

Rev. Proc. 2003–42

SECTION 1. PURPOSE

This revenue procedure contains an annotated sample declaration of trust and alternate provisions that meet the requirements under § 2702(a)(3)(A) of the Internal Revenue Code and § 25.2702–5(c) of the Gift

Tax Regulations for a qualified personal residence trust (QPRT) with one term holder.

SECTION 2. BACKGROUND

Section 2702(a) provides special rules for the valuation for gift tax purposes of a transfer of an interest in a trust to or for the benefit of a member of the transferor's family if the transferor (or an applicable family member) retains an interest in the trust. Under § 2702(a)(2)(A), the value of any retained interest that is not a qualified interest (as defined in § 2702(b)) is treated as zero unless the transfer is described in § 2702(a)(3). Section 2702(a)(3)(A) and § 25.2702–5(a)(1) provide that § 2702(a) does not apply to a transfer to a personal residence trust; that is, a transfer of an interest in trust all the property of which consists of a residence to be used as a personal residence by persons holding term interests in the trust. Although there are differences between a personal residence trust created under the statute and a QPRT created under the regulations, under § 25.2702–5(a), a trust meeting the requirements of a QPRT will be treated as a personal residence trust. Section 25.2702–5(c) contains the requirements that must be met by a trust in order to qualify as a QPRT. This revenue procedure provides a sample declaration of trust, as well as additional guidance in the form of annotations and alternative provisions.

SECTION 3. SCOPE AND OBJECTIVE

Section 4 of this revenue procedure provides a sample declaration of trust for a QPRT with one transferor for a term equal to the lesser of the life of the term holder or a term of years. Section 5 provides annotations to the provisions in the sample trust. Section 6 provides samples of certain alternate provisions concerning: (.01) additions to the trust to purchase a personal residence, and (.02) disposition of trust assets on cessation of its qualification as a QPRT.

The Internal Revenue Service will recognize a trust as a QPRT meeting all of the requirements of § 2702(a)(3)(A) and § 25.2702–5(c) if (i) the trust instrument is substantially similar to the sample in section 4 of this revenue procedure or if the trust agreement properly integrates one or more alternate provisions from section 6 of this revenue procedure into a document sub-

stantially similar to the sample in section 4, and (ii) the trust operates in a manner consistent with the terms of the trust instrument and is a valid trust under applicable local law. A trust instrument that contains substantive provisions in addition to those provided in section 4 of this revenue procedure (other than properly integrated alternate provisions from section 6 of this revenue procedure or provisions necessary to establish a valid trust under applicable local law), or that omits any of the provisions of section 4 of this revenue procedure (unless an alternative provision from section 6 of this revenue procedure is properly integrated), will not necessarily be disqualified, but will not be assured of qualification under the provisions of this revenue procedure. The Service generally will not issue a letter ruling on whether a trust with one term holder qualifies as a QPRT. The Service, however, will generally issue a letter ruling on the effect of substantive trust provisions, other than those contained in sections 4 and 6 of this revenue procedure, on the qualification of a trust as a QPRT.

SECTION 4. SAMPLE QUALIFIED PERSONAL RESIDENCE TRUST — ONE TERM HOLDER

This trust agreement is made this _____ day of _____, 20 ____, by and between, _____, (hereinafter “the Transferor”), and _____ as the trustee (hereinafter “the Trustee”), hereby creating the _____ Trust.

ARTICLE I. RETAINED INTEREST AND IRREVOCABILITY

A. Retained Interest. The Transferor intends to establish a qualified personal residence trust within the meaning of Rev. Proc. 2003–42, § 2702(a)(3)(A) of the Internal Revenue Code (hereinafter “the Code”), and § 25.2702–5(c) of the Gift Tax Regulations (hereinafter “the regulations”). Accordingly, the Transferor retains no right, title, or interest in any trust asset except as specifically provided in this trust instrument.

B. Irrevocable. This trust is irrevocable and therefore may not be modified, amended, or revoked by the Transferor or any other person. Notwithstanding the preceding sentence, however, the Trustee shall

have the power, acting alone, to amend the trust to the extent provided in § 25.2702–5(a)(2) of the regulations (or any subsequent regulation or statute) in any manner required for the sole purpose of ensuring that the trust qualifies as a qualified personal residence trust for purposes of § 2702(a)(3)(A) of the Code and § 25.2702–5(c) of the regulations (including with respect to the grantor retained annuity trust (“GRAT”) administered under Article III, the qualification of the annuity interest under § 2702(b)(1) of the Code and § 25.2702–3 of the regulations).

