

**PLANNED GIVING & TRUST SERVICES  
NORTH AMERICAN DIVISION MANUAL**



**Planned Giving**  
& TRUST SERVICES

Planned Giving & Trust Services  
General Conference of Seventh-day Adventists  
12501 Old Columbia Pike  
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## General Disclaimer

This Planned Giving & Trust Services Manual and the related Forms are intended as general educational material for use only by Seventh-day Adventist organizations listed in the Seventh-day Adventist Yearbook. These materials do not constitute, and should not be considered as, legal, tax, investment, accounting or other professional advice. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

The General Conference Corporation of Seventh-day Adventists has made a good faith effort to verify the information in this *Planned Giving & Trust Services Manual and Forms* book. However, it assumes no responsibility for the accuracy of that information. Laws change frequently and are subject to varying interpretations.

Anyone utilizing this manual and the forms should consult with the proper legal or other advisors to ensure compliance with state and federal laws, rather than relying upon the material contained in this manual.

*The manual is intended as a study guide only and is not to be relied upon separate from professional legal advice.*

Any forms included in this manual are included to convey to the reader a type of form that might be used. Legal counsel should be sought when using any legal form.

It is the intention of the editors to update this manual as needed. Updated pages, along with instructions regarding the pages to be discarded, will be distributed from our office.

The Editors

## Preface

The working policy of the Seventh-day Adventist Church states succinctly the purposes of Planned Giving & Trust Services:

“A recognition of the sovereignty of God, by right of creation and redemption, enables every Seventh-day Adventist Christian to enjoy a sense of security and a relationship with our heavenly Father that surpasses all other considerations. A contemplation of Calvary prompts us to dedicate ourselves and all that we have to God. To do less would mean the loss of spiritual and temporal blessings that come only to those who recognize that God is the owner of all things and that everyone is His steward. This concept of stewardship is recognized by the Christian community; therefore, unique approaches should be taken to achieve the goal of securing to the Lord the material blessings bestowed upon the members of His church.

“The Seventh-day Adventist Church in its Trust Services, offered through the conference legal and denominational institutions, teaches this profound truth and provides the means whereby individuals and families may, through the avenues of special gifts, trusts, annuities, and bequests, give their continuing, wholehearted support to God’s work.

“In the fulfillment of this purpose, the Legal Association through its Trust Services also seeks to minimize the cost of administering and closing the estates of donors and attempts to utilize every lawful means to hold income, gift, and estate tax consequences to a minimum and proclaims, as Heaven’s standard of stewardship, the principles set forth in the Bible and amplified in the Spirit of Prophecy.”

**NADWP FT, GCWP FT**

It is the object of Planned Giving & Trust Services to accomplish its purposes in harmony with good professional ethics and the laws of each jurisdiction involved. Careful planning and good professional advice is a necessity.

## 1. PHILOSOPHY AND OBJECTIVES

Mildred Horak Terry (1914-1996) was a registered nurse working for the United States government. She lived in the suburban Washington, D.C. area. Mildred, active in her local Seventh-day Adventist Church, had no children. Her husband, an alcoholic, predeceased her.

After retirement, she came under strong conviction that she needed to prepare a Christian estate plan. She contacted the General Conference Trust services and asked how she could fulfill her burning desire to benefit the Lord's work.

Her parents had immigrated to the United States from the old Czechoslovakia immediately after WW I. While she never lived in the Eastern European country, she had a great burden for the gospel to go to her parent's homeland.

It was arranged for proper legal counsel to prepare the estate planning documents necessary for Mrs. Terry to leave her assets to the General Conference of Seventh-day Adventist for the benefit of the Czecho-Slovakian Union Conference. These funds were to be for evangelism throughout the three conferences that cover this country of more than 15 million citizens.

Mrs. Terry was so pleased that she now had the assurance that she now had the legal documents executed that would provide for her wishes to be carried out.

When Mrs. Terry died in 1996, Trust Services as well as a close friend, she had named as her executor, assisted in the estate settlement. When the estate distribution was made, a total of \$455,795 was forwarded to the Czecho-Slovakian Union for use as Mrs. Terry had directed.

Union Treasurer, Elder Edvard Miskej, reported on the results: six city-wide evangelistic campaigns in major cities throughout the country, the writing, design, printing, and distribution of five full-color Bible correspondence courses in the Czech language; the purchase and distribution of 6,500 copies of the book, *Seventh-day Adventists Believe*, to every non-Adventist pastor in the entire country.

Pastor Miskej says, "During the ... years since the Velvet Revolution of 1989, our three conferences have been at work, and numerous individuals have, with God's help, come into contact with the Gospel. Many were hungering for the Word of God which, during the years of Communism, was absent from their lives..."

"Public campaigns and Bible courses were arranged; spiritual works, especially books by Ellen G. White, were distributed by colporteurs; invitations to Bible correspondence courses were delivered; and members sought out their friends to speak to them of Jesus Christ..."

"Children and adults were also active participants, welcoming their friends and classmates to Pathfinder Club meetings. Through this great amount of gospel work, 4,061 new followers of Jesus were baptized during the past 10 years.

“Recently, we have noticed a rather substantial decline of interest in spiritual matters. Our society has...begun to focus more on material goods, rather than spiritual values...

From this point of view, I see Sister Mildred Terry’s decision as a gift from heaven which came *at precisely the right time.*”

It is interesting to speculate as to how excited Mildred Horak Terry will be when her angel brings a crown studded with more than 4,000 jewels and places it on her head. “How is this possible? You must have made a mistake,” she will object.

Her angel will respond, “Let me tell you the rest of the story!”

According to Randy Alcorn, “Giving is a giant lever positioned on the fulcrum of this world. Because we give, eternity will be different - for others and for us.” *The Treasure Principle*, (Sisters, OR: Multnomah Publishers, 2001), p. 39.

God is the owner of all. He assigns us the task of managing His land and goods. Such stewardship includes making provision for our personal and family needs, and others dependent upon us. We remember that we have nothing of our own. We are responsible to a loving heavenly Father for how we manage money and property during our lifetime. We are equally responsible for the residue that remains after our life on this earth is over.

Individuals differ greatly. Parental influences, training, and life experiences help determine giving habits and, consequently, support of church ministries. Planned Giving and Trust Services personnel consider inspired stewardship principles and meet constituents *where they are* in terms of their spiritual maturity, individual philosophy and material prosperity.

Those who work in the Planned Giving and Trust Services ministry of the church are responsible for sharing principles of money management, family finance, stewardship and estate planning ensuring a judicious use of God’s assets.

The objectives of Planned Giving and Trust Services ministry include:

1. Presenting Biblical teachings, identifying God as the owner of all things, individuals as recipients of His benevolence and stewards of His assets. Some examples are:
  - A. “In the beginning God created the heavens and the earth. So God created man in his own image, in the image of God he created him; male and female he created them. God blessed them and said to them, ‘Be fruitful and increase in number; fill the earth and subdue it. Rule over the fish of the sea and the birds of the air and over every living creature that moves on the ground.’” Genesis 1:1, 27-28 NIV
  - B. “But remember the Lord your God, for it is He who gives you the ability to produce wealth, and so confirms His covenant, which He swore to your forefathers, as it is today.” Deut. 8:18 NIV

C. "If there is a poor man among your brothers in any of the towns of the land that the Lord your God is giving you, do not be hardhearted or tightfisted toward your poor brother. Rather be openhanded and freely lend him whatever he needs." Deuteronomy 15:7, 8 NIV

D. "In Those days Hezekiah became ill and was at the point of death. The prophet Isaiah son of Amoz went to him and said, 'This is what the Lord says: Put your house in order, because you are going to die; you will not recover.'" 2 Kings 20:1 & Isaiah 38:1 NIV

E. Gifts for Building the Temple, 1 Chronicles 29:1-9, NIV

Then King David said to the whole assembly, "My son Solomon, the one whom God has chosen, is young and inexperienced. The task is great, because this palatial structure is not for man but for the LORD God. With all my resources I have provided for the temple of my God—gold for the gold work, silver for the silver, bronze for the bronze, iron for the iron and wood for the wood, as well as onyx for the settings, turquoise, stones of various colors, and all kinds of fine stone and marble—all of these in large quantities. Besides, in my devotion to the temple of my God I now give my personal treasures of gold and silver for the temple of my God, over and above everything I have provided for this holy temple: three thousand talents of gold (gold of Ophir) and seven thousand talents of refined silver, for the overlaying of the walls of the buildings, for the gold work and the silver work, and for all the work to be done by the craftsmen. Now, who is willing to consecrate himself today to the LORD?" Then the leaders of families, the officers of the tribes of Israel, the commanders of thousands and commanders of hundreds, and the officials in charge of the king's work gave willingly. They gave toward the work on the temple of God five thousand talents and ten thousand darics of gold, ten thousand talents of silver, eighteen thousand talents of bronze and a hundred thousand talents of iron. Any who had precious stones gave them to the treasury of the temple of the LORD in the custody of Jehiel the Gershonite. The people rejoiced at the willing response of their leaders, for they had given freely and wholeheartedly to the LORD. David the king also rejoiced greatly.

F. King David's Prayer, 1 Chronicles 29:10-20 NIV

David praised the LORD in the presence of the whole assembly, saying, "Praise be to you, O LORD, God of our father Israel, from everlasting to everlasting. Yours, O LORD, is the greatness and the power and the glory and the majesty and the splendor, for everything in heaven and earth is yours. Yours, O LORD, is the kingdom; you are exalted as head over all. Wealth and honor come from you; you are the ruler of all things. In your hands are strength and power to exalt and give strength to all. Now, our God, we give you thanks, and praise your glorious name. "But who am I, and who are my people, that we should be able to give as generously as this? Everything comes from you, and we have given you only

what comes from your hand. We are aliens and strangers in your sight, as were all our forefathers. Our days on earth are like a shadow, without hope. O LORD our God, as for all this abundance that we have provided for building you a temple for your Holy Name, it comes from your hand, and all of it belongs to you. I know, my God, that you test the heart and are pleased with integrity. All these things have I given willingly and with honest intent. And now I have seen with joy how willingly your people who are here have given to you. O LORD, God of our fathers Abraham, Isaac and Israel, keep this desire in the hearts of your people forever, and keep their hearts loyal to you. And give my son Solomon the wholehearted devotion to keep your commands, requirements and decrees and to do everything to build the palatial structure for which I have provided." Then David said to the whole assembly, "Praise the LORD your God." So they all praised the LORD, the God of their fathers; they bowed low and fell prostrate before the LORD and the king.

- G. "But who am I, and who are my people, that we should be able to give as generously as this? Everything comes from you, and we have given you only what comes from your hand." 1 Chronicles 29:14 NIV
- H. "Who has a claim against me that I must pay? Everything under heaven belongs to me." Job 41:11 NIV
- I. "The earth is the Lord's, and everything in it, the world, and all who live in it." Psalm 24:1 NIV
- J. "For a man may do his work with wisdom, knowledge and skill, and then he must leave all he owns to someone who has not worked for it. This too is meaningless and a great misfortune." Ecclesiastes 2:21 NIV.
- K. "The silver is mine and the gold is mine,' declares the Lord Almighty." Haggai 2:8 NIV
- L. "And the second is like it: 'Love your neighbor as yourself.'" Matthew 22:39 NIV
- M. The parable of the talents as recorded in Matthew 25:14-30 NIV

"Again, it will be like a man going on a journey, who called his servants and entrusted his property to them. To one he gave five talents of money, to another two talents, and to another one talent, each according to his ability. Then he went on his journey. The man who had received the five talents went at once, put his money to work, and gained five more. So also, the one with the two talents gained two more. But the man who had received the one talent went off, dug a hole in the ground and hid his master's money. "After a long time the master of those servants returned and settled accounts with them. The man who had received the five talents brought the other five. 'Master,' he said, 'you entrusted me



with five talents. See, I have gained five more.' "His master replied, 'Well done, good and faithful servant! You have been faithful with a few things; I will put you in charge of many things. Come and share your master's happiness!' "The man with the two talents also came. 'Master,' he said, 'you entrusted me with two talents; see, I have gained two more.' "His master replied, 'Well done, good and faithful servant! You have been faithful with a few things; I will put you in charge of many things. Come and share your master's happiness!' "Then the man who had received the one talent came. 'Master,' he said, 'I knew that you are a hard man, harvesting where you have not sown and gathering where you have not scattered seed. So I was afraid and went out and hid your talent in the ground. See, here is what belongs to you.' "His master replied, 'You wicked, lazy servant! So you knew that I harvest where I have not sown and gather where I have not scattered seed? Well then, you should have put my money on deposit with the bankers, so that when I returned I would have received it back with interest. "Take the talent from him and give it to the one who has the ten talents. For everyone who has will be given more, and he will have an abundance. Whoever does not have, even what he has will be taken from him. And throw that worthless servant outside, into the darkness, where there will be weeping and gnashing of teeth.'

N. The Widow's Mite, Mark 12:43-44 NIV

Calling his disciples to him, Jesus said, "I tell you the truth, this poor widow has put more into the treasury than all the others. They all gave out of their wealth; but she, out of her poverty, put in everything—all she had to live on."

O. The Parable of the Rich Fool, Luke 12:13-34 NIV

Someone in the crowd said to him, "Teacher, tell my brother to divide the inheritance with me." Jesus replied, "Man, who appointed me a judge or an arbiter between you?" Then he said to them, "Watch out! Be on your guard against all kinds of greed; a man's life does not consist in the abundance of his possessions." And he told them this parable: "The ground of a certain rich man produced a good crop. He thought to himself, 'What shall I do? I have no place to store my crops.' "Then he said, 'This is what I'll do. I will tear down my barns and build bigger ones, and there I will store all my grain and my goods. And I'll say to myself, "You have plenty of good things laid up for many years. Take life easy; eat, drink and be merry." "'But God said to him, 'You fool! This very night your life will be demanded from you. Then who will get what you have prepared for yourself?' "This is how it will be with anyone who stores up things for himself but is not rich toward God."

P. Do Not Worry About Money and Possessions, Luke 12:22-32 NIV

Then Jesus said to his disciples, "Therefore I tell you, do not worry about your life, what you will eat; or about your body, what you will wear. Life is more than food, and the body more than clothes. Consider the ravens: They do not sow or reap, they have no storeroom or barn; yet God feeds them. And how much more valuable you are than birds! Who of you by worrying can add a single hour to his

life? Since you cannot do this very little thing, why do you worry about the rest? "Consider how the lilies grow. They do not labor or spin. Yet I tell you, not even Solomon in all his splendor was dressed like one of these. If that is how God clothes the grass of the field, which is here today, and tomorrow is thrown into the fire, how much more will he clothe you, O you of little faith! And do not set your heart on what you will eat or drink; do not worry about it. For the pagan world runs after all such things, and your Father knows that you need them. But seek his kingdom, and these things will be given to you as well. "Do not be afraid, little flock, for your Father has been pleased to give you the kingdom. Sell your possessions and give to the poor. Provide purses for yourselves that will not wear out, a treasure in heaven that will not be exhausted, where no thief comes near and no moth destroys. For where your treasure is, there your heart will be also.

Q. Zacchaeus the Tax Collector, Luke 19:1-10 NIV

Jesus entered Jericho and was passing through. A man was there by the name of Zacchaeus; he was a chief tax collector and was wealthy. He wanted to see who Jesus was, but being a short man he could not, because of the crowd. So he ran ahead and climbed a sycamore-fig tree to see him, since Jesus was coming that way. When Jesus reached the spot, he looked up and said to him, "Zacchaeus, come down immediately. I must stay at your house today." So he came down at once and welcomed him gladly. All the people saw this and began to mutter, "He has gone to be the guest of a 'sinner.'" But Zacchaeus stood up and said to the Lord, "Look, Lord! Here and now I give half of my possessions to the poor, and if I have cheated anybody out of anything, I will pay back four times the amount." Jesus said to him, "Today salvation has come to this house, because this man, too, is a son of Abraham. For the Son of Man came to seek and to save what was lost."

R. "Now it is required that those who have been given a trust must prove faithful." 1 Corinthians 4:2 NIV

S. "Do you not know that your body is a temple of the Holy Spirit, who is in you, whom you have received from God? You are not your own; you were bought at a price. Therefore, honor God with your body." 1 Corinthians 6:19-20 NIV

T. "If anyone does not provide for his relatives, and especially for his immediate family, he has denied the faith and is worse than an unbeliever." 1 Timothy 5:8 NIV

U. "But godliness with contentment is great gain. For we brought nothing into the world, and we can take nothing out of it. But if we have food and clothing, we will be content with that. People who want to get rich fall into temptation and a trap and into many foolish and harmful desires that plunge men into ruin and destruction. For the love of money is a root of all kinds of evil. Some people, eager for money, have wandered from the faith and pierced themselves with many griefs." 1 Timothy 6:6-11 NIV

2. Presenting Spirit of Prophecy admonitions regarding stewardship obligations to God and family; some examples are:

- A. “Those who are faithful stewards of the Lord’s means will know just how their business stands, and, like wise men, they will be prepared for any emergency. Should their probation close suddenly, they would not leave such great perplexity upon those who are called to settle their estate.” *Adventist Home*, p. 396
- B. “Let it ever be kept in mind that the present selfish system of disposing of property is not God’s plan, but man’s device.” *Testimonies for the Church*, Volume 4, p. 482
- C. “Many are not exercised upon the subject of making their wills while they are in apparent health. But this precaution should be taken by our brethren. They should know their financial standing, and should not allow their business to become entangled. They should arrange their property in such a manner that they may leave it at any time.

Wills should be made in a manner to stand the test of law. After they are drawn, they may remain for years, and do no harm, if donations continue to be made from time to time as the cause has need. Death will not come one day sooner, brethren, because you have made your will. In disposing of your property by will to your relatives, be sure that you do not forget God’s cause. You are His agents, holding His property; and His claims should have your first consideration. Your wife and children, of course, should not be left destitute; provision should be made for them if they are needy. But do not, simply because it is customary, bring into your will a long line of relatives who are not needy.

Let it ever be kept in mind that the present selfish system of disposing of property is not God’s plan, but man’s device. Christians should be reformers, and break up this present system, giving an entirely new aspect to the formation of wills. Let the idea be ever present that it is the Lord’s property which you are handling. The will of God in this matter is law.

If man had made you the executor of his property, would you not closely study the will of the testator, that the smallest amount might not be misapplied? Your heavenly Friend has entrusted you with property, and given you His will as to how it should be used. If this will is studied with an unselfish heart, that which belongs to God will not be misapplied.” *Counsels on Stewardship*, pp. 328-329

- D. “The very best legacy which parents can leave their children is a knowledge of useful labor and the example of a life characterized by disinterested benevolence. By such a life they show the true value of money, that it is only to be appreciated for the good that it will accomplish in relieving their own wants and the

necessities of others, and in advancing the cause of God.” *Testimonies for the Church*, Volume 3, p. 399.

- E. “Parents should exercise the right that God has given them. He entrusted to them the talents He would have them use to His glory. The children were not to become responsible for the talents of the father. While they have sound minds and good judgment, parents should, with prayerful consideration, and with the help of proper counselors who have experience in the truth and a knowledge of the divine will, make disposition of their property. If they have children who are afflicted or are struggling in poverty, and who will make a judicious use of means, they should be considered. But if they have unbelieving children who have abundance of this world, and who are serving the world, they commit a sin against the Master, who has made them His stewards, by placing means in their hands merely because they are their children. God's claims are not to be lightly regarded.” *Testimonies for the Church*, Volume 3, p.121.
3. Providing constituents with current estate and gift-planning information and encouraging them to create estate-planning documents by competent legal advisors.

Those charged with Planned Giving and Trust Services duties have the awesome responsibility of educating constituents about the methods of family financial management, stewardship, and estate planning which will help to ensure a thoughtful employment of God’s assets both during and after life—making paramount the principle that God, the owner of all, requires us to be just and faithful stewards.

“Some wills are made in so loose a manner that they will not stand the test of the law, and thus thousands of dollars have been lost to the cause. Our brethren should feel that a responsibility rests upon them, as faithful servants in the cause of God, to exercise their intellect in regard to this matter, and secure to the Lord His own.” *Counsels on Stewardship*, p. 323.

Such a plan will provide, protect and preserve funds and properties for the benefit of needy beneficiaries and the advancement of God’s cause.

## 2. Certification and Accreditation

**NAD WP S 40 25 Personnel Certification Requirements**— All personnel performing discretionary and/or fiduciary functions of trust development or management shall hold and maintain a PLANNED GIVING & TRUST SERVICES Active Certification, the process for which is detailed in the PLANNED GIVING & TRUST SERVICES Manual. This specifically includes, but is not limited to, Planned Giving and & Trust Services directors, Planned Giving and & Trust Services representatives, trust officers and treasurers/chief financial officers who are actively engaging in PLANNED GIVING & TRUST SERVICES activities.

**Certification** – The following details the requirements to obtain and maintain PGTS Certification and Accreditation as required by NAD WP.

**Code of Ethics**— Planned Giving & Trust Services (“PGTRS”) has a special mission in furthering God’s work. PGTRS personnel are charged with multiple responsibilities. All personnel should adhere to the highest standards, including the following:

1. Personnel should subscribe to the principles and code of ethics set forth in the Bible and the Spirit of Prophecy. These standards include emphasis on total fairness, honesty, openness, integrity, avoiding any conflict of interest or self-dealing, not showing unwarranted partiality, becoming competent in the work assignment, avoiding undue influence, warranting trust, and maintaining the confidentiality of those we serve.
2. Personnel should subscribe to and support the mission of the Church.
3. Personnel should strive to meet and exceed annual performance metrics developed by their organization.
4. Personnel should educate their constituency about Planned Giving & Trust Services, after first applying and exemplifying the principles in their own lives.
5. Personnel should participate in continuing education programs to improve their skills beyond the minimum requirements.
6. Personnel should endeavor to attain degrees and certifications which would enhance their work in Planned Giving & Trust Services.

7. Personnel should adhere/comply with all applicable local, state, provincial and federal government regulations.

### **Certification Requirements**

1. **ACTIVE CERTIFICATION REQUIREMENTS**—The following requirements shall be met for active certification of individuals:

- a. All PGTRS personnel must be employed by an organization listed in the Seventh-day Adventist Church Yearbook and subject to General Conference Auditing Service trust review. The personnel's employment must involve either management or development of Planned Giving & Trust Services.
- b. All PGTRS personnel must complete the following requirements within twelve (12) months from their initial date of employment to receive active certification by the North American Division Certification and Accreditation Committee (C&A Committee):

- 1) Satisfactorily complete the NAD Introduction to Planned Giving & Trust Services Certification Course (certification course) conducted under the direction of the General Conference Planned Giving & Trust Services ("GCPGTRS") department.

- a) An individual who has satisfactorily completed the certification course but has not been granted active certification by the C&A Committee within three years of its completion will need to retake and satisfactorily complete the certification course.

- 2) Satisfactorily complete thirty (30) hours of orientation in a Level A accredited PGTRS department other than their employing organization. Selection of that organization is to be in consultation with director of the individual's next higher organization. Only individuals employed by a Seventh-day Adventist

organization as described in paragraph 1(a) above may complete this orientation.

- 3) Pass the PGTRS qualifying examination with a score of 70% or better.
- c. Beginning January 1, 2018, and each calendar year thereafter, all active certified personnel shall complete a minimum of sixteen (16) hours of continuing professional education (CPE) to maintain active certification.
- 1) Personnel granted active certification by the C&A Committee in the first six months of the calendar year shall complete a minimum of sixteen (16) hours of CPE beginning the same calendar year.
  - 2) Personnel granted active certification by the C&A Committee in the last six months of the calendar year shall complete a minimum of sixteen (16) hours of CPE beginning the next calendar year.
  - 3) Fifty (50) minutes of continuing professional education will be credited as one (1) hour of CPE credit. Presenting/teaching CPE will be credited 2 hours for each hour of teaching.
  - 4) Attendance at the following seminars is mandatory:
    - a. The General Conference/North American Division sponsored training seminar. These seminars are held in odd calendar years and provide attendees with the opportunity to complete at least sixteen (16) hours of CPE.
    - b. A Union Conference sponsored training seminar. These seminars are held in even calendar years and provide attendees with the opportunity to complete at least sixteen (16) hours of CPE.

- 5) PGTRS personnel may seek an excused absence from attending mandatory educational seminars from the director of the organization sponsoring the seminar prior to the start of the seminar, with good cause. A plan for completion of the CPE requirements from other sources must be submitted with the excused absence request.
  
- 6) Non General Conference, North American Division or Union sponsored CPE must be approved in advance by the Union Conference Planned Giving & Trust Services Director, North American PGTRS Director or General Conference PGTRS Director. The CPE material must be relevant to PGTRS work including but not limited to planned giving, fiduciary duties, trust administration, trust investments, accounting/auditing planned gifts, trusts and estates.: Examples of CPE which may be approved in lieu of the mandatory seminars detailed above in paragraph 1(c)(4)(a) - (b) are:
  - A. Self-study courses with testing (Gift College, Canadian Association of Gift Planners, etc.)
  - B. Online classes with testing and evidence of completion
  - C. Conferences, seminar, teleconferences, web seminars and pod casts by a reputable provider that includes handouts Power Points presentations, or a certificate of completion
  - D. Other continuing education with testing, certificate of completion or the equivalent.
    - a. Examples of subject matter that will be considered for continuing education:
      - i. Planned Giving
      - ii. Trust Services
      - iii. Stewardship
      - iv. Financial Planning
      - v. Cash management & personal budgeting
      - vi. Insurance



- vii. Investments
- viii. Retirement
- ix. Estate Planning
- x. Relationship Development
- xi. Professional Relationships
- xii. Marketing Planned Giving
- xiii. Marketing specific to estate plans or deferred gifts
- xiv. Attorney or GCAS Approved classes

7) **MAKE-UP PROVISION FOR CPE HOURS:** If the required CPE hours in any calendar year are not completed by an individual with active PGTRS certification, the individual will maintain their active certification and have the next calendar year to acquire the required sixteen (16) hours for the current year, plus the hours that were deficient from the previous year. CPE hours from the current year must be completed before the deficient hours from the previous year may be completed. Failure to complete the make-up requirements will result in a lapsed certification, see below.

8) **CARRY OVER PROVISION FOR CPE HOURS:** If an individual completes in excess the required CPE hours in any calendar year, along with any hours that may have been deficient from the previous year, they may carry forward to the next calendar year up to eight (8) hours of CPE.

***NOTE:** These are the minimum requirements and governing committees are encouraged to approve additional professional training for Planned Giving & Trust Services personnel.*

2. **INACTIVE, LAPSED, AND REVOKED CERTIFICATION**—The following classifications describe active certified personnel who no longer meet the requirements for active certification:

- a. **INACTIVE CERTIFICATION:** When an individual with an active PGTRS certification ceases to be engaged in PGTRS work, or they are not employed at an accredited organization, but they continue to complete sixteen (16) hours of CPE annually and attend all GC, NAD and Union sponsored training seminars or approved CPE in lieu of mandatory training seminars, their active certification will be reclassified to an inactive certification.
  - 1) The GC/NAD PGTRS Department will notify the individual of their change in status to inactive certification.
  - 2) The individual's certification may be reactivated by notifying the Director of the GC/NAD PGTRS Department that their job function requires them to perform planned giving and trust services development or management activities and they are employed by an accredited organization.
  
- b. **LAPSED CERTIFICATION:** If a PGTRS personnel with an active certification fails to complete sixteen (16) hours of CPE in a calendar year as well as any deficit of CPE hours from the previous year, their active certification shall automatically be reclassified as lapsed certification on January 1 of the year immediately following the make-up year.
  - 1) PGTRS personnel with a lapse certification is prohibited from engaging in any planned giving and trust services development or management activities for any NAD Organization.
  - 2) **SDA EMPLOYED PERSONNEL:** Lapsed certified personnel who maintains employment with an accredited organization and whose employment involves either management or development of Planned Giving & Trust Services the following shall occur:

- a) The GC/NAD PGTRS Department will notify the individual, and their employing organization, of their change in status to lapsed certification.
  - b) The lapsed certified individual must make up all CPE hour deficiencies since they were last considered to have active certification before they can again be granted active certification and engage in any planned giving and trust services development or management activities for any NAD Organization.
- 3) **NON-SDA EMPLOYED PERSONNEL:** Personnel with lapsed certifications who are not employed by an accredited organization the following shall occur:
- a) The GC/NAD PGTRS Department will notify the individual of their change in status to lapsed certification.
  - b) To return to active certification the non-SDA employed lapsed certified personnel must complete sixteen (16) hours of CPE before they can engage in any planned giving and trust services development or management activities for any NAD Organization.
  - c) Upon returning to active certification, in addition, the individual must satisfactorily complete the annual CPE requirement for that calendar year.
- c. **REVOKED CERTIFICATION:** Individuals deemed to be lapsed certified personnel for 3 calendar years or more will be deemed to have a revoked certification.
- 1) The GC/NAD PGTRS Department will send to the individual notification of their change in status to revoked certification.
  - 2) To return to active certification the revoked certified personnel must:

- a) Be employed by an accredited GC/NAD organization with a job function that actively engages in planned giving and trust services work.
- b) Retake and satisfactorily complete the NAD Introduction to Planned Giving & Trust Services Certification Course conducted under the direction of the General Conference Planned Giving & Trust Services department.
- c) Must complete eight (8) hours of orientation in Planned Giving & Trust Services Department of a Level A accredited organization other than their employing organization.

**NAD WP S 40 20 Organization Accreditation Requirements**—Any Seventh-day Adventist Yearbook organization who engages in Planned Giving & Trust Services activities including, but not limited to, discretionary, fiduciary, development, education, and advertising activities, must be PLANNED GIVING & TRUST SERVICES Accredited by the NAD Certification & Accreditation Committee, the process for which is detailed in the NAD PLANNED GIVING & TRUST SERVICES Manual.

### **1) Organization Accreditation Requirements**

- a) The following accreditation requirements shall be met by all North American Division (NAD) year book Seventh-day Adventist Church Organizations with a Planned Giving and/or Trust Services program.
  - i) Organizations must complete the following requirements to obtain accreditation:
    - (1) Provide the NAD Certification & Accreditation (C&A) Committee with the level of service which the Organization will provide (see Level of service definitions below).
    - (2) Provide the C&A Committee with a legal opinion detailing the planned giving and trust services which the organization plans to provide to its constituents and those services which the organization does not plan to provide.
    - (3) Provide the C&A Committee with the appropriate disclosures the organization must make to its constituents and personnel.

- (4) Provide a list of NAD Planned Giving & Trust Services personnel.
- (5) Provide liability insurance provider with limits.

b) Currently Accredited Organizations:

- i) All organizations accredited prior to 2017 may continue to display their Level of Accreditation certificate, these organizations are held accountable to current Planned Giving and Trust Services (PGTRS) accreditation standards for the organization's level of service, and subject to an appropriate trust review by General Conference Auditing Service (GCAS). If these organizations apply for a different level of service and GCAS verifies through a trust review the new level of service the organization is providing, GCAS will then submit the organization's trust review to the C&A Committee who will determine the organization's new accreditation designation. The organization will then be held accountable for this level of service on all future trust reviews. The organization retains the right to request future changes to their level of service.
- c) Regardless of the level of service an organization chooses to be accredited for, all Planned Giving and Trust Services personnel will be fully certified in accordance with chapter 2 of the *NAD Planned Giving & Trust Services Manual*.

## 2) Levels of Service

a) Planned Giving Only Program (PGO)

- i) Organizations that select a PGO program level of service may, engage in the following: promotion, development, and education of Planned Giving to said organization's constituents and friends, in accordance to the organizations state law. General information may be given the constituents concerning the charitable planned giving options applicable to the organizations constituents.
- ii) No fiduciary or trust services shall be offered or engaged in by the office or its personnel nor may it be obligated as a fiduciary in the future. The organization may not: (1) prepare any legal documents for its constituents, (2) pay fees directly to the

- document preparer on behalf of a constituent, (3) offer compensation directly to the constituent for including the organization as a recipient of a gift, (4) provide advice specific to the constituent's, (5) recommend attorneys, accountants, financial advisors or any other professional advisor, however, providing a list of professionals is permitted provided that proper disclaimer will be made to advise the donor that they are responsible for assessing the ability of the professionals to meet their personal needs.
- iii) If revocable or irrevocable planned gifts are identified to benefit the organization are discussed, the organization must engage a qualified third party that is appropriately licensed, certified, to act in all aspects of the development and administration of that gift. The third party shall have complete control over all aspects of the administration of the gift.
  - iv) Trust reviews of PGO Accredited organizations are conducted annually through affidavits acknowledged by the Planned Giving Program's director that they are not engaging in any unauthorized practices and signed by the organization's President, Treasurer and Secretary. GCAS will then conduct an annual assessment during the financial audit to verify the organization is not engaging in any unauthorized practices.
- b) Planned Giving Plus Program (PGP)
- i) Organizations that chose to abide by Planned Giving Plus (PGP) program level of service may engage in the following:
    - ii) All of the forgoing activities of a PGO level of service.
    - iii) The organization may choose to offer reimbursement to their constituents for documents that name the organization as a beneficiary of planned gift, subject to proper disclosure and legal opinion approval.
    - iv) The organization may execute charitable gift annuity (CGA) contracts directly with donors when the organization has contracted with an appropriately qualified, licensed, certified, insured, and accredited third party to manage, the financial investments, issue

- payments to annuitants and prepare appropriate income tax documents. The CGA contracts will be the responsibility of the organization and the third party will be the administrator of the CGA program.
- v) Though it is not recommended, the organization may choose to provide original document storage for their donors, where all original documents are kept in an appropriate confidential, secure, locked, fireproof vault on behalf of the donor. A signed storage agreement, prepared or approved by local legal counsel, will be kept on file for each donor.
  - vi) All stored wills, self-administered trusts, and any other stored documents, that are in a sealed envelope that is not accessible by organizational personnel, will not be required to be reviewed by GCAS while in storage. CGA contracts require GCAS review.
  - vii) Service audit reviews of PGP level of service organizations are conducted annually through affidavits acknowledged by the Planned Giving Program's director that they are not engaging in any unauthorized practices and signed by the organization's President, Treasurer and Secretary. GCAS will then conduct an annual assessment during the financial audit to verify the organization is not engaging in any unauthorized practices.
- c) **Planned Giving & Trust Services Program**
- i) Organizations that chose to offer Planned Giving & Trust Services (PGTRS) program may, with approval from legal counsel and in accordance with state law, engage in all activities of the PGO and PGP levels of Services as well as the following. The organization and its certified Planned Giving & Trust Services personnel may engage in full service discretionary, revocable and irrevocable fiduciary services including serving as trustee, successor trustee, personal representative (PR), successor PR, administrator, attorney-in-fact (AF), successor AF, or a guardian.
  - ii) Trust reviews will be conducted by General Conference Auditing Services in the frequency directed by the NAD C&A Committee and will focus on the full scope of the PGTRS program.

3) **Accreditation Grade Levels**— The Grade Levels of organizational accreditation will be as follows.

a) Level A - When an organization undergoes a review of trust operations conducted by GCAS and all Planned Giving & Trust Service Accreditation Standards, listed below, are complied with, or any deficiencies noted by GCAS have been corrected and supporting documentation has been provided to the satisfaction of the C&A committee, a level A Accreditation may be granted to the organization.

i) In addition, the C&A Committee shall have the responsibility and discretion to grant accreditation for more than one year, up to a three-year limit to organizations that have achieved and maintained Level A Accreditation as a result of the two most recent successive trust reviews, and where there are no significant factors indicated in the most recent trust review which could negatively impact future performance.

(1) Should any material change occur subsequent to the granting of the extended accreditation, the C&A Committee shall have the authority to request GCAS to conduct a trust review prior to the expiration of the extended time limit.

(2) The factors used to grant extended accreditation or to call for an interim review after granting the extended accreditation shall be determined by the C&A Committee.

ii) The frequency in which a Level A accredited organization must undergo its future trust reviews will be indicated by the C&A Committee assigning a number from one to three after the Level A Accreditation is granted.

(1) The Level A accreditation will be noted as follows:

(a) A1—Trust review will happen annually

(b) A2—Trust review will happen every two years

(c) A3—Trust review will happen every three years



- b) **Suspended Decision**—A Suspended Decision may be granted when GCAS submits to the C&A committee an organization’s Review of Trust Operations with deficiencies that are deemed significant by the committee and need to be corrected, yet there has not been enough time for the organization to correct the deficiencies and provide supporting documents to the C&A Committee.
  - i) When a Suspended Decision is issued, the organization will have 60 days to make the corrections and document them to the C&A Committee.
  
- c) **Level B**—If a review of trust operations, appropriate for the service level chosen by an organization, reports findings that are infractions of NAD PGTS Working Policy, PGTS Accreditation Standards and/or the PGTS Manual, and these infractions are determined to be significant by the C&A Committee, and the infractions have not been satisfactorily corrected with supporting documentation within the time period required by the C&A Committee, a level B Accreditation may be granted to the organization by the C&A Committee.
  - i) Level B requires the organization to submit to the C&A Committee a plan for returning their organization to their chosen level of service within 60 days of being notified of the C&A Committee’s decision.
  - ii) The organization will meet with officers from their parent organization, representatives from the NAD, and at least one additional member of the C&A committee, to discuss their plan of correction.
  - iii) Upon receiving the Level B accreditation, the organization will have until the next meeting of the C&A Committee to submit adequate documentation proving they have corrected the findings on their most recent review of trust operations.
  
- d) **Withdrawn Accreditation**—When the C&A committee issues a Level B accreditation and the organization fails to submit a plan to correct the significant audit findings to the C&A Committee by the next regularly scheduled C&A Committee meeting, then accreditation will be withdrawn from the organization. Withdrawal of an organization’s accreditation requires a vote of the NAD Executive Committee.

- i) When the NAD withdraws accreditation of an organization a notice will be published informing the organization's constituent members of the withdrawn accreditation.
  - ii) The organization will then be responsible for notifying all active and future commitments of personal representative, power of attorney, successor trustee, or any other fiduciary responsibilities outlined in the documents held by the organization that they will not be able to serve in that capacity.
  - iii) The organization will also be responsible for returning any original documents to the constituent members.
  - iv) The organization will then be audited by GCAS to ensure they no longer are conducting any unauthorized Planned Giving & Trust Services activities.
- e) No Accreditation—The organization may not engage in any Planned Giving or Trust Services activities in any way. To become accredited the organization will present an application for accreditation to the C&A Committee.

**The following standards must be satisfied in order to attain Level A accreditation.**

**Personnel**

1. All Planned Giving & Trust Services personnel who have been performing any discretionary trust/estate management or development functions for at least one year have been certified. (1984 North American Division Annual Council)
2. Current signed conflict of interest statements are on file for all appropriate individuals. (NADWP S 47 10 and 20)
3. All Planned Giving & Trust Services personnel are adequately covered by a fidelity bond. (NADWP S 04 47)

**Legal Counsel**

4. All trusts, wills, charitable gift annuities, and all other legal documents are prepared by, or under the supervision of, legal counsel in such a manner that the attorney accepts

responsibility for the documents. (NADWP S 40 05, S 40 20 and 1983 NAD Annual Council)

5. The Professional Ethics for Corporate Legal Counsel policy is being complied with including:

a. A written opinion has been obtained from the attorney regarding the activities Planned Giving & Trust Services personnel may properly engage in and the risks that may be involved.

b. The denominational organization and the donor(s) are represented by separate independent legal counsel unless the attorney representing both the organization and the donor(s) has provided the organization with a legal opinion stating that the attorney may represent both parties concurrently in harmony with good professional ethics and applicable law and rulings.

The opinion, which shall be updated at least every five years, shall provide legal citations where appropriate (e.g., statutes, court opinions, ethics opinions and rulings, etc.), and shall address the following:

i. Estate planning documents that may be prepared under dual representation (e.g., will, trust, durable financial power of attorney, health care power of attorney, living will, etc.);

ii. Source of the legal fees for the various documents and manner of payment (e.g., partial or full payment by donor(s), partial or full payment by the organization directly to the attorney or by reimbursement to donor(s)); iii. The party to whom the attorney's primary duty is owed; and iv. Any other issues deemed relevant by the attorney.

c. If the above attorney is engaged in the drafting of wills, trusts, or other estate planning documents for the donor(s), there is:

i. An engagement letter setting forth the basic financial arrangement of who pays the fee, and

ii. A full disclosure statement and conflict of interest waiver are provided to and signed by the donor(s).

**NOTE:** The foregoing Standard 5 is not intended to preclude a situation where disclosure is made to the donor(s) that the attorney represents only the denominational organization, and the donor(s) decline(s) a recommendation to obtain independent legal counsel.

6. A written opinion has been obtained from legal counsel regarding the appropriate method of holding title to trust assets, and the attorney's recommendation is being followed. If legal counsel has indicated that the existence of the trust should be disclosed, such legal counsel has indicated the appropriate method of disclosure such as "Trustee for...."

### **Investments**

7. All denominational investment policies are complied with. (NADWP S 40 16 and S 85)
8. All revocable trusts are separately invested at the specific written direction of the trustor(s). Written directions from the trustor(s) are obtained for all investments of specifically invested revocable trusts. (NADWP S 40 16)
9. No loans of trust/estate assets are made to any denominational entity or fund other than the Union Revolving Fund. (NADWP S 40 16)
10. Assets held in a fiduciary capacity are kept separate from and not commingled with other assets held by the organization in a non-fiduciary capacity.
11. Gift annuity rates are in accordance with denominational policy. (NADWP S 40 10)

### **Documentation and Reporting**

12. The fiduciary has appropriate documents of title or ownership for all trust and estate assets.
13. Receipts are issued whenever any cash, non-cash assets, or other documents are received by Planned Giving & Trust Services personnel.
14. Procedures are in effect to assure that all necessary tax reports are accurately filed on a timely basis and qualified tax counsel is obtained when appropriate. (This includes Federal, provincial, and state tax reports.)
15. Taxpayer identification numbers have been obtained for all trusts and estates, where required.
16. All non-cash assets are consistently recorded in the accounting records as follows:

- a. All non-cash assets held in irrevocable trusts (e.g. unitrusts, annuity trusts, matured revocable trusts or estates) are consistently recorded in the accounting records at fair market value when the asset is placed in the trust or the estate.
  - b. All non-cash assets held in revocable trusts (or other grantor trusts) are consistently recorded at either:
    - i. Fair market value when the asset is placed into trust, or
    - ii. Trustor's income tax (cost) basis. (A signed statement from the trustor is acceptable for this purpose.)
17. Reports to the trustor(s), which include all trust assets, are issued at least annually and include both a statement of trust assets and a statement of trust income/activity. At least one report should be a composite report reflecting total assets held in the trust and all income activity for the year. These reports should be sent, where appropriate, to beneficiaries of irrevocable trusts and estates after consultation with legal counsel. **Real**

**Property and Insurance**

18. For all parcels of real estate, the files include one of the following:
- a. A recorded deed, or
  - b. A statement, approved by legal counsel, signed by the trustor(s) of a revocable trust, asking the trustee to not record the deed and agreeing to release the trustee from, and to indemnify the trustee for, all liability, if any, as a result thereof, or
  - c. A written opinion from legal counsel recommending that the specific deed not be recorded and explaining the reason therefore.
19. When real properties are accepted into trust or in other instances where legal title is taken (either in a fiduciary or non-fiduciary capacity) on behalf of Planned Giving & Trust Services on or after January 1, 1993, an investigation is made regarding hazardous waste. The organization's legal counsel shall approve an appropriate form and designate the individual who is to complete it. (NADWP S 05 46)
20. All insurable real property held as an irrevocable trust/estate asset is insured. For revocable trusts, all insurable real property assets should be insured unless a signed statement, approved by legal counsel, is obtained from the trustor(s) of a revocable trust indicating that the asset is not to be insured and agreeing to release the trustee from, and to indemnify the trustee for, all liability as a result thereof. (Insurable real property of

revocable trust assets should always be insured if the trustor(s) so desire(s), and it is practicable to do so. Insurable real property trust or estate assets include improved or unimproved real property whether the deed is recorded or not. Coverage should include fire and casualty, where applicable.)

In the event legal counsel determines it is impracticable to comply with the above requirements, an alternate procedure may be implemented for revocable trusts, if written approval from the organization's legal counsel states that the alternate procedure adequately fulfills the trustee's fiduciary responsibility. This legal opinion shall be updated at least every three years or upon change of legal counsel.

21. Insurance coverage is reviewed periodically (at least every three years) to verify that coverage appears to be adequate. Where coverage does not appear to be adequate, a "Hold Harmless" agreement approved by legal counsel is signed by the trustor(s) of a revocable trust stating that the trustor(s) is/are not relying upon the trustee to determine the adequacy of the insurance coverage and agreeing to release the trustee from, and to indemnify the trustee for, all liability as a result of any inadequacy of insurance coverage. This same procedure is followed when the trustor(s) does/do not wish this periodic review to determine the adequacy of insurance.

In the event legal counsel determines that it is impracticable under the circumstance to comply with the above requirements, an alternate procedure may be used for revocable trusts, if written approval by the entity's legal counsel states that this procedure adequately fulfills the trustee's fiduciary responsibility in this regard. This legal opinion shall be updated at least every three years or upon change of legal counsel.

22. In the case of revocable trusts, when it has been determined that the trustor has obtained insurance covering the real property, the trustee is named as an "additional insured" except in the following circumstances:
  - a. If the deed is to be recorded, evidence is contained in the trust file indicating that contact has been made with the trustor(s) or the insurance company, and that naming the trustee as an "additional insured" is impossible or impractical for the trustor(s). In this case, a "Hold Harmless" statement approved by legal counsel is signed by the trustor agreeing to release the trustee from and to indemnify the trustee for, all liability as a result.

- b. If the deed is not to be recorded (at the written request of the trustor(s)), the trustor shall have the option of choosing not to have the trustee named as an "additional insured." In this case, a "Hold Harmless" agreement approved by legal counsel is signed by the trustor(s) agreeing to release the trustee from, and to indemnify the trustee for, all liability as a result.

In the event legal counsel determines it is impracticable to comply with the above requirements, an alternative procedure shall be approved in writing by the entity's legal counsel in regard to (a) or (b) above, stating that this procedure adequately fulfills the trustee's fiduciary responsibility in this regard. This legal opinion shall be updated at least every three years or upon change of legal counsel.

### **New Trusts**

23. All trusts are specifically authorized by the appropriate board or committee. (NADWP S 40 15)
24. Trust agreements are written only when the denomination will substantially benefit from such agreements, with the nature of the assets, size of the estate, cost of servicing the trust, and other factors being considered in determining the feasibility of entering into such agreements. (NADWP S 40 15)
25. A checklist of procedures to be followed in establishing new trusts is consistently utilized.

### **Maturities and Revocations**

26. The governing board or appropriate committee is advised of all revocations of trust agreements. Such action is recorded in the minutes of the governing board or appropriate committee.
27. The governing board or appropriate committee is advised of each interim distribution from a matured trust or estate and is also advised of the final distribution and termination of each matured trust or estate. Such notification is recorded in the minutes of the governing board or appropriate committee. (NADWP S 40 25)
28. Signed receipts, releases or acknowledgments are requested and received, when practical, from all beneficiaries of matured trusts or estates. This means that the beneficiary signs a separate receipt or release, or signs an acknowledgment above the beneficiary's

- endorsement on the check. Such receipt, release or acknowledgment shall verify that the distribution is a "partial" or "full and complete" distribution to the beneficiary in harmony with the trust or will. Any other method shall be approved in writing by the entity's local legal counsel.
29. Appropriate documentary evidence is obtained whenever assets of revocable trusts are returned to the trustor(s). This means that the beneficiary signs a separate receipt or signs an acknowledgment above the distributee's endorsement on the check. Such receipt or acknowledgment shall verify that the asset was withdrawn from the trust by the beneficiary in harmony with the trust document. Any other method shall be approved in writing by the entity's local legal counsel.
  30. Assets of matured trusts and estates are distributed and the trusts/estates are terminated within a reasonable period of time.
  31. Written requests are obtained for all withdrawals from or revocations of revocable trusts.
  32. A checklist of procedures to be followed in revoking a trust is consistently utilized.
  33. A checklist of procedures to be followed in closing out a matured trust or estate is consistently utilized.

### **Power of Attorney and Personal Representative/Executor**

34. When a denominational employee/organization is named as attorney-in-fact under a Power of Attorney as a result of his/her employment:
  - a. The Power of Attorney is approved by the governing board or appropriate committee when the attorney-in-fact has the power to act. (NADWP S 40 31)
  - b. Significant acts (such as the disposition of major assets) are approved by the governing board or appropriate committee. (NADWP S 40 31)
  - c. All assets under the active control of the Power of Attorney are accounted for in a formal trust or estate accounting system with complete documentation which is available to the organization's officers and auditors at all reasonable times. (NADWP S 40 31)
35. When a denominational employee/organization is named as Personal Representative/Executor or Conservator as a result of his/her employment:



- a. The designation as Personal Representative/Executor or Conservator is approved by the governing board or appropriate committee when the need to serve arises. (NADWP S 40 33)
  - b. Significant acts (such as the disposition of major assets) are approved by the governing board or appropriate committee. (NADWP S 40 33)
  - c. All assets under the current control or responsibility of the Personal Representative/Executor or Conservator are accounted for in a formal trust or estate accounting system with complete documentation that is available to the organization's officers and auditors at all reasonable times.
36. A list of all Powers of Attorney held in an official capacity by persons employed by the organization, including the extent of, or limitations on, the powers is maintained.

### **Office Procedures**

37. When a trustor or testator dies, a copy of the death certificate or other appropriate evidence of death is obtained.
38. Documents held in a fiduciary capacity, and other related materials, are properly logged out when taken from the files.
39. All files held in a fiduciary capacity are properly organized and subdivided.
40. Files held in a fiduciary capacity are reviewed periodically (e.g., every 3 to 5 years) to verify that the files include all necessary documentation.
41. Original documents are never removed from the office except when an original document is required.
42. A summary (i.e. synopsis) is maintained for each trust which summarizes the pertinent provisions of the trust.
43. Securities held in a fiduciary capacity are physically inspected at least annually and the list of physically inspected securities is reconciled to the accounting records.
44. Files held in a fiduciary capacity and other legal documents are kept in properly secured fire-resistant files/vaults.
45. A tickler system is adequately maintained and utilized.

**General Conference Auditing Service Report**

46. The General Conference Auditing Service Report on Planned Giving & Trust Services Operations is either:
  - a. Submitted to the Financial Audit Review Committee which sends the report along with the Committee's response to the governing board, or
  - b. Submitted directly to the governing board. (NADWP S 71 35 and 36)
47. The report of the General Conference Auditing Service is carefully reviewed and appropriate action is taken to implement the recommendations.  
– End of Accreditation Standards –

### 3. VOCABULARY

**Abatement:** The reduction or partial payment of a gift/legacy under a will because there are not enough assets or cash in the estate to pay it in full.

**Abstract of Title:** A condensed history of the title to a piece of land, recording all the conveyances, transfers, liabilities, covenants against or burdens upon the land, and other facts pertinent to such title.

**Acknowledgement:** The formal declaration by a person, before a competent authority, such as a notary, that his/her signature on a legal document is his/her free act and deed.

**Active Trust:** A trust where the trustee has some active duty to perform; as opposed to a passive, dry, bare, or naked trust.

**Actuarial Value:** The present value of income or principal to be received in the future, as determined by actuarial tables of life expectancy and assumed rates of return.

**Ademption:** The extinction of a devise or bequest made in a will because the asset named was not found in the estate.

**Adjusted Gross Estate:** The decedent's total estate after administrative expenses, allowable debts, and losses are deducted, but before federal estate taxes.

**Adjusted Gross Income:** Amount of gross income, minus certain deductible expenses. This is the amount used to compute various deduction limitations.

**Administration:** The management of a decedent's estate, including the marshaling of assets, the payment of expenses, debts, and charges, the payment or the delivery of legacies, and the rendition of an account.

**Administrative Expenses:** Those costs necessarily incurred in the administration of the estate or in the collection of assets—the payment of debts and the distribution of property to named beneficiaries. Examples: attorney fees, sales commissions, funeral expenses, and other miscellaneous expenditures.

**Administrator (m.) or Administratrix (f.):** A person granted authority by a proper court to administer the estate of a deceased person when there is no executor named in the will. There is a trend to refer to this person as the Personal Representative.

**Advancement:** When a gift is given in life and is also mentioned in the will. Advancement occurs when the jurisdiction deems the gift given in life to be in place of the gift in the will, thus nullifying the gift at death.

**Adverse Possession:** A method of acquiring title to real property by occupation for a statutory period of time, in a manner that is inconsistent with the rights of the true owner.

**Affidavit:** A voluntary statement or declaration of facts, written or printed, and sworn to by the person making it, before an officer authorized to administer oaths (e.g. a notary public).

**Agency:** The relationship of one person acting for or representing another, called the **principal**, by the latter's authority. An agent may or may not have legal title, but generally lacks the discretion of a trustee.

**Alternative Minimum Tax:** An alternative method of computing regular income tax that must be used if applicable. The Alternative Minimum Tax (AMT) was enacted to ensure that corporations, trusts, and high-income individual taxpayers who benefit from certain tax deductions and exemptions, are required to pay some income tax. The AMT is computed by adjusting regular taxable income by the amounts of certain tax deduction and preference items.

**Alternative Valuation Date:** The date, usually six months after the date of the decedent's death, which may be elected by the executor (in some circumstances) for valuation of the gross estate for estate tax purposes.

The alternative valuation date may be elected only if two conditions are met:

1. The total value of the gross estate is lower on the valuation date than on the death date, and
2. A smaller federal estate tax is paid as a result of the election.

**Ancillary:** Subsidiary; subordinate; auxiliary; used to describe a legal proceeding that depends upon, or is auxiliary to, another, principal proceeding. "Ancillary administration" is the administration of a deceased person's estate in a state where he/she had property but which was not his/her domicile.

**Annual Exclusion (Gift Tax):** The amount of cash or other property of ascertainable value that a person can give to any one individual (excluding spouse) without incurring federal gift tax. The current amount is \$13,000 (2009 and indexed for inflation) in a taxable year. (See also Gift Splitting.) Only gifts of present interest qualify for the annual exclusion.

**Annuitant:** The person who receives regular (annual, semi-annual, quarterly, or monthly) payments from an annuity.

**Annuity:** A fixed amount of money that is payable periodically (at least annually). It is payable either for the life of the annuitant or for a definite period of time. (See Charitable Gift Annuity.)

**Applicable Federal Rate:** The interest rate that is set monthly by the Internal Revenue Service for use in computing certain charitable deductions, interest on below-market loans, and various

other types of instruments. There are numerous short-term, mid-term, and long-term AFRs for various compounding periods.

**Appreciation:** Increase in the value of property.

**Ascertainable Standard:** The power of appointment or power to use trust income and/or corpus for a person's health, education, maintenance and/or support. An ascertainable standard is often used for such a power in order to avoid adverse tax consequences.

**Bailee:** A person who received personal property of another person with the understanding that he/she will do something with the property. For example, a mover who receives goods for transportation, or a tailor who receives clothing for alteration is a **bailee**. A bailee never has legal title.

**Bailment:** The delivery of personal property from one person (bailor) to another person (bailee) for a specific purpose, but without passing title to the property. Generally a bailment does not involve a fiduciary relationship and does not create a trust.

**Bargain Sale:** A sale of property for a lower price than the fair market value, with the difference being a gift to the buyer.

**Beneficiary:** The person or entity who receives funds, property, or other benefits from a will, trust, insurance policy, retirement plan, or other source.

**Bequest:** A gift of personal property in a will; a **legacy**. The term is often used synonymously with **devise**, although the latter more strictly applies only to the disposition of real estate in a person's will.

**Capital Gains Tax:** A separate tax assessed against the gain on sale of an appreciated capital asset. If the seller holds property for a year or less, the capital gain is short-term and taxed as ordinary income. If the property is held more than a year, the capital gain is long-term and taxed at long-term capital gains rates.

**Cash Value:** The surrender value on certain types of life insurance policies.

**Carryovers of Charitable Deductions:** Contribution deductions that exceed the various percentage limitations may be "carried over"—up to five succeeding tax years, if necessary—to be counted as a charitable deduction.

**Charitable Contribution:** A gift to, or for the use of, a qualified charity. It results in a deduction for income, gift, or estate tax purposes when the donor does not receive more than an insubstantial benefit.

**Charitable Gift Annuity:** An irrevocable gift a donor makes to a qualified charity in return for a contract or agreement to pay the donor and/or another annuitant an annual fixed amount for life.

**Charitable Lead Trust:** A trust for a fixed term of years, or for one or more lives, wherein a charity is the income beneficiary, and the remainder goes to a non-charitable beneficiary. May be a charitable lead annuity trust or a charitable lead unitrust.

**Charitable Remainder Trust:** A trust for a fixed term of years, or for one or more lives, wherein a non-charitable beneficiary is the income beneficiary, and the remainder goes to a charity. May be a charitable remainder annuity trust or a charitable remainder unitrust.

**Class Gift:** A gift to members of the same class, such as children of the same parents, but where the specific identity or number of class members is generally not known at the time of the gift.

**Codicil:** An amendment or modification to a will, executed with all the legal formalities as a will.

**Common Law:** The body of law that originated in England, and is primarily judge-made law.

**Community Property:** Property acquired by a husband and wife, or either of them, during marriage, while residing in a community property state.

**Constructive Trust:** (See Implied Trust.)

**Contingent Beneficiary:** The beneficiary whose interest is conditioned upon a future occurrence that may or may not take place. Unless or until the condition takes place, the interest is only contingent.

**Corpus:** The body/amount of principal put into an estate or trust on which income may be earned.

**Cost Basis:** The original price paid to acquire an asset. The adjusted cost basis is increased or decreased by certain factors, such as buying costs, capital improvements, and depreciation. The adjusted cost basis is generally used to determine the gain or loss on the sale or disposition of the property.

**Curtesy:** The interest that a husband has in his deceased wife's real property. Many states do not recognize a dower right. (See also Dower.)

**Cy-Pres Doctrine:** Cy-Pres means "as nearly as may be." The doctrine, applied in English and Scottish law and in some of the states of the United States, provides that, where a donor, testator, or settler makes a gift to, or for, a charitable or non-charitable purpose that is impossible or illegal, the court will direct that the gift will be made as nearly as possible, in its judgment, in conformity with the intention of the donor.

**Decedent:** A deceased person.

**Deed:** A written instrument, signed and delivered, that transfers ownership of property from one party to another. The term usually refers to a transfer of land or an interest in land.

**Deed of Trust:** (See Trust Deed.)

**Defined Benefit Plan:** A pension plan where an employer promises a specified benefit at retirement. Contributions to the plan are based on the amounts actuarially determined to be sufficient to produce the specified benefit.

**Defined Contribution Plan:** A pension plan that provides for a separate account for each participant-employee based on the amount contributed to that individual's account including income, expenses, gains, and losses.

**Descendant:** A person who is descended in a direct line from another; one who proceeds from the body of another, however remotely, as a child, grandchild, or great-grandchild.

**Devise:** The disposition of real property under a will. (The disposition of personal property is usually called a bequest.)

**Distributable Net Income (DNI):** For fiduciary income tax purposes, the taxable income of the estate or trust for any taxable year, computed with certain modifications.

**Dividends:** A share of a company's profits that are divided among shareholders.

**Domicile:** The place which is an individual's permanent home and to which, whenever absent, the individual has the intention of returning. A person's domicile may not necessarily be the same as their residence.

**Donee:** The recipient of a gift.

**Donor:** The person who makes a gift.

**Donor Advised Fund:** A fund owned by a charity, over which the charity has total discretionary control, but where the donor retains the right to make suggestions as to the use of the funds, with the understanding that the charity may or may not comply with the donor's recommendations. A gift to a donor advised fund qualifies for a charitable tax deduction.

**Dower:** The life estate of a widow in the real property of her husband. At common law, a wife had a life estate in one-third of the value of the real property of her husband who died without leaving a valid will or from whose will she dissented. Many states do not recognize a dower right.

**Dry Trust:** A trust where the trustee merely holds title to trust assets but has no active duties to perform. (See Passive Trust.)

**Durable Power of Attorney:** A power of attorney that remains effective despite the disability or incompetence of the person granting the power. (See Power of Attorney.)

**Easement:** A right to use the property of another that is not inconsistent with the owner's use, such as the right to cross the owner's land in order to get to the highway. It generally arises by deed, will, or necessary implication.

**Escheat:** The reversion of property to the state when there is no person who qualifies as an heir, next of kin, identifiable beneficiary, or other claimant.

**Estate:** The title, right, or interest a person has in real and personal property. The term is often used in connection with a will, trust, bankruptcy, or estate taxes.

**Estate by the Entirety:** An estate held by husband and wife together so long as both live, and, after the death of either, by the survivor. Neither can sell without the consent of the other. (See Tenants by the Entirety.)

**Estate Tax:** One of three different taxes that comprise our transfer tax system: gift, estate, and generation-skipping taxes.

The estate tax is imposed on the value of interests in property that a decedent owns, possesses, or controls at death. The tax is both progressive (tax rates increase as value of the estate increases) and cumulative (value of the estate at death is increased by the value of all lifetime taxable gifts *in excess of* the donor's annual exclusion). A decedent's estate is granted an unlimited deduction for qualifying gifts to his/her spouse and charity.

**Executor (m.) or Executrix (f.):** A person who is named in a will and appointed by a court to carry out the terms of the testator's will and settle the estate after his/her death. There is a trend to refer to this person as the Personal Representative.

**Exemption Equivalent:** The total amount of property that can be given away (in excess of the annual exclusion amounts and other deductible gifts) during life or at death without transfer tax (gift or estate tax) consequences.

**Fair Market Value:** Amount of money a willing and able buyer would pay a willing seller for property, neither being under any compulsion to buy or sell, and both having a reasonable knowledge of relevant facts.

**Federal Estate Tax:** Tax levied on the taxable transfer of property to others at death.

**Federal Gift Tax:** Tax levied on the taxable transfer of property to others by gift during life.

**Fee Simple:** Absolute ownership of property, meaning that the owner has unconditional power to dispose of the property during his/her lifetime and to pass such absolute ownership to whomever he/she wishes upon his/her death.

**Fiduciary:** A person or institution that acts for another or administers property for another with a duty to act in their best interests in a capacity that involves a confidence or trust. Examples of fiduciaries are executors, trustees, and guardians.



**Fiduciary Relationship:** Relationship between a fiduciary and the person to whom the fiduciary owes the legal duty to act in the person's best interest.

**Fiduciary Income Tax Return:** State or federal income tax return filed by the fiduciary of an estate or trust.

**Five-Year Carry Over Rule:** A federal income tax provision that permits a donor to carry over into the five succeeding years any amount of a charitable gift that exceeds the deductible amount in the year the gift is made.

**Future Interest:** An interest where the right to possession or enjoyment is postponed until some future time or event. (See Present Interest.)

**General Warranty:** A covenant in the deed whereby the grantor agrees to protect the grantee against any defect in the title that would interfere with the grantee's enjoyment of the property.

**Generation-Skipping Transfer Tax (GSTT):** A tax imposed on a transfer of money or property that skips a generation. The tax is subject to an annual exclusion and a lifetime exemption per transferor. The types of GSTT events are direct skips, taxable distributions, and taxable terminations.

**Gift-in-Kind:** A gift of property other than cash and cash equivalents.

**Gift Splitting:** An election made by both a husband and wife whereby a gift made by one spouse is treated as if made equally by both spouses for gift tax purposes. The purpose of gift splitting is for both spouses to utilize their annual gift tax exclusion even though only one spouse makes a gift.

**Grantee:** A person to whom property is transferred, generally by a trust instrument or some other document.

**Grantor:** A person who transfers property to another, generally by a trust instrument or some other document. (See Settlor and Trustor.)

**Grantor Trust:** A trust over which the grantor (or other party) retains significant control or beneficial enjoyment. The grantor (or other party) is taxed on that portion of the trust over which he/she has control.

Examples of grantor trusts include a revocable trust (totally a grantor trust), and an irrevocable trust where all of the trust income is paid to the grantor (a grantor trust with respect to the trust income, but not necessarily for capital gains and losses).

**Gross Estate:** Everything a decedent owned at death and in which he had an interest at death, before deductions for debts, taxes, and certain expenses. It may also include lifetime transfers where the decedent retained the right to income, possession, or other enjoyment.

**Guardian:** Person appointed by a court to care for a person (such as a minor child or incompetent person), property, or both.

**Holographic Will:** A will entirely written and signed by the testator or maker with his/her own hand. In some states, only material provisions and signature must be handwritten. Many states do not allow holographic wills.

**Implied Trust:** A trust that is created, implied, or presumed from the circumstances; to be distinguished from an express trust that is created by express language, either orally or in writing.

There are two types of implied trusts: resulting trusts and constructive trusts.

**Incidents of Ownership:** Sufficient element of ownership or degree of control over a life insurance policy to make the insurance proceeds includable in the decedent's gross estate for federal estate tax purposes. For example, incidents of ownership include the right to cancel, borrow against, and/or change the beneficiaries of a life insurance policy.

**Incompetent:** A person judicially declared to be incapable of managing his/her affairs. In various states the fiduciary appointed to manage an incompetent's property and/or person is called a "guardian," "committee," or "conservator."

**Inheritance Tax:** A tax levied by many states on the right to receive property from a deceased person, as distinguished from the estate tax which is a tax levied on the right to transfer property. Usually the rate of tax varies according to the relationship of the beneficiary to the decedent.

**Insurable Interest:** Sufficient interest in the subject matter of insurance, such that the person or institution can apply for the insurance and benefit from the proceeds of the insurance. For example, a charity may or may not have an insurable interest in the life of a donor or other individual, depending on state law.

**In Terrorem Clause:** A provision of a will or trust agreement intended to frighten a beneficiary into doing, or refraining from doing, something at the peril of forfeiting his/her possible benefits—such as a provision that would disinherit any named or potential beneficiary who contests a will or trust.

**Inter Vivos:** A Latin phrase meaning "between the living." An inter vivos trust, for example, is one set up by a living person.

**Intestate:** Dying without a valid will. A person is said to die intestate when he/she dies without having made a valid will.

**Irrevocable:** That which cannot be revoked without a court order.

**Irrevocable Trust:** A trust that cannot be revoked without court authorization.

**Issue:** All persons who have descended from a common ancestor. In some jurisdictions, the term may include adopted children and/or children born out of wedlock.

**Joint Tenancy:** A type of ownership by two or more persons, where each owns an equal, undivided interest in the whole. In most states, joint tenancy includes the right of survivorship.

**Legacy:** Technically, a gift of personal property under a will (a bequest). But whether real or personal property, the following general categories apply:

1. *General:* A pecuniary legacy payable out of the general assets of the estate.
2. *Residuary:* A gift of all the property not otherwise effectually disposed of by will.
3. *Specific:* A testamentary gift of a special item.

**Legatee:** Any person who receives a legacy under a will.

**Letters of Administration:** A written document issued by a court authorizing the person named to administer and settle the estate of an intestate decedent. (Sometimes referred to as Letters of Authority.)

**Letters Testamentary:** A written document issued by a court providing notice of an executor's appointment and authority to act on behalf of the estate of a testate decedent. (Sometimes referred to as Letters of Authority.)

**Life Estate:** An interest that someone (the life tenant) has in property that lasts only during that person's lifetime, or the lifetime of some other person. The life tenant has no ownership rights to transfer any interests in the property after the life estate terminates.

**Life Expectancy:** The actuarial estimate of the number of years a person will live from any given age.

**Life Insurance Policy:** A contract between an insurance company ("insurer") and a customer ("insured") insuring the latter's life. The major types of life insurance policies are:

1. *Ordinary life* policies on which a fixed premium is paid for a fixed term of years or for the life of the insured, or the entire premium is paid in advance.
2. *Term* policies, on which an increasing premium may be paid, which remain in effect only for a specific number of years.
3. *Group term* policies, which resemble term policies except that the insured is a member of a group, all of whom are insured by the insurer as a "package," usually resulting in lower premiums. Such groups are frequently professional societies or the employees of a particular business, etc.

**Life Tenant:** The person who receives the income or benefit from a life estate. (See Life Estate.)

**Living Will:** A document that allows a person to state in advance his/her directions regarding artificial life support in the event of a terminal illness or permanent coma; to be distinguished from a health care (or medical) power of attorney that gives another person (an agent) the power to make a broad range of health care decisions on behalf of the person who cannot make his/her own decisions. May be known by different terms in various states, such as advance medical directive or some other designation.

**Marital Deduction:** The unlimited tax deduction allowed for gift tax and estate tax purposes for qualifying property transferred to, or for the benefit of, the spouse.

**Mechanic's Lien:** A claim under state law to secure a priority payment for the value of work performed and materials furnished in building, improving, or repairing a structure. The lien also attaches to the land on which the building sits.

**Minor:** An infant or person who is under the age of entitlement to full rights—in most states, age 18.

**Mortgage:** A form of conveyance given by the debtor to the creditor, wherein described real property is given as security for a loan. (See Trust Deed.)

**Negligence:** The failure to exercise the standard of care that would be expected of a reasonable and prudent person in a particular set of circumstances. If the prudent person should act, then one's failure to act is negligence; likewise, if the prudent person should not act, then to act is negligence.

**Next of Kin:** In the law of descent and distribution, the person most nearly related to a decedent by blood. Also, sometimes, those entitled to share in the decedent's estate according to the applicable laws of distribution.

**Non-qualified dividends:** Nonqualified dividends are ordinary dividends that are taxed at the regular tax rates.

**Nuncupative Will:** An oral will made by a person in his/her last illness or who is conscious of the possibility of dying in the near future (e.g., in a military action), stated before witnesses, usually later put in writing. Many jurisdictions do not honor a nuncupative will and instead regard the maker as having died intestate. Other jurisdictions will honor it only in specific situations.

**Ordinary Income Property:** Property which does not produce long-term capital gains and will be taxed at the "ordinary" rates of the taxpayer when it is sold. Examples of ordinary income property are: *short term capital gains property* (held one year or less); *inventory* (assets held for sale to customers in the ordinary course of a trade or business); certain *recapture property* (the value of some property against which accelerated depreciation deductions have been taken to reduce the tax basis); and *other property* which would *not* yield long-term capital gains if sold at a profit.

**Passive Trust:** A trust where the trustee merely holds title to trust assets but has no active duties to perform. (See Dry Trust.)

**Per Capita:** A Latin phrase meaning “by the heads.” It is used often in the law of descent and distribution to denote a method of dividing an estate by giving an equal share to each of a number of persons, all of whom stand in an equal degree to the decedent.

**Personal Property:** All property other than real property. There are two types of personal property: tangible and intangible.

1. *Tangible* personal property has physical characteristics, such as jewelry, furniture, etc.
2. *Intangible* personal property is property that cannot be touched or realized by the senses, such as legally enforceable rights in stocks, shares, patents, copyrights, and bank accounts.

**Personal Representative:** See Executor.

**Per Stirpes:** A Latin phrase meaning “by stock or roots.” It is used often in the law of descent and distribution to denote a method of dividing an estate by which a deceased person’s descendants share as a group in the portion to which their deceased ancestor was entitled.

**Pooled Income Fund:** A trust funded by a number of donors, each retaining an income interest for life. Each donor is paid a pro-rata share of the trust earnings. Each donor’s portion of the principal becomes the property of the charity at the death of the donor.

**Pour-Over Will:** A will that directs that all or part of the decedent’s assets to be “poured over” or transferred into a trust which has its own provision for distribution of assets.

**Power of Appointment:** The power given by one person to a second person, by a will or other instrument, to name the individual who will receive the first person’s property. A power of appointment may be general (power to give property to the power holder and others) or limited (power to give property only to others).

**Power of Attorney:** The legal document which grants the authority for one person to act as another’s agent or attorney-in-fact. A durable power of attorney continues during the principal’s incompetency. A power of attorney may be general or specific.

**Prearranged Sale:** An express obligation (a binding agreement) under state contract law to sell proposed charitable contribution property.

**Precatory:** Words in a will, trust, or other document expressing wishes and desires, but not a direction or mandate.

**Present Interest:** An unrestricted right to immediate use, possession, or enjoyment of property, or income from the property. Only a present interest gift qualifies for the annual gift tax exclusion. (See Future Interest.)

**Pretermitted Child:** A child to whom the parent's will leaves no share of his/her estate, without an affirmative provision in the will showing an intention to omit. It frequently is an after-born child, a child erroneously believed to be dead, or one unintentionally omitted. Many states have a statute for pretermitted children to receive a share of the estate.

**Principal:**

1. The body/amount or principal put into an estate or trust on which income may be earned. (See Corpus.)
2. Person who employs an agent to act on his behalf.

**Private Benefit:** A benefit granted by a 501(c)(3) charity to individuals or other non-charitable parties. A private benefit can result in a charity losing its tax-exempt status if the benefit is not incidental to the charity's exempt purpose or if it is more than insubstantial in amount.

**Private Inurement:** An impermissible benefit granted by a 501(c)(3) charity to insiders or those in a position of control. Any amount of private inurement can result in a charity losing its tax-exempt status.

**Probate:** The act or process by which the validity of a will is legally established by a court. In common usage, the term has been expanded to include all matters pertaining to the administration and settlement of an estate.

**Property:** Anything that may be the subject of ownership, real and personal, tangible and intangible. (See Personal Property and Real Property.)

**Prudent Investor Rule:** An investment standard adopted in many states that evaluates the propriety of an investment based on the total investment portfolio as a whole, rather than each individual investment. The Rule requires the fiduciary to invest in the best interests of both the income and remainder beneficiaries, taking into account several goals: to diversify the investment portfolio, and to develop specific investment strategies and asset allocations for each trust, estate, or other entity.

**Prudent Man Rule:** An investment standard whereby all that can be required of a fiduciary is that he/she conducts himself/herself as a prudent person of discretion and intelligence who is seeking a reasonable return and a preservation of capital. The Rule is generally applied to each individual investment.

**Qualified appraisal:** An appraisal that is conducted by a qualified appraiser in accordance with generally accepted appraisal standards as developed by the Appraisal Standards Board of the Appraisal Foundation.

**Qualified appraiser:** An individual who (1) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements, (2) regularly performs appraisals for which the individual receives compensation, and (3) meets such other requirements as may be prescribed by the Secretary of the U. S Treasury in regulations or other guidance. IRC Section 170(f)(11)(E)(iii) further

provides that an individual will not be treated as a qualified appraiser unless that individual (1) demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and (2) has not been prohibited from practicing before the Internal Revenue Service by the Secretary under § 330(c) of Title 31 of the United States Code at any time during the 3-year period ending on the date of the appraisal.

**Qualified Disclaimer:** The giving up of a right to receive property in a manner prescribed by the Internal Revenue Code and state law, so that the property is treated as never having been transferred to the person making the disclaimer.

**Qualified Dividends:** Dividends that are taxed at lower rates than ordinary dividends.

**Qualified Domestic Relations Order (QDRO):** A court order in a divorce, separation, or maintenance agreement that relates to child support, alimony, or the division of marital property. A QDRO is generally required for the assignment of benefits under a qualified retirement plan to be valid.

**Qualified Terminable Interest Property (QTIP):** Any property that passes from a donor spouse, during life or at death, in which the surviving or donee spouse has a qualifying income interest for life. To qualify, the spouse must be entitled to all income, the income must be payable at least annually and no person has any right to dispose of it during the spouse's lifetime. If qualified, the terminable interest is eligible for the unlimited gift or estate tax marital deduction, if an appropriate election is made. The value of the property may eventually be taxed in the donee spouse's estate.

**Quitclaim Deed:** A deed in which the grantor conveys to the grantee, with no warranty, all of the grantor's interests in the described property, whether the interest be all, part, or nothing.

**Real Property:** Any land, or any estate in land, usually including whatever is permanently affixed or growing upon the land.

**Record Notice:** When an instrument of conveyance or a mortgage is recorded in the appropriate public office, it is constructive notice of its contents to the whole world.

**Remainder Beneficiary:** A trust beneficiary who is entitled to the trust principal after the interest of the income beneficiary has been terminated. Same as Remainderman.

**Res:** (Latin) A thing, an object, or subject matter. The term is often used for property placed in a trust or a will.

**Residuary Estate (Residue):** The estate of a decedent remaining after the payment of all administration and funeral expenses, debts, charges, and legacies.

**Resulting Trust:** (See Implied Trust.)

**Reversion:** The interest in an estate remaining in the grantor after a particular interest, less than the whole estate, has been granted by the owner to another person; to be distinguished from remainder. The reversion remains in the grantor; the remainder goes to some grantee.

**Revocable Trust:** A trust in which the trustor reserves the right to revoke and reacquire the trust assets.

**Rule Against Perpetuities:** A rule of common law that prohibits future interests or estates from being tied up by one owner for too long a period. The interests or estates must become vested within 21 years after the death of some life or lives who were alive when the interests were created, plus the period of gestation. The rule often does not apply to charitable interests. The common law rule has been modified in some states.

**Separate Property:** Property owned separately and independently, free from any right or control by others. Property acquired by either spouse prior to marriage or by gift or devise after marriage is generally separate property.

**Settlor:** The person who creates a trust. Same as trustor.

**Special Warranty Deed:** A deed wherein the grantor limits his/her liability to the grantee to anyone claiming, by, from, through, or under the grantor. In other words, the grantor warrants only that done while he/she owned the property and that he/she has not done anything to encumber the property.

**Spendthrift Clause:** A provision in a will or trust that limits a beneficiary's right to dispose of his/her interest by assignment, and the right of the beneficiary's creditors to reach the trust assets by attachment.

**Split-Interest Gift:** A gift, often in trust, where the interests are split or divided between two parties—a charity and a non-charitable person.

**Sprinkling Trust:** A trust in which the income or principal is distributed among the members of a designated class in amounts and proportions as may be determined in the discretion of the trustee or other party. Also called spraying trust.

**Statute of Limitations:** A law which provides that a lawsuit must be brought within a specified time, usually beginning when the right to sue occurs. Any suit is generally barred after this time limit.

**Taxable Estate:** For estate tax purposes, the excess of a decedent's gross estate over allowable deductions for debts and certain administrative expenses.

**Tenancy in Common:** A form of property ownership held by two or more persons, each of whom holds an undivided interest in the whole. The tenants can own equal or unequal shares. There is no right of survivorship.



**Tenants by the Entirety:** A form of property ownership held by a husband and wife with survivorship rights. Generally creditors cannot reach the property unless both spouses are responsible for the debt.

**Testamentary:**

1. Of, or pertaining to, a will or testament, as a document.
2. Founded on, derived from, or created by a will, as a testamentary trust.

**Testate:** Leaving a valid will upon death.

**Testator (m.) or Testatrix (f.):**

1. A person who makes or has made a will or testament.
2. A person who dies leaving a will or testament.

**Totten Trust:** Trust created by deposit of one's own money in his/her own name as trustee for himself/herself. Title is vested in the record owner (trustee), who during his/her life holds it in a revocable trust for the named beneficiary. At the death of the depositor, a presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor, with the beneficiary assuming legal title.

**Trust:** A fiduciary relationship in which the trustee is the holder of the legal title to property (the trust property) and is obligated to keep or use the property for the benefit of another person (the beneficiary).

**Trust Deed:** A deed used in some states by which a debtor conveys legal title to real property to the trustee as security for the payment of a debt. Similar in substance to a mortgage.

**Trustee:** The person or institution that holds legal title to trust assets and has a fiduciary duty to administer the property for the benefit of the beneficiaries.

**Trustor:** A person who creates a trust. Same as a Settlor or Grantor.

**Undivided Interest:** The interest of joint owners in the entire property, which interest is indistinguishable.

**Undue Influence:** Improper influence exerted upon a person so as to overpower his/her will and induce him/her to perform an action he/she would not freely have performed, or not to perform an action that he/she would otherwise freely have performed. Misuse of a position of confidence or taking advantage of a person's weakness, infirmity, or distress to change improperly that person's actions or decisions.

**Unified Credit:** A credit amount available to each taxpayer that can be applied against his/her gift and estate tax.

**Unrelated Business Income:** Income to a tax-exempt organization from a trade or regular business that is unrelated to its tax-exempt purpose or function. Unrelated business income also includes income on debt-financed property, with certain exceptions.

**Unsound Mind:** An infirmity of the mind such that a person is not capable of managing his/her own affairs and is unable to understand the consequences of what is being done.

**Warranty:** A promise or guarantee that certain facts are as they are represented to be, subject to any express limitations.

**Warranty Deed:** A deed in which the grantor assures or warrants that he/she has a good and merchantable title to the property being granted. The usual covenants of title are warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances, and defense of title against all claims. It is also referred to as a grant deed in some states.

**Will:** A legally enforceable written instrument, properly executed, by which a person makes a disposition of his/her property, to take effect after his/her death.

**Witness:**

1. A person who sees or knows something and testifies to it.
2. A person who gives evidence under oath or affirmation, either orally or by deposition or affidavit.
3. A person who affixes his/her name to an instrument executed by another in order to testify to the genuineness of the maker's signature.

## **4. THE LEGAL CORPORATION**

History, Structure, Organization, Trustee

### **Background and History**

Generally the Seventh-day Adventist Church operates under a unique arrangement involving two entities, the unincorporated ecclesiastical body (the conference) and the non-profit corporation (the association/corporation). The association/corporation was originally established for the limited purposes of holding legal title to church property and receiving gifts and bequests from church members. In actual practice, the association/corporation acts to implement certain legal objectives of the conference.

It was not until 1860 that the Seventh-day Adventist Church voted to establish a legal organization. Many of the church pioneers were fearful of organizing and becoming like the world. The young church was occupied with the challenge of proclaiming rediscovered Bible truths and establishing its work in many places. However, there were a few leaders who realized that in order for the church to fulfill its spiritual mission it must also find a way to effectively function in the secular world.

During the early years, individual members held legal title to church facilities. Several problems developed, illustrating the risks of this practice. In one instance, the individual who held the title converted a Cincinnati, Ohio church into a vinegar establishment. In 1860, the church lost possession of two other meetinghouses. These incidents prompted James White to publish a series of articles in the *Review* urging church leaders to find a more secure method of holding church property. For several months, a debate raged between those for and against the establishment of a legal organization.

Finally, at the historic Battle Creek Conference held from September 29 to October 1, 1860, the delegates agreed on a unique, but wise, arrangement initially proposed by J. N. Andrews. They voted to select a few men to form a “legally incorporated business association” for holding title to church properties and receiving bequests from church members. The first church corporation established was the Review and Herald Publishing Association. (Incidentally, the name “Seventh-day Adventist” was also voted on the same day.)

### **The Corporate Legal Entity**

Legal Organizations Under the Law - The Seventh-day Adventist Church conducts its evangelistic work and performs its other religious functions as an unincorporated body. It is the general plan not to incorporate or register regular denominational organizations unless required by law. Corporate organizations are established pursuant to governing laws for the management of legal activity, and these operate under rules and bylaws as adopted by each organization. All organizations planning to form legal corporations for operations in North America shall first secure approval from the General Conference Executive Committee. The delegates to the regular conference sessions constitute the delegates to the session of the legal organization.

*The Seventh-day Adventist Church Manual (2005), p. 237*

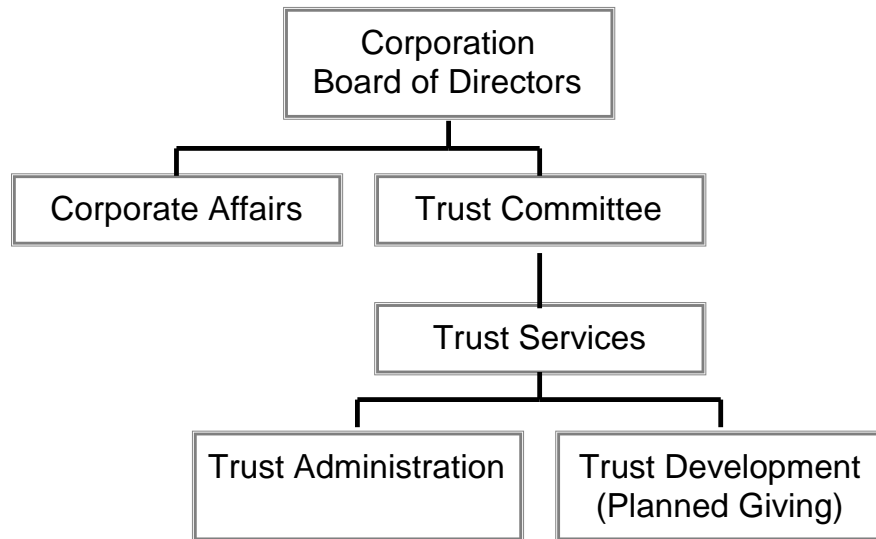
## **The Structure of the Corporation**

1. Membership. The corporation membership or constituency may be composed of the delegates to the conference meeting or members of the conference executive committee and board of directors. These members act as “shareholders” of the corporation in electing the board of directors and voting on the Articles of Incorporation and the Bylaws for the corporation.
2. Board of Directors. Corporation activities are controlled and managed by the board of directors. The board of directors appoints committees, reviews and approves all transactions, and ensures that the corporation follows the policies and programs of the conference, within its area of responsibility. In some cases, it may also appoint the corporate officers.
3. Committees. The board of directors usually creates and empowers various committees with specialized functions to act on its behalf, within well-defined guidelines and policies established by the board. These committees include the Trust Committee and the Investment Committee.
4. Officers. Corporation officers may be appointed by the board of directors or may be elected by the corporation constituency. The Trust Services director is often appointed secretary of the corporation, with a second individual to serve as corporation treasurer. Furthermore, the Trust Services director may also be a vice president of the corporation.

## **Corporate Functions**

1. Corporate Affairs. The corporation holds the legal title to all conference property: churches, schools, and other church facilities and institutions that are owned and controlled by the conference and its subsidiary units. In some conferences, the corporation performs investment functions.
2. Trust Services. The work of the Trust Services department usually involves promotion and development of trusts and wills, trust and estate administration, trust accounting, and investment management. The typical relationship between Trust Services and the corporation is illustrated by the following chart:

Figure 4-1



## Corporation Procedures

1. Notice of Meetings. Typically, corporation bylaws require that the corporation secretary provide notice of regular and special meetings of the membership and of the board of directors. These announcements should include the date, time, and place of upcoming meeting. The bylaws should specify the minimum period when the notices must be sent to all the members or directors.
2. Corporation Minutes. In many instances, the Trust Services director also serves as the corporation secretary and is responsible for recording the actions of the board of directors or the membership. It is important that the secretary keep an accurate record of the decisions made by the board. Since the minutes are the legal record of the corporation's proceedings, care should be taken to make the minutes clear, concise, complete, and accurate, using simple, unambiguous language.
  - A. Record of Attendance. The minutes should include a record of the members who were present, those who were absent, and any individuals who were present by invitation. The minutes are the legal record of what took place at the meetings and may be used as evidence in court.
  - B. Recording Resolutions. If necessary, the secretary should ask for formal wording of the proposition at the meeting so that the minutes accurately reflect the action of the meeting.

The minutes generally omit the names of persons who propose and second motions, although in some cases it may be advisable to show who introduced the proposition. Usually, it is unnecessary to list the names of those who vote for or against a proposition unless statute, charter, or bylaws require it. Where a special request is made to record a minority's dissenting votes or abstentions, the secretary should make these entries.

It is advisable to indicate in the minutes that a director personally interested in a particular transaction did not vote or left the room. For matters of great importance, such as sales of corporation property, consolidations, and similar transactions, the exact wording of resolutions, the names of persons who propose and second motions, and the names of those voting for or against should be recorded.

- C. Recording Discussions. Generally, discussions that take place at meetings are not included in the record, unless some member specifically requests that his/her view be made a matter of record. However, it may be appropriate to include an explanatory statement of the resolution or motion in order to clarify the proposal. Where this is necessary, the statement might well become part of the resolution by being included in the preamble under the "whereas" clauses. The secretary should not hesitate to record a full explanation of reasons for a particular vote.

Many secretaries err on the side of brevity when preparing minutes. The practice followed by some is to give detailed accounts of discussions, but limit minutes to a record of the motions and resolutions upon which action has been taken. Others include considerable material explaining the resolutions. This background information not only serves to aid in interpreting the resolutions, but may also help to refresh the memory of the directors on points of fact that may become the subject of future litigation. More detailed minutes may also eliminate future confusion as to the intent of a specific resolution.

- D. Matters Requiring Board Action. Some of the matters which require board action and recordation in the corporation minutes are the following:

- Sale of corporate assets
- Sale of irrevocable trust assets
- Investments
- Sale and purchase of real property
- Opening of bank or savings and loan accounts
- Distribution of matured trusts and estates
- Acceptance of gifts and bequests

Among those items which may be assigned to the Trust Committee by the board are:

- Acceptance of new trusts
- Amendments to trusts
- Return of trust assets to trustors
- Revocation of trusts

- E. Indexing of Actions. When the minutes are recorded in the permanent record book, it is appropriate to number each action taken, such as 1-02, 2-02, etc. 02 indicates that it is a year 2002 action; the 1 and 2 indicate the first and second recorded actions in 2002.

It is suggested that each action be indexed alphabetically, by action number and by page number, as follows:

<u>Action Title</u>	<u>Action No.</u>	<u>Page No.</u>
Smith, Lucy-Gift	02-01	02-01
Windsor, Ortha-Estate	02-02	02-02
Vernon, Mary-Gift Annuity	02-03	02-02

The chairperson and secretary must approve the minutes prior to their inclusion in the permanent record.

It is further suggested that copies of the minutes be delivered (regular mail or email) to each member of the board of directors as soon as possible following the board meeting.

Format. *The Corporate Secretary's Handbook* (Prentice Hall) recommends the following format for typing the minutes:

- (1) Leave a 1½-inch margin on the left side of the odd-numbered (right-hand) pages and a 1½-inch margin on the right side of the even-numbered (left-hand) pages; leave a 1-inch margin on the other three sides of all pages.
- (2) Fully capitalize and center the heading designating the meeting.
- (3) Indent paragraphs ten spaces.
- (4) Indent lists of attending directors and absentees, and all similar lists 15 spaces.
- (5) Double-space the main text of the minutes.
- (6) Double-space between paragraphs.
- (7) For the text of the resolution, indent ten spaces and single-space.
- (8) Capitalize the word "Corporation" when it refers to the organization whose meeting is being reported; capitalize "Board of Directors" in this manner when reference is made to the specific corporation board.
- (9) Make marginal captions in full capital letters.
- (10) In resolutions, fully capitalize the words "WHEREAS" and "RESOLVED" and follow each with a comma; capitalize the initial letter of "That" when used to begin a statement under "RESOLVED."
- (11) Write sums of money first in words, then in figures in parentheses.

## **The Corporation as Trustee**

The corporation functions as the legal entity primarily responsible for conducting the Trust Services program of the conference, as it is the corporation that is authorized by statute to act as trustee and to receive gifts and bequests.

