules of distribution, if applicable, making distributions as outlined in the Trust document...

If the deceased is an active or retired State of California employee; additional step must be taken to comply with the myriad of rules and regulations pertaining to the deceased public servant. Upon the death of the State employee:

- (1) Upon notification of the death of a State employee, the Personnel Office must do the following:
 - a. Notify the manager or supervisor of the deceased employee;
 - b. Notify the Public Employees' Retirement System (PERS);
 - c. Prepare the final pay, including lump sum payment for any vacation, personal holiday, Saturday holiday, personal leave, CTO or excess hours;
 - d. Notify the State Controller's Office (SCO);
 - e. Cancel Direct Deposit, if the employee was enrolled;
 - f. Notify the State's Group Life Insurance plan, if the employee was covered;
 - g. May notify the Department of Personnel Administration (DPA) if the employee was contributing to the Savings Plus Program (deferred compensation §§ 457 plan or 401(k) plan) or to the Part-time, Seasonal and Temporary (PST) retirement program;
 - h. Contact the appropriate Labor Union affiliation (if any) [*Some units have life insurance coverage for their members.*];
 - i. Notify the State Compensation Insurance Fund (SCIF) if the death may be work related.

Additional benefit explanations can be found on the State of California's Department of Personnel Administration "home page" located at:

<http://www.dpa.ca.gov/benefits/employeebenefits.shtm>

NOTE: When your employment with the State of California ends, your enrollment in some of the benefit programs also end. Your departmental Personnel Office will provide advice and enrollment information on the continuation of the benefit programs that are available for your dependents.

The successor trustee is empowered to apply the income or principal of the trust for the "health, education, support, and maintenance" of the trustor(s).

Please seek competent assistance if questions do arise.

Summary

The Trust which you have executed offers you many advantages with little or no inconvenience or burdens. It is a creation of the law which allows the orderly disposition of your estate without the cost, delay and burdens often found in the probate courts. You can put your mind at ease that as a result of your step in properly planning your objectives, you have prepared for the future support and well being of your loved ones.

It has been our great pleasure and opportunity to assist you in this accomplishment. Please address all questions to your "Agent", however, if he/she does not have the answer, is unavailable, or you want privacy concerning a matter, feel free to contact us at the following address, Monday through Friday, 8:00 A.M. to 6:00 P.M. Pacific time.

PART II ~ LIVING TRUST INFORMATION

This concise educational booklet is a modest outline showing the particular sections, tabs, and articles contained within your Living Trustee. Brief, succinct statements will accompany each section, tab, or article. **Remember:** No general brochure is a substitute for face-to-face discussions between your estate preparer and yourselves and/or family members.

In order to accomplish the long range objectives for which this trust was created, it is mandatory that your administration of the trust be consistent with the rules of *fiduciary law* as set forth in the trust instrument and the common law.

The instructions outlined below are very general in nature and are drafted to assist you in answering questions you may have concerning the trust of which you are the Creator, perhaps an initial Trustee, or even an enjoyer of beneficial interest.

This informational manual is strictly designed to aide you in the initial setting up, later on implementing, and then long range organizing and administration of your business trust operation. Every page and NOTE is important so please carefully read and understand your duties and requirements thoroughly before proceeding. Please read the following statement:

FIRST: WHAT'S IN THE TRUST PORTFOLIO PACKAGE?

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Each **Tab** has printed material on it that is essential to the proper operation of your Living Trust. Please ensure that you take the time to review each **Tab** page as well as your official documents.

### **Inside the Cover Page:**

Table of Contents, a three page Preliminary Data outline, and a copy of “Final Instructions and Acknowledgment of Receipt of the Portfolio ...”

### **Tab 1:**

The “Declaration of Trust Agreement,” “Memorandum of Declaration of Trust Agreement,” and an “Exhibit ‘A’ Memorandum of Declaration of Trust Agreement.” This memo is for any third parties with a need to know what the powers of the trustees are and really has no other purpose. If a SS-4 Form is included; it’s an IRS form and its function is to acquire a Federal I.D. Number for the trust.

