



The Role of Trustees

Introductory Workshop for Trustees

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Forward

Thank you for attending our Introductory Trustee Workshop, a benefit provided to you through our unique RWay Program. The overall purpose of RWay is to provide our members with an ongoing program designed to keep their trusts current with the law, to utilize the most up-to-date estate planning techniques, and to adjust to their changing family needs and goals.

We developed this program to introduce and teach proper estate planning and trust administration techniques to our members and their successor Trustees. Through Trustee education, our members can be assured that their estate plans will function as intended. We hope this introduction to trusts and trust administration will assist you in performing your duties when called upon to serve as successor Trustee.

Being appointed Trustee of a trust is a great honor and responsibility. This appointment makes you a fiduciary, thereby obligating you to follow the Trustmaker's instructions in the administration of the trust. It additionally obligates you to follow state law in all of your official activities.

This booklet is designed to help you navigate the administration process. It begins by explaining the basic concepts and terms you will need to know while serving as Trustee. Please read the handbook carefully and ask questions during the program. We invite you to contact us at any later date with questions. Session Two will concentrate on the actual duties you need to fulfill.

We do not recommend that successor Trustees act alone. We strongly believe that successor Trustees should seek professional guidance from a competent estate planning attorney. Assisting successor Trustees through the trust administration process is a key function of our practice. We believe that our assistance to the Trustees greatly reduces their stress, expense, and opportunity for error during the discharge of their duties.

Do not be alarmed by the responsibility of being a Trustee. If you have any questions relating to this handbook, this program, or any other matter, please do not hesitate to contact us. We are here to serve you.

Respectfully,

WILSON LAW GROUP

An Introduction to the Trust

What Is a Trust? In its simplest form, a trust is an agreement that provides for the management of property. A trust involves at least three parties:

- The ***Trustmaker***, sometimes referred to as the settlor or grantor, is the person who creates the terms or rules of the trust;
- The ***Trustee*** is the person who agrees to accept the Trustmaker's property and manage it as the trust directs;
- The ***beneficiary*** is the person who receives the benefit of the property held in the trust. Typically, this is the Trustmaker during his or her lifetime and the children of the Trustmaker when the Trustmaker passes away.

The Revocable Living Trust Document

A revocable living trust is a trust document created during the Trustmaker's lifetime. A revocable living trust is often referred to as an *inter vivos* trust, which means *during life*. The trust is revocable due to the Trustmaker's ability to terminate or amend the trust.

The Trustmaker generally names himself as the Trustee and the beneficiary of the trust during his lifetime. The Trustmaker also names disability Trustees to act for his benefit in the event of his disability, and death Trustees to manage the assets of the trust following the Trustmaker's death. The death Trustee has the responsibility of settling the obligations of the trust and distribution to the beneficiaries.

Funding the Trust

After a Trustmaker has signed a revocable living trust, the Trustmaker then needs to fund the trust. Funding is the process through which assets of the Trustmaker are re-titled and transferred into the trust. Once the revocable living trust has been funded, the Trustee will control all of the assets in the Trust's name.

Wisconsin is a marital property state, and generally, married couples in Wisconsin create a joint revocable living trust. The married couple will then re-title their property into the name of their trust, which creates a funded trust.

Re-titling is performed in different ways for different assets. For example, a checking account held in the name of John and Mary Sample will be funded into the Sample's Revocable Living Trust by re-titling the account as follows: John Sample and Mary Sample, Trustees of the Sample Living Trust dated (the date the trust is signed).

A similar action will be taken for other assets, such as real estate, automobiles, boats, investment accounts, securities, and any other asset with a title. Assets that do not have titles will be transferred into the trust by an assignment of personal property. An assignment of personal property is a document which memorializes the Trustmaker's act of transferring all property without a title into his revocable living trust.

A well-drafted revocable living trust will not only include direction on how to manage property, but also give instructions for how the Trustmaker or the Trustmaker's loved ones are to receive the benefits of the trust. The trust also makes provisions for how the Trustmaker is to be cared for in the case of the Trustmaker's disability and/or death.

What Does a Trust Do?

Trusts can be tailored to achieve a variety of objectives. Trusts can provide property management for yourself, your spouse and children, and others that may be dependent upon you. A trust is also an excellent device for management of property for the benefit of a beneficiary for whom outright property ownership is inappropriate, burdensome, or impossible. Trusts also are established to give lifetime use of property to a person (or a group) while ensuring that others eventually will inherit the remainder of the property. This can be particularly effective if the Trustmaker wishes to avoid estate taxes, creditors, and complications arising out of divorce in subsequent generations. A fully funded Trust will avoid probate, which should reduce or eliminate the delay and costs of distributing normally associated with probate.

How is a Trust Like a Set of Babysitter Instructions?

Trusts can sometimes be difficult to conceptualize, especially for people who have not read or seen one actually work. An analogy of "babysitter

instructions” can be used to describe a living trust. When parents leave their minor children with a babysitter for a getaway weekend, the babysitter typically receives several minutes of verbal instruction accompanied by written notes detailing all sorts of matters that need thought, attention, and action. Even after leaving, it is not uncommon for parents to stay close to a telephone and frequently check in to add instructions and confirm that all is right with their children and household.

A well-drafted living trust is like a set of baby-sitter instructions for the care of loved ones. The instructions tell the Trustee, *the babysitter*, how to care for the Beneficiaries. The instructions are as detailed as possible to cover all of the expected and unexpected events that might occur. Not only do these instructions tell the Trustee how to use the money and property to care for the Beneficiaries, but will frequently explain to the Trustee why the Trustmaker has left those instructions.

When you think of babysitter instructions, you might think that they would only apply to loved ones. On the contrary, one of the most important features of a revocable living trust is its ability to provide instructions for the care of the Trustmaker. A revocable living trust is valid and operational the day it is signed. If the Trustmaker becomes ill or incapacitated, the living trust controls the Trustmaker’s property for his or her benefit or for the benefit of others without the intervention of the court. By contrast, a will can only function after the death of its maker and is unfortunately subject to probate. A revocable living trust cares for its Trustmaker immediately and avoids both a living and death probate.

