

Trust Overview

by

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Major Terms Defined

Before drafting a trust, the draftsman must have a basic understanding of the people involved, and the role of each person in the administration of the trust. Selected definitions under NY Surrogate's Court Procedure Act (SCPA) §103 (for purposes of the SCPA) follow:

- **Beneficiary.** Any person entitled to any part or all of an estate.
- **Corporate trustee.** Any trust company, any bank authorized to exercise fiduciary powers and any national bank having a principal, branch or trust office in this state and duly authorized to exercise fiduciary powers.
- **Fiduciary.** An administrator, administrator c.t.a., administrator d.b.n., ancillary administrator, ancillary administrator c.t.a., ancillary executor, ancillary guardian, executor, guardian, preliminary executor, temporary administrator, testamentary trustee, to any of whom letters have been issued, and also the donee of a power during minority and a voluntary administrator and a public administrator acting as administrator or a public administrator or county treasurer to whom letters have been issued, and a lifetime trustee.
- **Grantor.** The creator of a lifetime trust. Also called a settlor.
- **Individual trustee.** Any trustee who is not a corporate trustee.
- **Lifetime trust.** An express trust, including all amendments thereto, created during the grantor's lifetime other than a trust for the benefit of creditors, a resulting or constructive trust, a business trust where certificates of beneficial interest are issued to the beneficiary, an investment trust, voting trust, a security instrument such as a deed of trust and a mortgage, a trust created by the judgment or decree of a court, a liquidation or reorganization trust, a trust for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, instruments wherein persons are mere

nominees for others, or a trust created in deposits in any banking institution or savings and loan institution.

- **Lifetime trustee.** A trustee acting under a lifetime trust.
- **Property.** Anything that may be the subject of ownership and is real or personal property, or is a chose in action.
- **Testamentary trust.** A trust created by Will.
- **Testamentary trustee.** Any person to whom letters of trusteeship have been issued.
- **Trust.** A testamentary trust or a lifetime trust.

Major Laws Governing Creation and Administration of Trusts

Article 7 of the NY Estates, Powers and Trusts Law (EPTL) governs the administration of trusts in New York State. Also of importance to the administration of trusts are EPTL Article 11 (Fiduciaries: Powers, Duties and Limitations) and Article 11-A (Uniform Principal and Income Act). Sections of note include:

- **EPTL §7-1.4:** An express trust may be created for any valid purpose.
- **EPTL §7-1.9(a):** Upon the written, acknowledged consent of all persons beneficially interested in a trust (grantor, trustee, current and presumptive remainder beneficiaries), the grantor can amend or revoke an otherwise irrevocable trust (in whole or in part). Only permissible if all persons beneficially interested are competent adults.
- **EPTL §7-1.12:** Supplemental Needs Trust (to be discussed in further detail separately).
- **EPTL §7-1.14:** Any person (a natural person, an association, board, any corporation, court, governmental agency, authority or subdivisions, partnership or other firm and the state under EPTL §1-2.12) may by lifetime trust dispose of real and personal property. A natural person must be at least age 18.

- **EPTL §7-1.16:** A lifetime trust is **irrevocable** unless it expressly provides that it is revocable.
- **EPTL §7-1.17(a):** A lifetime trust shall be **in writing** and executed and **acknowledged by the grantor and at least one trustee** (who may be grantor) in the manner required for the recording of a deed; or in lieu of acknowledgement, 2 witnesses.
- **EPTL §7-1.18:** A lifetime trust is valid as to any assets therein to the extent the assets have been transferred to the trust.
- **EPTL §7-1.19(a):** Any trustee or beneficiary may petition to terminate an uneconomical trust.

Who are the Main Parties? Their Duties and Responsibilities to a Trust

The main parties to a trust are the grantor (the person who created the trust), the Trustee (the person managing the trust), and the beneficiaries (the person for whom the trust was created and who has a beneficial interest in the trust assets). When reviewing a Trustee's actions, it is important to remember that not only must the effect on the current beneficiaries be considered, but also that of the presumptive and contingent remainder beneficiaries.

EPTL Article 11 includes the powers, duties and limitations of Trustees.

- **EPTL §11-1(b):** a detailed list of Trustees' powers is included here and should be reviewed. If additional powers are required, they should be expressly included in the trust document.
- **EPTL §11-1.6:** Every fiduciary shall keep property received as a fiduciary separate from his/her individual property.

EPTL §11-2.1 (the Principal and Income Act) sets forth how trust assets and expenses are allocated between income and principal.

- **EPTL §11-2.1:** The determination of a receipt or disbursement as principal or income (or partly to each) is governed first by the trust instrument; or in accordance with EPTL

§11-2.1 (if not specified in trust); or in accordance with what is reasonable and equitable to those entitled to income and principal. EPTL §11-2.1(a)(1). If the trust instrument gives the Trustee discretion in crediting a receipt or disbursement to income or principal (or partly to each), no inference that the Trustee has or has not improperly exercised such discretion arises from the fact that the Trustee made an allocation contrary to EPTL §11-2.1.

- **EPTL §11-2.1(b)(1):** defines income as the “return in money or property derived from the use of principal,” including return received as rent from property; interest on money lent; corporate distributions (discussed in further detail below); accrued income on bonds (discussed in further detail below); receipts from principal used in a business (discussed in further detail below); receipts from the disposition of natural resources (not discussed as not applicable); receipts from other principal subject to depletion (discussed in further detail below); and receipts from the disposition of underproductive property (discussed in further detail below).

- **EPTL §11-2.1(b)(2):** defines principal as “property, disposed of in trust, the income from which is payable to or to be accumulated for an income beneficiary and the title to which is ultimately to vest in the person entitled to the future estate,” and includes consideration received on the sale or transfer of principal, on the repayment of a loan or as a refund, replacement or change in the form of principal; proceeds resulting from eminent domain; insurance proceeds other than proceeds from an income beneficiary’s separate interest; stock dividends; receipts from bonds; royalties; receipts from principal subject to depletion; any profit resulting from any change in the form of principal; and receipts from the disposition of underproductive property.

- A summary of what constitutes income versus principal under the Principal and Income Act follows:

Interest and Dividends (Normal Investments)	Income
Capital Gains (Normal Investments)	Principal
Business Income	Income (Generally Accepted Accounting Principles)

Business Loss	Principal
Proceeds from Sale of Business Assets (not inventory)	Principal
Refunds	Principal
Fiduciary Fees	Annual Commissions- 1/3 Income, 2/3 Principal; 1% principal commission from Commission
Investment Management Fees	1/3 Income, 2/3 Principal

Outright Gifts

Before a discussion involving the drafting of trusts, lifetime gifting must be considered. Lifetime gifts offer clients important savings for both estate and income tax purposes and remain one of the most important tools in estate planning. An outright gift is most appropriate when the donor wants the donee (recipient) to have maximum freedom in owning and controlling the property. Outright gifts shift the taxability of income and save estate taxes. Outright gifts may also include transfers of partial interests (such as legal life estates, remainders and other present and future interests). An outright gift is most appropriate when the donor wants the donee to have maximum freedom in owning and controlling the property.

Section 2503 of the Internal Revenue Code (the “Code”) allows an exclusion from taxable gifts for present interests given to each donee each year up to specified amount. The current annual exclusion is \$14,000. The annual exclusion is tied to inflation, but may only be increased in increments of \$1,000.

The annual gift tax exclusion is allowed only for a gift of a *present interest* (an “unrestrictive right to the immediate use, possession, or enjoyment of property or the income from property”). Future interests (reversions, remainders, and other interests or estates, whether vested or contingent, which are limited to commence in use, possession, or enjoyment at some future time) do not qualify for the gift tax annual exclusion. Gifts of future interests must be reported at their full value, and the annual exclusion is barred. Future interests can be converted to present interests for gift tax purposes by giving the recipient a “Crummey” withdrawal power—a power to take immediate possession and control of the contribution for a limited

period of time. “Crummey” powers are discussed in further detail in the Life Insurance Trust section of this program.

Revocable Trusts

The Revocable or Living Trust is currently very popular among elderly clients and their attorneys. Many clients believe that the Revocable Trust will work to reduce or eliminate estate tax. Others are under the impression that the Revocable Trust will protect assets in the case of nursing home placement. Still others think that if they have a Revocable Trust, there is no need for them to also have a Will. It is important that the drafting attorney be able to correct each of the above misconceptions when advising clients and particularly when reviewing existing Revocable Trusts prepared by other attorneys. A sample, simple revocable trust with explanatory footnotes is attached to these materials.

The advantages of using a Revocable Trust often cited by estate planning attorneys include:

- Avoiding probate;
- Maintaining privacy;
- Avoiding ancillary probate;
- Avoiding Will contests;
- Quick disposition; and
- Asset management.

Avoiding Probate: Many clients believe that one of the most important concerns in estate planning is to avoid probate. There may be times when a particular client has already experienced the probate process with the estate of a close family member and not had a good experience. There is time, expense and judicial impediments that can arise during the probate of a Will (a subject for another seminar); however, in many New York State counties probate is not the horror that is commonly portrayed. An attorney with experience in a particular county will know the intricacies of that particular court. Where waivers of citation may be easily obtained from all beneficiaries, probate is not time consuming or expensive. Further, a client may want court supervision if the client anticipates a fight or there are minor beneficiaries- the Court will

appoint a guardian ad litem (a lawyer) to review the actions of the executor on behalf of a minor or otherwise disabled beneficiary.

