

NOTATIONS FOR FORM 207

This form is designed for a married settlor who wishes to establish generation–skipping trusts for his or her descendants, utilizing the generation–skipping tax exemptions of both the settlor and settlor’s spouse. The settlor should also execute a will patterned on FORM 110: WILL–Pour-over.

For community property states: This form assumes that the trust estate will consist solely of settlor’s separate property. If the trust estate will include community property, or if community property will be added to the trust upon the death of the settlor (e.g., community property life insurance proceeds), use FORM 306: REVOCABLE TRUST AGREEMENT–Community Property-Generation-Skipping Trust for Married Settlers.

Certain provisions of this form assume that there is a disinterested party acting as trustee or co-trustee under the agreement. FORMS 210 and 211: REVOCABLE TRUST AGREEMENT–Plural Trustees, operate to preclude a beneficiary who is acting as co-trustee from the exercise of powers which would have adverse tax consequences.

A beneficiary should not act as sole trustee where the trustee may accumulate income or pay it to or spray it among a group which includes the beneficiary; see IRC §678(a)(1).

If the settlor is to be the initial trustee of the trust, (i) use the alternate trustee succession provision on page 201-20 and the alternate testimonium provision on page 201-36, and (ii) substitute for the first paragraph:

1 I, JOHN DOE, of _____, _____, as settlor, make this agreement with myself, as trustee, this ____ day of _____, 20 _____.

If community property state, substitute for first sentence of second paragraph:

2 I hereby transfer to the trustee the property listed in the attached schedule and am causing the trustee to be designated as beneficiary of the life insurance policies described therein, all of which is my separate property.

If the trust will be funded during settlor’s lifetime and is to have sole responsibility for paying settlor’s death taxes and expenses, (i) revise settlor’s will so his or her estate does not pay those taxes and expenses and (ii) substitute for first paragraph of SECOND:

3 SECOND: Upon my death the trustee shall make the following payments from the trust estate. The trustee shall pay all expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against my estate (excluding debts secured by real property or life insurance), and unsatisfied pre–residuary devises under my will if my will contains a residuary devise to this trust. The trustee shall also pay all estate and inheritance taxes assessed by reason of my death, including such taxes on property passing outside this agreement, except that the amount, if any, by which the estate and inheritance taxes shall be increased as a result of the inclusion of property in which I may have a qualifying income interest for life or over which I may have a power of appointment shall be paid by the person holding or receiving that property. Such payments, including interest and penalties on any tax, shall be charged against principal or income as provided by applicable state law. The trustee may make payment directly or to the personal representative of my estate, as the trustee deems advisable. The trustee shall make these payments without apportionment or reimbursement. If any part of the Marital Trust hereinafter established does not qualify for the federal estate tax marital deduction because of disclaimer or lack of qualified terminable interest property election, then the amount by which the estate and inheritance taxes assessed by reason of my death are thereby incurred or increased shall be paid from or charged against that nonmarital part.

If the settlor will make direct skips at death in excess of his or her GST exemption, or if it is desired to reserve apportionment rights for death taxes generated not only by marital trusts but also by other property passing outside the revocable trust, substitute for first paragraph of SECOND:

4 SECOND: Upon my death, if I have no probate estate, or to the extent that the cash and readily marketable assets in the principal of the residue of my probate estate are insufficient, the trustee shall make the following payments from the trust estate. The trustee shall pay the expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against my estate (excluding debts secured by real property or life insurance), and pre–residuary devises under my will if my will contains a residuary devise to this trust. Except as hereinafter provided, the trustee shall also pay the estate and inheritance taxes and generation–skipping taxes on direct skips which are assessed by reason of my death, including such taxes on property passing outside this agreement. Such payments, including interest and penalties on any tax, shall be charged against principal or income as provided by applicable state law. The trustee may make payment directly or to the personal representative of my estate,

FORM 207
REVOCABLE TRUST AGREEMENT
One Settlor
-Generation-Skipping Trust
for Married Settlor

TRUST AGREEMENT

I, JOHN DOE, of _____, _____, as settlor, make this agreement with NORTHERN TRUST [*insert full legal name of applicable NORTHERN TRUST bank throughout the instrument*], of _____, _____, as trustee, this ____ day of _____, 20_____.

I hereby transfer to the trustee the property listed in the attached schedule and am causing the trustee to be designated as beneficiary of the life insurance policies described therein. That property, the proceeds of those policies, all additional property received by the trustee from any person by will or otherwise, and all investments and reinvestments thereof, are herein collectively referred to as the "trust estate" and shall be held upon the following trusts:

FIRST: During my lifetime the trustee shall pay so much or all of the income and principal of the trust estate to me or otherwise as I direct.

**DIRECTED
PAYMENTS**

If at any time or times I shall be unable to manage my affairs, the trustee may use such sums from the income and principal of the trust estate as the trustee deems necessary or advisable for the health and maintenance in reasonable comfort of myself and any person dependent upon me, or for any other purpose the trustee considers to be for my best interests.

DISABILITY

For purposes of this agreement, I shall be considered to be unable to manage my affairs if I am under a legal disability or by reason of illness or mental or physical disability am unable to give prompt and intelligent consideration to financial matters. The determination as to my inability at any time shall be made _____ by and my physician, or the survivor of them, and the trustee may rely upon written notice of that determination.

