

Article Two Distributions After Death of Each Trustor

The Taxpayer's Relief Act of 1997 increased the estate tax free Unified Credit amount to \$625,000 in 1998, \$650,000/1999, \$675,000/ 2001-2, \$700,000/ 2002-3, \$850,000/ 2004, \$950,000/ 2005 and \$1,000,000 per spouse in 2006. This tax free portion is referred to as the "applicable credit amount."

Advisory Regarding Use of A Simple Disclaimer Trust.

Should we direct the trustee to fund only a Simple Disclaimer Trust, upon the death of the first of us to die, the entire estate is left to the survivor of us in a Survivor's "A" trust, referred to as a "marital deduction trust". At the death of the survivor of us the assets held in trust shall pass to the heirs named by the last spouse to die. If at the death of the first of us, the total estate of both spouses is over the estate tax free value or would ultimately be too large to pass death-tax-free to our heirs, the surviving spouse may set over (referred to as disclaiming) any portion of the estate, not to exceed one-half of our community property, and all of the separate property of the deceased spouse, to a second trust called the Disclaimer Trust. The disclaimer trust is administrated for the benefit of the surviving spouse.

A disclaimer trust will keep the assets which would cause a death tax out of the survivor's estate for inheritance tax purposes. The surviving spouse continues to enjoy the right to receive from the Disclaimer trust all the net income of the trust, and principal to maintain his or her accustomed standard of living. *(For informational purposes, at the death of the survivor, the inheritance tax on the first dollar of the survivor's estate over \$625,000.00 in 1998 bears a tax of 37% and the tax brackets gradually increase to 55% of each dollar. To have an effective disclaimer of assets, the asset must be disclaimed within nine months after the death of the first spouse and before accepting any benefit from that asset (interest, income, etc.). The surviving spouse should contact an attorney for advice as soon as possible after the death of the first spouse).* It is also possible to disclaim in order to make room for future growth in the estate.

Advisory Regarding Use of "A-B" And "A-B-C" Trusts.

Where we select an "A-B" or an "A-B-C" trust, upon the death of the first of us to die, the entire trust shall be divided up into three shares. All of the assets of the survivor of us shall be allocated to a trust called the SURVIVOR'S "A" TRUST *(this first share consists of the survivor's separate property, if any, and the survivor's one half of any community property)*. The assets which were owned by the deceased spouse shall be divided into two shares. The estate-tax-free share containing up to \$625,000 in 1998 or the applicable credit amount in subsequent years *(constituting the second share)* will be allocated to a trust called the CREDIT SHELTER "B" TRUST. If the deceased spouse then owns more assets than would be estate tax free, those assets *(constituting the third share)* shall be added to the SURVIVOR'S "A" TRUST, if we have directed that the trustee fund an "A-B" Trust only. If we have directed that the trustee fund an "A-B-C" trust, instead of adding those assets to the Survivor's "A" trust, the third share will be allocated to a trust called the QTIP "C" TRUST. The QTIP "C" trust enjoys deferment of death taxes until the death of the surviving spouse. Any assets held in a "C" trust will be taxed as though they are a part of the surviving spouse's estate. Upon the death of the surviving spouse, the "B" and "C" trust assets shall be distributed to the heirs named by the first spouse (continued next page)

to die. The "A" trust shall be distributed to the heirs named by the last spouse to die. For purposes of document drafting, the distribution clauses for distributing all of the remaining trust assets after the death of the surviving trustor are found in the provisions set forth in paragraph 2.5. and following.

Below we have set out our rights to income and principal, and the terms of the final distribution of our trust property. In order to properly make our after death tax elections, and properly allocate our assets to the "A", "B" and/or "C" trusts, the technical paragraphs are set forth at the end of this article, and they are written for the benefit of our successor trustees, attorneys and accountants, and other professionals in technical language which they will understand, and as this language may be required by the Internal Revenue Service, banks and other institutions.

TRUSTORS' CHOICE OF TRUST FUNDING

We direct that the trustee fund the following trust type after the death of the first spouse to die:

[] **Simple Disclaimer** [] **A-B Credit Shelter** [] **A-B-C QTIP**

The trustee shall after the death of the first spouse to die fund the above trust type, and shall allocate all trust assets pursuant to the technical provisions set forth in Article Two pertaining to the above selected trust type.

