



**Buchheit Law, PLC**  
**Lindsey Buchheit, Attorney**  
633 1<sup>st</sup> Street  
P.O. Box 533  
Sergeant Bluff, Iowa 51054  
712.823.1024 (Phone)  
712.823.1025 (Fax)  
[Lindsey@Buchheitlaw.net](mailto:Lindsey@Buchheitlaw.net)  
[www.Buchheitlaw.net](http://www.Buchheitlaw.net)

## **GRANTOR TRUSTS**

The information contained herein is educational in nature. You should not rely on this material in lieu of a full review of the applicable statute, regulations and other authorities affecting any specific legal issue or transaction. The following information is not legal advice or a substitute for legal counsel.

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## **A. USE OF GRANTOR TRUSTS**

There are many advantages and uses of Grantor Trusts, including but not limited to:

1. Avoiding probate (sometimes in multiple states, a/k/a ancillary probate)
2. Maintaining privacy
3. Saving administrative fees
4. Protect assets from creditors (Note: with a typical revocable living Grantor Trust, the Grantor's or trust assets are still up for grabs, but the trust can protect the beneficiary's inheritance of trust assets after the Grantor dies)
5. Peace of mind for the Grantor / minimizing family conflict / simplicity at Grantor's death
6. Control over asset distribution (defining who gets what assets, when, how, and under what circumstances)
7. Tax benefits – There are many tax advantages to Grantor Trusts. For example, a Grantor may sell assets to the trust without recognizing a gain on the sale. The Grantor may also loan money to the trust without being taxed on the interest income (Note, however: the trust must pay at least a minimum IRS-prescribed interest rate, a/k/a the applicable federal rate). Additionally, the Grantor Trust's income tax, which is typically paid by the Grantor personally, is not deemed a gift to the trust. In other words, the trust assets can accumulate for the benefit of the beneficiaries, without the tax burden. Note: tax implications are extremely fact dependent, and not every type of Grantor Trust will help save taxes. In fact, most revocable living grantor trusts do not lower estate or inheritance tax.
8. Asset substitution – the power to swap assets with the trust. I.R.C. 675(4) provides the Grantor retains the right to substitute assets except life insurance policies.

## **B. TYPES OF GRANTOR TRUSTS**

With a Grantor Trust, the Grantor retains certain powers over the trust. When the Grantor dies or relinquishes certain powers, the Trust becomes non-Grantor Trust (*see Section C below*). There are many types of Grantor Trusts which can be classified as Grantor Trusts, but all of these may be confined to three categories: (1) revocable trusts; (2) irrevocable trusts included in the Grantor's taxable estate; (3) Intentionally Defective Grantor Trusts excluded from the Grantor's taxable estate. Following are examples among these three categories:

- Revocable living trust – the most common type of Grantor Trust; where the Grantor retains complete power to amend or revoke the trust and use and dispose of the trust assets during his/her life. A primary intention for most clients establishing a revocable living trust is to avoid probate upon the client's death.
- Spousal lifetime access trust (SLAT) – This trust functions like a bypass trust, providing limited access to income and/or principal for the needs of a surviving spouse. However, unlike a bypass trust, the SLAT is funded via gift while the Grantor is alive.
- Grantor retained annuity trust (GRAT) – possible uses of GRATs include, for example: (i) to make a transfer of property expected to appreciate faster than the requirement to make a GRAT's required annuity; (ii) to make a transfer of property expected to appreciate at a time when the Grantor is cash-poor and wants to lower the gift tax burden; (iii) to reduce the transferor's holdings in an entity to qualify for a minority discount; (iv) to shelter from gift tax the designation of descendants as remainder beneficiaries in a trust created to provide periodic payments to an ex-spouse. *See* Letter Ruling 9235032.
- Qualified personal residence Trust (QPRT) – lifetime transfer of a personal residence (primary or second home) in exchange for continued rent-free use of the residence for the trust term.

