Lipman’s Wills and Trusts

Texas Manual
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CHAPTER ONE
HOW TO USE THIS VOLUME

I. NATURE OF THE FORMS:
MARRIED, INDIVIDUAL, AND SAME-SEX SPOUSE / DOMESTIC PARTNERS

The forms contained in this Volume have been designed for use with married clients, unmarried (individual) clients, and same-sex marriage / domestic partner clients. You will never be asked whether your client is married or unmarried. Rather, you must choose the correct forms based upon the type of client that has hired you to perform the work.

For your married clients, there are reciprocal documents for both the husband and the wife. For instance, after you have made a determination as to which type of Will form you want to draft for your married client, you will need to choose two Will forms: one for the husband and a similar or corresponding Will form for the wife. (On rare occasions, you may decide to draft different types of Wills for the husband and wife.) The same holds true for all other documents, such as Powers of Attorney or Medical Powers of Attorney, that you would be drafting for the husband and the wife. For your unmarried clients, you will want to choose the forms which are listed under the headings for “Individuals.” If your client is an unmarried man, you do not want to use a document under the heading “Husband’s Estate Planning Documents” as these forms have been designed around the fact that this person has a wife.

The “Same-sex Spouse / Domestic Partner” forms are designed to allow you to draft forms in the following situations:

(1) Same-sex marriages (two men or two women)
(2) Domestic partners
(3) Any other situation where two people are providing for each other

With regard to (3), the two people can be two men, two women, or a man and a woman. Just like with the forms for married clients, the forms for same-sex spouses / domestic partners are designed so that one set of forms will be used for the first Spouse / Partner, and a second set of forms will be used for the second Spouse / Partner. Therefore, when your clients are either (i) a man and a woman, (ii) two men; or (iii) two women, you would draft two sets of forms, with one of the clients being treated as the first Spouse / Partner, and the other as the second Spouse / Partner. If you are hired to prepare documents for a man or woman who has a spouse / partner, but that other partner will not be using you to prepare his or her documents, then you would draft documents for the first Spouse / Partner alone.

II. WHICH FORMS TO USE

There are hundreds of forms available, from the very simple to the very complex. At times, it may be difficult to determine which forms to choose when drafting, and how to answer the questions the program will ask of you. You can learn more about the particular forms by reading
the appropriate sections of this manual, or by clicking on the form help in the ProDoc program. With regard to knowing how to answer the questions, the “Explain” screen associated with each particular question should prove helpful, as the explanation is designed to provide you with guidance to determine which answer is most appropriate. If you are still uncertain as to how you want to answer a particular question, a simple approach is to choose the default answer which has been pre-programmed into the system.

III. DRAFTING TRANSMITTLAL LETTERS

Lipman's Wills and Trusts gives you the ability to draft customized transmittal letters for your clients. These letters are found in Chapter 53, under the subvolume Miscellaneous Forms and Letters, and are Forms 53-1 & 53-2. Although the formatting of the letters may need to be adjusted to fit your letterhead, the text of the letters will describe the documents you have prepared. You should be sure to read the transmittal letters very carefully to make certain the language is accurate. There are literally millions of possible versions of the transmittal letters that can be produced, and although great care has been taken to make sure the transmittal letters contain no inaccuracies, it is possible that errors will occur. See Chapter Thirteen of this manual for additional information on the transmittal letters.

IV. LIMITATIONS OF THE WILLS AND TRUSTS VOLUME

It is not possible to market a document assembly system that is everything to every attorney. In fact, every clause in every Will and Trust Agreement in this Volume could be rewritten and stated in a different, and perhaps more understandable, way. Also, many of the clauses in the documents produced by this Volume do not allow you to choose an alternative, even though there may be a handful of options available. This Volume attempts to balance the desire of many attorneys to limit the number and complexity of the questions against the desire of other attorneys to draft a totally customized document with very complex terms. Presumably, you purchased this program because you want to profitably and efficiently produce quality documents without having to research the changes in the law or the changes to the Internal Revenue Code. Hopefully, a proper balance of ease of use and technical complexity has been achieved to make Lipman’s Wills and Trusts the right software program for you.

V. SUGGESTIONS AND COMMENTS

If there is a form, a question, an option in drafting, a different answer, a different way of saying something in the documents, a different way to format the document, or any other change that you feel is important, you can express your concerns one of three ways:

1. Call ProDoc at 800-759-5418.
2. Call Ronald Lipman at 713-840-9600, or email him at rlipman@lipmanpc.com.
3. Visit the estate planning forum, an online Q&A site for ProDoc users, found at www.prodoc.com.

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It is our expectation that new releases and improvements will be consistently offered so that this program remains the best available. All suggestions and comments will be taken seriously, and the criteria for inclusion in the next revision will be whether the added improvement or option is justified given the time needed to make the change versus the perceived benefit of making the change available.
CHAPTER TWO
IMPORTANT FEATURES OF FORMS

I. FEATURES OF THE SYSTEM

A. CHILDREN OF DIFFERENT MARRIAGES

The Wills and Trusts Volume accounts for your married clients who have children from previous marriages or relationships. A difficult task in drafting documents can be defining the word “children” so that the use of the word throughout the documents consistently accomplishes what you intend. The program will allow you to identify which children are products of your married clients’ present marriage, and which came earlier.

B. INCLUDING FUTURE CHILDREN

The program also allows you to make provisions for future children (and grandchildren in some forms) of your married clients. Future children will include adopted children, although you have the ability to limit the inclusion of adopted children according to their age when the adoption took place. The program will insert the appropriate language into the documents. You may also include future children in one document and not in another, as each form has its own unique set of questions.

C. DISINHERITING

You can also disinherit one or more persons. If your client wants to make no provisions for a person, the program will insert language to help you correctly state your client’s intentions. Also, the program asks you whether or not you want to insert a “No-Contest” clause, also known as an “In Terrorem” clause, which states that a beneficiary who contests the Will or Trust Agreement will not receive any benefits thereunder. (You may not want to use this type of clause if the child has been disinherited completely, as the no-contest provision will have no impact on that child.)

D. GENERATION-SKIPPING TRUSTS

Many of the Wills, Revocable Trusts, and Irrevocable Trusts allow you to draft generation-skipping trusts for the descendants or other beneficiaries of your clients. Generation-skipping trusts are trusts which last for the lifetime of the beneficiary and then pass to the next generation of beneficiaries without being subject to estate taxes upon the death of that beneficiary.

E. DEFAULTING OF ANSWERS

Most questions have default answers which are generally the most common answer to a particular question. You have the ability to change the default answer to any question

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by clicking on the Default box. Also, the program often remembers how you answered a question for a particular client, and it will default a later question to that same answer or to an appropriate answer which corresponds to the prior answer.

F. ABILITY TO DRAFT SIMILAR DOCUMENTS

If you are drafting two Wills, two Revocable Trusts, or two of the many miscellaneous documents (such as powers of attorney), with one for the husband and the other for the wife, or with one for the first Spouse / Partner and the other for the second Spouse / Partner, after you have answered the questions for the husband’s (or the first Spouse / Partner’s) document, the program will ask you if you want the wife’s (or the second Spouse / Partner’s) document to be drafted the same. If you answer “Yes,” the program will draft an identical, reciprocal document, and many of the questions you already asked will not be asked again. If you answer “No,” you will be asked all of the same questions you were asked when you drafted the husband’s (or the first Spouse / Partner’s) document, but even so, many of the answers to those questions will default to the same answers you were asked previously.

II. IMPORTANT FEATURES OF WILL FORMS

A. DISPOSITION OF ESTATE

You have a number of choices for how property is to be distributed. For instance, if you are drafting a tax-planned Will which is designed to create a Bypass Trust and a Marital Trust for the spouse, then it will be presumed that you will be leaving all property to the spouse, and then at that point in the drafting, other options for how the property will be distributed will become available to you. The following set of options is available when drafting some of the Will forms for a married client and is included here to show the kinds of drafting options that are available.

1. All to spouse, then to descendants This option will provide that the property will be distributed to the spouse, or if the spouse fails to survive, to the decedent’s descendants. You will be asked in a later question whether you want the property to be distributed to the descendants per stirpes or per capita. If you choose this answer, you will be asked in the next question how you want the property to be distributed in case no descendants are living.

2. To descendants (with nothing to spouse) This option is like option 1 above, except that it skips the spouse and gives everything to the descendants. You will be asked in a later question whether you want the property to be distributed to the descendants per stirpes or per capita. If you choose this answer, you will also be asked where you want the property to be distributed in case no descendants are living.

3. All to spouse, then equal shares to a list of beneficiaries This option will provide that the property will be distributed to the spouse, or if the spouse fails to
survive, in equal shares to various persons you will be able to list in the document. A number of questions will be asked so that you can properly list those persons.

4. **All to spouse, then various percentages to a list of beneficiaries** This option will provide that the property will be distributed to the spouse, or if the spouse fails to survive, in various percentages to persons you will be able to list in the document. A number of questions will be asked so that you can properly list those persons.

5. **All to spouse, then to a succession of listed individuals** This option will provide that the property will be distributed to the spouse, or if the spouse fails to survive, to a beneficiary, then to another beneficiary, then to another, and so on. You can also state that if an individual beneficiary is not living, before the property passes to the next listed individual beneficiary, the property will be distributed to that deceased individual’s descendants.

6. **Equal shares to a list of beneficiaries** This option will provide that the property will be distributed in equal shares to various persons you will be able to list in the document. A number of questions will be asked so that you can properly list those persons.

7. **Various percentages to a list of beneficiaries** This option will provide that the property will be distributed in various percentages to persons you will be able to list in the document. A number of questions will be asked so that you can properly list those persons.

8. **To a succession of one or more listed beneficiaries** This option will provide that the property will be distributed to a beneficiary, then to another beneficiary, then to another, and so on. You can also state that if an individual beneficiary is not living, before the property passes to the next listed individual beneficiary, the property will be distributed to that deceased individual’s descendants.

B. **SPECIFIC BEQUESTS**

Specific bequests are often bequests of a certain amount of cash, or an item of personal or real property which is to be distributed to a specified person before the remainder of a person’s estate is distributed. If your client wishes to make any such specific bequests, you can specify how many different specific bequests will be made. There are a number of different types of bequests you can make, and each of the choices is described below.

1. **Animal(s):** This option allows you to give away one or more animals.

2. **Animal(s) with Cash:** This option allows you to give away one or more animals together with a cash bequest, presumably to pay for the care of the
animal(s). A follow-up question will allow you to place the cash in a trust for the benefit of the animal(s).

3. Brokerage or Bank Account: This option allows you to give away a brokerage or bank account. Note: even though the program will allow you to make this type of bequest, you should avoid doing so, if possible, given that account numbers change and so do the names of banks and brokerage firms.

4. Cash - to One Person: This option will insert a bequest of cash to one person. You can state that the gift lapses if the person is not alive or that the gift passes to his or her descendants.

5. Cash - to Several Persons (equal amounts to each): This option will insert a bequest of a certain dollar amount which will be made to a certain class of persons, such as “nieces and nephews” or “grandchildren” Note: You should be sure to properly define these persons, preferably in the identification Article of the Will or Trust Agreement.

6. Cash to One Charity: This option will insert a bequest of cash to one charity.

7. Cash to Several Charities (equal amounts to each): This option will insert a bequest of a certain dollar amount which will be made to two or more charities.

8. Homestead / Primary Residence - life estate: This option will give a life estate in your client’s homestead to a named individual.

9. Homestead / Primary Residence - outright: This option will give your client’s homestead to a named individual.

10. Real Estate (not homestead / primary residence): This option allows your client to give away a second home or other non-homestead real estate.

11. Stock in a Corporation: This option allows your client to give away shares in a corporation to a named individual.

12. OTHER: This option allows you to type in the text of a bequest which does not fall into any of the above-listed categories of bequests.
C. MEMORANDUM

You may automatically insert language into your client's Will which provides as follows:

"I request that the beneficiaries of my estate and my Executor honor the provisions of any memorandum written by me (which is not to be a part of this Will) directing the disposition of any portion of my personal and household effects."

This will allow your client to attach a memorandum to his or her Will which makes bequests of his or her personal effects. The advantages of such a provision are: (1) it allows your client to change these specific bequests without having to prepare a codicil to his or her Will; and (2) it is easier to draft the Will because you will not have to type up lists of specific bequests.

D. EXECUTORS

The program allows you to name an unlimited number of "sets" of Executors. Each "set" may consist of an individual serving alone, or two or more Executors serving together. The language which is inserted into the Will presumes that for a new "set" to serve, that all of the Executors from the prior set will have ceased to serve. If you name two persons to serve together in the first "set" of Co-Executors, and you want a different person to serve as a Co-Executor if either of them ceases to serve, you will have to edit the Will.

E. TRUSTEES AND EXECUTORS

The longer Will forms which create trusts require the appointment of a person or trust company to serve as Trustee of the trusts created therein. You will therefore need to appoint both Executors and Trustees. The program allows you to draft separate sections in the Will, one which appoints Executors and the other which appoints Trustees. If you prefer to have only one section and if the Executors are going to be identical to the Trustees, you can draft only one section which appoints Executors and Trustees together. Having only one section can be a much simpler method which avoids redundancies in the document.

You may draft an unlimited number of "sets" of Executors and Trustees. Each "set" may consist of an individual serving alone, or two or more Executors and Trustees serving together. The language which is inserted into the Will presumes that for a new "set" to serve, that all of the Executors and Trustees from the prior set will have ceased to serve. If you name two persons to serve together in the first "set" of Co-Executors and Co-Trustees, and you want a different person to serve as a Co-Executor or Co-Trustee if either of them ceases to serve, you will have to edit the Will.
F. CONTINGENT TRUSTS FOR CHILDREN

If you want, a contingent trust may be added to every Will and most of the revocable and irrevocable Trust Agreements. There is little reason not to add a contingent trust, as there is almost always the possibility that property could pass to a person who is under the age you specify or to a person who is incapacitated. The contingent trust will provide that any property passing to such a person will be held in trust until the specified age is reached or until the incapacity ceases or is removed. If the Will provides that upon your client’s death (or upon the termination of one or more trusts) that all of the property will be passing to charity, then you may not need to add the contingent trust provisions.

G. GUARDIANS FOR MINOR CHILDREN

The program allows you to name an unlimited number of “sets” of guardians. Also, you are given the option to name two different listings of guardians which will sometimes occur when a client wants the children to live with different families. Each “set” of guardians may consist of an individual serving alone, or a married couple. Two persons may serve together only if they are married to each other. The language which is inserted into the Will presumes that for a new “set” to serve, that all of the guardians from the prior set will have ceased to serve. If you name two persons to serve together in the first “set” of guardians, the next “set” of guardians will serve only if both prior guardians cease to serve.

H. MANAGEMENT TRUSTS

For your married clients, a management trust is a trust which the surviving spouse may use to hold any or all of his or her property. It is very much like a revocable trust or a “living trust” (which you may create separately as well) created by a person during his or her lifetime, except that it is created in the Will of the first spouse to die. The management trust is an optional trust available in the more complicated Wills that need not be used by the surviving spouse. If your clients are older, and you think the surviving spouse would want to take advantage of this type of arrangement, then you should include a management trust.

I. PAYMENTS OF DEBTS CLAUSE

A “Payment of Debts” clause will provide that all of the decedent’s debts shall be paid upon death. You may not want to add this clause as debts are required to be paid anyway. If you choose to add this clause, it will not appear on the first page of the Will as you may be accustomed to seeing; rather, it will be placed in the middle of the Will. The “Payment of Debts” clause does provide that mortgages may be extended, rather than paid off, if it is desirable to do so.

J. WILLS NOT CONTRACTUAL CLAUSE

When drafting Wills, you may add a clause which states the following: “My wife and I are executing Wills at approximately the same time in which each of us may be a primary
beneficiary of the Will of the other. Our Wills are not executed because of any agreement between the two of us. Either Will may be revoked at any time in the sole discretion of the maker thereof."

K. DISPOSITION OF SPOUSE’S LIFE INSURANCE

For your married clients, the deceased spouse may own an interest in one or more insurance policies on the life of the surviving spouse. The question is what to do with that ownership interest. If your client has a taxable estate, it may be a good idea to remove the decedent’s one-half community property interest in such insurance from the surviving spouse’s estate. The program gives you five options:

1. Do not mention insurance: No specific bequest of the deceased spouse’s interest in such insurance will be made.

2. Give to children equally: This is a simple option, but the surviving spouse may not want the children to own an interest in the insurance policies on his or her life.

