TRUSTS, LIFE INSURANCE AND RETIREMENT BENEFITS

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TRUSTS

A. Overview of Trusts and the Texas Trust Code. The type of trusts covered by this section are express trusts covered by Texas Trust Code §111.003.

1. Creation of a Trust
   What is an “express trust?”
   Section 111.004(3) defines an express trust as “a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property for the benefit of another person.” For purposes of this article, an “express trust” under §111.004(3) will simply be referred to as a “trust.”

   What words are needed to create a trust?
   No specific terms are required. Section 112.001 of the Trust Code lists the following methods by which a trust may be created:
   a) A declaration that the owner holds property as trustee for another person;
   b) A property owner's inter vivos transfer of the property to another person as trustee for the property owner or a third person;
   c) A property owner's testamentary transfer of property to a person as trustee for another person;
   d) An appointment under a power of appointment to another person as trustee for the donee of the power or a third person; or
   e) A promise to another person whose rights under the promise are to be held in trust for a third person.

   Can a trust be created by accidental use of words?
   Under § 112.002 of the Trust Code, the settlor of the trust must manifest an intention to create a trust.

   Can an trust be invalidated for lack of consideration?
   Section 112.003 of the Trust Code provides that consideration is not required to create a trust.

   Must a trust be in writing?
   To be enforceable, a trust for land or personal property must be in writing, signed by the settlor or his agent, and must state the terms of the trust. There are two exceptions:
   a) A trust for personal property is enforceable if created by a transfer of property to a trustee who is neither the settlor nor a beneficiary, if simultaneously with or prior to the transfer, the transferor expresses the intention to create a trust.
   b) A declaration by the owner of property that he holds the property as trustee for another person or for himself and another person.

   Can a person create a trust but not fund it?
   In order to have a valid trust, there must be trust property. However, people sometimes create a standby management trust. This type of trust is not funded unless the settlor becomes incapacitated. At that time, someone holding a power of attorney funds the trust and then that agent, or another third party, serves as trustee to manage the property for the incapacitated settlor.

   Are there any limitations on the purposes for which a trust may be created?
   Section 112.033 of the Trust Code provides that a trust may be created for any purpose that is not illegal. Also, the terms of the trust may not require the trustee to commit a criminal or tortious act or an act contrary to public policy.
Once a trust is created, is it a separate legal entity such as a corporation?

There should be an easy answer to this question, but Texas law is somewhat muddled as of the date this article was written. A long line of cases, some relying upon Texas Property (Trust) Code §111.004, hold that the word “trust” as referred to in the Trust Code means a fiduciary relationship whereby one person holds title for another. *Huie v. DeShazo*, 922 S.W.2d 920 (Tex. 1996). *Thompson v. Vinson & Elkins*, 859 S.W.2d 617 (Tex. App. - Houston [1st] – 1993, no writ). Another line of cases, shorter but more current, claims that a trust is a legal entity. *Ray Malooly Trust v. Juhl*, No. 08-02-512-CV, 2004 Tex.App.LEXIS 5440 (Tex. App. - El Paso, June 17, 2004, pet. filed). In *Malooly*, the El Paso Court of Appeals cites as authority §311.005(2) of the Government Code, §301.003(12) of the Property Code, §481.002(3) of the Health and Safety Code as well as other statutes and many cases. *Malooly* has been appealed to the Supreme Court (04-0685). Though the petition has not yet been granted or denied, full briefing was requested by the Court, and both briefs have been filed. (The Reply Brief was filed 4/26/05).

How should property transferred in trust for another be titled?

Until the current controversy is settled by the Supreme Court, the author recommends including the following when naming a trust: the name of the trust, the date on which it was executed, the name of the trustee and the name of the settlor. For example, “The Fife Family Trust dated October 10, 2004, wherein Andy Taylor is the Trustee and Barney Fife is the Settlor.” The name can be shortened, but including at least the name of the trust and the date of execution is extremely important since the same settlor may have created several trusts with similar names. If it is necessary to file a suit involving a trust, the case can be styled “In re Fife Family Trust” and avoid naming a plaintiff and a defendant. However, if naming a trust as a plaintiff or as a defendant is required, the author recommends dual names to be safe (“The Fife Family Trust dated October 10, 2004” and “Andy Taylor as Trustee of The Fife Family Trust”).

Can a beneficiary disclaim an interest in a trust?

A beneficiary is presumed to accept an interest in a trust. If the trust is created by will, a beneficiary may disclaim in the manner set forth in §37A of the Texas Probate Code. Under §37A, a disclaimer must be in writing, signed and acknowledged by the beneficiary, and filed in the probate court in which the decedent's will has been probated. The disclaimer must be made within nine months after the date of death. A disclaimer of an interest in a trust created other than by will may be made by a beneficiary, the personal representative of an unborn, unascertained or deceased beneficiary or a beneficiary under a legal disability, with court approval, and the independent executor of a deceased beneficiary's estate, without court approval. The disclaimer must be in writing, signed and acknowledged by the person authorized to make the disclaimer, and delivered to the trustee not later than nine months after the later of (1) the day on which the transfer creating the interest is made; (2) the day on which the beneficiary attains age 21; or (3) in the case of a future interest, the date of the event that causes the interest to be finally ascertained and the interest of the beneficiary indefeasibly vested.

What is a spendthrift trust?

A spendthrift trust is one in which the settlor has provided that a beneficiary may not voluntarily or involuntarily alienate his interest before the trustee has delivered it to him. A spendthrift provision generally prevents creditors from reaching a beneficiary's interest in the trust prior to its distribution to the beneficiary.

Can a person protect their own assets by placing them in a trust with a spendthrift clause?

Under §112.035 of the Trust Code, if the settlor is also a beneficiary of the trust, a spendthrift provision does not prevent his creditors from satisfying claims from his interest in the trust estate.

Does the rule against perpetuities apply to trusts?

Yes, an interest must vest, if at all, not later than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation. However, a trust which violates the rule may be reformed and construed as provided by §5.043 of the Texas Property Code.
Who may serve as trustee?

2. Powers of a Trustee.
Any person having legal capacity to take, hold and transfer the trust property may serve as trustee. A corporation may serve as trustee if it is authorized to exercise trust powers in Texas. The settlor of the trust may serve as trustee, although with some trusts, there may be tax reasons why the settlor should not serve as trustee. A beneficiary may serve as trustee. However, a trust terminates if legal title to the trust property and all equitable interests in the trust become united in one person.

When I draft a trust or a will providing for a trust, do I need to list all of the statutory powers of the trustee or can I incorporate them by reference?

All of the powers granted to trustees by the Texas Trust Code can be incorporated in a will or a trust instrument by reference.

What are those powers?

Generally, the Trust Code provides that a trustee has any powers necessary or appropriate to carry out the purposes of the trust. Specifically, the Trust Code authorizes the following powers:

- a) power to retain the initial trust corpus without regard to diversification and without liability for depreciation or loss resulting from retention (§113.003);
- b) power to receive additions to the trust (§113.004);
- c) power to acquire all or a portion of the remaining undivided interests in property in which the trust holds an undivided interest (this does not authorize the trustee to acquire an undivided interest in property in which the trust holds no interest) (§113.005);
- d) power to deposit funds in a bank pending investment, distribution of the funds, or payment of debts (§113.007);
- e) power to invest in, continue, or participate in the operation of any business or investment, and to effect any change in the organization of the business enterprise (§113.008);
- f) power to exercise real property management powers, including exchange, subdivide, improve or partition real property, make repairs, and make extraordinary alterations or additions in structures necessary to make property more productive (§113.009);
- g) power to sell or grant an option to sell real or personal property for cash or for credit, with or without security (§113.010);
- h) power to grant or take a lease of real (surface or subsurface) or personal property, including a lease containing terms and options that extend beyond the duration of the trust (§113.011);
- i) power to enter into mineral transactions (§113.012);
- j) power to insure trust property (§113.013);
- k) power to pay taxes and assessments levied by governmental taxing or assessing authorities (§113.014);
- l) power to borrow money, purchase property on credit or mortgage or pledge trust assets (§113.015);
- m) power to manage securities, including the authority to pay calls and assessments, exercise subscriptions or conversion rights, vote securities, consent to reorganizations, mergers, consolidations and liquidations, participate in voting trusts, and assent to corporate sales, leases, encumbrances and other transactions (§113.016);
- n) power to hold corporate stock under the name of a nominee (§113.017);
- o) power to employ agents, including investment agents, attorneys, accountants and brokers (§113.018);
- p) power to compromise, contest, arbitrate and settle claims (§113.019);
- q) power to abandon burdensome or worthless property (§113.020);
- r) power to distribute property for a minor or incapacitated beneficiary to the beneficiary directly, or to the beneficiary's guardian, to a custodian under a uniform gifts to minors act of this or another state, by utilizing the funds directly for the health, support and maintenance of the beneficiary, or by reimbursing a person who is actually taking care of the beneficiary, though not his legal guardian (§113.021);
- s) power to provide a residence to a current income beneficiary under certain circumstances (§113.022);
- t) power to appoint and remove an ancillary trustee with respect to trust property located in a foreign jurisdiction (§113.023);
u) power to investigate potential environmental liability with respect to property the trustee has been asked to hold, and to take action to remedy any violation of an environmental law affecting property held directly or indirectly by the trustee (§113.025);

v) under appropriate circumstances, the power to appoint a replacement charitable beneficiary in place of a failed charitable beneficiary ((§113.026).

Are there any advantages to listing all of the powers?
The following might be some of the advantages of specifically listing powers:

1) uncertainty of the effect of subsequent Trust Code amendments which add or delete statutory powers;

2) third parties dealing with the trustee may be more easily satisfied as to trustee's specific powers;

3) other states in which the settlor owns properties might require that powers be specifically designated in the trust instrument;

4) the settlor can read exactly which powers he is granting to the trustee; and

5) it may be easier for the trustee to refer to the trust document for guidance rather than trying to locate a copy of the Trust Code.

What if the settlor does not want to grant one or more statutory powers to the trustee, do I need to list all of the powers that are being granted?
No, the settlor can negate certain powers in the trust instrument by providing for the trustee to have all powers allowed to trustees under the Trust Code, except for certain specific powers described in the trust instrument.

Can a settlor grant a trustee powers in addition to the powers set forth in the Trust Code?
A settlor can grant any other specific powers he wants a trustee to have. Additionally, a trustee may exercise any powers in addition to powers authorized by the Trust Code that are appropriate or necessary to carry out the purposes of the trust. The powers listed in the Trust Code do not exclude other implied powers which are not inconsistent with the powers set forth in the code.

Are there any powers which should be specifically set forth in the trust instrument if the settlor wants the trustee to have them?
Yes, a settlor who wants the trustee to have the following powers should specifically provide for them in the trust instrument:

a) Power to provide a residence to a beneficiary. Under § 113.022 of the Trust Code, after considering the probable intention of the settlor, and if the trustee finds that doing so would be consistent with that intention, the trustee may allow a current income beneficiary to occupy real estate owned by the trust, or if reasonably necessary for the maintenance of the beneficiary, may invest trust funds in real property to be used as a home for the beneficiary. Instead of leaving it to the trustee to try to interpret the probable intention of the settlor, it would be more prudent to specifically state in the trust instrument that the trustee has this power.

b) Power to Pay Funeral Expenses. Under §113.022, a trustee may also pay funeral expenses of a current income beneficiary upon a finding that it is consistent with the settlor's probable intention. If the settlor intends for the trustee to have the power to pay a beneficiary's funeral expenses, specifically include the power in the trust instrument.

c) Loan of Trust Funds to a Beneficiary. Under section 113.052 of the Code, a trustee may not loan trust funds to a beneficiary unless expressly authorized and directed by the trust instrument.

d) Power to Terminate a Small Trust. There may come a time when the time and expense of maintaining the trust is burdensome compared with the small size of the remaining trust corpus. The settlor may want to specifically grant the trustee the power, in such a situation, to terminate the trust and distribute the trust property to the current income beneficiaries or other beneficiaries entitled to it. This will avoid the expenses of obtaining a judicial termination.

e) Power to Merge Trusts. There may be a situation where a trustee holds multiple trusts for the same beneficiaries under substantially similar terms. A settlor may wish to include a provision in the trust instrument authorizing the trustee to merge such trusts. This will avoid the expense of multiple tax returns, accountings, and other expenses.
3. **Duties of a Trustee.**
   
   **In General.**
   A trustee has the duty to administer the trust according to its terms and the provisions of the Trust Code. Also, unless contrary to the terms of the trust instrument or the Trust Code, a trustee must:

   - **What common-law duties does a trustee have?**
     
     General common-law duties of a trustee include treating all beneficiaries of a trust impartially, preserving trust property, maintaining control of trust property, making property productive, not delegating discretionary duties, diversifying investments and maintaining the utmost loyalty to the trust.

   - **Is there any standard that a trustee must observe for investing trust property?**
     
     The 2003 Texas Legislature adopted the Uniform Prudent Investor Act, and it became effective on January 1, 2004. Codified as Chapter 117 of the Texas Trust Code, it requires all trustees (both corporate and individual) to invest and manage assets “as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. By the authority given in §117.003(b), the settlor can expand, restrict eliminate or otherwise alter the prudent investor rule. Section 117.011 allows the trustee to delegate investment and management functions “that a prudent trustee of comparable skills could properly delegate under the circumstances” and gives guidance as to how the agent should be selected. Section 117.011 also describes how the delegating trustee can avoid liability for acts of the agent.

   - **Does the Trust Code give guidance as to the allocation of principal and income?**
     
     The 2003 Legislature passed the Uniform Principal and Income Act, and it is codified as §§116.151 – 116.206 of the Trust Code. The new rules are extremely complex and apply to both corporate and individual trustees. Though the new laws do not specifically state, it is presumed that the settlor can allow the trustee to ignore the new standards or, alternatively, give the trustee a different set of standards to follow.

   - **What duties does a trustee have with respect to distributions from a trust?**
     
     The trustee must make distributions as provided by the terms of the trust instrument. The instrument might provide for mandatory and/or discretionary distributions. The trustee must make any mandatory distributions.

   - **What kind of discretionary distribution language can be included in the trust?**
     
     Depending upon the purposes of the trust, the particular circumstances of the beneficiary and who is to serve as trustee, a settlor may wish to give the trustee absolute discretion to make distributions. However, even if a trustee appears to have sole and uncontrolled discretion to make distributions, case law indicates that the trustee’s discretion is not absolute. The trustee must still use reasonable judgment in determining when and what should be distributed to a beneficiary. The settlor might provide a standard in the trust instrument for the trustee to make discretionary distributions. For example, the instrument might provide that the trustee may distribute income/and or principal to provide for the health, education, support and maintenance of the beneficiary. Under such a standard, the trustee has a duty to determine the beneficiary’s needs.

   - **If a trustee has power to distribute income and/or principal to provide for the beneficiary's health, education, support and maintenance, does this require the trustee to consider whether the beneficiary has other available sources to provide these things?**
     
     While the cases are conflicting, the rule in Texas is that if the instrument is silent, the trustee should not consider other available resources. If the settlor intends that the beneficiary’s other available resources be considered before anything is distributed from the trust, the trust instrument should so provide.

   - **Must a trustee post a bond?**
     
     A corporate trustee is not required to post a bond. A noncorporate trustee must post a bond unless the trust instrument provides otherwise. The bond must be in such amount as ordered by a court in a proceeding brought for that purpose. There may be situations in which a settlor wants a trustee to obtain a bond, and in those cases the instrument must contain appropriate language. However, if the settlor does not intend the trustee to provide a bond, the trust instrument should specifically relieve a trustee from the obligation of providing one.
Can a trustee be relieved of a duty imposed by the Trust Code?
Yes, the settlor may relieve the trustee of the obligation of complying with any duty imposed by the Trust Code, except that a corporate trustee may not be relieved of the self-dealing provisions of §§113.052 and 113.053. Also, a beneficiary with full legal capacity and acting on full information may relieve a trustee from any duty, responsibility, restriction or liability as to the beneficiary which is imposed by the Trust Code, including liability for past violations.

4. Practice Tips.
   a. Be sure and research current law to properly name a trust in a pleading or in any other document.
   b. The trust agreement should be in writing, signed by the settlor, and should set forth the terms of the trust.
   c. Include any powers the settlor wants the trustee to have which are not specifically granted to trustees under the Trust Code.
   d. Specifically describe any powers granted under the Trust Code which the settlor does not want the trustee to have.
   e. If the settlor does not want to require a bond of the trustee, then specifically state so in the trust agreement.

B. Types of Trusts
1. Revocable Inter Vivos Trust
   a. General
      This type of trust is also referred to as a revocable management trust or revocable living trust. While it can be a trust created by one person for the benefit of a third person, in most instances, this type of trust will be created by a person to hold his assets until his death. Appendix A is a form of revocable living trust.

   How can it be determined whether a trust is revocable?
   Under §112.051 of the Trust Code, a trust is revocable unless specifically made irrevocable.

   Is there any income tax advantage of a revocable inter vivos trust?
   No. During the joint lives of a married couple who transfer their assets to a revocable trust for their benefit, the trust does not even need a separate tax identification number or need to file a separate tax return. Instead, all items of income, gain, deduction and credit are reported on the couple's individual income tax return as if there were no trust.

   Is there any estate tax advantage of a revocable inter vivos trust?
   No. Exactly the same estate tax planning can occur in using a revocable living trust as with a will. For a married couple with a joint estate valued at more than $1,500,000, but less than $3,000,000, a revocable living trust will usually provide for the deceased spouse's share of the estate to be held in an irrevocable credit shelter trust.

   Currently, each citizen of the United States has a federal estate tax exclusion amount equal to $1,500,000. The exclusion amount will increase to $2,000,000 in 2006 and $3,500,000 in 2009. Each person can at his/her death, pass the federal exclusion amount to their heirs without estate tax. If both spouses die in 2004, they can transfer a total of $3,000,000 to their heirs tax free.

   If a married couple having a joint estate of $3,000,000 each leaves all of his or her property to the other spouse under a will or trust, there will be no tax on the death of the first spouse to die because of the marital deduction. However, the surviving spouse then would have an estate of $3,000,000. Unless this can be reduced, to $1,500,000 or less, there will be estate tax due at the death of the second spouse. Essentially, the couple has lost the benefit of the first spouse's exclusion amount.

   In order to avoid this, after the death of the first spouse, his or her share of the estate, up to the exclusion amount, should be placed in a separate trust. The trust can provide that income and principal be payable to the surviving spouse to provide for his or her health, education, support and maintenance. Also, the decedent's children or any other persons can be beneficiaries. At the second spouse's death, the trust
assets pay no estate tax regardless of the size of the trust at that time. Instead, those assets pass to whomever the first decedent named as remainder beneficiary. The second spouse’s estate passes under his or her will to his or her chosen beneficiaries. In this way, a husband and wife can pass their full exclusion amounts to their children or to other individuals without estate tax.

Will my clients lose their homestead protection if they transfer their residence to a trust?

