NOTATIONS FOR FORM 101

For a discussion of the advantages and disadvantages of the fractional share marital trust, see the INTRODUCTION.

Certain provisions of this form assume that there is a disinterested party acting as trustee or co-trustee under the will. FORM 109: WILL–Plural Trustees, operates 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 it is desired to reserve apportionment rights for death taxes generated not only by marital trusts but also by other property passing outside the estate, substitute for first paragraph of FIRST:

1 FIRST: My executor shall pay all expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, and other proper charges against my estate (excluding debts secured by real property or life insurance). Except as hereinafter provided, my executor shall also pay all 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 will. Such payments, including interest and penalties on any tax, shall be charged against principal or income as provided by applicable state law. My executor shall make these payments from my estate 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.

My executor 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) ____________________________________________________________.

The person holding or receiving the above-described property shall pay, either directly or to my executor, 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 SECOND:

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

If there is community property, add to SECOND:

3 I intend by this will to dispose of my separate property and my share of our community property, and I confirm to my wife her share of our community property.
I, JOHN DOE, a resident of ________, ________, make this my will and revoke all prior wills and codicils.

FIRST: My executor shall pay all expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, and other proper charges against my estate (excluding debts secured by real property or life insurance). My executor shall also pay all estate and inheritance taxes assessed by reason of my death, including such taxes on property passing outside this will, 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. My executor shall make these payments from my estate 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.

My executor’s selection of assets to be sold to make the foregoing payments or to satisfy any pecuniary devises, and the tax effects thereof, shall not be subject to question by any beneficiary.

My executor shall make such elections and allocations under the tax laws as my executor 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 my executor or by the trustee.

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

SECOND: My wife’s name is MARY DOE, and she is herein referred to as “my wife.”

I have three children now living, namely:

JOHN DOE, JR., born ___________ (date) _________;
DOROTHY DOE, born ___________ (date) _________; and
DAVID DOE, born ___________ (date) _______.
If special gifts of personal effects are desired, substitute for THIRD:

THIRD: I give (a) all my clothing and jewelry to my son, DAVID, if he survives me by 30 days, and (b) all my personal and household effects, automobiles, boats and collections not otherwise effectively disposed of by this will, and any insurance policies thereon, to my wife if she so survives me, otherwise to my children who so survive me to be divided equally among them as they agree. My executor shall sell any property as to which there is no agreement within 60 days after admission of this will to probate and shall add the proceeds to the residue of my estate.

If a separate writing identifying gifts of personal effects is desired and is permitted in your state, substitute for THIRD:

THIRD: I give all my personal and household effects, automobiles, boats and collections, and any insurance policies thereon, in accordance with a written statement which I shall have prepared prior to my death in conformity with state law. My executor may assume that no written statement exists if none is found within 30 days after admission of this will to probate. Except as otherwise provided in any such written statement, I give the aforementioned property to my wife if she survives me by 30 days, otherwise to my children who so survive me to be divided equally among them as they agree. My executor shall sell any property as to which there is no agreement within 60 days after admission of this will to probate and shall add the proceeds to the residue of my estate.

If the will elsewhere makes a special gift of personal effects (e.g., if a gift of furniture and furnishings is included with a gift of real estate), limit THIRD to those items “not otherwise effectively disposed of by this will.”

Tangible personal property not clearly described in THIRD (e.g., airplanes, tangible personalty acquired for investment) should be specifically mentioned in the will.

If there may be minor children, add to THIRD:

If a child is a minor at the time of distribution, the guardian of or person in loco parentis to the child shall represent him or her in the division of the property, receipt for and hold his or her share or sell all or any part of it, and deliver the share or proceeds to the child when he or she reaches majority, or earlier if the guardian or person considers it to be for the child’s best interests.

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

FOURTH: I give
(a) $5,000 to my sister, JANE DOE, of _______, _______, if she survives me;
(b) $2,500 to the OLD PEOPLE’S HOME, of _______, _______, if in existence at my death; and
(c) $5,000 to each of my grandchildren who survives me; 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 devises.

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

FOURTH: If my wife survives me by 30 days, I give to her
(a) all my interests in our residences, including seasonal and vacation homes, and any insurance policies thereon, subject to any mortgage indebtedness and unpaid taxes and assessments on the properties;

OR

(b) all my transferable club memberships; and
(c) all my community property interests in any individual retirement plans in her name and any employee benefit plans in which she is a participant.
THIRD: I give all my personal and household effects, automobiles, boats and collections, and any insurance policies thereon, to my wife if she survives me by 30 days, otherwise to my children who so survive me to be divided equally among them as they agree. My executor shall sell any property as to which there is no agreement within 60 days after admission of this will to probate and shall add the proceeds to the residue of my estate.

FOURTH: All the residue of my estate, wherever situated, including lapsed devises, but expressly excluding any property over which I may have power of appointment at my death, I give to NORTHERN TRUST [insert full legal name of applicable NORTHERN TRUST bank throughout the instrument], of _______, _______, as trustee, to 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 will.

(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.
If it is desired to give the marital share outright instead of in trust, (i) substitute the following for FIFTH and (ii) delete or modify all references to Marital Trust throughout the will:

10 FIFTH: If my wife survives me, the trustee as of my death shall distribute to her from the trust estate (undiminished to the extent possible by any estate or inheritance taxes or other charges) a fraction of the trust property of which

(a) the numerator is the smallest amount which will result in the least possible aggregate of (i) federal and state estate taxes and (ii) state death taxes which are based upon the state death tax credit, that will 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. This distribution shall carry with it a proportionate part of the income of my estate from the date of my death to the date of distribution.

For purposes of the preceding paragraph, the trust property is all property in the trust estate which would qualify for the federal estate tax marital deduction if it were distributed outright to my wife. For purposes of this will, my wife shall be deemed to have survived me if the order of our deaths cannot be proved.

