

## Drafting for Decoupling of Illinois and Federal Estate Taxes

Presented by  
**David Rolewick**  
Rolewick & Gutzke, P.C.  
Wheaton

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### History

- **Legislature History**
  - Limit our discussion to the last thirty years.
- **Understanding the Illinois estate tax must start with the federal estate tax.**

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### History

- **Section 2011 of the IRC**
  - Provided a credit against the federal estate tax for state death taxes paid.
- **Section 2011(a) provided:**
  - The tax imposed by Section 2001 shall be credited with the amount of any estate, inheritance, legacy, succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

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## History

- **Prior to 1990**
  - Illinois had an inheritance tax, a tax imposed on the privilege of receiving property by inheritance.
- **Illinois Inheritance Tax**
  - Referred to as a pick-up tax because Illinois was picking up the tax that the federal government dropped by virtue of the credit allowed by 2011 of the Internal Revenue Code.
  - Illinois collected the total amount of the State Death Tax credit and defined its own tax as equal to this amount.
  - Payment of Illinois estate tax did not increase the overall tax bill of a decedent.
  - A portion of the tax due at the federal level was paid to Illinois, and a credit for the payment was reflected on the federal return.

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## History

- **1990**
  - Illinois moved from an inheritance tax to an estate tax with the Illinois Estate and Generation-Skipping Transfer Tax Act, 35 ILCS 405/1.  
<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=609&ChapterID=8>.
  - Much like the Illinois inheritance tax, the Illinois estate tax was a pick-up tax with the federal estate tax credit for state taxation.

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## Illinois Estate Tax

- **So how much is the Illinois estate tax?**
  - That depends on a number of factors, one of which is the year of death.

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## Illinois Estate Tax

- No Illinois tax due if, in the application year, the amount of the estate is less than:

1990 to 1997	\$600,000
1998	\$625,000
1999	\$650,000
2000	\$650,000
2001	\$675,000
2002	\$1,000,000
2003	\$1,000,000
2004	\$1,500,000
2005	\$1,500,000
2006	\$2,000,000
2007	\$2,000,000
2008	\$2,000,000
2009	\$2,000,000
2010	repealed
2011 and thereafter	\$2,000,000

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## Illinois Estate Tax

- For the years 1990 to 2002, the tax is based on the allowable State Death Tax Credit against the Federal Estate Tax.

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## Illinois Estate Tax

- The State Death Tax Credit is calculated as follows using the taxable estate less \$60,000 as the adjusted taxable estate:

Adjusted Taxable Estate		Credit	+ %	Of Excess Over
At Least	But Less Than			
\$0	\$40,000	\$0	0%	\$0
\$40,000	\$90,000	\$0	0.8%	\$40,000
\$90,000	\$140,000	\$400	1.6%	\$90,000
\$140,000	\$240,000	\$1,200	2.4%	\$140,000
\$240,000	\$440,000	\$3,600	3.2%	\$240,000
\$440,000	\$640,000	\$10,000	4%	\$440,000
\$640,000	\$840,000	\$18,000	4.8%	\$640,000
\$840,000	\$1,040,000	\$27,600	5.6%	\$840,000
\$1,040,000	\$1,540,000	\$38,800	6.4%	\$1,040,000
\$1,540,000	\$2,040,000	\$70,800	7.2%	\$1,540,000
\$2,040,000	\$2,540,000	\$106,800	8%	\$2,040,000
\$2,540,000	\$3,040,000	\$146,800	8.8%	\$2,540,000
\$3,040,000	\$3,540,000	\$190,800	9.6%	\$3,040,000
\$3,540,000	\$4,040,000	\$238,800	10.4%	\$3,540,000
\$4,040,000	\$5,040,000	\$290,800	11.2%	\$4,040,000
\$5,040,000	\$6,040,000	\$402,800	12%	\$5,040,000
\$6,040,000	\$7,040,000	\$522,800	12.8%	\$6,040,000
\$7,040,000	\$8,040,000	\$650,800	13.6%	\$7,040,000
\$8,040,000	\$9,040,000	\$786,800	14.4%	\$8,040,000
\$9,040,000	\$10,040,000	\$930,800	15.2%	\$9,040,000
\$10,040,000		\$1,082,800	16%	\$10,040,000

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## Calculating the Tax

### ▪ Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)

- Federal government decided to raise its revenue by picking up the tax that it had previously dropped by virtue of the credit.
- It did this by
  - reducing the allowable credit by:
    - 25% for 2002 decedents;
    - 50% for 2003 decedents;
    - 75% for 2004 decedents;
  - and eliminating it thereafter.

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## Calculating the Tax

- Illinois missed 2002 decedents.
- In 2003, Illinois changed its law to continue to tax the full amount that can be computed under the State Death Tax Credit Table, regardless of whether it was treated as a credit or eliminated.

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## Calculating the Tax

### ▪ In 2005, the state death tax credit became a state death tax deduction.

- This resulted in an inter-related computation because the Illinois estate tax couldn't be determined until the federal estate tax was determined and the federal estate tax couldn't be determined until the state death tax deduction was determined.
- For the convenience of everyone, the Illinois Attorney General has calculators on its websites for such calculations. See [http://illinoisattorneygeneral.gov/publications/estate\\_tax.html](http://illinoisattorneygeneral.gov/publications/estate_tax.html)

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### Calculating the Tax

- In 2009, the federal exemption amount is \$3,500,000 and the Illinois exemption amount is \$2,000,000.

- Due to the inter-related relationship of the Illinois and federal estate taxes, one has to complete a federal return just to prepare an Illinois return.

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### Calculating the Tax

- 2009 - Also the Year of the Illinois QTIP

- The Illinois QTIP election allows one to not have to underfund the credit shelter trust with the lower Illinois estate tax exemption amount and to not have to pay Illinois estate tax on the death of the first spouse to fully fund the federal credit shelter trust.

- The trust must qualify for QTIP election.

- Example: all income to spouse.

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### Calculating the Tax

- In effect, you have more trusts to consider:

- Federal and State Estate Tax Exempt
- Federal Estate Tax Exempt Illinois QTIP
- State Estate Tax Exempt
- Marital Trust Federal and Illinois QTIP

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### Calculating the Tax

- In 2010, there is no Illinois estate tax.
- In 2011, the federal exemption amount is \$5,000,000 and the Illinois exemption amount is \$2,000,000.
  - Schedule 1 explains the current and anticipated federal estate tax rates under current legislation.

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### Drafting Options

- Challenge is to draft a trust with a formula that will capture the federal exemption amount and the Illinois exemption amount, but will not have to be amended in less than two years if there are no changes to the federal estate tax legislation.

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### Drafting Options

- Many documents drafted prior to EGTRRA included language that required funding the credit shelter trust in a way that minimized all federal estate taxes without regard to any state estate taxes. For example:
  - ... the largest pecuniary amount which will not result in or increase federal estate tax payable by reason of my death. In determining the pecuniary amount, the trustee shall consider the credit for state death taxes only to the extent these taxes are not thereby incurred or increased ....

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### Drafting Options

- This formula will result in an Illinois estate tax.
- The credit shelter trust is funded with an amount required to minimize federal estate taxes, even if that results in the imposition of state estate taxes.

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### Drafting Options

- This is a few hundred thousand dollar problem at the death of the first spouse.
- However, focusing on state estate taxes in the formula will likely avoid any tax at the death of the first spouse, but may underfund the credit shelter trust, thereby increasing the surviving spouse's taxable estate.

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### Drafting Options

- **Portability**
  - This federal estate tax provision permits a widow or widower to use the last deceased spouse's exemption amount to the extent it was unused at that spouse's death.
- **There are practice challenges to the concept.**
  - Will the amount available change when the exemption amount changes in 2013?
  - If the widow wants to remarry and the new spouse dies utilizing his exemption, the prior spouse's portable exemption is lost.

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### Drafting Options

- **An IRS Form 706 must be filed after the death of the first spouse in order to preserve the unused exemption amount for the second spouse.**
  - While portability is a nice, valuable failsafe concept, drafting to utilize the full exemptions in larger estates is the safer practice.

