

Setting a Minimum for Funding the Marital Trusts

Because of the increase in the exemption amount to \$5 million, some individuals may wish to require a minimum funding of the Marital Trust, ensuring that some assets are set aside for the exclusive benefit of the surviving spouse, even if the result is an underfunding of the Bypass Trust. Northern Trust has included such language in our Will and Trust forms for many years (see language in bold):

Language from Form 201-5:

FIFTH: If my wife survives me, the trustee as of my death shall set aside out of the trust estate as a separate trust for her benefit (undiminished to the extent possible by any estate or inheritance taxes or other charges) a fraction of the trust property of which

(a) the numerator is the smallest amount which, if allowed as a federal estate tax marital deduction, would result in the least possible aggregate of (i) federal estate tax and (ii) state death taxes which are based upon the state death tax credit, that would be payable by reason of my death, **but in all events the numerator shall be at least** \$_____, and

(b) the denominator is the federal estate tax value of the assets included in my gross estate which became (or the proceeds, investments or reinvestments of which became) trust property.

In determining the amount of the numerator the trustee shall assume that none of the Bypass Trust qualifies for a federal estate tax deduction.

For purposes of the preceding paragraph, the trust property is all property in the trust estate, including any property added thereto by my will, which was not paid pursuant to the preceding articles of this agreement and which would qualify for the federal estate tax marital deduction if it were distributed outright to my wife. For purposes of this agreement, my wife shall be deemed to have survived me if the order of our deaths cannot be proved.

Any part of the trust disclaimed by my wife shall be added to or used to fund the Bypass Trust. The disclaimer shall not preclude my wife from receiving benefits from the disclaimed property in the Bypass Trust, but my wife shall not have any power to appoint the portion of the Bypass Trust attributable to the disclaimed property.

My wife shall have the right by written notice to require the trustee to convert unproductive property in the trust to productive property within a reasonable time.

Each form is only a starting point for the preparation of a particular legal document. In each case, the attorney must adapt the form to meet the special circumstances and tax situation of the client. In addition, the drafting attorney must check (and if necessary, modify) each form to ensure that it satisfies the legal requirements and customary practice of the particular state.

Notice and Disclaimer

Although our Will and Trust forms are the product of much thought and effort, no form is a substitute for informed legal judgment. The attorney must make an independent determination as to whether a particular form is generally appropriate for a client and, further, how it must be modified for state law and to meet any special circumstances and objectives of the client.

Northern Trust does not guarantee that the forms effectively accomplish their purpose, and it assumes no responsibility for the forms or their use. By using a form, the attorney acknowledges that the attorney (and not Northern Trust) is responsible for any document which the attorney prepares based on the form. **The attorney must customize the generic form for the law of the particular state.**

Northern Trust will not necessarily update these forms.

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