While it appears that transfer of a homestead to a revocable trust will not affect the homestead protection from creditors claims, there is little direct authority on this point. Section 11.13(j)(1) of the Tax Code defines “residence homestead” as property which “is owned by one or more individuals, either directly or through a beneficial interest in a qualifying trust.” A “qualifying trust” is defined in §11.13(j)(3) in a manner which should allow a homestead exemption for a house owned by a typical revocable trust. However, each county treats trusts differently, so the attorney or the settlors should contact the local tax assessor/collector for a specific answer. In transferring a mortgaged residence or other real property to a trust, be careful not to violate any due-on-sale clause contained in the deed of trust.

What are the general advantages of a revocable living trust?

a. Management. A revocable living trust can provide a vehicle for management of a person's property in the event of the person's incapacity. Typically a settlor will serve as trustee of his own revocable living trust. In the event of the settlor's incapacity, a successor trustee is named in the trust instrument.

b. Privacy. Some people wish to avoid probate because probate proceedings are a matter of public record. Using a revocable living trust for management and eventual disposition of assets means that none of the trust assets are includible on the probate inventory. Further, since the trust document is not filed of record, the identities of the beneficiaries, and the property to be received by each, will remain a secret.

c. Avoiding ancillary administration. Since a trustee can own title, regardless of its location, and can transfer title to properties, use of a revocable trust may avoid ancillary administration on the death of the settlor. This works particularly well for out-of-state real property.

What are the general disadvantages of a revocable living trust?

a. Inexpensive alternatives. It takes time and money to establish and fund a revocable living trust. There are inexpensive alternatives such as a durable power of attorney or a joint tenancy with right of survivorship.

b. Transfer of Assets to Trustee. In order to properly fund a living trust, the settlor must incur the expense and spend the time transferring assets to the trustee, even if the settlor is the trustee.

c. Expenses. Expenses will be incurred in drafting the trust instrument, preparing and filing deeds transferring property to the trustee, and in preparing and filing deeds upon termination of the trust. These expenses will likely exceed the cost of a Will.

d. Lifetime maintenance. Once the trust is established and funded, the settler must maintain it for life, making certain that any new assets are titled in the name of the trust and that no assets are again titled in the settlor’s individual name.

e. A Will is Still Necessary. Even with a revocable trust, a pour-over Will remain a necessity. Some assets don’t have titles (furniture, fixtures), and the settler will inevitably neglect to change the title on some of his assets. The Will is needed to send these “loose” assets to the trust at death, and the Will must be probated. Absent a will devising such property to the trustee, the settlor will have died intestate as to those “loose” assets. An example of a pour-over Will is attached as Appendix B.

PRACTICE TIPS

a) To determine whether a revocable trust is an appropriate estate planning vehicle for the client, consideration should be given to the size and nature of the client's property and whether this expensive and somewhat complicated arrangement is justified. It might be possible to deal with the client's estate with survivorship accounts, informal probate or by probating a Will as a muniment of title. The client must be willing to transfer all assets to the trust and to title all future assets in the name of the trustee. It is always a mistake to force the client to incur the expense and hassle of establishing a living trust only to realize that he failed to administer it properly. His beneficiaries will thereafter pay for the mistake because probating a Will or probating the estate via intestacy.
b) If the trust is for the benefit of the settlor, spell out in the trust instrument how a successor trustee determines that the settlor is incapacitated. If incapacity can only be determined by a court, a guardianship proceeding will be necessary. Alternatively, the document could state that the client’s regular physician could make the decision without the involvement of a court.

2. Trust for a Minor.

   General.
   Under §2503 of the Internal Revenue Code (“IRC”), the first $11,000.00 a donor gives a person during any taxable year is excluded in determining the amount of taxable gifts made by the donor. In other words, a donor may give a person up to $11,000.00 per year without incurring gift tax. This is generally known as the annual exclusion. The annual exclusion is inflation-adjusted and may increase in the future. The exclusion does not apply to a gift of a future interest and a gift of a future interest will be a taxable gift. Generally, a gift in trust to a minor will be a gift of a future interest unless the minor has an unrestricted right to the immediate use, possession or enjoyment of property or income from property. Typically, a settlor transferring property in trust for a minor would not want the minor to have such unrestricted rights. A §2503(c) trust allows the settlor to transfer property into a trust for a minor, restrict the child's rights to receive the corpus or income from it, and still qualify for the annual exclusion. Appendix C is a form of a §2503(c) trust.

What are the requirements for a gift in trust under §2503(c)?

   The requirements are as follows:
   a) the corpus and the income from the property may be expended by or for the benefit of the donee before his attaining age 21;
   b) to the extent not so expended, the corpus and income from it will pass to the donee on his reaching age 21; and
   c) if the donee dies before attaining age 21, the corpus and income from it will be paid to the donee's estate or as he may appoint under a general power of appointment.

Is there any way to continue the trust beyond age twenty-one?

   A trust will continue to meet the requirements of §2503(c) if the donee has the right to extend the trust beyond age twenty-one. Revenue Ruling 74-43, 1974-1 C.B. 285 provides that a trust will meet the requirements of §2503(c) if the trust beneficiary upon reaching age twenty-one has the continuing right to withdraw the trust property, or has a right to do so for a limited time upon reaching age twenty-one. If the beneficiary has a limited time to exercise his withdrawal rights, the time period must be reasonable (30-60 days), and the beneficiary must be given reasonable notice of the right. As explained more fully below, a trust which the beneficiary elects to continue after age 21 will be taxed as a grantor trust.

What is a general power of appointment?

   A general power of appointment is a power to consume, invade or appropriate income or principal which is exercisable in favor of the individual possessing the power, his estate, his creditors or the creditors of his estate. It is often desirable to give a power of appointment to a beneficiary in a trust so that the beneficiary can re-direct the assets due to an unanticipated change in circumstances.

Can a trust have more than one beneficiary and still qualify under §2503(c)?

   Section 2503(c) requires that any amount not expended for the beneficiary must be paid to him at age twenty-one or included in his estate if he dies before that age. Therefore, for a trust to qualify under §2503(c), it may only have one beneficiary. However, separate trusts for different individuals can be set up under one trust instrument.

What restrictions can a settlor place on a trust and still qualify under §2503(c)?

   Section 2503(c) requires that the trustee have the authority to distribute income and principal to the beneficiary. If too many restrictions are placed on this authority, the trust will not qualify under §2503(c). Directions to make distributions for the health, education, support and maintenance of the beneficiary have been held to be broad enough. However, the better practice is to give the trustee discretion to make distributions for the beneficiary.
**Should the settlor serve as trustee?**

If the settlor serves as trustee, and has unrestricted power to control distribution of the trust property, the trust will be included in his estate. So, if one of the reasons for the trust is estate tax planning, the settlor should not serve as trustee. If the settlor insists on serving then distribution of income and principal should be limited to an ascertainable standard such as for the beneficiary's health, education, support and maintenance.

**Who pays tax on the trust income?**

A properly set up §2503(c) trust will be a separate taxpayer for federal income tax purposes. Until age 21, and assuming the trust is properly drafted to avoid the grantor trust rules of IRC §§671-678, all trust income, except that which is distributed will be taxed to the trust. Distributions made to or for the benefit of the beneficiary will be taxed to him.

**How is the trust income taxed if the trust is considered a grantor trust under §§671-678?**

If the settlor retains certain powers, the trust will be considered as owned by the settlor and all trust income taxed to him. For instance, the settlor will be considered the owner of the trust under the grantor trust rules if he serves as trustee with an unrestricted right to distribute trust property, or if he retains the unrestricted right to remove the trustee and appoint a successor trustee. Therefore, in drafting a §2503(c) trust, if the settlor retains any powers over the trust, individually or as trustee, be certain that the powers do not run afoul of the grantor trust rules.

**How is the trust income taxed after age twenty-one?**

After age twenty-one, the beneficiary will be considered the owner of the trust under IRC §678 because he either: (1) consented to continue the trust; or (2) failed to exercise a right to withdraw the trust. All income will be taxed to the beneficiary whether he receives it or not. The drafter of a §2503(c) trust should consider either (1) requiring that sufficient income be distributed to the beneficiary to enable him to pay all income taxes that will be due; or (2) requiring distribution of all income to the beneficiary beginning at age twenty-one.

**In the case of a transfer by a grandparent to a trust for a grandchild does generation skipping transfer tax apply?**

Yes, any time there is a transfer by a grandparent to a grandchild, whether outright or in trust, it may be subject to generation-skipping transfer tax. If the gift is nontaxable for gift tax purposes (such as an annual exclusion gift) it will be nontaxable for generation-skipping tax purposes.

**Are there any special generation-skipping transfer tax rules for annual exclusion gifts in trust?**

The annual exclusion for generation-skipping tax purposes applies for transfers in trust only if (1) during the life of the donee, no portion of the corpus or income of the trust may be distributed to or for the benefit of any person other than the donee; and (2) if the trust does not terminate before the donee's death, the assets of the trust must be includible in the donee's gross estate.

**PRACTICE TIPS.**

a) Meet the essential tax requirements:

1) property and income may be expended for benefit of person under age 21;
2) to the extent not expended it is distributed to the person at age 21;
3) if the person dies before age 21, all remaining property and income will be distributed to his estate or as he has appointed under a power of appointment.

b) Have someone other than the settlor serve as trustee.

c) Advise the settlor against retaining powers which will cause the trust to be included in the settlor's estate.
3. **Crummey Trust.**

**General.**

A Crummeay trust is a trust which provides a beneficiary certain withdrawal rights for gifts to the trust which result in qualifying the gifts as gifts of present interests and thus annual exclusion gifts. Crummeay trusts are named for the case which first held that gifts to trusts which contained certain withdrawal rights qualified as annual exclusion gifts. Crummeay v. Commissioner, 397 F.2d 82 (9th Cir. 1968). Appendix D is a form of a Crummeay trust.

**What withdrawal rights must be allowed in the trust instrument in order to qualify gifts to the trust for the annual exclusion?**

In order to qualify for the annual exclusion, the beneficiary for whom the property is transferred in trust must be given a right to demand or withdraw the gift.

**How long must the beneficiary be given a right to withdraw the property?**

There is no requirement that there be a limitation on the withdrawal right. But, typically a time limit will be put on the withdrawal right. If a time limit is placed on the withdrawal right, it must not be so short as to make the right illusory. A reasonable withdrawal period might be within 15-60 days after the gift is made in trust. Each time a gift is made, the beneficiary for whom the gift is made should be notified in writing of his right to withdraw the gift, and the deadline after which the gift will lapse.

**Can a Crummeay trust have more than one beneficiary?**

A Crummeay trust can have more than one beneficiary. However, a Crummeay trust has complicated income and gift tax issues which will be made more complicated by having multiple beneficiaries. It is much simpler to have a single beneficiary trust.

**How is a Crummeay trust treated for gift tax purposes?**

A withdrawal right is a general power of appointment since the person holding the right can vest the property subject to the right in himself. A failure to exercise a withdrawal right within the time limit provided in the trust instrument will be considered a release of a general power of appointment. In general, the release of a general power of appointment is treated as a transfer, for gift tax purposes, by the person holding the power. However, there is an exception to this rule. A lapse of a general power of appointment during a calendar year will be only be treated as a transfer to the extent that the right which lapsed exceeded in value the greater of $5,000 or 5% of the property over which the beneficiary had the power of appointment. Thus, where a beneficiary allows a withdrawal right to lapse, he will be treated as having made a gift to the extent that the value of the property over which the beneficiary did not exercise the right exceeds $5,000 or 5% of the property. In a single beneficiary Crummeay trust, this problem can be cured by giving the beneficiary a testamentary power of appointment over the trust property in the event that the beneficiary dies before termination of the trust. This prevents the gift from being a completed gift.

In a multiple beneficiary trust, where no beneficiary has a separate and independent share, the lapse of a withdrawal right in excess of the greater of $5,000 or 5% of the trust causes a completed gift to be made. Since it is a gift of a future interest, no annual exclusion applies.

**How can you cure the gift tax problem in a multiple beneficiary Crummeay trust?**

There are two main ways to cure the gift tax problem in a Crummeay trust:

a) **Limit Gifts to $5,000.** Limit the amount of gifts that can be made by any one donor to any one beneficiary to $5,000. Then, a beneficiary's withdrawal right with respect to a gift would be $5,000 and only $5,000 would lapse. Such a lapse will not be treated as a transfer.

b) **Provide for Hanging Powers.** A hanging power is a power that lapses only to the extent of the greater of $5,000 or 5% of the trust property each year. The beneficiary continues to have a withdrawal right over the excess until it lapses.
How is a Crummey trust treated for income tax purposes?

The beneficiary of a single-beneficiary Crummey trust is treated as the grantor with respect to any amount contributed to the trust over which the beneficiary had a power of appointment which he allowed to lapse. If any property is contributed to the trust over which the beneficiary does not have a withdrawal right, the trust is treated as a separate taxpayer with respect to that portion of the trust.

The income taxation of a multiple-beneficiary Crummey trust is extremely complex. Generally, if each beneficiary had the right to withdraw a pro rata portion of each transfer to the trust, each will be considered the owner of a pro rata portion of the trust. However, if unequal distributions of income are later made, one beneficiary may receive income which was actually taxed to another beneficiary.

How is a Crummey trust treated for generation-skipping tax purposes?

A single-beneficiary Crummey trust can be structured to qualify for the annual exclusion from generation-skipping transfer taxes by (1) providing that during the life of the beneficiary income and principal may only be distributed to or for the benefit of the beneficiary; and (2) making the trust payable at the beneficiary's death to his estate or by giving him a testamentary power of appointment.

A gift to a multiple-beneficiary Crummey trust will not qualify for the annual exclusion for generation-skipping tax purposes unless the document requires that assets be divided so that there are sub-trusts which each have only one beneficiary. Otherwise, the donee must use a portion of his $1,000,000 generation-skipping tax exemption to protect the assets from future tax.

What are some advantages of using a Crummey trust?

a) A Crummey trust can be created for a person of any age. By comparison, a §2503(c) trust may only be created for someone under age twenty-one.

b) There is no requirement that a Crummey trust terminate when the beneficiary reaches age twenty-one; instead, the settlor can choose any age.

c) There is more flexibility in limiting distributions from a Crummey trust than with a §2503(c) trust.

d) A Crummey trust can have multiple beneficiaries, where a §2503(c) trust can have only one beneficiary.

PRACTICE TIPS.

a) The client must understand the income and gift tax issues associated with a Crummey trust.

b) The chosen deadline by which a withdrawal must be exercised should not be so short as to make the withdrawal right illusory.

c) The beneficiary with a withdrawal right must be given actual notice of a gift he is entitled to withdraw. Notice of the withdrawal right should be in writing, and the trustee should require the beneficiary to sign the notice and indicate whether the right to withdraw is being exercised.

d) An advance determination must be made as to whether the trust should qualify for the generation skipping tax annual exclusion.

4. Trusts that do not Qualify for the Annual Exclusion.

A settlor can create a trust that does not qualify for the annual exclusion. Any transfers to such a trust will be taxable and will reduce the donor's unified credit for estate and gift tax. Since this type of trust does not have to qualify as a §2503(c) or Crummey trust, it can be made very flexible in terms of distributions and number of beneficiaries. Additionally, it will not have the income and gift tax issues associated with a Crummey trust.

C. Basic Income Taxation of Trusts and Beneficiaries.

A trust which is entirely a grantor trust will not be a separate tax paying entity. Instead, all tax items will flow through to the person considered as owning the trust. For a trust which is not a grantor trust, taxation will depend upon whether it is a simple trust or a complex trust.

What is a simple trust?

A simple trust is a trust which (1) by its terms requires distribution of all income at least annually; (2) provides for no charitable distributions; and (3) makes no actual distributions of principal in the year at issue.
How is a simple trust taxed?
A simple trust is treated as a conduit for income. It receives a deduction for the distribution of its income to the beneficiaries which offsets the trust's receipt of the income. However, if the trust has received capital gain which under local law is treated as principal, not income, then the trust will pay tax on that capital gain. If the trust document requires capital gain to be distributed, the beneficiary will be taxed on it along with the income.

What is the effect on the beneficiaries of a simple trust?
The trust income will pass through to the recipients pro rata or according to such other shares as provided in the trust instrument. Income will have the same character, ordinary or capital gain, as it had in the trust. Each beneficiary will pay tax on his share of the income.

What is a complex trust?
A complex trust is any trust which is not a simple trust. Usually a complex trust will be a trust which is not required to distribute all of its income annually. However, a trust can also be complex because of a charitable interest or a distribution of principal during a taxable year.

What is the income-tax effect of a distribution of income to the beneficiaries of a complex trust?
Like a simple trust, a complex trust gets a deduction for any income distributed during the year. The general rule is that any distributions flush out income first. In other words, no principal is “distributed” until all of the income has been distributed.

What is the tax treatment for income earned by a complex trust which is not distributed?
A complex trust pays income tax on income which it accumulates. Since trusts reach the maximum income tax bracket much quicker than an individual, trustees can save taxes by altering the investment scheme (to make the corpus either produce tax-exempt income or no income) to the extent that income will not be distributed. Trustees also can benefit from the 65-day rule which allows them to “count” any distribution made within 65 days from the end of the tax year as having been made during the prior year. This allows the trustee to use “hindsight” to flush income to the beneficiary so that less income tax will be paid than if the income remained in the trust.

D. Modification and Termination of Trusts.
1. Revocable Trusts.
Generally, a revocable trust may be revoked or modified by the settlor at any time. Also the settlor may authorize some other person to revoke or modify a trust.

Are there any limitations on modification of a revocable trust?
Section 112.051(b) of the Trust Code provides that no trust modification may enlarge the trustee's duties without the trustee's express consent.

What form must a modification or revocation of a revocable trust take?
There is no set form. However, if the trust is in writing, then §112.051(c) of the Trust Code requires that any revocation, modification, or amendment of the trust must be in writing. Further, care must be taken to follow any instructions given by the settlor in the document. For example, the settlor may require that an amendment must be in writing AND that it must be delivered to the trustee. If such language is in the trust document, a written amendment which is not delivered to the trustee will not be effective. McClure v. JPMorgan Chase Bank, Independent Executor, 147 S.W.3d 648 (Tex.App. – Fort Worth 2004, pet. den.).

2. Irrevocable Trusts.
The fact that a trust is irrevocable does not mean it cannot be modified or terminated. Under certain circumstances, an irrevocable trust may be terminated or modified by a court.
When can a court modify or terminate an irrevocable trust?

Under §112.054 of the Trust Code, a court may modify or terminate an irrevocable trust if (1) the purposes of the trust have been fulfilled or have become illegal or impossible to fulfill; or (2) because of circumstances not known to or anticipated by the settlor, compliance with the terms of the trust would defeat or substantially impair the accomplishment of the purposes of the trust.

What types of modifications can a court order?

A court may order that the trustee be changed, that the terms of the trust be modified, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, or that the trustee be prohibited from performing acts required by the terms of the trust.

