NOTATIONS FOR FORM 208

A child’s share can be
   - Given to the child outright (see right page main form), or
   - Added to the trust that will be created for the child under the predeceased spouse’s estate planning document (see left page alternate provision).

This form is designed for a settlor who will execute a will patterned on FORM 110: WILL–Pour-over.

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

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

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

2 SECOND: Upon my death the trustee shall make the following payments from the trust estate. The trustee shall pay all expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against my estate (excluding debts secured by real property or life insurance), and unsatisfied pre–residuary devises under my will if my will contains a residuary devise to this trust. The trustee shall also pay all estate and inheritance taxes assessed by reason of my death, including such taxes on property passing outside this agreement, except that the amount, if any, by which the estate and inheritance taxes shall be increased as a result of the inclusion of property in which I may have a qualifying income interest for life or over which I may have a power of appointment shall be paid by the person holding or receiving that property. Such payments, including interest and penalties on any tax, shall be charged against principal or income as provided by applicable state law. The trustee may make payment directly or to the personal representative of my estate, as the trustee deems advisable. The trustee shall make these payments without apportionment or reimbursement.

If it is desired to reserve apportionment rights for death taxes generated not only by marital trusts but also by other property passing outside the revocable trust, substitute for first paragraph of SECOND:

3 SECOND: Upon my death, if I have no probate estate, or to the extent that the cash and readily marketable assets in the principal of the residue of my probate estate are insufficient, the trustee shall make the following payments from the trust estate. The trustee shall pay the expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against my estate (excluding debts secured by real property or life insurance), and pre–residuary devises under my will if my will contains a residuary devise to this trust. Except as hereinafter provided, the trustee shall also pay the estate and inheritance taxes and generation-skipping taxes on direct skips which are assessed by reason of my death, including such taxes on property passing outside this agreement. Such payments, including interest and penalties on any tax, shall be charged against principal or income as provided by applicable state law. The trustee may make payment directly or to the personal representative of my estate, as the trustee deems advisable. The trustee shall make these payments without apportionment or reimbursement or charging any direct skip property.

The trustee shall not pay death taxes caused by:

(a) Property over which 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
[e] List additional property passing outside the instrument against which tax apportionment rights should be asserted. ]
(e) ______________________.
TRUST AGREEMENT

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

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

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

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

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

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

SECOND: Upon my death, if I have no probate estate, or to the extent that the cash and readily marketable assets in the principal of the residue of my probate estate are insufficient, the trustee shall make the following payments from the trust estate. The trustee shall pay the expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering devises, claims allowable against my estate (excluding debts secured by real property or life insurance), and pre–residuary devises under my will if my will contains a residuary devise to this trust. The trustee shall also pay the estate and inheritance taxes assessed by reason of my death, including such taxes on property passing outside this agreement, except that the amount, if any, by which the estate and inheritance taxes shall be increased as a result of the inclusion of property in which I may have a quali-
The person holding or receiving the above-described property shall pay, either directly or to the trustee, the amount, if any, by which the death taxes are increased as a result of the taxation of that property. If two or more properties cause an increase in a tax, the increase shall be allocated among the properties in proportion to their respective taxable values.

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

4 FOURTH: Upon my death the trustee shall distribute from the principal of the trust estate:
   (a) $5,000 to my sister, JANE ROE, of __________, _________, if she is then living;
   (b) $2,500 to the OLD PEOPLE’S HOME, of __________, _________, if then in existence; and
   (c) $5,000 to each of my grandchildren who is then living; if a grandchild is a minor, payment may be made for the benefit of the grandchild to a custodian under a Uniform Transfers or Gifts to Minors Act.

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

If it is desired to distribute the trust estate in unequal proportions, substitute for SECTION 1 of FOURTH:

5 SECTION 1: The trustee as of my death shall distribute the balance of the trust estate as follows:
   (a) 15% in value thereof to my son JOHN DOE, JR. if then living, otherwise per stirpes to his then living descendants;
   (b) 15% in value thereof to my son DAVID DOE if then living, otherwise per stirpes to his then living descendants;
   (c) 30% in value thereof to my daughter DOROTHY DOE if then living, otherwise per stirpes to her then living descendants; and
   (d) 40% in value thereof in equal shares to such of my grandchildren as shall then be living, except that the then living descendants of a deceased grandchild of mine shall take per stirpes the share which the grandchild would have received if living.