3. Give to Bypass Trust: This initially seems to be the best option because the Bypass Trust should pass to the children without estate taxes or probate. The problem is that the surviving spouse should not be the Trustee of a trust that owns insurance on his or her life. Accordingly, if you choose this option, you will notice that the section of the Will which gives the insurance to the Bypass Trust attempts to limit the powers the surviving spouse will have over the policies as Trustee of the Bypass Trust. Administration of this type of arrangement could prove quite difficult.

4. Give to Spouse outright: This is a very simple option. The potential problem with it is that the surviving spouse will own the entire policy, and it will consequently be includable in his or her estate.

5. Create Life Insurance Trust: This option will distribute the deceased spouse’s interest in any insurance policies on the life of the surviving spouse to a separate insurance trust designed to specifically own such policies. This option avoids the difficulties expressed in option (3) above, but it has its own problems. If the policies are small in size, it may not be worth the hassle, paperwork and expense of a trust. If the policies are large in size, the husband and wife are probably better off creating a life insurance trust at the same time as you are drafting their Wills.

III. IMPORTANT FEATURES OF REVOCABLE TRUST FORMS

A. DISPOSITION OF TRUST PROPERTY

You have a number of choices for how the trust property is to be distributed. For instance, if you are drafting a tax-planned Revocable Trust which is designed to create a
Bypass Trust and a Marital Trust for the surviving spouse, then it will be presumed that you will be leaving property first to the spouse, and then at that point in the drafting, other options for how the property will be distributed will become available to you. Also, the options listed below include several options allowing for distributions to a spouse, but these options are not made available when drafting a Revocable Trust for an unmarried client or a same-sex spouse / domestic partner client. (The options which follow are the same as those available when drafting a Will, and have been included here for your reference.)

1. **All to spouse, then to descendants** This option will provide that the property will be distributed to the surviving spouse, otherwise to the descendants. You will be asked in a later question whether you want the property to be distributed to the descendants per stirpes or per capita. If you choose this disposition, you will also be asked where you want the property to be distributed in case no descendants are living.

2. **To descendants (with nothing to spouse)** This option is like option 1 above, except that it skips the spouse and gives everything to the descendants. You will be asked in a later question whether you want the property to be distributed to the descendants per stirpes or per capita. If you choose this answer, you will also be asked where you want the property to be distributed in case no descendants are living.

3. **All to spouse, then equal shares to a list of beneficiaries** This option will provide that the property will be distributed to the surviving spouse, otherwise in equal shares to various persons you will be able to list in the document. A number of questions will be asked so that you can properly list those persons.

4. **All to spouse, then various percentages to a list of beneficiaries** This option will provide that the property will be distributed to the surviving spouse, otherwise in various percentages to persons you will be able to list in the document. A number of questions will be asked so that you can properly list those persons.

5. **All to spouse, then to a succession of listed individuals** This option will provide that the property will be distributed to the surviving spouse, otherwise to a beneficiary, then to another beneficiary, then to another, and so on. You can also state that if an individual beneficiary is not living, before the property passes to the next listed individual beneficiary, the property will be distributed to that deceased individual's descendants.

6. **Equal shares to a list of beneficiaries** This option will provide that the property will be distributed in equal shares to various persons you will be able to list in the document. A number of questions will be asked so that you can properly list those persons.
7. **Various percentages to a list of beneficiaries** This option will provide that the property will be distributed in various percentages to persons you will be able to list in the document. A number of questions will be asked so that you can properly list those persons.

8. **To a succession of one or more listed beneficiaries** This option will provide that the property will be distributed to a beneficiary, then to another beneficiary, then to another, and so on. You can also state that if an individual beneficiary is not living, before the property passes to the next listed individual beneficiary, the property will be distributed to that deceased individual’s descendants.

**B. SPECIFIC BEQUESTS**

The same types of specific bequests that can be added to Wills (as discussed previously) can also be added to Revocable Trusts. (Please see Chapter Two, Article II, Section B of this manual for details.)

**C. NAMING OF TRUSTEES**

The program allows you to name an unlimited number of “sets” of Trustees. Each “set” may consist of an individual serving alone, or two or more Trustees serving together. The language which is inserted into the Trust Agreement presumes that for a new “set” to serve, that all of the Trustees from the prior set will have ceased to serve. If you name two persons to serve together in the first “set” of Co-Trustees, and you want a different person to serve as a Co-Trustee if either of them ceases to serve, you will have to edit the Trust Agreement.

**D. GENERAL POWER OF APPOINTMENT GIVEN TO SURVIVING SPOUSE**

The tax-planned, married Revocable Trust forms include the option to give the deceased spouse a formula general power of appointment over a portion of the surviving spouse’s estate. The purpose of this clause is to address the situation where one spouse’s estate is much smaller than the other spouse’s estate. Rather than suggesting to your clients that the wealthier spouse make large gifts to the less wealthy spouse in order to increase the size of the less wealthy spouse’s estate, you can suggest this more flexible and modifiable solution to the problem of finding a way to achieve large estate tax savings at the surviving spouse’s death.

By granting the formula general power of appointment, the less wealthy spouse will be treated as owning and disposing of enough of the wealthier spouse's estate as is necessary to increase the size of the less wealthy spouse's estate so that the bypass trust created by the less wealthy spouse can be fully funded should the less wealthy spouse die first.
This general power of appointment can be useful as well in a situation where both spouses have large retirement accounts and other assets, and you want only those other assets to be used to fund the bypass trust when the first spouse dies. By granting the general power of appointment to the first spouse to die, you can fully (or substantially) fund the bypass trust, yet leave out all of the retirement funds so that they will not need to be placed into the bypass trust.

This provision should only be used in a very limited number of circumstances. The client will typically need to have a very sound marriage (usually, their first marriage), and (except in the case with retirement accounts as discussed above) one spouse will need to be worth many millions of dollars and the other spouse will need to be worth far less than the present (and expected) exemption amount available to be given away at death.

IV. IMPORTANT FEATURES OF IRREVOCABLE TRUST FORMS

A. NAMING OF TRUSTEES

The program allows you to name an unlimited number of "sets" of Trustees. Each "set" may consist of an individual serving alone, or two or more Trustees serving together. The language which is inserted into the Trust Agreement presumes that for a new "set" to serve, that all of the Trustees from the prior set will have ceased to serve. If you name two persons to serve together in the first "set" of Co-Trustees, and you want a different person to serve as a Co-Trustee if either of them ceases to serve, you will have to edit the Trust Agreement.

B. WITHDRAWAL RIGHTS - WHO GETS THEM?

Many of the Irrevocable Trusts give the beneficiaries a right of withdrawal. Withdrawal rights are typically included in the Trust Agreement so that gifts to the trusts will qualify for the annual exclusion. Withdrawal rights give the holder the right to demand a certain amount of cash or other property which is given to the trust. These rights of withdrawal are often referred to as Crummey withdrawal rights, after the case Crummey v. Comm'r, 397 F.2d 82 (9th Cir. 1968). In drafting the withdrawal rights in some of the irrevocable trusts, you have as many as four choices:

1. All beneficiaries: Cross Withdrawal Rights: This means that all of your clients' descendants (or other beneficiaries) have the right to withdraw property from each of the trusts created under the Trust Agreement.

2. Benef and desc can w/d from Benef's trust: This means that with regard to each trust created under the Trust Agreement, only the Beneficiary of that trust and that Beneficiary's descendants (or other beneficiaries) can withdraw property from that trust. There are no "cross" withdrawal rights as provided in answer #1.
3. **Benef can w/d 1st, desc of Benef w/d 2nd:** This choice is very similar to answer #2 above, except that withdrawal rights are first given to the primary Beneficiaries of the trusts, typically the client's children, and to the extent that the gifts exceed such Beneficiaries' withdrawal rights, the excess is subject to a withdrawal right held by the descendants of the Beneficiary.

4. **Only Beneficiary can withdraw from his or her trust:** This answer will draft a withdrawal right that gives the power to withdraw only to the person who is the primary Beneficiary of the trust. No descendants of the Beneficiary have withdrawal rights. There are no “cross” withdrawal rights either.

C. **WITHDRAWAL RIGHTS - HOW LARGE WILL THEY BE?**

The program gives you two choices regarding how large the rights of withdrawal will be:

1. **Full Annual Exclusion:** This answer will insert a formula clause into the Trust Agreement giving the beneficiaries the right to withdraw the full annual exclusion (or double the annual exclusion--if the client is married and both the husband and the wife either make gifts or elect to split gifts).

2. **Greater of $5,000 or 5%:** This answer will insert language in the Trust Agreement limiting the beneficiaries' withdrawal rights to such an amount of trust property as to which the right of withdrawal may lapse without constituting a release of a general power of appointment under Sections 2514(e) and 2041(b)(2) of the Code.

D. **WITHDRAWAL RIGHTS - HANGING OR LAPSING?**

If you decide to give the full annual exclusion as a withdrawal right, you with then have two choices as to the lapsing of these withdrawal rights:

1. **Hanging / Cumulative:** This answer will insert language in the Trust Agreement which causes unexercised withdrawal rights to lapse to the extent of the greater of $5,000 or 5% of the value of the trust property on an annual basis. Any withdrawal rights which do not lapse will be carried (or "hang") over to the next year.

2. **Fully Lapsing / Noncumulative:** This answer will insert language in the Trust Agreement which causes unexercised withdrawal rights to fully lapse if they are not exercised.

E. **WITHDRAWAL LETTERS**

Withdrawal letters provide the trust beneficiaries with written notice of their rights of withdrawal. These letters are drafted separately from the irrevocable trust agreements. An
explanation of the right of withdrawal that each beneficiary has is contained in these letters. There is some uncertainty as to how often withdrawal letters need to be signed. You may decide that the letters need to be signed only once, as the Internal Revenue Code only requires “actual notice” to the beneficiaries. Many attorneys, though, advise their clients to sign the letters at least once each year. Other attorneys recommend that the letters be signed each time a gift is made to the trust. If a beneficiary is a minor or is incapacitated, notice to that person can be given to his or her parent or guardian. In fact, all of the letters contain language stating that if the person signing the letter is the “Representative” for a minor or incapacitated beneficiary, then that letter serves as notice to that minor or incapacitated beneficiary as well.

F. FORM TO ALTER WITHDRAWAL RIGHTS

Along with many of the irrevocable trust agreements you can draft a form which allows the amount of a beneficiary’s or a donee’s withdrawal right to be changed by the donor of any gift to the trust(s). For instance, if a married client plans to give a child $10,000 in cash later in the year, the withdrawal right can be limited so that the combined gifts will not exceed the available annual exclusion.

G. SETTLORS CAN BE TRUSTEE

Some of the irrevocable trusts allow you to name the Settlor to serve as Trustee or as a successor Trustee of the trusts created by the Trust Agreement. If you do not name a Settlor to serve as the initial Trustee, you may still allow them to serve, or you may prohibit them from ever serving. If you decide to allow your client to serve as a Trustee, you may or may not want to give the client a power to distribute trust property (which is permitted in some of the trust agreements). Giving a Settlor the power to distribute income or principal can cause the trust property to be included in the Settlor’s estate under 2036 or 2038 of the Internal Revenue Code; however, the language granting the power to distribute income or principal will be limited to health, education, maintenance and support so that the distribution powers will fall within the ascertainable standards exception, meaning the trust property should not be includable in the Settlor’s estate.

H. TRUSTS FOR FUTURE CHILDREN

If future children may be born to or adopted by your clients, several of the Trust Agreements will automatically create new trusts for these children. When this option is available, you will have two choices as to how the new trusts for such children will be created.

1. Draw From Other Trusts: This will insert language in the Trust Agreement which will take property from the trusts that already exist under the Trust Agreement. This way a new child can literally be born into money.
2. **New Trusts Altogether:** This will insert language in the Trust Agreement which will create a new unfunded trust for the additional child to which new gifts can be made.

I. **MEMORANDUM REGARDING FUNDING OF TRUST AGREEMENT**

Along with each of the irrevocable trusts, you can draft a memorandum which is not a part of the agreement itself, but which explains the administration and funding of the trust agreement to your clients. It is recommended that this memorandum be given to one or more among your client’s accountant, financial planner, insurance agent, or other advisor.

J. **LETTER TO INSURANCE AGENTS**

Along with each of the life insurance trust agreements, you can also produce a short letter, intended to be sent via certified mail, return receipt requested, to the client’s insurance agent. This letter tells the agent to be sure the trust is properly funded. It is a way to make sure you are not held responsible for your client’s failure to follow your directions in funding the trusts created under the trust agreement.

K. **CERTIFICATION OF TRUST**

The Certification of Trust is an alternative to providing a full copy of the trust instrument to a requesting third party. The Certification of Trust provides only the minimum amount of information necessary by state law. It will most often be used to open a bank or brokerage account in the name of the Trust. Often clients are reluctant to provide a copy of a trust agreement since it contains terms and provisions of a personal nature.

V. **OTHER IMPORTANT FEATURES OF THE WILL AND TRUST FORMS**

A. **LIMITED POWERS OF APPOINTMENT**

Some of the Will and Trust forms ask you whether you want to give the surviving spouse or another beneficiary a limited power of appointment (which is, generally, a power to direct who receives trust property). The power may be given to a person for use during life or only at that person’s death (referred to as a testamentary limited power of appointment). If you want to give a descendant (or other beneficiary) a limited power of appointment you will be given a choice as to how broad you want to make the power. This program allows you to draft the limited power in three different ways:

1. **Descendants of Deceased Spouse Only:** This will allow property to be appointed only to the deceased spouse’s descendants;

2. **Blood, Marriage, Adoption:** This will allow the power-holder to appoint property to anyone related to him or her by blood, marriage or adoption.
3. **Blood, Marriage, Adoption or Charities:** This goes one step further than the previous option above, as it allows the power-holder to appoint property to anyone related to him or her by blood, marriage or adoption or to any charity or charities.

If you want to give the surviving spouse a limited power of appointment, the program will only allow you to give the surviving spouse the power to appoint property to the deceased spouse’s descendants and/or to charity. You typically do not want to give the surviving spouse a broader power of appointment because you do not want property appointed to a new spouse or to children who were not born to the deceased spouse.

If this is not either the husband’s or wife’s first marriage and if there are children by such prior marriages, you should be especially hesitant to give either spouse a limited power of appointment. By way of illustration only, if a husband has a child by a prior marriage, and the husband and wife have a child together, the wife may lose touch with the husband’s first child and decide to appoint all of the trust property to her child.

B. **CONTINGENT BENEFICIARIES**

Very often clients will tell you that if their children and grandchildren are not living, they want their property to go to a charity or to a certain individual or group of individuals. The Wills, Revocable Trusts and Irrevocable Trusts in this program allow you to draft a number of different distribution schemes for your client’s contingent beneficiaries, as follows (although options 1-3 listed below are combined into a single option called “Heirs” when drafting documents for unmarried or same-sex spouse / domestic partner clients).

1. **Husband’s heirs** This option will insert language distributing the property to the husband’s heirs.

2. **Wife’s heirs** This option will insert language distributing the property to the wife’s heirs.

3. **Half to Husband’s heirs and half to Wife’s heirs** This option will insert language distributing the property one-half to the husband’s heirs and one-half to the wife’s heirs.

4. **Equal shares to a list of beneficiaries** This option will provide that the property will be distributed in equal shares to various persons you will be able to list in the document. A number of questions will be asked so that you can properly list those persons.

5. **Various percentages to a list of beneficiaries** This option will provide that the property will be distributed in various percentages to persons you will be able to list in the document. A number of questions will be asked so that you can properly list those persons.
6. **To a succession of one or more listed beneficiaries** This option will provide that the property will be distributed to a beneficiary, then to another beneficiary, then to another, and so on. You can also state that if an individual beneficiary is not living, before the property passes to the next listed individual beneficiary, the property will be distributed to that deceased individual's descendants.

C. **RETIREMENT BENEFITS TRUSTS**

Many of the more complicated Wills and Revocable Trusts allow you to insert a section which creates separate Retirement Benefits Trusts. If your client expects to name a trust you are creating as a beneficiary of any retirement plans or accounts, you may want to utilize this provision. What it does is create a separate Retirement Benefits Trust to hold any retirement benefits which are payable to a trust you are creating.

D. **COMPENSATION**

You will usually be given three choices relating to the clause in a Will or Trust Agreement which provides for compensation to fiduciaries.

1. **No compensation:** The clause will provide that no compensation will be paid.

2. **Compensation to banks, none to individuals:** The clause will provide that corporate fiduciaries shall be paid a fee. The clause is silent as to payment of fees to individuals, leaving the fiduciaries with the option to pay themselves if they want to do so.

3. **Reasonable compensation:** The clause will provide for reasonable compensation to be paid to all fiduciaries, whether corporate or individual.

