# **Trusts for Our Beneficiaries**

Upon the death of the survivor of us, our Trustee shall administer and distribute our remaining trust property (not distributed under prior Articles of this instrument), or other property allocated to this Article under the terms of this Article.

We desire that the trust property held in each separate share trust remain the sole and separate property of our children and their descendants to protect against the loss of such property to a creditor claim, whether in a marital dissolution, lawsuit, or otherwise. Our Trustee shall take no action that would cause any of the property of a separate share trust to be commingled with the property of the spouses of our children and their descendants. Moreover, we urge each of our children and each of their descendants to be mindful, whenever they exercise withdrawal rights and whenever they receive distributions from a separate share trust, that they should protect the sole and separate property status of such withdrawals or distributions by depositing such distributions in separately titled accounts and by titling property received from a separate share trust solely in their names.

## Division of Our Remaining Trust Property

Our Trustee shall divide our remaining trust property into shares as follows:

|  |  |  |
| --- | --- | --- |
| **Name** | **Relationship** | **Share** |
| {%tr for person in beneficiaries %} | | |
| {{ person.name }} | {{ person.relationship }} | {{ person.inheritance\_percentage}} |
| {%tr endfor %} | | |

Our Trustee shall administer the share of each beneficiary as provided in the Sections that follow.

{%p macro distribution(person) %}

## Distribution of the Share for {{ person.name }}

Our Trustee shall administer the share set aside for {{ person.name }} in trust as provided in this Section.

## Identifying {{ person.name }}’s

To the extent practicable, for the purpose of transferring property to {{ person.name }}’s trust or identifying {{ person.name }}’s trust in any beneficiary or pay-on-death designation, {{ person.name }}’s trust should be identified as:

“The {{ person.name }} Trust created under the {{ trust\_name }} dated {{ trust\_date }}.”

For convenience, {{ person.name }}’s separate trust may be referred to as:

“The {{ person.name }} Trust.”

For all purposes concerning the identity of {{ person.name }}’s trust or any property titled in or payable to {{ person.name }}’s trust, any description referring to {{ person.name }}’s trust will be effective if it reasonably identifies {{ person.name }}’s trust and indicates that the trust property is held in a fiduciary capacity.

## {{ person.name }}’s Right to Withdraw Trust Income

During {{ person.name }}’s lifetime, {{ person.name }} (including any Legal Representative acting on behalf of {{ person.name }}) shall have the annual noncumulative power to withdraw all or any portion of the trust’s taxable income or accounting income, whichever is greater including net capital gains, on or before December 31 of the calendar year. It is intended that the beneficiary’s right to withdraw taxable income qualify the Trust as a grantor trust as to the beneficiary, and that the beneficiary be taxed on the greater of the accounting income or the taxable income of {{ person.pronoun\_possessive(‘trust’) }} as the deemed owner pursuant to Internal Revenue Code §678(a)(1).

The withdrawal right will be subject to the limitations and qualifications as provided in subsequent provisions of this Section.

## Exercise of Right to Withdraw by the Primary Beneficiary

The Primary Beneficiary may exercise a withdrawal right by a written request delivered to the Trustee. If the Primary Beneficiary (or an inheriting descendant) is unable to exercise a right to withdraw because of minority or incapacity, the beneficiary’s parent or Legal Representative may exercise the right to withdraw. If there is no Legal Representative, the Trustee shall designate an appropriate adult individual who may exercise the beneficiary’s right to withdraw.

Any property distributed to the Legal Representative of a minor or incapacitated beneficiary or individual designated to make the withdrawal on behalf of the beneficiary must be held for the use and benefit of the beneficiary and may not be used by the person who exercised the withdrawal right on behalf of the beneficiary to discharge that person’s legal obligation of support. The Trustee may pay any money or property distributed to a minor pursuant to the exercise of a right to withdraw to a custodian for the minor under the Uniform Transfers to Minors Act or Uniform Gifts to Minors Act of any state.