Any gift under this section which fails for lack of a beneficiary shall augment proportionately the remaining gifts under this section. Distributions under this section shall be subject to postponement of possession as provided below.
fying income interest for life or over which I may have a power of appointment shall be paid
by the person holding or receiving that property. Such payments, including interest and
penalties on any tax, shall be charged against principal or income as provided by applicable
state law. The trustee may make payment directly or to the personal representative of my
estate, as the trustee deems advisable. The trustee shall make these payments without appor-
tionment or reimbursement.

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

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

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

THIRD: My husband, JOHN DOE, is deceased. I have three children now living,
namely:

    JOHN DOE, JR., born ______(date)_______;
    DOROTHY DOE, born ______(date)_______; and
    DAVID DOE, born _________(date)________.

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

    SECTION 1: The trustee shall forthwith distribute the balance of the trust estate in equal
shares to such of my children as shall be living at my death, 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. Distributions under this section shall be subject to postponement of
possession as provided below.
If a retained share is of sufficient size to warrant distribution in two stages, substitute for SECTION 2 of FOURTH:

SECTION 2: Each share of the trust estate 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.

Addition to Bypass Trust Created by Settlor’s Predeceased Spouse:

Settlor’s predeceased spouse may have established a bypass trust which will continue for the benefit of children after the death of the settlor. The settlor may desire that a child’s share shall not be given to the child outright, but rather shall be added to the bypass trust. If that is desired, insert the following after FOURTH and renumber the succeeding articles of the agreement:

FIFTH: If under FOURTH of this agreement any share of the trust estate is distributable to a child or other descendant for whom the Bypass Trust or any part thereof is to be held under the trust agreement executed by my now deceased husband, JOHN DOE, on _______________ ____, 19 ____, with NORTHERN TRUST, of ___________, ___________, as trustee (designated as trust number _______________), then notwithstanding anything in FOURTH I give that share to the then acting trustee under that trust agreement, to be added to the trust or part to be held for that child or descendant.

or if addition is to bypass trust created under revocable trust agreement with spouse as initial trustee:

FIFTH: If under FOURTH of this agreement any share of the trust estate is distributable to a child or other descendant for whom the Bypass Trust or any part thereof is to be held under the trust agreement executed by my now deceased husband, JOHN DOE, on _______________ ____, 19 ____, with himself as initial trustee, and under which NORTHERN TRUST, of ___________, ___________, is now acting as successor trustee, then notwithstanding anything in FOURTH I give that share to the then acting trustee under that trust agreement, to be added to the trust or part to be held for that child or descendant.

or if addition is to bypass trust created under spouse’s will:

FIFTH: If under FOURTH of this agreement any share of the trust estate is distributable to a child or other descendant for whom the Bypass Trust or any part thereof is to be held in trust under the will executed by my now deceased husband, JOHN DOE, on _______________ ____, 19 ____, and under which NORTHERN TRUST, of ___________, ___________, is now acting as trustee, then notwithstanding anything in FOURTH I give that share to the then acting trustee under my husband’s will, to be added to the trust or part to be held for that child or descendant.
SECTION 2: Each share of the trust estate which is distributable to a beneficiary who has not reached the age of 21 years shall immediately vest in the beneficiary, but the trustee shall (a) establish with the share a custodianship for the beneficiary under a Uniform Transfers or Gifts to Minors Act, or (b) retain possession of the share as a separate trust, paying to or for the benefit of the beneficiary so much or all of the income and principal of the share as the trustee deems necessary or advisable from time to time for his or her health, maintenance in reasonable comfort, education (including postgraduate) and best interests, adding to principal any income not so paid, and distributing the share to the beneficiary when he or she reaches the age of 21 years or to the estate of the beneficiary if he or she dies before receiving the share in full.

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