Any excess income of the trust shall be added to principal.

**TAXES –
EXPENSES**

SECOND: Upon my death, if I have no probate estate, or to the extent that the cash and readily marketable assets in the principal of the residue of my probate estate are insufficient, the trustee shall make the following payments from the trust estate. The trustee shall pay the expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against my estate (excluding debts secured by real property or life insurance), and pre-residuary devises under my will if my will contains a residuary devise to this trust. The trustee shall also pay the estate and inheritance taxes assessed by reason of my death, including such taxes on property passing outside this agreement, except that the amount, if any, by which the estate and inheritance taxes shall be increased as a result of the inclusion of property in which I may have a qualifying income interest for life or over which I may have a power of appointment shall be paid

as the trustee deems advisable. The trustee shall make these payments without apportionment or reimbursement or charging any direct skip property. If any part of the Marital Trust hereinafter established does not qualify for the federal estate tax marital deduction because of disclaimer or lack of qualified terminable interest property election, then the amount by which the estate and inheritance taxes assessed by reason of my death are thereby incurred or increased shall be paid from or charged against that nonmarital part.

The trustee shall not pay death taxes caused by:

- (a) Property over which I may have a power of appointment,
- (b) Property in which I may have a qualifying income interest for life, unless for generation-skipping tax purposes the property has an inclusion ratio of zero and is treated as if the qualified terminable interest property election had not been made,
- (c) Property constituting a direct skip for generation-skipping tax purposes which is caused by a disclaimer or which is from a trust not created or appointed by me,
- (d) _____, and

[List additional property passing outside the instrument against which tax apportionment rights should be asserted.]

- (e) _____, and

The person holding or receiving the above-described property shall pay, either directly or to the trustee, the amount, if any, by which the death taxes are increased as a result of the taxation of that property. If two or more properties cause an increase in a tax, the increase shall be allocated among the properties in proportion to their respective taxable values.

If there may be after-born children, add to THIRD:

5 I intend by this agreement to provide for all my children, including any hereafter born or adopted.

If special gifts of money are desired, add the following after THIRD and renumber the succeeding articles:

6 FOURTH: Upon my death the trustee shall distribute from the principal of the trust estate:

- (a) \$5,000 to my sister, JANE DOE, of _____, _____, if she is then living;
- (b) \$2,500 to the OLD PEOPLE’S HOME, of _____, _____, if then in existence; and
- (c) \$5,000 to each of my grandchildren who is then living; if a grandchild is a minor, payment may be made for the benefit of the grandchild to a custodian under a Uniform Transfers or Gifts to Minors Act.

No interest or share of income shall be paid on these distributions. The balance of the trust estate which remains after the foregoing distributions have been made or provided for shall be held and disposed of as hereinafter provided.

by the person holding or receiving that property. Such payments, including interest and penalties on any tax, shall be charged against principal or income as provided by applicable state law. The trustee may make payment directly or to the personal representative of my estate, as the trustee deems advisable. The trustee shall make these payments without apportionment or reimbursement. If any part of the Marital Trust hereinafter established does not qualify for the federal estate tax marital deduction because of disclaimer or lack of qualified terminable interest property election, then the amount by which the estate and inheritance taxes assessed by reason of my death are thereby incurred or increased shall be paid from or charged against that nonmarital part.

Assets or funds otherwise excludable from my gross estate for federal estate tax purposes shall not be used to make the foregoing payments. The trustee's selection of assets to be sold for that purpose or to satisfy any pecuniary gifts, and the tax effects thereof, shall not be subject to question by any beneficiary.

The trustee shall make such elections and allocations under the tax laws as the trustee deems advisable, without regard to the relative interests of the beneficiaries and without liability to any person. No adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of elections or allocations under the tax laws made by the personal representative of my estate or by the trustee.

The balance of the trust estate which remains after the foregoing payments have been made or provided for shall be held and disposed of as hereinafter provided.

THIRD: My wife's name is MARY DOE, and she is herein referred to as "my wife." I **FAMILY** have three children now living, namely:

JOHN DOE, JR., BORN _____ (date) _____ ;
DOROTHY DOE, born _____ (date) _____ ; and
DAVID DOE, born _____ (date) _____ .

FOURTH: As of my death the balance of the trust estate shall be held and disposed of as follows:

(a) If the federal estate tax is in existence at my death, the trustee shall hold and administer the trust estate as provided in the following articles of this agreement.

(b) If the federal estate tax is not in existence at my death, the trustee shall allocate the trust estate as follows:

_____ % to the Marital Trust, if my wife survives me, and

_____ % (or all thereof, if my wife does not survive me) to the Bypass Trust hereinafter established.

As the applicable exclusion amount increases in future years, the formula in FIFTH might allocate little or no property to the Marital Trust. If it is desired that the Marital Trust shall receive a minimum amount of property in all events, add to the end of FIFTH(a):

7 ..., but in all events the numerator shall be at least \$ _____ , and

FIFTH(a)(ii) is designed to avoid incurring state death taxes at the first death. In some states its use may result in the Bypass Trust not receiving the full applicable exclusion amount. In such case, the applicable exclusion amount can still be fully utilized by post-mortem planning (partial QTIP election, disclaimer by spouse), but some state death tax would then be incurred. For a discussion and alternative approaches, see the INTRODUCTION.

