

NOTATIONS FOR FORM 402

This form is designed for a husband and wife who wish to establish an irrevocable trust which will own insurance policies which mature upon the death of the survivor of husband and wife. The trust benefits settlors' children, and it seeks to avoid federal estate taxation of the insurance proceeds on the deaths of both settlors. The settlors may not amend or revoke the trust agreement, although alternate SEVENTH gives the rights to amend and terminate the trust agreement to another person.

For community property states: The settlors may contribute to the trust community property, separate property, or both community property and separate property.

Certain provisions of this form assume that there is a disinterested party acting as trustee or co-trustee under the agreement after the death of the surviving settlor. A beneficiary should not act as sole trustee after the death of the surviving settlor 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).

Corporate Trustee as Initial Trustee:

Northern Trust recommends that an individual serve as initial trustee of an irrevocable insurance trust, with Northern Trust becoming trustee only when the insurance policy matures. In some cases Northern Trust might agree to be initial trustee, however, if it serves on a "no responsibility" basis and the agreement appoints an individual as trust director. If Northern Trust is to be the initial trustee of the trust:

- (a) Substitute "director" for "trustee" in SECTION 1(a) of SECOND so that the director notifies beneficiaries of their *Crummey* withdrawal rights.
- (b) Delete the first sentence of SECTION 2 of SECOND and delete "also" from the second sentence.
- (c) Substitute for SECTION 12(b) of FOURTH:

1 (b) The trustee and director need not pay or see to the payment of premiums or assessments on the policy, whether owned by the trustee or another person.

NOTE: This provision assumes that a settlor will pay the premiums directly to the insurance company.

(d) Add after the TESTIMONIUM a signature line for the director's acceptance of office.

(e) Insert the following after SECOND and renumber the succeeding articles:

2 THIRD: We appoint the following persons, singly and in the order listed, to act as director of this trust:

- (a) _____
- (b) _____
- (c) _____

[Insert names, e.g., child, sibling, accountant, attorney, but not a settlor or the trustee.]

Notwithstanding any other provision of this agreement, while either of us is living, the trustee's only duties under this agreement shall be to have custody of the trust property and to carry out the directions of the director. During that time the director shall have sole responsibility for the investment and distribution of trust property and for the administration of the trust, including notifying beneficiaries of their rights to withdraw contributions to the trust. The trustee shall be under no obligation to review trust investments or distributions, solicit any direction from the director, or inquire into the director's administration of the trust. The office of director shall terminate upon the death of the survivor of us. A director shall serve without compensation from the trust.

A director's powers shall be deemed to be and exercised as fiduciary powers. The trustee need not review whether the director is satisfying his or her responsibilities hereunder, and the trustee shall not be liable for any action or inaction of the director.

Any director may resign at any time by written notice to the trustee and to his or her named successor director, or if none, to our living children.

_____, if he [or she] is living and under no disability and has not relinquished the power granted to him [or her] hereunder, otherwise _____, may remove any director at any time by written notice to the director and the trustee.

In case of the death, resignation, removal, disability or refusal to act of any director acting or appointed to act hereunder, the next person listed in the first paragraph of this article shall be successor director, or if none, then a majority in number of our living children shall appoint a successor director. Neither of us shall be a director.

FORM 402
IRREVOCABLE INSURANCE
TRUST AGREEMENT
Two Settlers
-Second-to-Die Life Insurance
Policy

TRUST AGREEMENT

We, JOHN DOE and MARY DOE, husband and wife, of _____, _____, as settlors, make this agreement with JOHN DOE, JR., of _____, _____, as trustee, this _____ day of _____, 20 _____.

We hereby transfer to the trustee the property listed in the attached schedule. That property and all investments and reinvestments thereof and additions thereto are herein collectively referred to as the "trust estate" and shall be held upon the following trusts:

FIRST: We have three children now living, namely:

FAMILY

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

SECOND: While either of us is living, the trust estate shall be held and disposed of as follows:

SECTION 1: We, either of us or any other donor may make contributions to the trust at any time or times. For purposes of this agreement, the term "contribution" means any transfer of property to the trust for federal gift tax purposes, including property initially transferred to the trust or subsequently added thereto and payments of premiums on any insurance policy owned by the trustee which are paid otherwise than by the trustee. The amount of a contribution shall be its value for federal gift tax purposes.