Any part of this distribution 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.

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):

11 . . . , 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:

12 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.

Alternative Provisions for Marital Trust:

The qualified terminable interest property election trust (“QTIP trust”) in SECTION 1 through SECTION 4 of FIFTH may facilitate post-mortem estate planning because of the marital deduction election. SECTION 3 permits the spouse to appoint the Marital Trust by will among testator’s descendant and their spouses and charities, thereby providing considerable flexibility, but it precludes the spouse from appointing the trust to others (e.g., a second spouse). The spouse may not appoint any part of the QTIP trust to another person during his or her lifetime.

If a GENERAL POWER OF APPOINTMENT MARITAL TRUST is desired, substitute for SECTION 1 through SECTION 4 of FIFTH:

13 SECTION 1: 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.

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 at any time 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.
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

(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 (i) federal
and state estate taxes and (ii) state death taxes which are based upon the state death
tax credit, 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 which would qualify for the federal estate tax marital deduction if it were distributed
outright to my wife. For purposes of this will, 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 unpro-
ductive 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: 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.

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.

SECTION 2: My executor 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

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SECTION 2: Upon the death of my wife the principal and any accrued and undistributed income of the 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 Marital Trust shall qualify for the federal estate tax marital deduction in my estate.

SECTION 3: Upon the death of my wife any part of the principal and accrued and undistributed income of the Marital Trust not effectively appointed shall be added to or used to fund the Bypass Trust, except that, unless my wife directs otherwise by her will or revocable trust, the trustee shall first pay from the principal of the Marital Trust, directly or to the personal representative of my wife’s estate as the trustee deems advisable, 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 Trust in her 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.

SECTION 4: Upon the death of my wife any part of the principal and accrued and undistributed income of the Marital Trust not effectively appointed shall be added to or used to fund the Bypass Trust, and the added property shall be held and disposed of as though the Bypass Trust were then being created, except that, unless my wife directs otherwise by her will or revocable trust, the trustee shall first pay from the principal of the marital portion, directly or to the personal representative of my wife’s estate as the trustee deems advisable, 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 Trust in her 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.

SECTION 5: Notwithstanding the provisions of FIRST, my executor shall elect to have all of the Marital Trust treated as qualified terminable interest property for federal estate tax purposes. I intend that the Marital Trust shall qualify for the federal estate tax marital deduction in my estate.

SECTION 6: In addition, my wife may withdraw at any time or times from the principal of the Marital Trust not to exceed in the aggregate $5,000 during any calendar year $5,000 prior to the end of the third full calendar year following my death and thereafter the greater of $5,000 and 5% of the value of the principal of the Marital Trust. If the Marital Trust is divided into marital and nonmarital portion trusts, the amount of my wife’s withdrawal right under this paragraph shall be determined by aggregating the values of the trusts, but the trustee shall satisfy the withdrawal right first from the principal of the marital portion trust so long as any readily marketable assets remain in that trust. 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.

If lifetime power to withdraw from the QTIP trust is desired, add to SECTION 1 of FIFTH:

14 In addition, my wife may withdraw at any time or times from the principal of the Marital Trust not to exceed in the aggregate during any calendar year $5,000 prior to the end of the third full calendar year following my death and thereafter the greater of $5,000 and 5% of the value of the principal of the Marital Trust. If the Marital Trust is divided into marital and nonmarital portion trusts, the amount of my wife’s withdrawal right under this paragraph shall be determined by aggregating the values of the trusts, but the trustee shall satisfy the withdrawal right first from the principal of the marital portion trust so long as any readily marketable assets remain in that trust. 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.

If it is desired to direct the executor to elect to have all of Marital Trust qualify for the federal estate tax marital deduction, substitute “Marital Trust” for “marital portion” in SECTION 4 and substitute for SECTION 2 of the QTIP trust:

15 SECTION 2: Notwithstanding the provisions of FIRST, my executor shall elect to have all of the Marital Trust treated as qualified terminable interest property for federal estate tax purposes. I intend that the Marital Trust shall qualify for the federal estate tax marital deduction in my estate.

If it is desired to delete the limited testamentary power of appointment from the QTIP trust, substitute for SECTION 3 and SECTION 4 of FIFTH in the QTIP trust:

16 SECTION 3: Upon the death of my wife the Marital Trust shall be added to or used to fund the Bypass Trust, except that, unless my wife directs otherwise by her will or revocable trust, the trustee shall first pay from the principal of the marital portion, directly or to the personal representative of my wife’s estate as the trustee deems advisable, 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. 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 Bypass Trust will be funded at testator’s death and will or may be divided into shares prior to spouse’s death, substitute for SECTION 4 of FIFTH in the QTIP trust:

17 SECTION 4: Upon the death of my wife any part of the Marital Trust not effectively appointed shall be added to the Bypass Trust, and the added property shall be held and disposed of as though the Bypass Trust were then being created, except that, unless my wife directs otherwise by her will or revocable trust, the trustee shall first pay from the principal of the marital portion, directly or to the personal representative of my wife’s estate as the trustee deems advisable, 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. 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.

or substitute for SECTION 3 of alternate FIFTH in the general power of appointment marital trust:

18 SECTION 3: Upon the death of my wife any part of the principal and accrued and undistributed income of the Marital Trust not effectively appointed shall be added to the Bypass Trust, and the added property shall be held and disposed of as though the Bypass Trust were then being created, except that, unless my wife directs otherwise by her will or revocable trust, the trustee shall first pay from the principal of the Marital Trust, directly or to the personal representative of my wife’s estate as the trustee deems advisable, 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 Trust in her 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.
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.

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 3: 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.

SECTION 4: Upon the death of my wife any part of the Marital Trust not effectively appointed shall be added to or used to fund the Bypass Trust, except that, unless my wife directs otherwise by her will or revocable trust, the trustee shall first pay from the principal of the marital portion, directly or to the personal representative of my wife’s estate as the trustee deems advisable, 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. 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 a spray of the income from Bypass Trust is desired but the spouse is to be the primary beneficiary, add to first paragraph of SECTION 1 of SIXTH:

19. . . ; 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.