If it is desired to allocate a specific asset to Marital Trust or Bypass Trust, add to second paragraph of FIFTH:

8 In allocating assets to the Marital Trust and Bypass Trust, the trustee shall allocate [describe the specific asset] to the _____ Trust to the extent practicable.

In the simultaneous death sentence in second paragraph of FIFTH, determine whether husband or wife is the poorer spouse, and provide that such spouse is deemed to have died last. The estate planning documents of husband and wife should each provide that such spouse is deemed to have died last.

If a lifetime power to withdraw GST nonexempt property from the Marital Trust is desired, substitute for SECTION 1 through SECTION 5 of FIFTH:

9 SECTION 1: If the federal generation-skipping tax is in existence at my death, the trustee as of my death shall divide the Marital Trust into two separate trusts designated the "GST Exempt Marital Trust" and the "GST Nonexempt Marital Trust." The GST Exempt Marital Trust shall be a fraction of the Marital Trust of which

- (i) the numerator is the amount of my GST exemption which is allocated to the GST Exempt Marital Trust, and
- (ii) the denominator is the federal estate tax value of the assets in the Marital Trust.

The balance of the Marital Trust, or all thereof if no GST exemption is allocated to the Marital Trust, shall be the GST Nonexempt Marital Trust.

If the federal generation-skipping tax is not in existence at my death, the Marital Trust shall be allocated _____% to the GST Exempt Marital Trust and _____% to the GST Nonexempt Marital Trust.

SECTION 2: The GST Exempt Marital Trust shall be held and disposed of as follows:

(a) Commencing with my death the trustee shall pay the income from the GST Exempt Marital Trust in convenient installments, at least quarterly, to my wife during her lifetime.

The trustee may also pay to my wife such sums from principal as the trustee deems necessary or advisable from time to time for her health and maintenance in reasonable comfort, considering her income from all sources known to the trustee, but shall make no invasion of the GST Exempt Marital Trust so long as any readily marketable assets remain in the GST Nonexempt Marital Trust.

(b) The personal representative of my estate (or if no representative is acting, the trustee) may elect to have a specific portion or all of the GST Exempt Marital Trust, herein referred to as the "marital portion," treated as qualified terminable interest property for federal estate tax purposes. If an election is made as to less than all of the GST Exempt Marital Trust, the specific portion shall be expressed as a fraction or percentage of the GST Exempt Marital Trust and may be defined by means of a formula. I intend that the marital portion shall qualify for the federal estate tax marital deduction in my estate.

If the marital portion is less than all of the GST Exempt Marital Trust, the trustee in its discretion may divide the GST Exempt Marital Trust into two separate trusts representing the marital and nonmarital portions of the GST Exempt Marital Trust. The two separate trusts shall be held and disposed of on the same terms and conditions as the GST Exempt Marital Trust, except that the trustee shall make no invasion of the principal of the nonmarital portion trust so long as any readily marketable assets remain in the marital portion trust.

(c) Upon the death of my wife the GST Exempt Marital Trust shall be held in trust hereunder or distributed to or in trust for such one or more of my descendants and their respective spouses and charitable, scientific or educational purposes, with such powers and in such manner and proportions as my wife may appoint by her will making specific reference to this power of appointment.

(d) Upon the death of my wife any part of the GST Exempt Marital Trust not effectively appointed or paid pursuant to SECTION 4 shall be held and disposed of as hereinafter provided.

FIFTH: If my wife survives me, the trustee as of my death shall set aside out of the trust estate as a separate trust for her benefit (undiminished to the extent possible by any estate or inheritance taxes or other charges) a fraction of the trust property of which **MARITAL TRUST**

(a) the numerator is the smallest amount which, if allowed as a federal estate tax marital deduction, would result in the least possible aggregate of federal and state estate taxes that would be payable by reason of my death, and

(b) the denominator is the federal estate tax value of the assets included in my gross estate which became (or the proceeds, investments or reinvestments of which became) trust property.

In determining the amount of the numerator the trustee shall assume that none of the Bypass Trust qualifies for a federal estate tax deduction.

For purposes of the preceding paragraph, the trust property is all property in the trust estate, including any property added thereto by my will, which was not paid pursuant to the preceding articles of this agreement and which would qualify for the federal estate tax marital deduction if it were distributed outright to my wife. For purposes of this agreement, my wife shall be deemed to have survived me if the order of our deaths cannot be proved.

Any part of the trust disclaimed by my wife shall be added to or used to fund the Bypass Trust. The disclaimer shall not preclude my wife from receiving benefits from the disclaimed property in the Bypass Trust, but my wife shall not have any power to appoint the portion of the Bypass Trust attributable to the disclaimed property.

My wife shall have the right by written notice to require the trustee to convert unproductive property in the trust to productive property within a reasonable time.