- Charitable lead annuity trust (CLAT) – Charity receives a guaranteed annuity payment during the trust term.
- Intentionally defective grantor trust (IDGT) – examples include irrevocable life insurance trusts (ILIT) and dynasty or generation skipping transfer tax trusts (GST's)

### **C. PROVISIONS TRIGGERING GRANTOR TRUST STATUS**

I.R.C. Section 673-679 lists various triggers for Grantor Trust treatment. For example:

- I.R.C. Section 673: Reversionary interests exceeding 5% of principal or income
- I.R.C. Section 674: Power to control use of principal or income
- I.R.C. Section 675: Certain administrative powers; Note, the Grantor or a non-adverse party must be able to exercise each power without the consent of an adverse party. Examples under this section include, for example, (i) the power to deal for less than adequate / full consideration; (ii) the power to borrow trust property without adequate security interest; and (iii) the power to vote stock, control investments, or substitute property.
- I.R.C. Section 676: Power to amend or revoke
- I.R.C. Section 677: Income for benefit of Grantor or Grantor's spouse
- I.R.C. Section 678: Person other than Grantor treated as substantial owner – for example, beneficiaries' Crummey powers to qualify contributions to the trust for the federal gift tax annual exclusion because the beneficiaries have the right to withdraw some or all of the amount contributed to trust
- I.R.C. Section 679: Foreign trust with one or more U.S. beneficiaries

#### **D. FUNDING THE GRANTOR TRUST – WHO IS THE GRANTOR?**

The Grantor is the person who creates the trust. Some lawyers also refer to the Grantor as the Settlor. In most revocable living trusts the Grantor and Trustee are the same person. There are generally three parties to a Grantor Trust: (i) the Grantor of the trust who creates the trust and transfers his/her assets to the trust; (ii) the Trustee, who is the person or entity responsible for administering the trust according to the Grantor's directions; and (iii) the beneficiary, the recipient of the trust income or assets under to the trust agreement. Grantor Trusts are established by the Grantor during his/her life.

Revocable living trusts are almost always funded during the Grantor's lifetime. The purpose of funding a revocable living trust is to avoid probate. Technically, there is no trust until it is funded with assets. To avoid probate, the trust has to be funded with the Grantor's (otherwise probate) assets during the Grantor's life. However, even in the typical revocable living trust scenario, a Grantor Trust may contain trusts that spring into being upon the Grantor's death. A common example is as follows: Joe Dirt creates a revocable living trust. Joe is the Grantor and also the Trustee. The trust provides that Joe can use all of the trust assets during his life at his discretion. Joe signs the trust in the presence of a notary and funds the trust with a deed for his house, a bill of sale for his tangible personal property, and names the trust as the owner of his bank accounts and non-qualified retirement accounts (Note: non-qualified because putting qualified, or tax deferred assets into a trust is typically not advised due to adverse tax consequences). Joe's trust goes on to state that at his death, the remaining assets in the trust shall be divided into a marital trust and a family trust. The marital trust is to provide for Joe's wife during her life, while the family trust is to provide for Joe's children at the death of Joe's wife.

Following are some tips to consider when funding a Grantor Trust:

1. Quit Claim Deed – Grantors generally use a Quit Claim Deed to transfer their interest in real estate to trust. Every state and county has its own rules and fee schedule for Quit Claim Deeds. If a client has real estate in a state where you are not licensed to practice, recruit a lawyer licensed in that state to prepare the deed. This takes the liability off your shoulders as to that foreign state's deed. In Iowa, there is not a transfer

tax for a Quit Claim Deed, but you need to ensure the Deed recites the proper exemption (e.g. Iowa Code §428A.2(21) exempts transfer tax for transfers where consideration is less than \$500) and follows the County Recorder's formatting (e.g. in Woodbury County, Iowa – 3 inch margin at the top or Recorder's cover sheet) and substantive rules.

