

NOTATIONS FOR FORM 305

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 settlor. The form enables the surviving settlor to shelter the deceased 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 settlors who own only community property or both separate and community property and who will respectively execute wills patterned on FORM 110: WILL-Pour-over. It assumes that during the joint lifetime of the settlors the trust estate will include community property and perhaps the separate property of one or both of the settlors, and it permits addition upon the death of either settlor of his or her separate property and his or her share of any remaining community property. If the trust estate will not include community property, use FORM 205: REVOCABLE TRUST AGREEMENT-One Settlor-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 308 and 309: 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 settlors are to be the initial trustees of the trust, (i) use the alternate trustee succession provision on page 301-22 and the alternate testimonium provision on page 301-40, and (ii) substitute for first paragraph:

1 THIS AGREEMENT is made this _____ day of _____, 20____, between JOHN DOE and MARY DOE, husband and wife, of _____, _____, as settlors, and JOHN DOE and MARY DOE, as trustee.

If one of the settlors is to be the sole initial trustee of the trust, refer to FORM 310: REVOCABLE TRUST AGREEMENT-One Settlor as Initial Trustee.

If one or both of the settlors do not have separate property, modify second paragraph of the agreement as appropriate.

FORM 305
REVOCABLE TRUST AGREEMENT
Community Property
-Outright with Disclaimer Trust

TRUST AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 20____, between JOHN DOE and MARY DOE, husband and wife, of _____, as settlors, and NORTHERN TRUST [*insert full legal name of applicable NORTHERN TRUST bank throughout the instrument*], of _____, _____, as trustee.

The settlors and each of them hereby transfer to the trustee the property listed in the attached schedules and are causing the trustee to be designated as beneficiary of the life insurance policies described therein. The character of the property and insurance policies is as follows:

Schedule A is the community property of the settlors.

Schedule B is the separate property of settlor JOHN DOE.

Schedule C is the separate property of settlor MARY DOE.

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 referred to as the “trust estate” and shall be held upon the following trusts:

FIRST: During the joint lifetime of the settlors, the trust estate shall be held and disposed of as follows:

**DISTRIBUTIONS
DURING JOINT
LIFETIME**

SECTION 1: The trustee shall pay so much or all of the income and principal of the community property to the settlors or otherwise as the settlors, or either of them, shall direct.

**COMMUNITY
PROPERTY**

If at any time or times both settlors shall be unable to manage their affairs, the trustee may use such sums from the income and principal of the community property as the trustee deems necessary or advisable for the health and maintenance in reasonable comfort of the settlors and any person dependent upon them, or for any other purpose the trustee considers to be for settlors’ best interests.

SECTION 2: The trustee shall pay so much or all of the income and principal of a settlor’s separate property to that settlor or otherwise as he or she directs.

**SEPARATE
PROPERTY**

If at any time or times a settlor shall be unable to manage his or her affairs, the trustee may use such sums from the income and principal of his or her separate property as the trustee deems necessary or advisable for the health and maintenance in reasonable comfort of that settlor and any person dependent upon him or her, or for any other purpose the trustee considers to be for that settlor’s best interests.

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

2 SECOND: Upon the death of each settlor the trustee shall make the following payments. Upon the death of the first to die of the settlors, herein referred to as the "deceased settlor," the trustee shall make the following payments from his or her separate property and his or her share of the community property. Upon the death of the survivor of the settlors, herein referred to as the "surviving settlor," the trustee shall make the following payments from the Survivor's Trust, unless the surviving settlor directs otherwise by his or her will or revocable trust.

The trustee shall pay all expenses of each settlor's last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against settlor's estate (excluding debts secured by real property or life insurance), and unsatisfied pre-residuary devises under settlor's will if the will contains a residuary devise to this trust. The trustee shall also pay all estate and inheritance taxes assessed by reason of the death of each settlor, 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 the settlor may have a qualifying income interest for life or over which the settlor 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 settlor's 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 the death of the deceased settlor 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 two paragraphs of SECOND:

3 SECOND: Upon the death of each settlor, if that settlor has no probate estate, or to the extent that the cash and readily marketable assets in the principal of the residue of that settlor's probate estate are insufficient, the trustee shall make the following payments. Upon the death of the first to die of the settlors, herein referred to as the "deceased settlor," the trustee shall make the following payments from his or her separate property and his or her share of the community property. Upon the death of the survivor of the settlors, herein referred to as the "surviving settlor," the trustee shall make the following payments from the Survivor's Trust, unless the surviving settlor directs otherwise by his or her will or revocable trust.