Dated: _____

Trustor/Trustee

Trustor/Trustee

INTRODUCTORY CLAUSES OF ARTICLE TWO

2.1. **Definitions.** In this article, the first of us to die is referred to as "the deceased spouse" and the survivor of us, "the surviving spouse."

2.2. **Gifts To Be Made Immediately at Death of Each Spouse.** All gifts stated on the following pages shall be made only from the assets of each spouse. No gifts, other than a gift to the surviving spouse, shall be made from any of the assets which comprise a Qtip "C" Trust.

(a) **Gifts at the death of the Husband with Wife Surviving.** Upon the death of the husband, the husband being the first spouse to die, and the wife the surviving spouse, the trustee shall distribute any gifts specified on Attachment(s) 2.5(d) which will be appended to Page 5 of Article Two of this trust.

(b) **Gifts at the death of the Wife with Husband Surviving.** Upon the death of the wife, the wife being the first spouse to die, and the husband the surviving spouse, the trustee shall distribute any gifts specified on Attachment(s) 2.5(e) which will be appended to Page 6 of Article Two of this trust.

Governing Provisions of the Survivor's "A" Trust

2.3. **Governing Provisions of Survivor's "A" Trust.** The trustee shall hold, deal with, and dispose of the trust property set apart for the surviving spouse in a survivor's trust, subject to the terms and conditions set forth below.

(a) **Payment of Net Income.** Upon the death of the deceased spouse, the surviving spouse shall receive the entire net income of the trust so long as he or she lives, in monthly or other convenient installments as the surviving spouse acting as trustee, or as the surviving spouse and the successor trustee may agree upon, should the surviving spouse be unable to serve as the trustee for any reason.

(b) **Discretionary Payment of Principal by Trustee.** In addition to net income, the surviving spouse or the successor trustee, if the surviving spouse is unable to serve as the trustee for any reason, may pay to or apply for the benefit of the surviving spouse so much of principal as the trustee deems necessary or proper from time to time to pay for the surviving spouse's medical care, support, or maintenance, taking into consideration to the extent the trustee deems advisable, other income or resources of the surviving spouse known to the trustee.

(c) **Right of Withdrawal of Principal.** The trustee shall pay to the surviving spouse those amounts of the principal of the trust, up to the whole thereof, as the surviving spouse may from time to time desire.

(d) **Power To Direct Further Gifts by Will.** The surviving spouse may write a handwritten will or formal will or directive to the successor trustee of this trust directing the trustee to make further or different gifts of his or her assets which are held in trust. This power shall be called a "power of appointment." Any exercise of this power shall be in writing and shall be both signed and dated. The handwritten will or directive need not be witnessed or notarized. *The will or directive should contain words to this effect: "I hereby exercise my power of appointment and direct the trustee of my living trust dated _____ to make the following gifts to the following persons".* If the successor trustee receives no notice of the existence of a will of the surviving spouse within forty-five (45) days after the death of the surviving spouse, the trustee may distribute the trust assets and income as though this power of appointment had not been exercised and shall in that event be conclusively presumed to have acted in good faith, even if a valid will is thereafter discovered.

(e) **Distribution of Trust.** If there is no direction to make a different distribution of the survivor's trust, or to the extent that an attempt to exercise the power was ineffectual, the entire remaining principal, all net income then held by the trustee, and all income then accrued but not collected by the trustee, after any payment of taxes, debts, and expenses as set forth in paragraph 2.36 shall be held and administered or distributed in whole or in part, as directed by the last spouse to die pursuant to paragraph 2.5. (b) below.

Governing Provisions of Credit Shelter "B" Trust

2.4. **Governing Provisions of Credit Shelter "B" Trust Until the Death of Surviving Spouse.** The trustee shall, until the death of the surviving spouse, hold, deal with, and dispose of the trust property hereinabove directed to be set apart in the credit shelter trust, subject to the following terms and conditions.

RIGHTS OF SURVIVING SPOUSE TO NET INCOME OF THE CREDIT SHELTER "B" TRUST:

[] YES [] NO (*Wife initials this line*) Husband shall have the right to receive all of the net income from the Credit Shelter "B" Trust.