The Power of Attorney agent of a beneficiary, regardless of whether the beneficiary is incapacitated, shall have the power to exercise the beneficiary’s withdrawal right.

## Lapse of Right to Withdraw

Any unexercised withdrawal right by the beneficiary (or by any Legal Representative acting on behalf of the beneficiary), however, will be decreased on December 31 of each year (or by the time of the beneficiary’s death, if earlier), but not below zero, by the maximum amount under Section 2514(e) of the Internal Revenue Code to which the lapse of a power to withdraw is not considered a release of the power to withdraw.

A Primary Beneficiary’s withdrawal right over the Trust’s income will terminate by reason of the Primary Beneficiary’s death.

Any such withdrawable income (as it pertains to the maximum amount under Section 2514(e)) of the trust which is not withdrawn by the beneficiary (or by any Legal Representative acting on behalf of the beneficiary) by the end of any calendar year (or by the time of the beneficiary’s death, if earlier) shall be added to the principal of the trust estate, and the beneficiary’s power of withdrawal (as it pertains to the maximum amount under Section 2514(e)) for such calendar year shall lapse.

The Primary Beneficiary’s unlapsed vested withdrawal right can only be appointed or assigned by the Primary Beneficiary with the written consent of the Trust Protector. The Primary Beneficiary’s unlapsed vested withdrawal right will not terminate by reason of the Primary Beneficiary’s death. The personal representative of the Primary Beneficiary’s estate shall have the right to exercise the vested withdrawal right on behalf of the Primary Beneficiary’s estate.

## Satisfaction of Withdrawal Right by the Trustee

The Trustee shall satisfy any valid request for withdrawal within a reasonable time. The beneficiary may request a withdrawal in terms of either a dollar amount, by reference to a percentage of the taxable income ultimately received by the trust during the year, by reference to a percentage of the corpus, or any other reasonable description or combination thereof. The Trustee need not trace distributions to actual receipts of income and may satisfy the request from any trust assets or accounts.

## Trust Protector’s Power to Alter Withdrawal Rights

The Trust Protector may suspend, expand, alter, and/or reinstate the beneficiary’s withdrawal power under this Section, in whole or in part, by written instrument delivered to the beneficiary. All changes made by the Trust Protector shall take effect on January 1 of the following tax year. However, in the first year of the trust, prior to funding, the Trust Protector may make changes that take effect immediately.

The Trust Protector shall not be liable for acting or failing to act to suspend, alter, expand or reinstate the beneficiary’s withdrawal rights.

## Distributions of Income and Principal

The Independent Trustee may distribute to {{ person.name }} as much of the income and principal of {{ person.name }}’s trust (which is not withdrawable by {{ person.name }} or by {{ person.name }}’s Legal Representative pursuant to the provisions of subsection (b) of this Section, above) as the Independent Trustee may determine advisable for any purpose.

The Independent Trustee may exhaust the entire principle of this trust without regard to the interests of contingent beneficiaries.

In the event the income or principal of this separate trust share becomes subject to an Involuntary Action, or if the Independent Trustee, in its discretion, determines that {{ person.name }} is incapable of handling money or financial affairs prudently or that {{ person.name }} has financial problems or marital problems that could result in the diversion or dissipation of Trust property or property distributed from the Trust, the Spendthrift Section, located in the General Provisions Article of this instrument, shall apply, and the Independent Trustee, in its sole and absolute discretion, may refrain from making discretionary distributions to {{ person.name }} until the problems have been resolved to the Independent Trustee’s satisfaction.

If no Independent Trustee is then serving, the Trustee may distribute to {{ person.name }}, as much of the income and principal of {{ person.name }}’s trust as the Trustee determines necessary or advisable for {{ person.name }}’s health, education, maintenance, and support.

The Trustee shall add any undistributed net income to principal.

{%p if person.special %}

## Not a Conduit Trust

The conduit trust provisions set forth in {{ refone }}do not apply to this trust.