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### Drafting Options

- **Sample 1 and 2 are presented as possible drafting techniques to capture the state and federal exemption amounts separately.**

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### Drafting Options

- **Sample 1**

**SECTION 1:** Upon my death, if my Wife, \_\_\_\_\_, (hereinafter referred to as "my Wife") survives me, the Trustee shall divide the Trust Estate into separate trusts in such amounts and with designations as herein below provided:

a. The Trustee shall allocate to the "Federal and State Exempt Family Trust" the largest amount which will be exempt from both state and federal estate tax payments in my estate;

b. The Trustee shall allocate to the "Federal Exempt Family Trust" such additional amounts, if any, which will be exempt from federal estate tax payment in my estate; or

c. The Trustee shall allocate to the "State Exempt Family Trust" such additional amounts, if any, which will be exempt from state estate tax payment in my estate; and

d. The Trustee shall allocate the remainder of the Trust Estate to the "Marital Trust," provided however, if my Wife, within nine (9) months of my death, disclaims any portion of the Marital Trust or the Federal Exempt Family Trust, subject to payment of any federal and state estate taxes being paid by reason of such disclaimer, such disclaimed portion shall be held in a separate trust under the same terms and conditions as the Federal and State Exempt Family Trust and shall be designated as the "Disclaimer Family Trust."

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### Drafting Options

- **Sample 1 is suggested in estates of over \$6,000,000.00 and addresses the possibility that some of the exemption amount is used during life in gifting.**

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### Drafting Options

- **Sample 2**

SECTION 3: The legal representative of my estate (or if none is acting, the Trustee) may elect to have specific portions or all of the Trust, herein referred to as the "marital portions" or "marital portion," treated as Qualified Terminable Interest Property for federal or state estate tax purposes. If an election is made as to less than all of the Trust, the specific portion shall be expressed as a fraction, and the value of the marital portion at any time may be determined by multiplying the value of the Trust at that time by the fraction then in effect. Initially, the numerator and denominator shall be the values of the marital portion and the Trust, respectively, as finally determined for federal or state estate tax purposes. At the time of each payment of principal pursuant to the provisions of Section 1 of this Article II, the fraction shall be adjusted, first by restating it so that the numerator and the denominator are the values of the marital portion and of the Trust, respectively, immediately prior to the payment, and then by subtracting the amount of the payment from each of the numerator and the denominator, except that the numerator shall not be reduced below zero. I intend that the marital portion or marital portions, respectively, shall qualify for the state or federal estate tax marital deductions in my estate.

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### Drafting Options

- **Sample 2 lends itself to smaller estates in the next year where only the Illinois exemption amount needs to be captured but could protect the lower federal exemption amount in 2013 without amendment.**
  - Its problem is that it requires mathematic calculations that most clients and their lawyer roll their eyes at.

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### Drafting Options

- **In addition to drafting for the Illinois estate tax exemption, one should also consider:**
  - Change of domicile;
  - Other state estate taxes;
  - Converting tangible property in other states, such as real estate into intangible property, such as ownership interest in an LLC;
  - Gifting, as Illinois does not have an independent gift tax.

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### Drafting Options

- **There are many different ways to approach this problem, such as:**
  - Disclaimer planning;
  - QTIP planning;
  - Clayton QTIP planning; or
  - Single fund trusts.
- **Key is flexibility.**
- **All have their pros and cons.**

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### Drafting Options

- **We are perhaps too quick to quantify the results of the Illinois Estate tax as 8 to 16% of estates over \$2,000,000.00.**
  - Robert W. Kaufman points out that, in application, the tax is much higher and regressive rather than progressive. (ISBA, *Trust and Estates Newsletter*, October 2011, Vol. 58, No. 4)
  - The net result being, clients with more modest 3 to 6 million dollar estates are subject to tax rates from 25 to 12 percent on the taxable portion.

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**DISCLAIMER**

- The sample forms are not intended to be used for a specific client. They are provided for discussion purposes only and present information, which may not be appropriate in the estate plan of any specific client. The authors' intentions are not to represent or warrant any tax results for any specific client or estate.

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**Sample Forms**

SCHEDULE 1 Federal Estate and Related Tax Rates: Past, Present, and Future								
Tax Type	2009		2010		2011-2012		2013 / Beyond	
	Exemption	Rate	Exemption	Rate	Exemption	Rate	Exemption	Rate
Lifetime Gift	1 Million	45%	1 Million	35%	5 Million	35%	1 Million	55%
Estate	3.5 Million	45%	5 Million	35%	5 Million	35%	1 Million	55%
GST	3.5 Million	45%	5 Million	0%	5 Million	35%	1 Million	55%
Annual Gift Tax Exclusion (Individual)	13 Million		13 Million		13 Million		13 Million	

NOTE: Executors of 2010 decedents can elect the "no estate tax/modified carryover" basis.

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**Sample 1**

EXAMPLE OF FUNDING – 2011	
Decedent's Estate 2011	\$6,000,000.00
Federal and State Exempt Trust	\$2,000,000.00
Federal Exempt Trust	\$3,000,000.00
Marital Trust	\$1,000,000.00

On IRS Form 706, elect QTIP for the Marital Trust.  
On IL Form 706, elect QTIP for Marital and Federal Exempt Trusts.

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## Sample 1

EXAMPLE OF FUNDING – 2013	
Decedent's Estate 2013	\$6,000,000.00
Federal and State Exempt Trust	\$1,000,000.00
State Exempt Trust	\$1,000,000.00
Marital Trust	\$4,000,000.00

On IRS Form 706, elect QTIP on Marital and State Exempt Trust.  
On IL Form 706, elect QTIP on Marital Trust.

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## Sample 2

EXAMPLE OF CALCULATIONS: FRACTIONAL FORMULA	
<b>Decedent's Estate 2011</b>	<b>\$6,000,000.00</b>
Federal QTIP Fraction is 1/6	\$1,000,000.00 (in Federal Marital Portion)
State QTIP Fraction is 4/6	\$4,000,000.00 (in State Marital Portion)
<b>If the Trust distributes principal of</b>	<b>\$500,000.00</b>
Federal QTIP Fraction is 5/55	
Federal Marital Portion	\$500,000.00
State QTIP Fraction is 35/55	
State Marital Portion	\$3,500,000.00

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**ATG TRUST  
DRAFTING FOR THE ILLINOIS  
ESTATE TAX EXEMPTION**

**November 30, 2011**

By  
Justin J. Karubas, Esq.  
and  
David F. Rolewick, Esq.

**ROLEWICK & GUTZKE, P.C.  
1776 S. Naperville Road  
Suite 104A  
Wheaton, IL 60189  
Phone: (630) 653-1577  
Fax: (630) 6531579**

**ATG TRUST  
DRAFTING FOR THE ILLINOIS  
ESTATE TAX EXEMPTION  
November 30, 2011**

By  
Justin J. Karubas, Esq.

And

David F. Rolewick, Esq.  
**ROLEWICK & GUTZKE, P.C.**

Legislature history of the Illinois estate tax is beyond my appetite for boredom, and yours, so we will limit our discussion to the last thirty years. Understanding the Illinois estate tax must start with the federal estate tax. Section 2011 of the Internal Revenue Code provided for a credit against the federal estate tax for state death taxes paid. Section 2011(a) provided:

The tax imposed by Section 2001 shall be credited with the amount of any estate, inheritance, legacy, succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

Prior to 1990, Illinois had an inheritance tax, a tax imposed on the privilege of receiving property by inheritance. The Illinois inheritance tax was referred to as a pick-up tax because Illinois was picking up the tax that the federal government drops by virtue of the credit allowed by 2011 of the Internal Revenue Code. Illinois collected the total amount of the State Death Tax credit and defined its own tax as equal to this amount. The payment of Illinois estate tax therefore did not increase the overall tax bill of a decedent. A portion of the tax due at the federal level was paid to Illinois, and a credit for the payment was reflected on the federal return.

In 1990, Illinois moved from an inheritance tax to an estate tax with the Illinois Estate and Generation-Skipping Transfer Tax Act, 35 ILCS 405/1, <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=609&ChapterID=8>. Much like the Illinois inheritance tax, the Illinois estate tax was a pick-up tax with the federal estate tax credit for state taxation.