If a spray of the income and principal from Bypass Trust for the spouse and descendants is desired, substitute for SECTION 1 of SIXTH:

20. SECTION 1: 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 any one 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 principal encroachment for spouse alone is desired, substitute for second paragraph of SECTION 1 of SIXTH:

21. 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 Bypass Trust so long as any readily marketable assets remain in the Marital Trust.

If Bypass Trust is to be divided into shares as of the death of the testator, substitute the following for SECTION 1 through SECTION 3 and renumber the succeeding sections of SIXTH:

22. SECTION 1: The trustee shall forthwith divide the Bypass Trust, including any amounts added thereto from the Marital Trust, into equal shares to create one share for each child of mine living at my death and one share for the then 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 and disposed of as hereinafter provided.

If it is desired to delete the limited testamentary power of appointment from Bypass Trust, substitute the following for SECTION 2 and SECTION 3 and renumber the succeeding sections of SIXTH:

23. SECTION 2: Upon the death of my wife, or upon my death if my wife does not survive me, the trustee shall divide the Bypass Trust, including any amounts added thereto from the Marital Trust, 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.

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 and disposed of as hereinafter provided.
SIXTH: The trustee as of my death shall set aside the balance of the trust estate, or all thereof if my wife does not survive me, as a separate trust. The trust shall be designated the “Bypass Trust” and shall be held and disposed of as follows:

SECTION 1: 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.

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, and for the health, support in reasonable comfort, and education (including postgraduate) of any child of mine who may be dependent upon her, 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 child of mine shall be charged against the share hereinafter provided for the child or his or her descendants.

SECTION 2: Upon the death of my wife if she survives me, the Bypass Trust (excluding any amounts added thereto from 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.
If Bypass Trust is to be distributed upon the death of the surviving spouse, substitute the following for SECTION 3 through SECTION 7 and renumber the succeeding section of SIXTH:

24 SECTION 3: Upon the death of my wife any part of the Bypass Trust not effectively appointed, including any amounts added thereto from the Marital Trust, (or upon my death if my wife does not survive me, the Bypass Trust) shall be distributed in equal shares to such of my children as shall then be living, except that the then living descendants of a deceased child of mine shall take per stirpes the share which the child would have received if living, subject to postponement of possession as provided below.

If Bypass Trust is to be held as a single trust for children after the death of the surviving spouse and distributed when the youngest child has reached a specified age, substitute the following for SECTION 3 through SECTION 7 and renumber the succeeding section of SIXTH:

25 SECTION 3: After the death of my wife any part of the Bypass Trust not effectively appointed, including any amounts added thereto from the Marital Trust, (or after my death if my wife does not survive me, the Bypass Trust) shall be held and disposed of as hereinafter provided.

SECTION 4: Until the time hereinafter fixed for distribution, the trustee may pay so much or all of the income and principal of the Bypass Trust to any one or more of my children and the descendants of a deceased child of mine from time to time living, in equal or unequal proportions and at such times as the trustee deems best, considering the needs, other income and means of support, and best interests of my children and those descendants, individually and as a group, and any other circumstances and factors which the trustee deems pertinent, adding to principal any income not so paid. No payment of income or principal to a child or other descendant of mine shall be charged against the share hereinafter provided for the child or descendant or his or her ancestor or descendants.

SECTION 5: If upon or whenever after the death of the survivor of my wife and me there is no living child of mine under the age of 25 years, the trustee shall distribute the Bypass Trust in equal shares to such of my children as shall then be living, except that the then living descendants of a deceased child of mine shall take per stirpes the share which the child would have received if living, subject to postponement of possession as provided below.

If Bypass Trust is to be held as a single trust for children after the death of the surviving spouse and divided into shares when the youngest child has reached a specified age, substitute the following for SECTION 3 and renumber the succeeding sections of SIXTH:

26 SECTION 3: After the death of my wife any part of the Bypass Trust not effectively appointed, including any amounts added thereto from the Marital Trust, (or after my death if my wife does not survive me, the Bypass Trust) shall be held and disposed of as hereinafter provided.

SECTION 4: Until the time hereinafter fixed for division into shares, the trustee may pay so much or all of the income and principal of the Bypass Trust to any one or more of my children and the descendants of a deceased child of mine from time to time living, in equal or unequal proportions and at such times as the trustee deems best, considering the needs, other income and means of support, and best interests of my children and those descendants, individually and as a group, and any other circumstances and factors which the trustee deems pertinent, adding to principal any income not so paid. No payment of income or principal to a child or other descendant of mine shall be charged against the share hereinafter provided for the child or descendant or his or her ancestor or descendants.

SECTION 5: If upon or whenever after the death of the survivor of my wife and me there is no living child of mine under the age of 25 years, the trustee shall divide the Bypass Trust 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.

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 and disposed of as hereinafter provided.

If Bypass Trust is held as a single trust for children and principal encroachment is desired to enable a child to enter a business or acquire a home, add to alternate SECTION 4 of SIXTH:

27 In addition, to the extent that the trustee determines that the interests under the preceding paragraph of my other children and descendants of a deceased child of mine will not thereby be jeopardized, the trustee may pay to a child of mine who has reached the age of 25 years such sums (not exceeding the child’s presumptive share) from the principal of the Bypass Trust as the trustee deems necessary or advisable to enable the child to enter into or remain in a business, vocation or profession in which the trustee believes the child will have reasonable prospects of success, to assist the child in acquiring or furnishing a home, or for any similar purpose which the trustee considers to be in the best interests of the child. Each payment to a child of mine under this paragraph shall be treated as an advancement and charged without interest against the share hereinafter provided for the child or his or her descendants.
SECTION 3: Upon the death of my wife any part of the Bypass Trust not effectively appointed, including any amounts added thereto from the Marital Trust, (or upon my death if my wife does not survive me, the Bypass Trust) shall be divided 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.