Be sure to get a copy of the Grantor's most current deed so you can properly transfer title. For example, if Joe Dirt purchased his house in 2000 and holds title as Joe M. Dirt, a single person, but now Joe is married, the Deed must refer to Joe M. Dirt, a married person, and Joe's wife must sign off on the Deed so there is not a title issue.

2. Certification of Trust – In addition to avoiding probate, another perk of a living Grantor Trust is that the trust, even at the Grantor's death, remains private. Thus, when a Grantor creates a trust, Iowa Trust Code 633A.4604 allows the Grantor to use a Certification of Trust – rather than the entire, private trust document itself – to transfer certain assets. Typically the Certification of Trust is provided to the client's bank, life insurance carriers, and financial advisors, along with instructions for either funding the Trust during the Grantor's life or naming the Trust as the payable on death beneficiary.

3. Bill of Sale – This instrument is often used to fund the trust with the initial tangible personal property without a legal certificate. Be sure to state in the Bill of Sale that this includes all tangible personal property hereinafter acquired by the Grantor. Also ensure the Bill of Sale's definition of tangible personal property is consistent with the definition in the Grantor's Pour Over Will or Trust (e.g. Does personal property include boats or trailers?).

4. Certified Public Account (CPA) / Enrolled Agent (EA) – Have a CPA or EA review all trust funding strategies before the actual funding occurs. Tell your client this and also put it in writing. A CPA or EA might spot a tax issue the estate planning lawyer would otherwise miss. As previously mentioned, funding trusts with qualified retirement accounts is generally discouraged, and an alternative plan is necessary for these types of accounts.

5. Trust Funding Letter – Always put in writing what you've told the client about the importance of properly funding the trust. I typically send this letter after I have

received the recorded Quit Claim Deed, if applicable, or at the end of the case. Following is an example:

Joe Dirt  
8675309 Avenue  
Sioux City, Iowa 51106

Re: TRUST FUNDING

Dear Joe:

As we discussed, it is important we get all of your probate assets into your Trust. Below is a summary of action items to accomplish this:

1. Quit Claim Deed – Enclosed is the original recorded deed which we've transferred to your Trust. Please put this original document with your estate plans.

2. Bank accounts – If you have not done so already, you should take your Certification of Trust to your banks and transfer your accounts (CD's included) to your Trust. In the alternative, if you do not want to issue new checks in the name of your Trust, you may complete the paperwork with each bank and designate your Trust as the payable on death beneficiary of each account.

3. Financial Accounts – I recommend we name the Revocable Trust of Joe M. Dirt, dated December 24, 2015) as the beneficiary of all non-qualified accounts and insurance policies. I do not recommend naming qualified accounts (e.g. 401K's and IRA's) as the beneficiary of your Trust due to potential adverse tax consequences. Please let me know if you need assistance with this.

It is very important all of your non-qualified financial accounts are either in the Trust or name the appropriate beneficiary. I encourage you to review all transfers into your Trust with a certified public accountant to discuss any tax consequences. Likewise, if you purchase any additional real estate, be sure to purchase it in the name of the Trust. Any property not properly transferred to your Trust or without an existing beneficiary designation will need to be probated.

Please call me with any questions. Thank you.

## E. DRAFTING TIPS AND SAMPLES

The terms of revocable living trusts vary substantially depending upon the client's values and wishes. Following are common provisions and drafting tips and examples:

### Format Example

1. *Preamble* – Declaration of the trust establishment or agreement between Grantor and Trustee. Example: “This Revocable Trust Agreement is executed this 24<sup>th</sup> day of December, 2015, by and between Joe Dirt (“Joe”) as “Grantor”, and Joe, as “Trustee.”

2. *Trust Purpose & Family Defined* – Example:

The principal purpose of this Trust is to hold real and personal property for the benefit of Grantor's family as herein provided. At the time of making this trust agreement, Joe is a single person and has two children, namely, Michael Dirt (“Mike”) and Susan Dirt (“Susan”). All references to “child” or “children” hereinafter shall include Mike and Susan, and any child later born to or adopted by Grantor.