[] YES [] NO (*Husband initials this line*) Wife shall have the right to receive all of the net income from the Credit Shelter "B" Trust.

(a) **Payment of Net Income.** If so indicated by the trustors above, upon the death of the deceased spouse, the surviving spouse shall receive the entire net income of the trust so long as he or she lives, in monthly or other convenient installments as the surviving spouse acting as trustee, or if the surviving spouse is not acting as the trustee for any reason, then as the surviving spouse and the successor trustee may agree upon.

RIGHTS OF SURVIVING SPOUSE TO PRINCIPAL OF THE CREDIT SHELTER "B" TRUST:

(*Wife initials below*)

Right of Husband if surviving to receive Principal for maintenance and support:
[] YES [] NO (*If "NO" is marked, the surviving husband shall have no right to invade the principal of the Credit Shelter "B" Trust, and shall receive net income only.*)

[] YES [] NO Husband must exhaust all of his own assets before having the right to draw principal from the Credit Shelter "B" Trust.

[] YES [] NO Husband must expend his own assets for his support and maintenance, until his estate is reduced in value to the sum of \$ _____ before having the right to draw principal from the Credit Shelter "B" Trust for his maintenance and support.

(*Husband initials below*)

Right of Wife if surviving to receive Principal for maintenance and support:
[] YES [] NO (*If "NO" is marked, the surviving wife shall have no right to invade the principal of the Credit Shelter "B" Trust, and shall receive net income only.*)

[] YES [] NO Wife must exhaust all of her own assets before having the right to draw principal from the Credit Shelter "B" Trust.

[] YES [] NO Wife must expend her own assets for her support and maintenance, until her estate is reduced in value to the sum of \$ _____ before having the right to draw principal from the Credit Shelter "B" Trust for her maintenance and support.

Date _____

Signature of Husband _____

Signature of Wife _____

Article Two, Paragraph 2.4. (b)

(b) **Payment of Principal from Credit Shelter "B" Trust.** If so indicated by the trustors above, at any time after the death of the deceased spouse, should the trustee (either the surviving spouse who may be serving as the trustee, or if the surviving spouse is not acting as the trustee for any reason, the successor trustee) determine, in the discretion of the trustee, that the surviving spouse is in need of funds for his or her support in accordance with the surviving spouse's accustomed manner of living, maintenance, or medical, dental, hospital, and nursing services, and other costs relating to the health care of the surviving spouse, the trustee may pay to or apply for the benefit of the surviving spouse, in addition to any payments of the net income from the credit shelter trust, those amounts from the principal of the credit shelter trust, up to the whole thereof, as the trustee, in the discretion of the trustee may from time to time deem necessary or advisable for those purposes, giving the consideration that the trustee deems proper to all other income and resources then readily available to the surviving spouse for use for those purposes and that are then known to the trustee, and no amount or amounts so paid or applied need thereafter be repaid to the trustee or restored to the trust.

**RIGHT TO ADDITIONAL PRINCIPAL FROM
CREDIT SHELTER "B" TRUST
(5 and 5 power)**

[] YES [] NO (*Wife initials this line*) Husband shall have limited power to withdraw additional principal from the Credit Shelter "B" Trust.

[] YES [] NO (*Husband initials this line*) Wife shall have limited power to withdraw additional principal from the Credit Shelter "B" Trust.

(c) **Power to Withdraw Additional Principal.** If specified by the trustors above, at any time after the death of the deceased spouse, the surviving spouse shall have the power to withdraw from the trust principal during the month of January each calendar year those amounts as shall not exceed the greater of five thousand dollars (\$5,000) or five percent (5%) of the assets, at the time of the exercise of the power. This power shall be noncumulative and shall lapse as to any amount not so withdrawn in any calendar year at the end of January that calendar year. This power shall exist each year until the death of the surviving spouse.

(d) **Distribution of Trust.** The entire remaining principal of the Credit Shelter trust, including all net income then held by the trustee, and all income then accrued but not collected by the trustee shall be held and administered or distributed in whole or in part, as directed by the first spouse to die pursuant to paragraph 2.5. (b) below.