## **Trust Services Personnel**

The operation of a successful Trust Services program involves a myriad of functions, duties, and responsibilities. Present-day standards in the field of trust and estate planning require the employment of personnel with experience and expertise compatible with the requirements of Trust Services.

Some organizations may have only one or two individuals performing the functions of the positions listed below. Larger organizations may designate that separate individuals perform each of these functions.

1. Director of Trust Services. The director is the key person in the operation of a successful trust program and must be carefully selected.

The director is responsible for the development, implementation, and coordination of the Trust Services program within the territory of the organization. The director is ultimately responsible for the management and operation of various functions, which include trust development and trust responsibilities. Adequate background or education in the field of estate planning, gift planning, business administration, and financial affairs is desirable.

Because of the deeply spiritual nature of Christian estate and gift planning, the director must be experienced and familiar with biblical and Spirit of Prophecy principles in the area of Christian stewardship. A pastoral or ministerial background has proven to be very helpful.

2. Trust Officer. The trust officer is primarily responsible for performing the duties of the corporate trustee and in this capacity deals directly with trustors, beneficiaries, and other parties transacting business with the trusts.

In order to be effective trust the officer must be experienced and knowledgeable concerning the various functions involved in trust administration, such as record keeping, accounting, investing, compliance with tax and legal obligations, direct assistance to trustors, acquisition and disposition of trust assets, and distribution to designated beneficiaries.

The trust officer must also be familiar with laws, customs, and denominational policies regarding wills, trusts, general business, and fiduciary responsibilities.



In all functions, the trust officer acts directly on behalf of the organization. The position recognizes spiritual maturity as well as the ability to relate well with trustors and other professionals .

3. Field Representative/Planned Giving Consultant. The field representative is a professional counselor in the area of Christian gift and estate planning directly involved with church members, educating them in this specialized area of Christian stewardship and assisting them as they plan their estates.

The Field Representative/Planned Giving Officer is also responsible for educating potential trustors/testators/donors about any applicable charitable estate planning considerations. Thorough familiarity with general estate planning principles and techniques as well as effective use of various charitable instruments, tax-saving plans, fiduciary rules, and business law is important. This important team member will often work cooperatively with and must project a positive and competent image to the trustor/donor's professional advisors such as the attorney, financial planner and CPA.

4. Corporation Treasurer. The corporation treasurer is responsible for providing and maintaining an accurate, comprehensive, and effective accounting service for the trust administration functions of Trust Services. The holder of this important position works closely with the director and trust officers in the areas of investment, financial analysis and planning, tax reporting, and acquisition and disposition of trust assets.

The treasurer should have a college degree or equivalent background in business administration, management, or accounting. Prior experience in auditing or denominational treasury, real estate sales, and investing is very desirable.

The treasurer must also be familiar with denominational policies and office routine. A good working knowledge of the denominational organization, financial programs, and procedures is also essential.

5. Certification of Personnel. General Conference policies regarding Planned Giving and Trust Services personnel require individuals who perform discretionary functions in either trust development or trust administration to be currently certified by the NAD Certification and Accreditation Committee. Such personnel are required to maintain a continuing education program.

## **The Legal Entity as Trustee**

The corporation/association/foundation functions as the legal entity primarily responsible for conducting the Planned Giving and Trust Services program of the conference, as it is this organization which is authorized by its articles of incorporation, bylaws and/or statute to act as trustee, issue gift annuities, and to receive gifts and bequests.

While the ultimate responsibility for all activities of the corporation rests upon its board of directors. Certain oversight and decision making authority is generally delegated to a committee

known variously as trust acceptance committee, trust management committee or simply, trust committee.

The Trust Committee usually has authority to act in the following areas:

- A. Trust, Gift Plan, and Estate Review and Acceptance. Review and acceptance usually involves consideration of estate plan proposals and deferred gifts that incorporate participation by the corporation as trustee or personal representative and the church as charitable beneficiary. The committee will also review matured estates and trusts when the organization is named as personal representative or successor trustee respectively.
- B. Trust and Estate Administration. Trust and estate administration includes the management and asset investment, document preparation, record keeping, trust accounting, and distribution.

The Trust Committee should include the corporation management team, other key personnel involved in trust administration and development, and legal counsel (where available or advisable). Some organizations that operate a large trust program have found it efficient to have more than one committee to oversee specific areas of trust work.

C. The organization's Corporate board may choose to draft Terms of Reference for the Trust Committee to memorialize the committee's responsibilities and authority. A sample Terms of Reference.

### **Duties of the Trustee**

The position of trustee is a great responsibility that must be taken seriously. The law imposes duties and liabilities upon a trustee that must be handled with care, skill, prudence, and diligence. Failure to do so may expose the organization to a breach of fiduciary responsibility and financial liabilities.

The following list includes some of the generally recognized duties of the trustee:

1. Duty to Administer. Upon acceptance of the trust, the trustee has a duty to administer the trust according to the provisions of the trust instrument and existing statutes.

The trustee usually can resign only with court permission or by consent of all beneficiaries, unless the trust instrument permits exceptions. Review specific state statutes.

2. Duty of Loyalty. The duty of loyalty is a fundamental duty of the trustee. It arises out of the trustee's fiduciary relationship with the trustors and the beneficiaries. The trustee must administer the trust solely in the interest of the trustors and lifetime and remainder beneficiaries.

3. Duty to Deal Impartially With Beneficiaries. If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them. If the trustee is also the income or remainder beneficiary and by its investment policy it improperly favors its own position at the expense of other beneficiaries, this may be cause for court removal of the trustee.
4. Duty to Avoid Conflict of Interest. The trustee has a duty not to use or deal with trust property for its own profit or for any other purpose unconnected with the trust, or to take part in any transaction in which the trustee has an interest adverse to that of the beneficiary.

A transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee's influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties. This issue often arises in instances where the trustee uses the trust assets for its own purposes or receives compensation from a third party for the use of trust assets.

5. Duty Not to Undertake Adverse Trust. The trustee of one trust has a duty not to knowingly become a trustee of another trust adverse in its nature to the interest of the beneficiary of the first trust, and a duty to eliminate the conflict or resign as trustee when the conflict is discovered.
6. Duty to Take Control of and Preserve Trust Property. The trustee has a duty to take reasonable steps to assume and maintain control of, and to preserve, the trust property. It has a duty to keep buildings in a reasonable state of repair, to prevent theft or damage to trust property by third persons, and to provide adequate insurance for any risk that may pose a threat to the trust property, if persons of prudence would do so under similar conditions. It must bring such legal actions as may be necessary and appropriate to protect the trust property.
7. Duty to Make Trust Property Productive. The trustee has a duty to make the trust property productive in furtherance of the purposes of the trust. The trustee has a duty, within a reasonable time, to dispose of any part of the trust property, included at the time of its creation or later acquired by, or added to, the trust, that would not be a proper investment for the trustee to make.
8. Duty to Keep Trust Property Separate and Identified. The trustee has a duty to do the following:
  - A. To keep each trust asset separate from other assets in the trust.
  - B. To see that the trust property is designated as property of that specific trust.
  - C. To ensure that each asset is properly assigned to the trust.

- D. To avoid co-mingling assets held in a fiduciary capacity (trustee, personal representative, Power of attorney agent) with assets owned in a non-fiduciary capacity (Corporation owned).
9. Duty to Enforce Claims and Defend Actions. The trustee has a duty to take reasonable steps to enforce claims that are part of the trust property and to defend against actions that may result in a loss to the trust.
10. Duty to Pay Income to Beneficiaries. The trustee is charged with the duty of paying net trust income to the designated income beneficiaries as indicated in the trust document, or in the absence of any fixed interval, at reasonable intervals. In the determination of net income, the trustee is entitled to set aside appropriate reserves to cover anticipated future expenses and liabilities of the trust.
11. Duty Not to Delegate. The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required to perform and may not transfer the office of trustee to another entity or individual, nor delegate the entire administration of the trust to a co-trustee except as allowed by the trust or local statute.

In a case where a trustee has properly delegated a matter to an agent, co-trustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

12. Duty to Use Special Skills. The trustee has a duty to apply the full extent of the trustee's skills.
- If the trustor, in selecting the trustee, has relied on the trustee's representation of having special skills, the trustee is held to the standard of the skills represented.
13. Duty to Furnish Information to Beneficiaries. The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration. Except as provided in the trust agreement, upon reasonable request by a beneficiary, the trustee shall provide the beneficiary with information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiaries' interest, including the terms of the trust that describe or affect the beneficiaries' interest.
14. Duty to Keep and Render Accounts. A trustee is under duty to keep clear and accurate accounts in such a manner as to show what has been received and expended, what gains have been realized, and what losses have been sustained, and to show an allocation between principal and income. To the extent that the trustee fails to keep adequate accounts, all doubts will be resolved against it and never in its favor. The trustee must render an accounting, at reasonable times, when called upon to do so by the beneficiaries. If the trustee does not honor the request, the courts may decide the issue. Generally, trustees are required to make at least annual accounting to the beneficiaries.

Not only must the trustee be prepared to render accounts to the beneficiaries, but it must also keep records which are adequate for the accurate preparation of tax returns and other reports required of it by federal, state, and local governments. Full and complete accounts rendered to the beneficiaries in a timely manner will give them the opportunity to review trust activity.

Most jurisdictions have established statutes of limitation that define the period in which beneficiaries may file a claim based on the information which has been disclosed.

15. Duties of the Trustee of a Revocable Trust. The trustee of a revocable trust shall follow any written direction acceptable to the trustee given from time to time (a) by the person then having the power to revoke the trust or any part thereof, or (b) by any person to whom the trustor has delegated the right to direct the trustee, but only as permitted by the trust document, and if the trust is silent, then in harmony with state law.

If a written direction would have the effect of modifying the trust, the trustee has no duty to follow the direction unless it complies with the requirements for modifying the trust.

16. Duty With Respect to Co-Trustee. If a trust has more than one trustee, each trustee has a duty to do the following:
- A. To participate in the administration of the trust.
  - B. To take reasonable steps to prevent a co-trustee from committing a breach of trust, or to compel a co-trustee to redress a breach of trust.

### **Trustee's Standard of Care**

The trustee shall administer the trust with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument.

When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing trust property, the trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the trust and its beneficiaries, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

The trustor may expand or restrict these standards by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions.

A trustee's standard of care and performance in administering the trust are not normally affected by whether or not the trustee receives any compensation.

### **Powers of the Trustee**

Generally the trustee's powers are derived from two sources. The first source is the wording of the trust instrument itself. The second is that which is necessary or appropriate to carry out the purpose of the trust and is not forbidden by its terms. The first source is the best and most dependable and the person drafting the trust should endeavor to grant to the trustee, in the trust instrument, all of the powers which it may reasonably need for efficient trust administration. Most states have granted statutory powers to trustees that are generally subject to contrary provisions in the trust instrument. The grant of a power to a trustee, whether by the trust instrument, by statute, or by the court, does not in itself require or permit the exercise of the power. The exercise of a power by a trustee is subject to the trustee's fiduciary duties as defined in the above section, "Trustee's Standard of Care."

Some of the specific powers typically covered by the trust instrument and the statutes are the following:

1. Power to collect and hold property;
2. Power to receive additions to the trust;
3. Power to operate or participate in a business;
4. Power to invest;
5. Power to deposit trust funds;
6. Power to acquire or dispose of property;
7. Power to manage, control, or abandon trust property;
8. Power to encumber, mortgage, or pledge property;
9. Power to repair, improve, alter, or demolish property;
10. Power to develop land;
11. Power to enter into a lease;
12. Power to grant or take an option involving property;
13. Power to exercise voting rights or proxy of corporate shares;
14. Power to sell or exercise subscription or conversion rights;

15. Power to hold securities in the name of a nominee;
16. Power to insure trust property;
17. Power to borrow money;
18. Power to satisfy or contest any claim;
19. Power to pay taxes and assessments;
20. Power to make loans;
21. Power to distribute to beneficiaries;
22. Power to hire persons and agents;
23. Power to execute and deliver legal instruments; and
24. Power to prosecute or defend against actions.

### **Liabilities of the Trustee**

1. Liability of Trustees to Beneficiaries. If the trustee fails to discharge properly any of the duties with which it is charged, or if it fails to perform in accordance with the standard of care to which it is held by law, then the beneficiary has a right to recover from the trustee, in the form of a surcharge, the amount required to restore the beneficiary to the position he/she would have enjoyed had there been no breach of trust. In this area, any reasonable doubt will be resolved in favor of the beneficiary.

It thus behooves the trustee to keep full and accurate records of all trust transactions, and to administer the trust efficiently and in harmony with the powers and duties which it has, so that if its performance as a trustee is ever called into question, there will be opportunity for doubts to be resolved in favor of the beneficiary.

Problems typically arise in the following situations:

- A. When the trustee commingles trust assets with the trustee's own assets, without express authorization.
- B. When the trustee fails to account for all profits earned by the trust estate. Profits wrongfully gained belong to the trust and not to the trustee. The trustee must account for all gains made by successful but unauthorized investments, yet it must reimburse the trust for any losses sustained while engaged in unauthorized investment activities. The trustee is not guarantor or insurer of the trust estate and is not liable for losses where no breach of trust is involved.

- C. When the trustee commits negligent or wrongful acts, or fails to act when required. Examples of this include failure to collect rents or other receivables due the trust, failure to secure adequate insurance coverage for the trust assets, and failure to invest cash that the trustee has been directed to retain.
- D. Where the trustee improperly delegates duties that the trustee itself should have performed.

A provision in the trust instrument is not effective to relieve the trustee of liability for a breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interest of the beneficiary for any profit that the trustee derives from a breach of trust.

A trustee may not be held liable for a breach of trust if any of the following conditions apply:

- A. The beneficiary has consented to the act or omission before, or at the time of, the act or omission.
  - B. The beneficiary has released the trustee from liability for the breach.
  - C. The beneficiary, having the option to reject or affirm the transaction, has affirmed said transaction. However, the consent, release, or affirmation is not effective to discharge the trustee's liability for breach of trust in any of the following circumstances:
    - (1) The beneficiary was under incapacity.
    - (2) The beneficiary did not know of his/her rights in addition to all material facts which the trustee knew or reasonably should have known and of which the trustee should have informed the beneficiary.
    - (3) The affirmation was induced by improper conduct by the trustee.
    - (4) The transaction involved a bargain with the trustee that was not fair and reasonable.
2. Non-Liability for Following Instructions Under a Revocable Trust. A trustee for a revocable trust is not liable to the beneficiary for any act performed or omitted pursuant to written directions from the person holding the power to revoke, including a person who has been delegated power to direct the trustee.



### 3. Trustee Liability to Third Persons.

- A. Liability on Contract. In transactions with third parties, the trustee acts as a principal, and it is erroneous to think of it as an agent or to assume that the trust estate or the beneficiary will be primarily liable. The trustee has full and primary liability unless the liability has been specifically limited in dealings with third parties. Because of this situation, the trustee normally has an equitable right to reimburse itself for expenditures that it has properly made on behalf of the trust.

However, if the assets of the trust estate prove to be insufficient and the trustee has failed to limit its individual liability in its contract with third parties, it will remain liable.

Some states now excuse the trustee from liability on the contract where either the trustee's representative capacity or the identity of the trust is revealed in the contract.

- B. Liability for Taxes. The liability of the trustee for taxes depends largely upon the wording of the statute by which the taxes are imposed. If the tax is imposed upon the owner of record, then the trustee becomes personally liable because it is the owner of record of the trust property. If the tax is levied upon the property itself, then normally the trustee will escape personal liability for it.
- C. Liability as Owner of Property. The trustee is liable as owner of trust property to the same extent as if the trustee owned the property itself. For instance, if the trustee holds shares of assessable stock on which the par value has not been paid in, the trustee will be liable to pay, even though it holds the stock in trust. Provision may be made by statute that, if the trusteeship is shown as a matter of record in the stock registration, the trustee will not be individually liable.
- D. Liability for Tort. The trustee is just as responsible for its torts committed in the administration of the trust as it is in handling its own affairs. This liability extends to real property that the trustee is obligated to maintain, to any business that the trustee is operating, etc. It extends to any person employed by the trustee to engage in the business of the trust according to the legal concept of "respondeat superior."

This liability is individual to the trustee, even though it may have a right to indemnify itself from the trust estate, and the execution will run against it.

The trustee should secure adequate liability insurance coverage to protect the assets of the trust estate and its activities related to the trust administration. The cost of such insurance premiums is normally a proper charge against the trust estate.

4. Rights of Creditors of the Trustor. If the trustor retains the power to revoke the trust, the trust property is subject to the claims of the trustor's creditors, within the limits of the power of revocation, during the lifetime of the trustor.

When the trustor who had retained the power to revoke the trust dies, the property subject to the power of revocation at the time of the trustor's death is subject to the claims of the decedent trustor's creditors. This property is also subject to expenses of administration of the estate, to the extent that the decedent trustor's estate outside the trust is inadequate to satisfy those claims and expenses.

### **Trustee Responsibility**

The duties, powers, and liabilities of the trustee are complex and must not be entered into without adequate preparation.

The trustee should:

1. Give careful consideration to the problems involved in the administration of any trust;
2. Obtain the best legal counsel possible to draft the trust instrument;
3. Establish efficient procedures for accounting, filing, and record keeping; and
4. Approach the office of trustee with full awareness of the duties and potential liabilities that the trustee must assume.

With these guidelines in mind, the trustee may approach the trust relationship intelligently and perform the office of trustee in such a way that the trustee organization may be as fully protected as possible.

The trustors and individual beneficiaries of each trust may be dealt with in a manner that they have a legal right to expect, and ultimately the church may be benefited to the maximum degree possible under each trust instrument in which it is called upon to serve in the capacity of trustee.

## **5. THE TRUST COMMITTEE**

### **Introduction**

Within the Seventh-day Adventist denomination, the corporate entity typically serves as the trustee of trusts, personal representative/executor of wills, or fiduciary for specific responsibilities as requested by church members or donors. In some jurisdictions an individual employee may be named, but it is in their capacity as an employee of the church organization that they carry this responsibility. It is impractical for decisions regarding the creation and management of gift plans to be left to the corporate entity which may meet only every one, three, or five years. Therefore, it is common practice for the corporate constituency to select a Board of Directors to make corporate decisions in between constituency meetings. Even though the Board of Directors may meet frequently, denominational entities typically name an “in-house” sub-committee and delegate to it specific responsibility and authority to manage the organization’s gift plans including trusts. Usually the Board of Directors retains decision making authority regarding the opening of trust/estate bank or brokerage accounts, the conveyance of real estate or other asset title, and the designation of signors for certain documents.

This sub-committee is generally a standing or permanent committee of the corporate Board of Directors whose duties and authority include consideration of new trusts and other gift plans, overseeing management of existing agreements and monitoring the process of trust or gift plan maturity and termination. As such it acts on behalf of the Board of Directors and is accountable to it.

The committee may be known as the Trust Management and Acceptance Committee, Trust Management Committee, Planned Giving Committee, or Trust Committee. Committee membership is generally determined by the Board of Directors. It is typical for corporation or association officers, as well as the director and associate director(s) of the planned giving and trust services department, to serve on the committee. In many cases all certified staff serves on the committee. Other members may also be named by the Board of Directors. An institution, such as a college, university, or hospital may vary from this basic format depending on its corporate structure.

The Trust Committee provides part of the corporate due diligence in actions related to its fiduciary duty applicable to gift planning. The committee also provides an important check and balance to individual employee action involving a gift plan. The organization, through the Trust Committee, oversees its liability and manages its risk. The sense of corporate responsibility is expressed through the Trust Committee as it considers all manner of actions for a trust, estate or other gift plan.

The Trust Committee provides an important forum for internal communication pertaining to the organization’s gift planning ministry. Committee meetings facilitate communication with administration while keeping the circle of communication compact to protect donor privacy. It also broadens input beyond department staff providing additional perspective to a given situation.

All actions of the Trust Committee should be recorded in minutes taken by the committee recording secretary and maintained as permanent committee records. Since the Trust Committee is an extension of the corporate Board of Directors, some organizations may include the Trust Committee's minutes in its own permanent corporate records.

### **Basic Trust Committee Actions**

The Trust Committee generally performs six actions or functions in fulfillment of its role. It generally recommends, authorizes, acknowledges, discusses, receives reports, and records actions. Sometimes several of these activities are included in an individual action. It is a best practice for the organization's legal counsel to review and advise on the format used for the various types of committee actions.

1. **Makes Recommendations.**

Depending on what powers are granted to the Trust Committee, there may be certain actions that must be taken by the corporate board. Generally only the corporate board authorizes signatures on new accounts, account closures or the signing of deeds. The Trust Committee discusses the transaction and recommends to the Board of Directors that it authorize certain persons to execute the needed action. For example, "It is voted to recommend to the Board of Directors that corporation officers be authorized to execute and deliver all documents necessary to convey real estate held by the corporation as trustee of Revocable Trust No. \_\_\_\_ dated \_\_\_\_ to the trustors pursuant to a revocation of trust notice dated \_\_\_\_\_."

2. **Authorizes Actions.**

Many organizations create Terms of Reference for committees listing committee responsibilities and powers (a sample copy follows at the end of this chapter). Trust committees are typically empowered to decide if a trust or gift plan is acceptable. The committee action would therefore exercise this power by "authorizing" the particular action. The committee action might read, "It is voted to authorize the acceptance of a new Revocable Trust No. \_\_\_\_ for a husband and wife \_\_\_\_ and \_\_\_\_ years of age for which the conference association will serve as trustee and which names the family (\_\_\_\_%) and the conference (\_\_\_\_%) as beneficiaries."

3. **Acknowledges Instructions or Exercise of Powers By Others.**

Generally the revocable trust document will retain certain powers to the trustor/grantor. The most prominent retained powers are the power to withdraw assets, to give written investment directions and to revoke the trust. Since the trust authorizes the action, the Trust Committee acknowledges the exercise of the power. A revocation action might read, "It is voted to acknowledge the revocation in its entirety of Revocable Trust No. \_\_\_\_ dated \_\_\_\_ and the return of all trust assets pursuant to the Grantor's written notice dated \_\_\_\_\_."

4. **Discusses Items.**

On occasion the committee discusses items relating to a gift plan or departmental issue. While not rising to the level of a committee action it is appropriate to refer to the discussion in committee records. This provides staff and the committee a way to memorialize the discussion for later reference, for example, "Discussed the draft of a new gift acceptance

policy regarding minimum amounts acceptable for creating a new charitable gift annuity.” Additional details may also be included briefly summarizing the discussion. In the event a discussion results in a committee action, then that action would be duly recorded in the minutes, generally following the notation of the discussion.

5. **Receives Reports.**

From time to time staff may be called upon by administration to report on a certain aspect of the planned giving and trust services ministry. Perhaps the staff has researched an issue important to the department or a gift plan and reports its results to the committee. The committee action might read, “Received a report from \_\_\_\_\_ on gift annuity fund investment performance for the period ending December 31, 20\_\_.”

6. **Records Actions.**

The act of writing down committee meeting minutes creates a historical and legal record of the committee and organization. They are a protection for staff and the organization. These records verify authority for an action. They record the corporation, by way of the committee, fulfilling its duty to its constituents, trustors, and donors. The original committee minutes signed by the appropriate committee officer may be kept as a part of the corporate records or in the department vault for safe keeping.

**Trust Committee Responsibilities**

A primary responsibility of the committee is to thoroughly review the various aspects of a proposed trust or other gift plan and the prospect of the organization accepting associated fiduciary responsibilities. (Throughout this process, and the management of any estate or gift plan, it is paramount that the committee protects the privacy of a prospective donor by maintaining confidentiality.) The committee is charged with the responsibility of adhering to the organization’s gift acceptance policies, guidelines for payment or sharing the cost of legal expenses. It should also give careful consideration to the following:

1. The prospective trustor/donor’s current situation based on information received from the donor interview and family information form.
2. The type of estate or gift plan proposed by the attorney as well as the fiduciary’s powers and responsibilities.
3. The nature, type, location, and value of prospective plan assets. Is the corporation equipped to administer the specific trust/estate/gift plan in question? Efficient management may require trust assets be located in the territory of the trustee.
4. The financial viability of a gift plan managed by the organization. The organization must balance serving the donor with being fiscally responsible. There must be sufficient gift or donative intent to warrant the organization committing to the potentially long-term responsibility of trust/gift plan management. While division accreditation standards require a substantial benefit accrue to the denomination when a church organization serves as trustee, that benefit is not further defined, and it is the responsibility of the trustee organization to consider the cost and benefit of accepting fiduciary responsibilities.

## Trust Committee Activities Regarding Trusts

1. Trust Acceptances: Thoroughly review the following:
  - a. A brief background and the current status of the trustor.
  - b. The type of trust.
  - c. Trustee powers and management responsibilities.
  - d. The nature, type, and size of the assets to be placed in the trust.
  - e. The distributive provisions of the proposed trust.
  - f. Compliance with denominational policy and organization's trust acceptance policy.
  - g. Recommendations (if any) from organization's legal counsel.
  
2. Revocable Trust Revocations: Consider and acknowledge revocations. Authorize return of assets and documents according to organization's procedures. It is appropriate to provide the committee with a brief explanation of reason for revocation. Record an action in the committee minutes such as, "Acknowledge revocation of Revocable Trust No. \_\_\_\_\_ dated \_\_\_\_\_ in harmony with trust provisions and pursuant to trustor written instructions dated \_\_\_\_\_."
  
3. Irrevocable Trust Terminations: Give special attention to requests to terminate irrevocable trust's or gift plans as well as to requests by trustors whose mental competence or ability to act free from duress or fraud is in question. There may be unforeseen tax and legal consequences best commented on by legal counsel.
  
4. Trust Amendments: Pay particular attention to requests for:
  - a. Amendments to the distribution provisions that may prove unreasonable or burdensome for purposes of future administration, that incur unreasonable legal liability, or cause a trust distribution to fall below the general requirements for the corporation to act as trustee.
  - b. Amendments requested by trustors whose mental competence or ability to act free from duress or fraud is in question.
  
5. Trust Additions: When accepting assets into the trust, be mindful of assets which may be unduly burdensome to administer, assets which could subject the corporation to unreasonable liability, and the mental competence or ability of the trustor to act free from duress or fraud.
  
6. Trust Withdrawals: When considering requests for withdrawal of assets, beware of:
  - a. A withdrawal that could impair the validity of the trust by removing all property.
  - b. A withdrawal that may permanently reduce the trust estate to a level which would cause the trust to fall below the general requirements for acceptance of the trust, or which would cause the trust to be considered impractical to administer.
  - c. Withdrawal requests made by trustors whose mental competence or ability to act free from duress or fraud is in question.

7. Purchase and Sale of Assets: When trust assets are to be purchased, sold or reinvested, make sure:
  - a. A written request for the purchase, sale reinvestment of revocable trust assets is received from the trustor. Committee action will acknowledge receipt of trustor written instructions and authorize staff to proceed accordingly.
  - b. The decision to purchase, sell, or reinvest the assets held in an irrevocable trust should be based on corporation investment policy, investment policy for the specific trust, the requirements of the trust document, the needs of the trustor, the investment time horizon, and/or applicable state law. Record an action in the committee minutes authorizing all transactions for irrevocable trust assets.

### **Generally Acceptable Trust Assets**

1. Cash
2. Institutional Account
  - a. Savings accounts
  - b. Checking accounts
  - c. Certificates of deposit
  - d. Payable on death (POD) accounts
  - e. Totten trust accounts
  - f. Transfer on death accounts
3. Real Estate
  - a. Residential property
  - b. Undeveloped land, if marketable
  - c. Income producing and rental property provided the lease is acceptable from a trust management perspective. Exercise caution as considerable management may be involved.
  - d. Property, on which the trustor operates a business, provided the form of ownership and type of business activity is acceptable to the trustee. Consult legal counsel, organizational policy and the Planned Giving and Trust Services Manual before accepting such an asset.
  - e. Vacation property, provided that the property is readily marketable. Beware of time share property.
  - f. Before accepting any real estate, the Trust Committee should determine if there is any potential unacceptable liability under the myriad federal and state environmental statutes, regulations, and codes.
4. Mortgages Receivable and/or Deeds of Trust and Contracts, provided they are assigned to the trust. Caution should be exercised, as the trustee is normally responsible for the collection of amounts due and tax reporting.
5. Securities and Unsecured Notes
  - a. Stocks
  - b. Bonds
  - c. Mutual fund accounts
  - d. Revolving fund notes

- e. SDA institutional notes
  - f. Personal notes-**Caution** should be exercised before accepting personal unsecured notes. Personal notes are often very hard to collect and place the church trustee in an awkward position.
6. Insurance
- a. Insurance does not become an asset of the trust unless ownership of the insurance policy is transferred to the trustee which is normally not allowed by the insurer.
  - b. The trust may benefit from insurance, however, when the trustee is named as a beneficiary of an insurance policy. In this case, the insurance benefit is considered a contingent asset. A copy of the policy or beneficiary declaration showing the trust's interest should be included in the trust file. Each contingent asset should be included in the organization's trust accounting system at a nominal value of \$1.00.
  - c. The trustee may wish to store the original insurance policy with the trust papers for safekeeping, even though it is not a trust asset.
7. Gold and Silver
- a. The trustee must have physical custody of gold and silver and deposit such in its bank safe deposit box.
  - b. The trustor and trustee should sign an itemized inventory listing these assets.
8. Mobile Home
- a. The trustee should accept mobile homes only under limited circumstances where there is a likelihood that the home shall remain an asset of the trust estate until the death of the trustor, and usually when the trustor is at an advanced age. Caution should be exercised in the acceptance of mobile homes because they typically depreciate and are difficult to sell.
  - b. Title should be held in the name of the trustee or in a manner permissible under applicable law.
9. Beneficial Interests
- a. Pensions
  - b. Retirement programs

### **Assets That Are Generally Unacceptable Trust Assets**

The following list of generally unacceptable assets for trusts where the organization serves as trustee is not exhaustive, but these are among the most common items offered by donors. These assets may be appropriate for a self-administered trust pending advice from the trustor's legal counsel.

1. Motor vehicles (automobiles, motorcycles, boats, motor homes, travel trailers, etc.)
2. Household furnishings and supplies; however in some jurisdictions personal effects and household goods may be assigned to the trust
3. Business inventories



4. Personal effects
5. Livestock
6. Equipment
7. Purchase contracts
8. Partnership agreements (professional and investment)
9. Assets not acceptable under the standards of the Church

### **Additional Trust Committee Concerns**

#### 1. Potential Litigation

It may be prudent for the organization to decline to serve as trustee when it is apparent that the relationship with the trustor's family will interfere with the trustee's ability to manage the trust estate, or if the trust would create an obvious potential for litigation. The trustor should consult with independent legal counsel regarding all aspects of the estate plan including family obligations, the potential for litigation and the selection of a trustee. The organization should thoroughly review the matter with its own counsel before accepting any fiduciary duty.

#### 2. Tax Implications

Every effort should be made to determine the adjusted cost basis of non-cash assets. Income producing assets should not be accepted into trust until the tax reporting requirements have been carefully evaluated.

#### 3. Distributive Provisions

The following factors should be considered before accepting the specific distributive provisions requested in a trust.

- a. Do the terms of the trust distribution require an additional lengthy management term for the trust?
- b. Is the distribution of the assets likely to create a conflict of interest between the trustee and the beneficiaries?
- c. Is the distribution of the trust assets likely to create divisiveness and/or create an obvious potential for litigation?

#### 4. Educational Trusts

- a. Preferably, an educational trust should be included in a trust agreement only when a party other than the corporation is named as trustee of the educational trust.
- b. In the event that the corporation is named as trustee, the educational trust provisions should not extend beyond the time when each child would reasonably be expected to complete the baccalaureate degree (approximately 22 or 23 years of age). It is not advisable to become the trustee of educational trusts for grandchildren because of the long time frame involved and the perceived, if not actual, conflict of interest.

c. Educational trusts should clearly spell out what constitutes “educational expense” and investment guidelines.

5. Care for Special Needs Persons

Where the trustor has the responsibility for special needs persons and desires to create a trust to care for those persons, the following should be considered:

- a. The specific needs of each person.
- b. All available government aid.
- c. Other available resources.
- d. The trustee’s ability to perform.

6. Application of Guidelines

- a. Compliance with all of the guidelines set forth in this manual should not mean the automatic acceptance of a trust.
- b. No trust should be submitted to the trustor for signature prior to approval by the duly appointed committee(s).
- c. The size or value of the trust estate should not be the sole determining factor in the acceptance of a trust.

7. Depletion of Assets

When examining the prospective assets of a trust agreement, there are certain concerns that need to be taken into consideration:

- a. An individual’s net worth may be diminished if assets are used for support during retirement and old age.
- b. Some assets, such as receivables which are collected and passed on to the trustor, may have lost their entire value by the time the trust matures.
- c. Trust agreements should be reviewed periodically to determine if revocation is in order. Occasionally, the trust value may decline to a level where it is impractical for the organization to continue serving as trustee. A change in the circumstances or attitude of the trustor may make it necessary for the trustee to terminate the trust agreement. When this occurs, the trustee usually absorbs the expense incurred during the administration of the trust agreement. The longer a trust agreement is in existence, the less likely it is that the agreement will be revoked by the trustor. However, older trustors may be influenced by individuals who wish to alter the carefully laid estate plans of earlier years.
- d. Management costs must be considered when determining the ultimate value of the gift from the trust since management is normally provided free of charge. The church entity receives benefits only after the trustor’s death, by way of distribution from the trust.

8. Guarding Against Depletion of Trust Assets

The probability of trust depletion may be substantially diminished if PGTRS personnel will consider the following when setting up the trust:

- a. The importance of the gift to God’s work.
- b. The relationship of the gift portion to the cost of trust management.
- c. The importance of the potential survivor’s understanding of the trust and agreement with its distribution directives.
- d. Other gifts made to the charitable organization.

## 9. Specific Considerations

- a. When accepting a trust from a predecessor trustee, a final accounting should be required from the former trustee.
- b. Donors should be encouraged, and in some situations be required, to seek advice from independent legal counsel.
- c. Distributions shall be made in a timely and thoroughly documented manner.
- d. When the organization is named as a successor trustee and the assumption of its duties is determined by the trustor/grantor's mental or physical ability, the organization should consult its legal counsel about the applicability of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to its fiduciary role and, if advisable, obtain the appropriate authorization to access the trustor's protected health information

## **Guidelines for Acceptance of Other Charitable Gift Plans**

### **Charitable Gift Annuity**

1. A charitable gift annuity may be created for no more than two lives.
2. Follow organization's gift acceptance policies pertaining to annuitant's minimum age and minimum and maximum size of the annuity contract.
3. The annuity rate should be no higher than the rate set by denominational policy. This rate is typically the maximum rate recommended by the American Council on Charitable Gift Annuities as voted by the General Conference Corporation.
4. The Trust Committee should determine the minimum amount necessary to fund a charitable gift annuity.
5. The annuity asset should not be the sole or major asset of the donor's estate nor should the transfer reduce the donor's assets to such a level as to make the donor eligible for governmental assistance.
6. The donor should be encouraged to inform his/her close family members (children) of his/her intentions to establish an annuity.
7. The donor should be encouraged, in writing, to consult with his/her own tax and/or legal counsel prior to establishing the annuity.
8. Gift annuities are ideally funded with cash and marketable securities.
9. If a donor proposes funding an annuity with real property:
  - a. Does the real property have an encumbrance?
  - b. Does the donee have a need for the property?
  - c. Is the real property readily marketable?

10. If a local conference desires to accept an annuity funded with cash in excess of \$500,000, or any non-cash asset, approval must be obtained from the appropriate union Trust Services director or the union officers.
11. The organization promoting or issuing gift annuities must comply with federal and state statutes regulating gift annuities and related disclosures.

### **Charitable Remainder Unitrust (CRUT) and Charitable Remainder Annuity Trust (CRAT)**

1. All applications for unitrusts or annuity trusts must be reviewed by the corporation board or the designated subcommittee and/or the Trust Committee.
2. Recommendation should be made to the donor, in writing, to consult with independent tax and/or legal counsel and family members regarding his/her intentions to establish a charitable remainder trust.
3. The appropriate type of charitable remainder trust and trust payout rate should be determined by the donor, in consultation with independent legal counsel, based on the donor's needs and objectives.
4. The trust must meet certain tests, such as the 10% charitable deduction test and the 5% risk of exhaustion test (CRAT only). The trust term and number of life income beneficiaries will be limited by these tests.
5. The organization's legal counsel should be consulted and review documents drafted by donor counsel.
6. Acceptable funding assets for a unitrust include:
  - a. Cash
  - b. Marketable securities
  - c. Unencumbered real property
  - d. Real estate contracts and notes secured by deeds of trust or mortgages with first lien position
  - e. Commercial annuities in certain situations (these typically have negative income tax consequences for the donor)
  - f. Any other assets which are easy to value and readily marketable
7. Acceptable funding assets for an annuity trust include:
  - a. Cash
  - b. Marketable securities
  - c. Real estate contracts and notes secured by deeds of trust, or mortgages with first lien position. Contracts generally create difficulties if they fail to perform.

8. Other considerations

- a. The trust assets should not be the only assets in the trustor's estate.
- b. Trust assets should be readily marketable.
- c. Trust assets must be unencumbered and generate no unrelated business taxable income.
- d. Rental properties, hard to value assets (such as stock in a closely held company or works of art), and tangible or intangible personal property should be carefully evaluated before being accepted as assets of a charitable remainder trust.
- e. The donor is responsible for obtaining a qualified appraisal of the trust assets to determine the fair market value as partial fulfillment of gift valuation and substantiation requirements. If the asset is real property, the donor or trustee should purchase a title insurance policy which names the trust/trustee as the insured.
- f. For trust accounting purposes, charitable remainder trust assets are valued at fair market value as of the contribution date. Under the four-tier system used to characterize income payments for tax accounting purposes, the donor's basis is the initial value of the trust corpus.
- g. If the trust asset is a seller's interest in a real estate contract or a note secured by a deed of trust or mortgage, the trustor should consult legal counsel to determine if transfer into the trust will cause unacceptable income tax consequences.
- h. If non-income producing assets are contributed to a CRUT, the donor must be willing and able to make periodic additional liquid contributions to the trust in order to cover expenses (such as property taxes, insurance, appraisal fees, and other administrative costs) until assets can be sold and re-invested in a balance portfolio designed to meet trust income and growth requirements.

## 6. MARKETING AND DEVELOPMENT

### Introduction

As we near the end of the first decade of the twenty-first century, the decades of preaching stewardship and assisting church members in establishing planned gifts is paying off in unprecedented ways. We are entering into the most prolific and opportune time for the PGTRS (hereafter PGTRS) ministry of the Seventh-day Adventist Church! Never before in its history has PGTRS been poised to provide more timely service or better opportunities to invest in the final harvest of the earth in preparation for the Second Coming of Christ.

As a result of PGTRS work over the past four decades, more than a billion dollars has benefited the church's soul winning work and brought rich spiritual blessings to generous givers. In the last quinquennium alone, \$263.8 million were given. In 2005 alone a record breaking \$72.1 million was received from planned gifts.

In recent years, affluence in the world, especially in the United States and western countries, has been unprecedented. Many individuals have found their net worth doubling. Despite what some people believe, we can't take it with us! All assets in the world change hands with each generation. The Boston College Social Welfare Research Institute study reports that between the years 1998 and 2052, \$41 trillion to \$136 trillion dollars will change hands in the United States alone.

Another factor that makes marketing a priority is the marked improvement in PGTRS' professionalism and ministry. This is the result of the success of the Certification and Accreditation programs in the North American Division. More than 300 individuals are now certified professional PGTRS representatives, and more than 86 percent of conferences and institutions are accredited. This means that we have a quality product to offer to both church members and friends of the church.

### The Spiritual Challenge

About two-thirds of the parables Jesus told dealt with money, possessions, investments, etc. One is recorded in Luke 19:11-27: "A nobleman who went to a country far away... called his ten servants and gave them each a gold coin and told them, 'See what you can earn with this while I am gone.'" As Christians, we recognize that Jesus was speaking of Himself and His return. We also recognize the principle that He has made us His stewards. We are entrusted with this world's goods and admonished to "see what you can earn with this while I am gone."

Thus, we are managers of God's possessions and property. We work, we earn, we give, we spend, we invest, and we accumulate. When we can no longer actively manage our Lord's goods, what do we do with them? In this parable, the faithful stewards gave an accounting of their stewardship, and returned their Lord's goods to Him with an increase. Should today's stewards do any differently?

A startling statement is contained in the book *Counsels on Stewardship*, page 323. “There are aged ones among us who are nearing the close of their probation; but for the want of wide-awake men to secure to the cause of God the means in their possession, it passes into the hands of those who are serving Satan. This means was only lent them of God to be returned to Him; but in nine cases out of ten, these brethren, when passing from the stage of action, appropriate God’s property in a way that cannot glorify Him, for not one dollar of it will ever flow into the Lord’s treasury. In some cases, these apparently good brethren have had unconsecrated advisors, who counseled from their own standpoint, and not according to the mind of God.”

This statement, made over 100 years ago, suggests that only about ten percent of God’s people were remembering His work in their wills. How much better is that statistic today? Recent IRS statistics for wealthy estate tax decedents revealed only 7% of the assets of these estates were bequeathed to charity.

Many people do not like to discuss wills and estate planning, because they seem to feel that such talk somehow hastens death. However, we are assured that “Death will not come one day sooner, brethren, because you have made your will.” *Counsels on Stewardship*, page 328. The author goes on to counsel us to remember God’s cause in our estate planning.

Today, a growing number of church members are following this counsel. For the year 2005 a reported \$72.1 million were given to bless God’s cause through wills, trusts, gift annuities, and other special arrangements. While giving through these means should never be made a substitute for living benevolence, the promotion of deferred gifts has a definite place in the life and work of the church. In addition, the planning involved in making a deferred gift often results in the donor making a present gift from his/her accumulated assets.

Jesus taught a fundamental principle when He warned, “Watch out! Be on your guard against all kinds of greed; a man's life does not consist in the abundance of his possessions.” Luke 12:15. He then told a parable about a certain rich man who had a bountiful harvest one year. God asked him (paraphrased), “How does your will read?” Then he told the man that he was going to die and asked (in verse 20) “...Then who will get what you have prepared for yourself?”

Representatives of PGTRS should prayerfully and carefully present the principles of good stewardship and encourage planned gifts through wills, trusts, gift annuities, and other special arrangements. Most of the development of deferred giving instruments is with church members. Planning becomes more effective when the field representative visits the church members by invitation, usually in their homes, answering their questions, giving them the basic information they need to consider, and helping them to gather the information required by the attorney who will draft the documents needed to complete their estate plan.

## **Research**

The NAD PGTRS’ Development Program began in 1997, when the Ad Hoc Marketing and Strategy Committee started brainstorming about core development messages. Working with marketing consultants, the committee identified the following key issues for exploration:

- **Spiritual vs. temporal issues:** Which development messages will capture the spiritual nature of PGTRS and be in harmony with church members' basic financial and estate planning needs?
- **Development challenges in the field:** How can we document the views and experiences of PGTRS personnel and focus our development efforts on common interests instead of differences?
- **Church members' experiences with and need for PGTRS:** How can we go beyond anecdotal observations about church members' attitudes, beliefs, and experiences with PGTRS to arrive at a realistic profile that can guide effective development?

To address these questions, the Ad Hoc Committee and consultants implemented a formal planning process, which included:

- **Interviews with PGTRS personnel** addressing their perceptions of PGTRS as an institution, their relationship with church members, their job responsibilities, their approach to development, and the results of their development efforts.
- **Survey of PGTRS personnel** to test the findings of the interviews and to objectively profile PGTRS experience in the field.
- **Survey of church members** to reliably profile personal finance and estate planning needs, interests and attitudes, and the interaction of these factors with members' relationship to God and the church. The survey also measured awareness, understanding, and experience with PGTRS.

This research was enhanced by hands-on working sessions involving PGTRS personnel and treasurers at the NAD PGTRS Standing Committee (April 1998 and April 1999), the NAD PGTRS Seminar (July 1998) and at the Ad Hoc Committee (October 1998 and January 1999).

Once all data were collected and analyzed (between June 1998 and December 1998), the development planning process concluded with:

- Formulation of a system of messages and images, which correspond to the research and effectively communicate the attributes and benefits of PGTRS.
- Creation of a system of development materials that use these messages and images to motivate more church members to contact PGTRS.
- Selection of integrated activities that accomplish development goals. A marketing budget was approved by the NAD PGTRS Standing Committee and endorsed by the Treasurers in April 1999. Through continued special funding, PGTRS leadership has committed itself to a specific development approach, with sufficient time to track results.



This planning process represents a significant achievement for NAD PGTRS. There is now a wealth of helpful data that can guide development for years to come, as well as a creative approach that can deliver useful materials for at least five years. Perhaps more important, for the first time, the entire PGTRS organization has collaborated to identify and achieve common development goals. With these critical ingredients and the Lord's help, we believe PGTRS is well prepared to accomplish our mission.

## **Key Research Findings and Conclusions**

Development is most effective when it is guided by reliable research. This truism has proven especially significant for NAD PGTRS: Our research among church members reveals a new and challenging picture of prospects and identifies substantial development opportunities.

### **1. PGTRS Personnel**

The survey of PGTRS personnel was conducted in June 1998, through a questionnaire distributed to approximately 175 personnel throughout the North American Division. More than 80 individuals responded to the survey, creating a pool of data sufficient to draw conclusions about the total population.

The survey of PGTRS personnel profiles a group of dedicated individuals who approach their jobs from a pastoral perspective. This is not surprising, because a majority of PGTRS personnel are college-educated in theology, many with advanced degrees.

While nearly half of PGTRS personnel have come from the business world, those who shift from another career to PGTRS do so to undertake a ministry rather than to apply past professional experience to Adventist causes. They generally focus on spiritual, rather than practical, motivations for forming a PGTRS relationship. They are most comfortable discussing wills, rather than more complex estate planning documents. Many PGTRS personnel view the PGTRS mission as combining service to church members with planned giving. "Planned giving only" also receives substantial support, as does "service only."

PGTRS personnel have little time for development. Many hold other church jobs besides PGTRS, and two-thirds are responsible for educating 10,000 or more church members. Others have few colleagues or support staff sharing the workload. They also may lack technology and budget to sustain development activities.

"Tenure" is a significant barrier for most PGTRS personnel planning development efforts. Although they understand that planned gifts take time to mature and that one must "stay put" to foster gift maturity, half of PGTRS personnel have been in their current locale for five years or less; nearly 20 percent have been in their current locale for two years or less.

Given these barriers, most PGTRS personnel respond to inquiries, but may not have time to actively seek out new prospects. Their development activities are most likely to include holding member seminars, speaking from the pulpit at church services, and preparing camp meeting exhibits. Some publish articles and/or advertise in church publications, circulate newsletters, and

send brochures and letters. Most newsletters are purchased from a secondary source, as are roughly half of the brochures, so these publications do not reinforce a consistent image of PGTRS.

As current prospects, PGTRS personnel identify:

- Older couples, 65+
- Older singles, 65+
- Empty nesters, under 65
- Affluent Adventists, age/family circumstances irrelevant
- Families with young children

They also believe that reaching pastors and church administrators is critical to success within the larger church population.

To reach prospects in the future, PGTRS personnel would prefer the following activities:

- Brochures
- Articles in division-wide publications
- Division-wide ads
- Toll-free phone number
- PGTRS Web site

## 2. Church Members

The Church Member Survey was administered in the fall of 1998, through a questionnaire mailed to a sample of 4,825 from the nine unions in the U.S. and Canada. A response rate of 19.89 percent, achieved between September 1, 1998 and December 7, 1998 is sufficient to project to the total population of church members. These respondents roughly parallel the geographic distribution of church members; they are divided evenly between men and women, represent a range of ages (half above age 50 and half below age 50), and include representation from the church's key ethnic groups.

**Family status:** Respondents are generally married and support several children and/or other dependents. A high rate of married couples in older age groups suggest the longevity associated with the Seventh-day Adventist lifestyle. On average, families have one minor and two adult children. As many as 23 percent support 1-2 dependents in Adventist schools and/or elderly or disabled relatives.

**Education:** Although church members generally are well educated, PGTRS' potential donors - older individuals - are less likely to be college educated than younger members. Among all church members, 46 percent have completed college and pursued graduate education; another 32 percent have a high school diploma, plus some college. High school is the highest level of education for approximately 22 percent of church members, who tend to be older. Ethnicity is less likely to influence education than in the U.S. at large. Close to one-half attended Adventist colleges, but nearly one-third did not attend any Adventist school.

**Income and Assets:** PGTRS' key prospects are well represented among church members -27 percent are retired, and 12 percent are professionals likely to be affluent and aware of estate planning needs. Overall, church members are fully employed (unemployment is 2 percent) in a mix of occupations, primarily salaried. Some are on fixed incomes, such as pensions and Social Security.

Church members accumulate assets and are inclined to share those assets with the church. More than half "always" or "usually" have income remaining after monthly expenses, which they direct first to family or retirement savings, followed by special gifts to local churches and gifts to Adventist programs. Eighty-eight percent own a family residence; 41 percent own stocks or bonds; 27 percent own additional real estate; and 16 percent own professional practices or businesses.

**Expressions of Faith:** Church members are very committed to their faith - especially older church members. More than 80 percent attend Sabbath services; more than 75 percent engage in personal prayer; and approximately 50 percent hold church office. All these habits increase with age. African-Americans are significantly more like to attend Sabbath services and to engage in personal prayer than other ethnic groups. Approximately half the families send their children to, or support, Adventist schools.

**Expressions of Stewardship:** PGTRS has generated awareness among some key prospects (60+), but has been less visible among African-Americans and younger church members. More than 60 percent of whites have had contact with PGTRS, compared to approximately 40 percent of African-Americans. Sixty-seven percent of those over 60 have had contact with PGTRS, compared to 56 percent of all church members and 60 percent of those ages 41-50.

**Use of PGTRS:** Awareness of PGTRS does not always translate into action. Only one-quarter of those church members who have wills have sought information from PGTRS.

**Attitudes toward PGTRS:** Church members hold positive attitudes about PGTRS, and these attitudes improve as people age. Church members who have direct contact with PGTRS have positive experiences. More than 70 percent of all church members describe their experiences with PGTRS as "very positive." Older church members are even more positive.

**Use of Media:** The *Adventist Review*, *Ministry magazine* and union papers can reach as many as 70 percent of PGTRS' priority prospects. All other age groups regularly read the *Adventist Review* at rates ranging from 40-54 percent; 32-56 percent read their union paper; and 38-49 percent regularly read their local church bulletin. Nearly one-quarter of all Adventists always read their Adventist college alumni publication.

Church members - even older members - also can be reached in large numbers through web sites: Among younger church members, 50-60 percent surf the web, and nearly three-quarters own computers. Forty-four percent of those aged 51-60 visit web sites, and 14 percent of those over 61 use the internet. Nearly one-third of these older church members own a computer.

Existence of Wills: Significant opportunities remain for PGTRS to begin new relationships by communicating the importance of wills and other basic estate documents, especially to church members in mid-life. Approximately three-quarters of those over age 61 have a will; the existence of a will decreases with age, dropping to 58 percent among those 51-60, to 54 percent among those 41-50, down to 29 percent among those 40 or younger.

On the other hand, motivating planned gifts from the oldest church members may involve encouraging them to update existing wills. Data demonstrate that fulfilling religious desires is an important estate planning goal for elderly church members, and 48 percent of those with wills say they provide for gifts to the church. However, we do not know precisely how they have acted on this goal.

Reaching Those Without Wills: PGTRS must demonstrate the relevance of estate planning as a priority for all, regardless of assets, and ensure that more people know how to find information about estate planning.

Church members who have no will say it is because:

- They do not have enough assets (many believe they will not have assets left for the church after providing for family)
- It's not a priority right now
- They don't know how/who to contact
- They also say they *want* wills, as well as guardianships/trusts for minor children (younger groups), and techniques to reduce estate taxes.

Estate Planning and Asset Transfer Goals: PGTRS development will be most effective among younger church members when it emphasizes family matters; spiritual matters appeal more to older church members. When considering transfer of assets, younger members who have a will rank "support for minor children" as most important. "Gifts to adult children" become increasingly important as church members age. All Adventists place some importance on giving to the church, and this inclination increases with age. The oldest Adventists place the greatest emphasis on bequests to church entities.

### 3. Significance for Marketing Planning

#### **What results can we expect from marketing?**

Because PGTRS has not previously implemented a division-wide program, specific results are difficult to project. However, data profiling church members' financial resources, spiritual motivation, attitudes toward PGTRS and interest in estate planning suggest that pro-active development will increase service to church members and increase planned gifts to the church.

## **How can we best approach PGTRS marketing?**

Producing positive results depends on our ability to shift PGTRS to a more active marketing approach - moving from responding to inquiries to generating leads.

Accomplishing this goal requires a development program that:

- Provides guidelines and instructional materials that support effective marketing
- Provides unions and conferences with “ready-to-use” marketing materials generated at the division
- Uses division-wide activities to generate leads for referral to unions and conferences
- Spreads implementation costs over several years and provides for evaluation and reassessment after several years of activity

## **Who are our priority development prospects?**

Older Adventists are a priority. However, older people have varying needs and circumstances. Over time, from the empty nest phase through mature years and, finally, elderly years, church members are progressively more likely to have wills and to be concerned about fulfilling religious desires through estate planning. Although young Adventists are less likely to recognize the need for estate planning, PGTRS can, in fact, provide them with important information.

Thus, PGTRS’ marketing will be most effective by:

- Placing highest priority on serving/generating gifts from older church members
- Cultivating prospects over time, meeting changing needs throughout the life cycle

## **Who should be our secondary prospects?**

PGTRS personnel observe that:

- Reaching administrators and pastors can produce a cadre of role models whose philosophy of stewardship may be emulated by church members.
- Affluent church members represent valuable prospects for significant planned gifts.

Both these factors require additional planning. We do not yet know if pastors’ and administrators’ attitudes and beliefs differ substantially from the mainstream. We also need strategies that can identify affluent Adventists and focus on messages geared to their needs and interests. Future development planning will address these issues.

### **What messages should we deliver to our prospects?**

Development messages should balance the service and planned giving aspects of PGTRS, cultivate prospects over time, and address church members' hesitancy to make estate planning a priority. Effective development messages will:

- Demonstrate the relevance of estate planning to all ages.
- Adapt messages to life stages, with increasing emphasis on charitable planned giving in later life.

### **Through which activities do we deliver these messages?**

Development activities should correspond to the habits of church members and to the preferences of PGTRS personnel.

The following activities are part of PGTRS' Development and Marketing:

- Advertising in the *Adventist Review*, Ministry, union publications, and local church publications
- A PGTRS Web site ([www.willplan.org](http://www.willplan.org))
- Articles in division-wide publications
- A toll-free number (1-877-WILLPLAN)
- Prepackaged seminars

## Development Vocabulary and Materials

One of the most critical building blocks of development is vocabulary that expresses the features and benefits of our services. This vocabulary captures the essence of PGTRS and communicates through simple, repetitive languages that appeal to prospects.

### 1. Overarching Theme and Logotype

The theme for PGTRS builds on the most compelling findings of the Church Member Survey:

Church members do not see estate planning as a priority until they are elderly. It appears that they associate PGTRS with death and do not recognize its usefulness until they begin to consider their mortality.

To associate PGTRS with life, not death, and to suggest the need/usefulness of PGTRS throughout one's life, PGTRS has adopted the following marketing theme:

#### **Planned Giving & Trust Services Planning for the Cycle of Life**



A marketing theme is most effective when it becomes part and parcel of the identity of the institution using that theme.

We imprint the PGTRS theme on the conscious and unconscious minds of our prospects by using the theme to “package” our services. To accomplish this objective, we’ve created a special logo for use on all development materials (see illustration). A simple theme that can be identified immediately and consistently with PGTRS, this logo enhances PGTRS’ visibility and differentiates the department from other entities that use the church’s basic identity system.

### 2. Audience Segmentation and Audience-Specific Taglines

PGTRS’ development vocabulary reflects the way we think about our prospects and the way they think about themselves. We think about prospects in age - and life-stage-related groups, and our Church Member Survey confirms that age and corresponding life circumstances change attitudes toward estate planning. Our development plan defines six prospect groups. By using taglines that interpret the meaning of *Planning for the Cycle of Life* in the context of each group’s life circumstances, we plan to stimulate them to identify with PGTRS in a very personal way. In keeping with our research results, taglines for earlier life stages emphasize family issues; taglines for older age groups address spiritual issues.

### 3. Color Coding

To differentiate communications designed for each audience group, we have adopted a permanent palette of seven distinctive colors. One color is assigned to each of the six specific audience groups. A seventh color serves as a “program” color, applied to communications that address the total PGTRS program.

### 4. Photo Styles

To provide prospects with images with which they can identify, print materials use photos of individuals selected to represent each group. These photos have been chosen for diversity of age and ethnicity and carefully selected to reflect the modesty of dress and demeanor that characterize Seventh-day Adventists. Some of the models are indeed satisfied trustors and testators.

### 5. Family of Marketing Materials

Drawing on the established marketing vocabulary, PGTRS has created an integrated system of brochures and advertisements that:

- Focus on audience motivations and the benefits of PGTRS, instead of legalities
- Deliver messages for specific life and family circumstances
- Express estate planning concepts in basic terms understandable to older individuals whose education may have stopped at high school
- Establish a memorable and non-threatening/non-intrusive image of PGTRS
- Provide immediate and easy access to PGTRS, using a call to action combined with a toll-free number (1-877-WILLPLAN) and free worldwide response at our Web site ([www.willplan.org](http://www.willplan.org)).

Because they are designed to generate awareness and acceptance of PGTRS as a concept, division-wide development materials will not be a substitute for literature that describes estate planning documents and planned giving techniques in detail. Local offices will continue to purchase off-the-shelf brochures or produce their own specific publications that provide prospects with this information.



## Brochure System

Life Stage	Category/Brochure Title	Theme
All Stages	Overview	A Season For Everything
Young Singles	Flying Solo	Here and now plans for young adults
Young Marrieds	Togetherness	Building a future for two
Married, With Children	Family Focus	Plans that put families first
Empty Nesters	Empty Nest	Plans for mature lives and spiritual commitment
Widowers, Older Singles	On Your Own	Personal and spiritual security for older adults
Older Marrieds	Golden Years	Caring for family and the Lord's work
Leadership	Pastors & Wives	Pastors' Families Talk About Wills and Estate Planning

The brochure system consists of eight different brochures.

The series begins with an *Overview* brochure that introduces PGTRS as a concept and a service, and continues with six audience-specific brochures that address changing needs for PGTRS throughout the life cycle. Each audience-specific brochure uses a tagline, color, photos, and content appropriate to the designated prospect group. Lastly, a full color brochure features pastors and their wives from different cultures sharing their own stories of how PGTRS has blessed them personally, their churches and the wider family of God.

Advertising system: Advertisements are available to correspond to the *Overview* brochure and the six audience-specific brochures and the pastor's brochure. Each ad is available in varying sizes and distributed in reproducible form to PGTRS personnel. Local PGTRS officers can place these ads in union, conference, and church publications as part of their marketing efforts.

### 6. Marketing Kit and Guidebook

This *Guidebook* is part of a PGTRS *Marketing Kit*, designated to introduce you to the division-wide marketing program. In addition to the *Guidebook*, your kit includes a sample of all seven brochures and an order form for securing additional copies, reproducible artwork for the ads, as well as PGTRS' the marketing logo.

## Strategic Approach to PGTRS Development

For more than two decades, PGTRS has concentrated on creating a team of certified professionals, fully trained to help church members achieve estate planning goals and provide continuing support to the Lord's work. Today, certification and accreditation are institutionalized at PGTRS. Now we're ready to institutionalize development and marketing.

Institutionalizing marketing began by working “from the inside out”—building a reliable body of information about PGTRS personnel and prospects, and formulating a system of marketing messages and materials. To put this system to work generating prospects, we have developed a strategic approach that conforms to PGTRS’ special needs and requirements and accomplishes the desired goals.

### **More Than a Project—A New Consciousness**

Marketing is not a problem we fix and forget. Just as we need continuing education to sharpen our technical skills, ongoing development will ensure that new prospects continue to flow into the system and that we deliver consistent messages motivating church members of all ages to seek us out. Accomplishing this goal requires a commitment to institutionalize development in our program and to sustain appropriate development investments.

#### 1. Training Orientation

This development program seeks to improve results produced by PGTRS by building expertise in the field.

#### 2. Division vs. Union Responsibilities

Just as training has been coordinated at the division, the development plan locates ongoing planning at the division, with primary implementation occurring in the field. Consulting with the Ad Hoc Committee, Materials Committee, and the NAD PGTRS Standing Committee, the division will coordinate the concepts and content of development materials, manage the process of generating and referring leads, monitor the program against established goals, and implement limited division-wide development activities that complement local efforts. Unions, conferences, and institutions are responsible for launching local development programs and will be able to purchase materials in the quantities they require.

#### 3. Goals and Objectives

Marketing programs are measured by their success in accomplishing quantifiable goals and objectives. If we were marketing breakfast cereal, we might know that we sold 50 million boxes in 2002, set an objective of selling 52 million boxes in 2003, and use computer software to monitor sales and inventory to accurately measure whether or not we met that objective.

### **Measuring Success for PGTRS is More Complex**

First, development remains decentralized and varies from one union, conference, or institution, to another. Second, we have neither a track record for comparison nor a centralized data collection system as we move forward. Finally, PGTRS is not a “consumable” product. Our “products” are relationships and planned gifts, which take time to mature. Even if we looked at numbers documenting past maturities and set an objective for increased future maturities, that objective might actually measure the success of past development efforts, not current efforts. Thus, in the short term, it’s difficult to establish short-term quantifiable objectives.

## How Do We Establish Goals?

Our Church Member Survey documents current levels of awareness and understanding of PGTRS and its mission. Our priority marketing goals seek to improve on these benchmarks:

- Enhance awareness of the relevance and benefits of estate planning among church members of all ages.
- Raise visibility and enhance understanding of PGTRS among church members of all ages.

However, in the long run, we also wish to achieve the following:

- Encourage older church members to develop estate plans that provide for their families and fulfill their religious and charitable desires—and to seek information from PGTRS in support of these objectives.
- Convince more young church members to secure wills and other estate planning documents that meet their family needs—and to seek information from PGTRS in association with their estate plans.
- Increase the number of planned gifts generated by PGTRS.

These goals require behavioral change—and changing behavior is a long-term process. As we work to enhance awareness and understanding, achieving increased use of PGTRS and increased gifts may be realized by those unions, conferences, and institutions that launch especially active development efforts during the next few years.

#### 4. Measurements

Enhanced awareness and understanding can be measured after the full complement of development materials becomes more widely utilized and local PGTRS offices have launched their own development efforts. While we would not anticipate dramatic differences in attitudes after so short a period, positive changes will validate the usefulness of our messages and activities.

Opportunities also exist for measuring behavioral change. Our activities call for implementation of a division-wide *Lead Referral Program*. By creating a central “clearinghouse” for leads and monitoring the outcome of those leads, we can begin to track the effectiveness of our development program in increasing inquiries to PGTRS.

In the long-run, quantitative measures will become increasingly practical. As PGTRS develops a “development history,” each year’s results will provide a basis of comparison for the next. By carefully documenting results and experience, we can identify indicators of progress and establish useful quantitative objectives for future years.

## Marketing Activities

Guided by our strategic approach, PGTRS' Division-Wide Marketing Program brings together our marketing vocabulary and materials to support an integrated program, including:

- Marketing leadership on staff and available in consultation
- Locally based marketing programs supported by division-wide marketing materials
- A division-wide *Lead Referral Program* and toll-free “hot line”
- A PGTRS Web site
- Cooperation with the *Adventist Review*, *Ministry Magazine*, and other major Adventist publications to secure publication of special features on PGTRS
- Division-wide advertising program
- Marketing e-letter
- Ongoing marketing training.

### 1. Marketing Leadership on Staff, in Consultation

To keep PGTRS' Development Program on track, we've secured strong leadership in support of the program. The General Conference/NAD PGTRS Department, under the direction of the NAD PGTRS Standing Committee, will coordinate division-wide marketing, including production of materials and training. They also will establish ongoing communication with the field to monitor changing needs, local activities, and results. In addition, we anticipate that our marketing consultants will be available throughout the program to guide our efforts and offer the “outsider” view that has helped broaden our perspective on development.

### 2. Locally Based Marketing Programs

The success of our efforts depends on the willingness and ability of local PGTRS offices to launch local marketing programs. Division-wide materials and activities are necessarily designed to be supportive. Advertising, direct mail, seminars, and other activities must occur at the local level. This chapter provides an outline of a basic local marketing program. Future NAD Seminars will focus more specifically on local marketing efforts.

### 3. Division-Wide Lead Referral Program

Church members may be unclear about how to contact PGTRS for information. Yet church members desire assistance and PGTRS wants to help. To address these needs, PGTRS has established a toll-free number: **1-877-WILLPLAN**.

Administered by Adventist Information Ministries (AIM), located on the Andrews University campus in Berrien Springs, Michigan, this toll-free number is displayed on all division-wide marketing materials.

When inquiries come in, AIM will gather data from prospects, including their preference for giving to a specific church entity, and respond with a letter and the requested brochure. All inquiries will be relayed to the division for distribution to the appropriate PGTRS entity for follow-up. So that we can measure our results, all PGTRS personnel are asked to report on the outcome of these leads. Each entity may be billed per lead to cover AIM's services, postage, and other related costs.

By centralizing inquiries and providing prospects with a single, memorable phone number, PGTRS can project a consistent image among church members - while helping local PGTRS offices open dialogue with prospects.

### 4. PGTRS Web Site

E-commerce is the new "way of the world," and Adventists are not immune to this trend. Our Church Member Survey demonstrates that Adventists of all ages have begun to rely on the Internet to exchange correspondence and find information. Therefore, PGTRS launched a Web site that delivers the *Planning for the Cycle of Life* messages found in our marketing materials.

Accessed at [www.willplan.org](http://www.willplan.org), an address selected to reinforce the new image of PGTRS, the site includes both "consumer-oriented" information, like the name, address, phone number, and photo of their local PGTRS representative. Also included is a password-protected page, accessible only to PGTRS personnel, for sharing development advice, ideas, and experience.

Also planned is a special section that provides technical information for legal and financial professionals. Ultimately, we hope the Web site will include "chat" technology, enabling church members (and PGTRS personnel) to ask questions and receive immediate responses, which can be shared by others visiting the site.

### 5. Articles in the Adventist Review and Ministry Magazine

We are continuing to work with the *Adventist Review*, *Ministry Magazine*, and other church periodicals to publish articles about PGTRS. These articles will include case studies that illustrate how individuals of various ages, ethnic groups, and geographic regions, and at various points in the life cycle have benefited from PGTRS and/or how their planned giving has or will benefit the church.

## 6. Division-Wide Advertising Program

To raise division-wide visibility for PGTRS and to stimulate inquiries, NAD PGTRS implements flights of advertising in the *Adventist Review* and *Ministry Magazine* each year, targeted at church members in the later years of the life cycle. Each advertising flight covers all weekly (non-SDA) editions of the *Adventist Review*. These advertising flights generally occur in spring and summer. Unions, conferences, and institutions will be notified in advance of the dates of these placements, so that they can plan coordinated activities, such as direct mail, or complementary local advertising.

## 7. Ongoing Development Training

We can learn from experts and from each other. As we plan for future NAD PGTRS Seminars, we will design a specific marketing curriculum drawing on the skills of consulting experts and on success stories within PGTRS. As we move forward, we will seek other opportunities to strengthen the development of PGTRS in every possible way.

### **Local Marketing Efforts**

Local PGTRS organizations can use both available division-wide materials and other tools to launch development programs among union, conference, and institutional constituencies. Of course, local organizations are free to use their own materials. However, division-wide materials leverage the value of all development activities by delivering the same message in the same way at all levels of the church.

The first edition of the *Development Guidebook* explores the basics of local marketing activities.

### 1. Available Tools and Approaches

**Direct mail brochures and letters:** The brochures (see samples in Development Kit) can raise visibility and generate leads for local PGTRS organizations. Local organizations may purchase brochures in bulk for mailings timed to correspond with division-wide advertising or to complement local advertising programs. These mailings might be directed to PGTRS' priority prospects: older individuals. Mailings should always include a letter that establishes a local connection - either by explaining how bequests have already benefited the local area or by documenting how PGTRS has helped local church members accomplish their spiritual and charitable goals.

**Local advertising:** Using the advertising slicks provided in the Development Kit, local PGTRS organizations can place advertising in union, conference, and institutional publications, as well as in church bulletins and on tithe envelopes. Because it takes time to make an impression, local ads should be repeated frequently.

**Visibility at local churches:** In addition to church bulletin advertising, several other techniques can make PGTRS visible in local churches - even when no one can be there in person:

- Provide brochures for literature racks in church foyers.

- Reproduce the full-page ads as a poster for church bulletin boards.
- Publish bulletin inserts describing PGTRS. (Inserts may draw on the copy in the brochures and display the PGTRS logo art provided in the Marketing Kit.)
- Using the Cycle of Life logo on the back of conference title envelopes is also a very visible and helpful tool.

A personal presence at local churches: Visibility is valuable, but nothing replaces a personal presence. Consider working with the church to sponsor a PGTRS Sabbath. Publicize the upcoming PGTRS seminar in the church's bulletin for several weeks in advance, and, if possible, send personal invitation letters to those church members who are the seminar's target audience. This PGTRS Sabbath could combine several different activities:

- A PGTRS representative preaching from the pulpit (see below)
- A sponsored Saturday evening fellowship meal, where PGTRS can meet and greet church members
- A Sunday morning seminar
- A church bulletin insert published the following week, which summarizes the Sunday seminar.

Seminars: Our research shows that PGTRS seminars are used frequently in the field and are considered to be effective in delivering our messages. Keep in mind that our marketing plan revolves around the life cycle and concentrates on older church members first. Within this context, seminars should be geared toward helping church members transition from one stage of life to the next, addressing the budgeting, estate planning, spiritual, and philanthropic needs unique to the stage of life they are now entering.

## 2. By Preaching at the Local Church

Preaching from the pulpit provides an important opportunity to use Scripture to introduce PGTRS messages to church members. Here are some examples:

- God's Will for My Will  
"Trust in the Lord with all your heart and lean not on your own understanding; in all your ways acknowledge Him, and He will make your paths straight." Proverbs 3:5-6. Contemplating the future can be confusing, but we know One who knows the future. The Scripture provides guiding principles for wills and estate planning. Also see Ellen G. White, *Counsels on Stewardship*, p. 328.

- **Biblical Investment Planning Ideas for the Future and Eternity**  
In the heart of the Sermon on the Mount (Matthew 6:19-34), Jesus gave brilliant, worry-free advice regarding asset safety and investments: “Where your treasure is, there your heart will be also.”
- **Principles for Leaving a Legacy for My Children**  
“A good man leaves an inheritance for his children’s children.” Proverbs 13:22. “An inheritance quickly gained at the beginning will not be blessed at the end.” Proverbs 20:21. See the stories of Jacob and Joseph in Genesis, the Prodigal Son in Luke 15:11-32, and the “fairness” doctrine in Luke 12:13-15.

Primary areas of legitimate distribution:

Immediate family  
The poor  
God’s cause

“Christians should be reformers and break up this present system, giving an entirely new aspect to the formation of wills. Let the idea be ever present that it is the Lord’s property which you are handling. The will of God in this matter is law.” *Testimonies to the Church*, p. 482-483; see also 3T 121, 2T 655.

- **Living Benevolence and Dying Legacies: How Do They Compare?** “The Lord designs that the death of His servants shall be regarded as a loss, because of the influence for good which they exerted and the many willing offerings which they bestowed to replenish the treasury of God. Dying legacies are a miserable substitute for living benevolence. The servants of God should be making their wills every day, in good works and liberal offerings to God. They should not allow the amount given to God to be disproportionately small when compared with that appropriated to their own use. In making their wills daily, they will remember those objects and friends that hold the largest place in their affections.” *Counsels on Stewardship*, pp. 326-327 “Do your giving while you are living, so you will know where it is going” is good advice.
- **King David’s experience in 1 Chronicles 28-29; Ecclesiastes 2:21.** “For there is a man whose labor is with wisdom, knowledge, and skill; yet he must leave his heritage to a man who has not labored for it. This is also vanity and a great evil.”
- **Probably no subject regarding Christian money management is surrounded with more ignorance of God’s plan than this one—the Parable of the Talents, Matthew 25.** At death we give an account of our stewardship. Accordingly, one’s estate plan is the crowning act of his stewardship.
- **Adam and Abraham: Family Leadership and Responsibility**  
(Genesis 1:27-29, 18:19) The responsibilities given by God and accepted by our first parents provide a pattern we can follow even today.
- **Wealth as an Entrusted Talent: How Much is Enough?**



(Matthew 19:16-30; Haggai 1:6, 2:8; Deuteronomy 7:25, 8:18) Only Scripture and the examples set by biblical characters offer the principles needed to determine how much to earn, how much to keep, how much to give away, and when to give it away.

- **Gather Up the Fragments**

When your life is done there will be property left over. Good stewardship requires an individual to prepare a will or other gifting instruments to distribute the fragments. John 6:1-14. *Desire of Ages*, p. 368. When we give to God, He always gives back in blessings, both recognized and unrecognized—much more than we can even comprehend. Assets we have needed for living can be returned to God by 1) providing assistance for family needs, 2) gifts to the poor, and 3) gifts to God’s work. A Christian will is a way for us to distribute the fragments of our lives.

As our program develops, we will explore this topic in greater depth, and we welcome the submission of useful sermons. We will post them on the Web site for the benefit of other PGTRS representatives. Complete sermons are now available on our Web site at [www.willplan.org/forpastors/sermons](http://www.willplan.org/forpastors/sermons).

Clearly, this represents only a brief outline for a local development program. During the coming years, we will gather case studies from the field and share ideas and results with the PGTRS team.

Success in the presentation of planned giving is often because of the testimony of those who already have established estate plans through PGTRS. Current trustors and those with wills often volunteer testimonies of their satisfaction with the PGTRS program.

There is a trend for more and more young couples to use wills which include testamentary trusts for the education of their children and allow for the nomination of guardians for minor children. Older persons tend to favor the use of trusts, both revocable and irrevocable, along with their wills. Each person needs proper advice in selecting the plan best suited to his/her circumstances. Therefore, the PGTRS representative needs to be knowledgeable regarding the various types of plans which are available and the plan that is most appropriate for the donor’s circumstances and/or objectives. Your attorney will provide invaluable legal advice to individual donors about these and other matters.

Church members have a right to expect a high standard of professionalism from their PGTRS representatives. Most importantly, PGTRS personnel should be seen as examples of dedication, stewardship, and service.

### **True Leadership Involves Example**

**The truly effective PGTRS representative will have set in place his/her own Christian estate plan, and be willing to humbly share his/her testimony with others.**

“With all my resources I have provided for the temple of my God... besides, in my devotion to the temple... I now give my personal treasures of gold and silver...” 1 Chronicles 29:2, 3

“Every man according as he purposeth in his heart, so let him give; not grudgingly, or of necessity: for God loveth a cheerful giver.” 2 Corinthians 9:7

“We shouldn’t brag about our Bible study, prayer, evangelism, parenting, or giving, but neither should we cover it up. It’s easier for people to follow footprints (what we do) than commands (what we say). If we aren’t willing to openly and humbly discuss our giving, how can we expect to raise up givers? The church has plenty of examples of consumers – we need to see examples of givers. Hebrews 10:24 tells us to ‘spur one another on toward love and good deeds.’ We can only be spurred on by what we can see.” Randy Alcorn, *Money, Possessions and Eternity*, revised edition (Wheaton, IL: Tyndale House Publishers, Inc., 2003), p. 447.

Pastors' Advertisements

PLANNING FOR THE

*Cycle  
of Life*

“Be prepared.  
Have your house  
in order.”

*Pastor Jimmy and Shereen Ferguson / Baltimore, Maryland*



**W**e learn by example. Our two elderly aunts lived together and held everything in common. Worried about what might happen if one or the other of them died, the aunts prepaid their funerals; wrote out all their wishes for their belongings; and had an attorney prepare their wills. When they died, there were no unanswered questions. Their testimony, in death as in life, was: “Be prepared. Have your house in order.” Ellen White wrote, “Death will not come

one day sooner...because you have made your will.” By welcoming Trust Services into our life and into our church, we can truly live Ellen White’s teaching. Making wills is part of ordering your life – like doing a family budget or planning for education and careers. We’re preparing wills and guardianship documents for our children – so that our family can lead our church by example.



Call us toll free: 1-877-WILLPLAN

12501 Old Columbia Pike / Silver Spring, Maryland / 20904-6600 / USA / [www.willplan.org](http://www.willplan.org)

PLANNING FOR THE

## Cycle of Life

“Sometimes you have to face harsh realities before you do what’s right.”

Pastor Minervino (Minner) and Evelyn Labrador  
Clearwater, Florida



The first question our financial advisor asked us about retirement was: Do you have a will and other estate planning documents? We didn't. Within weeks, two tragedies in our church showed us how important estate planning can be. A beloved deacon suffered a serious stroke. Machines kept him alive, but he could no longer communicate. Loving relatives found themselves in a painful conflict that could have been avoided, if only our church member had signed an advance medical directive. Then, a young couple related to a church member died in a car accident,



leaving two small children. With no will or guardianship directions, the children's future was left to the courts. The custody dispute, together with probate costs, significantly reduced the children's inheritance. When we thought about our own family, we knew we couldn't live with uncertainty. We had to fulfill our obligations as parents, as pastors of the flock and as responsible stewards of God's goods. Now that we have wills, we are so relieved. We know that if anything happens to us, our sons will be raised in an Adventist home.

Call us toll free: 1-877-WILLPLAN

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PLANNING FOR THE

## Cycle of Life

“Together, we’ve planned a crowning act of stewardship – for our family and for God’s kingdom.”

Pastor Dwight and Karen Nelson  
Berrien Springs, Michigan



When our children were born, we called on Trust Services for information about drawing up wills. We didn't have to hunt down the facts or search for qualified professionals. Trust Services had all the information, and our attorney drafted the documents we needed. No one attempted to tell us what to do. No one even requested a gift to the Lord's work. But by asking us the right questions, Trust Services helped us discover for ourselves how we could provide for our children and benefit God's work.



Trust Services

Now we feel at ease. We know that all the legal documents are there to make sure our wishes are followed, even if we're not on the scene. We don't worry over our children, should something happen to us, and we are comforted by the knowledge that our wishes for our meager belongings will be carried out. Trust Services helped us find ways to fulfill our responsibilities as parents and stewards – right in the comfort of our own home.

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Bulletin Insert

**PLANNING FOR THE**  
*Cycle of Life*

**TUCSON SHARON SEVENTH-DAY ADVENTIST CHURCH**  
955 N. 10th Ave. Tucson, AZ 85705  
Ph: 520-622-2218  
Email: ibolaore@yahoo.com

Life is about transitions. It's about moving from child to adult to senior. It's about extending God's kingdom from generation to generation. Our faith in the Lord can be constant and personal, but family and financial challenges change almost daily.

Trust Services can help. A unique ministry of the Seventh-day Adventist Church, we provide useful financial, estate and gift planning information in order to help you protect your family now and in the future—in the context of your faith in Jesus.

This weekend seminar will explore vital issues for every family, issues not often discussed but that impact your loved ones and the Church you love. Don't miss this vitally important weekend seminar coming to Tucson Sharon Seventh-day Adventist Church and the surrounding communities!

**FRIDAY, DECEMBER 1**  
Friday evening 7:00 p.m. "Two Adams, Two Wills"—Elder Donald Bedney  
"Lessons From the Life of Oseola McCarty"—Elder Jeff Wilson

**SABBATH, DECEMBER 2**  
Sabbath School 10:45 a.m. "The Pumpkin Lady"—Elder Jeff Wilson  
Divine Worship 11:00 a.m. "Full Barns . . . Empty Head"—Elder Donald Bedney  
Fellowship Lunch 12:30 p.m. Everyone is welcome. Come join us.  
Sabbath Afternoon 1:30-2:15 p.m. "Leaving a Legacy of Love"—Elder Jeff Wilson  
2:15-3:00 p.m. "Why a Christian Will is Important"—Elder Donald Bedney  
3:00 p.m. Vespers—Elder Donald Bedney  
6:00 p.m. Refreshments  
6:30 p.m. "Strategies You Can Use to Avoid Probate Costs in Arizona"—Attorney Russell S. Duerksen.  
7:00-9:00 p.m. Consultations with Attorney Duerksen and Ed Eisele—assisting you to prepare your Will/Trust documents. At no cost to you!

**BLESSINGS YOU'LL RECEIVE FROM THIS WEEKEND PROGRAM:**

1. We'll explore the importance of establishing a Will/Trust to protect your spouse, your children and grandchildren.
2. Are you challenged with a fixed income? We'll explore how you can increase your monthly income stream and then at the end of your life still leave a legacy to the Lord's work.
3. Discover creative estate planning tools that you can use to bless your children and grandchildren during your life and then go on blessing the Lord's work after your passing.

*Don't miss this afternoon session for anything!*

**Presenters:** Jeff Wilson, Trust Services Director, General Conference of Seventh-day Adventists and Donald Bedney, Trust Services Director, Lake Region Conference.  
**Assisting:** Ed Eisele, Trust Services Director, AZ Conference and Israel Olaore, Pastor, Tucson Sharon Seventh-day Adventist Church.

**Need help with your Will/Trust?  
Contact us at:**

Arizona Conference of Seventh-day Adventists  
P.O. Box 12340  
Scottsdale, AZ 85267

Ph: 480-991-6777 Ext 104/132  
Web: <http://azsagift.org>  
Email: [edeisele@azconference.org](mailto:edeisele@azconference.org)



Elder Jeff Wilson



Elder Donald Bedney



Elder Ed Eisele



Elder Israel Olaore

Tithe Envelopes

**PLANNING FOR THE**  
*Cycle of Life*

Whether you are . . .  
 a young adult taking full responsibility for your life and your faith;  
 a husband and wife team depending on each other for emotional and financial support;  
 growing your family—meeting responsibilities for Christian education, special needs, and responding to emergencies;  
 an empty nester reflecting on retirement, aging, and the needs of God's greater family;  
 or a loving couple, growing old in each other's company, confronting the practical challenges of the golden years;  
 a recently widowed or an older single making adjustments as you age alone . . .  
 Trust Services can help you throughout the life cycle—to build financial security, protect your loved ones, and sustain the causes you love. Not just for the wealthy or for seniors, Trust Services provides useful financial, estate and gift planning information. Services are generally free—so every church member can effectively manage the resources God entrusts to them.  
 To contact your trust services representative please write, call, or email:

Gift Planning & Trust Services  
Arizona Conference of Seventh-day Adventists  
PO Box 12340  
Scottsdale, AZ 85267-2340  
(480) 991-6777  
E-Mail: [giftplanning@azconference.org](mailto:giftplanning@azconference.org)

*Tithe and Love Offerings to God*

"Bring to the storehouse a full tenth of what you earn so there will be food in my house. Test me in this," says the Lord All-Powerful. "I will open the windows of heaven for you and pour out all the blessings you need."  
—Malachi 3:10, NCV

*Tithe (10% of your income) . . .*

Before any portion of the increase is used for personal needs, God's share of the partnership, a tithe—10%, should be set apart to help support the ministry of the Word in the Arizona Conference and in all the world.

*Love Offerings . . .*

"As God has prospered . . ." I Corinthians 16:2  
After the tithe is determined, offerings of love and gratitude are set apart for the local church needs, Arizona Conference ministries, and other world projects.

Arizona Conference of Seventh-day Adventists  
13405 N. Scottsdale Rd  
PO Box 12340  
Scottsdale, AZ 85267-2340  
(480) 991-6777

(back)

(front)

**The Personal Giving Plan (PGP)**  
When everyone gives, every need is met.

When you seek the Lord's guidance to establish a regular percentage of your income beyond your tithe for your personal giving His ministries will prosper as the Lord prospers you.

Under the **Personal Giving Plan** when you give to your Local Church, the Arizona Conference and the World Church without specifying how your gift is used it will be distributed among the ministries listed below in each section.

**Local Church (3-5%)**

All Church Expenses	Missionary Literature
Sabbath School Expenses	Community Services
Church School Subsidy	Local Student Aid

**Arizona Conference (1-2%)**

- Camp Yavapais - 15% of your gift
- Evangelism - 50% of your gift
- K-10 Schools - 20% of your gift
- Native American Ministries - 5% of your gift
- Thunderbird Academy - 10% of your gift

**World Church (1-3%)**

ADRA (Disaster Relief)	Inner City Ministries
Adventist TV Ministries	Multi-Lingual Ministries
Adventist World Radio	Sabbath School Mission
Birthday/Thank Offering	Sevicaemen's Literature
Christian Record	1 <sup>st</sup> Sabbath Offering
Fall Mission Appeal	Voice of Prophecy
Higher Ed. Loma Linda, Andrews, Oakland	Week of Sacrifice
	Women's Ministries

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Home Telephone (\_\_\_\_) \_\_\_\_\_  
 E-Mail \_\_\_\_\_  
 Date \_\_\_\_\_ Receipt # \_\_\_\_\_

*Tithe and Love Offerings to God*

**Tithe (10% of Your Income)** . . . . . \$ \_\_\_\_\_  
**Local Church (PGP, 3-5%)** \* . . . . . \$ \_\_\_\_\_  
 Building Fund . . . . . \$ \_\_\_\_\_  
 . . . . . \$ \_\_\_\_\_  
**Arizona Conference (PGP, 1-2%)\*** . . . . . \$ \_\_\_\_\_  
 . . . . . \$ \_\_\_\_\_  
**World Church (PGP, 1-3%)\*** . . . . . \$ \_\_\_\_\_  
 Ingathering - Donated . . . . . \$ \_\_\_\_\_  
 Ingathering - Solicited . . . . . \$ \_\_\_\_\_  
 . . . . . \$ \_\_\_\_\_  
**TOTAL ENCLOSED** . . . . . \$ \_\_\_\_\_

I would like to talk to a Conference Trust Services representative about a will/estate plan or planned gift.

\*The above offering percentages are suggested giving guides only.

(inside)

## 7. ESTATE PLANNING FOR THE CHRISTIAN

### Introduction

Estate planning focuses on two major issues. Personal matters as well as financial matters must be considered. Planning for the transfer of personal responsibilities includes healthcare planning, care for dependants, property management and personal care. Financial matters involve planning for paying liabilities and transferring assets to the appropriate people in an effective manner.

Estate planning is a process, the end goal of which is peace of mind. The plan may deal with making sure personal wealth, to the greatest extent possible, is made available at the individual's death for the purposes he or she desires. Peace of mind also results from planning for surrogate decision makers in case of incapacity, guardians for dependent children and prudent asset management.

*Since a person's estate consists of everything he or she owns, estate planning can be broadened to include the creation, accumulation, and preservation of the estate as well as its final distribution.* An estate plan provides for the wise utilization of a person's property during life and for the orderly and cost effective disposition of the estate, in accordance with the owner's wishes and family needs, at the time of death.

For the Christian, the estate planning process goes beyond the preparation of the will and making certain that the estate is not unnecessarily diminished by taxes and costs. God is the owner of all things and people are stewards of His property. He grants people opportunity to manage that which He has placed in their care. As God's steward, the Christian is accountable to the Lord for His property. While living, the Godly steward manages and uses God's property wisely in harmony with the Heavenly owner's desires and plans for the distribution of that property upon death.

To the Christian estate planning is a spiritual experience. God provides abilities, influence and opportunities to gain wealth. The Christian uses those "God-owned" assets to care for his/her needs during life, to benefit others and to advance God's Kingdom. God places assets under the Christian's management and dominion, but retains an expectation of benefit in return. Such an experience is that of a sacred trust. It is a process to be approached prayerfully and with much counsel from those who not only have the necessary technical expertise, but also possess "...experience in the truth and knowledge of the divine will." *Counsels on Stewardship*, p. 330.

### Financial Planning: Utilizing Assets Wisely

Financial planning encompasses a person's earning, investing, saving, giving and spending resources so as to meet financial goals and provide for personal lifetime needs, the needs of others and needs of the Lord's work. A person's financial plan guides these endeavors. It is a process of developing comprehensive solutions to personal, business, and financial challenges and concerns.



Planned Giving & Trust Services provides spiritual guidance and counsel that informs and molds the financial planning process without engaging in dispensing technical advice. It is analogous to encouraging good healthful living practices without diagnosing and treating disease. The ministry of Planned Giving & Trust Services helps people focus on being good stewards and encouraging their obtaining competent professional advice throughout the estate development and disposition process.

## Lifetime Needs and Objectives

Some of the lifetime needs and objectives which require financial planning are the following:

### Children's Education

As early as possible, parents should develop a plan to finance their children's education. Through careful use of savings and investments, funds may be set aside for this purpose.

### Medical Care

The rising costs of medical care and hospitalization impacts a person's financial planning. Without adequate medical and hospitalization insurance and an emergency fund, a catastrophic illness could easily exhaust a person's estate. One of the leading causes of bankruptcy is insurmountable medically related debt.

### Disability Income

During a person's earning years, the loss of income because of disability could result in the "distress liquidation" of all assets. This may be avoided by obtaining adequate disability insurance to cover living expenses in the event of disability.

### Retirement Income

Without proper planning for continued income flow during the retirement years, a person may have to face some drastic lifestyle changes. Through the use of pension plans, individual retirement accounts (IRAs), annuities, deferred compensation plans, Social Security benefits, charitable remainder trusts, charitable gift annuities, and other investments; one can plan for adequate income during the retirement years.

### Risk Management

A person is always exposed to certain risks and liabilities which could result in the diminution of the estate. In order to protect and preserve the estate, a person must either avoid these risks or control them through careful management and the use of insurance. It is prudent to obtain adequate insurance coverage on items that would need to be replaced in the event of loss or destruction, such as the home and other real property, valuable personal property, and automobiles. Insurance is recommended for activities and property which present potential liability to third parties.



## Investment Planning

While Trust Services personnel are not to give investment advice, it is helpful to understand various types of investments and their involvement in a donor's estate plan.

Investment planning is the process by which an investment program is devised to meet a person's financial objectives and lifetime needs. Most of a person's financial objectives require the accumulation of capital within a specific timeframe or the establishment of a flow of income for a certain period. Investments are made within the context of a person's resources, risk tolerance, and the economic environment. Factors to be considered include:

### Liquidity and Marketability

A person's financial objectives may include short-term goals, such as purchasing an automobile or home; or a long-term goal, such as establishing a retirement plan. Having cash or capital available at appropriate times necessitates consideration of liquidity and marketability when selecting investment vehicles.

Liquidity is the ability to readily convert an investment into cash without losing principal. Funds that might be required for immediate use should be invested in highly liquid investments.