CONTRIBUTIONS

Each of our children who is living at the time of contribution to the trust may withdraw from the principal of the trust estate an equal share of the value of the contribution, except that no child may withdraw, in the aggregate during any calendar year, more than the largest per donee amount that qualifies for the federal gift tax annual exclusion under Internal Revenue Code Section 2503(b) in effect from time to time and assuming that a split gift election will be made if the donor was married at the time of the contribution. By granting these withdrawal rights we intend that contributions to the trust shall qualify for the federal gift tax annual exclusion as gifts of present interests, and all powers and duties granted to the trustee shall be interpreted accordingly.

**RIGHTS OF
WITHDRAWAL**

Every successor director shall have all the powers given the originally named director. A successor director has no duty to inquire into the administration of any predecessor director and is not personally liable for any act or omission of any predecessor director.

The statement of the trustee that it is acting according to this article shall fully protect all persons dealing with the trustee. The trustee shall have no responsibility for any loss that may result from acting in accordance with this article or from carrying out any direction given by the director.

NOTE: A settlor should not have the power to remove a director. An attorney often serves as director remover.

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

- 3 We intend by this agreement to provide for all our children, including any hereafter born or adopted.

If it is desired that all of settlors' descendants (e.g., settlors' grandchildren as well as children) have *Crummey* withdrawal rights, (i) substitute "descendants" for "children" and also "descendant" for "child" throughout SECOND, and (ii) substitute for fifth paragraph of SECTION 1 of SECOND:

- 4 Each payment to a descendant under this section shall be treated as an advancement and charged without interest against the share hereinafter provided for the descendant or his or her ancestor or descendants.

If notice of a contribution is given less than 30 days before the end of a calendar year, the beneficiaries or their representatives should notify the trustee in writing before the end of the calendar year that they have had adequate time to consider their withdrawal rights under SECTION 1 of SECOND and that they intend to let their rights lapse.

With respect to each contribution made to the trust during a calendar year:

(a) The trustee shall notify each beneficiary of his or her withdrawal right with respect to the contribution. The trustee may give notice after each contribution, once annually for all contributions made during the calendar year, or otherwise as the trustee deems advisable, but in no event later than December 31 of the calendar year.

(b) A beneficiary's withdrawal rights with respect to contributions to the trust shall continue from year to year until exercised (including after the death of the survivor of us), except that on December 31 of each year the beneficiary's aggregate withdrawal rights shall lapse as to the amount specified in Internal Revenue Code Section 2514(e) in effect from time to time (currently the greater of \$5,000 and 5% of the value of the trust estate), and except further that those withdrawal rights shall lapse upon the death of the beneficiary.

A beneficiary may exercise a withdrawal right only by written request delivered to the trustee. The trustee shall make payment pursuant to a written request in cash to the extent practicable, otherwise from other trust property selected by the trustee, including policies of life insurance.

Any donor may place conditions on donor's current and future contributions to the trust, which may include (i) granting withdrawal rights to new beneficiaries (other than the donor), (ii) excluding any person from having a withdrawal right, (iii) increasing or decreasing the amount subject to withdrawal (but any increase shall be limited to the amount of the contribution), and (iv) changing the period during which the withdrawal right can be exercised. The conditions shall remain in effect for future contributions until the donor prospectively amends or revokes them. Conditions may be imposed, amended or revoked only by instrument in writing delivered to the trustee.

Each payment to a child under this section shall be treated as an advancement and charged without interest against the share hereinafter provided for the child or his or her descendants.

The succeeding provisions of this agreement shall be subject to the terms of this section.

SECTION 2: The trustee may pay from the income and principal of the trust estate any premiums or assessments on any policy of life insurance owned by the trustee. The trustee may also pay so much or all of the income of the trust estate to any one or more of our children from time to time living, in equal or unequal proportions and at such times as the trustee deems necessary or advisable for their health and maintenance in reasonable comfort, except that no payment shall be made to satisfy any legal obligation of any person to a beneficiary. Any income not so paid shall be added to principal.

**INCOME AND
PRINCIPAL**

If minor child, add to first paragraph of SECTION 2 of THIRD:

- 5 . . . ; 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 3 of THIRD:

- 6 SECTION 3: After division of the trust estate 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.

THIRD: After the death of the survivor of us the trust estate shall be held and disposed of as follows:

SECTION 1: As of the death of the survivor of us the trustee shall divide the trust estate into equal shares to create one share for each then living child of ours and one share for the then living descendants, collectively, of each deceased child of ours. **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.