Can a court modify or terminate a spendthrift trust?

In making its decision to modify or terminate a spendthrift trust, a court must consider the spendthrift provisions as a factor, but a court is not precluded from modifying or terminating the trust simply because it is a spendthrift trust.


How is a proceeding for modification or termination of a trust begun?

A proceeding to modify or terminate a trust is begun by filing a petition with a court having jurisdiction and venue setting forth the modifications to be made and the reasons for the modification, or the reasons for termination of the trust. Appendix E is a form of petition for modification of a trust.

Who may bring an action to modify or terminate a trust?

The trustee or a beneficiary may petition a court for modification or termination of a trust.

What courts have jurisdiction to modify or terminate a trust?

Section 115.001 of the Trust Code provides generally that the district court has original and exclusive jurisdiction over all proceedings concerning trusts, except for jurisdiction conferred by law on a statutory probate court. Section 5A(b) of the Probate Code provides that a statutory probate court has jurisdiction to hear suits involving “the interpretation and administration of testamentary trusts and the applying of constructive trusts.” Section 5(e) states that a statutory probate court has “concurrent jurisdiction with the district court…in all actions involving an inter vivos trust” and “in all actions involving a charitable trust.”

Who are necessary parties to the suit?

Section 115.011 provides that necessary parties to an action are (1) a beneficiary on whose act or obligation the action is predicated; (2) a person designated by name in the instrument creating the trust; and (3) a person who is actually receiving distributions from the trust estate at the time the action is filed. Contingent beneficiaries designated as a class are not necessary parties. If the action involves a charitable trust, §115.011(c) requires that the Attorney General be given notice of the proceeding.

Where is venue proper for a suit to modify or terminate a trust?

Where there is one noncorporate trustee, venue is proper in the county where the trustee resides. If there are two or more noncorporate trustees, venue is proper in the county in which the principal office of the trust is maintained. If there is one (or more) corporate trustee, then venue is proper in the county in which the principal office of any of the corporations is located.

II. LIFE INSURANCE

Life insurance can play an important part in estate planning. It can provide funds to support the decedent's family, provide liquidity for paying estate taxes, fund buy-sell agreements, and fund charitable gifts. What type of life insurance product a client should use depends upon the client's needs.
TRUSTS, LIFE INSURANCE AND RETIREMENT BENEFITS

A. Types of Insurance

What is term insurance?
Term insurance provides a specified death benefit for a specified period of time. There is no accumulation of cash in the policy, so it does not have a cash surrender value. Premiums for term insurance begin at a low level but become very expensive in later years.

What are the general advantages and disadvantages of term insurance?
The primary advantage of term insurance is its initial low-cost premiums. The primary disadvantages are the high cost of premiums in later years and the fact that coverage may terminate when the insured reaches a certain age. Some policies have a conversion feature whereby the insured can convert to a permanent policy.

What is whole life insurance?
Whole life insurance provides a guaranteed level death benefit. It also provides for guaranteed level annual premiums and has a cash surrender value. The cash value can be withdrawn if the policy is surrendered, or it can be borrowed. Whole life is a permanent form of life insurance.

What are the general advantages and disadvantages of whole life insurance?
Whole life is a cost-effective way to meet long term insurance needs. The cash value builds up inside the policy and is not taxed until it is withdrawn. In addition, the policy remains effective until death; it does not terminate at a certain age like term insurance. Because of the cash surrender value, the owner of the policy may be able to stop paying premiums after ten to fifteen years. The disadvantage of a whole life policy is that it requires higher premiums in earlier years than term insurance.

What is universal life insurance?
Universal life insurance is a less rigid form of whole life insurance. The owner can adjust the death benefit and the premium. Like whole life coverage, it has a cash build-up inside the policy which is tax-deferred. Premium payments can be skipped if there is sufficient cash built up inside the policy with which to fund premiums.

What are the general advantages and disadvantages of universal life insurance?
The main advantage of universal life is the flexibility in premium payments. The disadvantage of a universal life policy is that if sufficient premiums are not paid on a regular basis, the inside cash build-up will be so low that the policy will essentially perform like a term policy, providing insurance only. The cash value and the premiums will fluctuate with the changing economy and with interest rates.

What is variable life insurance?
Variable life insurance can be either a whole or universal life policy in which the cash value portion of the policy is invested in various investment funds chosen by the policyholder. It is typically the most expensive form of cash value insurance. Rather than the risk being on the insurance company to choose investments wisely, variable life insurance puts the risk on the owner of the policy. The death benefit and cash value depend upon the returns on the investments. Poor investment performance will have an adverse effect on the death benefit and cash surrender value.

What are the advantages and disadvantages of variable life insurance?
The primary advantage is the possibility of obtaining better investment performance than with whole life or universal life. The carrier must credit the policy cash account with the true investment return from the investment funds chosen by the policyholder. The primary disadvantage of variable life is the risk that the policyholder assumes on investments. The policyholder risks not only low returns but also loss of principal as well.

What is “second-to-die” insurance?
Second-to-die insurance is a whole life or universal life insurance policy which covers two or more lives and pays a death benefit on the death of the last to die. Premiums for second-to-die insurance are typically lower than if the two persons purchased individual policies. The primary use of a second-to-die policy is to fund estate taxes which may be due at the death of the second spouse.
What are the primary advantages and disadvantages of second-to-die insurance?

The primary advantage of second-to-die insurance is the lower premiums compared to similar insurance on one life. If there is a disadvantage, it is that there will be no death benefit at the first death.

B. Estate and Gift Taxation of Insurance

When are insurance proceeds included in the insured's estate?

Under IRC §2042 life insurance proceeds are includible in the gross estate of a decedent to the extent they are receivable by the executor or payable to the decedent's estate. Even if they are payable to a named beneficiary but are subject to payment for estate taxes, debts or other charges of the decedent's estate, then under §20.2042-1(b) of the Estate Tax Regulations, the amount required for such payments is includible in the decedent's gross estate. Also under IRC §2042, the death benefit is included in the decedent's gross estate if the decedent possessed incidents of ownership with respect to the policy.

What are incidents of ownership?

Incidents of ownership include, in addition to actual ownership of a policy, the rights (1) to change the beneficiary, (2) to surrender or cancel the policy, (3) to assign or revoke an assignment of the policy, (4) to pledge the policy for a loan or to obtain a loan against the surrender value of the policy. Incidents of ownership also include a reversionary interest in the policy, but only if the value of the reversionary interest exceeds five percent of the value of the policy immediately before the decedent's death. The effect of community property laws must be taken into account when determining whether a decedent had incidents of ownership in a policy.

Can a recipient of insurance proceeds be made to pay that portion of the estate tax attributable to the inclusion of the insurance proceeds in the estate?

IRC §2206 provides that unless the will provides otherwise, the executor may recover from the insurance beneficiaries a portion of the estate taxes which are due. For example, if the insurance proceeds are 40% of the value of the gross estate, those proceeds are liable for 40% of the taxes. Because of the marital deduction, this right of recovery does not apply to insurance proceeds includible in the estate but which pass to the surviving spouse.

Does a surviving spouse have a community property interest in an insurance policy?

A policy acquired during the marriage, the premiums for which are paid with community property funds, is community property.

Does the decedent have a community property interest in a policy on the life of the surviving spouse?

If a policy was acquired during the marriage on the life of the surviving spouse, and if the premiums were paid with community funds, the decedent had a community property ownership interest in the policy which would be included in the gross estate for estate tax purposes. The amount to include in the estate would be one-half of the value of the policy at the time of death (not one-half of the death benefit).

Is a gift of an insurance policy a taxable gift?

A gift of an insurance policy may be a taxable gift if it is valued in excess of the annual exclusion ($11,000 per donee). The value of the gift will be the interpolated terminal reserve value on the date of the gift. The ITR is not the same as the cash surrender value or the death benefit. Upon request, the insurance company can provide such value on IRS Form 712. A gift of a term life insurance policy, since it has no value, will not trigger any gift tax consequences.

If a decedent makes a gift of a policy under which he is insured will any part of the policy be included in his estate?

Under IRC §2035, the value of the gross estate includes the value of a life insurance policy transferred by the decedent within three years of the date of his death. This three-year rule causes inclusion only if the insurance proceeds would have been included in the decedent's estate under IRC §2042. Also, the rule does not apply to a transfer of the policy for full and adequate consideration in money or money's worth.
C. Irrevocable Life Insurance Trust.

An irrevocable life insurance trust is set up to separate the insured from the incidents of ownership in the insurance policy. By properly setting up a trust, the proceeds are not included in the decedent's estate and the beneficiaries receive the proceeds or the benefit of the proceeds without the imposition of estate tax.

What kind of trust should be set up to own life insurance?

More than one type of trust can be used. Whichever type is chosen, however, must be irrevocable. A 2503(c) trust will work, provided the beneficiary is under age 21. However, the fact that the trust must terminate at age 21 may be a problem. The most popular type of trust used to own insurance is a Crummey trust. The settlor/insured makes gifts to the trust which are subject to the Crummey withdrawal powers. The trustee purchases a policy on the settlor’s life. Assuming the funds are not withdrawn by the beneficiaries of the trust, the trustee uses the cash to pay premiums on the insurance policy.

Can the surviving spouse be a beneficiary of a life insurance trust?

Yes, but if the policy is community property, the beneficiary spouse's one-half community property interest will be included in his or her estate. Also, the IRS may argue that the policy is includible in the estate of the insured.

Can this result be avoided?

The spouses should enter into a partition agreement so that the non-insured spouse (who is trustee of the trust) will purchase the policy with separate funds. (The same result can be achieved without a trust by having the spouse simply purchase the policy with separate funds.)

Who should serve as trustee?

Neither the settlor nor any other insured should serve as trustee. Also, neither the settlor nor any other insured should have the power to remove a trustee and appoint a successor. Obviously, if the trust has been created to purchase a second-to-die policy, neither spouse should be the trustee.

D. Practical Uses of Insurance.

1. Providing for the decedent's family.

Insurance can provide the surviving spouse and other family members with cash to replace the income lost because of the death of the first spouse. It can also provide funds for education of children and grandchildren. A properly structured insurance arrangement can fund trusts for children that provide income for life and then pass to grandchildren without estate tax at the death of the grandchild's parent. Gifts of cash in trust for children which are then used to purchase insurance on the life of the settlor provide a way to leverage the annual gift tax exclusion so that the gifts made to the trust eventually provide insurance proceeds far greater than the amount of the gifts and the income that might have been earned on the gifts.

2. Funding buy-sell agreements.

Insurance can be used to fund a buy-sell agreement among shareholders or partners. The death benefit will then provide liquidity to the business or to the other shareholders to meet current obligations or to purchase the interest of the decedent. The advantage to the deceased owner's family is that it provides a market for the business interest and cash for a lump-sum, rather than installment, settlement.

3. Liquidity to pay taxes.

Insurance can be used to provide liquidity to a family to pay estate taxes on non-liquid assets such as a business or the family ranch. With an insurance trust, the death benefit will not increase the taxable estate.

4. Funding charitable gifts/providing wealth replacement.

Insurance is an excellent way to fund a charitable gift. For each dollar the donor pays in insurance premiums, he or she potentially provides the charity with many dollars. Alternatively, insurance can be used to provide wealth to replace gifts of family assets to charities. For example, if a couple gave $1,000,000 in stock to a charity, they might have a corresponding life insurance trust which would provide $1,000,000 to their children, but which would not be included in their estates.
III. RETIREMENT BENEFITS

Retirement benefits are a complicated and specialized area of the law. However, every attorney who practices estate planning and probate should have a basic understanding of retirement benefits in order to advise clients. This article covers only retirement benefit plans which are covered under ERISA and IRAs.

What is ERISA?

A. Types of benefit plans.
Are pension plans all the same?
No, there are two basic forms of retirement plans - defined benefit plans and defined contribution plans.

What is a defined benefit plan?
A defined benefit plan promises the participant a certain benefit in the form of an annuity or its actuarial equivalent. The employer makes a current contribution to the plan so that, with anticipated investment returns, the plan will be able to pay the projected benefit to the employee when the employee retires. This type of benefit is paid from a trust that is funded primarily with employer contributions. The employee does not have an individual account in the plan. In today’s market, only the largest employers (like governmental entities) can afford to have a defined benefit plan.

What is a defined contribution plan?
Under a defined contribution plan, the employee has an individual account. The employee is entitled to whatever is in the account at the time of retirement. There is no guaranteed payout at that time.

Is an IRA covered by ERISA?
An IRA is not covered by ERISA.

What is a SEP?
A SEP, or Simplified Employee Pension, is a type of retirement plan under which an employer makes contributions to IRAs of employees. It is also sometimes called a “SEP-IRA.” An employee is also entitled to contribute to his/her own SEP-IRA, but those contributions are limited. These plans are easy to create and administer because the employer is not required to seek or obtain the blessing of the IRS.

What is a SIMPLE-IRA?
An acronym for Savings Incentive Match Plan for Employees, these plans can be established by employers with 100 or fewer employees who receive at least $5,000 in compensation during the preceding year. The employer can adopt one of two model forms issued by the IRS, and contributions to the plan consist of (1) the employee’s contributions that are made under a salary reduction agreement with the employer and (2) employer contributions that are made either as “matching contributions” or “nonelective contributions.”

How do I know whether a retirement plan provides any benefits to the surviving spouse or anyone else?
All retirement plans are required to provide certain death benefits to the surviving spouse. Unless there has been a waiver and consent, the benefits must be paid in the form of an annuity to the surviving spouse.

What is the effect of the waiver and consent of the annuity?
The effect is to allow the participant spouse to name someone other than the nonparticipant spouse as the recipient of the death benefit.

Do the same rules apply to IRAs?
Because IRAs are not subject to ERISA, the survivor annuity rules do not apply. There is no corresponding IRA rule which requires that the surviving spouse be the beneficiary of the IRA at the participant spouse's death; the owner of the IRA can name anyone he or she chooses.
B. Community Property Considerations.

Does the non-participant spouse have a community property interest in a retirement plan or IRA?

A non-participant spouse does have a community property interest in any part of a retirement plan or IRA acquired/funded during the marriage.

Can the non-participant spouse's community property interest in a retirement plan or IRA be transferred by will or intestacy?

A non-participant spouse's community property interest in the other spouse's IRA can be transferred by will or intestacy. It is not clear whether the non-participant spouse's interest in a retirement plan can be transferred.

C. Taxation of IRA and Pension Plan Benefits.

Are retirement benefits included in a decedent's estate?

Retirement benefits are taxable by reason of IRC §2039 which causes inclusion in the gross estate of annuities or other payments (other than life insurance) under a plan or contract which are receivable by a beneficiary by reason of surviving the decedent if (1) the benefits were payable to the decedent during life; or (2) the decedent had the right to receive the payment either for his life or for any period not ascertainable without reference to death. There are some transition rules for application of IRC §2039 which may exclude from taxation some of the benefits. The transition rules do not apply to IRAs.

Are retirement plan and IRA distributions taxable to the recipient?

Generally, distributions are taxable to the recipient. Distributions from Roth IRA’s are not taxable. But, no deduction is allowed for contributions to Roth IRAs.

Are retirement plan benefits and IRAs covered by the unlimited marital deduction if the surviving spouse is the beneficiary?

An IRA should be able to qualify for the unlimited marital deduction as qualified terminable interest property (“QTIP”). Retirement benefits may not automatically qualify. If the benefits are payable in the form of an annuity, the plan should qualify for the marital deduction. If the spouse has the unrestricted right to take a lump sum payment, the retirement plan should likewise qualify for the marital deduction.

What about after the recipient's death, are the benefits taxable to the beneficiary who receives them?

Retirement benefits constitute income in respect of a decedent (IRD) under the Internal Revenue Code. The recipient must include the income in his or her taxable income. However, the recipient is entitled to a deduction for the estate tax attributable to the IRD.

Are there any exceptions to these income taxation rules?

A spouse who is a beneficiary of a plan can roll over a plan distribution to an IRA and escape current income taxation on it. The spouse cannot roll over the distribution to another qualified plan. A nonspouse beneficiary cannot roll over a deceased participant's retirement benefits into the nonspouse beneficiary's IRA.

Is there any requirement as to when a participant can or must begin receiving distributions?

Generally, if the participant begins receiving distributions from an IRA or retirement plan prior to age 59 1/2, there is a ten-percent excise tax on the amount of the withdrawal in addition to any income tax. There are a number of exceptions, including (1) distributions to an employee who is 55 years of age and who has separated from service, (2) a distribution that is not includible in gross income, (3) distributions after death, (4) distribution on account of disability, and (5) a distribution which is part of a series of substantially equal periodic payments made for the life or life expectancy of the participant or the joint lives of the participant and a beneficiary.

There are also minimum distribution rules. Beginning January 1, 1997, a plan participant must begin receiving minimum distributions from a pension plan by the later of April 1 of the year following the calendar year in which the participant attained age 70 1/2 or (2) April 1 of the year following the calendar year in which the participant retires. For a five-percent owner of a business, pension plan distributions must commence by April 1 of the year following the calendar year in which the participant attained age 70 1/2.
For an IRA, distributions must begin by April 1 of the year following the calendar year in which the participant attained age 70 1/2.

There is a penalty for failure to take a minimum distribution. The amount of the penalty is 50% of the amount required to be distributed.

*Can a participant shelter his retirement plan from some of these tax pitfalls through charitable gift planning?*

Yes. If the benefits are left outright to a charity, the estate gets a deduction for the full value of the plan. The charity pays no taxes on the receipt of the pension plan or IRA assets. Therefore, if a client wants to make charitable gifts at the time of death, he or she should be encouraged to designate charities on some of the IRAs and then leave other assets to children. By so doing, no unnecessary income taxes will be owed.
THE [NAME] FAMILY REVOCABLE TRUST

THIS AGREEMENT is entered into by and between [HUSBAND] (hereinafter referred to as the "INSURED") AND [WIFE] (hereinafter referred to as "Spouse"), husband and wife, of ____________, ______________, County, Texas, (hereinafter jointly referred to as the "SETTLORS") and [NAME], ____________, Texas, (hereinafter referred to as the "TRUSTEE") as follows:

W I T N E S S E T H:

THAT WHEREAS, the Settlors desire to create trusts pursuant to the provisions of Section 58a of the Texas Probate Code; the trusts to be hereinafter described as Trust "A" and Trust "B," it being the intention of the Settlors that the trusts shall serve as a receptacle for the collection, administration, and distribution of all assets to which the Trustee may be entitled to receive hereunder, including, but not limited to, life insurance policy proceeds on the life of the Insured, residual assets from the separate and/or community estate poured into the trusts under the Last Will and Testament of the Insured, any pension and profit-sharing benefits payable to the Trustee of the trusts, and any other property which may be hereafter transferred to the Trustee.

ARTICLE I

1.01 The Settlors, or Settlor owner, as applicable, have caused the Trustee to be named as beneficiary of the insurance policies described in the annexed Exhibit "A."

