

NOTE: This guide is intended as a reference -we do not expect you to read this entire publication from start to finish.

WealthDocs Set Preferences Guide Table of Contents

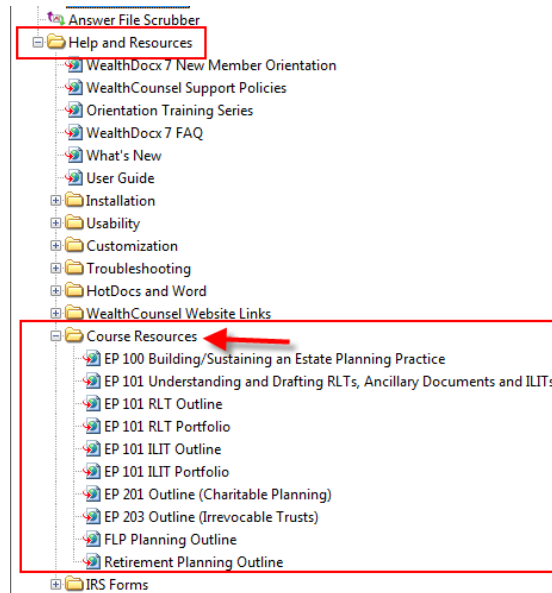
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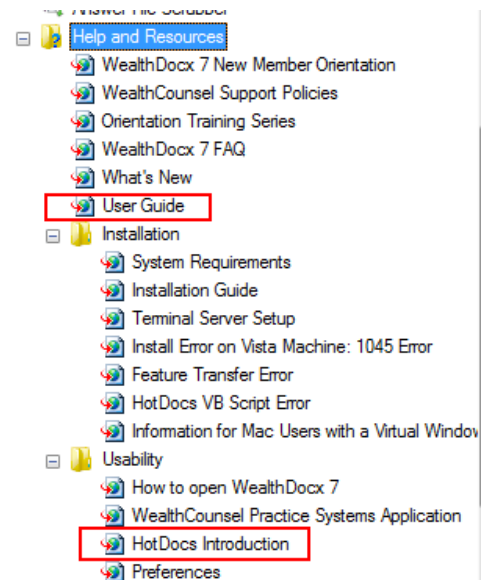
Overview of the “Set Preferences” Interview in WealthDocx

1.01 “Prerequisites”

To get the most from this outline, we recommend that you first review the **EP 101 guides** (available in the "Course Outlines" folder under the "Help and Resources" folder in WealthDocx™ 7) to familiarize yourself with many of the important decisions you must make during a document drafting interview, including the default settings you will establish as you complete the Set Preferences interview.



In addition, confirm that the latest service pack for HotDocs® has been installed and that the most recent WealthDocx update is installed on your computer. HotDocs updates are available from <http://www.hotdocs.com/downloads/>. WealthDocs updates are available from the Members' website: <https://www.wealthcounsel.com/wealthdocsupdates.aspx>. For more information on HotDocs, see "HotDocs Introduction" in the Usability folder under Help and Resources in the WealthDocx 7 library. For more information on WealthDocx see "User Guide" under Help and Resources in the WealthDocx 7 library.



1.02 Understand Set Preferences and Scenarios

WealthCounsel recommends that the Set Preferences interview be completed by new members very soon after installing WealthDocs. The concept behind the Set Preferences interview in WealthDocs is to allow you to assign predetermined answers to certain dialogs. The issues addressed in the Set Preferences interview are designed to identify your typical approach to estate planning, providing consistency for issues that you will address in every client's estate plan. The basic rule of thumb is if you will make a certain choice 8 out of 10 times or more; put that selection in your set preferences interview. You can always change the prefilled choice later in the actual document interview if needed. Times you may only make a certain choice 50% of the time you would want to leave those items blank and select the answer in the document interview.

Setting preferences does not address such issues as which marital deduction formula is used in clients' plans, the manner in which beneficiaries' shares are held and administered, and other fact-specific issues. As you identify and develop common estate planning strategies, these strategies can be developed as "scenarios" to be reused and applied to future clients' plans. Developing and using scenarios gives a great head start on developing estate plans for clients by "pre-answering" most plan-related questions relative to a particular plan design.

WealthDocx provides a number of scenarios "out of the box" when the software is installed. Members are encouraged to explore the Scenarios folders within each of the various document systems in the WealthDocx 7 library, and to create their own.

For more information on creating and using scenarios you have several options: 1) view the presentation entitled "Scenario Creator" available on the WealthCounsel website under Resource Center > 24/7 Library > WealthDocx Training and Usability, or 2) on the Orientation Training Series, and 3) you can also access this same 5 minute tutorial from within WealthDocx if you launch the Scenario Creator interview and click on the button for "Scenario Creator tutorial".

The remainder of this outline discusses the various decisions that must be made in the Set Preferences interview.

1.03 Naming Preference for Individual Revocable Living Trust (RLT)

Decide what term to use when creating a revocable trust for clients.

Naming Preference for Individual RLT

Preferred naming convention for an Individual Revocable Living Trust:

- [Client full name] + Living Trust
- [Client last name] + Living Trust
- [Client full name] + [Your wording]
- [Client last name] + [Your wording]

Enter your preferred other wording, e.g. "Revocable Living Trust"

Include "or their successors in interest" following the Trustee's name in the formal name of the trust.

Yes No

1.04 Naming Preference for Joint RLT

Decide what term to use when creating a revocable trust for clients.

Naming Preference for Joint RLT

Preferred naming convention for a Joint Revocable Living Trust:

- [Client last name] + Living Trust
- [Husband full name] + [Wife full name] + Living Trust
- [Husband first name] + [Wife first name] + [Client last name] + Living Trust
- [Client last name] + [Your wording]
- [Husband full name] + [Wife full name] + [Your wording]
- [Husband first name] + [Wife first name] + [Client last name] + [Your wording]

Enter your preferred other wording, e.g. "Joint Living Trust"

Include "or their successors in interest" following the Trustee's name in the formal name of the trust.

Yes No

1.05 Naming Preference for LLC Operating Agreement

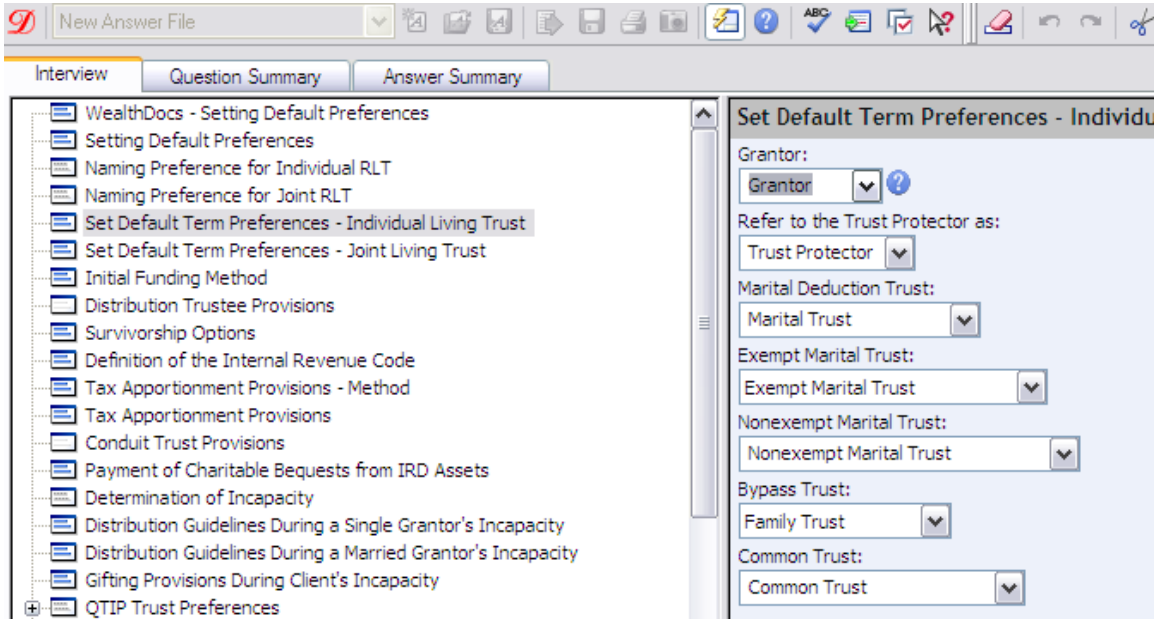
Type in the term to use when creating an LLC Operating Agreement.

Naming Preference for LLC Operating Agreement

Preferred naming convention for an LLC Operating Agreement:

1.06 Set Default Term Preferences – Individual Living Trust

Decide what terminology you want to use for the grantor, the trust protector, and the various trust shares established under an individual RLT. The screens look like this:



(a) Grantor

Many members have historically preferred the term “Trustmaker;” others prefer “Grantor,” to be consistent with the term used in the Internal Revenue Code. However, there is little consensus among WealthCounsel members about which term to use; this is purely a matter of personal preference.