SECTION 2: 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 3: After division of the trust estate 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 4: 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 other than the child, his or her estate, his or her creditors and the creditors of his or her estate, 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. **LIMITED
TESTAMENTARY
POWER OF
APPOINTMENT**

This form assumes that neither settlor will allocate GST exemption to the trust during his or her lifetime and that the trust will have an inclusion ratio of one for generation-skipping tax purposes. The second paragraph of SECTION 4 of THIRD grants a child a general testamentary power of appointment over his or her share so that federal estate tax (and not federal generation-skipping tax) will be incurred upon the death of the child. If this is not desired, the second paragraph may be deleted.

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

- 7 SECTION 7: Each share of the trust estate 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.

In addition, if a child's share would incur generation-skipping tax upon the death of the child (assuming the non-exercise of all testamentary powers of appointment granted to the child hereunder), then the child shall also have the power to appoint the portion of the share otherwise constituting a generation-skipping transfer to the creditors of his or her estate. This general testamentary power of appointment is granted to avoid generation-skipping tax. This power of appointment may be exercised only by a will making specific reference to this power. Any such portion not effectively appointed shall be held and disposed of as hereinafter provided, except that unless the child directs otherwise by his or her will or revocable trust, the trustee shall first pay from the principal of such portion, directly or to the personal representative of the child's estate as the trustee deems advisable, the amount by which the estate and inheritance taxes assessed by reason of the death of the child shall be increased as a result of the inclusion of such portion in the child's estate for such tax purposes. The trustee's selection of assets to be sold to pay that amount, and the tax effects thereof, shall not be subject to question by any beneficiary.

**CONTINGENT
GENERAL
TESTAMENTARY
POWER OF
APPOINTMENT**

SECTION 5: 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 our then living descendants, subject to postponement of possession as provided below, except that each portion otherwise distributable to a descendant of ours for whom a share of the trust estate is then held hereunder shall be added to that share.

DEFAULT

SECTION 6: If upon the death of the survivor of us, or at any time thereafter but prior to complete distribution of the trust estate, there is no living descendant of ours, any trust property then held under this agreement and not vested or effectively appointed shall be distributed 1/2 to husband's heirs-at-law and 1/2 to 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 our domicile as if both of us had died at that time.

**FAILURE OF
DESCENDANTS**

SECTION 7: Each share of the trust estate 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**

FOURTH: The following provisions shall apply to the trust estate and to each trust under this agreement:

ADMINISTRATIVE PROVISIONS

SECTION 1: If income or discretionary amounts of principal become payable to a beneficiary under disability, then that income or principal shall be paid or expended only in such of the following ways as the trustee deems best: (a) directly to the beneficiary or his or her attorney in fact; (b) to the legally appointed guardian or conservator of the beneficiary; (c) to a custodian for the beneficiary under a Uniform Transfers or Gifts to Minors Act; (d) by the trustee directly for the benefit of the beneficiary; (e) to an adult relative or friend in reimbursement for amounts properly advanced for the benefit of the beneficiary.

FACILITY OF PAYMENT

SECTION 2: The interests of beneficiaries in principal or income shall not be subject to the claims of any creditor, any spouse for alimony or support, or others, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered. This provision shall not limit the exercise of any power of appointment.

SPENDTHRIFT

Except with respect to SECOND, the rights of beneficiaries to withdraw trust property are personal and may not be exercised by a guardian, conservator, attorney in fact or others.

SECTION 3: The allocation of receipts and disbursements between income and principal shall be determined as provided by this agreement and applicable state statute or in cases not covered by statute by the trustee, except that

PRINCIPAL AND INCOME

(a) if the trust is beneficiary or owner of an individual account in any employee benefit plan or individual retirement plan, income earned after death in the account shall be income of the trust, and if the trustee is required to pay all trust income to a beneficiary, the trustee shall collect and pay the income of the account to the beneficiary at least quarterly (and to the extent that all income cannot be collected from the account, the deficiency shall be paid from the principal of the trust),

(b) reserves for depreciation shall be established out of income only to the extent that the trustee determines that readily marketable assets in the principal of the trust will be insufficient for any renovation, major repair, improvement or replacement of trust property which the trustee deems advisable, and

(c) income received after the last income payment date and undistributed at the termination of any estate or interest shall, together with any accrued income, be paid by the trustee as income to the persons entitled to the next successive interest in the proportions in which they take that interest.

SECTION 4: For convenience of administration or investment, the trustee may hold separate trusts as a common fund, dividing the income proportionately among them, assign undivided interests to the separate trusts, and make joint investments of the funds belonging to them. The trustee may consolidate any separate trust with any other trust with similar provisions for the same beneficiary or beneficiaries.

