

## Revocable Trust Interview

### *Trustees*

1. Who will serve as the initial trustees?
2. Who will serve as the successor trustees?
3. If more than one trustee or successor trustee is chosen, how will they serve (one at a time or all together)?
4. How will disagreements among multiple trustees serving together be resolved? Will a majority decision to act suffice, or must the decision be unanimous?
5. What investment standard will the trustee be subject to (i.e., the prudent person rule, the uniform prudent investor rule)?

### *Beneficiaries*

1. Who are the intended beneficiaries?
2. What are the names of all descendants who are to be omitted?
3. If there are no primary beneficiaries, who are the ultimate takers (e.g., the settlor's heirs, 50 percent to the settlor's heirs and 50 percent to the spouse's heirs, parents or siblings, charities, etc.)?

### *Assets*

1. What kind of tax apportionment, if any, does the client want at his or her death?
2. If there will be special or limited powers of appointment, what are the limitations?
3. What definition of representation is preferred (*per stirpes*, *per capita* at each generation, RPC)?
4. If the client owns a business interest, is the business an S corporation? Is there a stock redemption or a buy-sell agreement?
5. Does the husband or the wife have the larger estate?

### *Credit and Marital Portions*

1. Should the credit portion be distributed outright or held in trust? If held in trust, answer the following:
  - a. When and to whom should distributions be made? Are there any specific gifts from the credit portion?
  - b. Should income be paid out automatically or on a discretionary basis? Should it be paid only to the spouse or be sprinkled among the spouse and descendants?
  - c. Is invasion of principal for the spouse authorized? If so, will it be paid out on a discretionary basis or subject to an ascertainable standard? (Caution: The use of ascertainable standards is mandatory if the surviving spouse will be the sole trustee.)
  - d. Is invasion of principal for children, descendants, or both authorized? If so, on what basis and for what purposes? Are distributions to be counted as advances on the recipient's share on termination of the trust? Are the needs of the children or descendants considered secondary to providing for the spouse?
  - e. When does the trust terminate (e.g., at the surviving spouse's death or at the remarriage of the spouse)? Does the spouse have a testamentary power of appointment?
2. For married clients, should the property subject to the marital deduction pass outright, to the separate revocable trust established by the spouse, or to a marital trust? If a marital trust will be established, answer the following:

- a. What type of marital trust will be established? (A qualified terminable interest property trust is mandatory if the client wants to take advantage of his or her generation-skipping transfer tax exemption.)
  - b. Are invasions of principal authorized? If so, are they discretionary or subject to an ascertainable standard?
  - c. Should the spouse be given a lifetime power of appointment? If so, general or special/limited?
  - d. Should the spouse be given a five-by-five withdrawal right?
  - e. Should the spouse be given a testamentary power of appointment? If so, general or special/limited? (Remember, if you use a power of appointment trust, the spouse must be given a general testamentary power of appointment.)
  - f. By which formula is the property to be allocated between the credit and the marital portions?
3. Answer the following questions regarding the termination of the marital and the credit trusts (usually at the spouse's death):
- a. Will any specific gifts be made?
  - b. How are disputes between children over tangible personal property to be resolved (e.g., valuation and selection in rotation or the decision of the trustee)?
  - c. Is a shared trust desired? If so, under what circumstances and when does it terminate (e.g., when no living child is under a certain age)? At termination, should the shares be subject to a continuing right of withdrawal by each beneficiary of his or her own share, or should each beneficiary's share be allocated to a separate trust?
  - d. Are separate trusts desired? If so, for whom (children or only more remote descendants)?
  - e. Is income distribution discretionary, mandatory at age 21, or mandatory unless the beneficiary elects otherwise?
  - f. Should the trustee be authorized to distribute principal for the purpose of purchasing a home or starting a business?
  - g. Are partial withdrawals at stated ages desired? If so, at what ages can withdrawals be made?
  - h. At what age should complete distribution be made?
  - i. Should the beneficiary be given a testamentary power of appointment (in case of death before final distribution)?