(b) Trust Protector

Select the term to be used when a trust protector is named in a document. For more information on the use of trust protectors, consult the EP101 outline. In addition, a Google™ search of the phrase “Trust Protector” will give a number of hits for more information from the Internet. (Searching for the term in quotation marks will search for the phrase, rather than the separate keywords.)

(c) Marital Deduction Trust

In the Individual RLT, this refers to the portion of the decedent’s trust estate that will be funded with property that qualifies for the marital deduction. Although most WealthCounsel members choose the term “Marital Trust,” there is not an industry standard. Notice that when you click on an option, the help pane provides

more specific information about that choice.

(d) Exempt Marital Trust

These options select the terminology to be used when the plan divides the grantor's estate in to Generation Skipping Transfer Tax (GSTT) exempt and nonexempt shares. The exempt marital share is designed to hold the difference between the grantor's estate tax exemption equivalent amount and the GSTT exemption equivalent.

The Exempt Marital Trust is the trust designed to hold the amount of the Grantor's estate to be sheltered by the unlimited marital deduction and the GST Exemption. This will usually be the amount in excess of the Grantor's exemption credit amount up to the Grantor's GST Exemption. This often referred to as the Reverse QTIP Trust.

(e) Nonexempt Marital Trust

These options select the terminology to be used when the plan divides the grantor's estate in to Generation Skipping Transfer Tax (GSTT) exempt and nonexempt shares. The nonexempt marital share is designed to hold the property allocated to the marital deduction trust share all in excess of the grantor's GSTT exemption equivalent.

The Nonexempt Marital Trust is the trust designed to hold the amount of the Grantor's estate to be sheltered by the unlimited marital deduction that is in excess of the GST Exemption.

(f) Bypass Trust

Select the term used to describe the trust funded with the grantor's estate tax exemption equivalent.

The Bypass Trust is the trust created to hold an amount equal to the exemption credit amount. It is designed to "bypass" estate taxes upon the death of the surviving spouse.

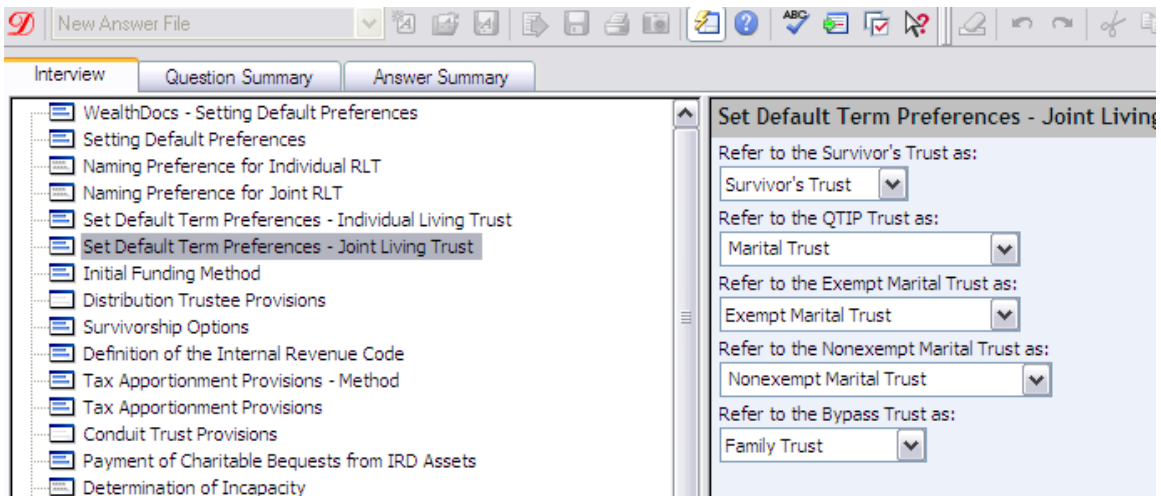
(g) Common Trust

Select the term used to describe a trust created for the common benefit of multiple beneficiaries. A common trust is created when property is held in one trust share from which multiple beneficiaries may receive periodic distributions. This is often used for purposes of funding children's education or when otherwise segregating the trust into separate shares for beneficiaries is not immediately desired.

The common trust is a single trust usually created for the Grantor's children until the youngest child is old enough to have graduated from college.

1.07 Set Default Term Preferences – Joint Living Trust

Decide what terminology you want to use for the grantor, the trust protector, and the various trust shares established under a joint RLT. The screens look like this:



(a) Survivor's Trust

Select the term used for the portion of the joint trust attributable to the surviving grantor (after death of first grantor). This is sometimes referred to as the survivor's "contributive share," or that portion that the survivor is deemed to have contributed to the trust. As grantor, the surviving spouse will have a general power of appointment (GPOA) over this trust share. Select from Survivor's Trust, Marital Trust One, A Trust or Marital Trust. This is purely a matter of personal preference.

(b) QTIP Trust

Select from Marital Trust, Marital Trust Two, Marital Deduction Trust, QTIP Trust, Spousal Trust or C Trust. This is purely a matter of personal preference.

(c) Exempt Marital Trust

User preference for term describing the portion of the deceased grantor's share of the joint trust designed to take advantage of unlimited marital deduction. Depending on the options the attorney selects in the interview, this trust share may or may not technically be a QTIP (Qualified Terminal Interest Property) trust. This option selects the terminology to be used when the plan divides the grantor's estate in to Generation Skipping Transfer Tax (GSTT) exempt and nonexempt shares. The exempt marital share is designed to hold the difference between the grantor's estate tax exemption equivalent amount and the GSTT exemption equivalent. Select from Exempt Marital Trust, Exempt Marital Deduction Trust, Marital Trust Two, Reverse QTIP Trust, Exempt Survivor's Trust, Exempt Spousal Trust, C Trust or Exempt C Trust.

(d) Nonexempt Marital Trust

These options select the terminology to be used when the plan divides the grantor's estate in to Generation Skipping Transfer Tax (GSTT) exempt and nonexempt shares. The nonexempt marital share is designed to hold the property allocated to the marital deduction trust share all in excess of the grantor's GSTT exemption equivalent.

(e) Bypass Trust

Select from Family Trust, Credit Shelter Trust, B trust, Bypass Trust, Decendants's Trust or Exemption Trust.as the term used to describe the trust funded with the grantor's estate tax exemption equivalent.

1.08 UTC Provisions

(a) Include UTC Provisions? Yes or No

Selecting Yes and clicking Next will bring up additional questions.

(b) Use default language? Yes or No

UTC Provisions

Include UTC provisions? Yes No

Use default language? Yes No

"Permissible Distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.

"Qualified Beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

- (1) is a distributee or Permissible Distributee of trust income or principal;
- (2) would be a distributee or Permissible Distributee of trust income or principal if the interests of the distributees described in subparagraph (1) terminated on that date; or
- (3) would be a distributee or Permissible Distributee of trust income or principal if the trust terminated on that date.

Default Language

The default language for "Permissible Distributee" and Qualified Beneficiary" are shown. Select No to reveal fields where you can type alternate definitions.

UTC Provisions

Include UTC provisions? Yes No

Use default language? Yes No

Reset to Default Language

"Permissible Distributee" definition:

"Qualified Beneficiary" definition:

(1)

(2)

(3)

Remove subparagraph (3)

Add subparagraph (4)

After selecting No to using default language, you can click "Reset to Default Language" for these fields to populate with the text of our default language.

1.09 Initial Funding Method

Initial Funding Method

Which method do you want to use to initially fund the trust?

\$10 Cash

Schedule

Magic Wand

(a) **\$10 Cash**

(b) **Schedule**

Assets listed on Schedule A. In the client RLT interview, this option leads to a series of dialogs to list the client's property on an asset schedule generated with the trust agreement.

(c) **Magic Wand**

In addition to allowing the listing of assets on Schedule A, the "Magic Wand" adds language expressly assigning the grantor's property to the trust, except for life insurance, qualified retirement accounts and certain other assets. Some practitioners believe that the Magic Wand funding language may be useful in

some jurisdictions if the grantor dies before the trust is completely funded. Even if including this language may not completely eliminate the need to probate in the event the trust is not fully funded, it does provide a statement of the grantor's intent to transfer property to the trust. The Magic Wand is not intended to replace fully funding the clients' trust; it simply helps establish the presumption that the client intends to do so.

1.10 Distribution Trustee Option

Distribution Trustee Provisions

Include provisions for naming, removing and appointing a Distribution Trustee?

Yes

No

In naming the Distribution Trustee select one of the following options:

Name the Distribution Trustee once for all trusts.

Name the Distribution Trustee separately for each trust.

No Distribution Trustee is named in the agreement. Upon the funding of a trust containing provisions for a Distribution Trustee, a majority of the income beneficiaries shall appoint the Distribution Trustee for that trust.