### **Tab 2:**

1. **The trust indenture:** This is the “Deed of Trust” contract and declaration of the business trust that the creator/s, exchangor/s, and/or grantor/s have/has with the trustee/s to control the assets of the trust for the benefit of the beneficiary/ies. The document begins by declaring the “valuable consideration” that the principle/s exchanged with the trustee/s in exchange for beneficial enjoyment. The date of the declaration is acknowledged and the authority is given to the trustee/s to operate under the name the creator/s has/have given the trust. Finally, section 1 ends with the trustees’ acceptance of the trust. This is the most important document of any trust and should be read by the creator/s and all the trustees. The trust indenture lets all know just what the creator/s want/s the trustee/s to do, who is to benefit from the trust and in what amounts or quantities and how.

**Tab 3:**

1. Fully Funded Trust: The first four pages of Tab 3 is a brief but concise explanation of what a “Fully Funded” living trust is and is not.
2. Shared/Community Property Agreement: If this is a married trust (i.e., an “A/B/C” trust); the Shared/Community Property Agreement is next. It simply states that the character of property placed into the trust will not change it’s designation just because it was included as part of the trust corpus (property).
3. Schedule “A”: For a “Single” trust; this is the only Schedule included within the trust agreement.

Otherwise, for “Married” trusts this is a list of all the real and/or personal property placed into the “Shared/Community Property Estate. Whenever possible, this should be by each property’s legal description and/or parcel numbers. The grantor/s should fill out each section such as professional property, financial institutions, stock/securities, deferred compensations, insurances, business affiliations, and/or make an inventory and attach it to each section as required.

You can write on the Schedule “A”, cross out deleted or sold items, write in new property, or use the accompanying “Supplemental Property Sheet.”

4. Schedule “B”: This is the same as Schedule “A” except for the property is considered “Shared/Quasi-Community Property,” that is property owned collectively by both spouses but located in another state that is not a “community property” state.

You can write on the Schedule “B”, cross out deleted or sold items, write in new property, or use the accompanying “Supplemental Property Sheet.”

5. Schedule “C”: This is referred to as the “Separate Estate of Husband.” In other words; property owned by the husband but not by the wife.

You can write on the Schedule “C”, cross out deleted or sold items, write in new property, or use the accompanying “Supplemental Property Sheet.”

6. Schedule “D”: This is referred to as the “Separate Estate of Wife.” In other words; property owned by the wife but not by the husband.

You can write on the Schedule “D”, cross out deleted or sold items, write in new property, or use the accompanying “Supplemental Property Sheet.”

7. Signature Page: The last page of the Schedule(s) must be signed once as the Settlor and then again as the Trustee. Make sure it is signed in front of a Notary.

8. Bill of Transfer: This is a simple “Bill of Transfer” (sale) of all your personal property into the trust.

9. Specific Request: Everyone has specific request that they want accomplished upon their death. These may include burial procedures, surviving pet arrangements, etc.

10. Memorandum Distribution of Personal Property: This is a listing of specific gifts to certain people or entities after your death.

11. Declaration of Intent: This is a “catch all” document that should avoid item in the process of being funded into the trust from going through probate if a death occurred while the property was being transferred.

**Tab 4:**

Trust minutes are filed in this section. The initial minutes are very important to the proper implementation of the trust agreement.

**NOTE:** Where there is a voluminous amount of Minutes to be kept; it is easier to use a computer generated and controlled “minute and/or resolution” program therefore we recommend Trust Manager software. Trust Manager can be purchased by going to the internet and logging on to [www.trustsoftware.com](http://www.trustsoftware.com) , by calling toll free at 888-878-7860 or

write to: TRUST SOFTWARE & CONSULTING, 5515 North 7th Street, Suite 5-324, Phoenix, AZ [85014].

The “Accounting Forms” are primarily used upon the death of the Trustor(s).

An “Appendix” of estate planning terms is also included.

**Tab 5:**

Pour-Over Last Will and Testament(s):

**Tab 6:**

Springing/Immediate Durable Power of Attorney(s):

**Tab 7:**

Living Will, Right to Die Statements, and Healthcare Decisions.

