

## Revocable Living Trust Review

### Section 1.05 (a): we'd like S/S to have full access to the trust without any consent.

Your Trust already provides this. The last sub-paragraph comes into play only if there is something in your Trust which would prevent a successor Trustee from conduct business on behalf of the Trust. In your case, this would occur, for example, if the survivor of you "disclaimed" property into a separate Trust which limited what the survivor could do with the separate Trust assets.

### Section 1.05 (d): why is trustee distributing the property to us? Should we be the trustee if alive?

The two of you are the co-trustees of your Trust so long as you are living, so you are distributing income and principal to yourself. The language used may seem odd, but it's like saying that the President of the company has the right to give all of the assets to himself. You are both the Trustees and the beneficiaries of the Trust so long as you are living. As is discussed below, however, if you a successor Trustee has to step in while one or both of you is still alive, these directions are for the successor Trustee. See my comment in response to your Section 3.03 below.

### Section 1.06: Will trust retain TIN as SSN after death? If yes, then would it be a taxable entity? Or be a joint filing (Trust's TIN and SSN)?

Trust will not have a separate TIN so long as one of you is alive. As far as tax law is concerned, the two of you own everything in the Trust personally, so no separate tax returns are required. However, if for any reason you need to provide a TIN for the Trust, it will be SSN. If Trust split into two trusts upon death of one of you, you will have to get TIN for separate Trust. If you have one or more Children's Trust(s), these Trusts will also need their own TIN's.

### Section 3.02 (a): why is someone else a trustee while we are alive?

Although you *could* appoint another person to serve as Trustee of your RLT, you designated yourselves as original Trustees under opening sentence of Article One on page 1 of your Trust. In this case, you are the only Trustees of your Trust at this time. *Article 3 addresses the Succession of Trustees both while you are alive, when you are incapacitated, and when one or both of you are deceased.*

### Section 3.02(b): can we state more backups after A, B and C? Does it involve a lawyer?

Yes, you can add more successor Trustees. No Court order is required to change the Trustee while you are alive if the change falls within the scope paragraph 3.03.

### Section 3.02 (c): should it a trustee be assigned if majority of children are not minors.

Yes, this essential. The age of your children does not matter so long as there are assets in your Trust. Your Trust will become irrevocable upon death of both of you, with successor Trustees you named (or others) appointed in their place.

### Section 3.03(b): We do not want 'spendthrift child' to become trustee even after age 30. Why does clause require beneficiary to serve with another Trustee? Is it only until certain age?

Children are named co-trustees to introduce them to asset management, which will eventually be passed on to them. However, naming children as co-trustees does not give them right to control the trust assets.

### Section 3.03(d): Who is Trust Protector? Is it selected and assigned by us? Clause mentions primary beneficiary can appoint new Trustee – can it create a situation to bypass interpreting the intent?

See Article Four. Trust Protector is a "fail safe" protection in event that something goes wrong with regard to Trustee, the law or the particular circumstances which affect your Trust and the purposes for which you

created it. For tax reasons (in particular, to avoid the possibility that the IRS will consider the person who appoints Trust Protector to be owner of the Trust assets), my Trusts require that this person be appointed by the Court. The Powers of the Trust Protector are set forth in Section 4.08. I will send you an Article which explains what a Trust Protector is. I highly recommend including this provision, even though it is rarely used, to ensure that your children have a means to protect what you intended for them.

Section 4.05: '15' should be '15 days' I believe

Yes it should. I will have to be sure this correct follows through to the next draft. I don't know how the word "days" was left out.

Section 5.03: Difference between trustee distributing during incapacity vs. agent during incapacity?

"Trustee" refers to someone who had authority over the trust assets, while "Agent" refers to holder of powers given to him or her under a DPOA. In almost all cases they will be the same person. The powers given are designed to be essentially the same in the documents I have drafted.

Section 5.03(c): We selected 'consider needs of Grantor and beneficiaries equally', is this the language that reflects our selection? Would it matter if Trustee is S/S thus benefiting other Grantor is immaterial.