Marketability is the degree to which there is an active market in which an investment may be traded. Some investment vehicles, while promising an excellent return, do not have a ready market where they can be easily traded or sold. Real estate sales, for example, may require an extended period of time to complete. Some limited partnership shares or family corporation stock may be difficult to sell to the public.

The failure to properly evaluate the liquidity and marketability of investments could result in funds being unavailable when needed or the principal being diminished when the asset is sold or traded.

### Investment Risks

Risk involves the possibility that the expected return will not be realized, loss of principal may occur or purchasing power could decline. Risk cannot be totally avoided. Many global factors beyond the individual investors control influence economic conditions, market performance, interest rates, and purchasing power.

Real investment risks include business risk, country risk, market risk, and inflation. The soundness of a business determines its quality as an investment. Companies can be in decline while its stock price remains strong. The strength of foreign countries affects investments even if a portfolio has no foreign investments because many US based companies derive a significant portion of their earnings from foreign sources. Security prices go up and down distinct from business soundness. Market risk is paying too much for a stock and then having the price go down due to cyclical market influences. Over time purchasing power tends to erode due to

inflation presenting real risk to investment return. Proper investment diversification is considered the most important risk management technique.

### Economic Environment

The economic environment must also be considered when making investment decisions. When a certain economic trend is anticipated, an appropriate investment strategy should be adopted. For instance, during periods of increasing interest rates, it is recommended that long-term, fixed-income investments be avoided and liquidity be sought. During inflationary times, assets for which the value will increase with the rate of inflation, such as real estate, may be acquired. In times of recession, assets such as common stock in firms that will benefit from expansionary monetary and fiscal policies may be considered for investment purposes. Long-term investments in firms that are able to sustain growth are preferred during periods of sustained economic growth.

A successful investment strategy must be based on accurate anticipation of economic trends. Thus, it is very important that the guidance of experts be obtained when planning investments.

## **Estate Planning: Planning for the Eventual Distribution of the Estate**

One of the main functions of an estate plan is transferring estate property in harmony with one's personal goals and family needs. Transfer of assets as a part of an estate plan may occur during life and will occur at death. The trust services representative has unique opportunities to assist families with their stewardship responsibilities for family and the Lord's work. There are numerous important issues for a person/couple to consider when engaging in the process of planning for management and distribution of property entrusted to them.

Basic to the whole endeavor, however, is overcoming procrastination and doing the hard work of planning in a timely manner. Knowledge about the planning process, the issues that need to be considered, and an organized way of approaching the process is a great stress reducer. Since all assets will eventually transfer to ownership either in life or at death planning needs to be done while the person's intent governs. Young families with minor age children need to express their intent regarding guardianship for their children. Planned Giving & Trust Services assists members in overcoming planning inertia by providing opportunities to initiate the process through responding to advertising, attending seminars, listening to Sabbath presentations and reading pertinent articles on the importance of planning at various stages of life. The Trust Services representative can facilitate this process by helping organize estate data, providing information, and encouraging family discussion of relevant issues.

Estate and financial planning is an ongoing, dynamic process; because personal circumstances and the law changes. These changes necessitate periodic review and, perhaps, revision in subsequent years.

### Asset Ownership

Asset ownership is an important matter to consider when planning the estate. The attorney preparing estate documents needs to know if an asset is titled in name of one spouse or jointly by both spouses, jointly with another individual or by a trustee. It is important to understand how ownership impacts the estate taxation on the death of the first spouse and then at the death of the second spouse so adequate plans can be made. Beneficiary designations of life insurance and retirement plan assets impact the estate distribution plan and need to express current intent.

### Estate Value

The value of an estate determines if there are estate tax planning issues to consider. Reasonable estimates of values may suffice in the initial planning stages, but an appraisal may be necessary to value property interests especially if there is substantial value involved. Insurance death benefits are an important part of the estate valuation as well since they are included in the gross estate for estate tax purposes and they may be the primary funding for children's care.

The other side of estate value is estate indebtedness. This information needs to be gathered as well. An individual bequest or a whole distribution plan can easily be frustrated by a decedent's debts. The Trust Services representative can assist in organizing asset and liability information and creation of a net worth statement.

### Beneficiary Decisions

As a person plans their estate the "who shall inherit" question is a major consideration. Family needs are primary. Gifts to the spouse will qualify for the unlimited marital deduction, but will only delay taxation until the second spouse dies. A decision will need to be made about spousal benefit. Should the surviving spouse receive all of the estate or are there children from previous relationships to be remembered? There may be other persons that may have need or a church ministry that the person wants to support. In addition to the "who" question, the "what amount" question is crucial. Giving too much can be injurious. Warren Buffet, a billionaire investor, when queried about how much he was going to give his children, is reputed to have responded, "I will give them enough to do something, but not enough to do nothing." The wise parent considers the needs, capability, and character of each child when planning the inheritance. One family member may have special needs requiring significant assistance, whereas another may have ample assets or income producing ability and not need a major portion of the estate. It may be wise to bypass the next generation (children) in favor of gifts to or for the benefit of grandchildren. In the event a child predeceases a decision is required about what to do with his or her bequest. In the case of blended families the "who" question can present significant challenges.

### Timing of Gift or Bequest

The timing of gifts and bequests is important to consider. For larger estates weighing the benefits of lifetime gifting to diminish the estate tax liability is prudent planning. Gifting during life can provide inexperienced beneficiaries the opportunity to develop skills in handling money while the benefactor is alive and available for counsel. Some assets may be placed in irrevocable trusts during life to reduce estate taxation or for Medicaid planning. Lifetime gifts are generally less expensive from an estate tax perspective than delaying the gift until death. It is also an important

part of Christian stewardship to not delay giving to support God's work until after death rather than being a living steward. Giving at death should not be a substitute for supporting the Lord's work during life. Gifts for a particular beneficiary can be given all during life, some in life with the balance at death, some at death and the remainder later on or all at death. Some may want their children to receive the heritage at 18 or 21 years of age, while others prefer to delay receipt until 30 or 40. Some choose installment payments, such as one half at age 25 and the balance at 30. The benefactor's goals and the beneficiary's needs govern the timing issue.

### Distribution Methods

The method used to distribute assets to beneficiaries is another major consideration. Outright ownership may be given or a partial interest in a trust. Specific assets, such as the vacation home, car, certain number of shares of a stock can be bequeathed to a person or charity. The distribution may be expressed as a percentage of total estate after debts, expenses and specific bequests. Some choose to bequeath a sum or percentage of the estate to a charitable split interest gift plan which provides income to a family member or friend with the remainder to charity.

### Advance Directives

A person needs to plan for incapacity, temporary or permanent, while mentally competent. Creation of a durable power of attorney to handle personal and business affairs, an advance health care directive, and/or a living will are essential. Creation of a living trust and appointment of a successor trustee to manage trust assets may provide continuity of financial management and avoidance of a court appointed conservator. The exact document(s) depends on the respective state laws, the individual's choices, and legal counsel.

## **Overview of the Transfer Tax System**

The federal government and the state where an individual resides or owns real estate can impose taxes on the transfer of property during life or death. The three federal taxes are: (1) the gift tax on gratuitous transfers during life, (2) the estate tax on transfers at death, and (3) the generation-skipping transfer tax (GSTT) for transfers during life or at death to individuals two or more generations below the transferor. In addition, some states impose various forms of transfer taxes at death.

### Gift Tax

The gift tax is a transfer tax levied on an individual who transfers money or property for less than full consideration to another individual during life. Many types of lifetime transfers may be considered gifts including: the transfer of cash or securities, the creation of a trust for another person, the forgiveness of a debt, an interest free or below market rate of interest loan, the assignment of insurance benefits, or the transfer of an automobile, boat, painting or other personal property.

In order to be considered a gift the transfer must be intended as a gift (donative purpose) rather than for business purposes. Involuntary transfers, such as transfers under a divorce decree, or an

arms length business proposition that provides a windfall for the purchaser would fall outside the scope of the gift tax.

The amount subject to the gift tax is the difference between the fair market value (FMV) of the property transferred and the value of any consideration received in return. Note the following two examples.

Example: Mother transfers \$100,000 in cash to Daughter and receives nothing in return. Mother has made a \$100,000 gift to Daughter.

Example: Mother gives Daughter \$100,000 in cash to Daughter in exchange for Daughter's house, which has a FMV of \$75,000. Mother has made a gift of \$25,000 to Daughter.

The gift tax applies only if there has been a completed, irrevocable transfer of property from one person to another. If the transfer can be revoked by the donor, then no completed gift has occurred. If a revocable transfer is made then a taxable gift can occur whenever the transfer becomes irrevocable. For example, if an individual creates a revocable trust for the benefit of a child no taxable gift has occurred. If the parent later amends the trust relinquishing the power to revoke it, a taxable gift is then made even though there is no actual transfer to the child. The creation of a joint bank account is not a taxable gift merely because the non-contributing account holder possesses the right to withdraw at any time. However, at the time the non-contributing account owner withdraws funds from the account the transfer is complete and a taxable gift occurs. Similar results occur with respect to US savings bonds and joint brokerage accounts.

The gift tax applies to the transfer of property or the use of property. The gratuitous performance of services for another is not a taxable gift.

#### Gift Tax Deductions and Exclusions

There are a number of deductions and exclusions that may protect a gratuitous transfer from gift tax. An individual can give up to \$13,000 (2011, indexed for inflation) of property each year free of gift tax through the annual gift tax exclusion. A married couple can each give \$13,000 separately to a donee, or one of the couple if the spouse agrees to gift splitting can give \$26,000 to that donee. Only one annual exclusion gift can be made to any one donee, but there is no limit on the number of donees. The exclusion applies to gifts of a present interest (present use, possession, and enjoyment) not future interest (the use, possession and enjoyment vests in donee at a future time).

An individual may pay an unlimited amount for tuition or medical expenses in behalf of a donee without incurring gift tax. These payments must be made directly to the educational or medical provider. The medical and educational exclusion is in addition to the annual exclusion amount and may be made to any person without regard to relationship between the donor and the donee.

A person can transfer unlimited amounts of property to his or her spouse free of gift tax because of the unlimited marital deduction. These transfers may be directly to the spouse or into certain

types of qualifying trusts for the exclusive benefit of the spouse during the spouse's life. This exclusion only applies if the spouse is a United States citizen. Special rules apply for non-US citizen spouses.

Transfers to qualified charities during life or at death are entirely free of transfer tax. There is no limit to the gift tax charitable deduction.

For the years 2011 and 2012 a lifetime gift tax "exemption" allows \$5,000,000 of assets to pass free of gift taxes. In 2012, the exemption will be adjusted for inflation. Gifts in excess of the annual exclusion can therefore pass tax-free if there is sufficient lifetime gift tax credit available.

## Estate Tax

The estate tax is a transfer tax levied on the right to transfer assets at death to beneficiaries of the decedent's choosing or, lacking testamentary direction, beneficiaries of the state's choosing. It is measured by the value of the taxable estate. The difference between the gross estate and any allowable deductions is the taxable estate.

Everything *actually owned* by a decedent is included in the decedent's gross estate for estate tax purposes. In addition, property interests *deemed* to have been owned are included in the gross estate to the extent of the decedent's interest in the property (e.g. life estate interest, present value of an annuity to a non-spouse). All property thus owned by a US citizen or resident regardless of its location is a part of the gross estate and is subject to the estate tax.

The value of the gross estate is established as of the date of death or a date 6 months after the decedent's death (alternate valuation date). The alternate valuation date may be used if it will decrease the value of the decedent's gross estate and the amount of estate tax due. Property is valued by appraisal at fair market value on the date of death or alternate valuation date if elected.

Deductions available to the estate include funeral expenses, estate administrative costs, debts or obligations of the estate, personal representative fees, attorney's fees, and casualty losses during the administrative period. The gross estate is further reduced by any bequest to the decedent's spouse eligible for the unlimited marital deduction and any bequest to a qualified charity. Once these deductions are taken the result is termed the taxable estate.

The taxable amount (the excess over any applicable exclusion for gift tax purposes) of gifts made after 1976 are added to the taxable estate. The resultant tentative tax base is used to compute the tentative tax. Gift taxes payable on post 1976 gifts are then subtracted from the tentative tax. The result is considered the estate tax payable before credits are applied.

Each person is entitled to an applicable credit amount as a credit against estate tax owed. This credit is a dollar for dollar reduction of tax. It excludes or shields a certain value of estate assets from tax (see table below). In addition three other credits serve to reduce the estate tax owed: credit for foreign death taxes owed, credit for gift tax paid on pre-1977 gifts, and credit for taxes paid on prior transfers.

Estate Tax Credit Schedule		
Year	Applicable Credit Amount	Applicable Exclusion Amount
2004 and 2005	\$555,800	\$1,500,000
2006, 2007, and 2008	780,800	2,000,000
2009	1,455,800	3,500,000
2010	Repealed*	Repealed*
2011 and 2012	1,730,800	5,000,000
2013	345,800	1,000,000
Under EGTRRA 2001, beginning in 2004, the GSTT exemption is scheduled to equal the estate tax applicable exclusion amount		

\*The heirs of those dying in 2010 may choose between applying the 2011 and 2012 rules or electing to be covered under the 2010 rules of no estate tax, but only a limited step-up in the cost basis of inherited assets.

“The Tax Relief Act of 2010 provides for "portability" of the unused estate tax exclusion amount to the surviving spouses of people dying in 2011 and 2012.... Portability also carries over the gift tax exemption. However, portability does not apply to the generation skipping tax exemption.

Portability means that a surviving spouse can elect to harvest the unused portion of the estate tax exclusion amount of the deceased spouse, thereby providing the surviving spouse with a potentially much larger tax exclusion amount upon his or her subsequent death. To preserve the first deceased spouse's unused exclusion amount..., the personal representative of the deceased spouse must file an estate tax return and make an appropriate election on the return. The estate tax return must be filed to achieve portability even if the filing of such a return is not otherwise required.” <http://marshallelder.blogspot.com/2011/06/estate-and-gift-tax-portability-law.html>

The personal representative of the estate has the duty to file the estate tax return (Form 706) if the value of the gross estate plus the value of adjusted taxable gifts on the date of gift exceeds the statutory filing requirement. The gross estate and the adjusted taxable gifts must exceed the applicable exclusion amount (\$5,000,000 in 2011 and 2012) for filing to be required. If filing is required, the return is due and the tax is payable no later than 9 months after the decedent’s death unless and extension is granted.

Estate Tax Rate (Generation Skipping Transfer Tax follows same rate schedule)	
Year	Maximum Rate
2006	46%
2007-2009	45%
2110	Repealed
2011and 2012	35%
2013	55%

### Generation-Skipping Transfer Tax

The third federal transfer tax is the generation-skipping transfer tax (GSTT). It was designed to fill a gap in the estate and gift tax systems which previously allowed certain transfers to avoid

taxation. Before the enactment of the tax in 1986, an individual could avoid transfer taxes on property over many generations by placing the property in a long-term trust for the benefit of succeeding generations or by skipping over one or more generations entirely (for example, by leaving property entirely to grandchildren and bypassing children). If the trust was properly structured, the trust property would escape taxation as it passed generation to generation. Only when the trust terminated would the property be subject to taxation.

Under current law, if an individual makes a transfer of property in a manner which will escape the gift tax or estate tax at a lower generation level, the GSTT may be imposed at a flat rate equal to the highest transfer tax rate (35% in 2011 and 2012). The GSTT also applies to non-lineal descendants who are a specified number of years younger than the donor. There are certain exemptions to the tax, the most important of which is the \$5,000,000 GSTT exemption per individual. A married couple can elect to split a transfer and exempt up to \$10,000,000 from the GSTT.

## State Transfer Taxes

The state rules for taxation of transfers during life or at death vary from state to state. Many states have estate taxes. Some states impose an “inheritance tax” on the right to receive property from the estate of a decedent. Maryland and New Jersey have both. Estate taxes are typically assessed against the value of real estate located in the state. Generally, exposure to the state estate tax is based on the gross estate computed for federal estate tax purposes. Rates and exemption vary widely from state to state; from a low of 3% in Kansas to a high of 19% in Washington. Rates may vary depending on nearness of relationship to the decedent e.g. a spouse may have a lower rate or total exemption whereas a cousin may have a higher rate). A decedent’s domicile may also play into state estate liability. A taxpayer could be domiciled in more than one state and owe taxes to each. The extensive variance in state death taxes requires competent legal and tax counsel involvement in the estate planning process.

Prior to 2006 a partial credit for state death taxes paid was allowed on the federal estate tax form; however this credit was eliminated beginning in 2006. Under current law death taxes paid to a state are allowed as a deduction from the gross estate for estate tax purposes.

## **Lifetime Planning: Taking Strategic Steps to Reduce Transfer Taxes**

Reducing one’s estate through lifetime gifts is one of the most effective methods of decreasing transfer taxes. Significant amounts of property can be given away without incurring gift tax, and, for wealthy individuals, making larger gifts is almost always advantageous from a tax standpoint.

### Take Advantage of Gift Tax Exclusions

Annual exclusion gifts (\$13,000 per donee or \$26,000 if married couple agree to gift splitting) are effective in moving property out of a taxable estate over time. By giving away property that is likely to grow in value all of the future appreciation is moved out of the estate as well.



Taking advantage of the medical care and educational expense gift tax exclusion allows individuals with taxable estates to diminish their estates at no tax cost and to benefit others with meaningful assistance enabling them to conserve their assets.

In addition to the annual exclusion gifts, wealthy persons might consider making one or more large gifts during life even if gift tax is incurred. Due to their nature, lifetime gifts cost less to make from a gift and estate tax perspective than transfers at death.

## Redistributing Assets Between Spouses

One spouse frequently has a smaller estate than the other. A married couple (both US citizens), may “equalize the value of the estates” by titling or gifting assets so that the value owned by each person is approximately the same. This increases the likelihood that each spouse will be able to use his or her estate tax applicable exclusion amount.

## Non-charitable Split Interest Gifts

A person or couple with a taxable estate can transfer assets to a trust which provides income to the grantor for a specified period of years, usually 10 – 15 years. At the end of the term of years, the trust assets belong to the individuals named in the trust document; usually children, nieces, or nephews. The gift tax due on the transfer is substantially less than what the estate tax would be if the assets were bequeathed to the next generation at the grantor’s death.

One version of this plan, the grantor retained annuity trust (GRAT), pays a fixed income expressed as a percentage of the original value of the trust assets. The other version, the grantor retained unitrust (GRUT), pays a variable income, expressed as a percentage of the trust assets revalued each year.

The date of death value of the assets placed into the trust is not included in the grantor’s estate as long as the grantor lives longer than the trust term. If the grantor dies during the trust term, the trust assets are included in his or her estate at date of death value.

## Qualified Personal Residence Trust (QPRT)

A Qualified Personal Residence Trust enables a grantor to deed the personal residence to the trust keeping the right to the property for a specified number of years. At the end of the trust term, the residence title passes to the individuals named in the trust, usually next generation family members. The grantor can continue staying in the residence by paying the owners the market value rent. The gift tax due on the transfer is substantially less than what the estate tax would be if the residence was bequeathed at the grantor’s death. Paying rent for one’s “own home” can be distasteful, however the payment of rent also moves assets out of an otherwise taxable estate. The prospect of saving substantial estate tax at the federal and state levels makes an otherwise bitter pill sweet.

The date of death value of the residence placed into the trust is not included in the grantor’s estate as long as the grantor lives longer than the trust term. If the grantor dies during the trust

term, the trust assets are included in his or her estate at date of death value. This result is no worse than if the trust had not existed.

## Bypass Trusts

Bypass trusts are sometimes called credit shelter trusts, “A-B Trusts,” or marital and family trusts. The surviving spouse is given rights to income and limited rights to the corpus. This is a typical strategy for married couples. At the first spouse’s death, the exemption amount of separately titled assets is given to a bypass trust for the benefit of the surviving spouse. These assets are sheltered from estate tax by using the decedent’s estate tax exemption to the extent available. The amount over the applicable exemption amount is given to the surviving spouse in a manner that qualifies for the unlimited marital deduction. Bypass trusts can be created during life (*inter vivos*) or testamentary through the Will.

At the surviving spouse’s death, assets in the bypass trust escape the estate tax since they are not owned by the spouse. In addition, the exemption amount for the second spouse to die can be applied against the remaining estate value as well as any unused exemption from the first spouse to die. This plan assures that the first \$10,000,000 (in 2011 and 2012) owned by a married couple will not be taxed for estate tax purposes.

## Irrevocable Life Insurance Plans

Many insurance professionals encourage wealthy individuals to purchase additional life insurance coverage with policy ownership held by an irrevocable life insurance trust. If planned and administered properly this pool of value is not taxed for estate tax purposes and is typically for the benefit of the surviving spouse and /or children. Some irrevocable life insurance trusts are created to replace the value of assets gifted to charity.

## Charitable Giving

Making lifetime charitable gifts, including outright gifts and gifts which provide a life income, such as charitable gift annuities, pooled income funds, and charitable remainder trusts is effective in moving assets out of a taxable estate. If a life income gift plan is created only for the donor, the amount contributed to the trust will never be taxed for estate tax purposes. Plus, a partial income tax charitable deduction can be claimed and, if appreciated property is contributed, no capital gains tax is due on the appreciation at the time of transfer into the gift plan. Significant income tax savings can be realized through such plans.

During lifetime the personal residence (a vacation property also qualifies) or farm (with or without buildings) can be deeded to a charitable organization reserving a life estate for the grantor. If the grantor is the only life estate beneficiary no estate tax would be payable on the value of the property. This charitable contribution of a remainder interest produces a partial income tax charitable deduction and moves the future appreciation out of the estate.

Charitable bequests are 100% deductible from the taxable estate for estate tax purposes and consequently avoid estate taxation. Amounts transferring to charity generally would not be taxable at the state level either.

A donor can create a testamentary charitable gift annuity, pooled income fund agreement, or charitable remainder trust to provide income to survivors. The present value of the eventual charitable remainder escapes estate taxation.

Designating a charitable organization to receive a portion of a qualified pension plan, deferred compensation plan, or IRA at the death reduces the taxable estate. It also reduces the deferred income tax the surviving spouse's estate or heirs would have owed.

As an alternative to an outright gift of all or a portion of the retirement plan, it is possible to create a testamentary charitable remainder trust, paying a specified income to an income beneficiary for a period of years (not exceeding 20). At the end of the trust term, the assets are distributed to the charitable remainder beneficiary. No deferred income tax is due on the value placed in the charitable remainder trust (because it is tax exempt) and part of the value also escapes estate taxation. A testamentary charitable gift annuity or pooled life income fund may also be used to provide similar income tax and estate tax benefits.

The beneficiary designation to accomplish these post death transfers is revocable and easily changed during the employee's lifetime.

### **In Closing...**

Estate planning is essential to preserve an estate that in every case takes a lifetime to build. When Elvis Presley died in 1977 his gross estate was valued at just over \$10,000,000. When probate closed 12 years later it had shrunk 73% to a mere \$2,700,000. Settlement costs included debts, administrative expenses, attorney's fees, executor's fees, state death tax and federal estate tax. On the other hand, the \$270 million dollar estate of Andy Warhol shrank just 2.3% due to extensive and effective estate planning.

## **8. PLANNING FOR RETIREMENT AND INCAPACITY**

### **Planning for Retirement**

Long before retirement, a person should take steps to:

1. Assure an income stream that is sufficient to maintain the lifestyle to which he/she has become accustomed.
2. Obtain insurance coverage for medical care and establish a reserve fund for catastrophic or long-term illness.
3. Set up a contingency plan for the management of finances in the event of disability or incapacity.
4. Select someone to make decisions regarding medical care in the event of physical or mental incapacity.

### **Qualified Retirement Plans**

Income during retirement generally comes from employment-related retirement plans, personal retirement savings plans, and Social Security benefits. Options such as money purchase plans, profit-sharing plans, employee stock ownership plans, stock bonus plans, and IRS non qualified plans are not covered in this Manual.

### **Employer Pension Plans**

The typical pension plan pays the retiree either a definite monthly payment fixed by contract, or an amount determined at retirement on the basis of contributions from the employer and employee. All employer contributions to the pension fund, within applicable limits, are tax-deferred, as is the income, until distribution to the employee.

Generally, there are three types of pension plans:

1. **Defined benefit plan** - This plan provides for a definite pension payment for each employee and annual contributions are fixed at whatever amount is necessary to produce that benefit.
2. **Target benefit plan** - This plan aims for a deferred benefit and calculates the contribution needed to produce that amount, but the benefit is not guaranteed and will be whatever the contributions actually produce.
3. **Defined contribution plan** - This plan establishes a contribution amount and pays whatever amount is generated by the contributions.

Annual contributions to defined-contribution plans are limited to the lesser of \$45,000 (2007) or 100% of the employee's annual compensation. Defined benefit plans may pay annual benefits not to exceed \$180,000 (2007). These amounts are indexed for inflation or 100% of the average of the employee's highest three consecutive years of compensation. The maximum annual benefits are adjusted for cost-of-living increases.\*

The individual will usually have three payout options at retirement:

1. Annuity
2. Lump-sum distribution
3. Lump-sum distribution with tax-deferred roll-over

A lump-sum distribution of previously untaxed funds is fully taxable as ordinary income in the year when the distribution is made. Taxation can be reduced or deferred if the recipient utilizes income averaging or transfers the distribution directly into an individual retirement account (IRA) or other qualified pension fund.

Distributions from a qualified pension plan generally must commence no later than April 1 of the calendar year following the calendar year in which the participant attains age 70 ½.

Early distributions (before the participant reaches age 59 ½) from any qualified retirement plan result in an additional 10% income tax. Exceptions are allowed if the employee is disabled or has attained age 55, terminated employment, and has qualified for early retirement under the pension plan.

### Individual Retirement Account (IRA)

There are two eligibility requirements for establishing a tax-deductible IRA:

- (1) The individual must earn annual compensation equal to the contribution to the IRA, and
- (2) the individual generally must be under age 70 ½ at the end of the year.

Where the individual's employer maintains a qualified retirement plan, there are limitations on the size of the tax deductible contribution that an employee can make to an IRA.

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\* Specific contribution or deduction limits used throughout this chapter are subject to change. Please refer to current regulations.

The limitation is as follows:

<b>Year(s)</b>	<b>Individual Contribution Limit</b>	<b>Additional Catch-up Contribution for Age 50+</b>
2008-2011	\$5,000	\$1,000

The contribution limits for married couples are equal to two times the above limits in each plan year. For example, in 2011, a married couple, both of whom are over age 50, may contribute a total of \$12,000.

Couples with a non-working spouse may deduct up to \$5,000 in 2011 to each of two separate IRAs (one for the employee, one for the spouse), up to a maximum of \$10,000 (plus catch up as above). Contributions may not exceed 100% of the working spouse's income. The IRA deduction is phased out when income reaches a certain amount set by the government each year. A person who does not qualify to deduct the IRA amount may still make non-deductible IRA contributions. Regular contributions, for most people, must be made by the *unextended* due date of the tax return for the year in question excluding extensions. For example; a deductible contribution for 2011 may be made at any time after December 31, 2010, and on or before April 15, 2012.

Contributions may be made to a traditional IRA any time before the participant reaches age 70 ½. IRA funds may be invested in bank CDs, stocks, bonds, money market mutual funds, and certain qualified real estate investment funds. The law prohibits investment of IRA funds in life insurance, collectibles such as coins (exceptions for United States coins used as legal tender), precious metals, stamps, and art.

Distributions from an IRA are taxable as ordinary income when payment is received. Distributions may begin no earlier than the year in which the individual reaches age 59 ½ and no later than the year when the individual reaches 70 ½. The minimum withdrawal schedule is based on the recipient's life expectancy. Early withdrawals are subject to a penalty tax of 10%, in addition to the ordinary income tax.

Lump-sum distributions from an employer's qualified retirement plan may be rolled over into an IRA. At death, the full value of an IRA is included in the individual's estate and any distribution to beneficiaries continues to be subject to ordinary income tax.

When an individual dies, the beneficiary of an IRA may receive the fund balance in one of the following ways:

1. If the beneficiary is the surviving spouse, that person may treat the IRA as his/her own IRA. This allows deferral of distribution until the year in which the beneficiary reaches age 70 ½.
2. If the decedent had already started to receive periodic payments, the beneficiary has the option to continue the same payment schedule. Regardless of the beneficiary's age, there is no premature withdrawal penalty.

3. The entire balance may be distributed within five years of the IRA owner's death, in lump sum, or by periodic payments.

## Roth IRA

Roth IRAs can now be created with an after-tax contribution of up to \$5,000 (2011) per year for an employed person and up to an additional \$5,000 (2011) per year for a non-working spouse. Catch up provisions for employees 50 years of age and over permit an additional \$1,000 per year contribution. After 2008 the limit will be annually indexed in \$500 increments, adjusted for the cost-of-living. Withdrawals after age 59 ½ are tax-free. There is no required withdrawal at age 70 ½. Also, additional contributions may be made after age 70 ½. There are limitations on contributions for higher income tax payers and for some tax payers depending on filing status. Consult competent legal or tax counsel. Limitations are also available at <http://www.irs.gov/retirement/participant/article/0,,id=202518,00.html> or in IRS Publication 590.

## 401(k) Plans (commonly known as salary reduction plans)

Section 401(k) of the Internal Revenue Code allows an employee the option of receiving current salary or having the employer make tax-deferred payments to the employee's account. The amount that the employee elects to have the employer pay into the plan is tax-free until withdrawn or distributed.

The law limits employee contributions to a 401(k) and 403(b) plans to \$16,500 in 2011. The total annual contribution by the employer and the employee may not exceed the lesser of \$49,000 in 2011 or 100% of employee compensation. In 2010 and later years total contributions will be indexed to inflation and can move up in \$1,000 increments.

The IRS allows for additional catch-up contributions to 401(k) plans applicable to employees aged 50 and over. In 2011 the catch up contribution is \$5,500. This means that in 2011, an employee aged 50 and over before the end of the calendar year can contribute up to \$22,000 (\$16,500 + \$5,500) to their 401k plan on a pre-tax basis.

The rules regarding the distribution and taxation of IRAs also apply to 401(k) plans.

## Annuities

Annuities provide a steady stream of fixed income for a long period of time and may be an attractive supplement to pension plans. Commercial annuities may be purchased from an insurance company or other source.

The contract may provide payments for a definite term or for the life of the annuitant. It may call for fixed or variable payments. The fixed annuity pays a steady rate of interest while the variable annuity produces a fluctuating return.

The income taxation of annuity payments is based on the following factors:

1. The portion that represents the return of the annuitant's principal contribution is tax-free.
2. If the transferred asset has associated capital gains, the portion representing the capital gain will be taxed as capital gains for payments received during the period of life expectancy, but as ordinary income if received after this period.
3. The remaining portion is taxed as ordinary income.

### Tax-Sheltered Annuities

Employees of public school systems and section 501(c) (3) non-profit organizations may also participate in a Tax-Sheltered Annuity (TSA) program qualified under section 403(b) of the Internal Revenue Code.

Income contributions made by the employer or employee to approved plans (usually annuities or mutual funds held in a custodial account) are not taxed until payments are received by the employee under the annuity contract. Premature distributions are subject to the same rules applicable to defined contribution plans. However, a TSA account can be rolled over to another TSA account or an IRA account, subject to restrictions currently imposed by revenue regulations.

Employees may contribute up to 20% of their annual compensation multiplied by the number of years of employment, under an agreement with their employer. The annual contribution may not exceed the limits defined in section 403(d)(1)(E).

### **Social Security Benefits**

Retirement planning is incomplete without taking into consideration the impact of Social Security benefits. The Social Security Act provides for a broad range of cash and health benefits, including old age (retirement), survivors, and disability insurance benefits (OASDI).

Social Security benefits are based on an individual's fulfillment of the following requirements during his or her working life:

1. The individual must have been an employee or been self-employed. Workers are considered employees when they are under an employer's control in matters such as being hired or suspended, working set hours, or submitting reports. Corporate officers, full-time salespersons, and home workers are ordinarily considered employees. Independent contractors and business partners, on the other hand, are not employees.



2. The individual's job must be covered employment. The major types of employment not covered by Social Security include:
  - A. Federal government employees hired before January 1, 1984.
  - B. Employees of non-profit organizations, prior to January 1, 1984, who did not arrange for Social Security coverage.
  - C. State/local government employees for whom coverage has not been arranged.
  - D. Railroad workers.
  - E. Some agricultural and domestic workers.
3. The individual must pay Social Security taxes on wages received or net earnings from self-employment.
4. The individual must accumulate sufficient quarters of coverage, based on earned income, to give the insured the status needed for a particular benefit.

### Receiving Benefits

Both the worker and the worker's spouse are entitled to Social Security benefits. Eligibility begins when the worker reaches age 62, provided that he or she has become fully insured by earning 40 consecutive quarters of coverage or one quarter for each calendar year between 1950 or age 21 (whichever is later) and retirement age or death.

Workers who apply for benefits at the full retirement age of 65 or later for those born after 1937 will receive the full primary insurance amount to which they are entitled. Benefits received by persons who retire between ages 62 and the full retirement age are paid at a permanently reduced rate.

Year of Birth	Full Retirement Age
1937 or earlier	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943—1954	66
1955	66 and 2 months
1956	66 and 4 months

1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 and later	67

*\*If you were born on January 1st of any year you should refer to the previous year.*

The worker's spouse is also eligible for Social Security benefits if he or she is at least 62, has the care of a disabled child, or has a child under age 16. The amount paid to a spouse is one-half of the amount paid to the worker. In order to qualify for spousal benefits, the spouse must have been married to the worker for at least one year, and he or she must be the parent of the worker's child.

The unmarried, divorced spouse who was married to the worker for at least ten years becomes eligible for spousal benefits at age 62. The benefits are lost upon remarriage.

The worker's dependent, unmarried children are also entitled to benefits if they are below age 18 or over age 18 and disabled. The child's benefits are terminated when he or she attains age 18 and is not disabled, or when the child marries.

The parent of a deceased worker who was fully insured is also entitled to benefits if he or she was the natural parent of the worker, the adoptive parent of the worker before he or she reached age 16 or the stepparent of the worker before the worker attained age 16. The parent must be at least age 62, must not have married since the worker died, must have been dependent upon the worker at the time of the worker's death, and must have applied for benefits.

Under the "higher benefits" rule, a person who is already (as a worker) entitled to Social Security or disability benefits which are larger than the proposed benefits arising from another worker's benefits will continue to receive those larger benefits, rather than qualify for the spouse's, children's, or parent's benefits.

### Lump-Sum Death Payment

The sum of \$255, or three times the worker's primary insurance amount, whichever is less, is payable to the deceased worker's surviving spouse who was living in the worker's household at the time of death. If there is no qualified surviving spouse, the death benefits are paid to the person who was entitled to the widow's benefits or the parent's benefits at the time of death. The application must be filed within two years of the date of the worker's death.

### Disability Benefits

Disability benefits are paid to the worker and his or her surviving spouse who becomes disabled. In order to qualify, the worker must be under age 65, have been disabled for at

least five consecutive months, continue to be disabled, and have insured status for disability.

A worker has insured status for disability if:

1. The worker would have been fully insured if the worker had attained age 62 and applied for old-age benefits when disability began; and
2. In the quarter when the worker's disability began, the worker had at least 20 quarters of coverage in a 40 quarter period ending with that quarter, or the worker became disabled in a quarter before age 31 and had quarters of coverage in one-half of the quarters from the quarter the worker attained age 21 and the first quarter of disability, or the worker is disabled by blindness. In addition, the worker must satisfy all the requirements for disability as defined by the Social Security Administration. Disability payments end when the disability ends, the worker becomes 65 years old (at which time he/she begins to receive retirement benefits), or the month before the worker dies.

#### Payment of Benefits

The amount of Social Security retirement benefits is based upon the worker's "primary insurance amount" (PIA), which in turn is based on the worker's "average indexed monthly earnings" (AIME). A person's AIME is determined by using the tables provided by the Social Security Administration and the elapsed years (after 1950 or the year after age 21, up to the year before the year of death, disability, or attaining age 62), less five years, and the earnings for each year (deleting the five years of lowest earnings).

A portion of the Social Security benefits is included in the recipient's taxable income if the recipient's adjusted gross income, plus non-taxable interest income and one-half of the Social Security benefits, exceeds the base amount. The base amount for a single taxpayer is \$25,000 and \$32,000 for a married couple filing jointly. There is no exclusion available for couples who file separately. The amount included as taxable income is the lesser of one-half of the benefits or one-half of the excess amount.

Benefits are increased automatically each January, based on the Consumer Price Index. Workers who delay retirement beyond age 65 are entitled to an increase in retirement benefits of 0.25% for each month they postpone retirement (3% per year). The delayed retirement credit will be gradually increased to 8% per year between 1990 and 2008.

If a person works and is full retirement age or older, there is no reduction of benefits regardless of the amount earned.

Retirement benefits for workers under age 65 who continue to work will be reduced if the worker's earnings exceed the annual limit. If a person is younger than full retirement age, there is a limit to how much can be earned and still receive full Social Security benefits.

An employed person younger than full retirement age during all of 2011, will lose \$1 from benefits for each \$2 earned above \$14,160.

## **Medicare**

Medicare is a health insurance program for persons age 65 and over and for some disabled persons. The program is administered by the Health Care Financing Administration and the Social Security Administration (SSA) within the Department of Health and Human Services (DHHS). DHHS contracts with private insurance companies for processing of payments to health care providers and patients. Companies called “fiscal intermediaries” are selected by the service provider (the Blue Cross Company, in many states) and companies called “carriers” are selected by DHHS. Specific claims for coverage are handled by the fiscal intermediary or the carrier. Inquiries and complaints about the programs should be made at the local Social Security district office.

### **Medicare Benefits: Part A and Part B**

Medicare benefits consist of two parts. Part A (hospital insurance) provides hospital benefits, limited post-hospital skilled nursing facility care, part-time home health services, and hospital care. Medicare beneficiaries pay the deductibles and co-payments to the provider.

Persons age 65 or older, who are entitled to retirement benefits as insured workers, or as the dependents or survivors of a worker, are eligible for Part A benefits. Persons under age 65 who are entitled to Social Security disability benefits, or who have end-stage renal disease, are also eligible for Part A benefits. U. S. citizens or permanent residents (those who have resided in the United States for five years) who are age 65 or older may purchase Part B coverage (by paying a monthly premium), if they are entitled to Part A coverage.

Part B (supplemental medical insurance) is a voluntary program of health insurance that covers physician’s services, certain outpatient services, home health care, diagnostic tests, and medical appliances. Enrollees for this coverage pay monthly premiums; the government matches this amount from general funds.

Persons who are entitled to Part A insurance are eligible to enroll in Part B. Persons who have resided in the U. S. for five years (citizen or permanent resident) may also enroll in the program. After an annual deductible of \$100, Part B pays 80% of the patient’s covered expenses.

### **Private Health Insurance (“Medigap”) Policies**

Private health insurance can be combined with Medicare coverage. The available policies include the following:

1. Medicare Supplement - This policy will pay for some or all of Medicare's deductibles and co-payments. However, most of these policies do not pay for expenses outside Medicare coverage.
2. Hospital Indemnity Benefits - This policy pays a fixed amount for each day the insured is hospitalized, up to a designated number of days.
3. Catastrophic or Major Medical Expenses - This policy helps cover the high cost of serious illness or injury, including some health services not covered by Medicare. To help consumers in selecting supplementary insurance coverage, DHHS has certified policies that meet or exceed certain content and benefit-payment standards.
- 4.

#### Medicare Benefits: Part D-Prescription Drug Coverage

Beginning on January 1, 2006, everyone with Medicare, regardless of income, financial resources, health status, or prescription drug usage, is eligible for prescription drug coverage under a variety of plans, premiums and co-payments. Medicare prescription drug coverage is insurance that covers both brand-name and generic prescription drugs at participating pharmacies. If the eligible participant does not sign up for the prescription drug coverage when first eligible, there may be a penalty at later enrollment.

The decision about Medicare prescription drug coverage depends on the kind of health care coverage the participant has. There are two ways to get Medicare prescription drug coverage. The eligible participant can join a Medicare prescription drug plan or a Medicare Advantage Plan or other Medicare Health Plan that offers drug coverage

#### Long-Term Care Coverage

Long-term care insurance covering nursing home and home health care is also available. It is important to make certain that the policy covers custodial care, since Medicare does not pay for this. The policy should also provide for several years of costs and cover a substantial portion of the average daily cost of nursing home care.

### **Medicaid**

Medicaid is a joint federal-state program of medical assistance to eligible needy persons. In addition to the following federal requirements, state law should be consulted, as it may be more restrictive. Basic Medicaid benefits include inpatient hospital services, nursing home care, and physicians' services. Some states provide additional services such as diagnostic tests and services, rehabilitation, prescribed drugs, eye glasses, dental care, etc. To be eligible for Medicaid, a person must meet two basic criteria:

1. The person must be eligible for Supplemental Security Income (SSI) or Aid to Families with Dependent Children (AFDC) programs, and

2. The person must be financially needy. The states may differ in their application of various requirements and benefits. The local state office administering the Medicaid program should be contacted for details.

In some states a person must also be medically eligible requiring a level of nursing home care to receive Medicaid benefits.

### Financial Responsibility of Spouse

Federal law allows states to consider the income and resources of both spouses in determining whether one spouse is financially qualified for Medicaid. The application of these “deeming” rules depends on the spouses’ living arrangements. The income and resources of spouses living together in the same household will be deemed available to either one of them, even if the “needy” spouse makes no actual contributions to the other.

If spouses cease to live together and only one is eligible for Medicaid, the income and resources of the ineligible spouse will be deemed available to the eligible spouse only until the end of the month of separation. If the separation is based on any reason other than admission to a care facility, both spouses’ incomes and resources are deemed available to one another for six months following the month of separation.

### Residential Property

“Depending on the state, nursing home residents do not have to sell their homes in order to qualify for Medicaid. Under the DRA (Deficit Reduction Act 2006) on , principal residences may be deemed noncountable only to the extent their equity is less than \$500,000, with the states having the option of raising this limit to \$750,000. In some states, the home will not be considered a countable asset for Medicaid eligibility purposes as long as the nursing home resident *intends* to return home; in other states, the nursing home resident must prove a *likelihood* of returning home. In all states and under the DRA, the house may be kept with no equity limit if the Medicaid applicant's spouse or another dependent relative lives there.” [http://www.elderlawanswers.com/elder\\_info/elder\\_article.asp?id=2751#2](http://www.elderlawanswers.com/elder_info/elder_article.asp?id=2751#2)

Pursuant to a court judgment, a lien on otherwise exempt real property may be imposed. If the state can prove that a person will not return home and there is no spouse, minor, blind, or disabled child residing in the house, a lien may be placed on the home. The lien is dissolved when the recipient is discharged from the institution and returns home. At the recipient’s death the property would be sold and proceeds used to satisfy the state’s claim.

### Transfer of Assets

A major rule of Medicaid eligibility is the penalty for transferring assets. States can "look back" to find transfers of assets for a certain number of months prior to the date he or she applies for Medicaid.

For transfers made prior to enactment of the Deficit Reduction Act on February 8, 2006, state Medicaid officials will look only at transfers made within the 36 months prior to the Medicaid application (or 60 months if the transfer was made to or from certain kinds of trusts). But for transfers made after passage of the DRA the so-called “look back” period for all transfers is 60 months.

If a transfer of assets for less than fair market value is found, the State must withhold payment for nursing facility care (and certain other long-term care services) for a period of time referred to as the penalty period which is a period of time during which the person transferring the assets is ineligible for Medicaid.

The length of the penalty period is determined by dividing the value of the transferred asset by the average monthly private-pay rate for nursing facility care in the State.

Example: A transferred asset worth \$100,000, divided by a \$5,000 average monthly private-pay rate, results in a 20-month penalty period. There is no limit to the length of the penalty period.

“The second and more significant major change in the treatment of transfers made by the DRA has to do with when the penalty period created by the transfer begins. Under the prior law, the 20-month penalty period created by a transfer of \$100,000 in the example described above would begin either on the first day of the month during which the transfer occurred, or on the first day of the following month, depending on the state. Under the DRA, the 20-month period will not begin until (1) the transferor has moved to a nursing home, (2) he has spent down to the asset limit for Medicaid eligibility, (3) has applied for Medicaid coverage, and (4) has been approved for coverage but for the transfer.

For instance, if an individual transfers \$100,000 on April 1, 2007, moves to a nursing home on April 1, 2008, and spends down to Medicaid eligibility on April 1, 2009, that is when the 20-month penalty period will begin, and it will not end until December 1, 2010. How this change will be implemented from state-to-state will be worked out over the next few years.”

[http://elderlawanswers.com/elder\\_info/elder\\_article.asp?id=2751#3](http://elderlawanswers.com/elder_info/elder_article.asp?id=2751#3)

For certain types of transfers, these penalties are not applied. The principal exceptions are:

- Transfers to a spouse, or to a third party for the sole benefit of the spouse;
- Transfers by a spouse to a third party for the sole benefit of the spouse;
- Transfers to certain disabled individuals, or to trusts established for those individuals;
- Transfers for a purpose other than to qualify for Medicaid; and
- Transfers where imposing a penalty would cause undue hardship.

## Resource Allowance for Community Spouse (Medicaid)

Concern for the spouse remaining at home after one spouse is admitted to a nursing home is a major concern. At what point is the nursing home spouse eligible for Medicaid benefits for long term care? Generally, the initial assessment required to answer this question should be done as early in the nursing home stay as practical.

Asset eligibility determination for married persons when only one of them is in the nursing home requires calculating the Protected Spouse Amount (aka Community Spouse Resource Allowance). The PSA is the amount of assets the community spouse will be allowed to keep for his or her own needs in addition to the applicant's resource allowance of \$2,000.

The PSA is an amount equal to half of the total countable assets as of the initial assessment date or *snapshot date*, but not less than \$21,912 (2011) and no more than \$109,560 (2011) unless another amount is established through a Medicaid hearing or by court order. Generally, the snapshot date is the date that represents the first period after September 30, 1989, that the applicant has been in a hospital for a continuous period of 30 days or more. This date certain could have occurred years in the past and may present challenges in recovering records for these long ago events. In most cases (hopefully) the event that led to the need for Medicaid planning for which services are required will be the event that triggers the snapshot date.

The basic formula for determining how much must be spent (spend down amount) so that the nursing home spouse is eligible for long term care benefits is summarized as follows:

Countable assets on snapshot date  
Less: Protected spouse amount  
Less: Nursing home spouse asset allowance (\$2,000 typically)  
Equals the Medicaid spend down amount

Notice these examples:

- Example 1: Countable assets on the snapshot date are \$25,000. The PSA is \$21,912. The amount necessary to spend down before application is \$1,088 ( $\$25,000 - \$21,912 - \$2,000 = \$1,088$ ).
- Example 2: Countable assets on the snapshot date are \$100,000. The PSA is \$50,000 (50% of countable assets). The amount necessary to spend down before application is \$48,000 ( $\$100,000 - \$50,000 - \$2,000 = \$48,000$ ).
- Example 3: Countable assets on the snapshot date are \$300,000. The PSA is \$109,560 (maximum allowed). The amount necessary to spend down before application is \$196,360 ( $\$300,000 - \$101,640 - \$2,000 = \$188,440$ ).

Generally, it is not necessary at the time of application for the assets used to establish a PSA to be titled in the name of the community spouse. A community spouse has one year



from the date of eligibility to remove the name of the Medicaid beneficiary from the assets. This is called the presumed asset eligible period.

Once a married applicant is qualified for benefits, the community spouse's assets may increase through inheritance, income, lottery winnings, or in any other manner, and this increase will have no effect on the ongoing eligibility of the institutionalized spouse.

Spend down funds can generally be used for paying off debt (e.g. home equity loan), repairs or painting home, exempt automobile repairs (new tires, repairs etc.) furnishing for nursing home spouse's room (e.g. rocking chair, television), and prepaying funeral/burial arrangements for both spouses. Knowledgeable legal counsel should be consulted regarding spending down resources to preserve eligibility for long term care benefits.

## **Supplemental Security Income (SSI)**

The Supplemental Security Income (SSI) program is a federal program, involving state participation, which provides a minimum level of income for certain categories of needy persons. Unlike Social Security, eligibility for SSI is not based on employment. SSI benefits are paid to the aged, blind, and disabled whose income and resources fall below a specific minimum standard.

In order to be eligible for SSI benefits, a person must be age 65 or older, legally blind, or disabled. Only U. S. citizens or permanent resident aliens who are present in the U. S. for 30 consecutive days will be eligible to apply for benefits. Aliens must be permanent residents for three years before becoming eligible.

### **SSI Income Limits**

Allowable income limits vary by state. Social Security Administration should be contacted for assistance in calculating allowable income.

Social Security does not count all of an applicant's income when determining eligibility for SSI. For example, the following are not counted:

- The first \$20 a month of most income received;
- The first \$65 a month earned from working and half the amount over \$65;
- Food stamps;
- Shelter you get from private nonprofit organizations; and
- Most home energy assistance.

### **SSI Resource Limits**

Persons whose resources exceed \$2,000 for single persons and \$3,000 for married couples may be ineligible for SSI benefits. Some assets are excluded, such as the claimant's home, household goods, and personal effects with current value up to \$2,000, motor vehicles with current market value of up to \$4,500, life insurance policies of up to

\$1,500 face value, and a burial expense fund of up to \$1,500. SSA Form 795 is used to set up a separate bank account within 30 days of filing an SSI application.

### Transfer of Resources

Includable assets that are transferred to another person for less than fair market value within 24 months of application are counted as an available resource. Records of sales should be kept and the proceeds should be used to improve the home or pay bills.

While the applicant's home is an excludable asset and could be transferred without jeopardizing one's eligibility for SSI benefits, such a move may make the owner ineligible for Medicaid benefits.

## **Planning for Incapacity**

Elderly persons sometimes become incapacitated so that they are unable to conduct business, manage their property, or make personal care decisions. This possibility should be recognized and plans made to provide for substitute decision-making, should the need arise.

Three legal devices are commonly used in planning for incapacity:

1. Advance Directives including the durable power of attorney, power of attorney for health care and living will.
2. The revocable living trust.
3. Joint tenancy with right of survivorship.

In the event that these mechanisms are inadequate, a conservatorship may become necessary.

### **Advance Directives**

#### Durable Power of Attorney

A power of attorney is a written instrument by which one person (the "principal") appoints another as his/her agent (the "attorney-in-fact") and gives broad powers to the agent in all areas involving the principal's business transactions and his/her property. A special power of attorney limits the agent's authority to specific areas enumerated in the document.

The validity of an ordinary power of attorney rests upon the requisite legal capacity of the principal to understand the nature of his/her act. Therefore, when the principal becomes incapacitated, the power of attorney is voided. For this reason, the ordinary power of attorney is useless when dealing with mental disability.

Most states have now enacted statutes authorizing a durable power of attorney that survives the incapacity of a principal.

1. It must be in writing.
2. The instrument should contain the following or similar language: “This power of attorney shall not be affected by the subsequent disability of the principal or by a lapse of time.”
3. The principal must have legal capacity to make the appointment at the time the power is created.
4. Some states require witnesses to the execution of the document, in addition to notarization.
5. Some states require recordation of powers of attorney.

State law should be consulted to make certain that all requirements are satisfied.

A durable power of attorney is intended as an alternative to a conservatorship. It will usually confer upon the agent the powers exercised by a trustee or conservator. Any limitation of powers should be expressly stated in the instrument (such as a limitation on the power to revoke trusts, etc.).

The durable power of attorney may also provide for the nomination of a conservator, should such appointment become necessary. In some states, the appointment of a conservator automatically revokes the power of attorney.

A power of attorney terminates when it is revoked by the principal, upon the death of the principal, or upon the expiration of the term specified in the instrument, if any. Good faith acts of an attorney-in-fact who has no actual knowledge of the principal’s death are binding on the principal’s successor in interest, unless otherwise invalid or unenforceable. Third parties often require the attorney-in-fact to execute an affidavit stating that the agent had no actual knowledge of the termination of his/her authority by revocation or the death of the principal.

Most states allow a “springing power” which creates the power of attorney upon the incapacity of the principal. This is usually accomplished by providing a mechanism for determining incapacity. For example, the instrument might require a certification by two parties (other than the agent), one of which may be the principal’s physician, to certify that the principal is no longer able to conduct his/her business affairs.

## Durable Power of Attorney for Health Care

Some statutes provide for the use of a durable power of attorney authorizing the person acting under the power of attorney to delegate health care decision-making power to another who is authorized to give consent, refusal of consent, or withdrawal of consent for health care.

Specific procedures are required in the execution of the health care instrument. For example, one state requires that a patient advocate witness the document if the principal is a patient in a skilled nursing facility.

Other states provide for an expiration date for the health care power of attorney that is automatically extended if the principal is incapacitated. The health care instrument may also provide for the nomination of a conservator to care for the principal's person.

The durable power of attorney for health care is also useful in authorizing the agent to make decisions regarding the use of life-sustaining medical treatment.

## Living Will

Some jurisdictions have authorized the use of a "living will." This document allows an individual to express his/her preferences for the type of treatment he/she wishes to receive under certain circumstances, in the event that he/she is no longer able to make these decisions. Some health care providers prefer the durable power of attorney for health care to living wills because it authorizes another individual, besides the medical practitioner, to make decisions for the patient.

## Revocable Trust

A revocable trust can be an effective tool in transferring management functions to another person in the event of incapacity. The trust may be funded at the time of its creation or it may be funded at the time of the trustor's incapacity through the use of a durable power of attorney (where local rules allow).

One advantage of the revocable trust is that it allows the trustor to retain control of his/her affairs while he/she is competent, yet provides asset management if he/she becomes incapacitated.

## Joint Tenancy with the Right of Survivorship

A useful, but limited, mechanism for providing management of certain assets for an elderly person is joint tenancy with right of survivorship. This allows the "non-owner" joint-tenant to step in and care for assets in the event of incapacity. It also removes the asset from the individual's estate. Such an asset is no longer subject to the individual's will or trust.

Generally, this method is recommended for small bank accounts that permit the withdrawal of funds by the “non-owner” to cover the expenses of the elderly person. When this is done, it is recommended that some written document be executed by the parties to state the intention of the owner of the funds and any terms controlling the use of the funds in the account.

## **Conservatorship**

Traditionally, a conservatorship is established when a person is adjudicated to be mentally incompetent. In some jurisdictions, however, conservatorship does not carry with it the stigma of mental incompetency or insanity. For example, the California Probate Code provides that a “...conservator may be appointed for a person (a) who is unable to properly provide for his personal needs for physical health, food, clothing, or shelter or (b) who is substantially unable to manage his own financial resources or resist fraud or undue influence.”

Generally, conservatorships deal with two aspects of an individual’s affairs. The conservator of the person deals with the personal needs involving the physical well-being of the conservatee. The conservator of the estate deals with the management of the property and the financial affairs of the conservatee. Depending on the circumstances, the court may appoint one conservator of both the person and the estate, or two conservators, one for each of these areas.

A conservator must behave like a trustee in the broadest sense of the term. He/She is under an obligation to the conservatee to deal with the property for the conservatee’s benefit. Also, like a trustee, a conservator has a fiduciary relationship with the conservatee. The functions of a conservator are narrower than those of a trustee. A conservator is appointed only if a person is incapacitated. The powers of a conservator are fixed by state statute and do not depend upon the terms of any written instrument. In many states, a conservator’s powers of investment are narrower than those conferred upon a trustee, even in the absence of provisions in the terms of the trust. The conservator’s authority does not extend beyond the jurisdiction of the court that appointed him/her, although a trustee who has title to the trust property can exercise its powers outside the court’s jurisdiction.

The conservator should exercise his/her own judgment and discretion in matters relating to the ward, but remains subject to judicial supervision. The conservator is entitled to compensation (at the court’s discretion) for services rendered, but where the matter is regulated by statute, compensation may be allowed only in cases falling within the purview of the statute.

## Nomination and Appointment

Those states that have instituted voluntary conservatorship allow individuals to nominate a conservator while they are mentally and physically competent. That nomination takes effect upon the prospective conservatee's disability.

As a general rule, an individual's legal incapacity must be judicially determined before a conservator is appointed. Statutes identify those persons who are authorized to initiate such proceedings. Usually, the application is made by written petition and provides sufficient facts to give the court jurisdiction and to justify the appointment of a conservator.

Notice of the proceedings must be given to all persons specified by the statute, although it is sometimes held to be unnecessary to give notice to anyone other than the alleged incompetent. It is sometimes required, and usually advisable, to give notice to members of the alleged incompetent's family or next of kin. This notice must be in writing, conform to the statutory requirements, and should be served in the manner prescribed by statute or in accordance with local practice. In most jurisdictions, third parties may waive notice; however, there is disagreement among authorities as to whether or not the alleged incompetent may waive notice.

Some jurisdictions require that the alleged incompetent be present before the court when the application is heard, and under some statutes a *guardian ad litem*, that is, a guardian for the purpose of this litigation, must be appointed.

The question of appointing a conservator may, and in some jurisdictions must, be submitted to a jury. In some states a commission must be appointed to examine the alleged incompetent and determine whether a conservator should be appointed. The presumption, until disproven, is that the alleged incompetent has legal and mental capacity. There must be clear evidence of the statutory grounds for the appointment and of the necessity for intervention by the court.

The court has wide discretion in the selection of a conservator. While the court will consider the recommendations of all interested persons, the paramount factor is the welfare of the incompetent individual. Therefore, the court may appoint any proper person as conservator and is not bound to appoint the petitioner.

## Administration of the Estate

Upon appointment, the conservator should immediately begin to collect the individual's assets. All of the conservatee's assets should be located and taken into possession. As soon as this is done, an inventory and appraisal of these assets should be prepared. This provides the court and all concerned parties with a starting point for all of the conservator's accountings.

After completing the inventory, the conservator should review the assets to determine what investment changes should be made, if any. In most states, investment changes must be approved by the court or be in harmony with the controlling statute. The conservator, in the absence of statutory authorization, ordinarily has no power to sell or lease real property without a court order.

#### Duties and Liabilities of the Conservator

The conservator of the estate is obligated to protect the interests of the conservatee. The conservator must file an inventory of the ward's estate as required by statute. He/She has the duty and right to marshal the assets of the ward and to collect the debts and obligations owed to the estate.

The conservator is not liable for the contracts of the conservatee, but he/she may be liable on his/her own contracts; likewise, the conservator may be liable individually in tort for an injury caused by his/her negligence in the management of the conservatee's estate.

The conservator, or de facto guardian, is required to account for the management of the estate and ordinarily must render periodic accounts (at least annually) of the administration of the estate, including a final report on the termination of his/her office. The conservator must account for all of the conservatee's property which came into his/her possession by the exercise of his/her office. He/She is accountable for rents and profits derived from the estate, and if he/she permits the conservatee's money to remain idle for an unreasonable time, he/she is liable for lost interest.

On the other hand, the conservator is entitled to credit in his/her account for all reasonable expenditures, such as those made for the support of the conservatee and his/her family, including legal fees incurred through any litigation necessary to protect the estate, etc.

Various persons, such as the personal representative of the conservatee, any heirs or creditors, the surety on the conservator's bond, or the Veterans Administration (in the case of an incompetent veteran), may require an accounting by the conservator or may be necessary parties to any proceedings for the settlement of conservatorship accounts.

Ordinarily, all accounting expenses are to be borne by the estate.

If and when the conservatee is restored to legal competency, a settlement may be made between the conservator and the conservatee with regard to the estate. However, upon the resignation of a conservator and appointment of a successor, the original conservator must account to his/her successor in office, and if the original conservator is deceased, his/her personal representative must make the accounting to the successor.

## Liabilities Of and Claims Against the Estate

The conservatee's property should not be applied to the reconciliation of his/her general indebtedness, as distinguished from claims for his/her present maintenance, until a sufficient fund is set aside for his/her support and that of his/her family. The conservatee's estate generally is liable for reasonable attorney fees incurred in the protection of personal property, and ordinarily the conservator is authorized to pay all valid debts and claims against the conservatee.

The court with jurisdiction over the estate may, and should, see that the conservatee's proper care and comfort are provided for out of the funds under its control. If the estate is sufficient, the conservatee should be maintained in that degree of comfort to which he/she had become accustomed when legally competent. In this regard, estate income should first be applied to the maintenance of the conservatee, reserving the corpus for his/her future support.

### Termination of Conservatorship

The conservatorship of an incompetent person is terminated upon (a) the death of the conservatee, (b) the resignation of the conservator, (c) the exhaustion of the estate, or (d) the restoration of the conservatee to competency.

A person who has been judged incompetent has the right to have his/her competency tested so as to relieve him/her of the disabilities imposed by the adjudication of incompetency. This proceeding for judicial restoration to competency is a special proceeding of a summary nature. It is ordinarily held in the probate court, or the court exercising probate jurisdiction, and the application should be made, if possible, to the court in which the proceedings were held which resulted in the adjudication of incompetency.

When one seeks restoration, the test is whether the original condition has ceased to exist; that is, whether he/she is capable of understanding and acting with discretion in the ordinary affairs of life, whether he/she has so far regained his/her reason as to be capable of managing his/her person and property. There is a conflict of authority as to whether the conservatee may institute the proceedings for restoration to mental competency or is a necessary part thereto; therefore local legal counsel should be sought.

In the absence of a contrary statute, notice of the proceedings for the restoration of competency should be given to all interested persons.

If the relationship terminates as a result of the conservatee's death, the conservator is responsible for managing the estate until a personal representative is appointed, accounting for the period prior to death, and making distribution to the personal representative. If the conservator resigns, he/she must account for all transactions up to the resignation date and make distribution to the successor. If the conservatee is restored to competency, the conservator must account for all transactions up to the date of restoration and make distribution to the restored person. If the estate is exhausted, certain



problems may arise. Several months prior to the exhaustion of the estate, the conservator should estimate the period for which the assets are going to last, account for them, and estimate fees and expenses through termination. The conservator of the person should arrange for public aid after the assets are exhausted.

The court will discharge the conservator after the final accounting and cash reconciliation reflecting the disposition of all funds is filed.

### Gifts from the Conservatee's Estate

Some jurisdictions give conservators the authority to make gifts on behalf of a conservatee, based on the following criteria:

1. The conservatee's incapacity must appear permanent, with no likelihood of recovery.
2. The remaining principal must be sufficient to provide enough income for the foreseeable needs of the conservatee and his/her dependents.
3. The transfers can be made only to those who are the natural objects of the conservatee's bounty.
4. There must be evidence of the donative intent of the conservatee, shown either by his/her former conduct or by a previous relationship and intimacy that indicate that the proposed donees would be objects of the conservatee's bounty.

When the above criteria are met, the court may grant or continue the donations of the conservatee. Generally, the donees involved are children or dependents of the conservatee. It is unlikely that tithes and offerings will be included in this class of gifts unless there is written intention to donate executed by the conservatee while still competent.

### The Conservatee's Estate Plan

While the conservator is empowered to manage the estate of the conservatee, he/she has no authority to thwart the conservatee's estate plan. Care should be taken in the disposition of the conservatee's assets. Those that are not specifically bequeathed or devised in the conservatee's will should not be sold without disclosure to, and authorization from, the court.

The conservator has authority to receive the income from assets held by the trustee on behalf of the conservatee. However, the withdrawal of principal and the revocation or amendment of a revocable trust can only take place under a court proceeding involving the conservator and the trustee. When the court has allowed such action, the trust assets were required for the immediate care, maintenance, and support of the conservatee.

When it becomes absolutely necessary, joint tenancy and Totten trust accounts may also be terminated with court approval. Short of extreme circumstances, courts are generally hesitant to authorize actions by a conservator that would drastically affect the conservatee's estate plan.

## 9. OWNERSHIP INTERESTS AND FORMS

Before a church organization decides whether or not to accept non-cash property as a proposed gift or transfer into trust, it is critical to ascertain how property ownership is held, who or what owns the property, what is actually owned, as well as, how ownership is to be transferred.

A number of forms of property ownership exist. These forms of ownership apply not only to real property but may apply to personal property as well. Planned Giving & Trust Services personnel should acquaint themselves with the various forms of ownership as they will not only be involved with the transfer of property, but will, in all likelihood, be questioned by constituents who do not have a clear understanding of their ownership interest.

### A. Ownership Interests, Generally

As a general rule, real estate may be held in either entire or partial interests, directly or indirectly. An entire interest occurs when ownership is vested solely in one person or entity. Accordingly, a partial interest occurs when ownership is concurrently or consecutively shared by two or more individuals or entities; each sharing a portion of ownership in some legal manner. Individuals directly own property when title is held in their name and indirectly when title is instead held by a separate legal entity in which the individual has an interest, as discussed in Section E below.

### B. Entire Ownership Interest

**Fee Simple Absolute.** In many cases, the owner holds the property in “fee simple”. Fee simple (or simply “fee”) is the largest estate known to the law. It denotes maximum legal ownership, the greatest possible aggregate of rights, powers, and privileges that a person may have in land. These rights include possession, control, enjoyment, and disposition. The owner is entitled to the entire property with unconditional and unlimited disposition during life and descending to the heirs at death. Although fee simple provides the most complete interest in property to the owner, these very broad rights are limited by governmental ordinances and statutes. All other ownership rights consist of partial or indirect interests.

### C. Types of Interests in Land

**1. Undivided Interest.** Joint owners are often said to have an undivided interest. An undivided interest in property is defined as interest in property owned by one or two or more tenants in common or joint tenants, before partition. The interest is held by the same title—by two or more persons—whether their rights are equal (in value or quantity) or unequal. The undivided interest is a fractional interest whereby each owner co-owns each and every right to the same property at the same time in their relative proportions.

**2. Present Interest and Future Interest.** A beneficial interest may be classified as either a present or future interest, depending on whether the owner has the immediate right (present interest) to possess or enjoy the property. The right of the owner of a future interest to possess and enjoy the property is delayed for a specific time period or until a certain event occurs. For example: Ted creates a revocable living trust and retains the right to possess and

enjoy the real estate titled to the trust for his lifetime. Ted's interest is a present interest. The Trust further directs that upon Ted's death the real estate is to be conveyed to Joan and Sylvia. Joan and Sylvia have future interests.

**3. Future Interests.** Future interests are the present right to future use and enjoyment of property which will take place upon the termination of a prior estate. The most common future interests are reversionary and remainder interests and can be either vested or contingent.

**a. Reversionary Interest.** A reversionary interest occurs when an owner transfers less than full rights in the property and reserves the right to get the property back at some time in the future. If the transferor is alive at the appointed time, the property will revert back directly to the transferor; if not, then to the transferor's estate. Reserving a reversionary interest does not mean the transferor retains the right to the use and enjoyment of the property. The reversionary interest is only the right to receive property ownership when the term of the estate transferred terminates. Consequently, it is a future interest. For example: John transfers property, in trust, to Mildred for her life. At her death the property comes back to John, if alive, or to his estate. John has a reversionary interest.

**b. Remainder Interest.** A remainder interest in property occurs when an owner transfers less than entire ownership in property and provides that the property will go to a third party at some time in the future. The remainder owner will be someone other than the grantor or life tenant. For example: Jack conveys the family farm to Susan subject to a life estate for Bill. Susan is the owner of the future remainder interest. She has no rights to possess, use or enjoy the property until the termination of Bill's life estate.

**c. Vested Future Interests.** A vested future interest is one that is not forfeitable. It is an interest the possession and enjoyment of which is delayed *only by time* and is not dependant on the occurrence of a future event. As in the example above, Susan's remainder interest is *vested* because there is nothing to prevent Susan or her estate from receiving possession except the passage of time. With the passage of enough time Bill will die and the remainder interest will mature to Susan or her estate.

**d. Contingent Future Interest.** A contingent future interest is one that is not vested. It is an interest the possession and enjoyment are dependant on the happening of a future event, not on just the passage of time. For example: When James died, his will directed all of his probate assets be invested to earn income for his daughter Jill. At Jill's death, the assets are to be distributed to William if he survives Jill, otherwise to the General Conference. William and the General Conference hold contingent future interests. William's possession of the property is dependant on his being alive when Jill dies. The General Conference's interest is contingent on William predeceasing Jill.

## **D. Consecutive and Concurrent Joint Ownership**

**1. Life Estate (consecutive ownership).** When there is a life estate, the fee interest in the property is divided between two or more parties, typically a life tenant and the owner of

the reversionary or remainder interest. The owner of the life estate (“life tenant”) is given the right as to possession, control, income, and enjoyment of the property for a period of time measured by the life of the life tenant or by the life of another person (“measuring life”). Upon conclusion of the measuring life, the life estate terminates or is extinguished and title then vests entirely in the remainder or reversionary interest holder.

The life tenant bears responsibility to prevent waste through any activity that will diminish the value of the remainder or reversionary interests. Generally, the life tenant must insure the property, pay all taxes, and provide for normal maintenance and upkeep. A life tenant can convey his/her interest in the property to a third person for a term less than or equal to but not greater than the duration of his/her own estate, that is, the term of the measuring life. If a life tenant voluntarily makes improvements, the remainder owners cannot be forced to share the costs of such improvements.

**2. Estate for Years (consecutive ownership).** As with the life estate, when there is an estate for years, the fee interest in the property is divided between two or more parties, typically the owner of the estate for years and the owner of the reversionary interest. The estate for years is similar to the life estate in that the owner of such an estate has the temporary right to possession and enjoyment of the property, but for a specifically stated number of years, rather than the indefinite period of a specified lifetime. Upon expiration of the stated number of years, the estate for years is terminated and title then vests entirely in the remainder or reversionary interest holder. Like the life tenant, the owner of an estate for years must not diminish the value of the future interests and must protect and maintain the property. If he/she voluntarily makes improvements to the property, the remainder owners are not obligated to share the costs of such improvements. The owner of an estate for years may convey his/her interest in the property to a third person, but, again, only for a term less than or equal to the duration of his/her own estate.

**3. Tenancy in Common (concurrent ownership).** Tenancy in common is a form of ownership in which each “tenant”, or co-owner, holds an undivided interest (may expressed as a fraction or percentage) in the property. The sizes of the interests do not have to be equal, but often they will be proportional to the number of co-tenants. Upon the death of one tenant, the decedent’s interest passes to the deceased’s heirs, not to the other co-owners.

**4. Joint Tenancy (concurrent ownership).** Joint tenancy is a form of ownership by two or more parties whereby each holds an *equal* and undivided interest in the whole property, acquired at the same time and by the same instrument. A joint tenancy ownership interest includes the right of survivorship, the operation of which results in a deceased joint tenant’s interest automatically passing to the surviving joint tenant(s). In some jurisdictions the right of survivorship is inherent simply when title is taken as joint tenants. In other jurisdictions, the intent for the right of survivorship to attach must be clear at the creation of the title; otherwise a tenancy in common is created. Some jurisdictions require the express wording “with the right of survivor ship” be used when taking title in order for the right to attach.

Because of the right of survivorship, a joint tenant cannot transfer his or her share to another by bequest. However, the joint tenant has the right to convey or transfer his or her interest in the property to another during life and has the right to compel a partition sale without the consent of

any other joint tenant. However, the transfer by a joint tenant of his/her interest to a third party terminates the joint tenancy as between the transferor's interest and the interest(s) of the remaining tenant(s), creating a tenancy in common.

**5. Tenancy by the Entirety (concurrent ownership).** Tenancy by the entirety is a form of joint tenancy that exists in many states, but not all of them. It is a special form of joint tenancy between married persons. If no survivorship is specified, a tenancy in common results. It is also possible to have a joint tenancy with right of survivorship between spouses, if the tenancy by entirety is not specified. The death of one tenant vests the entire ownership in the survivor automatically. Neither tenant can alienate (transfer) entirety property without the joinder (cooperation or agreement) of the other tenant. In other words, while both husband and wife are alive and married, property can be sold only with the consent and signature of both. Neither tenant may compel a partition of the property. Entirety property is immune from the creditors of either tenant during the lifetime of the non-debtor spouse, but not from the creditors of both tenants.

The tenancy by the entirety terminates upon a joint conveyance by the spouses. Because marriage is a requirement to hold title in this manner, divorce converts the tenancy by the entirety into a tenancy in common.

**6. Community Property (concurrent ownership).** A handful of states have a form of co-ownership of property between married persons known as community property. Those states currently are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. Additionally, the state of Wisconsin has a form of marital property similar to community property, but not designated as such. Alaska is an "opt in" community property state, allowing married persons to designate property as community property by written agreement. Details vary widely between community property jurisdictions. Generally, however, property owned by married persons is characterized as either "community" or "separate." Property that each spouse owns prior to marriage or receives during the marriage by gift or inheritance is that spouse's separate property. All other property acquired during the marriage, including wages and other compensation for services, is community property. Separate property can be "transmitted" into community property by written agreement between the spouses. When separate or community property assets are used to purchase or otherwise acquire new or different assets, the new or different assets retain the character of the assets used to acquire them, and, any income derived from community assets is community property. However, whether the income derived from separate assets is separate or community property varies from state to state. The rights of creditors of one spouse to reach a couple's community property also vary.

Each spouse technically owns an undivided one-half interest in the couple's community property. Each spouse may convey during life or bequeath at death his or her interest in the couple's community property to another. Upon the death of a spouse, in the absence of a bequest to another party, the deceased's interest in the community property passes to the surviving spouse.

Some community property states also recognize the concept of "quasi-community property," generally defined as property acquired by either spouse while domiciled in a non-community

property state that would have been community property had it been acquired while domiciled in a community property state. The concept of quasi-community property typically only comes into play upon divorce of the couple or death of one of the spouses, in which event, if occurring while domiciled in a community property state, the quasi-community property is treated as community property.

## **E. Indirect Forms of Ownership**

Indirect ownership exists when title to property is not held by an individual, but is held by a legal entity in which the individual has an interest.

**1. Partnership Interests.** A partnership is an association of two or more persons for the purpose of carrying on a business as co-owners. There are various types of partnerships available, including general partnership and limited partnership.

**a. The general partnership** imposes unlimited personal liability upon each general partner. If the partnership cannot fulfill a contract or business deal, each partner may be held personally liable for the amount owed.

**b. Limited Partners.** One or more partners contribute capital to the business. Limited partners neither participate in its day-day operations nor have personal liability for business debts and claims. Limited partnerships must be formed by two or more people with at least one person acting as the general partner, who has management authority and personal liability and the other in the role of limited partner.

Planned Giving & Trust Services personnel should exercise great caution and at all times consult with knowledgeable professionals before receiving partnership interests as gifts or transfers into trust. Church entities could be subjected to partnership indebtedness, expense, liability, income tax and unrelated business income tax.

**2. S Corporations.** S corporations are those corporations electing tax treatment under Subchapter S of the Internal Revenue Code. In form, an S corporation acts as a conduit very similar to a partnership. Items of income, expense, and credit retain their character as they are passed through to shareholders. All income is taxed to the shareholders each year. There may not be more than 35 shareholders, and the S corporation may not have more than one class of stock. Subchapter S stock may not be transferred to a Charitable Remainder Trust.

**3. C Corporations.** The most widely used form of ownership for large businesses is the C Corporation. There are a number of advantages to this form of business ownership, among which are: limited personal liability, perpetual life, generally unrestricted transfer of ownership interests, relative ease of acquiring capital, and constitutional rights to the business.

There are also significant disadvantages, among which are: the significant time and energy requirements of shareholders, directors, and management to maintain the corporate status, the generation of much paperwork, the expense required to run the corporation, limitations in ability

to cross state lines for conduct of business, less flexibility than provided by other forms of business, the oppression of minority stock holders by those in the majority, and double taxation.

**4 Limited Liability Company.** A limited Liability Company (LLC) is an entity formed under state law. Unlike a general partnership, none of the members of a LLC are personally liable for the LLC's debts. For income tax purposes a LLC may be classified as a partnership or corporation. If classified as a partnership there is a pass through of the tax characterization of the distributive share to the member. Gifting of such interests can create adverse tax consequences to the charity or charitable remainder trust.

**5. Cooperative Housing Corporations.** A "co-op" is a form of indirect ownership whereby property (typically multi-family residential) is acquired by a cooperative housing corporation. The purchase may be financed by a combination of conventional financing and sale of shares to prospective tenants. In essence the tenant-shareholder holds a proprietary lease providing tenancy to a particular residential unit. The shareholder interest is subject to the liens, debts, and obligations incurred by the corporation.

**6. Trust.** Usually, a property owner has all the rights to possess and enjoy it. Property titled "in trust" divides ownership rights, so that one party (the Trust or Trustee on behalf of the Trust) holds "bare legal title" wherein the Trustee is responsible for managing and preserving the property for the benefit of another, and a second (or more) party is entitled to enjoy the property in specified ways. The former holds the legal interest, while the latter holds the beneficial or equitable interest in the property. The Trust would have direct ownership and the beneficiary (either lifetime or remainder) would have an indirect interest.

## **F. Condominium**

A condominium is a type of joint ownership of real property in which portions of the property are commonly owned and other portions are individually owned. The abbreviated term "condo" is often used to refer to the individual dwelling unit itself in place of the term "apartment" in order to clearly signify property ownership. Condominiums are commonly owned in fee simple title, but can be owned in ways other real estate can be owned either directly (e.g. joint tenant) or indirectly (in trust, by a partnership).

Typically, a condominium consists of units in a multi-unit dwelling where each unit is individually owned and the common areas like hallways and recreational facilities are jointly owned by all the unit owners in the building. It is possible, however, for condominiums to consist of single family dwellings: so-called "detached condominiums" where homeowners do not maintain the exteriors of the dwellings, yards, etc. or "site condominiums" where the owner has more control over the exterior appearance.

A homeowners association or condominium association, consisting of all the members, manages the common areas usually through a board of directors elected by the members.



## 10. INVESTMENT AND MANAGEMENT OF TRUST ASSETS

### INTRODUCTION

The trustee's fiduciary duty in investing trust funds is to provide an appropriate return on the assets used to fund a trust. It is important for trustees to be acquainted with the legal principles that are the standards by which they will be judged in the handling of the trust.

Trustees face potential liability if beneficiaries are not pleased with the results of their investing. The trustee can protect him or herself by knowing and following the rules in the investment arena.

### PRUDENT MAN RULE

#### History

Before 1990, a trustee's handling of investments was measured by the so-called Prudent Man Rule. That rule or standard was first articulated in 1830 in the Massachusetts case of *Harvard College v. Amory*. The Massachusetts court advised trustees "to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested."

Over the years courts throughout the country adopted the above definition as the standard for trustees in the investment of trust funds. The rule was codified in 1935, in *The Restatement of the Law of Trusts* and ratified in 1959, in *The Restatement Second of the Law of Trusts*. The Restatement Second says,

"The trustee is under a duty to the beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property; and if the trustee has or procures his appointment as trustee by representing that he has greater skill than that of a man of ordinary prudence, he is under a duty to exercise such skill."

### EVOLUTION OF A NEW STANDARD

#### Modern Portfolio Theory

It was not long after ratification of the Second Restatement of the Law of Trusts that those trustees who felt hand cuffed in their ability to invest like other investors of their day began to criticize the Prudent Man Rule. Their criticism was supported by a large and growing body of literature that was supported by documented and compelling empirical research. Much of this criticism is found in writings that have collectively and loosely come to be called **modern portfolio theory**.

The modern portfolio theory refers to the process of reducing risk in a portfolio through systematic diversification across asset classes and within a particular asset class. It assumes that all investors desire the highest possible returns while bearing the lowest

amount of risk and that public markets are generally efficient. It involves the relationship between risk and reward. To increase the return, an investor must incur more risk.

As court rulings began to deviate from the Prudent Man Rule, many began to speak out for a need to modernize or at least clarify the Prudent Man Rule. So in May of 1990, The American Law Institute substantially revised the Prudent Man Rule and replaced it with revisions collectively referred to as the “**Prudent Investor Rule.**” This change was intended to permit fiduciaries to invest in accordance with the modern portfolio theory, which allowed a trustee more latitude for the exercise of investment judgment than did the Prudent Man Rule. In 1992, the American Law Institute published a complete revision of the Prudent Man Rule, entitled “*Restatement of the Law Third Trusts, Prudent Investor Rule.*”

## **PRUDENT INVESTOR RULE**

The Prudent Investor Rule grants trustees broader protections and powers, but these are paid for by imposing on the trustee more active management of the portfolio. A trustee will no longer be able to blindly follow the lead of other trustees or pick investments from an approved universe.

The rule states that the trustee is under a duty to invest and manage the funds of the trust as a prudent investor would, in light of the purposes, terms, distribution requirements, and other circumstances of the trust. The trustee must take into account the best interests of both the income beneficiaries and the remaindermen. This presents unique challenges when a denominational entity is both the trustee and the remainderman.

Further, the rule suggests that the trustee has a list of factors, which must be considered in making investment decisions, including general economic conditions, possible effect of inflation or deflation, the expected total return from income and the appreciation of capital, and other resources of the beneficiaries. The trustee must take tax consequences of investment decisions into account. There is an obligation to diversify assets “unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.” The trustee’s obligations are significant, requiring sophisticated approaches to investment that really take into account the right risk to return ratio for the particular trust.

The following is a summary of the key impact of the Prudent Investor Rule on trust administration:

- A trustee must review investment policies on a regular basis.
- A trustee will be held to a higher standard of skill and sophistication in investments to the extent he or she expressly or implicitly represents that he or she has special skills.
- Process and conduct are more important than results for determining if the trustee has discharged the investment duty.
- Overall portfolio strategy and performance are generally more important than the performance of individual assets.

- Diversification is fundamental.
- Permissive or discretionary language in a trust (e.g., retention) does not waive the duties of care, skill, and analysis when deciding to retain or dispose of initial trust assets. Even if the trust mandates retention, there may be situations in which a trustee should petition the court for relief if continued retention could jeopardize the purpose or existence of the trust.
- A trustee is not only authorized but may be required to delegate certain investment responsibilities to properly discharge the trustee's investment duties.
- Any investment strategy must be cost effective. Except in very large accounts, passive investments will generally prove more cost effective than active investments, which require extensive research, higher transaction costs, etc.

### **Comparison of the Prudent Man Rule with Prudent Investor Rule**

#### **Prudent Man Rule**

Each investment is inherently prudent or imprudent.

The propriety of investment decisions is reviewed with hindsight.

The trustee is subject to a standard of risk awareness.

The trustee may not delegate investment responsibility.

#### **Prudent Investor Rule**

No investment is itself prudent or imprudent but part of an overall strategy of market risk.

The propriety of investment decisions is reviewed when the decision is made.

The trustee is subject to a standard of risk management.

The trustee may responsibly delegate investment responsibility.

### **Uniform Prudent Investor Act**

The National Conference of Commissioners on Uniform State Laws, a non-profit unincorporated association comprised of state commissions on uniform law from each state, completed the Uniform Prudent Investor Act (UPIA) in 1994.

The commissioners, all who are members of the bar, come together for one purpose- to study and review the laws of all of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. The commissioners can only propose a uniform act to each state. No uniform law is effective until a state legislature adopts it.

With regard to the area of investment law, the commissioners determined that, although most states had state investment laws reflecting the modern portfolio theory, a uniform law was needed in the area of investment law based on the new consensus reflected in the Restatement of Trusts 3d, e.g. Prudent Investor Rule. The American Bar Association and American Bankers Association adopted the Uniform Prudent Investor Act and began to promote it among the 50 state legislatures.

“This act removes much of the common law restriction upon the investment authority of trustees of trusts and like fiduciaries. It allows

such fiduciaries to utilize modern portfolio theory to guide investment decisions. A fiduciary's performance is measured on the performance of the whole portfolio, not upon the performance of each investment singly. The act allows the fiduciary to delegate investment decisions to qualified and supervised agents. It requires sophisticated risk-return analysis to guide investment decisions.”

[http://www.nccusl.org/Update/uniformact\\_factsheets/uniformacts-fs-upria.asp](http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-upria.asp)

Check the Uniform Law Commissioners website quoted above for a list of jurisdictions that have adopted or introduced legislation to adopt the Uniform Prudent Investor Act.

It should be noted that the UPIA is a default standard. It applies only in the absence of another standard for the fiduciary articulated in the trust instrument.

### **Practical Considerations in the Management of Assets**

- 1. A trustee must first develop an investment strategy.**  
The strategy should have two major components:
  - (1) Creation of an asset allocation model, i.e. the percentage of equities v. bonds.
  - (2) Construction of a portfolio for each segment chosen.
  
- 2. Written investment policy for each trust.**  
Investment policy statements are important for three reasons:
  - (1) The policies are necessary for a fiduciary to fulfill his or her responsibilities. Fiduciaries are legally held to a prudent investor standard. To ensure that the fiduciary is investing according to the prudent investor standard well-reasoned investment policies that provide for formal asset allocation guidelines and benchmarks against which to compare results are necessary.
  
  - (2) It is sometimes difficult for a trustee to resist the outside pressure to jump on the “hottest” investment vehicle. Written policy guidelines provide the investment discipline to protect the trust from market-driven departures from a sound long-term policy.
  
  - (3) An investment policy serves as the guideline for all of the “players” in the fiduciary process. Both income and the remainder beneficiaries will understand what the goals and objectives are when it is in writing.
  
- 3. Consideration of delegating of investment functions to the professionals.**  
The trustee must exercise reasonable care, skill, and caution in:
  - (1) selecting an agent;
  
  - (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trusts; and

- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

**4. Periodic review of assets and rebalancing of each portfolio.**

This may be the most important requirement of trust management once the trust is first invested. A regular review will save the trustee even in down markets and bad times. This will generally meet the duty of care required of a prudent investor.

## **INVESTMENT SUB-COMMITTEE**

An investment sub-committee, as a committee of the governing board or as a sub-committee of the Trust Management Committee, could be established to develop investment strategy and policy that conforms to the requirements of the trust, state law, and the Prudent Investor Rule.

The Committee's terms of reference could be:

- Develop overall investment strategy and policy
- Develop individual investment policy for each trust
- Determine the appropriate asset allocation
- Review performance quarterly

The Committee should include both denominational employees and nondenominational employees.

The Committee reports to the Trust Management Committee or the governing board.

## **UNRELATED BUSINESS INCOME TAX RULES**

An exempt organization is not taxed on its income from an activity that is substantially related to the charitable, educational, or any other purpose that is the basis for the organization's exemption. Such income is exempt even if the activity is a trade or business. However, in order to prevent unfair competition between exempt organizations and commercial businesses the exempt organization is subject to tax on its income from an unrelated trade or business. Therefore, the trustee must be careful when investing that he or she does not subject the charity or trust to tax liability as a result of generating unrelated business income.

Unrelated business income (UBI) is gross income received from an unrelated trade or business, regularly carried on, that is not substantially related to the organization's fulfilling its exempt purpose or function except that the organization needs the profits derived from this activity. The following features characterize UBI:

**Trade or business** – the term “trade or business” generally includes any activity carried on for the production of income from selling goods or performing services.

**Regularly carried on** - Business activities of an exempt organization ordinarily are considered regularly carried on if they show a frequency and continuity, and are pursued in a manner similar to comparable commercial activities of nonexempt organizations.

**Not substantially related** - A business activity is not substantially related to an organization’s exempt purpose if it does not contribute importantly to accomplishing that purpose. Whether an activity contributes importantly depends in each case on the facts involved.

In computing unrelated business taxable income (UBTI) certain types of income are generally excluded when figuring the UBTI. All dividends, interest, annuities, and other investment income are excluded in computing unrelated business taxable income, unless the income is derived from debt-financed property as discussed below. Additionally, a specific deduction of \$1,000 is allowed. Thus, it is possible for an exempt organization, including a charitable remainder trust, to have some UBI without the related tax. Since church organizations receive mineral rights as gift or bequests from time to time, it is important to note the royalties from such mineral rights are excluded from UBTI; however income received from a mineral interest where the exempt organization shares in development costs is includable in UBTI. Certain income and gains derived from debt financed property are also included in UBTI.

The organization’s unrelated business income tax (UBIT) and related surcharges is computed using normal corporate rates. As of 2007, a charitable remainder trust that has UBTI is subject to a 100% tax on the income.

## **PARTNERSHIP INCOME**

An organization may have unrelated business income or loss as a member of a partnership if the partnership is regularly engaged in a trade or business that is an unrelated trade or business with respect to the organization; or if the partnership has income from debt-financed property as discussed below. If the partnership has either, the organization must treat its share of the partnership income or loss as if it had conducted the business activity in its own capacity as a trust, even if the trust does not receive any cash or other distributions from the corporation. Also, any capital gains from the sale of an S corporation stock are taxable. The partnership income and deductions to be included in the organization’s unrelated business taxable income are figured the same way as any income and deductions from an unrelated trade or business conducted directly by the organization.

**Example.** An exempt educational organization is a partner in a partnership that operates a factory. The partnership also holds stock in the corporation. The exempt organization

must include its share of the gross income from operating the factory in its unrelated business taxable income. However, since all dividends, interest, annuities, and other investment income are excluded in computing unrelated business taxable income, it may exclude its share of any dividends the partnership received from the corporation.

## **INCOME FROM DEBT-FINANCED PROPERTY**

Investment income that would otherwise be excluded from an exempt organization's unrelated business taxable income must be included to the extent that it is derived from debt-financed property. The amount of the income is proportionate to the debt on the property.

Debt-financed property is any property held to produce income for which there is **acquisition indebtedness** at any time during the tax year or during the 12-month period before the date of the property's disposal, if it was disposed of during the tax year. It includes rental real estate, tangible personal property, and corporate stock.

Acquisition indebtedness is the unpaid amount of debt incurred by an organization:

- (1) When acquiring or improving property.
- (2) Before acquiring or improving the property if the debt would not have been incurred except for the acquisition or improvement, and
- (3) After acquiring or improving the property if:
  - a. The debt would not have been incurred except for the acquisition or improvement, and
  - b. Incurring the debt was reasonably foreseeable when the property was acquired or improved.

## **S CORPORATION INCOME OR LOSS**

An organization that owns S corporation stock must take into account its share of the S Corporation's income, deductions, or losses in figuring unrelated business taxable income, regardless of the actual source or nature of the income.

For example; the organization's share of the S corporation's interest and dividend income will be taxable, even though interest and dividends are normally excluded from unrelated business taxable income.

Charitable remainder trusts are not permitted to be shareholders of an S-corporation.

## **NAD INVESTMENT POLICIES**

Policies for the investment of denominational funds within North America may be found in section S 85 of the North American Division Working Policy (the "Red Book").

## **DEFINITIONS:**

**Bonds** - a debt investment, with which the investor loans money to an entity (company or government) that borrows the funds for a defined period of time at a specified interest rate.

**Equities** - another name for stock or shares. It is a share in the ownership of a company. Stock represents an ownership interest in the company's assets and earnings.

**Mutual funds**- a security that is a collection of stocks and/or bonds. It gives investors access to a well-diversified portfolio of equities, bonds, and other securities. Income is earned from dividends on stock and interest on bonds. A fund pays out nearly all income it receives over the year to fund owners in the form of a distribution.

