THE JIM AND JANE BROWN FAMILY TRUST

Simple Trust Outline

A comprehensive estate plan has a living trust as its centerpiece. Trusts contain information about you and your family, an integrated set of instructions, and statements of how you want the trustee to administer the trust and what authority the trustee has to carry out these provisions of the trust.

These topics are grouped into separate "Articles" of the trust for convenience, although there are substantial interrelationships between and among them. Some of the form and content of trusts follow a legacy of formatting, words and phrases ("boilerplate") that, although a bit arcane, serve valid purposes. Consistent use of these words and phrases yields a consistent interpretation of their meaning and effect, and that is important from a legal perspective when your trustee, beneficiaries and/or the probate judge reviewing your trust can interpret your intentions and instructions. You may consider some of this language to be somewhat obscure, so ask me to explain anything you don't understand.

Article 1 - Declarations

You begin by introducing yourself as the maker and initial fiduciary of your trust, called the "Settlor" and initial Trustee.[1] Then you provide statements of information about you and your immediate family, statements about your intentions in making this trust, and general information about the trust itself. The content in this first section of your trust serves to confirm your capacity to make the trust and to inform everyone entitled to know about your intentions in making your trust. These statements are particularly helpful for people who are not familiar with you or this trust. When there is a question of interpreting the meaning and purpose of this document it is helpful to have the answers on the first page.

The property you transfer into your trust, the "trust estate', will be held by the trustee in the name of your trust and managed as you have directed. We listed your major assets on the last page of the trust document in a *Schedule of Initial Funding*, which is an inventory of what you intend to put into your trust. Other assets may be added to your trust at any time. One example is life insurance proceeds on a policy that is payable to your trust. Title to all assets you intend to be part of your trust should be changed in the name of the trustee of your trust.

If you have an asset that is not held in the name of your trust when you die, your Will instructs your Executor to add that property to your trust. If these assets are modest in value, they may be added by informal means. If they are significant, then a probate may be required to pass them into the trust. Therefore, it is important that you fund your trust while you are living and capable of doing so. Recall that one purpose for having a living trust is to avoid the inconvenience, delay and cost of probate. That is achieved only with respect to assets you have transferred into the trust before your death.

Article 2 – Administration for Settlor

This trust is written to provide support, care and health and general welfare for you only. Because the trust is revocable, you are in control of what you own and how it is spent. Therefore, the trustee is instructed to follow your directions for the use and expenditure of trust income and principal. While you are competent, you may tell the trustee what you want and you may demand any or all of your assets be

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1 Note that you are referred to as the "Settlor" of your trust. Because much of the trust is written in the third person, we must use a label for the person making the trust that is consistent throughout the document. Unfortunately, there is no adequate term for this: Settlor, Trustor, Grantor, etc. I have chosen to use the label "Settlor" because it implies that you are settling your affairs by using a living trust. The verb "to settle" also describes what the Trustee does in winding up your personal and financial affairs after your demise.

delivered to you from the trustee. If you make this demand for all or substantially all of the trust assets, it will have the effect of revoking your trust.

If you become too incapacitated to serve as your own trustee, the trustee will maintain your support, care and health in your present lifestyle to the extent possible within the means of your trust. The trustee is instructed to make sure you are well provided for and that you are able to remain in your home for as long as reasonably possible when you have a long-term illness. The trustee also is instructed to monitor your resources so that, if it appears you will not have enough to support you in your later years, the trustee can do what is possible to bring in available public benefits.

If there is any net income in the trust at the end of the year, it should be distributed to you to avoid extra income taxation (to the trust, then to you). That decision is left to you or the trustee.

Article 3 - Administration After Your Demise

The Trustee has two jobs after your demise: one is to pay final bills and tidy up your financial life, the other is to make sure the people you intend to benefit from your estate receive their legacies without undue delay.

Your final obligations are any unpaid bills you may leave, the cost of funeral and burial, the expense of winding down the administration of this trust (document fees, filing fees, title transfer costs, etc.), and settling any taxes that may be owed on account of your final income tax period and/or taxes relating to the administration of your trust and estate. The trustee is encouraged to determine how much these obligations may total and to hold that estimated amount in the trust, distributing the rest according to your directions in order to get your legacies to your beneficiaries without too much delay, which one of the goals in making a living trust.

If you have left informal instructions for the disposition of specific items (by making notes, putting tags on furniture, etc.), the trustee is instructed to honor these wishes and to treat these instructions as though they appeared in your trust or Will.

This Article of your trust contains your specific directions for the disposition of your estate. You have thought this out carefully and have provided at least one alternate plan in case your any of your specific beneficiaries do not survive you. This may be in the form of giving a child's share over to his or her surviving children, an alternate gift to another family member or charity, and direction to give any share for which there is no beneficiary surviving to your "heirs" under California law.