So how much is the Illinois estate tax? That depends on a number of factors, one of which is the year of death.

No Illinois tax due if in the application year, the amount of the estate is less than:

1990 to 1997	\$600,000
1998	\$625,000
1999	\$650,000
2000	\$650,000
2001	\$675,000
2002	\$1,000,000
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2007	\$2,000,000
2008	\$2,000,000
2009	\$2,000,000
2010	repealed
2011 and thereafter	\$2,000,000

For the years 1990 to 2002, the tax is based on the allowable State Death Tax Credit against the Federal Estate Tax. The State Death Tax Credit is calculated as follows using the taxable estate less \$60,000 as the adjusted taxable estate:

Adjusted Taxable Estate At Least	But Less Than	Credit =	+ %	Of Excess Over
\$0	\$40,000	\$0	0%	\$0
\$40,000	\$90,000	\$0	.8%	\$40,000
\$90,000	\$140,000	\$400	1.6%	\$90,000
\$140,000	\$240,000	\$1,200	2.4%	\$140,000
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\$9,040,000	\$10,040,000	\$930,800	15.2%	\$9,040,000

\$10,040,000	.....	\$1,082,800	16%	\$10,040,000

In 2001 with the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) the federal government decided to raise its revenue by picking up the tax which it had previously dropped by virtue of the credit. It did this by reducing the allowable credit by 25% for 2002 decedents, 50% for 2003 decedents, 75% for 2004 decedents and eliminating it thereafter. While it missed 2002 decedents, Illinois changed its law in 2003 to continue to tax the full amount which can be computed under the State Death Tax Credit Table regardless of whether it was treated as a credit or eliminated.

In 2005, the state death tax credit became a state death tax deduction. This resulted in an inter-related computation because the Illinois estate tax couldn't be determined until the federal estate tax was determined and the federal estate tax couldn't be determined until the state death tax deduction was determined. For the convenience of everyone, the Illinois Attorney General has calculators on its websites for such calculations. See <http://illinoisattorneygeneral.gov/publications/estatetax.html>

In 2009, the federal exemption amount is \$3,500,000 and the Illinois exemption amount is \$2,000,000. However, because of the inter-related relationship of the Illinois estate tax to the federal estate tax, one has to complete a federal return just to prepare an Illinois return. This also was the year of the Illinois QTIP. The Illinois QTIP election allows one to not have to underfund the credit shelter trust with the lower Illinois estate tax exemption amount and to not have to pay Illinois estate tax on the death of the first spouse to fully fund the federal credit shelter trust. However, it makes drafting complex. The trust must qualify for QTIP election, (example all income to spouse). In effect, you have more trusts to consider:

1. Federal and State Estate Tax Exempt
2. Federal Estate Tax Exempt Illinois QTIP
3. State Estate Tax Exempt
4. Marital Trust Federal and Illinois QTIP

In 2010, there is no Illinois estate tax.

In 2011, the federal exemption amount is \$5,000,000 and the Illinois exemption amount is \$2,000,000.

Schedule 1 explains the current and anticipated federal estate tax rates under current legislation.

Our challenge is to draft a trust with a formula that will capture the federal exemption amount and the Illinois exemption amount but will not have to be amended in less than two years if there are no changes to the federal estate tax legislation. Many documents drafted prior to EGTRRA included language that required funding the credit shelter trust



in a way that minimized all federal estate taxes without regard to any state estate taxes. For example:

...the largest pecuniary amount which will not result in or increase federal estate tax payable by reason of my death. In determining the pecuniary amount, the trustee shall consider the credit for state death taxes only to the extent these taxes are not thereby incurred or increased....

This formula will result in an Illinois estate tax. The credit shelter trust is funded with an amount required to minimize federal estate taxes, even if that results in the imposition of state estate taxes. This is a few hundred thousand dollar problem at the death of the first spouse. However, if you just focus on state estate taxes in the formula, you will likely avoid any tax at the death of the first spouse, but may underfund the credit shelter trust thereby increasing the surviving spouse's taxable estate.

A word on portability. This federal estate tax provision permits a widow or widower to use the last deceased spouse's exemption amount to the extent it was unused at that spouse's death. There are practice challenges to the concept. Will the amount available change when the exemption amount changes in 2013? If the widow wants to remarry and the new spouse dies utilizing his exemption, the prior spouse's portable exemption is lost. An IRS Form 706 must be filed after the death of the first spouse in order to preserve the unused exemption amount for the second spouse. While portability is a nice, valuable failsafe concept. I think drafting to utilize the full exemptions in larger estates is the safer practice.

Sample 1 and 2 are presented as possible drafting techniques to capture the state and federal exemption amounts separately. Sample 1 is suggested in estates of over \$6,000,000.00 and addresses the possibility that some of the exemption amount is used during life in gifting. Sample 2 lends itself to smaller estates in the next year where only the Illinois exemption amount needs to be captured but could protect the lower federal exemption amount in 2013 without amendment. Its problem is that it requires mathematic calculations that most clients and their lawyer roll their eyes at.

In addition to drafting for the Illinois estate tax exemption, one should also consider:

1. Change of domicile
2. Other state estate taxes
3. Converting tangible property in other states such as real estate into intangible property such as ownership interest in an LLC
4. Gifting as Illinois does not have an independent gift tax

There are many different ways to approach this problem such as disclaimer planning, QTIP planning, Clayton QTIP planning, or single fund trusts. The key is flexibility. They all have there pros and cons.

When speaking with our clients, we are perhaps too quick to quantify the results of the Illinois Estate tax as 8 to 16% of estate over \$2,000,000.00. Robert W. Kaufman in his recent article in ISBA, Trust and Estates Newsletter, October 2011, VOL 58, No 4, points out in application the tax is much higher and regressive rather than progressive. The net result being, clients with more modest 3 to 6 million dollar estates are subject to tax rates from 25 to 12 percent on the taxable portion. It is a short article we all need to read and digest.

### **DISCLAIMER**

The Sample forms are not intended to be used for a specific client. They are provided for discussion purposes only and present information which may not be appropriate in the estate plan of any specific client. The authors' intentions are not to represent or warrant any tax results for any specific client or estate.

## SCHEDULE 1

### FEDERAL ESTATE AND RELATED - TAX RATES - PAST, PRESENT AND FUTURE

	<u>YEAR 2009</u>		<u>YEAR 2010</u>	<u>YEAR 2011 - 2012</u>		<u>YEAR 213 &amp; BEYOND</u>		
<u>TAX TYPE</u>	<u>EXEMPTION</u>	<u>RATE</u>	<u>EXEMPTION</u>	<u>RATE</u>	<u>EXEMPTION</u>	<u>RATE</u>		
LIFETIME GIFT	1 Million	45%	1 Million	35%	5 Million	35%	1 Million	55%
ESTATE	3.5 Million	45%	5 Million	35%	5 Million	35%	1 Million	55%
GST	3.5 Million	45%	5 Million	0%	5 Million	35%	1 Million	55%
Annual Gift Tax Exclusion - Individual			\$13,000.00		\$13,000.00		\$13,000.00	\$13,000.00

\*NOTE: Executors of 2010 decedents can elect the "no estate tax/modified carryover basis

Sample 1 2011  
Example of Funding

Decedent's Estate 2011	\$6,000,000.00
Federal and State Exempt Trust	\$2,000,000.00
Federal Exempt Trust	\$3,000,000.00
State Exempt Trust	\$ - 0 -
Marital Trust	\$1,000,000.00

on IRS 706 elect QTIP for the Marital Trust

on IL 706 elect QTIP for Martial and Federal Exempt Trusts

Sample 1 2013

Example of Funding

Decedent's Estate 2013	\$6,000,000.00
Federal and State Exempt Trust	\$1,000,000.00
Federal Exempt Trust	\$ - 0 -
State Exempt Trust	\$1,000,000.00
Marital Trust	\$4,000,000.00

On IRS 706 elect QTIP on Marital and State Exempt Trust

On IL 706 elect QTIP on Marital Trust

**SAMPLE 1**

**ATG TRUST COMPANY STATE EXEMPTION TRUST**

**THE \_\_\_\_\_ DECLARATION OF TRUST**

**DATED \_\_\_\_\_, 20**

I, \_\_\_\_\_, of \_\_\_\_\_,  
County, Illinois, have transferred to myself, as Trustee, the property listed on the  
attached Schedule A. I declare that such property and all investments and  
reinvestments thereof and additions thereto are hereinafter collectively referred to  
as the "Trust Estate" and shall hereafter be held upon the following trusts:

**ARTICLE I**

**PAYMENTS FOR THE BENEFIT OF THE GRANTOR**

SECTION 1: During my lifetime, the Trustee shall pay the net  
income from the Trust Estate in convenient installments to me or otherwise as I  
may from time to time direct. Also, the Trustee shall pay such sums from principal  
as I may request at any time in writing.