## Distributions for Supplemental Needs

Our Trustee, in its sole, absolute, and unreviewable discretion, may distribute discretionary amounts of net income and principal for supplemental needs of {{ person.name }} not otherwise provided by governmental financial assistance and benefits or other service providers.

*Supplemental needs* refers to the basic requirements for maintaining the good health, safety, and welfare, when, in the discretion of our Trustee, those basic requirements are not being provided by any public agency, office, or department of any state or the United States.

*Supplemental needs* will also include medical and dental expenses; annual independent checkups; clothing and equipment; programs of training, education, treatment, and rehabilitation; private residential care; transportation, including vehicle purchases; maintenance; insurance; and essential dietary needs. *Supplemental needs* may include additional food; clothing; electronic equipment such as radio, recording and playback, television and computer equipment; camping; vacations; athletic contests; movies; trips; and the purchase of appropriate gifts for relatives and friends.

Our Trustee has no obligation to expend trust assets for those needs, but if our Trustee, in its sole, absolute and unreviewable discretion, decides to expend trust assets, under no circumstances may any amounts be paid or reimbursed to the federal government, any state, or any governmental agency for any purpose, including for the care, support, and maintenance of {{ person.name }}.

## Objective to Promote Independence of {{ person.name }}

While actions are in our Trustee’s sole, absolute and unreviewable discretion, all parties to this trust are to be mindful that our wish is that First Residuary Beneficiary live as independently, productively, and happily as possible.

## Trust Assets not to be Considered Available Resource to {{ person.name }}

The purpose of this trust is to supplement any benefits received or for which the beneficiary may be eligible through various governmental assistance programs, and not to supplant those benefits. All actions of our Trustee must be directed toward carrying out this purpose and the discretion granted our Trustee under this trust to carry out this purpose is absolute.

For purposes of determining {{ person.name }}’s eligibility for any governmental assistance program benefits, no part of the principal or undistributed income of the trust estate is to be considered available to {{ person.pronoun() }} for public benefit purposes. First Residuary Beneficiary does not have access to principal or income of the trust, and {{ person.pronoun\_subjective() }} has no ownership, right, authority, or power to convert any asset into cash for {{ person.pronoun\_possessive(‘own’) }} use.

Our Trustee shall hold, administer, and distribute all property allocated to this trust for the exclusive benefit of First Residuary Beneficiary during First Residuary Beneficiary’s lifetime. All distributions from this trust share are in the sole and absolute discretion of our Trustee, and First Residuary Beneficiary is legally restricted from demanding trust assets for {{ person.pronoun\_possessive(‘support’) }} and maintenance.

In the event our Trustee is requested to release principal or income of the trust to or on behalf of {{ person.name }} to pay for equipment, medication, or services that any government agency is authorized to provide, or in the event our Trustee is requested to petition a court or any other administrative agency for the release of trust principal or income for this purpose, our Trustee is authorized to deny the request and take whatever administrative or judicial steps may be necessary to continue {{ person.name }}’s eligibility for benefits. This may include obtaining legal advice about {{ person.name }}’s specific entitlement to public benefits and obtaining instructions from a court of competent jurisdiction ruling that neither the trust corpus nor the trust income is available to {{ person.name }} for eligibility purposes. Any expenses of our Trustee in this regard, including reasonable attorneys’ fees, are a proper charge to the trust estate

## Distribution Guidelines

Our Trustee is responsible for determining what discretionary distributions are to be made from this trust, and may use a Care Manager in accordance with the provisions of this Section. Our Trustee may distribute discretionary amounts of income and principal to or for the benefit of {{ person.name }} for those supplemental needs not otherwise provided by governmental financial assistance and benefits or by a service provider. Our Trustee shall add any undistributed income to principal. In making distributions, our Trustee:

shall consider any other known income or resources of the beneficiary that are reasonably available;

shall consider all entitlement benefits from any government agency, such as Social Security disability payments, Medicare, Medicaid (or any state Medicaid program equivalent), Supplemental Security Income (SSI), In-Home Support Service (IHSS), and any other person-purpose benefits for which {{ person.name }} is eligible;

shall consider resource and income limitations of any assistance program;

shall make expenditures so that {{ person}}’s standard of living will be comfortable and enjoyable;

is not obligated or compelled to make specific payments;

may not pay or reimburse any amounts to any governmental agency or department, unless proper demand is made by this governmental agency and reimbursement is required by the state; and

will not be liable for any loss of benefits.