Avoiding Court Interference with a Trust

A fully-funded and properly executed trust avoids both living and death probate. It is generally accepted that avoiding probate is beneficial to the family. Most of our clients who have been involved in the probate process with their own parents want to avoid the necessity of having their children deal with the court system, and its inherent costs and delays.

Death probate is a legal proceeding designed to provide court-imposed supervision over the property of a deceased person. This is done so that creditors may be paid, property may be protected for the benefit of disabled parties, and/or distributed to the heirs of the deceased. Probate is necessary due to the fact that the deceased party no longer has the ability to give his assets to his heirs, to pay his debts, or to guard an asset for a loved one with special needs. After a person has died, the court must then carry out these duties pursuant to the decedent’s will or the intestacy statute.

Trusts, unlike Trustmakers, are immortal. For this reason, assets placed in a revocable living trust never need pass through a probate process. A trust avoids probate by providing a means for paying a deceased party's creditors, protecting assets for disabled loved ones, and distributing assets to the heirs. The successor Trustee is given instructions on how to handle the above-mentioned tasks. The probate process is eliminated in its entirety, including its time delays, court appearances, and administrative costs.

A living probate occurs when a person can no longer handle his own affairs. Upon incapacity, an interested party can petition the court to authorize a guardian to take control of the person's property. The court then appoints a guardian to make decisions about the person's well-being and to safeguard their property. Unfortunately, we frequently see arguments among family members as to who should be the guardian, and lengthy court battles ensue. Even when the family agrees that the parent is incapacitated and agrees on the person who will serve as guardian, it can be a costly and time-consuming process to have a guardianship created.

How a Trust Avoids Guardianship Proceedings

A trust eliminates the need for a living probate. If a Trustmaker is found to be incompetent (as defined by the Trustmaker), the disability Trustee steps in to act. This relieves the probate court of any need to name a guardian to make decisions for the person with a disability or guard their property. Unlike with a guardianship, the disability Trustee does not have to provide annual reports to the court, which greatly reduces the Trustee's burden.

Additionally, clients that utilize a trust do not have to file their trust documents in a public forum. All probate files are public records and subject to inspection by anyone. Probate records include a list of the deceased person's assets as well as a list of all estate beneficiaries and what they inherited. Clients with a fully-funded revocable living trust, however, may keep all this information private, as no court filings are required.

During the process of creating and funding trusts, Trustmakers are forced to organize and document their estates while they are living and able. This information and organization is greatly appreciated by their successor Trustees who must carry out the direction of the trust. In a probate proceeding, often the greatest challenge for the personal representative and attorney is to track down the deceased person's assets and debts. As you may imagine, this process is quite difficult when the owner of the property is no longer available to answer these questions.

Estate Planning Goals

Why Create a Trust?

Everyone who wishes to accomplish complete estate planning objectives should consider and implement a trust-centered plan. A trust-centered plan is the only type of estate planning that can meet all of the elements of “our definition” of effective estate planning.

“Our Definition” of Effective Estate Planning

I want to control my property while I am alive.

I want to take care of myself and my loved ones if I become disabled.

I want to give what I have to whom I want, the way I want, and when I want.

I want to plan for taxes and expenses.

Reason One: Control

The most important element of “our definition” of estate planning is **control**. The most important step you need to take to gain control of your assets is to create an effective estate plan. If you do not write your own plan, the state will write it for you.

If you die without an estate plan, you are deemed to have died *intestate*. In this case, state laws direct how your assets are to be distributed. If you become incapacitated without a formal incapacity plan, there is another set of state laws that directs what will happen to you and your property.

State laws also control other aspects of a person’s life and property. For example, joint tenancy property may be tied up in the courts if one of the joint tenants becomes incapacitated or if there are creditor problems.

To maximize estate planning control, you must take responsible action to implement and use your own estate plan to dictate your wishes, rather than leaving it to state laws.

**Reason Two:
Incapacity**

The definition of estate planning addresses incapacity. Through effective planning, you can control how you are cared for during incapacity. Additionally, you may purchase long-term health care and/or disability insurance or implement savings plans to guarantee the availability of resources at your time of need.

In the event of incapacity, estate plans can clearly direct how property and money should be used for you and your loved ones, thereby overriding state rules. To exercise this control, you must do so while you are still competent.

**Reason Three:
Giving Your
Property to
Whom You
Want**

After you have taken control of your property while you are alive and planned for your incapacity, it is then time to create your plan for the distribution of your property.

Remember, the Trustmaker may transfer property during life and at death through the use of an effective trust plan. Our laws allow a Trustmaker to control property and to distribute it in any manner with great latitude and flexibility. Of course, one must initiate the process while one is still able.

**Reason Four:
Planning for
Taxes and
Expenses**

One of the most famous quotations about taxes comes from Judge Learned Hand, who wrote:

Anyone may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes.

(Gregory v. Helvering 69 -F.2d 809)

The same is true for professional fees and court costs. If you arrange your affairs to reduce administrative expenses, a greater portion of your estate will pass to your heirs. Proper planning eliminates these costs.

While saving on taxes and expenses is an important aspect of effective estate planning, we do not recommend actions that would compromise the goal of maintaining control. The secret of good planning is to reduce taxes and costs while retaining control.

The Job of the Trustee

Who May

Be a Trustee?

There is no simple answer as to who should be chosen to act as Trustee. The selection of a Trustee is an important matter and should be discussed with the Trustmaker's estate planning attorney when drafting the trust.

A corporate Trustee (normally a bank trust department) is sometimes chosen when a trust's assets are fairly liquid and is large enough to warrant paying the fees charged by corporate Trustees. Trustmakers should review a corporate Trustee's fee schedule and compensation agreement before asking it to act as Trustee. Corporate Trustees are occasionally appointed when there are no individual Trustees available.

Most often, individual Trustees are chosen because of their relationship to the Trustmakers. Usually individuals are a better choice when there are unique assets such as a closely-held family business or a farm.