Selecting this option will include provisions for naming an initial "Distribution Trustee" as well as provisions granting the primary beneficiary of a trust the authority to remove the Distribution Trustee and appoint a new Distribution Trustee. By selecting this option the drafting attorney will have the ability to include provisions for each subtrust restricting the authority to make discretionary distributions from the subtrust to the Distribution Trustee. This will allow the Grantor to name the primary beneficiary as the Trustee and someone else as the Distribution Trustee thus creating a "beneficiary-controlled" trust.

Many attorneys consistently provide for the naming of a distribution trustee in clients' estate plans. Others seldom, if ever, include these provisions. If uncertain about the advisability of using a distribution trustee in clients' plans, consult the EP101 materials available in the Resources folder in addition to conducting independent research.

Why use a distribution trustee? Some practitioners will allow a family member or a beneficiary to serve as administrative trustee to oversee the management and investment of the trust's assets, leaving distribution decisions to a third party not related or subordinate to the beneficiary. If a separate distribution trustee is named, many practitioners believe that the trust beneficiaries will enjoy greater asset protection, because the distribution trustee's discretion need not be limited to an ascertainable standard.

It is also important to note that other options later in the interview allow for a bifurcated treatment of the trustee's discretionary powers, limiting an interested trustee to make distributions for an ascertainable standard and broadening the discretion of an independent trustee. When these options are selected, the definitions of "interested trustee" and "independent trustee" are included in the definitions section of the last article of the assembled document.

Finally, if the member wishes to leave this (or any other) question blank in the Set Preferences interview, the issue may be addressed on a case-by-case basis for each client's plan.

1.11 Survivorship Options


Survivorship Options

Select method for distributing property to a beneficiary's descendants if the beneficiary is deceased:

per stirpes

by representation

per capita at each generation

 [Learn more about Survivorship Options \(4:31 minutes\)](#)

[launch video from here](#)

How many days must a beneficiary survive the Grantor before the beneficiary is deemed have survived the Grantor?

In a situation where a beneficiary is deceased and property is to be distributed to the beneficiary's descendants, decide what method is to be used to divide the property among the beneficiary's descendants.

"Per Stirpes" - Whenever a distribution is to be made to a person's descendants per stirpes, the distribution shall be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

"By Representation" - Whenever a distribution is to be made to a designated person's descendants by representation, the distribution shall be divided into as many shares as there are, at that time, descendants in the nearest degree of kinship and then deceased descendants in the same degree who left then living descendants. Each then living descendant in the nearest degree shall receive one share and the share of each then deceased descendant in the same degree shall be divided among his descendants in the same manner.

"Per Capita at Each Generation" - Whenever a distribution is to be made to a designated person's descendants per capita at each generation, the distribution shall be divided into as many equal shares as there are, at the time, descendants in the nearest degree of kinship to the designated ancestor and then deceased descendants in the same degree who left then living descendants, each then living descendant in the nearest degree receiving one share. The remaining shares, if any, are combined and then divided in the same manner among the then living descendants of the deceased descendants as if the then living descendants who received a share, and their descendants, had predeceased the date of distribution.






(a) Method of Distribution if Deceased

Select the manner in which a deceased beneficiary's share will be distributed in the event of death prior to distribution. For more information on understanding the different options, launch the video "Learn more about Survivorship Options" directly from the interview, or see the PowerPoint presentation entitled "Survivorship Options Explained" available on the members' Knowledge Base:

Knowledge Base

Survivorship Options E:

[Add a document](#)


-  Most Recent
-  Documents and Provisions
-  Heckerling Reports
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Search Results for:
Survivorship Options Explained
(42 documents)

Survivorship Options Explained

Lew Dymond

 Powerpoint presentation succinctly demonstrating the differences between "per stirpes," "by representation," and "per capita at each generation" survivorship options.

(b) Number of Days to be “Deemed to Survive”

Select the number of days a beneficiary must actually survive the grantor for the beneficiary to be deemed to have survived for the beneficiary’s interest to vest. Most WealthCounsel members select a survival requirement between 30 and 90 days. It will also be helpful to check with your jurisdictions statutory survivorship provision, if any.

1.12 Definition of “Internal Revenue Code”

Select which definition to use. The Repeal Phase-Out definition is considered to be more precise and takes into consideration the reality that the status of federal estate tax remains unsettled. In addition, the Phase-Out definition may more likely result in the grantor’s estate planning wishes being carried out in the event of a major shift in estate tax law.

Definition of the Internal Revenue Code

Which definition of the Internal Revenue Code do you want to use for the trust agreement?

Standard Definition

Federal Estate Tax Repeal Phase Out Definition

First Previous Next Last Finish

Certain provisions in the trust agreement are defined by reference to an Internal Revenue Code section, and if the section is repealed, what will be the effect on the provision in the document?

The answer to this question will depend upon how the provision is drafted, how terms are defined in the instrument, and how the "Internal Revenue Code" is defined. You need to decide from the following definitions:

1. Standard Definition:

References to the "Internal Revenue Code" or "Code" or to provisions thereof are to the Internal Revenue Code of 1986. References to the "Regulations" or "Regs" are to the Treasury Regulations under the Internal Revenue Code. If by the time in question a particular provision of the Internal Revenue Code has been renumbered, or the Internal Revenue Code has been superseded by a subsequent federal tax law, the reference shall be deemed to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in this agreement. A similar rule shall apply to references to the Regulations.

2. Phase Out Definition:

References to the "Internal Revenue Code" or "Code" or to provisions thereof shall refer to the Internal Revenue Code of 1986, as amended. References to the "Regulations" or "Regs" are to the Treasury Regulations under the Internal Revenue Code.

Reference to any provision or section of that Code shall be deemed to refer to the provision or section of the federal tax law in effect on the date of my death that corresponds to the provision or section referred to that was in effect at the time of the execution of this agreement.

If there is no provision or section at the date of my death that corresponds to such provision or section and if the estate tax has been repealed, the reference to a provision or section of the federal tax law shall nevertheless be deemed to refer to the provision or section that was in effect at the time of the execution of this instrument or the provision that was in effect immediately before the tax law was repealed, solely for the purpose of determining the amount of property that passes under a provision of this instrument if my Trustee, in its sole discretion, determines that such result is more consistent with my intention.

(If RLT or SRT, the following paragraph is also included)

The Trustee may not take any action under the powers granted under this section that would cause any property passing under this agreement to fail to qualify for a marital deduction, charitable deduction, special use valuation or QFOBI deduction, if the property would otherwise qualify.

1.13 Tax Apportionment Provisions - Method

(a) All From Residue

This option takes the traditional common law approach that estate tax liability should be charged against the residuary share of the estate, regardless what property or distribution gave rise to the imposition of the tax.

(b) Equitable Apportionment

This option follows a more modern approach, also codified in a number of jurisdictions, that charges estate tax liability against the property or distributee whose share gave rise to the imposition of the tax. This may be more desirable in states with a separate death tax for collateral heirs, or where a distribution to a specific distributee results in estate tax liability.

(c) Apportioned According to State Law.

This option allows the attorney to rely on the apportionment statute under state law.

By default, WealthDocs does not apportion between current and future interests. This approach helps to provide a practical means by which estate taxes can be paid following the grantor's death. The idea is to permit the payment of taxes efficiently without having to separately calculate and charge a portion of the transfer tax against the interest of the income beneficiary and another portion against the interest of the remainder beneficiaries. In the interests of equity, the result is that the income beneficiary's net interest is reduced by the diminution of the corpus on which income is earned, and the remainder beneficiaries' interest is reduced by the diminution of the remainder interest. For more discussion on the topic, review PLR 9419006.

1.14 Tax Apportionment Provisions

(a) No Apportionment of Retirement Accounts Payable to Trust

Because IRAs and other retirement accounts constitute Income in Respect of a Decedent (IRD), these assets are exposed to income tax, in addition to estate tax (if the estate is taxable). Requiring that other assets be used to satisfy estate tax liability keeps the trustee from withdrawing retirement account assets (generating income tax) to pay the estate tax.

(b) No Apportionment of Retirement Accounts Passing Outside Trust

This provision can be advisable where the retirement account beneficiaries and the trust beneficiaries are the same. However, if the retirement account

beneficiaries are different than the trust beneficiaries and the estate is taxable, this provision will result in an inequitable apportionment of estate tax liability. In that case, the trust beneficiaries' distributions will be reduced by the amount of tax attributable to the retirement accounts, while the retirement account beneficiaries receive a full share, undiminished by estate tax liability.

1.15 Conduit Trust Provisions

Over the past decade, an increasing number of clients have accumulated significant amounts in qualified retirement accounts, including IRAs – a trend not likely to diminish any time soon. Also, because IRAs and other qualified retirement accounts constitute IRD, the entire account balance is included in the plan participant's taxable estate at death and distributions to the beneficiaries are subjected to income tax when distributions are made from the account. Because of these factors, understanding planning nuances in dealing with IRAs and other qualified retirement accounts is critically important.