**COMMON FUND
AND
CONSOLIDATION**

SECTION 5: After the death of the survivor of us the trustee shall render an account of trust receipts and disbursements and a statement of assets at least annually to each beneficiary then entitled to receive or receiving the income from the trust and, in addition, to any other beneficiaries who are entitled to receive accounts under applicable state law. An account is binding on each beneficiary who receives it and on all persons claiming by or through the beneficiary, and the trustee is released, as to all matters stated in the account or shown by it, unless the beneficiary commences a judicial proceeding to assert a claim within one year after the mailing or other delivery of the account.

ACCOUNTS

Before distributing property to a beneficiary upon termination of a trust in whole or in part, the trustee shall have the right to require an approval of the trustee's accounts, either by a written approval and release from the beneficiary or, if it cannot be obtained, by a judicial settlement of accounts. The expenses of the judicial proceeding (including attorneys fees) shall be paid from the beneficiary's share of the trust. The trustee shall also have the right to require an indemnification from the beneficiary for any environmental law liability or expense which the trustee has incurred or may incur in the future with respect to the property distributed.

SECTION 6: The trustee shall be reimbursed for all reasonable expenses incurred in the management and protection of the trust, and any corporate trustee shall receive compensation for its services in accordance with its schedule of fees in effect from time to time. A trustee's regular compensation shall be charged against income and principal as provided by applicable state law, except that the trustee shall have full discretion at any time or times to charge a larger portion or all against income.

COMPENSATION

SECTION 7: A corporate trustee in its discretion may terminate and distribute any trust hereunder if the corporate trustee determines that the costs of continuance thereof will substantially impair accomplishment of the purposes of the trust. The trustee shall terminate and forthwith distribute any trust created hereby, or by exercise of a power of appointment hereunder, which is still held at the end of the period allowed by the applicable rule against perpetuities, if any. Distribution under this section shall be made to the persons then entitled to receive or eligible to have the benefit of the income from the trust in the proportions in which they are entitled thereto, or if their interests are indefinite, to those persons per stirpes if they have a common ancestor, or if not, then in equal shares.

**SMALL TRUST
TERMINATION
AND
PERPETUITIES
SAVINGS**

SECTION 8: Any trustee may resign at any time by written notice to each beneficiary then entitled to receive or eligible to have the benefit of the income from the trust. In case of the death, resignation, refusal or inability to act of any trustee acting or appointed to act hereunder, a successor trustee shall be appointed by the beneficiary or a majority in interest of the beneficiaries then entitled to receive or eligible to have the benefit of the income from the trust (or if their interests are indefinite, by a majority in number of the oldest generation of such beneficiaries), except that in no event shall either of us be a successor trustee, and except further that after the death of the survivor of us no beneficiary or person legally obligated to a beneficiary shall be a successor trustee. Separate trusts under this agreement may have the same or different trustees.

**TRUSTEE
SUCCESSION**

Upon the death of the survivor of us the then acting trustee shall cease to be trustee and NORTHERN TRUST [*insert full legal name of applicable NORTHERN TRUST bank throughout the instrument*], of _____, _____, shall be successor trustee.

Every successor trustee shall have all the powers given the originally named trustee. A successor trustee has no duty to inquire into the accounts or administration of any predecessor trustee and is not personally liable for any act or omission of any predecessor trustee. With the approval of the beneficiaries appointing a successor trustee, the successor trustee may accept the account rendered and the property received as a complete release and discharge to the predecessor trustee without incurring any liability for so doing.

No trustee wherever acting shall be required to give bond or surety or be appointed by or account for the administration of any trust to any court. The trustee need not register a trust with any court.

If another corporation succeeds to part or all of the trust business of a corporate trustee acting or appointed to act hereunder, that corporation shall be the successor corporate trustee, without the necessity of appointment, assignment or other action.

SECTION 9: If for any reason the trustee is unwilling or unable to act as to any property, such person or qualified corporation as the trustee shall from time to time designate in writing shall act as special trustee as to that property. Any person or corporation acting as special trustee may resign at any time by written notice to the trustee. Each special trustee shall have the powers granted to the trustee by this agreement, to be exercised only with the approval of the trustee, to which the net income and the proceeds from sale of any part or all of the property shall be remitted to be administered under this agreement.

**TRUSTEE FOR
OUT-OF-STATE
PROPERTY**

SECTION 10: A beneficiary, trustee or other person shall be considered to be under disability or unable to act if the person is a minor, is adjudicated by a court to lack legal capacity, or is not so adjudicated but is, by reason of illness or mental or physical disability, unable to give prompt and intelligent consideration to financial matters. The determination as to inability may be made by a physician, and the trustee may rely upon written notice of that determination. The parent, spouse, adult child, attorney in fact, guardian or conservator of a beneficiary under disability shall receive notice and have authority to act for the beneficiary under this agreement.