Directions for the disposition of your estate may appear in this trust and in your last Will. Your Will is the easiest estate plan document to change, and the least expenses. So, the trustee is directed to look at your last Will to determine whether you gave any instructions for the disposition of your estate. Taking those last directions into account, the trustee will distribute your estate as you have directed in the Will and this trust.

Any distribution to beneficiaries who are under age 21 may be held by the trustee, the beneficiary's parent or guardian, put into a special custodial account, as the trustee decides, until the beneficiary attains a responsible age but no later than age 25. This allows the trustee to close the administration of the trust when it he or she is ready instead of being required to hold a portion of the trust for several years waiting on a young beneficiary. This provision is included for the convenience of your trustee when, for example, a young beneficiary takes through a predeceased parent.

Article 4 - Trustee Provisions

This section of your trust is devoted to the identity and duties of your Trustees and their successors, if needed. While you are living, you retain the authority over these matters, and you may manage your own trust with the least degree of formality possible. However, these provisions are written in a way that require the Trustee (particularly anyone other else who is serving as your trustee) to perform all of the necessary administrative duties of your trust with the least amount of formality possible under applicable trust and fiduciary laws.

As long as you have the capacity to do so, you may name anyone to serve as Trustee and you may remove any Trustee, as you prefer. Therefore, your nomination of successor Trustees will take effect only by default: when you either do not wish to exercise those powers to appoint and remove Trustees, or you don't have the capacity to do so when needed.

Your trust provides that the Trustee (someone other than yourself) will be reasonably compensated for these services. The Trustee is not required to provide a bond, which is a surety policy that insures the Trustee's due performance of his or her duties. The bond is an administrative cost that is not really necessary when you have appointed trusted relatives or friends.

Similarly, in the spirit of informality and to encourage your nominees to perform this job for you, you are relieving your trustee from liability for the acts of prior trustees and for the trustee's own actions, except those which are willful, reckless or grossly negligent. Because this is a family trust, it may occur that your Trustee is a partner in some of your financial investments or has some personal interest in the assets or investments chosen for your trust. These present conflicts of interest that, if you did not waive, would prevent the Trustee from doing these things.

If the value of your trust becomes so low that it is uneconomical to have someone administer it in this manner, then the trust may be terminated to avoid unnecessary expense. In this situation, the power of attorney and small estate transfer rules will help you and your family to avoid a conservatorship and/or probate. So, the purposes of this trust can be accomplished by less formal means which, also, are less expensive than continuing the trust.

Article 5 - Trustee's Powers

The Trustee is given fairly broad powers to act for you in any likely circumstances that we presently believe may be necessary or likely to arise now or at any time in the future.

I have included those powers that I think the Trustee may need, in view of the types of assets you own and the preferences you have expressed in our planning discussions, in order to have each power specified in the trust. It is important to be specific about the trustee's authority when dealing with financial institutions, title companies, etc. who tend to have difficulty seeing powers that are implied from a more general statement of authority. This is an unfortunate reality, but we need to take it into account so that the Trustee's job will be as easy as possible.

These provisions of your trust are more technical because the words and phrases used have specific legal meanings and are readily understood by the courts and the financial institutions with which your Trustee will be dealing. We have discussed any trustee authority given in the document that you do not fully understand so that your choices to include or exclude certain powers are reasonably informed. As long as you are competent, we can alter this section to add or clarify these statements of the trustee's authority if that becomes necessary.

Article 6 - Changes and Revocation

This section of your trust confirms that you retain the power to change and revoke your trust at any time you are capable of doing so. Your power of attorney accompanying the trust may give your agent under that power of attorney the authority to alter and revoke your trust on your behalf when you are not capable of doing so yourselves.

Article 7 - General Terms & Definitions

This last section of your trust indicates the formal name you have selected for this trust, and defines certain legal terms used in the document so that your intentions are clearly understood by your Trustee, your beneficiaries, and the persons with whom your Trustee may be required to deal while administering your trust.

These provisions also include a "no contest' clause to encourage beneficiaries to refrain from challenging this plan, and a 'spendthrift' clause that prohibits a beneficiary from assigning his or her interest to anyone else in anticipation of receiving it. This is intended to prevent a beneficiary from borrowing

against or pledging his interest in the trust, etc.

This section also describes the procedure by which you may be found to be incapable of acting due to a physical or mental condition that renders you unable to act prudently for yourself. Because we are living longer, many of the effects of extended aging limit our capacity to act wisely for ourselves. Therefore, it is important to provide for this in a way that is neither burdensome nor expensive. Usually, your regular physician can make this determination with sufficient reliability, so that person's opinion can be enough. This issue also affects the Trustee, and it also makes sense to deal with it in an efficient manner.