Privacy: There is no requirement that a person be rich and famous to want privacy. Many clients do not want their estates made public. They may not want the public to know which heir receives what property. As a private contract, an inter vivos (lifetime) Revocable Trust is not a public document and is therefore not subject to inspection by the courts or the general public. However, if the Revocable Trust is not fully funded and a pour over Will is used to transfer any remaining assets into the Revocable Trust at death, the Court will frequently require that the Revocable Trust be filed with the Will in the probate proceeding, thereby removing the “privacy” advantage.

No Ancillary Probate: In addition to determining whether an estate is subject to the probate process, a similar determination must be made in each state where the decedent owns property. Where a Revocable Trust holds real property located in a jurisdiction different from where the decedent resides, title to the property continues to be held by the trust upon the grantor’s death. Therefore, there will be no need for probate in another state (ancillary probate). For example, if the grantor’s primary residence is New York, but the grantor also owns a home in Massachusetts, the grantor may transfer the Massachusetts real estate to a Revocable Trust, thereby avoiding probate in both states. Avoiding ancillary probate does not remove real property from the situs state for state estate tax purposes.

Avoid Contests: Although a trust instrument can be subject to challenge, it is more difficult to challenge an agreement that has been in effect during a grantor’s lifetime. It is important to note that a Revocable Trust is not sufficient to defeat a right of election of the decedent’s surviving spouse or to protect assets from the surviving spouse’s long term care expenses (Medicaid eligibility). Avoiding contests is particularly important when the client is gay and wants his or her assets to be distributed to his or her domestic partner or other non-spouse individual. If the client’s only surviving family includes non-approving family members, these family members may attempt to challenge the Will as distributees. Remember that during the probate of a Will, the decedent’s distributees must either sign or Waiver of Citation or be served with a citation, thereby opening the door for objections.

Quick Disposition: The statutory creditor period (7 months from the appointment of the executor by the Court) does apply- meaning that if the executor distributes the estate assets to the beneficiaries during the statutory creditor period, the executor can be held personally liable for the decedent's debts. The Revocable Trust provisions may provide for disposition to named beneficiaries on the death of the grantor, or in some other manner. Depending on the complexity of the decedent's estate, assets passing pursuant to the Revocable Trust may save several months. This becomes important where a family business is involved or where a constant flow of income is crucial.

Asset Management: With respect to Revocable Trusts, if the grantor is also named as Trustee, the Revocable Trust is his or her "alter ego" and he or she retains complete control over the trust and its assets. This allows the grantor to manage the assets and make any necessary changes if needed to accomplish his or her goals. New York State has abolished the merger doctrine, allowing the grantor to act as sole Trustee, thereby removing the need for a co-Trustee. The Revocable Trust may also provide trustee succession provisions that do not require court involvement, providing ease in the transfer of fiduciary duty upon the grantor's incapacity or death.

Professional Management: The grantor/trustee may retain a financial professional to manage assets in the trust for the grantor's benefit. This may be important where the grantor lacks expertise or interest in managing trust assets such as real estate, stock funds, or even a valuable art collection. The grantor/trustee may also change advisors if necessary.

Incapacity: Although an attorney-in-fact/agent named pursuant to a valid, durable power of attorney may manage assets on behalf of an incapacitated person, a Revocable Trust may provide the Trustee with much greater flexibility, control and authority in managing the trust assets. Many attorneys-in-fact/agents have experienced problems with having various financial institutions honor a power of attorney document. Although the banks or other financial institutions are most often unjustified in refusing to recognize the power of attorney, it is a pervasive problem within the community. Conversely most institutions will recognize the authority of the Trustee. However, they may require that a full copy of the trust instrument be provided.

A Revocable Trust should be considered for New York clients in the following cases:

The client owns real estate in a foreign jurisdiction (another state).

The client has a domestic partner or other non-spouse individual who the client wants to inherit.

The client is involved in a non-traditional family relationship (i.e. second marriage or no marriage).

The client wishes to keep something private.

The client may move to a state where probate is more complex.

The client may acquire real estate, such as a vacation home or a retirement home, in another state.

Irrevocable Trusts

Irrevocable trusts are used for a myriad of purposes, although they are mostly tax related. Many times a single type of irrevocable trust can be used for a variety of different tax purposes. For example, an irrevocable life insurance trust with Crummey withdrawal rights is used to make gifts that qualify for the annual exclusion and exclude life insurance from the grantor's estate.

Inter vivos irrevocable trusts include the following:

Basic irrevocable trusts, Medicaid income only trusts;

Crummey withdrawal or demand;

Generation-skipping and dynasty trusts; and

Specialized trusts, such as educational trusts and incentive trusts.

Grantor trusts are those trusts whose income is taxable to the grantor under Sections 671 through 679 of the Code. A Revocable Trust is a grantor trust because of its revocability by the grantor. An irrevocable trust is a grantor trust if grantor has a reversionary interest in the trust assets or has retained certain powers (“strings”) over the trust.

On occasion, an irrevocable inter vivos trust is made a “defective grantor trust” on purpose; that is, the trust is drafted with certain retained powers (“strings”) by the grantor that

cause the trust's income to be taxed to the grantor but that do not cause inclusion of the trust assets in the taxable estate of the grantor. Since the Code requires the grantor to recognize the trust's income and pay the income taxes on that income, the trust's beneficiaries receive the income intact. The taxes paid by the grantor are, in essence, an additional gift to the beneficiaries. However, the gift is not subject to federal gift tax, because the income tax payments are not voluntary but are required by law.

Grantor trusts include annuity or unitrusts that allow the grantor to retain an income or unitrust interest in the trust assets for a period of years before the assets vest in the name of the other beneficiaries. Contributions to these grantor-retained annuity and unitrusts (GRITs, GRATs and GRUTs) result in a gift to the beneficiaries equal to the value of the contribution to the trust less the value of the grantor's retained interest for the trust term. These trusts allow the grantor to divest himself or herself of the future appreciation without giving up the income immediately. The value of the gift to the beneficiaries is discounted by the actuarial value of the grantor's retained interest. There are special trusts that allow this same treatment if the trust is funded with the grantor's residence or a vacation home (qualified personal residence trust or QPRTs).

Grantor trusts include the following types of trusts:

- Lifetime QTIP (Qualified Terminable Interest Property) trusts;
- Grantor-retained annuity trusts (GRATs) and unitrusts (GRUTs);
- Grantor-retained income trusts (GRITs) for nonfamily members;
- Qualified personal residence trusts and personal residence trusts (QPRTs); and
- Intention-Defective ally Grantor “defective” trusts.

Determining Your Client’s Planning Needs

Before recommending the use of a revocable or an irrevocable trust, it is important to have a sense of whether the objectives of a client warrant creating a trust. The following may assist in the analysis of whether an irrevocable trust will be useful for the client:

The intended beneficiaries do not have investment experience, knowledge, skills, or desire to gain the experience, knowledge or skills.

The client wants another person or an institution to decide who will be a beneficiary and what a beneficiary is to receive.

The client wants to shift an income tax burden from himself or herself to a trust or another party.

The client wants to plan for Medicaid eligibility.

The client wants to control when and how a beneficiary will receive income or principal from a gift.

The client wishes to make a gift, but does not want the beneficiary/donee to have immediate access to the money or property.

The client wishes to make a gift, but wants to retain the income from the money or property for a period of time.

The client wants to skip one or more generations for purposes of reducing transfer taxes on property as it passes from generation to generation.

The client wants to avoid the capital gain tax on assets that have a low basis.

The client wants to maximize gift making, even to the extent of paying the income tax liability on the gifts.

The client wants to divest him/herself of life insurance but wishes to indirectly control the use of the policy's cash value and policy proceeds on death.

Getting a Taxpayer Identification Number

There are varying opinions whether certain trusts should obtain a separate federal taxpayer identification number. For revocable trusts, during the lifetime of the grantor, the trust can use the grantor's Social Security Number. Upon the death of the grantor, the use of the grantor's Social Security Number is no longer acceptable. A taxpayer identification number must be obtained.

The need for a taxpayer identification number for irrevocable trusts is a bit more complicated. So long as a trust is a "grantor trust" and all income is distributed to or for the

benefit of the Grantor, no federal taxpayer identification number is required while Grantor serves as Trustee or Co-Trustee. Under those circumstances, the trust uses the Grantor's personal social security number as the trust's taxpayer identification number. See Treas. Reg. 301.6109-1(a)(2)(i). Even if the Trustee is not a Grantor (as is the case for Medicaid income only trusts), a trust that is a grantor trust may elect to report for tax purposes under the social security number of a Grantor, or may elect to obtain a taxpayer identification number. Specific powers within a trust establishing the Trust as a "grantor trust" include (1) the requirement that all income be distributed to the Grantor, (2) the power of the Grantor to change the beneficiaries; and (3) the power of the Grantor to substitute Trust property. Reporting method choices for such trusts are covered by Treas. Reg. 1.671-4(b), a copy of which is attached to these materials.

To obtain a taxpayer identification number, form SS-4 must be submitted to the IRS. The IRS has an online application that allows almost instantaneous issuance for the taxpayer identification number. The link is: <https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>. Form SS-4 is available on the IRS website- be sure that when you complete the form that an individual is listed as the designated representative as the IRS will not speak with just anyone from your office.

Funding the Trust

Schedule A means nothing. There are many misconceptions regarding trust funding. Many of the software packages (and old-fashioned trusts) include "Schedule A" after the trust document as a means of listing the various assets held in the trust. Clients, social workers, Social Services case workers want to see Schedule A, and afford it meaning incorrectly. Listing an asset on Schedule A does not effectively transfer title/ownership of that asset into the trust.