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 and disposed of as hereinafter provided.
If minor child, add to first paragraph of SECTION 4 of SIXTH:

28; 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 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.

If a child’s share is of sufficient size to warrant withdrawal in three stages, substitute for SECTION 5 of SIXTH:

29 SECTION 5: After division of the Bypass Trust into shares 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 share at any time or times not to exceed in the aggregate:

1/3 in value after 25 years of age;
1/2 in value (after deducting any amount subject to withdrawal but not actually withdrawn) after 30 years of age; and
The balance after 35 years of age.

The value of the share 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.

If mandatory distribution of a child’s share is desired, substitute the following for SECTION 5 through SECTION 7 and renumber the succeeding section of SIXTH:

30 SECTION 5: When a child reaches the age of 25 years, or upon division of the Bypass Trust into shares if he or she has then reached that age, the trustee shall distribute to the child 1/2 in value of the principal of his or her share then held hereunder; the trustee shall forthwith distribute to the child 1/2 in value of any subsequent addition to his or her share; and when a child reaches the age of 30 years, or upon division of the Bypass Trust into shares if he or she has then reached that age, the trustee shall distribute to the child the balance of his or her share.

SECTION 6: If a child dies before receiving his or her share in full, then upon the death of the child his or her share 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 descendant of mine for whom a share of the Bypass Trust is then held hereunder shall be added to that share.
SECTION 4: The income from a child’s share shall be paid in convenient installments, at least quarterly, to the child until complete distribution of the share or his or her prior death.

The trustee may also pay to the child such sums from the principal of his or her 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, considering the income of the child from all sources known to the trustee.

SECTION 5: After division of the Bypass Trust into shares and after a child has reached the age of 25 years, the child may withdraw any part or all of the principal of his or her share at any time or times, but not to exceed in the aggregate 1/2 in value thereof prior to reaching the age of 30 years. The value of the share shall be its value as of the child’s first exercise of his or her 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 6: If a child dies before receiving his or her share in full, then upon the death of the child his or her share shall be held in trust hereunder or distributed to or in trust for such appointee or appointees, 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, except that any part of the child’s share not subject to withdrawal prior to the death of the child may be appointed only to or for the benefit of any 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. For purposes of this will, the term “spouse” shall include a widow or widower, whether or not remarried.
If it is desired to provide for contingent distributees in the event of a failure of descendants, insert the following after SECTION 7 and renumber the succeeding section of SIXTH:

SECTION 8: If upon the death of the survivor of my wife and me, or at any time thereafter but prior to complete distribution of the Bypass Trust, there is no living descendant of mine, any trust property then held under this article 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.

If a retained share is of sufficient size to warrant distribution in two stages, substitute for SECTION 8 of SIXTH:

SECTION 8: Each share of the Bypass 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.
SECTION 7: Upon the death of a child any part of his or her share 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 descendant of mine for whom a share of the Bypass Trust is then held hereunder shall be added to that share.

SECTION 8: Each share of the Bypass 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.

SEVENTH: The following provisions shall apply to the trust estate and to each trust under this will:

SECTION 1: If income or discretionary amounts of principal become payable to a beneficiary under disability, then that income or principal shall be paid or expended only in such of the following ways as the trustee deems best: (a) directly to the beneficiary or his or her attorney in fact; (b) to the legally appointed guardian or conservator of the beneficiary; (c) to a custodian for the beneficiary under a Uniform Transfers or Gifts to Minors Act; (d) by the trustee directly for the benefit of the beneficiary; (e) to an adult relative or friend in reimbursement for amounts properly advanced for the benefit of the beneficiary.

SECTION 2: The interests of beneficiaries in principal or income shall not be subject to the claims of any creditor, any spouse for alimony or support, or others, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered. This provision shall not limit the exercise of any power of appointment.

The rights of beneficiaries to withdraw trust property are personal and may not be exercised by a guardian, conservator, attorney in fact or others.
If the trust estate will not include residential property, SECTION 5 of SEVENTH may be omitted.
SECTION 3: The allocation of receipts and disbursements between income and principal shall be determined as provided by this will and applicable state statute or in cases not covered by statute by the trustee, except that

(a) if the trust is beneficiary or owner of an individual account in any employee benefit plan or individual retirement plan, income earned after death in the account shall be income of the trust, and if the trustee is required to pay all trust income to a beneficiary, the trustee shall collect and pay the income of the account to the beneficiary at least quarterly (and to the extent that all income cannot be collected from the account, the deficiency shall be paid from the principal of the trust),

(b) reserves for depreciation shall be established out of income only to the extent that the trustee determines that readily marketable assets in the principal of the trust will be insufficient for any renovation, major repair, improvement or replacement of trust property which the trustee deems advisable, and

(c) income received after the last income payment date and undistributed at the termination of any estate or interest shall, together with any accrued income, be paid by the trustee as income to the persons entitled to the next successive interest in the proportions in which they take that interest.

SECTION 4: For convenience of administration or investment, the trustee may hold separate trusts as a common fund, dividing the income proportionately among them, assign undivided interests to the separate trusts, and make joint investments of the funds belonging to them. The trustee may consolidate any separate trust with any other trust with similar provisions for the same beneficiary or beneficiaries.

SECTION 5: If my wife survives me and the trust estate includes any interests in real estate which she used as a residence during my lifetime, including seasonal and vacation homes, then notwithstanding any other provision of this will, the following shall apply to each residence or interest therein:

(a) My wife shall have the right to occupy and use each residence, rent free, as long as she desires to do so, if she is a permissible income beneficiary of the trust which owns the residence.
(b) My wife shall have responsibility (and the trustee shall have no responsibility) for each residence described above, including maintenance, repairs, and other expenses relating to the residence, except that the trustee shall pay all taxes, real estate and condominium assessments, insurance premiums and mortgage payments on the residence. This subsection (b) applies only while my wife is under no disability.