E. **NO CONTEST CLAUSE**

You have the option of inserting a no contest clause into every Will and Revocable Trust you draft. The no contest clause states that if any person named in the Will or Revocable Trust contests the Will or Revocable Trust, they will be cut out completely. You can also cut out the descendants of a contesting beneficiary. The no contest clause will be inserted as the last Article of the Will or Revocable Trust.

F. **SPOUSE NOT A UNITED STATES CITIZEN**

If the surviving spouse is not a citizen of the U.S., the general rule is the deceased spouse can only obtain the unlimited marital deduction if property is left to the survivor in a Qualified Domestic Marital Trust (QDOT). This type of trust is similar to a Qualified Terminable Interest Property (QTIP) Trust, except that a number of other required provisions have been added. If you answer the question asking whether the spouse is a United States
citizen “No”, then the program will automatically draft a QDOT trust, and several other changes will be made to the Will (and the corresponding transmittal letter) as well.

G. POOLING OF ASSETS

Many of the more complicated Wills and Trusts allow you to “pool” the assets in a single trust until all of the client’s children have reached a specified age. This type of trust arrangement is useful if the client wants money to be available to pay for all of their upbringings, including college, graduate school, health care, and the like. This trust would allow for all those things to be funded, and then when all the children had reached a specified age, then the remaining trust property would be divided. Clients who have already paid for one or more of their children to attend college and who have one or more other children who are not yet old enough to go to college often find this arrangement appealing.

H. TERMINATION OF TRUSTS FOR DESCENDANTS OR OTHER BENEFICIARIES

In many of the more complicated forms, you will be asked how long you want the individual trusts for the descendants (or other beneficiaries) to last. You will often have three choices:

1. **Beneficiaries until specified age:** This option will keep the property in trust only until the children or other beneficiaries attain a specified age, which you may specify. If you are creating trusts for a person or persons other than your client’s children, the specified age would apply to such other person or persons. This is not a generation skipping trust.

2. **Grandchildren until specified age:** This option will keep the property in trust for the lifetime of each child (or other beneficiary), and upon that child’s (or other beneficiary’s) death, the remaining trust property will be distributed in trust to that child’s (or other beneficiary’s) descendants. These trusts for these grandchildren will last until a specified age, which you may specify. This is a generation skipping trust.

3. **Rule Against Perpetuities:** This option will keep the property in trust for the lifetime of each beneficiary, and the trusts will terminate when the Rule Against Perpetuities (defined in the Will or Trust) causes the trusts to expire. The trusts for the children (or other beneficiaries) will last for their lifetimes, then further lifetime trusts will be created for the grandchildren and great-grandchildren, and so on, until the Rule Against Perpetuities interferes. This is a generation skipping trust.
I. BENEFICIARIES ELECTING TO BE SOLE TRUSTEE OR CO-TRUSTEE

When you draft a document which contains the types of trusts described in the previous section, you will be creating separate trusts for the children or other descendants or beneficiaries. You will be asked whether these descendants (or other beneficiaries) will be permitted to serve as a Co-Trustee or as the Sole Trustee of their individual trusts. (All beneficiaries must be treated the same when you draft the document.) You have five options:

1. **Never Sole or Co-Trustee:** This option is the most restrictive as it prohibits the beneficiaries from ever electing to be the Sole or Co-Trustee of their individual trusts. You typically would choose this option if the trusts for the children or other beneficiaries will terminate at a relatively early age or if the client does not want the children or other beneficiaries to serve in such a capacity. Of course, there are other reasons why this option may be chosen.

2. **Co-Trustee only at specified age:** This option allows the children or other beneficiaries to elect to be a Co-Trustee, but not the Sole Trustee, at a specified age. This option will not prohibit a Co-Trustee who is serving with the child or other beneficiary from resigning, leaving the child or other beneficiary to serve as sole trustee.

3. **Co or Sole Trustee at different ages:** This option allows the children or other beneficiaries to elect to be a Co-Trustee of their individual trusts at a specified age, and later at another specified age elect to be the Sole Trustee.

4. **Co or Sole Trustee at same age:** This option allows the children or other beneficiaries to elect at a specified age to be either a Co-Trustee or the Sole Trustee of their individual trusts.

5. **Co or Sole Trustee at death of Husband and Wife (or Individual):** This option allows the children or other beneficiaries to elect to be either a Co-Trustee or the Sole Trustee of their individual trusts at any time after both the husband and wife have died (or after the individual client has died). This option would be used for a client whose children or other beneficiaries are all older. Because the children or other beneficiaries have this option, you do not have to write a separate sentence saying that each beneficiary shall become the Sole Trustee of his or her trust at the death of the last to die of the husband and the wife (or until the death of the individual); you give them the option.
J. MARITAL TRUSTS AND BYPASS TRUSTS

In some of the husband and wife Will and Revocable Trust forms (specifically, the ones that contain “Bypass &/or QTIP” in the name of the form), you have five different ways that these forms can be drafted, as follows:

1. **Bypass Only - outright marital gift:** This option will eliminate the marital trust and create only the bypass trust. Given that the estate tax exemption is now much higher than it used to be, for many married persons’ estates there is little use for a marital trust. So rather than add all the extra language to the Will, you can simply draft the document without a marital trust.

2. **QTIP & Bypass Trusts:** This option will create a QTIP marital trust and a bypass trust.

3. **Disclaimer Bypass Trust:** This option will eliminate the marital trust and provide that all property is left to the spouse outright, and to the extent property is disclaimed by the surviving spouse, such property will pass to a "disclaimer" bypass trust. Although a decision to disclaim must be made within 9 months of the death of the first spouse to die, one of the advantages this option has over the One-lung Marital and the Clayton Marital is that if your client decides not to disclaim, all of the property will be distributed to the surviving spouse outright, and there will be no need to fund and administer a marital trust.

4. **One-lung Marital Trust:** This option leaves your client’s entire estate to a single marital trust. The executor will be permitted to make a partial QTIP election, though, with the result that part of the QTIP trust will not qualify for the marital deduction. There is also a provision stating that the property over which a QTIP election is not made will be held in a separate trust. The one-lung marital offers greater flexibility than the disclaimer bypass trust because the decision to make a QTIP election does not need to be made until 15 months have elapsed following your client’s death, whereas a disclaimer must be made within 9 months; however, the non-QTIP trust will have the same terms as the QTIP trust, and it will only benefit the surviving spouse.

5. **Clayton Marital Trust:** Like the one-lung marital, this option also leaves your client’s entire estate to a single marital trust. The executor will be permitted to make a partial QTIP election, and any property that does not qualify for the marital deduction will pass to a separate bypass trust, the terms and beneficiaries of which can be different than the QTIP marital trust. Like the one-lung marital, the Clayton Marital Trust offers greater flexibility than the disclaimer bypass trust because the decision to make a QTIP election does not need to be made until 15 months have elapsed following your client’s death, whereas a disclaimer must be made within 9 months. If you select this option, questions will be asked relating to the "Bypass
Trust" that will be created. This is the name that will be given to the trust that will hold property which does not qualify for the marital deduction.

K. MARITAL DEDUCTION FORMULA CLAUSES

In all Wills and Revocable Trusts that create a bypass trust, you are asked a series of questions regarding which type of Marital Deduction formula clause you wish to use. This is a complicated series of questions. Like much of the material in this handbook, it is beyond the scope of the materials contained herein to include a detailed section on how to answer these questions. When drafting these types of documents, you are now given six options:

1. **Pecuniary Marital with Residuary Bypass - True Worth:** This option will draft a clause which makes the marital gift a specific dollar amount (expressed as a formula), with the residue passing to the Bypass Trust. Values of the assets passing to the surviving spouse or to the trusts will be based upon their date of distribution values.

2. **Pecuniary Marital with Residuary Bypass - Fairly Representative:** This option will draft a clause which makes the marital gift a specific dollar amount (expressed as a formula), with the residue passing to the Bypass Trust. Assets passing to the surviving spouse or to the trusts must fairly represent the appreciation and depreciation in values from the date of death until funding.

3. **Pecuniary Marital with Residuary Bypass - Minimum Worth:** This option will draft a clause which makes the marital gift a specific dollar amount (expressed as a formula), with the residue passing to the Bypass Trust. Values of the assets passing to the surviving spouse or to the trusts this will be based upon the lesser of the value of such property on the date of death or at the date of distribution.

4. **Pecuniary Bypass with Residuary Marital - True Worth:** This option will draft a clause which makes the Bypass Trust a specific dollar amount (expressed as a formula), with the residue passing to the surviving spouse or to the Marital Trust. Values of the assets will be based upon their date of distribution values.

5. **Pecuniary Bypass with Residuary Marital - Fairly Representative:** This option will draft a clause which makes the Bypass Trust a specific dollar amount (expressed as a formula), with the residue passing to the surviving spouse or to the Marital Trust. Assets must fairly represent the appreciation and depreciation in values from the date of death until funding.

6. **Fractional Share:** This option will draft a formula clause where a portion of the deceased spouse’s estate which is equal to the marital deduction will pass to the surviving spouse (or to the QTIP Marital Trust, when applicable), and the balance of the deceased spouse’s estate will pass to the Bypass Trust.

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L. SUPPLEMENTAL NEEDS TRUSTS

If your client is leaving property to a disabled descendant or other beneficiary who is receiving government support, then you may want to draft certain Wills and Trusts which allow that child’s inheritance to be placed in a trust which serves as a purely supplemental source of funds. The SNT will be designed so that the trust property will not be counted for purposes of receiving public assistance benefits. Each such document will contain a separate Section or Article which creates the supplemental needs trust.

Many of the forms allow you to add a supplemental needs trust within the form itself, with the language specifying that any property to be distributed to the particular special needs beneficiary will be held in the supplemental needs trust created under a particular Section or Article. In addition, as more fully explained later in this manual, you can instead create a dedicated, irrevocable supplemental needs trust for the sole benefit of a particular beneficiary by using one of the four irrevocable supplemental needs trust agreements. These forms are numbered 32-1, 32-2, 32-3, and 32-4. In such a case, you may want to edit the Will or Revocable Trust so that the property to be distributed to a special needs beneficiary will be held subject to the terms of such other irrevocable trust rather than adding a supplemental needs trust to the Will or Revocable Trust.

M. TRUST PROTECTORS

When drafting most of the Will, Revocable Trust, and Irrevocable Trust forms, you can choose to add a trust protector (or trust committee). You will be given the option to call it a trust protector, trust committee, special trustee, or trust protector committee. Depending on the document you are drafting, you can give the trust protector any one or more of the following powers:

1. **Modify trust for tax reasons:** This power gives the trust protector the ability to modify or amend the trust agreement to achieve favorable tax status or to respond to changes in the Code and state law.

2. **Remove a trustee:** This power should only be given in situations where the trustee is never going to be a settlor of the trusts or a beneficiary of any of the trusts. For instance, if the beneficiaries have the ability to elect to be a co-trustee or the sole trustee, then you almost certainly would not want the trust protector to have the ability to remove and replace the trustee.

3. **Change situs & governing laws of trust.** Note, if you decide to add this power, the provisions of a section entitled "Governing Law" which appears near the end of the document will be modified. This particular power is one which is normally granted to the trustee, and by giving this power to the trust protector, it is necessary to remove it as a power given to the trustee.
4. **Change powers of appointment:** This power gives the trust protector the ability to modify the terms of the powers of appointment granted under the agreement.

5. **Change trust distributions:** This power gives the trust protector the ability to modify or amend the purposes for which the income and principal of a trust may be distributed, as well as the factors the Trustee may consider in making such distributions.

6. **Change trust termination date:** This power gives the trust protector the ability to change the termination date of a trust created under the trust agreement, either by shortening or lengthening the term thereof.

7. **Veto or direct distributions:** This power gives the trust protector the ability to direct the Trustee to distribute trust income or principal to the beneficiary of a trust as long as such distribution is within the discretionary powers granted to the Trustee.

8. **Veto or direct investments:** This power gives the trust protector the ability to direct the Trustee to invest all or a portion of the property of a trust in a particular type or kind of investment, including the power to veto a particular investment chosen by the Trustee.

9. **Correct ambiguities and scrivener errors:** This power gives the trust protector the ability to correct ambiguities, including scrivener errors, that might otherwise require court reformation or construction.

10. **Convert a trust to a supplemental needs trust:** This power gives the trust protector the ability to convert any trust created under the trust agreement to a purely discretionary supplemental needs trust designed to preserve the public benefits eligibility of the primary beneficiary of such trust.
CHAPTER THREE
EXPLANATION OF HUSBAND’S AND WIFE’S WILL FORMS

I. HUSBAND’S and WIFE’S SIMPLE WILLS - SHORT VERSION
(Form 1-1 & 2-1)

This Will is most often used when the husband and wife have an estate of $500,000 or less. This Will allows you to create contingent trusts for the children or other beneficiaries, but these trusts are not substantial in form. Therefore, you may want to choose the Long Version of the Simple Will which provides you more options when creating the children’s or other beneficiaries’ trusts.

II. HUSBAND’S and WIFE’S SIMPLE WILLS - LONG VERSION
(Form 1-2 & 2-2)

This Will is most often used when the combined estate of the husband and wife exceeds $500,000 or so. When you draft this Will, you will be asked if you want to leave out several pages of text so that the Will comes out as a shorter “long version.” Why? Sometimes, clients want their wills to be as short as possible. You may also want to draft a very short document. You may also be choosing this particular form because it has all the variables you need to draft the right kind of will, but you may not need it to be a very long form. Therefore, if you choose to draft a “short version” of this form, the software will automatically leave out some of the provisions which are not totally necessary to include.

Whether you choose the long version or the short version, this Will allows you to create lifetime, generation skipping trusts for children, grandchildren and other beneficiaries. In addition, you are given the option to pool the children’s inheritance until your client’s youngest child reaches a specified age, at which time the trust property will then be distributed to individual trusts. Rather than leaving the remaining property to the descendants or other beneficiaries outright, these Wills create a trust for each of your client’s children or other beneficiaries (and subsequently for their descendants). Income and principal of each trust will be distributable for health, education, maintenance and support. Also, in drafting these trusts, you may allow the beneficiaries to be the sole Trustee or a Co-Trustee of their own trusts.

III. HUSBAND’S and WIFE’S POUROVER WILLS - SHORT VERSION
(Form 1-3 & 2-3)

This Will is used when the husband and wife have created a Revocable Trust. A Will for each of them is still needed in the event they fail to contribute all of their property to the Revocable Trust(s). This Pourover Will is most often used when the husband and wife have a combined estate of less than $3,500,000 (or the relevant exemption amount). You should use this Will when the Revocable Trust or trusts you are drafting is the Form 11-2, 12-1 or 13-1. If your Revocable Trust is more complicated than a simple Revocable Trust, you should use Will Forms 1-4 and 2-4.
Among other things, this simple Pourover Will has no tax language and a very brief Executor's powers section.

IV. HUSBAND'S and WIFE'S POOUVER WILLS - LONG VERSION
(Forms 1-4 & 2-4)

This Will is used when the husband and wife have created a Revocable Trust. A Will for each of them is still needed in the event they fail to contribute all of their property to the Revocable Trust(s). This Pourover will is most often used when the husband and wife have a combined estate which exceeds $3,500,000 (or the relevant exemption amount). If your Revocable Trust is a Form 11-2, 12-1, or 13-1, you may instead want to use Will Form 1-3 and 2-3.

V. HUSBAND’S and WIFE’S WILLS: BYPASS TRUST ONLY - NO MARITAL TRUST
(Forms 1-5 & 2-5)

A. SUMMARY OF THE FORM

This Will is most often used when the combined estate of the husband and wife is between $3,500,000 (or the relevant exemption amount) and about $7,000,000. Importantly, this form can be drafted so that it functions as a “Disclaimer Will” meaning everything is given to the surviving spouse, and only disclaimed property passes to the bypass trust. This type of plan is particularly important following the 2001 Tax Act, given that so many clients have marginally taxable estates, and it is not clear at this time whether it will be necessary to have a bypass trust at all.

You can use this Will if your client is worth over $7,000,000, but you may want to have the balance of the estate which exceeds $3,500,000 (or the relevant exemption amount) pass to a marital trust. These Will forms place up to $3,500,000 into a bypass trust (which you may refer to as the “Bypass,” “Family” or “Credit Shelter” Trust) which is designed to bypass estate taxes upon the death of the survivor. In fact, if you expect your clients’ combined estates to increase in value, you may want to draft Forms 1-6 and 2-6 or possibly even Forms 1-7 and 2-7, each of gives you the option to create a marital trust.