ARTICLE II. QUALIFIED PERSONAL RESIDENCE TRUST

A. Funding of the Qualified Personal Residence Trust (“QPRT”).

(1) *Residence.* The Transferor transfers and assigns to the Trustee all of the Transferor’s interests in and rights to certain real property, including all improvements thereon and appurtenances thereto, known as _____ [legal description and/or address], _____ [city], _____ [state]. This property, or any property acquired as a replacement, will hereinafter be referred to as the “Residence.” The Trustee accepts the Residence and agrees to hold, manage, and distribute the Residence and any other trust property under the terms set forth in this instrument.

(2) *Assets of Trust.* Except as provided in Paragraphs A(3), B(6), and D of this Article II, the Trustee is prohibited from holding, at any time during the term of the QPRT, any property other than (a) an interest in one (and only one) Residence that meets the requirements of a personal residence of the Transferor as set forth in § 25.2702–5(c)(2) of the regulations, and (b) policies of insurance on the Residence.

(3) *Additions to QPRT.* From time to time, the Trustee may accept an addition of cash to the QPRT in an amount which, when added to any cash already held, does not exceed the amount reasonably required for: (a) the payment of QPRT expenses (including without limitation mortgage payments) already incurred or reasonably expected to be paid by the trust within 6 months after the date the addition is made; (b) the cost of improvements to the Residence to be paid by the trust within 6 months after the date the addition is made; and (c) the purchase by the trust of a re-

placement Residence within 3 months after the date the addition is made, provided that no addition may be made, or held by the Trustee, for the purchase of a replacement Residence unless the Trustee has, prior to receipt of the addition, entered into a contract to purchase that Residence. The Trustee shall hold the additions of cash received in accordance with this paragraph in a separate account.

B. Administration of Trust.

(1) *Use and Management of Residence.* The Trustee shall hold and maintain the Residence as a personal residence of the Transferor during the period beginning on the date of creation of the trust and continuing through the date of termination of the trust (hereinafter “the term of the QPRT”). During the term of the QPRT, the Transferor shall have the exclusive rent-free use, possession, and enjoyment of the Residence.

(2) *Payment of Expenses.* The Transferor shall be responsible for the payment of all costs associated with the Residence, including but not limited to mortgage payments, property taxes, utilities, repairs, maintenance, and insurance. The Trustee’s responsibility for the maintenance of the Residence and for other costs associated with the Residence is limited to the extent of any trust income and additions of cash for that purpose received by the Trustee in accordance with this Article II. If the Trustee has insufficient funds to pay these costs and expenses, the Trustee shall notify the Transferor, who shall be responsible for the unpaid balance of these costs and expenses. In addition, the Trustee from time to time may make improvements to the Residence, but the Trustee’s authority and responsibility to do so is limited to the extent of any trust income, insurance proceeds, and additions of cash for that purpose received by the Trustee in accordance with this Article II.

(3) *Distributions of Cash to Transferor.* Any net income of the QPRT shall be distributed to the Transferor, not less frequently than annually. In addition, the Trustee shall determine, not less frequently than quarterly, whether the cash held by the QPRT exceeds the amount permitted to be held by the Trustee and shall immediately distribute the excess, if any, to the Transferor. Within 30 days of the date of the ter-

mination of the QPRT, the Trustee shall distribute outright to the Transferor (or to the estate of the Transferor, as the case may be), any amounts held by the QPRT pursuant to Paragraph A(3) of this Article II that are not used to pay QPRT expenses due and payable on the date of termination (including expenses directly related to the termination of the QPRT).

(4) *Reinvestment of Trust Assets.* Except as provided in Paragraph B(5) of this Article II, the Trustee may sell the Residence from time to time upon terms and conditions the Trustee deems appropriate. The Trustee may disburse from time to time any part or all of the amounts described in Paragraph A(1) and A(3) above and Paragraph B(6) below, including all income and capital gains thereon, as the Trustee deems appropriate for the purchase or construction of a replacement Residence to be owned by the trust or for the reconstruction or repair of the Residence. These disbursements shall be made, and any reconstruction and repairs shall be completed, within the time periods necessary to allow this trust to continue to qualify as a QPRT, but the Trustee shall not be held liable for any failure in this regard unless the Trustee has acted (or failed to act) through willful default or gross negligence.