**Tabs 8 ~ 15:**

This section has all kinds of Miscellaneous Supporting Documents included for your support in maintaining accurate and concise records.

**SECOND: FURTHER DESCRIPTION OF EACH ARTICLE.**

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The following section will attempt to give short, concise statements about each Article, clause, and sub-clause.

**Restatement and/or Reformation:**

If this is a reformation of an existing living trust; this clause serves to “restate” the trust date, name, and who prepared the trust for the Trustors.

**Introduction:**

The introduction is merely a verbal means to declare the trust into existence.

**Declaration of Trust Agreement:**

The declaration identifies the creator(s)/trustor(s) by formal name and domicile.

**Trust Revocable/Irrevocable:**

This sub-clause declares the trust to be either revocable or irrevocable and the advantages and/or disadvantages of each status.

**Identification:**

The identification clause names the trust, establishes it’s creation date, and who are the creator(s)/trustor(s) by further identification.

**Preamble:**

Just like the preamble to the constitution; this statement clearly states the purpose for establishing the trust and under what authority it can operate.

**The Trust Estate:**

The trust must be funded with real and/or personal property. This section starts off with an “Intention” statement, followed by a “Composition” clause, and lastly an “Acceptance” statement.

**Article I ~**

**Joint Lifetime Separate Trusts**

If a married trust; this identifies the three separate trusts; namely the joint property, husband’s property, and the wife’s property.

**Terms and Conditions of Trust**

Outlines what the creator(s)/trustor(s) can expect during their lifetime(s) regarding the trust status.

**Article II ~**

**Catastrophic Illness Provision**

If the trust is irrevocable, and has been irrevocable for at least five years; this article protects the grantor(s) from Medi-Cal spend-down of their property.

**Definition of Medicaid Qualifying Trust (MQT)**

Explains what is a MQT and how is it operated and maintained.

## Article III ~

### **Provisions After Deceased Settlor's Death**

If a married trust; what happens after the death of the first spouse to die.

### **Definition of Surviving Spouse's Trust (Trust A)**

What is the “A” trust and how does it get funded. “A” stands for the spouse who is Alive or Above ground.

### **Definition of Deceased Spouse's Trust (Trust B)**

What is the “B” trust and how does it get funded. “B” stands for the spouse who is Buried or Below ground.

### **Definition of Qualified Terminal Interest Property (Q-TIP) Trust (Trust C)**

The “C” trust is used under two circumstances. One, if the value of the property funding the “B” trust exceeds the “lifetime” exemption; the excess goes into the “C” trust. Secondly, if beneficiaries disclaim their inheritance, their portion goes into the “C” trust to be distributed to the other beneficiaries.

### **Definition of the Qualified Domestic Trust (QDOT) Provision**

If the surviving spouse is not a US citizen; the QDOT is used to satisfy IRS limitations placed on non US citizen beneficiaries.

### **Definition of the Insurance Trust**

A brief description about an irrevocable life insurance trust (ILIT). A more thorough article follows later in the instrument.

### **Definition of the Generation-Skipping Trust**

If the grantor(s) ever decide to let their children only receive the income or interest from the estate after their death and then have the trust property distributed to the grandchildren after the children's death; then this is the vehicle for that strategy.

### **Provisions After Surviving Settlor's Death**

Question: "So what happens after the surviving spouse dies?"

## **Definition of Beneficiary Trust**

Answer: "The 'A' and 'B', and maybe 'C' trusts all come back together to form the "beneficiary trust."

### **Article IV ~**

#### **Payment of Last Expenses**

Last expenses always get paid before distributions are made, if any.

### **Article V ~**

#### **Provisions for Payments of Income to Surviving Spouse**

Any income from the "B" trust goes directly to the surviving spouse.

### **Article VI ~**

#### **Surviving Spouse's Estate Liable for Taxes**

Upon the death of the surviving spouse; the successor trustee must pay all taxes as applicable from the surviving spouse's estate.