## Use of Care Manager

Our Trustee has the option of utilizing the services of a Care Manager to advise on how best to provide for {{ person.name }}’s needs. The primary objective of the Care Manager will be to assist our Trustee to ensure that {{ person.name }} maintains a safe living situation, receives counseling services when appropriate, and lives as independently as possible, in accordance with our intentions.

A Care Manager must be a professional Licensed Clinical Social Worker, Professional Conservator, or care management agency that has experience in the field of assessment of conditions similar to those of {{ person.name }}, and is familiar with the public benefits to which {{ person.name }} may be entitled.

## Distribution Advancement

If our Trustee uses a Care Manager, the Care Manager will advise our Trustee concerning discretionary distributions to be made from the trust that are helpful and appropriate for {{ person.name }}’s needs, including payment for medical care, counseling services, and daily support.

## Care Manager Account for Periodic Payments

If our Trustee uses a Care Manager, the Care Manager may establish periodic payments for part or all of the payments authorized under this trust and maintain a separate bank account for disbursement by the Care Manager. Any account must be carried in the name of the trust and must have the trust’s federal tax identification number. At least monthly, the Care Manager must provide information on receipts and disbursements from this account to our Trustee. This account must contain no more than an amount reasonably necessary for {{ person.name }}’s needs for a period of 60 days.

Our Trustee will not be held liable for any actions of the Care Manager, unless our Trustee has actual knowledge of and consented to the Care Manager’s proposed actions before the actions were actually taken. The Care Manager may not make any distributions that may cause a reduction of public benefits, unless our Trustee has consented to the distribution.

## Annual Care Plan

If our Trustee uses a Care Manager, the Care Manager must at least annually provide to our Trustee a written care plan for purposes of evaluation of {{ person.name }}’s medical and psychosocial status. The care plan must include recommendations concerning resources and services beneficial to {{ person.name }}.

## Quarterly Assessments

If our Trustee uses a Care Manager, the Care Manager must visit {{ person.name }} at least quarterly to assess {{ person.name }}’s physical and emotional needs, including the appropriateness of the present placement, attendant care, access to required resources, reliability to make and keep medical appointments, and access to socialization activities.

## Compensation of the Care Manager

If our Trustee uses a Care Manager, the Care Manager is entitled to fair and reasonable compensation for the services provided equal to the customary and prevailing charges for these services at the same time period and in the same location.

## The Resignation of a Care Manager

Any Care Manager may resign by giving 30 days written notice to our Trustee.

## Replacement of Care Manager

Our Trustee may terminate the Care Manager without cause and name a replacement. If a Care Manager cannot serve for any reason, our Trustee may name a replacement, who may begin to serve immediately. A successor Care Manager must also be a professional Licensed Clinical Social Worker, Professional Conservator, or care management agency with experience in the field of assessment of conditions similar to those of {{ person.name }}, and familiarity with the public benefits to which {{ person.name }} may be entitled.

## No Seeking of Order to Distribute

For purposes of determining {{ person.name }}’s state Medicaid program equivalent eligibility, no part of the principal or undistributed income of the trust estate may be considered available to {{ person.name }}. Our Trustee shall deny any request by {{ person.name }} to:

release principal or income of the trust to or on behalf of {{ person.name }} to pay for equipment, medication, or services that the state Medicaid program equivalent would provide if the trust did not exist; or

petition a court or any other administrative agency for the release of trust principal or income for this purpose.