The best guide for understanding many of the intricacies in properly planning with retirement accounts is Life and Death Planning for Retirement Benefits: The Essential Handbook for Estate Planners, 6th Edition, by Natalie Choate. This guide currently lists for \$89.95 and is available at www.ataxplan.com. In addition, WealthCounsel offers many opportunities for you to enhance your understanding on planning for retirement benefits, including a series of CDs prepared by Lew Dymond and Robert Keebler (available for purchase on the WealthCounsel website), the EP 205 course dedicated to planning for retirement benefits (the outline for which is available free to WealthCounsel members on the Knowledge Base on our website -search for keyword EP205), and the full version is available for purchase, on our website under MarketPlace > Courses on CD (Audio), many other articles and outlines on the subject also on the Knowledge Base, and a recorded teleconference titled "Choosing Between Conduit and Accumulation Trusts" (available on our website under Resource Center > 24/7 Library & free to WealthCounsel members).

Conduit Trust Provisions

Include provisions to create conduit trusts for any retirement plans payable to any trust created under a Will or RLT?

Yes

No

First Previous Next Last Finish

Selecting this option will add language in the Retirement Plan and Life Insurance Article requiring that the Trustee of any trust designated as a beneficiary of qualified retirement benefits withdraw the required minimum distribution and immediately distribute that amount to the appropriate beneficiary.

This method of insuring that a trust will qualify as a designated beneficiary is supported by the Treasury Regulations. For more information on conduit trust provisions read Natalie Choate's book "Life and Death Planning for Retirement Benefits." For ordering information visit www.ataxplan.com.

It is important to note that conduit trust provisions may be contrary to other trust planning objectives such as creditor protection and protection of assets for younger or unsophisticated beneficiaries.

1.16 Payment of Charitable Bequests from IRD Assets

Including this language can help the trustee to claim an income tax deduction in addition to an estate tax charitable deduction, to the extent charitable distributions are made from the trust.

1.17 Determination of Incapacity

Although the term “incapacity” is defined in the “General Provisions” article of the trust agreement, some practitioners wish to include language clarifying the circumstances under which the grantor is deemed to be incapacitated for purposes of Article Three (setting forth the succession of trustees) and Article Four (dealing with administration of the trust during the grantor’s incapacity).

The screenshot shows a software dialog box titled "Determination of Incapacity". It contains two sections, one for single grantors and one for married grantors. Each section has a question and four radio button options. The first option in both sections is "Definition of Incapacity in the trust agreement", which is selected. The second section also includes "Spouse and Attending Physician" as an option. At the bottom of the dialog box, there are navigation buttons: "First", "Previous", "Next", "Last", and "Finish".

How will incapacity of the Grantor be determined if Grantor is single?

- Definition of Incapacity in the trust agreement
- Disability Panel
- Two Licensed Physicians
- Attending Physician

How will incapacity of the Grantor be determined if Grantor is married?

- Definition of Incapacity in the trust agreement
- Disability Panel
- Two Licensed Physicians
- Attending Physician
- Spouse and Attending Physician

Some practitioners like to include specific provisions for the determination of the incapacity of a Grantor. Others desire to rely on the general definition of incapacity as defined in the document. We provide you with several options for determination of the incapacity of the Grantor.

1.18 Distribution Guidelines During a Single Grantor’s Incapacity

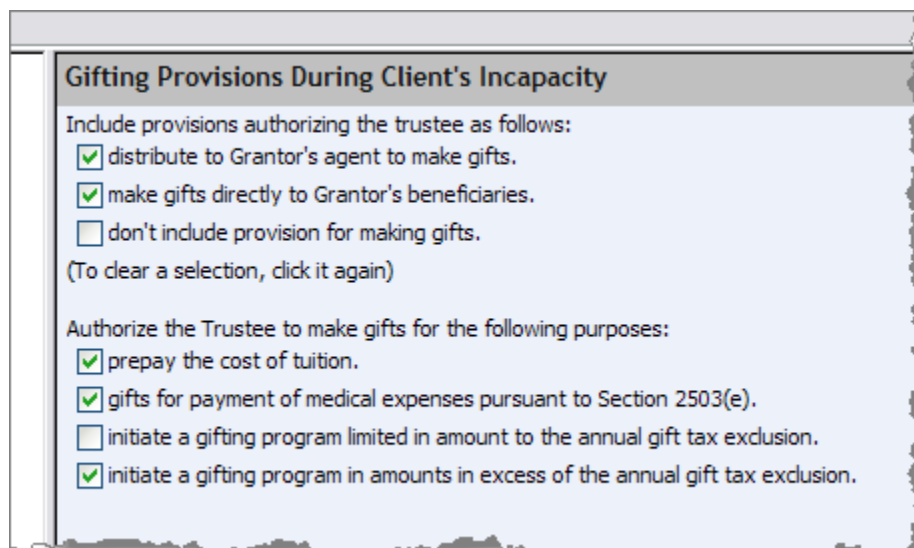
In most circumstances, practitioners tend to select the first option in this dialog, providing that the successor trustee shall give priority to the needs of the incapacitated grantor, and only thereafter provide for the needs of others. However, there may be some exceptions to this approach, such as when a client has minor children living with them or has willingly assumed responsibility for the care of elderly parents.

1.19 Distribution Guidelines During a Married Grantor’s Incapacity

In most circumstances, practitioners tend to select the second option, providing for the spouses or joint grantors equally, and only thereafter considering the needs of others. However, the same exceptions mentioned above may apply on a case-by-case basis.

1.20 Gifting Provisions During Grantor's Incapacity

The following are the most common options selected by WealthCounsel members, as they tend to provide the greatest degree of planning flexibility for the client. However, potential for abuses by the trustee and/or agent under the client's durable power of attorney (DPA) abound, so it is important to discuss these important powers with each client.



Gifting Provisions During Client's Incapacity

Include provisions authorizing the trustee as follows:

- distribute to Grantor's agent to make gifts.
- make gifts directly to Grantor's beneficiaries.
- don't include provision for making gifts.

(To clear a selection, click it again)

Authorize the Trustee to make gifts for the following purposes:

- prepay the cost of tuition.
- gifts for payment of medical expenses pursuant to Section 2503(e).
- initiate a gifting program limited in amount to the annual gift tax exclusion.
- initiate a gifting program in amounts in excess of the annual gift tax exclusion.

(a) Provisions authorizing the Trustee to make gifts

(1) Distributing to Agent

This was popular option prior to the Deficit Reduction Act of 2005 (DRA05), when there were separate Medicaid qualification look-back periods for gifts from individuals and for gifts from trusts (3-year vs. 5-year). Now, DRA05 applies same 5-year look-back period for all gifts, potentially obviating the need for this provision. However, some commentators question the enforceability of DRA05 in its present form and continue the gifting power from the trust to the agent under the power of attorney. If gifting power is granted here, make sure to be consistent as you draft the power of attorney.

(2) Directly to Beneficiaries

This provision enables the trustee to initiate or continue a gifting program on behalf of the client, provided that such gifts are consistent with the grantor's overall estate objectives.

(b) Purposes of Gifts

(1) Tuition/Medical Expenses

This provision enables the trustee to make gifts for beneficiaries' qualified education and/or medical expenses, provided that such gifts are made directly to the institution providing the service. Such gifts are not treated as taxable gifts, and this provision may help the trustee act to reduce the grantor's taxable estate by gifting for these purposes.

(2) Limited/Not Limited to Annual Exclusion Amount

If a greater degree of control is required, the trustee may be limited to make taxable gifts only up to the grantor's annual exclusion amount set forth under IRC§2503(b). On the other hand, if greater flexibility is desired, the trustee may be given broader power by making gifts in excess of the grantor's annual exclusion amount. This power can be very effective if the grantor wishes to enable the trustee to continue or initiate an accelerated or strategic gifting plan designed to reduce the grantor's estate.

These options are obviously mutually exclusive, so you must select one only.

1.21 QTIP Trust Preferences

These provisions will only apply when the attorney drafts the marital deduction share of the grantor's trust as a QTIP trust share. The options in these dialogs allow you to tailor the QTIP trust preferences, when used, to your practice preference.

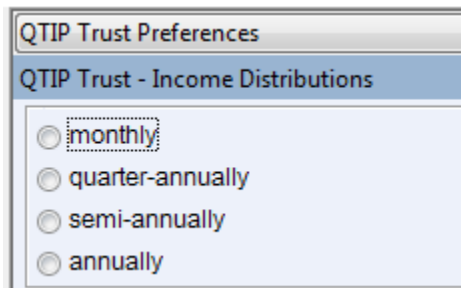
(a) Total Return QTIP Option

The screenshot shows a software dialog box titled "QTIP Trust Preferences" with a sub-header "QTIP Trust - Total Return Option". The main question is "Do you want to create a 'Total Return' QTIP Trust by including a provision that the Trustee shall distribute to the surviving spouse, the greater of all income or the unitrust amount?". There are two radio buttons: "Yes" (which is selected) and "No". Below this is a text input field labeled "Enter the unitrust percentage". At the bottom of the dialog, there are navigation buttons: "First", "Previous", "Next", "Last", and "Finish". A yellow highlighted box contains explanatory text: "A QTIP trust is required to distribute all of the income to the surviving spouse. You have the option to include a provision that the surviving spouse receives the greater of all of the income or a unitrust amount. The unitrust amount is a percentage of the value of the trust at the beginning of the trust's taxable year. Sometimes a unitrust is referred to as a total return trust, because it allows the Trustee to invest for a total return rather than an income stream."