**Fiduciary** – person, company or association holding assets in trust for a beneficiary charged with the responsibility of prudently investing money for the beneficiary's benefit.

**Small Cap** – shorthand for small capitalization stocks or mutual funds holding such stocks. Small cap stocks usually have a market capitalization (number of shares outstanding multiplied by the stock price) of \$500 million or less.

**Large Cap** – stocks usually have a market capitalization of \$1 billion or more.

**Blue Chip Stock** – common stock of a nationally known company that has a long record of profit growth and dividend payment and a reputation for quality management, products, and services.

**Junk bond** – bond with a credit rating of BB or lower by rating agencies. Junk bonds are issued by companies without long track records of sales and earnings, or by those with questionable credit strength.





## SUMMARY

### Uniform Prudent Investor Act

Trustees of trusts and like fiduciaries have been subject to rules severely restricting the types of investment modalities in which they can invest the assets of the trusts that they administer and manage. Interest bearing instruments -- safe income -- of limited kinds (no junk bonds) are the limit of risk permitted or thought to be permitted under the traditional rules. Protect the paper value of the principal at all costs is the mandate for trustees. In addition, a trustee's performance is rated by the performance of each and every investment, singly, and not on the performance of the whole of the portfolio. And trustees have been precluded from obtaining professional investment help.

The result for trusts is modest income production at best without regard for the erosion of a trust's assets by inflation. Can it be that these rules miscalculate the real risk and actually jeopardize the assets of a trust rather than provide for their protection?

The answer is yes. And a remedy is now at hand in the Uniform Prudent Investor Act (UPIA), promulgated by the Uniform Law Commissioners in 1994. The adoption of this act by the state legislatures will correct the rules, based on false and damaging premises, that now govern the actions of trustees.

By no means does UPIA turn trustees into unrestrained speculators. It provides rules governing investment that, in fact, result in greater protection for the trust's assets while providing a prospect of better income. UPIA does not encourage irresponsible, speculative behavior, but requires careful assessment of investment goals, careful analysis of risk versus return, and diversification of assets to protect them. It gives the trustee the tools to accomplish these ends. UPIA requires trustees to become devotees of "modern portfolio theory" and to invest as a prudent investor would invest "considering the purposes, terms, distribution requirements, and other circumstances of the trust" using "reasonable care, skill, and caution."

The trustee has a list of factors which must be considered in making investment decisions, including "general economic conditions," "possible effect of inflation or deflation," "the expected total return from income and the appreciation of capital," and, "other resources of the beneficiaries." The trustee must take tax consequences of investment decisions into account. There is a positive obligation to diversify assets "unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying." The trustee's obligations are significant, requiring sophisticated approaches to investment that really take into account the right risk to return ratio for the particular trust.

In addition, a trustee's performance in UPIA is measured by the performance of all the assets together. A loss with respect to a single asset does not mean that the trustee has violated his or her fiduciary responsibilities. The act takes the truly holistic approach to investment practices.

In return for these obligations, UPIA removes any restrictions upon the types of investment modalities which may be chosen in a trust's portfolio. It is quite possible, for example, to hold positions in high-interest bonds (junk bonds) or mutual funds investing in such bonds, in a diversified portfolio, if such an investment meets the needs of the particular trust in light of the risk/return analysis specific to that trust.

[http://www.nccusl.org/Update/uniformact\\_summaries/uniformacts-s-upia.asp](http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-upia.asp)

4/1/2007

One of the boons to trustees of smaller trusts is the ability to invest in mutual funds. Mutual funds reduce investment risk by diversifying their portfolios. By using mutual funds, a trustee of a trust that does not have a large enough corpus to effectively diversify its assets can enhance diversification of the trust's portfolio to limit the trust's risk of loss.

UPIA also permits the trustee to delegate investment and management functions "that a prudent trustee of comparable skills could properly delegate under the circumstances." Careful selection of the agent and careful, periodic review of the agent's actions are part of the trustee's responsibility when delegating authority. An agent has a responsibility of reasonable care in conducting the delegated business of the trust.

Why is it that the prudent man rule of prior law may, in fact, jeopardize the assets in a trust? Some of the instruments in which trustees have been able to invest have become more volatile in price. Treasury bonds, for example, long thought to be safe investments, now fluctuate considerably in value with the fluctuation of interest rates. The former so-called safe investment may not be so safe anymore. In contrast, common stocks have shown consistently better returns over the years than bonds -- yet trustees have been prevented from investing in common stocks. Stocks have been historically safer investments, therefore, in diversified portfolios than bonds have been. Trusts have been deprived of return at some greater risk by the antiquated rules that govern investment of their assets.

By far the most insidious damage to trust assets comes from inflation. If trustees cannot invest in modalities that exceed the rate of inflation in return, the inevitable result is diminution of the corpus of the trusts they manage. The beneficiaries of trusts so restricted lose in all ways, both with respect to income and principal.

The UPIA provides rules that can be modified or waived in the trust agreement. Any person who wishes to put property in trust and who wants to provide different standards of conduct for the trustee is permitted to do so under UPIA.

UPIA provides a reasonable approach to the investment of trust assets that better meets the needs of beneficiaries while preserving trust assets. It should become the law in every state as soon as possible.

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## 11. REAL ESTATE

Real estate is a term that encompasses land along with anything permanently attached to it, such as buildings, fences, landscaping, and growing crops. Real estate is often considered synonymous with real property or simply, realty. This term is often used in contrast with personal property (also sometimes called chattel or personalty). In civil law jurisdictions such as Louisiana and Quebec real estate or real property may be referred to as immovable property.

An estate in land is an interest in real property that has become possessory. This should be distinguished from an “estate” as used in reference to an area of land and “estate” as used to refer to property in general.

The rights and interests associated with an estate in land may be understood as a “bundle of rights” because of the potential for different parties having different interests, simultaneously, in the same real property. The rights of ownership to real property are often pictured as a “bundle of sticks.” Each stick represents a “right” of ownership. One stick might represent possession, another, a claim to satisfy a debt as in a lien, yet another, an easement for a utility line, and still another, a license to enter and exit. Accordingly a husband and wife can be owners of real property subject to a mortgage and a mechanics lien. Their neighbor could have an easement for a road to a nearby plot of land. Constitutionally, the state and federal government always hold the right to condemnation (eminent domain) and government at various levels retains regulatory rights such as environmental regulation, zoning, and building codes. In the United States, ultimately no owner ever holds the fullest possible bundle of rights.

Estates in land can be divided into four basic categories:

1. Freehold Estate which connotes rights of ownership
  - a. fee simple
  - b. life estate
2. Leasehold Estate meaning rights of possession and use but not ownership where the owner/landlord give this right to the lessee/tenant.
3. Statutory Estates are those created by law
  - a. community property
  - b. homestead
  - c. tenancy by entirety
  - d. dower - interest a wife has in the property of her husband
  - e. curtesy – interest a husband has in the property of his wife
4. Equitable Estates which are neither ownership nor possession
  - a. lien
  - b. easement

### Fee Simple in Land

**Fee simple** is the most common way real estate is owned in common law countries, and is ordinarily the most complete ownership interest that can be had in real property. It may be used in deeds transferring title, as in "Harry Hadit grants and conveys to Robert Gotit title in fee simple..." or similar words. Fee simple ownership represents absolute ownership of real

property, but it is limited by the four basic government powers of taxation, eminent domain, police power, and escheat and could also be limited by certain encumbrances or a condition in the deed. The owner(s) of real property in fee simple title have the right to own the property during their lifetime and typically have a say in determining who gets to own the property after their death.

## **Property in Trust**

Many trusts contain real property as an asset. Therefore, it is important that the development officer and those involved in the management of the trust assets be knowledgeable regarding real estate procedures. Whenever possible, it would be well for those engaged in Planned Giving and Trust Services to take courses related to real estate in order to increase their skills and expertise.

Following are some suggestions and general information that may be helpful in establishing guidelines for the handling of trust real estate transactions.

The material presented is general. Each Planned Giving & Trust Services director must carefully check the specific requirements of the several states within his/her own territory.

Title to real estate passes to a new owner by deed. The parties to the deed are: (1) the seller or grantor and (2) the buyer or grantee. Loans are evidenced by (1) a note and a mortgage, (2) a note and a trust deed, or (3) a real estate contract. The note is the obligation; the mortgage or trust deed is the security for the note.

The parties to a mortgage are: (1) the borrower or mortgagor and (2) the lender or mortgagee.

The parties to a trust deed are: (1) the trustor, buyer, or borrower, (2) the trustee or independent third party who holds title, and (3) the beneficiary, lender, seller, or a third party receiving a gift. When a note or mortgage is satisfied, it should be marked "Paid" by the mortgagee and sent back to the borrower. To clear title, there must be a document recorded known as a "Satisfaction of Mortgage" or discharge of mortgage. When a note or trust deed is paid off, the beneficiary should request the trustee to issue a reconveyance deed. This must be recorded. The trustee usually requires that the original note and trust deed be surrendered for cancellation. If portions of the property are to be released at various intervals throughout the duration of the loan, a "partial reconveyance" or partial discharge should be issued as directed by the beneficiary, according to the agreement in the trust deed document, or as the buyer and beneficiary may subsequently agree.

Real estate in trust can be a blessing or a curse, depending on its type, location, value, etc. Every trustee organization should have a trust committee of highly trained personnel to review every trust proposal and the nature of the asset being submitted. Organizations should have their own checklists for use when processing trust assets.

As legal documents, working policy requires all conveyance documents to be prepared by or under the supervision of legal counsel in such a way that the attorney assumes responsibility for the document. There are several essential elements to a deed:

1. Must be in writing
2. Competent grantor and grantee capable of acquiring title
3. Adequately designate the grantor and grantee
4. Words expressing intent to transfer title
5. Sufficient legal description
6. Execution by grantor
7. Delivery
8. Acceptance

Individual states and provinces may have other requirements that are unique to its jurisdiction.

Other elements usually required for recordation are:

1. Consideration (for transfer tax purposes in some jurisdictions)
2. Date
3. Notarial acknowledgment
4. Witness(es), in some jurisdictions
5. Documentary transfer tax, in some jurisdictions
6. Address where tax statement is to be mailed.

The basic instrument for transferring title to real property is the deed. Each type of deed has certain implied warranties or guarantees which are imputed to it by the laws of the respective states. These warranties may be fully recited in the document, partially set forth therein, or implied by law. There are many types of deeds, such as the following:

1. Warranty Deed

Typically, a warranty deed carries with it the following guarantees:

- A. That the grantors possess the property lawfully.
- B. That the property is free of all encumbrances (except as set forth in the deed).

- C. That the grantors have full authority to sell the property.
- D. That the grantors and their heirs and personal representatives will defend the conveyance of the title to the grantees against the claims of all persons.

When taking property into trust, it is best to require a warranty deed, or a deed with implied warranties, from the trustors to continue the chain of warranties. However, some jurisdictions may not utilize warranty deeds (e.g. Massachusetts).

## 2. Special Purpose Deed

- A. Grant deed
- B. Special warranty deed
- C. Bargain sale deed
- D. Other
  - i. Deed of reconveyance
  - ii. Trustee's deed
  - iii. Sheriff's or tax collector's deed
  - iv. Personal representative's deed

The special purpose deed usually carries with it some, but not all, of the warranties. For example, the grantors who use a special warranty deed guarantee only that they have not previously conveyed the property to any party other than the grantee and that the estate is free from any encumbrance made, or suffered by, the grantors or anyone claiming under them.

## 3. Quitclaim Deed

The quitclaim deed is used to convey whatever interest the grantors may have in the property which is described. This could range from full fee simple ownership to the removal of a small cloud on the title, or, in some situations, even no interest at all.

Real property is usually returned to trustors, or to a third party, by using a quitclaim deed or a special warranty deed. On occasion, a trustor may request in writing that the deed conveying the property into trust not be recorded. If this is done and the trustee is requested to reconvey, a deed of reconveyance is still required, but this deed should not be recorded.

## Miscellaneous

Holding title to real property, and the conveyance thereof, falls under the jurisdiction of the state where the real property is situated. In addition to statutes, the usage and customs of the area may have some bearing. It is important to learn as much as possible about statutes, usage, and customs in the states where you work. Using competent legal counsel to prepare conveyance documents is essential in safeguarding the organization and assuring compliance with local custom and statutes.

It should be noted that generally recordation is not required for title to be transferred. The transfer is made when delivery and acceptance have been completed. Recordation is necessary to protect against claims by third parties.

## Methods of Holding Title

1. In one's individual name—If there is only one person, title is taken in that name alone.
2. As a corporation—The conference corporation or association is the legal body responsible for holding title to church property.
3. As a trustee—Persons or corporations authorized by the corporate charter and bylaws, as well as by state law, can act as trustees. Check with legal counsel to see if your organization should disclose that it is taking property as trustee for a certain trust.
4. Joint tenancy—occasionally, joint tenancy is clarified as “joint tenants with right of survivorship and not tenants in common,” but in most situations, this is abbreviated to “joint tenants.” The key attribute is that upon the death of one joint tenant, ownership passes automatically, by operation of law, to the surviving joint tenant(s). There may be two or more joint tenants, but all joint tenants must own equal shares of the property. Some jurisdictions require the use of specific language.
5. Tenancy by the entirety—Tenancy by the entirety is similar to a joint tenancy, with two major exceptions: it can exist only between husband and wife and neither party can terminate it without the consent of the other. In some states, it is not a recognized type of concurrent ownership.
6. Tenancy in common—Unless otherwise indicated, each party owns an equal, undivided interest, but it can also be stipulated that the individual tenants in common own unequal interests, such as 1/3 and 2/3. Each may sell his/her interest independently, it can pass to his/her heirs by the terms of the will, or it may be transferred through intestate succession at his/her death.
7. Community property—Each community property state has its own laws covering this type of concurrent ownership, but the basic concept is that the husband and wife each

own a vested one-half interest in the property acquired by the personal efforts of either of them during the term of their marriage. Ten states recognize at least a form of community property: Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Alaska permits an opt-in option for married couples and Wisconsin treats marital property ownership in a manner similar to community property.

8. Partnership—In most states, a partnership asset may be held in the names of the several partners, in which case their interests between or among themselves will be as they have agreed, and generally, as set forth in their Articles of Partnership.
9. Limited Liability Company—A limited liability company (LLC) is an unincorporated business association—a cross between a partnership and a corporation that combines the most favorable attributes of both. The LLC has been designated to provide business owners and managers with a partnership’s flexibility and tax advantages and a corporation’s protection against personal liability.

### **Other Considerations**

1. Title. The chain of title, or history of ownership, is very important. Sometimes trustors forget that they have transferred title of assets to the trustee and will attempt to pass title to another party without first securing a deed back from their trustee. This can cause difficulty and embarrassment to the parties involved.

The deed should contain an accurate description of the property. Notice the wording on deeds conveying the property. In warranty or grant deeds and also in assignments of contracts or mortgages, the required wording is “grants, transfers, and conveys.” In quitclaim deeds, the deed states “remise, release, and forever quitclaim.” Each state usually requires specific wording. Check for specific requirements of the state in which the real property is located. It is dangerous to use a standard form. Church policy requires that legal counsel, licensed in the appropriate jurisdiction, assume responsibility for all legal instruments.

2. Escrow. In some states, it is customary to transfer real property through an escrow agent. In those states, an escrow agreement must be signed by both buyer and seller. If a broker is used, he or she should sign the sales agreement, but not the escrow instructions. The specific details of the transaction must be included in total before either party signs the escrow agreement. Great difficulty can result if, after both parties have signed, it is discovered that the instructions are incomplete. For example, one party may refuse to sign amended instructions. The escrow officer requires complete and adequate instructions and is charged with specific duties. Most states regulate the duties and requirements of the escrow company, as well as who can function as an escrow company.
3. Appraisal. An appraisal is an estimate of value. There are three methods of determining the estimated value.



- A. Income approach: The income approach determines the value of a piece of property based on the income derived from rents, etc., from the property and is used for apartments, commercial properties, and investment properties.
- B. Cost approach: The cost approach determines the cost to replace the specific building on a specific piece of land in the exact size, shape, type, architectural form, etc., in the current market. This approach is used for schools, hospitals, and similar types of property.
- C. Market approach: The market approach is based on comparable sizes of other “like” properties. This approach is typically used for residential properties and compares properties according to size, neighborhood, proximity to schools, churches, shopping centers, access to major roads, and so forth.

There are two main professional organizations to which appraisers may belong:

- A. The American Institute of Real Estate Appraisers of the National Association of Real Estate Board (MAI)
- B. The Society of Real Estate Appraisers (SREA)

An appraisal becomes important at the maturity of a revocable trust or at the inception of an irrevocable trust where the trust assets must be valued.

Qualified appraisals are essential in charitable contributions of real property valued in excess of \$5,000. Under IRS rules, all donations of property other than cash and publicly traded securities which are worth more than \$5,000 must be appraised and a report filed with the IRS on Form 8283 in order to obtain a charitable deduction. This must be done by a **qualified appraiser** who must be held out to the public as an appraiser. The appraiser must be qualified to value the type of property involved and have no personal interest that might cause him/her to undervalue or overvalue. Please consult Chapter 23, *Valuation and Substantiation* for a more complete discussion of the qualified appraisal rules.

North American Division accreditation standards for planned giving and trust services require non-cash assets, including real property, to be valued at either cost basis or fair market value when placed into a revocable trust. The organization must consistently use one or the other value for all of its non-cash assets held in a fiduciary capacity. A trustor’s signed statement as to cost basis is acceptable, but if the FMV standard is utilized then a qualified appraisal is required.

- 4. Insurance. It is necessary to have insurance coverage for the lender, trustor, and trustee. The trustee must be named on all fire and liability policies as an additional insured, unless a Waiver and Hold Harmless form is signed by the trustors and is

included in the trust file. A copy of each policy should be in the trust file. If, for any reason, the trustor does not want to have the property insured, a signed statement to that effect, promising to indemnify the trustee for any loss incurred by the trustor must be in the trust file.

5. Environmental Concerns. **Before** real property is accepted as a gift, taken into trust, or purchased, an inspection should be made to determine if the property is free from contaminants and pollutants. See the chapter entitled *The Environment and Hazardous Waste* in this Manual for additional information and sample screening forms.
6. Title Insurance. In a title insurance policy the insurer promises to indemnify the insured for any injury if the title to land is less than described in the policy. Generally, it only protects against losses from events that occurred prior to the policy date. Coverage ends on the policy issue date and extends backward in time for an indefinite period. The policy is paid with a single premium at the time of transfer. The premium for the policy may be paid by the seller/transferor or buyer/transferee as the parties agree. Generally there is a custom in a particular state or county on this matter which is reflected in most local real estate contracts.

A policy typically contains “general” and “special” exclusions. General exclusions are the routine exclusions that the title company simply will not insure against in every situation. Special exclusions are defects or encumbrances against the specific property that were revealed when the title company examined the records, surveys, and in some cases visual inspection of the property. The title company is also required to provide a legal defense to its insured. The limit of liability is usually the amount of the purchase or loan.

The Owner's Policy or Owner's Title Policy insures a purchaser that the title to the property is vested in that purchaser and that it is free from all defects, liens and encumbrances unless excluded. It also covers loss and damage suffered if the title is unmarketable and for loss if there is no right of access to the land. Title insurance coverage lasts as long as the insured retains an interest in the covered property and typically no additional premium is paid after the policy is issued. In some areas sellers provide the buyer an Owner's Policy in other areas it is purchased as an add-on to a Lender's Policy.

A Lender's Policy or Loan Policy is issued only to mortgage lenders and provides coverage up to the amount of the mortgage. Generally speaking, it follows the assignment of the mortgage loan, meaning that the policy benefits the purchaser of the loan if the loan is sold. For this reason, these policies greatly facilitate the sale of mortgages into the secondary market.

## Real Estate Description

It is extremely important in the conveyance of any real property that a precise “legal description” be included. This is done by making exact measurements of the property and showing the relationship of these measurements to other officially recognized measurements, so that the real property in question can be identified on an official map. The following explains measurements used in legal descriptions. The more general measurements will be discussed first and the measurements that will exactly locate a specific “tract” or “parcel” of land will be discussed last.

1. **Longitude.** Longitude is measured by north-south meridians encircling the earth through the poles, counting from the prime meridian (0 degrees) through Greenwich, England, just outside of London. West longitude extends half-way around the earth, westerly from Greenwich. Each degree of longitude is  $1/360^{\text{th}}$  of the globe’s circumference. At the equator, each degree measures 69.17 miles; the distance between meridians decreases as the distance from either pole is reduced.
2. **Latitude or Parallels.** Latitudes or parallels are lines that parallel the equator so that each point of any of them is the same distance from the equator as any other point on that parallel. North latitude is measured from the equator (0 degrees) to the North Pole (90 degrees). Longitude and latitude are expressed in degrees ( $^{\circ}$ ), minutes ( $'$ ), and seconds ( $''$ ).
3. **Countrywide Government Surveys.** A typical globe shows only a few meridians of longitude and parallels of latitude, perhaps no more than one at every fifteenth degree. On a local map, every degree line is shown. Even so, degree lines are too distant to be used alone in referring to the location of a small area such as a parcel of real estate. Many conveniently located markers (often bronze) have been established, and their precise longitude and latitude have been indicated, so that practical starting points for surveys may be easily located.
4. **State Survey Lines.** In many states, certain “base lines” and meridians, called by local names, have been designated, from which measurements within the state are generally taken. Reference to them by name is more convenient than would be the practice of describing the location of land in terms of longitude and latitude.
5. **Township.** A “standard” township is a six-mile-square area; that is, it is 36 square miles of land. (The name “township” has no connection with a town site or town.) East-west rows of townships are called “tiers;” north-south columns of townships are called “ranges.”

The principal meridians (verticals) and baselines (horizontal) are referred to when the description includes reference to the township in which the property lies. Townships are given numerical identity with relation to their position above or below the “local” meridian. For example, Township 2S., Range 2E., S.B.M.,” is an

abbreviated form for designating the township located at the intersection of the second tier of townships south of the San Bernardino baseline and the second range of townships east of the San Bernardino meridian.

6. Section. The next smaller unit after a township is a space one-mile square, called a "section." Townships consist of 36 sections, six sections wide by six sections high.

In describing the location of land, it is possible to identify its place on the map (for example, "Section 22, T. 2S. R.2E., S.B.M."). To identify its location within that section, a further division is required.

A **section** contains 640 acres (one square mile) and measures 5,280 feet on each side. A **half section** is half of that: 320 acres. Its dimensions are 2,640 feet by 5,280 feet. A **quarter section** is 160 acres—2,640 feet on each side.

Some maps show distances in units other than feet, for example, in rods and chains. A rod is 16 ½ feet. A chain is 4 rods, or 66 feet.

See chart at end of this chapter.

7. Acre. An acre is 1/640 of a square mile, or section; it contains 43,560 square feet. A square piece of land of one acre area measures 208.71 feet (208 ft. 8 ½ in.) on each side. To approximate one acre of space in an open field, step off 69 ½ three-foot paces straight ahead, then 69 ½ at a right angle.

Acre area of other dimensions:

50 feet x 871.2 feet

75 feet x 560.8 feet

100 feet x 435.6 feet

150 feet x 290.4 feet

8. "Lot, block, and tract" description. In the papers which are prepared for the conveyance of real property, the legally-phrased official description of the property may be of the "lot, block, and tract" type, in which case it might state, "Lot 6 in Block 2 of Tract No. 7594, in the City of \_\_\_\_\_, County of \_\_\_\_\_ State of \_\_\_\_\_, as per map recorded in Book 77, Page 48, of Maps, in the office of the Recorder of said County."
9. "Metes and bounds" description. Some property cannot be so briefly described as by lot, block, and tract, and requires a "metes and bounds" description. "Metes" refers to measurements and "bounds" refers to boundaries which represent units of measurement along stated boundary lines.

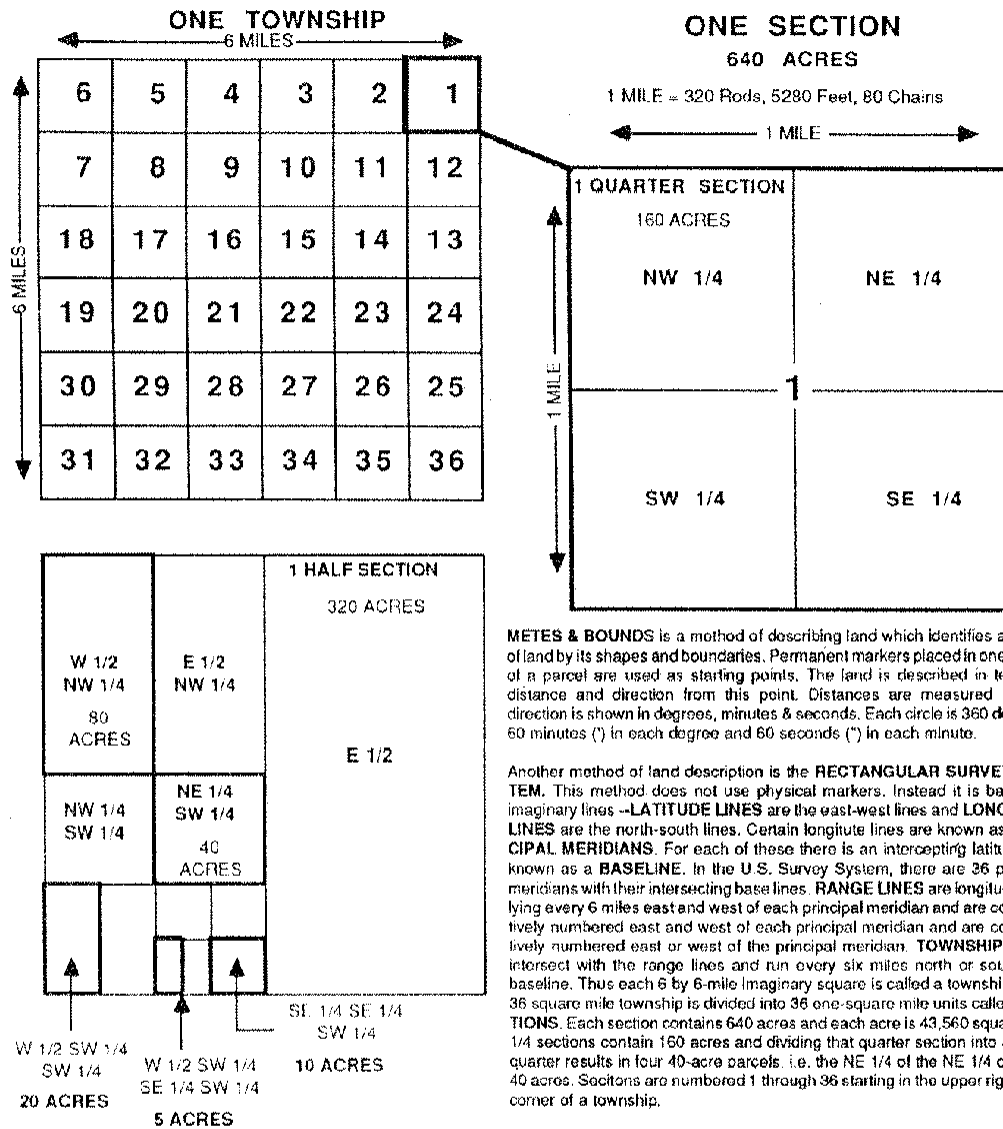
An area is described by specific reference to the location, direction, and extent of its boundary lines, beginning at a point which has been established by a recorded deed or official map.

10. Surveys. Surveyors use sophisticated distance and angle measuring devices to establish boundary lines and determine distances from officially registered starting points (benchmarks or monuments). Surveys are used to establish land maps and boundaries for ownership or governmental purposes. In order to accomplish their objective, surveyors use elements of geometry, engineering, mathematics, physics, and law. When property ownership changes, a survey may be required to verify property boundaries, locate easements, setbacks, and boundary encroachment.

Common types of surveys and drawings include:

- *ALTA/ACSM survey*: a surveying standard jointly proposed by the American Land Title Association and the American Congress on Surveying and Mapping that incorporates elements of the boundary survey, mortgage survey, and topographic survey. ALTA/ACSM surveys, frequently shortened to *ALTA surveys*, are often required for real estate transactions.
- *Boundary survey*: the actual physical extent of property ownership, typically witnessed by monuments or markers, such as (typically iron rods, pipes or concrete monuments in the ground, but also tacks or blazes in trees, piled stone corners or other types of monuments) are measured, and a map, or plat, is drawn from the data.
- *Draw lot*: one lot from a plat is drawn, with any easements and setbacks that may be on it.
- *Mortgage survey*: a simple survey that generally determines land boundaries and building locations. Mortgage surveys are required by title companies and lending institutions when they provide financing to show that there are no structures encroaching on the property and that the position of structures is generally within zoning and building code requirements. Some jurisdictions allow mortgage surveys to be done to a lesser standard, however most modern U.S. state minimum standards require the same standard of care for mortgage surveys as any other survey. The resulting higher price for mortgage surveys has led some lending institutions to accept "Mortgage Inspections" not signed or sealed by a surveyor.
- *Plot plan*: a proposal for a house or other building and driveway or parking lot are added to a draw lot.
- *Subdivision plat*: a plot or map based on a survey of a parcel of land. Lines are drawn inside it, indicating the location of roads and lots. Plats are usually discussed back and forth between the developer and the surveyor until they are agreed upon, at which point pins are driven into the ground to mark the lot corners and curve ends, and the plat is recorded in the cadastre (USA, elsewhere) or land registry (UK). In some jurisdictions, the recording or filing of a subdivision plat is highly regulated. The final map or plat becomes, in effect, a contract between the developer and the city or county, determining what can be built on the property and under what conditions.
- *Topographic survey*: a survey that measures the elevation of points on a particular piece of land, and presents them as contours on a plot.

## LAND DESCRIPTION



**METES & BOUNDS** is a method of describing land which identifies a parcel of land by its shapes and boundaries. Permanent markers placed in one corner of a parcel are used as starting points. The land is described in terms of distance and direction from this point. Distances are measured in feet, direction is shown in degrees, minutes & seconds. Each circle is 360 degrees, 60 minutes (') in each degree and 60 seconds (") in each minute.

Another method of land description is the **RECTANGULAR SURVEY SYSTEM**. This method does not use physical markers. Instead it is based on imaginary lines --**LATITUDE LINES** are the east-west lines and **LONGITUDE LINES** are the north-south lines. Certain longitude lines are known as **PRINCIPAL MERIDIANS**. For each of these there is an intersecting latitude line known as a **BASELINE**. In the U.S. Survey System, there are 26 principal meridians with their intersecting base lines. **RANGE LINES** are longitude lines lying every 6 miles east and west of each principal meridian and are consecutively numbered east and west of each principal meridian and are consecutively numbered east or west of the principal meridian. **TOWNSHIP LINES** intersect with the range lines and run every six miles north or south of a baseline. Thus each 6 by 6-mile imaginary square is called a township. Each 36 square mile township is divided into 36 one-square mile units called **SECTIONS**. Each section contains 640 acres and each acre is 43,560 square feet. 1/4 sections contain 160 acres and dividing that quarter section into another quarter results in four 40-acre parcels. i.e. the NE 1/4 of the NE 1/4 contains 40 acres. Sections are numbered 1 through 36 starting in the upper right hand corner of a township.

**MEANDERED LAKE OR STREAM** - Meandered water is generally known as public water, meaning the land owner pays the taxes on the land only and not the land under the water. The land is divided into divisions known as government lots which is the legal land description for that piece of land. If there are government lots adjoining the body of water it is meandered, otherwise it is privately owned land and the owner is paying taxes on the land under the water as well as adjoining the water. The landowner also owns fishing, hunting, etc., rights on that piece of land within the regulations of the federal and state governments except when the water is navigable.

SQUARE MEASURE			LINEAR MEASURE			
144 sq. in. ....	1 sq. ft.	160 sq. rds. ....	1 acre	7.92 in. ....	1 link	
9 sq. ft. ....	1 sq. yd.	4,840 sq. yds. ....	1 acre	3 ft. ....	1 yd.	
30 1/2 sq. yds. ....	1 sq. rd.	43,560 sq. ft. ....	1 acre	25 links. ....	16 1/2 ft.	
16 sq. rds. ....	1 sq. chain	640 acres. ....	1 sq. mile	16 1/2 ft. ....	1 rd.	
1 sq. rd. ....	272 1/4 sq. ft.	1 sq. mile. ....	1 section	100 links. ....	1 chain	
1 sq. chain. ....	4,356 sq. ft.	36 sq. miles. ....	1 township	5 1/2 yds. ....	1 rd.	
10 sq. chains. ....	1 acre	6 miles sq. ....	1 township	4 rds. ....	100 links	
					66 ft. ....	1 chain
					80 chains. ....	1 mile
					320 rds. ....	1 mile
					8,000 links. ....	1 mile
					5,280 ft. ....	1 mile
					1,760 yds. ....	1 mile

**CHART III**  
**SECTION MAP SHOWING SUBDIVISIONS THEREOF**

N1/2 of NW1/4  80 acres  <div style="text-align: center;">                     N                      ↑                 </div>		W1/2 of NW1/4 of NE1/4  20 acres	E1/2 of NW1/4 of NE1/4  20 acres	W1/2 of NE1/4 of NE1/4  20 acres	E1/2 of NE1/4 of NE1/4  20 acres
S1/2 of NW1/4  80 acres		N1/2 of SW1/4 of NE1/4  20 acres		N1/2 of SE1/4 of NE1/4  20 acres	
NW1/4 of SW1/4  40 acres	NE1/4 of SW1/4  40 acres	NW 1/4 of NW1/4 of SE1/4  10 acres	NE1/4 of NW1/4 of SE1/4  10 acres	N1/2 of NE1/4 of SE1/4  20 acres	
SW1/4 of SW1/4  40 acres	SE1/4 of SW1/4  40 acres	SW1/4 of NW1/4 of SE1/4  10 acres	SE1/4 of NW1/4 of SE1/4  10 acres	S1/2 of NE1/4 of SE1/4  20 acres	
		W1/2 NW1/4 SW1/4 SE1/4  5 a.	E1/2 SW1/4 SW1/4 SE1/4  5 a.	N1/2 NE1/4 SW1/4-SE1/4 5 a.  S1/2 NE1/4 SW1/4-SE1/4 5 a.	
		SW1/4 of SW1/4 of SE1/4  10 acres	A      B 2 1/2 a.   2 1/2 a.	W1/2 of SE1/4 of SE1/4  20 acres	
		C      D 2 1/2 a.   2 1/2 a.		E1/2 of SE1/4 of SE1/4  20 acres	

Tract A is the NW1/4 of SE1/4 of SW1/4 of SE1/4  
 Tract B is the NE1/4 of SE1/4 of SW1/4 of SE1/4  
 Tract C is the SW1/4 of SE1/4 of SW1/4 of SE1/4  
 Tract D is the SE1/4 of SE1/4 of SW1/4 of SE1/4

## 12. WILLS

### State Probate Process

A will is governed substantially by state law. State requirements vary, even if the state has adopted a form of the Uniform Probate Code. To determine the applicable law in any state, consult that state's probate code, review the constitution, other statutes, court decisions, and administrative rules. Although the probate code is applicable primarily to the probate process, it must also be consulted to determine how wills will be interpreted and administered.

The execution of a will does not mean that probate will be avoided. A will is of no legal effect until it has been accepted into probate by the probate court to be the decedent's last will.

### Legal Requirements

Wills must be in writing unless local law permits otherwise. In jurisdictions where nuncupative (oral) wills are permitted, they may be used in limited circumstances.

The ultimate aim of a will is for the testator to make a distribution of his/her property in a way that provides for the fulfillment of existing obligations at the time of death, and designates gifts to persons and organizations that are important to the individual. A person must have a testamentary intent in order for a will to be valid. The testator/trix (the one signing the will) must also be of age (in most states, at least 18) and of sound mind at the time the will is made. Subsequent lack of mental capacity does not affect a will previously made during a period of mental capacity.

It is important that wills be properly witnessed. All states require either two or three witnesses to legitimize the will. The witnesses must either see the signing or the acknowledgement of the will by the testator. Subsequent incompetency of the witnesses does not destroy the legality of their witness function. If, at the time the will is probated, the witnesses cannot be located, there is a presumption that the will was properly executed and witnessed. Many jurisdictions have adopted statutes that provide for a self-proving affidavit. This usually precludes the necessity of the witnesses appearing in court.

Witnesses should not be heirs of the testator or devisees (beneficiaries) named in the will. In some states, a testamentary gift made to a witness may be void except as to the portion that the witness would have received as an heir if the testator had died intestate (without a will). At the time of probate, even if all the witnesses are available and of full mental capacity, the probate court usually requires that no more than one witness testify to the validity of the signature and the mental competency of the testator.

If the testator is blind, the will should be read to him/her in the presence of the witnesses. The testator/trix should be asked if the document, as read to him/her, is his/her will. If he/she agrees that it is, the testator should then sign the will. The will should indicate that it was read to the



testator, that he/she acknowledged what was read to be his/her will, the name of the person who read the will, and that the witnesses heard it read exactly as it was printed on the will document.

State requirements vary, so qualified local legal counsel should be consulted.

### **If There Is No Will**

In the event that a person chooses not to make a will, or revokes a will, state law provides for distribution of the assets of intestate individuals (those without a valid will). The provisions of these intestacy laws will be implemented at his/her death.

### **Reasons for a Will**

Reasons to create a will include the desire to make distributions according to the perceived needs of the beneficiaries, to make charitable gifts, to make conditional gifts, to nominate guardians for minor children, establish trusts, nominate a personal representative (executor) to oversee the settling of the testator's affairs, and to avoid passing assets to the state in the event that there are no heirs (escheat).

For many young parents, the most important provision of a will is often the nomination of a guardian who would care for their children, should both parents die. Such a nomination will usually prevail unless there is some overriding concern that the probate judge considers paramount.

### **Holographic Will**

Some jurisdictions allow an individual to make a holographic will. Since state requirements vary, legal counsel should review all applicable statutes. Where a holographic will is allowed, it usually does not require witnesses, but it must be dated, the material provisions of the will must be in the handwriting of the testator, and the signature of the testator must be at the end of the will.

### **Pour-Over Will**

A pour-over will allows a testator to pass all assets into a pre-existing trust.

### **Codicil**

A codicil may be used to change or partially amend a will. A codicil is a change in the will which is short of a complete revision, but which must meet the same execution requirements as the original will.

### **Revocation**

A will can be revoked in whole or in part. The revocation can occur by the execution of a subsequent will or codicil that expressly revokes, or contains provisions that are inconsistent

with, the provisions of a prior will. The best way to avoid having several wills involved in the settlement of an estate is to expressly and completely revoke prior wills when preparing a new will. An example of a subsequent partially inconsistent will that revokes a prior will follows:

*Testator leaves the Ford to Son A, the Buick to Son B, and the Cadillac to Son C.*

*In a subsequent will, he leaves the Buick to Daughter D. He has revoked the provision in the prior will that gave the Buick to Son B, because the subsequent will is inconsistent with the prior will regarding the distribution of the Buick. However, the prior will is still partially valid because the Ford still goes to Son A and the Cadillac still goes to Son C.*

The manners of revocation can vary, but a written revocation is best. Other methods are burning, tearing, obliterating, or otherwise destroying the will with the intent to revoke. There must be the intent to revoke the will and the physical act of revocation. As a matter of law, a divorce or annulment can also revoke spousal provisions contained in a will.

Revocation of a second will does not automatically reinstate a prior will. For instance, if an individual writes a will, subsequently writes a second will, and then revokes the second will in one of the manners described above, such an individual is without a will (*intestate*).

### **Joint, Mutual, and Contractual Wills**

Joint and mutual wills and contracts not to change wills can have many disadvantages and should not be used without first receiving qualified legal counsel; however, they can also solve some problems. Suppose two individuals desire to make wills providing that upon the death of one, the other may not change the provisions of his or her will. Such provisions need to be made very explicit so there can be no successful challenge of such a contract at the time of probate. A contract not to change the terms of a will can be amended by both parties until the death of one of them. The contract can be contained in the wills themselves, there can be references to the contract in the wills with some outside proof of such a contract, or there can be an outside express written agreement as to the terms of the contract.

### **Will Preparation**

Wills may be prepared by the individual testator or may be prepared by an attorney. A non-lawyer who prepares wills for other individuals is engaged in the unauthorized practice of law.

### **The Statutory Will**

Some states have laws providing for a “statutory will.” A statutory will is basically a simplified fill-in-the-blank document which, if properly executed, is a valid will. Most statutory wills make no provision for educational trusts or other types of trusts desired by some testators. Often the use of the statutory will is not adequate for the needs of the testator because it is created without the benefit of legal counsel.

## **Will Provisions**

A will must first identify the testator by name and address. The will may also provide for the payment of the debts of the deceased, although most state laws provide for the payment of debts even in the absence of such a provision.

The primary reason most people make a will is to distribute their assets. This distribution can be made directly through probate (the usual procedure) or it can be made by use of a “pour-over” will that transfers assets to a previously existing trust which then makes distributions to specified beneficiaries. An existing document can be incorporated (by reference) into the will, provided the language of the will manifests the intent of the incorporation and describes the document sufficiently to permit its identification.

## **The Devise**

At common law, a bequest was a transfer of personal property and a devise was a transfer of real property. The Uniform Probate Code has removed this distinction and refers to all transfers, gifts, and conveyances through a will as a “devise.” The recipient of a devise is called a “devisee.” If a devisee predeceases the decedent, a devise to that person lapses unless the devisee is a lineal descendant of a grandparent of the testator. The Uniform Probate Code also provides that a devisee must survive the testator by a period of time, usually 120 hours, to take a devise under a will. A devise that lapses is treated as not having existed and is distributed pro rata among the other devisees in its class unless a different provision is made in the will. Consideration should be given to an alternate disposition in the event that a devise lapses.

Sometimes an individual, prior to his/her death, transfers property that was devised in a will. This transfer which removes the property from the estate by prior disposition may constitute an “ademption,” which results in the devisee not receiving the gift.

## **Sale of Devised Property to Pay Expenses**

Sometimes it is necessary for the personal representative (executor) to sell property to raise cash to pay debts of the estate. When this happens, the devisee (person who would have received the property) is usually entitled to the following proceeds from the devised property:

Any balance, after debts of the estate have been paid, of the purchase price, including any security owed by a purchaser to the testator at his/her death,

The balance of any amount of a condemnation award for the taking of property,

Any proceeds, not yet paid at death, on fire or casualty insurance on the property, unless the property is restored to its previous condition,

Property owned by the testator at death as a result of foreclosure of a security for a specifically devised obligation or property obtained in lieu of foreclosure.

### **Specific Bequest of Securities**

If a testator devised a specific gift of securities, rather than the equivalent value thereof, the specific devisee is entitled to the following:

All of the specifically devised securities which are a part of the estate at the time of the testator's death,

Additional or other securities of the same corporation owned by the testator by reason of action initiated by the corporation, excluding any acquired by exercise of purchase options,

Securities of another corporation owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the first corporation.

### **Advancement and Abatement**

If, during lifetime, a testator gives property to a devisee and in the will provides for a deduction of the lifetime gift, the gift will be treated as a satisfaction of the devise, in whole or in part. The act of giving a devise prior to death is called an "advancement."

Occasionally, the estate is not large enough to make full payment of the legacy contained in the will, in which case the legacy is reduced. This reduction is called "abatement."

### **Real Property Devise**

In devising real property, it is important to have the correct name of the devisee. For instance, a devise to a church entity that is not legally incorporated may result in a transfer of the real property to an organization that has no legal status for purposes of holding or transferring legal title. A subsequent attempt to convey the property would require additional legal expenses, affidavits, or other procedures to clear title. An individual devise should be made with sufficient particularity to enable the personal representative to identify the proposed recipient.

### **The Residue**

One important consideration when distributing property through a will is to determine that all of the property owned by the decedent has been distributed. After the specific devises have been made, there should be a provision for distribution of the "residue." Usually the residue is divided among several devisees. A final review of the will should be made to assure that the percentages of distribution of the residue add up to 100%.

### **Alternate Distribution Designations**

While the testator is free to devise monetary gifts in dollar amounts or in percentages, the use of percentages assures that the relative portions remain the same in spite of diminishing estate assets. For instance, assume a father with \$100,000 wanted to leave the bulk of his estate to the

child who took care of him in his final years, and accordingly devised \$10,000 to each of his three other children and the entire residue to the child who took care of him. The result would be satisfactory if he died in the same financial circumstances as when the will was executed. However, if, because of hospital bills, nursing home bills, and other expenses, at the time of his death there was only \$30,000 in his estate, the first three children would still each receive \$10,000, but the child to whom he wanted the bulk of his estate to go would receive nothing. It would be preferable to put all monetary gifts of the same class in percentages to assure the relative position regardless of the testator's economic circumstances at the time of death.

### **Educational Trust Provisions**

Many wills contain a provision that creates an educational trust to provide for the maintenance and education of children until they have completed their education. Assets are held in trust with the income and principal, if necessary, to be used to accomplish the objectives of the trust. At the termination of the trust, a distribution of the remaining trust assets, if any, is made. Normally the association/corporation should not serve as trustee of an educational trust, allowing some other person or organization to be appointed.

### **Appointment of a Guardian**

If there are minor children, the will should also nominate a guardian. Thus, in the event of the death of both parents, the court shall consider the nomination in the will of the last parent to die. An alternate guardian should also be nominated in the event that the primary guardian fails, refuses, or is unable to act. Where two persons are named as guardian, the will should be clear as to whether the child or children should live with only one of the named guardians if one guardian is unable or unwilling to serve.

### **Spousal Rights**

In most jurisdictions, an individual cannot disinherit his/her spouse. When the estate is probated, a spouse must make an election as to whether to take action against the will and receive his/her statutory share, or to abide by the terms of the will. Reference should be made to applicable state statutes regarding spousal rights.

### **The Rights of Children and Other Heirs**

In most jurisdictions, children and other heirs can be disinherited as long as it is clear from the will that the pretermitted (omitted) children and other heirs were not omitted by accident. Reference should be made to the applicable state statutes to define children's rights.

It is not necessary to give a reason when omitting heirs. The more elaborate the statement of reason to pretermite heirs, the more opportunity there is to challenge an allegation of fact or conclusion contained in the excluding language. Therefore, a pretermisison should be simple and short and yet be effective under local law.

### **Personal Representative (Executor or Executrix)**

All wills should nominate a personal representative as well as an alternate in the event that the first nominated personal representative fails, refuses, or is unable to act. In choosing a personal representative, the testator should be aware of the qualifications that may be needed by the personal representative in order to settle the estate. These should include his/her availability, general competence, capability, and integrity. Even though the individual named may have little specialized training, such a person can employ professionals to assist in the administration of the estate and thus he/she may prove to be a good choice.

### **Other Will Provisions**

The will should include a statement defining the powers of the personal representative, including a power of sale and a power to operate businesses. A power of sale contained in the will may avoid the necessity of obtaining permission to sell real estate and a confirmation of the sale once consummated, possibly saving the estate substantial costs and fees. The same is true regarding a power to operate a business.

It is preferable to avoid including funeral and burial instructions in the will. Typically the will is not readily available at the time this information is needed.

The will should also request that no bond or surety be posted, or that only a nominal bond be required. This request may save the estate substantial expense.

### **Safekeeping of the Will**

The will, upon execution, should be properly secured. The Planned Giving & Trust Services office of most conferences and unions has fire retardant cabinets in which documents can be stored. In most jurisdictions, a will may be left for safekeeping with the Clerk of the Probate Court. Wills kept at home are at risk of being lost or destroyed by fire. An heir who finds a will in which he/she is not favorably mentioned might destroy such a will. Caution should be exercised when keeping the will in a safety deposit box, since the box may be sealed upon the testator's death and the original will may not be available at the very time it is needed. Photocopies of the executed original will can also be beneficial, since in most jurisdictions a photocopy could be admitted in the event of the loss of the original.

### **Independent or Informal Probate**

Many probate codes include a procedure for independent or informal probate. This allows a personal representative (executor) to file a petition for commencement of proceedings with the probate court, receive letters of authority, and proceed to administer the estate without the intervention of the court. Portions of the estate activities, such as the claims procedure, could be brought under the supervision of the court with the rest of the estate being administered independently. This procedure is described more fully in the probate section of this manual, but, if desired, it should be either expressly approved in the will or at least not excluded from consideration, depending upon the requirements of local law.

## 13. THE REVOCABLE TRUST

### Creation of Trust

A trust is created when one party transfers legal ownership of property to another party for the benefit of a third party, but retains the right to specify, in writing or otherwise, what the responsibilities of the trustee will be.

A trust may be created by will (a testamentary trust), between parties during life (an *inter vivos* trust), or by declaration. The terms *inter vivos* trust and living trust are synonymous. A declaration of trust occurs when the trust creator declares the intention to own property in trust and names him/herself as the initial trustee.

### Essential Trust Elements

#### 1. Creator

The creator of a trust is known by several synonymous terms: grantor, trustor, or settler. The creator transfers owned property to another to hold for a specified purpose. (While the focus of this chapter is personal trusts, recognize that trusts can also be created by other legal entities such as corporations or governmental entities.) The grantor may or may not retain powers over the management of the trust and may or may not continue to be involved as a trustee or beneficiary. Lacking retained powers or rights the grantor's continuing relationship to the trust is nominal.

Generally, anyone who is an adult under state law (usually eighteen or older) can create a trust. The grantor is required to have mental capacity sufficient to understand the implications of the document. This would include the ability to know generally the nature and situation of the subject property, the persons who would have a claim on the trustor's remembrance and the ability and freedom to act independently in creating the trust. Generally, if the trustor has the mental capacity to create a will, the trustor has the mental capacity to create a revocable *inter vivos* trust.

#### 2. Trustee

The trustee is a fiduciary who manages trust assets pursuant to the directions set forth in the trust agreement and applicable law. The trustee is the one who is trusted to care for the trust property and to do what the trust document instructs. Implicit in the role of trustee is the requirement for the trustee to act solely for the benefit of trust beneficiaries with undivided loyalty. It has been written of the trustee's duty, "The first and most important duty of the trustee is to study and become thoroughly familiar with the provisions of the trust instrument and thereafter to follow them implicitly" (Charles Rounds, Jr. quoting Augustus P. Loring in *Loring: a Trustee's Handbook*, 2001).

The trustee may be a person, a bank, another corporate trustee, or a charitable corporation (if the corporation's articles of incorporation and state law so allow), or a combination of these. During the formative years of Seventh-day Adventist Planned Giving & Trust Services it was common for the church member grantor to name the church organization corporation or association as the trustee. However, it is becoming increasingly common for the church

member grantor to name himself or herself as the initial trustee with another person, bank or corporate trustee, or the church organization corporation as successor trustee to assume office upon the death or disability of the grantor. In this case, the revocable trust is commonly referred to as a *self-trusteed* or *self-administered* trust.

Legal capacity to serve hold and manage property in trust is one thing; fitness to serve as trustee is another. A person or entity with legal capacity to take title or hold property for oneself can generally do so as trustee. A natural person must be of majority age to serve as trustee. Some states may require residence in the state. Fitness to serve as trustee includes adequate mental capacity. Fitness also includes the ability to properly and honestly safeguard assets, handle financial transactions, engage in investment functions, and perform accounting and tax reporting duties. Fitness also includes the commitment of time, monetary and staffing resources to assure that trustee duties are properly performed. The trustee must also possess ability to manage a set of potentially complex relationships among lifetime and remainder beneficiaries.

### **3. Property**

The third essential element of a trust is the trust property. The transferred property is usually called the trust corpus or principal. Generally, a trust cannot exist without property, although in some jurisdictions a trust created during life (*inter vivos trust*) can be initially funded with a transfer at death either through will or beneficiary designation. The transferred property can generally be any type of property capable of ownership transfer (such as cash, securities, bank accounts, real estate, tangible personal property, contract ownership etc.). Even though a wide variety of property can be transferred to the trust does not mean that all assets are suitable trust assets.

The trust represents a split ownership of property. The trustor retains the “equitable” right to the transferred property, while the trustee holds the legal title. Equitable rights involve the right to use, enjoy and benefit from trust assets. For example, the grantor may retain the right to receive trust income and occupy trust real estate. Somewhat simplistically, the trustee has all rights to trust property except the right to its benefit; that right is given to the beneficiary.

In some jurisdictions, legal title may be held in the name of the trustee without reference to the trust (e.g. General Conference Corporation of Seventh-day Adventists), but it is generally preferred for title to be held in the name of the trustee, as trustee for a specifically named trust (e.g. General Conference Corporation of Seventh-day Adventists, trustee of the John and Mary Doe Trust). Legal title includes possession and control of the asset or title document. Legal title also includes the right to transfer ownership. In many revocable living trusts for which a church organizations serves as trustee, the trustee’s right and obligation as to property is to hold bare legal title and rely on grantor written instructions for investment and lifetime disposition of trust assets.

It is absolutely essential that the assets of any trust be kept separate from the trustee’s personal or corporation owned assets. Mingling the trust funds with funds belonging to the trustee generally is held to be a breach of trust. Many states prohibit co-mingling by statute; some states consider it to be a criminal act. A trustee who co-mingles trust funds with other owned funds exposes trust assets to the trustee’s creditor’s and invites personal responsibility



for loss. A trustee is held strictly accountable for co-mingled funds and any doubt will be resolved against the trustee.

#### **4. Beneficiaries**

The fourth essential part of a trust is the beneficiaries. Without a beneficiary there is no trust. The beneficiary is the person or class of persons for whose benefit the trust exists. The beneficiary must be specific, either named individually or described sufficiently to be definite (such as “the children of the grantor then living”), and must be identifiable before the termination of the trust.

There are two kinds of beneficiaries: income and remainder.

One type of income beneficiary has a *mandatory* interest; meaning that under the trust terms all income must be regularly paid out. Such income distributions are mandated at least annually or at a more frequent interval as the beneficiary and trustee agree. A trust might also make the income distribution *discretionary*, which leaves the decision to the trustee to pay out all or part of trust income in a given period. Income retained in the trust is usually added to trust principal and re-invested.

It is common in *inter vivos* trusts and declarations of trust for the grantor to retain the right to income during life, thus being the primary trust beneficiary. A trust could also name another individual or class or organization to receive trust income. Some income beneficiaries also receive or retain the right to withdraw trust principal from time to time or upon the occurrence of certain events.

A second type of beneficiary is the remainder beneficiary or remainderman. The remainder beneficiary takes the trust principal and accrued income, if any, remaining when the trust terminates.

#### **5. Trust Agreement**

The written terms and conditions of the trust are the final element of a trust. The trust agreement defines the rights, duties, and obligations of all parties to the trust. The terms of a trust will ordinarily govern the authority and duties of a trustee, to the extent those terms are possible and legal. The terms can be restrictive, forbidding an otherwise proper activity of the trustee, or they can expand the trustee’s authority, permitting actions that may be generally improper for a trustee.

Typical provisions in a revocable living trust agreement or declaration of trust for an individual or married couple may include the following:

- a. the name(s) of the trust creator (grantor) and that of the initial trustee,
- b. the grantor’s expression of intent to create a trust,
- c. a statement of grantor’s intent to transfer property to trustee and agreement by trustee to accept such property,
- d. whether the grantor, or anyone else, may amend or revoke the trust, add or withdraw assets,

- e. identity of successor trustee(s), conditions under which and in what order the successor trustee would serve,
- f. what powers the trustee should have, in terms of investment and management, and what discretion the trustee is to have in terms of releasing money or other trust property to beneficiaries,
- g. identity of the primary trust beneficiaries,
- h. who is to receive distribution of the trust estate upon the death of the grantor (remainder beneficiary, and
- i. when the beneficiaries would be entitled to receive the distributions.
- j. statement of governing state law

### **Benefits of a Revocable Trust**

1. Generally, properly titled trust assets do not become part of the probate assets of the decedent. Avoidance of probate may result in some cost savings as well as a timelier disposition of the trust assets. It must be kept in mind, however, that some trustee duties, like those of an executor/personal representative, take time to complete. These activities include, but are not limited to liquidating assets, determining and paying final expenses, filing tax returns, paying creditors, locating beneficiaries, and making distribution.
2. The trust is not normally filed with a court or made a part of any public record; and it is, therefore, more likely that it will remain a private document. It is likely however, if the trustee sells real estate, that recordation of a Memorandum of Trust Existence and Authority or similar document will be required. In those jurisdictions which assess an inheritance tax disclosure to taxing authorities of the names of trust beneficiaries, their relationship to the deceased grantors and their interests under the trust may be required.
3. A trust can generally avoid the necessity of a court appointed guardian and/or conservator by providing uninterrupted administration through any period of grantor disability or incapacity.
4. A trust may provide an increased certainty of result. The probate process offers an opportunity for interested parties to challenge the validity of the will. The revocable trust is not subject to the rules of probate and any attack must be based upon the more difficult showing that the grantor acted under duress or undue influence. This would be difficult to establish if the trust has been in operation for a significant period prior to the grantor's death.

### **Tax Consequences of the Revocable Trust**

For virtually all purposes the property in an *inter vivos* revocable trust remains the property of the grantor. Thus the grantor remains liable for all income taxes on income earned by trust property. Moreover, there are no gift taxes payable on the amounts placed in the trust because, due to the grantor's retained power of revocation, the transfer to trust is incomplete for gift tax purposes. Finally, when the grantor dies, the trust property is included in the grantor's taxable

estate for federal estate tax purposes. Despite common perception, there are no tax savings realized through *inter vivos* revocable trusts.

## 14. THE CHARITABLE GIFT ANNUITY

### Philosophy

Any attempt to establish a philosophy of charitable gift annuity agreements must emphasize the word “gift”. These agreements constitute one method by which Seventh-day Adventist organizations solicit and receive contributions to carry out their religious purposes. To refer to gift annuities as investments shifts the donor’s focus away from giving to support mission to a more self centered focus on return.

A person who enters into a charitable gift annuity agreement with a qualified charity makes an irrevocable gift to the organization and receives fixed payments for life. Hence, offering members and friends the opportunity of creating a gift annuity for the benefit of a church organization to opportunity to support God’s cause while at the same time preserving, what may be essential, life income.

### Definition

A charitable gift annuity agreement (CGA) is a contract **not** a trust, under which the charity, in return for an irrevocable transfer of cash, marketable securities or other property, agrees to pay a fixed sum of money (annuity payment) for a period measured only by one or two lives (**not** a term of years). The annuity payment can be made in equal monthly, quarterly, semi-annual, or annual installments.

The person who receives the annuity payments is called the “annuitant” or “beneficiary”. The annuity payment amount is calculated by multiplying an age determined percentage rate times the value of assets transferred to the charity. The annuity payments are **not** called “income” or “interest” because a portion of each payment is considered to be a tax-free return of a portion of the donor’s gift, nor is it determined by the annuity investment earnings. The annuity payment amount is clearly set forth in the annuity document and is not subject to change. If the donor(s)/annuitant(s) wishes to increase the annuity payments amount by transferring more cash or assets to the charity, a new gift annuity agreement must be established.

The irrevocably transferred property becomes a part of the charity’s annuity investment pool or fund and the payments are a general obligation or liability of the organization issuing the annuity. The annuity is backed by all of the issuing charity’s assets, not just the property contributed or the annuity investment fund. Unlike a trust, annuity payments continue for the life/lives of the annuitant(s), and **not only** as long as assets remain in the annuity investment fund or fund.

Variable annuities, term-certain annuities, guaranteed payment gift annuities (a certain number of payments are guaranteed, whether or not the annuitant survives), or an annuity agreement covering more than two lives do not qualify as charitable gift annuities under the Internal Revenue Code and applicable regulations. State regulations generally prohibit charitable organizations from entering into such agreements.

## **State Regulation**

Several states regulate the issuance, investment, and/or administration of gift annuities. Consult [www.acga-web.org](http://www.acga-web.org) for information on state regulation of annuities. Numerous other states require notification of the charity's intent to issue gift annuities in that state. Penalties are possible for those charities that fail to comply with state requirements. It is important to comply with state law in (1) the state the charity is located and the annuity is administered, (2) the residence state(s) of the donor(s) at the time the gift is given and the agreement is signed, and (3) any state where an annuity is promoted including any written or oral communication.

Some states (e.g. California, Washington, New York and others) take the position that the residence state of the annuitant is the state which governs the terms of the contract agreement while in other states the charity's domicile is the governing state. While each state's law is different, the statutes generally deal with the annual filing of information, the maintenance of reserves and the rates of return of the gift annuity. Most states require the inclusion of specific disclosure language in gift annuity agreements and/or promotional information. Required disclosures typically state that the gift annuity is not insurance, is not guaranteed by any governmental agency and is backed by the charity's assets. Generally, the Office of State Commissioner of Insurance administers the statutes governing gift annuities. In addition to complying with insurance commission rules a charity may be required to register with the Secretary of State, the state agency that oversees the sale of securities, or other state departments in order to conduct gift annuity "business" in that state. Up to date information on state regulations is available on the ACGA ([www.acga-web.org](http://www.acga-web.org)) and PG Calc ([www.pgcalc.com](http://www.pgcalc.com)) websites. Each church organization should consult its own legal counsel regarding the applicability of state law to its particular situation.

## **Funding Assets**

Cash is by far the easiest asset for the charity to accept in exchange for a gift annuity agreement; however, assets that are readily convertible to cash (such as marketable securities) are also suitable.

Stock of closely held corporations and tangible personal property are typically hard to value and may also be difficult to sell, making them generally unacceptable to fund a gift annuity agreement. Real estate, while acceptable in most states to fund a gift annuity agreement, should be carefully evaluated before acceptance, as there may be considerable delay before a sale. The charity must start paying the annuity payment according to the contract even if the donated property has not sold. Also, there is a risk that the real estate may sell for less than its appraised value. If the organization wishes to acquire and retain real property for its own purposes and the seller is willing, the organization can pay for the property with a gift annuity agreement rather than cash. The organization will need to make other arrangements to cover its annuity obligation if the property will be unproductive or under-productive of income.

Some state regulations may also restrict or prohibit acceptance of assets other than cash and listed securities for a charitable annuity agreement. Where non-cash assets are received in exchange for an annuity, consideration should be given to market conditions for a sale and the ability of the charity to make the required annuity payment. When a non-cash asset is used, the

value of the annuity is the fair market value of the asset on the date of transfer to the charity. When the asset is sold by the charity, regardless of the price, the annuity value remains unchanged.

### The Rate Structure

The American Council on Gift Annuities (ACGA) has been providing educational and other services regarding charitable gift annuities since 1927. It is a voluntary association of more than 1,500 gift annuity issuing agencies, including the General Conference of Seventh-day Adventists. One of its main purposes is to publish suggested maximum charitable gift annuity rates for use by charities and their donors. To this end the ACGA retains the services of a professional actuarial firm to advise and consult regarding life expectancies and related matters. The ACGA's suggested rates are recognized, by charities, donors, state insurance departments, and the IRS as being actuarially sound.

The recommended maximum rates for gift annuities are based on economic projections, assumed investment returns, and actuarial computations. The underlying belief is that gift annuities should be "marketed" on the merits of the issuing charitable organization, not on rate-based competition among charities.

The gift annuity rates recommended by the ACGA are computed to produce an average charitable remainder (the residuum) of approximately 50% of the amount originally transferred to the charity. Because of the gift element CGA rates are lower than, and are not in competition with, commercial annuity products.

In addition, the ACGA assumes that 100% of the amount transferred to the charity in exchange for the annuity is invested according to the following table.

Assumptions for ACGA Suggested Maximum Gift Annuity Rates (2-1-2009):		
Asset Allocation:	Equities:	40 %
	Bonds:	55 % (10 Year Treasury Bonds)
	Cash:	5 %

The overall investment return is assumed to be 4.75% and annuity fund management expenses are assumed to be 1% of the fund balance. The rate structure is carefully studied and adjusted biannually or as conditions warrant. There is no guarantee the investment market will perform equal to or in excess of these assumptions.

Rates are based on the age of the annuitant(s) on his/her nearest birthday as of the gift date, without regard to gender. The rates are lower for a two-life annuity than for a one life annuity.

The General Conference Corporation Board of Directors considers the American Council on Gift Annuities' recommendations and other factors in determining the rates to be offered by denominational entities. North American Division Working Policy S 40 45 (2.) states, "Rate Schedules—Maximum gift annuity agreement rate schedules are provided by the General Conference Corporation, to officers of union and local conferences and institutions, and shall be strictly adhered to by all issuing organizations."

## **The Application**

Once a prospective donor decides to fund a gift annuity agreement, the applicant should be asked to complete an application form. This form should elicit the following minimum information for each donor:

1. Full name of the annuitant, or both names if it is to be a two-life annuity.
2. Residence address and mailing address to which payments are to be sent.
3. Date(s) of birth and gender.
4. Social Security numbers of each annuitant.
5. City and state of birth (so that birth dates may be verified, if necessary).
6. Desired frequency of payments.
7. Intended asset(s) to be used for funding and asset value.
8. And restrictions or designations, if any, regarding the use of the residuum amount at maturity.

A specimen gift annuity application is included at the end of this chapter.

## **Effective Date**

**A gift annuity's effective date is the date in which the contract is executed as required by applicable laws and regulations and upon funding.**

## **Risks Inherent in Gift Annuities**

While gift annuities, seen from the donor's perspective, provide some level of financial stability, the annuitant is exposed to "inflation risk" because the purchasing power of the unchanging annuity payment decreases over time. The annuitant that receives payments for ten to fifteen years will experience a significant decline in purchasing power. The annuitant also assumes the risk of the charity becoming insolvent, in which case payments stop. Unlike commercial bank deposits or annuities issued by insurance companies, a gift annuity is not backed up by a guaranty association or government agency.

From the charity's perspective a charitable gift annuity also presents various risks. Investment risk is always a factor to the issuing charity. Most non-profits pool annuity funds and invest them in a managed portfolio. If investment returns are less than expected or less than ACGA assumptions the charity bears the risk that it will not earn the necessary amount over time and the fund could become exhausted while owing payments to one or more annuitants.

Investment risk extends to the type of assets acceptable as funding for a gift annuity agreement and the timing of asset sale. If publicly traded securities are accepted as funding the charity must

be careful to liquidate the security as close to the funding date as practical so as to “freeze” the value and avoid value erosion. Reinvestment in a well diversified portfolio will then tend to moderate risk. If significant value is lost immediately after accepting securities or other property for an annuity the losses are seldom regained resulting in accelerated decline of the individual annuity fund value.

When annuitants live longer than expected the annuity pool is exposed to “mortality risk.” The charity is under a contractual obligation to pay the annuitant for life. In some cases when the annuitant outlives the mortality table life expectancy an individual annuity can be exhausted thus requiring the charity to provide funds from operating or another source. No charitable residuum results from such an annuity.

Offering gift annuities at rates higher than the recommended rates may jeopardize the charitable remainder as well as compromise the actuarial soundness of the annuity. Offering increased rates may, in some states, give rise to the need for separate actuarial studies to verify the soundness of the annuity investment fund. If the rate is too high, other funds or the general assets of the organization may be required to carry out the terms of the agreement. A charity that follows the ACGA rates, which the General Conference Corporation generally accepts for use by church organizations, will rarely lose money on a gift annuity even if the annuitant(s) exceed(s) life expectancy and investment performance is mediocre. Compare the following tables for the effect of following ACGA rates vs. exceeding ACGA rates by 1%. Even if the risk of exhausting the contribution is slight, the residuum will be diminished when ACGA rates are exceeded.

<b>The Risk of Following ACGA Rates</b>							
Assuming Constant Return Net of Expenses							
Annuitant Age	ACGA Rate	Life Expectancy in Years		Number of Years to Exhaust Contribution When Net Return is:			
		Annuity 2000 Female Tables	ACGA Life Expectancy	4%	5%	6%	7%
65	6.0%	23.0	24.8	27.6	36.1	∞	∞
75	7.1	14.9	16.4	20.8	24.5	31.3	61.14
85	8.4	8.4	9.5	13.7	15.0	16.7	19.2

<b>The Risk of Exceeding ACGA Rates</b>							
Assuming Constant Return Net of Expenses							
Annuitant Age	Annuity Rate	Life Expectancy in Years		Number of Years to Exhaust Contribution When Net Return is:			
		Annuity 2000 Female Tables	ACGA Life Expectancy	4%	5%	6%	7%
65	7.0%	23.0	24.8	21.3	25.2	32.7	∞
75	8.1	14.9	16.4	17.1	19.3	22.7	28.8
85	9.4	8.4	9.5	12.0	13.0.0	14.2	15.8

Table information provided by ACGA effective July 1, 2006



<b>How Exceeding the ACGA Rate Affects the Residuum</b>				
Assuming One-Life Annuity, Female, Age 70				
Reserves Invested 50% in Stocks and 50% in bonds Expenses of 1%				
Year of Contribution	ACGA Rate Then in Effect	Rate Paid by Charity	Duration of Annuity	Effect of Higher Rate on Residuum
1971	6.2%	7.2%	18 years	31.6% less
1980	7.1	8.1	18 years	14.8 % less
1989	7.3	8.3	15 years	15.1 % less
2000	7.5	8.5	4 years	5.9% less

Table information provided by ACGA effective July 1, 2006

## Tax Considerations

### Federal Income Tax

A charitable gift annuity consists of two parts. One part is the amount paid for what is the equivalent of a single premium annuity, also known as the "investment in the contract" or "basis." It is the value or cost of the donor's right to receive the lifetime annuity payment. Since complex calculations are required to arrive at this value, it is advisable to use the most recent version of gift illustration/calculation software.

The second part of a gift annuity is the gift portion. The value of the gift portion is determined by subtracting the investment in the contract from the amount transferred. The resultant current value of the charitable remainder is the amount allowed for the donor's income tax charitable deduction. The federal income tax charitable deduction limitation (30% or 50% of adjusted gross income, depending on the type of property donated) and the five-year carryover provisions apply.

During the annuitant's life expectancy each annuity payment for agreements funded with cash is considered part ordinary income and part tax free return of principal (investment in the contract or basis). Annuity payments made after the annuitant's life expectancy are deemed fully taxable as ordinary income.

If the gift annuity is funded with appreciated assets, the bargain sale rules apply. Consequently, long term gain (gain on capital assets held more than one year) must be allocated proportionately between the gift portion and the investment in the contract. The capital gain allocated to the gift portion is forgiven. The capital gain allocated to the investment in the contract is taxable and is reported in equal amounts spread over the annuitant's life expectancy. In this situation, each annuity payment will consist of three components: ordinary income, capital gains, and tax-free return of principal. If the annuitant dies before the capital gain is fully reported the unreported amount is disregarded.

It is important to note that the capital gains pro rata deferral over the annuitant's life expectancy occurs only when the donor is an initial annuitant and the annuity is non-assignable. Otherwise, the capital gains are reported and taxable in the year the gift annuity is created. For example, if a

donor creates a gift annuity for a friend or child then the capital gain is fully reported in the year of transfer to the charity. The transaction is treated as if the donor sold the appreciated asset and donated cash for the annuity.

The tax character of annuity payments is reported annually to the annuitant on Form 1099-R.

### **Applicable Federal Rate**

Until the late 1980s the federal government published tables that utilized a fixed discount rate for gift calculation purposes. In 1989, the government mandated the use of a floating discount rate that changes monthly. For the purposes of determining the charitable contribution amount, Internal Revenue Code §7520 prescribes the use of a variable rate called the Applicable Federal Rate (AFR). The rate is the assumed annual rate of return the gift assets will earn during the gift term. It equals 120% of the annual mid-term rate, rounded to the nearest 0.2%. The annual mid-term rate is the annualized average yield of treasury instruments over the past 30 days that have remaining maturities of 3-9 years.

Commonly called "monthly rate," "rate of the month," or "7520 rate" the United States Treasury Department determines the monthly AFR. The Treasury publishes the next month's AFR in the Wall Street Journal about the 20<sup>th</sup> to the 23<sup>rd</sup> of the month. Crescendo Interactive and PG Calc communicate the monthly rate to clients via email and newsletters.

Since the "Monthly Rate" is a theoretical value intended to reflect economic conditions at the time of the gift and is used in calculations to determine the donor's income tax charitable deduction, it has no effect on the actual charitable remainder. The charitable remainder or annuity residuum is determined by the choice of investment instruments, investment return, management expense, and the actual life span of the donor. Other gift plans affected by the monthly rate are charitable remainder trusts, charitable lead trusts, and life estate agreements.

When performing the gift calculations, Code §7520 allows the selection of the "rate of the month" for the month the gift is made or the rate for either of the two previous months. For example, if the gift was made in September, the donor may elect to use either the monthly rate for September, August or July. Since the rate is published by about the 20<sup>th</sup> to 23<sup>rd</sup> of each month the donor could also choose to delay the gift until the next month to take advantage of that rate. However, if the monthly rate for either of the two months prior to the month of the gift is chosen a discount rate election statement must be attached to Schedule A of the donor's federal income tax return for the year of the gift. The election must provide specific information required by the IRS.

### **Effect of AFR Fluctuations**

For gift annuities, the lower monthly rate of the three allowable rates results in a larger tax-free return of principal in each payment and a smaller charitable deduction in comparison to the higher allowable rate. Using the highest of the three allowable rates provides a larger charitable deduction and a smaller amount of tax free income in each payment. The donor may select the monthly rate that best suits his/her situation.

Gift Annuity – Effect of Monthly Rate Fluctuation			
Deduction vs. Tax Free Income			
Gift Date: 05/25/2006, Gift Value:\$50,000, Basis \$20,000			
Monthly Rate	March 5.4%	April 5.6%	May 5.8%
<b>Charitable Deduction</b>	\$24,446.84	\$24,692.00	\$24,935.00
<b>Exclusion Ratio</b>	68.3%	67.6%	66.9%
<b>Capital Gain Pmts</b>	\$1,474.22	\$1,460.08	\$1,446.06
<b>Tax Free Income</b>	\$984.58	\$973.52	\$962.34
Table data generated using Crescendo Pro version 2007.1			

## Valuation and Substantiation

When the donation of a non-cash asset produces a charitable deduction in excess of \$500, the donor must complete Section I of IRS Form 8283 indicating the value of the asset on the date of transfer. If the deductible amount of a non-cash asset other than publicly traded securities is over \$5,000 (\$10,000 for closely held stock), the donor must obtain an appraisal from a qualified appraiser and complete Section II of Form 8283. The donor must attach Form 8283 to the tax return on which the charitable deduction is claimed. The charity must file IRS Form 8282 showing the value at the date of sale, if the asset is sold or otherwise disposed of within three years of the transfer. See Chapter 23 of this manual for a more thorough discussion of gift valuation and substantiation rules.

Since all gifts with a value of \$250 or more need to be acknowledged by the charity in the form of a receipt issued to the donor, the charity’s receipt must include the deductible amount, description of the donated asset, and a statement that no goods or services were received for the donated amount. It is generally better to issue a gift substantiation letter rather than the receipt form used for outright charitable gifts. A copy of the calculation sheet showing how the deductible amount was derived should be attached to the substantiation letter.

## Disclosures

If annuity fund assets are invested in one or more pooled funds, the Philanthropy Protection Act of 1995 requires the charity to disclose certain information to the donor. Some states also require similar disclosure. Accordingly, an Annuity Disclosure Statement should be given to each annuitant at or before the time of the gift. The form and content of the disclosure should be developed in consultation with legal counsel. Though not required, some charities ask the annuitant(s) to sign this statement, indicating that they have read it and still agree to enter into the annuity agreement. This signed statement would then be returned to the charity for inclusion in the annuity file.

## Tax Reporting

The charity reports the taxation of distributions on Form 1099-R (Distribution from pensions, annuities, retirements, IRAs, etc.). The gross distribution is reported in Box 1, the taxable amount as ordinary income in Box 2a, any amount taxable as capital gain in Box 3, and any non-taxable amount in Box 5 (See Reg. §1.1011-(2) Example 8). The deadline for providing the

1099-R to the annuitant is January 31. The deadline for the charity to file the 1099-R with the IRS is February 28 with Form 1096 transmittal form. If more than 250 1099-Rs are filed filing must be on magnetic media.

### **Additional Income Tax Deduction**

For gift annuities written after December 31, 1986, if the annuitant(s) lives longer than his/her life expectancy as determined at the inception of the gift annuity and has received a full return of the amount invested in the contract (synonymous with principal, basis in the contract and present value of the annuity), all annuity payments thereafter will be subject to taxation as ordinary income. However, if the sole or surviving annuitant does not live to the anticipated life expectancy, a deduction for the un-recovered basis in the contract is available on the decedent's final personal federal income tax return (Form 1040). It is deductible as a miscellaneous deduction not subject to the 2% of adjusted gross income limitation on Schedule A. The un-recovered basis in the contract is not deductible as a charitable deduction.

### **Gift and Estate Tax**

#### **Gift Tax**

When creating a charitable gift annuity where the annuity payment benefits someone other than the donor only, the donor makes two gifts. One gift is to the charity and the other to the annuitant. The gift to charity is a present interest gift equal to the amount transferred less the present value of the annuity. The present value of the annuity is the gift value to the non-donor annuitant and is potentially subject to gift tax.

If the payments to the non-donor annuitant begin immediately the gift is of a present interest and qualifies for the annual gift tax exclusion of \$13,000 (in 2011 and indexed for inflation). If the non-donor annuitant's payments begin in the future as in a deferred gift annuity or a joint and survivor annuity then the gift value is for a future interest and does not qualify for the annual gift tax exclusion. The balance of the gift in excess of the annual exclusion is taxable. To the extent the \$1,000,000 lifetime gift tax exclusion is available there may or may not be any tax payable. Regardless of the annuitant, if the charitable gift portion exceeds annual exclusion amount a gift tax return (Form 709) is required for the amount transferred to charity.

If the donor reserves the right to revoke the non-donor's annuity payments (exercisable only by Will), the gift becomes complete when the annuity payment is made rather than at the time the annuity agreement is signed. A completed gift is a gift of a present interest and therefore qualifies for the annual gift tax exclusion. Excess payments over annual gift tax exclusion per year are taxable gifts that may be excluded from taxation by the donor's lifetime gift tax exclusion if available. The donor annually reports taxable gifts on the gift tax return (Form 709).

If a donor creates a charitable annuity for the sole benefit of a spouse, the gift qualifies for the unlimited gift tax marital deduction. When the husband and wife are co-annuitants the gift tax marital deduction is available only under a joint and survivor annuity.

#### **Estate Tax**

Generally, if the present value of the annuity is included in the donor's gross estate for estate tax purposes it is subject to the estate tax. The present value of the annuity would be includable in

the gross estate if it was a testamentary gift or if the donor retains the right to revoke the annuitant's interest. However, if the benefit is for the donor's spouse it will qualify for the unlimited estate tax marital deduction. If the non-donor annuitant is not a spouse then the present value of the annuity included in the estate will be covered to the extent it is available by the donor's lifetime estate tax exclusion (\$5,000,000 in 2011 and 2012).

## **Various Types of Gift Annuities**

There are different types of charitable gift annuities, and not all states permit the use of each type. Within the regulating states, the charity often must submit a sample of each different "version" of each "type" of agreement it wishes to offer to the residents of that state before it issues that agreement.

## **Versions of Agreements**

Generally, there are three "versions" of each "type" of agreement:

1. A "single life" agreement (pay only one person for their lifetime),
2. A "two life in succession" agreement (pay person "A" and then if person "B" survives person "A", pay person "B"),
3. A "joint and survivor" agreement (pay two persons simultaneously with both names on the annuity payment check, each getting half of the payment, and at the demise of the first to die, pay the survivor the full annuity amount). This is often used for married couples who file joint tax returns and/or who live in community property states.

## **Types of Agreements**

### **Immediate Gift Annuity**

With an immediate gift annuity, the annuitant(s) start(s) receiving payments at the end (or the beginning) of the payment period immediately following the contribution. The annual annuity payment is determined by multiplying the amount contributed (fair market value on the gift date, NOT the net proceeds of sale if CGA is funded with securities or some other non cash asset) by the annuity rate. Payments can be made monthly, quarterly, semi-annually or annually. The end of a period is not the first day of a month, but the last day of a month or period, or the anniversary date of the gift. The first payment is often prorated from the date of the contribution to the end of the first period, and thus is smaller than the subsequent regular payments, but it is possible to stipulate that the first payment be for the full amount. It is also possible that the first pro rated payment be combined with the first regular full payment or be omitted entirely. All of these factors have some effect on the amount of the charitable deduction.

### **Deferred Payment Gift Annuity**

Deferred payment gift annuities are often attractive to persons who do not need current income, but prefer a larger annuity payment at a future time. A longer deferral period results in a higher annuity rate and ~~consequent~~ payment.

With a deferred payment gift annuity, the annuitant(s) start(s) receiving payments at a future date chosen by the donor. The deferred starting date must be more than one year after the date of the contribution. As with immediate gift annuities, payments can be made monthly, quarterly, semi-

annually or annually.

### **Flexible Annuity**

A Flexible Deferred Payment Gift Annuity means that the donor does not have to choose the payment starting date at the time of the contribution. The annuitant (who may or may not be the donor) may make the choice of the payment starting date based on his/her retirement date or other considerations. The older the annuitant(s) when the payments start, the larger the payments will be.

This concept provides some of the flexibility offered by commercial annuities sold by commercial insurance companies. The donor chooses a target date for payments to begin. However, the annuitant can elect to have payments begin either earlier or later than the target date. The annuity contract will include the range of payment beginning dates and a requirement that the annuitant give 90 day notice to the charity of the desired beginning date. The charitable deduction is based on the earliest payment beginning date and remains fixed regardless of the eventual beginning date.

### **Testamentary Gift Annuity**

It is possible to establish a gift annuity for another person by will or trust. This method may appeal to testators concerned that a specific beneficiary may be too young or inexperienced to handle a lump sum distribution. A testamentary gift annuity may also serve the needs of an elderly person needing additional income to supplement retirement income while potentially preserving a charitable gift. The will or trust should direct the personal representative/trustee to acquire from the desired charity a charitable gift annuity for a sum certain or percentage of the residual estate/trust at the gift annuity rate then in effect. The annuity computation would be based on the age of the annuitant as of the nearest birthday to the date of donor's death.

### **Early Termination of a Gift Annuity**

It is possible to terminate a gift annuity prior to the death(s) of the annuitant(s). Rather than early termination of an entire gift annuity, most commentators believe it is also possible for the annuitant(s) to surrender only a fractional share of their stream of future annuity payments. Early termination can often benefit both the annuitant(s) and the charity.

An annuitant can benefit by accelerating his/her cash flow from the gift annuity by receiving the present value of their future annuity payments either as a lump sum payment or in installments. The annuitant would recognize some income from the transaction and would pay any resulting taxes and penalties.

If the annuitant wishes and if the amount is large enough to meet the charity's gift acceptance guidelines, part or all of the present value of the income interest could be transferred to the charity as funding to create a pooled income agreement or charitable remainder trust. The annuitant/donor would then get a charitable income tax deduction for the present value of the charity's remainder interest in the pooled income agreement or charitable remainder trust based on the donor's(s') life expectancy(ies) and the applicable federal rate (monthly rate) in effect on the date of gift.

As another alternative, the annuitant(s) could completely surrender the entire right to all future

annuity payments and receive an income tax charitable deduction for the present value of the future payments surrendered. The amount of the deduction would depend on the nature and timing of the transaction. If the charitable deduction amount is in excess of \$500, the donor must file federal Form 8283 along with an appropriately worded gift receipt to substantiate the deduction. If the charitable deduction amount is in excess of \$5,000, the donor must also obtain a qualified appraisal.

In each of the above scenarios, the charity can benefit by being able to use all or part of the balance of the gift annuity account for its charitable purposes at an earlier date.

Early termination of all or part of a gift annuity can be a complex transaction with specific tax consequences. Such a transaction should only be considered if both the annuitant(s) and the charity are represented by qualified legal and tax counsel.

### **Denominational Policy**

All gift annuity agreements must be accounted for, invested and administered in accordance with North American Division working policy (NAD WP) and applicable state laws.

#### **North American Division Working Policy – NAD WP S 40 45, Gift Annuity Agreements (General Conference Working Policy GC WP S 40 10)**

1. *Approved Organizations*— General Conference, union and local conference associations/corporations, and other legally-recognized entities may issue gift annuities to the extent allowed by applicable laws and regulations.
2. *Rate Schedules*—Maximum gift annuity agreement rate schedules are provided by the General Conference Corporation, to officers of union and local conferences and institutions, and shall be strictly adhered to by all issuing organizations.
3. *Accounting*—Gift annuity agreements shall be accounted for by Generally Accepted Accounting Principles (GAAP) for such agreements as set forth in accepted fund accounting manuals. Each gift annuity shall be accounted for separately, and no part of the total annuity amount may be used for operations until the death of the final annuitant.
4. *Union/Division Counsel*— Before denominational organizations enter into Gift Annuity agreements funded with cash or publicly traded securities in excess of \$500,000 or other non-cash assets, the denominational organization personnel shall obtain counsel from the Union or Division Trust Services Director or officers. Denominational organizations shall comply with applicable state/provincial registration, reporting, investment and administration requirements for all charitable gift annuities.

### **Summary**

For many years, the charitable gift annuity has been recognized as an effective instrument for securing charitable remainder gifts, from the very large to the very small, for large numbers of charitable organizations in the United States. Tax advantages include favorable federal income, estate, and gift tax benefits that are attractive to many donors.

Gift annuities are often instrumental in establishing a bond between the donor(s) and the organization which encourages the donor(s) to take a greater personal interest in the organization and its activities. This may result in further gifts, both present and deferred, as well as possible referrals of relatives, friends, and associates.

#### Additional Resources

The foregoing discussion is not intended to be comprehensive, though it provides a brief review of certain features of the charitable gift annuity. For addition information, refer to the following:

American Council on Gift Annuities web site. [www.acga-web.org](http://www.acga-web.org)

*Charitable Gift Annuity*, PGDC Technical Report. [www.pgdc.com](http://www.pgdc.com).

*Charitable Giving Tax Service*, Volume 1, R & R Newkirk, Oak Brook, Illinois.

Minton, Frank, Edith Matulka and J. William Zook, Jr. *Charitable Gift Annuities: The Complete Resource Manual*. Planned Giving Services, Seattle, Washington. Available at [www.pgcalc.com](http://www.pgcalc.com).

Teitell, Conrad, *Deferred Giving*, Taxwise Giving, Old Greenwich, Connecticut, 2001.

Toce, Joseph P. et al *Tax Economics of Charitable Giving*, Warren, Gorham, & Lamont of RIA.



**[Corporate Name of Organization]**

Planned Giving & Trust Services  
[Address]  
[Telephone Number] [Fax Number]

**GIFT ANNUITY APPLICATION FORM**

I (we) hereby make application for a gift annuity subject to the following terms and conditions:

**Donor(s)** (Enter both names if property is jointly-owned or community property; otherwise enter one name)

Name \_\_\_\_\_ Name \_\_\_\_\_  
SS# \_\_\_\_\_ Date of birth \_\_\_\_\_ SS# \_\_\_\_\_ Date of birth \_\_\_\_\_  
Address \_\_\_\_\_ Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
Daytime phone (\_\_\_\_) \_\_\_\_\_ Daytime phone (\_\_\_\_) \_\_\_\_\_

**Annuitants**

Check one:

- One annuitant
- Two annuitants, joint-and-survivorship (payments to both jointly, continuing to the survivor)
- Two successive annuitants (payments to one, then to the survivor)

If annuitant(s) is(are) other than the donor(s), complete the following:

First annuitant \_\_\_\_\_ Date of birth \_\_\_\_\_  
Street address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
SS# \_\_\_\_\_ Relationship to donor \_\_\_\_\_

Second annuitant \_\_\_\_\_ Date of birth \_\_\_\_\_  
Street address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
SS# \_\_\_\_\_ Relationship to donor \_\_\_\_\_

**Assets to be Transferred for Gift Annuity:**

Cash: \_\_\_\_\_ Anticipated dollar value: \$ \_\_\_\_\_

Securities (include details if known; otherwise, estimate fair market value and indicate the cost basis)

Description \_\_\_\_\_

Cost basis \_\_\_\_\_ Estimated fair market value: \$ \_\_\_\_\_

*(Note: Actual fair market value of securities for calculating the amount of the annuity and tax deduction will be determined when the securities are received by [Organization Legal Name] .)*

Other Property:

Description \_\_\_\_\_

Cost basis \_\_\_\_\_ Estimated fair market value: \$ \_\_\_\_\_

Total estimated value of all assets contributed: \$ \_\_\_\_\_

**Annuity type and Annuity payment:**

Will payment of the annuity be immediate or deferred? Check one:

\_\_\_\_\_ Immediate payment. \_\_\_\_\_ Deferred payment

Payment frequency. Check one:

\_\_\_\_\_ Monthly \_\_\_\_\_ Quarterly \_\_\_\_\_ Semi-annually \_\_\_\_\_ Annually

If deferred, check and complete either (a) or (b) below:

(a) Payments are to begin on the last day of the period indicated above in \_\_\_\_\_ (indicate month and year).

(b) Payments may begin on the last day of the period indicated above in any year during the period

\_\_\_\_\_ and \_\_\_\_\_  
(1st possible year) (last possible year)

Choose one of the following payment methods:

\_\_\_\_\_ Electronically deposited into my bank/credit union account (We recommend this method for greater security. Please complete the enclosed direct deposit authorization and attach a voided check)

\_\_\_\_\_ Send check to me personally

\_\_\_\_\_ Other \_\_\_\_\_

**Charitable Purpose:**

Indicate the purpose to which gift is to be directed. Undesignated contributions will be used for general purposes.

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***[The following are listed only as specimen disclosures and should be included in your organization's annuity application only if applicable to your organizations' gift annuity program. If your state or the state in which the donor resides do not include these disclosures in the application.]***

**Disclosures**

The following disclosure statements are required by the respective states and are applicable only to residents of the respective state:

**Arizona:** the following disclosure is made pursuant to Arizona Revised Statutes Section 20-119, B.: The charitable organization issuing the annuity is [Organization Legal Name] whose principal office is located at [Street address, City State Zip Code]. [Organization Legal Name or abbreviated name] was incorporated in the [State of incorporation and date of incorporation]. It is established for religious, charitable, educational, and scientific purposes, and specifically for promoting the Christian gospel and fostering the growth of the Seventh-day Adventist Church, with which it is affiliated, through worship, evangelism, education, health, publishing and other denominational activities. [Organization Legal Name] will make available its most recent current audited and interim financial statements to the gift annuity donor on request. A charitable gift annuity is not insurance under the laws of the State of Arizona, is not subject to regulation by the director of the Department of Insurance and is not protected by any state guaranty fund. The State of Arizona and the Department of Insurance have not approved or disapproved the charitable gift annuity being offered and have not determined whether any of the information provided to the donor is truthful or complete.

**Oklahoma:** A charitable gift annuity is not regulated by the Oklahoma Insurance Department and is not protected by a guaranty association affiliated with the Oklahoma insurance Department.