1.02 With the consent of the Trustee, additional property may hereafter be added to the trust estate herein created by any person or persons. Such additions to the trust estate may be made by supplemental instruments which describe the additional property and declare the intention that such additional property shall become part of the trust estate. Any person or persons may at any time, and from time to time, add any additional policy or policies to this trust estate. Such addition may be accomplished by assigning such policy or policies to the Trustee or by causing the Trustee to be named either as primary or contingent beneficiary thereunder.

1.03 The Settlors, or Settlor owner, as applicable, reserve during the lifetime of the Insured, all benefits, payments, dividends, surrender values, options, rights, powers and privileges with respect to said policies, including but not limited to the following:

(a) The power to change the beneficiary of said policies or any additional policy which might be hereafter added to the trust estate herein created.
(b) The right to receive all disability benefits, dividends, payments, loan values or surrender values, provided in such policies or in any policy which might hereafter be added to the trust estate herein created.

(c) The power to borrow on, surrender or pledge said policies or any policy which might be added to the said trust estate herein created.

(d) The power to exercise any option provided in said policies or in any policy which might be added to said trust estate herein created, such as the power to convert to a different kind or amount of insurance, the power to select the mode of settlement of the proceeds of said policies, etc.

These rights may be exercised without the consent or approval of the Trustee or any beneficiary hereunder.

1.04 The Settlors, in Settlors' discretion, may pay the premiums, assessments or other charges necessary to keep in force the said policies. The Trustee shall be under no duty to:

(a) Pay such premiums, assessments, or other charges;

(b) Keep the Trustee informed as to the payment status of such premiums, assessments, or other charges;

(c) Notify the beneficiaries hereunder of the nonpayment of such premiums, assessments, or other charges; or

(d) Take any action to keep such policies in force.

1.05 The Settlors, or Settlor owner, as applicable, reserve the right to retain possession and custody of all of said life insurance policies described in the annexed Exhibit "A," or hereafter added to the trust estate herein created. The Trustee is relieved from any responsibility for the custody of said policies.

1.06 As soon as practicable after the Trustee has knowledge of the death of the Insured, the Trustee shall make proper proofs of death and shall take all reasonable steps to collect all moneys as and when due under the policies which, within the knowledge of the Trustee, are then within the operation of this agreement.

(a) The Trustee shall make every reasonable effort to ascertain and bring within the operation of this agreement the life insurance policies on the Insured's life, but the Trustee shall not be held responsible or liable for locating and processing the collection of moneys as and when due under any policies of life insurance payable to the Trustee under the terms of this agreement if the Trustee has no prior knowledge of the Trustee's designation as such beneficiary under such life insurance policies.
(b) The Trustee is authorized to compromise and adjust claims arising out of the insurance policies, or any one of them, upon such terms and conditions as the Trustee may deem just, and the decisions of the Trustee shall be binding and conclusive upon all persons interested therein.

(c) The Trustee shall not be required to maintain any litigation to enforce the payment of any of the policies unless the Trustee is indemnified, to the Trustee's satisfaction, against all expense and liability arising from litigation. If the Trustee shall elect to demand indemnity, the Trustee shall make such demand in writing, upon each of the beneficiaries under this agreement by mailing or delivering the same to the beneficiary's last known address.

1.07 Any insurance company or other party shall be completely protected in dealing with the Trustee. The receipt of the Trustee for any payment made to the Trustee shall be a complete acquittance and discharge to the extent specified in such receipt of the Trustee. No insurance company or other party making any payment or delivering or transferring any assets to the Trustee shall be permitted or required to see to the use or application of any such payment or assets hereunder.

ARTICLE II

2.01 Upon the death of the Insured, in the event Spouse shall survive the Insured, the Trustee shall set aside a separate trust for the sole benefit of Spouse, which trust shall be known as Trust A. This Trust A shall be funded with cash or property as follows:

(a) An amount equal in value to, and representing, Spouse's community property interest and separate property interest (if any) in all proceeds of insurance or other death proceeds resulting from Insured's death and payable to Trustee hereunder.

(b) Any property which Spouse or any other person may, from time to time, transfer expressly or exclusively to Trust A, whether said property be Spouse's separate or community estate.

(c) An amount equal in value to, and representing, Spouse's community property interest in any pension benefit, profit-sharing benefit, or any other community assets of both Settlors, payable to the Trustee.

(d) For purposes of this paragraph 2.01 only, in the event Insured and Spouse should die as a result of a common disaster or otherwise in such manner that it is difficult to determine which of them survived, the provisions of this paragraph 2.01 shall be construed as if Insured survived Spouse.
2.02 Subject to subparagraph 2.02(a), in addition to the allocations to Trust A made pursuant to the preceding paragraph 2.01, in the event Spouse survives the Insured by a period of six (6) months, then upon the death of the Insured, the Trustee shall also allocate to Trust A an amount equal in value to the maximum estate tax marital deduction allowable in determining the federal estate tax on the Insured’s gross estate (excluding any generation-skipping transfers deemed part of the Insured’s gross estate pursuant to Chapter 13 of the Internal Revenue Code of 1986, as amended), diminished by the value for federal estate tax purposes of all items in the Insured's gross estate which qualify for said deduction and which pass or have passed to Spouse, under any provisions of the Insured's Will or otherwise. Such allocation shall not be diminished by any estate, inheritance, succession, death or similar taxes owed by the Insured's estate. In determining the amount for purposes of this trust allocation, no amount allocable under any other Article of this Family Trust shall be considered as allowable for marital deduction purposes to the extent that allowance shall require an election under Section 2056(b)(7) of the Internal Revenue Code of 1986, as amended. In making the computations necessary to determine the amount of the allocation of this paragraph 2.02, the final determinations in the federal estate tax proceedings for the Insured's estate shall control.

(a) In no event shall the amount of the allocation under this paragraph 2.02 exceed an amount necessary (taking into consideration the Unified Credit Against Estate Tax allowed by Section 2010, Internal Revenue Code of 1986, as amended, and any other credit, exclusion, deduction or exemption allowed by any other provision of the Internal Revenue Code of 1986, as amended, on the date of the Insured's death and utilized by the executor, administrator or other legal representative of the Insured's estate in determining the federal estate tax on the Insured's gross estate) to reduce the federal estate tax on the Insured's gross estate to zero or as close to zero as possible.

(b) The Trustee shall have full power and the sole discretion to satisfy the allocation to Trust A under this paragraph 2.02 wholly in cash or wholly in kind, or partly in cash and partly in kind, and to select the assets which shall constitute this allocation and, for these purposes, any asset so allocated shall be valued at its value as finally determined for federal estate tax purposes; provided, however, the Trustee must allocate to this Trust A assets, including cash, fairly representative of appreciation or depreciation in the value of all property thus available for allocation to Trust A, between the date of valuation for federal estate tax purposes and the date or dates of allocation; and provided further, that in no event shall there be included in this allocation to Trust A any asset or
proceeds of any asset which will not qualify for the marital deduction for federal estate tax purposes in the Insured's estate. This allocation shall carry with it, as income and not as corpus, its proportionate share of all net income received from the date of the Insured's death.

(b) The Trustee shall have full power and the sole discretion to satisfy the allocation to Trust A under this paragraph 2.02 wholly in cash or wholly in kind, or partly in cash and partly in kind, and to select the assets which shall constitute this allocation and, for these purposes, any asset so allocated shall be valued at its value as finally determined for federal estate tax purposes; provided, however, the total fair market value on the date or dates of allocation to Trust A of all assets allocated in kind plus all cash allocated in satisfaction of this allocation shall not be less than the specific monetary amount of this allocation; and provided further, that in no event shall there be included in this allocation to Trust A any asset or proceeds of any asset which will not qualify for the marital deduction for federal estate tax purposes in the Insured's estate. This allocation shall carry with it, as income and not as corpus, its proportionate share of all net income received from the date of the Insured's death.

(c) For purposes of determining both the amount of the pecuniary legacy under this paragraph 2.02 and the amount of the federal estate tax marital deduction hereunder, the term "maximum estate tax marital deduction" shall mean the maximum federal estate tax deduction allowable under Section 2056 of the Internal Revenue Code of 1986, as amended.

(d) The allocation to Trust A pursuant to this paragraph 2.02 shall abate to the extent that it cannot be satisfied in the manner hereinabove provided. The exercise of the foregoing power and discretion by the Trustee shall not be subject to question by or on behalf of any beneficiary under this Family Trust, regardless of its effect upon the interest of such beneficiary.

(e) Notwithstanding anything to the contrary herein contained, Spouse, or Spouse's personal representative if Spouse be then deceased or incompetent, shall have all rights afforded under Section 2518 of the Internal Revenue Code of 1986, as amended, and under Texas law, pursuant to Section 37A of the Probate Code, or other applicable law, to disclaim and renounce all or any part of any interest in property to which Spouse or Spouse's estate, as applicable, may be entitled under this paragraph 2.02, provided that such disclaimer is made within the time and in the manner required by Section 2518 of the Internal Revenue Code of 1986, as amended. To the extent that all or any part of an interest in property is disclaimed hereunder, such interest or part thereof that is disclaimed shall be held and administered as a part of Trust B pursuant to Article III hereof. It is understood that Spouse shall have any
and all rights which Spouse may otherwise enjoy under said Article III, including any interest or benefits which arise under said Article III as a consequence of the disclaimer under this paragraph 2.02.

Any other assets received by the Trustee and not specifically allocated to Trust A shall be held pursuant to the provisions of Article III, as hereinafter provided.

2.03 The Trustee shall hold the property allocated to Trust A, manage, invest and reinvest it, collect the income therefrom, and pay the net income from said trust in monthly or more convenient installments, but in no event less often than annually, to Spouse for the term of Spouse's life.

2.04 Spouse shall have for the remainder of Spouse's life the right in Spouse's sole and uncontrolled discretion to direct the Trustee, from time to time, to distribute all or any portion of the corpus of Trust A to Spouse. The Trustee shall also have the right during the life of Spouse to distribute or use such part or all of the corpus of Trust A as may be necessary to provide for Spouse's health, comfort, welfare and support.

2.05 Upon the death of Spouse if Spouse survives Insured, then Settlors direct the Trustee to pay over and distribute any corpus of Trust A then remaining to such person or persons, including the estate of Spouse, in such amounts and upon such estate as Spouse shall by Spouse's last will have appointed by specifically referring to this power of appointment in this trust, or, in default of such appointment, the Trustee shall combine the balance of the corpus of Trust A with the corpus of Trust B and continue to hold the same and distribute the same in accordance with the provisions herein contained concerning the handling of Trust B.

2.06 It is Settlors' intention that the value for federal estate tax purposes of the property of this trust, with the exception of property not otherwise qualifying, shall be available for the marital deduction allowed by the federal estate tax law applicable to the estate of Insured. To this end, it is expressly provided that the grant of rights, powers, privileges, and authority to the Trustee in connection with the imposition of duties upon said Trustee by any provision of this trust or by any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in this Trust A herein. It is the Settlors' intention that Spouse under the provisions of Trust A have substantially that degree of beneficial enjoyment of the trust estate during Spouse's lifetime which the principles of law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust, and the Trustee shall not exercise its discretion in a manner which is not in accord with this expressed intention. The Trustee shall invest the trust estate so that it will produce for Spouse, during her lifetime, such an income or use which is consistent with the value of the trust estate and with its preservation, and any
unproductive property shall, upon the direction of Spouse, be converted within a reasonable period of time. It is expressly provided that the Trustee shall not in the exercise of said Trustee's discretion make any determination inconsistent with the foregoing especially in regard to and including, but not limited to the powers granted in Article V hereof and provided for in the Texas Trust Code as it now exists or is hereafter amended.

ARTICLE III

3.01 If Spouse survives the Insured, any assets not specifically allocated to Trust A pursuant to Article II, shall be set aside and designated as Trust B and shall be administered as hereinafter set forth. If Spouse does not survive the Insured, all of the trust assets shall be held as Trust B.

3.02 The Trustee may, in the sole discretion of the Trustee, distribute to Spouse, or to Settlors' children, out of the income of Trust B, such amounts as the Trustee may determine to be appropriate in the Trustee's sole and uncontrolled discretion. In making distributions of income to Spouse under this provision, the Trustee shall consider any resources or sources of income available to Spouse, bearing in mind that the primary concern of the Settlors is to provide for the support and maintenance of Spouse in Spouse's accustomed manner of living, and the secondary concern of the Settlors is to provide for the support, maintenance and education (including college and advanced studies) of the Settlors' children while they are under the age of twenty-one (21) or in school or college.

3.03 During the lifetime of Spouse, the Trustee shall have the power, in the Trustee's sole discretion, to distribute from time to time from the corpus of Trust B such amounts as are necessary to provide for the health, support and maintenance of Spouse in Spouse's accustomed manner of living and to provide for the support, maintenance and education (including college and advanced studies) of Settlors' children while they are under the age of twenty-one (21) or in school or college. It is suggested that the Trustee not invade the corpus of Trust B for the benefit of Spouse until all of the corpus of Trust A has been exhausted. In exercising said Trustee's discretion under this paragraph, the Trustee shall bear in mind that the primary concern of the Settlors is to provide for the health, support and maintenance of Spouse in Spouse's accustomed manner of living, and the secondary concern of the Settlors is to provide for the support, maintenance and education (including college and advanced studies) of the Settlors' children while they are under the age of twenty-one (21) or in school or college.

3.04 After the death of Spouse, or upon the death of Insured, in the event Spouse does not survive him, the Trustee shall continue to hold the rest and remainder of the assets of Trust B in trust as follows. The Trustee shall invest and reinvest the same, collect and receive the income therefrom, and pay or use such part of the same as the
Trustee may determine to be necessary for the health, support, maintenance and education (including college and advanced studies) of Settlors' issue, and any undistributed income shall be accumulated. The amounts to be distributed to each of such beneficiaries shall be within the sole discretion of the Trustee, and it shall not be necessary that there be equality of treatment among the members of any class of beneficiaries. The Trustee shall also have authority to invade the corpus of this trust from time to time for such purposes in the event the income therefrom is not sufficient. When Settlors' oldest living child attains the age of twenty-one (21) years, or if all of Settlors' children shall die before attaining the age of twenty-one (21) years, then upon the death of the last survivor of Settlors' children, the Trustee shall apportion the property of Trust B into separate, equal shares, one for the benefit of each of Settlors' children who shall be then alive, and one of such shares for the benefit of the issue, taken collectively, of any child of Settlors who shall be then deceased leaving issue then surviving. The Trustee shall hold each share allocated to a child of the Settlors for such child's primary benefit in accordance with the provisions of paragraph 3.05 below. The Trustee shall hold each share allocated to the issue of a deceased child of the Settlors for the benefit of the issue of such deceased child in accordance with the provisions of paragraph 3.06 below.

3.05 After separate shares have been created pursuant to paragraph 3.04 above, the Trustee shall continue to hold the assets in trust, to invest and reinvest the same, to collect and receive the income therefrom and distribute to or for the benefit of a child of Settlors for whom a separate share has been created, all of the net income of such child's share in monthly or more convenient installments, but no less often than annually. The Trustee shall also distribute to or for the benefit of such child, so much of the corpus of such share as the Trustee determines is necessary for said child's health, support, maintenance and education (including college and advanced studies). Any distribution of corpus shall be charged to the share of the child receiving the distribution and shall not be charged to the share of any other child.

(a) After shares have been created pursuant to paragraph and when each of Settlors' children attains the age of twenty-five (25) years, such child shall have the right to withdraw one-third (1/3) of the corpus of his or her trust share. Thereafter, when each of said children attains the age of thirty (30) years, such child shall have the right to withdraw one-half (1/2) of the then remaining corpus of his or her trust share. Thereafter, when each of said children attains the age of thirty-five (35) years, such child shall have the right to withdraw all of the remaining corpus of his or her trust share and shall have an unrestricted power of appointment over it. After separate shares have been created pursuant to paragraph hereof, any of Settlors' children who then have attained the age of 25, 30 or
35 years shall be entitled to withdraw that portion of his or her share he or she otherwise would be entitled to withdraw pursuant to this subparagraph 3.05(a) upon attaining such age, meaning that if any such child is then at least 25 years of age, but not yet 30 years of age, said child shall have the right to withdraw one-third (1/3) of his or her trust share; and if any such child is then at least 30 years of age, but not yet 35 years of age, said child shall have the right to withdraw two-thirds (2/3) of his or her trust share; and if any such child is then at least 35 years of age, said child shall have the right to withdraw all of his or her trust share.

(b) Notwithstanding the provisions of subparagraph (a) above, the Trustee may, prior to a child reaching the age of 25, 30, or 35 years, distribute to such child any or all of his or her share, if the Trustee determines that child is capable of handling his or her share of the trust properties, or if, in the Trustee's discretion, it is determined that it is no longer feasible to continue the operation of the trust of which the share is a part because of the small amount of property involved.

(c) Upon the death of a child of Settlors, prior to the distribution to such child of all of the share of the trust so set aside for him or her, as the case may be, the Trustee shall hold the remaining assets of such share for the benefit of the living issue of such child in accordance with the provisions of paragraph 3.06 below, but if any child of Settlors shall be then deceased without issue then surviving, such deceased child's share shall be equally apportioned and allocated among the remaining shares created for the other beneficiaries; provided, however, that if any of said shares have been partially or totally distributed to the beneficiaries thereof under either subparagraph 3.05(a) or (b), or 3.06(b), the Trustee shall distribute, free of trust, to the beneficiary or beneficiaries whose interest in the trust has been so terminated, the portion of the assets which they would have been entitled to receive had their share of the trust continued to exist.

3.06 Any share set aside for the living issue of a deceased child of Settlors (either pursuant to paragraph 3.04 or subparagraph 3.05(c)) shall be held and disposed of by the Trustee as follows:

(a) The Trustee shall divide the assets of such share into parts for the issue, per stirpes, of such deceased child. Each of said issue shall thereafter have a vested interest in his or her part of the trust share even though the interest of such beneficiary remains in trust. After the trust share has been divided into parts, the Trustee shall continue to hold the same in trust, to invest and reinvest the same, collect and receive the income therefrom and shall pay or use such amounts from the income or corpus of a separate part as are necessary for the health, support, maintenance and education (including college and advanced studies) of the beneficiary thereof. Any income from a
separate part which is not distributed to a beneficiary shall be added to and become a portion of the corpus of the part being held for such beneficiary. Any corpus distributed from the share shall be charged to the part of the corpus of the beneficiary receiving the distribution and shall not be charged to the part of any other beneficiary.

(b) Upon any member among the issue of a deceased child of Settlors attaining twenty-one (21) years of age, or upon the death of any such person, whichever first occurs, the part of the trust share then being held for such person shall terminate and the assets constituting that part shall be distributed in fee simple and free of trust to such person or his or her estate, as applicable, it being the intention of the Settlors that each member among the issue of a deceased child of Settlors shall have a vested interest in his or her part of such trust share as hereinabove provided, from and after the time the trust share is divided into parts pursuant to subparagraph 3.06(a) above.