The Total Return, or Unitrust, QTIP trust provides that, instead of distributing *all income* to the surviving spouse, the trustee will distribute *the greater of all income*

or a *unitrust amount*, calculated as a percentage of the value of the QTIP trust assets. This provision may be useful if there is a substantial likelihood for conflict between the QTIP beneficiary (the surviving spouse) and the remainder beneficiaries (often, the grantor's children). When distributing a unitrust amount to the surviving spouse, the trustee is able to invest for the total overall return on the invested assets, rather than trying to balance the interests of an income beneficiary interested in low growth/high yield assets against the interests of the remainder beneficiaries, interested in low yield and high growth.

(b) QTIP Trust – Income Distributions

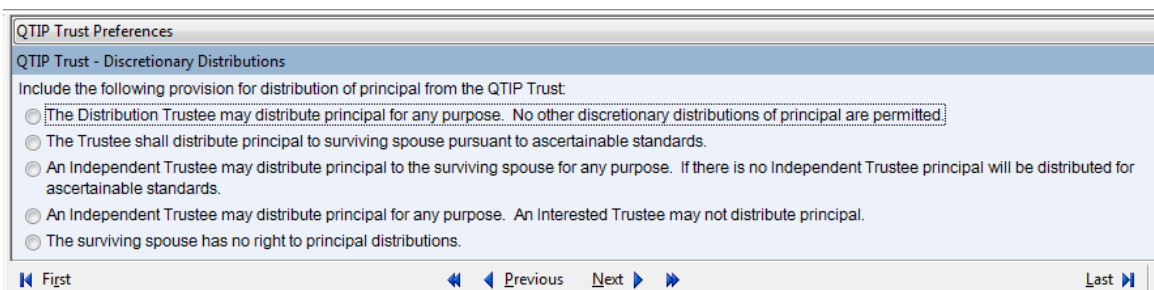


The screenshot shows a dialog box titled "QTIP Trust Preferences" with a sub-section "QTIP Trust - Income Distributions". It contains four radio button options: "monthly" (which is selected and has a dashed border), "quarter-annually", "semi-annually", and "annually".

To qualify for the unlimited marital deduction, the QTIP trust requires that the income be distributed to the surviving spouse at least annually. If desired, you may arrange for more frequent distributions.

(c) QTIP Trust – Discretionary Distributions

Electing whether or not to distribute principal from the QTIP trust to the surviving spouse requires substantial consideration, and will often depend on the individual client's planning objectives. To qualify for the QTIP election, the trust is not required to permit distributions of *principal* to the surviving spouse. If you prefer to address this issue on a case-by-case basis, this provision may be left blank and addressed in the client interviews or in a scenario you create.



The screenshot shows a dialog box titled "QTIP Trust Preferences" with a sub-section "QTIP Trust - Discretionary Distributions". It contains the text "Include the following provision for distribution of principal from the QTIP Trust:" followed by four radio button options. The first option is selected and has a dashed border: "The Distribution Trustee may distribute principal for any purpose. No other discretionary distributions of principal are permitted." The other options are: "The Trustee shall distribute principal to surviving spouse pursuant to ascertainable standards.", "An Independent Trustee may distribute principal to the surviving spouse for any purpose. If there is no Independent Trustee principal will be distributed for ascertainable standards.", "An Independent Trustee may distribute principal for any purpose. An Interested Trustee may not distribute principal.", and "The surviving spouse has no right to principal distributions." At the bottom of the dialog box are navigation buttons: "First", "Previous", "Next", and "Last".

(d) QTIP Trust – Spouse's Right to Demand Principal

This allows the surviving spouse to demand principal from the Marital share. The reason for the 16 month survival provision is to give the Trustee sufficient time to make the QTIP election on the deceased grantor's estate tax return. The answer

to this question may vary from case to case, especially depending on the reason the QTIP is established.

QTIP Trust Preferences

QTIP Trust - Spouse's Right to Demand Principal

Include a provision granting the Grantor's spouse a right to demand principal for any reason from the QTIP trust if the spouse survives the Grantor by 16 months?

Yes

No

First Previous Next Last Fin

If you select this option, the Grantor's spouse is given the right to request the Trustee to distribute principal to the Grantor's spouse if the spouse survives the grantor by at least 16 months. This right only applies to property elected to qualify for the unlimited federal estate tax deduction. The reason for the 16 month survival provision is to provide adequate time for making the QTIP election.

(e) QTIP Trust – 5 and 5 Power

For added flexibility the surviving spouse may be given the right to withdraw the greater of \$5,000 or 5% of the value of the QTIP trust annually. This may be desirable if the grantor wishes to give the surviving spouse a greater degree of benefit from and control over the QTIP trust.

QTIP Trust Preferences

QTIP Trust - 5 and 5 Power

Do you want to include a provision that the surviving spouse has an annual noncumulative right to greater of \$5,000 or 5% of the principal?

Yes

No

First Previous Next Last Fin

Selecting this option will give the spouse what is commonly called a "5 and 5 power" pursuant to Section 2514 (e) of the Internal Revenue Code.

The spouse has the right to withdraw up to \$5,000 from the trust anytime during the year and on the last day of the year may withdraw up to 5% of the trust assets, less any of the \$5,000 that may have been withdrawn during the year.

Note the \$5,000 limitation is an aggregate amount that applies to all trusts in which the spouse may have a 5 and 5 withdrawal right. That is if the beneficiary has a 5 and 5 withdrawal right in another trust the total amount that can be withdrawn is \$5,000 (not \$5,000 from each trust) .

(f) QTIP Trust – Remarriage Provision

These provisions are intended to enable the grantor to attempt to protect the interests of the residuary beneficiaries in the event the surviving spouse remarries after the grantor's death. It is important to note that some practitioners have expressed concern that imposing a remarriage provision on the spouse's right to receive distributions may result in the trust share not qualifying for the marital deduction. Also note that this is a restriction on principal only; no restriction can be made on the spouse's right to receive income or the trust will certainly not qualify for the marital deduction.

QTIP Trust Preferences

QTIP Trust - Remarriage Provision

Effect of Remarriage on Principal Distributions from the QTIP Trust

- Remarriage does not affect the surviving spouse's right to principal.
- Remarriage terminates the surviving spouse's right to distributions of principal.
- Remarriage terminates the surviving spouse's right to distributions of principal. However, if the spouse subsequently becomes unmarried, either because of death or divorce, the spouse shall again have the rights to distributions of principal.
- Remarriage terminates the surviving spouse's right to distributions of principal, unless the spouse and the new spouse execute a valid prenuptial agreement protecting the rights of the spouse and descendants in case of divorce or death.

(g) QTIP Trust – GPOA Over Stub Income

This provision ensures that in the event there is any remaining income in the QTIP trust that has not been distributed to the spouse at the spouse's death, the accrued income inures to the spouse or the spouse's estate (as directed by the spouse's GPOA), further ensuring marital deduction treatment. Although some practitioners believe this provision may not be necessary, others believe it is the safer practice.

(h) QTIP Trust – Testamentary LPOA

If this provision is included, it will enable the surviving spouse to alter the QTIP trust's dispositive provisions for the grantor's descendants after the surviving spouse dies. It is helpful to understand that because this is not a *general* power of appointment, inclusion in the surviving spouse's taxable estate is not a concern. However, granting the spouse a LPOA may not be desirable if the grantor has a child of a prior marriage and a child of the marriage to the surviving spouse, as the surviving spouse may revise the trust to allocate property inequitably. The practitioner may decide that whether to include this provision is fairly fact-specific and may prefer to leave blank to address on a case-by-case basis.

1.22 Bypass Trust Preferences

The preferences set in this part of the interview will apply in every circumstance in which a bypass/credit shelter/family trust is established. They will not apply in an outright, all to spouse scenario or in a situation where the family share is distributed to beneficiaries *to the exclusion of the spouse*.

(a) Bypass Trust – Beneficiaries

Select the option for designating the beneficiaries of the bypass trust. If any option other than the first is selected, then decide whether or not to give priority to the surviving spouse for receiving distributions from the bypass trust.

Bypass Trust - Beneficiaries

Default beneficiaries of the Bypass or Family Trust:

- Spouse only beneficiary.
- Spouse and descendants are beneficiaries.
- Spouse, descendants and other named beneficiaries.
- Spouse and other named beneficiaries.