You can provide for the Bypass Trust to distribute property outright upon the death of the surviving spouse, or the trust can continue to be held in a pooled trust until all of the children have reached a certain age. You can also provide that distributions are made from this trust in parts, for instance, at various specified ages.
Please Note:
1) All numbers are estimates.
2) Illustration assumes husband/wife dies first.
3) All property assumed to be community unless indicated.

COMBINED GROSS ESTATE
- Cash
- Stocks & Bonds
- Real Estate
- Partnerships
- IRAs
- Retirement Plans
- Life Insurance
- Miscellaneous

FAMILY (or "BYPASS") TRUST
1. Holds remaining unified credit ($2,000,000)
2. Surviving spouse is primary beneficiary.
3. Descendants are secondary beneficiaries.
4. Surviving spouse can be trustee.
5. Remaining property distributed according to terms set out in Will.

RETIREMENT PLANS
Usually payable directly to surviving spouse to continue tax deferred status.

GIFTS TO SPOUSE
Cars, books, clothing, jewelry, etc.

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VI. HUSBAND’S and WIFE’S BYPASS &/OR QTIP WILLS
(Forms 1-6 & 2-6)

There are five different ways these forms can be drafted (discussed in more detail in Chapter Two, Section V(J) of this manual):

- Bypass Only - outright marital gift
- QTIP & Bypass Trusts
- Disclaimer Bypass Trust
- One-lung Marital Trust
- Clayton Marital Trust

Forms 1-6 and 2-6 allow you to keep the Bypass Trust in existence for a period of time, until the youngest child or other beneficiary attains a specified age, but once the Bypass Trust terminates, the beneficiaries receive the remaining property outright and free of trust, unless property is held in a contingent trust for a minor or incapacitated person. You can also draft this Will so that the Bypass Trust does not terminate upon the death of the surviving spouse, and in such case, the QTIP Marital Trust will pour over into the Bypass Trust.

VII. HUSBAND’S and WIFE’S BYPASS &/OR QTIP WITH SEPARATE SHARE TRUSTS
(Forms 1-7 & 2-7)

A. SUMMARY OF THE FORMS

Like Forms 1-6 & 2-6, there are five different ways these forms can be drafted (discussed in more detail in Chapter Two, Section V(J) of this manual):

- Bypass Only - outright marital gift
- QTIP & Bypass Trusts
- Disclaimer Bypass Trust
- One-lung Marital Trust
- Clayton Marital Trust

This Will creates individual trusts for each of your client’s beneficiaries (and subsequently for their descendants). Each of these individual trusts will last for as long as you design them to last, depending on how you answer the questions. Also, in drafting these trusts for your client’s beneficiaries, you may allow each of the beneficiaries to be the sole Trustee or a Co-Trustee of their own trusts.
VIII. HUSBAND'S and WIFE'S BYPASS & QTIP WITH GST EXEMPT TRUSTS
(Forms 1-8 & 2-8)

A. SUMMARY OF THE FORMS

This form is designed to be used when you want to create the marital and bypass trusts at the first spouse’s death, and then create individual GST exempt trusts after both spouses have died. But you do not think it is necessary to automatically create GST nonexempt trusts for the children and grandchildren. These Wills provide that all GST nonexempt property will be distributed outright to the descendants (or other beneficiaries).

Forms 1-8 and 2-8 place up to $3,500,000 (or an amount which is equal to your client’s remaining unified credit) into a trust (which you may refer to as the “Bypass,” “Family” or “Credit Shelter” Trust) which is designed to bypass federal estate taxes upon the death of the surviving spouse, and the balance of the estate is placed into one or two Qualified Terminable Interest Property (“QTIP”) Marital Trusts. The Exempt Marital Trust will receive the balance of your client’s remaining GST exemption, and the Nonexempt Marital Trust will receive the balance of the estate. Note, though, if your client lives in a state that imposes an estate or inheritance tax, and the available exemption is lower than the federal exemption, then these Will forms will cause there to be estate or inheritance taxes owed to that state upon the death of the first spouse to die. Forms 1-6, 2-6, 1-7 and 2-7 can be drafted so that the payment of such taxes can be avoided by limiting the amount passing to the Bypass Trust.

Upon the death of the surviving spouse, the Bypass Trust and the Marital Trusts will terminate. (Note, you are allowed to pool the property of the Bypass Trust and Marital Trusts until your client’s youngest child reaches a specified age, at which time the trust property will then be distributed to the individual trusts.) These Wills then create trusts for each of your client’s children or other beneficiaries which are exempt from the GST tax. The Bypass Trust and Exempt Marital Trust will pass to the GST exempt trusts, and the property in the Nonexempt Marital Trust and the property owned by the surviving spouse which is not exempt from the GST tax will pass outright. Income and principal of each such trust will be distributable for health, education, maintenance and support. Also, in drafting these trusts, you may allow the children (or other beneficiaries) to be the sole Trustee or a Co-Trustee of their own trusts.
IX. HUSBAND’S and WIFE’S BYPASS & QTIP WITH GST EXEMPT AND NONEXEMPT TRUSTS
(Forms 1-9 & 2-9)

A. SUMMARY OF THE FORMS

This Will is most often used when the combined estate of the husband and wife exceeds $7,000,000. You use this form when you want to create the marital and bypass trusts at the first spouse’s death, and then create GST exempt and nonexempt trusts after both spouses have died.

These forms place up to $3,500,000 (or an amount which is equal to your client’s remaining unified credit) into a trust (which you may refer to as the “Bypass,” “Family” or “Credit Shelter” Trust) which is designed to bypass estate taxes upon the death of the surviving spouse, and the balance of the estate is placed into two Qualified Terminable Interest Property (“QTIP”) Marital Trusts, one of which is exempt from the GST tax, and the other which is not. Note, though, if your client lives in a state that imposes an estate or inheritance tax, and the available exemption is lower than the federal exemption, then these Will forms will cause there to be estate or inheritance taxes owed to that state upon the death of the first spouse to die. Forms 1-6, 2-6, 1-7 and 2-7 can be drafted so that the payment of such taxes can be avoided by limiting the amount passing to the Bypass Trust.

These forms provide that upon the death of the surviving spouse, the Bypass Trust and the Marital Trusts will terminate. (Note, you are allowed to pool the property of the Bypass Trust and Marital Trusts until your client’s youngest child reaches a specified age, at which time the trust property will then be distributed to the individual descendants’ trusts.) These Wills create two trusts for each of your client’s children or other beneficiaries. One of the trusts will be exempt from the GST tax, and the other will not be exempt from the GST tax. Income and principal of each such trust will be distributable for health, education, maintenance and support. Also, in drafting these trusts, you may allow the children (or other beneficiaries) to be the sole Trustee or a Co-Trustee of their own trusts.
CHAPTER FOUR
EXPLANATION OF INDIVIDUAL’S WILL FORMS

I. INDIVIDUAL’S SIMPLE WILL
(Form 3-1)

This Will is most often used when the individual has an estate of $500,000 or less. If your client has a larger estate, you should give some thought to using a either Form 3-4 or 3-5, as these Wills create longer term trusts for children, grandchildren, or other beneficiaries. You may have one client with $500,000 and seven children and another client with $500,000 and one child. The client with seven children probably does not need the more sophisticated trusts that are created under Forms 3-4 or 3-5 since each child will inherit less than $75,000, whereas the client with only one child may want to create a lifetime, generation-skipping trust (using Form 3-5) for that child.

II. INDIVIDUAL’S PO RouVER WILL - SHORT VERSION
(Form 3-2)

This Will is used when the individual has created a Revocable Trust. This Pouover Will is most often used when the individual has an estate of a few hundred thousand dollars. Typically, you would use this Will when the Revocable Trust you are drafting is Form 14-2. If your Revocable Trust is either Form 14-3 or Form 14-4, you should use Will Form 3-3. Among other things, this simple Pouover Will has no tax language and a very brief Executor’s powers section.

III. INDIVIDUAL’S PO RouVER WILL - LONG VERSION
(Form 3-3)

This Will is used when the individual has created a Revocable Trust. This Pouover Will is most often used when the individual has an estate which exceeds several hundred thousand dollars, and the Revocable Trust you are drafting is either Form 14-3 or 14-4. If your Revocable Trust is Form 14-2, you should use Will Form 3-2.

IV. INDIVIDUAL’S WILL - FAMILY / SPRINKLE TRUST
(Form 3-4)

This Will form places all of your client’s property into a single trust which is designed to benefit all of the client’s descendants. This form allows you to keep the trust in existence for a period of time, until the youngest child attains a specified age, but once the trust terminates, the descendants receive the remaining property outright and free of trust, unless property is held in a contingent trust for a minor or incapacitated person. If you expect your client’s estate to increase in value, you may want to draft Form 3-5 instead.
V. INDIVIDUAL’S WILL - SEPARATE SHARE TRUSTS
(Form 3-5)

This Will form provides that property will not be distributed outright to your client’s descendents or other beneficiaries. Rather, this Will creates a trust for each of your client’s beneficiaries (and subsequently for their descendants). Income and principal of each such trust will be distributable for health, education, maintenance and support. Also, in drafting these trusts, you may allow the beneficiaries to be the sole Trustee or a Co-Trustee of their own trusts.

VI. INDIVIDUAL’S WILL - SEPARATE SHARE TRUSTS - GST EXEMPT TRUSTS ONLY
(Form 3-6)

This Will form provides that your client’s $3,500,000 GST exemption (or the GST exemption which is available at death) will be held in GST exempt trusts, and the balance of your client’s estate, if any, will be distributed outright. Just as with the Form 3-5, income and principal of each such trust will be distributable for health, education, maintenance and support, and you may allow the beneficiaries to be the sole Trustee or a Co-Trustee of their own trusts.

VII. INDIVIDUAL’S WILL - SEPARATE SHARE GST EXEMPT AND NONEXEMPT TRUSTS
(Form 3-7)

This Will form provides that your client’s $3,500,000 GST exemption (or the GST exemption which is available at death) will be distributed to GST Exempt Trusts for each of your client’s children (and subsequently for other descendents). The balance of your client’s estate, if any, will be distributed to GST Nonexempt Trusts. Income and principal of each such trust will be distributable for health, education, maintenance and support. Also, in drafting these trusts, you may allow the beneficiaries to be the sole Trustee or a Co-Trustee of their own trusts.
CHAPTER FIVE
EXPLANATION OF SAME-SEX SPOUSE / DOMESTIC PARTNER WILL FORMS

I. SIMPLE WILL
(Forms 4-1 and 5-1)

This Will is most often used when your client has an estate of $500,000 or less. If your client has a larger estate, you should give some thought to using a either Form 4-4 or 4-5, or Form 5-4 or 5-5, as these Wills create longer term trusts for children, grandchildren, or other beneficiaries. Forms 4-1 and 5-1 are simple Wills designed to leave property outright to the client's beneficiaries. Contingent trusts may be created for minor or incapacitated beneficiaries.

II. POUROVER WILL - SHORT VERSION
(Forms 4-2 and 5-2)

This Will is used when your client has created a Revocable Trust. This Pourover Will is most often used when a client has an estate of a few hundred thousand dollars. Typically, you would use this Will when the Revocable Trust you are drafting is Form 15-1 or 16-1. If your Revocable Trust is either Form 15-2, 16-2, 15-3, or 16-3, you should use Will Form 4-3 or 5-3. Among other things, this simple Pourover Will has no tax language and a very brief Executor's powers section.

III. POUROVER WILL - LONG VERSION
(Forms 4-3 and 5-3)

This Will is used when your client has created a Revocable Trust. This Pourover Will is most often used when a client has an estate which exceeds several hundred thousand dollars, and the Revocable Trust you are drafting is either Form 15-2, 16-2, 15-3, or 16-3. If your Revocable Trust is Form 15-1 or 16-1, you should use Will Form 4-2 or 5-2.

IV. TRUST FOR SPOUSE / PARTNER, THEN SEPARATE SHARE TRUSTS
(Forms 4-4 and 5-4)

This Will is most often used when your client's estate exceeds several hundred thousand dollars, and he or she wants to leave all of his or her property to a trust for his/her spouse or domestic partner until that person's death, at which point the remaining trust property will be distributed to trusts for other beneficiaries. With regard to the trust for the spouse / partner, you have the option to allow for a number of different types of distribution schemes, including a 3%, 4% or 5% unitrust distribution standard. Income and principal of the other trusts created in this Will are distributable for health, education, maintenance and support. Also, in drafting these trusts, you may allow the beneficiaries to be the sole Trustee or a Co-Trustee of their own trusts.
V. SEPARATE SHARE TRUSTS FOR ONE OR MORE BENEFICIARIES  
(Forms 4-5 and 5-5)

This Will form allows you to create trusts for your client's beneficiaries (and subsequently for the descendants of the beneficiaries or for other beneficiaries). The spouse / partner can be a beneficiary of one of these trusts. Income and principal of each such trust will be distributable for health, education, maintenance and support. Also, in drafting these trusts, you may allow the beneficiaries to be the sole Trustee or a Co-Trustee of their own trusts.
CHAPTER SIX
EXPLANATION OF OTHER FORMS

I. DURABLE POWER OF ATTORNEY
(Forms 6-1, 7-1, 8-1, 9-1 & 10-1)

The Durable Powers of Attorney are designed to allow the designated person or persons to manage your client’s financial affairs. You can draft each of the Power of Attorney forms either as a Statutory Durable Power of Attorney (which is a form which created by the Texas Legislature in 1993 and modified by several legislatures in the years since) or as a more conventional Power of Attorney.

A. WITNESSES AND RECORDING

There is no longer a requirement that the Power of Attorney be witnessed. You may add lines to the Statutory Durable Power of Attorney for witnesses to sign, but it is not necessary. The Power of Attorney does not need to be recorded either; however, if you intend for it to be used in a real estate transaction, then it is a good idea to go ahead and record it. If your client owns real estate and even if the Power of Attorney may not be used for a number of years, then you should strongly consider recording the Power of Attorney.

B. ADDITIONAL POWERS

If you wish to extend the powers granted to the person appointed to serve as agent under the power of attorney, you may do so by selecting one or more of the additional powers that are listed in the appropriate question. For further information regarding any limitations or extensions to the powers granted to your agent, See Chapter XII of the Texas Probate Code, as amended effective September 1, 1993.

C. “SPRINGING” FEATURE

You can draft the power of attorney so that it springs to life only if it is needed in the event of incapacity. When drafting the document, you will be given three choices:

1. Immediately: You should select this answer if this power of attorney will not be affected by the subsequent disability or incapacity of the person executing this power of attorney.

2. Upon disability/incapacity: You should select this answer if this power of attorney will become effective only upon the disability or incapacity of the person executing this power of attorney.
3. **Let client decide:** You should select this answer if you want to let your client cross out the statement in the power of attorney which does not apply. (This is the way the statutory form is intended to be used.)

II. **NOTICE REGARDING DURABLE POWER OF ATTORNEY**  
(Forms 6-1a, 7-1a, 8-1a, 9-1a & 10-1a)

This form is designed to serve as a warning to your clients as to the variety and extent of the powers they will be granting under their powers of attorney. This is not a form they will present to banks, brokerage houses or other businesses, but instead it is designed for you to keep in your file to document the fact that your client was provided with proper and complete notice about the power of attorney.

III. **NOTICE TO PERSON ACCEPTING APPOINTMENT AS AGENT**  
(Forms 6-1b, 7-1b, 8-1b, 9-1b & 10-1b)

This form is designed to be signed by the person or persons serving as your client’s agent under a power of attorney. By signing the form, the agent will confirm that he or she understands the legal and fiduciary duties that will be assumed by acting or agreeing to act as your client’s agent under the terms of the power of attorney.

IV. **AFFIDAVIT OF AGENT**  
(Forms 6-1c, 7-1c, 8-1c, 9-1c & 10-1c)

This form is designed to be signed by the person who is actively serving as your client’s agent under a power of attorney. The form certifies, among other things, that the agent believes the power of attorney is currently in force, that it has not been revoked, and that your client is not deceased.

V. **AFFIDAVIT OF PHYSICIAN**  
(Forms 6-1d, 7-1d, 8-1d, 9-1d & 10-1d)

This form is designed to be signed by your client’s physician. In it, the physician certifies that to the best of his or her knowledge after reasonable inquiry, the physician believes your client lacks the capacity to manage property, including taking those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

VI. **TEXAS PROBATE CODE PROVISIONS**  
(Forms 6-1e, 7-1e, 8-1e, 9-1e & 10-1e)

This form contains no logic or codes, but rather is a way for you to print up the relevant Probate Code Sections which recite the powers granted under a Statutory Durable Power of Attorney.
VII. MEDICAL POWER OF ATTORNEY  
(Forms 6-2, 7-2, 8-2, 8-3 & 8-4)

The Medical Powers of Attorney allow the designated person or persons to consent to medical care on behalf of your client should the client suffer an injury or become mentally or physically disabled. The Medical Powers of Attorney are designed to become effective when your client becomes unable to make his or her own health care decisions and that fact is certified in writing by your client’s physician. The agents who are appointed may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. The agent’s authority begins when your client’s doctor certifies that your client lacks the capacity to make health care decisions. Unless you state otherwise, your client’s agent has the same authority to make decisions about your client’s health care as your client would have had.