The trust shall be designated the "Marital Trust" and shall be held and disposed of as follows:

SECTION 1: If the federal generation-skipping tax is in existence at my death, the trustee as of my death shall divide the Marital Trust into two separate trusts designated the "GST Exempt Marital Trust" and the "GST Nonexempt Marital Trust." The GST Exempt Marital Trust shall be a fraction of the Marital Trust of which **GST DIVISION**

(i) the numerator is the amount of my GST exemption which is allocated to the GST Exempt Marital Trust, and

(ii) the denominator is the federal estate tax value of the assets in the Marital Trust.

The balance of the Marital Trust, or all thereof if no GST exemption is allocated to the GST Exempt Marital Trust, shall be the GST Nonexempt Marital Trust.

SECTION 3: The GST Nonexempt Marital Trust shall be held and disposed of as follows:

(a) Commencing with my death the trustee shall pay the income from the GST Nonexempt Marital Trust in convenient installments, at least quarterly, to my wife during her lifetime.

The trustee may also pay to my wife such sums from principal as the trustee deems necessary or advisable from time to time for her health, maintenance in reasonable comfort, and best interests, considering her income from all sources known to the trustee.

In addition, my wife may withdraw any part or all of the principal of the GST Nonexempt Marital Trust at anytime or times. The trustee shall make payment without question upon her written request. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise.

(b) Upon the death of my wife the principal and any accrued and undistributed income of the GST Nonexempt Marital Trust shall be held in trust hereunder or distributed to or in trust for such appointee or appointees (including the estate of my wife), with such powers and in such manner and proportions as she may appoint by her will making specific reference to this power of appointment. I intend that the GST Nonexempt Marital Trust shall qualify for the federal estate tax marital deduction in my estate.

(c) Upon the death of my wife any part of the principal and accrued and undistributed income of the GST Nonexempt Marital Trust not effectively appointed or paid pursuant to SECTION 4 shall be held and disposed of as hereinafter provided.

SECTION 4: Upon the death of my wife, unless she provides for payment by her estate or revocable trust, the trustee shall pay the aggregate amount by which the estate and inheritance taxes assessed by reason of the death of my wife shall be increased as a result of the inclusion of the GST Nonexempt Marital Trust and the marital portion of the GST Exempt Marital Trust in her estate for such tax purposes. Payment shall be made first from the principal of the GST Nonexempt Marital Trust not effectively appointed and, to the extent of any insufficiency, from the principal of the marital portion of the GST Exempt Marital Trust not effectively appointed. The trustee may make payment directly or to the personal representative of my wife's estate, as the trustee deems advisable. The trustee's selection of assets to be sold to pay that amount, and the tax effects thereof, shall not be subject to question by any beneficiary.

If it is desired to delete the limited testamentary power of appointment from the QTIP marital trust, substitute for SECTION 4 and SECTION 5 of FIFTH:

10 SECTION 4: Upon the death of my wife the Marital Trust shall be held and disposed of as hereinafter provided, except that, unless my wife provides for payment by her estate or revocable trust, the trustee shall first pay from the principal of the marital portion the amount by which the estate and inheritance taxes assessed by reason of the death of my wife shall be increased as a result of the inclusion of the marital portion in her estate for such tax purposes. Payment shall be made first from the GST Nonexempt Marital Trust and, to the extent of any insufficiency, from the GST Exempt Marital Trust. The trustee may make payment directly or to the personal representative of my wife's estate, as the trustee deems advisable. The trustee's selection of assets to be sold to pay that amount, and the tax effects thereof, shall not be subject to question by any beneficiary.

The two separate trusts shall be held and disposed of on the same terms and conditions as the Marital Trust, but the trustee in its discretion may pay principal to my wife disproportionately from the two trusts. The trustee in its discretion may invest the two trusts either jointly as a common fund or separately.

SECTION 2: Commencing with my death the trustee shall pay the income from the Marital Trust in convenient installments, at least quarterly, to my wife during her lifetime. **INCOME**

The trustee may also pay to my wife such sums from principal as the trustee deems necessary or advisable from time to time for her health and maintenance in reasonable comfort, considering her income from all sources known to the trustee. **PRINCIPAL
INVASION**

SECTION 3: The personal representative of my estate (or if no representative is acting, the trustee) may elect to have a specific portion or all of the Marital Trust, herein referred to as the "marital portion," treated as qualified terminable interest property for federal estate tax purposes. If an election is made as to less than all of the Marital Trust, the specific portion shall be expressed as a fraction or percentage of the Marital Trust and may be defined by means of a formula. I intend that the marital portion shall qualify for the federal estate tax marital deduction in my estate. **ELECTION**

If the marital portion is less than all of the Marital Trust, the trustee in its discretion may divide the Marital Trust into two separate trusts representing the marital and nonmarital portions of the Marital Trust. The two separate trusts shall be held and disposed of on the same terms and conditions as the Marital Trust, except that the trustee shall make no invasion of the principal of the nonmarital portion trust so long as any readily marketable assets remain in the marital portion trust.