In making distributions from the Bypass Trust the Trustee shall give:

- Priority to the surviving spouse and thereafter to other beneficiaries.
- No priority between the needs of the surviving spouse and needs of other beneficiaries.

(b) Bypass Trust – Distribution Options

Select the manner in which income and/or principal shall be distributed from the bypass trust. If the option for discretionary income and principal is selected, you will also be prompted to further define the discretionary standard for distributions.

Bypass Trust - Distribution Options

Include a provision that the Trustee shall distribute:

- All income to surviving spouse.
- Discretionary income and principal to the beneficiaries of the Bypass Trust.
- A "Unitrust Amount" to the surviving spouse (this creates what is commonly referred to as a "Total Return Trust")

(c) Bypass Trust – Discretionary Distributions

Bypass Trust Preferences
Bypass Trust - Discretionary Distributions
The Trustee shall make distributions of income and principal to the beneficiaries of the Bypass Trust as follows:
<input checked="" type="radio"/> The Distribution Trustee may make distributions for any purpose. No other Discretionary distributions are permitted.
<input type="radio"/> The Trustee shall make distributions pursuant to ascertainable standards.
<input type="radio"/> An Independent Trustee may distribute for any purpose and an interested Trustee shall make distributions pursuant to ascertainable standards.
<input type="radio"/> An Independent Trustee may make distributions for any purpose. If there is no Independent Trustee there will be no Discretionary distributions.

(d) Bypass Trust – 5 and 5 Power

Decide whether or not to give the surviving spouse the right to withdraw the greater of \$5,000 or 5% of the bypass trust annually. This does not create a general power of appointment for the surviving spouse, so estate tax inclusion is not a concern.

(e) Bypass Trust – Remarriage Provisions

These provisions are intended to enable the grantor to attempt to protect the interests of the residuary beneficiaries in the event the surviving spouse remarries after the grantor's death. The enforceability of these provisions will vary by

jurisdiction; it is recommended that you check applicable state law to determine if remarriage provisions should be included.

(f) Bypass Trust – Lifetime LPOA

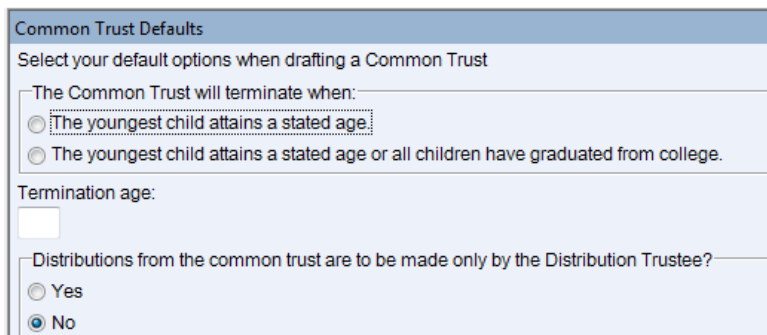
This power enables the surviving spouse to appoint bypass trust assets among a defined class of permissible appointees. Because this is a limited power, it will not cause the bypass trust corpus to be included in the surviving spouse's estate. However, it is important to note that the exercise of this power of appointment will constitute a gift for gift tax purposes, subject to the surviving spouse's annual and lifetime gift exclusions.

(g) Bypass Trust – Testamentary LPOA

This power enables the surviving spouse to adjust distributions from the bypass trust for grantor's descendants. Because this is a limited power, it will not cause the bypass trust corpus to be included in the surviving spouse's estate. A counseling note: granting this power may not be desirable if the grantor has children of a prior marriage and other children of the marriage to surviving spouse, as the surviving spouse could exercise the power to the exclusion of the children from the prior marriage. Deciding whether or not to grant this power can be fairly fact-specific, so you may prefer to leave this item blank and address the issue on a client-by-client basis.

1.23 Common Trust Defaults

The preferences set in this dialog only apply when a common "pot" trust is created for the benefit of a class of beneficiaries. When a common trust is created, determine the default circumstances under which the common trust will terminate: the youngest common pot trust beneficiary attaining a certain age, or the later of all common trust beneficiaries attaining a certain age or graduating from college. When making this selection, it is recommended that you be consistent with the age selected for underage beneficiaries as defined by the trust agreement (see below) and the youngest age at which a beneficiary of a share held in trust is granted a withdrawal right (optional – addressed on a case-by-case basis).



Common Trust Defaults

Select your default options when drafting a Common Trust

The Common Trust will terminate when:

The youngest child attains a stated age.

The youngest child attains a stated age or all children have graduated from college.

Termination age:

Distributions from the common trust are to be made only by the Distribution Trustee?

Yes

No

1.24 Residuary Trust Preferences

(a) Descendants as Current Beneficiaries

This option enables you to include beneficiaries' children as concurrent beneficiaries of the residuary trusts (that is, the trust shares administered for the residuary beneficiaries after the death of the surviving spouse, or under the residuary articles if no bypass trust is created). Note that this is a GSTT-sensitive issue and will trigger GST tax if the trustee makes a distribution to a skip person from a trust that has a GST inclusion ratio greater than zero.

(b) Residuary Trust – Distributions of Income

Choose to distribute mandatory income to the residuary beneficiaries (creating a “simple trust” for income tax purposes), discretionary income and principal (typically offering the greatest creditor protection for the beneficiaries), or a unitrust amount (distributing the greater of all income or a set percentage of the trust principal annually to the residuary beneficiaries).

(c) Residuary Trust – Discretionary Distributions

Select the provisions to guide the trustee in making discretionary distributions of principal from the trust to the residuary beneficiaries. The terms “Independent Trustee” and “Interested Trustee” are defined in the General Provisions article (the last article) in the trust agreement.

Residuary Trust - Discretionary Distributions

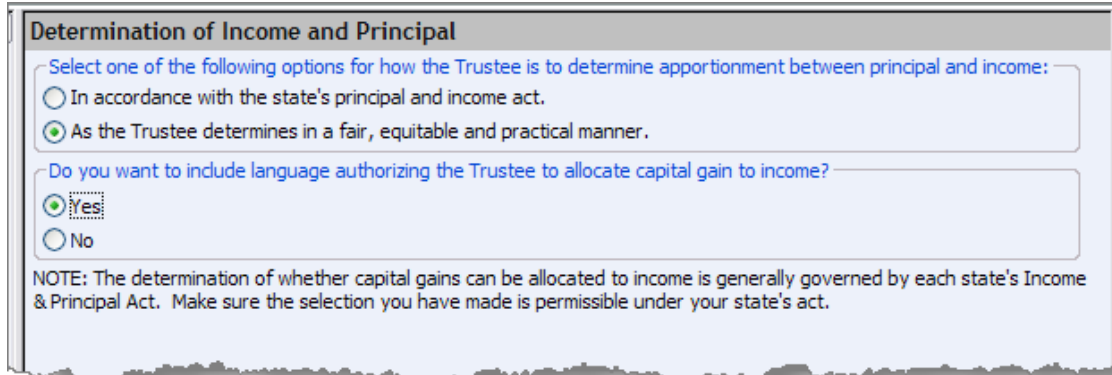
- The Distribution Trustee may distribute principal for any purpose. No other discretionary distributions are permitted.
- The Trustee shall make distributions to the beneficiary pursuant to ascertainable standards.
- An Independent Trustee may make distributions for any purpose and an Interested Trustee shall make distributions pursuant to ascertainable standards.
- The Trustee may distribute principal for any purpose. If there is no Independent Trustee no discretionary distributions are permitted.
- A beneficiary has no right to discretionary distributions.

1.25 Corporate Fiduciary Capital Requirements

This option enables you to require any corporate fiduciaries who serve to maintain a minimum amount of capital and surplus. If you enter an amount for combined capital or surplus, you can also provide an alternative that in lieu of capital and surplus, the fiduciary have a stated minimum amount of assets under management. (If you have established relationships with specific trust companies which you consistently recommend to clients, make sure the selections here are consistent with the fiduciaries' capabilities.)

1.26 Determination of Income and Principal

Determine the method by which the trustee shall determine apportionment between principal and income – either in accordance with applicable state statute or as the trustee independently determines. If you select the first option, you will be prompted to enter the name of your applicable state’s principal and income act. If the second option is selected, you will be given the option of permitting the trustee to allocate capital gains to income.



Determination of Income and Principal

Select one of the following options for how the Trustee is to determine apportionment between principal and income:

In accordance with the state's principal and income act.

As the Trustee determines in a fair, equitable and practical manner.

Do you want to include language authorizing the Trustee to allocate capital gain to income?