(5) *Prohibition on Sale of Residence to Transferor or Related Parties.* The Trustee is prohibited from selling or transferring (as defined in § 25.2702–5(c)(9) of the regulations) the Residence, directly or indirectly, to the Transferor, the Transferor's spouse, or an entity controlled by the Transferor or the Transferor's spouse during the retained term interest of the QPRT, or at any time after the termination of the retained term interest in the QPRT while the trust is treated as owned in whole or in part by the Transferor or the Transferor's spouse under §§ 671 through 678 of the Code.

(6) *Receipt of Proceeds With Respect to Residence.* If the Residence is sold, the Trustee shall hold the proceeds of the sale (along with any income accrued thereon) in a separate account. If the Residence is damaged, destroyed, or involuntarily converted within the meaning of § 1033 of the Code, the Trustee shall hold any proceeds payable as a result thereof (consisting either of insurance proceeds in the case of damage or destruction to the Residence or the proceeds payable upon involuntary conversion) in a separate account. The pro-

ceeds (and any interest thereon) so received shall be held, administered, and distributed by the Trustee as provided in this Article II.

(7) *Commutation of Interests.* The Transferor's interest in the QPRT may not be sold, commuted, or prepaid by any person.

(8) *Prohibited Distributions.* Except to the extent provided in Paragraph D below, the Trustee may not make any distribution of income or principal from the QPRT to or for the benefit of any person other than the Transferor prior to the termination of the QPRT.

C. *Termination of Trust.* The trust's date of termination shall be the earlier of [date], or the date of the Transferor's death. Except as otherwise provided in Paragraph D below, the Trustee shall distribute the trust property at the end of the term of the QPRT as provided in this Paragraph C. If the date of termination is [date], the Trustee shall distribute all of the property of the trust (other than any amounts due the Transferor pursuant to this trust instrument) to [designate transferees — if more than one, specify shares]. If the date of termination is the earlier death of the Transferor, the Trustee shall distribute all trust property (other than any amounts due the Transferor's estate pursuant to this trust instrument) to [designate transferees — if more than one, specify shares].

D. *Cessation of Qualification as a Personal Residence Trust.*

(1) *Cessation Date.*

(a) The trust shall cease to be a QPRT on the date on which the Residence ceases to be used or held for use as a personal residence of the Transferor within the meaning of § 25.2702–5(c)(7) of the regulations (other than for reasons described in Paragraphs D(1)(b) or D(1)(c) below).

(b) In the event of a sale of the Residence, the trust shall cease to be a QPRT on the first to occur of the following: (i) the date which is 2 years after the date of sale; (ii) the date of termination as determined in Paragraph C above; or (iii) the date on which a replacement Residence is acquired by the Trustee. If the first to occur is the acquisition of a replacement Residence by the Trustee, then the QPRT shall continue with respect to that replacement Residence, and the trust shall cease to be a QPRT only to the extent of any sale proceeds then held

by the Trustee and not used for the purchase of the replacement Residence.

(c) If the Residence is damaged or destroyed, thus making it unusable as a personal residence, the trust shall cease to be a QPRT on the first to occur of the following dates: (i) the date that is 2 years after the date of damage or destruction; (ii) the date of termination as determined in Paragraph C above; or (iii) replacement of or repairs to the Residence are completed or a new Residence is acquired by the Trustee. If the first to occur is the completion of the replacement or repair (or the acquisition of a new Residence), then the QPRT shall continue with respect to the repaired Residence or the new Residence, and the trust shall cease to be a QPRT only to the extent of any insurance proceeds then held by the Trustee and not used for the replacement or repair of the Residence (or the purchase of the new Residence).

(2) *Distribution on Cessation.* Within 30 days after the date on which the trust ceases to be a QPRT with respect to any of its assets, and after satisfying the provisions of Paragraph B(3) of this Article II, the Trustee shall distribute the trust assets with respect to which the trust has ceased to qualify as a QPRT to a separate share of this trust to be referred to and administered as a GRAT in accordance with Article III below. That GRAT shall continue until the date of termination as defined in Paragraph C above.