While my wife has responsibility for a residence, the trustee need not review or inspect the residence, make any payments in connection with it except as provided above, or inquire whether my wife is fulfilling that responsibility.

While my wife has responsibility for a residence, she shall have the right to direct the trustee to sell the residence and also to reinvest part or all of the net sale proceeds in a replacement residence selected by her. My wife shall have sole responsibility for the sale and reinvestment, including price and other terms and conditions. My wife and the trustee shall have the same rights and responsibilities with respect to the replacement residence. My wife may exercise these powers of direction only in fiduciary capacity.

The statement of the trustee that it is acting according to this section shall fully protect all persons dealing with the trustee. The trustee shall have no responsibility for any loss that may result from acting in accordance with this section.

SECTION 6: The trustee shall render an account of trust receipts and disbursements and a statement of assets at least annually to each beneficiary then entitled to receive or receiving the income from the trust and, in addition, to any other beneficiaries who are entitled to receive accounts under applicable state law. An account is binding on each beneficiary who receives it and on all persons claiming by or through the beneficiary, and the trustee is released, as to all matters stated in the account or shown by it, unless the beneficiary commences a judicial proceeding to assert a claim within one year after the mailing or other delivery of the account.

Before distributing property to a beneficiary upon termination of a trust in whole or in part, the trustee shall have the right to require an approval of the trustee’s accounts, either by a written approval and release from the beneficiary or, if it cannot be obtained, by a judicial settlement of accounts. The expenses of the judicial proceeding (including attorneys fees) shall be paid from the beneficiary’s share of the trust. The trustee shall also have the right to require an indemnification from the beneficiary for any environmental law liability or expense which the trustee has incurred or may incur in the future with respect to the property distributed.
If a trust is or may be held for charitable objects, delete or modify SECTION 8 of SEVENTH as appropriate.

If the testator desires to name one or more individual trustees to act with the corporate trustee, substitute for SECTION 9 of SEVENTH one of the TRUSTEE SUCCESSION sections set forth in FORM 109: WILL–Plural Trustees.

If it is desired that a successor trustee be a corporation, substitute for last clause in second sentence of SECTION 9 of SEVENTH:

33 . . . , but any successor trustee shall be a bank or trust company qualified to accept trusts.
SECTION 7: The trustee shall be reimbursed for all reasonable expenses incurred in the management and protection of the trust and shall receive compensation for its services in accordance with its schedule of fees in effect from time to time. The trustee’s regular compensation shall be charged against income and principal as provided by applicable state law, except that the trustee shall have full discretion at any time or times to charge a larger portion or all against income.

SECTION 8: A corporate trustee in its discretion may terminate and distribute any trust hereunder if the corporate trustee determines that the costs of continuance thereof will substantially impair accomplishment of the purposes of the trust. The trustee shall terminate and forthwith distribute any trust created hereby, or by exercise of a power of appointment hereunder, which is still held at the end of the period allowed by the applicable rule against perpetuities, if any. Distribution under this section shall be made to the persons then entitled to receive or eligible to have the benefit of the income from the trust in the proportions in which they are entitled thereto, or if their interests are indefinite, to those persons per stirpes if they have a common ancestor, or if not, then in equal shares.

SECTION 9: Any trustee may resign at any time by written notice to each beneficiary then entitled to receive or eligible to have the benefit of the income from the trust. In case of the resignation, refusal or inability to act of any trustee acting or appointed to act hereunder, a successor trustee shall be appointed by the beneficiary or a majority in interest of the beneficiaries then entitled to receive or eligible to have the benefit of the income from the trust (or if their interests are indefinite, by a majority in number of the oldest generation of such beneficiaries), but no beneficiary or person legally obligated to a beneficiary shall be a successor trustee. Separate trusts under this will may have the same or different trustees.

Every successor trustee shall have all the powers given the originally named trustee. A successor trustee has no duty to inquire into the accounts or administration of any predecessor trustee and is not personally liable for any act or omission of any predecessor trustee. With the approval of the beneficiaries appointing a successor trustee, the successor trustee may accept the account rendered and the property received as a complete release and discharge to the predecessor trustee without incurring any liability for so doing.

No trustee wherever acting shall be required to give bond or surety or be appointed by or account for the administration of any trust to any court. The trustee need not register a trust with any court.

If another corporation succeeds to part or all of the trust business of a corporate trustee acting or appointed to act hereunder, that corporation shall be the successor corporate trustee, without the necessity of appointment, assignment or other action.
SECTION 10: If for any reason the trustee is unwilling or unable to act as to any property, such person or qualified corporation as the trustee shall from time to time designate in writing shall act as special trustee as to that property. Any person or corporation acting as special trustee may resign at any time by written notice to the trustee. Each special trustee shall have the powers granted to the trustee by this will, to be exercised only with the approval of the trustee, to which the net income and the proceeds from sale of any part or all of the property shall be remitted to be administered under this will.

SECTION 11: A beneficiary, trustee or other person shall be considered to be under disability or unable to act if the person is a minor, is adjudicated by a court to lack legal capacity, or is not so adjudicated but is, by reason of illness or mental or physical disability, unable to give prompt and intelligent consideration to financial matters. The determination as to inability may be made by a physician, and the trustee may rely upon written notice of that determination. The parent, spouse, adult child, attorney in fact, guardian or conservator of a beneficiary under disability shall receive notice and have authority to act for the beneficiary under this article.