The Trustee, as the name suggests, must be someone in whom the Trustmaker has great faith and trust. The Trustmaker must be comfortable leaving the Trustee in charge of property. A Trustmaker may name a spouse, children, grandchildren, nieces, nephews, or friends to be Trustees.

What Is the

Trustee's

Responsibility?

When you agree to act as Trustee you become a fiduciary. You have a duty to carry out the terms of the trust. You are responsible for managing and holding the property within the trust for the Beneficiaries and distributing that property as directed. As Trustee, you have the powers and duties provided in the trust document as well as those provided in your state's statutes.

**What Should I
Do When I
Become a
Trustee?**

Read the Trust Agreement from beginning to end. Concentrate on the powers and administrative duties of the Trustee. If in doubt about your powers, *discuss it with your Trust Attorney.*

Your first actions as Trustee should be to:

1. Sign the “Successor Certificate of Trust”. The original signed and notarized form should be placed in the Trust Portfolio.
2. Make sure all property is titled in the name of the Trust. If not, consult your trust attorney for further direction.
3. Prepare an inventory of Trust property.
4. Obtain a copy of the Certificate of Trust to use in management of assets.
5. If necessary, ask your Trust Attorney to prepare an application for a federal identification number from the IRS. This number commonly is called an employer identification number. This number is needed to replace the SSN of a deceased Trustmaker, unless there is a surviving Trustmaker. This number is needed to capture the income earned by the trust after the Trustmaker passes on.
6. Open a checking account in the name of the trust at a bank or credit union where deposits are federally insured.
7. Create a set of accounting records to record the trust’s assets, receipts, disbursements, and other transactions such as the purchase or sale of assets. Sample accounting records are found in the Appendix. If the transactions become numerous and complicated, you should retain professional accounting assistance. The expense of the accountant can be paid from the trust assets. The Trustee may be required to provide a copy of the accounting to the Beneficiaries.
8. Trustmakers often provide that more property can be put into the trust after its creation. You should consult with your Trust Attorney about these transfers. Transfer documents may be required.
9. Keep copies of all documents you sign as trustee.

**May I Hire
People to
Assist Me?**

Yes. You should get the help you need to carry out your duties as Trustee. For instance, if there are many trust assets, it is common to hire an investment advisor. You should get legal and accounting advice as needed. The reasonable costs of these services are expenses of the trust and can be paid from the trust assets.

**When May I
Distribute
Property After
the Death of the
Creator of the
Trust?**

Do not distribute or sell trust assets without your professional advisor's approval. There can be tax and other serious problems if property is sold or distributed too soon. Your advisor can advise you as to when it is appropriate to make a distribution. The Trustee should obtain receipts from beneficiaries who receive property from the trust.

**What Fees May
I Charge for My
Services?**

You can charge reasonable fees for your services unless the trust document specifies otherwise.

In deciding what is reasonable, you should consider:

- What the customary fees are for such services;
- Any unusual skill or experience you have that you are using as Trustee for the benefit of the trust;
- The amount of risk and responsibility you have assumed as Trustee;
- The amount of time spent by you as Trustee; and
- The character of the trust work, whether routine or involving skill and judgment.

Your Trustee fees are reportable on your income tax returns and can be deducted by the trust as an expense. If there is a dispute about your fees, a court may decide what is fair compensation. The court can reduce or deny fees to you if you don't carry out your duties under the law and the terms of the trust.

You are not required to take fees and can waive fees that are established in the trust agreement.

**How Must I Act
as a Trustee?**

You must act in good faith toward the beneficiary of the trust. “Good faith” means not taking advantage of another, even through technicalities of law. You must follow the instructions of the Trust Agreement and use ordinary care and diligence even if you are not receiving any compensation for your Trustee services. You must invest the funds of the trust properly to preserve the principal and earn a reasonable rate of return. Get advice from your Trust Attorney and investment advisor as to what investments are prudent for this trust. Remember that you are carrying out the wishes of the Trustmaker throughout the process.

The Trustee may be required to provide all Beneficiaries with interim reports during the term of the trust, and a final report when the assets are distributed and the trust is terminated after the death of the decedent. The trust agreement may also require regular reports to the Beneficiaries by the Trustee if irrevocable trusts are established after the death.

Are There Things

I Must Not Do? Yes. There are several things you must **not** do.

1. You may not deal with the trust property for your own benefit or for any purpose not connected with the trust’s purpose. This means, unless the trust specifically says you can, you cannot buy property from the trust or make loans, gifts, or donations to yourself, your friends, or your relatives. This includes gifts or donations to churches or other charities.
2. You cannot do anything that would give you an advantage over a beneficiary or take part in any transaction against a beneficiary unless the beneficiary gives you permission after knowing all the facts.
3. You cannot mix your property or money with the trust property or money. In other words, there should not be any of your money in the trust checking account. Property should be clearly identified so that there is no question whether it belongs to the trust or to you.

Other Legal Documents

Last Will

For every living trust-centered plan there should be a short Last Will. The Last Will must be signed so that any property not put in the trust name will end up in the trust after Trustmaker's death.

A Last Will may say something like:

I leave any property owned by me at my death, and not already in my trust, to my trust.

Property in an individual's sole name at death without a beneficiary designation is subject to probate. If there is no Last Will leaving this property to someone, it passes to a person's heirs as directed by state law. It is best if all assets are titled in the name of the trust so that the revocable living trust instructions control all property of the decedent after death.

Durable Powers of Attorney for Funding

A Durable Power of Attorney for Funding is an integral part of every living trust-centered plan. It grants an agent the power to transfer property into the trust if the Trustmaker becomes disabled and is unable to do so. This power is considered durable because it survives disability.

We believe that a Durable Power of Attorney for Funding must be limited. Whoever is named in the Durable Power of Attorney for Funding can only transfer property into the trust. That person cannot sell, take, use, or give the Trustmaker's property to anyone else. Once property is in the trust, it is administered by the Trustee pursuant to the Trustmaker's specific instructions.