3.07 In the event no beneficiary or issue of any beneficiary described in paragraph ___ hereof survives Spouse, or in the event of the death of all of said beneficiaries who survive Spouse, prior to the complete distribution of the trust property, as hereinbefore provided, then, unless subparagraph 3.06(b) is applicable, the Trustee shall distribute the corpus, together with any accumulated and undistributed income from said trust estate, to Insured's heirs.

3.08 "Children," "issue," and "descendants" as used herein refers to the legitimate children of the person designated and the legitimate lineal descendants of such children, and includes any person adopted before attaining age eighteen (18) and the adopted person's lineal descendants. A posthumous child shall be considered as living at the death of his or her parent.

3.09 The "heirs" of any person means the individuals who would have inherited the person's personal property if the person had died intestate at the time the distribution is to be made, not married and domiciled in Texas, under the laws of Texas in force on the date this Will is signed, with the shares of taking determined by those laws.

ARTICLE IV

4.01 The trust estate herein created shall terminate when all of the trust property has been fully distributed as hereinabove provided.

4.02 Each trust created herein is a spendthrift trust, and no interest of any beneficiary under any trust estate created herein, either in income or corpus, shall be subject to pledge, assignment, sale or transfer in any manner, nor shall any beneficiary have power in any manner to anticipate, charge or encumber his or her interest
either in income or corpus, nor shall such interest of any beneficiary be liable or subject in any manner while in the possession of the Trustee for the debts, contracts, liabilities, engagements or torts of such beneficiary.

4.03 In the event [NAME] should die, resign or be unable or unwilling to continue as Trustee for any reason, then the Settlors name, constitute and appoint [NAME] as Successor Trustee. Any Trustee may resign by an instrument in writing duly executed and acknowledged and delivered to the Successor Trustee named in this instrument, and no further action or judicial approval of same shall be deemed necessary.

4.04 No bond shall be required of any Trustee. A Successor Trustee shall have all of the rights, powers and duties as the originally named Trustee.

4.05 The Trustee shall not be required to account to any court for the Trustee's administration of the trust estate created herein, except in the case of breach of trust, but the Trustee shall furnish periodic reports of the Trustee's administration to those persons entitled for the time being to any of the income from said trust estate.

4.06 Any Successor Trustee may accept the assets from a predecessor Trustee or Trustees without any liability for acts of the predecessor Trustee or Trustees other than its own acts; and said Successor Trustee shall not be required to obtain an accounting from the predecessor Trustee or Trustees.

4.07 Except for Spouse only as a beneficiary under any trust herein created which qualifies for the Marital Deduction, if by reason of the bankruptcy or other event happening during the continuance of any trust herein created, the income or principal otherwise intended for a beneficiary shall wholly or in part cease to be enjoyed by him or her as above provided, then, in such event, the trusts hereinbefore expressed concerning said income and principal shall thereupon cease and terminate as to such beneficiary, and all income and principal otherwise hereinbefore provided for him or her shall thereafter be held and distributed by the Trustee for him or her during the remainder of his or her life, according to the absolute discretion of the Trustee. But the Trustee may, nevertheless, pay to him or her, or for his or her health, maintenance, support or education, or to his or her child, children or spouse thereafter, from such income and principal, such sums as the Trustee in the Trustee's absolute discretion shall think fit and proper, having regard for Settlors' wishes as in this instrument expressed, and retaining any unexpended sums as part of the principal of the trusts to be finally disposed of after the death of such beneficiary, as herein provided.

ARTICLE V

5.01 Except as provided to the contrary in Article II hereof, the Trustee and any successor or successors thereto shall have the following powers, all of which shall be exercised in a fiduciary capacity:
(a) To exercise all of the powers granted to trustees by the provisions of the Texas Trust Code as now enacted or as hereafter amended.

(b) To retain any assets legally acquired without liability for such retention even though such property, by reason of its character, amount, proportion to the total trust estate, or otherwise, would not be considered appropriate for a fiduciary apart from this provision.

(c) To retain or to acquire wasting assets. The Trustee shall have no duty to sell wasting assets or to apportion any of the income therefrom to corpus. The Trustee may, if, in the Trustee's sole discretion, the Trustee deems it necessary to prevent injustice, transfer income or proceeds from such wasting assets to corpus under such formulae as the Trustee deems equitable.

(d) To retain or acquire property returning no income or slight income and to retain any such property so long as the Trustee shall think fit without the same being in any way chargeable with income or the proceeds thereof in case of sale being in any part deemed income.

(e) To apportion receipts to income or corpus and to charge disbursements to income or corpus in the Trustee's sole discretion, providing the Trustee follows generally accepted accounting principles. Provided, however, and notwithstanding that just above stated in this subparagraph .01(e), payments to which the Trustee is entitled under any employees' pension or profit-sharing plan benefits, Keogh plan benefits or any IRA plan benefits, or any other employee benefit plan, payable to the Trustee, shall be deemed principal if distributed in a lump sum, but shall be deemed income, not principal, if distributed periodically over a period in excess of three years. Furthermore, any income tax deduction for depletion, whether state or federal, shall be allocated to the beneficiaries on the basis of the net income distributed to each.

(f) The Trustee shall allocate the income tax deduction, both state and federal, with regard to depletion and depreciation between the trusts and the beneficiaries on the following basis: Each trust shall be entitled to a proportionate part of such deductions which the ratio of the amount retained by each trust bears to the net income of each trust. The remainder of such deductions shall be allocated to the beneficiaries on the basis of the net income distributed to each.

(g) To borrow money and to pledge any of the assets of the trust estate for that purpose, even though the term of the loan may extend beyond the term of the trusts. The Trustee may borrow money from the corporate trustee or any of its affiliates and any rule of law prohibiting such a transaction is expressly waived so long as any such loans are competitive with other banks in the area.

(h) To purchase or sell any asset of any one of the trusts created by this instrument to any other trust created hereunder.

(i) To mingle the trust property of the separate trusts established hereunder, allotting to each separate trust an undivided interest in the mingled property, which undivided interest shall always be equal to that trust's proportionate contribution, as adjusted from time to time as a result of accumulations of income, payments of principal and additions to principal, to the mingled property. It shall not be necessary to segregate the assets of each trust, and the Trustee may hold any or all of the trusts' assets jointly and may make joint investments with any or all of the trusts, but separate records shall be kept for each separate trust established by this instrument.

(j) To continue to operate any business interest which becomes part of the trust estate; to delegate all or part of the management thereof; to invest other funds of the trust estate therein; to convert such business from one form (e.g., proprietorship, partnership, corporation) to another; all in such manner, and for such times, and on such terms as the Trustee shall think fit.

(k) In dividing the trust estate into separate parts, shares or trusts or in distributing the same, to divide or distribute in cash, in kind, or partly in cash and partly in kind, using different
properties according to their value and/or undivided interests in the same properties, as the Trustee
shall think proper. The Trustee may also consider the Federal Income Tax consequences of the
distribution or division to the trusts and beneficiaries to the extent known to the Trustee, without
independent inquiry. The exercise of the discretion and power herein granted the Trustee shall be
final and conclusive upon all parties and shall not be subject to question by or on behalf of any
beneficiary, regardless of its effect upon such beneficiary. The power of the Trustee to convert
assets into cash or other assets, shall not terminate at the time required for distribution, but shall
continue for a reasonable time thereafter to assist the Trustee in making an orderly distribution of the
assets comprising the trusts.

(l) In the event any beneficiary is under legal disability, or though not adjudged
incompetent, is, by reason of illness or mental or physical disability, unable, in the opinion of the
Trustee, to use or disburse wisely such payment or distribution under the provisions of the trusts
herein created, then the Trustee may make such payment or distribution for the benefit of such
beneficiary in such of the following ways as in the Trustee's opinion shall be most desirable:

(i) Directly to such beneficiary;

(ii) To the duly qualified legal representative or representatives of such
beneficiary;

(iii) To some near relative or friend of such beneficiary to be used for that
beneficiary's benefit;

(iv) By using such payment directly for the benefit of such beneficiary; or

(v) By distribution to a relative as Custodian for such beneficiary under the
Texas Uniform Transfers to Minors Act.

However, no distribution shall be made in a manner that discharges a legal obligation (including, but
not limited to, any obligation of support), of any person other than the beneficiaries. Distribution by
any one or more of the foregoing shall operate as a complete acquittance of the duties of the Trustee
to make such payment.

(m) To distribute to any beneficiary any items of personal property such as clothing,
personal belongings, jewelry, household furnishings, furniture, tools, recreation equipment and
property of a like nature which would bring a disproportionately low price if sold. To the extent
necessary to effectuate this provision, the Trustee is given a special power of appointment over such
items of property. The Trustee may also consider the Federal Income Tax consequences of the
distribution to the beneficiaries to the extent known to the Trustee, without independent inquiry. The
exercise of the discretion and power herein granted the Trustee shall be final and conclusive upon all
parties and shall not be subject to question by or on behalf of any beneficiary, regardless of its effect
upon such beneficiary.

(n) To pay to the personal representative of a deceased Settlor's estate such amounts as
the Trustee may determine, in the Trustee's sole discretion, are or may be necessary to pay any taxes,
debts, liabilities, administration expenses, or funeral expenses of a deceased Settlor, to the extent not
paid by the estate. This provision shall not give the personal representative, a beneficiary, or any
creditor any right to demand payment from the Trustee. Any payment made by the Trustee in good
faith shall not be open to question by any beneficiary, and the Trustee shall have no liability by
virtue of such payment. Any payment made pursuant to this paragraph to the estate of Insured shall
be charged first against Trust D to the extent there are available assets and then against Trust B, and
any payment made pursuant to this paragraph to the estate of Spouse shall be charged against Trust
A, except the payment of any taxes against the estate of Spouse by reason of the inclusion of the
assets of Trust C in Spouse's estate pursuant to Section 2044 of the Internal Revenue Code of 1986,
as amended, and state inheritance tax law, shall be charged against the assets of Trust C, as provided
in subparagraphs 5.03(e) and (f), as of the date of death of Spouse. The Trustee shall have the powers provided in this subparagraph even though the Trustee may be serving at the same time as personal representative of such estate, and any rule of law prohibiting such transaction is expressly waived.

(o) While [NAME] is serving as Trustee or Successor Trustee of the trusts herein created, said person is specifically given and granted the power to deal with the trusts in said person's individual capacity, to buy, sell and exchange real or personal property; to make loans to, or borrow money from, the said trusts; and said person is specifically relieved from any and all liability as a result thereof so long as such dealings are consummated in good faith and for an adequate and full consideration in money or money's worth. All loans made to [NAME] in said person's individual capacity shall be adequately secured and bear a reasonable rate of interest. While [NAME] is serving as Trustee or Successor Trustee of the trusts herein created, and also as an officer or director of any corporation in which the trusts own stock and whether or not said person individually owns stock in such corporation, said person is authorized to sell stock in such corporation owned by the trusts back to the corporation at its fair market value and on such terms, interest rate and other provisions as said person deems advisable and any rule of law prohibiting same is expressly waived, and the estate or trusts of [NAME], as applicable, shall indemnify said person from all liability on any such transaction entered into by said person in said person's fiduciary capacity in good faith. Any decision made by any Trustee pursuant to this paragraph shall be final and conclusive upon all beneficiaries.

(p) If any person who is a Settlor of any trust herein created or a beneficiary of any such trust, or a trustee or co-trustee of any such trust, has a power alone or in conjunction with others to remove any trustee, then the Trustee shall be prohibited from making any distribution that would have the effect of discharging any such person's legal obligation to support any beneficiary.

(q) Any power to make discretionary distributions to or for the benefit of a person who is serving as Trustee of a trust (including early termination distributions, distributions to the person's spouse and distributions in discharge of any legal obligation of the person) shall be exercisable solely by the Trustee or Trustees other than that person. If no other Trustee is then serving, such power shall not be exercisable. The preceding sentences shall not apply to a power to make distributions to a beneficiary pursuant to a standard limiting such distributions to the beneficiary's needs for health, support and maintenance, except where there is a discharge of any legal obligation of the person.

(r) To hold, buy, sell or exchange oil and gas or other mineral properties (including interests in deposits of other natural resources), to execute leases on such properties for a period extending beyond the term of the trust; to execute subleases and farmout agreements; to carve out or reserve such mineral interests as the Trustee deems advisable or expedient; to execute unitization and pooling agreements; to exchange undivided interests in mineral properties for interests in other properties for a period of time extending beyond the duration of the trust.

(s) To own and acquire life insurance on the life of any person in which the trust or its beneficiaries may have an insurable interest. In the event the trust owns any life insurance on the life of either Settlor, premium payments thereon shall only be made out of corpus, and not out of income. Any insurance company or other party shall be completely protected in dealing with the Trustee. The receipt of the Trustee for any payment made to the Trustee shall be a complete acquittance and discharge to the extent specified in such receipt of the Trustee. No insurance company or other party making any payment or delivering or transferring any assets to the Trustee shall be permitted or required to see to the use or application of any such payment or assets hereunder.
(t) To purchase at a fair price any property belonging to the estate of either Settlor and to retain such purchased property as an investment of the trust estate. The Trustee is authorized to make loans out of the trust property to the executor or administrator of a Settlor's estate, provided such loans are made on adequate security and for an adequate interest. The Trustee shall have such powers even though the Trustee may be serving at the same time as personal representative of such estate, and any rule of law prohibiting such a transaction is expressly waived.

(u) The Trustee is specifically empowered to borrow money and while [BANK NAME] is serving as [SUCCESSOR] Trustee, it may do so from the Commercial Department of [BANK NAME], or any affiliates thereof, as long as any such loans are competitive with other banks in the area.

(v) The Trustee is expressly relieved of all liability to any beneficiary under the trust or to any other person whomsoever because of any loss or losses that may develop as a result of the Trustee complying with the direction that the Trustee use the Trustee's own discretion and judgment rather than be governed by any certain rule or rules of law with respect to investment of trust funds, and the Trustee, having acted in good faith, shall not be liable for losses resulting from errors of judgment or from the exercise of the Trustee's own discretion with respect to the kind and character of investment that the Trustee may hold from time to time.

(w) All incidents of ownership with respect to any interest in any insurance policies on the life of a Trustee which form a part of a trust estate shall be exercisable in a fiduciary capacity solely by a Trustee other than the insured. If there is no other Trustee then acting hereunder, such incidents of ownership shall be exercisable by the person, persons or entity herein named as Successor Trustee or Trustees, who would be acting as Trustee if the insured were to cease to act without having appointed a Successor Trustee.

ARTICLE VI

6.01 During the lifetime of Insured, the Settlors reserve the power to amend, modify and revoke this trust in whole or in part at any time by written instrument duly executed by the Settlors. Provided, however, Insured shall not have the power at any time to amend, modify or revoke this trust as to the proceeds of any life insurance on his life which are owned by Spouse, and the power to amend, modify, or revoke the trust as to such insurance owned by Spouse shall be vested solely in said Spouse. This trust shall become irrevocable at the death of Insured.

6.02 Each trust hereunder is a Texas trust, made in that State, and is to be governed and construed and administered according to its laws and shall continue to be so governed and construed and administered even though administered elsewhere within the United States.

6.03 After the death of Insured, Spouse shall have the authority in said Spouse's discretion, from time to time, to remove the Trustee and the situs of the trust and appoint a Successor Trustee. Such Successor Trustee must be a trust company or bank possessing trust powers and having a combined capital and surplus of not less than Ten Million Dollars. Spouse shall have the authority to settle the accounts of any Trustee who is so removed and such settlement, if any, shall be binding on all parties.
APPENDIX A

6.04 As compensation for its services, upon receipt of any assets other than unmatured life insurance policies, the Trustee shall be entitled to retain the commissions stipulated in its regularly adopted schedule of compensation in effect and applicable at the time of performance of such services.

6.05 The Settlors may make additional transfers, conveyances, or contributions to the trust created herein, in which event it shall be considered that the particular properties transferred, conveyed, or contributed are received upon the same terms and conditions and subject to the same uses and trust as the property initially contributed by the Settlors.

WITNESS OUR HANDS this ___ day of __________, 2005.

[NAME]

[NAME]

ACCEPTED:

[NAME] [TRUSTEE]

THE STATE OF TEXAS §
COUNTY OF __________ §

THIS INSTRUMENT was acknowledged before me on the ____ day of ____________, 200__, by [NAME] and [NAME], husband and wife.

Notary Public in and for the State of Texas
APPENDIX B

LAST WILL AND TESTAMENT

OF

____________________

THE STATE OF TEXAS § KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF §

THAT I, [NAME], of the County of [__________], State of Texas, being of lawful age and of sound and disposing mind and memory, do hereby make, publish and declare this to be my Last Will and Testament, and do hereby revoke any and all other wills, codicils and other testamentary papers heretofore made by me.

ARTICLE I

1.01 I direct my Executor to pay, out of my residuary estate and without apportionment, all of my legally-enforceable debts, including the expenses of my last illness, and funeral expenses, except for insurance policy loans and retirement plan loans, if any, which are to be repaid out of the policy proceeds or plan proceeds. All of such debts shall be paid as soon as practicable after my death, except that the payment of any debt secured by a mortgage or pledge of real or personal property may be postponed by my Executor at my Executor's discretion.

1.02 I direct my Executor to pay all estate, inheritance, transfer, and succession or other taxes, (including interest and penalties), whether State or Federal (but excluding any tax on generation-skipping transfers imposed by Chapter 13 of the Internal Revenue Code of 1986, as amended, or any additional or recapture tax imposed by Section 2032A of that Code), which may be assessed as a result of my death, with respect to the value of any property, whether or not passing under my Will, including the taxable value of all policies of insurance on my life and of all transfers, powers, rights, or interests includible in
my estate for the purpose of such taxes and duties. Payments for such taxes shall be made out of my residuary estate and without apportionment. [*Provided, however, that my Executor shall have all rights conferred by Section 2207A of the Internal Revenue Code of 1986, as amended, for recovery of any federal estate taxes, interest and penalties imposed on my estate by reason of Section 2044 of that Code.]

ARTICLE II

2.01 I declare that I am married to [NAME], and that I have _____ children, [NAMES].

2.02 I declare that the property and estate which I now own or in which I now have an interest, wheresoever situated, are composed of community property of my spouse and myself and my separate property. It is my intention by this Will to dispose of my one-half (1/2) interest in and to the community property of my spouse and myself and all of my interest in my separate property.

ARTICLE III

3.01 I give, devise and bequeath to my spouse, [SPOUSE'S NAME], if my spouse survives me by a period of sixty (60) days, my interest in and to our home (subject to any then existing encumbrances), all household goods, articles of personal adornment and personal effects of a non-income producing nature, club memberships, and our family automobiles in fee simple. My Executor shall have the final authority to determine what constitutes a "personal effect". If my spouse shall fail to survive me by a period of sixty (60) days, the property described in this paragraph of my Will shall become and be a part of my residuary estate and shall be governed according to the provisions respecting the residue of my estate, as hereinafter provided.