If at any time or times I am unable to manage my affairs, the Successor  
Trustee (hereinafter sometimes referred to as the "Trustee") shall pay the income  
and may pay such sums from the principal of the Trust Estate as the Trustee  
deems necessary or advisable for my care, support and comfort, or for any other

purpose the Trustee considers to be for my best interests.

For purposes of this Declaration of Trust, I shall be considered to be unable to manage my affairs if I am under a legal disability or by reason of illness, disease 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 the Successor Trustee. In making that determination, the Successor Trustee may rely upon written notice of my personal treating physician certifying my condition of disability.

SECTION 2: Upon my death, if I have no probate estate or to the extent that the cash and readily marketable assets in my probate estate are insufficient, the Trustee shall pay from the principal of the Trust Estate my funeral expenses, last illness expenses, claims allowable against my estate, costs of all administration, such amounts as may be necessary to satisfy any pecuniary gifts made in my Last Will and Testament, and estate and inheritance taxes assessed by reason of my death. However, the amount, if any, by which the estate and inheritance taxes shall be increased as a result of the inclusion of property over which I may have power of appointment or as a result of the inclusion of terminable interest property shall be paid by the person holding or receiving that property. Interest and penalties concerning any tax shall be paid and charged in the same manner as the tax. The Trustee may make payment directly or to the legal representative of my estate, as the Trustee deems advisable. I hereby authorize my Trustee to waive all rights of reimbursement for any payments made pursuant to

this Section.

Assets or funds otherwise excludable in computing federal estate taxes shall not be used to make the foregoing payments. I recommend that assets sold by the Trustee for that purpose be selected, to the extent practicable, so as to minimize the recognition by the Trust Estate of gain for federal income tax purposes.

The Trustee shall make such elections under the tax laws as the Trustee deems advisable, without regard to the relative interests of the beneficiaries. No adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of elections under the tax laws made by my Executor or by the Trustee.

The succeeding Articles of this Declaration of Trust shall be subject to the Trustee's making or providing for the foregoing payments.

## **ARTICLE II**

### **PAYMENTS AND DIVISION OF THE TRUST ESTATE AFTER THE GRANTOR'S DEATH**

**SECTION 1:** Upon my death, if my Wife, \_\_\_\_\_  
(hereinafter referred to as "my Wife"), survives me, the Trustee shall divide the Trust Estate into separate trusts in such amounts and with designations as herein below provided:

- (a) The Trustee shall allocate to the "Federal and State Exempt Family Trust" the largest amount which will be exempt from both state and federal estate tax payments in my estate;



(b) The Trustee shall allocate to the "Federal Exempt Family Trust" such additional amounts, if any, which will be exempt from federal estate tax payment in my estate; or

(c) The Trustee shall allocate to the "State Exempt Family Trust" such additional amounts, if any, which will be exempt from state estate tax payment in my estate; and

(d) The Trustee shall allocate the remainder of the Trust Estate to the "Marital Trust", provided however, if my Wife, within nine (9) months of my death, disclaims any portion of the Marital Trust or the Federal Exempt Family Trust, subject to payment of any federal and state estate taxes being paid by reason of such disclaimer, such disclaimed portion shall be held in a separate trust under the same terms and conditions as the Federal and State Exempt Family Trust and shall be designated as the "Disclaimer Family Trust".

SECTION 2: The Trustee may fund the Marital Trust and the Federal Exempt Family Trust or the State Exempt Family Trust, if any, wholly or partially in cash or in kind out of any property, subject to the following provisions:

(a) Assets distributed in kind shall be valued at the dates of funding;

(b) Only assets which would, if distributed outright to my Wife, qualify for the marital deduction shall be allocated to the Marital Trust and the Federal Exempt Family Trust or the State Exempt Family Trust, if any, and it shall abate to the extent it cannot be so funded;

(c) To the extent that other assets which qualify for the marital deduction are available, there shall not be allocated to the Marital Trust and the Federal Exempt Family Trust or the State Exempt Family Trust, if any: (i) assets with respect to which an estate tax credit for foreign taxes paid is allowable and (ii) assets which constitute income in respect of a decedent;

(d) If any unproductive property at any time constitutes a part of the Marital Trust and the Federal Exempt Family Trust or the State Exempt Family Trust, if any, the Trustee shall sell such property upon being directed to do so by my Wife; and

(e) The determination by my Executor or Trustee of the amount and nature of property allocated to the Marital Trust and the Federal Exempt Family Trust or the State Exempt Family Trust, if any, pursuant to this Article shall be binding on all beneficiaries.

SECTION 3: If any principal of the Marital Trust or the Federal Exempt Family Trust becomes allocable to a Disclaimer Family Trust as a result of disclaimer by or on behalf of my Wife, my Wife shall not be deemed to have predeceased me (by reason of the disclaimer) for purposes of the Disclaimer Family Trust, except to the extent interests in the Disclaimer Family Trust are also disclaimed by or on behalf of my Wife.

SECTION 4: The Trustee may elect (and may direct my Executor or legal representative of my estate to elect) to treat the Federal Exempt Family Trust

or the State Exempt Family Trust as Qualified Terminable Interest Property for either federal or state estate tax purposes. Such elections may be independent each of the other election for state and federal estate tax purposes.

### **ARTICLE III**

#### **THE MARITAL TRUST**

The Marital Trust shall be held and disposed of as follows:

SECTION 1: Commencing with my death, the Trustee shall pay the net 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 my Wife's health, maintenance, and best interest, considering her income from all sources known to the Trustee.

In addition, the Trustee shall pay to my Wife during her lifetime, so long as she is not incapacitated, such amounts from the principal as she may from time to time request in writing.

SECTION 2: Upon the death of my Wife, the principal and any accrued and undistributed net 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.

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 Federal and State Exempt Family Trust, except that unless my Wife directs otherwise by her Will, the Trustee shall first pay from the principal of the Marital Trust, directly or to the legal representative of the estate of my Wife 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. I recommend that assets sold by the Trustee to pay that amount be selected, to the extent practicable, so as to minimize the recognition by the Marital Trust of gain for federal income tax purposes.

#### **ARTICLE IV**

#### **THE FAMILY TRUSTS**

The "Family Trusts" identified in Section 1 of Article II above (including the Disclaimer Family Trust, if there is one) 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 net income from each of the Family Trusts in convenient installments, at least quarterly, to my Wife during her lifetime.

Once on or before January 31<sup>st</sup> of each calendar year following the calendar year of my death, my Wife, so long as she is not incapacitated, shall have the right, exercisable by instrument in writing delivered to the Trustee, to withdraw property from the principal of any of the Family Trusts, the value of which shall not exceed in the aggregate the greater of FIVE THOUSAND DOLLARS (\$5,000.00) or

five percent (5%) of the value of the principal of the applicable Family Trust at the time of such withdrawal.

The Trustee may also pay to my Wife such sums from principal of any of the Family Trusts as the Trustee deems necessary or advisable from time to time for her health, maintenance and support, considering her income from all sources known to the Trustee, but shall make no invasion of the Family Trusts for my Wife so long as any readily marketable assets remain in the Marital Trust, and shall invade the principal of the Family Trusts if necessary or advisable, as provided above, in the following order:

- (a) First, the State Exempt Family Trust; then
- (b) Second, the Federal Exempt Family Trust; then
- (c) Third, the Federal and State Exempt Family Trust; then
- (d) Fourth, the Disclaimer Family Trust.

