

NOTATIONS FOR FORM 205

This form is designed for use in the smaller estate in which a bypass trust may or may not be needed. The decision whether or not to create a bypass trust is made after death, by the surviving spouse. The form enables the spouse to shelter settlor's applicable exclusion amount by disclaiming part or all of the outright residuary gift and still receive benefits from the disclaimed property in the bypass trust.

This form is designed for a settlor who will execute a will patterned on FORM 110: WILL–Pour-over.

For community property states: This form assumes that the trust estate will consist solely of settlor's separate property. If the trust estate will include community property, or if community property will be added to the trust upon the death of the settlor (e.g., community property life insurance proceeds), use FORM 305: REVOCABLE TRUST AGREEMENT–Community Property-Outright with Disclaimer Trust.

Certain provisions of this form assume that there is a disinterested party acting as trustee or co-trustee under the agreement. FORMS 210 and 211: REVOCABLE TRUST AGREEMENT–Plural Trustees, operate to preclude a beneficiary who is acting as co-trustee from the exercise of powers which would have adverse tax consequences. A beneficiary should not act as sole trustee where the trustee may accumulate income or pay it to or spray it among a group which includes the beneficiary; see IRC §678(a)(1).

If the settlor is to be the initial trustee of the trust, (i) use the alternate trustee succession provision on page 201-20 and the alternate testimonium provision on page 201-36, and (ii) substitute for the first paragraph:

1 I, JOHN DOE, of _____, _____, as settlor, make this agreement with myself, as trustee, this _____ day of _____, 20 ____.

If community property state, substitute for first sentence of second paragraph:

2 I hereby transfer to the trustee the property listed in the attached schedule and am causing the trustee to be designated as beneficiary of the life insurance policies described therein, all of which is my separate property.

If the trust will be funded during settlor's lifetime and is to have sole responsibility for paying settlor's death taxes and expenses, (i) revise settlor's will so his or her estate does not pay those taxes and expenses and (ii) substitute for first paragraph of SECOND:

3 SECOND: Upon my death the trustee shall make the following payments from the trust estate. The trustee shall pay all expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against my estate (excluding debts secured by real property or life insurance), and unsatisfied pre-residuary devises under my will if my will contains a residuary devise to this trust. The trustee shall also pay all estate and inheritance taxes assessed by reason of my death, including such taxes on property passing outside this agreement, except that the amount, if any, by which the estate and inheritance taxes shall be increased as a result of the inclusion of property in which I may have a qualifying income interest for life or over which I may have a power of appointment shall be paid by the person holding or receiving that property. Such payments, including interest and penalties on any tax, shall be charged against principal or income as provided by applicable state law. The trustee may make payment directly or to the personal representative of my estate, as the trustee deems advisable. The trustee shall make these payments without apportionment or reimbursement. If any part of the balance of the trust estate does not qualify for the federal estate tax marital deduction because of disclaimer, then the amount (if any) by which the estate and inheritance taxes assessed by reason of my death are thereby incurred or increased shall be paid from or charged against the disclaimed property.

If it is desired to reserve apportionment rights for death taxes generated not only by marital trusts but also by other property passing outside the revocable trust, substitute for first paragraph of SECOND:

4 SECOND: Upon my death, if I have no probate estate, or to the extent that the cash and readily marketable assets in the principal of the residue of my probate estate are insufficient, the trustee shall make the following payments from the trust estate. The trustee shall pay the expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against my estate (excluding debts secured by real property or life insurance), and pre-residuary devises under my will if my will contains a residuary devise to this trust. Except as hereinafter provided, the trustee shall also pay the estate and inheritance taxes and generation-skipping taxes on direct skips which are assessed by reason of my death, including such taxes on property passing outside this agreement. Such payments, including interest and penalties on any tax, shall be charged against principal

FORM 205
REVOCABLE TRUST AGREEMENT
One Settlor
-Outright with Disclaimer Trust

TRUST AGREEMENT

I, JOHN DOE, of _____, _____, as settlor, make this agreement with NORTHERN TRUST [*insert full legal name of applicable NORTHERN TRUST bank throughout the instrument*], of _____, _____, as trustee, this _____ day of _____, 20_____.