SECTION 12: In disposing of any trust property subject to a power to appoint by will, the trustee may rely upon an instrument admitted to probate in any jurisdiction as the will of the donee or may assume that the power was not exercised if, within 3 months after the death of the donee, the trustee has no actual notice of a will which exercises the power. The trustee may rely on any document or other evidence in making payment under this will and shall not be liable for any payment made in good faith before it receives actual notice of a changed situation. The trustee may consult with legal counsel and other agents at trust expense and shall not be liable for any action taken or omitted in good faith reliance upon the advice or recommendation of the legal counsel or other agent. The trustee shall not be personally liable for acts or omissions done in good faith.

SECTION 13: To enable trusts to be either completely exempt or nonexempt from generation-skipping tax, or for any other reason, the trustee may divide a trust into two or more separate trusts and may hold an addition to a trust as a separate trust. A division shall be done on a fractional basis and may be defined by means of a formula. The rights of beneficiaries shall be determined as if the trusts were aggregated, but the trustee may pay principal to beneficiaries and taxing authorities disproportionately from the trusts. The trustee shall not be liable for deciding in its discretion to exercise or not exercise these powers.

Upon division or distribution of an exempt trust and a nonexempt trust held hereunder, the trustee in its discretion may allocate property from the exempt trust first to a share from which a generation-skipping transfer is more likely to occur.
If a no contest provision is desired and is permitted in your state, the following may be inserted in SEVENTH:

SECTION ___: If any person shall seek to prevent the admission of this will to probate or to contest the validity of any part of this will, including any codicil hereto, then I disinherit that person and his or her spouse and descendants, and all of them shall be deemed to have predeceased me for all purposes of this will.
If the trustee considers that any distribution from a trust hereunder other than pursuant to a power to withdraw or appoint is a taxable distribution subject to a generation-skipping tax payable by the distributee, the trustee shall augment the distribution by an amount which the trustee estimates to be sufficient to pay the tax and shall charge the same against the trust to which the tax relates.

If the trustee considers that any termination of an interest in trust property hereunder is a taxable termination subject to a generation-skipping tax, the trustee shall pay the tax from the portion of the trust property to which the tax relates, without adjustment of the relative interests of the beneficiaries.

If a trust hereunder would incur generation-skipping tax by reason of the death of a beneficiary (assuming the non-exercise of all testamentary powers of appointment granted to the beneficiary hereunder), then the beneficiary shall have the power to appoint the trust property 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, and it shall be in addition to any other testamentary power of appointment granted to the beneficiary under this will. Any such trust property not effectively appointed by the beneficiary shall be held and disposed of as provided in this will, except that unless the beneficiary directs otherwise by his or her will or revocable trust, the trustee shall first pay from the principal of such property, directly or to the personal representative of the beneficiary’s estate as the trustee deems advisable, the amount by which the estate and inheritance taxes assessed by reason of the death of the beneficiary shall be increased as a result of the inclusion of such property in the beneficiary’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.

SECTION 14: In determining whether any person is a child or descendant for purposes of this will, children and descendants by both birth and adoption shall be included, except that

(a) a person adopted when over the age of 18 years shall be excluded,

(b) a person born out of wedlock shall be treated as the child of the mother, unless her parental rights are terminated by placement for adoption or otherwise, and

(c) a person born out of wedlock shall not be treated as a child of the father unless the father marries the mother, acknowledges paternity of the child by a writing delivered to the trustee during the father’s lifetime, or paternity is established by adjudication before or after the death of the father.
If non-marketable assets (e.g., partnership interests, closely held stock, real estate, loans) or investment concentrations of marketable securities may be included in a trust, this should be discussed in advance with the corporate trustee. If these assets are to be retained, clients usually want to relieve the corporate trustee of investment responsibility for them. If this is desired, add to the end of SEVENTH:

35 SECTION 18: A trust under this will may hold some or all of the following assets, which shall be known as “special assets:”

(a) I appoint the following individuals who are willing and able to act (singly, and in the order listed) to act as manager for the special assets in the trust:
   (i) The remaining individual cotrustees or cotrustee of the trust (if any)
   (iii) _____________________________

(b) While a manager is acting, the manager shall have sole investment, voting and management responsibility (and the trustee shall have no such responsibility) for the special assets in the trust. The trustee shall sell the special assets, and deal with them, only upon the written direction of the manager. The trustee shall be under no obligation to review the special assets, make any investment recommendation with respect to them, solicit any direction from the manager, or value special assets which are non-marketable. The trustee need not review whether the manager is satisfying his or her responsibilities hereunder, and the trustee shall not be liable for any action or inaction of the manager.

(c) The powers of the manager shall be deemed to be and exercised as fiduciary powers. Special assets may include stock or other interests in a corporation, partnership, limited liability company or other entity (herein called a “company”). The manager’s fiduciary powers shall not preclude the manager from holding office in a company, accepting remuneration from it, voting any interest in favor of himself or herself as director, manager or officer, or purchasing or selling interests in the company. The trustee shall make tax elections with respect to a company only as the manager directs. If a firm succeeds to part or all of the business or assets of a company by merger, consolidation, reorganization or otherwise, the trust’s interest in that firm (whether or not publicly traded) shall continue to be a special asset of the trust.

(d) Special assets may include interests in real estate. The trustee shall have no responsibility, other than title-holding, for those interests and the tangible personal property associated with them. The manager shall have sole responsibility for managing, insuring, leasing and repairing the properties, collecting rents, and paying all taxes and expenses on the properties. The trustee shall deal with the properties only as and when directed to do so by the manager. If the manager asks the trustee to provide additional money for the expenses or improvement of a special asset, however, the trustee shall have responsibility for determining whether or not to provide funds. The manager may employ property managers at the expense of the trust or may manage the properties personally. The trustee need not review or inspect the properties, except that the trustee shall have the right (but not the duty) to exercise the trustee’s environmental powers under this will.

(e) A manager shall be entitled to reasonable compensation, unless waived, and to reimbursement for reasonable expenses, including travel costs.