**South Dakota:** Charitable gift annuities are not regulated by and are not under the jurisdiction of the South Dakota division of insurance.

***[Other states may require a disclosure statement in the application or in other documents.]***

**The undersigned acknowledges the following:**

1. I have received the disclosure statement from [Organization Legal Name] regarding its gift annuity reserves and investments, as required under the Philanthropy Protection Act of 1995.
2. I understand that a charitable gift annuity is irrevocable and that, at the death of the last annuitant, the portion of my contribution remaining after satisfying the annuity payment obligation will be used by [Organization Legal Name] for the charitable purpose stated above.

*[If the state where your organization is domiciled requires a specific disclosure include that statement here instead of the following generic statement.]*

3. I understand that payments made under a charitable gift annuity are backed by the full faith and credit of the issuing organization, are not insured or guaranteed by an insurance company, are not protected by any insurance guaranty association and are not backed in any way by the states.
4. That I am not making this gift in order to reduce my assets to a level qualifying me for any government assistance program.
5. That I am hereby advised to seek competent legal and tax counsel before signing the gift annuity document.

Signature of Donor(s): \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_ Date: \_\_\_\_\_

## 15. THE CHARITABLE REMAINDER TRUST

### The Charitable Remainder Trust

#### Common Trust Characteristics

While the charitable remainder trust (CRT) is a unique, highly sophisticated, and flexible charitable gift-planning tool, it shares common features with other types of trusts. Regardless of type, each trust has a creator, “the one who trusts.” Terms such as “grantor,” “trustor,” or “settlor” refer to the one who establishes the trust. In the case of the CRT, the grantor is also properly termed “the donor.” The second common feature is the trustee, “the one who is trusted.” The trustee cares for the trust assets on behalf of the trustor/donor and beneficiary in accordance with the instructions contained in the trust document and applicable state and federal law.

A third common characteristic is the “trust” itself. At its essence, a trust is a relationship between the trustor and trustee. The trustor-trustee relationship is commonly described by a written legal document called “the trust.” The trust document expresses the basic understanding between the trustor and trustee. It instructs the trustee and expresses the trustor’s intent. Such a document is essential to the CRT because of the need to satisfy Internal Revenue Code requirements in order to secure the CRT benefits to the donor and charity. The CRT is not only an expression of a relationship, but it is also a legal entity, like a person or corporation, having its own rights and responsibilities. As a legal entity, the CRT upon application is assigned its own taxpayer identification number by the IRS.

A fourth common trust characteristic is property. “Assets” are the things held in trust. The CRT donor irrevocably transfers asset ownership to the trustee. Assets may be held in the form in which they are received or sold and reinvested. Assets are so fundamental to the CRT that it must “own” assets (be funded) in order to exist.

Common to all trusts are the rights to use and enjoy the benefits of the trust assets. The CRT has one or more beneficiaries (at least one of which must be a non-charitable beneficiary) entitled to receive trust payments, as well as a qualified charitable organization entitled to receive assets at the trust’s termination (the remainder beneficiary).

#### Split Interest Trust

The CRT provides a way to blend philanthropic intent with financial benefits for the donor or another income beneficiary. Because of these two distinct elements, a CRT is a *split-interest* trust; that is to say, one interest to a non-charitable entity (e.g. donor or family) and a second interest to a qualified charity. In this respect a CRT is similar to charitable gift annuity, charitable lead trust, pooled life income agreement, and life estate reserved gift plans.

## Charitable Remainder Trust Models

The CRT is defined and the qualifying requirements are spelled out in Internal Revenue Code (IRC) Section 664, related regulations, Revenue Rulings and Revenue Procedures. The IRC provides five different models or forms which differ only in respect to how the amount payable to the income beneficiary is determined. The IRC and related regulations begin with the simplest form of payment calculation format and progress to the most complex.

### Annuity Trust

The basic model is that of an annuity trust (charitable remainder annuity trust or CRAT) which pays a fixed annuity payment to the income beneficiary. The annuity amount may be expressed as a fixed dollar amount or as a fixed percentage of the net fair market value (FMV) of the trust assets at the time they are placed into trust. Regardless of how it is expressed, the annuity amount must be at least 5% and not more than 50% of the net FMV of trust assets as of the date of transfer. Once established, the annuity amount never changes. Additional contributions to an annuity trust are not allowed. The annuity amount is paid to the income beneficiary whether or not it is earned. In those years when the annuity amount is greater than the trust income, principal is invaded in order to provide the full payment. Consequently, over time the trust principal can decline to the point of total depletion. A CRAT measured by the life expectancy of the income beneficiary must have a 5% or lower probability that trust assets will be exhausted before the charity receives the remainder interest. The 5% probability test does not apply to a term of years CRAT. If trust principal is exhausted, payments to the income beneficiary stop and the trust terminates. Because of the rigidity of the required annuity payment, only liquid or readily marketable assets such as cash and publicly traded securities are suitable for funding a CRAT.

### Standard Unitrust

The next most complex form, the unitrust (charitable remainder unitrust or CRUT), pays a fixed percentage of at least 5% and not more than 50% of the net FMV of trust assets as *valued annually*. The trust document typically designates the first business day of the year as the valuation date. Thus the feature added to the basic model is that of a *variable* net FMV of trust assets upon which the unitrust payment is based. This type of CRUT is commonly called a straight or standard unitrust (StanCRUT or SCRUT). In years when the stated unitrust amount payable to the income beneficiary is greater than trust income, trust principal is invaded to pay the full unitrust amount. Depending on investment performance, the annual trust value may increase or decrease, thus the actual amount payable correspondingly increases or decreases. Even though it is possible for the trust principal to decline, because the payment amount is based on a variable principal value the probability of exhausting the principal is negligible. Consequently the unitrust is not subject to the 5% probability test.

### Net Income Unitrust

In order to relieve the trustee of the obligation to distribute principal in years when net trust income is less than the stated unitrust payment, the IRC allows for two income exception

variations of the unitrust. The first income exception trust pays the *lesser* of net trust income or a fixed percentage which is at least 5% and not more than 50% of the net fair market value of trust assets as valued annually. This income exception model is commonly called a net income unitrust or simply NICRUT. Trust principal is not invaded. Generally, depending on state law and the trust document (see IRC §643(b) and applicable regulations), the definition of “income” is limited to interest, dividend, rents, and royalties. Therefore, capital appreciation is generally not paid to the income beneficiary, but is added to principal. Under the NICRUT, the income beneficiary never receives more than the stated fixed percentage, but may receive less than that amount.

### Net Income with Make-up Unitrust

The second exception, the net income with makeup option (NIMCRUT), may pay the income beneficiary an amount in excess of the required unitrust amount. As in the NICRUT (net income only CRUT), the income beneficiary receives the *lesser* of the trust's net income or a fixed percentage which is at least 5% and not more than 50% of the net FMV of trust assets as valued annually. However, in a year when the net trust income is less than the unitrust payout amount, the difference between the net income and the fixed unitrust percentage is designated as a deficit amount. In any year when the trust earns more than the unitrust percentage the excess can be used to *make up* any amount not paid in previous years when the trust earned less than the unitrust amount. When the aggregate deficit from previous years is fully paid, then any excess income is added to principal. Any excess income added to principal cannot be recovered to pay any subsequent deficit.

### FLIP Unitrust

In addition to the two income exception options above, the IRC provides for a final option which was designed to effectively manage what the code calls “unmarketable” assets until such time as they are sold and reinvested for capital growth as well as income. This option, the so-called FLIP unitrust, begins as either a net income (NICRUT) or net income with make-up (NIMCRUT) agreement. At the occurrence of a “triggering event,” the payment calculation method converts (or flips) to a standard unitrust (StanCRUT) method. The unitrust document must expressly allow for the conversion/flip and define the “triggering event.” Examples include: a future calendar date, marriage, divorce, death, or the sale of the “unmarketable” trust assets. Once the trust is executed, the donor cannot have direct control over the triggering event. The actual conversion/flip occurs on January 1 of the year following the triggering event. Because the StanCRUT does not allow for any deficit or make up, any deficit amount related to the NIMCRUT is forfeited.

## **Administrative Concerns**

### Qualification as a Charitable Remainder Trust

In order for a trust to qualify as a CRT it must meet all of the requirements of the Internal Revenue Code (IRC) §664, its related regulations, Revenue Rulings and Revenue Procedures. Not only must the trust document contain the proper provisions, but the trustee must manage the

trust as a charitable remainder trust. The trust must either be an annuity trust or unitrust from its inception. No blending of the two payout forms is permitted. Annuity or unitrust payments to income beneficiaries must actually be made. The income beneficiaries may be one or more persons, at least one of which is not a charity as described in IRC §170(c). Neither the grantor nor any other person may be considered owner of the trust under the Grantor Trust rules (IRC §§671-678).

In addition, the present value of the remainder interest (the amount available as an income tax charitable deduction) must be at least 10% of the FMV of assets initially transferred to the trust. As indicated above, the stated payout to the income beneficiary must be at least 5% and no more than 50% of the FMV of trust assets as of the date of transfer. A CRAT must also have less than a 5% probability of totally depleting its assets. The charitable remainder must be payable to an organization described in IRC §170(c).

### Tax Exempt Status

A qualified charitable remainder trust is tax exempt. Accordingly, it pays no tax on realized gain when selling appreciated assets or on trust income and the donor is eligible for income, gift and estate tax charitable deductions.

This extremely important feature enables the trustee to convert highly appreciated assets into a current income stream without erosion due to the donor paying capital gains tax when selling and reinvesting the cash. Increased cash flow to the donor results from transferring assets and their related management expense from their personal estate to the trust. The trustee is able to sell trust assets at no tax cost and reallocate assets for better diversification, thus improving risk management. Unless the donor also serves as trustee, asset management and investment responsibilities are shifted to another party. At maturity when the trust measuring term expires, trust assets pass to the designated charitable beneficiary without probate.

The Tax Relief and Health Care Act of 2006, signed into law on December 20, 2006, included a provision affecting the taxation of any charitable remainder trust (CRT) that has any unrelated business taxable income (UBTI). Under the old law, if a CRT had any UBTI, the entire CRT would lose its tax exempt status for any and every year it had UBTI. That could result in catastrophic consequences for some CRTs with lots of income that would otherwise have been tax-exempt.

Under the new law, effective for taxable years beginning after December 31, 2006, a CRT that has UBTI will no longer lose its tax-exempt status for the year and will no longer be subject to any income tax. Instead, an excise tax will be imposed that is equal to the entire amount of the UBTI. This new provision should be good news for most CRTs. However, it could produce disastrous results in some situations.



## Tax Returns

Even though the CRT is tax exempt, the Trustee must file annually:

- Form 5227, *Split Interest Trust Information Return*
- Form K-1 which describes the character of trust distributions
- State tax and information returns where required.

An Employer (taxpayer) Identification Number (EIN) should be obtained from the IRS at the inception of the CRT. A copy of the CRT Agreement is filed with the initial Form 5227.

## Measuring Term

The obligation to pay the income beneficiary begins at the creation of the charitable remainder trust, when it is executed and funded. The period of time during which the trustee pays the unitrust or annuity amount to the income beneficiary is called the *measuring term* of the trust. This period is irrevocably designated in the trust document. The measuring term is most commonly expressed as a term of years (not to exceed 20), the life of an individual income beneficiary, or the lives of multiple beneficiaries.

## Early Termination

A CRT is an irrevocable trust. However, it may be terminated before the conclusion of the measuring period. To accomplish this, the income beneficiary must surrender or donate to the charitable remainder beneficiary all rights to future unitrust or annuity amounts. This donation yields an income tax charitable deduction for the present value of the donated income interest. Consequently, the charitable remainder beneficiary “owns” all interests in the trust (income and remainder). The trustee will terminate the trust and distribute all remaining assets to the charitable remainderman for its exempt purposes.

## Potential Trustees

Subject to local law, a CRT trustee may be an individual, bank, trust company, charitable remainder beneficiary (if permitted by its constitution and by-laws), or other professional trust administrator. In some circumstances, the donor/grantor might elect to serve as trustee. Caution must be taken to avoid the trust being designated a grantor trust for income tax purposes because the donor-trustee retains too much control over the trust. This decision should be made only in after careful consideration of the technical aspects and need for specialized assistance.

Occasionally, a special independent trustee should be appointed to care for certain transactions such as valuing and selling real estate or other hard to value assets. A donor-trustee would be well advised to retain competent tax, legal, and investment professionals to assist in trust administration.

### Private Foundation Rules

A charitable remainder trust is subject to private foundation rules and applicable excise taxes against acts of self-dealing. Such acts include, but are not limited to, loans, sales, leases, providing goods or services between a charitable remainder trust and a disqualified person, or such transactions between the trustee and a disqualified person. Disqualified persons include the trustee, the creator of the trust (trustor/donor), anyone who contributes more than \$5,000.00 to the trust, the spouse, ancestors, children, grandchildren, great grandchildren and the spouses of all such persons. Other disqualified persons also exist. Consult competent legal counsel. Examples of forbidden acts of self dealing may include the trustor continuing to use a trust asset (living in a dwelling after transferring it to the trust) or the trustee paying trust or trustor expenses with its own funds.

### Knowledgeable Legal Counsel

Creation of charitable gift plans, such as the charitable remainder trust, requires the participation of competent legal counsel knowledgeable in this area of the law. Not only should the denominational entity be served by counsel, but perhaps more importantly, the donor should receive independent legal counsel and tax advice. Good practice and prudence dictates that denominational entities advise the donor in writing of the need for such independent professional advisors.

### Unauthorized Practice of Law

While Planned Giving & Trust Services personnel serving in their gift planning capacity may discuss and illustrate the various features of a particular gift plan, prohibitions against the unauthorized practice of law preclude anyone other than competent legal counsel from rendering legal advice and/or drafting legal documents. Independent professional advisors help protect the donor's interest and shelter the denominational entity from accusations of undue influence, conflict of interest, and the unauthorized practice of law. These protections will reduce the risk of potential legal challenges to charitable gift plans and preserve the donor's intent to support the various ministries of the Church.

## **Funding the CRT and Reporting the Gift**

### Suitable Assets

While some assets are problematic, such as debt encumbered property, sole proprietorships, professional practices, and assets with no ready market, a wide variety of assets are suitable to fund a CRT. These include cash, cash equivalents, publicly traded securities, closely held stock in C corporations, and certain real estate. Gifts of highly appreciated assets take advantage of the CRT tax exempt status to avoid capital gain on the transfer to trust, sale within the trust without tax cost, and reallocation of asset investment for growth, income, and risk management.

## Cautions

Care must be taken to insure that the CRT avoids all unrelated business taxable income (UBTI) and issues involving self-dealing when accepting assets. Certain savings bonds can be transferred to a CRT. However, the donor may be taxed on all accrued income when the bonds are transferred. While real estate can be an excellent CRT asset, there are numerous factors to be considered, such as: the potential presence of hazardous waste, marketability, property taxes, insurance, ability to produce income, UBTI, valuation, title concerns, pre-sale expenses, etc.

## Valuing the Gift

Donations of cash and publicly listed securities have readily ascertainable values. Transfers of non-cash assets (except publicly traded securities) where the deductible value is greater than \$5,000 (\$10,000 if closely held stock) require a qualified appraisal performed by a qualified appraiser (as defined by the Internal Revenue Code and Regulations) and the completion of appropriate sections of IRS Form 8283. The appraisal may be conducted any time within 60 days prior to the asset's transfer to the trust and the due date (including extensions) of the tax return in which the charitable deduction is claimed. A copy of the appraisal as well as Form 8283 and the Trust document must accompany the donor's tax return for the year of the transfer. Donations of similar assets to multiple donees are combined for purposes of the \$5,000 threshold test (\$10,000 for closely held stock).

## Gift Substantiation

Because the charitable remainder beneficiary designation is often revocable and in some instances there may be no charity specifically designated, charitable remainder trusts are exempt from the requirement to provide the donor with a written gift substantiation under IRC §170(f)(8) (Hoffman, pp. 192, 193). The donor will file the appraisal summary (Form 8283) and the trustee will acknowledge receipt of assets in the Donee Acknowledgement section of the 8283. A copy of the gift illustration showing how the deductible amount was determined should be provided to the donor.

## **Tax Implications**

### **Income Tax**

#### Charitable Deduction and Limitation

Generally, a charitable deduction is only available for transfers of present interests. However, the IRC allows an income tax charitable deduction for the present value of the future charitable interest for donations to qualified charitable remainder trusts. The present value of the remainder interest must be at least 10% of the fair market value of assets on the transfer date. If the CRT remainder beneficiary is a public charity, such as a church or school, the deduction is limited to 50% of the donor's adjusted gross income (AGI) for gifts of cash, short-term capital-gains property and other ordinary income property. Gifts of long-term appreciated property such as

real estate and securities are limited to 30% of AGI. Contributions that exceed these limitations may be carried over for an additional five years. The donor may elect to reduce the value of long term capital property to its basis rather than fair market value for purposes of valuing the asset for the charitable deduction. This election permits such donations to be subject to the 50% limitation, thus avoiding the more restrictive 30% limitation. This step-down election must apply to all contributions of long term capital gains property made in the election year.

Tax Consequence to Income Beneficiary

Unitrust and annuity trust payments to the income beneficiary are taxable to the beneficiary according to a four-tier ordering system. The so called “four-tier system” distributes, to the extent it is earned by the trust that year and undistributed from prior years, first, ordinary income, then capital gains, tax exempt income, and finally tax free return of principal. The general rule is that within each “tier” or category the income class subject to the highest (or worst) tax rate is distributed first (WIFO: worst in, first out). Accordingly, within the “ordinary income” tier (category), interest and ordinary dividends, which are taxed at the recipient’s highest rate, are distributed first. Then qualified dividends, which are taxed at a lower rate, are distributed. Once the trust exhausts the ordinary income category, it then distributes the income class within the capital gain category that is taxed at the highest rate. Within the capital gain tier short term capital gain, which is taxed as high as 35%, is distributed first, then long term capital gain is distributed. Since different types of long term gain are taxed at different rates, long term gain is distributed in order from highest to the lowest rates. If a CRT does not distribute all of its income in a particular class, that income is carried forward indefinitely within its class for possible distribution in a future year. The trustee reports the type of income distributed to the beneficiary on Form K-1.

Read distribution order from left to right:							
1. Ordinary Income Tier		2. Capital Gain Tier			3. Other Income Tier	4. Principal Tier	
Interest & ordinary dividends *35%	Qualified dividends 15%	Short Term 35%*	Long Term			Tax Exempt 0%	Basis 0%
			Collectibles 28%	Depreciation Recapture on Real Estate 25%	Other LTG 15%**		

\*Varies depending on Recipient’s Tax rate (10% - 35%)  
 \*\*0% if Recipient is in 10% or 15% brackets

The spread between the various tax rates is significant. The type of income earned by various trust investments determines the net after tax benefit to the income beneficiary. The prudent investor standard dictates that trust investments yield the most “tax efficient” result for the income beneficiary.

**Gift Tax**

Lifetime Gifts

There is a potential “gift tax” on lifetime transfers made for less than adequate consideration (gratuitous transfers). In the CRT, when the donor names another person as income beneficiary

there are essentially two gifts: the remainder to charity and the income to the other person. This may produce gift tax consequences. The gift of the remainder interest to charity receives the benefit of the unlimited charitable deduction so no gift tax is incurred. The gift of the income interest to the donor's spouse (if a U.S. citizen), for a term of years or for life, qualifies for the unlimited marital deduction and there is no gift tax.

### Gift to Non-spouse

An irrevocable gift of the income benefit to a non-spouse is a taxable gift for gift tax purposes. It is deemed a completed gift of the present value of the income interest in the year the trust is created and therefore qualifies for the annual gift tax exclusion (\$13,000 per donee in 2011 and indexed for inflation) for that year. Any amount in excess of the exemption amount would count toward the unified gift and estate tax credit amount to the extent it is available.

### Power to Revoke an Income Interest

If the donor reserves the right to revoke an income interest, the gift is not a completed present interest gift for gift tax purposes in the year the trust is created. As payments are received by the recipient, they become completed present interest taxable gifts and, as such, are subject to the \$13,000 annual exclusion. Such a right to revoke must be expressed in the trust document and be exercisable only by the donor's will.

### Reporting the Lifetime Gift

Even if no gift tax is due, the federal gift tax return, Form 709, should be filed by the donor for all CRT contributions, regardless of size, because he/she has made a split interest gift. The gift of a charitable remainder constitutes a gift of future interest for which the \$13,000 annual exclusion is unavailable. Such a gift does qualify for an unlimited gift tax charitable deduction. The donor should obtain competent tax counsel from their own advisor in this matter.

## **Estate Tax**

### Transfers at Death

The Estate Tax is levied on the value of property possessed by a decedent at the time of death. In certain circumstances, the value of the income interest and/or trust value may be includible in the CRT donor's gross estate for estate tax purposes. In general, if the donor dies owning an income interest, or transfers an income interest at death to a non-spouse, then the value of that interest is includible in the gross estate for estate tax purposes. Estate tax consequences are dependent on several factors: who holds the income interest, if the donor retained the right to revoke the income interest in his/her will, whether the income interest expired before the donor's death, and the trust measuring term.

### Term Certain CRT

If the donor is the income beneficiary of a fixed term CRT and dies before the expiration of the term, the full value of trust assets is includible in the donor's estate. The estate receives an estate tax charitable deduction for the present value of the charitable remainder as of the date of death, resulting in taxation on only the value of the remaining income interest (if any). If the spouse (if a U.S. citizen) is named the irrevocable income beneficiary of a fixed term CRT, there is no estate tax consequence to the donor. Likewise, if a non-spouse is named the income beneficiary, there is no estate tax on the value of the trust. The value of the taxable gift arising from the lifetime transfer of the income interest is added to the estate. However, it is offset by the amount of any gift tax previously paid.

### One Life Measuring Term CRT

If the donor is the only income beneficiary of a one life measuring term CRT, the value of the trust assets are included in the estate for estate tax purposes. However, it is offset by an estate tax charitable tax deduction for the charitable remainder value. If the spouse (if a U.S. citizen) is the income beneficiary and the donor retains no rights to the trust, there is no estate tax consequence. If a non-spouse is the sole income beneficiary, there is no estate tax on the value of the trust. The value of the taxable gift arising from the lifetime transfer of the income interest is added to the estate. However, it is offset by the amount of any gift tax previously paid.

### Multiple Lives Measuring Term

In two-life CRTs, the estate tax consequences depend on whether or not the donor has an interest in the trust which is sufficient to include its value in the gross estate. If the donor is an income beneficiary or retains the right to revoke the survivor beneficiary's income interest, the value of CRT assets is includible in the donor's estate. If the power to revoke is unexercised, the estate tax charitable deduction is limited to the present value of the charitable remainder as of the donor's date of death. If the power to revoke is exercised, then the trust terminates, assets pass to charity, and the estate receives a full charitable deduction for the value of the charitable remainder. If the sole surviving income beneficiary is the donor's spouse (if a U.S. citizen); then the estate is entitled to the "marital deduction for the value of the spouse's income interest." If the donor's spouse and another individual are the surviving income beneficiaries, there is no marital deduction available.

## Gift and Estate Tax Summary

Donor Creates Lifetime Trust Paying Income to:	Taxable Gift?	Annual Gift Tax Exclusion?	Marital Deduction?	Included in Gross Estate?
1. Self for life	No	N/A	N/A	Yes, but 100% charitable deduction
2. Spouse for life	No	N/A	Yes	No
3. Self and spouse for life	No	N/A	Yes	Yes, but 100% marital deduction
4. Spouse and third person for life	Yes	Yes	No	No
5. Non-spouse for life, no right to revoke in will reserved	Yes	Yes	No	Yes, but charitable deduction for date of death remainder value
6. Self, then to non-spouse without right to revoke by will reserved	Yes	No (gift of future interest)	No	Yes, but charitable deduction for date of death remainder value
7. Self, then to non-spouse reserving right to revoke by will	No (gift incomplete)	N/A	No	Yes, but charitable deduction based on date of death remainder value
8. Self and non-spouse as joint and survivor beneficiaries, no right to revoke by will reserved	Yes	Yes	No	Yes, but charitable deduction based on age at donor's death
9. Non-spouse for life, reserving right to revoke by will	Probably as to annual payments, uncertain as to income interest	Yes, for annual payments	No	Yes, but charitable deduction based on age at donor's death
10. on-spouse for term of years with right to revoke by will	Annual payments taxed	Yes, for annual payments	No	Yes, but charitable deduction based on remainder value at donor's death
11. Non-spouse for term of years, no right to revoke in will	Yes, on value of income interest	Yes	No	No-out of estate

Table taken from Charitable Giving Tax Service 7-110(c)  
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## **Additional Resources**

The foregoing discussion is not intended to be comprehensive, though it provides a brief review of certain features of the charitable remainder trust. For additional information, refer to the following:

*Charitable Giving Tax Service*, Volume 2, R & R Newkirk, Oak Brook, Illinois.

Marc D. Hoffman and Leland E. Hoffman, Jr. *Harnessing the Power of the Charitable Remainder Trust*, Eighth ed., Distributed by Philanthro Tec, Inc. Matthews, NC.

Moerschbaecher, Lynda S., *Plain English Planned Giving: After the Gift is Closed*, Published privately by the author as study material for seminars in planned giving.

*Planned Giving Design Center*. [www.pgdcnet](http://www.pgdcnet). Site contains extensive resource material on CRTs and other planned giving instruments. Marc Hoffman is editor.

Toce, Joseph P. et al, *Tax Economics of Charitable Giving*, Warren, Gorham, & Lamont of RIA.

Teitell, Conrad, *Substantiating Charitable Gifts*, Taxwise Giving, Old Greenwich, Connecticut



## 16. THE POOLED INCOME FUND AGREEMENT

### Introduction

#### General Description

A pooled income fund (PIF) is a trust established and maintained by a public charity (such as a church, school, college, university, hospital, or medical research institution) which receives contributions from multiple donors and is defined in Internal Revenue Code (IRC) §642(c). The PIF is a split-interest gift plan which designates an irrevocable remainder interest for the use of the public charity which maintains the fund and provides an income interest for the life of one or more beneficiaries, each of whom must be living at the time of the asset transfer to the PIF. Contributions qualify for income, gift, and estate tax charitable deductions based on the present value of the charitable interest at the time the gift is completed. The fund is maintained by the organization to which the remainder interest is contributed. No donor or beneficiary of an income interest may be a trustee. A national charitable organization may maintain a fund for its affiliated local organizations with which it has common aims and purposes. Based on the number of fund units attributable to a donor, the pro-rata share of the annual PIF income is distributed to the income beneficiaries during their lifetimes. At the death of the last surviving income beneficiary of a specific PIF agreement, the shares in that account are severed from the fund and the proceeds are distributed to the designated entity for its charitable purposes.

#### General Conference Corporation Pooled Income Fund

The General Conference Corporation administers its pooled income fund, without charge, for any Seventh-day Adventist Yearbook entity that is a beneficiary under a Pooled Income Fund Agreement with the GCC. The only acceptable assets for funding are cash and readily marketable securities. Two constituent parts make up the PIF in relation to a donor: the founding document entitled *General Conference Pooled Income Plan* which establishes the fund and its specific characteristics, and an instrument of transfer or gift agreement, which is identified as the *Pooled Income Fund Agreement*. This document memorializes the agreement between the donor and the General Conference as Trustee of the PIF, the amount transferred, the transfer date, the income beneficiaries and their respective interests, the remainder beneficiaries, and other pertinent facts specific to the agreement. The General Conference Pooled Income Fund Plan was established June 30, 1971, amended, and restated in 1999. A copy is included at the end of this chapter.

#### Donor

A pooled income fund donor may be an individual or may be a “person” other than an individual, such as a decedent’s estate, trust, or corporation. The only limitations in the case of a donor who is not an individual are (1) the income beneficiary must be an individual other than the donor who is living at the time the agreement is funded, and (2) the income interest may not be revoked by will.

### Commingling of Funds

In order to qualify as a pooled income fund, the contributions of the various donors must be commingled for both administrative and investment purposes. Although accounts are maintained for each pooled fund agreement, no donor or income beneficiary has a right to income from any particular asset in the fund, but rather each receives a proportionate share of the income from the entire fund. In this respect, a PIF is analogous to a mutual fund.

### Valuation Dates

The pooled income fund must be valued on the first day of its tax year. In addition, the fund must be valued no less frequently than every three months. Thus, a full tax year would have a minimum of four valuation dates. The General Conference PIF is valued on January 1 of each year and on the last business day of each month.

### Charitable Remainder at Death of Income Beneficiary

An amount equal to the value of a deceased income beneficiary's fund units/shares is severed from the PIF on the first valuation date following the death of the last income beneficiary entitled to receive income. This amount is then transferred to the remainder beneficiary for its exempt purposes.

### Fiscal Year

The Tax Reform Act of 1986 mandates that all pooled income funds adopt a calendar year as their tax year. Thus, the year in which the fund begins will likely be a short year for tax purposes.

### Investment Prohibitions

The pooled income fund cannot invest in tax-exempt securities. Long-term capital gains cannot be distributed as income, but must be retained in the fund. Short-term capital gains may be distributed as income, but only if called for in the governing instrument.

### Private Foundation Excise Taxes

Pooled Income Funds are subject to some of the private foundation excise taxes even though they are not private foundations. Violations of the private foundation prohibitions against self-dealing, making any taxable expenditures, and, if income is payable to a charitable organization, the rules against excess business holdings and investments that jeopardize the PIF's tax exempt purpose (providing a remainder to charity), can result in the imposition of excise taxes. Accordingly the governing instrument must include prohibitions against the various private foundation prohibited activities.

## **Income Interest**

### Income Beneficiary

Income beneficiaries may be one or more individuals living at the time assets are transferred to the pooled income fund. While a corporation can be a PIF donor, it cannot be an income beneficiary. Income beneficiaries may receive the life income jointly or consecutively. The charitable remainder beneficiary may be designated as one of the beneficiaries to receive an income interest. The charity's income benefit is not taxed to the donor and no income tax charitable deduction is allowed to the donor for the income interest paid to the charity at the time of transfer or at the time the payment is made. Each income beneficiary must receive the required income payment at least annually. Income distributed within 65 days following the close of the fund's taxable year is treated as if distributed on the last day of the taxable year.

### Term of Income Interest

The pooled income fund measuring term must be for the life of the income beneficiary. It cannot be for a term of years or for the life of someone other than an income beneficiary.

### Assignments of Units in the Fund

Units, or shares of participation, are assigned to each donor when property is donated to the fund. The number of shares assigned is determined by dividing the fair market value of the property transferred by the value of one unit (as of the valuation date). Thus if a donor transfers \$5000 to the PIF and each unit is valued at \$50 then the donor is assigned 100 shares of the fund. The value of one unit/share is determined by dividing the fair market value of the fund by the total number of outstanding fund units/shares. If, on the valuation date, the fund is worth \$100,000 and there are 2000 shares outstanding each share is worth \$50. For assets transferred between valuation dates, the fund value is the average of the fund value on the valuation dates before and after the transfer, with appropriate time weighting adjustments.

### Allocating Income to Units

Income is allocated to each unit/share by dividing the net income for the period by the total number of outstanding shares. The resultant income per share is multiplied by the number of shares assigned to a particular income beneficiary. General Conference Corporation PIF payments are made quarterly.

### Termination of Income Interest

The income interest must either terminate at the last payment before the income beneficiary's death or be prorated to the date of the death. The governing instrument must state which method is to be used. The GCC PIF terminates the income interest as of the date of the payment due next preceding the date of death of the last income beneficiary entitled to receive income. Any income earned by the units during the quarter in which death occurs, but prior to severance of fund shares, accrues to the charitable remainder beneficiary.

## **Income Tax Considerations**

### Taxation of the Pooled Income Fund

Pooled income funds are taxable trusts. However, in most cases, pooled income funds do not pay taxes because of deductions for (1) amounts required to be distributed annually to the income beneficiaries, and (2) long-term capital gains permanently set aside for charity. The fund retains all long-term gains without taxation. However, short term capital gains (if any) are taxable.

### Character of Income in the Hands of the Income Beneficiary

Income beneficiaries are taxed on their proportionate share of the earnings of the fund. The income retains the same character in the hands of the income beneficiary as it had in the fund. The income beneficiary receives a Schedule K-1 reporting the amount and character of income received.

### Recognition of Gain or Loss on Transfer to the Fund

Ordinarily, the donor does not recognize gain or loss on property transferred to a qualified pooled income fund. Capital gains realized by the fund on the sale of donated assets are permanently set aside for charity as additions to principal. Generally, the donor's holding period and basis transfer to the fund. However, if the property is debt encumbered or if the donor receives property from the fund in addition to his/her income interest, gain may be recognized. Under these circumstances, the transfer is subject to bargain sale rules. Since loss is typically not recognized on the transfer of depreciated property to the pooled income fund, it is usually better for the donor to sell the property, recognize the loss on their personal Form 1040, and transfer the proceeds to the pooled income fund for an income tax charitable deduction.

## **Charitable Deduction**

### Gift of Future Interest

Generally, charitable deductions for income, gift, or estate tax purposes are allowed only when a donor contributes an entire interest in property—unless the contribution takes the form of a charitable remainder trust, a pooled income fund, a qualified grantor charitable lead trust, or a remainder interest in a personal residence or farm.

### Income Tax Charitable Deduction

The donor receives an income tax charitable deduction equal to the value of the charitable gift portion (present value of the future charitable interest) of the pooled income fund agreement in the year of the transfer to the PIF. Any unused charitable deduction may be carried over and used as needed for up to five additional years.

### Rate of Return of the Fund

For established funds, the highest yearly rate of return in the previous three tax years is used in calculating the charitable contribution. If the fund has been in existence for less than three taxable years, a deemed rate of return is mandated by the Internal Revenue Service ([Reg. 1.642\(c\)-6\(e\)\(4\)](#)). In 2011, the deemed rate of return for any pooled income fund less than three years old is 2.8%.

### The Ages of the Income Beneficiaries

The charitable contribution is also dependent upon the ages of the income beneficiaries; the older the beneficiary, the larger the charitable contribution, because there is actuarially a shorter period of payout and thus a potentially larger remainder interest.

### Gift Substantiation

All gifts with a value in excess of \$250 must be substantiated by the donor with a contemporaneous written statement indicating asset transfer date, the amount transferred (if cash), and a description of the assets (if other than cash). The gift acknowledgement must also state that no goods or services were provided for the donated amount (other than the value of the income interest). Any return which claims a deduction on the value of the remainder interest in property transferred to a pooled income fund must be supported by an attached statement showing the computation of the present value of the interest (typically produced by gift planning software such as Crescendo Pro or PG Calc).

### Percentage Limitations

Depending on the type of property transferred to the fund, the charitable deduction is limited to 30% or 50% of the donor's adjusted gross income (AGI), with a five year carryover for any unused deductible amount. Cash transferred to a PIF is deductible up to 50% of AGI. Long-term appreciated securities are deductible up to 30% of AGI, but may be deducted at 50% of AGI if the donor elects to base the deductible amount on the property's adjusted basis. In the latter event, the donor must treat all contributions of long term appreciated property in that year, and all such carryover from previous years, in the same manner.

## **Gift Tax and Estate Tax Considerations**

### Gift Tax Consequences

A transfer to a pooled income fund consists of (1) a charitable gift of a future remainder interest and (2) a gift of an income interest. Transfers may be made during life or, as a testamentary transfer, at the donor's death. Gifting the income interest during life, in whole or in part, to someone other than the donor may result in gift tax.

### Donor as Sole Income Beneficiary

If the donor is the sole income beneficiary, the income interest is retained so there is no gift. The remainder interest is donated to a qualified charity and qualifies for the unlimited gift tax charitable deduction.

### Spouse (U.S. Citizen) as Income Beneficiary

If the donor's spouse is named as an income beneficiary, potential gift tax consequences exist. If the donor spouse is the named income beneficiary, the unlimited marital deduction is available by electing to treat the entire transferred property as a qualified terminable interest property (QTIP). If the first decedent spouse's executor makes the QTIP election on the decedent spouse's federal estate tax return the property will be included in the donee spouse's gross estate for estate tax purposes.

When the donor is the primary income beneficiary and the spouse is the irrevocable survivor income beneficiary, neither the annual gift tax exclusion, nor the marital deduction is available. The spouse's survivor income interest is a future interest and is therefore not eligible for the annual exclusion. In addition, since the spouse is not the sole income beneficiary, the marital deduction is not available. In this case, the donor's lifetime gift tax exclusion must be utilized (to the extent available) to reduce or eliminate gift tax otherwise payable on the value of the spouse's income interest. A taxable gift may be avoided by retaining a testamentary power to revoke the spouse's interest.

If the donor's spouse is the *sole* irrevocable income beneficiary, the gift is of a present interest and qualifies for the annual gift tax exclusion (\$13,000 in 2011 and indexed for inflation) and the unlimited marital deduction. In the event the donor's spouse is named income beneficiary along with any other person (including the donor), the spouse's interest does not qualify for the marital deduction because he/she is not the *sole* income beneficiary. Therefore, the donor's lifetime gift tax exclusion must be utilized to eliminate or reduce any gift tax due.

### Non-Spouse as Income Beneficiary

An income interest retained for an individual other than the donor's spouse is a taxable gift. Since it is of present interest, it qualifies for the annual gift tax exclusion. The donor's lifetime gift tax exclusion (to the extent it is available) may be used to eliminate or reduce the gift tax on any amount in excess of the annual exclusion.

### Gift Tax Return

Even though the gift of a remainder interest is to a qualified charity, because it is of future interest and less than the entire interest transferred, it is necessary to report the gift on Form 709, regardless of the remainder interest size. However, the charitable gift portion qualifies for an unlimited gift tax charitable deduction.

### Power to Revoke an Income Interest

A donor may avoid making a taxable gift by reserving the right to revoke an income interest paid to any income beneficiary except the public charity maintaining the fund. The reservation of the power to revoke must be expressed in the pooled life income agreement and must be exercisable only by the donor's will. Such reservation renders the gift of an income interest to another person an incomplete gift for gift tax purposes. As payments are received by the recipient, they become completed present interest taxable gifts and, as such, are subject to the annual gift tax exclusion. Any amount in excess of the annual exclusion is a taxable transfer that would count toward the lifetime gift tax exclusion to the extent it is available.

### Estate Tax Consequences

Deferred gift plans, such as the pooled income fund, have estate tax implications that need to be considered before the gift agreement is executed and assets are transferred. The estate tax charitable deduction is dependent on the charitable remainder passing to a qualified charity under IRC §2055(a).

### Donor as Sole or Surviving Income Beneficiary

If the donor is the sole or surviving income beneficiary, the date of death (or alternate valuation date) value of the fund units is included in the decedent's gross estate. However, the full value of the fund units qualifies for an estate tax charitable deduction.

### Spouse (U.S. Citizen) as Sole Beneficiary

When the spouse is the sole irrevocable income beneficiary, the donor has no interest in the fund that would cause share values to be includible in his/her gross estate for estate tax purposes.

### Donor as Income Beneficiary with Spouse or Another Individual

If the donor retains no testamentary power to revoke, the value of the surviving beneficiary's income interest generally will be includable in the donor's adjusted taxable gifts, but not in the donor's gross estate.

If the donor who is also an income beneficiary predeceases a successor income beneficiary while retaining the testamentary power to revoke the successor income beneficiary's interest, the date of death value of the entire interest is includible in the donor's gross estate with a estate tax charitable deduction for the charity's remainder interest. If the sole surviving beneficiary is the donor's spouse (U.S. citizen), the unlimited marital deduction is available if a QTIP election is made. If a non-spouse income beneficiary survives, the value of the non-spouse beneficiary's life income is included in the donor's gross estate. The present value of the charitable remainder as of the date of death of the donor is available for an estate tax charitable deduction.

In the event of a testamentary transfer to a pooled life income fund, the present value of the life income interest is included in the donor's gross estate. The estate is also entitled to an estate tax

charitable deduction for the present value of the charitable interest. If the life income beneficiary is the donor's spouse the marital deduction is available in the donor's executor elects to qualify the property under the QTIP rules.

### **Additional Resources**

The foregoing discussion is not intended to be comprehensive, but provides overview of certain features of the pooled income fund. For further information, refer to the following:

*Charitable Giving Tax Service*, Volume 3, R & R Newkirk, Oak Brook, Illinois.

Internal Revenue Code Sec. 642(c) and Treasury Regulations thereunder.

Planned Giving Design Center website: [www.pgdc.net](http://www.pgdc.net). (Registration is free.)

Toce, Joseph P. et al, *Tax Economics of Charitable Giving*, Warren, Gorham, & Lamont of RIA.

Teitell, Conrad. *Deferred Giving*, Volume 1, Taxwise Giving, Old Greenwich, Connecticut



**GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS**  
**AMENDED AND RESTATED**  
**POOLED INCOME FUND PLAN – 1999**

1. **The Plan.** The General Conference is a national church body which carries out its purposes through local organizations with which it has an identity of aims and purposes. The General Conference Pooled Income Fund (“Fund”) is established exclusively for the management and investment of property transferred by Donors during lifetime and by Will to the General Conference contributing irrevocable remainder interests in the property to the General Conference or local organizations with which it has an identity of aims and purposes, which organizations are public charities (organizations described in clauses (i) to (vi) of section 170(b)(1)(A) of the Internal Revenue Code, and retaining income interests for the life of one or more beneficiaries living at the time of the transfer. The property (“Life Income Agreement”) transferred by each Donor is, must, and will be commingled with and invested or reinvested with other property transferred by other Donors who have made or make similar transfers satisfying the requirements of section 642(c)(5) of the Internal Revenue Code and the regulations thereunder. The Fund shall include only amounts received from transfers which meet such requirements. The General Conference intends that the Fund be a pooled income fund within the meaning of section 642(c)(5) of the Internal Revenue Code and the regulations thereunder. Accordingly, this plan shall be interpreted in accordance with the Internal Revenue Code, United States Treasury regulations, and Internal Revenue Service rulings governing pooled income funds.
2. **Taxable Year.** The first taxable year of the Fund begins June 30, 1971 and ends December 31, 1971. Subsequent years shall begin on January 1<sup>st</sup> and end December 31<sup>st</sup>.
3. **Division of Fund into Units.** The Fund shall be divided into units, and the proportionate interest of each Donor’s Life Income Gift shall be represented by the number of units allocated to it, based on the fair market value of each Donor’s Life Income Gift on the date it enters the Fund. The original unit of participation shall be \$93,6432. When new Life Income Gifts are added to the Fund, the number of units shall be increased accordingly. The number of units assigned to each new Life Income Life Income Gift which is transferred to the Fund on a valuation date, shall be determined by dividing the fair market value of the new Life Income Gift on the date it is transferred to the Fund by the fair market value of each existing unit in the Fund at the time of the transfer. The fair market value of each existing unit in the Fund at the time of the transfer of a new Life Income Gift shall be determined by dividing the fair market value of all property in the Fund at such time by the number of units then in the Fund. The value of each unit in the Fund will fluctuate with each new transfer of a Life Income Gift to the Fund in relation to the appreciation or depreciation in the fair market value of the Fund’s property, but all units in the Fund will always have equal value. The number of units assigned to each new Life Income Gift which is transferred to the Fund on other than a valuation date shall be based on a method whereby the fair market value of the property in the Fund at the time of such transfer is deemed to be the average of the fair market values of the property in the Fund on the valuation dates immediately preceding and succeeding the date of transfer. For purposes of determining such average, any property transferred to the Fund between such preceding and succeeding dates, or on such succeeding date, shall be excluded. Such valuation shall be consistent with the method illustrated in the example in Treasury Regulation Section 1.642(c)-5(c)(2)(iii).
4. **Valuation.** The Fund’s assets shall be valued on January 1<sup>st</sup> of each year and on the last business day of each month. The Fund’s assets shall also be valued on June 30, 1971, the first day of the first taxable year. In computing the fair market value of the Fund’s assets, there shall be taken into account all accrued assets and liabilities. The amount of any income earned by or accrued to the Fund but not yet distributed on a valuation date shall be excluded from the Fund’s fair market value. All determinations of the fair market value of Life Income Gifts added to the Fund, of the Fund’s assets and of Life Income Gifts to be withdrawn from the Fund shall be consistent with customary fiduciary accounting practices and any United States treasury regulations and Internal Revenue Service rulings, procedures and guidelines shall prevail over customary fiduciary accounting practices and any inconsistent provisions of this Plan
5. **Distribution of Income.** The net income (as determined under section 643(b) of the Internal Revenue Code and the regulations thereunder) of the Fund shall be computed on an accrual basis. In determining net income, there shall be deducted the expenses of administering the Fund, which expenses may include reasonable investing management, custodian, and similar fees. The income shall be distributed ratably to the income beneficiaries of participating Life Income Gifts quarterly on the basis of income accrued and received. The apportionment of income for each quarter shall be determined on the last day of each quarter and income for each quarter shall be distributed currently.
6. **Withdrawal of Life Income Gifts.** At the first valuation date following the death of the last income beneficiary entitled to receive income from a Life Income Gift, the General Conference shall withdraw from the Fund (in cash, in kind, or partly in each) and pay to the Charitable Remainderman specified in the agreement creating the Life Income Gift, an amount equal to the then total fair market value of that Life Income Gift’s units in the Fund valued as of the valuation date next following the termination of that Life Income Gift’s income interest. This amount shall be determined by multiplying the value per unit (the then total fair market value of the Fund divided by the total number of units then outstanding) by the number of units to be withdrawn. If at the time of such withdrawal of the remainder interest, a Charitable Remainderman is not a public charity (an organization described in clauses (i) to (vi) of section 170(b)(A) of the Internal Revenue Code), its share of the remainder interest shall be transferred to such other public charity (including the General Conference) selected by the General Conference.
7. **Investment Powers.** In addition to the powers conferred upon it by law, the General Conference is authorized to retain or sell the property transferred to the Fund and may invest and reinvest the Fund in any kind of property without diversification as to kind or amount and without regard to the limitations imposed by law on investments except that it may not accept or invest in securities the income from which is exempt from tax (under subtitle A of the Internal Revenue Code), interests in real estate investment trusts, or organizations similarly treated under the Internal Revenue Code, depreciable real or personal property, wasting assets, or in any property which would in any way result in the denial of any charitable contribution deduction to which the Donors to the Fund (and

their estates) may be entitled under the Internal Revenue Code. The Fund may be invested and reinvested jointly with other funds maintained by the General Conference (including, but not limited to, the General Conference Income Fund). Where such joint investment or reinvestment is made, records must be maintained sufficiently identifying the portion of the total fund owned by this Fund and the income earned by and attributable to such portion.

8. **Additional Restrictions.** The General Conference as Trustee of the Fund may not engage in any act of self-dealing (as defined in section 4941(d) of the Internal Revenue Code), retain any excess business holdings (as defined in section 4943(c) of the Internal Revenue Code), make any investment which jeopardizes the Fund's charitable purposes (as defined in Section 4944 of the Internal Revenue Code), or make any taxable expenditure (as defined in section 4943(d) of the Internal Revenue Code). If section 4942 of the Internal Revenue Code is deemed applicable to the Fund by reason of section 508(e) of the Code or otherwise, the General Conference as Trustee of the Fund shall distribute the Fund's income for each taxable year at such time and in such manner as not to subject the Fund to tax under section 4942. No donor or income beneficiary (other than the General Conference) of a Life Income Gift may be a trustee of the Fund. No trustee, officer, director, or other official of the General Conference who is a donor to or beneficiary of the Fund may directly or indirectly have general responsibilities with respect to the Fund which are ordinarily exercised by a trustee. The General Conference shall always maintain control over the Fund.
9. **Principal and Income Allocation.** The following shall during each taxable year be allocated to and permanently set aside as part of the Fund principal and shall not be paid as income: (1) gains from the sale, exchange, redemption, or other disposition of any investments; (2) stock dividends; (3) capital gains dividends of regulated investment companies (mutual funds); (4) liquidating distributions; and (5) any other dividends or distributions not deemed taxable as income under the Internal Revenue Code. Any losses from the sale, exchange, redemption or other distribution or any investments shall be allocated to the Fund principal. If interest-bearing securities are acquired at a premium over par or other stated value, the premium shall be amortized from income so as to restore the premium to principal.
10. **Limited Right of Amendment.** The General Conference shall have the power, acting alone, to amend the Plan and agreements under which Life Income Gifts have been transferred to the Fund in any manner required for the sole purpose of insuring that the Fund in any manner required for the sole purpose of insuring that the Fund qualifies as a pooled income fund within the meaning of section 642(c)(5) of the Internal Revenue Code and the regulations thereunder.

## 17. THE CHARITABLE LEAD TRUST

### Introduction

The charitable lead trust is an irrevocable, split interest trust. Simplistically, it is the “reverse” of the more familiar charitable remainder trust in that payments are first made to one or more qualified charities for a term certain or for a term measured by one or more lives. Upon expiration of the term, the remaining trust estate either reverts to the Grantor or is distributed to other non-charitable recipients, often the Grantor’s family members.

Under the right circumstances, charitable lead trusts can be used quite effectively by clients (typically those with a high net worth) who have both philanthropic and tax objectives. Properly structured, a charitable lead trust allows the client to make a gift of income to charity for a period of time and then pass property to individual beneficiaries with reduced or no gift and/or estate tax. However, the tax issues can be tricky. Working closely with qualified tax and legal counsel is essential when developing this type of trust.

1. Types of Charitable Lead Trusts: Depending on the Donor’s circumstances, wishes and goals, the trust can be structured as either a charitable lead unitrust or a charitable lead annuity trust, as either a grantor charitable lead (unitrust or annuity trust) or a non-grantor charitable lead (unitrust or annuity trust). Lead trusts can be created during the Donor’s lifetime [*inter vivos* charitable lead (unitrust or annuity trust)] or upon the Donor’s death [testamentary charitable lead (unitrust or annuity trust)].

A. Charitable Lead Unitrust: A charitable lead unitrust annually pays to charity a unitrust amount equal to a stated percentage of the net fair market value of the trust assets, valued annually.

B. Charitable Lead Annuity Trust: A charitable lead annuity trust annually pays to charity a specified amount, either a fixed dollar amount or a percentage of the initial value of the trust.

C. Grantor charitable lead (unitrust or annuity trust): If the Donor retains a reversionary interest of more than 5% in the charitable lead trust assets and/or retains certain administrative control(s) over the trust (is treated as the “owner” of the trust), the trust is characterized as a grantor charitable lead trust. The advantage to such characterization is that the Donor may be entitled to an income tax deduction upon creation of the trust; the disadvantage is that the Donor will be taxable on the income paid by the trust to the charity.

D. Non-grantor charitable lead (unitrust or annuity trust): If the remainder of the lead trust is to be distributed to the Donor’s family or other non-charitable beneficiaries (not Donor or Donor’s spouse) upon termination of the trust and the Donor does not retain controls over the administration of the trust, the lead trust is characterized as a non-grantor charitable lead trust. The Donor will not be able to take an income tax deduction upon creation of the trust and will not be taxed on the trust income.

## 2. General Requirements for all Qualified Charitable Lead Trusts

A. Trust term: Under a charitable lead trust, payments are made to charity for a specified period, either a specific term of years (“term certain”), for the life or lives of identified person or persons (“measuring life/lives”), or for a life or lives of identified person(s) and then a term of years. The length of the trust term can have income, gift and/or estate tax ramifications. Accordingly, care should be taken in choosing a trust term.

i. Term certain: Unlike charitable remainder trusts, there is no 20-year limitation on the length of the term certain; with some restrictions, it can be as long or as short as the Donor wishes and as will best meet Donor’s goals.

ii. Measuring life: The measuring life or lives a) must be a life or lives “in being” (ie, alive) at the inception of the lead trust, and b) must be the Donor, the Donor’s spouse or another person who is either a lineal ancestor or the spouse of a lineal ancestor to all of the non-charitable beneficiaries of the lead trust.

iii. Commutation: Generally, a charitable lead trust that gives the trustee the authority to “commute” the trust (prepay the charitable amounts and terminate the trust early) is not qualified.

iv. Rule Against Perpetuities: In some states, the application of this ancient rule may limit the duration of the lead trust. The rule generally requires a trust interest to vest, if at all, within “a life in being plus 21 years.” In such jurisdictions, a) the trust term should be carefully determined in light of the Rule, and b) the trust instrument should include a Rule Against Perpetuities Savings Clause, which clause operates to ensure compliance with the Rule notwithstanding whatever else the trust instrument may say.

### B. Payments to Charity:

i. Guaranteed payment: The charity must have an irrevocable right to receive a guaranteed annuity or unitrust amount at least annually. Trusts providing for the payment of “net income” or “income only” are not sufficient and do not qualify as charitable lead trusts.

ii. Amount: Unlike charitable remainder trusts, there are no minimum or maximum payment amount requirements.

iii. Nature of payments: Payments may be made in cash or in kind, from income and, to the extent income is insufficient, from principal.

iv. Choice of Charities: A charitable lead trust must have at least one qualified charitable lead beneficiary and may have more than one. Donor may give the trustee of the lead trust the authority to select the charitable beneficiary(ies), provided, however, doing so has potential tax implications if the Donor him/herself is serving as the trustee. Also, Donor may retain the right in the trust instrument to change charitable beneficiaries after inception of the lead trust. However, retaining such right may cause some or all of the trust assets to be included in the Donor’s gross estate for estate tax purposes.

C. Funding: Most any type of property can be used to fund a charitable lead trust, although there are some restrictions as to the use of mortgaged property and closely held stock. Also, while appreciated property is a perfectly acceptable asset to fund a lead trust (and is a preferred asset to fund a charitable remainder trust), any gain realized by the trust upon the subsequent sale of the property will be taxable to the Donor (grantor trust) or the trust (non-grantor trust), or, if the property is not sold by the trust but held and then eventually transferred to the non-charitable beneficiaries, those beneficiaries will take on the Donor’s basis in the

property, not receiving the stepped-up basis they would have received had the Donor left them the property at Donor's death. Accordingly, using appreciated property to fund a charitable lead trust may be disadvantageous to Donor and/or Donor's non-charitable beneficiaries.

D. Trustee: There are no limitations upon who may serve as trustee of a charitable lead trust. However, a Donor should be cautious about serving as trustee him/herself, as some trustee powers (such as the power to designate charitable beneficiaries or apportion the annuity/unitrust payment between charities), if held by the Donor/Trustee, may cause some or all of the trust assets to be included in the Donor's gross estate. The trustee of a lead trust is subject to the same requirements as trustees of other types of trust, such as the fiduciary duty of loyalty to all trust beneficiaries (income and remainder), compliance with the Prudent Investor Act, and other regulations applicable to trustees in your jurisdiction.

E. Application of Private Foundation Rules: To qualify for income, estate and/or gift tax deductions, the lead trust must specifically prohibit 1) self-dealing [IRC §4941(d)], 2) making taxable expenditures [IRC §4945(d)], 3) retaining excess business holdings [IRC §4943(c)], and 4) making investments that jeopardize its purpose [IRC §4944].

### 3. Tax Issues

A. Trust Income Issues: Charitable lead trusts are not tax-exempt; the income earned and capital gains generated by the trust are taxable. The responsible party for such taxes depends upon the type of lead trust.

i. Grantor Lead Trust: All of the lead trust's income is taxable to the Donor, as is long term capital gain. If the Donor is able to take an income tax deduction upon the creation of the lead trust, no charitable deductions will be allowed for the annuity or unitrust amounts paid by the trust to charity during the trust term. (However, if more than the required annuity or unitrust amount is paid to a public charity, the Donor may deduct such excess amount.)

ii. Non-Grantor Lead Trust: The trust's income and capital gain are taxable to the trust. However, the trust may claim a deduction for all income (and capital gains) paid to charity.

B. Unrelated Business Taxable Income Issues: UBTI is allowable within a charitable lead trust. However, a non-grantor lead trust may not deduct any income paid to charity attributable to UBTI.

C. Generation Skipping Tax Issues: Often, a Donor will use a charitable lead trust to pass substantial assets to family members after the charitable lead period. While this technique may save Donor gift and /or estate taxes, if the trust is to "skip" a generation or two and pass assets to Donor's grandchildren or great grandchildren, the Donor may incur generation skipping taxes. While there are various exemptions available to alleviate the GST, if the assets to be transferred are substantial and/or if the Donor has made or provided for other gifts to his/her grandchildren, the exemptions may not be allocated to the lead trust or may otherwise be insufficient to eliminate the GST. Accordingly, when planning such a trust, the GST ramifications must be taken into account.

D. Income Tax Deduction Issues: Donor is entitled to an income tax deduction upon creation of the charitable lead trust only if the trust is a Grantor Trust, that is, if Donor retains a reversionary interest in the trust assets and/or retains certain administrative controls over the trust and is thus treated as the "owner" of the trust. As set forth above, Donor may be entitled to an

income tax deduction in the year he/she sets up the trust, but, Donor will then be taxable on all the income the trust earns. Except in rare instances, such as when the trust is invested in tax exempt securities or when the Donor changes tax brackets after creating the trust, the initial deduction is not worth the subsequent taxes.

i. Deduction: If a Grantor trust, Donor is entitled to an income tax deduction equal to the value of a public charity's lead interest, subject to a ceiling of (usually) 30% of AGI with a 5 year carryover.

ii. Recapture of Deduction: If Donor ceases to be treated as the owner of the trust at any time during the term of the trust (such as in the event of Donor's death prior to termination of the trust), a portion of Donor's income tax charitable deduction will be recaptured.

E. Gift Tax Issues: The value of the charity's lead interest is subject to gift tax. Donor must file a gift tax return if the value exceeds the then current gift tax exclusion, but, Donor may claim a gift tax charitable deduction, zeroing out the tax. If the trust property is to be distributed to non-charitable beneficiaries (rather than revert to Donor) upon termination of the trust, the value of the non-charitable beneficiaries' remainder interest (present fair market value of the trust assets less the value of the charitable lead interest) is also subject to gift tax. Because the remainder interest is a future interest it does not qualify for the annual gift tax exclusion. Donor may be subject to a gift tax unless offset by Donor's unified transfer tax credit. Or, careful planning can reduce or even eliminate the gift tax. It is possible to structure the trust term and amount of payments to charity so as to make the value of the charitable interest (and therefore the gift tax charitable deduction) equal to (or close to) 100% of the trust assets—eliminating (or reducing) any gift tax on the remainder interest.

F. Estate Tax Issues: Donor's estate may be entitled to a charitable deduction for the value of the charity's lead interest at Donor's death. However, if the trust property is to revert to Donor upon termination of the trust and the Donor dies during the trust term, the value of Donor's reversionary interest will be includable in his/her estate. And, if Donor reserves certain administrative controls over the trust, the entire value of the trust may be includable in Donor's gross estate.

### Conclusion

The charitable lead annuity trust or unitrust is an estate planning tool of somewhat limited utility. Its principal use is for distributing portions of very large estates to individual beneficiaries with the elimination or substantial reduction of gift or estate taxes, while at the same time making provision for substantial distributions for several years to the charity or charities chosen by the donor(s).

## **18. LIFE INSURANCE**

Many church members own life insurance at some point in their lives. Life insurance may provide peace of mind, risk protection, financial liquidity or investment diversification. For individuals who have not had time to build substantial net worth, life insurance can be used to create an estate for dependants at the death of the insured. To individuals who have been successful in creating wealth, life insurance can be an important vehicle in providing cost effective funds to pay wealth transfer taxes and other expenses or liabilities at death, thus preserving a legacy for heirs.

Insurance is often considered the perfect legacy asset:

- It matures automatically at death for the full face amount regardless of equity built or deposits made to date
- It passes immediately upon claim to named beneficiaries
- It passes free of the costs and delays of the probate process
- It passes in cash
- It passes free of income tax
- It passes free of estate tax where the insured has no incidents of ownership

### **Important Terms**

There are a few basic terms that are important to understand. Life insurance is a contract under state law with the parties involved being described as:

- The insurer--the company issuing the policy,
- The insured--the individual whose life/lives are covered by the policy and at whose death a benefit is paid,
- The applicant--the individual or company who applies for the policy,
- The owner--the individual, company or organization who has legal rights to the policy such as the right to change beneficiary, and who owns the cash value,
- The beneficiary--the one to whom the death benefit is paid.
- The cash surrender value—the amount the policy owner would receive from the company if the policy is cashed in. the cash surrender value reflects the value of premiums paid plus investment growth less administration expenses.

Other important terms include:

- Premium-- the amount paid for a life insurance policy. The premium is reflective of (1.) the insured's age and the mortality costs associated with providing the death benefit, (2.) the insurer's expenses in issuing and maintaining the insurance contract, and (3.) the rate of return earned on the invested premiums.
- Participating contract--the policy owner receives or participates in unused premium, typically in the form of dividends, which results from savings in any of the above three factors.
- Non-participating--the policy owner does not receive any benefit from savings in company costs or investments.

- Dividend--a return of unused or excess premium and is not taxable income to the recipient. If the dividends are left on deposit with the company, the interest earned on the invested dividends is taxable to the insured. Therefore many policy owners elect to buy additional paid-up life insurance with their dividends, thereby reinvesting them in a way that does not generate taxable interest.
- Vanishing premiums--typically this term is used to describe the time period (10 years, 15 years etc.) during which accumulated policy reserves, including cash values, cover all future premium charges. The reality is that the premiums do not really vanish, they remain due and payable, but by surrendering amounts of paid-up additions in conjunction with current payable dividends, the premium due is satisfied. However, if dividend performance is not as projected, the policy owner may be required to pay premiums to keep the policy in force.
- Incidents of ownership—these include the right to:
  1. Change the beneficiary;
  2. Surrender, pledge, or assign the policy;
  3. Change the contingent beneficiary;
  4. Select or revoke a settlement option;
  5. Receive policy dividends; and
  6. Reversionary interest in the policy.

All incidents of ownership must be irrevocably assigned to the charity in order for an insurance gift to qualify for an income tax charitable deduction.

- Insurable Interest—the interest arising when a policy beneficiary has a reasonable expectation of benefiting from the continuance of the insured's life, or of suffering a loss at the insured's death. Policies obtained by persons lacking insurable interest are not enforceable.

## **Types of Life Insurance**

Life insurance is designed to spread an individual's risk of loss among a large group of people. There are basically two kinds of life insurance: term insurance and permanent (cash value) insurance.

Generally, if the insured dies during a coverage period the company pays the policy face amount. Additional value might be added to the face amount for certain types of permanent insurance. Loans against a permanent life policy would be deducted from the death benefit.

## **Term Insurance**

Term insurance is temporary insurance that provides coverage for a period of time. It is the least expensive form of insurance. It provides pure insurance coverage without any build up of cash value. As the insured's risk of death increases with age, the premiums increase at every renewal period. For estate planning purposes term insurance generally becomes prohibitively expensive to renew late in life. The more popular types of term insurance are:



- **Annual Renewable Term:** This contract provides fixed coverage for the present year and guarantees the right to renew for the following year at a specified rate.
- **Level Term:** This policy is written for a fixed period of years and total premiums for the entire period of coverage are divided into equal installments. Common types are five, ten or twenty year convertible and renewable term and term to age 65.
- **Decreasing Term:** Also known as declining balance term. Premiums remain constant over the period of coverage, but the amount of coverage decreases annually. These policies are generally used for mortgage protection.
- **Modified Term:** Usually designed to function as term insurance for five to ten years and then to automatically convert to whole life or permanent insurance.

## **Permanent Life Insurance**

There are many varieties of permanent life insurance. Each provides unique features to assist the insured in reaching certain financial or risk protection goals. For example:

**Whole Life Insurance:** Whole life insurance features fixed premiums which typically are higher than term insurance premiums. To offset higher mortality and policy service costs at older ages, a portion of each premium paid goes into a reserve account. While the insured lives and the contract remains in force, part or all of this reserve is available to the policy owner as the policy's cash value. The cash value grows over time and approximates the policy's cash surrender value. Most policies are "participating" and pay out as dividends all earnings in excess of those required to maintain required reserves.

In time, the reserve and the equivalent guaranteed cash value grow to an amount equal to the face value of the policy. At that point the policy reaches its maturity value and is said to "endow" – that is, an amount is paid to the policy owner or designee and the contract terminates.

**Joint Lives Life Insurance:** Joint lives insurance provides "second-to-die" or "first-to-die" coverage. Second to die contracts are frequently used in irrevocable life insurance trusts and in conjunction with wealth replacement trusts. The policy is usually less expensive than two separate policies and is appropriate when looking for proceeds at the survivor's death. The policy premium can be paid up at the first death or continue until the second death.

**Universal Life:** Universal Life policies are a form of term life insurance in which the premiums are paid from the insured's earnings from a money market fund. They offer flexibility as long as enough money remains in the policy to cover mortality and annual expenses. The policy owner can raise or lower the death benefit, access the cash value via loans or withdrawals. Since a universal policy can be viewed as a term policy coupled with a side fund, it is the most sensitive of all whole life policies to changes in company profitability.

**Variable Life Insurance:** A form of life insurance in which the premiums are invested in securities and whose death benefits thus depend on the securities performance, though there may be a minimum guaranteed death benefit. The agent must have a variable annuity license and all illustrations should be accompanied by a current prospectus. The policy has fixed premiums, but neither the cash accumulation nor the death benefit is guaranteed. The death benefit may

fluctuate, but not below a guaranteed minimum, based on the performance of the underlying investments.

## **Taxation of Life Insurance**

There are income tax, gift tax, and estate tax consequences to life insurance. An in depth explanation of these issues exceeds the scope of this Manual.

**Income Taxation:** Generally, proceeds of life insurance are not subject to income tax (IRC §101(a)(1) with the following exceptions.

1. **Transfer For Value Exception**

If the transferee of a life insurance policy acquired the policy for consideration, the proceeds are taxable income to the transferee. The transferee may deduct the consideration paid for the policy and all premiums or other payments made by the transferee after the transfer.

2. **Exception to the Transfer for Value Exception.**

The transfer for value rule does not apply in the following situations:

- a. The purchaser acquired the policy directly from the insurance company as the original applicant and owner.
- b. The transferee acquired the policy by gift or through any transaction in which the transferee retains the income tax basis in the policy of the transferor.
- c. The transferee is the insured, a partner of the insured, a partnership in which the insured is a partner or a corporation in which the insured is a shareholder or officer.

The transfer for value exception is often used when an insured who has established an irrevocable life insurance trust whose terms become inappropriate with the passage of time. With the consent of the trustee, the insured may use the transfer for value exception to acquire the policy from the insurance trust and transfer the policy to a new trust with acceptable terms. The three year period governing the exclusion of assets from the gross estate for estate tax purposes will begin to run with respect to the new transfer.

**Gift Taxation:** The transfer of all ownership rights in a life insurance policy is a taxable gift, the value of which is based on the interpolated terminal reserve at the time of the gift. Treas. Reg. §25.2512-6(A). The IPTR approximates the cash surrender value and can be calculated by the insurance company. In addition, the payment of premiums by someone other than the owner

is a taxable gift. These events are subject to the annual gift tax exclusion and lifetime gift tax exclusion to the extent they are available.

**Estate Taxation:** Life insurance is includable in the insured's gross estate for estate tax purposes if the insured retains any incidents of ownership or if the proceeds are payable to or for the benefit of the decedent's estate. (IRC §2042) Incidents of ownership include any rights to economic benefits from the policy, including the power to change the beneficiaries, borrow against the policy, surrender or cancel the policy, assign or cancel the assignment of the policy. Treas. Reg. §20.2042-1(C)(2). Further, if any incident of ownership is actually transferred by the decedent without consideration within three years of death, proceeds are includable in the gross estate for estate tax purposes. Generally, the decedent's estate will be then be entitled to an unlimited estate tax deduction for insurance proceeds passing directly to charity.

### Life Insurance as a Charitable Gift

A life insurance policy can be given to charity entitling the donor to claim an income tax charitable deduction. Life insurance policies are given to charity for primarily two reasons:

1. The coverage exceeds what the insured needs
2. The donor wants to leverage a relatively small amount of money (premium) into a larger charitable benefit by way of the death benefit.

Life insurance may be used as a charitable gift by:

1. Assigning the annual dividends to a charity. This method creates a deduction as dividends are paid.
2. Irrevocably transferring policy ownership and all incidents of ownership to charity.
  - a. The charitable income tax deduction for the transfer of a **fully paid-up** policy is the lesser of
    - (1) the donor's basis in the policy (premiums less dividends received) or
    - (2) the policy replacement value.
  - b. If the policy transferred to charity is **not fully paid-up**, the charitable gift is valued at the interpolated terminal reserve of the policy. This value is generally slightly more than the cash surrender value. It amounts to the value of premiums paid plus investment growth minus administrative costs. If the interpolated terminal reserve exceeds the donor's basis, the deduction is limited to basis. The insurance company can calculate the interpolated terminal reserve.
3. Purchasing a new policy for naming the charity as owner and beneficiary. Premiums paid by the donor for the gifted policy constitute charitable contributions. These contributions are easier to substantiate and procedurally simpler if the donor contributes the premium amount as a cash donation and the charity pays any premiums due. Premiums paid to the insurer are considered "for

the benefit of' the charity and are limited to 30% of adjusted gross income. Premium amounts donated in cash to the charity are gifts "to charity" and are consequently limited to 50% of AGI.

4. The policy owner can name a charity as the primary or contingent beneficiary of an existing or new policy. Although this does not qualify for an income tax charitable deduction, it will result in a federal estate tax deduction for the full amount of proceeds paid to charity, regardless of policy size.

Gifts of both fully paid-up and non paid-up insurance policies to a public charity qualify for the 50% of adjusted gross income limitation, with a five year carry forward.

### Insurance Policies With Outstanding Loans

Charitable gifts of life insurance policies with outstanding loans can be problematic. When the outstanding loan exceeds the donor's basis in the policy, the donor must report and recognize the loan amount in excess of gain as an ordinary gain. Such gifts are typically treated as part gift and part sale, a bargain sale. If the charity accepts a life insurance policy and in turn borrows from the policy whether to pay premiums or reinvest may be subject to unrelated business income tax. Therefore, each situation must be reviewed by competent counsel prior to each transfer.

### Gift Valuation and Substantiation

Gifts of life insurance policies are subject to substantiation rules applicable to contributions of non-cash assets. The following table summarizes the requirements:

Deductible Value	Requirements to Qualify for Deduction
\$5000 or less	(1) Contemporaneous written acknowledgement describing the property received, (2) Donor completes Form 8283 Section A, Parts I, II, and III as applicable and attaches it to the tax return for the year during which the property was transferred to charity (including extensions).
Over \$5,000	(1) Contemporaneous written acknowledgement describing the property received. (2) Donor obtains qualified appraisal from a qualified appraiser who is someone other than the donor, donee, agent that sold the policy or the insurance company or spouses of the donor or agent. (3) Donor completes Form 8283 Section B, Parts I, II, Appraiser completes Part III, and Charity completes and signs Part IV. Donor attaches 8283 to the tax return for the year during which the property was transferred to charity (including extensions).
Charity responsibility for gifts over \$5,000	If property is disposed of within three years of the date of gift, charity files Form 8282 with the IRS and provides a copy to the donor.

## **Insurable Interest**

States generally have insurable interest requirements for owners of policies. Many states, but not all, have statutes granting an insurable interest in the lives of donors to charity. Some require the donor to purchase the policy, others allow the charity to purchase the policy (with permission of the insured), and others are silent. Consequently, charities should be aware of the requirements in the states where their donors reside and donors should confirm whether or not his or her state grants an insurable interest to charity.

## **Additional Resources**

*Charitable Giving Tax Service*. Marc Carmichael, editor. R & R Newkirk. Willow Springs, IL

*Gift Law Pro*. A module of CresPro Gift Planning software published by Crescendo Interactive. Also accessible on line at [www.adra.org](http://www.adra.org) and [www.iiv.org](http://www.iiv.org).

*Planned Giving Management, Marketing and Law, Second Edition*. Katelyn Quynn & Ron Jordan, John Wiley & Sons, Inc., 605 Third Avenue, New York NY. 2000.

*Tax Economics of Charitable Giving*, Joseph P. Toce, Jr., JD, CPA et al., Wealth and Tax Advisory Services, Inc. of RIA.

## 19. OFFICE PROCEDURES

### Administrative Responsibility

Regardless of the size of the organization or the number of personnel involved, the requirements for operating an office are consistent. The responsibility of administration, from the initial visit to document execution, is to carry out the instructions of the donor/trustor/testator (client) and the direction of the governing document (trust, will, or gift annuity) and/or other documents that make up the estate plan.

The following procedures are intended to help accomplish that objective.

#### 1. Donor Relations/Contact

##### A. The Request

In most cases, the names of persons interested in Planned Giving & Trust Services (PGTRS) are communicated to the department via letter, email, or telephone call. It is essential to retain all requests for information or assistance in the file documenting the initial request for service.

1) File letters received and sent with enclosures, email, telephone notes, memos etc. on “Communication” page of multi-partition file folder. Include complete date (day, month, and year) on all communication records.

2) Follow-up all requests with telephone call, email, or letter promptly (within 1-2 days).

3) Arrange appointment for home or office visit. Document appointment in file and send appointment confirmation.

##### B. Initial Visit—Information Interview

The activities of the field representative must be carefully directed by administration.

1) Consider dividing territories and assigning districts to field representatives in a multi-staff department.

2) Gather information using the appropriate forms approved by legal counsel such as gift plan application, Family Information Form, Estate Worksheet, or asset inventory.

4) Give written receipt for all original documents and asset documents received (deeds, checks, cash, stock certificates etc.). Retain copy of receipt for file.

5) Provide completed Family Information Form or Estate Worksheet to legal counsel to initiate attorney contact with potential donor and to determine services needed.

- 6) Create Memo of visit/interview noting time, date, location, issues discussed, decisions made, things-to-do for client and staff, and other pertinent visit information. File on Communication page in file folder.
  - 7) Initiate the appropriate Routing Checklist(s) (New Will, New Annuity, New Trust, Power of Attorney, etc.)
    - a. When an annuity is requested, complete the application form, obtain donor signatures, create annuity proposal, and provide appropriate disclosures. This may also be done by mail.
- C. Follow-up Visit. Detailed Information and Assets
- 1) Schedule a follow-up appointment as needed to further build the relationship with the potential donor and to begin/complete gathering information to facilitate creation of a gift plan or creation of estate planning documents by the attorney.
  - 2) Completion of irrevocable gift plans such as charitable remainder trusts may require multiple visits to develop the relationship, explore options, explain the plan, obtain executed documents etc.
- D. Client/Donor Contact. Plan regular trustor contact through personal visits, correspondence, email and telephone calls to maintain relationships and keep abreast of life changes. This can be a part of the regular periodic file review process required in Accreditation Standard 43.
2. File Management
- A. General. The Accreditation Standards require, “All files held in a fiduciary capacity are to be properly organized and subdivided.” A well organized filing system for the many important papers and documents such as correspondence, trust agreements, wills, insurance policies, conveyances, tax information, and notes saves time, assists in donor service and documents the gift/estate planning process. Such documentation is invaluable in the event of litigation and during the periodic examination by General Conference Auditing Service.
- Develop a file system distinct to each type of gift or estate plan (e.g. will only plan, revocable trust, gift annuity, charitable remainder trust etc.); however maintain uniformity in document location within the different file systems wherever possible. For example, place communication records (telephone notes, letters, email printout etc.) on the same page or under the same tab in each file, place governing document (will, trust, annuity agreement) in the same location etc. A uniform method makes it easier to find information when searching a file. It is appropriate to file the Will for persons with a revocable trust in the trust file in order to keep the basic estate plan documents together. Secure the file folder in a locked fireproof file or vault

Many departments use classification folders with multiple dividers. Sturdy dividers with fasteners on both sides permit you to store information under several subdivisions in a single folder. Fastening documents, notes, letters, etc. to a designated divider keeps the many pieces of paper in a specific place and helps prevent loss of records. Color coding file folders assist visual recognition of file types. (See sample file maps in Forms Appendix)



- B. **Master File Folder.** The master file folder should contain original documents such as deeds, contracts, notes, and worksheets. The file must be well organized and labeled so that information may be easily located.
- 1) **File Summary or Synopsis.** It is very helpful to summarize the pertinent information of each gift plan file (will, trust, gift annuity etc.) with a cover page or File Summary (See Accreditation Standard number 45 pertaining to trust files). Client contact information, gift plan details, trustee's responsibilities, committee action references etc. are thus made readily available. See sample File Summary Sheets in Forms Appendix.
  - 2) **Burial Information.** It is helpful to include trustor's/testator's burial plans in the file. Copies of burial plot deeds, funeral arrangements etc. can be included in the file as a part of general information on each testator/trustor.
- C. **File Folder Organization.** A variety of organizational schemes may be observed in PGTRS departments throughout the NAD. Consistency within an individual department is important to facilitate filing and retrieving documents and other information. The following are merely examples of file organization.
- 1) **Color Tab System.** This system features one file folder with fasteners to anchor pages into the folder. Various colored tabs designate certain categories of information. For example.
    - a. An orange tab labeled "CONVEYANCES" for all real property documents such as deeds, contracts, title policies, and fire insurance policies. (If there is more than one parcel of real estate, use numbers 1, 2, 3, etc. Identify the residence property as "1.")
    - b. A red tab labeled "LIFE INSURANCE" for life insurance policies, changes of beneficiary endorsements, etc.
    - c. A green tab labeled "SECURITIES" for photocopies of all securities, mutual fund statements, etc.
    - d. A blue tab labeled "NOTES" for original notes and assignments.
    - e. A white tab labeled "INCOME TAX" for the yearly fiduciary forms and other tax information.
    - f. A pink tab labeled "TRUST" for the original trust agreement with amendments, receipts of trust assets, or trust additions and withdrawals.
    - g. A yellow tab labeled "WILLS" for the trustor's original will or copies of it.



- h. A different colored tab labeled “MISCELLANEOUS” to identify titles, cemetery deeds, etc.
  - 2) A recommended, but optional, procedure is for the above documents to be kept on the **right** side of the trust folder. On the **left** side, keep the original worksheet, the request for a PGTRS interview, and all correspondence in chronological order with the most recent on top. When the folder is opened, the Summary Sheet should be the top document.
  - 3) Multi-folder System. This system uses two classification folders for a trust file. One colored folder is used for master documents (communication, trust and will, family data form etc.) and a second different colored folder is used for assets and accounting records (asset summary, tax reporting, real estate, securities, contingent assets). See sample file maps in Forms Appendix.
- D. Check-out System. It is important that the master file containing the original documents never be removed from the PGTRS office unless absolutely necessary. When working with a file in-house a “check-out” system should be used when removing the master file from the vault. There are various “file out” systems available to facilitate identifying the employee who has the file.
- If an individual document or record is removed from the file folder, place a memo or photo copy in its place to record its location and reason for removing it from the original file. For example, when a deed is sent for recording, keep a copy in the appropriate place in the file folder with a notation of the original deed’s location.
- E. The Travel File. It may be advisable to maintain a travel file for use when visiting the client outside the PGTRS office. Duplicate copies of the will or trust agreement, conveyances, and all documents important to home visitation may be included. Secure the travel file in an accessible location.
- F. Information Management and Retrieval. It is desirable that certain vital information such as names, addresses, telephone numbers, Social Security numbers, birth dates, trust ID numbers, asset information, and many other pieces of information be readily available to development and management personnel.
- 1) Larger offices may use a computerized data base to hold PGTRS Information. Client contact software may be adapted to serve PGTRS needs. A desktop Rolodex system, while decidedly “low-tech,” can function very effectively as well.
  - 2) Regardless of the system, keeping the information current is essential. Creating a record for a new donor/trustor should be part of the routine checklist procedure in setting up any new estate or gift plan. Establish a procedure for updating the department information system.

- G. **Tickler System.** Another important requirement for a well-run office is a reliable tickler system. It is impossible to remember all the many requests or transactions that are in process. A tickler system will solve these problems. The tickler can be computerized, a desktop sorter to hold checklists, or simply making entries on a day-at-a-glance calendar.



- 1) Determine what and when tasks need to be done and when these tasks are to be completed. Set up your tickler system so that the tasks will be recalled at the appropriate time.
- 2) Check the tickler system daily to see what tasks need to be reviewed. If the task has not been accomplished, action will be necessary. If the action has already been accomplished, establish the next review date.
- 3) Use the tickler system for all tasks that need to be called to your attention.

- H. **File Review.** Accreditation standards require periodic review of each file to ascertain if all necessary documentation is in the file. Communicating with clients by mail or home visit as a part of the review enables staff to keep in touch and stay abreast of client needs. This is especially critical as clients advance in age.

- I. **Action Log.** Some departments find it useful to include a running narrative record to document work done in a file. Placing the Activity Log on top of the first “page” of the file folder keeps it readily available.

- J. **Date Stamp.** Stamping all incoming mail assists in documenting when items were received in the office. A department identifier can be included in the message to distinguish the PGTRS department from other departments in the office. A variety of date stamps are available for modest cost at office supply stores.



### 3. Document Preparation

A. Preparation of Estate and Gift Plan Documents. Trust accreditation and denominational policy requires all legal documents (trusts, wills, annuity agreements, powers of attorney etc.) be prepared in such a manner that a licensed attorney takes responsibility for the document.

- 1) Utilize appropriate routing checklist for gift plan created (trust, will, annuity, charitable remainder trust etc.).
- 2) Route needed information to the attorney for client interview, document preparation and further planning.
- 3) Review completed documents in office before contacting client for document signing.
- 4) Schedule visit with client to review plans and arrange for document execution.
- 5) Place executed documents in PGTRS file system
  - a. Original wills may be kept in organization files if requested by testator and organization policy allows. If testator retains the original, request a copy of signed document for file, especially if organization is named as executor.
  - b. Retain original executed trust document and funding documents (deed, contracts, insurance policies, etc.) if organization is trustee or at the trustor's request. If the organization is named as successor trustee retain document copies in the office file and discuss and/or arrange the process of obtaining original documents when assuming the role of successor trustee becomes necessary.
  - c. Retain original advanced directives if organization personnel is named agent or if requested by principal.
- 6) Send copies of executed documents to client.

Some organizations create an Estate Planning Notebook to hold client documents and other pertinent information about their Estate Plan. A notebook provides a centralized place for the client to keep documents and communication regarding their plan.

#### B. Execution of Documents

- 1) Vote authorization of acceptance of fiduciary duties (trustee, personal representative, attorney in fact) in the proper committee and record in the committee minutes (See Corporation Minutes in Chapter 4.). The governing committee action number and date may be recorded on the File Summary for ease of reference.
- 2) When the trust, will, or other gift plan and all supporting documents have been prepared, they should be properly signed, acknowledged, and witnessed as appropriate. Check local law regarding the necessity or desirability of

notarization. In some jurisdictions the execution of legal documents is considered the practice of law or custom/tradition may dictate the document execution process. Verify with legal counsel as to the document signing procedure.

3) All appropriate documents should be signed by the officers of the corporation and properly acknowledged.

C. Finalize and File Documents

1) Verify proper execution by reviewing document dates, signatures of grantor/testator/client, witnesses, and notary public if required.

2) Duplicate, as necessary, each document and place the original in the vault file folder and the copy in the travel file.

3) After all documents have been properly signed deliver personally, by mail or other shipper the appropriate copy to the client.

4) Complete appropriate checklist and place in document file.

4. Administration

A. Revocable Trusts

1) Obtain written investment instruction from grantor for all revocable trust investments, additions to trust and withdrawals from trust. Memorialize investment actions in governing committee/board minutes.

a. Addition of Assets to Trust. Have the trustor execute the Addition to Trust form which should then be acknowledged by the corporation and then placed in the file. Issue a receipt for cash, checks, and all original documents (deeds, insurance policies etc.) received from the grantor/Donor. Make appropriate entries in organization's trust accounting system. Use of an appropriate checklist is highly recommended.

b. Withdrawal of Assets from Trust. Obtain signed Asset Withdrawal instruction from grantor(s). Acknowledge withdrawal in Trust Management Committee minutes. Obtain proper authorization from corporation/Association board of Directors for officers to sign deeds and other required documents of conveyance. Adjust accounting records and file updated asset listing in trust file. Use of an appropriate checklist is highly recommended.

2) Cash. Small amounts of cash can be held in a trust checking account maintained for all revocable trusts as long as each trust's interest in the common account is accounted for separately in the organization's accounting system. Funds must not be co-mingled with organization assets held in a non-fiduciary capacity. Keep large cash deposits productive in interest bearing accounts.

- 3) Real Estate. Transfer real estate into the trust by grant or warranty deed subject to local counsel. Generally, additions of real estate to the trust should be properly recorded in county land records where the property is located.
  - a. Initiate Real Estate Information form. Perform environmental due diligence before accepting property into title whether by purchase, outright gift, in trust, life estate reserved etc. Obtain cost basis of the real estate. Basis can be included in Family Information Form or the trustor may execute a Statement of Value (See Forms Appendix.
  - b. Initiate the appropriate real estate acceptance checklist to guide you through the approval and conveyance process.
  - c. If conveyance is into a revocable trust consult legal counsel to determine if recording the deed will negatively effect the grantor's homestead exemption or other benefit. If a problem is created then discuss with counsel and the trustor the possibility of using an unrecorded deed. Obtain a Hold Harmless Agreement (Forms Appendix) from the trustor if deed is to be unrecorded.
  - d. Request legal counsel to prepare the appropriate deed.
  - e. Proofread the deed and verify legal description
  - f. File a copy of the original conveyance to the grantor with the new warranty deed into trust.
  - g. Initiate the Recording Deeds and Assignments Checklist when the signed, dated, and notarized deed is returned.
  - h. Where possible, when the conference corporation serves as trustee for real estate, the corporation should be listed as an additional insured on the trustor's fire and liability insurance policies, even when the deed is unrecorded. The trustor can arrange the proper policy endorsement with the insurer. When the trustor will not, or cannot, name the corporation as an additional insured, obtain a signed Hold Harmless Agreement (Forms Appendix). If the trustor does not have (or does not desire to obtain) insurance on real estate, the trustor should sign a Hold Harmless Agreement (Forms Appendix). Review the trustor's policy on their primary residence to determine if vacant land is included as insured property.
  - i. Review property insurance coverage at least every three years (preferable annually) to determine that the insurance coverage is adequate. The trustor should be contacted for verification and the appropriate Hold Harmless Agreement obtained based on the current circumstances.
  - j. The file should also contain Hazardous Waste Questionnaires and Checklists (Forms Appendix), or any other forms approved by legal counsel, for each piece of real estate.
  - k. Document annual payment of taxes for trust property. The trustor can complete a statement, submit a receipt or in some jurisdictions property tax records are available online.
  - l. Adjust trust accounting records at least annually to reflect amount of any mortgages or other liabilities associated with trust property.

4) Life Insurance Policies. Include life insurance death benefits in the asset inventory of the Family Information Form/Estate Worksheet as a part of the client's net worth statement. Record company name, policy type and number in data form. Assist the grantor in obtaining and completing beneficiary change forms from the company so that the trust is properly designated as beneficiary or owner of the policy according to the grantor's desire. Some insurance companies require the policy to be returned for endorsement. Change of Beneficiary information is typically available in the policy or on the company's web site. Forms may also be available on line. Record a beneficiary designation in the account system at a nominal value of \$1.00. File documentation in the contingent asset section of the trust file.

5) Bank Accounts. Often the grantor/trustor will desire their personal bank accounts pay on their death to the trust. Generally the bank will require the grantor/ trustor sign new account ownership forms at the bank. Some banks will not name a beneficiary on a checking account, although a POD beneficiary is often readily added to savings accounts. Some financial institutions use trustee accounts where the account owner holds the account "In trust For" the beneficiary (ITF or Totten Trust Accounts). The financial institution will have its own policy and procedure for each type of account. Typically a copy of pertinent portions of the trust is required for the financial institution file. Arrange with financial institutions for a trustee account or payable on death account with the corporation, as trustee of the respective trust as beneficiary. Designation of a beneficiary does not place the asset in trust. Place financial institution documentation of POD or beneficiary intent in the contingent asset section of the trust file. List each contingent asset in organization accounting records at a nominal value of \$1.00.

Financial institutions are much more familiar with self administered trusts and more readily cooperate in the naming of the trust as beneficiary or, more commonly, as the owner of the account. The bank will often require a copy of pertinent portions of the trust be retained in their file. The self administered trust is generally carried on the organization's accounting records at a nominal value if the organization is named as successor trustee.

6) Notes Receivable. All notes placed in trust must be assigned to the corporation as trustee.

- a. Promissory Notes. Request attorney prepare an assignment of promissory notes to the trust for grantor's signature.
  - i) When notes are paid off, the security must be released. If a third party holds the security, he/she should be notified that the note has been paid off and instructed to release the security.
  - ii) Unsecured notes may be difficult or impossible to collect when the trust matures. The trustee must be ready to pursue all available avenues in collection. In most cases it will be best to leave such assets outside of trust and rely on the probate process to collect or write off a note receivable.

b. Union Revolving Fund Notes. Many Seventh-day Adventists place funds in the Union Revolving Fund because they want the money to be actively working for the church. Many Union Revolving Funds are subject to securities regulations in its state of domicile. Consequently, the respective Union Revolving Fund's policies and its state regulations may or may not permit assignment of an existing note to the trust. In this case it may be advisable for the grantor to withdraw the funds from the Revolving Fund and then deposit cash into the trust. The trustee in turn would invest trust cash, at the grantor's written instruction, in the Union Revolving Fund and title the note in the name of the trust or trustee for the trust. The Union Revolving Fund manager or the Fund prospectus can provide guidance on how to title assets into trust.

- i) If the trust is listed as owner of a Revolving Fund asset periodic interest or dividend payments may accumulate in the Revolving Fund or be paid to the trustee who in turn sends the income payment to the appropriate beneficiary. Obtain written investment instructions from the grantor.
- ii) The annual tax reporting from the Union Revolving Fund is made to the trustee and reconciled to the trustee's accounting records. The grantor receives an explanatory schedule of trust income and expense and reports the income on his/her personal income tax return. See Chapter 22, Tax Reporting.

7) Securities. Publicly traded stocks may be held in certificate or in electronic form.

a. Certificated securities can be re-titled into the name of the trustee for the trust by properly executing a stock power and submitting the certificate and stock power to the company for certificate reissue. Generally it is advisable to execute a stock power separately from the certificate. The grantor must have his or her signature on the stock power "Medallion Guaranteed" by a bank or qualified securities company representative. If the certificates are to be mailed to the trustee, the certificates should be mailed separately from the stock power. Consult with the company investor services office or broker to verify procedure. See Forms Appendix.

NADWP S 85 20.10 states, "Self custody of securities is not allowed.