### **Article VII ~**

#### **Property Not Disposed of Added to Deceased Spouse's Trust (Trust B)**

Upon the death of the surviving spouse; the successor trustee shall add to the "B" trust any assets not effectively placed into the "B" trust.

### **Article VIII ~**

#### **Amendment, Revocation and Termination**

In the case of a married trust; the trustors (i.e., husband and wife) can amend, revoke, or terminate any portion, article, section, clause, etc. by properly filling out the appropriate form(s) in duplicate.

The only exception is 1) after the death or incompetence of one of the spouses or 2) after the death or incompetence of both spouses. Successor trustees cannot amend, revoke, or terminate any portion, article, section, clause, etc., without guidance and approval from the appropriate probate court of competent jurisdiction.



## Article IX ~

### **Trustee Powers**

Now that you are a trustee . . . what can you do? Well, anything that's not illegal or fattening. These next eight paragraphs and 40 plus sub-paragraphs state everything in detail.

Paragraph "D." limits the role of successor trustees while paragraph "G." outlines how to determine if a trustee is incompetent or incapacitated and at what point can he/she return to his/her trustee duties, if ever.

## Article X ~

### **Settlors' Residence**

If the grantor(s) primary residence real property is placed into the trust this article declares that they retain all legal and equitable title to said property.

## Article XI ~

### **Life Insurance as a Trust Asset**

If the trust owns life insurance on any of the settlors and an ILIT is required to remove ownership from the trustors; then this is the creation of the ILIT.

### **Administration of the Insurance Trust**

Every ILIT needs administrative procedures and rules.

### **Employee Benefit Plan as a Trust Asset**

What if any of the trustors has an "employee's benefit plan" as a trust asset? How does the trust recapture any unpaid benefits? This provides for that situation.

### **Restrictions as to Disposition of Certain Qualified Plan Death Benefits and Insurance Proceeds**

Some assets require very specific distribution processes and these are a few of them.

### **Instruction for a Qualified "S" Corporation Trust**

Directions on how to manage sub-chapter "S" corporation stock.

## **Trustee for Stock of a Professional Corporation**

Directions on how to manage stocks from a professional corporation.

## **Units of Beneficial Interest (UBI) as a Trust Asset**

If the trust has UBIs from a business trust; this explains what happens upon the unit holder's death.

### **Article XII ~**

#### **Protective Provision**

Trustee sometimes make bad decisions or perform off-colored acts. This protects the trust from penalties that could be imposed by the IRS.

### **Article XIII ~**

#### **Revised Uniform Principal and Income Act**

The trustee always decides what is income and what was principal.

#### **Ambiguities Regarding Principal and Income Resolved by Trustees**

This is the "kitchen drawer" of the trust where everything we need to get into it but don't know where to put it is held.

### **Article XIV ~**

#### **Trustee Not Liable to Beneficiary Without Written Notice**

The trustee is not liable to any beneficiary unless properly notified by a beneficiary.

#### **Notice of Births, Deaths, or Other Events Affecting Trust Interest**

The trustee is required to get accurate Minutes concerning births, deaths, marriages, divorces, etc., effecting beneficiaries.

#### **Additional Property Granted to the Trust Estate**

Unlike some types of trusts; living trusts can have additional property added to them at anytime during their existence.

### **Trustee Authorized to Make Gifts**

If the successor trustee can determine that the grantor(s) established an "annual gifting" program; he/she can continue to do the same.

### **Perpetuities Savings Provision**

This trust can only exist for a specified number of years. It is usually not to exceed "twenty-one years after the death of the last surviving beneficiary alive at the time of the death of the surviving spouse."

### **Spendthrift Provision**

Let's not throw the baby out with the bath. In other words, if any article, clause, etc., becomes ineffectual because of a change in the law the entire trust is deemed null and void; only that section.

## **Article XV ~**

### **General Trust Provisions**

A series on minor but important declarations about the trust.

### **Simultaneous Death**

Who dies first if death of more than one party happened close to each other and the exact sequence of death cannot be determined.

### **Disclaimers**

Any beneficiary can say "I don't want my inheritance."