There is a "no contest" clause in this section to discourage disagreements and outright challenges to your plan after your passing. When they occur, these situations are disruptive to everyone and work against your right to decide where you want your estate to go.[2]

The other significant provision in this last section is a "spendthrift" clause that prevents a beneficiary from anticipating his or her legacy. It is possible for a beneficiary to "borrow" against their legacy or even assign it to someone in exchange for money or something of value. This also disrupts your plan and adds to the burden of the trustee's job.

Execution

The trust concludes with your notarized signature as the Settlor (the maker of this trust) and the signature of your initial Trustee (usually yourself) accepting the trusteeship and agreeing to carry out the terms written in your trust. You may have additional pages attached to your trust which are there for convenience and information, such as the inventory of your assets discussed below.

The Trust Estate

I will mention several times that you must put assets "into" your trust before the terms of the trust apply to them. This is called "funding" your trust. Part of our discussions in creating your estate plan has been a review of your assets. I will prepare a list of the assets you intend to include in the trust estate and attach that list at the end of your trust document. Note that the early part of the trust document (usually page 1) contains a statement that refers to this attachment. That reference serves as evidence of your intention to make this trust and to include the listed assets as part of your trust estate. I most often call this the *Schedule of Initial Funding*. This list also serves as a reminder to you to actually transfer these assets into your trust, and it informs your successor trustees what to expect to find titled in the name of your trust. This list is not a "legal" part of the trust so it may be changed as often as you wish with no particular formality required, or you may prefer to attach revisions of your list from time to time as the composition of your estate changes over time.

Final Thoughts

If you intend to change anything in this trust, it must be done by a written and notarized amendment. If you wish to add to the information in the trust, do so by means of a separate writing that you may keep with your trust or a copy of it. DO NOT WRITE directly on your trust document as that may invalidate it or the part on which you have written. The only reason to write on a trust or other estate plan document is to cancel or revoke it.

2 Unfortunately, California is tending with many other states that will not enforce no-contest provisions. We have a dominant legal policy that prefers inheritance, which makes your direction to disinherit someone difficult to enforce. In the mean time, your no-contest provision may serve as a deterrent and evidence of your intentions.

Estate Planning Terminology

Estate Planning matches the legal documents that will best provide you with the means to provide for the management of your finances, your support and care when you may need assistance due to illness or disease, and to provide clear directions for your survivors for the disposition of your estate after death. Our estate planning conversations will sort out the types of plans you should make so that the administration of your estate during any period of incapacity and after your death will be carried out, as you prefer. Once those choices are made, we will create documents that we tailor to your particular situation, then execute and implement those arrangements as needed.

Elder Law. Our conversation may go beyond these topics to collateral questions about income or estate taxation, public benefits qualification and planning, arrangements to fund long-term care, or how you are protected when you late in life when you are vulnerable or dependent on others. These broader discussions fall into this broader legal discipline called Elder Law, which also includes protecting your rights to competent care and serenity.

The term ***Estate Administration*** refers to how, where and by whom your estate (assets and income) will be managed for you during a period of incapacity and how it will be handled following your death. This may be done by informal means such as with powers of attorney or a living trust. The management of your estate and your care may need to be managed more formally in the probate court where the judge will appoint a personal representative for you and/or your estate, and will supervise the representative's acts and transactions made on your behalf.

Essential Estate Plan Documents.

Wills. Everyone should have a Will! It is quite true that the State has an estate plan for you, if you die without a valid will. There are statutes which dictate who will take your estate, and others which dictate who will act as your executor. The choices you make in your Will override those prescribed in these statutes. You have the freedom to make these choices, there is no reason why you should not do so!

A Will may be the only document needed for your plan if your estate is small in size and your plan for its disposition is quite simple. On the other hand, your Will may be part of a plan that includes one or more trusts, powers of attorney and other, more complex property management devices.

Although you may choose to plan with a Living Trust, you still need a Will that instructs your Executor to distribute any assets that may have been left out of your trust at the time of your death to the Trustee of your Living Trust. This is called a "pour over will." It is intended as a safeguard, just in case it is needed. This will may need to go through probate only if there are assets of significant value that are not owned by the trust at the time of your death.

Revocable "Living" Trust. This is a document in which you name one or more trustees to hold all assets you transfer into your trust, and your directions for the administration of these assets during your lifetime and following your death.

The assets you transfer into a living trust are not subject to the expense and delay of probate after your death and, because your trustee will have full authority to manage the trust assets, the appointment of a conservator is not necessary.