- a. For accounts managed on a separate account basis, controlling committees must select a recognized custodian (or through agreement with a sub-custodian) who:
  - 1) Maintains possession of securities owned by the controlling committee;
  - 2) Settles brokerage transactions, and provides monthly detail of such transactions;
  - 3) Collects dividend and interest payments;
  - 4) Redeems maturing securities;
  - 5) Effects delivery following purchases and sales;

- 6) Provides timely exception reporting;
- 7) Handles corporate actions;
- 8) Provides performance measurement and risk assessment;
- 9) Provides transaction cost management;
- 10) Performs regular accounting of all assets owned, purchased, or sold, as well as movement of assets into and out of controlling committee accounts;
- 11) Independently prices all marketable securities on a daily basis;
- 12) On a monthly basis produces an audited statement detailing all positions held as well as all transactions that occurred during the month;
- 13) Independently marks to market all securities and pooled funds on at least a monthly basis;
- 14) Performs monthly valuations on a trade date, fully accrued basis;
- 15) Provides a report on controls in accordance with International Standards on Assurance Engagements 3402 (or in the United States, Statement on Standards for Attestation Engagements No. 16) on an annual basis;
- 16) Does not commingle the controlling committee assets with any other assets;
- 17) Is separately organized and regulated from all broker-dealers;
- 18) Is financially sound;
- 19) Is registered with the proper regulatory authorities and in good standing.”

While these policies were designed to apply to organizationally owned securities, it may be prudent to determine in consultation with the organization’s investment manager, legal counsel and the respective grantor to determine the best method to hold securities in trust. Include the method of holding securities in the grantor’s written investment direction.

b. Electronically owned (“street account”) securities are transferred through the Depository Trust Company (DTC). The DTC transfer is



started when the donor's agent or broker receives written instructions from the client. Following the written instructions, the agent initiates the DTC transfer. The DTC may be made to an account titled in the name of the trustee for the specific trust at either the same brokerage firm or a different firm. Generally the effective date of transfer is the date when the transferor gives up "dominion and control" of the securities. With a DTC transfer to the same brokerage firm, the effective date of transfer is the date of transfer into the account of the trust. This transfer can be directed and take place the same day if an account for the trust has been previously established. With a DTC transfer to a different brokerage firm the transfer date has not been definitively determined in statute or regulations. Since transferring the stock into a revocable trust has no tax consequences, the trustee may determine the date of transfer according to its own policy.

c. Savings Bonds. Generally, a reissue of savings bonds will result in recognition of the accumulated interest as taxable income. Any resultant tax will be payable in the taxable year in which the bond is finally redeemed or in the taxable year of final maturity. In Rev.Rul. 58-2, the IRS held that transfer of Savings Bonds by the owner to his own revocable trust would not result in immediate taxation. However, the transfer to a revocable trust with a third party trustee may result in immediate assignment of income to the transferor. It is generally best tax wise for Savings Bonds to transfer at death directly from the Savings Bond owner to charity rather than through a revocable trust.

8) Deeds of Trust, Mortgages, Vendor's Interests, and Contracts. Have legal counsel prepare assignments or conveyance documents to the trust.

**Caution.** It is advisable not to assign purchase contracts into the trust, in order to avoid acceptance of the liability attached to purchase contracts.

9) Trust Revocation and Amendment

a. Revocable trusts. Generally, a trust is revocable if someone possesses the right to revoke, the unlimited right to withdraw property, or possesses a general power of appointment over the trust property. Depending on state law unless the terms of a trust expressly provide that the trust is irrevocable, the grantor may revoke or amend the trust. Some revocable trusts contain a provision reserving the right to revoke personally to the grantor only during a period of competency. The power to revoke would therefore not be available to an attorney in fact. In some jurisdictions the grantor's conservator or, if no conservator has been appointed, the grantor's guardian may exercise a grantor's powers with respect to revocation, amendment, or distribution of trust property with the approval of the court. A revocable trust may also contain a provision deeming the trust irrevocable on the death of the first grantor.

- i) Depending on state law the grantor may revoke or amend a revocable trust by substantially complying with a method provided in the terms of the trust or in a number of alternate ways.
    - a) Executing a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust
    - b) By intent if the trust has no title to property and no means of funding at the grantor's death, or
    - c) By creating a formal amendment executed to the same degree as the original document
    - d) Any other method manifesting clear and convincing evidence of the grantor's intent.
  - ii) When revocation is requested, it may be prudent to discreetly determine the reason for the revocation, the grantor's mental competence, and if the grantor is acting under duress.
  - iii) Summary of revocation procedures
    - a) Obtain a written revocation notice/request signed by all competent grantor's and file it form with the original trust document.
    - b) Prepare adequate documentation for all parties.
    - c) Return the assets promptly with a full accounting as of the date of revocation. Keep copies of all documents pertaining to returned assets in the file. Obtain receipts for all assets returned to the donor.
    - d) Real estate should usually be returned by Quitclaim Deed or Special Warranty Deed.
    - e) If a duplicate original trust agreement exists, request it from the grantor, stamp it "Revoked," and return it to the trustee's file.
    - f) Follow a comprehensive Trust Revocation Checklist (See Checklist Appendix).
- b. Irrevocable trusts. Depending on state law an irrevocable trust may be rescinded when the donor has been induced to create it under circumstances of fraud, mental incapacity, undue influence, or mistake. Rescission may require court action. Notice to all interested parties, one of which may be the state Attorney General, may also be required. State law may permit non-judicial termination in certain situations and will direct how the trust assets are distributed. Consult qualified legal counsel.
- 10) Reporting to Beneficiaries. it is important that beneficiaries receive regular and periodic information about their trust account. Accreditation Standard 20 requires reports to the trustor, which list all trust assets, be issued at least annually and include both a Statement of Trust Assets and a Statement of Trust Income/Activity. At least one report should be a composite report, reflecting total assets held in the trust, and all income activity for the year. Monthly or quarterly may be provided as well.

- B. Power of Attorney
- 1) The appointment/nomination of a denominational employee as an attorney in fact (POA agent), who is named as a result of his/her employment, is to be approved by the governing board or appropriate committee.
    - a. In many cases the active exercise of the power of attorney is not needed for many months or even years, thus the power of attorney lies "dormant" or unused, even though it may be completely valid.
    - b. Obtain governing board/committee authorization to actively exercise powers granted at the time such exercise becomes necessary.
  - 2) Obtain authorization by the governing board or committee for all significant acts such as the disposition of major assets.
    - a. Record all actions in the governing committee's official minutes.
    - b. A copy of the action may be kept in the file or a notation of action number may be entered on the file summary sheet to make locating the information easier.
  - 3) Account for all assets and liabilities under the active control of the attorney-in-fact and all financial transactions affecting those assets and liabilities in a formal trust and estate accounting system.
    - a. While it is generally preferable that this record be incorporated in the respective entity's regular accounting system, this is not required. Commonly available software packages such as Quicken, QuickBooks, MS Money, or Probate Plus may be utilized.
    - b. Generally accepted supporting documentation such as asset ownership documents, statements, receipts, bank statements, reconciliation records, and canceled checks documenting each transaction should be kept in an organized manner such that an adequate audit trail is apparent.
    - c. Access to these records shall be available to the organization's officers and auditor's at all reasonable times.
  - 4) An agent's authority is generally limited to those acts expressly conferred in the power. This especially applies to making of gifts to individuals or charity. A person who wishes the power of attorney agent to make outright lifetime gifts to family or charity or to create lifetime deferred gifts to charity after he or she becomes incapacitated must specifically grant this power.
5. Summary of Activities at the death of a trustor
- A. Introduction. After someone dies or becomes incapacitated the trustee or successor trustee of a self administered trust has obligations regarding administering the trust. These duties are very important and should be followed with utmost care. Major duties include notice, accounting, inventory, appraisal, creating sub-trusts, filing a variety of tax reports and winding up decedent's affairs. A summary of an executor or personal representative's duties for a probate estate may be found in Chapters 20 and 21 of this Manual.

Generally some tasks need immediate attention and others involve ongoing administration. Perhaps the first thing to do is to initiate a comprehensive checklist to guide you through the process.

- B. Tasks Requiring Immediate Attention upon the Death of a Grantor.
- 1) Document trustor's death with a certified copy of the death certificate at the earliest possible opportunity
  - 2) Notification to Beneficiaries. The trustee is first required to notify all heirs and trust beneficiaries of the grantor's death and the existence of the trust. If the beneficiaries request it, the trustee must send them a copy of the trust.
  - 3) Inventory and Appraisal. The trustee must prepare an inventory of all of the decedent's assets and determine their fair market value as of the date of the decedent's death. The value of cash-type investments and marketable securities can be easily determined. However, with certain types of property (jewelry, artwork, and real estate) it is often advisable to hire a professional appraiser. An appraisal of the trust assets is often necessary for the following reasons.
    - a. To assist in determining the amount of any estate tax owing upon the decedent's estate
    - b. To assist in determining the cost basis in the trust assets, in the event that the assets are later sold for a capital gain
    - c. To assist in determining how to allocate the decedent's assets among the various trusts and/or beneficiaries that may have arisen as a result of the decedent's death.
  - 4) Set Up Trust Checking Account and Record-Keeping System. In addition to preparing an inventory of all assets owned by the decedent, a trustee should immediately set up an account for the irrevocable trust in the organization's accounting system and begin properly accounting for all trust receipts and disbursements
  - 5) Payment of Claims and Administration Expenses. Trustees are typically empowered to pay routine administration expenses out of the trust estate.
    - a. Taxes, accountant and attorney fees, and expenses related to the maintenance of trust property
    - b. Decedent's final expenses as directed by the trust document and other just and payable debts incurred during the decedent's lifetime for which the trust property may be liable.
      - i) Consult with legal counsel
      - ii) Obtain court instruction if necessary
      - iii) Obtain authorization from Trust Management Committee
    - c. Some jurisdictions may provide an elective procedure to shorten the period in which the decedent's creditors may bring claims against the trust property. This procedure generally requires publication of a notice of the decedent's death, as well as notifying all known creditors by mail. This is similar to the manner in which creditor claims are handled in a probate proceeding.

- 6) Tax Matters. Various tax matters must be dealt with at an early stage.
  - a. Estate tax returns must generally be filed within nine months after the decedent's death if the decedent's taxable estate exceeds the federal estate tax exemption amount.
  - b. The decedent's final state and federal income tax returns must also be prepared.
  - c. Obtain taxpayer identification number from [www.IRS.gov](http://www.IRS.gov)
  - d. If the decedent owned an interest in any real estate, in some jurisdictions it may be necessary to notify the county assessor within a certain time period following the date of death
  
- 7) Allocation of Trust Assets to Beneficiaries or Sub-Trusts.
  - a. Trust assets must frequently be allocated among various sub-trusts of the decedent's living trust.
  - b. Also, the trust instrument may call for certain assets to be immediately transferred to the beneficiaries of the trust or final distribution if no sub-trusts are established. This involves changing title to the trust assets by executing instruments of conveyance, such as deeds or bills of sale.
  
- 8) Transfer of Non-Trust Assets. If the decedent owned any assets such as jointly-held property, retirement plans or Totten Trust accounts, title to the above assets may need to be changed to the trust or liquidated and proceeds deposited into organization's trust checking account.
  - a. Investigate how best to roll over or liquidate IRA or other qualified plans if the trust is a named beneficiary
  - b. Apply for any life insurance, annuity or other pay on death benefits owned by the decedent.
  
- C. Ongoing Administrative Tasks of a Continuing trust
  - 1) Provide periodic accounting (at least annual) to Beneficiaries
    - a. Information about trust income, expenses, gains and losses
    - b. Inventory of all trust assets, including their fair market value and tax basis.
    - c. Supplementary schedule of financial activity such as sales of trust property, liabilities of the trust, distributions to the trust beneficiaries etc.
  - 2) Income Tax Returns of trust. In general, any irrevocable trust earning at least \$600 in gross income in any taxable year must file a federal fiduciary income tax return (Form 1041) for that year.
    - a. State fiduciary income tax returns may also be required.
    - b. Trust tax returns are due on April 15 (plus any extension) of the following year
    - c. Failure to ensure that the required returns are filed could cause the trustee to be personally liable for penalties and interest.
    - d. See Tax Reporting Chapter 22 for additional information.

- 3) Managing Trust Investments. A trustee is given broad discretion over the choice of investments of trust assets.
  - a. Manage the trust assets in a reasonably prudent manner
  - b. Appropriately diversify the trust investments
  - c. Manage the trust so as not to unduly favor either the income or principal beneficiaries
  - d. Under no duty to grow trust assets
  - e. Must keep assets productive, but protect from loss
  - f. See Chapter 10 for additional information

D. Final Tasks

- 1) Disbursements to Beneficiaries. A trustee is required to make distributions of income and/or principal to the trust beneficiaries in accordance with the terms of the trust instrument.
  - a. May include interim distributions
  - b. Final distributions
  - c. Provide final accounting to beneficiaries
  - d. Obtain signed receipts for all assets distributed to beneficiaries
  - e. Obtain Trust Management Committee or governing board authorization for each distribution and file closure.
- 2) Professional Consultants and Fees. A trustee is generally permitted to hire outside consultants (attorneys, accountants, bookkeepers, investment consultants) as is reasonably necessary to assist him or her in administering the trust.
  - a. The fees for these consultants are generally paid out of the trust assets as administration expenses.
  - b. Denominational organizations typically do not charge trustee fees since they generally receive a portion of the distribution. It is appropriate for administrative costs to be charged to the trust. See NAD Working Policy S 40 30 and 32 for additional information pertaining to denominational employees serving as fiduciary and the charging of fees.
- 3) File final fiduciary income tax returns
  - a. Final 1041, K-1 to beneficiary
  - b. Final 1041-A if charitable distribution made

## 20. PROBATE PROCEDURES

### Testacy and Intestacy

The two basic types of probate are testate (with a valid will) and intestate (without a valid will). The type depends on whether or not the decedent left a valid will disposing of his/her entire estate. This discussion will focus on the estate where a valid will exists, with indications as to procedural variances when there is no valid will.

Inasmuch as each state has adopted a probate code, all information in this chapter should serve as nothing more than a beginning point for further research. In addition, each jurisdiction will have different procedures and forms.

In working with a probate court, contact with the judge may be minimal compared to contact with the probate clerk or register of wills. Typically clerks are glad to provide information, although they cannot give legal advice. The court may also maintain a website where valuable information and forms can be obtained.

To institute probate proceedings, the original of the last known will should be filed with the court at the death of the testator. No will, regardless of its form or content, is of any legal significance until it has been reviewed and accepted by the probate court. If the original cannot be located a copy may be acceptable to the court depending on legal counsel.

### The Process

The first major document filed is the petition for commencement of proceedings. This document usually contains jurisdictional information for the court, the name of the decedent, the decedent's Social Security number, the date of the Last Will and Testament, the names of witnesses, an estimate as to the value of the estate, and a list of the heirs and devisees. The petition usually contains a request that the will be admitted to probate and that administration be granted to the personal representative (executor/trix) named in the will. Where the will and/or statute expressly allows, the court can waive the requirement of a surety bond.

Unless all "Parties in Interest" (a term usually defined by court rule) consent to the admission of the will to probate and the appointment of the personal representative named in the will, a court hearing is necessary (except for independent or informal probate). A waiver and consent form may avoid the need for a hearing, but if a hearing is necessary, a written notice of hearing will need to be provided to each interested party.

It may also be necessary to publish a notice regarding the decedent's estate. If consent cannot be obtained from all parties, the publication can serve as notice to heirs and devisees whose locations are unknown, but more importantly, the decedent's creditors are notified of the name of the personal representative (executor) and the date by which all claims against the deceased or the decedent's estate must be filed. This date is usually two to four months after publication.

If a hearing is necessary, a proof of service verifying delivery of the notice of hearing, a copy of the will, and a copy of the petition for commencement of proceedings should be filed with the court.

Since certain information regarding the family and heirs of the decedent is necessary even with the use of waivers and consents, a testimony of interested parties is usually used and signed under oath by a person who has personal knowledge of the heirs of the decedent. If a will is involved, there may be supplemental testimony of interested parties that supplies to the court information regarding a devisee who may be named in the will, but who is not an heir of the decedent. This document is also signed under oath by a knowledgeable person.

If all consents and waivers are signed and the documents are in order, a court order admitting the will to probate and appointing the personal representative will be issued. If the person nominated to be personal representative declines, then a declination to serve must be filed.

Where required by the court, bond must be filed before letters of authority are issued to the personal representative. The letters of authority (or in some states “letters testamentary”) evidence the personal representative’s authority to act in the place of the decedent and to conclude the decedent’s affairs. Multiple certified copies of these documents will be needed for distribution to banks or other entities that will require them for their records.

Once the personal representative has had an opportunity to assemble and evaluate the assets, an inventory is usually required. This inventory should be as accurate as possible. If errors are discovered, it will be necessary to file an amended inventory when the correct facts become known.

The assets listed on the inventory and included in the estate should be only those assets in which the decedent had an interest to pass at his/her death. Estate planning utilizes various devices to avoid including property in the estate of the decedent. Depending upon state law, different methods may be employed before death to arrange the decedent’s affairs so as to exclude assets from the probate estate. Some of the more common alternatives are trusts, joint tenancies, pay-on-death clauses, deferred compensation plans, and assignment of insurance policies. These assets and proceeds are excludable from the probate estate under normal circumstances.

Creditors may file a claim. The claim needs to be filed by all creditors within a specified time period. However, tardy claims may be filed after a successful petition to the court. Provision can also be made in wills for claims, or classes of claims, to be paid from certain funds rather than from the general estate.

Another initial duty of the personal representative, if the decedent left a surviving spouse, is to notify the surviving spouse of the option to abide by the terms of the will, take an intestate share, or receive dower benefits, if such are allowed under state law. The personal representative must file a proof of service for the delivery of the notice of election to the spouse.

The estate should be closed in a timely manner. If the estate cannot be closed within the time allotted by the letters of administration, the court may extend the period of administration. However, the personal representative must make an annual accounting of receipts and



disbursements. The annual accounting must indicate the dates covered by the accounting period and start with the balance from the preceding accounting or the inventory, whichever is applicable, add the receipts, subtract the disbursements, and specify the balance. Some accounting forms also require an itemized list of the remaining assets. Generally, no hearing is necessary if all parties agree to the accounting and provide consent. The judge will then sign an order allowing the account. On some occasions, a hearing must be held, notices sent, and a proof of service filed. The final accounting of the estate should also contain a request that the residue of the estate be assigned, the fiduciary discharged, his/her bond canceled, and the estate closed. Upon court approval, an order is entered approving the final accounting.

One of the remaining duties of the personal representative is to provide a summary of the entire estate to the inheritance tax examiner and to pay the inheritance tax, if state law requires one. All inventory fees, taxes, and other costs assessed by government agencies must be paid prior to the order allowing the final accounting and assignment of residue. The residue is what remains after all debts have been paid and all specific devises have been satisfied. The general devises are then made from the residue of the estate. Real property is transferred from an estate by a personal representative's deed, but a receipt for distributive shares should be obtained for any personal property transferred to a devisee. After all receipts of a distributive share have been filed, an order of discharge is entered by the court and the bond is canceled, closing the estate.

For small estates, probate can be simplified and quickly resolved in most jurisdictions.

A new procedure initiated by the Uniform Probate Code is called Independent or Informal Probate. Under this system, there is no court supervision of the personal representative. The personal representative initiates the action and proceeds to gather the assets (advising the heirs and devisees along the way), to pay all debts, and to distribute the estate to the beneficiaries who are entitled to receive assets. The Independent Probate estate must be closed in a timely manner. It is possible that an estate under court supervision could be closed earlier than an estate under Independent Probate.

In jurisdictions that permit it, Independent Probate can be used unless the will expressly forbids it. One significant disadvantage of Independent Probate is that the personal representative is liable for claims and contracts of the decedent for a period of up to six years, depending on the statute of limitations. Independent Probate can be transferred, in part or in whole, to supervised administration at any time, following petition by an interested party. However, once court supervision has been instituted, the estate cannot revert to Independent Probate. When there is a disputed claim, the personal representative should request that the court supervise this aspect of the estate, while keeping the remaining aspects of the estate in Independent Probate.

This brief introduction to the basic probate process does not cover such issues as will contests, ancillary proceedings, temporary personal representatives, sales of real property, continuation of a decedent's business, contested proceedings, or a plethora of other probate procedures and problems.

## 21. SETTLING THE ESTATE

### Estate Settlement

The settlement of an estate or trust after the death of the testator/trustor is a complex process requiring attention to details and deadlines. For the purpose of this chapter many final settlement tasks are similar for probate estates and matured trusts. Timely and efficient settling of estates and trusts has many benefits. In addition to securing the gift to the church in a cost effective and timely manner, the trustee/ personal representative who settles matters quickly and efficiently will earn the appreciation and confidence of heirs and beneficiaries. On the other hand, if the estate/trust settlement is inefficient, observers may be critical not only of the trust services ministry, but also of the church organization, creating a potential for legal disputes and fewer bequest gift in the future.

Obviously, it is to everyone's advantage to close the estate as soon as possible. If the distribution is inadvertently delayed, efforts should be made to apprise the beneficiaries of the reason, or they will assume it to be the fault of the trustee/personal representative.

Four basic requirements are necessary in order to ensure prompt settlement of estates and trusts:

### Mandatory Internal Deadlines

Target dates for the various procedures of administration should be established in order to assure the earliest possible distribution date. These dates should be selected based on reasonable estimates of how long it will take to complete these functions. If target dates are not established, the trust officer involved may only take care of the most pressing current problems and the estate may be kept open longer than necessary. It must be kept in mind that federal or state statutes or procedures may dictate parts of the timetable.

### Managerial Monitoring System

Management should regularly review the checklists in process to ensure that all necessary tasks are performed in a timely manner.

There are several ways of encouraging compliance with established deadlines. One method is to develop a tickler system to keep track of deadline dates. Another approach is to maintain a control log reflecting target dates for each estate. If the procedure is not completed on time, an explanation should be provided by the person in charge of the estate.

### Communication with Legal Counsel and Interested Persons or Parties

Consult with legal counsel to determine the necessity of initiating a probate proceeding and what type of probate proceeding to utilize (supervised, informal, or independent). If the decedent had a trust determine with counsel the relationship of the decedent's trust to the probate proceeding and review the organization's role in settling the matured trust. Obtain guidance and develop a

strategy for administering the estate or trust during the settlement phase. Acknowledge the maturity and secure appropriate authorizations from the Trust Committee or other governing board. Notify beneficiaries and other interested persons as required by state statute. Communication and disclosure of appropriate information can alleviate concerns

### **Comprehensive Administrative Checklist**

The following suggested reference checklist is designed to help ensure that no important details are overlooked. The actual working checklist will include other tasks and not have the detail included below. Organizations should create their own checklists to suit their specific needs in harmony with legal counsel and local law.

### **Suggested Checklist**

1. Determine the trust officer's responsibilities by identifying the following:
  - A. Personal Representative or Executor (will)
  - B. Trustee (trust)
  - C. Interested parties (attorney-in-fact, conservator, creditors, heirs at law and beneficiaries)
  - D. Rights of spouse and children
2. Notification of Death
  - A. A relative, friend, or the local pastor should inform Trust Services of the death. Use cards, stickers, and instructions on document copies as reminders.
  - B. Notify relatives and send a letter of condolence. Express genuine sympathy, describe the role of the church organization, and indicate the desires of the decedent.
  - C. Local church—pastor, other friends
  - D. Memorial Association—file claim
  - E. Social Security—stop checks (this is typically done by the funeral director), obtain Social Security death benefits
  - F. Retirement/Sustentation—request final check, death benefits
  - G. Treasury/Accounting—establish a matured trust account, check last income statement

- H. Trust officer should create a matured trust or probate estate file
  - I. Did the deceased wish to be an organ donor?—communicate with his/her doctor, family, attorney
  - J. Stop annuity payments--notify issuer
3. Document Review
- A. Will, including all codicils
  - B. Trust—assets, liabilities, notes, other records
  - C. All amendments—note assets, beneficiaries
  - D. Special instructions—written or oral
4. Funeral Arrangements
- A. In some situations you will be very involved perhaps making all final arrangements, in most however, you will be an observer and assist only when requested. In yet others your involvement will not be welcome. Great sensitivity and understanding is essential.
  - B. Burial
    - (1) Who is in charge of finances? Inform the undertaker.
    - (2) Time, place, pastor; are you involved?
    - (3) Contact the mortuary; plot or cremation? Grave marker?
    - (4) Casket—if family is to choose, give conservative guidelines.
    - (5) Ensure that the hospital will release the body; autopsy is not necessarily required.
    - (6) Provide clothing for the deceased.
    - (7) When will you meet family? Before or after the funeral, or later?
  - C. Funeral Services
    - (1) It is wise to attend. Your absence will be noticed.
    - (2) Open or closed casket; will you attend viewing/visitation?
    - (3) Information on death, life history of deceased.
    - (4) Friends to send flowers or donations—to what?
    - (5) Make yourself known to the funeral director; he/she may introduce you to the closest relatives.
  - D. If Meeting the Relatives

- (1) Arrange introduction as trust officer or personal representative--by next-of-kin, if possible.
- (2) Express genuine sorrow, even if deceased is unknown to you.
- (3) Express willingness to help.
- (4) Delay most business until after the funeral.
- (5) Determine if the relatives are friendly or hostile.
- (6) Discuss distribution of personal items and the contents of the house.
- (7) Indicate your involvement (i.e., executor or trustee). Note: The will is considered a public document once it is filed; a trust document is a private document; however, local law may require disclosure of certain aspects of the trust or even the entire trust document and financial activity.
- (8) Make any comments you deem advisable regarding the church's involvement.
- (9) Discuss the possibility of retaining an attorney—the need, the cost.
- (10) Distribute your business cards. Create open communication lines as needed.
- (11) Indicate how you plan to proceed.
- (12) Indicate how you will be communicating with them in the future and the input you want from them.
- (13) Be friendly and helpful—accept suggestions.
- (14) Assist with arrangements for relatives coming from distant locations. Church members may help with refreshments.
- (15) Remember, you represent the church.

#### E. Expenses

- (1) Mortuary bill
- (2) Cemetery bill
- (3) Grave marker
- (4) Obituary in appropriate journals
- (5) Casket—honor known wishes of the deceased
- (6) Trust department usually sends flowers

#### 5. If You Are Not the Personal Representative (Executor)

- A. Determine who the executor is, contact him/her and indicate your intent to cooperate with him/her.
- B. Indicate your involvement (i.e., trustee) and discuss your future relationship with the executor.
- C. If you have the original will, file it with the probate court located in the county where the decedent was living at the time of death and notify the executor that you have filed. State laws vary as to the responsibilities of the custodian of a will. Consult your local counsel for specific requirements.

6. Securing Residence (if the corporation/association is responsible and no adult family member will continue to reside there)
  - A. Obtain all keys, change locks
  - B. Verify property insurance in force. Add to organization's general liability and property insurance as needed. Protect property from loss.
  - C. Check refrigerator, remove perishables
  - D. Care for house plants and pets
  - E. Perform yard care, remove garbage
  - F. Contact utilities and pay final bills: telephone, gas, electricity, water, etc.
  - G. Cancel publications
  - H. Notify police to patrol empty residence
  - I. Instruct the post office to send all mail to you
  - J. Inventory house contents and personal effects; perhaps videotape or photograph
  - K. Photograph antiques, special items
  - L. Secure photo albums, pictures, etc., for relatives
  - M. Obtain latest address book
  - N. Secure medical bills and receipts for the last year
  - O. Secure credit cards and notify of cancellation
  - P. Find property insurance policy and note terms of vacancy
  - Q. Locate bank safety deposit box key
  - R. Secure all titles, certificates, contracts, deeds, abstracts, leases, and evidences of ownership
  - S. Locate property tax bill
  - T. Locate prior years' tax returns

- U. Secure all bank books, blank checks and deposit all uncashed checks
  - V. Secure all coins, cash, securities, collections, silver, and antiques
  - W. Use care in disposing of personal property. Remember, one person's junk is another person's treasure.
  - X. Secure and recover all unused traveler's checks
7. If You Are the Personal Representative (Executor)
- A. Avoid this responsibility if at all possible; a family member is often a better choice.
  - B. Volunteer to "decline" the responsibility in favor of a family member or other person when advisable.
  - C. Obtain Trust Committee approval to accept appointment and responsibilities as Personal Representative.
  - D. Register the will with the probate court in the county where decedent was living at the time of death, even if no probate is intended. Consult your local legal counsel to determine the specific requirements in your state.
  - E. Petition the court for temporary appointment as Personal Representative if you need to act immediately in case of emergency, operate a business, or to preserve or protect assets (i.e., livestock, farm).
  - F. Obtain appointment as the Personal Representative. You cannot act prior to receiving court appointment. You will then be accountable to the probate court.
  - G. Verify insurance coverage for personal and real property.
  - H. Check hospital, funeral home, for personal belongings.
  - I. Secure motor vehicles.
  - J. If real estate is part of probate, see Section 6, "Securing Residence."
  - K. Obtain several copies of the death certificate and Letters of Authority.
  - L. Consider independent probate.
  - M. Note that some states have a simplified procedure for small estates.

8. Retaining a Lawyer and/or a CPA (where necessary)
  - A. Consider the family wishes regarding selection. Consider competence and experience of professional advisors.
  - B. Consider the need for an accountant, especially when filing estate income and/or inheritance tax returns. Be aware of state and federal requirements.
  - C. Consider costs. The estate pays all expenses and, consequently, the family share will diminish.
  - D. Consider proximity to the probate court.
  - E. Is a challenge anticipated?
  - F. Is a wrongful death claim being pursued?
9. Power of Attorney

Notify, in writing, any known holder of such a power that the death has occurred.
10. Business as an Asset
  - A. Stopping a business operation may be detrimental to its future sale.
  - B. Contact the manager and determine your level of involvement as personal representative/trustee.
  - C. Determine if there is an existing buy/sell agreement or any other terms or arrangements.
  - D. Determine if the business is to be sold, liquidated, or continued.
  - E. Who will control, employ, finance?
11. Open Bank Account for Probate Estate
  - A. Should be used to keep detailed records of income and expense.
  - B. Letters of Authority will be required by financial institution
  - C. Personal Representative should have sole access to account
  - D. Not necessary if all assets are held in a trust.



12. Establish Value of All Assets for Tax Purposes and Distribution Purposes (consider six-month alternative valuation for estate tax purposes)
  - A. Real estate—appraisal
  - B. Bank accounts—value at date of death
  - C. Cash
  - D. Rents due
  - E. Notes due—principal and interest (sue if necessary)
  - F. Securities, certificates held, and street accounts. Consult with financial advisor, organization, and legal counsel about timing of security liquidation.
  - G. Life insurance—check employer, credit union. Obtain death claim forms.
  - H. Appraise personal property, furniture
  - I. Appraise collections: coins, stamps, china, glassware, etc.
  - J. Appraise business interests, oil and mineral rights
  - K. Appraise gold, silver, diamonds, jewelry
  - L. Appraise automobiles, trucks, recreational vehicles, equipment
  - M. File wrongful death action, if appropriate
13. Record Keeping of All Transactions
  - A. Income
  - B. Expense
  - C. Retain all supporting documents, bills, checks, etc.
  - D. Utilize formal trust or estate accounting system.
  - E. Provide regular accounting to court, heirs, beneficiaries, interested parties as required or necessary

14. Determine Liabilities
  - A. Credit card charges, medical expenses, other current debts
  - B. Claims—determine if valid or invalid (i.e., if services were rendered). Consult legal counsel before paying claims. Court instruction may be desirable/necessary for claims against probate estate. There may be a priority list to determine payment order.
  - C. Mortgages payable
  - D. Notes—secured and unsecured
  - E. Funeral expenses
  - F. Probate court fees
  - G. Attorney’s fees and expenses
  - H. Executor’s fees and expenses
  - I. Real estate and motor vehicle taxes
  - J. Insurance on real estate and vehicles
  - K. Utility bills—gas, electricity, water, maintenance
  - L. Estate and inheritance taxes
  - M. CPA fees and expenses
15. Support of Legal Dependents and Others
  - A. Spouse, dependent children, parents, disabled persons
  - B. Cats, dogs, horses, fish, other pets
16. Lifetime Gifts for Gift and Estate Tax Purposes
  - A. Search for records of gifts made.
  - B. Note gifts given to non-charitable entities that were in excess of the annual exclusion amount.
  - C. Consult decedent’s income tax preparer.

17. Form of Ownership of Assets
  - A. Life interest only—notify remaindermen
  - B. Jointly held—send death certificate to survivor
  - C. Tenants-in-common—what percentage?
  - D. Community property
  - E. Solely owned
18. Bequests—Personal Property
  - A. Distribute as soon as the court allows; obtain receipt.
  - B. Distribute cash after all debts have been paid.
19. Selling Real Estate
  - A. Clean out house.
  - B. Fix up?
  - C. Broker? Realtor?
  - D. Local residents are usually the greatest potential buyers.
20. Selling Home Contents—Not Distributed
  - A. Auction
  - B. Private sale
  - C. Relatives

21. Cash in Banks, Credit Unions, etc.
  - A. Determine the ownership and nature of the account.
  - B. Certificates of deposit mature on date of death.
  - C. Locate and present passbooks, if used by the financial institution.
22. Sell Stocks, Bonds, Mutual Funds
  - A. High priority especially in periods of volatility. Fiduciary has duty to preserve asset value not to maximize or grow assets. Consult with financial advisor, organization, and legal counsel about timing of security liquidation.
  - B. Determine ownership and if held in certificate form or brokerage account
  - C. Determine if distribution in kind is required by document or preferred by beneficiary
  - D. Most require proof of ownership, e.g.:
    - (1) Affidavit of domicile and debts
    - (2) Certificate of Death
    - (3) Letters of Authority; some companies require “fresh” Letters of Authority,” that is, less than 60 days since issue
  - E. Proceeds of sale can be held in liquid asset account until needed.
  - F. Never sign the certificate itself; use “Assignment of Stock Separate From Certificate”
23. Rents or Notes Due
  - A. Notify obligor in writing to make payment to you as Personal Representative/Executor, or have future payments made payable to “The Estate of \_\_\_\_\_, deceased.”
  - B. Send obligor a copy of your authority.
  - C. Notify tenants of intent to sell, subject to terms of rental agreement and statutory obligations.
24. Selling Cars and Other Vehicles
  - A. Keep vehicle insured until sold

- B. Verify how title is held
  - C. Obtain two appraisals or offers from dealers
  - D. Advantage of bids
  - E. Heir or relative may wish to purchase
  - E. Some jurisdictions provide for vehicle transfer outside of probate
25. Trusts
- A. Contact beneficiaries—do they want cash or do they desire to receive the asset as is? Some jurisdictions have specific time, recipient, and disclosure requirements for notification.
  - B. Make sure deeds are recorded. Verify with legal counsel if unrecorded deeds held in trust are recordable.
  - C. Check for pour-over will.
  - D. Determine if there is a continuing trust—education or other.
  - E. Secure all collectible assets.
  - F. Obtain estate assets, via probate, pursuant to pour-over will if applicable.
  - G. Value all assets as of date of death. Appraisals may be needed for some assets. Values in accounting records may need adjusting to date of death values.
  - H. Determine if any challenge to the distribution of the trust assets is likely.
  - I. Obtain signed “Receipt of Beneficiary” forms for all distributions. Some jurisdictions may prohibit requiring receipts prior to making the distribution.
26. Small Estate Procedure
- A. Simple form—paid funeral bill, small fee
  - B. Probate court assigns asset—assignment may be limited to heirs or certain creditors only.
27. Tax Returns
- A. Obtain Tax Payer Identification (TIN) number from IRS for probate estate and matured trust. See Tax Reporting chapter for additional information.

- B. File Federal Estate Tax Return Form 706, within nine months of death
  - C. File state inheritance tax return, if necessary
  - D. File Federal Income Tax Return
    - (1) Final Form 1040 for decedent
    - (2) Form 1041 for the estate for each year until estate closes
    - (3) Final Form 1041 for Revocable Trust in year of surviving grantors death
    - (4) File initial Form 1041 for matured trust in year of maturity and each year as required until termination
    - (5) Determine if trust can be combined with estate for income tax reporting
  - E. File state income tax return(s), where required
  - F. File Gift Tax Return Form 709 for taxable gifts made during the last year of life
  - G. Check previous years' Form 1040 returns for proper filing
28. Distribution
- A. Obtain Trust Committee action authorizing each distribution
  - B. Consider state law, anticipated expenses and beneficiary needs in distribution timing
  - C. Make initial partial distribution with a full report as soon as possible
  - D. Make interim partial distribution with report
  - E. Make final distribution with report
  - F. Keep beneficiaries informed and provide adequate information
  - G. Provide evidence of receipt by beneficiaries
  - H. Keep beneficiaries' current addresses

This list of tasks is intended to serve as information regarding the kinds of items that need to be addressed when closing an estate or winding up a trust; however it is not necessarily comprehensive. There may be additional tasks that need to be accomplished. Consult your legal counsel and other professional advisors as each estate and trust is unique.

## 22. TAX REPORTING

### Reporting Taxes

Preparation of the necessary tax forms for certain Trust Services activities can be a complex matter. Someone on the staff of the trustee organization should be designated to be responsible for the preparation of all tax forms the fiduciary is required to file. Many of these forms are routine, with the information coming directly from the accounting records. However, some trust and estate matters are very complex and are encountered only occasionally. When such questions arise, qualified tax counsel should be sought.

Publishers such as CCH and RIA have regular publications that are up-to-date on all tax matters. At a minimum, one of the basic tax services should be available to the individuals responsible for the fiduciary tax form preparation in each office.

Over the years, church leaders have become accustomed to the idea that church entities do not have to pay tax. However, churches are subject to the general tax laws. The fact that churches do not generally pay taxes is a function of the tax law that exempts them. Unrelated business income, lobbying activities, and loss of tax exempt status as a result of breaking the rules under which the organization is tax exempt are examples of situations that could cause a tax liability.

Acting as fiduciary for trusts and estates in which the church has a substantial interest should not subject the charity to any tax. But the trusts and estates themselves, and the non-charitable beneficiaries of those trusts and estates, will often be subject to a tax liability. The fiduciary is responsible for filing the income tax forms and information forms required of all fiduciaries.

It should be noted that different tax returns are required for different types of trusts and estates. Sometimes forms must be filed giving information to the IRS, even though no tax is due. The detailed instructions which accompany all IRS forms should be carefully studied and followed.

### Grantor Trusts Defined

A grantor trust is a trust in which the grantor or another person has the right to control the enjoyment of the income and/or principal. Internal Revenue Code sections 671-679 and the related regulations describe the circumstances that will determine if a trust is to be taxed to the grantor or to another party. A trust may be partly a grantor trust and partly a non-grantor trust.

In general, if a person or his/her spouse has the right to receive the income or principal or the right to name or change the individuals who will receive the income or the principal or the beneficial enjoyment thereof, he/she will be required to report the income earned by the trust on his/her own personal tax return.

The trust will also be a grantor trust if the creator of the trust retains any administrative authority that would allow him/her to deal with the trust on less than an "arm's-length" basis. Borrowing

from the trust would show that this kind of administrative authority exists. **All revocable trusts are grantor trusts.**

For trusts created after March 1, 1986, the existence of a reversionary interest of more than 5% of the principal may make the trust a grantor trust. This provision in the Tax Act of 1986 made income shifting trusts such as the Clifford Trust and the spousal remainder trust ineffective for tax-avoidance purposes.

### **Simple Trust Defined**

A simple trust is a trust that is required to distribute all of its income currently; does not provide for any income amount to be paid to; or set aside for, a charitable purpose; and does not have any amounts other than income paid out during the year (IRC 651(a)). However, a trust may still be a simple trust if capital gains or losses are allotted to income under the governing instrument or local law.

### **Complex Trust Defined**

A complex trust is defined as any trust that is not a simple trust or a grantor trust. Any trust that distributes principal is a complex trust in any year that it distributes principal. A trust may be a simple trust in one year and a complex trust in another year. This could happen if the trustee is required to pay out the income and has discretion to pay out principal. In the years that only income is paid out, the trust would be a simple trust. In years when the trustee exercises its discretion and pays out principal, the trust would be a complex trust. A trust will never be a simple trust in the year in which it is closed, since the principal is distributed when closing the trust. Estates are treated like complex trusts.

### **Distributable Net Income Defined**

Distributable Net Income (DNI) is a very important concept in trust taxation because it is used to limit two important amounts. DNI is the maximum amount of distributions to beneficiaries that the trust can deduct from its gross income. DNI is also the maximum amount of trust income that the beneficiaries must include in their gross income. Where there is more than one beneficiary, each will report his/her share of trust income, up to his/her pro rata share of the DNI. DNI is a concept that also applies to income taxation of estates.

The following is a formula for calculating distributable net income. Start with taxable income (gross income minus deductions). Add to that the exemption, the distribution deduction, and net capital losses allocated to principal. Also add net tax exempt interest. Net tax exempt interest is all of the tax exempt interest earned by the trust, reduced by any expenses allocated to the tax exempt interest. Subtract from this any net capital gains attributable to principal, unless the trust requires that the gains be distributed to the beneficiaries or a charity. A trust will not include in DNI any extraordinary dividends or taxable stock dividends that are allocated to the principal.



### Distributable Net Income

Gross Income	\$	
(Minus) Deductions	\$	
<i>(Equals)</i>		\$
(Plus) Personal Exemption	\$	
(Plus) Distribution Deduction	\$	
(Plus) Net Capital Losses (unless charged to income)	\$	
(Plus) Net Tax Exempt Interest	\$	
(Minus) Net Capital Gain (unless allocated to income)	\$	
<i>(Equals) DNI</i>		\$

### Taxpayer Identification Numbers

The taxpayer identification number for an estate or trust is an employer identification number (EIN). The EIN is a unique 9 digit assigned by the IRS to each trust or estate for filing and reporting requirements. EINs are always in the format xx-xxxxxxx.

Generally every trust or estate which earns any income must have its own Taxpayer Identification Number. Final income tax forms (Form 1040) for a decedent are filed using the decedent's Social Security number. Self-trusted revocable trusts may also utilize the trustor's/trustee's Social Security number. Other trusts and estates require Employer Identification Numbers (EINs) provided by the IRS (use Form SS-4). You may also apply online and generally receive the EIN immediately at <http://www.irs.gov/businesses/small/article/0,,id=97860,00.html>.

### Final Form 1040 for Decedent

In the year that a person dies, his/her personal representative (or anyone responsible for his/her assets) is required to file a final Form 1040 reporting any income that he/she received during the tax year, through the day that he/she died. If the decedent has a surviving spouse, a joint return is allowed. The decedent's income through the date of death is included in the joint return. All of the applicable standard deductions are allowed, as if the decedent had been alive throughout the entire year.

### Estate Income Tax

At the death of the decedent, a separate taxable entity comes into being; namely the decedent's estate. Each estate that has income should apply for its own EIN. Form 1041 must be filed for each estate that has gross income in excess of \$600, a beneficiary who is a non-resident alien, or aggregate gross income of at least \$600 from an electing qualified revocable trust and the related estate.

## **Trust Income Tax**

All trusts are taxable entities, conduits for passing taxable income to someone else, or a combination of the two. Payment of the tax depends on who has a right to the income. If an individual has the right to the income, or the right to direct who receives the income (as the grantor in a grantor trust), he/she will be responsible for paying any tax that might be due on that income, even if that income is allowed to accumulate in the trust or is paid to someone else at the grantor's direction.

A Form 1041 must be filed any time the trust has any taxable income, gross income in excess of \$600, or a beneficiary who is a non-resident alien. Section 6034(a) requires that beneficiaries be informed of any trust income that should be taxed to the beneficiary.

As a matter of practice, the IRS generally will want to know why a form has not been filed if application has been made for an EIN or if a Form 1041 has been submitted in previous years. Many offices find that it is easier to file a 1041 for each trust than to try to decide whether one is necessary and answer IRS queries if one is not filed.

## **Revocable Trusts**

All revocable trusts are grantor trusts. The person who has the right to revoke is treated as the owner of the trust for income tax purposes and is obligated to pay any tax on trust income. If required, a Form 1041 should be filed with an explanatory schedule that shows the name, address, and Social Security number of the grantor along with details as to the amount and the character of all income that the trust earned during the year. This schedule is sometimes referred to as a substitute Schedule K-1. The substitute Schedule K-1 is sent to the grantor so that he/she will know what amount of income to report on his/her own income tax return. The tax year for a grantor trust is generally the calendar year. It should be noted that a revocable trust almost always ceases to be revocable upon the death or incompetency of the grantor. At the time of death or incompetency, a new EIN should be obtained. In that year, two Forms 1041 should be filed, one for the part of the year when the trust was a grantor trust and one for the part of the year when the trust was not a grantor trust. Separate K-1 schedules or appropriate substitutes should be filed with each Form 1041.

## **Irrevocable Trusts**

Irrevocable trusts can be simple, complex, or grantor trusts, depending on the terms of the trust instrument and how it is administered. Form 1041 should be filed if required. The income beneficiaries should be informed of the income that is taxed to them on Schedule K-1 or an acceptable substitute.

## Charitable Remainder Trusts

Charitable remainder unitrusts and charitable remainder annuity trusts have unique filing requirements that must be carefully followed. *Deferred Giving Specimen Forms*, published by *Taxwise Giving*, has a complete guide to tax return preparation for charitable remainder trusts.

Form 5227 must be filed for all charitable remainder trusts whether or not income is earned. Form 4720 is required if the trust violates any of the governing instrument's prohibitions against activities not allowed by a private foundation (i.e., self-dealing, taxable expenditures, etc.). As with all trusts or estates, a Schedule K-1 or appropriate substitute should be sent to all income beneficiaries to report any income taxable to the beneficiary. If there is any unrelated business taxable income (UBTI), the tax must be paid as an excise tax on Form 4720, with a form 990-T or similar schedule attached. The returns for split interest trusts (e.g. CRT) are required to be made available for public inspection upon request, but information about non-charitable beneficiaries need not be made publically available (IRC 6034 and Reg. Sec. 1.6034.1).

## Estimated Tax Payments

Any trust that owes tax may be required to pay the tax in quarterly installments. This tax must be estimated and paid with Form 1041-ES. Any potential tax liability should be studied carefully and estimates filed if necessary to avoid unnecessary penalties and interest.

## Trust Tax Report Form Flow Chart

To choose the correct form for the correct trust, answer the following questions, and follow the directions:

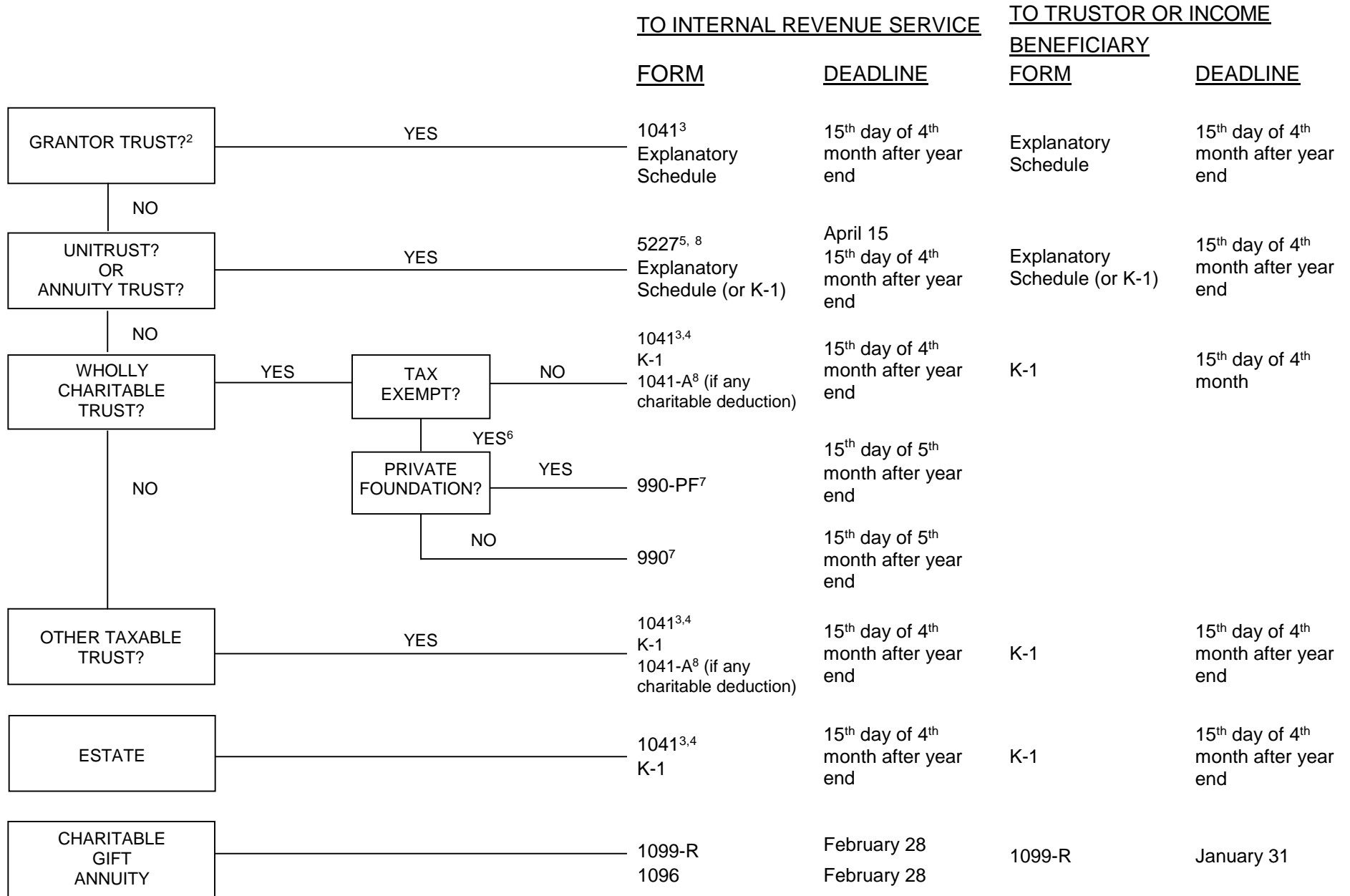
1. Is the trust a grantor trust? If it is, file a Form 1041 with a zero amount of income and a substitute Schedule K-1. A copy of the substitute K-1 also goes to the grantor.
2. Is the trust either simple or complex? If it is either one, file Form 1041 with the necessary schedules. Pay whatever tax is required. Give the tax information on a K-1 to the beneficiary, indicating his/her share of the DNI that must be reported.
3. Is the trust either a charitable remainder unitrust or a charitable remainder annuity trust? If it is either one, file Form 5227. Send the beneficiary any information concerning the income that he/she must report. If the trust has any UBTI additional forms may be required as described above.

## Estate Tax Returns

For decedents dying in 2010, 2011 or 2012 a return is required if the gross estate value is \$5,000,000 or more, indexed for inflation. However, for decedents dying in 2010, an election may be made to follow the pre-2010 rules that provide for no estate tax for 2010. If that election is made, then the estate assets will not qualify for a full step-up in basis for assets in excess of \$1.3 million or \$3 million passing to a surviving spouse. All assets owned by the decedent,

including joint property, certain life insurance policies, etc., are included in the gross estate. The personal representative/executor is responsible for filing the estate tax return. Most denominational planned giving and trust services personnel will not have a great deal of experience with Form 706, Estate Tax Return, and therefore, should seek competent tax counsel when the responsibility for filing Form 706 arises.

**SUMMARY OF FIDUCIARY TAX REPORTING REQUIREMENTS<sup>1</sup>**  
**By O. Richard Caldwell**



**Footnote Explanations for  
Summary of Charitable Fiduciary Tax Reporting Requirements Table**

1. Does not include Pooled Income Agreements or Charitable Lead Trusts.
2. A grantor trust exists if the grantor (or other party) retains too much control or other benefit from the trust (e.g., a revocable trust or an irrevocable trust where all trust income is required to be paid to the trustor). (IRC 671-679)
3. A 1041 is required for any trust that has gross income of \$600 or more, any taxable income, or any non-resident alien beneficiary. (IRC 6012(a)) Forms for extension of time to file—Form 2758 (estates) or 8736 (trusts).

Under the middleman reporting requirements (Reg. Sec. 1.6042 and 1.6049), if the minimum requirement for filing a 1041 is not met, a 1099 should be sent to the income beneficiary; however, no 1099 is required if a 1041 is sent, even though not required. Therefore, for uniformity, simplicity, and efficiency, it is recommended that a 1041 be used for all trusts and estates that earn any income.

4. Estimated Income Tax for Fiduciaries Form 1041-ES may have to be filed and estimated income tax payments made for any trust, or estate (and any trust that was treated as owned by the decedent and that received the residue of a decedent's estate under the will or if no will was admitted to probate, a trust primarily responsible for paying debts, taxes, and other expenses of administration) for any tax year ending two or more years after the decedent's death, if there is at least \$1,000 of net income tax due, and total withholding and credits are less than the smaller of 90% of the current year's net tax due or 100% of the prior year's net tax due. (NOTE: certain limitations exist regarding reference to the prior year's tax due.)
5. May also have to file Form 4720 if any private foundation excise taxes. If there is any unrelated business taxable income (UBTI) the UBTI must be paid as an excise tax on Form 4720, with Form 990-T or a similar schedule attached.
6. If tax-exempt status is applied for (Form 1023) within 15 months of the creation of the trust, the exempt status generally will be effective retroactively to the creation of the trust; if exempt status is applied for more than 15 months after the creation of the trust, the trust generally will be exempt only from the date the exemption is granted. An automatic 12-month extension is available.
7. May also have to file Form 990-T, Exempt Organization Business Income Tax Return, if \$1,000 or more of unrelated business income (UBI).
8. Any taxable trust claiming a charitable deduction is required to file Form 1041-A unless all trust income is required to be distributed currently to beneficiaries in the tax year. A Form 1041-A is no longer required for a split-interest trust (CRT). The returns for split-interest trusts are required to be made available for public inspection upon request, but information about non-charitable beneficiaries need not be made publicly available. (IRC 6034 and Reg. Sec. 1.6034.1)

## 23. VALUATION AND SUBSTANTIATION OF GIFTS

### Importance of Valuing Assets

One of the most complex and uncertain aspects of the gift planning and the estate planning process is the valuation of property for income, gift and estate tax purposes. The taxpayer's representative may value property at one amount, the IRS may attempt a second figure and if the issue cannot be settled between the taxpayer and the IRS, the tax court may settle at another amount.

Values are important for a variety of purposes; establishing property tax assessments, purchase or sales price, computing gain or loss on sale, tax deduction, trust accounting and financial accounting purposes. The purpose or use of a value will determine the method by which it is obtained and the qualification of the person making the valuation. While a Realtor's market analysis value of a particular parcel might be sufficient for establishing a listing price, it is insufficient for trust accounting purposes or for tax purposes. Further, when the property sells the sale price will have been the result of negotiation between buyer and seller and may differ widely from the Realtor's market analysis value. A county tax assessor will use specific methods and assumptions in establishing a value for property taxation purposes which may or may not relate to market value.

For estate planning purposes, the estate owner needs to have a reasonable understanding of the estate value to determine the estate's liquidity needs. In order to avoid the need for a "fire sale" liquidation of estate assets to generate cash to pay estate taxes or fund buy-sell agreements sufficient liquidity needs to be built into the estate plan. Liquidity can be obtained through life insurance, cash or cash equivalents, or specialized stock redemption plans and installment payment of taxes related to business interests.

Some individuals will consider lifetime gifts as a way of transferring assets at the most reasonable transfer cost. Charitable gifts can yield benefits to the estate holder. Before a person can estimate how beneficial a lifetime gifting program might be the estate's value must be known.

### Valuation Date for Gift and Estate Tax Purposes

Generally, the value of an asset for determining the transfer tax cost is its fair market value as of the date of transfer (gift tax purposes) or the date of death (estate tax purposes). A date six months after the date of death (the alternate valuation date) for estate tax purposes may be used if elected by the personal representative and only if the election will decrease the value of the gross estate and decrease the sum of estate and generation skipping tax imposed. Once the date-of-death valuation or the alternate valuation date is selected, that valuation date applies to all assets in the estate

Certain exceptions apply to this general rule. If the alternate valuation date is selected and property is distributed, sold, exchanged, or otherwise disposed of within the six month period after the decedent's death, that property is valued as of the date of distribution, sale, exchange, or

other disposition, not as of the alternate valuation date. Certain types of property diminish in value as time goes on. Any property interest or estate whose value is affected by the mere passing of time, such as an annuity, is valued as of the date the decedent died, even if the alternate valuation date applies to other estate assets.

### **Fair Market Value**

For tax purposes, the “willing buyer-willing seller rule” guides the determination of value. A property’s fair market value (synonymous with fair value or market value) is “the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.” It is an opinion of value that is not always easily determined. Its accuracy is based on the qualifications and methodology of the one doing the valuation as well as other variables.

Some property types present minimal valuation problems. The fair market value of money is its face value unless it is in the form of a collectible. Publicly traded securities are readily valued per the applicable market exchange.

Valuation of other property types may be complex. Publicly traded securities for which there were no sales on the transfer date require a weighted average of sales prices on the sale date immediately before and after the valuation date. If a block of stock is large enough to depress the market value if sold within a short period thus making it difficult to sell, its value may be subject to a “blockage discount.” Large holdings representing a controlling interest may experience a “majority premium” which adds value to the asset. Conversely, if the size of the interest valued does not provide control a “minority discount” would reduce the value reflecting the lack of control. Valuation of closely held stock (as in a family owned business), since it is seldom traded, is typically difficult to value. The absence of marketability reduces asset value due to a “marketability discount.” Many factors affect real estate values including size, shape, location, environmental issues, actual or intended use, and market value of similar properties in the area. Other property types such as partnership interests, collectibles, art work, and copyrights can be very complex to value. The services of professional appraisers are often required to document and render an opinion of value.

### **Valuation for Income Tax Charitable Deduction**

Generally, the value for income tax charitable deduction purposes is the fair market value of the donated property on the date of transfer to the charity. Fair Market Value (FMV) for the purpose of determining income, gift and estate tax charitable deductions may be affected by various factors such as restrictions placed on donee’s use of the asset, difficulties in use of the asset by donee, or other circumstances of the transaction. These factors must be reflected in the value of the property for charitable deduction purposes.

In certain situations a charitable deduction may be limited to the donor’s basis irrespective of the fair market value. Property that if sold by the donor would produce ordinary income or short term capital gain is limited for income tax charitable deduction purposes to the donor’s adjusted basis. Included in this category of donated property are items such as business inventory, real



property held short term, crops, and items created by the donor such as paintings or sculpture. If the fair market value is less than the basis then the lower value is used as the deductible amount.

### **Gifts of Remainder Interest**

Gifts in trust of a charitable remainder are deductible for income, gift and estate tax purposes only if they are made through a qualified charitable remainder unitrust, charitable remainder annuity trust or pooled income fund. The deductible amount is limited to the present value of the charitable remainder which is the remainder after subtracting the present value of lifetime payments from the fair market value of property transferred to the trust. A qualified appraisal is required to establish the fair market value of donated property upon which the present value calculations are based.

Gifts of remainder interest in a personal residence or farm are also deductible at the present value of the remainder interest. Gifts of a charitable remainder through a charitable gift annuity contract are also valued at the present value of the charitable remainder. As in the charitable remainder trust and pooled income fund, the fair market value of donated property is the starting point for computing the present value of the charitable remainder and establishing the deductible amount.

The fair value of non-cash property is determined by a qualified appraisal. If publicly traded securities are donated to these split interest gift plans market value is the mean between the high and low sale price on the day of transfer.

### **Appraisals**

A “qualified appraiser” is someone who (a) holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis and is paid for appraisals, (b) has earned an appraisal designation from a recognized professional appraiser organization and demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, (c) has not been prohibited from practicing before the Internal Revenue Service, (d) does not establish the appraisal fee as a percentage of the appraised value, (e) knows that making an intentionally false or fraudulent overstatement will subject him/her to a penalty, and (f) has not been excluded by Treasury regulations from serving as an appraiser. The appraiser cannot be the donor or donee or a party to the transaction by which the donor obtained the property. The appraiser cannot be an employee of, or married to, any person who is related to the foregoing persons. The appraiser can be used by the donor or donee to perform other appraisals, but must perform the majority of his/her appraisals for other persons.

For real property gifts on returns filed after October 19, 2006, the appraiser meets the required standards if he or she is licensed or certified for the type of real property by the appropriate state agency. Some state agencies have a separate certification for residential real estate and other types of real estate such as commercial real estate. In these states the appraiser must have the appropriate designation for the type of real estate gifted to charity.

For gifts that are not real property, on returns filed after February 16, 2007, the appraiser must fulfill three requirements. He or she must have completed "college or professional-level coursework," must have two years of experience in buying, selling or valuing the type of gifted property, and must thoroughly describe in the appraisal his or her education and qualifying experience. (Crescendo Pro Gift Law 1.5.2 referencing IRS Notice 2006-96; 2006-46 IRB 1 (19 Oct 2006)).

## Qualified Appraisal

The qualified appraisal rules apply to gifts of property (with some exceptions) where the income tax charitable deduction claimed exceeds \$5,000 or where the deduction claimed for closely held stock exceeds \$10,000. Qualified appraisal exceptions include stock traded on a public exchange, inventory and vehicles sold by the donee without significant intervening use or material improvement. The donor must: 1) obtain a qualified appraisal; 2) attach a properly completed appraisal summary (Form 8283, Section B) to the tax return on which the deduction is first claimed; and 3) maintain appropriate records for gifts of property. The appraisal must be prepared not earlier than 60 days before the date of transfer of the property to the charity and must be received by the donor no later than the due date (plus extensions) of the return on which the deduction is first claimed. For a deduction first claimed on an amended return, the appraisal must be received before the date the amended return was filed.

A separate qualified appraisal and a separate Form 8283 (to be discussed below) are required for each item of property except for an item that is part of a group of similar items. Only one appraisal is required for a group of similar items contributed in the same tax year, if it includes all the required information for each item. If similar items are donated to more than one donee for which a total deduction of more than \$5,000 is claimed a separate Form 8283 for each donee must be attached to the return in which the deduction is claimed.

Generally, appraisals will qualify if consistent with the Uniform Standards of Professional Appraisal Practice set forth by the Appraisal Standards Board of the Appraisal Foundation. There are several statements that must be included in a qualified appraisal:

1. A description of the donated item (including a description of the physical condition in the case of tangible personal property).
2. The date of the appraisal.
3. The date or expected date of gift.
4. The fair market value of the donated item on the date or expected date of the gift.
5. The basis for the determination of fair market value.
6. A description of any agreement or understanding affecting the use of the donated item by the donee organization.
7. A statement that the appraisal was prepared for federal income tax purposes.
8. A description of the fee arrangement between the donor and the appraiser (can't be a percentage of the appraised value).
9. The appraiser's name, address, and tax ID number.
10. A listing of the appraiser's education, background, training, and experience, including membership (if any) in professional appraisal associations.

**Form 8283 (see IRS Form 8283 for complete filing instructions)**

Internal Revenue Service Form 8283 is required to report information about non cash charitable contributions when the total deduction claimed is greater than \$500 for all contributed property. Form 8283 is filed with the donor's tax return for the year in which the donor contributed the property and first claimed a charitable deduction.

Charitable non cash gifts of more than \$500 but \$5,000 or less are reported in Section A of Form 8283 without the need for an appraisal. Gifts of publicly traded securities are also reported in Section A even if their value is greater than \$5,000.

All non cash gifts (with certain exceptions as noted above) where the deductible amount is more than \$5,000 per item or group (or \$10,000 for non-publicly traded stock) require a qualified appraisal by a qualified appraiser if the donor intends to claim a federal income tax charitable deduction. These items are listed in the Appraisal Summary; Section B of Form 8283.

The taxpayer, and/or appraiser completes Part I of Section B. In certain instances a complete copy of the signed Appraisal must be attached. The donor completes the declaration in Section B Part II. The appraiser completes the Appraiser Declaration in Part III of Section B.

The charitable donee completes and signs the Donee Acknowledgement in Section IV. In doing so the charity acknowledges receipt of the listed property, affirms its status as a qualified charitable organization, and, in the case of tangible personal property, indicates whether the intended use of the property is related to its exempt purpose. In addition, the donee affirms that it will file Form 8282 in the event it disposes of the property described in Section B, Part I (or any portion thereof) within three years after the date of receipt of the property. It is not agreeing with the claimed fair market value. Treasury Regulations require the charitable donee to retain a copy of the donor's appraisal summary (8283) for so long as it may be relevant.

If there is more than one property gift, a separate Form 8283 is required for each gift, except where an item is part of a group of similar gifts. If similar gifts are given to more than one charity, the donor will need each charity to sign a separate Form 8283.

When a gift is received through a split interest gift such as, a charitable remainder trust, charitable gift annuity, bargain sale, life income fund agreement, or similar plan, only the portion claimed as a charitable gift is reported. For example, if the value of the property transferred is \$7,500, but the gift portion is only \$4,500, Form 8283 must be filed since the gift portion exceeds \$500, but an appraisal is not necessary since the gift portion is under \$5,000.

**Form 8282 (see IRS Form 8282 for complete filing instructions)**

Internal Revenue Service Form 8282 (also known as the "tattletale" form) is used by the original or successor donee organization to report information about dispositions of certain charitable deduction property. IRS instructions for Form 8282 define charitable deduction property as "Property (other than money or certain publicly traded securities) for which the original donee signed, or was presented with for signature, the Appraisal Summary (Form 8283, Section B)." If

a charity disposes of charitable deduction property, valued at more than \$5,000, within three years of the date the original donee received it and; the property was not consumed or distributed for charitable purposes, the charity must file Form 8282 within 125 days after the date of disposition. The charity must give the original donor a copy of the Form 8282 filed with the IRS. A charity may be subject to a penalty under Code Section 6721 if it fails to file a complete and accurate Form 8282 in a timely manner.

### **Substantiation Rules for Charitable Contributions**

Cash gifts of any amount are deductible only if supported by either a bank record or a receipt from the charity specifying the amount and date of the contribution. This new rule established by the Pension Protection Act of 2006 is effective for gifts made in calendar tax years 2007 and thereafter. This rule eliminates the prior-law ability to support such donations with "other reliable records" in the absence of a bank record or written donee receipt

For gifts of \$250 or more the donor must obtain and maintain contemporaneous written substantiation typically in the form of a receipt or letter. Cancelled checks are not acceptable as substantiation of gifts of \$250 or more. To be "contemporaneous" the written substantiation must generally be obtained by the donor no later than the date the donor actually files his/her return for the year the contribution is made.

A gift to a CRAT or a CRUT is deductible without a receipt from a charity. While the remainder interest must be irrevocably committed to a charitable entity, the donor is not required to vest any specific charity with the remainder at the time the gift is created. Therefore, no receipt is required. While no receipt is required for the charitable deduction, Form 8283 is required for donations of property other than cash. If required, the Donee Acknowledgement section of Form 8283 would be signed by the trustee of the charitable remainder trust.

For charitable transfers to a pooled income fund or in exchange for a charitable gift annuity, the normal receipt requirements apply. Only the remainder interest in a pooled income fund or the gift interest in a gift annuity qualifies for a charitable deduction. The receipt or receipt letter should indicate the value transferred. Since an income interest is retained with a pooled income fund and an annuity interest is retained with a charitable gift annuity, the charity should show on the receipt the value of the charitable interest. A copy of the charitable contribution calculation form should be included with the receipt/substantiation letter sent to the donor.

### **The Donor Must Maintain Certain Records**

The donor must keep records to prove the amount of the cash and non-cash contributions made during the year. The kind of records depends on whether the donated amount is less or greater than \$250.00 and whether cash or non-cash property is contributed.

For a cash contribution of less than \$250.00 a cancelled check or a readable account statement showing the check number, posting date, amount and to whom the check was payable is acceptable. If payment is made by electronic fund transfer a statement showing the amount paid, posting date and the donee name. If payment was charged to a credit card a credit card statement

showing amount, transaction date and donee organization name. A receipt from the charitable organization stating organization's name, amount, and contribution date is also an acceptable record. The burden of proof regarding the "reliability" of those records, i.e., whether the IRS will accept them, rests with the taxpayer.

For cash contributions of \$250 or more, a deduction can be substantiated only by contemporaneous written acknowledgment from the charitable organization or certain payroll records if the gift is made via payroll deduction. In the case of a payroll deduction the donor must keep a pay stub, Form W-2, or other employer furnished document that proves the amount withheld and a pledge card or other document from the charity that states that no goods or services were provided in exchange for the donated amount.

For any non-cash contribution the donor must maintain a receipt from the charity showing the name of the charity, the date and location of the gift, and a reasonable description (but not value) of the property. If it is impractical to obtain a receipt, the donor must retain "reliable written records" containing the above information, plus information regarding the value of the contribution. In addition to the above basic receipt information for non-cash contributions of less than \$250.00 the donor must also keep (1) reliable written records of the fair market value of the property as of the date of contribution and how the FMV was figured, (2) the cost or other basis if the FMV must be reduced by appreciation, (3) the amount claimed as a deduction and any other amounts deducted in previous years if less than the donor's full interest was contributed, and (4) the terms of any conditions attached to the gift of property.

If a deduction is claimed for non-cash donation of \$250.00 or more but less than \$500.00 the required gift acknowledgement must be obtained from the charity. The acknowledgement must contain the basic receipt information from the preceding paragraph and the donor's written records must contain all other information listed for donations of less than \$250.00. In addition the acknowledgement must meet the following tests: (1) it must be written, (2) it must describe the property, disclose whether or not goods or services were provided and provide a good faith estimate of the value of those goods or services provided, and (3) it must be received by the donor on or before the earlier of the date the return is filed in which the deduction is first claimed or the due date, including extensions, for filing the return.

If the deduction claimed for a non-cash charitable contribution exceeds \$500.00, but is less than \$5,000.00 the donor must maintain a written record including the above information, plus the manner, date of acquisition and cost basis. The donor must also complete Section A of Form 8283 for Non-cash Charitable Contributions.

If a deduction is claimed for non-cash donation of over \$5,000.00 for one item or a group of similar items (\$10,000.00 if closely held stock) the donor must retain the written records described in previous paragraphs. In addition, generally, the donor must also have a qualified written appraisal for the donated property from a qualified appraiser and retain a copy of Form 8283 Section B.

## Substantiation Rules for the Charity

The responsibility for obtaining the “contemporaneous, written acknowledgement” of a charitable gift of \$250.00 or more resides with the donor. An organization incurs no penalty for failure to acknowledge such a gift, but its failure to do so will negatively affect its donor relations to the point that donors may cease to support the organization.

The charity can assist its donors by providing a timely, written statement containing the name of the organization, amount of cash contribution, description (but not the value of non-cash contribution), statement that no goods or services were provided by the organization in return for the contribution (if applicable), description and good faith estimate of the value of goods and services, if any, that the organization provided in return for the contribution, and in the case of a contribution to the church, that the goods or services provided the donor consisted entirely of “intangible religious benefits” if that were the case. It is not necessary to include either the donor’s social security number or the tax identification number on the acknowledgement.

The charitable organization is required to provide a written disclosure to a donor who receives goods or services in exchange for a single payment in excess of \$75.00. A contribution made by a donor in exchange for goods or services is known as a *quid pro quo* contribution. The written disclosure statement must inform a donor that the deductible portion of the contribution for federal income tax purposes is limited to the amount of the contribution that exceeds the value of the goods or services provided by the organization. In addition the organization must provide the donor with a good faith estimate of the fair market value of the goods or services.

The good faith estimate of value of goods and services may be determined by any reasonable method such as comparing the item given to the contributor with similar commercially available goods or services.

A common error made by charities when estimating value of benefits is to value the items given to it to use as premiums for donors at \$0. The value of goods or services is its commercially available value. If a charity was given books which it used as premiums to donors, the value for purposes of the disclosure requirement is not \$0, the price the charity paid, but is the commercially available price of comparable books.

Three exceptions exist to the written disclosure requirement. First, when the value of the goods or services is of an insubstantial, token or *de minimus* value. Second, a *quid pro quo transaction* does not exist when there is no donative or gift intent in a particular transaction for example, when an item is purchased from a charity’s gift shop. Third, a *quid pro quo* transaction does not exist when a donor receives intangible religious benefits from an organization organized exclusively for religious purposes.

Certain goods or services may be disregarded for purposes of the gift substantiation requirements because they are considered inconsequential. Goods or services which are considered “token benefits” may be disregarded and the entire amount transferred to charity is considered deductible under the safe harbor rules. Accordingly, for 2011 a payment is fully deductible if it

is made in a fund raising campaign and (1) the FMV of all benefits received by the donor is not more than the lesser of 2% of the payment or \$97 (indexed for inflation); (2) the donor's payment to charity is \$48.50 or more and the only benefits received in connection with the payment are token items (bookmarks, calendars, key chains, mugs, posters, tee shirts, etc.) bearing the organization's name or logo and have an aggregate cost of no more than \$9.70; or the donee organization mails or otherwise distributes free, unordered items (such as greeting cards). Crescendo Gift Law Pro Section 1.6.2 contains an excellent explanation of the gift premium rules.

## 24. DENOMINATIONAL POLICIES/PROCEDURES FOR PLANNED GIVING & TRUST SERVICES

*The Denominational Policies for Trust Services* were first assembled in 1977 in a bound folder.

In 1984, this was expanded to a green loose-leaf notebook called *Operating Policies and Procedures Manual for Trust Services* (OPPM), which included both General Conference and North American Division policies.

While the OPPM has served its purpose well, it is believed that the policies affecting Planned Giving & Trust Services should be a part of each revised Manual. It is impossible to include all policies that might have any effect on Planned Giving & Trust Services. However, an endeavor has been made to include those policies that directly affect Planned Giving & Trust Services. All denominational policies should be followed.

The current *North American Division Planned Giving & Trust Services Manual* is updated regularly and contains both the North American Division and the General Conference policies.

In addition to the regular policies, a number of actions from the North American Division Planned Giving & Trust Services Standing Committee are included. While these actions do not have the authority of policy, they are actions that have been voted and adopted by Planned Giving & Trust Services and Treasury leadership from every union in North America.



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## **FT LEGAL ASSOCIATION AND TRUST SERVICES DEPARTMENTAL POLICIES<sup>1</sup>**

### **FT 05 Statement of Purpose**

A recognition of the sovereignty of God, by right of creation and redemption, enables every Seventh-day Adventist Christian to enjoy a sense of security and a relationship with his heavenly Father that surpass all other considerations. A contemplation of Calvary prompts him to dedicate himself and all that he has to God. To do less would mean the loss of spiritual and temporal blessings that come only to those who recognize that God is the owner of all things and that everyone is His steward. This concept of stewardship is recognized by the Christian community; therefore, unique approaches should be taken to achieve the goal of securing to the Lord the material blessings bestowed upon the members of His church.

The Seventh-day Adventist Church in its Trust Services, offered through the conference legal associations and denominational institutions, teaches this profound truth and provides the means whereby individuals and families may through the avenues of special gifts, trusts, annuities, and bequests, give their continuing, wholehearted support to God's work.

In the fulfillment of this purpose, the Legal Association through its Trust Services also seeks to minimize the cost of administering and closing the estates of donors and attempts to utilize every lawful means to hold income, gift, and estate tax consequences to a minimum, and proclaims, as Heaven's standard of stewardship, the principles set forth in the Bible and amplified in the Spirit of Prophecy.

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<sup>1</sup> NADWP and GCWP references are from the 2019-2020 *NAD Working Policy* and 2019-2020 *General*  
2019 Planned Giving & Trust Services Manual, Chapter 24  
Revised 3/2019

## **BA 25 Corporations, Trusts, Associations, Institutions, and Other Legal Entities Establishment, Structure, and Relationships**

### **BA 25 15 Local Conference Association/Corporation for Management of Gifts, Wills, Legacies, and Trust Funds**

The conference association, or corporation, serves primarily in a legal and trustee capacity. Local conference associations/corporations should hold, manage, and invest trust funds and channel unrestricted matured funds as directed by action of the conference executive committee.

## **BA 70 Retention and Safeguarding of Records**

### **BA 70 05 Records Management**

The normal operation of denominational organizations and institutions results in the production and the accumulation of a large volume of files and records of varying degrees of administrative and historical value. In order to preserve documents of permanent value and to avoid the unnecessary preservation of unneeded materials, each organization will find it advantageous to establish a records management program.

Administrators, business managers, and other employees in all organizations should evaluate the legal, financial, and cultural worth of various types of files and records produced in all offices. The political unrest through which the world is constantly passing seriously affect property rights, for example, and demand the proper preservation of denominational property records. Corporate papers and board minutes not only tell the history of an organization but may be called upon in cases of litigation. Many other documents and general files that seem to be of little value beyond their initial retention period grow rapidly in historical value as time passes and even serve future administrators in restudying issues and problems.

### **BA 70 10 Records Retention**

1. Each organization and institution shall establish a records center, that is, a storage place to protect documents from fire, deterioration and unauthorized access. This records center shall house those noncurrent documents or files designated for either short-term or permanent storage. The records center is not to be used for the storage of current files, that is, those that are consulted several times a year in the normal course of business.

2. A records retention schedule, available from the General Conference Office of Archives, Statistics, and Research, shall be considered by the respective denominational organizations and institutions and, with revisions that may be indicated by local needs or varying legal requirements, be adopted by their governing boards or committees.

3. Documents and files stored in the records center awaiting later destruction shall be boxed in such a way as to make clear the date of their destruction, under the provision of a records retention schedule approved by the organization's executive committee or board.

4. Documents and files to be preserved permanently may be kept in hard copy, microform, or digital form, at the discretion of the appropriate governing body. Hard copy and microform may be stored in the same storage facility with less permanent items but should be physically separated from them and clearly labeled. In the event of digital storage, copies of vital records, including executive officer correspondence and major committee minutes, should also be stored offsite.

5. Organizational units (see B10) with sizable collections of records, aged fifty years or older, shall make provision to create an historical archive, where measures can be taken for long-term preservation and for making documents accessible to researchers. Organizational units may designate an Adventist tertiary institution as their historical archive, with the agreement of the institution.

6. Planned Giving & Trust Services Programs -- Trusts, wills, charitable gift annuities, and other estate planning documents shall be retained permanently in their original form. Other documents including information worksheets, accounting reports, tax returns, correspondence, email messages and other routine materials may be retained in a secure and accessible electronic form. These guidelines shall be reviewed periodically (e.g., every three to five years).

### **BA 70 15 Transmittal of Vital Records**

1. All organizations and institutions shall give special attention to the preservation and security of their own vital records, such as articles of incorporation, constitutions and bylaws, minutes of boards or governing committees, property records and other legal documents.

2. The secretary of each union conference in the North American Division shall forward to the General Conference Office of Archives, Statistics, and Research a true copy of the articles of incorporation of all legal bodies within the union conference, the union committee minutes and the board minutes of union institutions.

### **BA 70 20 Ownership of Records**

1. When an organization records ideas and information on paper or other medium, it retains the ownership of that record. Both the information and medium on which it is recorded are a resource to be protected and preserved, or destroyed, according to approved records management principles.

2. All records, files, and documents (including emails and other correspondence) created by the employee in the course of employment are the property of the employing organization and shall at all times continue in the

ownership and control of the employing organization for its use, preservation, or destruction according to its records management policies. On leaving employment, the individual shall transfer copies of all such documents relating to their official duties to the secretary (or designee) of the employing or parent organizational unit.

a. The term “records” includes, but is not limited to, information recorded on or transmitted by paper, film, audio and videotape, email, or other electronic media or sound media, as well as charts, drawings, and maps.

b. Excluded from this policy are materials closely related to an employee’s professional career or graduate education such as sermons and sermon files and graduate research materials.

3. In addition to the informational value of organizational documents, files, and other records, some items have a literary value. Although this value also resides with the employer, it may, by written agreement, be vested in the employee or shared with the employee. (See B 70 25, Literary Property Interests.)

### **BA 70 25 Literary and Other Property Interests**

1. *Ownership*—Literary and computer software property interests in any work prepared on the job by an employee within his/her employment shall vest in the legal employing church entity. Such legal entity shall hold title to any copyright, trademark, patent, or other legal property interest without responsibility for royalty or reimbursement other than the regular salary and benefits earned by the employment.

2. *Exclusion*—This policy is not intended to cover sermons and graduate-study materials.

3. *Exception*—The legal employing church entity by written agreement signed by all parties may exempt an employee from any portion of this policy. Any such agreement must be approved by majority vote of the executive committee/board of the legal church entity, and an original copy of the agreement must be filed with the official minutes of such board.

### **BA 70 30 Implementation**

The secretary of a local conference/ mission, union or division shall be responsible for the implementation of this policy in his/her respective field and in its subsidiary organizations except for those portions specifically designated as being the responsibility of the treasurer/chief financial officer. In the case of institutions, the secretary may delegate this responsibility to the institution’s chief executive officer.

## **S 40 Planned Giving & Trust Services**

### **S 40 01 Mission Statement**

Planned Giving & Trust Services assists people in conveying their Christian values through planned gifts. Our

goal is to connect the donor's passion with the mission of the Seventh-day Adventist Church so their gift will advance God's work.

### **S 40 05 Applicable Laws**

Denominational organizations engaging in Planned Giving & Trust Services activities shall comply with applicable federal, state/provincial laws, regulations, and rules. Planned Giving & Trust Services Working Policy is subject to law.

### **S 40 15 Certification and Accreditation Committee**

1. The North American Division shall establish a nine-member Certification and Accreditation Committee. Its members shall include the North American Division Treasurer/Chief Financial Officer as chair; the General Conference/North American Division Planned Giving & Trust Services Director as Secretary; three additional members who are employed in Planned Giving & Trust Services, two of which are selected from the North American Division Planned Giving & Trust Services Standing Committee; and four qualified laypersons. All non-ex officio members are to be recommended by the Planned Giving Trust Services Standing Committee.

a. Non Ex-officio Member Term—Each Non ex-officio member will serve a three (3) year term beginning on January 1 of the calendar year following their nomination at the NAD PGTRS standing committee and ending on Dec. 31 of the third year. Non ex-officio members may serve an additional three (3) year term.

b. Reinstatement Period—Non ex-officio members who have served an additional term on the C&A Committee cannot be reinstated on the committee until a full three (3) year term has elapsed.

c. Member Resignation—If a current member resigns during their term, the NAD PGTRS Service Director may appoint a replacement. The replacement may be a past non ex-officio who has not completed the full reinstatement period. The interim replacement will fulfill the resigned member's term. If the interim replacement has not completed the reinstatement period, the reinstatement period will be suspended and begin to run again upon the end of the interim term.

2. The Certification and Accreditation Committee shall issue individual certification and organizational accreditation and shall establish and institute the procedures within guidelines established by the North American Division Planned Giving & Trust Services Standing Committee.

### **S 40 20 Organization Accreditation Requirements**

Any Seventh-day Adventist Yearbook organization who engages in Planned Giving & Trust Services activities including, but not limited to, discretionary, fiduciary, development, education, and advertising activities, must be PLANNED GIVING & TRUST SERVICES Accredited by the NAD Certification & Accreditation Committee, the process

for which is detailed in the NAD PLANNED GIVING & TRUST SERVICES Manual.

### **S 40 25 Personnel Certification Requirements**

All personnel performing discretionary and/or fiduciary functions of trust development or management shall hold and maintain a PLANNED GIVING & TRUST SERVICES Active Certification, the process for which is detailed in the PLANNED GIVING & TRUST SERVICES Manual. This specifically includes, but is not limited to, Planned Giving and & Trust Services directors, Planned Giving and & Trust Services representatives, trust officers and treasurers/chief financial officers who are actively engaging in PLANNED GIVING & TRUST SERVICES activities.

### **S 40 30 Allied Professionals**

Provision shall be made for adequate legal and tax counsel services.

### **S 40 35 Trust Review**

A regular operation and compliance review to insure compliance with denominational policy and fiduciary responsibility shall be performed by the General Conference Auditing Services or as otherwise provided by denominational policy. A copy of the report, including management letter, shall be furnished to the Certification and Accreditation Committee. Any substantial exception shall be cause for action by the Certification and Accreditation Committee as provided herein.

### **S 40 40 Legal Counsel**

The preparation and execution process for planned giving instruments shall be under the control of licensed legal counsel to ensure all documents are in compliance with the statutes and regulations of the governing jurisdiction.

### **S 40 45 Gift Annuity Agreements**

1. Approved Organizations—General Conference, union and local conference associations/corporations, and other legally-recognized entities may issue gift annuities to the extent allowed by applicable laws and regulations.
2. Rate Schedules—Maximum gift annuity agreement rate schedules are provided by the General Conference Corporation, to officers of union and local conferences and institutions, and shall be strictly adhered to by all issuing organizations.
3. Accounting—Gift annuity agreements shall be accounted for by Generally Accepted Accounting Principles (GAAP) for such agreements as set forth in accepted fund accounting manuals. Each gift annuity shall be accounted



for separately, and no part of the total annuity amount may be used for operations until the death of the final annuitant.

4. Union/Division Counsel – Before denominational organizations enter into Gift Annuity agreements funded with cash or publicly traded securities in excess of \$500,000 or other non-cash assets, the denominational organization personnel shall obtain counsel from the Union or Division Planned Giving & Trust Services Director or officers.

### **S 40 50 Trust Agreements**

1. In addition to outright gifts and the provisions made for gift annuity agreements, General Conference, union and local conference associations or corporations, and legally organized institutions, are authorized to accept funds or property in trust, subject to compliance with the: PLANNED GIVING & TRUST SERVICES Manual.

2. Approval of Agreements—All agreements for which the organization serves as fiduciary shall be specifically authorized by the board of trustees concerned; however, this does not preclude a board of trustees from designating a subcommittee to handle this on a continuing basis.

3. Investments in Trusts—Organizations and institutions acting as trustee shall not invest in any property accepted in trust, give any guarantee based on the security of the trust, or loan any funds to a trustor. While it is not recommended as a routine procedure, under extenuating circumstances the organization or institution may, from its own funds, make temporary loans or advances of nominal amounts, fully secured by trust assets, which may be necessary to establish the trust or cover an emergency situation involving the trust assets. The organization or institution as trustee of an irrevocable trust may, however, secure a loan from a third-party lender for purposes of the trust based upon the security thereof.

4. Denominational Benefit—Organizations accept fiduciary duties for a trust or will only if the denomination may substantially benefit from such trust or will, considering the nature of the assets, size of the estate, cost of administration, and other relevant factors Entities accepting fiduciary duties for a trust or will shall develop written fiduciary acceptance guidelines.

### **S 40 55 Revocable Trusts**

1. Specifically Invested—a. All church entities acting as trustee of revocable trusts shall serve as such only in those cases where trust funds are invested based on specific written direction by the trustor or as provided in the trust instrument. All income shall accrue to the benefit of the trustor who shall assume the benefits and risks of variations in principal and rates of return.

2. Union Revolving Fund—No cash transferred to or held in revocable trusts shall be loaned to any church organizations, except to a Union Revolving Fund.

## **S 40 60 Wills**

Individuals should consider wills in addition to trusts and gift annuities when making gifts.

## **S 40 65 Recording Maturity of Deferred Giving Instruments**

The maturities and all distributions to beneficiaries of all deferred giving instruments should be recorded in the minutes of the governing board of the fiduciary, and/or its designated subcommittee.

## **S 40 70 Fiduciary Fees**

A denominational employee who serves as a fiduciary (administrator, trustee, executor, personal representative, conservator, guardian, or other fiduciary), as a result of his/her employment, shall not retain fees received for such service.

When a Seventh-day Adventist entity or its employee serves as fiduciary and chooses not to charge a fiduciary fee, and there are other Seventh-day Adventist entities who benefit, the servicing entity shall not be entitled to reimbursement from any benefiting church entity for the cost of the fiduciary services without a prior written agreement between the entities approving such payment.

## **S 40 75 Fiduciary Succession**

Upon completion of term of office or denominational employment, written notice shall be given to the affected individuals with whom the former employee was known to have an established fiduciary or other business relationship as a result of the denominational employment. The responsibility as fiduciary shall pass to the successor in that position, to the extent allowable by law.

## **S 40 80 Power of Attorney/Fiduciary Safeguards**

The denomination and its employees are discouraged from serving as Power of Attorney and/or fiduciary except in extenuating circumstances as voted by the governing board or delegated committee. Where there is a need for a church employee as a part of their work to serve as a Power of Attorney (agent), such function shall be approved by the governing board or appropriate committee. All assets under the active control of the agent shall be accounted for in an adequate accounting system. Significant acts (such as the disposition of major assets) shall be approved by the governing board or appropriate committee.

## **S 40 85 Interorganizational Planned Giving & Trust Services guiding principles**

The following interorganizational Planned Giving & Trust Services guiding principles shall govern all organizations and institutions rendering trust services.

1. Local Conference—It is recognized that local conferences have the right to contact all persons in their territories.
2. Referrals—All referrals among conferences and institutions will be followed up in the regular contact procedures.
3. Alumni—Educational institutions have the right to directly approach their alumni, including attendees, relative to current and deferred giving.
4. Promotional Materials—Organizations and institutions have the privilege of sending promotional materials to the territory they serve.
5. Non-Seventh-day Adventists—No restrictions are to be placed on contacting non-Seventh-day Adventists; however, discretion should be used to avoid duplication of appeal by more than one denominational organization. If it is not known whether the individuals are such members, reasonable efforts should be taken to ascertain their status.
6. Approaches to Higher Organizations— If a Seventh-day Adventist Church member contacts the General Conference or a union conference, it shall refer him/her to the appropriate entity; however, if the person still desires to relate to the administrative level contacted this will be respected with administrative level's consent.
7. Church Members—Other Conferences—Should a church member residing and holding membership in one local conference desire to enter into an agreement with another conference, the same provisions will apply as in the preceding paragraph.
8. Cooperation—All entities of the church shall cooperate in a spirit of good will and understanding.

## **S 45 Borrowing of Funds From Church Members**

### **S 45 05 Borrowing of Funds from Church Members**

1. Approach Methods—Denominational organizations shall not solicit loans from church members except through Union Revolving Funds.
2. Interest Rate—In unusual circumstances when unsolicited funds are offered to an organization by a church member as a loan for a specific project, the interest rate shall not exceed the rate paid on revolving fund notes in the respective union territory unless approval is granted by the respective union committee. Proper budgetary provisions shall be made for their repayment.
3. Unsolicited funds may be accepted only if in compliance with state regulatory codes.

## **S 50 Solicitation of Funds**

### **S 50 05 Denominational Funding**

1. Mission of the Church—The Seventh-day Adventist Church has accepted the commission to “go into all the world and preach the gospel.” This has resulted in the development of a network of schools, hospitals, churches, clinics, mission stations, publishing houses, and other institutions, and the involvement of thousands of workers. In developing and maintaining this worldwide outreach, a philosophy of Church funding has been adopted that not only provides for local needs, but also encourages support by strong churches and conferences for development in weaker areas.