The trustee shall pay the expenses of each settlor's last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against settlor's estate (excluding debts secured by real property or life insurance), and pre-residuary devises under settlor's will if the 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 the death of each settlor, including such taxes on property passing outside this agreement. 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 settlor's 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 the death of the deceased settlor 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 the settlor may have a power of appointment,
 - (b) Property in which the settlor 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 the settlor,
 - (d) _____, and
 - (e) _____.
- [List additional property passing outside the instrument
against which tax apportionment rights should be asserted.]

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.

DISABILITY

SECTION 3: For purposes of this agreement, a settlor shall be considered to be unable to manage his or her affairs if he or she is under a legal disability or by reason of illness or mental or physical disability is unable to give prompt and intelligent consideration to financial matters. The determination as to a settlor's inability at any time shall be made by that settlor's physician and the other settlor (if he or she is living and not unable to manage his or her affairs), and the trustee may rely upon written notice of that determination.

CHARACTER OF PROPERTY

SECTION 4: Any community property or separate property of the settlors which is transferred to or from the trust shall retain its same character after the transfer.

UNPAID INCOME

SECTION 5: Any income of the trust not paid shall be added to principal.

TAXES-EXPENSES

SECOND: Upon the death of each settlor, if that settlor has no probate estate, or to the extent that the cash and readily marketable assets in the principal of the residue of that settlor's probate estate are insufficient, the trustee shall make the following payments. Upon the death of the first to die of the settlors, herein referred to as the "deceased settlor," the trustee shall make the following payments from his or her separate property and his or her share of the community property. Upon the death of the survivor of the settlors, herein referred to as the "surviving settlor," the trustee shall make the following payments from the Survivor's Trust, unless the surviving settlor directs otherwise by his or her will or revocable trust.

The trustee shall pay the expenses of each settlor's last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against settlor's estate (excluding debts secured by real property or life insurance), and pre-residuary devises under settlor's will if the will contains a residuary devise to this trust. The trustee shall also pay the estate and inheritance taxes assessed by reason of the death of each settlor, 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 the settlor may have a qualifying income interest for life or over which the settlor 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 settlor's 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 the death of the deceased settlor are thereby incurred or increased shall be paid from or charged against the disclaimed property.

Assets or funds otherwise excludable from settlor's 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.

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

4 The settlors intend by this agreement to provide for all their children, including any hereafter born or adopted.

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

5 **FOURTH:** Upon the death of settlor JOHN DOE the trustee shall distribute from the principal of the trust estate:

- (a) \$ 5,000 to his 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 the grandchildren of JOHN DOE 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.

Distribution shall be made from the separate property of JOHN DOE and his share of the community property, or if he is the surviving settlor, from the Survivor's Trust. 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.

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 interest of the beneficiaries to compensate for the effect of elections or allocations under the tax laws made by the personal representative of settlor's 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: The settlors have three children now living, namely:

FAMILY

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

FOURTH: The trustee as of the death of the deceased settlor shall set aside out of the trust estate as a separate trust for the benefit of the surviving settlor:

SURVIVOR'S TRUST

- (a) the separate property of the surviving settlor; and
- (b) the surviving settlor's share of the community property of the settlors.

The trust shall be designated the "Survivor's Trust" and shall be held and disposed of as follows:

SECTION 1: During the lifetime of the surviving settlor the trustee shall pay so much or all of the income and principal of the Survivor's Trust to the surviving settlor or otherwise as he or she directs.

DIRECTED PAYMENTS

If at any time or times the surviving settlor shall be unable to manage his or her affairs, the trustee may use such sums from the income and principal of the Survivor's Trust as the trustee deems necessary or advisable for the health and maintenance in reasonable comfort of the surviving settlor, or for any other purpose the trustee considers to be for his or her best interests.

DISABILITY

Any income of the Survivor's Trust not paid shall be added to principal.

SECTION 2: Upon the death of the surviving settlor any part of the principal and accrued and undistributed income of the Survivor's Trust not paid pursuant to **SECOND** shall be added to or used to fund the Bypass Trust.