It is important to remember that a revocable trust is only effective for probate avoidance purposes to the extent that the revocable trust is funded. If there are individually-owned assets remaining outside the trust (not controlled by beneficiary designation or joint ownership), probate will be required.

When real estate is transferred to a trust, it must be accomplished by deed filed in the applicable county clerk's office. If you are assisting a client with transferring real estate into the

trust, be careful. Provide yourself with protection if a title abstract is not obtained, i.e. “The deed prepared by our office will be based upon the deed and tax bills that we ask you to provide. We will not conduct an examination of title. Without a title opinion or title insurance to update the property descriptions, we will have no way of knowing whether there is any problem in using the property descriptions in your original deeds. If you are concerned or if you have subdivided or sold any portion of the property, we suggest a title search be performed before transferring title to the Trust.”

When transferring bank accounts, stocks, mutual funds, and other investments, the actual account must be re-titled in the name of the trust. Many clients hold various stocks in certificate form or in direct registration with the stock transfer agent. To transfer the stocks to the trust, the stocks must be re-registered in the name of the trust. The stock transfer agents have the necessary forms on their websites, and attorneys can assist their clients with the transfer. The forms will require a medallion guarantee. If original stock certificates are being sent to the stock transfer agent, be sure that they are sent in a secure manner with insurance to cover lost stock certificate fees.

Insurance contracts which provide for payments to be made if there is loss or damage to assets held in trust (for example, the insurance on your home) should be amended once the assets is transferred into a trust. The Trustee and the Trust should be named as additional insured parties. The Grantor, as an individual, should continue to be named as an insured party even though the trust and Trustee are added as additional insured parties.

ESTATE PLANNING WORKSHEET

First *Middle Initial* *Last* (Self)

Date of Birth *Social Security Number*

First *Middle Initial* *Last* (Spouse)

Date of Birth *Social Security Number*

Address _____
Street *City* *State* *Zip*

Phone Numbers: Home _____ Work- Self _____

Work- Spouse _____ Cell- Self _____

Cell- Spouse _____ Email: _____

Marital Status: Married Divorced Separated Single (including widowed)

Do you presently have a will? Yes No

Do you presently have a trust? Yes No

Were there any previous marriages? Yes No

Do any of your children or other beneficiaries
have disabilities? Yes No

Do you own a farm or business? Yes No

Are you a U.S. citizen? Yes No

Are there any serious health problems? Yes No

If yes, please describe briefly: _____

Do you own a long-term care (nursing home)
insurance policy? Yes No

Please bring copies of any existing estate planning documents with you to our meeting.

CHILDREN, GRANDCHILDREN OR OTHER BENEFICIARIES

Name	Address	Phone Number	Date of Birth	Relationship

ASSET/LIABILITY INFORMATION

Please list your asset/liability information in the appropriate category below. Attach a separate page if necessary. While exact amounts are not necessary, a realistic estimate for each account is required to provide us with the information required to make the proper recommendations.

Type of Asset	Title in Which Held (Self, Spouse, Joint, Joint with Another Person)	Type of Property (Residential, Commercial)	Current Value
REAL ESTATE (Include address. Bring deed and tax bill if considering Medicaid planning.)			
Personal Residence			
Vacant Land			
Other:			

LIQUID ASSETS (Include Financial Institution; Account Numbers are not necessary.)				
Type of Asset	Title in Which Held (Self, Spouse, Joint, Joint with Another Person)	Type of Property (Residential, Commercial)	Current Value	
Checking Accounts				
Savings Accounts				
Certificates of Deposit				
Money Market Accounts				
Equity in Business <input type="checkbox"/> Sole Prop. <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> LLC				
Notes and Loans Receivable				
Pension/Profit Sharing	Owner	Beneficiary		
Life Insurance	Owner	Beneficiary	Cash Value	Death Benefit

Retirement Accounts, IRAs, 401(k)s, 403(b)s, Deferred Compensation	Owner	Beneficiary	Value
Other Assets			
Liabilities	Name Loan Taken In: (Self, Joint, Other)		Amount Owed

GIFT TAX RETURNS

Have gift tax returns ever been filed to report gifts made? _____ If yes, please bring copies of the returns to your appointment.

APPOINTMENTS

1. **PERSONAL REPRESENTATIVE (Executor).** The Executor is responsible for administering your estate (paying bills and making distributions to beneficiaries), and probating your Will. Please include addresses and phone numbers.

EXECUTOR: _____

ALTERNATE: _____

SECOND ALTERNATE: _____

2. **HEALTH CARE AGENT.** Who should be named to make medical decisions on your behalf including decisions regarding medical consents, life support issues and nursing home admission if you were unable to make these decisions yourself? It is not necessary to appoint the same person who is your successor trustee or personal representative as your health care agent. Please include addresses and phone numbers.

HEALTH CARE AGENT: _____

ALTERNATE: _____

SECOND ALTERNATE: _____

3. AGENT UNDER POWER OF ATTORNEY. Who should be named to transact business in your name in the event you become disabled or incompetent?

AGENT: _____

ALTERNATE: _____

PLAN OF DISTRIBUTION

1. SPECIFIC GIFTS. Do you want to make charitable gifts, such as to a church or other charity? Do you wish to make a special gift to a particular person, such as jewelry or a family heirloom?

Briefly describe where you would want assets remaining after any specific gifts are distributed. (Don't worry about tax planning or other considerations in answering this question. We'll consider those details later if needed.)

PLEASE COMPLETE THIS SECTION ONLY IF YOU HAVE MINOR BENEFICIARIES OR BENEFICIARIES WITH DISABILITIES

1. GUARDIAN. If you have minor children or an incompetent child, you will need to appoint a guardian. The guardian is responsible for the day-to-day care of the child. It is a good idea to name an alternate guardian in the event your first choice cannot serve.

GUARDIAN: _____

ALTERNATE: _____

2. TESTAMENTARY TRUSTEE. You may need a trustee to manage assets for children until they reach an age when you believe they should be capable of managing property on their own. The trustee can be a relative, friend, trust company or other person you trust to manage and distribute assets according to your wishes. The testamentary trustee can be the same person named as the guardian, or could be a different person.

TESTAMENTARY TRUSTEE: _____

ALTERNATE: _____

3. **AGE OF DISTRIBUTION.** If you do establish a trust to allow a third party to manage assets for beneficiaries, then it is necessary for you to decide when the beneficiaries will be mature enough to manage assets on their own. You may want to give each beneficiary his/her share at the time the beneficiary reaches a particular age. I typically recommend 30 as the youngest age for outright distribution. You may consider splitting the distribution, such as $\frac{1}{2}$ at age 25 and the balance at age 30, or $\frac{1}{3}$ at 21, $\frac{1}{3}$ at 25, and $\frac{1}{3}$ at 35. You may use any age or combination of ages that you choose.

GENERAL QUESTIONS

NOTES AND QUESTIONS: Please note anything else which may be of importance in planning your estate, or note and questions you may have.

THE SHEVY LAW FIRM, LLC

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WHAT IS ESTATE PLANNING?

Estate Planning is a very simple concept. Unfortunately, it is also the subject of many misrepresentations and misinterpretations. This confusion causes many to create an improper estate plan. To avoid this result, we need to take the time to understand what estate planning is. The following provides an explanation of the estate planning process so that you may be familiar with the topics we will discuss at our initial meeting. Please review this memo and complete the estate planning worksheet prior to our meeting.

Options to consider when planning your estate include:

1. **Intestate Succession:** The State of New York determines how your assets are distributed after your death.
2. **Last Will and Testament:** You decide how your assets are distributed after your death by a Will. Your Will is supervised by a court after your death.
3. **Revocable or Living Trust:** You decide where your assets are distributed using a trust that you can easily change without the consent of any other person. If properly implemented, court supervision after death is not required.
4. **Irrevocable Trust:** You decide to protect your assets from long term care (nursing home) expenses and decide how your assets are distributed after your death. These trusts can be drafted to allow for changes with the consent of another person.

There are times when both a Will and a trust (revocable or irrevocable) are recommended. If estate tax minimization or long term care planning is included in your goals, we can discuss the strategies to meet these goals after reviewing your personal circumstances.

INTESTATE SUCCESSION.

Intestate Succession is an estate plan by default. If you fail to personally create an estate plan prior to death, then the State of New York will determine to whom your estate will be transferred. In many intestate situations, the heirs as determined by the state are not the persons to whom you would have left the property. The current law provides that if:

1. **You have a spouse and children:** The spouse receives \$50,000 plus one-half of the balance of your assets. The children equally share the other one-half.
2. **You have a spouse and no children:** The spouse takes everything.
3. **You have children and no spouse:** The children equally share everything. If a child predeceases you, his or her children may inherit.
4. **You have parents and no spouse or children:** The parents share everything.
5. **No parents, spouse or children:** Distribution depends upon who the closest living blood relatives may be.

THE LAST WILL AND TESTAMENT AND PROBATE.

New York State has very specific requirements with respect to the proper execution of a Will. To be validly executed Will, you must declared the document to be your Will in the presence of 2 independent witnesses. A Will can only be successively contested if: (1) the Will is not executed properly, (2) you do not have mental capacity to execute a Will, or (3) there is undue influence or duress. When executed in an attorney's office, you can be assured that your Will will be executed properly, and that the attorney will take every precaution to avoid contest.

Probate is the administration of your estate by the Surrogate Court according to the terms of your Will; or if there is no Will, then by intestate succession. The word "probate" usually conjures up visions of dark court buildings and substantial legal fees. This fear is generally based on horror stories passed down through the years. Most of the stories are either untrue or are based on misunderstandings as to the actual process.

