

Appendix 2

SAMPLE SECOND-TO-DIE IRREVOCABLE LIFE INSURANCE TRUST

Note: This form is a sample irrevocable life insurance trust that is designed to hold a second to die life insurance policy on a married couple. The trust is designed to be GST tax exempt, but because of the hanging *Crummey* withdrawal rights may **not** qualify as a GST Trust (to which the grantor's GST tax exemption will be automatically allocated). Therefore, the transferor will need to annually allocate his or her GST tax exemption to contributions or will need to make a one time election on IRS Form 709 to have the trust be treated as a GST Trust (see, "GST Trust Election Statement" in Appendix 4). The trust contains a hanging *Crummey* right of withdrawal, and permits a donor to make gift contributions to the beneficiaries up to the annual exclusion amount. Optional and alternate language is contained in brackets { } .

This form is designed to be an adjunct to (and not a substitution for) the grantor's base estate plan, such as a revocable living trust. This form should not be used as a pour-over from a person's probate estate, will, or other trust.

Practice Note: Michigan practitioners should note that the sample forms complies with Michigan's Estates and Protected Individuals Code, which went into effect April 1, 2000.

As this is a sample form, practitioners must be careful when using the form to adapt it to comply with new developments in federal and state estate, gift and generation-skipping transfer tax law and to modify it to comply with applicable state law and the particular requirements and needs of their client; accordingly, the author makes no representations or warranties as to the efficacy of the form.

[Revised thru 06292007]

THE «SETTLORFULLNAME» IRREVOCABLE TRUST

Name of Trust: The «SettlorFullName» Irrevocable Trust, dated
«DateofExecution»

Initial Trustee: «InitialTrustee»

Successor Trustees: «AltTrustee1»

«AltTrustee2»

«AltTrustee3»

«AltTrustee4»

Date of Execution: «DateofExecution»

I, «SettlorFullName», on «DateofExecution», sign this Trust Agree ment ("Agreement") with «InitialTrustee» as trustee (who, and any successor trustee, substitute trustee, or co-trustee, will be called "Trustee" in this Agreement and referred to in singular neuter pronouns), on the following terms and conditions. The original trust established hereunder by me is hereinafter sometimes referred to as the "initial trust."

ARTICLE 1
CREATION AND FUNDING THE TRUST

1.1 Creation of Trust. I create this trust as a means by which assets, which may include one (1) or more policies of insurance on my life, the life of any other person, or the joint lives of two or more persons, directly or indirectly in any arrangement deemed appropriate by Trustee, may be held for the benefit of my beneficiaries, on the terms and conditions set forth in this Agreement. It is my intent in creating this trust that all gifts made to this trust by me (directly or indirectly) be both complete and generally gifts of present interests for federal gift tax purposes. All provisions of this trust shall be construed in such a manner as best to affect these intents. Accordingly, no power enumerated herein or accorded to trustees, or granted pursuant to law, whether singularly, jointly or as a whole, shall be construed:

(A) To enable me: (i) to become a Trustee hereunder (or to possess or exercise any powers of such office), (ii) to vote any stock described in IRC section 2036(b) which may at any time be directly or indirectly given to any trust hereunder, (iii) to possess or exercise any power of appointment (including a right of withdrawal) with respect to any such trust, (iv) to possess, exercise or retain any power or interest described in IRC sections 2036, 2037 and 2038, (v) if I am the insured under any policy of insurance held by any trust hereunder, to exercise any incident of ownership within the meaning of IRC section 2042 with respect to that policy held by the trust, (vi) to receive any distributions on behalf of a beneficiary (regardless of my relationship to the beneficiary), or (vii) to possess or exercise any rights or discretion granted to a beneficiary hereunder; and

(B) To permit any trust distribution which would have the effect of discharging any legal obligation of mine (including any obligation that I may have at any time relating to the support and/or education of any beneficiary hereunder).

1.2 Transfer of Property to Trust. I hereby irrevocably transfer and assign to Trustee the property listed in **SCHEDULE A**, to be held and administered according to the terms of this trust. In connection with the transfer of any life insurance policies to Trustee, I agree to execute, in addition to an appropriate assignment of ownership form, any and all other instruments necessary or appropriate to permit Trustee to exercise all rights, powers, options, privileges or incidents of ownership that I may have had as the owner of such policies. With regard to any group term policies assigned to Trustee, the transfer of such policies also includes any future policies to be issued, or policies in supplementation thereof, or in succession, substitution, replacement or renewal thereof, and any increase in the amount of coverage.

Any person may transfer property acceptable to Trustee at any time. Trustee may accept a transfer of property that is subject to one or more conditions imposed by the donor (including giving a particular beneficiary (or a group of beneficiaries) a right to withdraw a contribution and the conditions for the lapse of a beneficiary's right of withdrawal) if Trustee deems it to be in the best interests of the trust and the beneficiaries. No condition imposed on a transfer of property and accepted by Trustee may in any way alter, amend, or change the rights of a beneficiary with respect to any prior transfers of property to the trust. Trustee may also refuse to accept any transfer of property if Trustee deems the refusal to be in the best interests of the trust and its beneficiaries.

1.3 Restrictions on Donors. Any individual (other than a donor's spouse who merely consents to gift splitting under IRC section 2513 concerning the donor's contribution to the trust) who makes a "contribution" (as defined in the Paragraph entitled,

“**Contribution Defined**”) to a trust in the first instance (in contrast to a beneficiary’s exercise or lapse of a power of withdrawal or power of appointment) (such individual hereinafter sometimes being referred to as a “donor”) shall, with respect to the contribution to the trust in question, be subject to the same limitations, restrictions, exceptions, and exclusions that I am subject to under this Agreement (but only insofar as they relate to the contributed property or to the trust in question (and any trusts derived therefrom)).