Yes to the first question. I don't know what you mean by the question about "materiality," but if attorney-in-fact and co-trustee is S/S, then they can distribute assets both for himself or herself and the children.

Section 6.02: Is it made irrevocable because that is based on our intent, or for tax purposes (to pass my portion of the exempt amount to them)? Can S/S trustee of Survivor's trust?

If any assets are distributed to a separate Trust for D/S, trust will be irrevocable by design. However, this trust is designed as "Disclaimer" Trust, which means that S/S has right either to keep everything in one trust, or to "disclaim" certain assets to be distributed into D/S trust. Whether or not to disclaim should be made asap after D/S death, and after a meeting with Estate Planning counsel to determine whether there is any tax or other reason to set up a separate Irrevocable Trust with the disclaimed assets.

Section 6.03: Death taxes and avoiding taxes during death of Grantor. Is transfer w/in 6 months going to minimize such transfer?

Death taxes refers to the FET. Presently, only .3% of individuals are likely to owe or pay any death taxes, and you are well below the \$22.4M, which would be required to trigger FET. Paragraph 6.03 is included to cover the remote possibility that (1) your estate will be a taxable estate upon death of one or both of you and (2) someone will file probate proceeding in court within 6 months of death. The provision has nothing to do with "minimizing" estate taxes.

Section 6.04: I understand this is done to save taxes for retirement plans. However 'designation date' is unclear. Is it needed to allow beneficiaries to obtain funds into trust without incurring penalty or undue tax to beneficiaries?

No. Paragraph intended to ensure that all funds from tax-qualified retirement plans (IRA) distributed to the Trust are immediately passed through to the individual beneficiaries you name in your Trust.

Section 6.05: 'payable to the Trustee', or 'payable to the Trust'?

Anything payable to the "Trust" is payable to the Trustee, so either word works.

Section 6.05: should it include anything for 529 plans here?

No. 529 plans cannot be made payable to a Trust. I don't believe any 529 plan administrator would accept your designation of a Trust as a beneficiary of the Plan.

Section 6.07: Why is PR needed? How is it different from Trustee, Trust Protector, Attorney-in-fact?

There are situations in which probate may have to be commenced even though you have a Trust. For example, if you or your wife become incapacitated, and the other dies thereafter. If his should happen, someone would have to file Probate proceeding to set up the "Special Needs" of Trust which is included in both of your Pour-Over Wills.

Section 7.01: if home is community property, why is this gift required explicitly?

Because home is now in Trust, which could be designed to distribute property in some other way.

Section 7.03: why is there clause to not distribute property to beneficiaries and not to their descendants?

Because (1) most people want to distribute personal property in equal shares to their children (equal shares, except for person property which is specifically gifted by memorandum) but (2) do not have plan about how to distributed personal property to their children's descendants. Any personal property which is of any consequence to your children or to your children's children should be distributed by memorandum.

Section 8.01: is distribution to Pour-over-will only applicable when Grantor was disabled?

Yes. The purpose of this provision is to protect assets from either (1) disqualifying S/S from governmental benefits or (2) losing those assets to governmental program when D/S dies.

Section 9: Is Survivor's trust irrevocable?

No. Survivor Trust is revocable, except to extent that it consists of the D/S Trust Property as described in Section 9.03.

Section 9.02: Does this allow surviving Grantor to change percentage allocation to beneficiaries, and Trustee appointment of beneficiaries trust?

Yes, except to the extent that the Survivor's share consists of the Deceased Trustor's Trust property.

Section 9.03: With use of Survivor Trust's separate share, retirement funds are not taxable upon D/S death? Are they taxed at death of second grantor? When can they be withdrawn penalty and gift-tax free?

You are mixing two questions here, since qualified retirement funds will not and should not ever become part of your Trust. Depending upon your plan, moreover, S/S can "roll over" spouse's plan into their own plan. Moreover, "qualified" retirement plans (plans where funds which are deposited into plan have not yet been taxed, such as regular IRA's and 401K's) can be "stretched out" for beneficiaries based upon table of life expectancies. Unless there are separate shares for each beneficiary, "stretch" out is based upon a table of life expectancies for the oldest beneficiary.