Actual probate of the Will is fairly simple. The people who would inherit from you if you die without a Will are given a copy of your Will, and the opportunity to either sign a Waiver consenting to the terms of the Will, or a date and time to voice their objection to the probate of your Will before the applicable Court.

The Will also places little or no burden upon you during your lifetime. You do not need to change the title to any of your accounts or other investments. You can change your Will whenever you like provided that you are mentally competent.

REVOCABLE OR "LIVING" TRUSTS.

In order to fully understand the concepts behind a "living" trust, it is important for you to understand the difference between the three basic types of trusts. Today, when the term "trust" is used, it is likely being used in reference to what is known as a "living trust." The second broad category is a testamentary trust. A living trust is created by you during your lifetime. In most cases the living trust is revocable, which means that you may terminate or modify it. A testamentary trust, on the other hand, is created by your Will upon your death. A third type of trust is an "irrevocable trust," commonly referred to as a "Medicaid Trust." Medicaid Trusts are particularly useful if you wish to plan to protect your assets from the potential costs associated with nursing home care.

Creation of a living trust entails a two-step process. The first step is the execution of the physical document which will be referred to as a trust. The second and all-important step is the transfer of all the property out of your name as an individual and into the name of the trustee of the trust. The execution process is relatively simple. Where people go wrong with living trusts is with the next step: the transfer of assets to the trust. It is important to note that living trusts only avoid probate to the extent that the trust owns your assets (or your assets are controlled by joint ownership or beneficiary designation). If you own assets individually at the time of your death, probate will still be required.

The title to your home, bank accounts, stocks, life insurance, and all other major assets must be changed so that the records indicate a transfer has been made to the trust. When some people hear this requirement, they fear that somehow they will lose control and possession of their property. This fear is due to a misunderstanding of what occurs during the transfer process.

In short, as long as you are alive and able, the trust can be drafted so that no one can totally take away the management or control of your assets.

The major advantage of the living trust is the elimination of most types of court interference. If you become disabled, the living trust avoids the necessity of having the court appoint a guardian to administer your financial affairs. If you die, the living trust avoids the necessity of probating your estate.

The primary disadvantage of the living trust, unfortunately, is the establishment cost. Because of the additional time it takes to explain the inner-workings of the trust, and then to create it, the out-of-pocket cost to you is many times greater than the cost of a Will. The second disadvantage of a living trust is the nuisance factor. After the trust is created, you must be willing to incur the inconvenience of transferring assets to your trust. You must also be willing to accept responsibility of maintaining the trust for the remainder of your life, including the proper transfer of any assets purchased after the creation of the trust. In short, you must be willing to place a bigger burden on yourself in order to lessen the burden on your heirs at the time of death. The third disadvantage of a living trust is the possibility of mismanagement by the successor trustee. By removing the court from the administrative process, the risk of mismanagement of the estate is increased. This disadvantage is eliminated or reduced by proper selection of the individual who will serve as trustee or successor trustee. If one trustworthy person cannot be found, then two persons can be named to serve as co-trustees. If no individuals can be found, then the trust department of a bank or other institution may be called upon to serve as the successor trustee. Finally, living trusts do nothing for long term care planning (planning for Medicaid eligibility).

LONG TERM CARE OR MEDICAID PLANNING

Long term care planning, also called Medicaid planning, involves the protection of assets from potential nursing home expenses. The best time to consider Medicaid planning is at least 5 years prior to nursing home admission. While no one has a crystal ball to make the 5 year determination, we typically assist clients in their late 60s or early 70s with long term care planning through the use of irrevocable trusts. Irrevocable trusts are never truly irrevocable, as New York law allows an irrevocable trust to be changed or terminated with the written consent of those beneficially interested in the trust (the creator of the trust and the beneficiaries).

Crisis planning is also available when a person has not adequately planned more than 5 years prior to a nursing home admission. Even after a person has been admitted to a nursing home, there is a strategy that allows us to save approximately ½ of a person's assets from the nursing home cost. This strategy can only be implemented after a nursing home admission; and takes into consideration the private pay rate of the facility, the person's fixed income (Social Security, pension and retirement account required minimum distributions), as well as any gifts made within the 5 prior years.

COMPREHENSIVE ESTATE PLAN

In addition to the selection of either a Will or living trust, a comprehensive estate plan should include a Health Care Proxy and Living Will (sometimes within the same document) and a durable general Power of Attorney.

The Health Care Proxy and Living Will address the termination of life support in the event of a terminal illness or injury, and who will make health care decisions for you, if you cannot. By executing a Living Will you can inform your family and the attending physician of your desire not to receive life support or to have heroic measures taken to prolong your life. Or it can be used to clearly state your desire as to the medical care to be provided. That is, you may want measures taken to prolong your life. A Living Will is basically a health care declaration. The Health Care Proxy appoints an agent to speak for you. It is designed to entrust a loved one or close friend with the legal authority necessary to make medical decisions (including termination of life support) in case you are unable to personally communicate with the doctors.

By executing a Power of Attorney, you may grant to someone the legal authority to handle your financial transactions (pay your bills, manage your finances, and sometimes, plan for Medicaid eligibility). A Power of Attorney is only valid during your lifetime. If you die, the Power of Attorney automatically terminates. The Power of Attorney is intended to serve as a safety net to the estate plan to protect against lifetime financial emergencies. A Power of Attorney can postpone or possibly avoid a guardianship if you become mentally incapacitated.

ESTATE TAX PLANNING

The federal estate and gift tax exemption (the amount a person could pass without paying federal estate and gift tax) is \$5 Million per person indexed for inflation (\$5.49 Million in 2017). In addition to the \$5.49 Million estate and gift tax exemption, each person may gift up to \$14,000 annually to as many recipients as he or she chooses without even filing a gift tax return. New York States does not have a gift tax, but does have an estate tax that brings back gifts made within 3 years prior to death as part of the estate tax calculation.

The New York State estate tax exemption increases annually as follows:

April 1, 2017 – March 31, 2019	\$5,250,000
April 1, 2019 and forward	Equal to Federal Exemption

Under the federal rules, “portability” permits spouses to use each other’s exemptions, meaning that a married couple can fully utilize the full \$10.99 Million of federal exemption. New York does not recognize portability, so planning must be implemented for each spouse to use both spouses’ New York exemptions. Additionally, New York’s estate tax law requires estates valued at 105% of the exemption to lose the exemption in its entirety with New York estate tax calculated on the full value of the estate (essentially meaning there is no state estate tax exemption for these estates).

Please complete the enclosed estate planning worksheet prior to our meeting. It will provide me with the necessary information to provide the right recommendations to meet your estate planning goals. I look forward to meeting with you.

TRUST AGREEMENT
FOR THE
GRANTOR R. SMITH REVOCABLE TRUST¹

I, GRANTOR R. SMITH, of Anytown, New York, hereby make this Agreement as Grantor and Trustee, [said Agreement to be effective when signed by me] [together with SPOUSE E. SMITH, of Anytown, New York, as Trustee, to be effective when signed by both of us].²

I have delivered or will deliver certain property to the Trustee, and the Trustee has [Trustees have]³ agreed to hold this property, together with any additional property contributed to the trust by me or by any other person, (the “Trust Estate”), upon the following terms:

ARTICLE I.

During My Lifetime⁴

¹ *This is a simple sample Revocable Trust form. Practical comments are italicized for you, and should not be shared with clients. Optional provisions are included in brackets. Before using any part of this form, be sure that you understand your client’s estate planning goals, and meet the specific facts for that client- for example, if the client does not have children, be sure that all language is appropriate. Explanatory footnotes are included throughout the draft. We typically send the draft Trust with the explanatory footnotes to the client for review (this footnotes within this form that are not italicized). Before the Trust is finalized and executed, be sure to remove all footnotes, and cleanly insert page-breaks where appropriate.*

² The Revocable Trust is essentially your alter ego. Once assets are transferred to the Trust, you will control the assets as Trustee, instead of controlling them in your individual capacity. You will report the trust income on your personal income tax return using your Social Security number. It is important to remember that the Revocable Trust only avoids probate to the extent that your Trust owns all of your assets unless the asset is controlled by joint ownership or beneficiary designation.

³ *Be sure that if you have more than 1 Trustee that you change to Trustees throughout the document and use the proper tense/possessives.*

⁴ During your lifetime, you control the trust and how the trust income (interest and dividends) and principal (underlying trust assets) is distributed. You may alter or amend the trust at any time. You may also revoke the trust.

Section 1.01 Disbursement of Income⁵

A. The net income of the trust will be paid to me, or accumulated or paid as I may direct from time to time.

B. In the event of, and during the continuance of the incompetence or other disability of mine, the Trustee may pay income of the trust in any one or more of the following ways, as the Trustee deems best: (1) directly to me; (2) to my committee, conservator or guardian; (3) to any of my [spouse and] children for my support, maintenance and welfare; or (4) by the Trustee using such income directly for my support, maintenance and welfare.

C. Any income not paid shall be accumulated and added to principal at least annually.

Section 1.02 Disbursement of Principal⁶

A. The Trustee may distribute any part or all of the trust principal to me for my health, support in reasonable comfort, or maintenance in the manner to which I am accustomed. [The Trustee may distribute any part or all of the trust principal to me as I may direct; or in the Trustee's sole and absolute discretion.]