SECTION 4: Upon the death of my wife the Marital Trust shall be held in trust hereunder or distributed to or in trust for such one or more of my descendants and their respective spouses and charitable, scientific or educational purposes, with such powers and in such manner and proportions as my wife may appoint by her will making specific reference to this power of appointment. **LIMITED
TESTAMENTARY
POWER OF
APPOINTMENT**

SECTION 5: Upon the death of my wife any part of the Marital Trust not effectively appointed shall be held and disposed of as hereinafter provided, except that, unless my wife provides for payment by her estate or revocable trust, the trustee shall first pay from the principal of the marital portion the amount by which the estate and inheritance taxes assessed by reason of the death of my wife shall be increased as a result of the inclusion of the marital portion in her estate for such tax purposes. Payment shall be made first from the GST Nonexempt Marital Trust and, to the extent of any insufficiency, from the GST Exempt Marital Trust. The trustee may make payment directly or to the personal representative of my wife's estate, as the trustee deems advisable. The trustee's selection of assets to be sold to pay that amount, and the tax effects thereof, shall not be subject to question by any beneficiary. **DEFAULT**

If as pray of the income and principal from Bypass Trust for the spouse and descendants is desired, substitute for SECTION 2 of SIXTH:

- 11 SECTION 2: If my wife survives me, then during her lifetime the trustee may pay so much or all of the income and principal of the Bypass Trust to anyone or more of my wife and descendants from time to time living, in equal or unequal proportions and at such times and in such manner as the trustee deems necessary or advisable for their health, support in reasonable comfort, and education (including postgraduate), considering the income of each of them from all sources known to the trustee, but shall make no invasion of the principal of the Bypass Trust for my wife so long as any readily marketable assets remain in the Marital Trust. Any income not so paid shall be added to principal. No payment of income or principal to a descendant of mine shall be charged against the share hereinafter provided for the descendant or his or her ancestor or descendants.

If it is desired to delete the limited testamentary power of appointment from Bypass Trust, substitute the following for SECTION 3 and SECTION 4 of SIXTH:

- 12 SECTION 3: Upon the death of my wife, or upon my death if my wife does not survive me or to the extent my wife disclaims, the Bypass Trust or the disclaimed part of it shall be held and disposed of as hereinafter provided.

SIXTH: The trustee as of my death shall set aside the balance of the trust estate as a separate trust. The trust shall be designated the "Bypass Trust" and shall be held and disposed of as follows:

**BYPASS
TRUST**

SECTION 1: If the federal generation-skipping tax is in existence at my death, the trustee as of my death shall divide the Bypass Trust into two separate trusts designated the "GST Exempt Bypass Trust" and the "GST Nonexempt Bypass Trust." The GST Exempt Bypass Trust shall be a fraction of the Bypass Trust of which

GST DIVISION

(i) the numerator is the amount of my GST exemption which is allocated to the GST Exempt Bypass Trust, and

(ii) the denominator is the federal estate tax value of the assets in the Bypass Trust.

The balance of the Bypass Trust, if any, shall be the GST Nonexempt Bypass Trust.

The two separate trusts shall be held and disposed of on the same terms and conditions as the Bypass Trust, but the trustee in its discretion may pay income and principal to my wife disproportionately from the two trusts. The trustee in its discretion may invest the two trusts either jointly as a common fund or separately.

SECTION 2: If my wife survives me, then commencing with my death the trustee shall pay the income from the Bypass Trust in convenient installments, at least quarterly, to her during her lifetime; but if the income so payable to my wife shall at any time or times exceed the amount which the trustee deems to be in her best interests (considering her other income and means of support known to the trustee, including the income from the Marital Trust, the desirability of augmenting her separate estate, and any other circumstances and factors deemed pertinent), the trustee may pay any part or all of the excess income to any one or more of my descendants from time to time living, in equal or unequal proportions, according to their respective needs and best interests, or accumulate the same and add it to principal as the trustee deems advisable.

INCOME

The trustee may also pay to any one or more of my wife and descendants, in equal or unequal proportions, such sums from principal as the trustee deems necessary or advisable from time to time for their health, support in reasonable comfort, and education (including postgraduate), considering the income of each of them from all sources known to the trustee, but shall make no invasion of the Bypass Trust for my wife so long as any readily marketable assets remain in the Marital Trust. No payment made for a descendant of mine shall be charged against the share hereinafter provided for the descendant or his or her ancestor or descendants.

**PRINCIPAL
INVASION**

SECTION 3: Upon the death of my wife if she survives me, the Bypass Trust shall be held in trust hereunder or distributed to or in trust for such one or more of my descendants and their respective spouses and charitable, scientific or educational purposes, with such powers and in such manner and proportions as my wife may appoint by her will making specific reference to this power of appointment.

**LIMITED
TESTAMENTARY
POWER OF
APPOINTMENT**

If a 90-day period of survivorship for a child or other descendant is desired (see Treas. Reg. §26.2612-1(a)(2)), insert after first sentence in SECTION 2 of SEVENTH:

- 13 For purposes of this agreement, a child or other descendant who is living at the death of the survivor of my wife and me, but dies no later than 90 days thereafter, shall be deemed to have predeceased the survivor.

As the GST exemption increases in future years, the funding in SECTION 2(b) might allocate little or no property to a child's GST nonexempt trust. If it is desired that the GST nonexempt trust shall receive a minimum percentage of property in all events, insert after fourth sentence in SECTION 2(b) of SEVENTH:

- 14 In all events, however, the child's GST nonexempt trust shall receive at least _____ % of the child's share.