(End of Governing Provisions of Credit Shelter Trust)

Date _____

Wife
and

Signature of Husband

Governing Provisions of QTIP "C" Trust

2.4.1. **Governing Provisions of QTIP "C" (Qualified Terminable Interest Property) Trust.** The trustee shall hold, deal with, and dispose of the trust property directed to be set apart in the qualified terminable interest property trust for the surviving spouse, subject to the following terms and conditions:

(a) **Payment of Net Income.** Upon the death of the deceased spouse, the trustee (who could be either the surviving spouse acting as the trustee, or the successor trustee if the surviving spouse is unable to serve as the trustee for any reason) shall pay the entire net income of the trust to the surviving spouse so long as he or she lives, in monthly or other convenient installments (but not less often than annually) as the surviving spouse and the trustee may agree upon from time to time. In determining the net income of the trust distributable to the surviving spouse the trustee shall include all income that must be considered as income in order for the trust to qualify for the marital deduction under the federal estate tax law applicable to the deceased spouse's estate, and shall make no deductions from gross income that would prevent the trust from qualifying for the marital deduction, notwithstanding any contrary provisions of this instrument or any applicable provisions of state law. Assuming the trust has qualified under section 2056(b)(7), then any grant of rights, powers, discretion, and authority to the trustee in any provision of this instrument or any statute relating thereto shall not be effective if and to the extent the grant, if effective, would disqualify for federal estate tax purposes the marital deduction trust held under this article, it being the trustors' intention that the surviving spouse, as the beneficiary of a marital deduction trust, shall have substantially that degree of beneficial enjoyment of the trust during his or her lifetime that the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust, and the trustee shall not exercise the trustee's discretion in a manner that is not in accord with this expressed intention.

Wife

and

RIGHTS OF SURVIVING SPOUSE TO PRINCIPAL OF THE QTIP "C" TRUST:

Right of Husband if surviving to receive Principal for maintenance and support: *(This section to be initialed by Wife)*

[] YES [] NO *(If "NO" is initialed, the surviving husband shall have no right to invade the principal of the QTIP "C" Trust, and shall receive net income only.)*

[] YES [] NO Husband must exhaust all of his own assets before having the right to draw principal from the QTIP "C" Trust.

[] YES [] NO Husband must expend his own assets for his support and maintenance, until his estate is reduced in value to the sum of \$ _____ before having the right to draw principal from the QTIP "C" Trust for his maintenance and support.

Signature of Husband

Date

Paragraph 2.4.1. (b) (Continued)

RIGHTS OF SURVIVING SPOUSE TO PRINCIPAL OF THE QTIP "C" TRUST:
(This section to be initialed by Husband)

Right of Wife if surviving to receive Principal for maintenance and support:

YES NO *(If "NO" is initialed, the surviving wife shall have no right to invade the principal of the QTIP "C" Trust, and shall receive net income only.)*

YES NO Wife must exhaust all of her own assets before having the right to draw principal from the QTIP "C" Trust.

YES NO Wife must expend her own assets for her support and maintenance, until her estate is reduced in value to the sum of \$_____ before having the right to draw principal from the QTIP "C" Trust for her maintenance and support.

(b) **Payment of Principal.** Unless otherwise limited by the trustors as indicated above, at any time after the death of the deceased spouse, should the trustee (either the surviving spouse who may be serving as the trustee, or the successor trustee if the surviving spouse is unable to serve as trustee for any reason) determine, in the discretion of the trustee, that the surviving spouse is in need of funds for his or her support in accordance with the surviving spouse's accustomed manner of living, maintenance, or medical, dental, hospital, and nursing services, and other costs relating to the health care of the surviving spouse, the trustee may pay to or apply for the benefit of the surviving spouse, in addition to any payments of the net income from the QTIP trust, those amounts from the principal of the QTIP trust, up to the whole thereof, as the trustee, in the discretion of the trustee may from time to time deem necessary or advisable for those purposes, giving the consideration that the trustee deems proper to all other income and resources then readily available to the surviving spouse for use for those purposes and that are then known to the trustee, and no amount or amounts so paid or applied need thereafter be repaid to the trustee or restored to the trust.

RIGHT TO ADDITIONAL PRINCIPAL (5 and 5 power)

YES NO *(Wife's initials here)* Husband shall have limited power to withdraw additional principal from the QTIP "C" Trust.