Additional Documents Helpful to the Trustee

Living trust-centered planning is the term we use to describe an estate plan in which a living trust is used as the foundation. However, a total estate plan requires additional documentation to make it effective for purposes of meeting the definition of estate planning. A trust-centered plan should have, at an absolute minimum, the following important legal documents and information:

- The revocable living trust document
- A Last Will
- Durable Power of Attorney for Funding
- A Health Care Power of Attorney
- A Living Will
- HIPAA authorization
- A Memorandum of Personal Property or some other mechanism to dispose of special personal effects
- An anatomical gift form, if applicable
- Burial and memorial instructions
- Information about all Trustmaker's property
- The location of Trustmaker's important papers and financial information
- Lists of all advisors and those people or institutions that should be contacted in the event of incapacity or death
- Child Care Exhibit, if applicable
- Marital Property Agreement
- Authorization for Final Disposition

All of these documents and information are vital to the Trustee's ability to effectively manage the Trust property.

Summary

There is a great deal of similarity between probating an estate under a Will and settling your Trust. The major difference is that a Trust settlement takes place outside of the court system. This makes it faster and is less expensive.

When someone dies with a Trust, the Trustee is required to do a number of things to properly administer the Trust. Trust administration is not

automatic. We do not recommend you attempt to do this yourself without the assistance of professionals, including an attorney, accountant, and financial advisor. If you would like us to assist you with the Trust administration, please let us know.

This is only a convenient guide. It is general in nature and should not be relied upon as a substitute for professional tax and legal advice.

Successor Trustees

Instructions for Successor Trustees

If you have been named as successor Trustee for someone, you are probably wondering what you should do when that person dies or becomes incapacitated.

At Incapacity

- Check the trust document for specific instructions regarding:
 - How to determine incapacity
 - Any special directions for type of care (in-home care, assisted living)
 - Who should benefit from trust funds during incapacity (Trustmaker only? Spouse? Kids? Other family members?)
 - Any stipends to be paid to family members who provide care
- Contact the attorney who prepared the trust document to be sure there were no amendments or other documents (property powers of attorney, for example, to cover unfunded property) you do not have in your possession.
- Obtain written certification of incapacity from a treating physician pursuant to trust direction.
- Notify banks, brokerage firms, financial advisors, etc., that you are now the Trustee for this person. Documents which you may be required to produce may include:
 - Statements of incapacity from physicians
 - An updated Certificate of Trust that names you as successor trustee
 - A legal form of personal identification
- Secure and inventory any property, especially real estate. Make sure you have keys and take care of any utilities.

- Make sure assets are funded into the trust, especially if the incapacity is long-term.
- Obtain and use any durable power of attorney for property which the disabled person may have signed.
- Make sure auto and homeowner's insurance is in effect and up to date.
- Transact any necessary business for the incapacitated person. You can apply for disability benefits, receive and deposit funds, pay bills, maintain investment accounts and, in general, use the person's assets to take care of him/her until recovery or death.
- Keep a ledger of bills paid and any income received.

At Death

- **There is time** to consult with an attorney, accountant, and other advisors.
- Families are not in the best frame of mind to address the necessary financial issues immediately after a death.
- Inform the family of your position and assist them as needed with the following: funeral arrangements, flowers, cemetery marker, announcement in paper, special wishes for service, notifying friends, relatives, employer, etc.
- Order certified death certificates (you can usually get these from the funeral home). You will need these to transfer titles, etc.
- Notify the bank so you can start writing checks. The bank will probably want to see a certified death certificate, an updated Certificate of Trust (similar to the Certificate of Trust used for disability) and some form of personal identification.
- Notify Social Security, pension funds, and any other associations who may provide a death benefit.
- Make a claim for life insurance proceeds payable to the trust.
- Secure and inventory property, especially real estate. Make sure you have keys, make arrangements to keep the utilities on (or turn them off), keep insurance in force, make mortgage payments, etc.

- Make a list of all assets and their approximate date of death values.
- Make a list of all liabilities.
- Begin preparing a list of receipts, expenses, and disbursements.
- Meet with your attorney, your financial advisor, and/or accountant for advice and guidance for:
- Preparation of the necessary tax returns.
- A final income tax return (1040) is due by April 15 of the year following the Trustmaker's death (it covers January 1 to the day of death).
- A fiduciary return (1041) may also be required. This return reports any income earned by the trust between the time of the Trustmaker's death and prior to the distribution of property to the Beneficiaries.
- A federal estate tax return (706) must be filed within 9 months of the date of a Trustmaker's death if the total gross estate exceeds the Federal Estate Tax exemptions (currently in excess of \$5 million) or if the Trustmaker is transferring the unused Federal Estate Tax exemption to a surviving spouse ("portability"). Payment of any federal estate tax owing is due at that time.

Special Note: Property must be distributed in this order (make sure you get a receipt signed by each beneficiary stating that he/she has received the property):

1. Specific bequests; specific property given to one person
2. Residue: Divide cash and transfer titles of property according to trust instructions

Glossary

A-B Trust

Also called a “bypass trust.” The purpose of an A-B Trust is to keep certain assets out of the surviving spouse’s estate so that they are not subject to Federal Estate Taxes upon the survivor’s death. The surviving spouse receives the income and principal to meet the surviving spouse’s need for “health, education, support and maintenance” during the surviving spouse’s lifetime. On the surviving spouse’s death, the remaining assets are distributed to the Beneficiaries selected by the Trustmaker, typically his or her children.

Ademption

Extinguished or withdrawn. This term is sometimes used to describe the situation in which a special gift of property (whether a sum of money or an item of personal property or real property) intended for you to receive at a person’s death is instead given to you during his or her lifetime. The term “ademption” is also used when the property that was to be given as a special gift has been sold, lost, or otherwise disposed of by the owner and thus is not part of the estate at the time of his/her death.

Administrator

The care and management of an estate by an executor, a trustee, or a guardian.

Adult

A person who has reached the age at which he or she is able to enter into binding legal agreements. In Wisconsin a person is regarded as an adult on his or her 18th birthday. In some other jurisdictions, the age is 21. However, just because a person has reached age 18 or 21 and is no longer legally considered a minor does not mean he or she became possessed of the wisdom, knowledge, temperament, or judgment needed to handle substantial assets or property.