Our Trustee may, in its sole, absolute and unreviewable discretion, take necessary administrative or legal steps to protect {{ person.name }}’s eligibility for a state equivalent of the Medicaid program. This may include obtaining a ruling from a court of competent jurisdiction that the trust principal is not available to {{ person.name }} for purposes of determining eligibility for a state equivalent of the Medicaid program. Expenses for this purpose, including reasonable attorneys’ fees, are a proper charge to the trust estate.

## Indemnification of Trustee When Acting in Good Faith

Our Trustee will be indemnified from the trust property for any loss or reduction of public benefits sustained by {{ person.name }} as a result of our Trustee exercising, in good faith, the authority granted to our Trustee under this Section.

## Termination and Distribution of the Supplemental Needs Trust

If our Trustee, in its sole, absolute, and unreviewable discretion, determines that {{ person.name }} is no longer dependent on others and is able to independently support themselves, our Trustee shall administer the remaining property in accordance with the provisions that follow.

The *independently support* requirement is satisfied when {{ person.name }} has been gainfully employed for 33 months of a 36 month period.

The terms *gainful employment* and *gainfully employed* mean full-time employment that produces sufficient net income to enable {{ person.name }} to contribute not less than 100% of the funds (exclusive of other sources of revenue) that are necessary to provide for the independent care, support, maintenance, and education of {{ person.name }}. Our Trustee, in its sole and absolute discretion, determines whether or not {{ person.name }} has satisfied the condition of gainful employment.

## Distributions of Income and Principal

Our Independent Trustee may distribute as much of the income and principal of {{ person.name }}’s trust to {{ person.name }} as our Independent Trustee may determine advisable for any purpose. If no Independent Trustee is then serving, our Trustee shall distribute as much of the income and principal of {{ person.name }}’s trust to {{ person.name }} as our Trustee determines necessary or advisable for {{ person.name }}’s health, education, maintenance, and support.

Our Trustee shall add any undistributed net income to principal.

{%p endif %}

{%p if subtrustpoa %}

## Distributions of Principal and Income

The Independent Trustee may distribute to {{ person.name }} as much of the income and principal of {{ person.name }}’s trust (which is not withdrawable by {{ person.name }} or by {{ person.name }}’s Legal Representative pursuant to the provisions of subsection (b) of this Section, above) as the Independent Trustee may determine advisable for any purpose.

The Independent Trustee may exhaust the entire principle of this trust without regard to the interests of contingent beneficiaries.

In the event the income or principal of this separate trust share becomes subject to an Involuntary Action, or if the Independent Trustee, in its discretion, determines that {{ person.name }} is incapable of handling money or financial affairs prudently or that {{ person.name }} has financial problems or marital problems that could result in the diversion or dissipation of Trust property or property distributed from the Trust, the Spendthrift Section, located in the General Provisions Article of this instrument, shall apply, and the Independent Trustee, in its sole and absolute discretion, may refrain from making discretionary distributions to {{ person.name }} until the problems have been resolved to the Independent Trustee’s satisfaction.

If no Independent Trustee is then serving, the Trustee may distribute to {{ person.name }}, as much of the income and principal of {{ person.name }}’s trust as the Trustee determines necessary or advisable for {{ person.name }}’s health, education, maintenance, and support.

The Trustee shall add any undistributed net income to principal.

{%p endif %}

## Distribution if {{ person.name }} is Deceased

If {{ person.name }} dies before the establishment of {{ person.pronoun\_possessive(‘trust’) }}, our Trustee shall distribute {{ person.name }}’s share *per stirpes* in truststo the descendants of {{ person.name }}. If {{ person.name }} has no then-living descendants, our Trustee shall distribute {{ person.name }}’s share *per stirpes* in trusts to our descendants. Our Trustee shall administer the trusts under the same terms as {{ person.name }}’s trust. If we have no then-living descendants, our Trustee shall distribute {{ person.name }}’s share as provided in Article Eleven.

{%p endmacro %}

{%p for person in beneficiaries %}

{{p distribution(person) }}

{%p endfor %}

{%p if letter\_of\_instruction %}

{{p include\_docx\_template(‘loi.docx’) }}

{%p endif %}