You can use a trust to limit or eliminate estate taxes. For example, what you give to your spouse is not taxable, nor is what you give to charity. Your arrangements for these two beneficiaries can reduce the size of the taxable portion of your estate to an amount below the level that will be subject to the estate tax. In 2007 and 2008, that amount will be $2 million, then $3.5 million in 2009. We don't know what will happen with the estate tax law after that. So you can surmise that married couples and domestic partners have advantages in planning to avoid estate taxation which we will discuss as needed.

Durable Power of Attorney. Authorizes the person you arrange for your personal care, to transfer assets into your trust and to take certain actions (such as, signing documents) when you are not able to do so for yourself. A power of attorney in which you authorize someone to handle your tax returns must be executed on a special forms provided by the federal and California tax authorities.

We use powers of attorney that, most often, do not become operative until you become too incapacitated to handle your own finances or care on your own, as certified by your doctor. These are called "durable" powers of attorney for the simple reason that they are valid when the principal (you) is incapacitated. The powers of an agent under a power of attorney that is not durable will cease when the principal loses his or her capacity.

Advance Health Care Directive. This very essential document serves two purposes. In it you inform your health care providers the type of treatment you wish to be provided or withheld or withdrawn from you when you are not capable of making informed decisions at the time treatment is recommended. The directive also may serve as a power of attorney to authorize someone to make health care decisions for you when you are incapacitated, or for any other reason you are not able to give informed consent for these decisions yourself.

It is very important that you not only make a health care directive of your treatment wishes but also you should let your doctor and the person(s) you choose as health care agents to know your thoughts about end of life medical care. Communication is vital to enabling these documents to work as you intend.

Collateral Documents.

Property Agreements. If you are married, you are advised to own your assets as community property, not in joint tenancy or other form of co-ownership. Under current estate tax law, you are entitled to have your basis (the amount you paid for your assets that will be used to determine the amount of capital gain you receive when selling them) adjusted up to their date of death values. This has the effect of eliminating all appreciation in value from the time you acquired the asset to the date of death. Couples who jointly own their assets as community property are entitled to this "step-up" in value to both the deceased and surviving spouse's interest in community assets. This is very valuable to the surviving spouse.

A written marital property agreement also may be helpful to confirm the identity of your assets as community property and to ensure that they will be treated as community property after the first spouse's death.

Another purpose served by these agreements is to identify any separate property you own so that it will not be mixed with your marital property. If, for example, you have married a second time later in life, it is likely that you have assets that were brought into this marriage that are your separate property.

If you own property jointly with others we need to examine the title to that property to determine the type of joint ownership and how to incorporate this asset into your estate plan.

Business Agreements. Other property arrangements may consist of a family business, partnership, or corporation. These are special arrangements that often contain terms and conditions that effect how you can incorporate these assets into your estate plan. We need to look at these specific documents with care. If there are agreements for the disposition of a deceased partner's interest in the business, those probably will have precedence over your will or trust. We need to look at these specific documents with care to identify any of these agreements and work them into your overall estate plan strategy.

Transfer Documents. To realize all the benefits of a living trust, you will need to transfer your assets to your trustee. This is called "funding" your trust. For example, your residence will be transferred by a new deed, your personal property by a simple bill of sale or assignment, your bank accounts by arrangement with your bank, etc. Assets, such as retirement accounts and insurance will not be transferred without considerable thought and care.

Who will implement your plan?

You will be called on to select one or more individuals to serve your interests and the interests of your beneficiaries when you are not able to do so yourself. You may select different choices for different jobs or the same person to fill all of them.

Trustee. The person (or corporate fiduciary) you appoint to hold and administer your assets under the directions of your trust. Typically, you will act as your own trustee in the beginning. You will be asked to name one or more alternates to serve in this capacity when you no longer can or wish to do so yourself.

Executor. This is the title for the person who is legal representative of your Will and your probate estate. You executor is nominated in your Will. If all your assets are held by your trustee in a living trust, it is unlikely that an executor will need to be appointed.

Agent. Sometimes called an "attorney in fact", your representative under a power of attorney will be authorized to do the jobs you give your agent to deal with your finances, your estate plan, your income taxes, to make gifts, etc. The agent has an important role whose job is to oversee your personal care as well.

Conservator. The representative appointed for you by the court in a proceeding to determine whether you have the capacity to care for your personal or financial affairs. If you lose your capacity, a conservator probably will be appointed under Court supervision to handle these affairs for you, unless you have provided for the management of your assets and personal affairs in a living trust. You may name one or more persons to serve as a conservator if (or when) needed.

Guardian. Like a conservator, a guardian is appointed by the court to handle the affairs of minor children, including to hold property given outright to minor children.

As an alternative, you may appoint someone to hold a minor child's assets as a "custodian," or they may be held in your trust. If you do this, a guardian should not be required except to take legal custody as a substitute parent. Gifts to minor beneficiaries that you authorize to be distributed to a legal custodian can be handled with a minimum of formality.