



# ESTATES & TRUSTS FORMS MANUAL

## VOLUME 1 & 2

By Stanley Hagendorff

### CHAPTER 1.1

#### BASIC PLANNING, INFORMATION, ENGAGEMENT

The forms included in chapter 1 are fairly basic and general in nature and should be helpful for both the general practitioner and the specialist.

#### **Preplanning Documentation**

Commentary—Getting Needed Information

Form 1.1-1 Information Needed for Estate, Tax, and Financial Planning

Form 1.1-2 Personal Planning Worksheet

Form 1.1-3 Estate Planning Engagement Contract

Form 1.1-4 Alternative Legal Services Agreement

#### **Will Forms**

Form 1.1-5 Basic Last Will and Testament

Form 1.1-6 Basic Last Will and Testament—Disposition to Surviving Spouse, Alternative Disposition to Children

Form 1.1-7 Basic Last Will and Testament—Complex Disposition

Form 1.1-8 Basic Tax Planning Credit Shelter Will—Disposition to Surviving Spouse in Trust and Outright, Alternate Disposition to Children

Form 1.1-9 Codicil to a Last Will and Testament

Form 1.1-10 Pour-Over Will with Provisions for Simultaneous Death and Spendthrift Protection

Form 1.1-11 Self-Proving Pour-Over Will With Provisions for Simultaneous Death and Sale of Personal Effects If No Agreement Between Beneficiaries

Form 1.1-12 Self-Proving Pour-Over Will With Provisions for Disposition by Written Statement, Sale of Personal Effects If No Agreement Between Beneficiaries

Form 1.1-13 Simplified Will for a Married Individual's Small Estate

#### **Durable Powers of Attorney**

Form 1.1-14 Durable Power of Attorney—Property and Tax Matters

Form 1.1-15 Power of Attorney and Declaration of Representative (I.R.S. form 2848) and Instructions

Form 1.1-16 Durable Power of Attorney—Health Care Matters

- Form 1.1-17 Durable Power of Attorney (Check-the-Box Format)
- Form 1.1-18 Durable Power of Attorney With Trust and Health Care Powers
- Form 1.1-19 Power of Attorney—Business and Professional
- Form 1.1-20 General Power of Attorney (Check-the-Box Format)

### **Planning for Minors**

- Form 1.1-21 Independent Appointment of Guardian for Minor and Disabled Children
- Form 1.1-22 Section 2503(c) Trust for a Minor Child

### **Marital Property Agreements**

- Form 1.1-23 Pre-Nuptial Property Agreement
- Form 1.1-24 Post-Nuptial Property Agreement
- Form 1.1-25 Marital Property Agreement Recognizing Marital Property Ownership of Partnership or LLC Units

### **Post-Mortem Planning**

- Form 1.1-26 Post-Mortem Planning Checklist
- Form 1.1-27 Disclaimer
- Form 1.1-28 Qualified Terminable Interest Property Election & the Estate Tax Marital Deduction

## **CHAPTER 1.2**

### **PLANNING WITH REVOCABLE TRUSTS**

Commentary—The Revocable Living Trust

#### **Living Trust for an Unmarried Person**

- Form 1.2-1 One Maker Living Trust—Unmarried Person, Remainder to Children

#### **One Maker Living Trust & Testament—Married Person**

- Form 1.2-2 One Maker Living Trust—Married—Disposition Outright or in Trust for Spouse
- Form 1.2-3 One Maker Living Trust—Married with Taxable Estate—Mandatory Credit Shelter Trust
- Form 1.2-4 One Maker Living Trust—Taxable Estate—Advanced Mandatory Credit Shelter Trust, Complex Remainder to Charitable and Family Beneficiaries

#### **Joint Living Trust & Testament, Married Persons**

- Form 1.2-5 Joint Living Trust—Married Persons—Mom/Pop Outright Disposition
- Form 1.2-6 Joint Living Trust—Married Persons—Credit Shelter Tax Planning
- Form 1.2-7 Joint Living Trust—Married Persons—Credit Shelter Tax Planning & Complex Disposition of the Remainder to Family and Charitable Beneficiaries

## **Living Trust Supporting Documentation**

- Form 1.2-8 Last Will & Testament—Pours all of Estate Subject to Probate Over to an Existing Living Trust
- Form 1.2-9 Separate Durable Powers of Attorney for Property Matters and Health Care Matters
- Form 1.2-10 Deed Transferring Homestead Property to the Living Trust
- Form 1.2-11 Global Funding Directive—Revocable Living Trust
- Form 1.2-12 Amendment to Living Trust

## **Special Purpose Revocable Trusts**

- Form 1.2-13 Forms a Dedicated Trust to Own Homestead Property
- Form 1.2-14 Trust Formed to Own and Manage Jointly Owned Property
- Form 1.2-15 Dedicated Motor Vehicle Trust
- Form 1.2-16 Management Trust
- Form 1.2-17 Revocable Inter-Vivos Self-Declaratory Trust for Two Adult Children and Third Child—Separate Shares
- Form 1.2-18 Self-Declaration of Trust With Spendthrift and Incompetency Clauses, Equal Division of Assets, QTIP Clause, Power-in-Trust for Minors

## **CHAPTER 1.3**

### **PLANNING WITH IRREVOCABLE FAMILY TRUSTS**

The forms in the first edition have been “polished.” Each form has been revised to include additional *Crummey* withdrawal options.