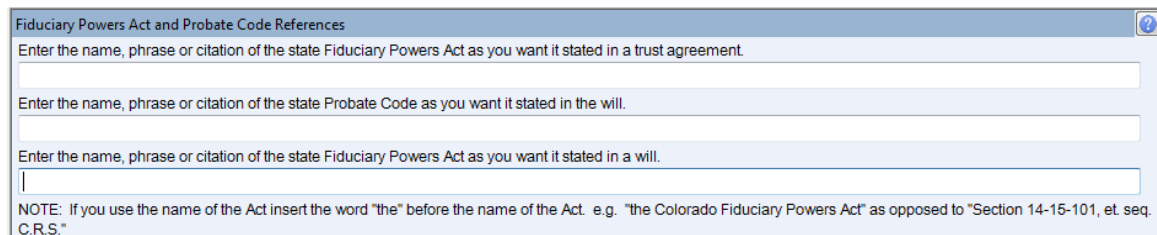
Yes

No

NOTE: The determination of whether capital gains can be allocated to income is generally governed by each state's Income & Principal Act. Make sure the selection you have made is permissible under your state's act.

1.27 Fiduciary Powers Act/Probate Code References

Enter the applicable state statutory references as you want them to appear in assembled documents. These options help give your documents a “state-specific” feel.



Fiduciary Powers Act and Probate Code References

Enter the name, phrase or citation of the state Fiduciary Powers Act as you want it stated in a trust agreement.

Enter the name, phrase or citation of the state Probate Code as you want it stated in the will.

Enter the name, phrase or citation of the state Fiduciary Powers Act as you want it stated in a will.

NOTE: If you use the name of the Act insert the word "the" before the name of the Act. e.g. "the Colorado Fiduciary Powers Act" as opposed to "Section 14-15-101, et. seq. C.R.S."

1.28 Ascertainable Standards (Definition)

These options allow you to more precisely define the “ascertainable standards” terms used in documents. Note that the first option uses the verbiage that appears in the Treasury Regulations.

Ascertainable Standards

What phrase do you want to use when referring to distributions limited to ascertainable standards?

health, education, maintenance or support
 health, education, maintenance and support
 health, education and maintenance
 health, education, maintenance and support in reasonable comfort

This is the exact phrase from Treasury Regulation Section 20.2041-1(c)(2).

Consult the resource pane in this option for additional information if you prefer to use a different definition.

1.29 Alternatives for Trustee’s Discretion

Select the phrase to be used to define the trustee’s exercise of discretion. Again, the resource panes in this option provide additional information.

Alternatives for Trustee Discretion

When a Trustee is granted discretion to make a distribution or perform an act, select which phrase, if any, you want to use to describe how the Trustee may exercise its discretion:

sole discretion
 sole and absolute discretion
 sole, absolute and unreviewable discretion
 none
 Other

1.30 Trustee Indemnification

Selecting an indemnification option will include a provision indemnifying a Trustee from good faith actions.

Trustee Indemnification

Select a Trustee indemnification option:

Do not include such a provision
 Indemnify family member Trustees
 Indemnify uncompensated Trustees
 Indemnify all Trustees

1.31 Trustee Succession – Incapacity of a Trustee

This dialog provides an option within trust agreements that would require that, in the event a trustee was removed due to an allegation of the trustee’s incapacity, the assertion of the trustee’s incapacity must be supported by a physician’s statement. The next option in this dialog inserts a provision that requires the assertion to be supported by a physician’s statement if the trustee who is alleged to be incapacitated resists the removal, and provides that the trustee must execute any releases necessary to consent to examination by a physician to determine the trustee’s capacity. (Note – these will not apply in circumstances where trustee may be removed by beneficiaries with or without cause. This option applies only when a successor trustee seeks the predecessor trustee’s removal.)

Trustee Succession - Incapacity of a Trustee

Incapacity of a Trustee may be established by the written certificate of the successor Trustee made in good faith, which certificate:

must be supported by physician's statement.

need not be supported by physician's statement.

Check to provide that if the Trustee objects to removal within a certain number of days and signs any necessary releases for obtaining medical information, the statement must be supported by a doctor's certificate.

Enter the number of days (e.g., "10 days"):

1.32 Method of Exercising Power of Appointment

Determine the manner in which a beneficiary who is given a power of appointment may exercise that power. Note that if the power is exercisable only by will, most states will require that a will exercising the power must be first proven in probate to give effect to the exercise of the power. If the power is exercisable either by will or trust, such power could likely be exercised either in an original trust created by the beneficiary or in an amendment to the beneficiary’s trust. The third option expands the exercise of the power to any “other written instrument” that specifically refers to the power of appointment. (Refer to the inserted image below for a comparison of the merged language.) Conceivably, this third option eliminates all other formalities in the exercise of the power.

Method of Exercising a Power of Appointment

A testamentary power of appointment granted under any trust created under the trust agreement may be exercised by:

will

will or living trust

will, living trust or other written instrument

other written instrument only

Section 12.07 Exercise of Testamentary Power of Appointment

A testamentary power of appointment granted under this agreement may be exercised by valid will ~~or valid living~~ revocable trust that specifically refers to this power of appointment. The holder of a testamentary power of appointment may exercise the power to appoint property among the permissible appointees in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the holder of the power designates. The holder of a testamentary power of appointment may grant further powers of appointment to any person to whom principal may be appointed, including a presently exercisable limited or general power of appointment.

My Trustee may conclusively presume that any power of appointment granted to any beneficiary of a trust created under this agreement has not been exercised by the beneficiary if my Trustee has no knowledge of the existence of a valid will ~~or valid living~~ revocable trust exercising the power within 3 months after the beneficiary's death.

Will or living trust option

Section 12.07 Exercise of Testamentary Power of Appointment

A testamentary power of appointment granted under this agreement may be exercised by valid will, valid revocable living trust or by any other written instrument that specifically refers to this power of appointment. The holder of a testamentary power of appointment may exercise the power to appoint property among the permissible appointees in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the holder of the power designates. The holder of a testamentary power of appointment may grant further powers of appointment to any person to whom principal may be appointed, including a presently exercisable limited or general power of appointment.

My Trustee may conclusively presume that any power of appointment granted to any beneficiary of a trust created under this agreement has not been exercised by the beneficiary if my Trustee has no knowledge of the existence of a valid will, valid revocable living trust or by any other written instrument exercising the power within 3 months after the beneficiary's death.

Will, trust or "other written instrument" option

1.33 Definition of Underage Beneficiary & Underage and Incapacitated Beneficiaries

The trust agreements created using WealthDocs contain an article specifically addressing the administration of distributions to underage or incapacitated beneficiaries. The provisions give the trustee greater flexibility in making distributions to or for the benefit of beneficiaries under this article, including distributions to a custodian or guardian, retention of the property in trust, etc. The option in this dialog enables you to determine the age until which a beneficiary will be deemed to be underage for purposes of the trust agreement. For greatest consistency in your trust agreements, you may wish to use the same age here as was entered for the common trust termination age and the age at which a beneficiary is typically granted a withdrawal right (if applicable).

Underage and Incapacitated Beneficiaries

A beneficiary shall be considered underage if younger than:

?

years of age

Include Stand-by SNT provisions?

No

Yes

Yes, with Care Manager provisions

Decide whether the trust should be called a Special Needs Trust or Supplemental Needs Trust.

Special Needs Trust

Supplemental Needs Trust

First Previous Next Last Finish

The belief of the authors is that property should never be distributed to a beneficiary if such distribution will result in a conservatorship being required. Therefore there is a specific article providing for alternative distribution methods whenever a distribution is to be made to an individual who is a minor or is disabled.

The authors have found that a number of clients for this purpose want to define a minor as an individual under the age of something older than the normal 21 years of age. Therefore you as the drafter have the option to insert whatever age you want.

1.34 Discretionary Distributions for Specific Purposes

Determine whether or not estate plans will typically include a provision enabling the trustee to distribute principal from a QTIP trust to help the surviving spouse achieve the spouse's estate planning objectives. Note that this decision may be fairly case specific; as it potentially bestows a great deal of control upon the surviving spouse, potentially frustrating the grantor's estate planning objectives.

Discretionary Distributions for Specific Purposes

Include a provision granting the Trustee the authority to make discretionary distributions of principal from a QTIP trust to assist the surviving spouse in achieving estate planning objectives?

Yes
 No

In a Revocable Living Trust, do you want to provide that an Independent Trustee may distribute property to the beneficiary of a trust so that the beneficiary's estate may utilize the basis increase allowed under Section 1014 of the Internal Revenue Code without causing an increase in the federal estate tax?

Yes
 No

This dialog also potentially allows discretionary distributions to beneficiaries in the event the federal estate tax has been repealed and §1022 of the Internal Revenue Code is in effect (allowing maximum step up in basis for capital gains tax purposes). Note that this authority vests a great deal of discretion in the trustee. Also, refer to the resource pane (text inserted below) for additional considerations.

Section 15.11 Discretionary Distribution to Fully Utilize Basis Increase Upon Death of Beneficiary

If at any time there is no federal estate tax in effect and if I have given the Trustee of any trust created under this agreement the discretion to make distributions of principal to the beneficiaries of the trust, then the Trustee, other than an Interested Trustee, may, in its sole discretion, distribute to the beneficiaries of the trust then eligible for discretionary distributions of income and principal as much of the income and principal as the Trustee, from time to time, determines advisable so that the estate of the beneficiaries can take full advantage of the aggregate basis increase allowed under Section 1022 of the Internal Revenue Code.

