

NOTATIONS FOR FORM 307

This form is designed for settlors who own only community property or both separate and community property and who will respectively execute wills patterned on FORM 110: WILL-Pour-over. It assumes that during the joint lifetime of the settlors the trust estate will include community property and perhaps the separate property of one or both of the settlors, and it permits addition upon the death of either settlor of his or her separate property and his or her share of any remaining community property. If the trust estate will not include community property, use FORM 209: REVOCABLE TRUST AGREEMENT-One Settlor-Outright for Married Settlor.

If the settlors are to be the initial trustees of the trust, (i) use the alternate trustee succession provision on page 301-22 and the alternate testimonium provision on page 301-40, and (ii) substitute for first paragraph:

1 THIS AGREEMENT is made this _____ day of _____, 20____, between JOHN DOE and MARY DOE, husband and wife, of _____, _____, as settlors, and JOHN DOE and MARY DOE, as trustee.

If one of the settlors is to be the sole initial trustee of the trust, refer to FORM 310: REVOCABLE TRUST AGREEMENT-One Settlor as Initial Trustee.

If one or both of the settlors do not have separate property, modify second paragraph of the agreement as appropriate.

FORM 307
REVOCABLE TRUST AGREEMENT
Community Property
-Outright for Married Settlers

TRUST AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 20____, between JOHN DOE and MARY DOE, husband and wife, of _____, as settlers, and NORTHERN TRUST [*insert full legal name of applicable NORTHERN TRUST bank throughout the instrument*], of _____, _____, as trustee.

The settlers and each of them hereby transfer to the trustee the property listed in the attached schedules and are causing the trustee to be designated as beneficiary of the life insurance policies described therein. The character of the property and insurance policies is as follows:

Schedule A is the community property of the settlers.

Schedule B is the separate property of settlor JOHN DOE.

Schedule C is the separate property of settlor MARY DOE.

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 referred to as the “trust estate” and shall be held upon the following trusts:

FIRST: During the joint lifetime of the settlers, the trust estate shall be held and disposed of as follows:

**DISTRIBUTIONS
DURING JOINT
LIFETIME**

SECTION 1: The trustee shall pay so much or all of the income and principal of the community property to the settlers or otherwise as the settlers, or either of them, shall direct.

**COMMUNITY
PROPERTY**

If at any time or times both settlers shall be unable to manage their affairs, the trustee may use such sums from the income and principal of the community property as the trustee deems necessary or advisable for the health and maintenance in reasonable comfort of the settlers and any person dependent upon them, or for any other purpose the trustee considers to be for settlers’ best interests.

SECTION 2: The trustee shall pay so much or all of the income and principal of a settlor’s separate property to that settlor or otherwise as he or she directs.

**SEPARATE
PROPERTY**

If at any time or times a settlor shall be unable to manage his or her affairs, the trustee may use such sums from the income and principal of his or her separate property as the trustee deems necessary or advisable for the health and maintenance in reasonable comfort of that settlor and any person dependent upon him or her, or for any other purpose the trustee considers to be for that settlor’s best interests.

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

2 SECOND: Upon the death of each settlor the trustee shall make the following payments. Upon the death of the first to die of the settlors, herein referred to as the "deceased settlor," the trustee shall make the following payments from his or her separate property and his or her share of the community property. Upon the death of the survivor of the settlors, herein referred to as the "surviving settlor," the trustee shall make the following payments from the Survivor's Trust, unless the surviving settlor directs otherwise by his or her will or revocable trust.

The trustee shall pay all expenses of each settlor's last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against settlor's estate (excluding debts secured by real property or life insurance), and unsatisfied pre-residuary devises under settlor's will if the will contains a residuary devise to this trust. The trustee shall also pay all estate and inheritance taxes assessed by reason of the death of each settlor, 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 the settlor may have a qualifying income interest for life or over which the settlor 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 settlor's estate, as the trustee deems advisable. The trustee shall make these payments without apportionment or reimbursement.

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 two paragraphs of SECOND:

3 SECOND: Upon the death of each settlor, if that settlor has no probate estate, or to the extent that the cash and readily marketable assets in the principal of the residue of that settlor's probate estate are insufficient, the trustee shall make the following payments. Upon the death of the first to die of the settlors, herein referred to as the "deceased settlor," the trustee shall make the following payments from his or her separate property and his or her share of the community property. Upon the death of the survivor of the settlors, herein referred to as the "surviving settlor," the trustee shall make the following payments from the Survivor's Trust, unless the surviving settlor directs otherwise by his or her will or revocable trust.

The trustee shall pay the expenses of each settlor's last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against settlor's estate (excluding debts secured by real property or life insurance), and pre-residuary devises under settlor's will if the 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 the death of each settlor, 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 settlor's estate, as the trustee deems advisable. The trustee shall make these payments without apportionment or reimbursement or charging any direct skip property.

The trustee shall not pay death taxes caused by:

- (a) Property over which the settlor may have a power of appointment,
- (b) Property in which the settlor 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 the settlor,
- (d) _____, and

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

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.

