NOTATIONS FOR FORM 406

This form is based upon the sample charitable remainder annuity trust forms issued by the Internal Revenue Service. For more alternate provisions, annotations and additional forms, see:

Rev. Proc. 2003-55 (inter vivos CRAT providing for annuity payments payable consecutively for two measuring lives)

Rev. Proc. 2003-53 (inter vivos CRAT providing for annuity payments for one measuring life)

Rev. Proc. 2003-54 (inter vivos CRAT providing for annuity payments for a term of years)

For community property states: This form is designed for a trust estate consisting of settlor’s separate property. If the trust estate will consist of community property, use FORM 408: CHARITABLE REMAINDER ANNUITY TRUST UNDER IRREVOCABLE AGREEMENT–Community Property.

If the annuity is for the settlor alone, substitute for SECTION 1 through SECTION 13:

SECTION 1: The Donor hereby transfers and irrevocably assigns, on the above date, to the Trustee the property described in Schedule A, and the Trustee accepts the property and agrees to hold, manage, and distribute the property under the terms set forth in this trust instrument.

SECTION 2: In each taxable year of the trust during the annuity period, the Trustee shall pay to JOHN DOE (hereinafter “the Recipient”) an annuity amount equal to _________ [a number no less than 5 and no more than 50] percent of the initial net fair market value of all property transferred to the trust, valued as of the above date (that is, the date of the transfer). The first day of the annuity period shall be the date the property is transferred to the trust and the last day of the annuity period shall be the date of the Recipient’s death. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income, and to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal tax purposes, the Trustee shall pay to the Recipient (in the case of an undervaluation) or receive from the Recipient (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.

SECTION 3: The Trustee shall prorate the annuity amount on a daily basis for any short taxable year. In the taxable year of the trust during which the annuity period ends, the obligation of the Trustee to pay the annuity amount shall terminate with the regular quarterly installment next preceding the death of the Recipient.

SECTION 4: At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipient or the Recipient’s estate under the provisions above) to H COLLEGE (hereinafter “the Charitable Organization”). The Donor reserves the right to designate, at any time and from time to time, in lieu of the Charitable Organization identified above, one or more organizations described in §§170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code as the charitable remainderman and shall make any such designation by giving written notice to the Trustee. If the Charitable Organization is not an organization described in §§170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion.

NOTE: If the originally named charitable remainderman is an organization described in IRC §170(b)(1)(B), the reference to section “170(b)(1)(A)” may be deleted.

SECTION 5: No additional contributions shall be made to the trust after the initial contribution.

SECTION 6: The Trustee shall not engage in any act of self-dealing within the meaning of §4941(d) of the Code, as modified by §4947(a)(2)(A) of the Code, and shall not make any taxable expenditures within the meaning of §4945(d) of the Code, as modified by §4947(a)(2)(A) of the Code.

SECTION 7: The taxable year of the trust shall be the calendar year.

SECTION 8: The operation of the trust shall be governed by the laws of the State of ______________. However, the Trustee is prohibited from exercising any power or discretion granted under said laws that would be inconsistent with the qualification of the trust as a charitable remainder annuity trust under §664(d)(1) of the Code and the corresponding regulations.
TRUST AGREEMENT

On this _______ day of __________________, 20 ____, I, JOHN DOE, of ___________, ___________, (hereinafter “the Donor”), desiring to establish a charitable remainder annuity trust, within the meaning of Rev. Proc. 2003-55 and §664(d)(1) of the Internal Revenue Code (hereinafter “the Code”), hereby enter into this trust agreement with NORTHERN TRUST [insert full legal name of applicable NORTHERN TRUST bank throughout the instrument], of ___________, ___________, as the initial trustee (hereinafter “the Trustee”).

FIRST: This trust shall be known as the JOHN DOE Charitable Remainder Annuity Trust.

SECTION 1: The Donor hereby transfers and irrevocably assigns, on the above date, to the Trustee the property described in Schedule A, and the Trustee accepts the property and agrees to hold, manage, and distribute the property under the terms set forth in this trust instrument.

SECTION 2: In each taxable year of the trust during the annuity period, the Trustee shall pay to JOHN DOE (hereinafter “the Initial Recipient”) until the Initial Recipient’s death, and thereafter to his wife, MARY DOE (hereinafter “the Successor Recipient”) (subject to any proration in Section 4), an annuity amount equal to _________ [a number no less than 5 and no more than 50] percent of the initial net fair market value of all property transferred to the trust, valued as of the above date (that is, the date of the transfer). The Donor hereby expressly reserves the power, exercisable only by the Donor’s last will and testament, to revoke and terminate the interest of the Successor Recipient under this trust. The first day of the annuity period shall be the date the property is transferred to the trust and the last day of the annuity period shall be the date of the death of the survivor of the Initial Recipient and the Successor Recipient or, if the Donor revokes the interest of the Successor Recipient, the date of the Initial Recipient’s death. The annuity amount shall be paid in equal quarterly installments at the end of each calendar quarter from income, and to the extent income is not sufficient, from principal. Any income of the trust for a taxable year in excess of the annuity amount shall be added to principal. If the initial net fair market value of the trust assets is incorrectly determined, then within a reasonable period after the value is finally determined for federal tax purposes, the Trustee shall pay to the Initial Recipient and/or Successor Recipient (in the case of an undervaluation) or receive from the Initial Recipient and/or Successor Recipient (in the case of an overvaluation) an amount equal to the difference between the annuity amount(s) properly payable and the annuity amount(s) actually paid.
SECTION 9: This trust is irrevocable. However, the Trustee shall have the power, acting alone, to amend the trust from time to time in any manner required for the sole purpose of ensuring that the trust qualifies and continues to qualify as a charitable remainder annuity trust within the meaning of §664(d)(1) of the Code.