I hereby transfer to the trustee the property listed in the attached schedule and am causing the trustee to be designated as beneficiary of the life insurance policies described therein. That property, the proceeds of those policies, all additional property received by the trustee from any person by will or otherwise, and all investments and reinvestments thereof, are herein collectively referred to as the "trust estate" and shall be held upon the following trusts:

FIRST: During my lifetime the trustee shall pay so much or all of the income and principal of the trust estate to me or otherwise as I direct.

**DIRECTED
PAYMENTS**

If at any time or times I shall be unable to manage my affairs, the trustee may use such sums from the income and principal of the trust estate as the trustee deems necessary or advisable for the health and maintenance in reasonable comfort of myself and any person dependent upon me, or for any other purpose the trustee considers to be for my best interests.

DISABILITY

For purposes of this agreement, I shall be considered to be unable to manage my affairs if I am under a legal disability or by reason of illness or mental or physical disability am unable to give prompt and intelligent consideration to financial matters. The determination as to my inability at any time shall be made by _____ and my physician, or the survivor of them, and the trustee may rely upon written notice of that determination.

Any excess income of the trust shall be added to principal.

SECOND: Upon my death, if I have no probate estate, or to the extent that the cash and readily marketable assets in the principal of the residue of my probate estate are insufficient, the trustee shall make the following payments from the trust estate. The trustee shall pay the expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against my estate (excluding debts secured by real property or life insurance), and pre-residuary devises under my will if my will contains a residuary devise to this trust. The trustee shall also pay the estate and inheritance taxes assessed by reason of my death, including such taxes on property passing outside this agreement, except that the amount, if any, by which the estate and inheritance taxes shall be increased as a result of the inclusion of property in which I may have a qualifying income interest for life or over which I may have a power of appointment shall be paid

**TAXES –
EXPENSES**

or income as provided by applicable state law. The trustee may make payment directly or to the personal representative of my estate, as the trustee deems advisable. The trustee shall make these payments without apportionment or reimbursement or charging any direct skip property. If any part of the balance of the trust estate does not qualify for the federal estate tax marital deduction because of disclaimer, then the amount (if any) by which the estate and inheritance taxes assessed by reason of my death are thereby incurred or increased shall be paid from or charged against the disclaimed property.

The trustee shall not pay death taxes caused by:

- (a) Property over which I may have a power of appointment,
- (b) Property in which I may have a qualifying income interest for life, unless for generation-skipping tax purposes the property has an inclusion ratio of zero and is treated as if the qualified terminable interest property election had not been made,
- (c) Property constituting a direct skip for generation-skipping tax purposes which is caused by a disclaimer or which is from a trust not created or appointed by me,
- (d) _____, and

**[List additional property passing outside the instrument
against which tax apportionment rights should be asserted.]**

- (e) _____.

The person holding or receiving the above-described property shall pay, either directly or to the trustee, the amount, if any, by which the death taxes are increased as a result of the taxation of that property. If two or more properties cause an increase in a tax, the increase shall be allocated among the properties in proportion to their respective taxable values.

If there may be after-born children, add to THIRD:

- 5 I intend by this agreement to provide for all my children, including any hereafter born or adopted.

If special gifts of money are desired, add the following after THIRD and renumber the succeeding articles:

- 6 FOURTH: Upon my death the trustee shall distribute from the principal of the trust estate:
- (a) \$5,000 to my sister, JANE DOE, of _____, _____, if she is then living;
 - (b) \$2,500 to the OLD PEOPLE'S HOME, of _____, _____, if then in existence; and
 - (c) \$5,000 to each of my grandchildren who is then living; if a grandchild is a minor, payment may be made for the benefit of the grandchild to a custodian under a Uniform Transfers or Gifts to Minors Act.

No interest or share of income shall be paid on these distributions. The balance of the trust estate which remains after the foregoing distributions have been made or provided for shall be held and disposed of as hereinafter provided.

by the person holding or receiving that property. Such payments, including interest and penalties on any tax, shall be charged against principal or income as provided by applicable state law. The trustee may make payment directly or to the personal representative of my estate, as the trustee deems advisable. The trustee shall make these payments without apportionment or reimbursement. If any part of the balance of the trust estate does not qualify for the federal estate tax marital deduction because of disclaimer, then the amount (if any) by which the estate and inheritance taxes assessed by reason of my death are thereby incurred or increased shall be paid from or charged against the disclaimed property.

Assets or funds otherwise excludable from my gross estate for federal estate tax purposes shall not be used to make the foregoing payments. The trustee's selection of assets to be sold for that purpose or to satisfy any pecuniary gifts, and the tax effects thereof, shall not be subject to question by any beneficiary.