1.4 Restriction on My Spouse. If the trust holds a policy on the life of my Spouse or a life insurance policy covering first or last to die, or joint deaths, of myself and my Spouse as the insureds, then and in that event, my Spouse shall be subject to the same restrictive terms, conditions, limitations, and overall restrictions that I am subject to under this Agreement. Furthermore, if my Spouse is a donor to the trust, my Spouse shall be subject to the same restrictive terms, conditions, limitations, and overall restrictions that I am subject to under this Agreement. In these regards, my Spouse shall be treated as though my Spouse were a grantor of the trust in question, and the words referring to me in the singular, such as “me,” “I,” “my” or “mine,” shall, where the context requires, refer to “us”, “we”, or “ours” instead.

1.5 Construction of Agreement. The Rule In Shelley’s case and the Doctrine of Worthier Title (or any similar rule, doctrine or statute) shall not apply to this Agreement, nor shall this Agreement be construed under any such rule, doctrine or statute.

{ Start Optional Paragraph 1.6}

1.6 Intent and Material Purpose of Trust. Without limiting, restricting or compelling the exercise of a Trustee’s (or a Trust Protector’s or a Special Power Holder’s) discretionary authority set forth in this Agreement, some of the material purposes of this Agreement are: (i) to retain assets in trust for the benefit of the trust’s beneficiary, (ii) to provide creditor and asset protection to the trust’s beneficiary, (iii) to provide spendthrift protection for the trust’s beneficiary, (iv) to provide for the orderly and professional management and investment of trust assets, (v) to protect the trust’s beneficiary from the trust’s beneficiary’s inabilities, disabilities, in-laws, ex-spouses, creditors, and predators, both now and in the future, (vi) to provide a financial “safety-net” for the trust’s beneficiary, (vii) to provide potential resources that may be available to deal with the uncertainties of the economy, emergencies, and other vicissitudes and exigencies of daily life, and (viii) to minimize transfer, death and generation skipping transfer taxes. **{ End Optional Paragraph 1.6}**

ARTICLE 2 IRREVOCABILITY

2.1 Irrevocable Trust. This trust is irrevocable. Applicable state law notwithstanding, I have no power, whether alone or in conjunction with others, and in whatever capacity, to control and direct payments or to alter, amend, modify, revoke, or terminate this Agreement or any trust provision or interest, in whole or in part, or to designate who shall possess or enjoy the trust property or trust income, whether under this trust or any statute or other rule of law. I retain no right, title, interest, or incident of ownership in any trust property.

ARTICLE 3 WITHDRAWAL RIGHTS

3.1 Withdrawal Rights. Unless otherwise provided pursuant to the paragraph item

entitled, "**Restriction of a Withdrawal Right,**" the following withdrawal rights shall exist with respect to contributions to the trust:

(A) Immediately following any contribution to the trust, each of [my children] [my descendants] (individually a "donee," collectively the "donees") who are living on the date of the contribution (and have not been excluded from exercising their withdrawal right with respect to the contribution in question), shall have the right to withdraw an amount equal to a proportionate share of the value of the contribution. Such proportionate share will be the value of the contribution, divided by the number of donees living at the time of the contribution, who have not been excluded from exercising their withdrawal right with respect to the contribution in question; provided, however, that the maximum amount that a donee may withdraw with respect to all contributions made by the same donor during a single calendar year shall be the **lesser** of: (i) the total amount of such contributions, or (ii) the amount of the federal gift tax exclusion under IRC section 2503(b) available to the donor with respect to gifts to such donee, provided however, if requested by a married donor at the time of a contribution, the alternative limitation based on the gift tax annual exclusion shall be two (2) times the amount of the gift tax annual exclusion. In determining the amount of this withdrawal limitation, there shall be taken into consideration all previous gifts made to such donee from (or attributable to) such donor (and the donor's spouse, to the extent relevant) during the same calendar year, which gifts were eligible for the federal gift tax annual exclusion. To the extent a donee is also the donor of a contribution, or is treated as donor of one-half (1/2) of a contribution for federal gift tax purposes, that donee shall have no right of withdrawal with respect to such contribution to which they are the donor (or treated as the donor), and shall never thereafter be considered to have had a right of withdrawal with respect to such contribution.

(B) **Return of Excess Distribution.** If any donee receives a distribution in excess of the amount he or she is authorized to withdraw under this Paragraph, Trustee shall immediately notify such donee in writing, requiring the prompt repayment of such excess amount.

These withdrawal rights take precedence over any other power or discretion granted Trustee or any other person.

3.2 Rules Concerning Withdrawal Rights. With respect to the withdrawal rights created under this Article, unless otherwise provided pursuant to the paragraph item entitled, "**Restriction of a Withdrawal Right,**" the following rules shall apply:

(A) **Notification of Withdrawal Right.** Each eligible donee (or the person who would exercise an eligible donee's withdrawal right) shall be kept reasonably informed of all withdrawable contributions to the trust which are made or are anticipated to be made. Notification may be made orally or in writing, and such efforts may include, by way of example (and without limitation), annually apprising each donee of his or her withdrawal rights, by providing the donee with a single notice sufficient to apprise him or her of his or her current and expected future withdrawal rights, or any other means to provide each eligible donee (or the person who would exercise an eligible donee's withdrawal right) with reasonable or actual notice. In no event shall the failure of any donee to receive such notice be deemed to abrogate his or her withdrawal rights in accordance with the provisions of this Article. A donee's right of withdrawal is not contingent upon such notice; and unless otherwise expressly limited (as is permitted pursuant to the subparagraph entitled, "**Restriction of a Withdrawal Right,**") a donee's withdrawal right shall become effective upon Trustee's receipt (actual, constructive or imputed) of the