You can also add HIPAA (the Health Insurance Portability and Accountability Act of 1996) language to this form, if you want. (For more information on HIPAA, see the next section of this manual.) Since the medical document does not take effect until a person is unable to make health care decisions for himself or herself, it may be difficult to get a doctor to talk to the agent(s) named therein about the subject of whether the person is actually unable to make those decisions. Adding the HIPAA language will hopefully make it easier for the agents to obtain the information they will be requesting.

VIII. HIPAA RELEASE  
(Forms 6-3, 7-3, 8-3, 9-3 & 10-3)

HIPAA (the Health Insurance Portability and Accountability Act of 1996) requires health care providers to be very careful how they release health care information. All health care providers are required to make reasonable efforts to limit the release of protected health information to the minimum necessary to accomplish the intended purpose of the particular disclosure or request for disclosure. In this form, your client will name one or more persons who will be able to have access to all of your client’s medical information.

IX. DIRECTIVE TO PHYSICIANS  
(Forms 6-4, 7-4, 8-4, 9-4 & 10-4)

The Directive to Physicians (often referred to as “Living Wills”) instructs a doctor to disconnect any life support systems if your client is suffering from an incurable or irreversible condition caused by injury, disease, or illness certified to be a terminal condition by two physicians.

X. COMBINATION DIRECTIVE TO PHYSICIANS & MEDICAL POWER OF ATTORNEY  
(Forms 6-5, 7-5, 8-5, 9-5 & 10-5)

The Combination Directive to Physicians and Medical Power of Attorney doubles as both a Directive to Physicians and a Medical Power of Attorney. All of the language from both forms (described above in this manual) are combined into a single form. Many attorneys prefer to
combine the forms as it reduces the number of documents your clients are required to sign when they come to your office. You can also add HIPAA language directly to the body of the document or an attachment to the document, or both. Adding the HIPAA language will hopefully make it easier for the agents to obtain the information they will be requesting.

XI. CODICIL
(Forms 6-6, 7-6, 8-6, 9-6 & 10-6)

A codicil may be prepared for a client if you want to amend the client's existing Will without rewriting the Will in its entirety. You will be able to (i) modify an existing provision, (ii) add a new provision, or (iii) delete an existing provision. An unlimited number of changes can be made.

XII. GIFT BY A LIVING DONOR
(Forms 6-7, 7-7, 8-7, 9-7 & 10-7)(Forms 6-6, 7-6, 8-6, 9-6 & 10-6)

The purposes of the document entitled “Gift By A Living Donor” is for your client to designate a recipient or several recipients for his or her body parts.

XIII. REVOCATION OF POWER OF ATTORNEY
(Forms 6-8, 7-8, 8-8, 9-8 & 10-8)

The documents entitled “Revocation of Power of Attorney” will revoke an existing power of attorney. In order for the revocation to be effective, it is important that the Revocation of Power of Attorney be filed of record in the deed records of each county in which the original Power of Attorney was recorded.

XIV. VIDEO WILL CHECKLIST
(Forms 6-9, 7-9, 8-9, 9-9 & 10-9)

One of the ways to prevent a successful challenge to the validity of a Will is to video tape the execution ceremony. The Video Will checklist has been provided to you so that you can be sure you do not leave out any important details.

XV. DECLARATION OF GUARDIAN
(Forms 6-10, 7-10, 8-10, 9-10 & 10-10)

The Declaration of Guardian forms are designed to allow your clients to designate who will be allowed to serve as the guardian of their person and estate should one ever need to be appointed. Your client may also declare that he or she does not want a particular person or persons to serve as guardian.
XVI. DECLARATION FOR MENTAL HEALTH TREATMENT
(Form 6-11, 7-11, 8-11, 9-11 & 10-11)

The Declarations For Mental Health Care Treatment are designed to allow your clients to specify their preferences for treatments and medications if it is ever determined by a court that they lack the ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment. Your client must be impaired to such an extent that he or she lacks the capacity to make mental health treatment decisions. "Mental health treatment" means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive medication, and preferences regarding emergency mental health treatment.

XVII. DESIGNATION OF HEALTH CARE AGENT
(Form 6-12, 7-12, 8-12, 9-12 & 10-12)

These forms are designed to allow your clients to name one or more persons to make health care decisions for their children. The forms also give the persons named as agents in the form the right to travel with the children, should the need arise.

XVIII. APPOINTMENT OF GUARDIAN FOR CHILDREN
(Form 6-13, 7-13, 8-13, 9-13 & 10-13)

Naming a guardian for one's children is normally accomplished in a person's Will. However, there is no requirement that it be done there. This form is designed to appoint guardians, and it may be useful when your client has a Will or Revocable Trust that does not need to be changed, except to name guardians for their children.

XIX. MEMORANDUM REGARDING PERSONAL BELONGINGS
(Form 6-14, 7-14, 8-14, 9-14 & 10-14)

This form allows your clients to prepare a non-testamentary listing of who is to receive certain personal belongings when they die.

XX. FORM TO DONATE BODY FOR MEDICAL STUDY
(Form 6-15, 7-15, 8-15, 9-15 & 10-15)

Many clients desire to donate their bodies for medical study after they pass away. This form allows you to choose many of the more popular programs available in Texas.

XXI. APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS
(Form 6-16, 7-16, 8-16, 9-16 & 10-16)

This form allows your client to designate an agent to control the disposition of his or her remains upon death.
XXII. DO NOT RESUSCITATE
(Forms 6-17, 7-17, 8-17, 9-17 & 10-17)

This form allows your client or certain representatives to specify that they want CPR to be withheld in the future.
CHAPTER SEVEN
EXPLANATION OF HUSBAND’S AND WIFE’S REVOCABLE TRUSTS

I.  BLIND TRUST
(Form 11-1)

The primary purpose of this Trust Agreement is to provide your clients with a means to have someone other than themselves manage their financial and other business affairs for them if they are unable to do so. It is essentially the same type of trust that politicians set up to distance themselves from managing their properties while they are in office. This Revocable Trust will not avoid probate or taxes. Upon the death of either of your clients, the remaining trust property which was owned by the decedent will be distributed to the estate of the decedent. This Trust Agreement does not create contingent trusts for the clients’ children. Any trust planning would have to be accomplished under the clients’ Wills.

II.  SIMPLE REVOCABLE TRUST - OUTRIGHT TO BENEFICIARIES
(Form 11-2, 12-1 & 13-1)

These Trust Agreements come in three versions. Form 11-3 is designed for the Husband and Wife to create a Revocable Trust together, Form 12-1 is designed for the Husband to create his own Revocable Trust, and Form 13-1 is designed for the Wife to create her own Revocable Trust. These Trust Agreements are most often used when the husband and wife have a combined estate of less than $3,500,000 (or the relevant exemption amount).

In Form 11-2, upon the death of the first spouse to die, the Revocable Trust will continue its existence, with the surviving spouse becoming the sole beneficiary of the trust. Upon the death of the surviving spouse, the Revocable Trust will terminate and the remaining property will be distributed to the deceased spouse’s descendants or other beneficiaries (depending on how the questions are answered when drafting the documents).

In Forms 12-1 and 13-1, upon the death of the first spouse to die, the deceased spouse’s Revocable Trust will terminate and the remaining property will either be distributed to the surviving spouse outright, to the surviving spouse’s Revocable Trust, or to the deceased spouse’s descendants or other beneficiaries (depending on how the questions are answered when drafting the documents).

III. SIMPLE REVOCABLE TRUST - WITH SEPARATE SHARE TRUSTS
(Form 11-3, 12-2 & 13-2)

These Trust Agreements come in three versions. Form 11-3 is designed for the Husband and Wife to jointly a Revocable Trust together, Form 12-2 is designed for the Husband to create his own Revocable Trust, and Form 13-2 is designed for the Wife to create her own Revocable Trust. These Trust Agreements are most often used when the husband and wife have a combined
estate of less than $3,500,000 (or the relevant exemption amount), yet a large enough amount of
money and property is being left to one or more beneficiaries to warrant the creation of trusts for
their benefit.

In Form 11-3, upon the death of the first spouse to die, the Revocable Trust will continue its
existence, with the surviving spouse becoming the sole beneficiary of the trust. Upon the death of
the surviving spouse, the Revocable Trust will terminate and the remaining property will be
distributed to trusts for the descendants or other beneficiaries. (Note, though, you are allowed to
pool the property being left to your client’s children until your client’s youngest child reaches a
specified age, at which time the trust property will then be distributed to the individual trusts.)

In Forms 12-2 and 13-2, upon the death of the first spouse to die, the deceased spouse’s
Revocable Trust will terminate and the remaining property will either be distributed to the surviving
spouse outright, to the surviving spouse’s Revocable Trust, or to trusts for the deceased spouse’s
descendants or other beneficiaries (depending on how the questions are answered when drafting
the documents). The same pooled trust can be created for your client’s children as described
above for Form 11-3.

IV. BYPASS &/OR QTIP
(Form 11-4, 12-3 & 13-3)

These Trust Agreements come in three versions. Form 11-4 is designed for the Husband
and Wife to create a Revocable Trust together, Form 12-3 is designed for the Husband to create
his own Revocable Trust, and Form 13-3 is designed for the Wife to create her own Revocable
Trust.

Each of these forms can be drafted five different ways (discussed in more detail in Chapter
Two, Section V(J) of this manual):

• Bypass Only - outright marital gift
• QTIP & Bypass Trusts
• Disclaimer Bypass Trust
• One-lung Marital Trust
• Clayton Marital Trust

After both spouses have died, you can pool the property formerly in the Marital and/or
Bypass Trusts for a period of time in a trust for your client’s children, until the youngest child attains
a specified age, but once this trust terminates, the children receive the remaining property outright
and free of trust. Any property which is to be distributed to a person who has not attained a
specified age (a grandchild, great-grandchild, or possibly a niece, nephew, or other beneficiary) or
to a person who is incapacitated upon the termination of the Bypass Trust will be distributed to the
contingent trusts which you will find towards the end of the Trust Agreement (if you decide to draft
the agreement with contingent trusts).
V. BYPASS &/OR QTIP WITH SEPARATE SHARE TRUSTS
(Form 11-5, 12-4 & 13-4)

A. SUMMARY OF THE FORMS

These Trust Agreements come in three versions. Form 11-5 is designed for the Husband and Wife to create a Revocable Trust together, Form 12-4 is designed for the Husband to create his own Revocable Trust, and Form 13-4 is designed for the Wife to create her own Revocable Trust.

Each of these forms can be drafted five different ways (discussed in more detail in Chapter Two, Section V(J) of this manual):

- Bypass Only - outright marital gift
- QTIP & Bypass Trusts
- Disclaimer Bypass Trust
- One-lung Marital Trust
- Clayton Marital Trust

Upon the death of the surviving spouse, the Bypass and/or Marital Trusts will terminate, and the remaining trust property will be distributed to their descendants or other beneficiaries. (Note, though, you are allowed to pool the property of the Marital Trust and Bypass Trust until your client's youngest child reaches a specified age, at which time the trust property will then be distributed to the individual trusts.)

These Revocable Trusts create separate trusts for each of your client's descendants or other beneficiaries (and subsequently for their descendants). If you have created separate but substantially identical Revocable Trusts, then the trusts for the descendants or other beneficiaries created under each of the Trust Agreements can be merged. Income and principal of each such trust will be distributable for health, education, maintenance and support.
B. CHART ILLUSTRATING ONE VERSION OF THIS TRUST AGREEMENT:

**HUSBAND'S POPOVER WILL**
Will is designed to pourover assets the husband owns as of his death to the Revocable Trust.

**REVOCALEL LIVING TRUST**
1. Trust benefits H and W while both are living.
2. Distributions for health, support, maintenance and education.
3. At death of first Grantor to die, trust terminates and is divided as provided below.

**WIFE'S POPOVER WILL**
Will is designed to pourover assets the wife owns as of her death to the Revocable Trust.

**SURVIVOR'S REVOCABLE TRUST**
1. Trust benefits survivor.
2. Distributions for health, support, maintenance and education as surviving Grantor directs.
3. At death of surviving Grantor, trust terminates and is divided as provided below.

**FAMILY (or "BYPASS") TRUST**
1. Holds remaining unified credit ($2,500,000)
2. Surviving spouse is primary beneficiary.
3. Descendants are secondary beneficiaries.
4. Surviving spouse can be Trustee.

**MARITAL TRUST**
1. Holds all property not distributed to Family Trust.
2. Surviving Spouse is sole beneficiary.
3. All income must be distributed.
4. Principal may be distributed for health, support, maintenance and education.

**RETIEMENT PLANS**
Usually payable directly to surviving spouse to continue tax deferred status.

**GIFTS TO SPOUSE**
Cars, books, clothing, jewelry, etc.

**TRUST FOR CHILD**
1. Child is primary beneficiary.
2. Child's descendants are secondary beneficiaries.
3. Property may be distributed for health, support, maintenance and education.

**GCHILD'S Trust**
Same terms as parent's trust.

**GC2's Trust**
Same terms as parent's trust.

**GC3's Trust**
Same terms as parent's trust.

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VI. Bypass & QTIP with GST Exempt Trusts
(Forms 11-6, 12-5 & 13-5)

These Trust Agreements come in three versions. Form 11-6 is designed for the Husband and Wife to create a Revocable Trust together, Form 12-5 is designed for the Husband to create his own Revocable Trust, and Form 13-5 is designed for the Wife to create her own Revocable Trust. These Revocable Trust forms are very similar to the Wills created by Forms 1-8 or 2-8.

In Form 11-6, the first spouse to die will leave as much of his or her Exemption Amount as remains at death to the Family Trust created within the Trust Agreement, with the balance of the estate to be placed into two QTIP Marital Trusts (one of which is exempt from the GST tax and the other of which is not exempt from the GST tax). Each of these trusts will be irrevocable. The surviving spouse's property will continue to be held in a new Revocable Trust created within the Revocable Trust.

In Forms 12-5 and 13-5, upon the death of either the Husband or Wife, the deceased Settlor's Revocable Trust will terminate and as much of the deceased Settlor's Exemption Amount available at death will be distributed to the Family Trust created within the Trust Agreement, with the balance of the trust property being placed into two QTIP Marital Trusts (one of which is exempt from the GST tax and the other of which is not exempt from the GST tax). Each of these trusts will be irrevocable. The surviving spouse's property will continue to be held in his or her existing Revocable Trust.

If your client lives in a state that imposes an estate or inheritance tax, and the available exemption is lower than the federal exemption, then these Revocable Trust forms will cause there to be estate or inheritance taxes owed to that state upon the death of the first spouse to die. Forms 11-4, 11-5, 12-3, 12-4, 13-3 and 13-4 can all be drafted so that the payment of such taxes can be avoided by limiting the amount passing to the Bypass Trust.

Upon the death of the surviving spouse, the Bypass and/or Marital Trusts will terminate, and the remaining trust property will be distributed to their descendants or other beneficiaries. (Note, though, you are allowed to pool the property of the Marital Trust and Bypass Trust until your client's youngest child reaches a specified age, at which time the trust property will then be distributed to the individual trusts.)

These Revocable Trusts create separate trusts for each of your client's descendants or other beneficiaries (and subsequently for their descendants). Only property from the Exempt Marital Trust and the surviving Settlor's available GST exemption amount will pass to these trusts. Property from the Nonexempt Marital Trust and the surviving spouse's remaining property will be distributed outright. Income and principal of each trust will be distributable for health, education, maintenance and support. If you have created separate but substantially identical Revocable Trusts, then the trusts for the descendants and other beneficiaries created under each of the Trust Agreements can be merged.
VII. BYPASS & QTIP WITH GST EXEMPT & NONEXEMPT TRUSTS
(Forms 11-7, 12-6 & 13-6)

These Trust Agreements come in three versions. Form 11-7 is designed for the Husband and Wife to create a Revocable Trust together, Form 12-6 is designed for the Husband to create his own Revocable Trust, and Form 13-6 is designed for the Wife to create her own Revocable Trust. These Revocable Trust forms are very similar to the Wills created by Forms 1-9 or 2-9.