3. *Trustees* – This provision appoints the Trustee(s) and may also include certain waivers and/or direction for the Trustee. For example:

Grantor shall serve as Trustee during his life. In the event Joe cannot act as Trustee, then his daughter, Susan, shall serve as successor Trustee. In the event Susan is unable or unwilling to act as a Trustee, then his son, Mike, shall serve as successor Trustee. The Trustee shall not be required to give a bond and shall be entitled to reasonable compensation.

The Trustee shall not be required to qualify or file reports with any Court. However, following the death of Joe, the Trustee shall, at least annually, make an accounting to all beneficiaries, and the approval by a beneficiary, or his or her parent, legal guardian, or conservator, shall release and relieve the Trustee from any further responsibility or liability with respect to that beneficiary, and his or her heirs and assigns, for their actions during the period covered by the accounting.

4. *Property* – States the type of property initially transferred to the trust, and that other property may fund the trust in the future. Example:

Grantor transfers to the Trustee property described in the Bill of Sale signed by Joe on December 24, 2015, which shall constitute the initial principal of the “Revocable Trust of Joe M. Dirt” (hereinafter sometimes referred to as

the “Revocable Trust” or “Trust”). The Trust property shall be administered and disposed of as provided for herein.

Additional property may be added to the Trust estate at any time by any person, partnership, corporation or other legal entity, by transfer upon death, by insurance contract, trust designation or, with the consent of the Trustee, by a lifetime transfer. Such additional property, including the proceeds and interest therefrom, shall be held and managed according to the provisions of this Trust Agreement, the same as if originally deposited hereunder. All such original and additional property is referred to collectively as the “Trust estate”.

5. *Revocation and Amendment* – This section provides that the trust may be revoked or modified and the method by which such revocation or modification shall occur. In most cases, any amendment must be in writing and delivered to the Trustee. Consider also defining who has the power to revoke or amend the trust – e.g. Does any attorney-in-fact have that power?

6. *Provisions During Grantor’s Life* – This section generally states that the Grantor may receive as much income and principal as he/she desires during his/her life. Consider also including a provision which contemplates the Grantor being alive, but incapacitated. The successor Trustee in that instance might be given power to give to the Grantor for his reasonable health, education, support, and maintenance.

7. *Payments Upon Grantor’s Death* – This section states what expenses (e.g. funeral expenses, taxes, administrative fees, etc.) the Trustee can pay for with trust funds upon the Grantor’s death.

8. *Disposition of Trust Property Upon Grantor’s Death* – This is perhaps the most important provision, at least in the client’s eyes. This provision directs the Trustee who gets what property, and under what conditions. This provision varies greatly from client-to-client, so be sure to spend a lot of time considering all possibilities and flushing out the client’s goals.

9. *Rule Against Perpetuities* – The dreaded concept that fries most first year law school student’s brains! Essentially, this “rule” means the trust cannot live on forever; it has to end at some point, specifically, for example, “not later than twenty-one (21) years

after the death of the last survivor of Joe’s children, grandchildren, or other descendants living at the time of Joe’s death.”

10. *Trustee Powers* – This section describes the powers of the Trustee. The provision may simply state that the Trustee has the powers of all common law and statutory authority and the Iowa Trust Code and the Iowa Probate Code, or it may state this and go on to define additional powers of the Trustee (for example, to sell or dispose of real property; to mortgage or encumber trust property; etc. – *See Section G below*).

11. *Interpretive Rules* – For example:

- A. *Pronouns*. As used herein, the pronouns "he," "she," "his," "hers," "him," "her", "it" and "its" shall include the masculine, feminine, neuter and plural thereof.
- B. *Singular and Plural*. As used herein, the singular shall include the plural, and the plural shall include the singular, wherever the context and facts require such construction.
- C. *Headings*. The headings, titles and subtitles herein are for convenience of reference only and are to be ignored in any construction of the provisions hereof.
- D. *Jurisdiction*. All questions of law arising under this agreement shall be determined under and according to the laws of the state of Iowa.