Section 10: When are descendant's trusts created? Are they taxable? Are they on beneficiary SSN?

These Trusts are created upon death of the last to die of the two of you. These are taxable entities with their own TIN.

Section 10.02(e): Our wish is that this be amended based on if beneficiary had descendants with S/S, or from previous marriage.

I recommend that all of these provisions be revised to permit *discretionary* distributions of principal only to provide your children with the best possible asset protection, including protection from divorced spouses.

Section 12.03: Why is it not allowing Trustee to transfer the amount in the beneficiaries trust?

A regular Trust for your beneficiaries does not include provisions necessary to prevent public entities from grabbing assets in the Trust.

Section 12.04: is the withdrawal by beneficiary from his/her trust or Grantor's trust or Survivor's Trust?

Neither. The Trusts for children do not come into existence until survivor of the two of you passes away. Moreover, beneficiary does not "withdraw" funds from the Trust. Rather, Trustee you have name makes "distributions" from the Trust.

Section 13(b): is this section needed if spouse is the primary beneficiary of the retirement plan?

Yes. The purpose of this paragraph is to ensure "pass-through" of retirement benefits which are *mistakenly* "made payable" to your Trust. Provision intended to treat benefits as though they were never directed to the Trust, and/or to give trustee right to "disclaim" beneficiary designation if this does trick.

Section 13.02: Will trust ever be beneficiary for life insurance? Should we make spouse (primary) and children (50% each contingent beneficiaries), before making trust the beneficiaries?

No, the Trust should not be beneficiary of insurance policies. However, this provision is included to protect you if the Trust is erroneously named as a beneficiary (which sometimes happens).

Section 14.01: Is this talking about exclusion amount as used by gifting the property/estate?

This concerns what is known as the DSUE, or "Deceased Spousal Unused Exclusion Amount." The purpose of this paragraph is to preserve the unused exclusion amount for S/S. This is tax issue, which is highly unlikely to arise in most situation (unless the two of you end up with more than \$22.4M in assets) for each of you, but it's here "just incase."

Section 14.03: I didn't understand reason behind Trust Decanting and power to appoint further Trust?

This Section is another "just in case" provision which will probably never be used. "Trust Decanting" is a means of substituting one Trust for another, and is very rarely used. The language used in this paragraph establishes boundaries on creation of "decanted" trust to ensure that your Trust does not harm interests of your beneficiaries.

Section 14.04: What is a pecuniary Amount?

A specific amount of money.

Section 14.12: What is the purpose of testamentary power of appointment?

A testamentary power of appointment is a term used to describe ability of beneficiary to appoint property to someone else.

Section 14.18: When are subsequent trusts established which then receive payments from SurvivorTrust?

I cannot think of any situation in your Trust where this would come up. However, provision is there because it is common to all Trusts I create (to ensure that, rather than amounts being given to an individual outright, they are given to a Trust of which the person is an individual. This gives the individual the protection of the Trust.

Section 15.04: What would be name of such bank account? Will it be bearing out name or trust name?

While you are alive, bank accounts remain in your name. However, you need to add Trust as owner by following directions in Trust Funding directions. Upon your passing, Bank might prefer to rename account.

Section 15.12: Who typically is a nominee? Is it Trustee? Beneficiaries?

Person into whose name securities are transferred to help transactions, while leave client as owner. Nominee account is stockbroker holds shares belonging to clients, to make transactions easier.

Section 15.19: Allow trustee copy of certain digital assets to beneficiaries, including videos or photos?

I can put in provision for this. However, if you and your wife you have something digital (photos) you really care about, you should include gift of those items to your children or others in personal memoranda.

Section 15.22: What is difference between Independent Trustee and Interested Trustee? The allocated trustee is independent or interested?

An interested Trustee is someone who has beneficial interest under the Trust. For example, children who are both Trustees and beneficiaries. You do not want to have interested beneficiaries. They should, however, be entitled to receive payment for the work they do as Trustees.