Annulment

Made legally void, as if it never happened. A marriage that has been annulled is treated as if it never occurred (for most purposes).

Ascertainable Standards

Limited trustee powers to provide for the health, education, maintenance and support for a surviving spouse or others. This avoids trust assets being included in a beneficiary's estate.

Attorney-in-Fact

The person selected to have the authority to act on the behalf of a principal. An attorney-in-fact can be any adult that the principal selects (the person need not be a lawyer). Typically, people appoint an attorney-in-fact in a power of attorney, granting the attorney-in-fact the power to transact business (enter into agreements and contracts, make transfers of property, etc.) in accordance with the power-of-attorney. The authority of the attorney-in-fact cannot last beyond the life of the principal.

Back-up Trustee

Also called the Successor Trustee. The person or institution named in the trust agreement who will assume control of the trust if the original Trustee dies, resigns, or becomes unable or unwilling to act. In sporting terms, it is like someone who sits on the bench and comes out to play only if the regular can't continue. There can be several layers of Back-up Trustees that take over in the order you designate.

Beneficiary

A person or organization who is to receive a benefit. The benefit may flow from an insurance policy or another contract, from a trust, or from a will.

Bequest

A bequest, though strictly a gift by will of personal property as distinguished from a gift of real estate, is often used to cover a gift of either personal property or land, or both. Bequests are classified, generally speaking, as specific or general. A specific bequest is a gift of a specified class or kind of property: for example, a gift of the testator's diamond ring to a named individual or a gift of designated stock in a corporation. A general bequest is one that may be satisfied from the general assets of the estate: for example, a bequest of a sum of money without reference to any particular fund from which it is to be paid.

Bypass trust

Please see **A-B Trust**.

Charitable Remainder Trust

One of the most commonly used forms of charitable tax planning. Offers a way to convert highly appreciated assets (e.g., real estate or stock) into lifetime income without having to pay capital gains tax on the sale of the property or estate taxes at death. The asset is

placed into an irrevocable trust, naming one or more charities as beneficiary. The trustee then sells the assets at full market value, pays no taxes, and reinvests the proceeds in income-producing assets. The trust pays the grantor a fixed amount (calculated annually) during his or her life. Upon death, the remainder goes to the charity.

Codicil A written change or amendment to a will. A codicil must be executed with the same formality as an original.

Cohabitation Living together, typically without being married to each other.

Commingle To mix together. If the separate property of a married couple are commingled and cannot be traced to their sources, the properties are likely to become **community property**. See also **Transmute**.

Common Trust Funds A fund maintained by a bank or trust institution exclusively for the collective investment and reinvestment of money contributed to the fund by the bank or trust institution in its capacity as trustee, executor, administrator or guardian.

Community Property Property acquired during a marriage and while living in a community property state (see below). As a general rule, everything derived from the earnings of either spouse is shared equally by both spouses. Each spouse owns only one half of the community property because the other half belongs to the other spouse. Community property rules can be modified by **pre-marital and post-marital agreements** made by the spouses. See also **separate property, quasi-community property, and commingle**.

Community Property States States in which community property laws apply. Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington State, and Wisconsin are considered community property states.

Conflicts of Interest Actual or potential conflicting objectives. Conflicts of interest often arise when a course of action would benefit one spouse but restrict or negatively impact the other.

Conservator The person appointed by a court to be legally responsible for the care and well-being of another person, typically a person who is

incapacitated, and to manage the person's property and financial affairs. The conservator is under the supervision of the court and must report all actions and financial dealings made on behalf of the incompetent person to the court.

Conservatorship	A court-controlled program for persons who are unable to manage their own affairs due to physical or mental incompetence. In some respect this is akin to probate, but for a living person.
Contingent Beneficiary	The beneficiary whose interest is conditioned upon a future occurrence which may or may not take place. Unless or until the condition takes place the interest is only contingent.
Corporate Fiduciary	A trust institution serving in a fiduciary capacity, such as executor, administrator, trustee, or guardian.
Corporate or Institutional Trustee	A corporation that handles the management of trusts. Under the laws of most states, the only corporations that can be corporate trustees are banks and trust companies.
Corpus	The principal or trust estate as distinguished from the income. Also the property transferred to the trust.
Cost Basis	The amount originally paid for property. The Tax Basis is the value that is used to determine gain or loss for income tax purposes. Generally, the tax basis will equal the cost basis plus the cost of capital improvements, less depreciation. Once the property is transferred upon the owner's death, it is revalued as of the date of death; this is called the Stepped-up Basis for Federal Income Tax purposes.
Creator	See Grantor .
Credit Shelter Trust	A trust that uses an individual's unified credit for federal estate and gift tax purposes. (The amount allowed under current law is in excess of \$5 million.)
Crummey Letter	A written notification to the Beneficiaries that contributions of money -- typically to an irrevocable life insurance trust -- have been received on their behalf. The Beneficiaries then have a period of time to withdraw the funds. If the Beneficiaries do not withdraw the money, they are regarded as having received a gift. The funds can then be used to pay the premium on insurance on the grantor's life. Use of a Crummey Letter can avoid certain potential tax problems arising from the gift of a future interest .

Crummey Trust	An irrevocable insurance trust, and popular method of making gifts, that qualifies for annual exclusions. Each time a contribution is made, the beneficiary must have a temporary right to demand withdrawals from the trust assets equal to the value of the gift.
Custodian	A person or trust institution having physical possession of assets and responsibility for accounting and settlement of transactions, but not for making investment decisions.
Death Taxes	Taxes imposed on property or on the transfer of property at the owner's death; a general term including estate taxes, inheritance taxes, and all succession or transfer taxes associated with the death of the owner of the property.
Decedent	A person who has died.
Descendant	All persons who have directly descended from a common ancestor. (See also "Issue".)
Devise	A gift made by a will or a trust. A devise is made to a Beneficiary under the terms of the will or trust.
Disclaimers	The refusal or rejection of any rights, interest, or property that was offered to a person. Taxpayers have up to nine months to disclaim an asset from the time the gift was made (in an estate, it would be nine months from the date of death).
Domicile	A person's permanent legal residence. While a person may have more than one residence, he or she can have only one domicile. Typically, the domicile is the same place you use for purposes of voter registration.
Donee	The recipient of a gift.
Donor	The person who makes a gift.
Durable Power of Attorney for Health Care	A document that grants a person, sometimes known as a Health Care Agent, the legal authority to make health care decisions for another in the event that the latter person is unable to make them for him/herself.