In Form 11-7, the first spouse to die will leave as much of his or her Exemption Amount as remains at death to the Bypass Trust created within the Trust Agreement, with the balance of the estate to be placed into two QTIP Marital Trusts (one of which is exempt from the GST tax and the other of which is not exempt from the GST tax). Each of these trusts will be irrevocable. The surviving spouse’s property will continue to be held in a new Revocable Trust created within the Revocable Trust.

In Forms 12-6 and 13-6, upon the death of either the Husband or Wife, the deceased Settlor’s Revocable Trust will terminate and as much of the deceased Settlor’s Exemption Amount available at death will be distributed to the Bypass Trust created within the Trust Agreement, with the balance of the trust property being placed into two QTIP Marital Trusts (one of which is exempt from the GST tax and the other of which is not exempt from the GST tax). Each of these trusts will be irrevocable. The surviving spouse’s property will continue to be held in his or her existing Revocable Trust.

If your client lives in a state that imposes an estate or inheritance tax, and the available exemption is lower than the federal exemption, then these Revocable Trust forms will cause there to be estate or inheritance taxes owed to that state upon the death of the first spouse to die. Forms 11-4, 11-5, 12-3, 12-4, 13-3 and 13-4 can all be drafted so that the payment of such taxes can be avoided by limiting the amount passing to the Bypass Trust.

Upon the death of the surviving spouse, the Bypass Trust and the Marital Trusts will terminate, and the remaining trust property will be distributed to their descendants or other beneficiaries. (Note, though, you are allowed to pool the property of the Marital Trusts and Bypass Trust until your client’s youngest child reaches a specified age, at which time the trust property will then be distributed to the individual trusts.)

These Revocable Trusts create separate trusts for each of your client’s descendants or other beneficiaries (and subsequently for their descendants). Property from the Exempt Marital Trust as well as the surviving Settlor’s $3,500,000 GST exemption (or the GST exemption which is available at such time) amount will pass to the Exempt Trusts. Property from the Nonexempt Marital Trust as well as the surviving spouse’s remaining property will be distributed to the Nonexempt Trusts.
CHAPTER EIGHT
EXPLANATION OF INDIVIDUAL’S REVOCABLE TRUSTS

I. BLIND TRUST
(Form 14-1)

The primary purpose of this Trust Agreement is to provide your individual client with a means to have someone other than your client manage his or her financial and other business affairs if he or she is unable to do so. It is essentially the same type of trust that politicians set up to distance themselves from managing their properties while they are in office. This Revocable Trust will not avoid probate or taxes. Upon the death of your client, the remaining trust property will be distributed to the client’s estate. This Trust Agreement does not create contingent trusts for the client’s children. Any trust planning would have to be accomplished under the client’s Will.

II. SIMPLE - OUTRIGHT TO BENEFICIARIES
(Form 14-2)

This Trust Agreement is most often used when the individual has an estate of a few hundred thousand dollars. Upon the death of your client, the Revocable Trust will terminate and the remaining trust property will be distributed to your client’s descendants or other beneficiaries.

III. FAMILY - SPRINKLE TRUST
(Form 14-3)

Upon your client’s death, this form places all of your client’s property into a single trust (called the “Family Trust” in the Revocable Trust) which is designed to benefit all of your client’s descendants until the youngest child attains a specified age. Once the Family Trust terminates, the descendants or other beneficiaries receive the remaining property outright and free of trust. Any property which is to be distributed to a person who has not attained a specified age (a grandchild, great-grandchild, or possibly a niece, nephew or other beneficiary) or to a person who is incapacitated upon the termination of the Family Trust can be distributed to contingent trusts.

IV. SEPARATE SHARE TRUSTS
(Form 14-4)

A. Summary of the Form

This form provides that property will not be distributed outright; rather, this Revocable Trust Agreement creates a trust for each of your client’s descendants or other beneficiaries (and subsequently for their descendants). Income and principal of each such trust will be distributable for health, education, maintenance and support. Also, in drafting these trusts, you may allow the descendants (or other beneficiaries) to be the sole Trustee or a Co-Trustee of their own trusts.
B. CHART ILLUSTRATING THIS TRUST:

INDIVIDUAL'S POOROVER WILL
Will is designed to pourover assets owned at death to the Revocable Trust.

REVOCABLE LIVING TRUST
1. Trust benefits individual while living.
2. Distributions for health, support, maintenance and education.
3. At death of Grantor, trust terminates and is divided as provided below.

RETIREMENT PLANS
Sometimes payable directly to children in equal shares to continue tax deferred status.

TRUST FOR CHILD 1
1. Child is primary beneficiary.
2. Child's descendants are secondary beneficiaries.
3. Property may be distributed for health, support, maintenance and education

TRUST FOR CHILD 2
1. Child is primary beneficiary.
2. Child's descendants are secondary beneficiaries.
3. Property may be distributed for health, support, maintenance and education

TRUST FOR CHILD 3
1. Child is primary beneficiary.
2. Child's descendants are secondary beneficiaries.
3. Property may be distributed for health, support, maintenance and education

OUTRIGHT GIFTS TO CHILDREN
Cars, boats, clothing, jewelry, etc.

GC1's Trust
Same terms as parent's trust.

GC2's Trust
Same terms as parent's trust.

GC3's Trust
Same terms as parent's trust.

GCF's Trust
Same terms as parent's trust.

GCF's Trust
Same terms as parent's trust.

GCF's Trust
Same terms as parent's trust.
CHAPTER NINE
EXPLANATION OF SAME-SEX SPOUSE / DOMESTIC PARTNER’S
REVOCABLE TRUSTS

I. SIMPLE - OUTRIGHT TO BENEFICIARIES
(Forms 15-1 & 16-1)

This Trust Agreement is most often used when your client has an estate of a few hundred thousand dollars. Upon the death of your client, the Revocable Trust will terminate and the remaining trust property will be distributed to your client’s descendants or other beneficiaries. Contingent trusts may be created for minor or incapacitated beneficiaries.

II. TRUST FOR SPOUSE / PARTNER, THEN SEPARATE SHARE TRUSTS
(Forms 15-2 & 16-2)

This Revocable Trust is most often used when your client's estate exceeds several hundred thousand dollars, and he or she wants to leave all of his or her property to a trust for the other Spouse / Partner until his or her subsequent death, at which point the remaining trust property will be distributed to trusts for other beneficiaries. With regard to the trust for the spouse / partner, you have the option to allow for a number of different types of distribution schemes, including a 3%, 4% or 5% unitrust distribution standard. Income and principal of the other trusts created in this Revocable Trust are distributable for health, education, maintenance and support. Also, in drafting these trusts, you may allow the beneficiaries to be the sole Trustee or a Co-Trustee of their own trusts.

III. SEPARATE SHARE TRUSTS
(Forms 15-3 & 16-3)

This Trust Agreement is most often used when your client's estate exceeds about $500,000. This form provides that property can be held in trust for each of your client's descendants or other beneficiaries (and subsequently for their descendants). A trust can be created for the spouse / domestic partner. Income and principal of each such trust will be distributable for health, education, maintenance and support. Also, in drafting these trusts, you may allow the descendants (or other beneficiaries) to be the sole Trustee or a Co-Trustee of their own trusts.
CHAPTER TEN
EXPLANATION OF MISCELLANEOUS REVOCABLE TRUST FORMS

I. MEMORANDUM REGARDING FUNDING OF REVOCABLE TRUST
(Forms 17-1, 18-1, 19-1, 20-1, 21-1 & 22-1)

Along with each Revocable Trust Agreement, you can draft a separate memorandum which explains the administration and funding of the trust agreement. The memorandum outlines the steps that are involved in transferring property to the Revocable Trust. It is also recommended that this memorandum be given to your clients and the referral source, which is often a CPA, financial planner, or insurance agent.

II. DEED TRANSFERRING PROPERTY TO REVOCABLE TRUST
(Forms 17-2, 18-2, 19-2, 20-2, 21-2 & 22-2)

Along with the Revocable Trusts, you can draft a deed which transfers property to the Revocable Trust.

III. LETTER TO LENDER RE. TRANSFER OF ACCOUNTS
(Forms 17-3, 18-3, 19-3, 20-3, 21-3 & 22-3)

If your clients are planning to transfer property to their Revocable Trust(s) which is subject to a mortgage, you may want to recommend that they contact their lender prior to the transfer. This form is a letter addressed to the lender seeking permission to transfer a particular piece of property to the Revocable Trust without the lender calling the note due.

IV. CERTIFICATION OF TRUST
(Forms 17-4, 18-4, 19-4, 20-4, 21-4 & 22-4)

The Certification of Trust is an alternative to providing a full copy of the trust instrument to a requesting third party. The Certification of Trust provides only the minimum amount of information necessary by state law. It will most often be used to open a bank or brokerage account in the name of the Revocable Trust. Often clients are reluctant to provide a copy of a trust agreement since it contains terms and provisions of a personal nature.

V. MEMORANDUM REGARDING TRANSFER OF ACCOUNTS
(Forms 17-5, 18-5, 19-5, 20-5, 21-5 & 22-5)

This memorandum is designed to be used by your clients when they try to switch the names on their various accounts to the name of their Revocable Trust(s). This is a memo from your client to the particular bank or broker stating how they want the new account to be styled.
VI. ASSIGNMENT OF PROPERTY TO REVOCABLE TRUST
(Forms 17-6, 18-6, 19-6, 20-6, 21-6 & 22-6)

This form is designed to transfer all of your client's property to their Revocable Trust. Many attorneys view this form as a stop-gap measure which merely attempts to accomplish the transfer of properties to the trust. Despite the existence of this form, it is important for your clients to take the time to individually transfer each of their assets to their Revocable Trusts as this Assignment form may not be effective to transfer all assets.

VII. AMENDMENT TO REVOCABLE TRUST
(Forms 17-7, 18-7, 19-7, 20-7, 21-7 & 22-7)

Just like a Codicil amends a Will, this form is designed to amend an existing Revocable Trust. An unlimited number of changed can be made.
CHAPTER ELEVEN
EXPLANATION OF IRREVOCABLE TRUSTS

I. INVESTMENT TRUSTS (IDGT optional)

A. SEPARATE INVESTMENT TRUSTS
   (Forms 23-1 and 23-3)

   This Trust Agreement can be created by a married client jointly or by an individual, unmarried client. This Trust Agreement creates either (i) a single trust which divides into separate trusts upon the death of your client(s), or (ii) separate trusts from the outset, with one for each child (or other beneficiary you may designate). Distributions may be made for health, support, maintenance and education. Your clients may transfer properties such as cash, stocks, bonds and other securities, and real property to the Trustee of the trusts. However, they are prohibited from transferring life insurance on either of their lives to this trust.

   You have the option to make the trusts created under these Trust Agreements intentionally defective trusts for income tax purposes. This means your client will be treated as the owner of the trust for income tax purposes by virtue of the grantor trust rules under Sections 671 through 679 of the Internal Revenue Code. However, despite the existence of language causing grantor trust treatment, your client will not be treated as the owner of the trust for estate tax, gift tax, or generation skipping tax purposes. The advantages of a trust where your client is treated as the owner for income tax purposes but not for estate, gift, and GST purposes are that the income of the trust will be taxed to your client and transfers and transactions between your client and the trust will be disregarded because the trust and your client will be treated as the same person for income tax purposes. When your client is treated as the owner of the trust for income tax purposes, they will need to take into account trust income, deductions, and credits as if the trust were not in existence.

B. INVESTMENT “SPRINKLE” TRUST
   (Forms 23-2 and 23-4)

   This Trust Agreement can be created by a married client jointly or by an individual, unmarried client. This Trust Agreement creates a single trust which benefits a number of persons. Distributions can be made for the health, support, maintenance and education of the trust’s beneficiaries. Your clients may transfer properties such as cash, stocks, bonds and other securities, and real property to the Trustee of the trust. However, they are prohibited from transferring life insurance on either of their lives to this trust.

   Just as with the trusts in Section A above, you have the option to make the trust created under these Trust Agreements an intentionally defective trust for income tax purposes. This means your client will be treated as the owner of the trust for income tax purposes by virtue of the grantor trust rules under Sections 671 through 679 of the Internal
Revenue Code. However, despite the existence of language causing grantor trust treatment, your client will not be treated as the owner of the trust for estate tax, gift tax, or generation skipping tax purposes. The advantages of a trust where your client is treated as the owner for income tax purposes but not for estate, gift, and GST purposes are that the income of the trust will be taxed to your client and transfers and transactions between your client and the trust will be disregarded because the trust and your client will be treated as the same person for income tax purposes. When your client is treated as the owner of the trust for income tax purposes, they will need to take into account trust income, deductions, and credits as if the trust were not in existence.

II. S CORPORATION TRUSTS  
(Forms 24-1 & 24-2)

This Trust Agreement can be created by a married client jointly or by an individual, unmarried client. This trust is designed to provide a vehicle for your clients to make gifts of S corporation stock to their descendants and thereby remove that stock from both of their estates. As a general rule, trusts are not permitted to own S corporation stock unless they meet certain requirements. Trusts which are permitted to own S corporation stock are known as Qualified Subchapter S Trusts ("QSST"). In order to qualify, the trust must: (1) have only one income beneficiary, (2) distributions can only be made to this income beneficiary and all income must be distributed at least annually, (3) the identity of this income beneficiary cannot change except by reason of death or termination of the trust in his or her favor, and (4) a timely election must be made by the income beneficiary.

Although the trusts created by this type of Agreement are designed specifically to own S corporation stock, your clients may transfer other properties such as cash, bonds and other securities, and real property to the Trustee of the trust. However, they are prohibited from transferring life insurance on either of their lives to this trust. Also, if a client transfers voting stock, the client will be prohibited from voting that stock if the client is serving as trustee. You should note that the Trustee is required to distribute all of the income of each trust to the beneficiary thereof at least annually, and for this reason, your clients may hesitate transferring anything but S corporation stock to the trusts created by this Trust Agreement.

III. GRANDCHILDREN’S TRUSTS - GST QUALIFYING  
(Forms 25-1 & 25-2)

This trust agreement is designed to allow grandparents to create trusts for grandchildren to which gifts may be made which do not require the grandparents to allocate any portion of their GST exemptions. This Trust Agreement can be created by a married client jointly or by an individual, unmarried client.

This Trust Agreement creates separate trusts, one for each grandchild. The grandchild will be the sole beneficiary, and distributions shall be made for his or her health, support, maintenance and education. Normally, gifts from a grandparent to a trust created for a grandchild would be subject to certain limitations relating to the generation skipping transfer tax. More specifically, the
rule is that even if a gift to a trust for a grandchild qualifies for the $13,000 annual exclusion, that
gift will not be exempt from the generation skipping transfer tax (a 45% tax in 2009), unless the trust
meets certain requirements. Those requirements can be found in Section 2642 of the Internal
Revenue Code and are that each grandchild must be the sole beneficiary of his or her trust and the
trust property must be includable in the grandchild's gross estate upon his or her death. Note,
property is included in the grandchild's estate by giving the grandchild a general power of
appointment over the trust property. Both of these Trust Agreements have been written that way
intentionally to create the desired tax result.

Your clients may transfer properties such as cash, stocks, bonds and other securities, and
real property to the Trustee of the trusts. However, they are prohibited from transferring life
insurance on either of their lives to the trusts created by this Trust Agreement. Also, if your clients
transfer voting stock in a closely held corporation, they will be prohibited from voting that stock. If
future grandchildren are possible, the Trust Agreement can be written so that it automatically
creates new unfunded trusts for these grandchildren to which gifts may be made.

IV. IRREVOCABLE LIFE INSURANCE TRUSTS

A. SECOND TO DIE LIFE INSURANCE TRUST
(Form 26-1)

The primary purpose of this Trust Agreement is to remove second to die insurance
proceeds from your married clients' estates. There is no problem, though, with your clients
giving individual insurance policies on each of their lives to this trust; however, this trust only
benefits your clients' descendants—not the husband or the wife. This Trust Agreement
creates either (i) a single trust which divides into separate trusts upon the death of your
client(s), or (ii) separate trusts from the outset, with one for each child (or other beneficiary
you may designate).

B. WIFE / HUSBAND PRIMARY BENEFICIARY LIFE INSURANCE TRUSTS
(Forms 26-2 & 26-3)

1. SUMMARY OF THE FORMS

This Trust Agreement is designed to own insurance on one spouse's life and
ultimately create a trust which benefits the other spouse and descendants. This trust
can be drafted as Form 26-2--where the husband is the settlor and the insured, and
the wife is the primary beneficiary--or it can be drafted as a Form 26-3--where the
wife is the settlor and the insured, and the husband is the primary beneficiary. It is
important that all gifts made to this trust be made by the settlor from his or her
separate property.