SECTION 10: Nothing in this trust instrument shall be construed to restrict the Trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

SECTION 11: If the contribution of property to the trust would, but for the operation of this section, fail to qualify for the income, gift or estate tax charitable deduction because of either

(a) the probability that the trust corpus will be exhausted before the termination of the annuity period exceeds 5 percent (Rev. Rul. 77-374), or

(b) the value of the remainder interest in such contributed property does not satisfy the requirements of §664(d)(1)(D) of the Code,

the terms of the trust shall be modified by the Trustee to the extent necessary, in the Trustee’s sole discretion, to qualify the trust under §664(d)(1) of the Code and the corresponding regulations, including (but not limited to) reduction of the annuity amount and, if necessary, reduction of the term of the annuity period.

SECTION 12: The provisions specifically applicable to this charitable remainder annuity trust shall prevail over any other provision in this trust instrument inconsistent herewith.
SECTION 3: The lifetime annuity interest of the Successor Recipient will take effect upon the death of the Initial Recipient only if the Successor Recipient furnishes the funds for payment of any federal estate taxes and state death taxes for which the Trustee may be liable upon the death of the Initial Recipient. If the funds are not furnished by the Successor Recipient, the annuity period shall terminate on the death of the Initial Recipient, notwithstanding any other provision in this instrument to the contrary.

SECTION 4: Except as provided below, the Trustee shall prorate the annuity amount on a daily basis for any short taxable year. The obligation of the Trustee to pay the annuity amount to the Initial Recipient shall terminate with the regular quarterly installment next preceding the Initial Recipient’s death. In the taxable year of the trust during which the annuity period ends, the obligation of the Trustee to pay the annuity amount shall terminate with the regular quarterly installment next preceding the termination of the annuity period.

SECTION 5: At the termination of the annuity period, the Trustee shall distribute all of the then principal and income of the trust (other than any amount due the Recipients or their estates under the provisions above) to H COLLEGE (hereinafter “the Charitable Organization”). The Donor reserves the right to designate, at any time and from time to time, in lieu of the Charitable Organization identified above, one or more organizations described in §§170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code as the charitable remainderman and shall make any such designation by giving written notice to the Trustee. If the Charitable Organization is not an organization described in §§170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code at the time when any principal or income of the trust is to be distributed to it, then the Trustee shall distribute the then principal and income to one or more organizations described in §§170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Code as the Trustee shall select, and in the proportions as the Trustee shall decide, in the Trustee’s sole discretion.

NOTE: If the originally named charitable remainderman is an organization described in IRC §170(b)(1)(B), the reference to section “170(b)(1)(A)” may be deleted.

SECTION 6: No additional contributions shall be made to the trust after the initial contribution.

SECTION 7: The Trustee shall not engage in any act of self-dealing within the meaning of §4941(d) of the Code, as modified by §4947(a)(2)(A) of the Code, and shall not make any taxable expenditures within the meaning of §4945(d) of the Code, as modified by §4947(a)(2)(A) of the Code.

SECTION 8: The taxable year of the trust shall be the calendar year.
SECTION 9: The operation of the trust shall be governed by the laws of the State of _______________. However, the Trustee is prohibited from exercising any power or discretion granted under said laws that would be inconsistent with the qualification of the trust as a charitable remainder annuity trust under §664(d)(1) of the Code and the corresponding regulations.

SECTION 10: This trust is irrevocable. However, the Trustee shall have the power, acting alone, to amend the trust from time to time in any manner required for the sole purpose of ensuring that the trust qualifies and continues to qualify as a charitable remainder annuity trust within the meaning of §664(d)(1) of the Code.

SECTION 11: Nothing in this trust instrument shall be construed to restrict the Trustee from investing the trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

SECTION 12: If the contribution of property to the trust would, but for the operation of this section, fail to qualify for the income, gift or estate tax charitable deduction because of either

(a) the probability that the trust corpus will be exhausted before the termination of the annuity period exceeds 5 percent (Rev. Rul. 77-374), or

(b) the value of the remainder interest in such contributed property does not satisfy the requirements of §664(d)(1)(D) of the Code,

the terms of the trust shall be modified by the Trustee to the extent necessary, in the Trustee’s sole discretion, to qualify the trust under §664(d)(1) of the Code and the corresponding regulations, including (but not limited to) reduction of the annuity amount and, if necessary, reduction of the term of the annuity period.

SECTION 13: The provisions specifically applicable to this charitable remainder annuity trust shall prevail over any other provision in this trust instrument inconsistent herewith.

For ADMINISTRATIVE PROVISIONS, TRUSTEE POWERS, TESTIMONIUM, ATTESTATION and ACKNOWLEDGMENT, refer to FORM 405: CHARITABLE REMAINDER UNITRUST UNDER IRREVOCABLE AGREEMENT–One Settlor. However, omit (i) the CONSOLIDATION section, (ii) the phrase “or subsequently added thereto” in paragraph (a) of the TRUSTEE POWERS article, and (iii) the ADDITIONS article.