(3) *Multiple GRATs.* Because it may be possible to have more than one cessation of qualification during the term of the QPRT, the Trustee shall create and fund a separate GRAT for each cessation and each GRAT shall be administered as a separate share of the trust in accordance with Article III below.

ARTICLE III. GRANTOR RETAINED ANNUITY TRUST

Each GRAT administered as a separate share under this Article III (each of which is referred to as "the GRAT" with regard to that separate share) is intended to provide for the payment of a qualified annuity interest as defined in § 25.2702–3 of the regulations for the benefit of the Transferor. No amount shall be paid before the termination of this trust other than to or for the Transferor's benefit.

A. *Right to Receive Annuity.* In each taxable year of the GRAT, beginning with the

year beginning on the cessation date (as defined below), the Trustee shall pay to the Transferor an annuity, the amount of which shall be determined in accordance with Paragraph D of this Article III. The right of the Transferor to receive the annuity amount begins on the cessation date.

B. Cessation Date. The cessation date is the date on which the Residence ceases to be used or held for use as a personal residence of the Transferor, the date of sale of the Residence, or the date of damage to or destruction of the Residence that renders the Residence unusable as a residence, as the case may be.

C. Payment of Annuity. The annuity amount shall be paid in equal [*insert monthly, quarterly, semi-annual or annual*] installments. The annuity amount shall be paid first from the net income of the GRAT and, to the extent net income is not sufficient, from principal. The Trustee may defer payment of any annuity amount otherwise payable after the cessation date until the date that is 30 days after the date that the assets are converted to a GRAT as provided in this trust instrument. Any deferred payment of the annuity amount shall bear interest for the period of deferral, compounded annually, at a rate not less than the rate prescribed in § 7520 of the Code in effect on the cessation date. The Trustee shall reduce the aggregate deferred annuity payments by the amount of income actually distributed to the Transferor during the deferral period.

D. Computation of Annuity Amount.

The amount of the annuity payable to the Transferor shall be determined as follows.

(1) If, on the date that any property of the trust is converted from the QPRT to a GRAT (hereinafter the “conversion date”), the assets of the trust do not include a Residence used or held for use as a personal residence of the Transferor, the annuity shall be the amount determined by dividing the lesser of (a) the value of the interest retained by the Transferor (as of the date of the original transfer) or (b) the value of all the trust assets (as of the conversion date) by the annuity factor determined (i) for the original term of the Transferor’s interest and (ii) at the rate used in valuing the retained interest at the time of the original transfer to the QPRT.

(2) If, on the conversion date, the assets of the trust include a Residence used or held for use as a personal residence of

the Transferor, the annuity shall be the amount determined under subparagraph (1) of this Paragraph D multiplied by a fraction. The numerator of the fraction is the excess of the fair market value of the assets of the trust on the conversion date over the fair market value of the assets as to which the trust continues as a QPRT, and the denominator of the fraction is the fair market value of the trust assets on the conversion date.

(3) In computing the annuity amount for any second or subsequent GRAT to be administered under this Article III, the Trustee shall make appropriate adjustments to the formulas above in this paragraph D that are consistent with the applicable provisions of the Code and the regulations thereunder and with the Transferor’s intent to maintain qualification of each of the trust shares hereunder as a QPRT or a GRAT.

(4) If there is an error in the determination of the annuity amount, then, within a reasonable period after the error is discovered, the difference between the annuity amount payable and the amounts actually paid shall be paid to or for the use of the Transferor by the Trustee in the event of an underpayment, or shall be repaid by the Transferor to the Trustee in the event of an overpayment.

E. Proration. Notwithstanding the preceding paragraphs of this Article III, in determining the annuity amount for a short taxable year, the Trustee shall prorate the annuity amount on a daily basis. In determining the annuity amount for the taxable year of the termination of the GRAT, the Trustee shall prorate the annuity amount for the final period of the annuity interest on a daily basis.