#### **Frequent Questions and Answers**

Technical Guide

#### **Stand-Alone Heritage Trusts—Trust Formed for an Individual Child or Grandchild**

- Form 1.3-1 Stand-Alone Trust for a Descendant, Limited Term
- Form 1.3-2 Irrevocable Education Trust for Minor With *Crummey* Power and Definition of Education
- Form 1.3-3 Stand-Alone Trust for a Descendant, Remainder Passes to Third Generation Family Members
- Form 1.3-4 Stand-Alone Trust for a Descendant, Long Term

#### **Family Trusts With Multiple Beneficiaries**

- Form 1.3-5 Family Umbrella Trust
- Form 1.3-6 Long-Term GST Tax-Exempt Family Resource Trust—Independent Trustee Required
- Form 1.3-7 Guidelines to a Trustee as to the Use and Disposition of the Trust Fund for Family Members’ Letter of Wishes

## **Trust for Spouse**

Form 1.3-8 GST Tax-Exempt Trust Formed for a Spouse, Pour Over to GST Tax-Exempt Heritage Trusts

## **Maintenance**

Form 1.3-9 Redesignation of Successor Trustees by Existing Trust

Form 1.3-10 Resignation Form for Trustee

Form 1.3-11 Illustration—Exercise of a General and Limited Power to Redesignate Beneficiaries

# CHAPTER 1.4

## **PLANNING FOR ASSET PROTECTION**

### **Preliminary Planning Asset Protection**

Commentary

Introduction

Asset Protection Aspects with a Business Entity: The LLC

The Self-Settled Spendthrift Trust

The Non Self-Settled Irrevocable Trust

Estates and Trusts Income Tax Rates

Current Gift Tax Exemptions

### **Income Tax-Grantor Trusts**

Grantor Trust Classification

Tax Treatment of Grantor Trust

Income Payable for Grantor's Benefit

Definitions

Grantor's Control Over Beneficial Enjoyment

Administrative Powers Retained by Grantor

Power to Revoke

Reversionary Interests

Power of Substitution

Form 1.4-1 The Grandchildren Irrevocable Spendthrift Trust

### **Cover Your Assets-Asset Protection Trust in Nevada**

Applicability

Qualified Trustee

Assets in a Spendthrift Trust

Absolute Protection from Creditors

Advantages of the Nevada Spendthrift Trust

Disadvantages of the Nevada Spendthrift Trust

Benefits to the Nevada Spendthrift Trust

### **The Inherent Dangers of Offshore Trusts**

Definitions

Particular Dangers

Voluntary Disclosure Policy for Unreported Offshore Accounts

### **The *Anderson* Case**

## CHAPTER 1.5

### **RETIREMENT PLANNING**

#### **Integration With Estate Plan**

Social Security

Medicare—Basics

Medicare Part D

Long Term Care

#### **Insurance**

Commentary

Income Taxation

Estate Taxation

Form 1.5-1 Life Insurance Trust—Prototype

## CHAPTER 2.1

### **PLANNING WITH SPECIAL NEEDS TRUSTS**

This chapter pertains to planning for children and elder adults with special needs.

#### **Planning for Family Members With Special Needs**

Who Are Those With Special Needs?

Understanding the Basics of Medicaid

Medically Needy Eligibility Groups

Medicaid Planning Trusts Created by Third Parties Special Needs Trusts

## Roundup of Asset Protection Planning for Seniors and the Disabled

Form 2.1-1 Special Needs Trust for a Disabled Family Member

Form 2.1-2 Miller Trust

Form 2.1-3 Miller Trust Created by Court Order

Form 2.1-4 Durable Property Matters Power of Attorney Permitting Establishment of Medicaid Planning Trust

## CHAPTER 2.2

### PLANNING WITH ESTATE PLANNING PARTNERSHIPS AND COMPANIES

#### Commentary

Planning With Family Owned and Controlled Limited Partnerships and Limited Liability Companies—Why?