Durable Power of Attorney	See Power of Attorney .
Durable Power	A power (typically a power of attorney) that continues despite mental incompetence of the principal. See also Power of Attorney and Attorney-in-Fact .
Estate Taxes	Federal taxes paid on the value of property left at death. The federal estate tax rates currently range from 37 to 55 percent.
Estate	The total of all assets, debts and other obligations of an individual. At the time of death the total amount of benefits (life insurance, annuity, and retirement benefits) to be paid to beneficiaries is often also considered part of the estate for Federal Estate Tax purposes.
Execution	The act of properly signing legal documents, such as a Power of Attorney , a Trust or a Will . For example, proper execution of a will is more than “just signing” and normally requires at least two witnesses who are not Beneficiaries under the will. For a power of attorney or a trust, proper execution involves having a notary public certify your signature.
Executor	Person or institution named in a will to carry out its instructions (female is executrix); also called a personal representative.
Exemption Credit	The amount of tax credit, similar in nature to the personal income tax exemption, applied to the transfer tax due at a person’s death.
Family Limited Partnership	A legal partnership agreement between members of a family for the management and control of property for the benefit of family members. This agreement is sometimes used to minimize transfer taxes.
Family Partnership	A voluntary contract between family members (i.e., spouse, ancestors and lineal descendants) for tax purposes. If children are made partners, they should be given complete control over their interests. If not, that portion of profits will be considered income for the adult members.
Federal Estate Taxes	See Estate Taxes .
Fiduciary	A person in whom one places great confidence and upon whom one relies for his or her integrity, trust, and good faith. A fiduciary has the legal duty to act in the best interest and benefit of another

and therefore is held to the very highest legal standards. A Trustee is a fiduciary.

Form 1041 IRS Estate and Trust Income Tax Return.

Form 706 IRS Estate Tax Return.

Form 709 IRS Gift Tax Return.

Funded Insurance Trust

A trust in which, in addition to life insurance policies, cash and securities have been placed in trust to provide sufficient income for the payment of premiums and other charges on or assessments against the insurance policies.

Future Interest

An interest in property that occurs in the future, after certain events have taken place. See also **Remainderman**.

Gain

The difference between the **Tax Basis** (the amount originally paid for property with certain adjustments) and the amount received for the property when it was sold. This value is used to determine the amount of capital gains tax due on the income from the sale. See also **Cost Basis** and **Stepped-up Basis**.

Generation Skipping Transfer Tax (GST Tax)

A tax imposed on transfers of money or property made during life or at death that skips a generation of family members. The GST Tax also applies to transfers to non-family members 37 years younger than the person making the transfer. For example, if a grandparent leaves money directly to a grandchild rather than to his own son/daughter (the grandchild's parent), it may create GST Tax. The current exemption from this tax is in excess of \$5 million.

Generation Skipping Trust

Any trust having beneficiaries who belong to two or more generations younger than the grantor.

Gift (For Gift Tax Purposes)

Property or property rights or interests gratuitously passed on or transferred for less than an adequate and full consideration in money or money's worth to another, whether the transfer is in trust or otherwise, direct or indirect.

Gift Tax	A tax imposed on transfers of property by gift during the donor's lifetime.
Grantor	The person who sets up or creates the trust; also called a Settlor, Trust Creator, Trustmaker, or Trustor.
Grantor Retained Trust	An irrevocable trust where the grantor assigns trust assets, but retains either income or the use of the property for a specified number of years. The trust assets are handed over to the beneficiaries at the prearranged date. There are three different types of grantor retained trusts: GRAT, GRIT, GRUT.
GRAT	Grantor Retained Annuity Trust.
GRIT	Grantor Retained Income Trust.
Gross Value	The value of an estate before any deduction (i.e., debts, charitable contributions, etc.). Probate fees are usually calculated on the gross value of the estate.
GRUT	Grantor Retained Unitrust.
Guardian Ad Litem	A person appointed by a court to represent and defend a minor or an incompetent person in connection with court proceedings.
Guardian	One who is legally responsible for the care and well-being of another person. Appointed by a court, the guardian is under the court's supervision.
Guardianship	A court-controlled program to manage the affairs of a minor child or incompetent person.
Gun Trust	A purpose-built revocable trust designed to hold firearms
Health Care Agent	Person designated to make health care decisions for an individual.
Heir	A person who is eligible to inherit property through the intestacy statute.
Holographic Will	A will entirely in the handwriting of the testator.
Incapacitated/ Incompetent	Legally unable to manage one's own affairs due to mental disability. This may be temporary or permanent.
Income Beneficiary	The beneficiary of a trust who is entitled to receive the income from it.

Informed Consent	An authorization to proceed by a person who has been given and understands all of the relevant facts. The concept of informed consent is often used with respect to medical decisions. If the procedures to be used and the associated risks and benefits of the procedures have been fully explained so that you understand them, you are in a position to give informed consent.
Inheritance Tax	A tax on the receipt of inherited property; to be distinguished from an estate tax.
Insurance Trust	A trust composed partly or wholly of life insurance policy contracts.
Intangible Property	Property that does not have physical substance. Examples: a certificate of stock or bond.
Inter Vivos Trust	Another name for a living trust. (See Living Trust .)
Interlineation	Something written in-between; often a change to a typed document that is made by crossing out words and entering in replacement words. Never change an executed will or trust by interlineation.
In-Terrorum Clause	A provision of a will or trust that disinherits a person in the event that he/she challenges the terms of the will or trust. Sometime called a No Contest Clause.
Intestate	Having died without a will or without providing legally binding instructions for the distribution of one's property after his/her death. See also testate and probate .
Irrevocable	Something that cannot be altered, changed or modified. An irrevocable trust is one that cannot be changed, canceled, or revoked once it is established.
Issue	Refers to a person's descendants — children, grandchildren, great-grandchildren, great-great-grandchildren, etc. (See also descendent .)
Joint Tenancy	Property owned by two or more people in such a manner that upon death of one of the joint owners, all of his/her interest in the property is transferred immediately, by operation of law, to the other surviving owners. If the joint tenancy exists between

spouses, it may be called a **Tenancy-by-the-Entirety**. Compare with **Tenancy-in-Common**.