F. Additional Contributions Prohibited. No additional contributions shall be made to the GRAT after its creation.

G. Termination of GRAT. The GRAT shall continue through the date of termination of the QPRT, as defined in Paragraph C of Article II, and shall then terminate. Upon termination of the GRAT, the Trustee shall distribute all of the trust property in the manner described in Paragraph C of Article II as if the GRAT property had been part of the QPRT disposed of under that provision.

H. No Commutation. The Transferor’s interest in the annuity amount may not be sold, commuted, or prepaid by any person.

ARTICLE IV. GENERAL PROVISIONS

A. Taxable Year. The taxable year of the trust shall be the calendar year.

B. Governing Law. The operation of the trust shall be governed by the laws of the state of [*state*]. The Trustee, however, shall not have or exercise any power or discretion granted under applicable law that would prevent: (1) the QPRT administered under Article II above from meeting the requirements for a qualified personal residence trust under § 2702(a)(3)(A) of the Code and § 25.2702–5(c) of the regulations; or (2) the Transferor’s interest in any GRAT administered under Article III above from meeting the requirements for a qualified annuity interest under § 25.2702–3 of the regulations.

SECTION 5. ANNOTATIONS REGARDING SAMPLE QUALIFIED PERSONAL RESIDENCE TRUST

.01 *Annotations for Introductory Paragraph and Article I, Retained Interest and Irrevocability.*

(1) *Qualification as a QPRT.* In order to qualify as a QPRT, the governing instrument must contain all the provisions required under the regulations, and these provisions must by their terms continue in effect during the existence of any term interest in the trust. Section 25.2702–5(c)(1).

(2) *Appointment of Trustee.* Alternative or successor trustees may be designated in the trust instrument.

(3) *Limited Power of Amendment.* A QPRT must be irrevocable. However, modification of a trust by judicial reformation (or nonjudicial reformation if effective under state law) to comply with the requirements of § 25.2702–5(c) will be effective for purposes of § 2702, provided the reformation is commenced within 90 days after the due date (including extension) for the filing of the gift tax return reporting the transfer of the residence under § 6075 and is completed within a reasonable time after commencement. Section 25.2702–5(a)(2).

.02 *Annotations for Article II, Qualified Personal Residence Trust.*

(1) *Requirement that QPRT Must be Funded With a Personal Residence (Article II, Paragraph A(1)).* The QPRT must be funded with a residence that qualifies as a personal residence of the term holder during the term of the QPRT. A personal residence of a term holder is: (A) the principal

residence of the term holder (as that term is defined in § 25.2702–5(c)(2)(i)(A)); (B) one other residence of the term holder (within the meaning of § 25.2702–5(c)(2)(i)(B)); or (C) an undivided fractional interest in a residence described in either (A) or (B). Section 25.2702–5(c)(2)(i). A personal residence may include appurtenant structures used by the term holder for residential purposes and adjacent land not in excess of that which is reasonably appropriate for residential purposes, taking into account the residence’s size and location. The fact that a residence is subject to a mortgage does not affect its status as a personal residence. The term “personal residence” does not include any personal property, for example, household furnishings. Section 25.2702–5(c)(2)(ii). A residence is a personal residence only if its primary use is as a residence of the term holder when occupied by the term holder. The principal residence of the term holder will not fail to meet the requirements of the preceding sentence merely because a portion of the residence is used in an activity meeting the requirements of § 280A(c)(1) or (4) (relating to deductibility of expenses related to certain uses), provided that such use is secondary to use of the residence as a residence. A residence is not used primarily as a residence if it is used to provide transient lodging and substantial services are provided in connection with the provision of lodging, for example, a hotel or a bed and breakfast. A residence is not a personal residence if, during any period not occupied by the term holder, its primary use is other than as a residence. Section 25.2702–5(c)(2)(iii).

(2) *Assets other than personal residence* (Article II, Paragraph A(3)). This is an optional provision that, if included in the trust instrument, permits the trustee to accept additions of cash to the trust for the purposes set forth in Paragraph A(3) of Article II. A provision in the trust instrument that permits these additions is not required in order to qualify the trust as a QPRT. Section 25.2702–5(c)(5)(ii)(A). In addition, the trust instrument may permit improvements to the residence to be added to the trust and may permit the trust to hold such improvements, provided the residence, as improved, meets the requirements of a personal residence. Section 25.2702–5(c)(5)(ii)(B).