SECTION 4: Upon the death of my wife any part of the Bypass Trust not effectively appointed (or upon my death if my wife does not survive me or to the extent my wife disclaims, the Bypass Trust or the disclaimed part of it) shall be held and disposed of as hereinafter provided. **DEFAULT**

SEVENTH: Upon the death of my wife, or upon my death if my wife does not survive me, the trust estate shall be segregated and divided as follows:

SECTION 1: If the federal generation-skipping tax is then in existence, the trustee shall segregate (and if necessary, divide) all of the property in the trust estate, including property from the Marital Trust and the Bypass Trust, so that property is either completely exempt or nonexempt from federal generation-skipping tax (hereinafter called "GST exempt property" and "GST nonexempt property"). If my wife survives me and part or all of her GST exemption is allocated to the trust estate, the trustee shall consider that in dividing the trust estate into GST exempt property and GST nonexempt property. A division shall be done on a fractional basis and may be defined by means of a formula. **GST EXEMPT AND NONEXEMPT PROPERTY**

SECTION 2: The trustee shall divide the trust estate into equal shares to create one share for each then living child of mine and one share for the then living descendants, collectively, of each deceased child of mine.

(a) Each share created for the descendants of a deceased child shall be distributed per stirpes to those descendants, subject to postponement of possession as provided below. If the federal generation-skipping tax is then in existence, each share shall be funded first with GST nonexempt property that qualifies for the predeceased parent rule in Internal Revenue Code Section 2651(e) and, to the extent of any insufficiency, with GST exempt property. **DEFAULT**

(b) If the federal generation-skipping tax is then in existence, after giving effect to (a) the remaining GST exempt property shall be used to fund the shares for my living children to the extent of the value of those shares, with each child's share receiving an equal portion of GST exempt property. The part of a child's share funded with GST exempt property shall be held as a separate trust for the child, designated the child's "GST exempt trust." To the extent permitted by applicable law, a child may disclaim a part or all of his or her interest in the GST exempt trust. The balance of a child's share, if any, shall be held as a separate trust for the child, designated the child's "GST nonexempt trust." Each trust shall be held and disposed of as hereinafter provided.

(c) If the federal generation-skipping tax is not then in existence, each share created for a living child of mine shall be allocated _____% to the child's GST exempt trust and _____% to the child's GST nonexempt trust.

If a spray of the income and principal from a child's GST exempt trust for the child and descendants is desired, substitute for SECTION 1 of EIGHTH:

15 SECTION 1: The trustee may pay so much or all of the income and principal of a child's GST exempt trust to any one or more of the child and his or her descendants from time to time living, in equal or unequal proportions and at such times and in such manner as the trustee deems necessary or advisable for their health, support in reasonable comfort, and education (including postgraduate), considering the income of each of them from all sources known to the trustee, but shall make no invasion for the child from the principal of his or her GST exempt trust so long as any readily marketable assets remain in a GST nonexempt trust for the child. Any income not so paid shall be added to principal. No payment of income or principal to a descendant of the child shall be charged against the share hereinafter provided for the descendant or his or her ancestor or descendants.

If it is desired that the generation-skipping trusts continue for the period of time allowed by the rule against perpetuities, substitute the following for SEVENTH, EIGHTH and the first paragraph of NINTH:

16 SEVENTH: Upon the death of my wife, or upon my death if my wife does not survive me, the trust estate shall be segregated and divided as follows:

(a) If the federal generation-skipping tax is then in existence, the trustee shall segregate (and if necessary, divide) all of the property in the trust estate, including property from the Marital Trust and the Bypass Trust, so that property is either completely exempt or nonexempt from federal generation-skipping tax (hereinafter called "GST exempt property" and "GST nonexempt property"). If my wife survives me and part or all of her GST exemption is allocated to the trust estate, the trustee shall consider that in dividing the trust estate into GST exempt property and GST nonexempt property. A division shall be done on a fractional basis and may be defined by means of a formula.

(b) If the federal generation-skipping tax is not then in existence, all of the property in the trust estate shall be allocated _____ % to GST exempt property and _____ % to GST nonexempt property.

The GST exempt property and GST nonexempt property shall be held and disposed of as hereinafter provided.

EIGHTH: The trustee shall forthwith divide the GST exempt property per stirpes among my descendants who are living at the death of the survivor of my wife and me. Each share set aside for a descendant of mine (herein referred to as a "beneficiary") shall be held as a separate trust, designated the beneficiary's "GST exempt trust," and disposed of as follows:

SECTION 1: The trustee shall pay the income from a beneficiary's GST exempt trust in convenient installments, at least quarterly, to the beneficiary during his or her lifetime; but if the income so payable to the beneficiary shall at any time or times exceed the amount which the trustee deems to be in his or her best interests (considering his or her other income and means of support known to the trustee, the desirability of augmenting his or her estate, and any other circumstances and factors deemed pertinent), the trustee may pay any part or all of the excess income to any one or more of the beneficiary's descendants from time to time living, in equal or unequal proportions, according to their respective needs and best interests, or accumulate the same and add it to principal as the trustee deems advisable.