This Trust Agreement initially creates a trust which is designed to own the
insurance on the settlor's life. Upon the settlor's death, this trust will terminate. Any
proceeds of life insurance which are includable in the settlor's gross estate for
Federal estate purposes (policies transferred within three years of death) will be distributed to a Marital Trust so that the unlimited marital deduction can be obtained. Any proceeds of life insurance which were purchased by the trust with property gifted by the settlor’s spouse will be distributed to the Descendants Trusts. This would occur if gifts of community property were made to the trust or if the spouse contributes any separate property to the trust. All other proceeds of life insurance will be distributed to a trust for the spouse and descendants (called the Family Trust in the Trust Agreement). However, if the spouse dies before the settlor, then all proceeds of insurance will be distributed to the Descendants Trusts.

Note: You should not draft a Form 26-2 and 26-3 for the same client, as the reciprocal trust doctrine may cause the trust property of both trusts to be included in your clients’ estates. However, there is some authority for the principal that if the trusts differ enough in their terms that you can draft both of these trusts for the same client. For instance, if one spouse has a limited power of appointment and the other does not, or if the trusts benefit different children and grandchildren, then it may be possible to draft both trust agreements for the same client.

2. SETTLOR CANNOT BE TRUSTEE

An insured should not be named as the Trustee of a trust which owns insurance on his or her life. If such were the case, the insured’s powers as Trustee could cause the insurance which is owned by the trust to be included in his or her estate. You may, if you want, name the spouse of the insured to serve as Trustee of the trusts created under this Trust Agreement.

3. PARTITION AGREEMENTS and RELEASES OF COMMUNITY PROPERTY INTEREST

All property given to this trust should be the separate property of the settlor. The problem is how to create separate property. You have two choices, each of which can be produced as separate forms.

a. Partition Agreements: These are agreements that the husband and wife sign whereby they split up property, so that after the partition, the husband will own half of the property as his separate property and the wife will own the other half as her separate property.

b. Releases of Community Property Interest: These documents are signed by the spouse of the Settlor. In one of the documents, the spouse gives up all community property interests in the policies that are given to the trust. In the other, the spouse gives up all community property interest in all payments that may ever be made to the trust. This form only needs to be signed once.
4. CHART ILLUSTRATING THIS TRUST:

INITIAL TRUST
1. Must receive separate property of Grantor.
2. Benefits descendants only.
3. Spouse is Trustee (usually).
4. Descendants have withdrawal rights.
5. Terminates at insured's death.
6. Owns insurance policy.

MARITAL TRUST
1. Benefits spouse only
2. Spouse is Trustee (usually).
3. Includable in spouse's estate at death.
4. Passes to descendants at death of survivor.

FAMILY TRUST
1. Benefits spouse and descendants
2. Spouse is Trustee (usually).
3. Passes estate tax-free to descendants at death of survivor.

TRUST FOR CHILD 1
1. Child can be sole Trustee.
2. Benefits child and child's descendants.
3. Passes estate tax-free to children.

Please Note:
All numbers are estimates.

Steps To Create:
1) Obtain Tax Id. No.
2) Partition policies and cash.
3) Assign policies to trust.
4) Change Beneficiary.
5) Open checking acct.
6) Give money to trust.
7) Write checks from trust checking acct.
8) Withdrawal letters.
9) Gift tax returns.

If Grantor dies within 3 years of policy assigned to trust.

If Grantor survives by 3 years of trust buys new insurance.

GC1's Trust
Same terms as parent's trust.

GC2's Trust
Same terms as parent's trust.

GC3's Trust
Same terms as parent's trust.

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C. HUSBAND & WIFE'S LIFE INSURANCE TRUSTS FOR CHILDREN (Forms 26-4 & 26-5)

1. SUMMARY OF THE FORMS

This trust can be drafted as a Form 26-4, where the trust is designed to own insurance on the husband’s life, or it can be drafted as a Form 26-5, where the trust is designed to own insurance on the wife’s life. This Trust Agreement creates either (i) a single trust which divides into separate trusts upon the death of your client(s), or (ii) separate trusts from the outset, with one for each child (or other beneficiary you may designate). Neither spouse is a beneficiary under this Trust Agreement.

2. SETTLORS CANNOT BE TRUSTEES

An insured should not be named as the Trustee of a trust which owns insurance on his or her life. If such were the case, the insured’s powers as Trustee could cause the insurance which is owned by the trust to be included in his or her estate.

D. HUSBAND & WIFE'S INSURANCE "SPRINKLE" TRUST (Form 26-6)

1. SUMMARY OF THE FORM

This Trust Agreement creates a single trust which benefits a number of persons. This Trust Agreement is similar to Forms 26-4 and 26-5, except that a single trust is created rather than individual trusts for each beneficiary. After the death of both the husband and the wife, distributions can be made for the health, support, maintenance and education of the trust’s beneficiaries.

2. SETTLORS CANNOT BE TRUSTEES

An insured should not be named as the Trustee of a trust which owns insurance on his or her life. If such were the case, the insured’s powers as Trustee could cause the insurance which is owned by the trust to be included in his or her estate.

E. INDIVIDUAL’S SEPARATE LIFE INSURANCE TRUSTS FOR CHILDREN (Form 26-7)

1. SUMMARY OF THE FORM

This Trust Agreement creates either (i) a single trust which divides into separate trusts upon the death of your client(s), or (ii) separate trusts from the outset, with one for each child (or other beneficiary you may designate).
2. SETTLOR CANNOT BE TRUSTEE

An insured should not be named as the Trustee of a trust which owns insurance on his or her life. If such were the case, the insured's powers as Trustee could cause the insurance which is owned by the trust to be included in his or her estate.

F. INDIVIDUAL'S INSURANCE "SPRINKLE" TRUST
(Form 26-8)

1. SUMMARY OF THE FORM

This Trust Agreement creates a single trust which benefits a number of persons and which is designed to own life insurance on the settlor's life. After the settlor's death, distributions can be made for the health, support, maintenance and education of the trust's beneficiaries.

2. SETTLOR CANNOT BE TRUSTEE

An insured should not be named as the Trustee of a trust which owns insurance on his or her life. If such were the case, the insured's powers as Trustee could cause the insurance which is owned by the trust to be included in his or her estate.

V. QUALIFIED PERSONAL RESIDENCE TRUSTS
(Form 27-1, 27-2, 27-3 & 27-4)

A. WHAT IS A QPRT?

A qualified personal residence trust, in very general terms, is a trust created to own an interest in a home. The trust benefits the settlor or settlors for a specified number of years and then terminates and passes to children or to trusts for children. This type of trust is one of the last very favorable techniques available to allow your wealthy clients to transfer huge amounts of property to descendants without generating gift or estate taxes. (If you feel comfortable enough with complicated estate planning principals to draft a QPRT, you probably don't need a detailed description in this manual.)

B. FOUR VERSIONS OF THE FORM

You may create the QPRT using any of four different forms. One of the forms, Form 27-1, is designed to be created jointly by a husband and wife. Alternatively, you can have your married clients each create their own QPRTs, Form 27-2 and Form 27-3, with each trust owning a 50% (or other) interest in the home. Your individual clients can use the fourth version of this form, Form 27-4.
C. OPTIONAL GRAT

You can add a GRAT (Grantor Retained Annuity Trust) to the trust so that if the home inside the QPRT is sold or if all or a portion of the assets in the QPRT ever cease to be a qualified personal residence, such trust property will convert to a GRAT.

D. OPTIONAL GRANTOR TRUST UPON TERMINATION OF QPRT

Rather than have the trust property pass directly to your client’s children or other descendants, this trust agreement allows you to create a single pooled trust which is taxed for federal income tax purposes as a grantor trust as to the settlor or settlers of the QPRT. This trust is useful because your clients can pay rent to the subsequently created grantor trust, and these rental payments will not be treated as taxable income to the trust or to the trust’s beneficiaries (since the trust is a grantor trust) and the payments will also not be treated as gifts (since the payments will be equal to the price a willing renter would pay to live in the home).
E. CHART ILLUSTRATING THE QPRT:

QUALIFIED PERSONAL RESIDENCE TRUST
1. Owns personal residence.
2. Income payable to Grantor.
3. Grantor is Trustee (usually).
5. Terminates at Grantor's death or in ___ years.

If property is sold or ceases to be a qualified personal residence. If Grantor fails to survive the ___ year term.

GRANTOR RETAINED ANNUITY TRUST
1. Grantor retains an annuity.
2. Grantor is Trustee (usually).
3. Terminates when QPRT would have ended.
4. Passes to Grantor's estate if Grantor dies prior to end of term.

If Grantor survives the ___ year term.

GRANTOR'S ESTATE
(No estate tax savings)

GRANTOR'S TRUST FOR KIDS
2. Children are Co-Trustees.
3. Grantor pays rent to trust.
4. Terminates upon the death of Grantor and Grantor's spouse.

TRUST FOR CHILD 1
1. Child can be sole Trustee.
2. Benefits child and child's descendants.
3. Likely taxed when child dies.

GRANTOR's Estate

TRUST FOR CHILD 2
1. Child can be sole Trustee.
2. Benefits child and child's descendants.
3. Likely taxed when child dies.

GC1's Trust
Same terms as parent's trust.

GC2's Trust
Same terms as parent's trust.

GC3's Trust
Same terms as parent's trust.

GC4's Trust
Same terms as parent's trust.

GC5's Trust
Same terms as parent's trust.
VI. CHARITABLE REMAINDER ANNUITY TRUSTS
(Forms 28-1, 28-2, 28-3 & 28-4)

A. WHAT IS A CRAT?

A charitable remainder annuity trust, in very general terms, is a trust created for the
initial benefit of either the settlor, the settlors, or another person or persons. The idea is to
give away property to a charitable trust, retain an interest in the trust which is in the form of
annuity payments, and then allow the trust property to pass to charity upon termination of
the trust. The retained interest will either be a stated dollar amount or a fixed percentage
of the value of the assets which are initially contributed to the trust.

B. FOUR VERSIONS OF THE FORM

You may create the CRAT using any of four different forms. One of the forms, Form
28-1, is designed to be created jointly by a husband and wife. Alternatively, you can have
your married clients each create their own CRATs, Form 28-2 and Form 28-3. Your
individual clients can use the fourth version of this form, Form 28-4.

C. TYPES OF ANNUITY INTERESTS

You can draft the CRAT so that either concurrent and consecutive interests are
created or so that consecutive interests are created. Concurrent and consecutive means
that the annuity payments will be made one-half to each of the two recipients until the first
one dies, then the entire annuity payment will be made to the surviving annuity recipient.
Consecutive means payments will be made to one recipient, and then when that person
dies, payments will then be made to the other annuity recipient.

VII. CHARITABLE REMAINDER UNITRUSTS
(Forms 29-1, 29-2, 29-3 & 29-4)

A. WHAT IS A CRUT?

A charitable remainder unitrust, in very general terms, is a trust created for the initial
benefit of either the settlor, the settlors, or another person or persons. The idea is to give
away property to a charitable trust, retain an interest in the trust which is in the form of
unitrust payments, and then allow the trust property to pass to charity upon termination of
the trust. The unitrust interest will be equal to a percentage of the value of the CRUT
revalued annually.

B. FOUR VERSIONS OF THE FORM

You may create the CRUT using any of four different forms. One of the forms, Form
29-1, is designed to be created jointly by a husband and wife. Alternatively, you can have
your married clients each create their own CRATs, Form 29-2 and Form 29-3. Your individual clients can use the fourth version of this form, Form 29-4.

C. TYPES OF UNITRUST INTERESTS

You can draft the CRUT so that either concurrent and consecutive interests are created or so that consecutive interests are created. Concurrent and consecutive means that the unitrust payments will be made one-half to each of the two recipients until the first one dies, then the entire unitrust payment will be made to the surviving unitrust recipient. Consecutive means payments will be made to one recipient, and then when that person dies, payments will then be made to the other unitrust recipient.

D. FIVE OPTIONAL UNITRUST PAYMENTS

You can draft the CRUT so that the unitrust payments are a fixed percentage of the trust assets revalued annually, or so that payments are the lesser of the trust’s income or the same fixed percentage (commonly referred to as a NICRUT). Payments can also be equal to the lesser of the trust’s income or a fixed percentage of the assets of the trust revalued annually, except that to the extent the income in a prior year was less than the fixed percentage amount, such shortfall can be made up in later years when income exceeds the fixed percentage (commonly referred to as a NIMCRUT). Also, you can start the trust out as a NICRUT or a NIMCRUT, and then have it convert to a fixed percentage upon the occurrence of an event which is not discretionary with, or with the control of, the trustees or any other person. See Treas. Reg. 1.664-3 for more information.

VIII. GRANTOR RETAINED ANNUITY TRUSTS
(Forms 30-1, 30-2 & 30-3)

A. WHAT IS A GRAT?

A GRAT is a trust where the settlor retains an irrevocable right to receive a fixed amount payable to (or for the benefit of) the Settlor for each taxable year of the trust. The fixed amount may be a stated dollar amount or a fixed fraction or percentage of the initial fair market value of the property transferred to the trust, payable at least annually. (However, the fixed fraction or percentage payable in a given year cannot exceed 120% of the fixed fraction or percentage payable in the preceding year). A GRAT may permit payments of income in excess of the annuity amount to the Settlor, but this amount is not included in valuing the initial gift to the trust. The value of the retained annuity interest that is retained by the Settlor will be subtracted from the fair market value of the gift in determining the value of the transfer.
B. THREE VERSIONS OF THE FORM

The GRAT forms have been designed so that husbands and wives will each create their own trusts, Form 30-1 and Form 30-2. Your individual clients can use the other version of this form, Form 30-3.

C. TERM OF THE GRAT

A GRAT may be drafted to last for the lifetime of the annuity recipient, for a term of years, or for the shorter of the annuity recipient's life or a term of years.

IX. GRANTOR RETAINED UNITRUSTS
(Forms 31-1, 31-2 & 31-3)

A. WHAT IS A GRUT?

A GRUT is a trust where the settlor retains an irrevocable right to receive, at least annually, a fixed fraction or a percentage of the net fair market value of the trust property, determined annually. The fixed fraction or percentage payable in a given year cannot exceed 120% of the fixed fraction or percentage payable in the preceding year). A GRUT may permit payments of income in excess of the annuity amount to the Settlor, but this amount is not included in valuing the initial gift to the trust. The value of the retained unitrust interest that is retained by the Settlor will be subtracted from the fair market value of the gift in determining the value of the transfer.

B. THREE VERSIONS OF THE FORM

The GRUT forms have been designed so that husbands and wives will each create their own trusts, Form 31-1 and Form 31-2. Your individual clients can use the other version of this form, Form 31-3.

C. TERM OF THE GRUT

A GRUT may be drafted to last for the lifetime of the unitrust recipient, for a term of years, or for the shorter of the unitrust recipient's life or a term of years.

X. SUPPLEMENTAL NEEDS TRUSTS
(Forms 32-1, 32-2, 32-3 and 32-4)

A. WHAT IS A SUPPLEMENTAL NEEDS TRUST?

This Trust Agreement is designed to provide a vehicle for your clients to make gifts to a trust for a disabled or incapacitated individual (typically a child or grandchild). This Trust
Agreement creates only one trust, and if your client has two persons for whom they wish to create supplemental needs trusts, then you will need to draft this trust agreement two times.

You can draft this trust as a purely discretionary trust or as a (d)(4)(A) trust. Your clients may transfer properties such as cash, stocks, bonds and other securities, and real property to the Trustee of this trust. However, they are prohibited from transferring life insurance on either of their lives to the trust created by this Trust Agreement.

B. FOUR VERSIONS OF THE FORM

You may create the Supplemental Needs Trust using any of four different forms. One of the forms, Form 32-1, is designed to be created jointly by a husband and wife. Alternatively, you can have your married clients each create their own Supplemental Needs Trust, using Forms 32-2 and 32-3. Your individual clients can use the fourth version of this form, Form 32-4.

XI. SECTION 142 TRUST
(Form 38-1)

A. WHAT IS A SECTION 142 TRUST?

Section 142 Trusts are trusts which are authorized by Section 142 of the Texas Property Code. Section 142 Trusts can be created by a court when there is a lawsuit involving a minor who has no legal guardian or an incapacitated person who is represented by a next friend or an appointed guardian ad litem.

You can draft this trust agreement one of three ways. The simple way to referred to as "HEMS (short version)", and it inserts simple language, basically tracking the statute with a health, education, maintenance and support distribution standard. You can also draft the trust using a longer version of the HEMS language, and if you do, additional language describing the uses of the distributions will be added as well. Third, you can draft this trust as a (d)(4)(A) Special Needs Trust, and if you do, language allowing the trust to qualify as a special needs trust will be added.

