# **Creating Trust Shares upon the Death of a Trustor**

Our Trustee shall administer the deceased Trustor’s remaining trust property as provided in this Article.

## Allocation to the Marital Share

Our Trustee shall allocate all of the deceased Trustor’s remaining trust property to the Marital Trust, and shall administer the property as provided in Article Eight.

## Disposition of Property upon Disclaimer by the Surviving Trustor

The surviving Trustor, the surviving Trustor’s fiduciary, or the surviving Trustor’s agent serving under a power of attorney may disclaim any portion of any interest in or power over property passing from the deceased Trustor to or for the surviving Trustor’s benefit under this instrument. If the surviving Trustor disclaims any property that would otherwise be allocated to the Marital Trust, our Trustee shall allocate the disclaimed property to the Non-Marital Share. Our Trustee shall administer the Non-Marital Share as provided in Article Nine.

If the surviving Trustor disclaims the surviving Trustor’s interest in any portion of the Non-Marital Share, our Trustee shall dispose of the disclaimed interest as though the surviving Trustor had predeceased the deceased Trustor.

# **The Marital Trust**

Our Trustee shall administer the Marital Trust as provided in this Article.

## Trustee of the Marital Trust

The surviving Trustor may serve as sole Trustee of the Marital Trust. The surviving Trustor may remove and replace the Trustee of the Marital Trust at any time, with or without cause. Notwithstanding any other provision in this instrument, the surviving Trustor may appoint any individual or corporate fiduciary to serve as Trustee of the Marital Trust.

## The Surviving Trustor’s Right to Amend

Except as otherwise provided in this Article, the surviving Trustor also has the absolute right to amend the Marital Trust’s terms by restating them in full. The restated Marital Trust must be in writing and signed by the surviving Trustor and the Trustee of the restated Marital Trust.

If the surviving Trustor does not disclaim assets allocated to the Marital Trust (and no Credit Shelter Trust is created), then the Marital Trust may continue to be referred to as the {{ trust\_name }} dated {{ trust\_date }}, and may use the surviving Trustor’s social security number as its Taxpayer Identification Number.

The right to amend by restatement may be exercised only by the surviving Trustor.

## Marital Trust As Only Trust

If the Marital Trust is the only trust established on the death of the deceased Trustor, a transfer to that trust need not be evidenced by a change of title.

## Separate Share for Deceased Trustor’s Trust Property

If the Marital Trust becomes the beneficiary of death benefits under any qualified retirement plan, our Trustee shall hold this property in a separate share of the Marital Trust during the surviving Trustor’s lifetime. Our Trustee shall administer the separate share in accordance with all of this Article’s provisions. But, notwithstanding any other provision of this Article, the surviving Trustor may not amend the terms of the separate share.

The purpose of the separate share is to keep the deceased Trustor’s trust property and its accumulated income separate from the main share during the lifetime of the surviving Trustor, in order to qualify the separate share as a designated beneficiary under qualified retirement plans.

Our Trustee shall distribute as much of the principal and accumulated income of the separate share to the main share of the Marital Trust as the surviving Trustor directs. This right to direct distribution from the separate share to the main account may be exercised only by the surviving Trustor.

## Distribution of Income

Notwithstanding any other provision in this instrument, our Trustee shall distribute all of the net income of the Marital Trust, including net income generated by property held as a separate share of the Marital Trust that was previously the deceased Trustor’s property, to the surviving Trustor at least quarter-annually. Nothing contained in this instrument may limit the right of the surviving Trustor to receive the Marital Trust’s entire net income.

## Distributions of Principal

Notwithstanding any other provision in this instrument, our Trustee shall distribute as much of the principal of the Marital Trust, including property held as a separate share of the Marital Trust that was previously the deceased Trustor’s property, to the surviving Trustor as he or she directs for any reason.

Our Trustee may also distribute as much of the principal of the Marital Trust to the surviving Trustor as our Trustee determines necessary or advisable for any purpose.

## Unproductive Property

At the direction of the surviving Trustor, our Trustee shall convert any unproductive property held in the Marital Trust to productive property.

## Trust Distributions during the Incapacity of the Surviving Trustor

During any time the surviving Trustor is incapacitated, our Trustee shall administer the Marital Trust according to the provisions of Section 4.03.

## General Power of Appointment

Notwithstanding any other provision in this instrument, the surviving Trustor may appoint all or any portion of the principal and undistributed income remaining in the Marital Trust, including property and undistributed income generated by the property held as a separate share of the Marital Trust that was previously the deceased Trustor’s property, at the surviving Trustor’s death among one or more persons or entities, including the creditors of the surviving Trustor’s estate. The surviving Trustor has the exclusive right to exercise this general power of appointment.

## Administration following the Surviving Trustor’s Death

The Marital Trust becomes irrevocable upon the death of the surviving Grantor, and our Trustee shall administer the Marital Trust consistent with the provisions of Article Five for administration following the death of the first of us to die.

Upon completion of the administrative tasks, our Trustee shall satisfy the provisions of Article Ten with respect to any specific distributions to be made from the surviving Grantor's remaining trust property. Our Trustee shall then administer the unappointed balance or remainder of the Marital Trust as provided in Article Ten.