### **Drafting Tips**

1. *Keep it simple*. Legal jargon is unavoidable (e.g. rule against perpetuities), but clients appreciate being able to understand what they are reading and signing. Also avoid repetition unless it is intentional to make point (e.g. disinheritance of a certain beneficiary).

2. *Keep it clear*. Before the client signs, read every trust document from start to finish from the perspective of the trustee. The trustee is the person who will have to interpret and implement the trust you’ve drafted. Unclear language such as, “no person who has not turned age 25 shall receive trust property,” is an unnecessary headache.

3. *Keep it consistent*. If you refer to the Grantor initially, don’t later refer to him/her as Settlor.

4. *Use active voice.* Your teacher/professor clients will appreciate this. Using an active voice makes for an easier read, avoids unnecessary words, and is more affirmative than passive writing. For example:

The Trustee shall distribute the trust property when my child turns nineteen (*active voice*).

The trust property shall be distributed by the Trustee when my child turns nineteen (*passive voice*).

5. *Use property punctuation.* It sounds nit-picky, but a comma in the wrong place can cause confusion, uncertainty, or an entirely different meaning.

6. *Define categorizations.* For example, “I give all of my tangible personal property to my spouse.” What is tangible personal property? Does it include trailers and boats? Also, be sure to define “grandchildren” and “descendants.” Sample language:

As referred to herein, “grandchild” or “grandchildren” shall include all grandchildren born to (including but not limited to by way of surrogacy) or adopted by a child of Joe. Step-children who are not adopted by a child of Joe are excluded as grandchildren, as defined herein. Similarly, a “descendant” or “descendants” as referred to herein shall only include those descendants of Joe in his direct bloodline or adopted by someone in her direct bloodline.

7. *Avoid being overly specific.* Drafting a trust document is easier said than done. As estate planners, we constantly think about all of the potential scenarios that could arise and try to craft language that is clear, yet all encompassing. Sometimes our desire to be thorough can backfire and be too cumbersome and confusing. If the language is questionable, consider drafting a clear statement and then give an illustration / example of the statement’s intent.

8. *Advocate for contingent / alternate trustees and fiduciaries.* Sometimes clients have little family or friends to choose from to fill the role as a trustee, but in those instances you should at least discuss with the client the option to name a corporate trustee (e.g. bank or financial institution) as a backup.

9. *Avoid unintentional disinheritance.* If the Grantor may have children in the future, be sure to include, “and any children hereinafter born to or adopted by me” in the definition of “child(ren).”

## **F. TAXATION CONSIDERATIONS – WHEN TO FILE THE RETURN**

A Grantor Trust is disregarded for income tax purposes. In other words, the income, deductions, gains, and losses flow to the Grantor of a wholly-owned Grantor Trust for income tax purposes. In most cases, there is not even a requirement to file a trust income tax return during the Grantor’s life, as the income of the trust assets can be reported with the Grantor’s social security number. Because the Grantor is responsible for any income tax liability associated with his/her wholly-owned trust, the trust assets may grow within the trust without reduction for such taxes.

When establishing a Grantor Trust, it is generally advised the Grantor is treated as the owner as to the entire trust. If the Grantor is deemed the owner of only a portion of the trust, then the Grantor only includes income, deductions, and credits allocable to that portion. Treas.Reg. §1.671-3(a). However, at some point a Grantor may waive certain powers if, for example, the Grantor feels there are sufficient assets for the trust’s intended beneficiaries, or it’s no longer economical for the Grantor to pay the trust’s income taxes. In these instances, or in the event of the Grantor’s death, the trust becomes a non-Grantor Trust, and a separate trust tax return must be filed.