The trustee may also pay to any one or more of the beneficiary and his or her descendants, in equal or unequal proportions, such sums from the principal of the beneficiary's GST exempt trust as the trustee deems necessary or advisable from time to time for their health, support in reasonable comfort, and education (including postgraduate), considering the income of each of them from all sources known to the trustee, but shall make no invasion for the beneficiary from his or her GST exempt trust so long as any readily marketable assets remain in a GST nonexempt trust hereinafter established for the beneficiary. No payment made for a descendant of the beneficiary shall be charged against the share hereinafter provided for the descendant or his or her ancestor or descendants.

SECTION 2: Upon the death of a beneficiary his or her GST exempt trust shall be held in trust hereunder or distributed to or in trust for such one or more of the beneficiary's surviving spouse, the beneficiary's descendants and their respective spouses, and my descendants (other than the beneficiary) and their respective spouses, with such powers and in such manner and proportions as the beneficiary may appoint by his or her will making specific reference to this power of appointment. For purposes of this agreement, the term "spouse" shall include a widow or widower, whether or not remarried.

SECTION 3: Upon the death of a beneficiary any part of his or her GST exempt trust not effectively appointed shall be divided per stirpes among his or her then living descendants, or if none, then per stirpes among the then living descendants of the nearest ancestor of the beneficiary who is a descendant of mine and who has one or more descendants then living, or if also none, then per stirpes among my then living descendants. Each portion set aside for a descendant of mine for whom a GST exempt trust is then held under this article shall be added to that trust. Each portion set aside for any other descendant shall be held as a separate GST exempt trust, with the descendant as the "beneficiary" of the trust, and shall be disposed of as provided in this article.

EIGHTH: A GST exempt trust for a child shall be held and disposed of as follows:

**GST EXEMPT
TRUST**

SECTION 1: The trustee shall pay the income from a child's GST exempt trust in convenient installments, at least quarterly, to the child during his or her lifetime; but if the income so payable to the child shall at any time or times exceed the amount which the trustee deems to be in his or her best interests (considering his or her other income and means of support known to the trustee, the desirability of augmenting his or her estate, and any other circumstances and factors deemed pertinent), the trustee may pay any part or all of the excess income to any one or more of the child's descendants from time to time living, in equal or unequal proportions, according to their respective needs and best interests, or accumulate the same and add it to principal as the trustee deems advisable.

INCOME

The trustee may also pay to any one or more of the child and his or her descendants, in equal or unequal proportions, such sums from the principal of the child's GST exempt trust as the trustee deems necessary or advisable from time to time for their health, support in reasonable comfort, and education (including postgraduate), considering the income of each of them from all sources known to the trustee, but shall make no invasion for the child from his or her GST exempt trust so long as any readily marketable assets remain in a GST nonexempt trust for the child. No payment made for a descendant of the child shall be charged against the share hereinafter provided for the descendant or his or her ancestor or descendants.

**PRINCIPAL
INVASION**

SECTION 2: Upon the death of a child his or her GST exempt trust shall be held in trust hereunder or distributed to or in trust for such one or more of the child's surviving spouse, the child's descendants and their respective spouses, and my descendants (other than the child) and their respective spouses, with such powers and in such manner and proportions as the child may appoint by his or her will making specific reference to this power of appointment. For purposes of this agreement, the term "spouse" shall include a widow or widower, whether or not remarried.

**LIMITED
TESTAMENTARY
POWER OF
APPOINTMENT**

SECTION 3: Upon the death of a child any part of his or her GST exempt trust not effectively appointed (or upon the death of the survivor of my wife and me if the child disclaims, the disclaimed part of his or her GST exempt trust) shall be distributed per stirpes to his or her then living descendants, or if none, then per stirpes to my then living descendants, subject to postponement of possession as provided below, except that each portion otherwise distributable to a child of mine for whom a GST exempt trust is then held hereunder shall be added to that trust.

DEFAULT

SECTION 4: The trustee shall terminate and distribute any GST exempt trust which is still held at the end of the period allowed by the applicable rule against perpetuities, if any. In addition, a corporate trustee in its discretion may terminate and distribute any GST exempt trust at any time if the corporate trustee determines that the cost of continuance thereof will substantially impair accomplishment of the purposes of the trust. A GST exempt trust terminated under this section shall be distributed to the beneficiary of the trust.

NINTH: Upon the death of the survivor of my wife and me, the trustee shall divide the GST nonexempt property into equal shares to create one share for each living child of mine and one share for the living descendants, collectively, of each deceased child of mine.

Each share created for the descendants of a deceased child shall be distributed per stirpes to those descendants, subject to postponement of possession as provided below. Each share created for a living child shall be held as a separate trust for the child, designated the child's "GST nonexempt trust," and disposed of as follows:

If a child's GST nonexempt trust is to be distributed outright to the child upon the death of the surviving spouse, (i) substitute the following for NINTH and (ii) delete or modify all references to GST nonexempt trust throughout EIGHTH:

17 NINTH: Upon the death of the survivor of my wife and me, a GST nonexempt trust for a child shall be distributed outright to the child.

If minor child, add to first paragraph of SECTION 1 of NINTH:

18 ... ; except that while the child is under the age of 21 years, the trustee may pay to or for the benefit of the child so much or all of the income from his or her GST nonexempt trust as the trustee deems necessary or advisable from time to time for his or her health, maintenance in reasonable comfort, education (including postgraduate) and best interests, adding to principal any income not so paid.