3.02 It is my intention to make a list of certain items of household goods and personal effects of a non-income producing nature which I would want to be distributed by my Executor to designated persons. In the event such a list is placed with this Will, which list is wholly in my handwriting, signed and dated by me, then said list is specifically incorporated into this Will by reference and my Executor
shall make distribution of the designated item on said list, as they are set forth. The bequests set forth on such list shall take precedence over any other bequest or disposition set forth herein.

3.03 If my spouse, [SPOUSE'S NAME] fails to survive me by a period of sixty (60) days, and except as provided in paragraph 3.02 above, said bequests shall be deemed to have lapsed and shall be governed according to the provisions regarding my residuary estate as provided in Article IV hereof.

ARTICLE IV

4.01 I give, devise and bequeath all of the rest and residue of my estate to [NAME], [CITY, STATE], or said Trustee's successors, as Trustee under THE [NAME] FAMILY TRUST, dated the ____ day of __________, 2005, under which [HUSBAND] and [WIFE] were the Settlors and wherein [NAME] was named as Trustee, to be administered pursuant to the provisions of said trust in existence at the date of my death. THE [NAME] FAMILY TRUST is hereby incorporated by reference to the same effect as if it were set out in full herein.

4.02 In the event the trust instrument described in paragraph above has been revoked at the date of my death, then I give, devise and bequeath all of the rest and residue of my estate to my spouse, [NAME], if my spouse then survives, and if not, to my then living issue, per stirpes.

ARTICLE V

5.01 I hereby name, constitute and appoint [NAME] as Independent Executor of this my Last Will and Testament.

5.02 No bond or other security shall be required of my Independent Executor or of my Successor Independent Executor hereinafter named. My Successor Independent Executor shall have all of the rights, powers and duties as my originally named Independent Executor.

5.03 In the event [NAME] should predecease me or be unable or unwilling to serve as Independent Executor, or having served, should be unable to continue as such for any reason, then I appoint [NAME] as Successor Independent Executor.
APPENDIX B

5.04 I further direct that no action be had in the County Court in the administration of my estate other than the probating and recording of this My Last Will and Testament and the return of a statutory inventory and appraisement and list of claims as required by law.

5.05 In addition to the powers which an Independent Executor may have under the law and under the provisions of this Will, my Independent Executor and any Survivor or Successor Independent Executor shall have all of the powers of a trustee as provided in the Texas Trust Code. My Independent Executor is authorized, in my Executor's sole and absolute discretion, to exercise any election or option given to my Independent Executor under the Internal Revenue Laws of the United States or any State in which this Will may be probated, or in which property in which I own an interest at the time of my death may be located. The decision of my Independent Executor with respect to any matters set forth herein shall bind each and every beneficiary of my estate and my Independent Executor shall not be required to make any compensating adjustments between income and corpus or among beneficiaries as the result of my Executor's action or inaction.

5.06 My Independent Executor is specifically given the authority to make the election under Section 2056(b)(7)(B)(v) of the Internal Revenue Code of 1986, as amended, to claim the marital deduction on the Federal Estate Tax Return of my estate. Such an election, once made, shall be irrevocable. The decision of my Independent Executor in either making the election under this paragraph or in not making the election shall not be subject to question by or on behalf of any beneficiary under this Will regardless of its effect upon the interest of such beneficiary, and my Independent Executor shall have no liability by reason thereof except for bad faith and gross negligence. Subject to the provisions of this paragraph 7.06, it is expressly provided that the grant of rights, powers, privileges, and authority to my Independent Executor in connection with the imposition of duties upon said Independent Executor by any provision of my Will or by any statute relating thereto shall not be effective if and to the extent that the
APPENDIX B

same, if effective, would disqualify the marital deduction as established in Article III of THE [NAME] FAMILY TRUST, dated the _____ day of_______, 2005.

6.07 [BANK’S NAME], in acting as Successor Independent Executor hereunder, shall be entitled to receive as compensation for its services such fees as are customarily charged by banks in the [CITY], Texas area for performing similar services.

6.08 Any Successor Independent Executor may accept the assets from a predecessor Independent Executor without any liability for acts of the predecessor Independent Executor other than its own acts; and said Successor Independent Executor shall not be required to obtain an accounting from the predecessor Independent Executor.

6.09 As used herein, the term "Executor" will include all persons or entities named to serve as personal representative of my estate, whether I have named one person or entity, more than one person or entity, or a combination of persons and entities. The Terms "Executor" and Testator" as used herein include masculine, feminine and neuter genders, as applicable.

IN TESTIMONY WHEREOF, I have to this my Last Will and Testament, consisting of [____] ([____]) sheets of paper, including the attestation hereof and the self-proving affidavit, subscribed my name this _____ day of ______________________, 2005, in the presence of the undersigned witnesses, each of whom I have requested to witness the same, and they, at my special instance and request, and in my presence and in the presence of each other, have signed their names hereto as attesting witnesses.

[NAME], Testator

SUBSCRIBED by [NAME], Testator, in the presence of each of us, the undersigned, and at the same time declared by said Testator to us to be said Testator's Last Will and Testament, and we,
APPENDIX B

thereupon, at the request of [NAME], in said Testator's presence and in the presence of each other, sign
our names hereto as witnesses, this the ______ day of __________________, 2005.

WITNESSES:  

PLACES OF RESIDENCE:

________________________________  __________________________________________

__________________________________________

________________________________  __________________________________________

__________________________________________

STATE OF TEXAS §

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared [NAME],
_______________________________ and _____________________________, known to me to be the
Testator and the witnesses, respectively, whose names are subscribed to the foregoing instrument in their
respective capacities, and all of said persons by me duly sworn, the said [NAME], Testator, declared to
me and to the said witnesses in my presence that said instrument is said Testator's Last Will and
Testament, and that said Testator had willingly made and executed it as said Testator's free act and deed;
and the said witnesses, each on his oath stated to me, in the presence and hearing of the said Testator that
the said Testator had declared to them that said instrument is said Testator's Last Will and Testament, and
that said Testator executed same as such and wanted each of them to sign it as a witness; and upon their
oaths each witness stated further that they did sign the same as witnesses in the presence of the said
Testator, and at said Testator's request; that said Testator was at that time eighteen years of age or over (or
being under such age, was or had been lawfully married, or was then a member of the Armed Forces of
the United States or of an Auxiliary thereto or of the Maritime Service) and was of sound mind; and that
each of said witnesses was then at least fourteen years of age.

________________________________

(NAME), Testator


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Witness

Witness

SUBSCRIBED AND SWORN TO before me by the said [NAME], Testator, and by the said
____________________________ and ________________________, witnesses, this ________ day of
__________________________, 2005.

Notary Public, State of Texas
This agreement and declaration of trust (the "Trust Agreement") is entered into as of the _____ day of ____________, 2005, by and between [NAME] and [NAME], as Trustors, of Tarrant County, Texas; and [NAME], as Trustee, who, together with [his/her] successors in office, is called the "Trustee."

W I T N E S S E T H:

The Trustors hereby transfer to the Trustee, IN TRUST, the property that is described in Exhibit A attached to this Trust Agreement to be held and administered as provided in this Trust Agreement.

ARTICLE ONE

CREATION OF TRUST

Section 1.01. Creation of Trust. The Trustee shall hold the properties contributed to the Trustee for the use and benefit of [NAME], whose birthday is ________________. Said property shall be held and shall constitute an irrevocable trust and shall be called the "[NAME] GIFT TRUST." [NAME] shall be referred to as the "Beneficiary" of the Trust.

Section 1.02. Trust and Trust Indenture Irrevocable. The Trustors declare that they have been advised by counsel that they may reserve the right to revoke or to amend this Trust Agreement. After due consideration, the Trustors expressly waive all rights and powers to revoke or amend this Trust Agreement, or the Trust it creates.

Section 1.03. Additional Contributions Permitted. The Trustors or any other person or entity may contribute additional property to the Trustee, to be administered and distributed in accordance with the terms of this Trust Agreement.

ARTICLE TWO

DISTRIBUTIONS FROM TRUST ESTATE

The Trustee shall hold the net income and principal of the Trust for the use and benefit of the Beneficiary, and shall distribute such net income and principal in the following manner.

Section 2.01. Distributions of Income and Principal. Until the termination of the Trust, the Trustee may distribute to or apply for the benefit of the Beneficiary of the Trust so much of the net income and the principal thereof at such time or times and in such amounts and manner as the Trustee, in the Trustee's sole and absolute
discretion, shall determine. The discretionary power of the Trustee to distribute the net income and the principal of the Trust, even to the point of complete exhaustion, shall be unlimited.

Section 2.02. Termination Date and Distribution. Between the thirtieth and the sixtieth day immediately prior to the date the Beneficiary attains the age of twenty-one (21), the Trustee shall forward to the Beneficiary written notice that the Trust for the Beneficiary may be terminated as of the Beneficiary's twenty-first birthdate if the Beneficiary so instructs the Trustee in writing prior to reaching age twenty-one (21). Such notice shall contain a reply form by which the Beneficiary may exercise the termination right.

If the Beneficiary validly elects to terminate the Trust as of [his/her] twenty-first birthdate, the entire trust estate of the Trust shall be distributed to the Beneficiary as of such date.

If notice of the Beneficiary's election to terminate the Trust is not delivered by the Beneficiary to the Trustee on or before the Beneficiary's twenty-first birthdate, the Trust shall continue as an irrevocable trust for the Beneficiary's benefit, and shall terminate when the Beneficiary reaches twenty-five (25) years of age, or upon the earlier death of the Beneficiary. Upon the date the Beneficiary attains twenty-five (25) years of age, the entire trust estate of the Trust shall be delivered to the Beneficiary.

Section 2.03. Death of Beneficiary. If the Beneficiary should die before the termination date of the Trust, the Trust shall terminate as of the date of death of the Beneficiary, and the trust estate of the Trust shall be distributed to, or shall be held for the benefit of, such persons or entities, including the Beneficiary's own estate, in such proportions and upon such terms as the Beneficiary shall appoint by [his/her] Last Will and Testament. To be valid any such appointment must contain a specific reference to the power conferred under this Section of this Trust Agreement. To the extent the deceased Beneficiary does not effectively exercise such power of appointment, the Trustee shall distribute the trust estate to the surviving descendants of the deceased Beneficiary, per stirpes; or in the event the deceased Beneficiary leaves no surviving descendants, then to [NAME], if then living, otherwise [equally to any brother or sister of the Beneficiary then living, or to their then-living descendants, per stirpes, and if none, then to the heirs of the deceased Beneficiary.]

ARTICLE THREE

GENERAL POWERS AND RESPONSIBILITIES OF TRUSTEE

Section 3.01. Spendthrift Provision. The Trust created by this Trust Agreement shall be a spendthrift trust. All distributions from the Trust to the Beneficiary shall be made to the Beneficiary personally, or upon [his/her]
personal receipt delivered to the Trustee or to the Trustee’s agent. No interest in the Trust may be voluntarily anticipated or conveyed by the Beneficiary in advance of the actual receipt of such interest, nor may the Beneficiary's interest be attached involuntarily by any claimant, including governmental or tort claimants, and by any person or agency seeking spousal or child support, or payment for services or goods deemed to be necessities.

Section 3.02. General Administrative Provisions. The Trustee shall have the following powers, duties and obligations.

A. Applicability of Texas Trust Code. The Trustee shall have the powers, duties, and liabilities set forth in the Texas Trust Code, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this Trust Agreement, in which case the provisions of this Trust Agreement shall govern.

B. General Investment Powers. The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad and shall include the following authorities.

(i) Originally Contributed Properties. The Trustee may continue to hold and maintain all assets originally contributed to the Trust.

(ii) Investment of Cash Assets. A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In determining whether to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

(iii) Life Insurance. The Trustee may acquire, maintain in force, and exercise all rights of a policyholder under policies of life insurance. However, the Trustee shall not acquire a policy of life insurance insuring the life (or lives) of one (or both) of the Trustors without the consent of the Trustors.

(iv) Unproductive or Wasting Assets. The Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income of the Trust.
(v) **Speculative Investments.** The Trustee may receive, acquire and maintain assets that may be categorized as speculative or hazardous if the Trustee believes it is reasonable to do so. For example, the Trustee may invest in options, puts and calls with respect to securities, and may invest in commodity transactions if the Trustee believes any of such investments are appropriate for the Trust under administration.

(vi) **Negation of Rule Requiring Impartiality in Investments Strategy.** In managing and investing the funds of a trust estate, the Trustee shall not be required to observe any usual rules of trust law requiring impartiality in investment policy as applied to present income and more remote beneficiaries, and may exercise management and investment discretions in favor of the Beneficiary of the trust estate. By way of illustration, the Trustee may give primary consideration to the present or future income tax consequences of each transaction upon the Beneficiary, and the Trustee may invest all or any part of the funds of a trust estate in tax-exempt securities or in other fixed income investments which have limited prospects for capital appreciation without any duty to make any equitable adjustment in favor of any remaindermen.

(vii) **Mineral Properties.** The Trustee shall have the power to acquire, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of the trust estate, including leases for periods extending beyond the duration of the Trust. The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of the Trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize. The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties. The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contractors, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production. The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.
C. **General Management Powers.** The Trustee is granted the authority to exercise the managerial powers of an individual with respect to matters affecting the Trust, it being the Trustors’ intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

(i) **Power to Enter Into or Continue Business Activities.** The Trustee shall have the authority to enter into, engage in, expand and carry on business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress as of the date of this Trust Agreement and to business opportunities arising hereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not the Trustors’ intention to convert the Trust into an entity that would be taxable as an association for federal income tax purposes.

(ii) **Corporate Activities.** The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and liquidations. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by the Trust created herein, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation.

(iii) **Real Estate.** The Trustee may purchase or sell real property (or enter into options for same), and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use.

(iv) **Authority to Sell or Lease.** The Trustee may sell or lease trust property (or grant options for same) without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of the Trust, upon such terms and for such consideration as the Trustee deems appropriate.

(v) **Warranties and Covenants.** The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.
(vi) Employment and Delegation of Authority to Agents. The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authority (including discretionary authority) as the Trustee deems appropriate, including the power to designate an agent as deputy with the right to enter safe deposit boxes of the Trustee.

(vii) Power to Release or Abandon Property or Rights, and to Pursue Claims. The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate.

(viii) Nominal Title and Use of Nominees. The Trustee may acquire title to property in the name of one or more nominees, and may allow such nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

(ix) Power to Lend Money and Guarantee Obligations. The Trustee may lend money to any person, to any business entity, to any estate, or to any trust, provided that any such loan (except loans to a Beneficiary) shall be adequately secured and shall bear a reasonable rate of interest. The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of the Trust created hereunder. The Trustee may make loans from the Trust to the Beneficiary of such Trust on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment such loan would be consistent with the purposes of such Trust.

(x) Power to Borrow. The Trustee may assume the payment of and renew and extend any indebtedness previously created, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate. The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancings of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of the Trust. The Trustee may loan its own monies to the Trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.
(xi) **Commingling Trust Estates.** The Trustee may commingle all or any portion of the separate Trust estates created by this Trust Agreement and may hold them as a common fund with the separate trusts owning undivided interests in the common fund.

(xii) **Addition of Accumulated Income to Principal.** The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of the Trust to principal.

(xiii) **Tax Elections.** The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of the Beneficiary.

(xiv) **Power to Deal with Environmental Hazards.** The Trustee shall have the power to use and expend the trust income and principal to (a) take all appropriate action to prevent, identify or respond to actual or threatened violations of any environmental law or regulation for which the Trustee may have responsibility, including the authority to conduct environmental assessments, audits and site monitoring to determine compliance with any environmental law or regulation; (b) take all appropriate remedial action to contain, cleanup, or remove any environmental hazard including a spill, release, discharge or contamination, either on its own accord or in response to an actual or threatened violation of any environmental law or regulation; (c) institute legal proceedings concerning environmental hazards or contest or settle legal proceedings brought by any local, state or federal agency concerned with environmental compliance, or by a private litigant; (d) comply with any local, state or federal agency order or court order directing an assessment, abatement or cleanup of any environmental hazards; and (e) employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. Any expenses incurred by the Trustee under this paragraph may be charged against income or principal as the Trustee shall determine.

**D. Apportionment of Receipts and Expenses Between Income and Principal.** The Trustee shall have the power, exercisable in such Trustee's reasonable discretion, to determine what is principal or income of the Trust and to allocate receipts and disbursements in a reasonable manner between principal and income, including the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowances available for federal income tax purposes.
E. Records, Books of Account and Reports. The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for the inspection or audit of the Beneficiary, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the person making such inspection or audit.

The Trustee shall make a written financial report, at least annually, to the Trustors and to the Beneficiary unless the Trustors or the Beneficiary has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to the Beneficiary (if [he/she] is less than twenty-one (21) years old) if such reports are being provided to a parent or guardian of the Beneficiary. Such reports shall be submitted to the parent or guardian of the Beneficiary while [he/she] is a minor, or to the guardian or other legal representative of the Beneficiary if [he/she] is incapacitated.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the Trust of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

F. Compensation of Trustee. [NAME] shall receive no compensation for serving as Trustee. A corporation serving as Trustee shall be entitled to receive (annually or at other convenient intervals selected by the Trustee) fair and reasonable compensation or commissions for its services hereunder, taking into account the nature and value of the trust estate, and the time and work involved.

G. Bond Requirement. No Trustee shall be required to furnish bond or any other security, and no ancillary trustee, unless required to do so by the Trustee, shall be required to furnish bond or any other security.

H. Trustee's Liability. No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts
involving willful misconduct, gross negligence or bad faith. No person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment and management of similar estates. No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, ancillary trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care. No Trustee shall be liable for any loss or depreciation in value sustained by the Trust as a result of the Trustee retaining any property upon which there is later discovered to be hazardous materials or substances requiring remedial action pursuant to any federal, state or local environmental law, unless the Trustee contributed to the loss or depreciation in value through willful default, willful misconduct or gross negligence.

Unless a Trustee shall expressly contract and bind [himself/herself] or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of the Trust. The Trustee shall be entitled to reimbursement from the properties of the Trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of the Trust.

I. Duty of Third Parties Dealing with Trustee. No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of the Trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

J. Distributions During Minority or Disability. During the terms and at the termination of the Trust created by this Trust Agreement, if the Trustee is authorized or directed to make any distribution of income or principal to the Beneficiary during the minority or other disability of the Beneficiary, the Trustee may make such distribution in any one or more of the following ways:

(i) Directly to the Beneficiary;
(ii) To the guardian of other similar representative of the Beneficiary or [his/her] estate;

(iii) To a custodian for the benefit of the Beneficiary if [he/she] is a minor;

(iv) By expending the same directly for the benefit of the Beneficiary, or by reimbursing a person who has advanced funds for the benefit of the Beneficiary; and

the Trustee shall not be responsible for such distribution after it has been made to any person in accordance with these provisions.