Before making principal distributions under this Section, the Trustee should determine whether there are good reasons to retain the property in trust. These reasons may include the fact that the asset may be sold in the near future, creditor protection, protection from failed marriages and protection of assets for future generations. The Trustee shall not be liable to any beneficiary for the exercising or failing to exercise its discretion to make distributions under this Section.

Each of the powers granted under these provisions are exercisable only by an independent trustee (not an "Interested Trustee"). If all of the trustees named in the trust agreement are Interested Trustees, the trust provides for the appointment of an ancillary or special trustee empowered to make these decisions.

1.35 Dispute Resolution and Contest Provision

Dispute Resolution and Contest Provision

Dispute Resolution by Mediation

Do you want to insert provisions stating Grantor's desire that disputes with respect to administration of the trust and disputes between Trustees be resolved by mediation and if necessary arbitration in accordance with the Uniform Arbitration Act?

- Yes
 No

Contest Provision

What type of Contest Clause do you want to include in the trust agreement?

- Standard
 Expanded
 None

(a) Dispute Resolution Clause

Provisions requiring that disputes be resolved in mediation or arbitration are precatory in nature; they are not typically binding on the beneficiaries. However, they may dissuade beneficiaries from bringing legal action concerning the trust and can save time and money. Some practitioners have expressed concern that with these provisions in place, a trustee may seek to use these provisions to intimidate beneficiaries who feel they lack effective recourse against the trustee in the event of a legitimate objection or concern.

(b) Contest Provision

Select the option for the use of Contest Provisions. Compare the following:

The "Standard" Contest Provision

Section 14.03 Contest Provision

If, after receiving a copy of this Section, any person shall, in any manner, directly or indirectly, attempt to contest or oppose the validity of this agreement, (including any amendment to this agreement), or commences, continues or prosecutes any legal proceedings to set this agreement aside, then such person shall forfeit his or her share, cease to have any right or interest in the trust property, and shall, for purposes of this agreement be deemed to have predeceased me.

This Section may not be applied so as to cause a forfeiture of any distribution otherwise qualifying for the federal estate tax marital deduction or charitable deduction.

The “Expanded” Contest Provision

Section 14.03 Contest Provision

If any beneficiary of this trust or any trust created under this trust agreement, alone or in conjunction with any other person engages in any of the following actions, the right of the beneficiary to take any interest given to the beneficiary under this trust or any trust created under this trust agreement must be determined as it would have been determined had the beneficiary predeceased me without surviving descendants.

Contests by a claim of undue influence, fraud, menace, duress or lack of testamentary capacity, or otherwise objects in any court to the validity of (a) this trust, (b) any trust created under the terms of this agreement, (c) my will, or (d) any beneficiary designation of an annuity, retirement plan, IRA, Keogh, pension or profit sharing plan or insurance policy signed by me, (collectively referred to hereafter in this Section as “Document” or “Documents”) or any amendments or codicils to any Document; or

Seeks to obtain an adjudication in any court proceeding that a Document or any of its provisions is void, or otherwise seeks to void, nullify or set aside a Document or any of its provisions; or

Files suit on a creditor’s claim filed in a probate of my estate, against my trust estate, or any other Document, after rejection or lack of action by the respective fiduciary; or

Files a petition or other pleading to change the character (community, separate, joint tenancy, partnership, domestic partnership, real or personal, tangible or intangible) of property already so characterized by a Document; or

Claims ownership in a court proceeding to any asset I hold in joint tenancy, other than as a surviving joint tenant; or

Files a petition to determine domestic partnership property as my cohabitant; or

Files a petition for probate homestead in a probate proceeding of my estate without the prior written consent of the Personal Representative designated in my Will; or

Files a petition for family allowance in a probate of my estate without the prior written consent of the Personal Representative designated in my will; or

Files a petition to impose a constructive trust or resulting trust on any assets of the trust estate; or

Participates in any of the above actions in a manner adverse to the trust estate, such as conspiring with or assisting any person who takes any of the above actions;

My Trustee is hereby authorized to defend, at the expense of the trust estate, any violation of this Section. A “contest” shall include any action described above in an arbitration proceeding and shall not include any action described above solely in a mediation not preceded by a filing of a contest with a court, notwithstanding the foregoing.

This Section may not be applied so as to cause a forfeiture of any distribution otherwise qualifying for the federal estate tax marital deduction or charitable deduction.

1.36 Rule Against Perpetual Trusts Provision

Select the applicable “Rule Against Perpetuities” provision.

Rule Against Perpetual Trusts

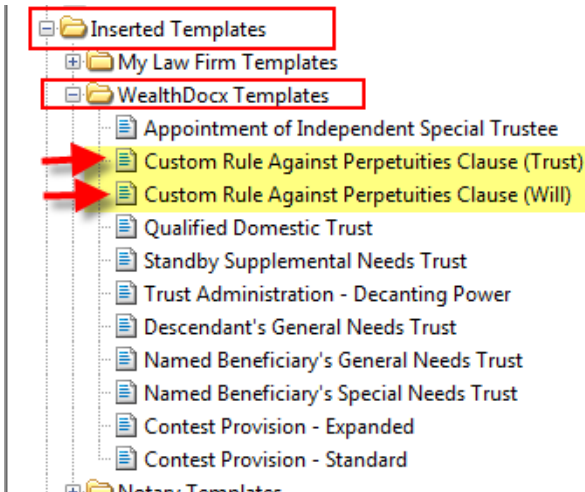
Select one of the following options:

- 1. Standard, lives in being plus 21 years.
- 2. Terminate pursuant to applicable rule against perpetuities, if applicable rule is lives in being plus 21 years, lives in being includes descendants of the person named below.
- 3. Custom rule against perpetual trusts clause.

Use whose descendants as measuring lives?

- John D. Rockefeller
- Brigham Young
- King George VI
- Joseph P. Kennedy
- Paternal and maternal grandparents only

If the trust is to be situated in a modified RAP jurisdiction, you should select “Custom rule against perpetual trusts clause” and create a customized RAP clause. (This is done by editing the applicable custom template within the “Inserted Templates folder” which contains the “WealthDocx Templates” folder – both the Trust and Will have their own separate RAP.



1.37 Spouse Options

Spouse Options

Refer to the spouse as:
Spouse ▼

When entering the client's gender, the spouse's gender should default to:

The opposite gender of the client
 Do not default the spouse's gender, I will select it for each interview

If planning for spouses of the same gender, refer to the spouse as:
your term here ▼

1.38 Layout Options

WealthDocs provides a number of options to customize the “look and feel” of your documents. Select the options you wish to incorporate.

Layout Options

Check to include a copyright notification on the cover page.

Check to include the name of the document above the page number on each page of the trust or will.

Check to include section breaks between each Article

Check to include " (Remainder of page intentionally left blank.) " after section breaks, where option is available.

Check to include the Attorney phone number on the title page of documents.

Check to include the Attorney fax number on the title page of documents.

When inserting the Law Firm or Attorney Information on the title page of documents what do you want above the name of the Law Firm or Attorney?

LAW OFFICES
 PREPARED BY
 Nothing (start with name of Law firm or Attorney)
 Other

Do you want to include a cover page and table of contents?

No cover page or table of contents
 Cover page and table of contents for Trust and Will only
 Cover page and table of contents for Trust, Will and Ancillary documents

Don't use HTML paragraph auto spacing
(Deselect to reduce spacing between paragraphs.)

Include firm information in footer

Include Annotations in assembled document? (see resource)

1.39 Notary Options

WealthDocs provides a number of options to customize the “look and feel” of your notary. Select the options you wish to incorporate.

Notary Options

NOTARY OPTIONS

- Check to use "smart" California notary block (see help)
- Check to exclude "[Seal]" from notary block (not applicable if Notary State is Virginia)
- Include name of notary below notary signature line
- Include address of notary below notary signature line

Select one of the following options for formatting of signature lines and notary blocks:

- All signatures grouped together, one below the other, followed by a single notary for all signatures
- All signatures grouped together, one below the other, followed by separate notaries for each signatarue
- Each signature and the notary for that signature on a separate page

1.40 Client Letter – Arbitration Act

Client Letter - Arbitration Act

For use in the Engagement Terms Client Letter.

Any fee dispute will be settled by arbitration administered in accordance with what arbitration act?

1.41 Contacting WealthCounsel

If you experience difficulty using WealthDocs, please do not hesitate to contact our support team.

For fastest technical and legal support please complete the online support request form on our Members’ website: <http://www.wealthcounsel.com/supportrequest.aspx> , or fill out an online request using your WealthCounsel toolbar in Word, or phone 888-659-4069x801, or send an email to support@wealthcounsel.com.