YES NO *(Husband's initials here)* Wife shall have limited power to withdraw additional principal from the QTIP "C" Trust.

(c) **Power to Withdraw Additional Principal.** If specified by the trustors above, at any time after the death of the deceased spouse, the surviving spouse shall have the power to withdraw from the principal each calendar year those amounts as shall not exceed the greater of five thousand dollars (\$5,000) or five percent (5%) of the assets, at the time of the exercise of the power. This power shall be noncumulative and shall lapse as to any amount not so withdrawn in any calendar year at the end of that calendar year. This power shall exist each year until the death of the surviving spouse.

Date _____

Wife

and

Signature of Husband

Article Two, Paragraph 2.4.1. (d) (continued)

Termination of QTIP Trust Upon Death of Last Spouse To Die

(d) **Termination of Trust.** The qualified terminable interest property trust shall terminate upon the death of the surviving spouse. Upon termination of the trust, any net income of the trust then accrued but uncollected, and all net income remaining in the hands of the trustee shall be added to the survivor's "A" trust. The remaining trust property in the QTIP trust shall be dealt with as set forth below.

(e) **Payment of Taxes.** The trustee shall determine from the personal representative (trustee, administrator or executor) of the surviving spouse's estate the amount of the federal estate tax allocable to the property of the trust by reason of section 2207A of the Internal Revenue Code, and shall set aside a portion of the trust principal for the purpose of paying that tax upon written demand by the personal representative.

(f) **Distribution of Balance of Trust Principal.** The trustee shall dispose of the balance of the trust principal (or the entire trust principal if the personal representative of the surviving spouse's estate does not in due course make the above written demand) as directed by the first spouse to die in paragraph 2.5. (b) below.

(End of Governing provisions of QTIP "C" Trust)

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GOVERNING PROVISIONS UPON DEATH OF SURVIVING SPOUSE

2.5. Governing Provisions of Survivor's "A", Credit Shelter "B" and/or QTIP "C" Trust Upon Death of Surviving Spouse. Upon the death of the surviving trustor, the trustee shall hold, deal with, and dispose of the property subject to the credit shelter trust as provided below.

(a) **Final Distribution of Trust.** The entire remaining principal and all net income then held by the trustee and all income then accrued but not collected by the trustee, after any payment of taxes, debts, and expenses pursuant to paragraphs 2.17, 2.35 and 2.36 shall be distributed as follows:

(b) **Distribution To Beneficiaries of Each Trustor.** The trustee shall distribute all that trust property which had been held in the survivor's "A" trust to the named beneficiaries of the last spouse to die as set forth below. The trust property, if any, originally held in the QTIP "C" trust and the Credit Shelter "B" trust which had been the share of trust property traceable to the separate property, and the one-half of the trustors' community property owned by the first spouse to die, shall be distributed to the named beneficiaries of the first spouse to die, as set forth below and on the following pages.

(c) **Affirmation of Gifts By Trustors.** On the following pages the trustors have set forth the distributions of their trust assets. The various forms and attachments may be modified or amended by the trustors from time to time. The trustors may amend any of the pages setting forth distributions, gifts and administration by using the Notice of Amendment form(s) or by the simple replacement of the desired page. Any page replaced as an amendment by the trustor shall be dated as of the date of the amendment, and the page shall be signed by the trustor or trustors as may be necessary. The revoked page(s) may be destroyed by the trustor to insure that the page does not survive its revocation by being found in the trust instrument. Supplemental and attachment pages should be numbered in the space provided at the bottom of each page to aid the chronological order of the pages, however in the event that a page is not numbered, this shall not affect the validity of that gift or any other gift.

