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

Our Trustee shall divide the deceased Trustor’s remaining trust property into two separate shares, to be designated the Marital Share and the Non-Marital Shares as provided in Section 5.01 and Section 5.02.

## Creation of the Marital Share

Our Trustee shall allocate {{ marital\_percent }} of the deceased Trustor’s remaining trust property to the Marital Share.

The Marital Share must carry its *pro rata* share of the income, but the Marital Share must not receive less income than that required to be paid to the surviving Trustor under applicable state law.

Our Trustee shall add the assets of the Marital Share to the Marital Trust and administer those assets as provided in Article Eight.

## Creation of the Non-Marital Share

Our Trustee shall allocate the balance of the deceased Trustor’s trust property to the Non-Marital Share. Our Trustee shall administer the Non-Marital Share as provided in Article Nine.

## Funding the Marital Share

Our Trustee has complete authority and discretion to satisfy the Marital Share by cash, in-kind, by a combination of cash and in-kind contributions, or by undivided interests in property.

Our Trustee may select the specific property to be allocated to the Marital Share subject to the limitations set forth in this Section.

To the extent that the assets qualifying for the marital deduction are insufficient to fully fund the Marital Share, our Trustee shall reduce the amount of the funding to the Marital Share accordingly. We acknowledge that the amount of funding may be affected by actions of our Trustee and the deceased Trustor’s Personal Representative in making certain tax elections.

* + 1. Ineligible Assets

Our Trustee may not allocate property or the proceeds of any property to the Marital Share that does not qualify for the federal estate tax marital deduction.

* + 1. Valuation of Assets

The fractional share is fixed and may not vary with changes in the trust property’s value after the valuation date used for federal estate tax purposes. But since the fractional share is not intended to be a gift of a specified dollar amount or pecuniary in nature, the fraction must be applied to the trust assets at their actual value on the effective allocation date so that the resulting value of the fractional share of the trust property will reflect fluctuations in the trust property’s value.

* + 1. Tax Consequences of Certain Allocation

We request that our Trustee always consider the tax consequences of allocating any insurance policy that insures the life of the surviving Trustor, property subject to the foreign death credit, property on which a tax credit is available, or property that is income in respect of a decedent under the Internal Revenue Code to the Marital Share.

## 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.

## 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 8.03.

## 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 Trustor, 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.

# **The Credit Shelter Trust**

Our Trustee shall hold and administer the Non-Marital Share in a separate trust as provided in this Article. This document refers to the trust as the *Credit Shelter Trust*.

## Credit Shelter Trust Beneficiary

The surviving Trustor is the only beneficiary of the Credit Shelter Trust during the surviving Trustor’s lifetime.

## Distribution of Income and Principal

Our Independent Trustee may distribute as much of the income and principal of the Credit Shelter Trust to the surviving Trustor as our Independent Trustee may determine advisable for any purpose. If no Independent Trustee is then serving, our Trustee shall distribute as much income and principal to the surviving Trustor as our Trustee determines necessary or advisable for the surviving Trustor’s health, education, maintenance, and support.

Any undistributed net income must be accumulated and added to principal.

## Guidelines to Our Trustee

The surviving Trustor is the only beneficiary of the Credit Shelter Trust. In making discretionary distributions under this Article, our Trustee should bear in mind that our primary concern and objective is to provide for the well-being of the surviving Trustor, and the preservation of principal is not as important as this objective.

Without limiting our Trustee’s discretion, we recommend that our Trustee not distribute principal from the Credit Shelter Trust to the surviving Trustor until the principal of the Marital Trust is substantially exhausted.

## Termination of the Credit Shelter Trust

The Credit Shelter Trust will terminate upon the death of the surviving Trustor and our Trustee shall administer the balance or remainder of the Credit Shelter Trust as provided in Article Ten.