**PERSON UNDER
DISABILITY**

SECTION 11: In disposing of any trust property subject to a power to appoint by will, the trustee may rely upon an instrument admitted to probate in any jurisdiction as the will of the donee or may assume that the power was not exercised if, within 3 months after the death of the donee, the trustee has no actual notice of a will which exercises the power. The trustee may rely on any document or other evidence in making payment under this agreement and shall not be liable for any payment made in good faith before it receives actual notice of a changed situation. The trustee may consult with legal counsel and other agents at trust expense and shall not be liable for any action taken or omitted in good faith reliance upon the advice or recommendation of the legal counsel or other agent. The trustee shall not be personally liable for acts or omissions done in good faith.

**RELIANCE BY
TRUSTEE**

SECTION 12: The trustee may acquire, maintain and terminate policies of insurance on our joint lives and may invest the trust solely in such policies. With respect to any policy of life insurance owned by or under which the death benefits are made payable to the trustee:

**LIFE
INSURANCE**

(a) The trustee or any other person, as owner of the policy, shall have all available benefits, privileges, payments, dividends, surrender values, options and elections, including the right at any time or times to change the beneficiary and to pledge or assign the policy or its proceeds as collateral security for any loan which the owner may obtain from any lender, including a trustee hereunder individually or a parent or affiliate company, except that the trustee's right to change the beneficiary shall be limited to naming the trustee or a successor trustee as beneficiary. We, as insureds or otherwise, shall not have any incident of ownership in the policy if owned by the trustee and issued on our lives.

(b) The trustee shall pay or see to the payment of premiums and assessments on the policy if owned by the trustee, except that if a person has advised the trustee that he or she will make a payment, the trustee may rely on that statement. If the trustee does not have sufficient assets to make a payment and the premium or assessment is not paid when due, the trustee in his discretion may solicit contributions to the trust, borrow money to make the payment, exercise any conversion privileges or terminate the policy. The trustee need not pay or see to the payment of premiums or assessments on the policy if not owned by the trustee.

(c) Upon the death of the insured thereunder the trustee shall take such action as the trustee deems best to collect the policy proceeds, paying the expense thereof from the trust estate, but the trustee need not enter into or maintain any litigation to enforce payment on the policy until indemnified to the trustee's satisfaction against all expenses and liabilities to which the trustee might thereby be subjected. The trustee may release the insurance company from its liability under the policy and make any compromise which the trustee deems proper.

(d) The insurance company shall not take notice of the provisions of this agreement or see to the application of the policy proceeds, and the trustee's receipt to the insurance company shall be a complete release for any payment made and shall bind every beneficiary under this agreement.

(e) The trust shall be operative with respect to the proceeds of the policy at the death of the insured thereunder, after deducting all charges by way of advances, loans or otherwise in favor of the owner or owners or any other person, for which the trustee shall not seek reimbursement.

SECTION 13: To enable trusts to be either completely exempt or nonexempt from generation-skipping tax, or for any other reason, the trustee may divide a trust into two or more separate trusts and may hold an addition to a trust as a separate trust. A division shall be done on a fractional basis and may be defined by means of a formula. The rights of beneficiaries shall be determined as if the trusts were aggregated, but the trustee may pay principal to beneficiaries and taxing authorities disproportionately from the trusts. The trustee shall not be liable for deciding in his discretion to exercise or not exercise these powers.

**GENERATION-
SKIPPING TAX**

Upon division or distribution of an exempt trust and a nonexempt trust held hereunder, the trustee in his discretion may allocate property from the exempt trust first to a share from which a generation-skipping transfer is more likely to occur.

If the trustee considers that any distribution from a trust hereunder other than pursuant to a power to withdraw or appoint is a taxable distribution subject to a generation-skipping tax payable by the distributee, the trustee shall augment the distribution by an amount which the trustee estimates to be sufficient to pay the tax and shall charge the same against the trust to which the tax relates.

If the trustee considers that any termination of an interest in trust property hereunder is a taxable termination subject to a generation-skipping tax, the trustee shall pay the tax from the portion of the trust property to which the tax relates, without adjustment of the relative interests of the beneficiaries.