(3) *Authority to Sell or Repair Residence* (Article II, Paragraph B(4)). The pro-

visions of Paragraph B(4) are optional. If the trustee is given the authority to sell the personal residence but not to reinvest the proceeds in a replacement personal residence, the trust ceases to be a QPRT upon the sale of the residence.

(4) *Prohibition on Sale of Residence to Transferor or Related Person* (Article II, Paragraph B(5)). The governing instrument must prohibit the trust from selling or transferring the residence directly or indirectly to the transferor, the transferor’s spouse, or an entity controlled by the transferor or the transferor’s spouse during the retained term interest in the trust or at any time after the expiration of that interest when the trust is a grantor trust. For these purposes: (A) a sale or transfer to another grantor trust of the transferor or the transferor’s spouse is considered a sale or transfer to the transferor or the transferor’s spouse; and (B) a “grantor trust” is a trust that is treated as owned in whole or in part by the transferor or the transferor’s spouse pursuant to §§ 671 through 678, and “control” is as defined in § 25.2701–2(b)(5)(ii) and (iii).

This prohibition, however, does not apply to a distribution for no consideration either to: (i) another grantor trust of the transferor or the transferor’s spouse, if the distributee-grantor trust includes the same prohibition against a sale or transfer; (ii) the transferor’s spouse after the term of the QPRT; or (iii) any person pursuant to the trust instrument or the exercise of the transferor’s retained power of appointment, if any, if the transferor dies prior to the expiration of the retained term interest. Section 25.2702–5(c)(9).

(5) *Termination of Trust* (Article II, Paragraph C).

(a) *Termination on Death of Transferor*. If the trust terminates by reason of the death of the transferor, and therefore terminates prior to the end of the term interest, the trust property will be includible in the transferor’s gross estate for federal estate tax purposes because the transferor will have retained an interest in the trust for a period that did not in fact end before the transferor’s death. Section 2036(a)(1). Therefore, consideration should be given to designing the dispositive provisions to take advantage of marital or charitable deductions that may be available for estate tax purposes.

(b) *Generation-Skipping Transfer Tax*. Consideration also should be given to potential generation-skipping transfer (GST) tax consequences under § 2601 upon termination of the trust by reason of the death of the transferor during the QPRT term. The transferor may prefer to design the dispositive provisions to avoid any generation-skipping transfer in the event of the transferor’s death during the term because, pursuant to § 2642(f), no allocation of GST exemption can be made until the end of the term of the QPRT (the transferor’s death).

(6) *Cessation of Use As a Personal Residence* (Article II, Paragraph D).

The governing instrument must provide that a trust ceases to be a QPRT if the residence ceases to be used or held for use as a personal residence of the term holder. Under § 25.2702–5(c)(7)(i), a residence is held for use as a personal residence of the term holder so long as the residence is not occupied by any other person (other than the spouse or a dependent of the term holder) and is available at all times for use by the term holder as a personal residence.

.03 *Annotation for Article III, Grantor Retained Annuity Trust (GRAT)*.

(1) *Payment of Annuity* (Article III, Paragraph C). Allowing deferral of the annuity payment is an optional provision and is not required in order to qualify as a QPRT. If the trustee is given the power to defer payment of any annuity amount, then the trust may (but is not required to) provide that the aggregate deferred annuity payments must be reduced by the amount of income actually distributed to the transferor during the deferral period. Section 25.2702–5(c)(8)(ii)(B).

(2) *Computation of Annuity Amount* (Article III, Paragraph D). The annuity amount may be greater than the amount identified in the sample trust, but may not be less than that amount. See *Example 6* in § 25.2702–5(d) for a numerical example of how the annuity formulas operate.

.04 *Annotation for Article IV, General Provisions*.

Trustee Powers. The trust instrument may contain administrative provisions relating to the trustee’s duties and powers, as long as the provisions do not conflict with the rules governing QPRTs under § 2702(a)(3)(A) and § 25.2702–5(c), or the rules governing qualified annuity interests under § 25.2702–3. A clause may be included that provides: “Except to the ex-

tent provided otherwise in Article II and Article III, the Trustee has the following powers”

SECTION 6. ALTERNATIVE OR OPTIONAL PROVISIONS FOR SAMPLE QUALIFIED PERSONAL RESIDENCE TRUST

.01 Contribution(s) of Cash to Purchase Personal Residence.