B. APPLICATION TO ESTABLISH SECTION 142 TRUST
(Form 38-2)

This form is designed to be filed with the court requesting that the judge authorize the creation of the 142 Trust.
C. ORDER ESTABLISHING SECTION 142 TRUST  
(Form 38-3)  

This Order is designed to be filed with the court along with the Application to Create the 142 Trust.

D. TRUSTEE’S APPLICATION TO APPROVE SECTION 142 TRUSTEES’ FEES  
(Form 38-3)  

This form creates an Application for the trustee of a 142 trust to use in order to get the trustee’s fees approved.

E. ORDER APPROVING SECTION 142 TRUSTEE’S FEES  
(Form 38-4)  

This form creates the Order which should be filed together with the Application to Approve Section 142 Trustee’s fees.

XII. SECTION 867 MANAGEMENT TRUST  
(Form 39-1)  

A. WHAT IS A SECTION 867 MANAGEMENT TRUST?  

Section 867 Trusts are trusts which are authorized by Section 867 of the Texas Probate Code.

You can draft this trust agreement one of four ways. The simple way to referred to as "HEMS (short version)", and it inserts simple language, basically tracking the statute with a health, education, maintenance and support distribution standard. You can also draft the trust using a longer version of the HEMS language, and if you do, additional language describing the uses of the distributions will be added as well. Third, you can draft this trust as a (d)(4)(A) Special Needs Trust, and if you do, language allowing the trust to qualify as a special needs trust will be added. Fourth, you can draft this trust as a (d)(4)(B) Qualified Income Trust (see the following Article in this manual for a discussion of QITs).

B. APPLICATION TO ESTABLISH SECTION 867 TRUST  
(Form 39-2)  

This form is designed to be filed with the court requesting that the judge authorize the creation of the 867 Management Trust.

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C. ORDER ESTABLISHING SECTION 867 TRUST
(Form 39-3)

This Order is designed to be filed with the court along with the Application to Create the 867 Management Trust.

D. TRUSTEE'S APPLICATION TO APPROVE SECTION 867 TRUSTEE'S FEES
(Form 39-3)

This form creates an Application for the trustee of an 867 Management Trust to use in order to get the trustee's fees approved.

E. ORDER APPROVING SECTION 867 TRUSTEE'S FEES
(Form 39-4)

This form creates the Order which should be filed together with the Application to Approve Section 867 Management Trustee's fees.

XIII. QUALIFIED INCOME ("MILLER") TRUST
(Form 40-1)

Qualified Income ("Miller") Trusts are designed to allow people to qualify for Medicaid even though they may be earning more than is allowed under the Medicaid eligibility rules.

To qualify for Medicaid, a person needs to have limited resources and limited income. Even if the resources test is met, to qualify for Medicaid, one's income cannot exceed a specified monthly amount which changes annually. Qualified Income Trusts are for people who meet the limited resource test, but who make too much money.

The way the Trust works is a limit is set on how much of the trust can be distributed. This way, a person who makes too much money each month can artificially lower his or her income to satisfy the Medicaid income test. Except for a personal needs allowance allowed and funds which can be distributed to a spouse by the trust, the remainder of the client's income will be used to pay for the nursing home care. Medicaid will then pay the balance of the cost of the nursing home.
CHAPTER TWELVE
EXPLANATION OF FAMILY LIMITED PARTNERSHIP DOCUMENTS

I. AGREEMENT OF LIMITED PARTNERSHIP
(Form 41-1)

A. SUMMARY OF THE FORM

The Agreement of Limited Partnership is the basic operating agreement of the limited partnership. This Agreement sets forth the purposes of the limited partnership, the powers, rights and duties of the general and limited partners, the way profits and losses are shared, the accounting procedures, the manner in which distributions are to be made, the limitations on the transferability of partnership interests, and the manner in which the limited partnership dissolves and terminates.

B. OTHER FEATURES

The program allows you to choose any of the following general partners: a corporation, LLC or other entity, a trust, or up to 4 individual general partners. You may name up to eight limited partners.

II. CERTIFICATE OF FORMATION
(Form 41-2)

This Certificate must be filed with the Secretary of State in order for the Limited Partnership to validly operate. There is a $750 filing fee (plus $25 extra for expedited filing). Before filing the Certificate (or even before drafting the documents), call the Secretary of State at 512-463-5555 to check on the availability of the name you have chosen. Only the general partners need to sign this form. It does not need to be notarized.

III. ASSIGNMENT OF LIMITED PARTNERSHIP INTEREST
(Form 41-3)

This Assignment form should be used when a limited partner wants to give away his or her limited partner interest in the partnership. You are strongly encouraged to engage a qualified appraiser to value the underlying assets of the limited partnership as well as the value of the gifted interest.

IV. SUBSCRIPTION AGREEMENT
(Form 41-4)

This Agreement is needed because limited partners must agree to be bound by the terms of the limited partnership agreement, and all of the partners must consent to the new limited

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partner. This form should be prepared for each new limited partner that joins the limited partnership.

V. MEMORANDUM REGARDING ADMINISTRATION OF YOUR LIMITED PARTNERSHIP
(Form 41-5)

This Memorandum is designed to assist your clients in funding and operating their limited partnership. It is advisable to attach this form to the transmittal letter that you will send to the client after the documents have been executed.

VI. ASSUMED NAME CERTIFICATE
(Form 41-6)

This Certificate is only needed if your limited partnership is planning to operate under a name different that the one you have registered with the Secretary of State's office. If required, this Certificate needs to be filed in each county where the limited partnership does business.

CHAPTER THIRTEEN
EXPLANATION OF BUY SELL AGREEMENTS

In order to guarantee a buyer for the interest in a business (particularly a minority interest which may be of very little value to one's heirs), consideration should be given to a lifetime agreement among the business owners as to how to dispose of the business.

I. HYBRID OR “WAIT AND SEE”
(Form 42-1)

This type of buy-sell agreement combines the features of the Stock Redemption with the Cross Purchase. This agreement is between the business owners and the entity. Each shareholder agrees to offer for sale the interest to both the entity and the other shareholders according to the terms of the agreement.

II. CROSS PURCHASE
(Form 42-2)

This is similar to the Stock Redemption format; however, this agreement is between the business owners. Under this arrangement each surviving shareholder agrees to buy the interest of any deceased owner. The business owners have a first right of refusal to purchase the interest according to the terms and price stated in the agreement.
III. STOCK REDEMPTION / ENTITY PLAN  
(Form 42-3)

Under a Stock Redemption Agreement the Corporation buys the interest of the deceased shareholder. This type of arrangement is often used when there are multiple owners. This is a contract between the corporation and the shareholders whereby, the shareholders agree to offer their ownership interests in the corporation for sale to the corporation itself.

Where the business owner desires to sell his or her interest to a person or entity not already a shareholder, the interest must first be offered to the entity. In essence, the entity in which an interest is owned has the first right of refusal to purchase the interest according to the price and terms stated in the agreement. Conversely, if the business owner is deceased, the estate will be required to offer the interest to the entity according to the price and terms stated in the agreement.
CHAPTER FOURTEEN
EXPLANATION OF MARITAL PROPERTY AGREEMENTS

I. PREMARITAL AGREEMENTS
(Form 43-1)

This form is designed to be used when you are representing an individual rather than both of the parties who are soon to be married. The language in the transmittal letters as well as the formatting of the codes in ProDoc assume that you are representing only one person. It is important to strongly encourage the person your client is marrying to seek independent legal counsel to review the document you prepare. In the event of a divorce, your client’s ability to enforce the premarital agreement will be greatly enhanced. The premarital agreement is designed to keep everything separate. The document does not allow for there to be any community property during the term of the marriage.

A. ATTORNEY CHECKLIST
(Form 43-1a)

This short document is designed to help you assess what terms and provisions need to be included in the premarital agreement.

B. OPTIONAL ADDENDUM AGREEMENT REGARDING FUTURE ATTORNEYS’ FEES
(Form 41-4)

Attached to the fee agreement (which is Form 52-2, discussed later in this manual) for individual clients is an addendum which you may want to ask your clients to sign when they are engaging you to prepare a premarital agreement. The language of the addendum reads substantially as follows: “I agree to pay the attorneys’ fees of each lawyer who is involved in the preparation of my prenuptial agreement should any dispute or litigation result upon the termination of my marriage. Such fees shall include, but not be limited to, time spent by each such attorney responding to requests from other attorneys involved in such dispute or litigation, as well as time spent in depositions, in trial, and in preparation for a deposition or trial. I will pay such fees at the then hourly rate being charged by each such attorney. I understand that my estate will be liable for such payments should my death terminate my marriage.”

C. WAIVER OF FURTHER DISCLOSURE
(Form 43-1b)

Before the Premarital Agreement is signed, your clients should sign the document entitled “Waiver of Further Disclosure.” This form can be signed minutes before the Premarital Agreement, as long as it is signed before the Premarital is signed.
D.  REAFFIRMATION AGREEMENT  
(Form 43-1c)

Several weeks after your client marries, this agreement should be signed to affirm the terms of the premarital agreement.

II.  POSTMARITAL PROPERTY AGREEMENT - COMPREHENSIVE  
(Form 43-2)

This Agreement is designed to be used when a husband and wife desire to partition all of their property. It functions in much the same way as the premarital agreement discussed above in that it provides there will no longer be community property of the marriage.

A.  ATTORNEY CHECKLIST  
(Form 43-2a)

This short document is designed to help you assess what terms and provisions need to be included in the Postmarital Property Agreement.

B.  WAIVER OF FURTHER DISCLOSURE  
(Form 43-1b)

Before the Postmarital Property Agreement is signed, your clients should sign the document entitled “Waiver of Further Disclosure.” This form can be signed minutes before the Postmarital Property Agreement, as long as it is signed beforehand.

III.  POSTMARITAL PROPERTY AGREEMENT - CASH AND SPECIFIED ASSETS  
(Form 43-2)

This Agreement is designed to be used when a husband and wife desire to partition only a portion of their property. This agreement provides that all future growth and income from the partitioned property will remain the separate property of the spouse to whom the property was partitioned. This Agreement also contains language allowing the spouses to periodically partition cash in the future as they choose, without having to sign new partition agreements and without the need to hire an attorney to prepare additional partition agreements.

Before the Postmarital Property Agreement is signed, your clients should sign the document entitled “Waiver of Further Disclosure.” This form can be signed minutes before the Postmarital Property Agreement, as long as it is signed beforehand.
IV. AGREEMENT TO CONVERT SEPARATE PROPERTY TO COMMUNITY PROPERTY
(Form 43-4)

The Agreement to Convert Separate Property to Community Property is designed to be used in situations where one of your clients has separate property which he or she wishes to convert to community property. For instance, your clients may have non-tax reasons for the conversion, such as a desire to have all property which they entered the marriage with as well as all property which they have received through gifts and devises to be owned by both spouses together, as community property.

More likely, though, your clients will want to convert separate property to community property for tax reasons. The advantage of owning community property at death is that the entire community receives a step up in cost basis. Therefore, if a spouse who owns separate property wishes to receive a stepped up cost basis in the event his or her spouse dies first, then the conversion is the appropriate document for them to sign.

Before signing the Agreement to Convert Separate Property to Community Property, your clients must understand that the following adverse consequences could occur during their marriage or upon termination of their marriage by death or divorce:

A. Exposure to Creditors. By signing the Agreement to Convert Separate Property to Community Property, all or part of the separate property being converted to community property may become subject to the liabilities of the spouse who did not formerly own the property. If the Agreement is not signed, separate property is generally not subject to the liabilities of a spouse unless one is personally liable under another rule of law.

B. Loss of Management Rights. By signing the Agreement to Convert Separate Property to Community Property, all or part of the separate property being converted to community property may become subject to either the joint management, control, and disposition of your clients or the sole management, control, and disposition of one of the spouses.

C. Loss of Property Ownership. When the marriage of your clients terminates, either by death or divorce, all or part of the separate property being converted to community property may become the sole property of the formerly non-propertied spouse or such spouse’s heirs.

Also, be aware that under Texas law, an Agreement to Convert Separate Property to Community Property may not be enforceable if it can later be demonstrated that (i) the Agreement was not executed voluntarily; or (ii) the disclosure provided above was, in fact, not provided to the one of your clients who is seeking to declare the Agreement invalid. When signing the Agreement, your clients must both certify that they are signing the Agreement voluntarily and that the required disclosure was provided.
CHAPTER FIFTEEN
EXPLANATION OF AUTHORIZATION AGREEMENTS

I. SUMMARY OF THE FORM
(Form 44-1, 44-2, 44-3 and 44-4)

This form is created by Chapter 34 of the Texas Family Code, and it allows your clients to authorize a grandparent, adult sibling, or adult aunt or uncle of their children to have the power to perform a number of functions, including the making of medical decisions, obtaining medical insurance, enrolling the child in school, and applying for employment, to name a few of the permissible actions. This form must be signed by both parents of the child (or by only one parent, if applicable) and by the relative named in the document. Their signatures must be notarized as well.

II. TYPES OF FORMS

The Authorization Agreements can be drafted for a married couple, for an individual, or for a same-sex spouse / domestic partner.
CHAPTER SIXTEEN
MISCELLANEOUS LETTERS AND FORMS

I. PRELIMINARY INFORMATION FORMS
(Forms 50-1, 50-2 & 50-3)

Before you meet with a client, you may want to send out a short preliminary form to your clients. The one included in this Volume is designed to collect the basic information regarding names, addresses, and phone numbers. It also provides you with an idea of your client’s net worth, and it gets your clients thinking about who they will want to name as Executors, Trustees, Guardians, and Agents on powers of attorney.

II. FACT FINDERS
(Forms 51-1, 51-2 & 51-3)

These forms are designed to be used by you--the attorney--in a meeting with your client. Many of the important drafting decisions are included as check-the-boxes under the various form headings so that you can be sure to ask your client how they will want to have their documents prepared.

III. FEE AGREEMENTS
(Forms 52-1, 52-2, 52-3 & 52-4)

These forms are a 4 - 5 page long engagement letter / fee agreement. This agreement is a little different than the typical fee agreement used by most lawyers outside of the estate planning arena, as it establishes flat fees for most of the work. The agreement creates a chart which contains many of the more common groupings of documents. The program does not insert or suggest the fees which should be charged for these particular groupings of documents or other estate planning forms. It was decided that each attorney who purchases the software should establish his or her own prices. When you prepare this agreement, it is a very good idea to save each of your pricing answers as a default so that you don’t have to input all the information each time you draft up this agreement.

The "married" fee agreement is much like the "single" fee agreement, except that the items listed are geared for the types of documents typically requested by married clients or single clients, as the case may be. The fee agreements for Same-sex Spouses / Domestic Partners come in two versions, one for use when you are representing one Spouse / Partner (Form 52-3), and the other for use when you are representing two Spouses / Partners (Form 52-4).
IV. LETTERS

A. LETTER SENT WITH DRAFTS
   (Form 53-1)

   This letter summarizes the documents you will be sending to your clients. You have
   the ability to send unsigned originals with this cover letter. If you do, the transmittal
   letter will allow you to attach instructions explaining the steps your clients must take to execute
   the documents on their own.

B. LETTER SENT WITH SIGNED ORIGINALS
   (Form 53-2)

   You can also prepare a transmittal letter designed to be sent to your clients after they
   have signed their documents. It is best to prepare this letter at the same time you are
   preparing the client's documents and other transmittal letter. In fact, it is a good idea to
   review this letter with clients at the meeting when they sign their documents, as it contains
   information which is useful for your clients to follow up on after the documents are signed.
   In particular, when drafting Wills and/or Revocable Trusts, this transmittal letter will contain
   a detailed section which helps your clients name the proper beneficiaries on their life
   insurance and retirement accounts.

C. LETTERS REGARDING DEPOSIT OF SIGNED DOCUMENTS
   (Forms 53-3, 53-4, 53-5, 53-6 & 53-7)

   These letters are intended to be signed by your clients and addressed to you. In the
   letters, your clients direct you to hold their documents for them at your office, and they tell
   you the conditions upon which you can release them.

V. WILL & CODICIL SIGNING CEREMONY
   (Forms 54-1, 54-2, 54-3 & 54-4)

   This form is to be used when your clients sign their Wills and/or Codicils in order to be sure
   all steps are properly followed and to help establish testamentary capacity.

VI. ANSWERS TO FREQUENTLY ASKED QUESTIONS
   (Form 55-1)

   This is a form which answers a number of frequently asked estate planning questions. This
   form is not a form your clients will sign, but rather is a form you can send to them with drafts of their
   documents or before you meet with them as a way to get them thinking about their estate planning.