Joint Will	The same instrument is made the will of two or more persons and is jointly signed by them. When a will is joint and mutual it contains reciprocal provisions.
Judgment	An official court order regarding the rights or claims of the parties to a legal action or proceeding.
Legacy	A gift of personal property by will.
Legatee	The person to whom a legacy is given.
Life Insurance Trust	This irrevocable trust is established for the purpose of excluding life insurance proceeds from the estate of the insured for estate tax purposes. It is a type of trust, the corpus of which consists in whole or in part of life insurance policies owned by the trustees and payable to the trust on the death of the insured.
Life Interest	The estate or interest that a person has in property that will endure only during his or someone else's lifetime with no possession or ownership rights the holder might transfer during life or at his death.
Lineal Descendant	A person in the direct line of descent, such as a child or grandchild (see also Issue).
Living Will	A written document stating the desire not to be kept alive by artificial means in the event of a terminal illness or injury.
MAPT	A Medicaid Asset Protection Trust is an irrevocable grantor trust that holds property and keeps the assets protected from long-term care expenses after the expiration of a five-year period.
Marital Deduction	This deduction is available for inter-spousal transfers either during their lifetimes or at death. Under federal law, there is a complete inter-spousal exemption for qualifying transfers regardless of the amount.
Marital Property	The form of Community Property adopted in Wisconsin.

Minor Child	A child under the legal age of adulthood. The age varies by state but is usually is either the child's 18th or 21st birthday; in Wisconsin the age of majority is 18.
Natural Guardian	The parent of a minor.
Net Value	The value of an estate after all debts have been paid. Federal estate taxes are based on the net value of an estate. Compare with Gross Value .
Nonprobate Property	Property that passes outside the administration of the estate. It passes other than by will or the intestacy laws (e.g., jointly-held property, life insurance proceeds payable to a named beneficiary, property in an <i>inter vivos</i> trust).
Notary Public	A person who has been authorized to administer oaths. Some legal documents, such as deeds, require the use of a Notary Public.
Ownership	The holding of property by one person in such a manner that upon death it passes either by the terms of the will or if no will, according to the intestacy laws.
Ownership Interest	The legal right to manage, sell, or give away property.
Per Capita	A means by which a grantor can distribute his/her estate so that each of the surviving descendants will share equally, regardless of generation. Compare with Per Stirpes .
Per Stirpes	A term used in the distribution of property; distribution to persons as members of a family (per stirpes) and not as individuals (per capita).
Personal Property	Movable property, including furniture, antiques, automobiles, business equipment, cash, and stocks. Compare with Real Property .
Personal Representative	See Executor and Administrator .
Personal Residence Trust	One type of estate plan in which an individual transfers his home to a trust for a specified number of years with the right to occupy. The beneficiaries own the home, and the grantor pays rent after the trust terminates. The value of the gift is considered the present value of the future gift, according to IRS tables.

**Post-Marital Agreement
(Also Called a Post- Nuptial Agreement)**

An agreement entered into between spouses that defines each spouse's respective rights to property.

Pour-over Will

A short will often used with a living trust stating that any property left out of the living trust will become part of (or "pour over" into) the living trust upon death.

Power of Appointment

The legal authority to provide instructions. Often used when a person is given the authority to direct the ultimate distribution of property under the terms of another person's will or trust.

Power of Attorney

A legal document that gives another person, the **attorney-in-fact**, legal authority to act on the principal's behalf. This authority ends at the death of either the principal or the attorney-in-fact. A **durable power of attorney** is valid through the principal's disability. If a power of attorney is unrestricted, it is called a *general* power of attorney. If there are restrictions, it is called a *limited* power of attorney, such as one for a very specific purpose (to sell a home, for instance). If the power only becomes effective upon certain conditions, it is considered a **Springing Power of Attorney**.

**Pre-Marital Agreement
(Also Called a Pre- Nuptial Agreement)**

An agreement entered into between spouses prior to their marriage that can define the respective legal rights and obligations to property, whether acquired before or after the marriage.

Present Interest

A present right to use or enjoy property.

Principal

- (1) A person who is the original source of authority, often used when the owner of property authorizes another person, through a power of attorney, to act in his/her stead.
- (2) Capital or original property as opposed to interest or other earnings derived from that property.

Probate	The process of proving the validity of the will in court and executing its provisions under the guidance of the court.
Probate Court	The court that has jurisdiction with respect to wills and intestacies and sometimes guardianships, adoptions, and the like.
Probate Fees	Costs associated with probate, usually based as a percentage of the gross value of the estate. These costs generally range from 2 to 5 percent for statutory probate fees. Extraordinary probate fees may exceed state limits and are in addition to the statutory fees.
Property	Anything that is owned or possessed. See also Real Property and Personal Property .
Qualified Terminable Interest Property (QTIP TRUST)	Gives the first-to-die spouse the ability to control where the corpus of this trust will go after the death of the second spouse. This election requires that the surviving spouse receive the income from the Q-Tip trust for life. The balance of the trust is included in the surviving spouse's gross estate upon death and distributed in accordance with instructions of the first-to-die spouse.
Quasi-Community Property	Property acquired during a marriage while not living in one of the 9 community property states that would have been community property if the couple were living in a community property state. As a general rule, everything derived from the earnings of either spouse in one of the non-community property states will be quasi-community property. See also Community Property and Separate Property . Quasi-community property rules can be modified by pre-marital and post-marital agreements made by the spouses.
Real Property	Land and property that is "permanently" attached to the land such as a house or barn. Compare with Personal Property .
Remainder Interest	A future interest that comes into existence after termination of a prior interest.
Remainderman	A person who receives what is left, typically from a will or trust. Children and grandchildren are often remaindermen. For example, a husband may leave property in a trust with the income

to go to his wife for life. Upon her death, the remaining estate goes to the couple's children or their survivors.