A non-grantor trust pays income tax at the trust level on any taxable income retained by the trust. A trust’s income taxation is similar to individuals, but the tax brackets are extremely compressed. Under the American Taxpayer Relief Act (ATRA), in 2015 a trust may income tax up to 39.6% when the taxable income exceeds \$12,300. The Net Investment Income Tax (NIIT) imposes a 3.8% tax on the lesser of an estate’s or trust’s net investment income or the excess of the trust’s adjusted gross income over a specific amount. The NIIT does not apply to trusts where all of the unexpired interests are devoted to charitable purposes. For the 2015 tax year, the maximum tax rate for long-term capital

gains and qualified dividends in a trust is 20% of amounts above \$12,300, while the 0% rate applies to amounts up to \$2,500. The 15% rate applies to amounts between the two thresholds.

It is generally recognized that the termination of the trust is a transfer of the assets and liabilities from the Grantor to the trust. *Madorin v. Comm'r*, 84 T.C. 667 (1985); Treas.Reg. §1.1001-2(c), Ex. (5); Rev.Rul. 77-402, 1977-2 C.B. 222. However, there is less certainty on the type and timing of the transfer.

If a trust makes a distribution to a beneficiary, such distribution will pass the taxable ordinary income (but generally not capital gains) to the beneficiary, to be taxed on the beneficiary's personal income tax return. The trustee must complete Form 1041 and issue a Schedule K-1 to the beneficiary. The Schedule K-1 shows the amount and type of income from the trust to be included on the beneficiary's individual tax return. 2015 Form 1041-ES, Estimate Income Tax for Estate and Trusts may be found at [https://www.irs.gov/pub/irs-access/f1041es\\_accessible.pdf](https://www.irs.gov/pub/irs-access/f1041es_accessible.pdf).

## **G. ADMINISTRATIVE POWER**

Following is an example of the Trustee administrative powers provision for use in a revocable living trust. Although these powers may be somewhat boilerplate, a careful estate planner will read through each power and tweak the powers as necessary on each trust document. Some clients may not want the Trustee to have such open-ended powers and discretion.

### **TRUSTEE'S POWERS**

In addition to, and not in limitation of, all common law and statutory authority, the Iowa Trust Code and the Iowa Probate Code, the Trustee shall have the following powers, with regard to both real and personal property, with respect to the trusts created under this Agreement, which powers shall be exercised without the necessity of notice to or approval of any court:

- A. To sell, convey, transfer and assign, any property, in whole or in part, at public or private sale without appraisal and without approval of any Court, upon any terms which it deems advisable and without liability upon any person, dealing

with the Trustee, to see to the application of any money from the property delivered to it.

- B. To borrow money for any reasonable purpose, with or without giving security therefore; to mortgage, to pledge, to lease, with or without option to purchase, upon any terms and for such consideration as it may deem advisable, and even though such mortgage, pledge, or lease extends beyond the terms of said trust.
- C. To operate any business or enterprise owned by the Grantors, or in which the Grantors may have an interest at the time of death of a Grantor.
- D. To retain any investments made by the Grantors, and, in its uncontrolled judgment, to purchase, acquire, invest, reinvest in, and sell any type of real and personal property, including, but not limited to, bonds, stocks, both preferred and common, shares and participation in investment companies and investment trusts, any corporate or government securities, even though any such investments above enumerated, may be of a kind or in an amount which ordinarily would not be considered suitable for a trust investment; to keep any or all securities or other property in the name of some other person or corporation, or nominee of the Trustee, with or without a Power of Attorney for their transfer attached, or in the name of the Trustees without disclosing its fiduciary capacity.
- E. To vote, execute proxies to vote, join in, or oppose any plans for reorganization, consolidation, merger, recapitalization, refinancing or liquidation of any corporation, association, or other organization of which he holds shares, obligations or other securities, and to exercise any conversions or subscription rights pertaining to any stocks, bonds, or other securities held; and to become a party to any voting Trust Agreement they may choose; except that the voting rights over any bank stock or bank holding company stock which would affect the Trustee's ability to retain such security shall be exercised by the beneficiaries to whom the Trustee is to or may distribute the income of the Trust.
- F. To pay, compromise, or contest any claim or other matter, directly or indirectly affecting the Trust estate.
- G. To employ counsel, or other agents, for any of the above or other purposes, particularly with regard to the making of investments and to determine whether or not to act upon its advice.
- H. To make payments to, or for the benefit of, any beneficiary (specifically including any beneficiary under legal disability) in any of the following ways:

1. directly to the beneficiary;
2. directly for the support, health, maintenance and education of the beneficiary;
3. to the legal or natural guardian of the beneficiary; or
4. to anyone who, at the time, shall have custody and care of the person of the beneficiary.

The Trustee shall not be obliged to see to the application of the funds so paid, but the receipt of the person to whom the funds were paid, shall be full acquittance of the Trustee.

- I. To hold the assets of the several trusts, shares or portions of Trust, created by this Trust Agreement, as a single fund for joint investment and management, without the need for physical segregation, dividing the income proportionately among them. Segregation of the various trusts, shares or portions need only be made on the books of the Trustee for accounting purposes.
- J. To receive proceeds of any insurance policies on the life of a Grantor and to receive money or property from any other source and administer such proceeds, funds and property the same as if they were originally a part of the Trust estate. The insurance proceeds shall be divided and allocated to the trusts established under Trust Agreement in the discretion of the Trustee.
- K. To enter into any transaction, authorized by this Article, with Trustee, Executors or Administrators of other trusts or estates, in which any beneficiary hereunder has any interest, even though any such Trustee or representative are also Trustee hereunder; and, in any such transaction, to purchase property, or make loans on notes secured by property, even though similar or identical property constitutes all or a large proportion of the balance of the trust estate, and to retain any such property or note with the same freedom as if it had been an original part of the Trust estate.
- L. If the Trustee determines that a trust has become reduced in size to the point that the continued administration of it has become unduly expensive and not in the best interests of the beneficiaries, the Trustee shall distribute the balance of principal and accumulated income to the beneficiaries who are then entitled to receive the income or to have the income accumulated for their benefit.
- M. To determine what is principal and what is income of the trust, and in the Trustee's discretion, to allocate receipts and expenses between principal and income and to establish out of income and credit to principal reasonable

reserves for rehabilitation, major repairs, replacements and losses in value resulting from wear and tear and obsolescence of tangible property.

- N. To merge, without court action, the trusts created by this document into or with any other share or trust created under this or any other document wherein the beneficiaries, distribution of income and principal, ultimate method of distribution, and all other administrative terms and provisions are substantially similar. The Trustee may select the trust instrument under which the single resulting trust shall be administered; provided, however, that the trust instrument having the earliest effective rule against perpetuities savings clause shall be the one so selected. The decision of the Trustee in this regard shall be conclusive on all parties in interest.
  
- O. To segregate by allocation to a separate Trust a portion of or specific assets included in the Trust property, or property directed to be added to or consolidated with the Trust property, of any Trust held hereunder in order to reflect a partial disclaimer or differences in federal tax attributes (in a manner consistent with the rules governing such federal tax attributes), and to divide, segregate, allocate or distribute Trust property in undivided interest, non-pro rata or wholly or partly in kind at fair market value. Except for disclaimed powers or interest or as expressly provided by this instrument, the separate Trust created by such segregation shall be held on the same terms and conditions as the Trust from which it was segregated. In managing, investing and administering the Trust property of any such separate Trust and in making applicable tax elections, the Trustee shall consider the differences in federal tax attributes and all other factors the Trustee believes pertinent.

All such judgments, decisions and actions made by the Trustee in carrying out the above powers shall be conclusive on all parties in interest, unless the same be made in bad faith. The Trustee shall not be required to furnish bond for the faithful performance of its duties.