Section 16.07(c): Is it possible to define descendants as having born with Grantor or Beneficiary, or legally adopted by them, not from prior marriage of spouse of beneficiary?

A “descendant” does *not* include spouse who is not descended from you. If you or your wife have children from prior marriage, I need to know that and deal with the issue in a separate provision.

In addition to staged distribution, how do include distribution to qualify for home? Were you referring to purchase of home, or its down payment? Will house be CP for them or property of beneficiary's trust?

I will address my recommendation for discretionary distributions is in the revised Trust. However, once money is distributed to your children, it becomes theirs, and anything they buy can end up being co-mingled with the assets of their spouse and become “community property.”

Section 3.15: I understand that POA is person stepping into my shoes and can make all decisions I would have. In a case of S/S incapacitated, POA can change beneficiary, distribute money as he please, except to serve own interests because he is a fiduciary. While we'd like S/S to get all this liberty, it seems a bit generous to give all these powers to POA. Is there any protection against PoA for the S/S from not making radical changes to Trust? What's your recommendation?

POA can make only changes to Trust which are described specifically in the Trust, which are very limited.

Need to know if there are special provisions for 529 plans? Who should be designated as beneficiary?

You would almost certain designate one of your children on each plan. You can “roll over” plan to someone else if necessary. You can even take money back and use it for non-qualified expenses, but you will pay 10% penalty plus income tax on any gains earned on 529 plan investments. It would be good to get a ‘list’ from you that, in your expert opinion states recommended beneficiaries for various types of accounts (bank, 401k, IRA, Investment, Annuities, 529, Insurance, etc.) Your spouse is almost certainly best primary beneficiary for all but 529 accounts, with children as contingent beneficiaries. If your institution allows, you should designate your children as “separate shares” so that they can each have amounts paid to them (RMD's) stretched out over their own “estimated” lifetimes. However, each company has their own forms, and some will not agree to create separate shares.

Pour over will—Will it mean legal/court proceeding is required at death of either one of us? To roll over the undeclared assets into the Trust according to the manner described in Pour Over will?

It is a backup, but you may have to use it if S/S is incapacitated and in need of governmental services at death. If this should occur, yes, there will be a Court proceeding. You may also need to commence a Court proceeding if assets which belong in the Trust were not properly “funded” into the Trust at the time of death. However, this will be an abbreviated proceeding known as a “Heggstad” petition.

How many Trusts are created? Grantor's Trust, Survivor's Trust, beneficiaries' trust. Now, Later, Death of a spouse? Does each trust become a taxable entity? If so, when?

One Trust at first, then 1 or 2 after D/S dies (with an "administrative trust" in between, while Marital Trust (if any) is created and "funded". There could also be separate SNT for S/S. After you both pass away, there will be 2 separate Trusts for your children, the Marital Trust and your children's Trusts will need their own TIN's, as would SNT.

Who/When Trust Protector named? What is role of trust protector v. trustee v. attorney-in-fact v. spouse?

Trust Protector should be appointed by Court in proceeding filed by beneficiaries. The role of the Trust Protector is to protect the Trust by making changes to it, which are needed due to changes in the law or unexpected changes in the underlying situation.

How to keep compensation to Trustee, Trust Protector, Guardians and others, in check. 1% of estate is okay if estate value seems high.

Professionals who perform these services are compensated based upon their own fee schedules, if professionals, or at rates specified by Court. Private Guardians ( family members) do not usually receive compensation, except perhaps for complying with Court requirements.

Who keeps the original trust documents? Who is legally allowed to have a copy of the Trust? Lawyer, Trustee and Beneficiaries? Is it recorded in some state or federal government entity?

You keep original of your Trust. I provide you with a digital copy of your Trust and related documents on a flash drive. Trust is not recorded by State or any other governmental entity. You can provide copies of Trust to whomever you wish. I recommend you provide copies of Trust to Successor Trustees and agents designated in your Health Care documents and Powers of Attorney. I keep digital copy of your documents on my computer or in storage, but there is no guarantee that it will always be available. I also recommend that you store copies of your documents in some form of offsite secure storage such as Docubank.