### **No-Contest Clause**

If any beneficiary brings a lawsuit against the trust protesting their inheritance; the trust considers that person as "pre-deceasing the surviving spouse and leaving no children to inherit in their stead.

### **Governing Law of this Trust Agreement**

This trust is valid in all states and territories of the United States.

### **Survivorship Provisions: All Beneficiaries Required to Survive Settlor by Thirty Days**

It's just what the bold title implies.

## Article XVI ~

### **Powers of Appointment**

A power of appointment is a grant of authority that allows the power holder to designate recipients of beneficial interest in property but does not give any interest in the property to the power holder.

### **Payments to Beneficiary Under Disability or to Minor Beneficiary**

If any of the beneficiaries are minors or disabled; the trust has certain provisions as to the manner which these beneficiaries would get their inheritance without disqualifying them from governmentally sponsored programs.

## Article XVII ~

### **Division and Distribution of Trust**

Exactly what it says. this is where the successor beneficiaries are listed by name and age along with their relationship (if applicable) and percentages, etc.

Outright distributions as well as thirds distribution methods might be listed here.

### **Guardians**

If there are minor children or those with disabilities; here is where their guardians would be listed as well as trustees for any trusts established on their behalf.

### **Special Needs Provision**

If any beneficiary is disabled; this provision establishes the procedures for distribution to them.

### **Definition of the Sprinkling Trust**

Definition in how to administer this trust for minors or those that haven't reached a certain age because a thirds distribution method was chosen.

### **Trustee's Power to Defer Division or Distribution**

All bills get paid first before distribution. This allows the successor trustee to defer distribution up to six months after the death of the surviving spouse.

### **Article XVIII ~**

#### **Issue of Husband and Wife Deceased**

If all the settlor's children, grandchildren, beneficiaries, etc., have predeceased them; these are contingent directions on how to distribute the estate.

### **Article XIX ~**

#### **Provisions Relating to Trustees and Successors**

Rights reserved by the settlors and restriction placed upon successor trustees.

### **Article XX ~**

#### **Trustees Order Of Succession**

This names the order of trustees, executors, agents, etc.

#### **Right to Replace any Independent Trustee**

The grantors retain the right to replace independent trustees.

### **Article XXI ~**

#### **Signatures of the Settlers/Trustees**

Throughout one's lifetime; several names and/or ways of signing documents might occur. This acknowledges all those different ways as signatures of the same person.

### **Article XXII ~**

#### **Trust Certification**

This states that the trust form has been certified by an attorney for compliance with the law.

## **Article XXIII ~**

### **Rules of Professional Conduct of the State Bar**

Attorneys are prohibited from representing either the husband or wife in disputes if they assisted the same people in establishing their estate planning.

## **Article XXIV ~**

### **Waiver of Dower and Curtsey Rights**

Required in community property states.

## **Article XXV ~**

### **Shared/Community Property Agreement**

This is a formal “community property agreement” as mandated by the IRS. It augmented by a sub-clause that identifies the initial beneficiaries.

## **Signatures ~**

Of course this is where you'll sign the trust instrument first as the settlor(s) and alternately as the new trustee(s).

## **Tabs 5, 6, and 7 ~ Wills, DPOAs, and DPOAHCs**

The Pour-Over Last Will and Testament(s), Springing/Immediate Durable Power of Attorney(s), and the Health Care Decision(s) form and substance are prescribed by law. They have been perfected to afford you the best documents of their type available to fully compliment your living trust agreement.

## **Tabs 8 through 15 ~ Misc Supporting Documents**

Tab 8 contains deeds and promissory notes, etc pertaining to real estate.  
Tab 9 contains sample letters and affidavits to financial institutions.  
Tab 10 holds replacement “inventory sheets” for the Schedules & Minutes.  
Tab 11 contains “accounting sheets” for distribution(s) of the estate.  
Tab 12 holds amendment, revocations/termination, and addition forms.  
Tab 13 contains “successor trustee” appointment forms.  
Tab 14 holds “beneficiary” distributions forms.  
Tab 15 is this Users Manual.