If a trust hereunder would incur generation-skipping tax by reason of the death of a beneficiary (assuming the non-exercise of all testamentary powers of appointment granted to the beneficiary hereunder), then the beneficiary shall have the power to appoint the trust property otherwise constituting a generation-skipping transfer to the creditors of his or her estate. This general testamentary power of appointment is granted to avoid generation-skipping tax. This power of appointment may be exercised only by a will making specific reference to this power, and it shall be in addition to any other testamentary power of appointment granted to the beneficiary under this agreement. Any such trust property not effectively appointed by the beneficiary shall be held and disposed of as provided in this agreement, except that unless the beneficiary directs otherwise by his or her will or revocable trust, the trustee shall first pay from the principal of such property, directly or to

If a no contest provision is desired and is permitted in your state, the following may be inserted in FOURTH:

8 SECTION ____: If any person shall seek to set aside this agreement or to contest the validity of any part of it, then we disinherit that person and his or her spouse and descendants, and all of them shall be deemed to be deceased for all purposes of this agreement.

the personal representative of the beneficiary's estate as the trustee deems advisable, the amount by which the estate and inheritance taxes assessed by reason of the death of the beneficiary shall be increased as a result of the inclusion of such property in the beneficiary's estate for such tax purposes. The trustee's selection of assets to be sold to pay that amount, and the tax effects thereof, shall not be subject to question by any beneficiary.

SECTION 14: In determining whether any person is a child or descendant for purposes of this agreement, children and descendants by both birth and adoption shall be included, except that

**CHILDREN AND
DESCENDANTS**

(a) a person adopted when over the age of 18 years shall be excluded,

(b) a person born out of wedlock shall be treated as the child of the mother, unless her parental rights are terminated by placement for adoption or otherwise, and

(c) a person born out of wedlock shall not be treated as a child of the father unless the father marries the mother, acknowledges paternity of the child by a writing delivered to the trustee during the father's lifetime, or paternity is established by adjudication before or after the death of the father.

SECTION 15: Whenever trust property is to be distributed or allocated *per stirpes* to the then living descendants of a person, the trust property shall be first divided at the generational level of the person's children, whether or not any child of the person is then living.

PER STIRPES

SECTION 16: In making discretionary distributions of trust property to beneficiaries, the trustee shall consider the following:

**DISCRETIONARY
DISTRIBUTIONS**

(a) Among current beneficiaries of the trust, the interests of an older-generation beneficiary shall have priority over younger-generation beneficiaries, if the younger-generation beneficiaries are descendants of the older-generation beneficiary.

(b) The interests of a current beneficiary shall have priority over the remaindermen of the trust, if the remaindermen are descendants of the current beneficiary.

The trustee may also consider tax effects in making discretionary distributions of trust property to beneficiaries.

SECTION 17: A trustee may not use trust property to discharge the trustee's legal obligations, including any obligation to support a beneficiary.

**LEGAL
OBLIGATIONS**

If non-marketable assets (e.g., partnership interests, closely held stock, real estate, loans) or investment concentrations of marketable securities may be included in a trust after the death of the insureds, this should be discussed in advance with the corporate trustee. If these assets are to be retained, clients usually want to relieve the corporate trustee of investment responsibility for them. If this is desired, add to the end of FOURTH:

9 SECTION ____: After the death of the survivor of us a trust under this agreement may hold some or all of the following assets, which shall be known as "special assets:"

Notwithstanding the general investment powers of the trustee, the following provisions shall apply to the special assets in the trust:

(a) We appoint the following individuals who are willing and able to act (singly, and in the order listed) to act as manager for the special assets in the trust:

- (i) The remaining individual cotrustees or cotrustee of the trust (if any)
- (ii) _____
- (iii) _____

(b) While a manager is acting, the manager shall have sole investment, voting and management responsibility (and the trustee shall have no such responsibility) for the special assets in the trust. The trustee shall purchase and sell the special assets, and deal with them, only upon the written direction of the manager. The trustee shall be under no obligation to review the special assets, make any investment recommendation with respect to them, solicit any direction from the manager, or value special assets which are non-marketable. The trustee need not review whether the manager is satisfying his or her responsibilities hereunder, and the trustee shall not be liable for any action or inaction of the manager.

(c) The powers of the manager shall be deemed to be and exercised as fiduciary powers. Special assets may include stock or other interests in a corporation, partnership, limited liability company or other entity (herein called a "company"). The manager's fiduciary powers shall not preclude the manager from holding office in a company, accepting remuneration from it, voting any interest in favor of himself or herself as director, manager or officer, or purchasing or selling interests in the company. The trustee shall make tax elections with respect to a company only as the manager directs. If a firm succeeds to part or all of the business or assets of a company by merger, consolidation, reorganization or otherwise, the trust's interest in that firm (whether or not publicly traded) shall continue to be a special asset of the trust.