NINTH: A GST nonexempt trust for a child shall be held and disposed of as follows:

GST NONEXEMPT TRUST

SECTION 1: The income from a child's GST nonexempt trust shall be paid in convenient installments, at least quarterly, to the child until complete distribution of the trust or his or her prior death.

INCOME

The trustee may also pay to the child such sums from the principal of his or her GST nonexempt trust as the trustee deems necessary or advisable from time to time for the health, maintenance in reasonable comfort, education (including postgraduate) and best interests of the child and his or her descendants, individually and as a group, considering the income of each of them from all sources known to the trustee. The trustee may also pay to an educational organization or medical care provider such sums from principal as the trustee deems necessary or advisable from time to time for the tuition (including postgraduate) and medical care of any descendant of the child. No payment made for a descendant of the child shall be charged against the share hereinafter provided for the descendant or his or her ancestor or descendants.

PRINCIPAL INVASION

SECTION 2: After creation of a child's GST nonexempt trust and after a child has reached any one or more of the following ages, the child may withdraw from the principal of his or her GST nonexempt trust at any time or times not to exceed in the aggregate:

RIGHT TO WITHDRAW

1/3 in value after 30 years of age;

1/2 in value (after deducting any amount subject to withdrawal but not actually withdrawn) after 35 years of age; and

The balance after 40 years of age.

The value of the GST nonexempt trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The trustee shall make payment without question upon the child's written request. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise.

SECTION 3: If a child dies before receiving his or her GST nonexempt trust in full, then upon the death of the child his or her GST nonexempt trust shall be held in trust hereunder or distributed to or in trust for such appointee or appointees other than the child, his or her estate, his or her creditors and the creditors of his or her estate, with such powers and in such manner and proportions as the child may appoint by his or her will making specific reference to this power of appointment.

LIMITED TESTAMENTARY POWER OF APPOINTMENT

If it is desired to provide for contingent distributees in the event of a failure of descendants, add to TENTH:

- 19 If upon the death of the survivor of my wife and me, or at any time thereafter but prior to complete distribution of the trust estate, there is no living descendant of mine, any trust property then held under this agreement and not vested or effectively appointed shall be distributed 1/2 to my heirs-at-law and 1/2 to my wife's heirs-at-law, the heirs-at-law and the proportions which they shall respectively take to be determined in each case according to the present laws of descent of the state of my domicile as if my wife and I had both died at that time.

In addition, if a child's GST nonexempt trust would incur generation-skipping tax upon the death of the child (assuming the non-exercise of all testamentary powers of appointment granted to the child hereunder), then the child shall also have the power to appoint the portion of the GST nonexempt trust otherwise constituting a generation-skipping transfer to the creditors of his or her estate. This general testamentary power of appointment is granted to avoid generation-skipping tax. This power of appointment may be exercised only by a will making specific reference to this power. Any such portion not effectively appointed shall be held and disposed of as hereinafter provided, except that unless the child directs otherwise by his or her will or revocable trust, the trustee shall first pay from the principal of such portion, directly or to the personal representative of the child's estate as the trustee deems advisable, the amount by which the estate and inheritance taxes assessed by reason of the death of the child shall be increased as a result of the inclusion of such portion in the child's estate for such tax purposes. The trustee's selection of assets to be sold to pay that amount, and the tax effects thereof, shall not be subject to question by any beneficiary.

**CONTINGENT
GENERAL
TESTAMENTARY
POWER OF
APPOINTMENT**

SECTION 4: Upon the death of a child any part of his or her GST nonexempt trust not effectively appointed shall be distributed per stirpes to his or her then living descendants, or if none, then per stirpes to my then living descendants, subject to postponement of possession as provided below, except that each portion otherwise distributable to a child of mine for whom a GST nonexempt trust is then held under this article shall be added to that trust.

DEFAULT

TENTH: Each share of the trust estate which is distributable to a beneficiary who has not reached the age of 35 years shall immediately vest in the beneficiary, but the trustee shall retain possession of the share as a separate trust, paying to or for the benefit of the beneficiary so much or all of the income and principal of the share as the trustee deems necessary or advisable from time to time for his or her health, maintenance in reasonable comfort, education (including postgraduate) and best interests, adding to principal any income not so paid (except that after the beneficiary has reached the age of 21 years, the trustee shall pay to him or her all the income from the share in convenient installments, at least quarterly), and distributing 1/2 in value of the principal of the share to the beneficiary if he or she has then reached or at such time thereafter as he or she reaches the age of 30 years and the balance to the beneficiary when he or she reaches the age of 35 years or to the estate of the beneficiary if he or she dies before receiving the share in full.

**POSTPONEMENT
OF POSSESSION**

For ADMINISTRATIVE PROVISIONS, TRUSTEE POWERS, ADDITIONS, RIGHT TO REVOKE, GOVERNING LAW, TESTIMONIUM, ATTESTATION and ACKNOWLEDGMENT, refer to FORM 201: REVOCABLE TRUST AGREEMENT-One Settlor-Fractional Share Marital Trust.