B. In the event of, and during the continuance of the incompetence or other disability of mine, the Trustee may pay principal of the trust in any one or more of the following ways, as the Trustee deems best: (1) directly to me; (2) to my committee, conservator or guardian; (3) to any of my [spouse and] children for my support, maintenance and welfare; or (4) by the Trustee using such principal directly for my support, maintenance and welfare.⁷

⁵ Remember that income generally means interest, dividends and rent. Capital gains can be redefined as income if the Trustee is given authority to so classify it as income.

⁶ If there comes a time when you can no longer act as Trustee, the successor/remaining Trustee can make sure that the trust principal is used to maintain your health and support (pay your daily living expenses).

⁷ If you become disabled, the Trustee may pay your expenses from trust principal for your benefit without making payment directly to you.

Section 1.03 Specific Rights Reserved to Me⁸

A. **Right to Amend.** I reserve the right, at any time and from time to time, to amend this Agreement, in whole or in part with the consent of the Trustee, by a written instrument executed and acknowledged by me and the Trustee.⁹

B. **Right to Revoke.** I reserve the right to revoke and terminate the trust created under this Agreement by delivering to the Trustee a written instrument executed and acknowledged solely by me.

C. **Right to Withdraw or Appoint Principal.** I reserve the right to appoint any part or all of the principal of the Trust Estate to any one or more persons (including myself) by delivering to the Trustee a written instrument executed and acknowledged solely by me or by my expressly and duly authorized attorney-in-fact.

D. **¹⁰Right to Add Other Assets.** I reserve the right, at any time and from time to time, to transfer to the Trustee, by gift with the consent of the Trustee, or by Will or beneficiary designation, additional property, including life insurance policies, as I may desire. Any additional property will be held on the same terms as are then applicable to the original Trust Estate, except that it may be transferred subject to conditions and provisions of special application to additional property.

E. **¹¹Right to Add or Remove Trustee.** I reserve the right, at any time and from time to time, to add one or more Trustees or to remove any Trustee by a duly

⁸ This Section reserves certain rights to you. During your lifetime, you can change or terminate the trust at any time. However, if you do revoke the trust, the assets will then be subject to probate.

⁹ When drafting this section, consider which, if any, powers an agent under power off attorney should be given- perhaps give the agent the power to make administrative changes, but not to change the ultimate disposition (beneficiaries after the grantor's death).

¹⁰ This permits you to add assets to the trust at any time during your life.

¹¹ This permits you to add, change or remove a Trustee.

acknowledged written instrument filed with the Trust records. The effective date of the appointment of an additional Trustee is the date of the additional Trustee's written consent to act.

ARTICLE II.

After My Death

Section 2.01 ¹²**Payment of My Debts, Taxes and Expenses**¹³

A. Upon my death, the Trustee may directly pay and discharge, or disburse funds to my probate estate to pay and discharge (1) all or any part of my debts, (2) all or any part of the expenses incident to my last illness, funeral and burial, and (3) all or any part of the administration expenses of my probate estate, including executors' commissions, attorneys' fees and all other proper administration expenses that are not paid or discharged by my probate estate, all as the Trustee may determine.

B. In addition, the Trustee may pay directly all administration expenses incurred with respect to the property passing under this Agreement and all inheritance, estate, transfer, succession and other death taxes (including any interest or penalties) payable by reason of my death with respect to the property passing under this Agreement and any property not passing under this Agreement.

Section 2.02 **Disposition to Descendants**¹⁴

¹² *When drafting the provisions with respect to payment of expenses and taxes, take into consideration how to allocate estate tax (should the tax be paid from only trust assets or should taxes be allocated among all assets- trust and otherwise). If the beneficiaries of the trust are different than the beneficiaries of a life insurance policy or retirement account, be sure to discuss with the client the funding of estate tax- should such a beneficiary be required to pay his or her share of tax?*

¹³ This Section provides for the payment of debts, administration expenses and taxes. The federal estate tax exemption (the amount a person can pass without paying federal estate tax) is \$5.49 Million, indexing annually with inflation. Spouses may share federal estate tax exemptions, regardless of how assets are titled. The New York State estate tax exemption is currently \$5.25 Million and increases through 2019 when it will match the federal exemption. Remember, there is no portability for New York State estate tax purposes (spouses do not get to share state estate tax exemption).

Upon my death, the balance of the Trust Estate, after any payment under Section 2.1 has been made or set aside, will be distributed, subject to Section 2.03, to [my spouse; or if my spouse does not survive me, to] my descendants who survive me, per stirpes.

Section 2.03 Trusts for Descendants

Any property (other than tangible personal property) that would otherwise pass outright under this Agreement (other than pursuant to the exercise of a discretionary fiduciary power or power of appointment) to a descendant of mine¹⁵ who has not attained the age of [Age], shall instead be held by the Trustee as a separate trust for such descendant (the “Beneficiary”) upon the following terms:¹⁶

A. The Trustee may distribute to the Beneficiary any part or all of the income and principal of the trust as the Trustee may determine for health, support, maintenance or education. Any income not paid shall be accumulated and added at least annually to principal.¹⁷

B. The Trustee shall distribute the remaining principal of the trust to the Beneficiary upon the Beneficiary’s attaining the age of [Age].¹⁸

¹⁴ After your death, the remaining trust assets will be distributed to your descendants on a “per stirpes” basis. “Per stirpes” is a legal term that means the descendants of a predeceased beneficiary equally share their parent’s inheritance. For example, if [Child] predeceases you, [Child]’s ____ children will equally share [Child]’s 1/____ interest in your trust.

¹⁵ *Do not rely exclusively on forms. This language should be crafted to ensure that the trusts are established for beneficiaries other than descendants. For example, if the trusts are for the client’s step-children/grandchildren, the language should include “to a descendant of mine or a descendant of my spouse.” Trusts for nieces/nephews could read, “to a descendant of my parents.” When you make these changes, be sure to also change the corresponding language in paragraph C below.*

¹⁶ This establishes separate trusts for any Beneficiary under the age of [Age]. This keeps a Beneficiary’s inheritance in the control of another adult until such time as the Beneficiary may achieve an age of maturity.

¹⁷ Income (interest and dividends) and principal (underlying trust assets) may be sprinkled among the Beneficiary and his or her descendants for health, support or educational needs.

C. If the Beneficiary dies prior to attaining the age of [Age], then upon the Beneficiary's death the remaining principal of the trust shall be distributed, subject to this Section, in equal shares to the Beneficiary's then surviving children; or if there is none, to the then surviving descendants, per stirpes, of the person who, among a class consisting of me and my descendants, is the Beneficiary's closest ancestor with any then surviving descendant.¹⁹

D. Notwithstanding anything under this Agreement, any trust created under this Agreement for any person not in being at the date of my death terminates (unless terminated earlier) 21 years after the death of the last to survive of all descendants of my parents and my spouse's parents in being at that date, and upon termination the assets of the trust must be distributed to the person.²⁰

ARTICLE III.

Trust Administration²¹

Section 3.01 Application of Property for Beneficiary²²

Any property, whether principal or income, distributable to any person under this Agreement, may be applied for the benefit of that person, including, without limitation, a distribution to a trust for the benefit of that person. In the case of a minor, this property may be paid or delivered directly to the minor, to a parent or guardian of the minor, to a person with whom the minor resides, or to a custodian for the minor under any Uniform Transfers to Minors

¹⁸ The balance of the trust will be distributed to the Beneficiary when he or she attains the age of [Age].

¹⁹ If the Beneficiary dies before the age of [Age], the Beneficiary's children will inherit the balance of the trust. If the Beneficiary does not have children, the Beneficiary's siblings will share the balance equally.

²⁰ This protects the trusts from violating the Rule Against Perpetuities—a rule that does not permit trusts to last forever.

²¹ This Article provides standard terms with respect to the administration of the trusts established under this Revocable Trust.

²² Rather than making distributions to a beneficiary, the Trustee can write checks directly to the vendor on behalf of the beneficiary.

Act or similar statute until age 21 or an earlier age that is the maximum permitted under applicable law.²³

Section 3.02 Exercise of Discretionary Powers

A. In connection with the exercise of a discretionary power to distribute income or principal to any person, there is no requirement to take into account the person's other income or capital resources, the interest of the person in any other fund or the duty of anyone to support the person, although these factors may be taken into account. Notwithstanding the above, no distribution may be made to satisfy any legal obligation of any Trustee.²⁴

B. Notwithstanding anything in this Agreement, no Trustee (other than me) may participate in a decision to make any proposed discretionary distribution of income or principal to himself or herself or to satisfy any legal obligation of the Trustee.²⁵

Section 3.03 Discretionary Payments

Any discretionary payment from any trust under this Agreement may be charged only against the trust as a whole, and not against the individual share of any person at any time.

Section 3.04 Spendthrift Provision²⁶

No beneficiary of any trust under this Agreement has any right or power to anticipate, pledge, assign, sell, transfer, alienate or encumber his or her interest in the trust in any way; nor is any interest in any manner liable for or subject to the debts, liabilities or obligations of any beneficiary or claims of any sort against a beneficiary.

²³ If a minor's inheritance is too small to justify establishing a trust, the Executor or Trustee can distribute the inheritance directly to the minor, the minor's parent or guardian, or to a custodial account for the minor.

²⁴ The Trustee may, but is not required, to review a beneficiary's income or other assets before making a distribution from the trust.

²⁵ A Trustee cannot distribute trust assets to himself or herself or to satisfy the Trustee's legal obligations (i.e. child support). This is necessary to provide for creditor protection.

²⁶ This protects trust assets from a beneficiary's creditors.