(1) *Explanation.* If the transferor does not currently own the personal residence that will constitute the trust corpus, cash may be transferred to the QPRT for the purchase of the initial residence. However, the purchase must take place within 3 months of the date the trust is created. Except for a nominal amount that may be required under state law to create the trust, before any contribution, the trustee must have previously entered into a contract to purchase that residence. Section 25.2702–5(c)(5)(ii)(A)(iii).

(2) *Instructions for use.* Replace Paragraphs A(1) and A(3) of Article II with the following paragraphs:

A(1) *Cash for Purchase of Residence.* The Transferor transfers \$_____ to the Trustee and confirms that the Transferor intends to transfer to the Trustee additional cash in an amount sufficient to allow the Trustee to purchase a residence to be used as a personal residence of the Transferor. The Trustee accepts that amount, agrees to hold it in a separate account, and agrees to use it and any additional cash contributed under Paragraph A(3)(d) of this Article to purchase, within 3 months after the date on which this trust is created, such a residence (hereinafter referred to as “the Residence”). The Trustee agrees to hold, manage, and distribute the Residence and any other trust property under the terms set forth in this instrument.

A(3) *Additions to QPRT.* From time to time, the Trustee may accept an addition of cash to the QPRT in an amount which, when added to any cash already held, does not exceed the amount reasonably required for: (a) the payment of QPRT expenses (including without limitation mortgage payments) already incurred or reasonably expected to be paid by the trust within 6 months after the date the addition is made; (b) the cost of improvements to the Residence to be paid by the trust within 6 months after the date the addition is made; (c) the purchase by the trust of a replacement Residence within 3 months after the

date the addition is made, provided that no addition may be made, or held by the Trustee, for this purpose unless the Trustee has, prior to receipt of the addition, entered into a contract to purchase that Residence; and (d) the purchase by the trust of the initial Residence within 3 months of the date the trust is created, provided that no addition may be made, or held by the Trustee, for the purchase of the initial Residence unless the Trustee has, prior to receipt of the addition, entered into a contract to purchase that Residence. The Trustee shall hold the additions of cash received in accordance with this paragraph in a separate account.

.02 Disposition of Trust Assets on Cessation as QPRT.

(1) *Explanation.* The sample trust provides that, if the trust ceases to qualify as a QPRT, the assets are to be held as a separate share in a GRAT pursuant to which a qualified annuity interest is to be paid to the transferor until the QPRT’s date of termination. Alternatively, the trust instrument may direct that the assets be returned to the transferor, or may give to a trustee, who is independent of the transferor, the discretion either to elect to return the assets to the transferor or to hold the assets in a GRAT. Section 25.2702–5(c)(8).

(2) *Instructions for use if outright distribution.* If the assets are to be distributed outright to the term holder, delete all of Article III, delete the reference to GRAT at the end of Paragraph B of Article I and Paragraph B of Article IV, delete Paragraph D(3) of Article II, and replace Paragraph D(2) of Article II with the following paragraph:

D(2) *Distribution on Cessation.* Within 30 days after the date on which the trust ceases to be a QPRT with respect to any assets, the Trustee shall distribute those assets outright to the Transferor.

(3) *Instructions for use if trustee’s discretion.* If the trustee is to be given the discretion to either distribute the assets outright or establish a GRAT, replace Paragraph D(2) of Article II with the following paragraph:

D(2) *Distribution on Cessation.* Within 30 days after the date on which the trust ceases to be a QPRT with respect to any of its assets, and after satisfying the provisions of Paragraph B(3) of this Article II, the Trustee shall distribute any trust assets with respect to which the

trust has ceased to qualify as a QPRT in one of two ways, as the Trustee may select in the Trustee’s sole discretion. Specifically, the Trustee shall distribute the assets with respect to which the trust no longer qualifies as a QPRT either: (i) to the Transferor, outright; or (ii) to a separate share of this trust to be referred to and administered as a GRAT in accordance with Article III below. That GRAT shall continue until the date of termination as defined in Paragraph C above.

DRAFTING INFORMATION

The principal author of this revenue procedure is Mary Berman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mary Berman at (202) 622–3090 (not a toll-free call).