2. Systematic Giving—Stability for the Work is assured by coordinating church giving into a regular offering pattern which guarantees continuing income to the various church operations around the world. The Personal Giving Plan provides for contributions to support the local church, the conference, the union, the world church, and special projects. The regular Sabbath School mission offering provides funds for the operation of missions around the world; while the local Sabbath School expense offering is kept in the local church to provide for Sabbath School supplies. The Church administration endeavors to provide balanced support for all the approved operations of the Church.

3. Direct Solicitation—Direct or indirect private solicitation of funds by workers serving outside their home divisions is considered to be in violation of denominational policy and not in the best interests of the long term support and development of the Church.

### **S 50 10 Solicitation by Organizations**

No conference, church, institution, or self-supporting enterprise is to solicit funds from outside its own territory without written authorization from its conference officers and of the conference administration of the area in which the solicitation is to take place.

### **S 50 15 Solicitation by Individuals**

No individual representing special interests in one part of the field is to solicit help for that work in any other part of the field or in any other conference, without the written authorization from the conference officers of his own territory and of the area in which the solicitation is to take place.

### **S 50 20 Contributed Funds**

All funds contributed by our members for any cause, in response to appeals by the local church, including

authorized special projects, shall be passed through the regular denominational channels. Donor-designated funds shall be used in accordance with the wishes of the donor and not diverted to other causes. All funds contributed to the local church, including those to be passed through for designated special projects, shall be limited to donations to or for organizations of the Seventh-day Adventist Church as listed in the Yearbook, or their affiliates. This provision does not prohibit local churches from using donated funds for local church-sponsored mission projects which may use other organizations to fulfill the projects with the local church.

### **S 50 25 Unauthorized Presentations and Solicitations**

1. Use of Pulpit—Ministers and church officers should not grant the privilege of the pulpit to persons who have no written recommendation from the conference.
2. Literature—Literature for solicitation purposes shall be provided only to responsible persons.
3. Unauthorized Solicitation—Conference and church officers shall take such steps as may be necessary to prevent unauthorized or illegal public solicitation.
4. Regular Channels—All funds contributed by individuals in response to appeals for any cause, including authorized special projects, shall be passed through the regular channels of the Church.
5. Appropriation Adjustment—The General Conference and/or divisions reserve the right to make adjustments in the appropriations of organizations that, without proper authorization, solicit funds in other territories.

### **S 50 30 Ingathering Methods**

No campaign other than Ingathering shall be conducted for the solicitation of money by Ingathering methods, using Ingathering literature and other Ingathering materials, for either home or foreign missions, and local conferences shall take such steps as may be necessary to prevent violations of this regulation.

## **S 55 Holding Properties**

### **S 55 05 Property Ownership**

Church properties and other assets shall be held in the name of an appropriate denominational corporate entity, not by individuals, trustees or local congregations. Where this is not legally possible, such as on United States Reservations and Canadian Reserves, alternate ownership arrangements should be made in consultation with the union, the Division, and the General Conference Office of General Counsel.

### **S 55 10 Valuation**

All church properties and other properties owned by conference/mission associations that are not used for

association operating purposes shall be listed in the association books of account at their cost. Land improvements and buildings shall be depreciated over the useful lives of the assets.

The Seventh-day Adventist Accounting Manual offers two (2) options for reporting these properties. This policy is not intended to require either option. None of these properties shall be pledged or encumbered in any way without written approval from the board of the organization using the property.

### **S 55 20 Hazardous Waste Assessment**

A hazardous waste assessment and review shall be made regarding all church properties and other real estate to be held in the name of a denominational entity, or held in the name of a denominational entity as fiduciary, prior to acquisition of the asset, whether by gift, purchase, or otherwise. The assessment and review shall be made using an appropriate form approved by the organization's legal counsel. If a more in-depth review is needed, direction is to be provided by the appropriate committee.

## **S 60 Risk Management Policies**

### **S 60 32 Miscellaneous Professional Liability**

1. Denominational organizations shall participate in the North American Division Master Policy for professional liability insurance on clergy, educators, notary publics, internal auditors, accountants, and attorneys who are employees of the denominational entity while acting within the scope of their assigned duties.

2. Trustees Errors and Omissions Insurance shall also be carried on all trust officers employed by the denominational entity as approved by the NAD Risk Management Committee.

3. All attorneys who are hired or retained by denominational entities shall be required to maintain errors and omissions liability insurance with minimum limits of \$1,000,000. Evidence of coverage should be provided to the organization prior to the commencement of their service.

### **S 60 33 Executive Risk**

Denominational organizations in the North American Division shall participate in a worldwide master policy for the following executive risks:

1. Directors and Officers Liability—Coverage for wrongful acts of officers and board members in the performance of their authorized duties—including local church and school boards.

2. Employee Dishonesty—Coverage for dishonest acts by employees and volunteers, including local church and school treasurers/chief financial officers. Individuals who have committed prior dishonest acts are not covered under the provisions of this insurance policy.

3. **Fiduciary Liability**—Coverage for failure to act prudently as a fiduciary of pension and employee benefit program.
4. **Outside Directorship Liability**—Coverage for wrongful acts when asked to serve on a board at the request of the denominational entity.
5. **Premium Allocations**—The premium allocation shall be approved annually by the NAD Risk Management Committee and charged to each organization.

## **S 65 Recording of Contingent Liabilities**

### **S 65 10 Errors and Omissions Liability**

All attorneys who are engaged or retained by denominational entities located in North America shall be required to maintain errors and omissions liability insurance with minimum limits of US\$3,000,000. Evidence of coverage should be provided to the organization prior to the commencement of their service. Divisions other than the North American Division are to determine insurance limits under the errors and omissions coverage that are appropriate for their territories.

## **S 85 Investment of Church Funds**

### **S 85 05 Safeguarding Denominational Funds**

1. **Introduction**— The Seventh-day Adventist Church has adopted the following principles and policies to promote the prudent management of certain assets owned and designated for investment by entities listed in the Seventh-day Adventist Yearbook. The General Conference Corporation of Seventh-day Adventists (the “Corporation”) is the legal entity appointed by the Church to (a) hold or oversee assets designated for investment, whether as trustee or otherwise, and (b) exercise or oversee legal and regulatory authority and compliance regarding such designated assets. The Corporation has authorized its Investment Management Committee (also referred to in these working policies as the “Investment Committee”) to hire, coordinate and provide global investment management expertise to maintain and promote these principles and policies with regard to such assets in service to the Church.

2. In order that assets for investment might be prudently managed the following principles and policies have been adopted for the North American Division:

- a. All investment must be in compliance with the Prudent Investment Act or other applicable legal standard in the jurisdiction(s).
- b. Unions may authorize their conferences, individually or as a group to apply the terms of this policy to conference member organizations such as churches and academies.

c. The conference executive committee shall take action, after evaluating the nature of the available funds and the skill resources available, recommending to the Union that the member organization apply the provisions of this policy.

3. The Church also maintains a General Conference Investment Office which carries daily administrative and operational functions based upon these principles and policies as well as the actions and recommendations of the Investment Management Committee of the Corporation.

## **S 85 20 Policies**

1. Investments in any company should not exceed 2.5 percent of the outstanding ownership of the entity.

2. At no time shall a controlling committee allow more than five (5) percent of the assets under its management, based on market value, to be invested in the securities of any one issuer other than G-7 countries and their guaranteed agencies.

3. At no time shall a controlling committee allow more than fifteen (15) percent of the assets under management, based on market value, to be invested in any one industry. Industries are defined as sub-groupings within macro-economic sectors (e.g. Sector = Technology, Industry = Hardware).

4. Retention of external managers or the construction of portfolios through the purchase of individual securities or vehicles should only be considered when the assets for investment are large enough to allow for appropriate diversification and to justify the fees associated with management of the fund and custody of the securities. Normally asset pools of less than US\$5,000,000 would not qualify. For asset pools greater than US\$5,000,000, a committee must evaluate available options with a view to minimizing management costs in consultation with an investment management consultant as defined in S 85 20, paragraph 11.,below.

5. Use of Brokers—**a. Criteria for Selection**—In placing portfolio transaction orders on behalf of the Fund, the manager (internal or external—anyone with authority to approve the purchase or sale of securities) shall obtain execution of orders through well capitalized, qualified broker-dealers. Managers may not trade with affiliated brokerages.

**b. Costs**—All transactions must be executed at the optimum commission rates and spreads, taking into consideration the efficiency of execution of the transaction. All costs must be fully disclosed including direct commissions, reductions in yield, placement fees, management fees, administrative or any other benefits the brokers may receive as compensation. The committee should keep in mind that these types of costs are traditionally negotiated and the committee has the responsibility to negotiate the most favorable rates. Seeking prices from multiple vendors is strongly suggested.

**c. Reporting**—At least annually, the committee shall review a report detailing all commissions paid, including bid/ask spreads and new issue allocations by the Fund. Additionally, the report shall detail the benefits, if any,



received in exchange for the commission dollars generated at each broker-dealer.

6. Controlling committees shall complete an asset allocation study in consultation with non-conflicted, qualified Investment Management Consultant for asset pools for investment prior to investing any assets.

7. Common and convertible preferred stocks should be of good quality and listed on a major exchange or traded in the over-the-counter market with the requirement that such stocks have adequate market liquidity relative to the size of the asset pool.

8. For each asset pool, an Investment Policy Statement in a format understood by the money management industry and consistent with this North American Division Working Policy shall be approved by each controlling committee whether employing external managers or managing funds internally.

9. All members of controlling committees must have a current, signed conflict of interest statement on file.

10. Custody and Valuation of Securities: Self custody of securities is not allowed.

a. For accounts managed on a separate account basis, controlling committees must select a recognized custodian (or through agreement with a sub-custodian) who:

- 1) Maintains possession of securities owned by the controlling committee;
- 2) Settles brokerage transactions, and provides monthly detail of such transactions;
- 3) Collects dividend and interest payments;
- 4) Redeems maturing securities;
- 5) Effects delivery following purchases and sales;
- 6) Provides timely exception reporting;
- 7) Handles corporate actions;
- 8) Provides performance measurement and risk assessment;
- 9) Provides transaction cost management;
- 10) Performs regular accounting of all assets owned, purchased, or sold, as well as movement of assets into and out of controlling committee accounts;
- 11) Independently prices all marketable securities on a daily basis;
- 12) On a monthly basis produces an audited statement detailing all positions held as well as all transactions that occurred during the month;
- 13) Independently marks to market all securities and pooled funds on at least a monthly basis;
- 14) Performs monthly valuations on a trade date, fully accrued basis;
- 15) Provides a report on controls in accordance with International Standards on Assurance Engagements 3402 (or in the United States, Statement on Standards for Attestation Engagements No. 16) on an annual basis;
- 16) Does not commingle the controlling committee assets with any other assets;

- 17) Is separately organized and regulated from all broker-dealers;
- 18) Is financially sound;
- 19) Is registered with the proper regulatory authorities and in good standing.

b. Controlling committees may not select a custodian (or through agreement with a sub-custodian) that:

- 1) Is principally engaged in securities trading or commercial banking other than what is incidental to its custody services or other asset management services;
- 2) Is any broker-dealer with whom securities and transactions are made—must be an independent custodian;
- 3) Allows securities to be held by any brokerage house or financial institution through which securities are purchased or sold.

c. Banks or broker-dealers which are engaged in the sale of securities to the controlling committee may not act as a custodian except in the sole case of local banks which are handling the controlling committee's deposit accounts. Purchase by the controlling committee of its depository banks' interest bearing short-term securities, that qualify under S 85 35, is permitted. Custodianship of that bank's certificates of deposit are excluded from the recognized custody restriction, although it is preferable when cost effective, to have all securities held by the recognized custodian.

11. Investment Management Consultancy: All controlling committees that delegate investment management authority of intermediate or long-term portfolios of marketable or nonmarketable securities to internal management or outside investment advisors, through either a separate account or a pooled fund, through delegation to an investment manager or the purchase of a pooled investment vehicle (General Conference Unitized Funds are exempt), shall engage the services of an independent investment consultant. Investment Management Consultants must:

- a. Be professionally certified with academic or professional credentials and certifications or proven experience.
- b. Be active in advising institutions on fund asset management, custody, performance measurement, asset allocation, Investment Policy Statement development (IPS—instructions to managers) and administrative tasks.
- c. Assist the controlling committee in defining programmatic objectives and financial goals.
- d. Objectively analyze portfolio structure and recommend asset allocation.
- e. Advise on the suitability of asset selection and strategy used by investment managers to fulfill the objectives of the investment pool.
- f. Assist in determining if the controlling committee and the investment manager meet the provisions of S 85

15.

- g. Demonstrate a substantive financially stable organization that effectively performs due diligence and

research on a large universe of asset managers and assists in the asset managers' engagement and discharge.

- h. Perform compliance review and actively participate in the performance monitoring.
- i. Be involved in portfolio rebalancing.
- j. Review potential conflicts of interest.
- k. Assist in the selection of an external manager.
- l. Not be empowered to contract directly with any third party.
- m. Not be affiliated with any bank, brokerage, or financial institution which transacts in securities, whether for its own account or as a third-party agent but is prohibited from utilizing a broker-dealer who is an affiliate of the investment management consultant.
- n. Not be commissioned based but must be fee or asset based and may not receive any incentive fee, brokerage commission, or sales load.
- o. Acknowledge any conflict of interest in writing and this must be approved by the controlling committee.
- p. Investment management consultants may only recommend highly qualified, professional asset managers, see S 85 20, paragraph 11., below.
- q. Be registered with the SEC or its foreign equivalent.
- r. Have had no violations in the previous 36 months for which it has paid fines imposed by regulatory authorities.
- s. No less than annually, the investment management consultant must:
  - 1) Document and certify in writing that it has performed a review of all asset managers' required regulatory filings and compliance records;
  - 2) Review the history of assets under management;
  - 3) Review historical personnel turnover;
  - 4) Review contracted for investment management strategy compared with actual portfolio performance;
  - 5) Adherence to policy and suitability of holdings;
  - 6) A written review must also include sections detailing actions taken as a result of the decisions made in paragraph 11. a. to 11. s., above. When appropriate this may be in the form of minutes reflecting actions by an investment committee;

12. Investment managers—Investment managers selected to manage a portfolio for a controlling committee must:

- a. Be compensated on a salary, fee, or asset basis not a commission basis.
- b. Represent and warrant that they are currently and will continue to act in a fiduciary capacity.
- c. Have combined assets under management of at least US\$250 million with no less than US\$100 million in

each of the specific asset classes for which they are being retained.

- d. Have a satisfactory track record of at least three years.
- e. Be managed by no less than three full-time professionals with academic or professional credentials and certifications or proven experience.
- f. Be registered with the SEC or its foreign equivalent.
- g. Have had no violations in the previous 36 months for which it has paid fines imposed by regulatory authorities.
- h. Not use a broker-dealer who is an affiliate of the Manager.
- i. Not allow any broker-dealer to act as a custodian.
- j. Ensure that all broker-dealers are properly registered and in good standing with all regulatory entities.
- k. Not participate as a voting member of the controlling committee whether they are an external or internal manager.
- l. If retained as an internal manager be reviewed with the same diligence and objectivity as that of an external manager.
- m. Exceptions to this policy may be made only with approval of the next higher organization.

13. Controlling committees shall require qualified legal review of account opening documents, management contracts, and powers of attorney.

14. Controlling committees are required to retain all records pertaining to transfers of assets, account documents, contracts, and statements.

15. When restricted or illiquid securities or real estate, acquired through donation or the maturity of a trust, are held until a prudent investor would liquidate such securities, they shall not constitute a violation of S 85. Reasonable effort will be made to dispose of said assets in a timely manner.

16. Divisions to Establish Investment Policy—**a. Rationale** —Wide variations in national markets, laws, regulations, securities, and levels of investment expertise make it impractical to establish a single detailed set of investment policies beyond a set of general principles and policies.

**b. Divisions**—Each division is encouraged, subject to General Conference Administrative Committee approval, to develop an investment policy in harmony with and no less restrictive than the provisions of this policy which contains principles, guidelines, and processes appropriate to its territory to govern the investment practices of its organizations and institutions.

17. Investments listed in S 85 35 thru S 85 50 must at time of purchase meet all qualifying criteria. Should such investments subsequently fail to meet qualifying purchase criteria they may be held until a prudent investor would liquidate such investments and shall not constitute a violation of this policy.

## **SA 05 AUDITORS AND AUDITING**

### **SA 05 27 Responsibility for Audits of Local Conference Institutions and Local Churches**

4. Donor Records—In harmony with BA 70 and good business practices of storing duplicate copies of vital records at another site, in order to guard against loss by such disasters as fire, flood, or theft, each local church shall provide the local conference treasurer/chief financial officer with a copy of the monthly remittance worksheet. This will ensure the preservation of the records. The confidentiality of such records shall not be compromised.

## **25. THE ENVIRONMENT AND HAZARDOUS WASTE**

### **Background and Purpose**

Investors, fiduciaries, and other successors-in-interest who acquire legal title after the property has been contaminated may be liable for clean-up costs and penalties if they do not satisfy all the criteria and obligations for statutory exemptions or defenses specified under the law.

Two federal statutes create the greatest potential liability in connection with real estate transactions. They are:

1. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund), as amended by the
  - A. Superfund Amendments and Reauthorization Act of 1986 (SARA), the
  - B. Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996 (Asset Conservation Act 1996), and the
  - C. Small Business Liability Relief and Brownfields Revitalization Act of 2002 (Brownfields Act); and
2. The Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

These statutes create liability in slightly different manners, but both involve the cleanup of hazardous materials already released into the environment.

In instances of environmental contamination that have not been addressed by Congress in a specific environmental statute, common-law liability for environmental contamination of property may also arise.

CERCLA (federal “Superfund”) is the most significant of these environmental laws. It imposes strict and retroactive liability on all “potentially responsible parties” (PRPs), including the current owners and operators (e.g., tenants) of the contaminated property even if they did not contribute to the contamination. A charitable organization that purchases real estate with contamination, receives contaminated property as a gift, or as a trust asset may be held liable for clean-up costs under this law as a PRP.

### **Potentially Responsible Parties**

There are four broad categories of “Potentially Responsible Parties” (PRP):

1. Current owners or operators of a facility where hazardous substances were released or are in danger of being released
2. Owners or operators of a facility at the time hazardous substances were disposed of at the facility
3. Persons or entities that arranged for the treatment or disposal of hazardous substances (Generators)
4. Persons or entities that transported the hazardous substances to a facility they selected (Transporters)

CERCLA defines an “owner or operator” as the “person” owning or operating a facility or, if the facility has been abandoned, as a “person who owned, operated, or otherwise controlled activities at such facility immediately prior to the abandonment.” This definition has been interpreted by the EPA and the courts to include owners of property during times when no hazardous waste was disposed of during their ownership. Moreover, a person holding equitable title to property may be deemed an owner. It is even possible that a person who merely signs an agreement to purchase contaminated property could face liability under CERCLA. Courts have ruled that lessees fall within the statutory definition of “owner.” In addition, officers and employees of companies operating a facility may be treated as owners or operators and in some cases held personally liable even when they were working for their employers.

The definition of “facility” is also very broad, covering any location where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located. A facility is any building, structure, well, pit, lagoon, ditch, or installation, or any site or area where a hazardous substance has been deposited or stored. So think not of just dump sites, but roads, drag strips, horse arenas, residential developments and even individual homes where workers carried contaminants on their work clothes.

Cleaning up contaminated real estate can cost a small fortune, in some cases more than the property may be worth. For this reason, church organizations must be extremely careful when accepting real estate as a gift or trust asset, and must make every effort to fit real estate transactions into an exception or defense which is allowed under CERCLA’s strict liability rules. In addition, because many state superfund laws have different tests for qualifying for an exemption or defense, church organizations must also make every effort to avoid potential state superfund claims even if they qualify for a CERCLA exemption.

## **LIABILITY RELIEF FOR FIDUCIARIES**

Prior to the Asset Conservation Act of 1996 amendment to CERCLA, there was considerable concern among fiduciaries as to whether the fiduciary's own assets could be at risk as "owners and operators" of contaminated property. There was no clear statutory relief for fiduciaries.

The Asset Conservation Act 1996 added to CERCLA and to the petroleum underground storage section of RCRA a new subsection on fiduciaries. The amendments do not create a defense against liability, but rather they protect fiduciaries (e.g., trustees, executors, administrators) from personal liability in certain situations. The Act clarifies that "the liability of a fiduciary...for the release or threatened release of a hazardous substance...shall not exceed the assets held in a fiduciary capacity." In other words, a fiduciary who is liable as a “owner/operator” can only be liable to the extent of the assets held in a fiduciary capacity and may not be personally liable. For example: if a certain trust holds contaminated property as an asset, assuming no negligence by the trustee, the liability for cleanup is limited to the trust value.

However, the fiduciary's relief from personal liability does not apply "if negligence of a fiduciary causes or contributes to the release or threatened release;" or if "a person is liable under this Act

independently of the person's ownership of a vessel or facility as a fiduciary or actions taken in a fiduciary capacity."

There is also no relief for a "person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person."

Finally, the ACA 1996 provides no express relief and has no effect if a person:

1. Acts in a capacity other than that of a fiduciary or beneficiary capacity, and in that other capacity, directly or indirectly benefits from a trust or fiduciary relationship, or
2. Is a beneficiary and a fiduciary with respect to the same fiduciary estate, and as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under applicable law.

The ACA 1996 does not preclude a claim against the assets of an estate or trust administered by the fiduciary, or against a non-employee agent or independent contractor retained by the fiduciary.

This liability limitation applies only to CERCLA and the underground storage tank (UST) sections of RCRA. It does not cover the more than two dozen other federal laws and accompanying regulations that impose civil environmental penalties and possible remedial costs. Nor does it cover other RCRA sections dealing with solid or other wastes. In addition, other uncontaminated trust assets are exposed to liability for costs associated with a contaminated trust asset. Such potential costs may also create third party rights of action in income and remainder beneficiaries for allowing waste of trust assets.

The Brownfields Act, signed into law January 11, 2002 further amended CERCLA creating new conditional exemptions from CERCLA "owner/operator" liability for contiguous property owners and bona fide prospective purchasers. For the first time, Congress limited the CERCLA liability of a party who purchases real property, even with knowledge of the contamination, to a potential "windfall lien" (if the EPA has unrecovered response action costs and the response action increased the fair market value of the property), provided that this person meets the criteria for a bona fide purchaser and does not impede a response action. In addition, the 2002 amendments clarified the pre-existing innocent landowner defense.

Notably, the innocent landowner defense, the new contiguous property owner exemption, and the definition of what constitutes a "bona fide prospective purchaser" ("BFPP") all contain the following common obligations which persons seeking these exemptions must meet:

- Conduct "all appropriate inquiry" (AAI) prior to purchase of the property;
- Not be potentially liable or affiliated with any person potentially liable;



- Exercise appropriate care by taking reasonable steps to “stop any continuing release; prevent and threatened future release; and prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance;”
- Provide full cooperation, assistance, and access to persons undertaking a response action or natural resource restoration;
- Comply with all governmental informational requests;
- Comply with land use restrictions and not impede the performance of institutional controls; and
- Provide all legally required notices regarding releases of hazardous substances.

### **All Appropriate Inquiry Defined**

The 2002 Brownfields Law changes CERCLA Section 101(35)(B) to now define “all appropriate inquiries” for purposes of all three exemption provisions. It specifies an interim standard for conducting all appropriate inquiry and requires the federal Environmental Protection Agency (EPA) to promulgate regulations that establish federal standards and practices for conduct of all appropriate inquiry.

Under the Brownfields Act EPA regulations defining all appropriate inquiry must specifically include,

1. The results of an inquiry by an environmental professional
2. Interviews with past and present owners, operators and occupants
3. Reviews of historical sources, such as chain of title documents
4. Search for recorded environmental cleanup liens
5. Review of governmental records
6. Visual inspection
7. Specialized knowledge on the part of the defendant
8. The relationship of the purchase price to the value of the property if uncontaminated
9. Commonly known or reasonably ascertainable information about the property
10. The obviousness of the presence or likely presence of contamination

### **All Appropriate Inquiry For Residential Property**

The Brownfields amendments to CERCLA provide relief for bona fide prospective purchasers of residential property by a person who is not a government or commercial entity. Under Brownfields a facility inspection and a title search satisfy the appropriate inquiry requirement.

Section 223 (2) “(v) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.”

## **Final EPA Rule**

On November 1, 2005 the EPA published its final rule setting federal standards for the conduct of “all appropriate inquiry” noting that the 2005 version of the ASTM (American Society for Testing and Materials) Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment E1527-05 satisfied the requirement for “all appropriate inquiry.” The final rule became effective November 1, 2006.

“In today’s final rule, EPA is referencing the standards and practices developed by ASTM International and known as Standard E1527–05 (entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process”) and recognizing the E1527–05 standard as consistent with today’s final rule. The Agency determined that this voluntary consensus standard is consistent with today’s final rule and is compliant with the statutory criteria for all appropriate inquiries. Persons conducting all appropriate inquiries may use the procedures included in the ASTM E1527–05 standard to comply with today’s final rule.” Fed Reg Vol 70, No 210, p. 13 (66081), Nov 1, 2005.

## **Current Standard**

After November 1, 2006 only those requirements set forth in the AAI rule or in ASTM Standard E1527-05 will constitute all appropriate inquiry.

## **Environmental Professional Defined**

An important feature of the EPA Final Rule is the definition of “environmental professional.” For the purposes of the all appropriate inquiry rule an environmental professional is

(1) a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases(see [40 CFR] § 312.1(c)) on, at, in, or to a property, sufficient to meet the objectives and performance factors in § 312.20(e) and (f).

(2) Such a person must:

(i) Hold a current Professional Engineer’s or Professional Geologist’s license or registration from a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) and have the equivalent of three (3) years of full-time relevant experience; or

(ii) Be licensed or certified by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries as defined in § 312.21 and have the equivalent of three (3) years of full-time relevant experience; or

(iii) Have a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of five (5) years of full-time relevant experience; or

(iv) Have the equivalent of ten (10) years of full-time relevant experience.

(3) An environmental professional should remain current in his or her field through participation in continuing education or other activities.

(4) The definition of environmental professional provided above does not preempt state professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional. Before commencing work, a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in § 312.21(b).

(5) A person who does not qualify as an environmental professional under the foregoing definition may assist in the conduct of all appropriate inquiries in accordance with this part if such person is under the supervision or responsible charge of a person meeting the definition of an environmental professional provided above when conducting such activities. (Fed Reg Vol 70, No 210, p. 40 (66108), Nov 1, 2005)

### **How Much Is Enough?**

The most difficult question is how much “due diligence” is enough. The short answer lies in the complex factors governing the nature and value of the property, the value of the transaction to the parties, and the comfort sought by the buyer. It would be prudent for the church organization to seek to qualify for all available defenses/exemptions against environmental liability: the innocent landholder defense, the bone fide prospective purchaser exemption, and the contiguous property owner exemption by compliance with the all appropriate inquiry standard, which will change with time.

### **Additional Considerations**

In addition, because certain important areas of inquiry are not required under the ASTM or the AAI rule, it may be prudent for the church organization to enhance the property evaluation to include an analysis of certain “non-scope considerations” such as wetlands, asbestos containing materials, lead (paint or in plumbing), other indoor air quality issues (radon, mold), and environmental compliance. These issues may affect the amount of the subject property that can be developed, the habitability of a building, and/or the construction costs of a building’s conversion.

In addition, these procedures also may be used by church organizations for the environmental assessment of donated property and real estate purchased by church entities.

### **Classification of Real Estate**

Prior to acceptance for management or ownership, the property should be identified as one of the following types:

1. Residential—this includes typical residential property located in a residential neighborhood consisting of lots that are less than five acres in size. This type of property may be considered low risk recognizing the potential clean-up cost is not likely to exceed the fair market value of the contaminated property. It is recommended that a site/facility inspection and title search be performed by trained

- personnel in satisfaction of the all appropriate inquiry requirement for residential property under the Brownfields Act of 2002.
2. **Acreage**—this includes lots of five or more acres which may be unimproved, residential, or used for agricultural purposes. This type of real estate may be considered low to moderate risk with the potential clean-up cost likely to equal or exceed the fair market value of the contaminated property. It is recommended that a site/facility inspection and title search be performed by trained personnel in satisfaction of the all appropriate inquiry requirement for residential property under the Brownfields Act of 2002. If concerns exist then it is strongly recommended that an environmental site assessment be obtained from an environmental professional as defined under the All Appropriate Inquiry Rule or ASTM E1527-05.
  3. **Industrial/Commercial**—this includes property where manufacturing and other activities that might involve the use of chemicals and toxic materials are likely to take place. This type of property may be considered high risk. The potential clean-up cost and penalties may greatly exceed the fair market value of the contaminated property. It is strongly recommended that an environmental site assessment be obtained from an environmental professional as defined under the All Appropriate Inquiry Rule or ASTM E1527-05.

### **Property Evaluation**

As a first step in pre-acceptance environmental evaluation, the ownership history and previous uses of a parcel of real estate must be determined by requiring the current owner to complete an Environmental Questionnaire. A questionnaire has been designed for each classification of property, based on risk potential.

Trustors, donors, and other potential transferors should be asked to provide answers to the questions to the best of their ability and knowledge. If, after making reasonable efforts to obtain an answer to a question, the current owner still does not have the requested information or can only give a partial response, he or she should simply answer to the best of his or her ability and so indicate. It is important that the owner provide a response to every item on the questionnaire.

### **Site Inspection**

After the property is classified (residential or non-residential) and a history of its ownership and uses is obtained, an on-site inspection is necessary. The inspection should be performed by a church organization staff member who has been trained to evaluate property. The site inspection should be performed according to an environmental inspection checklist/procedures approved by the respective organization's legal counsel

The questionnaire and inspection checklist are intended as screening tools and not as a substitute for conducting an ASTM Phase I Environmental Site Assessment for purposes of satisfying CERCLA's "all appropriate inquiry" requirements and establishing an exemption or defense.

The ASTM Phase I assessment and report should be performed by an independent environmental professional qualified to conduct such an assessment.

The following list includes various features that may be indicative of environmental hazards and contamination. They are included on typical site inspection checklists and their presence on a subject property should be noted and further investigated. At the very least their presence should lead to additional interview with property owners to ascertain as much information about the feature as possible. The presence of these features may indicate the need for an ASTM Phase I Environmental Site Assessment before the property is accepted by the church organization outright or as a fiduciary. Consultation with legal counsel and an environmental professional is essential.

1. Evidence of asbestos (sprayed on fireproofing, pipe wrap, friable ceiling tiles, and acoustical plaster). Only an EPA trained inspector can make a definitive opinion as the presence of asbestos. Sample testing is generally required.
2. Discolored soil or pavement areas.
3. Recently disturbed soil area.
4. Areas of sparse, sick, or dead vegetation.
5. Discolored standing water.
6. Unusual or noxious odors.
7. Groundwater monitoring wells.
8. Roads or tire tracks with no apparent destination.
9. Drums or storage tanks.
10. Evidence of PCBs (electrical transformers, capacitors).
11. Septic system.
12. Evidence of petroleum products.
13. Evidence of chemical spills/leaks (stains on floor, discolored paint)
14. Any source of air emission (paint booths, smoke stacks, chimneys).
15. Above or underground storage tanks, vents, or filler pipes.

Certain activities may generate hazardous substances or contribute to pollution and/or contamination. Among them are:

1. Building cleaning/maintenance
2. Chemical manufacturing
3. Furniture/wood refinishing
4. Dry cleaning
5. Laboratories
6. Metal manufacturing
7. Paint shop or paint manufacturing
8. Vehicle maintenance (automotive)
9. Wood preserving

It is important that every item on the checklist be completed during the inspection. Your “due diligence” is based on strict adherence to your organization’s procedural standards.

### **Acceptance/Rejection**

Only property that has passed preliminary screening and site assessment by an environmental professional should be recommended for acceptance by the organization. When questions or concerns arise about a particular parcel of property and if the organization wants to potentially qualify for available defenses or exemptions from liability it will be necessary to obtain an assessment by a qualified environmental professional.

Property with obvious or potential environmental contamination should not be accepted by the organization until government-approved clean up has taken place (at the expense of the owner) and potential liability is eliminated.

### **Forms**

1. **Residential Property**  
Residential Environmental Questionnaire  
Residential Environmental Inspection Checklist
2. **Commercial/Industrial/Agricultural Property**  
Non-residential Environmental Questionnaire  
Non-residential Environmental Inspection Checklist

## RESIDENTIAL ENVIRONMENTAL QUESTIONNAIRE

OWNER: \_\_\_\_\_

PROPERTY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

1. Type of Structure: (brick, frame, etc.)

Evidence of Asbestos

Siding

Insulation

Pipe wrap

Evidence of underground storage tanks

Other evidence of contamination or "hazardous substances" as defined in item 12 below (including, without limitation, radon or mold)

YES	NO
YES	NO
YES	NO

If any questions are "YES" please describe:

2. Please describe current use(s) if other than residential:

3. When did you acquire the property?

a. Bought land and buildings in \_\_\_\_\_ (year)

b. Bought land in \_\_\_\_\_ (year) and added buildings in \_\_\_\_\_ (year)

4. Please provide the following names, addresses and telephone numbers.

FORMER OWNER (land and building)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

5. Describe all prior uses of the building and land of which you have knowledge (e.g. agricultural land), and the approximate dates of such uses:

6. Do you have any reason to believe that asbestos was in the past or currently is present in any form in, on or about the property?

YES	NO
-----	----

7. Do you have any reason to believe that the property, including the land and any existing or prior buildings, was at any time in the past or currently contaminated by any “hazardous substances” as defined in item 12 below?  
If “YES”, explain:
- |     |    |
|-----|----|
| YES | NO |
|-----|----|

8. The following are situations that pose a higher risk of contamination. Check if present on the site or in the subject building:

	Lead paint
Stored batteries	Urea formaldehyde foam insulation
Stored electrical or hydraulic equipment (transformers, oil-filled switches or ballasts, etc.)	Liquid or solid waste disposal area (debris piles, burn dumps, etc.)
Above ground tanks	Septic system, cesspool, drywell, sump, leach field or other subsurface disposal

Explain in detail and give exact location of items checked.

9. Do any current occupants, or did any prior occupants of the property use, handle or store any “hazardous substances” as defined in item 12 below?  
If “YES”, explain:
- |     |    |
|-----|----|
| YES | NO |
|-----|----|

10. Is there now, or has there been, any underground tanks or pipelines (other than water, sewer, and natural gas utility lines) on the property?  
If “YES”, explain:
- |     |    |
|-----|----|
| YES | NO |
|-----|----|

11. Please **list** the names of adjoining landowners and, if such land is other than residential, specify the nature of the use of that land, including the name(s) of any businesses operated thereon, which border the property on all sides:

EAST

WEST

NORTH

SOUTH



12. To the best of your knowledge, have any of these adjoining businesses or landowners been involved in any matter in Questions 6 – 10?

YES	NO
-----	----

As used herein, the term “hazardous substance” includes any chemical, substance, oil, petroleum product, pollutant, waste or material defined, designated, or otherwise regulated as hazardous, toxic, or dangerous (or any similar term) to health, safety, public welfare or the environment by any federal, state or local statute, regulation, rule or ordinance now or hereafter in effect.

As owners of that real property which is the subject of this questionnaire, I/we are familiar with the property and the uses and operations presently conducted in the property, and I/we represent and certify for the benefit of the \_\_\_\_\_ Association of Seventh-day Adventists, that to the best of my/our knowledge:

- 1) The property and all operations thereon comply with applicable environmental laws, regulations, and court or administrative orders;
- 2) There are no pending or threatened private or governmental claims, or judicial or administrative actions or environmental liens relating to environmental impairment on the property;
- 3) There are no areas on the property where “hazardous substances” (as defined in item 12, above) have either been released, disposed of, or found, other than those that are disclosed in this Questionnaire or in the Reports attached hereto; and
- 4) True and correct copies of all Reports and Permits pertaining to the property are attached hereto. I have no knowledge that any of the information in the Reports or Permits is false or misleading in any respect.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

## RESIDENTIAL ENVIRONMENTAL INSPECTION CHECKLIST

INSPECTED BY: \_\_\_\_\_

OWNER: \_\_\_\_\_

PROPERTY: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This property is: \_\_\_\_\_ Rural \_\_\_\_\_ Urban (within incorporated city limits)

Title Search/Ownership 50 Year Chronology (Attach additional sheet if necessary):

Date of Transfer	New Owner	Previous Owner	Recorded	
			Book	Page

List any encumbrances/liens (easements, licenses, environmental/windfall liens, etc):

- An onsite inspection revealed evidence of the following:
  - Asbestos (sprayed on fireproofing, pipe wrap, friable ceiling tiles, acoustical plaster, siding, roofing, insulation.
  - Discolored soil or pavement areas.
  - Recently disturbed soil area.
  - Areas of sparse, sick or dead vegetation or unusual bare spots.
  - Discolored standing water or oil sheens.
  - Ponds, lagoons, or unidentified pits and depressions.
  - Maintenance areas (shops and/or auto/truck operations)
  - Proximity of property to dump/landfill, known hazardous waste sites, or high risk industries.
  - Unusual or noxious odors.
  - Groundwater monitoring wells or other wells.

<u>YES</u>	<u>NO</u>

- Roads or tire tracks with no apparent destination.
- Drums or storage tanks (note type):
- PCBs (electrical transformers; oil-filled electrical equipment such as switches or light ballasts; hydraulic systems)
- Septic system, cesspool, drywell, sump, leach field, or other subsurface disposal system.
- Liquid or solid waste disposal area.
- Petroleum or oil products.
- Chemical spills/leaks (floor stains, discolored paint).
- Source of air emission (paint booths/smoke stacks/chimneys).
- Above or underground storage tanks, vent or filler pipes.
- Piles of waste or trash or unidentified mounds.
- Floodplain or coastal exposure.
- Earthquake potential.
- Extensive wetlands or drainage problems.
- Endangered plants or wildlife.
- Adjacent potentially contaminated property.
- Lead paint (in pre-1978 homes).
- Previous tests indicating radon.
- Mold or mold-inducing conditions.
- Prior or current non-residential use (industrial, commercial, agricultural, manufacturing, or otherwise).


If any of the above items are marked “YES”, explain details and exact location:

2. Note any information that could be helpful for further investigation, such as names of people you spoke with at the site, exact locations of suspect contamination, etc.
3. Please note any other observations you have regarding past, current, or possible future contamination.
4. All adjacent properties should be viewed. If any evidence of oil or hazardous substances was discovered, please describe. (Attach a plat showing (a) adjacent properties, and (b) all commercial activities within a five (5) block radius).

5. I viewed all of the site, including yard areas, vacant land, etc.

YES	NO
-----	----

If "NO" list areas not seen.

6. Based on the evaluation of known environmental factors, there is no evidence of environmental contamination on this or neighboring properties, and no further action is recommended.

7. Based on the evaluation of known environmental factors, there is evidence of environmental contamination on this or neighboring properties, and further investigation is recommended.

Reported:

By: \_\_\_\_\_  
Type name and title                      Signature                      Date

By: \_\_\_\_\_  
Type name of legal counsel                      Signature of legal counsel                      Date

## NON-RESIDENTIAL ENVIRONMENTAL QUESTIONNAIRE

OWNER: \_\_\_\_\_

PROPERTY \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

1. Type of Business:  
(industrial, retail, office, agricultural, other commercial, medical, educational, etc.)
  
2. Products or services:
  
3. When did you acquire the property?
  - a. Bought land and buildings in \_\_\_\_\_ (year)
  - b. Bought land in \_\_\_\_\_ (year) and added buildings in \_\_\_\_\_ (year)
  - c. Leased building in \_\_\_\_\_ (year)
  
4. Please provide the following names, addresses and telephone numbers.

### FORMER OWNER (land and building)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

### BUILDING ARCHITECT

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

### GEOTECHNICAL (SOILS) ENGINEER

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

5. Describe all prior uses of the building and land of which you have knowledge (e.g. agricultural, building used for vehicle maintenance, multi-tenant industrial occupancy, etc.), and the approximate dates of such uses:

6. Do you have any reason to believe that asbestos was in the past or currently is present in any form in, on or about the property? YES NO

7. Do you have any reason to believe that the property, including the land and any existing or prior buildings, was at any time in the past or currently contaminated by any "hazardous substances" as defined in item 19 below? YES NO  
 If "YES", explain:

8. The following are situations that pose a higher risk of contamination. Check if present on the site or in the subject building:

<table border="1" style="border-collapse: collapse;"> <tr><td style="width: 20px; height: 20px;"></td><td>Drums or other containers stored of hazardous substances stored on site</td></tr> <tr><td style="width: 20px; height: 20px;"></td><td>Stored batteries</td></tr> <tr><td style="width: 20px; height: 20px;"></td><td>Stored electrical or hydraulic equipment (transformers, oil-filled switches or ballasts, etc.)</td></tr> <tr><td style="width: 20px; height: 20px;"></td><td>Above ground tanks</td></tr> <tr><td style="width: 20px; height: 20px;"></td><td>Railroad or pipeline easements</td></tr> </table>		Drums or other containers stored of hazardous substances stored on site		Stored batteries		Stored electrical or hydraulic equipment (transformers, oil-filled switches or ballasts, etc.)		Above ground tanks		Railroad or pipeline easements	<table border="1" style="border-collapse: collapse;"> <tr><td style="width: 20px; height: 20px;"></td><td>Septic system, cesspool, drywell, sump, leach field or other subsurface disposal</td></tr> <tr><td style="width: 20px; height: 20px;"></td><td>Urea formaldehyde foam insulation</td></tr> <tr><td style="width: 20px; height: 20px;"></td><td>Liquid or solid waste disposal area (debris piles, burn dump, landfill, etc.)</td></tr> <tr><td style="width: 20px; height: 20px;"></td><td>Mold</td></tr> <tr><td style="width: 20px; height: 20px;"></td><td>Lead paint</td></tr> </table>		Septic system, cesspool, drywell, sump, leach field or other subsurface disposal		Urea formaldehyde foam insulation		Liquid or solid waste disposal area (debris piles, burn dump, landfill, etc.)		Mold		Lead paint
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	Mold																				
	Lead paint																				

Explain in detail and give exact location of items checked.

9. Do any current occupants, or did any prior occupants of the property use, handle or store any "hazardous substances" as defined in item 19? YES NO  
 If "YES", explain:

10. The following are situations that pose a higher risk of contamination. Check if present on the site or in the subject building:

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11. Is there now, or has there been, any underground tanks or pipelines (other than water, sewer, and natural gas utility lines) or railroads on or adjacent to the property? YES NO  
 If "YES", explain:

Provide evidence of permits.

12. List all occupants of the property (owner and/or tenants). Nature of business and products produced in each business on the property.

	Name of Occupant	Nature of Business	Products Produced
a.			
b.			
c.			
d.			
e.			

- 12A. For each occupant listed above, attach copies of all applicable permits which are required for the operation of the occupant's business on the property.

13. Please **list** the names of adjoining landowners and the names and natures of businesses which border the property on all sides:

EAST

WEST

NORTH

SOUTH

14. To the best of your knowledge, have any of these adjoining businesses or landowners been involved in any matter in Questions 7 – 10? YES NO
15. Does any portion of this property lie within a 100 year flood plain? YES NO
16. Are there any streams which cross property? YES NO
17. Are there any wells on the property? YES NO  
 Use of water: \_\_\_\_\_drinking \_\_\_\_\_process\_\_\_\_\_agricultural?

18. If this property is/has been a landfill, what kind of records (permits, manifests, etc.) were kept?

19 Are you aware of any reports, surveys, investigations or test results (the "Reports") for this property? YES NO

If "YES", please list and attach copies of any such items which are in your possession.

Name of Report

Prepared By

Date

As used herein, the term "hazardous substance" includes any chemical, substance, oil, petroleum product, pollutant, waste or material defined, designated, or otherwise regulated as hazardous, toxic, or dangerous (or any similar term) to health, safety, public welfare or the environment by any federal, state or local statute, regulation, rule or ordinance now or hereafter in effect.

As owners of that real property which is the subject of this questionnaire, I/we are familiar with the property and the uses and operations presently conducted in the property, and I/we represent and certify for the benefit of the \_\_\_\_\_ Association of Seventh-day Adventists, that to the best of my/our knowledge:

1) The property and all operations thereon comply with applicable environmental laws, regulations, and court or administrative orders;

2) There are no pending or threatened private or governmental claims, or judicial or administrative actions or environmental liens relating to environmental impairment on the property;

3) There are no areas on the property where "hazardous substances" (as defined in item 19, above) have either been released, disposed of, or found, other than those that are disclosed in this Questionnaire or in the Reports attached hereto; and

4) True and correct copies of all Reports and Permits pertaining to the property are attached hereto. I have no knowledge that any of the information in the reports or Permits is false or misleading in any respect.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature



## NON-RESIDENTIAL ENVIRONMENTAL INSPECTION CHECKLIST

INSPECTED BY: \_\_\_\_\_

OWNER: \_\_\_\_\_

PROPERTY

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

This property is:

\_\_\_\_\_ Rural

\_\_\_\_\_ Urban (within incorporated city limits)

\_\_\_\_\_ Zoned Commercial

\_\_\_\_\_ Zoned Industrial

\_\_\_\_\_ No Improvements

\_\_\_\_\_ Improved

\_\_\_\_\_ Developed (Describe type and extent of development):

\_\_\_\_\_  
\_\_\_\_\_

Type of Business: \_\_\_\_\_

Describe Structure: \_\_\_\_\_

Briefly describe business activity:

\_\_\_\_\_  
\_\_\_\_\_



If any of the above items are marked “YES”, explain details and exact location:

2. The following types of activities may generate hazardous substances. Check if any are present in the property:

<input type="checkbox"/>	Service/Gas Station	<input type="checkbox"/>	Building Cleaning/Maintenance
<input type="checkbox"/>	Chemical Manufacturing	<input type="checkbox"/>	Furniture/Wood Refinishing
<input type="checkbox"/>	Dry Cleaners	<input type="checkbox"/>	Laboratories
<input type="checkbox"/>	Metal Manufacturing or Processing	<input type="checkbox"/>	Paint Shop Manufacturing
<input type="checkbox"/>	Waste Treatment, Storage, Disposal or Recycling	<input type="checkbox"/>	Vehicle Maintenance or Repair/ Automotive
<input type="checkbox"/>	Oil or Gas Operations	<input type="checkbox"/>	Agricultural
<input type="checkbox"/>	Photo Developing	<input type="checkbox"/>	Commercial Printing
<input type="checkbox"/>	Junkyard/Landfill	<input type="checkbox"/>	Filling
<input type="checkbox"/>	Wood Preserving	<input type="checkbox"/>	
<input type="checkbox"/>	Other (please explain)	<input type="checkbox"/>	

- a. List all products, services manufactures, services sold:
  - b. List all by-products created:
  - c. List all waste products:
3. Note any information that could be helpful for further investigation, such as names of people you spoke with at the site, exact locations of suspect contamination, etc.
  4. Please note any other observations you have regarding past, current, or possible future contamination.
  5. All adjacent properties should be viewed. If any evidence of hazardous substances was discovered, please describe. (Attach a plat showing (a) adjacent properties, and (b) all commercial activities within a one (1) mile radius).

6a. I viewed all tenant spaces.

YES	NO
-----	----

List tenants and nature of business:

- a.
- b.
- c.
- d.

List spaces not seen (Tenant Name – Suite No.)

- a.
- b.
- c.
- d.

6b. I viewed all of the site, including yard areas, vacant land, etc.

YES	NO
-----	----

If “NO” list areas not seen.

7. Interviewed Fire Department

YES	NO
-----	----

Interviewed Health Department and Conservation Commission

YES	NO
-----	----

If “YES”, results:

8. Are aerial photos and Sanborn Insurance Maps available?

YES	NO
-----	----

If “YES”, dates of photos/maps:  
Have they been reviewed?

9. Does current occupant have any permits from:

State Water Pollution Control       State Air Pollution Control       EPA

If any, describe purpose.

10. How is wastewater handled?

11. Are any hazardous substances/waste stored on site:

YES	NO
-----	----

If “YES”, explain:

12. Does the property or any site within 1 mile of the property appear on any state or federal list of hazardous substance/waste site (i.e., National Priorities List)?

YES	NO
-----	----

Based on the evaluation of known environmental factors, there is no evidence of environmental contamination on this or neighboring properties, and no further action is recommended.

Based on the evaluation of known environmental factors, there is evidence of environmental contamination on this or neighboring properties, and further investigation is recommended.

Reported:

By: \_\_\_\_\_  
Type name and title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Type name of legal counsel

\_\_\_\_\_  
Signature of legal counsel

\_\_\_\_\_  
Date

## APPENDIX A

### RESOURCES

#### Books

*Alzheimer's Advisor, The*, Vaughn E. James, JD. American Management Association, New York. 2009. A Caregiver's guide to dealing with the tough legal and practical issues. Mr. James, a graduate of the SDA Theological Seminary and law school professor writes from personal experience with family members and clients covers the topic from recognizing the early signs of the disease to understanding the legal implications.

*Baby Boomers Guide to Estate & Medicaid Planning*, Jon A. Iverson, JD. Stonemark Publishing, Medford, Oregon. 2005. Elder law attorney explores 53 common estate planning issues with examples and explanation.

*Building An Endowment*, Lynda S. Moerschbaecher, Precept Press, Chicago, 136 pages.  
[www.bonus-books.com](http://www.bonus-books.com), [www.lyndam.com](http://www.lyndam.com)

*Building a Planned Giving Program* (3 volumes), Kathryn W Miree & Associates, Inc.,  
[www.giftplanners.com](http://www.giftplanners.com)

*Christian Guide to Wills, Living Trusts and Estate Planning*. Mark L. James, JD and Lynne Marie Kohm, JD. Barron Publishing Company, State College, PA. 2007.  
[www.barronpublishing.com](http://www.barronpublishing.com). Breaks down estate planning into nine palatable steps and applies stewardship principals to each step. Glossary and index.

*Complete Retirement Survival Guide, second edition*. Peter J. Strauss and Nancy M. Lederman, Checkmark Books New York, NY. 2003. [www.factsonfile.com](http://www.factsonfile.com) Written for the 55 plus lay consumer by experienced elder law attorneys.

*Counsels on Stewardship*, Ellen G White, Chapters 62-64

*Estate Planning Made Easy: Your Step-by-Step Guide to Protecting Your Family, Safeguarding Your Assets, and Minimizing Tax Bite*, Phillips & Wolfkiel, Dearborn Press, 1998, 205 pages

*Estate Planning Smarts: A Practical User-Friendly, Action Oriented Guide*, Deborah L. Jacobs, DJWorking Unlimited, Inc. 2009, 329 pages. This book captures many complicated aspects of federal estate tax law and makes them readable for the lay person. It is a comprehensive and accurate guide to estate planning that tackles all the issues in clear easy to read style.

*Executor's Handbook: A Step by Step Guide to Settling an Estate*, Theodore Hughes and David Klein, Second Edition, Checkmark Books New York, NY. 2001. [www.factsonfile.com](http://www.factsonfile.com). Practical and informative. Based on Michigan statute.

*Faithful Steward: Reclaiming Stewardship for Christ's Kingdom*, The, Michael O'Hurley-Pitts, Canadian Council of Christian Charities. 2002. 175 pages. A forthright and critical review of the assumptions and practices of secular philanthropy as these have been adopted by the Christian Church.

*Federal Income Taxes of Decedents, Estates, and Trusts, 23<sup>rd</sup> edition*, CCH Incorporated, Chicago, 239 pages.

*Generations: Planning Your Legacy, Practical Answers From America's Foremost Estate Planning Attorneys*, Robert A Esperti & Renno L Peterson with Charles C Case Jr & Stuart W Rapp

*Guide to Elder Planning*, Steve Wiseman, Prentice-Hall. 2004.

*Harnessing the Power of the Charitable Remainder Trust*, Eighth Edition, Marc D Hoffman, Leland E Hoffman Jr, PhilanthroTec, Inc. Matthews, NC, 2010, 249 pages

*How To Use Financial Statements: A Guide To Understanding the Numbers*. James Bandler. McGraw Hill, 1994. 147 pages. Covers a complex subject in plain English. Contains glossary and index.

*How to Write an Investment Policy Statement*, Jack Gardner, Market Place Books. PO Box 2466, Ellicott City, MD 21041. Addresses a critical fiduciary function in a concise manner.

*Life and Death Planning for Retirement Benefits: The Essential Handbook for Estate Planners, Sixth Edition 2006*, Natalie B. Choate, JD, Ataxplan Publications, Boston, 575 pages. Comprehensive, authoritative.

*Looking Ahead: Estate and Long-Term Planning for You and Your Family*, Kenneth M. Coughlin and Harry S. Margolis, Elder Law Answers. 866-267-0947. [www.Elderlawanswers.com](http://www.Elderlawanswers.com). Understandable, written for lay audience, updated annually.

*Money, Possessions and Eternity*. Randy Alcorn. Tyndale House. Wheaton, IL. 2003. Challenges typical understanding and money practices. Rich and stirring content.

*Philanthropy & Taxation* (two volumes), Conrad Teitell, 13 Arcadia Road, Old Greenwich CT 06870, 203.637.4553

*Planned Giving Essentials: A Step-by-Step Guide to Success*, Richard D Barrett & Molly E Ware, 1997, Aspen Publishers, Inc., 7201 McKinney Circle, Frederick, MD 21704, 800.638.8437

*Planned Giving for the One Person Development Office, second edition*, David Schmeling, Deferred Giving Services, 614 South Hale Street, Wheaton IL 60187, 630.632.4301

*Planned Giving Management, Marketing and Law*, Katelyn Quynn & Ron Jordan, John Wiley & Sons, Inc., 605 Third Avenue, New York NY, 800.879.4539

*Planned Giving Simplified*, Robert F Sharpe Sr, John Wiley & Sons, Inc., New York, 210 pages

*Planning for Retirement Distributions: Tax, Financial, and Personal Aspects*, Eric Donner with Victor M Finmann & Terry White, Harcourt Professional Publishing, 2000, 401 pages (with CD ROM containing sample forms & checklists & selected Letter Rulings)

*Practical Guide to Planned Giving*, Taft Group, 12300 Twinbrook Parkway, Suite 520, Rockville MD 20852, 800.877.8238

*Professional Advisor's Guide to Planned Giving*, Kathryn Miree, 2002, Panel Publishers, Frederick, MD, 800.638.8437

*Provide & Protect*, A. Charles Shultz. Crescendo Interactive, Inc., Camarillo, CA, 276 pages. This very readable book contains chapters with a brief quiz at the end of each chapter. The book covers the estate planning process assisting the reader in planning for family and charitable interests. The quizzes are designed to re-direct the reader to the web-based wills planner on [www.giftplanning.com](http://www.giftplanning.com).

*Start at Square One: Starting and Managing the Planned Gift Program*, Lynda S Moerschbaeher, Precept Press, Chicago, 223 pages. [www.lyndam.com](http://www.lyndam.com)

*Stewards in the Kingdom, A theology of Life in All its Fullness*, R. Scott Rodin, Inter-Varsity Press, Downers Grove, IL, 2000

*Tales of Knock Your Socks Off Service: Inspiring Stories of Outstanding Customer Service*, Kristin Anderson & Ron Zemke, Amacom Publishing, 1998, 193 pages

*Tax Economics of Charitable Giving 2006-2007*, Joseph P. Toce, Jr., JD, CPA et al., Wealth and Tax Advisory Services, Inc. of RIA. Extensive appendices and index.

*Testimonies to the Church*, Ellen G White, Volume 3 pp. 117-130, Volume 4 pp. 476-485

*The Art of Planned Giving: Understanding Donors and the Culture of Giving*, Douglas White, John Wiley & Sons, Inc., 362 pages, 605 Third Avenue, New York NY, 800.879.4539

*The Complete Guide to Planned Giving, revised Third Edition*, Debra Ashton, Ashton Associates, 24 Robertson Street, Quincy MA 02169, 617.472.9316, [www.debraashton.com](http://www.debraashton.com), 550 pages

*The Harvard Manual on Tax Aspects of Charitable Giving*, Osteen & Donaldson, Harvard University PG Office, 124 Mt Auburn Street, Cambridge MA 02138, 617.495.4647



*The Makings of a Philanthropic Fundraiser: The Instructive Example of Milton Murray*, Ronald Alan Knott, Jossey-Bass Publishers, 1992, 200 pages

*The Millionaire Next Door*, Thomas J Stanley & William D Stanko, Longstreet Press, Atlanta, 1996, 258 pages

*The Planned Giving Idea Book*, Robert F Sharpe, 6410 Poplar Avenue, Seventh Floor, Memphis TN 38119, 901.680.5300

*The Portable Planned Giving Manual*, Conrad Teitell, 13 Arcadia Road, Old Greenwich CT 06870, 203.637.4553

*The Tax Law of Charitable Giving*, Bruce Hopkins, John Wiley & Sons, Inc., 605 Third Avenue, New York, NY, 800.879.4539

*The Thoughtful Christian's Guide to Investing*, Gary D Moore, Zondervan Press, 1990, 335 pages

*The Wall Street Journal Guide to Understanding Money & Markets*, Wurman, Siegel, Morris, Access Press, 1990, 119 pages

*Wall Street Words: An Essential A to Z Guide for Today's Investor*, David L. Scott, Houghton Mifflin, New York, 433 pages

### **Internet Discussion Groups**

*Canadian Gift-pl* Topics of interest to Canadian gift planners. To subscribe, sent the message "subscribe cdn-gift-pl Your Name" to" listproc@listserv.mcmaster.ca

*Gift-pl* Topics of interest to American gift planners. To subscribe, send the message "subscribe gift-pl Your Name" to: [listserv@iupui.edu](mailto:listserv@iupui.edu)

### **Internet Resources**

*American Council on Gift Annuities:* [www.acga-web.com](http://www.acga-web.com)

*Crescendo Interactive:* [www.crescendointeractive.com](http://www.crescendointeractive.com)

Checkout Gift Law Pro by Crescendo Interactive. Access it on Crescendo Pro software or at <http://www.giftlaw.com/glawpro.jsp?WebID=GL2005-0789>

You can also get to this valuable resource via [www.adra.org](http://www.adra.org) or [www.IIW.org](http://www.IIW.org). Click through to planning giving page, then professional advisors link.

*Gift College:* Online continuing education at a modest cost produced by Crescendo Interactive. Follows Gift Law curriculum. [www.crescendointeractive.com](http://www.crescendointeractive.com)

*Planned Giving Design Center*: [www.pdgc.com](http://www.pdgc.com).

Helps charitable organizations create strategic alliances with legal, tax, and financial services professionals in their communities who have the capacity to influence philanthropy.

*PG Calc*: [www.pgcalc.com](http://www.pgcalc.com)

## **Periodicals**

*Charitable Gift Planning News*, Jerry J McCoy, JD, et al. Editor, JAS Destiny, Inc. Publisher, PO Box 551606, Dallas TX 75355-1606

*Planned Gifts Counselor*, Practical Publishing, LLC publisher, PO Box 970367, Orem UT 84097, 877.742.0499

*Planned Giving Today*, G Roger Schoenhals editor. Mary Ann Liebert, Inc. Publisher. New Rochelle, NY. **800-654-3237**. <http://pgt.liebertpub.com/>

*Taxwise Giving*, Conrad Teitell, Editor, 13 Arcadia Road, Old Greenwich CT 06870, 203.637.4553

*The American Philanthropy Review*, Steven Nill, 30021 Tomas Street, Suite 300, Rancho Santa Margarita, CA 92688, 714.589.5938

*The Chronicle of Philanthropy*, The Chronicle of Higher Education, Inc., 1255 23<sup>rd</sup> Street, North West Washington DC, 800.728.2819

*The Tidd Letter*, Jonathon Tidd, 9 Beaver Brook Road, West Simsbury CT 06092, 203.651.8937

## **Professional Associations**

*American Council on Gift Annuities*, 310 N Alabama, Suite 210, Indianapolis IN 46204-2103, 317.269.6274, [www.acga-web.org](http://www.acga-web.org)

*Association for Healthcare Philanthropy*, 313 Park Avenue, Suite 400, Falls Church VA 22046, 703.532.6243

*C.A.S.E. (Council for the Advancement and Support of Education)*, 11 Dupont Circle NW, Suite 400, Washington DC 20036-1261, 202.328.5900, [www.case.org](http://www.case.org)

*National Society of Fund Raising Executives*, 1101 King Street, Suite 700, Alexandria VA 22314-2967, 703.684.0410

## APPENDIX B

### Disclaimer

The following forms are intended as specimen forms only. These specimen forms are provided as an educational service only and should not be interpreted as being suitable for any organization's purpose. The North American Division or General Conference of Seventh-day Adventists are not engaging in the practice of law or the rendering of tax or legal advice by offering these specimen forms. Neither does the North American Division or General Conference of Seventh-day Adventists represent that these specimen forms are complete or adequate for any particular purpose. Forms used in Planned Giving and Trust Services should be developed and used pursuant to consultation and approval of legal counsel.

### Introduction

Forms are a part of daily living in a Planned Giving and Trust Services department. There are many pieces of information that needs gathering and retaining. Forms assist in that purpose. They also help maintain information in a consistent manner which aids in retrieval and use.

These specimen forms have been used in varying configurations by a variety of organizations. Forms are dynamic in many cases. As time passes, forms change depending on the needed information and intent of the form.

Some forms may have legal consequence. These forms should be developed according to legal counsel guidelines and used with counsel's approval as a protection for the organization.

## **FAMILY INFORMATION FORM**

---

**FILL OUT THIS FORM:** Effective estate planning requires that all relevant information concerning your personal, family and financial situation be assembled. This FAMILY INFORMATION FORM is provided to aid you in organizing that information in a manner which an attorney will find useful in giving you legal advice, specific planning recommendations and in preparing documents for you. If additional space is needed for any part of this form, please include the information on a separate sheet. Thank you.

**CONFIDENTIALITY:** The information you give here and all resulting documents and subsequent dealings will be held in the strictest confidence and released to no one without your specific instructions to do so.

### **I. PERSONAL AND FAMILY INFORMATION**

Today's Date \_\_\_\_\_

**You**  
Full Name \_\_\_\_\_

**Spouse**

Father Full Name \_\_\_\_\_

Mother Full Name \_\_\_\_\_

Mother (maiden) \_\_\_\_\_

Home \_\_\_\_\_  
Address

Seasonal \_\_\_\_\_  
Address

City, State, Zip \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone \_\_\_\_\_

Phone \_\_\_\_\_

City \_\_\_\_\_ Township \_\_\_\_\_ Village \_\_\_\_\_

County \_\_\_\_\_

E-mail \_\_\_\_\_

Fax \_\_\_\_\_

Date of Birth \_\_\_\_\_

Social Security Number \_\_\_\_\_

Prior Will Date(s) \_\_\_\_\_

Church Membership \_\_\_\_\_

U.S. Citizen Yes \_\_\_\_\_ No \_\_\_\_\_

U.S. Citizen Yes \_\_\_\_\_ No \_\_\_\_\_

Living Alone Yes \_\_\_\_\_ No \_\_\_\_\_

Living Alone Yes \_\_\_\_\_ No \_\_\_\_\_

Health \_\_\_\_\_

Occupation/Business \_\_\_\_\_

\_\_\_\_\_

Business Address \_\_\_\_\_  
Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone \_\_\_\_\_

Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Phone \_\_\_\_\_

States of prior residence \_\_\_\_\_

Date moved to State you are presently living in \_\_\_\_\_

Location of personal papers \_\_\_\_\_

Safe Deposit Box? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, name and address of bank \_\_\_\_\_

Funeral Home \_\_\_\_\_ Address \_\_\_\_\_

Cemetery/Plot Number \_\_\_\_\_ City, State \_\_\_\_\_

Do you desire any special instructions to be included in the file regarding burial or cremation, anatomical gifts or extraordinary medical care? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, give details \_\_\_\_\_

**YOUR ADVISORS**

Name

Phone

Accountant \_\_\_\_\_

Broker \_\_\_\_\_

Insurance \_\_\_\_\_

Lawyer \_\_\_\_\_

Pastor \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FAMILY STATUS**

\_\_\_\_ Married \_\_\_\_ Separated \_\_\_\_ Divorced \_\_\_\_ Widowed \_\_\_\_ Single

Present Marriage \_\_\_\_\_  
                                    Wedding Date                                   City/State

Have you had any prior marriages? \_\_\_\_ Yes \_\_\_\_ No. If yes, give name of your former spouse(s) and your marital status to that spouse? \_\_\_\_\_

Date of spouse's death \_\_\_\_\_ Administered by \_\_\_\_ Probate \_\_\_\_ None

County and State of Administration \_\_\_\_\_ Attorney Handling Administration \_\_\_\_\_

If you are unmarried, is a marriage presently planned? \_\_\_\_ Yes \_\_\_\_ No. If yes, date of proposed marriage \_\_\_\_\_

Do you have any children from a prior marriage, or from any prior relationship, including any adopted children? Yes \_\_\_\_ No. If yes, please list at the top of page 3.

**Children from prior marriage/relationships: (Include adopted children)**

<u>Name</u>	<u>Address</u>	<u>Birth Date</u>	<u>Parent</u>

**Living Children from current marriage: (Include stepchildren, adopted or disabled/incapacitated children and identify as such.)**

<u>Name</u>	<u>Address</u>	<u>Birth Date</u>	<u>SDA?</u>	<u>Parents: B / H / W</u>

**Deceased Children:**

Name Birth Date Date of Death

---

---

**Surviving children of your deceased child(ren):** (Include parent's name)

Name Address Birth Date Parent

---

---

---

**Grandchildren:**

Name Address Birth Date Parent

---

---

---

---

Specify any disabilities and special needs or other instructions as to above children or grandchildren.

---

---

---

---

**Other Dependents:** (Include parent, spouses of children, or others you or your spouse believe to be potentially dependent on you.)

Name Address Birth Date Relationship

---

---

---

**Siblings:** (If you or your spouse have no living children or grandchildren, please list below your or your spouse's siblings.)

<u>Name</u>	<u>Address</u>	<u>Relationship</u> (Please specify to you or your spouse.)

**COMMENTS:**

**II. FINANCIAL INFORMATION**

**Estimated Personal Balance Sheet**

Please complete this form by supplying your estimate of the fair market value of the categories of assets and liabilities listed below. If you have a recent personal financial statement, you may include that with this data form and complete only the retirement and insurance information.

<u>Asset</u>	<u>You</u>	<u>Spouse</u>	<u>Jointly Held</u>
Residence (Date of Purchase _____)	\$ _____	\$ _____	\$ _____
Other Real Property (See Schedule)	_____	_____	_____



Bank Accounts and CDs	_____	_____	_____
Securities (See Schedule)	_____	_____	_____
Business Interests	_____	_____	_____
Life Insurance Cash Value	_____	_____	_____
Receivables	_____	_____	_____
IRAs	_____	_____	_____
Retirement Benefits	_____	_____	_____
Automobiles	_____	_____	_____
Boat, Camper Etc.	_____	_____	_____
Household Contents	_____	_____	_____
Household Antiques	_____	_____	_____
Collections:			
Riding Mower and Attachments	_____	_____	_____
Farm Equipment	_____	_____	_____
Livestock	_____	_____	_____
_____	_____	_____	_____
<b>Total Assets</b>	<b>\$</b> _____	<b>\$</b> _____	<b>\$</b> _____

<b><u>Liabilities</u></b>	<b><u>You</u></b>	<b><u>Spouse</u></b>	<b><u>Jointly Held</u></b>
Real Estate Mortgages	_____	_____	_____
Unpaid Taxes: Income & Property	_____	_____	_____
Credit Cards	_____	_____	_____
Auto Loans	_____	_____	_____
Personal Signature Loans	_____	_____	_____
Personal Property Loans	_____	_____	_____
Other Bank Loans	_____	_____	_____
Student Loans	_____	_____	_____
Personal Notes Payable	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
<b>Total Liabilities</b>	<b>\$</b> _____	<b>\$</b> _____	<b>\$</b> _____
<b>Net Worth</b> (Total Assets less Total Liabilities)	<b>\$</b> _____	<b>\$</b> _____	<b>\$</b> _____
Value of Potential Inheritance	\$ _____	\$ _____	
Life Insurance Death Benefit (See Schedule)	\$ _____	\$ _____	
Sub Totals	\$ _____	\$ _____	\$ _____
<b><u>TOTAL POTENTIAL ESTATE, INCLUDING INSURANCE AND</u></b>			
<b><u>VALUE OF POTENTIAL INHERITANCE:</u></b>			<b>\$</b> _____
Accidental Death Insurance	\$ _____	\$ _____	

\_\_\_\_ Values of Assets - Estimates only. The undersigned herewith state that the values assigned to any and all assets appearing on this data form are estimates which have been determined solely and exclusively by the undersigned without the assistance of General Conference Corporation of Seventh-day Adventists, further that the said General Conference Corporation of Seventh-day Adventists or its attorney has not and will not undertake any independent investigation or study to determine the accuracy or inaccuracy of the values assigned to the various assets which are herein above disclosed.

\_\_\_\_ I/we hereby verify that the above information is correct to the best of my/our knowledge.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Field Rep.: \_\_\_\_\_ Date: \_\_\_\_\_

SPECIMEN

**HOLD HARMLESS AND INDEMNITY AGREEMENT**

(Where Trustor requests that Trustee not record the deed)

The undersigned as the Trustor(s) of Trust No. \_\_\_\_\_ and dated \_\_\_\_\_ with the (use the name of your Association/Corporation of Seventh-day Adventists) as Trustee, has transferred real property located at \_\_\_\_\_ as an asset by a Deed dated \_\_\_\_\_.

INASMUCH as this Deed has been transferred and delivered to the Trustee but the Trustee has been requested by the Grantors not to record the Deed in the Public Records,

NOW THEREFORE, the Grantor(s) does specifically waive the necessity of the Trustee recording the Deed of Conveyance, and requests the Trustee to hold the Deed unrecorded until further written notice by the Grantor or until such time as the Trustee, in its sole discretion, deems it advisable to record the Deed. The Grantor(s) does hereby hold harmless the Trustee from any liability whatsoever arising because Trustee retains the Deed unrecorded and further agrees to indemnify the Trustee for any expense or loss the Trustee may incur in connection with the Trustee's failure to record the Deed.

This Hold Harmless and Indemnity Agreement executed this \_\_\_\_ day of \_\_\_\_\_, 20\_

Signed, Sealed and Delivered in the presence of:

\_\_\_\_\_  
Trustor

\_\_\_\_\_  
Trustor

**HOLD HARMLESS AND INDEMNITY AGREEMENT**

**(Where Trustor has no insurance coverage)**

The undersigned as the Trustor(s) of Trust No. \_\_\_\_\_ and dated \_\_\_\_\_ with  
the (use the name of your Conference Corporation of Seventh-day Adventists) as Trustee,  
has(have) transferred real property located  
as an asset by deed dated \_\_\_\_\_.

INASMUCH as the Trustor(s) has chosen not to insure this real estate,

NOW THEREFORE, the Trustor(s) does specifically waive and release the Trustee from  
all liability whatsoever because of the Trustor's(s') decision not to insure the real estate, and does  
hold harmless the Trustee from any liability arising thereto, and further agrees to indemnify the  
Trustee for any expense or loss the Trustee may incur in connection with the Trustor's(s')  
decision not to insure this real estate.

This Hold Harmless and Indemnity Agreement is executed this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

Signed:

\_\_\_\_\_  
Trustor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Trustor

\_\_\_\_\_  
Date

**HOLD HARMLESS AND INDEMNITY AGREEMENT**

**(Where the Trustor has insurance but does not or cannot add Trustee as an Additional Insured)**

The undersigned as the Trustor(s) of Trust No. \_\_\_\_\_ dated \_\_\_\_\_ with the (use the name of your Conference Corporation of Seventh-day Adventists) as Trustee, has (have) transferred real property located \_\_\_\_\_ as an asset by a Deed dated \_\_\_\_\_.

INASMUCH as the Trustee has not been named an additional insured,

NOW THEREFORE, the Trustor(s) does/do specifically waive and release the Trustee from any liability because of the fact that the Trustee is not named additional insured, and does hold harmless the Trustee from any liability arising thereto, and further agrees to defend the Trustee in connection with any legal action in connection with the real estate, and will indemnify the Trustee for any expense or loss the Trustee may incur in connection with the failure of the Trustee to be named as an Additional Insured.

This Hold Harmless and Indemnity Agreement is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signed:

\_\_\_\_\_  
Trustor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Trustor

\_\_\_\_\_  
Date

**STATEMENT OF VALUE - Update for the Year Ending December 31, 20\_\_\_\_\_**

---

The following information is requested each year for the following real estate held in trust by the \_\_\_\_\_ Conference Corporation/Association of Seventh-day Adventists, as trustee:

Indicate to the best of your knowledge the current market value of your property.  
(Please do not combine these figures):

Land:\$\_\_\_\_\_House/Building(s) \$\_\_\_\_\_

Specify the current amount of fire insurance on building(s):\$\_\_\_\_\_

List name of your fire insurance company: \_\_\_\_\_

The fire insurance policy is in effect until \_\_\_\_\_

Currently, the mortgage amount yet owed on this property:\$\_\_\_\_\_

List the name of the mortgage holder: \_\_\_\_\_

The real estate taxes on this property are paid through: \_\_\_\_\_  
(Please send us a copy of your paid tax receipt.)

Trustor \_\_\_\_\_ Date \_\_\_\_\_

Trustor \_\_\_\_\_ Date \_\_\_\_\_

**ASSIGNMENT OF STOCK  
SEPARATE FROM CERTIFICATE**

For value received, \_\_\_\_\_ (name exactly as it appears on certificate)  
does hereby sell, assign, and transfer unto \_\_\_\_\_ (name of Conference Corporation as Trustee  
of Trustor Name Trust) \_\_\_\_\_ (number of shares) \_\_\_\_\_ of the \_\_\_\_\_  
\_\_\_\_\_ (name and address of stock company)

standing in the name of the undersigned name on the books of said Company, represented by  
Certificate No. \_\_\_\_\_, and do hereby irrevocably constitute and appoint \_\_\_\_\_ (transfer  
agent) \_\_\_\_\_ Attorney, to transfer the stock on the books of the Company with full power of  
substitution in the premises.

**IMPORTANT:** The signature(s) to this power must correspond with the name(s) as  
written upon the face of the certificate(s) in every particular without alteration.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Signature)  
Type name as it appears on certificate \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
(Signature)  
Type name as it appears on certificate \_\_\_\_\_ Date \_\_\_\_\_

**Medallion Guarantee Stamp** - We cannot complete the transfer if this stamp is not affixed in the box on the left. The stamp and authorized signature may be obtained from a financial institution that is a member of the Securities Transfer Association Medallion Program, New York Exchange Medallion Program or Stock Exchange Medallion Program.



**ASSIGNMENT OF BOND -  
SEPARATE FROM CERTIFICATE**

---

For value received, \_\_\_\_\_ (name as it appears on certificate)  
hereby sell, assign, and transfer unto \_\_\_\_\_ (name of Conference Corporation as Trustee of  
Trust Name) \_\_\_\_\_ one Bond of the \_\_\_\_\_ (Company name)  
for \_\_\_\_\_ (amount of money passing) \$, No. \_\_\_\_\_,  
standing in the name of the undersigned on the books of said Company, and do hereby  
irrevocably constitute and appoint \_\_\_\_\_ (transfer agent) \_\_\_\_\_ Attorney, to transfer  
the bond on the books of said Company, with full power of substitution in the premises.

**IMPORTANT:** The signature(s) to this power must correspond with the name(s) as  
written upon the face of the certificate(s) in every particular without alteration.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Signature)  
Type name as it appears on certificate

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Signature)  
Type name as it appears on certificate

\_\_\_\_\_  
Date

**Medallion Guarantee Stamp** - We cannot complete the transfer if this stamp is not affixed in the box on the left. The stamp and authorized signature may be obtained from a financial institution that is a member of the Securities Transfer Association Medallion Program, New York Exchange Medallion Program or Stock Exchange Medallion Program.

## ADDITION TO TRUST

The undersigned Trustor desires to add the following asset to the \_\_\_\_\_  
REVOCABLE TRUST, dated \_\_\_\_\_, entered into by the Trustor and the  
General Conference Corporation of Seventh-day Adventists, who acts as Trustee, who accepts  
this asset:

Asset       Contingent \_\_\_\_\_

Asset       Contingent \_\_\_\_\_

Asset       Contingent \_\_\_\_\_

Asset       Contingent \_\_\_\_\_

Asset       Contingent \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Trustor

\_\_\_\_\_  
Trustor

Date \_\_\_\_\_

Your Corporate Name of Seventh-day-  
Adventists, Trustee

By: \_\_\_\_\_

## INVESTMENT DIRECTION

---

The undersigned hereby directs the General Conference Corporation of Seventh-day Adventists, Trustee, of the \_\_\_\_\_ Revocable Trust, dated \_\_\_\_\_ to:

A. Make the following specific investments:

- \_\_\_\_\_ 1. \_\_\_\_\_ in the \_\_\_\_\_ Union Revolving Fund (can be withdrawn by giving \_\_\_\_\_ days written notice).
- \_\_\_\_\_ 2. \_\_\_\_\_ in a Certificate of Deposit with \_\_\_\_\_ Bank for \_\_\_\_\_ months.
- \_\_\_\_\_ 3. \_\_\_\_\_ shares of common stock of \_\_\_\_\_
- \_\_\_\_\_ 4. Assignment of Personal Property
- \_\_\_\_\_ 5. Other: \_\_\_\_\_  
\_\_\_\_\_

B. Process the income of this investment as follows:

- \_\_\_\_\_ 1. Mail check to Trustor quarterly
- \_\_\_\_\_ 2. Reinvest interest in Account \_\_\_\_\_
- \_\_\_\_\_ 3. Other: \_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Trustor Signature

\_\_\_\_\_  
Trustor Signature

Trustee: Your Corporate Name of Seventh-day Adventists

by: \_\_\_\_\_

Date: \_\_\_\_\_

## REVOCATION NOTICE

---

DATE: \_\_\_\_\_

TO: YOUR CONFERENCE CORPORATION / ASSOCIATION  
OF SEVENTH-DAY ADVENTISTS  
STREET  
CITY STATE ZIP

Trust Name: \_\_\_\_\_

Trust Date: \_\_\_\_\_

As Grantor(s) of the above referenced trust Agreement, I(we) hereby revoke the Trust in its entirety and I(we) hereby direct you to transfer and deliver all of the assets held in trust to me(us).

Subject to receipt of the trust assets in satisfactory form, it is acknowledged that the trust is hereby canceled and terminated. It is further acknowledged that the trustee has fully discharged all of its obligations under the trust, and the trustee is hereby released from all liabilities and obligations arising out of or in any manner connected with the trust or affecting the trust estate.

In addition, return to me(us) original documents pertaining to trust assets, pour over will and advance directives held in your custody.

Sincerely yours,

\_\_\_\_\_  
Trustor's Name

\_\_\_\_\_  
Trustor's Name

## WITHDRAWAL FROM TRUST

---

Date: \_\_\_\_\_

The undersigned, being the acting Trustor of the \_\_\_\_\_ Revocable Trust No. \_\_\_\_\_, dated \_\_\_\_\_, entered into by the undersigned Trustor and the \_\_\_\_\_ Conference Corporation of Seventh-day Adventists, who serves as Trustee, requests the withdrawal of the following described Trust asset(s):

Asset(s) \_\_\_\_\_

Asset(s) \_\_\_\_\_

Subject to receipt of the above listed asset in satisfactory form, the undersigned acknowledge that the Trustee is hereby relieved of any further liability or obligation arising out of or in any manner connected with the Trust insofar as the above described asset is concerned.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Trustor

\_\_\_\_\_  
Trustor

**FILE SUMMARY SHEET: Charitable Gift Annuity**

**Donors:** \_\_\_\_\_

Address: \_\_\_\_\_

Telephone numbers Home \_\_\_\_\_ Work \_\_\_\_\_

E-Mail: \_\_\_\_\_

Dates of birth His \_\_\_\_\_ Hers \_\_\_\_\_

Social Security No. His \_\_\_\_\_ Hers \_\_\_\_\_

Dates of death His \_\_\_\_\_ Hers \_\_\_\_\_

**Annuity No.** \_\_\_\_\_ **Date:** \_\_\_\_\_ (Use Annuity Summary Table if multiple annuities)

**Amount:** \_\_\_\_\_ **Frequency:** \_\_\_\_\_ **Payment Amount:** \_\_\_\_\_

**Annuitant:** Donor Donor & Spouse: Donor & another person: Other: \_\_\_\_\_

Name(if other than Donor): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone numbers Home \_\_\_\_\_ Work \_\_\_\_\_

E-Mail: \_\_\_\_\_

Dates of birth His \_\_\_\_\_ Hers \_\_\_\_\_

Social Security No. His \_\_\_\_\_ Hers \_\_\_\_\_

Dates of death His \_\_\_\_\_ Hers \_\_\_\_\_

Payment Method: Check ACH Other \_\_\_\_\_

**Remainder Beneficiary:**

\_\_\_\_\_  
\_\_\_\_\_

**Additional Gift Plans** (See respective file)

CRT \_\_\_\_\_ PLIA \_\_\_\_\_ Revocable Trust \_\_\_\_\_ Other \_\_\_\_\_

TMC Actions & Date:

Comments:

(The following table may be used if one person has multiple contracts)

ANNUITY SUMMARY TABLE

Annuitant	Annuity Date	Number	Original Amount	Rate	Frequency	Payment amount	Payment Method	Beneficiary

SPECIMEN

**FILE SUMMARY SHEET: Trust**

Grantors: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone numbers Home \_\_\_\_\_ Work \_\_\_\_\_

E-Mail: \_\_\_\_\_

Dates of birth His \_\_\_\_\_ Hers \_\_\_\_\_

Social Security No. His \_\_\_\_\_ Hers \_\_\_\_\_

Dates of death His \_\_\_\_\_ Hers \_\_\_\_\_

Trust No. \_\_\_\_\_ Date: \_\_\_\_\_ TIN/EIN: \_\_\_\_\_

Amendments dated: \_\_\_\_\_

Trustee: Self\_GC Corp\_Other: \_\_\_\_\_ Distribution Summary \_\_\_\_\_

\_\_\_\_\_

Type: Rev \_\_\_\_\_ Irrev \_\_\_\_\_ CRT \_\_\_\_\_

Income Beneficiary: Grantor \_\_\_\_\_ Other \_\_\_\_\_ None after Grantor \_\_\_\_\_

If Other: Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Date of Birth: \_\_\_\_\_ SSN \_\_\_\_\_

Trust Assets: Real Estate \_\_\_\_\_ No. Parcels \_\_\_\_\_ Mortgage \_\_\_\_\_ Rental \_\_\_\_\_

Recorded \_\_\_\_\_ HH No Record \_\_\_\_\_ Ins \_\_\_\_\_ HH No Add'l Ins \_\_\_\_\_

Securities \_\_\_\_\_ CURF \_\_\_\_\_ Other \_\_\_\_\_

Contingent \_\_\_\_\_

Wills dated: \_\_\_\_\_ Codicils dated: \_\_\_\_\_

Personal Rep \_\_\_\_\_

Pour over Will \_\_\_\_\_ Simple Will \_\_\_\_\_ Testamentary Trust \_\_\_\_\_ Guardian \_\_\_\_\_

Distribution Summary \_\_\_\_\_

**Advanced Directives:**

His DPOA \_\_\_\_\_ Date \_\_\_\_\_ Agent \_\_\_\_\_

POA-HC \_\_\_\_\_ Date \_\_\_\_\_ Agent \_\_\_\_\_ Living Will \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_

HIPAA \_\_\_\_\_ Date \_\_\_\_\_ Agent \_\_\_\_\_



Hers DPOA \_\_\_\_\_ Date \_\_\_\_\_ Agent \_\_\_\_\_

POA-HC \_\_\_\_\_ Date \_\_\_\_\_ Agent \_\_\_\_\_

Living Will \_\_\_\_\_ Date \_\_\_\_\_

HIPAA \_\_\_\_\_ Date \_\_\_\_\_ Agent \_\_\_\_\_

Other \_\_\_\_\_

**Additional Gift Plans** (See respective file)

CRT \_\_\_\_\_ Gift Annuity \_\_\_\_\_ Life Income Agreement \_\_\_\_\_ Other \_\_\_\_\_

**Annual Actions Needed**

**TMC Actions & Date:**

File Review \_\_\_\_\_

Real Estate Info Update \_\_\_\_\_

HIPAA Update \_\_\_\_\_

Securities Inspection \_\_\_\_\_

Comments:

SPECIMEN

**FILE SUMMARY SHEET: Will**

Testators: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone numbers Home \_\_\_\_\_ Work \_\_\_\_\_

E-Mail: \_\_\_\_\_

Dates of birth His \_\_\_\_\_ Hers \_\_\_\_\_

Social Security No. His \_\_\_\_\_ Hers \_\_\_\_\_

Dates of death His \_\_\_\_\_ Hers \_\_\_\_\_

Wills dated: \_\_\_\_\_ Codicils dated: \_\_\_\_\_

Personal Rep \_\_\_\_\_

Pour over Will \_\_\_\_\_ Simple Will \_\_\_\_\_ Testamentary Trust \_\_\_\_\_ Guardian \_\_\_\_\_

Distribution Summary \_\_\_\_\_

Guardian Information: Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone numbers Home \_\_\_\_\_ Work \_\_\_\_\_

E-Mail: \_\_\_\_\_

Testamentary Trust: Type: Simple \_\_\_\_\_ CRT \_\_\_\_\_

Trustee: GC Corp \_\_\_\_\_ Other: \_\_\_\_\_

Distribution Summary \_\_\_\_\_

**Income Beneficiary:**

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Date of Birth: \_\_\_\_\_ SSN \_\_\_\_\_

**Advanced Directives:**

His DPOA \_\_\_\_\_ Date \_\_\_\_\_ Agent \_\_\_\_\_

POA-HC \_\_\_\_\_ Date \_\_\_\_\_ Agent \_\_\_\_\_ Living Will \_\_\_\_\_ Date \_\_\_\_\_

HIPAA \_\_\_\_\_ Date \_\_\_\_\_ Agent \_\_\_\_\_

Hers DPOA \_\_\_\_\_ Date \_\_\_\_\_ Agent \_\_\_\_\_

POA-HC \_\_\_\_\_ Date \_\_\_\_\_ Agent \_\_\_\_\_

Living Will \_\_\_\_\_ Date \_\_\_\_\_

HIPAA \_\_\_\_\_ Date \_\_\_\_\_ Agent \_\_\_\_\_

Other \_\_\_\_\_

Additional Gift Plans (See respective file)

CRT \_\_\_\_\_ Gift Annuity \_\_\_\_\_ Life Income Agreement \_\_\_\_\_ Other \_\_\_\_\_

Annual Actions Needed

TMC Actions & Date:

File Review \_\_\_\_\_

Real Estate Info Update \_\_\_\_\_

HIPAA Update \_\_\_\_\_

Securities Inspection \_\_\_\_\_

Comments:

SPECIMEN

**RESIDENTIAL ENVIRONMENTAL QUESTIONNAIRE**

---

Owner's name(s) \_\_\_\_\_

Property address \_\_\_\_\_

---

1. Type of structure (brick, frame, etc.) \_\_\_\_\_

Evidence of asbestos?

\_\_\_\_\_siding \_\_\_\_\_insulation \_\_\_\_\_pipe wrap

Evidence of underground storage tanks? \_\_\_\_\_yes \_\_\_\_\_no

Other evidence of contamination or hazardous substances?

\_\_\_\_\_yes \_\_\_\_\_no

If any question is yes, please describe:

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2. If the property is rural, please describe current use (other than residential):

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3. When did you acquire the property?

Bought land and building(s) in \_\_\_\_\_(year).

Bought land in \_\_\_\_\_(year) and added building(s) in \_\_\_\_\_(year).

4. Please provide the following information regarding the former owner of land and building(s):

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

5. Describe all prior uses of the building(s) and land of which you have a knowledge (e.g., agricultural land), and the approximate dates of such uses:

---

---

6. Do you have any reason to believe that asbestos was in the past, or currently is present, in any form, in, on, or about the property?

\_\_\_\_\_yes \_\_\_\_\_no

7. Do you have any reason to believe that the property, including the land and any existing or prior buildings, was at any time in the past or currently, contaminated by any hazardous substances as defined in item #12 below?

\_\_\_\_\_yes \_\_\_\_\_no

If yes, please explain: \_\_\_\_\_

---

8. The following are situations that pose a higher risk of contamination. Check if any are present on the site or in the subject building(s):

\_\_\_\_\_Drums or other containers stored on site

\_\_\_\_\_Stored batteries

\_\_\_\_\_Stored electrical transformers

\_\_\_\_\_Above-ground tanks

\_\_\_\_\_Liquid or solid waste disposal area

\_\_\_\_\_Septic system

\_\_\_\_\_Lead paint

\_\_\_\_\_Urea formaldehyde foam insulation

Explain in detail and give exact location of items checked.

---

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9. Do any current occupants, or did any prior occupants of the property, use, handle, or store any hazardous substances? yes no

If yes, explain:

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---

10. Are there now, or have there been any underground tanks or pipelines (other than water, sewer, and natural gas utility lines) on the property?  
yes no

If yes, please explain:

---

---

---

11. Please list the name of adjoining landowners. If any, adjoining land is other than residential, list the natures of the use of such adjoining land including the name(s) of any businesses operated thereon which border the property on all sides:

East: 

---

West: 

---

North: 

---

South: 

---

---

12. To the best of your knowledge, if there are adjoining businesses, have any of these adjoining businesses or landowners been involved in any matter described in questions 6 through 10? \_\_\_\_\_yes \_\_\_\_\_no

As used herein, the term "hazardous substances" includes any substance, waste, or material defined or designated as hazardous, toxic, or dangerous (or any similar term) by any federal, state, or local statute, regulation, rule, or ordinance now or hereafter in effect.

As owners of that real property which is the subject of this questionnaire, I/we are familiar with the property and the uses and operations presently conducted on the property, and I/we represent and certify for the benefit of the \_\_\_\_\_ Corporation of Seventh-day Adventists, that to the best of my/our knowledge:

1. The property and all operations thereon comply with applicable environmental laws, regulations, and court or administrative orders;
2. There are no pending or threatened private or governmental claims, or judicial or administrative actions relating to environmental impairment on the property.
3. There are no areas on the property where hazardous or toxic substances have either been released, disposed of, or found, other than those that are disclosed in this questionnaire or in the reports attached hereto; and
4. Reports and Permits attached hereto are true and correct copies. I/We have no knowledge that any of the information in the Reports or Permits is false or misleading in any respect.

\_\_\_\_\_  
Owner

Date \_\_\_\_\_

\_\_\_\_\_  
Owner

Date \_\_\_\_\_

## **RESIDENTIAL ENVIRONMENTAL INSPECTION CHECKLIST**

---

Inspected by \_\_\_\_\_

Owner's name(s) \_\_\_\_\_

Property address: \_\_\_\_\_

---

This property is \_\_\_\_\_ rural or \_\_\_\_\_ urban (within incorporated city limits).