Section 3.05 Limitation on Distributions²⁷

Notwithstanding anything in this Agreement, no discretionary distribution of income or principal of any trust under this Agreement may be applied to pay for medical care, residential facilities, or any other care or service that would otherwise be provided for any beneficiary of any trust under this Agreement by any federal, state, or other governmental agency; and no discretionary distribution of income or principal may be made for reimbursement for any care, facilities or services previously provided. Before making any discretionary payment to or for the benefit of a beneficiary of any trust under this Agreement, the Trustee must consider the amounts the beneficiary is receiving or may be entitled to receive from any governmental agency for care, facilities, or services. If any amount is available, discretionary distributions of income and principal from any trust under this Agreement may be made only to supplement this amount, and to provide liberally for needs and comforts over and above the basic maintenance, support, and medical care that may be paid for by any agency.

Section 3.06 Delegation of Authority²⁸

At any time when more than one Trustee is acting, by a written instrument signed by all of the Trustees acting with respect to any trust under this Agreement, the Trustees may (1) authorize any one or more Trustees (jointly or severally as the instrument specifies) to write checks and otherwise direct the transfer, deposit, investment or disbursement of funds or other assets of the trust, and (2) delegate to any one or more Trustees entire authority to make decisions regarding the investment and reinvestment of the assets of the trust. In addition, the Trustees (or any Trustee to whom this authority is delegated as provided above) may in the same manner delegate to agents (including independent investment advisers, investment counsel or managers, banks or trust companies, and regulated investment companies) the authority to make those decisions or take those actions. Any delegation is revocable by any Trustee upon written notice to all Trustees and, if applicable, to any agent. To the extent applicable law allows, no

²⁷ This protects trust assets from a beneficiary's medical expenses that can be covered by a government program, such as Medicaid.

²⁸ This permits the Trustees to delegate check-writing or investment-making authority to one Trustee.

Trustee is liable for any claim or loss resulting from investments made or held during a period during which, pursuant to this Section, the Trustee had delegated his or her investment duties.

ARTICLE IV.

Powers of Trustee

Section 4.01 Broad Powers²⁹

In addition to the powers conferred by law, the Trustee has complete discretion to exercise each of the following powers with respect to any property held at any time under this Agreement without authorization from any court, it being my intent that these powers be construed in the broadest possible manner:

A. To retain, for a period that the Trustee may determine, any property, real or personal, constituting a part of the Trust Estate, to carry on any business in which any trust has an interest, and to invest and reinvest in any real or personal property, all as the Trustee may determine, without regard to any requirement for diversification;

B. To sell, grant options with respect to, or dispose of, any property, real or personal, for cash or on credit, with or without security, upon the terms that the Trustee may determine;

C. To lease any property, real or personal, for any period, upon the terms (including options for renewal) that the Trustee may determine, and to improve or take any other action with respect to real property;

D. To permit any income beneficiary (and the guardian of any minor income beneficiary and the family of such guardian) to use any real property or tangible personal property held hereunder for the benefit of such beneficiary, rent free or otherwise, upon such terms as my Executor or the Trustee (other than such beneficiary or guardian) may determine;

²⁹ This Article grants specific powers to the Trustee. These are broad powers designed to ensure maximum flexibility.

E. To borrow money for any purpose, from others or from any Trustee, with or without security, and to mortgage or pledge any property, real or personal;

F. To employ agents, brokers, attorneys, accountants, custodians and investment advisers, (including any individual Trustee) and to treat their compensation as an administration expense;

G. To purchase any real or personal property from my estate, to make loans to my estate or to any trust at prevailing interest rates, and to sell any real or personal property from one trust to another;

H. To sell any property, real or personal, from my estate to any trust or from any trust to my estate, or from one trust to another;

I. To sell any property, real or personal, to any Executor, Trustee or beneficiary hereunder at fair market value;

J. To make loans to any income beneficiary after my death, interest free or otherwise, upon the terms that the Trustee (other than such beneficiary) may determine;

K. To sever any trust into two or more separate trusts having the same terms as the original trust, and to combine two or more trusts having identical terms and beneficiaries (whether or not the trusts resulted from division of a prior trust), at any time and from time to time (whether before or after funding), without approval of any court, for administrative, tax or any other purpose determined by the Trustee to be in the best interests of any beneficiary (including any remainder beneficiary);³⁰

L. To hold the property of any separate trusts under this Agreement as an undivided whole; provided that these separate trusts must have undivided interests; and provided further that no holding may defer the vesting of any estate in possession or otherwise;

³⁰ Sections K through N give the Trustee the power to make different tax elections for the trusts.

M. To allocate administration expenses to income or principal in the proportions that my Executor or the Trustee may determine, to the extent this discretion is permitted under applicable law, without liability to any person for any consequences of this allocation;

N. To treat capital gains on the books, records and tax returns of any trust as part of a distribution to a beneficiary of the trust to the extent of principal distributed to the beneficiary;

O. To take control of, conduct, continue or terminate any of my or the trust's digital accounts on any social networking website, any micro-blogging or message service website or any e-mail website, including, but not limited to, broker accounts, utility accounts, Credit Union and bank accounts, other financial institutions and similar digital accounts related to personal, financial, photographs, medical, tax and real estate, customer affinity programs, and any file storage sites;

P. To change the situs or governing law of any trust under this Agreement at any time and from time to time for the convenience of the beneficiaries or the Trustee or for any other reason; and³¹

Q. To make any distribution or division of property wholly or partly in kind, whether or not pro rata, using specific assets or undivided interests therein.³²

³¹ A change in situs means a change in location or jurisdiction. For example, if a beneficiary moves to a state where there is no state income tax, the trust can also be moved to that state.

³² A distribution "in kind" means that the Trustee can distribute an investment directly to a beneficiary. For example, if the trust owns 10 shares of stock in a corporation, the Trustee can distribute the 10 shares directly to the beneficiary rather than liquidating the shares and distributing the cash.

ARTICLE V.

Provisions Concerning Trustee³³

Section 5.01 Successor and Additional Trustee³⁴

A. If I fail to continue to act as Trustee or upon my death, I appoint my _____, _____, to be successor Trustee.³⁵

B. I appoint _____, of _____, New York, to be the Trustee of any Trust established under Section 2.03 of this Agreement. If s/he fails to qualify or to continue to act, I appoint _____, of _____, New York, to be substitute Trustee.

C. To the extent that the exercise of this right does not conflict with the foregoing, each Trustee acting under this Agreement has the right to designate an individual to act as a successor Trustee in the event he or she fails to continue to act, provided that no conflicting designation by a previously acting Trustee is in effect.

Section 5.02 Designation and Appointment of Additional and Successor Trustee

A. Any designation made under this Agreement to provide for a series of individuals to act as a successor Trustee, must be made by a duly acknowledged instrument filed with the Trust records, and is revocable with respect to any designated successor by the designating individual at any time before the successor is appointed.

B. The appointment of an additional or successor Trustee becomes effective upon the filing with the trust records of the additional or successor Trustee's written consent to act.

³³ This Article concerns the appointment of a Trustee and includes specific provisions with respect to the payment of Trustee commissions, the removal or resignation of a Trustee and the appointment of a successor Trustee.

³⁴ This provides for the appointment of an additional and a successor Trustee.

³⁵ *Be sure to discuss with the grantor/client the appointment of successor Trustees. Do not only consider the appointment of a Trustee after the death of the grantor/client, but also in the event of incapacity. Remember to coordinate the appointment of Trustees with the possible additional powers granted to an agent under a power of attorney.*

Section 5.03 Elimination of Bond

No bond or other security is required of any Trustee acting under this Agreement in any jurisdiction.

Section 5.04 Resignation of Trustee³⁶

Any Trustee may resign by filing a written notice of resignation with the trust records. In addition, any Trustee is deemed to have resigned if there is filed with the trust records a certification in writing from any attending physician of the Trustee that he or she is no longer able to make decisions with respect to financial matters.

Section 5.05 Compensation of Trustee³⁷

I anticipate that the Trustee may contract for professional investment management of trusts hereunder. Because this delegation will reduce the scope of the Trustee's duties and liabilities, the Trustee's compensation should be correspondingly reduced. To this end, with respect to each trust:

- A. No Trustee who is also a beneficiary of such trust is entitled to compensation for acting as Trustee.

- B. Any Independent Trustee shall receive such compensation for his, her or its services as shall be agreed from time to time with the other Trustees acting with respect to such trust, or if there is none, with a majority of the adult income beneficiaries of such trust, or if there is none (or if a majority cannot agree), with a majority of all Trustees (other than Independent Trustees) acting under this Agreement. The preceding sentence shall not be deemed to preclude any professional organization with which any individual Trustee may be associated from receiving its normal fees for services performed for any trust hereunder; provided that no

³⁶ This provides for the resignation of a Trustee. Additionally, if a Trustee becomes incapacitated, the Trustee can be deemed to have resigned.

³⁷ This provides for Trustee compensation. A Trustee who is also a beneficiary will not be compensated for acting as Trustee of his or her own trust.

fees shall be payable for work for which the Trustee is otherwise compensated in a fiduciary capacity.

C. Any Trustee may be reimbursed for such Trustee's reasonable expenses in acting hereunder.

Section 5.06 Liability of Trustee

No additional or successor Trustee is personally liable for any act or omission of any predecessor. With the written consent of all adult beneficiaries (including presumptive remainder beneficiaries, but excluding contingent remainder beneficiaries), an additional or 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 VI.

Miscellaneous Provisions

Section 6.01 Representation of Person Under a Disability

Where a party to any proceeding with respect to any trust has the same interest as a person under a disability, it is not necessary to serve legal process on the person under a disability.