K. Division and Distribution of Trust Estate. When the Trustee is required to divide or make distribution of the trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of the trust estate.

L. Termination and Distribution of Small Trust. If, in the discretionary judgment of the person or entity serving as Trustee, the Trust shall at any time be of a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue the Trust, then the Trustee may distribute the trust estate of such Trust to the Beneficiary. The Trustee shall not be liable either for terminating or for refusing to terminate the Trust as authorized by this paragraph.

M. Powers of Trustee Subsequent to an Event of Termination. The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of the Trust and to make a distribution of its assets. During this period of time, the Trust shall continue to be a spendthrift trust, and the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this Trust Agreement are fully executed.

Section 3.03. Provisions Relating to Ancillary Trustee. In the event any of the property which is or may become a part of the assets of the Trust is situated in any jurisdiction other than the State of Texas and in which the Trustee is not qualified to act as Trustee, or if for any other reason the Trustee should need or desire to appoint an ancillary trustee, the Trustee, to the maximum extent permitted by the laws of such other jurisdiction, is empowered to name an individual or corporate trustee qualified to act in such jurisdiction in connection with the property there situated as ancillary trustee or as successor ancillary trustee of such property and to require such security from such
ancillary trustee as may be designated by the Trustee, and to exercise the further procedural and supervisory powers with respect to such ancillary trustee as are granted in this section of the Trust Agreement.

Such appointment should be evidenced by a written instrument, in recordable form, specifying the effective time, date and duration of appointment, and contain an acceptance of appointment by such ancillary trustee. The trustee so appointed shall have all the powers, duties and responsibilities granted to or imposed upon the Trustee, except where the same may be modified by the Trustee, or by the laws of the other jurisdiction.

Such trustee shall account to the Trustee for all property which may be received by it in connection with the administration of such property.

The Trustee may confine and limit the rights, powers and discretions of any ancillary trustee, and may remove such trustee, with or without cause, and appoint a successor at any time by the execution by the Trustee of a written instrument, in recordable form, declaring such ancillary trustee removed from office, specifying the effective time and date of removal, and identifying the successor ancillary trustee. A copy of any instrument of removal shall be mailed to the ancillary trustee being removed from office, but such instrument of removal need not be delivered to or received by such trustee being removed in order to effect such removal from office. The Trustee is authorized to determine and fix the compensation to be paid each ancillary trustee and to provide for the payment or reimbursement of expenses incurred by each such trustee.

Section 3.04. Freedom from Judicial Supervision. All of the powers and discretions granted to the Trustee shall be exercised without the supervision of any court, it being the intention of the Trustors that so far as can be legally provided, the Trustee shall be completely free of judicial supervision.

Section 3.05. Requesting Financial Information of Trust Beneficiary. In exercising its discretion to make any discretionary distributions to the Beneficiary of the Trust created under this Trust Agreement, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the Beneficiary that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this Trust Agreement.

Section 3.06. Situs of Trust. The Trust created herein shall be deemed a Texas trust and shall be governed by the laws of the State of Texas. The situs and principal office of the Trust shall be maintained in Tarrant County, Texas, regardless of the residence or domicile of the Trustee. However, if the Trustee in [his/her] or its sole discretion, determines that a change of situs of the Trust would be beneficial to the Trust established herein, the
Trustee shall have the discretion and authority to change the situs of the Trust to another county in Texas or to another state. Formal notice of any change of situs may be given by the Trustee by filing a written declaration of change of situs of the Trust, which must specify the effective time and date of such change, in the deed records of the county then constituting the situs of the Trust, and a counterpart of such notice in the county (and state, if applicable) to which the situs is being changed. If the situs of the Trust is changed to another state, the administration of the Trust thereafter shall be governed by the laws of the state to which the situs has been removed. During such period of time as the Trustee is not residing in the state in which the situs of the Trust is located, such Trustee shall maintain an agent in such state in which the situs is located, authorized to receive communications, including service of process, directed to the Trustee as Trustee of the Trust created hereunder.

ARTICLE FOUR

OFFICE OF TRUSTEE

Section 4.01. Appointment of Successor Trustee. If for any reason [NAME] fails to serve as Trustee, [he/she] shall be succeeded by [NAME] as Trustee.

Section 4.02. General Provisions Regarding Successor Trustees. The following provisions shall govern the succession and resignation of any individual or entity serving as a Trustee of the Trust created by this Trust Agreement.

A. Resignation. Any person or entity serving as a Trustee shall have the right to resign from office as Trustee, with or without cause. At least thirty (30) days prior to the date of such resignation, or such lesser period of time to which every continuing and immediate successor Trustee may consent, the resigning Trustee shall give written notice thereof by certified mail, return receipt requested, to the Trustors, to the successor Trustee, to the Beneficiary of the Trust if [he/she] is at least twenty-one (21) years of age, and to the parent or guardian of the Beneficiary of the Trust if [he/she] is under twenty-one (21) years of age. Notice shall be deemed to be sufficiently given if it specifies the effective time and date of resignation, and if it is acknowledged in a form that could be recorded in the deed records of the county in which such Trustee is residing. Upon any such resignation, the resigning Trustee shall render such accounting as shall be requested in writing by the successor Trustee.

B. Change of Identity of Corporate Trustee. If a corporation nominated to serve or serving as a Trustee shall ever change its name, or shall merge or consolidate with or into any other bank or trust company, such
corporation shall be deemed to be a continuing entity and shall continue to be eligible for appointment, or shall continue to act as Trustee.

C. **Manner of Succession.** Each successor Trustee, upon its acceptance of office, shall execute a written instrument, in recordable form, accepting the office of Trustee which states the date and time of such acceptance. No successor Trustee shall be required to make application to any court to accept the office of Trustee. Each successor Trustee may accept and rely upon the accounting furnished by the predecessor Trustee unless such successor Trustee has actual knowledge that such accounting is materially in error, or unless the Trustors, the Beneficiary (if [he/she] is at least eighteen (18)), or the parent or guardian of the Beneficiary (if [he/she] is under eighteen (18)) requests the Trustee to verify, audit or contest such accounting. The successor Trustee shall succeed to the rights and titles of the predecessor Trustee without the necessity of any conveyance or assignment of the trust estate, although conveyances and assignments shall be made if desired and requested by the successor Trustee.

**ARTICLE FIVE**

**PARENTAL OBLIGATIONS**

It is the Trustors' intention that the Trust created herein is not established to discharge any of the legal obligations or duties of [NAME] (original Trustee) as a parent of the Beneficiary of the Trust, and the Trustors expressly request that the Trust created herein not be so used. However, this is merely a suggestion to the Trustee, and shall not serve to restrict the Trustee's sole and absolute discretion to make income and principal distributions pursuant to the provisions of Section 2.01 hereof.

**ARTICLE SIX**

**GENERAL PROVISIONS**

Section 6.01. **Construction.** It is the intention of the Trustors that gifts of property to this Trust qualify as gifts of present interests, as opposed to gifts of future interests, within the meaning of Section 2503(c) of the Internal Revenue Code of 1986, as amended (the "Code"), and the Trustee is directed at all times to administer and construe the Trust hereby created so as to qualify under Section 2503(c) of the Code.

Section 6.02. **Effect of Inoperative, Invalid or Illegal Provision.** If any provision of this Trust Agreement is held to be inoperative, invalid or illegal, it is the Trustors' intention that all of the remaining provisions thereof shall continue to be fully operative and effective as far as is possible and reasonable.
Section 6.03. Headings. The headings employed herein are for reference purposes only and shall not in any way affect the meaning or interpretation of the provisions of this Trust Agreement.

Section 6.04. Texas Law Controls Construction. The Trust Agreement shall be governed by and construed in accordance with the laws of the State of Texas so long as the situs of the Trust remains within the State of Texas.

Section 6.05. Counterparts. This Trust Agreement is being executed in a number of counterparts, each of which may serve as an original, but all of which shall constitute one and the same Trust Agreement.

ARTICLE SEVEN

DEFINITIONS

A. Descendant or Descendants. The words "descendant" and "descendants" shall include any person adopted into the line of descent, as well as lineal descendants by blood. The term "adopted" shall mean or denote adoption by legal proceeding, the finality of which is not questioned by the adopting person.

B. Gender. Pronouns, nouns and terms as used in this Trust Agreement instrument shall include the masculine, feminine, neuter, singular and plural forms thereof wherever appropriate to the context.

C. Survival. A requirement that a person "survive" a specified individual or event or be "surviving" or "living" shall be interpreted to mean "survival by at least thirty days."

D. Heirs. "Heirs" shall refer to those persons who would inherit the separate property estate of the person indicated under the laws of descent and distribution of the state of the Trustors' domicile as of the date indicated.

E. Per Stirpes. "Per stirpes," when used with respect to a distribution of property among a class of beneficiaries, shall mean by representation; that is, the descendants of a deceased ancestor take the share such ancestor would have received had he or she been living, and the issue of a living ascendant would not take in competition with such ascendant. The per stirpital allocation shall commence with the most senior generation that has a living representative.

F. Custodian. The term "custodian" shall refer to a custodian under the Texas Uniform Transfers to Minors Act or other appropriate state Uniform Transfers to Minors Act. Whenever the Trustee is authorized to make a distribution to a custodian, the Trustee may designate a custodian, and may designate one of the persons or entities serving as Trustee to serve as such custodian.
ARTICLE EIGHT

ACCEPTANCE BY TRUSTEE

The Trustee hereby accepts the Trust herein created, and agrees to administer the same in accordance with the terms of this Trust Agreement.

IN TESTIMONY WHEREOF, the parties have executed this Trust Agreement the day and year first above written.

______________________________
[NAME], Trustor

______________________________
[NAME], Trustor

______________________________
[NAME], Trustee

THE STATE OF TEXAS §

COUNTY OF TARRANT §

This instrument was acknowledged before me on _____________, 2005, by [NAME].

______________________________
Notary Public In and For the State of Texas

THE STATE OF TEXAS §

COUNTY OF TARRANT §

This instrument was acknowledged before me on _____________, 2005, by [NAME].

______________________________
Notary Public In and For the State of Texas

THE STATE OF TEXAS §

COUNTY OF TARRANT §

This instrument was acknowledged before me on _____________, 200_, by [NAME], as Trustee.

______________________________
Notary Public In and For the State of Texas
APPENDIX C

EXHIBIT A

TO

[NAME] GIFT TRUST
APPENDIX D

IRREVOCABLE TRUST AGREEMENT

WE, [NAME] and [SPOUSE'S NAME], husband and wife, (hereinafter called "Settlors") on this _____ day of ______________, 200[___], do hereby transfer the property described in Exhibit "A" attached hereto and made a part hereof to [NAME] (hereinafter called "Trustee") in trust, for the uses and purposes and subject to the terms and conditions hereinafter set forth.

ARTICLE I

1.01 The Trustee shall divide the trust assets into [# OF TRUSTS] (___) equal trusts, one equal trust to be held for the benefit of each of Settlors' [children, grandchildren] (hereinafter referred to as the primary beneficiaries). One such equal trust shall be held for the benefit of [NAME] and shall be known as "THE [NAME] IRREVOCABLE TRUST". One such equal trust shall be held for the benefit of [NAME] and shall be known as "THE [NAME] IRREVOCABLE TRUST". Physical segregation of the assets shall not be required, and the Trustee may manage the assets of the trusts as though they constituted only one trust, but each shall be deemed a separate trust, and separate accounts shall be maintained by the Trustee for each trust.

1.02 The Trustee shall distribute the net income from each trust to the primary beneficiary of such trust, in monthly or more convenient installments but in no event less often than annually. [However, if a primary beneficiary is under the age of eighteen (18) years, distributions may be made to [NAME] as Custodian for such beneficiary under the Texas Uniform Transfers to Minors Act.]

1.03 The Trustee is also authorized, in the Trustee's sole discretion, to pay or apply out of the corpus of each trust, such amounts as are necessary, in the opinion of the Trustee, to provide for the health, support,
maintenance and education (including college and advanced studies) of the beneficiary of that particular trust. In making invasions of corpus under this last provision, the Trustee shall consider any resources or sources of income of each beneficiary or other means of providing for such needs, including, but not limited to, the trust income. Any distribution of corpus pursuant to this paragraph shall be charged against the corpus of the trust of such beneficiary, and shall not be charged against the corpus of the trust of any other beneficiary.

1.04 Each primary beneficiary shall have a testamentary power of appointment to appoint the assets comprising his or her trust to such person or persons, including the estate or creditors of the primary beneficiary, in such amounts and proportions as he or she may appoint by his or her Last Will and Testament by specifically referring to this power of appointment, but said trust shall not terminate at that time. The assets therein shall remain a part of this trust and subject to its provisions until said assets are fully distributed as hereinafter provided in paragraph 1.05 at the same times that the deceased primary beneficiary would have been entitled to withdraw the assets had he or she survived.

(a) If any trust property is included in the estate of a primary beneficiary for federal or state death tax purposes as a result of this power of appointment, and the power is not exercised by such beneficiary, or to the extent it is not exercised, the Trustee shall pay over to the Executor or administrator of the beneficiary's estate, or pay directly from said property an amount equal to that increment of federal and state death tax liability attributable to the inclusion of the property (on which the power of appointment was not exercised) in the beneficiary's estate.

1.05 After the death of both the Settlors, after the settlement of both their estates and when each primary beneficiary attains the age of [___] (___) years, such person shall have the right to withdraw one-third (1/3) of the corpus of his or her trust. Thereafter, when each of said primary beneficiaries attains the age of [___] (___) years, such person shall have the right to withdraw one-half (1/2) of the then remaining corpus of his or her trust. Thereafter, when each of said primary beneficiaries attains the age of [___] (___) years, such person shall have the right to withdraw all of the then remaining corpus of his or her trust and shall have an unrestricted power of appointment over it.

1.06 Upon the death of a primary beneficiary, prior to the distribution to such person of his or her trust, and without having validly exercised the testamentary power of appointment as to all the assets consisting of said deceased beneficiary's trust granted to said person under paragraph 1.04 above, the Trustee shall hold the remaining assets of such primary beneficiary's trust (to the extent such beneficiary has not validly exercised said testamentary
power of appointment) for the benefit of the living issue of such person (hereinafter called the secondary beneficiary) in accordance with the provisions of paragraph 1.07 below, but if any primary beneficiary shall be then deceased without issue then surviving, such deceased person's trust shall be allocated equally to the remaining trusts created for Settlors' other primary beneficiaries; provided, however, that if said trusts or any shares thereto have been distributed to the beneficiary or beneficiaries thereof under paragraph 1.05 or subparagraph 1.07(b), the Trustee shall distribute, free of trust, to the beneficiary or beneficiaries whose interest in the other trust or shares has been so terminated, the portion of the assets which they would have been entitled to receive had their trust or share of the trust continued to exist.

1.07 Any trust set aside for the living issue of a deceased primary beneficiary pursuant to paragraph 1.06 shall be held and disposed of by the Trustee as follows:

(a) The Trustee shall divide the assets of such trust into shares for the issue, per stirpes, of such deceased primary beneficiary. Each secondary beneficiary shall thereafter have a vested interest in his or her share of the trust even though the interest of such beneficiary remains in trust. After the trust has been divided into shares, the Trustee shall continue to hold the same in trust, to invest and reinvest the same, collect and receive the income therefrom and shall pay or use such amounts from the income or corpus of a separate share as are necessary for the health, support, maintenance and education (including college and advanced studies) of the beneficiary thereof. Any income from a separate share which is not distributed to a secondary beneficiary shall be added to and become a portion of the corpus of the share being held for such beneficiary. Any corpus distributed from the share shall be charged to the share of the corpus of the secondary beneficiary receiving the distribution and shall not be charged to the share of any other beneficiary.

(b) After the death of both Settlors, after the settlement of both their estates, and when each member among the issue of a deceased primary beneficiary attains twenty-one (21) years of age, or upon the death of any such secondary beneficiary, whichever shall first occur, the trust share then being held for such person shall terminate and the assets constituting that share shall be distributed in fee simple and free of trust to such person or his or her estate, as applicable, it being the intention of the Settlors that each member among the issue of a deceased primary beneficiary shall have a vested interest in his or her trust share as hereinabove provided, from and after the time the trust is divided into shares pursuant to subparagraph 1.07(a) above.
1.08 If upon the termination of the trust created herein, there is no one in being to take in accordance with the provisions provided for above and if subparagraph 1.07(b) is not applicable, then the Trustee shall distribute all of the remaining trust assets, free of trust, as follows: one-half (½) to [NAME]'s heirs, and one-half (½) to [SPOUSE’S NAME]'s heirs.

1.09 The trusts herein created shall terminate when all of the corpus has been fully distributed as hereinabove provided, which date of termination shall not, in any event, be later than twenty-one (21) years after the death of the last survivor of [NAME], [SPOUSE’S NAME] and the issue of the Settlors, living at the time the trusts were created.

1.10 In the event of termination under the provisions of the preceding paragraph, the entire corpus of the trusts, together with any undistributed income therefrom, shall be distributed to those persons entitled to take under the provisions herein set forth, regardless of the age which any distributee, otherwise entitled, has obtained.

1.11 "Children," "issue," and "descendants" as used herein refers to the legitimate children of the person designated and the legitimate lineal descendants of such children, and includes any person adopted before attaining age eighteen (18) and the adopted person's lineal descendants. A posthumous child shall be considered as living at the death of his or her parent.

1.12 The "heirs" of any person means the individuals who would have inherited the person's personal property if the person had died intestate at the time the distribution is to be made, not married and domiciled in Texas, under the laws of Texas in force on the date this trust is signed, with the shares of taking determined by those laws.

ARTICLE II

2.01 In the event [NAME] should die, resign or be unable or unwilling to continue as Trustee, then Settlors name, constitute and appoint [NAME] as Successor Trustee. Any Trustee may resign by an instrument in writing duly executed and acknowledged and delivered to the Successor Trustee named in this instrument, and no further action or judicial approval of same shall be deemed necessary.

2.02 No bond shall be required of any Trustee or Successor Trustee. A Successor Trustee shall have all of the rights, powers and duties as the originally named Trustee.

2.03 None of the beneficiaries of the trusts herein created shall have the right or power to dispose of, or in any manner encumber or charge by way of anticipation or otherwise his or her interest under the trusts, nor shall such
interest be subject to any writ of attachment, garnishment, execution or other judicial process, or liable or chargeable in the hands of the Trustee for any debts or liabilities of any of the beneficiaries, nor shall the same at any time be so liable or chargeable prior to the actual receipt thereof by him or her from said Trustee.

2.04 No Trustee, other than a corporate Trustee, shall receive any compensation for duties performed hereunder. The corporate Trustee shall receive reasonable compensation for its duties performed hereunder, commensurate with compensation paid to banks or trust companies in the [CITY], Texas, area for services of a like nature. All Trustees shall be reimbursed for reasonable expenses incurred in the administration of the trust.