DISABILITY

SECTION 3: For purposes of this agreement, a settlor shall be considered to be unable to manage his or her affairs if he or she is under a legal disability or by reason of illness or mental or physical disability is unable to give prompt and intelligent consideration to financial matters. The determination as to a settlor's inability at any time shall be made by that settlor's physician and the other settlor (if he or she is living and not unable to manage his or her affairs), and the trustee may rely upon written notice of that determination.

CHARACTER OF PROPERTY

SECTION 4: Any community property or separate property of the settlors which is transferred to or from the trust shall retain its same character after the transfer.

UNPAID INCOME

SECTION 5: Any income of the trust not paid shall be added to principal.

TAXES-EXPENSES

SECOND: Upon the death of each settlor, if that settlor has no probate estate, or to the extent that the cash and readily marketable assets in the principal of the residue of that settlor's probate estate are insufficient, the trustee shall make the following payments. Upon the death of the first to die of the settlors, herein referred to as the "deceased settlor," the trustee shall make the following payments from his or her separate property and his or her share of the community property. Upon the death of the survivor of the settlors, herein referred to as the "surviving settlor," the trustee shall make the following payments from the Survivor's Trust, unless the surviving settlor directs otherwise by his or her will or revocable trust.

The trustee shall pay the expenses of each settlor's last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against settlor's estate (excluding debts secured by real property or life insurance), and pre-residuary devises under settlor's will if the will contains a residuary devise to this trust. The trustee shall also pay the estate and inheritance taxes assessed by reason of the death of each settlor, 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 the settlor may have a qualifying income interest for life or over which the settlor 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 settlor's estate, as the trustee deems advisable. The trustee shall make these payments without apportionment or reimbursement.

Assets or funds otherwise excludable from settlor's 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.

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

4 The settlors intend by this agreement to provide for all their children, including any hereafter born or adopted.

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

5 **FOURTH:** Upon the death of settlor JOHN DOE the trustee shall distribute from the principal of the trust estate:

- (a) \$ 5,000 to his 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 the grandchildren of JOHN DOE 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.

Distribution shall be made from the separate property of JOHN DOE and his share of the community property, or if he is the surviving settlor, from the Survivor's Trust. 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.

In the simultaneous death sentence in first paragraph of FOURTH, determine whether husband or wife is the poorer spouse, and provide that such spouse it deemed to have died last.

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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 interest of the beneficiaries to compensate for the effect of elections or allocations under the tax laws made by the personal representative of settlor's 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: The settlors have three children now living, namely:

FAMILY

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

FOURTH: After the death of the deceased settlor the trustee shall hold all of the trust estate as a separate trust for the benefit of the surviving settlor. The trust shall be designated the "Survivor's Trust" and shall be disposed of as hereinafter provided. For purposes of this agreement, settlor MARY DOE shall be deemed to have survived settlor JOHN DOE if the order of their deaths cannot be proved.

SURVIVOR'S TRUST

SECTION 1: During the lifetime of the surviving settlor the trustee shall pay so much or all of the income and principal of the Survivor's Trust to the surviving settlor or otherwise as he or she directs.

DIRECTED PAYMENTS

If at any time or times the surviving settlor shall be unable to manage his or her affairs, the trustee may use such sums from the income and principal of the Survivor's Trust as the trustee deems necessary or advisable for the health and maintenance in reasonable comfort of the surviving settlor, or for any other purpose the trustee considers to be for his or her best interests.

Any income of the Survivor's Trust not paid shall be added to principal.

DISABILITY

If a retained share is of sufficient size to warrant distribution in two stages, substitute for SECTION 3 of FOURTH:

SECTION 3: Each share of the Survivor's Trust which is distributable to a beneficiary who has not reached the age of 30 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 25 years and the balance to the beneficiary when he or she reaches the age of 30 years or to the estate of the beneficiary if he or she dies before receiving the share in full.

DISTRIBUTION

SECTION 2: Upon the death of the surviving settlor any part of the principal and accrued and undistributed income of the Survivor's Trust not paid pursuant to SECOND shall be distributed in equal shares to such of settlors' children as shall then be living, except that the then living descendants of a deceased child of the settlors shall take per stirpes the share which the child would have received if living, subject to postponement of possession as provided below.

**POSTPONEMENT
OF POSSESSION**

SECTION 3: Each share of the Survivor's Trust which is distributable to a beneficiary who has not reached the age of 21 years shall immediately vest in the beneficiary, but the trustee shall (a) establish with the share a custodianship for the beneficiary under a Uniform Transfers or Gifts to Minors Act, or (b) 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, and distributing the share to the beneficiary when he or she reaches the age of 21 years or to the estate of the beneficiary if he or she dies before receiving the share in full.

For ADMINISTRATIVE PROVISIONS, TRUSTEE POWERS, ADDITIONS, RIGHT TO REVOKE, GOVERNING LAW, TESTIMONIUM, ATTESTATION and ACKNOWLEDGMENT, refer to FORM 301: REVOCABLE TRUST AGREEMENT-Community Property-Fractional Share Marital.