If my Wife survives me and does not disclaim any interest under this Declaration of Trust, the Trustee shall, upon my Wife's death, distribute each of the Family Trusts to, or in trust for, such one or more of my descendants in such proportions and on such terms as my Wife may appoint by will, specifically referring to the limited power hereby conferred.

SECTION 2: Upon the death of my Wife, if she does not exercise the power of appointment herein above provided, or upon my death if my Wife does not survive me, the Trustee shall divide each of the Family Trusts, 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 or portion thereof created for the descendants of a deceased child of mine shall be distributed per stirpes to such descendants, subject to postponement of possession as provided below. Each share created for a living child of mine shall be held as a separate trust and disposed of as hereinafter provided.

SECTION 3: The net income from a child's share or shares 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, support, education (including postgraduate) and best interests, considering the income of the child from all sources known to the Trustee. In making any discretionary distributions to any of my children, the Trustee shall be guided by my intention that my children shall not be financially dependent upon this Trust for their primary support so as to diminish their desire or ability to obtain and maintain gainful employment. Nevertheless, if a child is unable to earn a living due to factors essentially beyond such child's control, then the Trustee may expend funds for the support of such child as provided in this Trust.

SECTION 4: After a child has reached any one or more of the following ages, the child may withdraw from the principal of any of his or her shares at any time or times amounts not to exceed in the aggregate:

One-Third (1/3) in value after twenty-five (25) years of age;

One-Half (1/2) in value (after deducting any amount subject to withdrawal but not actually withdrawn) after thirty (30) years of age; and

The balance after thirty-five (35) years of age.

The right of withdrawal shall be a personal privilege which may be exercised only voluntarily and shall not include any involuntary or third party exercise.

SECTION 5: If a child dies before receiving his or her share or shares in full, upon the child's death his or her remaining share or shares 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 or shares not subject to withdrawal prior to the child's death, the child may only appoint to or for the benefit of any one or more of the child's surviving spouse, the child's descendants and my descendants (other than the child or his or her estate).

SECTION 6: Upon the death of a child, any part of his or her share or shares 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 a Family Trust is then held hereunder shall be added to that share.

SECTION 7: Each share of the Family Trusts which is distributable to a descendant who has not reached the age of twenty-one (21) years shall immediately vest in the descendant, but the Trustee shall (a) establish therewith a custodianship for the descendant under a Uniform Transfers to Minors Act, or (b) retain possession of the share as a separate trust until the descendant reaches the age of twenty-one (21) years, meanwhile paying to or for the benefit of the descendant 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, support, education and best interests, and adding to principal any income not so paid.

**ARTICLE V**

**DISTRIBUTION OF THE TRUST ESTATE IN THE  
EVENT OF THE DEATH OF ALL DESCENDANTS**

If any portion of the Trust Estate is not disposed of under the provisions above, I give such property as follows:

- (a) One-half thereof to the persons to whom, and in the proportions in which, the same would have been distributed had my Wife died intestate domiciled in the State of Illinois owning such assets immediately following my death; and
- (b) One-half thereof to the persons to whom, and in the proportions in which, the same would have been distributed had I died intestate domiciled in the State of Illinois owning such assets on the date of my



death.

**ARTICLE VI**

**SPENDTHRIFT PROVISIONS  
AND OTHER ADMINISTRATIVE PROVISIONS**

The following provisions shall apply to the Trust Estate and each share or trust thereof:

SECTION 1: If income or discretionary amounts of principal become payable to a minor or to a person under legal disability or to a person not adjudicated incompetent but who, by reason of illness, disease or mental or physical disability, is in the opinion of the Trustee unable properly to manage his or her affairs, then such income or principal shall be paid or expended only in such of the following ways as the Trustee deems best: (a) to the beneficiary directly; (b) to the legally appointed guardian or conservator of the beneficiary; (c) to a custodian for the beneficiary under a Uniform Transfers 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 former 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.

SECTION 3: 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, except in the case of the Marital Trust. In the Marital Trust, any accrued and undistributed income at the time of my Wife's death subsequent to mine shall be distributed to her estate.

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

## **ARTICLE VII**

### **TRUSTEE'S POWERS, RIGHTS AND DUTIES**

SECTION 1: The Trustee shall hold, manage, care for and protect the Trust Estate and each share or trust 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 of a parent or affiliate company) originally constituting the trust or subsequently added thereto, although not of a type, quality or diversification considered proper for trust investments;
- (b) To invest and reinvest the trust property in bonds, stocks,

mortgages, notes, or other property of any kind, real or personal, which the Trustee in the exercise of ordinary care deems suitable for the investment of trust funds;

(c) 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;

(d) 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 me if living, otherwise by the beneficiaries then entitled to receive or 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;

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

(f) To borrow money from any lender, including a Trustee hereunder

individually, extend or renew any existing indebtedness and mortgage or pledge any property in the trust;

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

(h) To employ agents, attorneys and proxies and to delegate to them such powers as the Trustee considers desirable;

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

(j) To divide or distribute the trust property in cash or in kind, or partly in each, or in undivided interests or in different assets or disproportionate interests in assets; to value the trust property for such purposes; and to sell any property in order to make division or distribution;

(k) To deal with, purchase assets from, or make loans to, the fiduciary of any trust made by me or to any member of my family or a trust or estate in which any beneficiary under this Declaration has an interest, though a Trustee hereunder is such fiduciary, and to retain any property so purchased;

(l) To establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion;

(m) To transfer the situs of any trust property to any other jurisdiction within the United States as often as the Trustee deems it advantageous to the trust; to resign and appoint a substitute Trustee to itself to act with respect thereto; and to remove any substitute Trustee appointed pursuant to this paragraph at any time and appoint another, including the appointing Trustee;

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

(o) To collect the rents and earnings from and with respect to any real estate which is in the possession of the Trustee, to keep in tenable repair the buildings and fixtures located thereon, to make all reasonable expenditures necessary to preserve the real estate, to employ agents and custodians, and, by the purchase of insurance, to protect the real estate, the Trustee and beneficiaries, and any person or organization who may have responsibility for the repair, upkeep or management of such real estate from such liabilities as the Trustee deems advisable;

(p) To transfer assets from the Trust to any donee and in such amounts as the Grantor may direct in writing, and provided that any such transfer or gift shall be treated by the Trustee as a partial revocation of the Trust to the extent of the value of the asset transferred, so long as the Trust is revocable;

(q) To pay all expenses incurred in the administration of the trusts hereby created, including, but not by way of limitation, taxes, and compensation to the Trustee, its agents, and counsel and any substitute or special Trustee appointed by the Trustee pursuant to the authority granted herein; provided that all trustees', accountants', and attorneys' fees and all other usual and ordinary trust expenses will be payable from income, unless income is insufficient, then from principal, provided further that no such charges shall be made against income unless deductible for federal income tax purposes;

(r) 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;

(s) To delegate all or a portion of the Trustee's powers and duties to a substitute Trustee, Co-Trustee or Agent for a determined period of time or indefinitely; and to revoke the delegation returning such duties and powers to the delegating Trustee or to another substitute Trustee, Co-Trustee or Agent; and

(t) The Trustee shall have the following powers specifically related to Generation Skipping Taxation:

(i) The Trustee may allocate all or any portion of my unutilized Generation Skipping Tax ("GST") Exemption, on

a pro rata or non-pro rata basis, to any property with respect to which I am the transferor, including any property that I transferred during my life to which I made no allocation pursuant to Section 2631(a) of the Internal Revenue Code, even if the effect of such allocation is to discriminate among beneficiaries under this instrument, my Will or otherwise;