The trustee shall make such elections and allocations under the tax laws as the trustee deems advisable, without regard to the relative interests of the beneficiaries and without liability to any person. No adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of elections or allocations under the tax laws made by the personal representative of my estate or by the trustee.

The balance of the trust estate which remains after the foregoing payments have been made or provided for shall be held and disposed of as hereinafter provided.

THIRD: My wife's name is MARY DOE, and she is herein referred to as "my wife." **FAMILY**
I have three children now living, namely:

JOHN DOE, JR., born _____ (date) _____;
DOROTHY DOE, born _____ (date) _____; and
DAVID DOE, born _____ (date) _____.

In the simultaneous death sentence in FOURTH, determine whether husband or wife is the poorer spouse, and provide that such spouse is deemed to have died last. The estate planning documents of husband and wife should each provide that such spouse is deemed to have died last.

If principal encroachment for spouse alone is desired, substitute for second paragraph of SECTION 1 of FIFTH:

7 The trustee may also pay to my wife such sums from principal as the trustee deems necessary or advisable from time to time for her health and maintenance in reasonable comfort, considering her income from all sources known to the trustee.

FOURTH: As of my death the balance of the trust estate shall be held and disposed of as follows:

(a) The trustee shall forthwith distribute the balance of the trust estate to my wife if she survives me. For purposes of this agreement, my wife shall be deemed to have survived me if the order of our deaths cannot be proved.

(b) If my wife does not survive me, or if my wife survives me but disclaims a part or all of the distribution to her, the balance of the trust estate (or the disclaimed part of it) shall be held as a separate trust designated the "Bypass Trust."

FIFTH: The Bypass Trust shall be held and disposed of as follows:

**BYPASS
TRUST**

SECTION 1: If my wife survives me, then commencing with my death the trustee shall pay the income from the Bypass Trust in convenient installments, at least quarterly, to her during her lifetime.

INCOME

The trustee may also pay to my wife such sums from principal as the trustee deems necessary or advisable from time to time for her health and maintenance in reasonable comfort, and for the health, support in reasonable comfort, and education (including postgraduate) of any child of mine who may be dependent upon her, considering the income of each of them from all sources known to the trustee. No payment made for a child of mine shall be charged against the share hereinafter provided for the child or his or her descendants.

**PRINCIPAL
INVASION**

If Bypass Trust is to be distributed upon the death of the surviving spouse, substitute the following for SECTION 2 through SECTION 6 and renumber the succeeding section of FIFTH:

- 8 SECTION 2: Upon the death of my wife, or upon my death if my wife does not survive me, the Bypass Trust shall be distributed in equal shares to such of my children as shall then be living, except that the then living descendants of a deceased child of mine shall take per stirpes the share which the child would have received if living, subject to postponement of possession as provided below.

If Bypass Trust is to be held as a single trust for children after the death of the surviving spouse and distributed when the youngest child has reached a specified age, substitute the following for SECTION 2 through SECTION 6 and renumber the succeeding section of FIFTH:

- 9 SECTION 2: After the death of my wife, or after my death if my wife does not survive me, the Bypass Trust shall be held and disposed of as hereinafter provided.

SECTION 3: Until the time hereinafter fixed for distribution, the trustee may pay so much or all of the income and principal of the Bypass Trust to any one or more of my children and the descendants of a deceased child of mine from time to time living, in equal or unequal proportions and at such times as the trustee deems best, considering the needs, other income and means of support, and best interests of my children and those descendants, individually and as a group, and any other circumstances and factors which the trustee deems pertinent, adding to principal any income not so paid. No payment of income or principal to a child or other descendant of mine shall be charged against the share hereinafter provided for the child or descendant or his or her ancestor or descendants.

SECTION 4: If upon or whenever after the death of the survivor of my wife and me there is no living child of mine under the age of 25 years, the trustee shall distribute the Bypass Trust in equal shares to such of my children as shall then be living, except that the then living descendants of a deceased child of mine shall take per stirpes the share which the child would have received if living, subject to postponement of possession as provided below.

If Bypass Trust is to be held as a single trust for children after the death of the surviving spouse and divided into shares when the youngest child has reached a specified age, substitute the following for SECTION 2 and renumber the succeeding sections of FIFTH:

- 10 SECTION 2: After the death of my wife, or after my death if my wife does not survive me, the Bypass Trust shall be held and disposed of as hereinafter provided.