(f) The statement of the trustee that it is acting according to this section shall fully protect all persons dealing with the trustee. The trustee shall have no responsibility for any loss that may result from acting in accordance with this section.
SECTION 15: Whenever trust property is to be distributed or allocated *per stirpes* to the then living descendants of a person, the trust property shall be first divided at the generational level of the person’s children, whether or not any child of the person is then living.

SECTION 16: In making discretionary distributions of trust property to beneficiaries, the trustee shall consider the following:

(a) Among current beneficiaries of the trust, the interests of an older-generation beneficiary shall have priority over younger-generation beneficiaries, if the younger-generation beneficiaries are descendants of the older-generation beneficiary.

(b) The interests of a current beneficiary shall have priority over the remaindermen of the trust, if the remaindermen are descendants of the current beneficiary.

The trustee may also consider tax effects in making discretionary distributions of trust property to beneficiaries.

SECTION 17: A trustee may not use trust property to discharge the trustee’s legal obligations, including any obligation to support a beneficiary.

EIGHTH: The trustee of each trust under this will shall hold, manage, care for and protect the trust property and shall have the following powers and, except to the extent inconsistent herewith, those now or hereafter conferred by law:

(a) To retain any property (including stock of any corporate trustee hereunder or a parent or affiliate company) originally constituting the trust or subsequently added thereto, and to invest and reinvest the trust property in bonds, stocks, mortgages, notes, bank deposits, options, futures, partnership and limited liability company interests, shares of investment companies, real estate investment trusts and other investment funds (including ones that receive services from, and pay compensation to, a corporate trustee hereunder or a parent or affiliate company), or other property of any kind, real or personal, domestic or foreign; the trustee may retain or make any investment without liability, even though it is not of a type, quality, marketability or diversification considered proper for trust investments; I understand that investments are subject to risk, including possible loss of principal, and that the trustee is not liable for losses which do not result from a violation of the trustee’s duties;
(b) To cause any property, real or personal, belonging to the trust to be held or registered in the trustee’s name or in the name of a nominee or in such other form as the trustee deems best without disclosing the trust relationship;

(c) To vote in person or by general or limited proxy, or refrain from voting, any corporate securities for any purpose, except that any security as to which the trustee’s possession of voting discretion would subject the issuing company or the trustee to any law, rule or regulation adversely affecting either the company or the trustee’s ability to retain or vote company securities, shall be voted as directed by the beneficiaries then entitled to receive or eligible to have the benefit of the income from the trust; to exercise or sell any subscription or conversion rights; to consent to and join in or oppose any voting trusts, reorganizations, consolidations, mergers, foreclosures and liquidations and in connection therewith to deposit securities and accept and hold other property received therefor;

(d) To lease trust property for any period of time though commencing in the future or extending beyond the term of the trust;

(e) To borrow money from any lender, extend or renew any existing indebtedness and mortgage or pledge any property in the trust;

(f) To sell at public or private sale, contract to sell, convey, exchange, transfer and otherwise deal with the trust property and any reinvestments thereof, and to sell options, from time to time for such price and upon such terms as the trustee sees fit;

(g) To employ agents, attorneys and proxies, to delegate to them such duties and powers as the trustee considers desirable, and to pay them reasonable compensation from the trust estate; a corporate trustee hereunder may delegate to an affiliate company any of the corporate trustee’s duties and powers, discretionary or otherwise, and the delegating corporate trustee need not review the actions of the affiliate;

(h) To compromise, contest, prosecute or abandon claims in favor of or against the trust;

(i) To distribute income and principal in cash or in kind, or partly in each, and to allocate or distribute undivided interests or different assets or disproportionate interests in assets, and no adjustment shall be made to compensate for a disproportionate allocation of unrealized gain for federal income tax purposes; to value the trust property and to sell any part or all thereof in order to make allocation or distribution; no action taken by the trustee pursuant to this paragraph shall be subject to question by any beneficiary;
(j) To deal with, purchase assets from, or make loans to, the fiduciary of any trust made by me or a trust or estate in which any beneficiary under this will has an interest, though a trustee hereunder is the fiduciary, and to retain any assets or loans so acquired, although not of a type, quality, marketability or diversification considered proper for trust investments; to deal with a corporate trustee hereunder individually or a parent or affiliate company;

(k) To maintain or terminate any life insurance policy included in the trust property, to pay premiums thereon (but only from principal), and to exercise all incidents of ownership in connection therewith;

(l) To elect, pursuant to the terms of any employee benefit plan, individual retirement plan or insurance contract, the mode of distribution of the proceeds thereof, and no adjustment shall be made in the interests of the beneficiaries to compensate for the effect of the election;

(m) To take such action in collecting the proceeds of any life insurance policy payable to the trustee (after deducting all charges by way of advances, loans or otherwise, for which the trustee shall not seek reimbursement) as the trustee deems best, paying the expense thereof from the trust property, but the trustee need not enter into or maintain litigation to enforce payment on a policy until indemnified to its satisfaction against all expenses and liabilities which might result therefrom; the insurance company shall not take notice of the provisions of this will or see to the application of the proceeds, and the trustee’s receipt to the insurance company shall be a complete release for any payment made;

(n) To retain or acquire any interests in oil, gas or other mineral resources received from any source without liability for any loss occasioned thereby; to execute any agreements, assignments, contracts, deeds, grants, leases for any term, and any other instruments or documents (even though their term may extend beyond the administration of any trust); to manage, control, operate, explore, mine, develop, or take any other action for the production, recovery, sale, treatment, storage, or transportation of any interest in oil, gas, or other mineral resources; to drill wells of any type; to conduct or participate in secondary recovery operations; to enter into agreements for pooling or unitization; to install, operate, or participate in the operation of any plant, mine, or other facility; and generally, with reference to oil, gas, and other mineral interests and operations, to enter into any other agreements and to take any other actions (whether or not presently recognized as common or proper practice by those engaged in the business of prospecting for, developing, producing, processing, transporting, or marketing oil, gas, or other minerals) as the trustee deems to be advisable;
If the GUARDIAN APPOINTMENT article is included, also add the optional provisions for after-born children in the FAMILY article and for minor children in the PERSONAL EFFECTS article and the INCOME section of a child’s trust share.