ADDITION

In the simultaneous death sentence in FIFTH(a), determine whether husband or wife is the poorer spouse, and provide that such spouse it deemed to have died last.

If principal encroachment for the surviving settlor alone is desired, substitute for second paragraph of SECTION 1 of SIXTH:

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

FIFTH: As of the death of the deceased settlor the balance of the trust estate shall be held and disposed of as follows:

(a) The trustee shall forthwith add the balance of the trust estate to the Survivor's Trust. For purposes of this agreement, settlor **MARY DOE** shall be deemed to have survived settlor **JOHN DOE** if the order of their deaths cannot be proved.

(b) If the surviving settlor disclaims a part or all of the addition to the Survivor's Trust, the disclaimed part of the addition shall be held as a separate trust designated the "Bypass Trust."

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

**BYPASS
TRUST**

INCOME

SECTION 1: Commencing with the death of the deceased settlor the trustee shall pay the income from the Bypass Trust in convenient installments, at least quarterly, to the surviving settlor during his or her lifetime.

**PRINCIPAL
INVASION**

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

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

7 SECTION 2: Upon the death of the surviving settlor the Bypass Trust, including any amounts added thereto from the Survivor's Trust, shall be distributed in equal shares to such of settlors' children as shall then be living, except that the then living descendants of a deceased child of the settlors 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 settlor 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 SIXTH:

8 SECTION 2: After the death of the surviving settlor the Bypass Trust, including any amounts added thereto from the Survivor's 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 settlors' children and the descendants of a deceased child of the settlors 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 settlors' 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 the settlors 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 surviving settlor there is no living child of the settlors under the age of 25 years, the trustee shall distribute the Bypass Trust in equal shares to such of settlors' children as shall then be living, except that the then living descendants of a deceased child of the settlors 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 settlor 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 SIXTH:

9 SECTION 2: After the death of the surviving settlor the Bypass Trust, including any amounts added thereto from the Survivor's 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 settlors' children and the descendants of a deceased child of the settlors 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 settlors' 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 the settlors 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 surviving settlor there is no living child of the settlors 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 the settlors and one share for the then living descendants, collectively, of each deceased child of the settlors.

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 SIXTH:

10 In addition, to the extent that the trustee determines that the interests under the preceding paragraph of settlors' other children and descendants of a deceased child of the settlors will not thereby be jeopardized, the trustee may pay to a child of the settlors 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 the settlors 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.

DIVISION

SECTION 2: Upon the death of the surviving settlor the trustee shall divide the Bypass Trust, including any amounts added thereto from the Survivor's Trust, into equal shares to create one share for each then living child of the settlors and one share for the then living descendants, collectively, of each deceased child of the settlors.

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 SIXTH:

11 . . . ; 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 SIXTH:

12 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 SIXTH:

13 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 settlors' then living descendants, subject to postponement of possession as provided below, except that each portion otherwise distributable to a descendant of the settlors for whom a share of the Bypass Trust is then held hereunder shall be added to that share.

FORM 305 (continued)

INCOME

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.

**PRINCIPAL
INVASION**

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.

**RIGHT TO
WITHDRAW**

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.

**TESTAMENTARY
POWER OF
APPOINTMENT**

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 settlors' 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.

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 SIXTH:

14 SECTION 7: If upon the death of the surviving settlor, or at any time thereafter but prior to complete distribution of the Bypass Trust, there is no living descendant of the settlors, any trust property then held under this article and not vested or effectively appointed shall be distributed 1/2 to the deceased settlor's heirs-at-law and 1/2 to the surviving settlor'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 settlors' domicile as if the settlors 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 SIXTH:

15 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.

DEFAULT

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 settlors' then living descendants, subject to postponement of possession as provided below, except that each portion otherwise distributable to a descendant of the settlors for whom a share of the Bypass Trust is then held hereunder shall be added to that share.

**POSTPONEMENT
OF POSSESSION**

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.

For ADMINISTRATIVE PROVISIONS, TRUSTEE POWERS, ADDITIONS, RIGHT TO REVOKE, GOVERNING LAW, TESTIMONIUM, ATTESTATION and ACKNOWLEDGMENT, refer to FORM 301: REVOCABLE TRUST AGREEMENT-Community Property-Fractional Share Marital.