What Else You Need to Know About Planning With Partnerships and Limited Liability Companies

Comparison of Tax Attributes Between the Proprietorship, Partnership, Corporation, and S Corporation

#### Limited Liability Company Articles of Organization

##### Commentary

Entity Classification Election (I.R.S. Form No. 8832)

Application for Employer Identification Number (I.R.S. Form SS-4)

LLC Member Control Agreement

Single Member Operating Agreement—Member Managed

Single Member Operating Agreement—Manager Managed

Multiple Member LLC Operating Agreement—Member Managed

Multiple Member LLC Operating Agreement—Manager Managed

#### Estate Planning Limited Partnership

Form 2.2-1 Limited Partnership and Alternative Limited Partnership Agreement

Form 2.2-2 Certificate and Articles of Agreement Forming a Family Limited Partnership

#### Estate Planning Limited Liability Company

Form 2.2-3 Certificate and Articles of Agreement Forming a Family Limited Liability Company

Form 2.2-4 Certificate and Articles of Agreement Forming a Family Limited Liability Company With Preferred Equity

#### Estate Planning General Partnership

Form 2.2-5 Agreement Forming a General Partnership

#### Corporation

Form 2.2-6 Forms a Corporation With All Ancillary Documentation

Form 2.2-7 Tax Planning Perks for C Corporations

### **Supporting Documentation for a Partnership or LLC**

Form 2.2-8 Crescendo Funding Directive—Partnership or Limited Liability Company

Form 2.2-9 Illustrates Move of an LP or LLC to Another Jurisdiction Via Merger

Form 2.2-10 Formula Gifts of Equity in a Partnership, LLC, or Corporation

Form 2.2-11 Reorganizations, Consolidation, and Merger

## **CHAPTER 2.3**

### **PLANNING WITH CHARITABLE TRUSTS AND FOUNDATIONS**

Charitable Planning Guidelines

#### **Charitable Remainder Annuity Trust**

Form 2.3-1 Charitable Remainder Annuity Trust—One Life

Form 2.3-2 Charitable Remainder Annuity Trust—Two Lives

#### **Standard Charitable Remainder Unitrust**

Form 2.3-3 Standard Charitable Remainder Unitrust—One Life

Form 2.3-4 Standard Charitable Remainder Unitrust—Two Lives

#### **NimCrut**

Form 2.3-5 Income Only Charitable Remainder Unitrust With Optional Make-Up Payments—One Life

Form 2.3-6 Income Only Charitable Remainder Unitrust With Optional Make-Up Payments—Two Lives

#### **FLIP Charitable Remainder Unitrust**

Form 2.3-7 FLIP Charitable Remainder Unitrust—One Life

Form 2.3-8 FLIP Charitable Remainder Unitrust—Two Lives

#### **Charitable Income Lead Trusts**

The Charitable Income “Lead” Trust—Commentary

Form 2.3-9 Inter Vivos Charitable Income Lead Annuity Trust Nongrantor Status

Form 2.3-10 Inter Vivos Charitable Income Lead Unitrust Nongrantor Status

Form 2.3-11 Inter Vivos Charitable Grantor Income Lead Annuity Trust Grantor Tax Status

Form 2.3-12 Testamentary Charitable Income Lead Annuity Trust

Form 2.3-13 Testamentary Charitable Income Lead Unitrust

#### **Family Charitable Foundation and Donor Advised Fund**

Form 2.3-14 Donor Advised Account With an Area Foundation

Form 2.3-15 Form a Family Private Charitable Foundation

## **CHAPTER 2.4**

## GRANTOR RETAINED ANNUITY TRUST

### Grantor Retained Annuity Trust

Commentary

- Form 2.4-1 One Maker Grantor Annuity Trust—Annotated
- Form 2.4-2 One Maker Grantor Annuity Trust—Term of Years
- Form 2.4-3 One Maker Grantor Annuity Trust—Annotated With a Reversion

## CHAPTER 2.5

## QUALIFIED PERSONAL RESIDENCE TRUST

### Qualified Personal Residence Trust

Commentary

- Form 2.5-1 One Maker Qualified Personal Residence Trust

## CHAPTER 2.6

## PLANNING WITH A PRIVATE ANNUITY

### Planning With a Private Annuity

Commentary

- Form 2.6-1 Agreement for the Purchase of Corporate Stock in Exchange for a Lifetime Annuity Based Upon Previous Assumptions

## CHAPTER 2.7

## SIMPLE ESTATE PLAN FORMS FOR NONTAXABLE ESTATES

### Simple, Easy-to-Understand Estate Plans for Nontaxable Estates

Commentary

- Form 2.7.1 Simple Will for Single Individual
- Form 2.7.2 Simple Will for Married Husband
- Form 2.7.3 Simple Will for Married Wife
- Form 2.7.4 Simple Trust for Single Individual
- Form 2.7.5 Simple Trust for Married Individuals
- Form 2.7.6 Pour-Over Will for Single Individual
- Form 2.7.7 Pour-Over Will for Married Husband
- Form 2.7.8 Pour-Over Will for Married Wife