Section 6.02 Law Governing

The trust hereby created is in all respects be construed under the internal laws of the State of New York. Each trust hereby created is in all respects be regulated by the laws of the State in which the trust is situated. In the event that the situs of any trust cannot be determined with certainty, the laws of the State of New York apply.

Section 6.03 Termination of Trusts

If at any time an Independent Trustee determines that it is uneconomic to continue any trust, that Trustee may terminate the trust and distribute the trust assets, in amounts and

proportions determined by that Trustee, to the person or persons to whom income may be distributed.³⁸

Section 6.04 Consolidation of Trusts

If at any time after my death, there is in existence a trust under my Will or under any Trust Agreement made by me as Grantor, having identical beneficiaries and substantially the same terms as any trust under this Agreement, the Trustee may terminate the trust hereunder, and transfer all assets thereof to the trustee of such other trust, to be administered by the trustee thereof or may receive the assets of such other trust and administer them hereunder. Different termination dates under the applicable Rule Against Perpetuities shall not be deemed a difference in the terms of such trusts, but the portion of the trust representing the transferred assets shall retain the termination date of the original trust.

Section 6.05 Definitions

As used in this Agreement:

A. The term “Trustee” means the Trustee or Trustees acting under this Agreement from time to time.

B. The term “Independent Trustee” means a Trustee other than: (i) a beneficiary (including a remainderman) of such trust, (ii) any person having a legal duty to support a beneficiary of such trust, and (iii) any person who would be considered “related or subordinate” to a beneficiary or a person having such duty of support (within the meaning of Section 672(c) of the Code).

C. References to Sections of the Code are to the Internal Revenue Code of 1986, as amended, and shall be deemed to refer to the corresponding sections of subsequent federal tax law.

³⁸ If an Independent Trustee determines that it is no longer economic to continue the trust (i.e. funds have been spent down), the Trustee can dissolve the trust and distribute the balance to the Beneficiary.

CONCLUSION

I have duly executed this Trust Agreement on the date set opposite my signature.

Dated: _____, 20__

GRANTOR R. SMITH, Grantor and Trustee

Dated: _____, 20__

SPOUSE E. SMITH, Trustee

STATE OF NEW YORK, COUNTY OF _____) ss.

On the ____ day of _____, in the year 20__, before me, the undersigned, a notary public in and for said state, personally appeared GRANTOR R. SMITH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as Grantor and Trustee, and that by his/her signature on the instrument, he/she executed the instrument.

Notary Public

STATE OF NEW YORK, COUNTY OF _____) ss.

On the ____ day of _____, in the year 20__, before me, the undersigned, a notary public in and for said state, personally appeared SPOUSE E. SMITH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as Trustee, and that by his/her signature on the instrument, he/she executed the instrument.

Notary Public

§ 1.671-4

a power over corpus alone, if satisfaction of the interest or an exercise of the power will not result in an interest in or the exercise of a power over ordinary income which would itself cause that income to be included. For example, if a grantor has a reversionary interest in a trust which is not such as to require that he be treated as an owner under section 673, he may nevertheless be treated as an owner under section 677(a)(2) since any income allocable to corpus is accumulated for future distribution to him, but items of income included in determining ordinary income are not included in the portion he is treated as owning. Similarly, he may have a power over corpus which is such that he is treated as an owner under section 674 or 676 (a), but ordinary income will not be included in the portion he owns, if his power can only affect income received after a period of time such that he would not be treated as an owner of the income if the power were a reversionary interest. (See paragraph (c) of this section to determine the treatment of deductions and credits when only income allocated to corpus is included in the portion.)

(3) Both ordinary income and other income allocable to corpus are included by reason of an interest in or a power over both ordinary income and corpus, or an interest in or a power over corpus alone which does not come within the provisions of subparagraph (2) of this paragraph. For example, if a grantor is treated under section 673 as the owner of a portion of a trust by reason of a reversionary interest in corpus, both ordinary income and other income allocable to corpus are included in the portion. Further, a grantor includes both ordinary income and other income allocable to corpus in the portion he is treated as owning if he is treated under section 674 or 676 as an owner because of a power over corpus which can affect income received within a period such that he would be treated as an owner under section 673 if the power were a reversionary interest. Similarly, a grantor or another person includes both ordinary income and other income allocable to corpus in the portion he is treated as owning if he is treated as an owner under section 675 or 678 because of a power over corpus.

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(c) If only income allocable to corpus is included in computing a grantor's tax liability, he will take into account in that computation only those items of income, deductions, and credit which would not be included under subparts A through D in the computation of the tax liability of the current income beneficiaries if all distributable net income had actually been distributed to those beneficiaries. On the other hand, if the grantor or another person is treated as an owner solely because of his interest in or power over ordinary income alone, he will take into account in computing his tax liability those items which would be included in computing the tax liability of a current income beneficiary, including expenses allocable to corpus which enter into the computation of distributable net income. If the grantor or other person is treated as an owner because of his power over or right to a dollar amount of ordinary income, he will first take into account a portion of those items of income and expense entering into the computation of ordinary income under the trust instrument or local law sufficient to produce income of the dollar amount required. There will then be attributable to him a pro rata portion of other items entering into the computation of distributable net income under subparts A through D, such as expenses allocable to corpus, and a pro rata portion of credits of the trust. For examples of computations under this paragraph, see paragraph (g) of § 1.677(a)-1.

[T.D. 6500, 25 FR 11814, Nov. 26, 1960, as amended by T.D. 6989, 34 FR 742, Jan. 17, 1969]

§ 1.671-4 Method of reporting.

(a) *Portion of trust treated as owned by the grantor or another person.* Except as otherwise provided in paragraph (b) of this section and § 1.671-5, items of income, deduction, and credit attributable to any portion of a trust that, under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code, is treated as owned by the grantor or another person, are not reported by the trust on Form 1041, "U.S. Income Tax Return for Estates and Trusts," but are shown on a separate statement to be attached to that

form. Section 1.671-5 provides special reporting rules for widely held fixed investment trusts. Section 301.7701-4(e)(2) of this chapter provides guidance regarding the application of the reporting rules in this paragraph (a) to an environmental remediation trust.

(b) *A trust all of which is treated as owned by one or more grantors or other persons*—(1) *In general.* In the case of a trust all of which is treated as owned by one or more grantors or other persons, and which is not described in paragraph (b)(6) or (7) of this section, the trustee may, but is not required to, report by one of the methods described in this paragraph (b) rather than by the method described in paragraph (a) of this section. A trustee may not report, however, pursuant to paragraph (b)(2)(i)(A) of this section unless the grantor or other person treated as the owner of the trust provides to the trustee a complete Form W-9 or acceptable substitute Form W-9 signed under penalties of perjury. See section 3406 and the regulations thereunder for the information to include on, and the manner of executing, the Form W-9, depending upon the type of reportable payments made.

(2) *A trust all of which is treated as owned by one grantor or by one other person*—(i) *In general.* In the case of a trust all of which is treated as owned by one grantor or one other person, the trustee reporting under this paragraph (b) must either—

(A) Furnish the name and taxpayer identification number (TIN) of the grantor or other person treated as the owner of the trust, and the address of the trust, to all payors during the taxable year, and comply with the additional requirements described in paragraph (b)(2)(ii) of this section; or

(B) Furnish the name, TIN, and address of the trust to all payors during the taxable year, and comply with the additional requirements described in paragraph (b)(2)(iii) of this section.

(ii) *Additional obligations of the trustee when name and TIN of the grantor or other person treated as the owner of the trust and the address of the trust are furnished to payors.* (A) Unless the grantor or other person treated as the owner of the trust is the trustee or a co-trustee of the trust, the trustee must furnish

the grantor or other person treated as the owner of the trust with a statement that—

(1) Shows all items of income, deduction, and credit of the trust for the taxable year;

(2) Identifies the payor of each item of income;

(3) Provides the grantor or other person treated as the owner of the trust with the information necessary to take the items into account in computing the grantor's or other person's taxable income; and

(4) Informs the grantor or other person treated as the owner of the trust that the items of income, deduction and credit and other information shown on the statement must be included in computing the taxable income and credits of the grantor or other person on the income tax return of the grantor or other person.

(B) The trustee is not required to file any type of return with the Internal Revenue Service.

(iii) *Additional obligations of the trustee when name, TIN, and address of the trust are furnished to payors*—(A) *Obligation to file Forms 1099.* The trustee must file with the Internal Revenue Service the appropriate Forms 1099, reporting the income or gross proceeds paid to the trust during the taxable year, and showing the trust as the payor and the grantor or other person treated as the owner of the trust as the payee. The trustee has the same obligations for filing the appropriate Forms 1099 as would a payor making reportable payments, except that the trustee must report each type of income in the aggregate, and each item of gross proceeds separately. See paragraph (b)(5) of this section regarding the amounts required to be included on any Forms 1099 filed by the trustee.

(B) *Obligation to furnish statement.* (1) Unless the grantor or other person treated as the owner of the trust is the trustee or a co-trustee of the trust, the trustee must also furnish to the grantor or other person treated as the owner of the trust a statement that—

(i) Shows all items of income, deduction, and credit of the trust for the taxable year;

(ii) Provides the grantor or other person treated as the owner of the trust

TRUST OVERVIEW

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What is a Trust?

- A Trust is a written, formal agreement between:
 - The Grantor (settlor, creator)- the person who makes the contribution to the Trust.
 - The Trustee- the person who takes over control of the Trust.
 - The Beneficiary- the person who is going to receive benefits (income and/or principal from the Trust).