2.05 The Trustee shall render an annual account of the administration of the trusts to the income beneficiaries and to the Settlors, which accounting may be made by submission of a copy of the federal fiduciary income tax return filed for the trust. If no objection to an account has been made in writing by either Settlor or a beneficiary (or his or her legal representative, if incompetent or deceased) within sixty (60) days after the date of mailing of such account by the Trustee or the delivery of same, it shall be deemed approved and shall be conclusive upon all persons interested.

2.06 Any Successor Trustee may accept the assets from a predecessor Trustee without any liability for acts of the predecessor Trustee other than its own acts; and said Successor Trustee shall not be required to obtain an accounting from the predecessor Trustee.

2.07 A majority of the adult beneficiaries shall have the authority to remove any corporate Successor Trustee and to appoint an individual (other than either Settlor) or a different corporate Successor Trustee and to change the situs of any trust. Any corporate Successor Trustee so appointed must be a trust company or bank possessing trust powers and having a combined capital and surplus of not less than Ten Million Dollars. A majority of the adult beneficiaries shall have the authority to settle the accounts of any corporate Successor Trustee who is so removed and such settlement, if any, shall be binding on all parties. Notice of removal shall be given by written instrument signed by a majority of the adult beneficiaries and delivered to the corporate Successor Trustee to be removed and to the Successor Trustee so appointed at least thirty (30) days prior to such removal and appointment.

2.08 If by reason of the bankruptcy or other event happening during the continuance of any trust herein created, the income or principal otherwise intended for a beneficiary shall wholly or in part cease to be enjoyed by him or her as above provided, then, in such event, the trusts hereinbefore expressed concerning said income and principal shall thereupon cease and terminate as to such beneficiary, and all income and principal otherwise
hereinbefore provided for him or her shall thereafter be held and distributed by the Trustee for him or her during the remainder of his or her life, according to the absolute discretion of the Trustee. But the Trustee may, nevertheless, pay to him or her, or for his or her health, maintenance, support or education, from such income and principal, such sums as the Trustee in the Trustee's absolute discretion shall think fit and proper, having regard for Settlors' wishes as in this instrument expressed, and retaining any unexpended sums as part of the principal of the trusts to be finally disposed of after the death of such beneficiary, as herein provided. Any power under this paragraph to make distribution to or for the benefit of a person who is a beneficiary of any trust herein (including, without limiting the foregoing, termination distributions and distributions in discharge of any legal obligation of the person) shall be exercisable solely by the Trustee other than such beneficiary, or if none, by the person or entity who would be Trustee if such beneficiary ceased to act as Trustee, and if such beneficiary is a Trustee or Successor Trustee, such beneficiary shall have no power or authority to participate in any decision regarding distribution of income and principal to him or her.]

ARTICLE III

3.01 The Trustee and any successor or successors thereto shall have the following powers, all of which shall be exercised in a fiduciary capacity:

(a) To exercise all of the powers granted to trustees by the provisions of the Texas Trust Code as now enacted or as hereafter amended.

(b) To retain any assets legally acquired without liability for such retention even though such property, by reason of its character, amount, proportion to the total trust estate, or otherwise, would not be considered appropriate for a fiduciary apart from this provision.

(c) To retain or to acquire wasting assets. The Trustee shall have no duty to sell wasting assets or to apportion any of the income therefrom to corpus. The Trustee may, if, in the Trustee's sole discretion, the Trustee deems it necessary to prevent injustice, transfer income or proceeds from such wasting assets to corpus under such formulae as the Trustee deems equitable.

(d) To retain or acquire property returning no income or slight income and to retain any such property so long as the Trustee shall think fit without the same being in any way chargeable with income or the proceeds thereof in case of sale being in any part deemed income.

(e) To apportion receipts to income or corpus and to charge disbursements to expense or corpus in the Trustee's sole discretion, providing the Trustee follows generally accepted accounting principles. Provided, however, and notwithstanding that just above stated in this subparagraph 3.01(e), payments to which the Trustee is entitled under any employees' pension or profit-sharing plan benefits, Keogh plan benefits or any IRA plan benefits, or any other employee benefit plan, payable to the Trustee, shall be deemed principal if distributed in a lump sum, but shall be deemed income, not principal, if distributed periodically over a period in excess of three years. Furthermore, any income tax deduction for depletion, whether state or federal, shall be allocated to the beneficiaries on the basis of the net income distributed to each.
(f) The Trustee shall allocate the income tax deduction, both state and federal, with regard to depletion and depreciation between the trusts and the beneficiaries on the following basis: Each trust shall be entitled to a proportionate part of such deductions which the ratio of the amount retained by each trust bears to the net income of each trust. The remainder of such deductions shall be allocated to the beneficiaries on the basis of the net income distributed to each.

(g) To borrow money and to pledge any of the assets of the trust estate for that purpose, even though the term of the loan may extend beyond the term of the trusts. The Trustee may borrow money from the corporate trustee or any of its affiliates and any rule of law prohibiting such a transaction is expressly waived so long as any such loans are competitive with other banks in the area.

(h) To purchase or sell any asset of any one of the trusts created by this instrument to any other trust created hereunder.

(i) To mingle the trust property of the separate trusts established hereunder, allotting to each separate trust an undivided interest in the mingled property, which undivided interest shall always be equal to that trust's proportionate contribution, as adjusted from time to time as a result of accumulations of income, payments of principal and additions to principal, to the mingled property. It shall not be necessary to segregate the assets of each trust, and the Trustee may hold any or all of the trusts' assets jointly and may make joint investments with any or all of the trusts, but separate records shall be kept for each separate trust established by this instrument.

(j) To continue to operate any business interest which becomes part of the trust estate; to delegate all or part of the management thereof; to invest other funds of the trust estate therein; to convert such business from one form (e.g., proprietorship, partnership, corporation) to another; all in such manner, and for such times, and on such terms as the Trustee shall think fit.

(k) In dividing the trust estate into separate parts, shares or trusts or in distributing the same, to divide or distribute in cash, in kind, or partly in cash and partly in kind, using different properties according to their value and/or undivided interests in the same properties, as the Trustee shall think proper. The Trustee may also consider the Federal Income Tax consequences of the distribution or division to the trusts and beneficiaries to the extent known to the Trustee, without independent inquiry. The exercise of the discretion and power herein granted the Trustee shall be final and conclusive upon all parties and shall not be subject to question by or on behalf of any beneficiary, regardless of its effect upon such beneficiary. The power of the Trustee to convert assets into cash or other assets, shall not terminate at the time required for distribution, but shall continue for a reasonable time thereafter to assist the Trustee in making an orderly distribution of the assets comprising the trusts.

(l) In the event any beneficiary is under legal disability, or though not adjudged incompetent, is, by reason of illness or mental or physical disability, unable, in the opinion of the Trustee, to use or disburse wisely such payment or distribution under the provisions of the trusts herein created, then the Trustee may make such payment or distribution for the benefit of such beneficiary in such of the following ways as in the Trustee's opinion shall be most desirable:

(i) Directly to such beneficiary;

(ii) To the duly qualified legal representative or representatives of such beneficiary;

(iii) To some near relative or friend of such beneficiary to be used for that beneficiary's benefit;

(iv) By using such payment directly for the benefit of such beneficiary; or
(v) By distribution to a relative as Custodian for such beneficiary under the Texas Uniform Transfers to Minors Act.

However, no distribution shall be made in a manner that discharges a legal obligation (including, but not limited to, any obligation of support), of any person other than the beneficiaries. Distribution by any one or more of the foregoing shall operate as a complete acquittance of the duties of the Trustee to make such payment.

(m) While [NAME] is serving as Trustee or Successor Trustee of the trusts herein created, said person is specifically given and granted the power to deal with the trusts in said person's individual capacity, to buy, sell and exchange real or personal property; to make loans to, or borrow money from, the said trusts; and said person is specifically relieved from any and all liability as a result thereof so long as such dealings are consummated in good faith and for an adequate and full consideration in money or money's worth. All loans made to [NAME] in said person's individual capacity shall be adequately secured and bear a reasonable rate of interest. [*While [NAME] is serving as Trustee or Successor Trustee of the trusts herein created, and also as an officer or director of any corporation in which the trusts own stock and whether or not said person individually owns stock in such corporation, said person is authorized to sell stock in such corporation owned by the trusts back to the corporation at its fair market value and on such terms, interest rate and other provisions as said person deems advisable and any rule of law prohibiting same is expressly waived, and the estate or trusts of [NAME], as applicable, shall indemnify said person from all liability on any such transaction entered into by said person in said person's fiduciary capacity in good faith.*] Any decision made by any Trustee pursuant to this paragraph shall be final and conclusive upon all beneficiaries.

(n) If any person who is a beneficiary of any trust herein created, or a trustee or co-trustee of any such trust, has a power alone or in conjunction with others to remove any trustee, then the Trustee shall be prohibited from making any distribution that would have the effect of discharging any such person's legal obligation to support any beneficiary.

(o) Any power to make discretionary distributions to or for the benefit of a person who is serving as Trustee of a trust (including early termination distributions, distributions to the person's spouse and distributions in discharge of any legal obligation of the person) shall be exercisable solely by the Trustee or Trustees other than that person. If no other Trustee is then serving, such power shall not be exercisable. The preceding sentences shall not apply to a power to make distributions to a beneficiary pursuant to a standard limiting such distributions to the beneficiary's needs for health, support and maintenance, except where there is a discharge of any legal obligation of the person.

(p) To hold, buy, sell or exchange oil and gas or other mineral properties (including interests in deposits of other natural resources), to execute leases on such properties for a period extending beyond the term of the trust; to execute subleases and farmout agreements; to carve out or reserve such mineral interests as the Trustee deems advisable or expedient; to execute unitization and pooling agreements; to exchange undivided interests in mineral properties for interests in other properties for a period of time extending beyond the duration of the trust.

(q) To own and acquire life insurance on the life of any person in which the trust or its beneficiaries may have an insurable interest. In the event the trust owns any life insurance on the life of either Settlor, premium payments thereon shall only be made out of corpus, and not out of income. Any insurance company or other party shall be completely protected in dealing with the Trustee. The receipt of the Trustee for any payment made to the Trustee shall be a complete acquittance and discharge to the extent specified in such receipt of the Trustee. No insurance company or other party making any payment or delivering or transferring any assets to the Trustee shall be permitted or required to see to the use or application of any such payment or assets hereunder.

(r) To purchase at a fair price any property belonging to the estate of either Settlor and to retain such purchased property as an investment of the trust estate. The Trustee is authorized to
make loans out of the trust property to the executor or administrator of a Settlor's estate, provided such loans are made on adequate security and for an adequate interest. The Trustee shall have such powers even though the Trustee may be serving at the same time as personal representative of such estate, and any rule of law prohibiting such a transaction is expressly waived.

(s) The Trustee is specifically empowered to borrow money and while [BANK NAME] is serving as [SUCCESSOR] Trustee, it may do so from the Commercial Department of [BANK NAME], or any affiliates thereof, as long as any such loans are competitive with other banks in the area.

(t) The Trustee is expressly relieved of all liability to any beneficiary under the trust or to any other person whomsoever because of any loss or losses that may develop as a result of the Trustee complying with the direction that the Trustee use the Trustee's own discretion and judgment rather than be governed by any certain rule or rules of law with respect to investment of trust funds, and the Trustee, having acted in good faith, shall not be liable for losses resulting from errors of judgment or from the exercise of the Trustee's own discretion with respect to the kind and character of investment that the Trustee may hold from time to time.

(u) All incidents of ownership with respect to any interest in any insurance policies on the life of a Trustee which form a part of a trust estate shall be exercisable in a fiduciary capacity solely by a Trustee other than the insured. If there is no other Trustee then acting hereunder, such incidents of ownership shall be exercisable by the person, persons or entity herein named as Successor Trustee or Trustees, who would be acting as Trustee if the insured were to cease to act without having appointed a Successor Trustee.

ARTICLE IV

4.01 The Settlors reserve no power to alter, amend, or revoke the terms of this trust instrument. The Settlors shall have no right to require that any of the trust corpus or income be used for the discharge of any obligation for which they may be liable.

4.02 The Settlors may make additional transfers, conveyances, or contributions to the trust created herein, in which event it shall be considered that the particular properties transferred, conveyed, or contributed are received upon the same terms and conditions and subject to the same uses and trust as the property initially contributed by the Settlors.

4.03 The Trustee may receive any other real or personal property from the Settlors or from any other person or persons, by lifetime gift, under a Will or Trust or from any other source. Such additional property shall be held by the Trustee subject to the terms of this Agreement.

(a) With respect to each transfer of property to the Trustee during the life of the Settlor (other than by devise or bequest), each primary beneficiary may request the Trustee to pay him or her, from the trust principal, an amount not in excess of the eligible amount.
(b) “Eligible amount” shall mean the market value of any property transferred to the trust divided by the number of primary beneficiaries, provided, however, the value of the property subject to a power of withdrawal by such primary beneficiary shall be the lesser of the following amounts:

(1) An amount equal to the product of
   a. The value of the property transferred; and
   b. The fraction of which the numerator is one (1) and the denominator is the sum of (i) the number of primary beneficiaries living when the property is transferred less (ii) the number of primary beneficiaries who have been excluded from having a right of withdrawal with respect to such transfer pursuant to paragraphs 4.03(c) or 4.03(d) of this Article; or

(2) The maximum federal gift tax exclusion under Section 2503(b) of the Code in effect at the time of transfer (currently $11,000 per transferor) or twice the maximum federal gift tax exclusion under Section 2503(b) of the Code in effect at the time of the transfer if the transferor is married at the time of the transfer and if there is a provision in the Code permitting spouses to split gifts at the time of the transfer (currently $22,000);

provided that the total amount that any individual may demand with respect to all gifts made to the trust by the Settlors shall lapse on December 31 of each year (whether or not a contribution to the trust has been made that year) by the greater of (a) Five Thousand Dollars ($5,000) or (b) Five Percent (5%) of the value of the trust estate on December 31 of that year.

(c) The Trustee shall, promptly after a transfer of property is made to the trust during the life of the Settlors, notify in writing any holder of a power of withdrawal, such notice to include a description of (1) the transferred property, (2) the respective right of withdrawal resulting from the transfer, and (3) the time limit on exercise of the right. In case any holder of a power of withdrawal is under a legal disability, notification shall be given to his or her legal guardian, committee or conservator, or, if none, to his or her parent or to such other person or institution in a position to act on his or her behalf as the Trustee shall deem appropriate. Each holder of a power of withdrawal may exercise the power by a writing signed and delivered to the Trustee, except that in the case of a person under a legal disability, his or her power may be exercised by his or her legal guardian, committee or conservator, as the case may be. However, in no circumstance shall the Settlors exercise a power of withdrawal on behalf of a person under a legal disability.

(d) Prior to the transfer of any property to the trust, the Trustee may exclude any one or more persons from having powers of withdrawal over that transfer and/or subsequent transfers, by delivering an instrument
in writing to such holder of a power of withdrawal. No such instrument shall limit any powers of withdrawal resulting from transfers made prior to such instrument.

(e) The Trustee may at any time and from time to time amend the provisions of this Article governing powers of withdrawal in any way that the Trustee determines will help achieve the Settlors’ goal of obtaining the gift tax annual exclusion for transfers to the trust estate while avoiding other adverse consequences to the Settlors, the Settlors’ estate, the trust estate and the beneficiaries of this trust estate; provided, however, that the Trustee may not amend the provisions of this Article to convey powers of withdrawal. Such amendment may, for example, eliminate powers of withdrawal altogether, or deny powers of withdrawal to any primary beneficiary, or alter the provisions regarding notification, or alter the annual limitations on the powers of withdrawal by any one person, or alter the terms on which any power of withdrawal lapses. Any such amendment shall be made by an instrument in writing delivered to the then beneficiaries of this trust estate. Any such amendment made by the Trustee in good faith shall be conclusive on all persons interested in this trust estate and the Trustee shall not be liable for the consequences of any amendment or of non-amending. No such amendment shall limit any beneficiary’s rights resulting from any transfer to the trust estate made prior to such amendment.

IN WITNESS WHEREOF, the Settlors have executed this instrument the day and year first above written.

[NAME]  

[SPOUSE'S NAME]  

SETTLORS

ACCEPTED:

[NAME]  

TRUSTEE

THE STATE OF TEXAS §  
COUNTY OF ___________ §  

This instrument was acknowledged before me on _________________. 200_, by [NAME] and [SPOUSE'S NAME], husband and wife.

Notary Public, State of Texas
IN RE: ABC TRUST

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS

ORIGINAL PETITION TO APPOINT SUCCESSOR TRUSTEE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, STATE NATIONAL BANK AND TRUST, TRUSTEE ("TRUSTEE"), and files this Original Petition to Appoint Successor Trustee, and in support thereof shows the following:

1. Trustee is a banking institution which is licensed to do business in Texas and which has offices in Fort Worth, Tarrant County, Texas.

2. The trust listed above is currently under the control of Trustee. The beneficiaries ("Beneficiaries") of the trust, and the persons who must be served with citation in this cause, are as follows:
   a. 
   b. 
   c. 

All of the Beneficiaries are adults. There are no minor, incapacitated or unknown beneficiaries, and therefore there is no reason to appoint an guardian ad litem in this cause.

3. This Court has jurisdiction over this action pursuant to §115.001(a) of the Texas Trust Code. Venue is proper in Tarrant County because the situs of the trust is in Tarrant County and one of the beneficiaries is a resident of Tarrant County.

4. Trustee desires to resign as Trustee of each of the trust listed above. A true and correct copy of the trust is attached hereto as Exhibit A and is incorporated herein by reference. The trust does not provide guidance as to how a trustee can resign, and it does not designate a successor trustee if the current trustee should resign.

5. Trustee has made its desires known to the Beneficiaries and has given said persons ample time to locate a successor trustee. Since the Beneficiaries have not done so, Trustee has initiated this action.

6. Trustee respectfully requests that this Court approve its resignation and that this Court also appoint a successor Trustee for the trust. As a part of its resignation, Trustee requests that this Court approve the accountings for the trust and release Trustee from further responsibility and liability regarding its services as fiduciary for the trust listed above.
APPENDIX E

WHEREFORE, PREMISES CONSIDERED, Trustee prays that the Beneficiaries be cited to appear and answer herein, that Trustee’s resignation be approved by this Court, that Trustee’s accounts for the trust be approved, that Trustee be released from further liability to the Beneficiaries of the trust, that a successor trustee be appointed for the trust, and that Trustee receive such other and further relief to which it may be entitled.

Respectfully submitted,

JACKSON WALKER L.L.P.
301 Commerce Street, Suite 2400
Fort Worth, Texas 76102
Telephone: 817.334.7235
Telecopier: 817.334.7290

By: ______________________________
   M. Keith Branyon
   State Bar No. 02902050

ATTORNEYS FOR STATE NATIONAL BANK AND TRUST, TRUSTEE