1. An on-site inspection revealed the following:

- |                                                                                                                                   |          |         |
|-----------------------------------------------------------------------------------------------------------------------------------|----------|---------|
| Evidence of asbestos (sprayed on fireproofing, pipe wrap, friable ceiling tiles, acoustical plaster, siding, roofing, insulation) | _____yes | _____no |
| Discolored soil or pavement areas                                                                                                 | _____yes | _____no |
| Recently disturbed soil areas                                                                                                     | _____yes | _____no |
| Areas of sparse, sick, or dead vegetation                                                                                         | _____yes | _____no |
| Discolored standing water                                                                                                         | _____yes | _____no |
| Ponds, lagoons, or unidentified pits and depressions                                                                              | _____yes | _____no |
| Maintenance areas (shops and/or auto/truck operations)                                                                            | _____yes | _____no |
| Proximity of property to dump/landfill, known hazardous waste sites, or high-risk industries                                      | _____yes | _____no |
| Unusual or noxious odors                                                                                                          | _____yes | _____no |
| Groundwater monitoring wells or other wells                                                                                       | _____yes | _____no |
| Roads or tire tracks with no apparent destination                                                                                 | _____yes | _____no |
| Drums or storage tanks (specify type) _____                                                                                       | _____yes | _____no |
| Evidence of PCBs (electrical transformers, capacitors)                                                                            | _____yes | _____no |
| Septic system                                                                                                                     | _____yes | _____no |



- Liquid or solid waste disposal area \_\_\_\_\_yes \_\_\_\_\_no
- Evidence of petroleum or oil products \_\_\_\_\_yes \_\_\_\_\_no
- Evidence of chemical spills or leaks (floor stains, discolored paint)\_\_\_\_\_yes \_\_\_\_\_no
- Source of air emission (paint booths/smoke stacks/chimneys) \_\_\_\_\_yes \_\_\_\_\_no
- Above-ground or underground storage tanks, vent, or filler pipes \_\_\_\_\_yes \_\_\_\_\_no
- Piles of waste or trash or unidentified mounds \_\_\_\_\_yes \_\_\_\_\_no

If any of the above items are marked yes, explain details and exact location:

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2. Note any information that could be helpful for further investigations, such as names of people you spoke with at the site, exact locations of suspect contamination, etc.

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3. Please note any other observations you have regarding past, current, or possible future contamination.

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4. All adjacent properties should be viewed. If any evidence of hazardous waste was discovered, please describe. (Attach a plat showing (a) adjacent properties and (b) all commercial activities within a one-mile radius.)

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5. I viewed all of the site, including yard areas, vacant land, etc.  yes  no

If no, list areas not seen.

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### Evaluation

Based on the evaluation of known environmental factors, there is no evidence of environmental contamination on this or neighboring properties, and no further action is recommended.

Based on the evaluation of known environmental factors, there is evidence of possible environmental contamination on this or neighboring properties, and further investigation is recommended.

Reported by

---

Type name and title

---

Signature

Date

Reviewed by

---

Name of legal counsel

---

Signature of legal counsel

Date

**ACREAGE ENVIRONMENTAL QUESTIONNAIRE**

---

Owner's name(s) \_\_\_\_\_

Property address: \_\_\_\_\_

\_\_\_\_\_

As used herein, the term "hazardous substances" includes any substance, waste, or material Defined or designated as hazardous, toxic, or dangerous (or any similar term) by any federal, state, or local statute, regulation, rule, or ordinance now or hereafter in effect.

1. If there are any improvements on property:

Check type of structure: \_\_\_\_\_ brick \_\_\_\_\_ frame \_\_\_\_\_ other

Use: \_\_\_\_\_

Evidence of asbestos?

\_\_\_\_\_ Siding \_\_\_\_\_ insulation \_\_\_\_\_ pipe wrap \_\_\_\_\_ yes \_\_\_\_\_ no

Evidence of underground storage tanks? \_\_\_\_\_ yes \_\_\_\_\_ no Other

evidence of contamination or hazardous substances? \_\_\_\_\_ yes \_\_\_\_\_ no If any

question is yes, please describe:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. If the property is agricultural or unimproved land, please describe the current use :

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. When did you acquire the property?

Bought land and building(s) in \_\_\_\_\_(year).

Bought land in \_\_\_\_\_(year) and added building(s) in \_\_\_\_\_(year).

4. Please provide the following information regarding the former owner of land and building(s):

Former owner's name(s) \_\_\_\_\_

Address: \_\_\_\_\_

5. Describe all prior uses of the building(s) and land of which you have a knowledge (e.g., agricultural land), and the approximate dates of such uses:

\_\_\_\_\_  
\_\_\_\_\_

6. Do you have any reason to believe that asbestos was in the past, or currently is present, in any form, in, on, or about the property? \_\_\_\_\_yes \_\_\_\_\_no

7. Do you have any reason to believe that the property, including the land and any existing or prior buildings, was at any time in the past or currently, contaminated by any hazardous substances as defined above? \_\_\_\_\_yes \_\_\_\_\_no

If yes, please explain:

\_\_\_\_\_  
\_\_\_\_\_

8. The following are situations that pose a higher risk of contamination. Check if any are present on the site or in the subject building(s):

\_\_\_\_\_ Drums or other containers stored on site

\_\_\_\_\_ Stored batteries

\_\_\_\_\_ Stored electrical transformers

\_\_\_\_\_ Above-ground tanks

\_\_\_\_\_ Other liquid or solid waste disposal area

\_\_\_\_\_ Septic system

\_\_\_\_ Lead paint

\_\_\_\_ Urea formaldehyde foam insulation

Explain in detail and give exact location of items checked.

---

---

---

Do any current occupants, or did any prior occupants of the property, use, handle, or store any hazardous substances?      \_\_\_\_yes      \_\_\_\_no

If yes, please explain:

---

---

---

Are there now, or have there been any underground tanks or pipelines (other than water, sewer, and natural gas utility lines) on the property?      \_\_\_\_yes      \_\_\_\_no

If yes, explain:

---

---

Please list the names of adjoining landowners and the name(s) of any businesses operated thereon which border the property on all sides:

East: \_\_\_\_\_

West \_\_\_\_\_

North \_\_\_\_\_

South \_\_\_\_\_

---

9. Are there now or have there ever been oil or any gas operations on this property?  
(Includes oil wells, gas wells, water injection wells, storage facilities, pipelines, refineries, etc.)

\_\_\_\_\_yes \_\_\_\_\_no

If yes, describe:

---

---

10. To the best of your knowledge, if there are adjoining businesses, have any of these adjoining businesses or landowners been involved in any matter described in questions 6 through 9?

\_\_\_\_\_yes \_\_\_\_\_no

11. Have you had the water tested within the last five years? \_\_\_\_\_yes \_\_\_\_\_no

By whom? \_\_\_\_\_

Results? \_\_\_\_\_

12. Have you had the soil tested within the last five years? \_\_\_\_\_yes \_\_\_\_\_no

By whom? \_\_\_\_\_

Results? \_\_\_\_\_

13. Does any portion of this property lie within a 100-year flood plain? \_\_\_\_\_yes \_\_\_\_\_no

14. Are there any streams that cross the property? \_\_\_\_\_yes \_\_\_\_\_no

15. Are there areas of the property which are subject to unregulated trash dumping, and/or does trash wash across the property during heavy rains or flooding? \_\_\_\_\_yes \_\_\_\_\_no

16. Are there any wells on the property? \_\_\_\_\_yes \_\_\_\_\_no

17. Have you ever sprayed crops on this land?

When? \_\_\_\_\_

Product used? \_\_\_\_\_

18. If this property is or has been a landfill, are all permits current? \_\_\_\_\_yes \_\_\_\_\_no

If yes, record here permit numbers and attach copies of permits:

---

19. What kinds of records were kept of landfill dumping?

---

---

20. Have hazardous or toxic materials ever been dumped under permit?  yes  no

If yes, attach copies of permit(s).

21. What kind of fence surrounds the landfill? \_\_\_\_\_

What kind of security is in place? \_\_\_\_\_

22. Does any off-site drainage cross the property?  yes  no

If yes, what is the source? \_\_\_\_\_

23. Are there any fire hazards on the site?  yes  no

24. Are you aware of any reports, surveys, investigations, or test results (see the Reports) for this property?  yes  no

25. For each occupant of the property (owner and/or tenant(s)), attach copies of all applicable permits which are required for the operation of the occupant's business or use of the property.

### Owners Certification

As owners of that real property which is the subject of this questionnaire, I/we are familiar with the property and the uses and operations presently conducted on the property, and I/we represent and certify for the benefit of the \_\_\_\_\_ Corporation/Association of Seventh-day Adventists, that to the best of my/our knowledge:

1. The property and all operations thereon comply with applicable environmental laws, regulations, and court or administrative orders;
2. There are no pending or threatened private or governmental claims, or judicial or administrative actions relating to environmental impairment on the property.
3. There are no areas on the property where hazardous or toxic substances have either been released, disposed of, or found, other than those that are disclosed in this questionnaire or in the reports attached hereto; and
4. Reports and Permits attached hereto are true and correct copies. I/We have no knowledge that any of the information in the reports or permits is false or misleading in any respect.

\_\_\_\_\_  
Owner signature

Date \_\_\_\_\_

\_\_\_\_\_  
Owner signature

Date \_\_\_\_\_

SPECIMEN



# ACREAGE ENVIRONMENTAL INSPECTION CHECKLIST

Inspected by \_\_\_\_\_

Owner's name(s) \_\_\_\_\_

Property address/description: \_\_\_\_\_

This property is \_\_\_\_\_ farm \_\_\_\_\_ ranch \_\_\_\_\_ dump site \_\_\_\_\_ landfill \_\_\_\_\_ other

1. An on-site inspection revealed the following:

Evidence of asbestos (sprayed on fireproofing, pipe wrap, friable ceiling tiles, acoustical plaster, siding, roofing, insulation) \_\_\_\_\_ yes \_\_\_\_\_ no

Discolored soil or pavement areas \_\_\_\_\_ yes \_\_\_\_\_ no

Recently disturbed soil areas \_\_\_\_\_ yes \_\_\_\_\_ no

Areas of sparse, sick, or dead vegetation \_\_\_\_\_ yes \_\_\_\_\_ no

Discolored standing water \_\_\_\_\_ yes \_\_\_\_\_ no

Ponds, lagoons, or unidentified pits and depressions \_\_\_\_\_ yes \_\_\_\_\_ no Maintenance

areas (shops and/or auto/truck operations) \_\_\_\_\_ yes \_\_\_\_\_ no

Proximity of property to dump/landfill, known hazardous waste sites, or high-risk industries \_\_\_\_\_ yes \_\_\_\_\_ no

Unusual or noxious odors \_\_\_\_\_ yes \_\_\_\_\_ no

Groundwater monitoring wells or other wells \_\_\_\_\_ yes \_\_\_\_\_ no

Roads or tire tracks with no apparent destination \_\_\_\_\_ yes \_\_\_\_\_ no Drums or

storage tanks (specify type) \_\_\_\_\_ yes \_\_\_\_\_ no Evidence of

PCBs (electrical transformers, capacitors) \_\_\_\_\_ yes \_\_\_\_\_ no

Septic system \_\_\_\_\_ yes \_\_\_\_\_ no

Liquid or solid waste disposal area \_\_\_\_\_ yes \_\_\_\_\_ no

Evidence of petroleum or oil products yes no

Evidence of chemical spills or leaks (floor stains, discolored paint) yes no

Source of air emission (paint booths/smoke stacks/chimneys) yes no

Above-ground or underground storage tanks, vent, or filler pipes yes no

Piles of waste or trash or unidentified mounds yes no

If any of the above items are marked yes, explain details and exact location:

---

---

2. Note any information that could be helpful for further investigations, such as names of people you spoke with at the site, exact locations of suspect contamination, etc.

---

---

3. Please note any other observations you have regarding past, current, or possible future contamination.

---

---

4. All adjacent properties should be viewed. If any evidence of hazardous waste was discovered, please describe. (Attach a plat showing (a) adjacent properties and (b) all commercial activities within a one-mile radius.)

---

---

5. I viewed all of the site, including yard areas, vacant land, etc. yes no

If no, list areas not seen.

---

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**Evaluation**

\_\_\_\_ Based on the evaluation of known environmental factors, there is no evidence of environmental contamination on this or neighboring properties, and no further action is recommended.

\_\_\_\_ Based on the evaluation of known environmental factors, there is evidence of possible environmental contamination on this or neighboring properties, and further investigation is recommended.

Reported by: \_\_\_\_\_

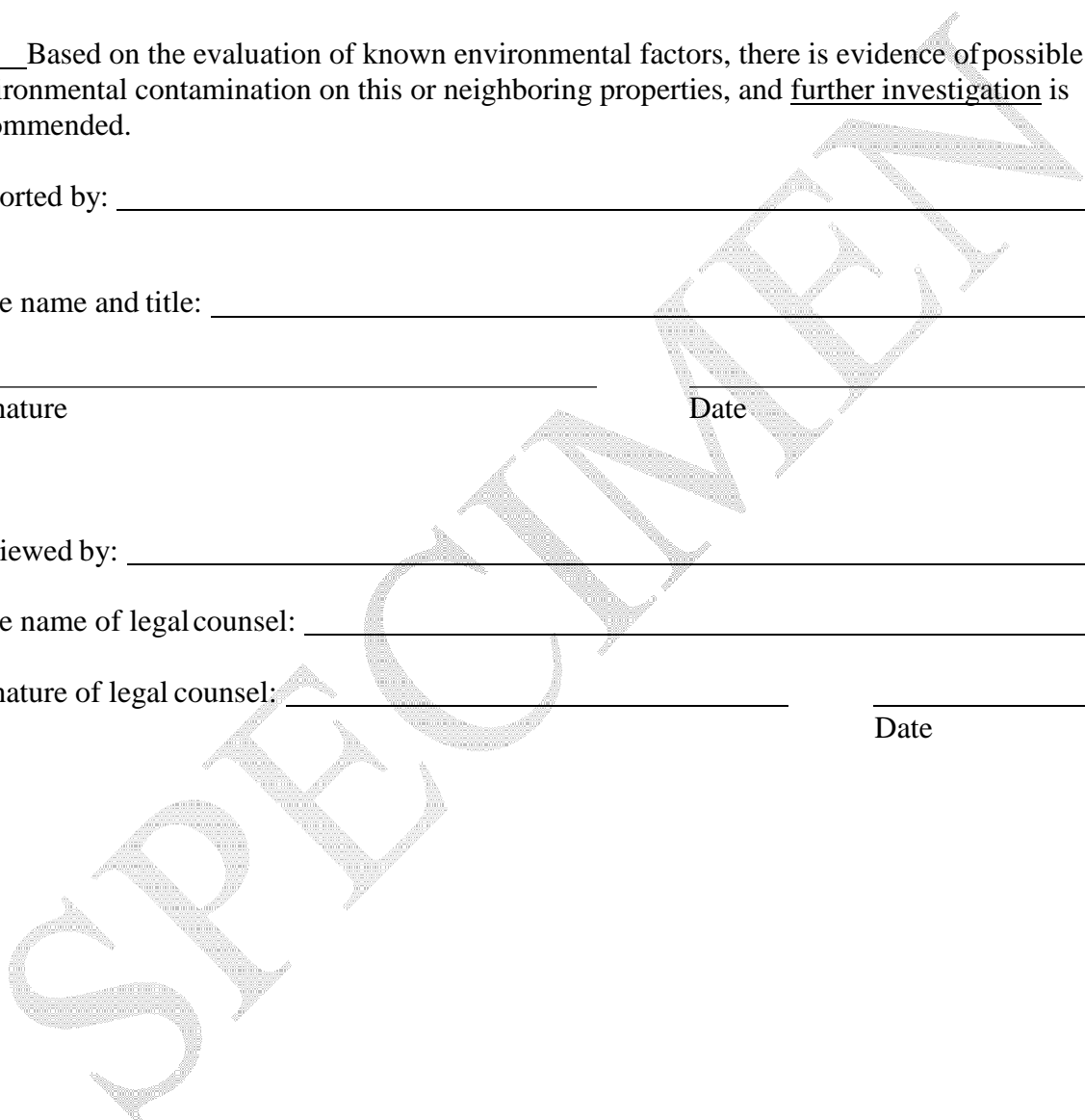
Type name and title: \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by: \_\_\_\_\_

Type name of legal counsel: \_\_\_\_\_

Signature of legal counsel: \_\_\_\_\_ Date \_\_\_\_\_



## **COMMERCIAL/INDUSTRIAL ENVIRONMENTAL QUESTIONNAIRE**

---

Owner's name(s) \_\_\_\_\_

Property address: \_\_\_\_\_

\_\_\_\_\_

As used herein, the term "hazardous substances" includes any substance, waste, or material defined or designated as hazardous, toxic, or dangerous (or any similar term) by any federal, state, or local statute, regulation, rule, or ordinance now or hereafter in effect.

1. Type of business: \_\_\_\_\_

2. Products or services manufactured/sold: \_\_\_\_\_

\_\_\_\_\_

3. When did you acquire the property? \_\_\_\_\_

a. Bought land and building(s) in \_\_\_\_\_ (year).

b. Bought land in \_\_\_\_\_ (year) and added building(s) in \_\_\_\_\_ (year).

c. Leased building in \_\_\_\_\_ (year).

4. Please provide the following information:

a. Name of former owner of land and building(s): \_\_\_\_\_

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

b. Building architect

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

c. Geotechnical (soils) Engineer

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

5. Describe all prior uses of the building(s) and land of which you have a knowledge (e.g., agricultural land, building occupied by an auto parts distributor, multi-tenant industrial occupancy, etc.), and the approximate dates of such uses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Do you have any reason to believe that asbestos was in the past, or currently is present, in any form, in, on, or about the property? \_\_\_\_\_yes \_\_\_\_\_no

7. Do you have any reason to believe that the property, including the land and any existing or prior buildings, was at any time in the past or currently, contaminated by any hazardous substances as defined above? \_\_\_\_\_yes \_\_\_\_\_no

If yes, please explain:

\_\_\_\_\_  
\_\_\_\_\_

8. The following are situations that pose a higher risk of contamination. Check if any are present on the site or in the subject building(s):

\_\_\_\_ Drums or other containers stored on site

\_\_\_\_ Stored batteries

\_\_\_\_ Stored electrical transformers

\_\_\_\_ Above-ground tanks

\_\_\_\_ Other liquid or solid waste disposal area

\_\_\_\_ Septic system

\_\_\_\_ Lead paint

\_\_\_\_ Urea formaldehyde foam insulation

If any of these items are checked, explain in detail and give exact location.

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9. Do any current occupants, or did any prior occupants of the property, use, handle, or store any hazardous substances? \_\_\_\_\_yes \_\_\_\_\_no

If yes, explain:

---

---

10. The following types of activities may generate hazardous waste or materials. Check if any are present in the property:

- |                                   |                                     |
|-----------------------------------|-------------------------------------|
| ____ service/gas station          | ____ building cleaning/maintenance  |
| ____ chemical manufacturing       | ____ furniture/wood refinishing     |
| ____ dry cleaners                 | ____ laboratories                   |
| ____ metal manufacturing          | ____ paint shop manufacturing       |
| ____ wood preserving              | ____ vehicle maintenance automotive |
| ____ other (please explain) _____ |                                     |

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11. Are there now, or have there been any underground tanks or pipelines (other than water, sewer, and natural gas utility lines) on the property? \_\_\_\_\_yes \_\_\_\_\_no

If yes, please explain:

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Provide evidence of permits:

---

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12. List all occupants of the property (owner(s) and/or tenant(s)), nature of business and the products produced in each business on the property:

Name(s) of Occupant(s)	Nature of Business	Products Produced

13. For each occupant listed above, attach copies of all applicable permits which are required for the operation of the occupant’s business on this property.

14. Please list the name(s) of adjoining landowners and the name(s) of and natures of businesses operated thereon which border the property on all sides:

East: \_\_\_\_\_

West \_\_\_\_\_

North \_\_\_\_\_

South \_\_\_\_\_

15. To the best of your knowledge, have any of these adjoining businesses or landowners been involved in any matter described in questions 5 through 11?     yes     no

16. Are there now or have there ever been oil or any gas operations on this property? (Includes oil wells, gas wells, water injection wells, storage facilities, pipelines, refineries, etc.)  
 yes     no

If yes, describe:

---

---

17. Are you aware of any reports, surveys, investigations, or test results (see the Reports) for this property?  yes  no

Name of report	Prepared by	Date

SPECIMEN



Owners Certification

As owners of that real property which is the subject of this questionnaire, I/we are familiar with the property and the uses and operations presently conducted on the property, and I/we represent and certify for the benefit of the \_\_\_\_\_ Corporation/Association of Seventh-day Adventists, that to the best of my/our knowledge:

1. The property and all operations thereon comply with applicable environmental laws, regulations, and court or administrative orders;
2. There are no pending or threatened private or governmental claims, or judicial or administrative actions relating to environmental impairment on the property.
3. There are no areas on the property where hazardous or toxic substances have either been released, disposed of, or found, other than those that are disclosed in this questionnaire or in the reports attached hereto; and
4. Reports and Permits attached hereto are true and correct copies. I/We have no knowledge that any of the information in the reports or permits is false or misleading in any respect.

Owner signature \_\_\_\_\_

Date \_\_\_\_\_

Owner signature \_\_\_\_\_

Date \_\_\_\_\_

**COMMERCIAL/INDUSTRIAL ENVIRONMENTAL INSPECTION CHECKLIST**

Inspected by \_\_\_\_\_

Owner's name(s) \_\_\_\_\_

Property address/description: \_\_\_\_\_

This property is

\_\_\_\_ rural

\_\_\_\_ urban (within incorporated city limits)

\_\_\_\_ zoned "commercial"

\_\_\_\_ zoned "industrial"

\_\_\_\_ has no improvements

\_\_\_\_ developed

Describe the extent of development:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Type of business: \_\_\_\_\_

Describe structure(s): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Briefly describe the business activity: \_\_\_\_\_

\_\_\_\_\_

1. An on-site inspection revealed the following:

Evidence of asbestos (sprayed on fireproofing, pipe wrap, friable ceiling tiles, acoustical plaster, siding, roofing, insulation) yes no

Discolored soil or pavement areas yes no

Recently disturbed soil areas yes no

Areas of sparse, sick, or dead vegetation yes no

Discolored standing water yes no

Ponds, lagoons, or unidentified pits and depressions yes no

Maintenance areas (shops and/or auto/truck operations) yes no

Proximity of property to dump/landfill, known hazardous waste sites, or high-risk industries yes no

Unusual or noxious odors yes no

Groundwater monitoring wells or other wells yes no

Roads or tire tracks with no apparent destination yes no Drums or storage tanks (specify type) yes no Evidence of PCBs (electrical transformers, capacitors) yes no

Septic system yes no

Liquid or solid waste disposal area yes no

Evidence of petroleum or oil products yes no Evidence of chemical spills or leaks (floor stains, discolored paint) yes no Source of air emission (paint booths/smoke stacks/chimneys) yes no Above-ground or underground storage tanks, vent, or filler pipes yes no Piles of waste or trash or unidentified mounds yes no

If any of the above items are marked yes, explain details and exact location:

---

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---

---

2. The following types of activities may generate hazardous substances. Check if any are present in, on or at the property.

- |                                                        |                                                         |
|--------------------------------------------------------|---------------------------------------------------------|
| <input type="checkbox"/> service/gas station           | <input type="checkbox"/> metal manufacturing            |
| <input type="checkbox"/> building cleaning/maintenance | <input type="checkbox"/> paint shop manufacturing       |
| <input type="checkbox"/> chemical manufacturing        | <input type="checkbox"/> wood preserving                |
| <input type="checkbox"/> furniture/wood refinishing    | <input type="checkbox"/> vehicle maintenance automotive |
| <input type="checkbox"/> dry cleaners                  | <input type="checkbox"/> other (please explain)         |
| <input type="checkbox"/> laboratories                  |                                                         |

a. List all products manufactured/created, services sold:

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b. List all waste products:

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c. Explain how waste products are disposed

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---

3. Note any information that could be helpful for further investigation, such as names of people you spoke with at the site, the exact locations of suspect contamination, etc.

---

---

---

---

4. Please note any other observations you have regarding past, current, or possible future contamination.

---

---

5. All adjacent properties should be viewed. If any evidence of hazardous waste was discovered, please describe. (Attach a plat showing (a) adjacent properties and (b) all commercial activities within a one-mile radius.)

---

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---

---

6. List any tenants and the nature of their business

Name(s) of Occupant(s)	Nature of Business	Products Produced

b. I viewed all tenant spaces  yes  no

List any tenant spaces not seen (list tenant's name and suite number)

---

---

c. I viewed all of the site, including yard areas, vacant land, etc.  yes  no

List areas not seen.

---

---

6. Interviewed fire department?  yes  no

If yes, please relate results

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7. Interviewed health department?  yes  no

If yes, please relate results

---

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8. Are aerial photos available?  yes  no

If yes, what is the date of the photos? \_\_\_\_\_

Have the photos been reviewed? \_\_\_\_\_

9. Does the current occupant have any permits from

State Water Control?

State Air Control?

EPA?

If any, attach copies:

10. How is waste water handled?

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11. Are any chemicals stored on site?  yes  no

If yes, list chemicals and how stored.

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12. Is property listed on the National Priorities ("Superfund") List?  yes  no

If yes, attach any applicable documentation.

### Evaluation

Based on the evaluation of known environmental factors, there is no evidence of environmental contamination on this or neighboring properties, and no further action is recommended.

Based on the evaluation of known environmental factors, there is evidence of possible environmental contamination on this or neighboring properties, and further investigation is recommended.

Reported by: \_\_\_\_\_

Type name and title: \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by: \_\_\_\_\_

Type name of legal counsel: \_\_\_\_\_

Signature of legal counsel: \_\_\_\_\_ Date \_\_\_\_\_

## File Folder Organization

**General Conventions:** Chronological order with oldest on bottom, Checklist on top of document/procedure it references, Separate different types of documents/forms with divider sheets/cards (label card on bottom); in order to facilitate reading of labels (if multiple dividers on a page) trim divider sheets/cards in 1 inch increments

### File Folder Name Label

Name (all caps) top left corner of label

Type of document (Trust No. 123, Estate, Annuity etc.) in lower right corner

### Trust Document Folder

Blue, 2 partitions

<p style="text-align: center;"><b>Page 1</b></p> <p style="text-align: center;"><b>Label = COMMUNICATION</b></p> <p>Documents starting from the bottom: original request/ initial contact; then chronologically, not by type; letters, phone notes, memos, FAXes, visitation records, etc.</p>	<p style="text-align: center;"><b>Page 2</b></p> <p style="text-align: center;"><b>Label = TRUST DOCUMENTS</b></p> <p>Documents starting from the bottom: Trust; Amendments; Death Certificate of Grantor (on top of whichever is the current document at the time of death); Trust/Amendment Checklist; File Summary</p>
<p style="text-align: center;"><b>Page 3</b></p> <p style="text-align: center;"><b>Label: SUPPORTING DOCUMENTS</b></p> <p>Disclosures, Committee Actions, Add/Withdraw Forms, Distribution receipts &amp; checklist</p>	<p style="text-align: center;"><b>Page 4</b></p> <p style="text-align: center;"><b>Label = WILL &amp; ADVANCE DIRECTIVES</b></p> <p>Documents starting from the bottom: Wills, Will checklist Divider POA, POA-Health Care, Living Will</p>
<p style="text-align: center;"><b>Page 5</b></p> <p style="text-align: center;"><b>Label = FILE REVIEW</b></p> <p>Check list/file review, memo to responsible department personnel for corrective action needed, Memo listing GC audit faults (Use dividers to separate a File Review and its resultant Memos from subsequent File Reviews)</p>	<p style="text-align: center;"><b>Page 6</b></p> <p style="text-align: center;"><b>Label = INFORMATION</b></p> <p>Documents starting from the bottom: Burial Information, Beneficiary information, Family Information Form, directions to home</p>



**Trust Asset Folder**  
Green, 2 partitions

<p style="text-align: center;"><b>Page 1</b></p> <p style="text-align: center;"><b>Label = ASSET SUMMARY</b></p> <p style="text-align: center;">Year end Asset Review; Current Asset Review</p>	<p style="text-align: center;"><b>Page 2</b></p> <p style="text-align: center;"><b>Label = ACCOUNTING AND TAX INFORMATION</b></p> <p style="text-align: center;">Tax ID # IRS Notice on bottom; Annual reports to Trustor, tax filings, 1099's (chronological with tax reports on top of annual reports)</p>
<p style="text-align: center;"><b>Page 3</b></p> <p style="text-align: center;"><b>Label = REAL ESTATE</b></p> <p>Separate related documents by sheet/card stock divider): Abstracts, Deed bringing property to Trustor, Supporting documents such as: cost basis statement, RE Information Form, RE Checklist, Title Insurance, RE Directions (HH not record Deed, Attorney letter etc.), Deed to Trustee, Land Contract/Mortgage, Property Insurance / hold harmless, Property Tax payment receipt</p> <p>If more than 2 parcels then use additional folder for all real estate. Place 1 parcel with supporting documents per page.</p>	<p style="text-align: center;"><b>Page 4</b></p> <p style="text-align: center;"><b>Label = BANK / BROKERAGE / SECURITIES / REVOLVING FUND</b></p> <p>(If &gt; 1 asset, use divider sheets with specific asst name, account # on bottom edge of divider) Assets included here: Only those assets titled in the name of the Trust/GCC Asset document on bottom, Investment Direction, supporting documents / statements in chronological order. Periodic statements, 1099s. Annual Security Insp. (if any) Always on top of page.</p>
<p style="text-align: center;"><b>Page 5</b></p> <p style="text-align: center;"><b>Label = OTHER ASSETS</b></p> <p style="text-align: center;">Assignment of Personal Property Vehicle Titles, etc.</p>	<p style="text-align: center;"><b>Page 6</b></p> <p style="text-align: center;"><b>Label = CONTINGENT ASSETS</b></p> <p>Utilize usual divider method to sep. assets Top page = Sections Inventory Include here POD, TOD, ITF, beneficial interest assets of various kinds Document status with financial institution verifications, copies of beneficiary designations countersigned by company representatives, etc.</p>

**Power of Attorney Folder**

Brown, 6 sections

<p style="text-align: center;">Page 1</p> <p>Label = COMMUNICATION Phone notes, memos, letters, etc.</p>	<p style="text-align: center;">Page 2</p> <p>Label = ADVANCE DIRECTIVES Durable Power of Attorney POA Revocation Letter/Memo re: death Court Guardianship documents Physician Declaration of Incompetence, POA-Health care/Living Will. Summary Sheet on top.</p>
<p style="text-align: center;">Page 3</p> <p>Label = AUTHORIZATIONS TMC Minutes Authorization for disposition of assets and major decisions and actions</p>	<p style="text-align: center;">Page 4</p> <p>Label = MISCELLANEOUS INFORMATION</p>
<p style="text-align: center;">Page 5</p> <p>Label = ASSET SUMMARY &amp; TRANSACTION SUMMARY Treasury printouts Quicken printouts (Acct. Balance Report, Transaction Report)</p>	<p style="text-align: center;">Page 6</p> <p>Label = BANK STATEMENTS &amp; RECONCILIATION Check book, Bank Statements Reconciliation Statements</p>

**Matured Will**  
Brown, 6 sections

<p style="text-align: center;">Page 1</p> <p>Label = COMMUNICATION (Chronological) Phone notes, memos, letters, etc. from date of death</p>	<p style="text-align: center;">Page 2</p> <p>Label = WILL, DEATH CERTIFICATES, AUTHORIZATIONS <i>From the bottom: Will, Death Certificate, Committee Actions, Matured Will Checklist, Distribution receipts, checklist, file summary on top</i></p>
<p style="text-align: center;">Page 3</p> <p>Label = PROBATE DOCUMENTS Chronologically by filings</p>	<p style="text-align: center;">Page 4</p> <p>Label = ASSET INFORMATION Asset ownership documents, Asset summary on top (Use additional folder for multiple assets)</p>
<p style="text-align: center;">Page 5</p> <p>Label = ACCOUNTING &amp; TAX INFORMATION IRS notice of EIN on bottom, Accounting &amp; Tax Information, (including final bills)</p>	<p style="text-align: center;">Page 6</p> <p>Label = MISCELLANEOUS INFORMATION (Beneficiary information, photos, SS card, etc.)</p>

**Matured Trust**  
 Brown, 6 sections  
 (Seldom used as separate folder)

<p style="text-align: center;">Page 1</p> <p>Label = COMMUNICATION                  (Chronological) Phone notes, memos,                  letters, etc. from date of death</p>	<p style="text-align: center;">Page 2</p> <p>Label = TRUST DOCUMENTS  <i>From the bottom: Trust, Death Certificate,                  Completed Matured Trust checklist,                  Committee Actions, Distribution receipts,                  Distribution checklist, File Summary on                  top</i></p>
<p style="text-align: center;">Page 3</p> <p>Label = ASSET INFORMATION                  Asset ownership documents, Asset                  summary on top                  (Use additional folder for multiple assets)</p>	<p style="text-align: center;">Page 4</p> <p>Label = ACCOUNTING &amp; TAX                  INFORMATION                  IRS notice of EIN on bottom,                  Accounting &amp; Tax Information,                  (including final bills)</p>
<p style="text-align: center;">Page 5</p> <p>Label = BENEFICIARY INFORMATION                  Addresses, other pertinent information                  concerning beneficiaries</p>	<p style="text-align: center;">Page 6</p> <p>Label = MISCELLANEOUS                  INFORMATION                  (photos, SS card, etc.)</p>

**Gift Annuity**  
Blue, 4 Sections

<p>Page 1 Label = COMMUNICATION (Chronological) Phone notes, memos, letters, etc.</p>	<p>Page 2 Label = ANNUITY AGREEMENT #1 <i>From the bottom: Gift Illustration, check copy/stock transmittal, Application, Annuity agreement, all disclosures, New Annuity Checklist, Distribution receipts, Matured Annuity Checklist, Death Certificate</i> <i>file summary on top</i></p>
<p>Label = ANNUITY AGREEMENT #2 <i>From the bottom: Gift Illustration, check copy/stock transmittal, Application, Annuity agreement, all disclosures, New Annuity Checklist, Distribution receipts, Matured Annuity Checklist, Death Certificate</i> <i>file summary on top</i></p>	<p>Label = ANNUITY AGREEMENT #3 <i>From the bottom: Gift Illustration, check copy/stock transmittal, Application, Annuity agreement, all disclosures, New Annuity Checklist, Distribution receipts, Matured Annuity Checklist, Death Certificate</i> <i>file summary on top</i></p>

## APPENDIX C

### CHECKLISTS

Checklists included herein are specimens intended for instructional purposes only. They should not be thought of as the only way or the best way to perform any function. Steps on these specimen checklists may or may not apply to your organization's procedures. They should not be used in whole or in-part without thinking through how your organization intends to perform an action. Feel free to modify these checklists in any way to fit your situation. If any part of a checklist in this manual is of no use to your organization, then as a prominent mid-western attorney is fond of saying, "the delete key is your friend."

Each organization must think through its own process of handling a given task. In essence the checklist becomes your organization's procedure to accomplish a certain function, such as processing a matured gift annuity or receipt of a gift of real estate. Developing a checklist will help you to remember the many steps involved in effectively administering a planned giving and trust services department. After a checklist is developed it may be discovered that a specific step is un-necessary. Since it is your procedure you are free to change it. Be cautious however, as there may be steps in a given situation that may be required by statute or required to satisfy the standard of care in your jurisdiction. In some cases you may want to consult legal counsel as to the creation of an adequate checklist for a given purpose.

Developing a checklist system for your organization will assist in developing well thought out procedures. Utilizing well developed checklists will help you obtain consistent administrative performance. They also provide freedom from having to remember (and freedom from forgetting!) the myriad details involved in planned giving and trust services. Include only those steps in a checklist that you want to remember. If an action is included in a checklist and it does not need to be completed, then merely mark it with "n/a" and include a brief explanation adjacent to that step on the checklist. The checklist can be thought of as a communication tool between current personnel and future reviewers regarding the procedure being completed.

Accreditation standards require the consistent use of a checklist for only a few functions. Following these specimen checklists will not guarantee approval by the General Conference Auditing Service of how your organization performs its work. One way to improve compliance with the Accreditation Standards is to verify that all required actions spelled out in the standards are included as steps in the checklist. In addition, other best practices or audit requirements may also be included in the checklist to insure fulfillment.

The following specimen checklists are included in alphabetical order.

Asset Addition to Trust	Matured Will
Asset Withdrawal from Trust	New Annuity
Death of First Trustor	New Trust
Distribution Checklist and Table	New Will
File Review	Real Estate Addition to Trust
Gift Acceptance of Tangible/Intangible Personal Property	Real Estate Sale
Gift Acceptance – Real Estate	Real Estate Withdrawal from Trust
Independent / Outside Bequest	Return Unrecorded Deed
Matured Annuity	Return Will
Matured Trust	Revoked Trust

## ASSET ADDITION TO TRUST CHECKLIST

(Other than Real Estate)

Trustor Name(s) \_\_\_\_\_ Trust Number \_\_\_\_\_

Asset Added \_\_\_\_\_ To \_\_\_\_\_

- \_\_\_\_\_ 1. Acknowledgement/Receipt to Trustor
- \_\_\_\_\_ 2. Prepare *Addition to Trust* Form \_\_\_\_\_ Mailed \_\_\_\_\_ Received
- \_\_\_\_\_ 3. Complete *Investment Direction* Form \_\_\_\_\_ Mailed \_\_\_\_\_ Received
- \_\_\_\_\_ 4. Obtain TMC acknowledgement and acceptance  
TMC Action # \_\_\_\_\_ Date \_\_\_\_\_
- \_\_\_\_\_ 5. Prepare legal transfer documents as needed  
Forward to attorney for drafting  
\_\_\_\_\_ Draft \_\_\_\_\_ Attorney Review \_\_\_\_\_ Final prep.
- \_\_\_\_\_ 6. Trustor executes transfer documents as needed  
\_\_\_\_\_ Deliver \_\_\_\_\_ Mail documents for execution
- \_\_\_\_\_ 7. Funding information to Treasury  
\_\_\_\_\_ Investment Direction Form  
\_\_\_\_\_ Update Trust Accounting  
\_\_\_\_\_ Print new Asset Review for file
- \_\_\_\_\_ 8. \_\_\_\_\_ Copy of Asset document to Trustor Estate Planning Notebook  
\_\_\_\_\_ File Checklist and Asset Addition Form with Trust  
\_\_\_\_\_ File Investment Direction Form and Asset with Asset  
\_\_\_\_\_ File Correspondence with correspondence
- \_\_\_\_\_ 9. Update Trust database
- \_\_\_\_\_ 10. Director sign as completed

## ASSET WITHDRAWAL CHECKLIST

(Other than Real Estate)

---

Trustor Name(s) \_\_\_\_\_ Trust Number \_\_\_\_\_

Asset Withdrawn \_\_\_\_\_ From \_\_\_\_\_

- \_\_\_\_\_ 1. Document request from Trustor
  - \_\_\_\_\_ Memo of conversation or \_\_\_\_\_ Written request
  - \_\_\_\_\_ Initiate tickler \_\_\_\_\_ Add to TMC Agenda
  
- \_\_\_\_\_ 2. \_\_\_\_\_ Mail *Withdrawal From Trust* Form to Trustor include SAE/PP (if oral request or if written request unclear) \_\_\_\_\_ Also mail *Investment Direction Form* (if needed) \_\_\_\_\_ *Withdrawal From Trust* Form returned
  
- \_\_\_\_\_ 3. Check Request to Treasury
  - \_\_\_\_\_ Check & Cashier's Receipt Received
  - \_\_\_\_\_ Obtain non-monetary asset
  
- \_\_\_\_\_ 4. TMC acknowledgment of ALL withdrawals (not necessary to wait for TMC to return requested asset)
  - \_\_\_\_\_ Action # \_\_\_\_\_ Date \_\_\_\_\_
  - \_\_\_\_\_ Action noted on Summary Sheet
  
- \_\_\_\_\_ 5. Check to Trustor
  - \_\_\_\_\_ Prepare *Withdrawal Cover Letter & Receipt*, include SAE/PP
  - \_\_\_\_\_ Copy and stamp check endorsement area with receipt stamp
  - \_\_\_\_\_ Copy packet for file
  - \_\_\_\_\_ Printout updated Asset Summary for file
  
- \_\_\_\_\_ 6. Delivery/pick up date \_\_\_\_\_ or Mail date \_\_\_\_\_  
Or Certified Mail sent \_\_\_\_\_ Cert. Receipt returned \_\_\_\_\_
  
- \_\_\_\_\_ 7. Obtain signed receipt
  - \_\_\_\_\_ File check, cover letter copies, checklist and receipt in respective asset section,
  - \_\_\_\_\_ Print and file updated asset value printout on top of respective asset section
  - \_\_\_\_\_ File *Withdrawal From Trust* Form in Trust Supporting Document section
  
- \_\_\_\_\_ 8. Update Trust database, remove from tickler
  
- \_\_\_\_\_ 9. Director verify completion



## DEATH OF FIRST TRUSTOR CHECKLIST

Trustor name: \_\_\_\_\_

Field Rep.: \_\_\_\_\_ Date of Death: \_\_\_\_\_ File No.: \_\_\_\_\_

- \_\_\_\_\_ 1. Secretary:
- \_\_\_\_\_ Start Tickler \_\_\_\_\_ Mark on Calendar
  - \_\_\_\_\_ Mark date of death on File labels \_\_\_\_\_ Rolodex \_\_\_\_\_ Trust Database
  - \_\_\_\_\_ Mail will to PR/probate (certified) \_\_\_\_\_ Receipt returned from PR/probate
  - \_\_\_\_\_ Order flowers (if we know in time for the funeral/memorial service)
  - \_\_\_\_\_ Send card to the surviving spouse/immediate family
  - \_\_\_\_\_ Update mailing list and trust list
- \_\_\_\_\_ 2. Trust Management Assistant / Field Representative
- \_\_\_\_\_ Review trust document and remainder of file
  - \_\_\_\_\_ Note interim distributions
  - \_\_\_\_\_ Make contact with the surviving trustor
  - \_\_\_\_\_ Verify funeral/memorial service arrangements
  - \_\_\_\_\_ Order a copy(ies) of death certificate or print SS Death Index entry
  - \_\_\_\_\_ Attend funeral/memorial service if at all possible
  - \_\_\_\_\_ At surviving trustor's convenience, visit and review file for desired or necessary changes
  - \_\_\_\_\_ Check for One-life Annuity
- \_\_\_\_\_ 3. Director:
- \_\_\_\_\_ Acknowledge death (\_\_\_\_\_ Vote change of status to irrevocable if necessary)
  - \_\_\_\_\_ TMC Action # \_\_\_\_\_ Date \_\_\_\_\_
  - Notify treasury:
  - \_\_\_\_\_ Update mailing list
  - \_\_\_\_\_ Stop payments
  - \_\_\_\_\_ Adjust basis
  - \_\_\_\_\_ Other \_\_\_\_\_
- \_\_\_\_\_ 4. Director verify completion.

## DISTRIBUTION CHECKLIST

Trust Name: \_\_\_\_\_ File No.: \_\_\_\_\_

- \_\_\_\_\_ 1. Preliminary distribution report to TMC
- \_\_\_\_\_ 2. Consult with Treasury Re:  
\_\_\_\_\_ Updated accounting of the trust  
\_\_\_\_\_ Approximate partial and final distribution date
- \_\_\_\_\_ 3. Notify each beneficiary by letter of:  
(Within \_\_\_\_\_ days of death as required by state law) Deadline: \_\_\_\_\_  
\_\_\_\_\_ Approximate assets in trust  
\_\_\_\_\_ Approximate distribution date  
\_\_\_\_\_ Percent of trust he/she is to receive  
\_\_\_\_\_ Identity of in-kind assets beneficiary receives  
\_\_\_\_\_ If a partial distribution is to be made  
\_\_\_\_\_ Other required pertinent information
- \_\_\_\_\_ 4. For In-kind Distribution:  
\_\_\_\_\_ Inventory in-kind Assets to be distributed  
\_\_\_\_\_ Verify in-kind distribution in compliance with document  
\_\_\_\_\_ Obtain valuations as appropriate  
\_\_\_\_\_ Obtain certified appraisal(s) as necessary  
\_\_\_\_\_ Consult with beneficiaries as appropriate according to document  
\_\_\_\_\_ Obtain signed declination of in-kind distribution as necessary  
\_\_\_\_\_ Prepare receipts for in-kind asset distribution  
\_\_\_\_\_ Distribute in-kind assets  
\_\_\_\_\_ Obtain signatures on receipts
- \_\_\_\_\_ 5. For Partial Payments: TMC: Action # \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Verify with Treasury the amount of partial distribution  
\_\_\_\_\_ Complete attached Distribution Table
- \_\_\_\_\_ 6. For Partial Payments: TMC: Action # \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Verify with Treasury the amount of partial distribution  
\_\_\_\_\_ Complete attached Distribution Table
- \_\_\_\_\_ 7. For Final Payments: TMC: Action # \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Verify with Treasury the amount of final distribution  
\_\_\_\_\_ Verify distribution in compliance with document  
\_\_\_\_\_ Send Receipt of Final Distribution & Final Accounting to beneficiary to sign, include  
PPD/SAE to private individuals (if SDA Entities include check with receipt)  
\_\_\_\_\_ Complete attached Distribution Table
- \_\_\_\_\_ 8. Director review for completion

### Distribution Table

<b>Partial</b> _____ <b>Final</b> _____ <b>In-kind</b> _____ <b>Trailing Income</b>				
<b>Beneficiary</b>	<b>Receipt Sent</b>	<b>2<sup>nd</sup> Receipt Sent</b>	<b>Receipt Returned</b>	<b>Check Sent</b>

<b>Partial</b> _____ <b>Final</b> _____ <b>In-kind</b> _____ <b>Trailing Income</b>				
<b>Beneficiary</b>	<b>Receipt Sent</b>	<b>2<sup>nd</sup> Receipt Sent</b>	<b>Receipt Returned</b>	<b>Check Sent</b>

<b>Partial</b> _____ <b>Final</b> _____ <b>In-kind</b> _____ <b>Trailing Income</b>				
<b>Beneficiary</b>	<b>Receipt Sent</b>	<b>2<sup>nd</sup> Receipt Sent</b>	<b>Receipt Returned</b>	<b>Check Sent</b>

## FILE REVIEW CHECKLIST

Name: \_\_\_\_\_ Type: \_\_\_\_\_ File #: \_\_\_\_\_

Field Rep.: \_\_\_\_\_ Reviewer: \_\_\_\_\_ Review Date: \_\_\_\_\_ Last Reviewed: \_\_\_\_\_ Zip : \_\_\_\_\_

**Mark or check the items that are not in compliance. Use spaces to make notes. Fix items that are immediately fixable.**

### **BLUE FOLDER (Documents)**

#### **Section 1: Correspondence**

- \_\_\_ Not in chronological order
- \_\_\_ Original request for service (on bottom) missing
- \_\_\_ Telephone message/notes missing

#### **Section 2: Trust Document**

Trust & Amendments:

- Execution error
- Giving guidelines problem
- Educational trust expired
- Amendment needed
- Cash trust action needed
- Death certificates of Grantor or beneficiaries missing
- Written revocation notice

Add/Withdrawals ( transactions):

- Request from Trustor missing
- W/d receipt missing ( terminated folder)
- Receipt for non cash assets missing

TMC Authorizations needed/missing:

- Trust
- Amendment(s)
- Personal Representative
- GCC becomes Trustee of Self Trust
- GCC staff DPOA
- GCC staff DPOA Activation
- GCC staff. Patient Advocate
- Change of Status (e.g. Irrevocable)
- First Trustor to die notice
- Exception to policy
- Additions: cash, notes receivable, life ins / comm'l annuities, real estate, mortgages/land contracts, etc.
- Withdrawals: all assets except contingent
- Revocation

\_\_\_ Attorney Disclosure Letter missing

\_\_\_ Updated file summary needed

\_\_\_ Needs visit

#### **Section 3: Supporting Documents**

- \_\_\_ Add Forms current
- \_\_\_ Withdraw Forms current
- \_\_\_ Match WD/Add docs with directions/checks

#### **Section 4: Will & Advance Directives**

- \_\_\_ POW Will \_\_\_\_\_ Simple Will \_\_\_\_\_ No Will
- \_\_\_ Execution error in Will
- \_\_\_ POW pre-dates trust
- \_\_\_ Deceased Grantor's Will not sent to probate
- \_\_\_ Execution error in DPOA
- \_\_\_ GCC staff DPOA not current (>3 yrs)
- DPOA for GCC staff does not include giving to charity
- \_\_\_ No DPOA \_\_\_\_\_ Older than 3 years
- \_\_\_ No Living Will \_\_\_\_\_ Older than 3 years
- \_\_\_ Need HIPPA Release

#### **Section 5: File Review**

#### **Section 6: Data Form**

- \_\_\_ Beneficiary information needed
- \_\_\_ Family Information Form needed
- \_\_\_ Family Information Form not signed
- \_\_\_ Need receipt for original documents/cash/assets received from grantor

<p><b><u>GREEN FOLDER (Assets)</u></b>  <b>Section 1: Asset Summary</b>          ___ Year-end Asset Summary missing          ___ Trust is dry          ___ Cost/Benefits Problem          Update Asset Summary add/remove:  <input type="checkbox"/> FMV needed _____  <input type="checkbox"/> Contingent assets @ \$1  <input type="checkbox"/> Item held for safe keeping @ \$1          ___ Assets not @ basis (revocable)          ___ Assets not @ FMV (irrevocable)          _____          _____          _____</p> <p><b>Section 2: Accounting &amp; Tax Information</b>          ___ Current 1041 missing          ___ 1041 missing other years _____          ___ 1099 does not agree with income report &amp; tax return          ___ Tax ID# needed (GCC TTEE w/income or irrevocable)          ___ Annual report to Grantor missing</p> <p><b>Section 3: Real Estate</b>          Deed (# of properties) _____ Use separate Review          for each property</p> <p><b>Proper Titling:</b>  <input type="checkbox"/> GCC outright  <input type="checkbox"/> GCC as Trustee  <input type="checkbox"/> Other _____          Deed not recorded  <input type="checkbox"/> Hold harmless or attorney statement not to record          needs investigation as to relevancy</p> <p><b>Real Estate Information Form:</b> (property added after 1992):  <input type="checkbox"/> Missing  <input type="checkbox"/> Incomplete  <input type="checkbox"/> Site visit needed  <input type="checkbox"/> Signed by Field Rep  <input type="checkbox"/> Signed by Trustor(s)          ___ Need cost basis statement          ___ Appraisal needed          ___ Mortgage information needed          ___ Environmental concerns</p>	<p><b>Mortgage/Land Contract:</b>  <input type="checkbox"/> Need Assignment to Trust (not necessary if Trust          owns Land Contract)  <input type="checkbox"/> Assignment not recorded  <input type="checkbox"/> Specific investment direction missing</p> <p><b>Property Insurance &amp; Tax</b>  <input type="checkbox"/> Hold harmless-no insurance  <input type="checkbox"/> Hold harmless-not adequate coverage  <input type="checkbox"/> No proof of insurance in-force  <input type="checkbox"/> Additional Insured missing or incorrect  <input type="checkbox"/> Inadequate coverage  <input type="checkbox"/> Property tax payment verification needed</p> <p><b>Reports:</b>  <input type="checkbox"/> Need Year-end mortgage/land contract report  <input type="checkbox"/> Need Year-end rental inc/exp report</p> <p><b>Section 4: Bank, Brokerage, Securities &amp; CURF</b>          ___ No Current Security Inspection &amp; Reconciliation          ___ No Proof of Ownership          ___ No Specific Investment direction          ___ Inappropriate titling          ___ No cost basis          ___ Year-end statements for bank accts, etc missing</p> <p><b>Section 5: Other Assets</b>          List Other Assets:          _____          _____          _____</p> <p><b>Section 6: Contingent Assets          (POD/TOD/ITF/other beneficiary designation)</b>          ___ Verification needed          ___ Beneficiary correction needed</p> <p>_____          Reviewer Signature</p> <p>_____          Associate Director Sign: Remediation Complete</p>
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**Comments:**

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## GIFT ACCEPTANCE CHECKLIST

Tangible/Intangible Personal Property

Donor Name: \_\_\_\_\_ Donor SSN: \_\_\_\_\_

Property Description: \_\_\_\_\_

Gift Date: \_\_\_\_\_ Beneficiary \_\_\_\_\_ File No.: \_\_\_\_\_

- \_\_\_\_\_ 1. Written statement of gift intent & purpose
- \_\_\_\_\_ 2. TMC approval: Action # \_\_\_\_\_ Date \_\_\_\_\_  
Include in action the intended use of the property (sell, retain for GC / Entity use etc.)  
Purpose: \_\_\_\_\_
- \_\_\_\_\_ 3. Gift valuation as needed or attach copy of donor's appraisal: Appraised value \_\_\_\_\_
- \_\_\_\_\_ 4. Prepare and execute legal transfer documents as needed:  
\_\_\_\_\_ Type document: \_\_\_\_\_  
\_\_\_\_\_ Type document \_\_\_\_\_  
\_\_\_\_\_ Who Prepares? \_\_\_\_\_ Donor Counsel \_\_\_\_\_ OGC \_\_\_\_\_ Other \_\_\_\_\_
- \_\_\_\_\_ 5. Thank you letters from:  
\_\_\_\_\_ Planned Giving Director \_\_\_\_\_ Beneficiary Representative \_\_\_\_\_
- \_\_\_\_\_ 6. Send Donor gift substantiation \_\_\_\_\_ Receipt letter \_\_\_\_\_ 8283?
- \_\_\_\_\_ 7. To Treasury:  
\_\_\_\_\_ Copy of statement of gift intent & purpose / other documentation  
\_\_\_\_\_ Valuation \_\_\_\_\_
- \_\_\_\_\_ 8. Add to Gift Property Inventory for Resale
- \_\_\_\_\_ 9. Liquidation of asset: Disposition date: \_\_\_\_\_  
\_\_\_\_\_ Real Estate Sale/Closing Checklist  
\_\_\_\_\_ Other \_\_\_\_\_  
\_\_\_\_\_ Cancel Insurance \_\_\_\_\_
- \_\_\_\_\_ 10. File IRS Form 8282 within 125 days after disposition of gift property  
\_\_\_\_\_ Copy to file \_\_\_\_\_ Copy to Donor \_\_\_\_\_
- \_\_\_\_\_ 11. Distribution of Gift Proceeds:  
\_\_\_\_\_ Request to Treasury \_\_\_\_\_ Check from Treasury  
\_\_\_\_\_ Check, Cover letter, Receipt, SA/PP envelope to entity \_\_\_\_\_ Receipt returned \_\_\_\_\_
- \_\_\_\_\_ 12. Director verify completion

## GIFT ACCEPTANCE CHECKLIST

### Real Estate

Donor Name: \_\_\_\_\_

Parcel address/description: \_\_\_\_\_

Parcel Number: \_\_\_\_\_ Beneficiary: \_\_\_\_\_

- \_\_\_\_\_ 1. Complete Real Estate Information Form
- \_\_\_\_\_ 2. Voted through TMC Action # \_\_\_\_\_ Date \_\_\_\_\_ (Pending title commitment, tax status, environmental screening)
- \_\_\_\_\_ 3. Title Insurance Policy (Corp/Assn as insured):  
\_\_\_\_\_ Ordered \_\_\_\_\_ Commitment received \_\_\_\_\_ Final copy received  
Name of Title Company and Address \_\_\_\_\_  
Telephone and Contact Person \_\_\_\_\_
- \_\_\_\_\_ 4. Verify real estate taxes paid:  
\_\_\_\_\_ Copy of tax certification or tax payment receipt to file
- \_\_\_\_\_ 5. Obtain appraisal or copy of donor's appraisal: Appraised value \_\_\_\_\_
- \_\_\_\_\_ 6. Prepare Deed:  
\_\_\_\_\_ Initiate Tickler \_\_\_\_\_ Draft \_\_\_\_\_ Attorney Review \_\_\_\_\_ Final Prep.
- \_\_\_\_\_ 7. Execute Gift Acceptance Agreement with Donor (or Memorandum of Understanding for Gifts of Real Estate)  
\_\_\_\_\_ Original to file \_\_\_\_\_ Copy to donor
- \_\_\_\_\_ 8. Donor execute Deed: \_\_\_\_\_ Deliver \_\_\_\_\_ Mail / FedEx  
Deed returned from Trustor signed & notarized \_\_\_\_\_ (date)
- \_\_\_\_\_ 9. Record Deed: Deed sent to County with check for recording \_\_\_\_\_  
Recorded Deed returned \_\_\_\_\_ (date) \_\_\_\_\_ File in gift property folder
- \_\_\_\_\_ 10. Property Insurance:  
\_\_\_\_\_ Insurance information to Treasury/ARM, retain copy in file
- \_\_\_\_\_ 11. Gift Acknowledgement and Substantiation  
\_\_\_\_\_ Thank you letter from TRS \_\_\_\_\_ Thank you letter Beneficiary Rep  
\_\_\_\_\_ Gift receipt/substantiation ltr \_\_\_\_\_ Form 8283 & Instructions enclosed
- \_\_\_\_\_ 12. Add to Gift Property Inventory
- \_\_\_\_\_ 13. List property for sale: \_\_\_\_\_ Sale by Corp Assn: \_\_\_\_\_ Retain for Corp/Assn use? \_\_\_\_\_ Transfer to: \_\_\_\_\_  
Price \_\_\_\_\_  
Sale by Realtor: Name \_\_\_\_\_ Phone \_\_\_\_\_  
Address \_\_\_\_\_ FAX \_\_\_\_\_  
Listing agreement signed \_\_\_\_\_ List price \_\_\_\_\_  
TMC Action # \_\_\_\_\_ Date \_\_\_\_\_ Corp Action date and # \_\_\_\_\_
- \_\_\_\_\_ 14. File IRS Form 8282 within 125 days after disposition of gift property  
\_\_\_\_\_ Copy to file \_\_\_\_\_ Copy to Donor
- \_\_\_\_\_ 15. Director Review checklist & verify completion





## MATURED ANNUITY CHECKLIST

Annuitant Name(s): \_\_\_\_\_ Annuity No. \_\_\_\_\_

Remainder Beneficiary: \_\_\_\_\_ Death Date: \_\_\_\_\_

Estate Representative: \_\_\_\_\_

Address: \_\_\_\_\_

Phone \_\_\_\_\_ FAX: \_\_\_\_\_

- \_\_\_\_\_ 1. Record date of death  
     \_\_\_\_\_ File label \_\_\_\_\_ File Summary Sheet \_\_\_\_\_ Data Base  
     \_\_\_\_\_ Initiate tickler \_\_\_\_\_ TMC Agenda
- \_\_\_\_\_ 2. Notice to Fund Manager \_\_\_\_\_ Death date: \_\_\_\_\_ Telephone memo \_\_\_\_\_ Fax / Email Memo
- \_\_\_\_\_ 3. Personal Representative/Family \_\_\_\_\_ Condolence letter \_\_\_\_\_ Copy of CGA Agreement  
     Request copy of Death Certificate \_\_\_\_\_
- \_\_\_\_\_ 4. Receive copy of death certificate \_\_\_\_\_ File \_\_\_\_\_ Fax to Fund manager
- \_\_\_\_\_ 5. Request refund of payments made after death  
     \_\_\_\_\_ None made \_\_\_\_\_ Letter sent \_\_\_\_\_ File claim with Estate  
     \_\_\_\_\_ Refund received \_\_\_\_\_ Refund to Fund manager \_\_\_\_\_ Refund to Treasury
- \_\_\_\_\_ 6. If Annuitant dies before transition year: Transition Year \_\_\_\_\_  
     Un-recovered basis in contract \$ \_\_\_\_\_  
     (Get un-recovered basis from fund manager)  
     \_\_\_\_\_ Letter to Estate Rep with Un-recovered Basis calculation and explanation  
     \_\_\_\_\_ Enclose Fund Manager letter of deduction for undistributed investment  
     \_\_\_\_\_ Enclose copy of calculation sheet from Fund Manager
- \_\_\_\_\_ 7. Request remainder balance and check from Mellon \$ \_\_\_\_\_  
     \_\_\_\_\_ Date check received  
     \_\_\_\_\_ Request corrected 1099-R
- \_\_\_\_\_ 8. TMC acknowledgement and authorization to distribute: Action # \_\_\_\_\_ Date \_\_\_\_\_  
     \_\_\_\_\_ Log Action # on File Summary Sheet
- \_\_\_\_\_ 9. Estate Representative Information to Mellon for final 1099-R
- \_\_\_\_\_ 10. Distribution to beneficiary (ies)

Beneficiary Name	Date Delivered	Mail?	GC Treas/Personal?	Date Receipt Returned

\_\_\_\_\_ 11. Final Things: \_\_\_\_\_ Update Maturity spreadsheet \_\_\_\_\_ Cancel Tickler \_\_\_\_\_ File in Terminated

\_\_\_\_\_ 12. Assoc. Director Sign as Complete

## MATURED TRUST CHECKLIST

Trust \_\_\_\_\_ Date Of Death \_\_\_\_\_ Trust No. \_\_\_\_\_

- \_\_\_\_\_ 1. Initial actions: \_\_\_\_\_ Record date of death: \_\_\_\_\_ Rolodex \_\_\_\_\_ File label..  
 \_\_\_\_\_ Initiate tickler \_\_\_\_\_ Send flowers to funeral \_\_\_\_\_ Send card to family (as appropriate) \_\_\_\_\_ Notify organization legal counsel
- \_\_\_\_\_ 2. Update trust database (change status to pending, change name to Irrevocable, change type)
- \_\_\_\_\_ 3. Update beneficiary information (names & addresses)
- \_\_\_\_\_ 4. Sent Will to Probate (certified) \_\_\_\_\_ Receipt returned \_\_\_\_\_  
 \_\_\_\_\_ Complete Matured Will Checklist if necessary \_\_\_\_\_ Not applicable
- \_\_\_\_\_ 5. Trust Committee vote to acknowledge death, change trust status to irrevocable, liquidate assets and give preliminary distribution report: Action # \_\_\_\_\_ Date \_\_\_\_\_
- \_\_\_\_\_ 6. \_\_\_\_\_ TMC--If Self-Administered and CORP/ASSN is willing to serve as Successor Trustee:  
 Action # \_\_\_\_\_ Date \_\_\_\_\_  
 \_\_\_\_\_ Prepare Certificate of Trust naming CORP/ASSOC as Successor Trustee
- \_\_\_\_\_ 7. Order (3-10 depending on assets) certified copies of Death Certificate
- \_\_\_\_\_ 8.. Stop retirement, annuity, social security payments etc. as needed
- \_\_\_\_\_ 9. Notify Treasury:  
 \_\_\_\_\_ Change to Irrevocable Trust Account Numbers  
 \_\_\_\_\_ File for Federal ID # for Irrevocable Trust # \_\_\_\_\_  
 \_\_\_\_\_ Trust Income beneficiary payment stopped  
 \_\_\_\_\_ Print Asset Review report as of date of death
- \_\_\_\_\_ 10. Value assets at fair market value as of date of death  
 \_\_\_\_\_ 6 month alternative valuation date
- \_\_\_\_\_ 11. Decide if distribution reserve needed to pay taxes, administrative expenses etc.
- \_\_\_\_\_ 12. Review distribution & notify beneficiary (see Distribution Checklist) within 30 days after death  
 \_\_\_\_\_ 30 day deadline (as required by state law)
- \_\_\_\_\_ 13. Notify creditors, terminate charge accounts, pay final bills as appropriate
- \_\_\_\_\_ 14. Determine in-kind distribution
- \_\_\_\_\_ 15. Collect contingent assets
- \_\_\_\_\_ 16. Liquidate trust assets as appropriate
- \_\_\_\_\_ 17. Obtain TMC authorization to make final distribution and close file  
 Action # \_\_\_\_\_ Date \_\_\_\_\_
- \_\_\_\_\_ 18. Make distribution following Distribution Checklist
- \_\_\_\_\_ 19. Verify distribution receipts in file

- \_\_\_\_ 20. Treasury file final Federal 1040, 1041 and 706 and corresponding state tax returns as needed. Consider combining Trust and Estate for final 1041. If Trustor was an Annuitant and died before the life expectancy then calculate unrecovered basis deduction for decedent's final 1040.  
\_\_\_\_ No 1041 needed memo in file \_\_\_\_ Place on tax prep tickler for end of year
- \_\_\_\_ 21. Change status in trust database to matured, enter date closed, move to inactive database and place on term-up database, remove from tickler, file placed in terminated files
- \_\_\_\_ 22. Director review for completion

SPECIMEN

## MATURED WILL CHECKLIST

\_\_\_\_\_ First Spouse To Die \_\_\_\_\_ Second Spouse To Die \_\_\_\_\_ Single Person

Name \_\_\_\_\_ County & State of Domicile \_\_\_\_\_

Field Rep.: \_\_\_\_\_ Date Of Death: \_\_\_\_\_ File # \_\_\_\_\_

- \_\_\_\_\_ 1. Memo death notice to file \_\_\_\_\_ notify department staff \_\_\_\_\_ legal counsel \_\_\_\_\_ initiate tickler
- \_\_\_\_\_ 2. Locate original Will and Review Will file
- \_\_\_\_\_ 3. Make contact with surviving spouse or family
- \_\_\_\_\_ 4. Verify funeral/flower arrangements if necessary
- \_\_\_\_\_ 5. Attend funeral if appropriate and practical
- \_\_\_\_\_ 6. Send condolence letter or card as necessary
- \_\_\_\_\_ 7. Meet with surviving spouse/family (if necessary) at their convenience to orient to process
- \_\_\_\_\_ 8. **If CORP/ASSN is NOT the Personal Representative:**
  - \_\_\_\_\_ Obtain copy of death certificate
  - \_\_\_\_\_ Send Will to Personal Representative / Attorney / Probate court per statutory requirement
  - \_\_\_\_\_ Update Will Database (for surviving spouse), remove decedent from Will Database and enter on Terminated-Up Database
  - \_\_\_\_\_ Stamp & date outside of folder and put in Terminated File, update tickler
- \_\_\_\_\_ 8. **If CORP/ASSN is the Personal Representative:**
  - \_\_\_\_\_ Authorize Personal Representative responsibilities and retention of independent attorney, if necessary through TMC:  
 Action # \_\_\_\_\_ Date \_\_\_\_\_  
 Personal Representative \_\_\_\_\_ Attorney \_\_\_\_\_
  - \_\_\_\_\_ Assign file number and update tickler
  - \_\_\_\_\_ Obtain Certified Death Certificate (3-10 copies)
  - \_\_\_\_\_ Secure heirs at law and beneficiary information (names, addresses, relationship, and SSN)
  - \_\_\_\_\_ Funeral expenses paid in full: Yes \_\_\_\_\_ No \_\_\_\_\_  
 If unpaid: Determine if assets are sufficient to pay funeral expenses  
 Obtain itemized statement from funeral director
  - \_\_\_\_\_ Determine if sufficient assets, denomination benefits and facts to justify opening probate.
  - \_\_\_\_\_ Determine if Small Estate procedure available/appropriate.
  - \_\_\_\_\_ Initiate *Probate Checklist* and *Probate Essential Dates Checklist* (per local jurisdiction/atty.)
  - \_\_\_\_\_ Make distribution following *Distribution Checklist*
  - \_\_\_\_\_ When Probate is declared complete: Update Will Database (for surviving spouse), remove decedent from Will Database
  - \_\_\_\_\_ Stamp & date outside of folder and put in Terminated-Up File, update tickler
- \_\_\_\_\_ 9. At surviving testator's convenience, visit and review estate plan for desired changes
- \_\_\_\_\_ 10. Director verify completed

## NEW ANNUITY CHECKLIST

Present \_\_\_\_\_ Deferred \_\_\_\_\_

Annuitant Name(s): \_\_\_\_\_ Annuity No. \_\_\_\_\_

State of Residence: \_\_\_\_\_ Remainder Beneficiary: \_\_\_\_\_ Gift Date: \_\_\_\_\_

- |       |       |                                                                                                                                                                                                                                                                                                              |
|-------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| _____ | _____ | 1. Document request from Donor:<br>Initial _____ Date _____<br>_____ Memo of conversation _____ Written request/ App _____ Initiate tickler & Checklist                                                                                                                                                      |
| _____ | _____ | 2. Packet to Donor<br>_____ Summary letter _____ Application _____ Atty. Disclosure _____ ACH Authorization<br>_____ MD Disclosure _____ Federal Disclosure _____ Privacy Policy _____ Rtn Envelope                                                                                                          |
| _____ | _____ | 3. When Cash or Securities Received _____ Prep Annuity File _____ Add Annuity to TMC Agenda<br>_____ Attach Check copy to Original Application for File<br>_____ Prep Draft Contract, State specific forms/disclosure<br>_____ Prep CresPro calculator sheets with correct gift date and Income Tax schedule |
| _____ | _____ | 4. Acknowledgement receipt of check etc, thank you letter                                                                                                                                                                                                                                                    |
| _____ | _____ | 5. Packet to Fund Manager: How shipped _____ Reg Mail _____ Cert Mail _____ Over Night<br>_____ Check _____ Application Copy _____ ACH Application<br>_____ CresPro Calculator Sheets with correct gift date & Inc Taxation Schedule                                                                         |
| _____ | _____ | 6. Packet to Treasury<br>_____ Application Copy _____ Copy of Check<br>_____ Calc Sheets with correct gift date & Inc Taxation Schedule                                                                                                                                                                      |
| _____ | _____ | 7. Packet to Legal<br>_____ Contract Draft _____ Copy of Check _____ Application<br>_____ Signed Atty. Disclosure _____ CresPro Calculator Sheets                                                                                                                                                            |
| _____ | _____ | 8. Receipt Received From Fund Manager                                                                                                                                                                                                                                                                        |
| _____ | _____ | 9. Contract Approved/Received From Legal                                                                                                                                                                                                                                                                     |
| _____ | _____ | 10. TMC Authorization: Action # _____ Date _____<br>_____ Log Action # on File Summary Sheet                                                                                                                                                                                                                 |
| _____ | _____ | 11. Document Packet to Assn/Corp officers for signature _____ Packet Returned                                                                                                                                                                                                                                |
| _____ | _____ | 12. Contract Packet to Annuitant for Signature<br>_____ One original & one copy of contract _____ Cover Letter _____ Return Envelope                                                                                                                                                                         |
| _____ | _____ | 13. All Documents received from Annuitant with signature _____ Contract _____ State Disclosure<br>_____ Federal Disclosure _____ Atty. Disclosure _____ ACH Application                                                                                                                                      |
| _____ | _____ | 14. FAX executed CGA Agreement to Fund Manager                                                                                                                                                                                                                                                               |
| _____ | _____ | 15. Gift Substantiation Letter with 2-page calculation sheet attached, Final Thank You                                                                                                                                                                                                                       |
| _____ | _____ | 16. Update Database                                                                                                                                                                                                                                                                                          |
| _____ | _____ | 17. State Notification/other requirements                                                                                                                                                                                                                                                                    |
| _____ | _____ | 18. Director Sign as Complete                                                                                                                                                                                                                                                                                |

- New
- Amendment

### NEW TRUST CHECKLIST

- Corp/ASSN Trustee
- Self-Administered
- Irrevocable
- CRT

Trustors Name: \_\_\_\_\_

Staff Rep.: \_\_\_\_\_ Date of Trust: \_\_\_\_\_ File #: \_\_\_\_\_

Trustor Counsel Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

- \_\_\_\_\_ 1. Gather Initial Information: Family Information Form \_\_\_\_\_ Atty Info Sheet \_\_\_\_\_  
Atty Disclosure \_\_\_\_\_ Receipt for Documents received \_\_\_\_\_
- \_\_\_\_\_ 2. Determine Initial Funding: \_\_\_\_\_ Real Estate: Complete Real Estate Addition Cklist or Gift  
Acceptance-Real Estate Cklist (for CRT)  
\_\_\_\_\_ Other Investments: Complete Investment Direction Form  
\_\_\_\_\_ Asset Assignment Needed
- \_\_\_\_\_ 3. Assign file number, enter in record book, initiate computer tickler
- \_\_\_\_\_ 4. Voted through TMC Action # \_\_\_\_\_ Date \_\_\_\_\_
- \_\_\_\_\_ 5. Prepare permanent file folders; insert docs according to File Map. Verify attorney disclosure letter in file.  
Begin Summary Sheet
- \_\_\_\_\_ 6. Packet to Legal for document drafting: Family Info Form \_\_\_\_\_ Atty Info Sheet \_\_\_\_\_ Atty  
Disclosure \_\_\_\_\_ Asset info/docs (deeds etc.) \_\_\_\_\_  
Request for HIPPA authorization \_\_\_\_\_
- \_\_\_\_\_ 7. Execute Documents: \_\_\_\_\_ Staff Deliver \_\_\_\_\_ Office signing \_\_\_\_\_ Mail docs
- \_\_\_\_\_ 8. After trustor(s) return(s) documents, check signatures, dates, witnesses, notary, etc. also, attorney disclosure  
letter
- \_\_\_\_\_ 7. Officers sign trust documents
- \_\_\_\_\_ 8. Packet to Treasury: \_\_\_\_\_ Asset info \_\_\_\_\_ Investment Direction Form
- \_\_\_\_\_ 9. Apply for Employer Tax ID # only if receiving income or at maturity:  
Date applied for \_\_\_\_\_ Date received \_\_\_\_\_ Not applicable \_\_\_\_\_
- \_\_\_\_\_ 11. Verify Completion of Funding Checklists: \_\_\_\_\_ Real estate \_\_\_\_\_ Investment Direction Form  
\_\_\_\_\_ Other \_\_\_\_\_ Copy of Treasury Asset Summary to file
- \_\_\_\_\_ 13. Prepare Estate Planning Notebook \_\_\_\_\_ Deliver \_\_\_\_\_ Mail
- \_\_\_\_\_ 14. \_\_\_\_\_ Update trust database, remove from tickler  
\_\_\_\_\_ If there were prior wills, remove them from Will database
- \_\_\_\_\_ 15. Director Review trust folder and verify that trust is complete

## NEW WILL CHECKLIST

New Will \_\_\_\_\_

Revised \_\_\_\_\_

Testator Name \_\_\_\_\_

Field Rep. \_\_\_\_\_

DPOA \_\_\_\_\_  
(yes) (no)

Living Will \_\_\_\_\_  
(yes) (no)

- \_\_\_\_\_ 1. Gather Initial Information: Family Info Form \_\_\_\_\_ Atty Info Sheet  
\_\_\_\_\_ Atty Disclosure \_\_\_\_\_ Receipt for Documents received
- \_\_\_\_\_ 2. Initiate tickler
- \_\_\_\_\_ 3. Authorize Personal Representative Responsibilities through TMC  
Action # \_\_\_\_\_ Date \_\_\_\_\_
- \_\_\_\_\_ 4. Information to Attorney for document preparation
- \_\_\_\_\_ 5. Returned from Attorney
- \_\_\_\_\_ 6. Document Execution  
\_\_\_\_\_ Deliver \_\_\_\_\_ Mail/Ship \_\_\_\_\_ Returned for Dept. file
- \_\_\_\_\_ 7. When wills are returned  
\_\_\_\_\_ Check signatures and dates  
\_\_\_\_\_ Photocopy for Testator/Testatrix  
\_\_\_\_\_ Prepare folder \_\_\_\_\_ Verify attorney disclosure letter  
\_\_\_\_\_ Copies of correspondence  
\_\_\_\_\_ Family Information Form  
\_\_\_\_\_ Update Will Database, update date of will  
\_\_\_\_\_ Remove from tickler
- \_\_\_\_\_ 8. Director Review Will folder and verify completion

## REAL ESTATE ADDITION CHECKLIST

Trust Name: \_\_\_\_\_ Trust # \_\_\_\_\_

Parcel address/description: \_\_\_\_\_

Tax/Parcel Identification Number: \_\_\_\_\_

- \_\_\_\_\_ 1. Complete Real Estate Information form
- \_\_\_\_\_ 2. Prepare Deed:  
\_\_\_\_\_ Initiate Tickler \_\_\_\_\_ Draft \_\_\_\_\_ Attorney Review \_\_\_\_\_ Final Prep.
- \_\_\_\_\_ 3. Voted through TMC Action # \_\_\_\_\_ Date \_\_\_\_\_
- \_\_\_\_\_ 4. Obtain Title Commitment/Policy (if applicable)
- \_\_\_\_\_ 5. Verify real estate taxes paid: \_\_\_\_\_ Copy of paid taxes \_\_\_\_\_ Hold Harmless
- \_\_\_\_\_ 6. Trustor execute Deed: \_\_\_\_\_ Deliver \_\_\_\_\_ Mail  
\_\_\_\_\_ Deed returned from Trustor signed & notarized (date) \_\_\_\_\_
- \_\_\_\_\_ 7. Record Deed \_\_\_\_\_ Send Deed to County with check for recording  
\_\_\_\_\_ Hold Harmless not to record
- \_\_\_\_\_ 8. Recorded Deed returned \_\_\_\_\_ File in Asset folder \_\_\_\_\_ Mail copy to Trustor
- \_\_\_\_\_ 9. Property Insurance:  
\_\_\_\_\_ Additional Insured  
\_\_\_\_\_ Hold Harmless: \_\_\_\_\_ Not named Add'l Insured \_\_\_\_\_ Inadequate Coverage  
\_\_\_\_\_ Not Insured  
\_\_\_\_\_ Copy of Insurance Policy for file  
\_\_\_\_\_ Prepare letter and envelope to insurance co., then send to Trustor(s) for signatures  
\_\_\_\_\_ Endorsement received from insurance co., verify that GCC is properly listed  
\_\_\_\_\_ File endorsement  
\_\_\_\_\_ Update insurance information file and database
- \_\_\_\_\_ 10. Land Contract/Mortgage:  
\_\_\_\_\_ Investment Direction Form \_\_\_\_\_ Memo regarding who pays taxes & insurance  
\_\_\_\_\_ Sellers Assignment of Land Contract/Mortgage \_\_\_\_\_ Original Land Contract for file  
\_\_\_\_\_ Draft \_\_\_\_\_ Attorney Review \_\_\_\_\_ Trustor Execute \_\_\_\_\_ Return  
\_\_\_\_\_ Title Policy for Corp/Assn \_\_\_\_\_ Ordered \_\_\_\_\_ Received
- \_\_\_\_\_ 11. Complete Transfer Tax declaration
- \_\_\_\_\_ 12. Obtain appraisal (for irrevocable trusts only): Appraisal value \_\_\_\_\_
- \_\_\_\_\_ 14. Rental property? \_\_\_\_\_ No \_\_\_\_\_ Yes: Place on annual report tickler
- \_\_\_\_\_ 15. Mortgage on property? \_\_\_\_\_ No \_\_\_\_\_ Yes: Place on annual report tickler
- \_\_\_\_\_ 16. Update Trust Summary \_\_\_\_\_ Property Tax and Insurance \_\_\_\_\_ Databases
- \_\_\_\_\_ 17. Director Review checklist & verify completion



## REAL ESTATE SALE/CLOSING CHECKLIST

Seller: \_\_\_\_\_

Buyer: \_\_\_\_\_

Property: \_\_\_\_\_

Realtor: \_\_\_\_\_

- \_\_\_\_\_ 1. Authorization TMC/Corp Board Action # \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Investment direction to sell
- \_\_\_\_\_ 2. Appraisal \_\_\_\_\_ Ordered \_\_\_\_\_ Received \_\_\_\_\_ Amount \_\_\_\_\_  
Name of Appraiser \_\_\_\_\_  
Phone & Contact person \_\_\_\_\_
- \_\_\_\_\_ 3. Survey \_\_\_\_\_ Ordered \_\_\_\_\_ Received \_\_\_\_\_  
Name of Surveyor \_\_\_\_\_  
Phone & Contact person \_\_\_\_\_
- \_\_\_\_\_ 4. Offer to purchase \_\_\_\_\_ Draft \_\_\_\_\_ Attorney approval \_\_\_\_\_  
\_\_\_\_\_ Seller's Disclosure Statement prepared. Given to buyer \_\_\_\_\_  
\_\_\_\_\_ Trustor/Corp/Assn Accepted/Approved Action # \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Signed by buyer \_\_\_\_\_ Signed by seller \_\_\_\_\_
- \_\_\_\_\_ 5. Order Title Insurance: (Verify with legal counsel type of policy needed for each circumstance)  
Name of Title Co \_\_\_\_\_  
Address \_\_\_\_\_  
Phone & Contact person \_\_\_\_\_
- \_\_\_\_\_ 6. Prepare documents as required by Title Co: (Title commitment generally lists required documentation)  
\_\_\_\_\_ Affidavit & Resolution \_\_\_\_\_ Certificate of Trust \_\_\_\_\_ Draft \_\_\_\_\_ Attorney approval  
\_\_\_\_\_ Warranty Deed \_\_\_\_\_ Draft \_\_\_\_\_ Attorney approval  
\_\_\_\_\_ Affidavit Certifying Interest in Real Property (if Land Contract sale)  
\_\_\_\_\_ Draft \_\_\_\_\_ Attorney approval  
\_\_\_\_\_ Closing Statement \_\_\_\_\_ Proof read  
\_\_\_\_\_ Bill of Sale \_\_\_\_\_ Draft \_\_\_\_\_ Attorney approval  
\_\_\_\_\_ Disclosure of Info on Lead-based paint if required  
\_\_\_\_\_ Other \_\_\_\_\_
- \_\_\_\_\_ 7. Inspection reports  
\_\_\_\_\_ Structural and mechanical report  
\_\_\_\_\_ Environmental audit, including septic tank
- \_\_\_\_\_ 8. Closing set: Place \_\_\_\_\_ Mail \_\_\_\_\_  
Date & Time \_\_\_\_\_
- \_\_\_\_\_ 9. Property Insurance: Terminate Additional Insured endorsement \_\_\_\_\_
- \_\_\_\_\_ 10. Director review for completion

## REAL ESTATE WITHDRAWAL

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Trustor Name(s) \_\_\_\_\_

Trust Date \_\_\_\_\_ Trust No. \_\_\_\_\_

Parcel address/description \_\_\_\_\_

- \_\_\_\_\_ 1. Document request from Trustor/Treasury  
 \_\_\_\_\_Memo of telephone request \_\_\_\_\_Written request \_\_\_\_\_Place on tickler \_\_\_\_\_TMC Agenda
- \_\_\_\_\_ 2. \_\_\_\_\_Obtain signed Withdrawal From Trust Form  
 \_\_\_\_\_File with Trust document \_\_\_\_\_Trust Revocation --Withdrawal Form not needed  
 \_\_\_\_\_Obtain Investment Direction Form to Sell
- \_\_\_\_\_ 3. TMC / Corp/Assn Action convey to Trustor or sell out of Trust  
 \_\_\_\_\_Action # \_\_\_\_\_Date \_\_\_\_\_File Minute copies (one with Deed, one with Trust)
- \_\_\_\_\_ 4. If a Sale out of Trust then Complete Real Estate Closing Checklist
- \_\_\_\_\_ 5. If a Withdrawal From Trust \_\_\_\_\_If Unrecorded deed—complete Returning Unrecorded Deed Checklist  
 \_\_\_\_\_If Recorded deed in TRS file—Atty prepare deed to Trustor
- \_\_\_\_\_ 6. Forward Documents to attorney for drafting: \_\_\_\_\_Grantor / Title Comp attorney to prepare?  
 \_\_\_\_\_If Corp/Assn is selling the property prepare Corporate Resolution  
 \_\_\_\_\_Draft \_\_\_\_\_Attorney Review Final prep. \_\_\_\_\_Proof legal description  
 \_\_\_\_\_Secure and notarize signatures of Corp/Assn officers  
 \_\_\_\_\_If Trustee to record:  
 \_\_\_\_\_Send Deed to County with check for recording, request Deed return to Corp  
 \_\_\_\_\_Mail copy to Trustor (if necessary)  
 \_\_\_\_\_Recorded Deed returned from County  
 \_\_\_\_\_Copy recorded Deed for file and send original to Trustor  
 \_\_\_\_\_If Trustor / Title Company to record:  
 \_\_\_\_\_Send Deed to Trustor/Title Company for recording  
 \_\_\_\_\_Send Trustor/Title Company Corporate Resolution
- \_\_\_\_\_ 7. Prepare letter to Trustor &/or Title Co. listing documents enclosed and reporting new asset balance to Trustor  
 \_\_\_\_\_Receipt of Documents & return envelope
- \_\_\_\_\_ 8. Deliver to: \_\_\_\_\_Trustor/Buyer: \_\_\_\_\_Title Co./Attorney: Date delivered or mailed \_\_\_\_\_
- \_\_\_\_\_ 9. Obtain signed Receipt of Documents from Trustor, Buyer, Attorney, Title Company, etc.
- \_\_\_\_\_ 10. Cancel ARM insurance &/or add'l. insured. endorsement by letter to ins. company/agent. Only if total parcel is withdrawn
- \_\_\_\_\_ 11. Update Accounting records  
 \_\_\_\_\_Memo to Treasury listing parcel withdrawn, include withdrawn parcel size if only a partial withdrawal is made  
 \_\_\_\_\_If Land Contract cancel/update Investment Directions due to withdrawal  
 \_\_\_\_\_Adjust basis if a partial withdrawal of real estate parcel  
 \_\_\_\_\_Printout updated Asset Summary for file and return to Trust Department
- \_\_\_\_\_ 12. Verify that the entire parcel has been deeded back to the Trustor. Make a file note of the change in the legal description.) \_\_\_\_\_Update File Summary
- \_\_\_\_\_ 13. Director verify Completion

## RETURNING UNRECORDED DEED CHECKLIST

Trustor Name: \_\_\_\_\_ Trust No.: \_\_\_\_\_

\_\_\_\_\_ 1. Mark original unrecorded deed "Unrecorded", make a copy (which will go to Trustor), put original back in the file.

\_\_\_\_\_ 2. Prepare Trustee's Quit Claim Deed. (Each state a specific form. Use atty in that state.)

Attorney Contact Info: \_\_\_\_\_

\_\_\_\_\_ Review \_\_\_\_\_ Proof legal description \_\_\_\_\_ Final preparation as needed

\_\_\_\_\_ 3. Secure and notarize signatures of GCC officers.

Corporation Action Number \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ 4. The new Quit Claim Deed should have a notice stating "DO NOT RECORD" attached to and/or stamped on it. Put a copy in the file in front of the original deed mentioned in #1, original new Quit Claim Deed will go to Trustor.

\_\_\_\_\_ 5. Type a letter of explanation concerning the return of the unrecorded deed (retain original unrecorded deed to trust and copy of quit claim deed, send original QC deed to trustor with a copy of unrecorded deed into trust.)

\_\_\_\_\_ Return to Revoked Trust Checklist if applicable

\_\_\_\_\_ 6. Director verify as complete.

## RETURN OF WILL CHECKLIST

Name: \_\_\_\_\_

Current Address: \_\_\_\_\_

- \_\_\_\_\_ 1. Document request to return Will  
\_\_\_\_\_ Memo of oral contact \_\_\_\_\_ Written request received  
\_\_\_\_\_ Initiate tickler
- \_\_\_\_\_ 2. Make copy of original will(s), put in folder
- \_\_\_\_\_ 3. Mail original wills certified to testator(s) with cover letter and Receipt Documents Form of  
\_\_\_\_\_ Date mailed \_\_\_\_\_ Certified Mail Receipt returned (green card)  
\_\_\_\_\_ Receipt of Documents Form returned  
\_\_\_\_\_ Update Tickler  
\_\_\_\_\_ Personally Delivered
- \_\_\_\_\_ 4. After receipt is received then remove will(s) from Wills Database and put on Terminated-up Database, remove from tickler
- \_\_\_\_\_ 5. Mark file label "Terminated" with date put in Terminated-up files
- \_\_\_\_\_ 6. Associate Director/TMA sign as complete

## REVOKED TRUST CHECKLIST

Trust Name \_\_\_\_\_

Trust No. \_\_\_\_\_ Revocation Date \_\_\_\_\_

- \_\_\_\_\_ 1. Document request from Trustor  
\_\_\_\_\_ Memo of conversation \_\_\_\_\_ Written request \_\_\_\_\_ Initiate tickler
- \_\_\_\_\_ 2. Revocation Letter sent to Trustor(s) (include Revocation of POA letter if appropriate), include  
ppd/sae
- \_\_\_\_\_ 3. Revocation Letter (and Revocation POA) is returned signed by all persons named as Trustor(s)
- \_\_\_\_\_ 4. TMC acknowledgement of revocation, authorization to return assets, & close file  
Action # \_\_\_\_\_ Date \_\_\_\_\_
- \_\_\_\_\_ 5. Treasury  
\_\_\_\_\_ Trust Revocation notice to Treasury  
\_\_\_\_\_ Close asset accounts  
\_\_\_\_\_ Treasury issues check if necessary, place check in file for return to Trustors  
\_\_\_\_\_ Print Asset Summary showing assets removed from trust  
\_\_\_\_\_ Place on Tax Return Tickler for final 1041, Grantor Trust
- \_\_\_\_\_ 6. Prepare documents to return assets to Trustor  
Real Estate \_\_\_\_\_ Complete Real Estate Withdrawal Checklist  
\_\_\_\_\_ Complete Unrecorded Deed Checklist  
Other Assets \_\_\_\_\_ Attach Asset list  
POW \_\_\_\_\_ Return POW, make copy for file  
Trust \_\_\_\_\_ Return copy of Trust marked revoked/date  
\_\_\_\_\_ Mark original Trust revoked/date keep in our file  
\_\_\_\_\_ Copy of Revocation notice for their file
- \_\_\_\_\_ 7. Return documents and assets to Trustor  
Mail check, Receipt of Documents Form, PPD/SAE, Certified-Return Receipt Requested, Original  
POW, Copy of Trust, all asset documents (e.g. assignments, insurance policies, deeds, etc.) Final  
copy of revocation notice stapled to copy of revoked trust.
- \_\_\_\_\_ 8. Receipt of Documents form returned, signed
- \_\_\_\_\_ 9. Update Trust database, remove assets, update tickler  
\_\_\_\_\_ Change trust type, move record to Non Active Trust Database  
\_\_\_\_\_ Remove from tickler; add to Terminated-Up database  
\_\_\_\_\_ File stamped revoked, dated and placed in terminated files
- \_\_\_\_\_ 10. Final Federal 1041 return. I.D. # \_\_\_\_\_  
\_\_\_\_\_ Return filed or \_\_\_\_\_ No return needed memo in file
- \_\_\_\_\_ 11. Director Review for Completion