(d) Special assets may include interests in real estate. The trustee shall have no responsibility, other than title-holding, for those interests and the tangible personal property associated with them. The manager shall have sole responsibility for managing, insuring, leasing and repairing the properties, collecting rents, and paying all taxes and expenses on the properties. The trustee shall deal with the properties only as and when directed to do so by the manager. If the manager asks the trustee to provide additional money for the expenses or improvement of a special asset, however, the trustee shall have responsibility for determining whether or not to provide funds. The manager may employ property managers at the expense of the trust or may manage the properties personally. The trustee need not review or inspect the properties, except that the trustee shall have the right (but not the duty) to exercise the trustee's environmental powers under this agreement.

(e) A manager shall be entitled to reasonable compensation, unless waived, and to reimbursement for reasonable expenses, including travel costs.

(f) The statement of the trustee that it is acting according to this section shall fully protect all persons dealing with the trustee. The trustee shall have no responsibility for any loss that may result from acting in accordance with this section.

FIFTH: The trustee of each trust under this agreement shall hold, manage, care for and protect the trust property and shall have the following powers and, except to the extent inconsistent herewith, those now or hereafter conferred by law: **TRUSTEE POWERS**

(a) To retain any property (including stock of any corporate trustee hereunder or a parent or affiliate company) originally constituting the trust or subsequently added thereto, and to invest and reinvest the trust property in bonds, stocks, mortgages, notes, bank deposits, options, futures, partnership and limited liability company interests, shares of investment companies, real estate investment trusts and other investment funds (including ones that receive services from, and pay compensation to, a corporate trustee hereunder or a parent or affiliate company), or other property of any kind, real or personal, domestic or foreign; the trustee may retain or make any investment without liability, even though it is not of a type, quality, marketability or diversification considered proper for trust investments; we understand that investments are subject to risk, including possible loss of principal, and that the trustee is not liable for losses which do not result from a violation of the trustee's duties;

(b) To cause any property, real or personal, belonging to the trust to be held or registered in the trustee's name or in the name of a nominee or in such other form as the trustee deems best without disclosing the trust relationship;

(c) To vote in person or by general or limited proxy, or refrain from voting, any corporate securities for any purpose, except that any security as to which the trustee's possession of voting discretion would subject the issuing company or the trustee to any law, rule or regulation adversely affecting either the company or the trustee's ability to retain or vote company securities, shall be voted as directed by the beneficiaries then entitled to receive or eligible to have the benefit of the income from the trust; to exercise or sell any subscription or conversion rights; to consent to and join in or oppose any voting trusts, reorganizations, consolidations, mergers, foreclosures and liquidations and in connection therewith to deposit securities and accept and hold other property received therefor;

(d) To lease trust property for any period of time though commencing in the future or extending beyond the term of the trust;

(e) To borrow money from any lender, extend or renew any existing indebtedness and mortgage or pledge any property in the trust;

(f) To sell at public or private sale, contract to sell, convey, exchange, transfer and otherwise deal with the trust property and any reinvestments thereof, and to sell options, from time to time for such price and upon such terms as the trustee sees fit;

(g) To employ agents, attorneys and proxies, to delegate to them such duties and powers as the trustee considers desirable, and to pay them reasonable compensation from the trust estate; a corporate trustee hereunder may delegate to an affiliate company any of the corporate trustee's duties and powers, discretionary or otherwise, and the delegating corporate trustee need not review the actions of the affiliate;

(h) To compromise, contest, prosecute or abandon claims in favor of or against the trust;

(i) To distribute income and principal in cash or in kind, or partly in each, and to allocate or distribute undivided interests or different assets or disproportionate interests in assets, and no adjustment shall be made to compensate for a disproportionate allocation of unrealized gain for federal income tax purposes; to value the trust property and to sell any part or all thereof in order to make allocation or distribution; no action taken by the trustee pursuant to this paragraph shall be subject to question by any beneficiary;

(j) To deal with, purchase assets from, or make loans to, the fiduciary of our respective estates, or a trust established by either of us, or any other trust or estate in which any beneficiary under this agreement has an interest, though a trustee hereunder is the fiduciary, and to retain any assets or loans so acquired, although they constitute a large part or all of the trust estate or are not of a type, quality or marketability considered proper for trust investments, and to delay distributions of trust principal to make such purchases or loans; to deal with a corporate trustee hereunder individually or a parent or affiliate company;

(k) To maintain or terminate any life insurance policy included in the trust property, to pay premiums thereon (but only from principal after the death of the survivor of us), and to exercise all incidents of ownership in connection therewith;