SECTION 3: Until the time hereinafter fixed for division into shares, the trustee may pay so much or all of the income and principal of the Bypass Trust to any one or more of my children and the descendants of a deceased child of mine from time to time living, in equal or unequal proportions and at such times as the trustee deems best, considering the needs, other income and means of support, and best interests of my children and those descendants, individually and as a group, and any other circumstances and factors which the trustee deems pertinent, adding to principal any income not so paid. No payment of income or principal to a child or other descendant of mine shall be charged against the share hereinafter provided for the child or descendant or his or her ancestor or descendants.

SECTION 4: If upon or whenever after the death of the survivor of my wife and me there is no living child of mine under the age of 25 years, the trustee shall divide the Bypass Trust into equal shares to create one share for each then living child of mine and one share for the then living descendants, collectively, of each deceased child of mine.

Each share created for the descendants of a deceased child shall be distributed per stirpes to those descendants, subject to postponement of possession as provided below. Each share created for a living child shall be held as a separate trust and disposed of as hereinafter provided.

If Bypass Trust is held as a single trust for children and principal encroachment is desired to enable a child to enter a business or acquire a home, add to alternate SECTION 3 of FIFTH:

- 11 In addition, to the extent that the trustee determines that the interests under the preceding paragraph of my other children and descendants of a deceased child of mine will not thereby be jeopardized, the trustee may pay to a child of mine who has reached the age of 25 years such sums (not exceeding the child's presumptive share) from the principal of the Bypass Trust as the trustee deems necessary or advisable to enable the child to enter into or remain in a business, vocation or profession in which the trustee believes the child will have reasonable prospects of success, to assist the child in acquiring or furnishing a home, or for any similar purpose which the trustee considers to be in the best interests of the child. Each payment to a child of mine under this paragraph shall be treated as an advancement and charged without interest against the share hereinafter provided for the child or his or her descendants.

SECTION 2: Upon the death of my wife, or upon my death if my wife does not survive me, the trustee shall divide the Bypass Trust into equal shares to create one share for each then living child of mine and one share for the then living descendants, collectively, of each deceased child of mine.

DIVISION

Each share created for the descendants of a deceased child shall be distributed per stirpes to those descendants, subject to postponement of possession as provided below. Each share created for a living child shall be held as a separate trust and disposed of as hereinafter provided.

If minor child, add to first paragraph of SECTION 3 of FIFTH:

- 12 . . . ; except that while the child is under the age of 21 years, the trustee may pay to or for the benefit of the child so much or all of the income from his or her share as the trustee deems necessary or advisable from time to time for his or her health, maintenance in reasonable comfort, education (including postgraduate) and best interests, adding to principal any income not so paid.

If a child's share is of sufficient size to warrant withdrawal in three stages, substitute for SECTION 4 of FIFTH:

- 13 SECTION 4: After division of the Bypass Trust into shares and after a child has reached any one or more of the following ages, the child may withdraw from the principal of his or her share at any time or times not to exceed in the aggregate:
- 1/3 in value after 25 years of age;
 - 1/2 in value (after deducting any amount subject to withdrawal but not actually withdrawn) after 30 years of age; and
 - The balance after 35 years of age.

The value of the share shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The trustee shall make payment without question upon the child's written request. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise.

If mandatory distribution of a child's share is desired, substitute the following for SECTION 4 through SECTION 6 and renumber the succeeding section of FIFTH:

- 14 SECTION 4: When a child reaches the age of 25 years, or upon division of the Bypass Trust into shares if he or she has then reached that age, the trustee shall distribute to the child 1/2 in value of the principal of his or her share then held hereunder; the trustee shall forthwith distribute to the child 1/2 in value of any subsequent addition to his or her share; and when a child reaches the age of 30 years, or upon division of the Bypass Trust into shares if he or she has then reached that age, the trustee shall distribute to the child the balance of his or her share.

SECTION 5: If a child dies before receiving his or her share in full, then upon the death of the child his or her share shall be distributed per stirpes to his or her then living descendants, or if none, then per stirpes to my then living descendants, subject to postponement of possession as provided below, except that each portion otherwise distributable to a descendant of mine for whom a share of the Bypass Trust is then held hereunder shall be added to that share.

SECTION 3: The income from a child's share shall be paid in convenient installments, at least quarterly, to the child until complete distribution of the share or his or her prior death.