If an individual is to serve as co-executor, substitute for first paragraph of TENTH:

36 TENTH: I appoint my wife, MARY DOE, and NORTHERN TRUST as executors of this will. If for any reason either my wife or NORTHERN TRUST is unwilling or unable to act as an executor, the other of them shall be sole executor of this will. If for any reason neither my wife nor NORTHERN TRUST is willing and able to act as executor as to any property, I appoint as executor as to that property such person or qualified corporation as NORTHERN TRUST shall designate in writing. The term “executor” shall mean the executors or executor from time to time qualified and acting under this will. The compensation of any corporate executor shall be in accordance with its schedule of fees in effect from time to time. The compensation, if any, of the individual executor shall be in addition to the full fee of the corporate executor.

If an individual is to serve as executor with power to add a corporate coexecutor, substitute for first paragraph of TENTH:

37 TENTH: I appoint my wife, MARY DOE, as executor of this will. If my wife desires to associate a corporate executor with her, I appoint NORTHERN TRUST as co-executor of this will. If for any reason my wife is unwilling or unable to act as executor, I appoint NORTHERN TRUST as executor of this will. If for any reason neither my wife nor NORTHERN TRUST is willing and able to act as executor as to any property, I appoint as executor as to that property such person or qualified corporation as NORTHERN TRUST shall designate in writing. The term “executor” shall mean the executor or executors from time to time qualified and acting under this will. The compensation of any corporate executor shall be in accordance with its schedule of fees in effect from time to time. The compensation, if any, of the individual executor shall be in addition to the full fee of the corporate executor.

If an individual is to serve as co-executor, insert after first sentence in second paragraph of TENTH:

38 No individual executor shall participate in the exercise of any tax election or allocation which affects his [or her] interests or the interests of any person to whom he [or she] is legally obligated, or possess any incidents of ownership with respect to any policy of insurance on his [or her] life, and the corporate executor alone shall exercise that tax election or allocation and possess those incidents of ownership.

If trust provision for the investment management of special assets is included, the following may be added to the second paragraph of TENTH:

39 The restrictions on the powers of the trustee as to any special assets shall apply to the executor during probate of my estate.
(o) To inspect and monitor businesses and real property (whether held directly or through a partnership, corporation, trust or other entity) for environmental conditions or possible violations of environmental laws; to remediate environmentally-damaged property or to take steps to prevent environmental damage in the future, even if no action by public or private parties is currently pending or threatened; to abandon or refuse to accept property which may have environmental damage; the trustee may expend trust property to do the foregoing, and no action or failure to act by the trustee pursuant to this paragraph shall be subject to question by any beneficiary; and

(p) To perform other acts necessary or appropriate for the proper administration of the trust, execute and deliver necessary instruments and give full receipts and discharges.

NINTH: If my wife does not survive me or dies after my death without providing for the custody of a minor child of mine, I name __________________________ as guardian of the person of that child. If a guardian or conservator of the property and estate of a minor child is necessary, I name __________________________ to serve in that capacity. No bond or security shall be required of any guardian or conservator.

TENTH: I appoint NORTHERN TRUST as executor of this will. If for any reason NORTHERN TRUST is unwilling or unable to act as executor as to any property, I appoint as executor as to that property such person or qualified corporation as NORTHERN TRUST shall designate in writing. The compensation of any corporate executor shall be in accordance with its schedule of fees in effect from time to time.

I give my executor the same powers as to the administration and investment of my estate which I have granted the trustee with respect to the trust property, to be exercised without authorization by any court and, as to property subject to administration outside the state of my domicile, only with the approval of my domiciliary executor. No bond or security shall be required of any executor wherever acting. If permitted by law and if not inconsistent with the best interests of the beneficiaries as determined by my executor, the administration of my estate shall be independent of the supervision of any court.

If at my death any trust under this will has become executed, my executor shall make distribution to the beneficiary without the intervention of the trustee.
The headings in this will are for convenience of reference only and shall not be considered in the interpretation of this will.

[Note to drafting attorney:
As needed, modify the following Testimonium,
Attestation and Affidavit
to satisfy the legal requirements and customary practice of the state in which the testator resides.]

IN WITNESS WHEREOF I have signed this will, consisting of _____ pages, [this][the following] page included, and for the purpose of identification have placed my initials at the foot of each preceding page, this _____ day of __________________, 20 ______.

______________________________________________

TESTIMONIUM

We certify that the above instrument was on the date thereof signed and declared by JOHN DOE as his will in our presence and that we, at his request and in his presence and in the presence of each other, have signed our names as witnesses thereto, believing JOHN DOE to be of sound mind and memory at the time of signing.

______________________________________________ Residing at ________________________________

______________________________________________

______________________________________________ Residing at ________________________________

______________________________________________

______________________________________________ Residing at ________________________________

ATTESTATION

© 2014, Northern Trust Corporation
STATE OF ____________________________  
COUNTY OF ____________________________  

We, the undersigned, being the testator and the witnesses, respectively, whose names are signed to the foregoing instrument, and being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his will and that he signed willingly, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as a witness and that to the best of his or her knowledge the testator was at that time of legal age, of sound mind and under no constraint or undue influence.

____________________________________  
TESTATOR

____________________________________  
WITNESS

____________________________________  
WITNESS

____________________________________  
WITNESS

Subscribed, sworn to and acknowledged before me by JOHN DOE, the testator, and subscribed and sworn to before me by each of the above witnesses, this ______ day of ________________, 20_____.

____________________________________  
NOTARY PUBLIC

My commission expires ____________