- (ii) If two or more trusts are held for the benefit of the same beneficiary upon similar terms, the Trustee may, in the Trustee's discretion, pay trust property to the beneficiary primarily or exclusively from the trust or trusts with the higher inclusion ratio;
- (iii) The Trustee of each trust or share hereunder shall comply with any then applicable proposed or final regulations regarding the funding of any trusts that are intended to only hold trust property that is GST Exempt so as to result in the use of federal gift or estate tax values in determining the inclusion ratio and applicable fraction (as those terms are described in Section 2642(a) of the Internal Revenue Code) for such trusts;
- (iv) If the property or share created under this instrument (an "original trust") would otherwise be partially exempt from

federal generation-skipping tax after an intended allocation of GST Exemption to it, then before such intended allocation and as of the relevant valuation date under Section 2642 of the Internal Revenue Code with respect to such allocation, the Trustee may create two separate trusts of equal or unequal value that shall be funded fractionally out of the available property, and that shall be identical in all respects to the original trust so that the GST Exemption can be allocated to one of such trusts that will only hold property that is GST Exempt. The two trusts created pursuant to this sub-section shall have the same name as the original trust, with such additional designation (such as "GST Exempt" or "GST Non-Exempt") for purposes of identification as the Trustee determines;

- (v) If the property that is held in, or is to be added or allocated to, a trust or share held pursuant to this instrument is subject to different treatment for GST purposes than other property held in or being added or allocated to such trust or share, then the Trustee may hold such property as a separate trust that is identical in all respects to that trust, with such additional designation for purposes of



identification as the Trustee determines; and

- (vi) It is my intention that the Trustee shall not be required to create or administer a trust or share hereunder that is only partially exempt from GST, or to commingle property subject to different treatment for GST purposes because the transferors of the property are assigned to different generations or for any other reason. The provisions of this sub-section are intended to enable the Trustee to avoid such situations by permitting the Trustee to segregate trust property (a) that is GST Exempt from trust property that is not GST Exempt, or (b) that is otherwise treated differently from other trust property for GST purposes, and the provisions of this sub-section should be construed in a manner consistent with this intention.

SECTION 2: The Trustee shall render an account of his receipts and disbursements at least annually to me if I am living, otherwise to each income beneficiary. The Trustee shall be reimbursed for all reasonable expenses incurred in the management and protection of the Trust Estate and shall receive fair compensation for his services. In the case of a corporate trustee serving hereunder, its normal and customary fees shall be determined and paid in accordance with its published fee schedule in effect at the time or times such services are rendered. The Trustee's regular compensation shall be charged against income during my

lifetime and thereafter half against income and half against principal, except that the Trustee shall have full discretion at any time or times to charge a larger portion or all against income without being limited to circumstances specified by state law.

SECTION 3: If at any time the market value of a trust or share hereunder is determined by the Trustee, in his sole discretion, to be of a size or amount too small to make the continuation of the Trust economically beneficial, the Trustee may, in his discretion, terminate the trust or share and distribute the trust property proportionately to the persons then entitled to receive or have the benefit of the income therefrom.

SECTION 4: No trust created hereby, or by exercise of a power of appointment hereunder, shall continue for more than twenty-one (21) years after the death of the last to die of myself and the beneficiaries in being at my death. Any property still held in trust at the expiration of that period shall immediately be distributed to the persons then entitled thereto, in proportion to their interests in the trust, or if their interests are indefinite, then in equal shares.

SECTION 5: I may resign as Trustee at any time by written notice to ATG TRUST COMPANY of Chicago, Illinois, or its successor. After my resignation, death or inability to manage my affairs, ATG TRUST COMPANY of Chicago, Illinois, or its successor, shall serve as Successor Trustee.

Any Successor Trustee may resign at any time by written notice to me, if living, otherwise to each beneficiary then entitled to receive or have the benefit of the income from the Trust. In case of the resignation, refusal or inability to act of

any Trustee, I, if living, otherwise the beneficiary or a majority in interest of the beneficiaries then entitled to receive or have the benefit of the income from the Trust, may appoint a Successor Trustee. I, if living, otherwise the beneficiary or a majority in interest of the beneficiaries then entitled to receive or have the benefit of the income from the Trust, may require the resignation of a Successor Trustee by providing the Trustee with sixty (60) days written notice. Except as specifically otherwise hereinabove provided, every Successor Trustee must be a bank or trust company qualified to accept trusts in Illinois and must have capital and surplus of not less than FIVE MILLION DOLLARS (\$5,000,000.00).

Every Successor Trustee shall have all the powers given the originally named Trustee. No Successor Trustee shall be personally liable for any act or omission of any predecessor. With my approval, if I am living, otherwise with the approval of the beneficiary or a majority in interest of the beneficiaries then entitled to receive or have the benefit of the income from the Trust, a Trustee may accept the account rendered and the property received as a full and complete discharge to the predecessor Trustee without incurring any liability for so doing.

The parent, guardian or conservator of a beneficiary under disability shall receive notice and have authority to act for such beneficiary under this Article.

No Trustee shall be required to give bond or surety or be appointed by or account for the administration of any trust to any court.

SECTION 6: 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 of the power or may assume that he or she died intestate if the Trustee has no notice of a Will within three (3) months after his or her death.

## **ARTICLE VIII**

### **MISCELLANEOUS PROVISIONS**

**SECTION 1:** The laws of Illinois shall govern the validity and interpretation of the provisions of this Declaration.

**SECTION 2:** I or any other person may transfer, devise or bequeath additional property to the Trustee to be held under this Declaration and may designate the trust to which the addition shall be made. If the addition is made by Will, the Trustee shall accept the statement of the legal representative that the assets delivered to the Trustee constitute all of the property to which the Trustee is entitled, without inquiring into the representative's administration or accounting.

**SECTION 3:** I may, at any time or times during my lifetime by instrument in writing delivered to the Trustee, amend or revoke this Declaration in whole or in part. The trust property to which any revocation relates shall be conveyed to me or otherwise as I direct. This power is personal to me and may not be exercised by my legal representative or others.

**SECTION 4:** Headings and titles are included herein for convenience of reference and shall be ignored in any construction. The singular shall include the plural and all pronouns used herein shall include any other

appropriate pronoun wherever the text and contexts so require.

SECTION 5: Before any life insurance policy, annuity or other contract of which the Trustee may at any time be designated as beneficiary or payee matures, the Trustee is not obligated to pay any premium or assessment or to keep informed with respect to any such policy or contract. After any such policy or contract matures, in addition to the powers, rights and duties enumerated in this Trust and conferred by law upon Trustees, the Trustee is authorized to take whatever action may be necessary to collect the proceeds due under such policy or contract or to elect any optional method of settlement, provided that the Trustee shall not be required to institute or maintain any litigation therefor unless indemnified to the satisfaction of the Trustee against liability for all expenses of such litigation.

**IN WITNESS WHEREOF**, I, as Grantor and as Trustee, have signed this Declaration of Trust on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Grantor

ACCEPTED:

\_\_\_\_\_  
\_\_\_\_\_, Trustee



unable to manage my affairs if I am under a legal disability or by reason of illness, disease 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 the Successor Trustee. In making that determination, the Successor Trustee shall rely upon written notice or statement of my personal treating physician certifying my condition of disability.

SECTION 2: Upon my death, if I have no probate estate or to the extent that the cash and readily marketable assets in my probate estate are insufficient, the Trustee shall pay from the principal of the Trust Estate my funeral expenses, last illness expenses, claims allowable against my estate, costs of all administration, such amounts as may be necessary to satisfy any pecuniary gifts made in my Last Will and Testament, and estate and inheritance taxes assessed by reason of my death. However, the amount, if any, by which the estate and inheritance taxes shall be increased as a result of the inclusion of property over which I may have power of appointment or as a result of the inclusion of terminable interest property shall be paid by the person holding or receiving that property. Interest and penalties concerning any tax shall be paid and charged in the same manner as the tax. The Trustee may make payment directly or to the legal representative of my estate, as the Trustee deems advisable. I hereby authorize my Trustee to waive all rights of reimbursement for any payments made pursuant to this Section.

Assets or funds otherwise excludable in computing federal estate taxes

shall not be used to make the foregoing payments. I recommend that assets sold by the Trustee for that purpose be selected, to the extent practicable, so as to minimize the recognition by the Trust Estate of gain for federal income tax purposes.

The Trustee shall make such elections under the tax laws as the Trustee deems advisable, without regard to the relative interests of the beneficiaries. No adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of elections under the tax laws made by my Executor or by the Trustee.

The succeeding Articles of this Declaration of Trust shall be subject to the Trustee's making or providing for the foregoing payments.