Residue	That portion of a decedent's estate remaining after the payment of all debts, expenses, and charges and the satisfaction of all legacies and devises.
Reversionary Interest	A right to future enjoyment by the transferor of property that is now in possession or enjoyment of another party.
Revocable	Subject to alteration, change, or modification.
Revocable Living Trust	A revocable or "grantor" trust that is created while one is still living. The grantor has the right to revoke or amend the trust at any time. The trust has instructions for its management and distribution upon disability or death of the owner.
Revocation	The act of terminating that which has been done. Often used in connection with the taking back of the authority granted under a power of attorney or the termination of an Inter Vivos Trust during a person's lifetime.
Rule of Contribution	When the first joint tenant dies, it is presumed that the decedent purchased the entire asset (meaning the full value) if the security is included in the decedent's gross estate. The surviving tenants must prove they contributed capital toward the asset to keep their pro rata share out of the decedent's estate.
Separate Property	Property acquired by either spouse before a marriage or after the termination of a marriage. In addition, property acquired during a marriage by gift or inheritance by one spouse that is kept separate and distinct from community property remains separate property. See also Commingle, Community Property, Quasi-Community Property and Transmute .
Separation	The act of taking apart. Often used when a married couple decides that they no longer intend to live as a married couple. This may have an important impact on community property .
Settlor	A person who owns the property that is placed into a trust. Also called a Grantor, Trust Creator, Trustmaker or Trustor .
Sole Ownership	Property that is owned by only one person.

Special Administrator	A person or Trust institution appointed to administer the estate of a decedent for a specified purpose or until a personal representative is appointed.
Special Gift	A specifically identified item of property, such as a home, a ring, antique, or a sum of money, earmarked in a will or trust to go to a particular person or charity before any other distribution is made.
Spendthrift Provision	A provision in which the interest of a beneficiary cannot be assigned or disposed of by him or attached or otherwise reached by his creditors.
Springing Power of Attorney	A power of attorney that becomes effective only when a defined contingency occurs, such as if two physicians find that the principal is unable to manage his/her own affairs. See Power of Attorney .
Sprinkling Or Spray Trust	A trust under which the trustee is given discretionary power to distribute any part or all of the income among beneficiaries in equal or unequal shares, and direction to accumulate any income not distributed.
Statutory Fees	Maximum probate costs established by each state. In general, the statutory maximums generally range from 2 to 5 percent.
Stepped-up Basis	The revaluation (for tax purposes) of property upon a person's death.
Successor Trustee	Person or institution named in the trust agreement who can take over should the first trustee die, resign, or become unable to act.
Survivorship Marital Property	A form of Marital Property by which the surviving spouse assumes a deceased spouse's interest upon the death of the deceased spouse.

Tangible Property	Property that has physical substance—may be touched, seen or felt (e.g., house, car, furniture).
Tax Basis	See Cost Basis .
Tenancy- by- the -Entirety	Ownership must involve a two spouses. Termination of the account requires joint action by both spouses (i.e., divorce). This type of ownership is typically used in separate-property states.
Tenancy-in-Common	A form of ownership of property in which two or more persons share ownership (may be equal or unequal shares). At the death of a tenant-in-common, his/her share in the property transfers to his/her heirs, rather than to the other surviving owner(s). Compare with Joint Tenancy .
Testamentary Trust	A trust set up in a will that takes effect after death. Compare with Living Trust .
Testate	Describes one who dies with a will.
Testator	One who creates a will.
Transfer Tax	The combined Federal Estate and Gift tax. A single exemption credit applies whether the property was transferred during a person's lifetime (gift tax) or is held by a person at the time of his/her death (estate tax).
Transmute	This term is used to describe the transfer of separate property to community property (or of community property to separate property).
Trust	A fiduciary relationship in which the Trustee has legal title to property and must to keep or use the property for the benefit of the beneficiary.
Trust Agreement	A written agreement between the Trustmaker and Trustee setting forth the terms of a trust.
Trust Instrument	Any writing, will, trust agreement, declaration of trust, deed of trust, or order of court under which a trust is created.
Trustmaker or Trustor	A person who owns the property that is placed into a trust. Also called a Creator, Grantor or Settlor .

Trustee	A person or institution responsible for the management and distribution of property held in a Trust. The trustee has the authority to act according to the instructions provided in the trust agreement. See Fiduciary .
Trustor	The individual who establishes a trust; also referred to as grantor or creator .
Unfunded Insurance Trust	An insurance trust in which the premiums on the policies are to be paid by the insured or by some third person and not by the trustee; to be distinguished from a Funded Insurance Trust .
Unified Tax Credit	An estate and gift tax credit that permits the transfer of an exempt amount in assets free of federal estate and gift tax. The current exemption is in excess of \$5 million.
Uniform Gifts to Minors Act	An act adopted by most states providing for a means of transferring property to a minor, wherein the designated custodian of the property has the legal right to act on behalf of the minor without the necessity of guardianship.
Unlimited Marital Deduction	The ability of one spouse to transfer the entire estate to the surviving spouse free of any estate or gift taxes. The amount that may be transferred is unlimited.
Will	A written document that provides instructions for disposing of a person's property upon the person's death. A will generally also names an executor or personal representative to handle the estate. A will must be signed and (unless it is a holographic will) properly witnessed in order to be valid. Upon the person's death a will must go through the probate process in order to have the instructions carried out.

Appendix

Record of Cash Receipts and Deposits

_____ Trust

Record of Cash Receipts and Deposits for the year _____

Date of Receipts	Received From	Explanation	Amount
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			

Record of Daily Activity

_____ Trust

Record of Daily Activity for the Year _____

Date	Description	Receipts/Deposits	Disbursements/Withdrawals
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			



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