INCOME

The trustee may also pay to the child such sums from the principal of his or her share as the trustee deems necessary or advisable from time to time for his or her health, maintenance in reasonable comfort, education (including postgraduate) and best interests, considering the income of the child from all sources known to the trustee.

**PRINCIPAL
INVASION**

SECTION 4: After division of the Bypass Trust into shares and after a child has reached the age of 25 years, the child may withdraw any part or all of the principal of his or her share at any time or times, but not to exceed in the aggregate 1/2 in value thereof prior to reaching the age of 30 years. The value of the share shall be its value as of the child's first exercise of his or her withdrawal right, plus the value of any subsequent addition as of the date of addition. The trustee shall make payment without question upon the child's written request. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise.

**RIGHT TO
WITHDRAW**

SECTION 5: If a child dies before receiving his or her share in full, then upon the death of the child his or her share shall be held in trust hereunder or distributed to or in trust for such appointee or appointees, with such powers and in such manner and proportions as the child may appoint by his or her will making specific reference to this power of appointment, except that any part of the child's share not subject to withdrawal prior to the death of the child may be appointed only to or for the benefit of any one or more of the child's surviving spouse, the child's descendants and their respective spouses and my descendants (other than the child) and their respective spouses. For purposes of this agreement, the term "spouse" shall include a widow or widower, whether or not remarried.

**TESTAMENTARY
POWER OF
APPOINTMENT**

If it is desired to provide for contingent distributees in the event of a failure of descendants, insert the following after SECTION 6 and renumber the succeeding section of FIFTH:

- 15 SECTION 7: If upon the death of the survivor of my wife and me, or at any time thereafter but prior to complete distribution of the Bypass Trust, there is no living descendant of mine, any trust property then held under this article and not vested or effectively appointed shall be distributed 1/2 to my heirs-at-law and 1/2 to my wife's heirs-at-law, the heirs-at-law and the proportions which they shall respectively take to be determined in each case according to the present laws of descent of the state of my domicile as if my wife and I had both died at that time.

If a retained share is of sufficient size to warrant distribution in two stages, substitute for SECTION 7 of FIFTH:

- 16 SECTION 7: Each share of the Bypass Trust which is distributable to a beneficiary who has not reached the age of 30 years shall immediately vest in the beneficiary, but the trustee shall retain possession of the share as a separate trust, paying to or for the benefit of the beneficiary so much or all of the income and principal of the share as the trustee deems necessary or advisable from time to time for his or her health, maintenance in reasonable comfort, education (including postgraduate) and best interests, adding to principal any income not so paid (except that after the beneficiary has reached the age of 21 years, the trustee shall pay to him or her all the income from the share in convenient installments, at least quarterly), and distributing 1/2 in value of the principal of the share to the beneficiary if he or she has then reached or at such time thereafter as he or she reaches the age of 25 years and the balance to the beneficiary when he or she reaches the age of 30 years or to the estate of the beneficiary if he or she dies before receiving the share in full.

SECTION 6: Upon the death of a child any part of his or her share not effectively appointed shall be distributed per stirpes to his or her then living descendants, or if none, then per stirpes to my then living descendants, subject to postponement of possession as provided below, except that each portion otherwise distributable to a descendant of mine for whom a share of the Bypass Trust is then held hereunder shall be added to that share.

DEFAULT

SECTION 7: Each share of the Bypass Trust which is distributable to a beneficiary who has not reached the age of 21 years shall immediately vest in the beneficiary, but the trustee shall (a) establish with the share a custodianship for the beneficiary under a Uniform Transfers or Gifts to Minors Act, or (b) retain possession of the share as a separate trust, paying to or for the benefit of the beneficiary so much or all of the income and principal of the share as the trustee deems necessary or advisable from time to time for his or her health, maintenance in reasonable comfort, education (including postgraduate) and best interests, adding to principal any income not so paid, and distributing the share to the beneficiary when he or she reaches the age of 21 years or to the estate of the beneficiary if he or she dies before receiving the share in full.

**POSTPONEMENT
OF POSSESSION**

For ADMINISTRATIVE PROVISIONS, TRUSTEE POWERS, ADDITIONS, RIGHT TO REVOKE, GOVERNING LAW, TESTIMONIUM, ATTESTATION and ACKNOWLEDGMENT, refer to FORM 201: REVOCABLE TRUST AGREEMENT-One Settlor-Fractional Share Marital.