## **ARTICLE II**

### **PAYMENTS AND DISTRIBUTION OF THE TRUST ESTATE AFTER THE GRANTOR'S DEATH FOR THE BENEFIT OF HIS SPOUSE**

SECTION 1: If my Wife, \_\_\_\_\_ (herein referred to as "my Wife"), survives me, then commencing with my death the Trustee shall pay the net income from the Trust Estate in convenient installments, at least quarterly, to her during her lifetime.

The Trustee shall also pay to my Wife such sums from the principal of the Trust Estate as the Trustee deems necessary or advisable from time to time for her health, maintenance, support and comfort, considering her income from all sources known to the Trustee.

SECTION 2: If my Wife survives me and does not disclaim any



interest under this Trust, the Trustee shall, upon her death, distribute the Trust to, or in trust for, such appointee or appointees, in such proportions and on such terms as my Wife may appoint by her last Will, specifically referring to the power hereby conferred, provided however, the appointee class shall be limited to my descendants.

SECTION 3: The legal representative of my estate (or if none is acting, the Trustee) may elect to have specific portions or all of the Trust, herein referred to as the "marital portions" or "marital portion", treated as Qualified Terminable Interest Property for federal or state estate tax purposes. If an election is made as to less than all of the Trust, the specific portion shall be expressed as a fraction, and the value of the marital portion at any time may be determined by multiplying the value of the Trust at that time by the fraction then in effect. Initially, the numerator and denominator shall be the values of the marital portion and the Trust, respectively, as finally determined for federal or state estate tax purposes. At the time of each payment of principal pursuant to the provisions of Section 1 of this Article II, the fraction shall be adjusted, first by restating it so that the numerator and the denominator are the values of the marital portion and of the Trust, respectively, immediately prior to the payment, and then by subtracting the amount of the payment from each of the numerator and the denominator, except that the numerator shall not be reduced below zero. I intend that the marital portion or marital portions, respectively, shall qualify for the state or federal estate tax marital deductions in my estate.

SECTION 4: Upon the death of my Wife, the Trustee shall distribute any accrued or undistributed income to the estate of my Wife, and the Trust shall be administered and distributed as hereinafter provided, except that, unless my Wife directs otherwise by her Will, the Trustee shall first pay from the principal of a marital portion, directly or to the legal representative of my Wife's estate as the Trustee deems advisable, the amount by which the estate taxes assessed by reason of the death of my Wife shall be increased as a result of the inclusion of a 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.

SECTION 5: Upon the death of my Wife, if she does not exercise the power of appointment as hereinabove provided, or upon my death if my Wife does not survive me, the Trust Estate shall be administered and distributed as hereinafter provided.

### **ARTICLE III**

#### **THE FAMILY TRUST**

Upon my Wife's death, if she survives me, or upon my death if my Wife does not survive me, the Trust Estate (including any amounts added thereto from the marital portion), shall be held and disposed of as follows:

SECTION 1: As used herein, the "Division Date" shall occur when my youngest living child attains the age of twenty-one (21) years.

SECTION 2: Until the Division Date, the Trustee may pay so much

or all of the Trust Estate to any one or more of my children and the descendants of a deceased child of mine, in equal or unequal proportions and at such time or times as the Trustee deems necessary or advisable, for the support, health, education (including postgraduate) and best interests of my children and their descendants, individually and as a group, considering the income of each child from all sources known to the Trustee, and any other factors which the Trustee deems pertinent, adding to principal any income not so paid. No payment of income or principal to or for the benefit of a child or other descendant of mine who has not attained the age of twenty-one (21) years shall be charged against the share hereinafter provided for that child, or his or her descendants. Any distribution of income or principal to a child or other descendant of mine who has attained the age of twenty-one (21) years shall be considered an advancement and shall be charged against the share hereinafter provided for that child, or his or her descendants.

SECTION 3: Upon the Division Date, the Trustee shall divide the Trust Estate into equal shares to create one share for each then living child of mine and one share for the descendants, collectively, of each deceased child of mine. Each share or portion thereof created for the descendants of a deceased child of mine shall be distributed, per stirpes, to those descendants, subject to postponement of possession as provided below. Each share created for a living child of mine shall be held as a separate trust, and administered and distributed as hereinafter provided.

SECTION 4: After the Division Date, the net income from a child's

share shall be paid in convenient installments, at least quarterly, to the child.

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, support, education (including postgraduate) and best interests, considering the income of the child from all sources known to the Trustee. In making any discretionary distributions to any of my children, the Trustee shall be guided by my intention that my children shall not be financially dependent upon this Trust for their primary support so as to diminish their desire or ability to obtain and maintain gainful employment. Nevertheless, if a child is unable to earn a living due to factors essentially beyond such child's control, then the Trustee may expend funds for the support of such child as provided in this Trust.

SECTION 5: 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 amounts not to exceed in the aggregate:

One-third (1/3) in value after twenty-one (21) years of age;

One-half (1/2) in value (after deducting any amount subject to withdrawal but not actually withdrawn) after twenty-five (25) years of age; and

The balance after thirty (30) years of age.

The right of withdrawal shall be a personal privilege which may be exercised only voluntarily and shall not include any involuntary or third party exercise.

SECTION 6: If the Trustee is directed in a preceding provision to

distribute any share or portion of the trust principal to a descendant under the age of twenty-one (21) years when distribution is to be made, and if no other trust is then to be held under this instrument for that descendant's primary benefit, that share or portion shall vest in interest in the descendant indefeasibly, but the Trustee may, in his sole discretion, continue to hold it as a separate trust, for such period of time as the Trustee deems advisable, but not after the time the descendant reaches the age of twenty-one (21) years. In the meantime, the Trustee may use for the descendant's benefit so much of the income and principal as the Trustee determines to be required, in addition to his or her other resources known to the Trustee, for his or her reasonable support, comfort and education, adding any excess income to principal at the sole discretion of the Trustee.

SECTION 7: If a child dies before receiving his or her share in full, upon the child's death 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 child's death may be appointed to or for the benefit of any one or more of the child's surviving spouse, the child's descendants and my descendants (other than the child).

SECTION 8: 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 above, except that each portion otherwise distributable to a descendant of mine for whom a share of the Trust is then held hereunder shall be added to that share.

#### **ARTICLE IV**

#### **DISTRIBUTION OF THE TRUST ESTATE IN THE EVENT OF THE DEATH OF ALL DESCENDANTS**

If any portion of the Trust Estate is not disposed of under the provisions above, I give such property as follows:

- (a) One-half thereof to the persons to whom, and in the proportions in which, the same would have been distributed had my Wife died intestate domiciled in the State of Illinois owning such assets immediately following my death; and
- (b) One-half thereof to the persons to whom, and in the proportions in which, the same would have been distributed had I died intestate domiciled in the State of Illinois owning such assets on the date of my death.

#### **ARTICLE V**

#### **SPENDTHRIFT PROVISIONS AND OTHER ADMINISTRATIVE PROVISIONS**

The following provisions shall apply to the Trust Estate:

**SECTION 1:** If income or discretionary amounts of principal become payable to a minor or to a person under legal disability or to a person not adjudicated incompetent but who, by reason of illness, disease or mental or

physical disability, is in the opinion of the Trustee unable properly to manage his or her affairs, then such income or principal shall be paid or expended only in such of the following ways as the Trustee deems best: (a) to the beneficiary directly; (b) to the legally appointed guardian or conservator of the beneficiary; (c) to a custodian for the beneficiary under a Uniform Transfers 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 former 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.

SECTION 3: For convenience of administration or investment, the Trustee may hold the several trusts as a common fund, dividing the income proportionately among them, assign undivided interests to the several trusts, and make joint investments of the funds belonging to them. The Trustee may consolidate any separate trust under this Declaration of Trust with any other trust with similar provisions for the same beneficiary or beneficiaries.