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Article Two, Paragraph 2.5.(d) or (e)

Special Administration of Gifts After Death of Trustor

This supplemental page is attached to Husband's Distribution [] Wife's Distribution []

2.5. (d) or (e) (reference the paragraph as (d) for Husband's distribution or (e) as Wife's distribution)

SPECIAL ADMINISTRATION OF GIFTS. The trustee shall administer the following gift(s) to the person(s) or entities named in Paragraph 2.5.(d) or (e) as indicated above pursuant to the terms and conditions directed for each gift below:

- Gift number 2.5. [] for [] (Enter 1 -10) (Enter name of beneficiary)
Gift number 2.5. [] for [] (Enter 1 -10) (Enter name of beneficiary)
Gift number 2.5. [] for [] (Enter 1 -10) (Enter name of beneficiary)
Gift number 2.5. [] for [] (Enter 1 -10) (Enter name of beneficiary)
Gift number 2.5. [] for [] (Enter 1 -10) (Enter name of beneficiary)
Gift number 2.5. [] for [] (Enter 1 -10) (Enter name of beneficiary)

THE ABOVE GIFT(S) SHALL BE ADMINISTERED AS FOLLOWS:

- [] YES [] NO Distributed outright and free of trust.
[] YES [] NO Administered in trust until age [] (PARA.2.8.)
[] YES [] NO Distributed in "Multiple Distributions" pursuant to Paragraph 2.9. The Shares shall be distributed in the following proportions and at the following ages: Sprinkling Trust [] YES [] NO (PARA. 2.10)
First Share at Age [] Portion []
Second Share at Age [] Portion []
Third Share at Age [] Portion []
Balance at Age []
[] YES [] NO Administered as a "Life Estate" pursuant to Paragraph [] (enter paragraph 2.11-14)
[] YES [] NO Administered in a "Special Needs" trust as set forth in paragraph 2.15.

Enter percentage or fraction. If less than four stages enter "X" in unused boxes.

SHOULD THE BENEFICIARY PREDECEASE THE DISTRIBUTION OF THE TRUST:

- [] YES [] NO The gift shall pass to the issue of the beneficiary by right of representation (per stirpes). If none then-
[] YES [] NO The gift shall pass to the other named beneficiaries [] in equal shares [] proportionately. If none then-
[] YES [] NO The gift shall pass to the following persons in the amounts stated:

[] YES [] NO The gift shall lapse to the residue of the trust.

Date
Signature of Husband
Signature of Wife (both spouses sign if joint distribution)

Initials box

Article Two, Paragraph 2.5.(d) or (e)

Attachment for Husband 2.5(d) Wife 2.5 (e)

Gifts of Real Estate, Personal Property or Other Items

Gifts To Be Distributed After: Death of HUSBAND Pursuant to 2.2. (a)

Check Appropriate Boxes

Death of WIFE Pursuant to 2.2. (b)

Death of BOTH SPOUSES Paragraph 2.5.

DISTRIBUTIONS FROM TRUST. The trustee shall distribute the following gifts to the persons or entities named below pursuant to the terms and conditions directed for each gift:

This is Gift Number [] of a Total of [] Gifts [] Initial []

TO: _____
(Name of Beneficiary(s))
THE FOLLOWING GIFT(S): _____
(Description of gift)

THE ABOVE GIFT SHALL BE ADMINISTERED AS FOLLOWS:

- [] YES [] NO Distributed outright and free of trust.
[] YES [] NO Administered in trust until age [] (PARA.2.8.)
[] YES [] NO Distributed in "Multiple Distributions" pursuant to Paragraph 2.9. The Shares shall be distributed in the following proportions and at the following ages:
Sprinkling Trust [] YES [] NO (PARA. 2.10)
First Share at Age [] Portion []
Second Share at Age [] Portion []
Third Share at Age [] Portion []
Balance at Age []
[] YES [] NO Administered as a "Life Estate" pursuant to Paragraph [] (enter paragraph 2.11-14)
[] YES [] NO Administered in a "Special Needs" trust as set forth in paragraph 2.15.

Enter percentage or fraction. If less than four stages enter "X" in unused boxes.

SHOULD THE BENEFICIARY PREDECEASE THE DISTRIBUTION OF THE TRUST:

- [] YES [] NO The gift shall pass to the issue of the beneficiary by right of representation (per stirpes). If none then-
[] YES [] NO The gift shall pass to the other named beneficiaries [] in equal shares [] proportionately. If none then-
[] YES [] NO The gift shall pass to the following persons in the amounts stated: _____

[] YES [] NO The gift shall lapse to the residue of the trust.

Date _____

Signature of Husband (Both spouses if joint distribution)

Signature of Wife (Both spouses if joint distribution)