(l) To elect, pursuant to the terms of any employee benefit plan, individual retirement plan or insurance contract, the mode of distribution of the proceeds thereof, and no adjustment shall be made in the interests of the beneficiaries to compensate for the effect of the election;

(m) To retain or acquire any interests in oil, gas or other mineral resources received from any source without liability for any loss occasioned thereby; to execute any agreements, assignments, contracts, deeds, grants, leases for any term, and any other instruments or documents (even though their term may extend beyond the administration of any trust); to manage, control, operate, explore, mine, develop, or take any other action for the production, recovery, sale, treatment, storage, or transportation of any interest in oil, gas, or other mineral resources; to drill wells of any type; to conduct or participate in secondary recovery operations; to enter into agreements for pooling or unitization; to install, operate, or participate in the operation of any plant, mine, or other facility; and

If it is desired to give a nonadverse party the powers to amend and terminate the trust agreement, substitute for SEVENTH:

10 SEVENTH: Neither of us may amend or revoke this agreement in any respect.

Husband's brother, RICHARD DOE, if he is living and able to act and has not relinquished the powers granted to him hereunder, otherwise _____ **[person other than a settlor, a descendant of a settlor, or spouse of a descendant]**, at any time or times while both of us are living, by instrument in writing delivered to the trustee, may amend this agreement or terminate it and direct distribution of the trust estate in such manner as he [or she] deems advisable, except that no distributee, or beneficiary of the agreement as amended, shall be a person other than a beneficiary under the agreement as originally executed or a descendant or a spouse of a descendant of ours, and except further that he [or she] shall not exercise the powers to amend and terminate to benefit himself [or herself] or his [or her] spouse or descendants.

generally, with reference to oil, gas, and other mineral interests and operations, to enter into any other agreements and to take any other actions (whether or not presently recognized as common or proper practice by those engaged in the business of prospecting for, developing, producing, processing, transporting, or marketing oil, gas, or other minerals) as the trustee deems to be advisable;

(n) To inspect and monitor businesses and real property (whether held directly or through a partnership, corporation, trust or other entity) for environmental conditions or possible violations of environmental laws; to remediate environmentally-damaged property or to take steps to prevent environmental damage in the future, even if no action by public or private parties is currently pending or threatened; to abandon or refuse to accept property which may have environmental damage; the trustee may expend trust property to do the foregoing, and no action or failure to act by the trustee pursuant to this paragraph shall be subject to question by any beneficiary; and

(o) To perform other acts necessary or appropriate for the proper administration of the trust, execute and deliver necessary instruments and give full receipts and discharges.

SIXTH: Either of us or any other person may transfer or devise property acceptable to the trustee, or make the proceeds under policies of life insurance payable, to the trustee to be held under this agreement and may designate the trust to which the property or proceeds shall be added. If the addition is made by will, the trustee shall accept the statement of the personal representative that the assets delivered to the trustee constitute all of the property to which the trustee is entitled, without inquiring into the representative's administration or accounting.

ADDITIONS

SEVENTH: This agreement shall not be subject to amendment or revocation.

**AGREEMENT
IRREVOCABLE**

EIGHTH: The law of the State of _____ shall govern the validity of each trust created under this agreement and the interpretation of its dispositive provisions. In all other respects (including investments, accountings and principal/income matters), the trust shall be governed by the law of the state in which the trust has its principal place of administration from time to time. The headings in this agreement are for convenience of reference only and shall not be considered in the interpretation of this agreement.

**GOVERNING
LAW**

IN WITNESS WHEREOF WE, JOHN DOE and MARY DOE, and JOHN DOE, JR. have signed this agreement the day and year first above written.

TESTIMONIUM

JOHN DOE

MARY DOE

JOHN DOE, JR.

*[Note to drafting attorney:
As needed, modify or omit the following
Attestation and Acknowledgment
to satisfy the legal requirements and customary practice
of the state in which the settlors reside.]*

We certify that the above instrument was on the date thereof signed and declared by JOHN DOE and MARY DOE as their trust agreement in our presence and that we, at their

ATTESTATION

request and in their presence and in the presence of each other, have signed our names as witnesses thereto, believing JOHN DOE and MARY DOE to be of sound mind and memory at the time of signing.

_____ Residing at _____

_____ Residing at _____

_____ Residing at _____

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this _____ day of _____, 20____, by JOHN DOE and MARY DOE, as settlors.

ACKNOWLEDGEMENT

NOTARY PUBLIC

My commission expires _____