## **ARTICLE VI**

### **TRUSTEE'S POWERS, RIGHTS AND DUTIES**

SECTION 1: The Trustee shall hold, manage, care for and protect the Trust Estate 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 of a parent or affiliate company) originally constituting the trust or subsequently added thereto, although not of a type, quality or diversification considered proper for trust investments;
- (b) To invest and reinvest the trust property in bonds, stocks, mortgages, notes, or other property of any kind, real or personal, which the Trustee in the exercise of ordinary care deems suitable for the investment of trust funds;
- (c) 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;
- (d) 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 me if living, otherwise by the beneficiaries then entitled to receive or 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;

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

(f) To borrow money from any lender, including a Trustee hereunder individually, extend or renew any existing indebtedness and mortgage or pledge any property in the trust;

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

(h) To employ agents, attorneys and proxies and to delegate to them such powers as the Trustee considers desirable;

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

(j) To divide or distribute the trust property in cash or in kind, or partly in each, or in undivided interests or in different assets or disproportionate interests in assets; to value the trust property for such purposes; and to sell any property in order to make division or distribution;

(k) To deal with, purchase assets from, or make loans to, the fiduciary

of any trust made by me or to any member of my family or a trust or estate in which any beneficiary under this Declaration has an interest, though a Trustee hereunder is such fiduciary, and to retain any property so purchased;

(l) To establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion;

(m) To transfer the situs of any trust property to any other jurisdiction within the United States as often as the Trustee deems it advantageous to the trust; to resign and appoint a substitute Trustee to itself to act with respect thereto; and to remove any substitute Trustee appointed pursuant to this paragraph at any time and appoint another, including the appointing Trustee;

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

(o) To collect the rents and earnings from and with respect to any real estate which is in the possession of the Trustee, to keep in tenable repair the buildings and fixtures located thereon, to make all reasonable expenditures necessary to preserve the real estate, to employ agents and custodians, and, by the purchase of insurance, to protect the real estate, the Trustee and beneficiaries, and any person or organization who may have responsibility for the repair, upkeep or management of such real

estate from such liabilities as the Trustee deems advisable;

(p) To transfer assets from the Trust to any donee and in such amounts as the Grantor may direct in writing, and provided that any such transfer or gift shall be treated by the Trustee as a partial revocation of the Trust to the extent of the value of the asset transferred, so long as the Trust is revocable;

(q) To pay all expenses incurred in the administration of the trusts hereby created, including, but not by way of limitation, taxes, and compensation to the Trustee, its agents, and counsel and any substitute or special Trustee appointed by the Trustee pursuant to the authority granted herein; provided that all trustees', accountants', and attorneys' fees and all other usual and ordinary trust expenses will be payable from income, unless income is insufficient, then from principal, provided further that no such charges shall be made against income unless deductible for federal income tax purposes;

(r) 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; and

(s) To delegate all or a portion of the Trustee's powers and duties to a substitute Trustee, Co-Trustee or Agent for a determined period of time or indefinitely; and to revoke the delegation returning such duties and

powers to the delegating Trustee or to another substitute Trustee, Co-Trustee or Agent.

SECTION 2: The Trustee shall render an account of his receipts and disbursements at least annually to me if I am living, otherwise to each income beneficiary. The Trustee shall be reimbursed for all reasonable expenses incurred in the management and protection of the Trust Estate and shall receive fair compensation for his services. In the case of a corporate trustee serving hereunder, its normal and customary fees shall be determined and paid in accordance with its published fee schedule. The Trustee's regular compensation shall be charged against income during my lifetime and thereafter half against income and half against principal, except that the Trustee shall have full discretion at any time or times to charge a larger portion or all against income without being limited to circumstances specified by state law.

SECTION 3: If at any time the market value of a trust hereunder is determined by the Trustee, in his sole discretion, to be of a size or amount too small to make the continuation of the Trust economically beneficial, the Trustee may, in his discretion, terminate the trust and distribute the trust property proportionately to the persons then entitled to receive or have the benefit of the income therefrom.

SECTION 4: No trust created hereby, or by exercise of a power of appointment hereunder, shall continue for more than twenty-one (21) years after the death of the last to die of myself and the beneficiaries in being at my death. Any property still held in trust at the expiration of that period shall immediately be

distributed to the persons then entitled thereto, in proportion to their interests in the trust, or if their interests are indefinite, then in equal shares.

SECTION 5: I may resign as Trustee at any time by written notice to ATG TRUST COMPANY of Chicago, Illinois, or its successor. After my resignation, death or inability to manage my affairs, ATG TRUST COMPANY of Chicago, Illinois, or its successor, shall serve as Successor Trustee.

Any Successor Trustee may resign at any time by written notice to me, if living, otherwise to each beneficiary then entitled to receive or have the benefit of the income from the Trust. In case of the resignation, refusal or inability to act of any Trustee, I, if living, otherwise the beneficiary or a majority in interest of the beneficiaries then entitled to receive or have the benefit of the income from the Trust, may appoint a Successor Trustee. I, if living, otherwise the beneficiary or a majority in interest of the beneficiaries then entitled to receive or have the benefit of the income from the Trust, may require the resignation of the Trustee by providing the Trustee with sixty (60) days written notice. Except as specifically otherwise hereinabove provided, every Successor Trustee must be a bank or trust company qualified to accept trusts in Illinois and must have capital and surplus of not less than FIVE MILLION DOLLARS (\$5,000,000.00).

Every Successor Trustee shall have all the powers given the originally named Trustee. No Successor Trustee shall be personally liable for any act or omission of any predecessor. With my approval, if I am living, otherwise with the approval of the beneficiary or a majority in interest of the beneficiaries then entitled

to receive or have the benefit of the income from the Trust, a Trustee may accept the account rendered and the property received as a full and complete discharge to the predecessor Trustee without incurring any liability for so doing.

The parent, guardian or conservator of a beneficiary under disability shall receive notice and have authority to act for such beneficiary under this Article.

No Trustee shall be required to give bond or surety or be appointed by or account for the administration of any trust to any court.

SECTION 6: 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 of the power or may assume that he or she died intestate if the Trustee has no notice of a Will within three (3) months after his or her death.

## **ARTICLE VII**

### **MISCELLANEOUS PROVISIONS**

SECTION 1: The laws of Illinois shall govern the validity and interpretation of the provisions of this Declaration of Trust.

SECTION 2: I or any other person may transfer, devise or bequeath additional property to the Trustee to be held under this Declaration and may designate the trust to which the addition shall be made. If the addition is made by Will, the Trustee shall accept the statement of the legal representative that the assets delivered to the Trustee constitute all of the property to which the Trustee is entitled, without inquiring into the representative's administration or

accounting.

SECTION 3: I may, at any time or times during my lifetime by instrument in writing delivered to the Trustee, amend or revoke this Declaration in whole or in part. The trust property to which any revocation relates shall be conveyed to me or otherwise as I direct. This power is personal to me and may not be exercised by my legal representative or others.

SECTION 4: Headings and titles are included herein for convenience of reference and shall be ignored in any construction. The singular shall include the plural and all pronouns used herein shall include any other appropriate pronoun wherever the text and contexts so require.

SECTION 5: Before any life insurance policy, annuity or other contract of which the Trustee may at any time be designated as beneficiary or payee matures, the Trustee is not obligated to pay any premium or assessment or to keep informed with respect to any such policy or contract. After any such policy or contract matures, in addition to the powers, rights and duties enumerated in this Trust and conferred by law upon Trustees, the Trustee is authorized to take whatever action may be necessary to collect the proceeds due under such policy or contract or to elect any optional method of settlement, provided that the Trustee shall not be required to institute or maintain any litigation therefor unless indemnified to the satisfaction of the Trustee against liability for all expenses of such litigation.

**IN WITNESS WHEREOF**, I, as Grantor and as Trustee, have signed this Declaration of Trust on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Grantor

ACCEPTED:

\_\_\_\_\_  
\_\_\_\_\_, Trustee

SAMPLE



SAMPLE

Sample 2

Example of Calculations

Fractional Formula

Decedent's Estate 2011	\$6,000,000.00
Federal QTIP Fraction is 1/6	\$1,000,000.00 (in Federal Marital Portion)
State QTIP Fraction is 4/6	\$4,000,000.00 (in State Marital Portion)
If the Trust distributes principal of	\$ 500,000.00
Federal QTIP Fraction is 5/55	
Federal Marital Portion is	\$ 500,000.00
State QTIP Fraction is 35/55	
State Marital Portion	\$3,500,000.00