Major Law Governing Trusts

- Surrogate's Court Procedure Act
 - See definitions in materials.
- Estates Powers and Trusts Law
 - Article 7- General Trust Provisions
 - Article 11- Fiduciary Duties and Responsibilities
 - Article 11-A- Principal and Income Act

Article 7: General Trust Provisions

- **EPTL §7-1.14:** Any person (a natural person, an association, board, any corporation, court, governmental agency, authority or subdivisions, partnership or other firm and the state under EPTL §1-2.12) may by lifetime trust dispose of real and personal property. A natural person must be at least age 18.
- **EPTL §7-1.16:** A lifetime trust is irrevocable unless it expressly provides that it is revocable.

Article 7: General Trust Provisions

- **EPTL §7-1.17(a):** A lifetime trust shall be in writing and executed and acknowledged by the grantor and at least one trustee (who may be grantor) in the manner required for the recording of a deed; or in lieu of acknowledgement, 2 witnesses.
- **EPTL §7-1.18:** A lifetime trust is valid as to any assets therein to the extent the assets have been transferred to the trust.
- **EPTL §7-1.19(a):** Any trustee or beneficiary may petition to terminate an uneconomical trust.

What kinds of trusts exist?

- **Testamentary Trusts**– established under your Will or other Lifetime Trusts
 - Trusts for Minor Children/Grandchildren
 - Trusts for Spendthrifts
- **Revocable Trusts**
- **Irrevocable Trusts**– lots of kinds
 - Medicaid Trusts
 - Insurance Trusts
 - Pet Trusts

Questions to Ask . . .

- Purpose of the Gift
- Level on Control
- When Distribution is Required
- Tax Consequences:
 - Present or Future Interest
 - Gift/Estate Tax
 - Income Tax

Tax Considerations

- Federal Gift and Estate Tax
- NYS Estate Tax
- Generation-Skipping Transfer Tax
- Income Tax
 - Tax Cost Basis- Carry Over or Step Up?

Why do I care about estate taxes?

- New York State estate tax exemption- amount you can pass without paying NYS estate tax.
 - \$5.25 Million 04/01/2017 – 03/31/2019.
 - Matches the federal exemption as of 04/01/2019.
 - No portability.
- Federal estate tax exemption- amount you can pass without paying federal estate tax.
 - \$5.49 Million and indexes with inflation.
 - Portability between spouses.

Outright Gifts

- Code §2503 allows an exclusion from taxable gifts for present interests given to each donee each year up to a specified amount.
- Annual exclusion is currently \$14,000 and applies only to present interests.
- Future interest do not qualify for exclusion.

Outright Gifts

- **Present Interest:** an unrestrictive right to the immediate use, possession or enjoyment of property or the income from property.
 - Qualifies for annual exclusion.
- **Future Interest:** reversions, remainders and other interests or estate, whether vested or contingent, which are limited to commence in use, possession or enjoyment at some future time.
 - Does not qualify for annual exclusion.

Revocable Trusts

Revocable Trust

- **What is it?** A revocable trust is an agreement established by a donor that acts as the donor's "alter ego."
 - The donor can amend, alter or revoke the agreement.
 - The donor can act as sole Trustee of the trust.
 - The donor is in full control.

Revocable Trusts

- Benefits of a Revocable Trust
 - Avoiding Probate
 - Maintaining Privacy
 - Avoiding ancillary probate
 - Avoiding Will contests
 - Quick disposition
 - Asset management

Revocable Trusts

- **Avoiding Probate**

- Many misconceptions exist about the probate process.
- Waivers of citation can make the process easier.

- **Privacy**

- Private contract.
- Pour-over Will may effect this.

Revocable Trusts

- **No Ancillary Probate**

- **Example** ... if the grantor's primary residence is New York, but the grantor also owns a home in Florida, the grantor may transfer the Florida real estate to a New York Revocable Trust, thereby avoiding probate in both states.

- **Avoid Contests**

- More difficult to challenge agreements that were made during a person's lifetime.

Revocable Trusts

- **Quick Disposition**
 - Can save months of time
 - Complexity of estate may alter this
- **Asset Management**
 - Grantor and Trustee
 - Control assets to meet goals.

Revocable Trusts

- **Professional Management**
 - Have an expert manage your assets
- **Incapacity**
 - Powers of Attorney are sometimes not honored by financial institutions (even when the law requires it!)
 - Revocable Trust may provide a Trustee greater flexibility, control and authority than a POA.

When to use a Revocable Trust

- Client owns real estate in a foreign jurisdiction
- Client has a domestic partner – who the clients want to inherit his/her estate.
- The client is involved in a non-traditional marriage (second marriage, no marriage).
- Client wishes to keep something private.
- Client may move to a state that is more complex.
- Client may acquire vacation/retirement home in another state.

More Reasons to Use. . .

- You want to skip one or more generations.
- You want to avoid the capital gain tax on assets that have a low basis.
- You want to maximize gift making.
- You want to divest yourself of life insurance (subject to federal estate tax) but wish to indirectly control the use of the policy's cash value and policy proceeds on death.

How to Draft a Revocable Trust.

I, GRANTOR R. SMITH, of Anytown, New York, hereby make this Agreement as Grantor and Trustee, [said Agreement to be effective when signed by me] [together with SPOUSE E. SMITH, of Anytown, New York, as Trustee, to be effective when signed by both of us].

I have delivered or will deliver certain property to the Trustee, and the Trustee has [Trustees have] agreed to hold this property, together with any additional property contributed to the trust by me or by any other person, (the “Trust Estate”), upon the following terms:

Provisions During Lifetime

- **Disbursement of Income-** who decides, who can receive, convert to principal if not taken.
- **Disbursement of Principal-** who decides, who can receive.
- **Power to Amend/Revoke-** Remember, trust is irrevocable unless specifically stated that it can be revoked; and by whom.

What happens after death?

- **Payment of Taxes and Administration Expenses-** are they allocated proportionally, paid from residue, . . . Remember to coordinate with beneficiary designations and joint ownership.
- **Cash Gifts/Other Gifts-** Be specific, and clear in drafting. Remember to coordinate timing (“who survives me” versus “is then surviving.”)

What happens after death?

- **Residuary-** how are the remaining assets distributed after death, outright or held in further trust.
- **Trusts for Young Beneficiaries-** assets available for health, support, maintenance or education until a specified age (25 or 30 or forever).

Administrative Provisions

- Trustee's powers to manage trust assets.
- Appointment of Trustee and successors.
- Discretionary distribution rules.
- No bonding or insurance, minimal court involvement.
- Accounting requirements.
- Compensation.
- Governing law.

Drafting Reminders. . . .

- Sample simple revocable trust in your materials.
- Footnotes in *italics* are notes to you, the drafter. Normal footnotes are explanations for the client when reviewing a draft.
- Remove the footnotes before the client signs.
- Trust must be acknowledged or signed in the presence of 2 independent witnesses.

Irrevocable Trusts

- Inter vivos irrevocable trusts include the following:
 - Basic irrevocable trusts;
 - Crummey withdrawal or demand;
 - Generation-skipping and dynasty trusts; and
 - Specialized trusts, such as equipment leasing trusts, educational trusts, and incentive trusts.

What is a Grantor Trust?

- Grantor trusts are those trusts whose income is ***taxable to the grantor*** under Code Sections 671 through 679.
- A Revocable Trust is a grantor trust because of its revocability by the grantor.
- An irrevocable trust is a grantor trust if grantor has a reversionary interest in the trust assets or has retained certain powers (“strings”) over the trust.

Grantor Trust “Strings”

- Power to re-acquire trust property by substituting property of equivalent value-- IRC 674(4)
- Income is distributed to Grantor or Grantor’s spouse or held/accumulated for future distribution to Grantor or Grantor’s spouse without the approval or consent of an adverse party– IRC 677(a)
- Unrestricted power to remove or substitute Trustees and to designate any person as a replacement Trustee– IRC 1.674(d)-2
- Power to revoke under IRC 675 would **not** work for an irrevocable trust (generally defeats the purpose).

Tax Identification Number

- **Revocable Trust-** use the Grantor's Social Security Number until death; then obtain TIN.
- **Irrevocable Trust-** depends on the trust. Grantor trusts (Medicaid trusts) do not necessarily require a separate TIN. See materials/regulations.
- **Go to IRS website, and complete online, but. . .** You still need a signed SS-4.

Funding the Trust

- **Revocable Trust-** only avoids probate to the extent that the trust is funded. . . Assets are re-titled in the name of the Trust.
 - **Real Estate-** file deed with county clerk.
 - **Bank accounts/Investments-** change account with financial institutions.
 - **Privately held businesses-** assignment of LLC membership interest or stock powers to the Trust.

Once in the trust, what is income? What is principal?

Interest and Dividends (Normal Investments)	Income
Capital Gains (Normal Investments)	Principal
Business Income	Income (Generally Accepted Accounting Principles)
Business Loss	Principal
Proceeds from Sale of Business Assets (not inventory)	Principal
Refunds	Principal
Fiduciary Fees	Annual Commissions- 1/3 Income, 2/3 Principal; 1% principal commission from Commission

What else?

- Materials include:
 - **Sample Simple Revocable Trust-** includes testamentary trusts for young beneficiaries after Grantor's death.
 - **Estate Planning Memo-** We send this to clients before the initial meeting.
 - **Estate Planning Worksheet-** We send this to clients before initial meeting, and request that it be completed prior to that meeting.

THE END.

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