

Review Worksheet for Revocable Living Trusts

The following is a list of 50 issues commonly addressed in a comprehensive Revocable Living Trust drafted by Thomas J. Bouman. How does your trust compare?

	Trust Provision	Satisfactory	Needs Attention	N/A
1	<p>Trust Name</p> <p>Does the trust document identify the formal and abbreviated names of the trust at the beginning of the document? This provision avoids confusion and provides clarity on how to appropriately title assets owned by the trust.</p>			
2	<p>Certification of Trust</p> <p>Does the trust document include a Certification of Trust that complies with the new requirements of ARS 14-11013? The Certification of Trust eliminates the need to produce the entire trust document when dealing with financial institutions and title companies. The new Arizona Trust Code includes detailed requirements for a Certification of Trust, including a true copy of the Trustee powers attached to the document.</p>			
3	<p>Arizona Trust Code</p> <p>Does the trust document meet the requirements of the Arizona Trust Code, effective January 1, 2009? The new Trust Code also permits new drafting opportunities that enhance trust privacy and long-term viability.</p>			
4	<p>Names of Family Members</p> <p>Does the trust document clearly identify the trust beneficiaries? This provision should include enough information to eliminate confusion for a successor Trustee. In addition, the names of disinherited family members should be clearly identified.</p>			

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5	<p>Specific Revocation Provisions</p> <p>Does the trust document address when the trust would become irrevocable? This is especially important for estate tax planning and protection of inheritance for children from the original marriage.</p>			
6	<p>Retention of Power to Act Alone</p> <p>Does the trust document confirm to third-parties that a married Trustor/Trustee has authority to act when his/her spouse cannot (if desired by client)?</p>			
7	<p>Procedure to Remove Trustee</p> <p>Does the trust document include a procedure for removing a successor Trustee? In some cases, the beneficiaries may want to remove a Trustee they don't like or who is acting irresponsibly. In many cases, this power must be drafted in such a way that it does not cause adverse estate tax or creditor protection consequences for the beneficiaries. Regardless, it is important to include a detailed procedure, which can further prevent court involvement.</p>			
8	<p>Procedure to Appoint New Trustee</p> <p>Does the trust document include a procedure for appointing a new successor Trustee if the position becomes vacant? In some cases, this provision must be drafted in such a way that it does not eliminate estate tax or creditor protection for the beneficiaries. This procedure is especially important when drafting a multi-generational trust.</p>			
9	<p>Community Property Issues</p> <p>Does the trust document clearly articulate the treatment of property in a joint trust as community, separate, or jointly-held based upon various default rules? In general, a more comprehensive trust document will permit separate property treatment even inside a joint trust.</p>			

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10	<p>Determination of Incapacity</p> <p>Does the trust document include a detailed procedure for determining the incapacity of a Trustor? This type of provision is necessary to avoid court involvement and should be customized to meet the Trustor's objectives.</p>			
11	<p>Guidelines for Distributions During Incapacity</p> <p>Does the trust document include detailed guidelines for trust administration during a Trustor's extended incapacity? In general, a poorly drafted trust will not provide enough detail regarding incapacity planning.</p>			
11	<p>Guidelines for Potential Gifting During Incapacity</p> <p>Does the trust document clarify whether gifting is permitted during a Trustor's incapacity? In general, a comprehensive trust document will permit gifts to trust beneficiaries if necessary for Medicaid qualification (too poor) and estate tax planning (too rich). If this power is included in the trust document, most estate planning attorneys will suggest it be restricted in scope and amount to prevent abuse.</p>			
12	<p>Ability to Distribute Funds to Dependents During Incapacity</p> <p>Does the trust document permit trust distributions to a surviving spouse and dependents during a Trustor's extended incapacity?</p>			
13	<p>Guidelines for Distributions to Guardians of Deceased Trustor's Minor Children</p> <p>If the Trustor's estate plan designates a guardian for minor children, does the trust document include guidelines for distribution of trust funds to or for the benefit of the guardian? In some cases, an independent Special Trustee should be appointed to oversee such distributions.</p>			

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14	<p>Disposition of Tangible Personal Property</p> <p>Does the trust document include detailed provisions for distribution of tangible personal property? One of the greatest sources of family fall-out after the death of a parent is perceived inequities in the distribution of tangible personal property.</p>			
15	<p>Provision for Tangible Personal Property Memorandum</p> <p>Does the trust document include a provision for use of a written list to designate beneficiaries of specific personal items? The provision should include instructions for how to interpret misleading or conflicting lists.</p>			
16	<p>Provision to Offset Encumbrances on Gifts of Tangible Personal Property</p> <p>Does the trust document clarify whether the beneficiary of a personal item must accept the gift subject to its accompanying debt? Without this clarification, an unfair result is likely when other beneficiaries must pay off the debt for someone else's asset.</p>			
17	<p>Coordination of Trust with Probate Proceedings</p> <p>Does the trust document seek to coordinate its post-death administration with a concurrent probate? Although the Trustor intended to avoid probate, this does not necessarily mean probate will be avoided. If a probate is necessary, the successor Trustee must coordinate the probate estate with the trust estate.</p>			
18	<p>Restrictions on Payments from Retirement Plans</p> <p>Does the trust document include provisions to restrict payment of estate taxes, expenses, and debts from retirement assets? This provision should at least include a deadline for payment from retirement assets in order to preserve the "stretch" option in an inherited IRA.</p>			

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19	<p>Trustee Power to Make Tax Elections</p> <p>Does the trust document permit specifically permit a successor Trustee to make all potential tax elections?</p>			
20	<p>Detailed Instructions for Allocation of Deceased Trustor's One-Half of Community Property</p> <p>For married Trustors, does the trust document include detailed instructions on the method and manner trust assets should be allocated upon the first death? Many complex issues are present including how to allocate the taxable income earned by the Trust prior to distribution of the assets into marital and family shares.</p>			
21	<p>Marital Deduction Planning Method</p> <p>Does the trust document provide an appropriate marital deduction planning method for married Trustors? Older trust documents must be reviewed regularly in light of changes in the estate tax law and the Trustors' taxable estate. The document should select a suitable funding/allocation formula based on projections about the Trustors' net worth and asset allocation.</p>			
22	<p>Credit Shelter Trust Provisions</p> <p>Does the trust document include valid Credit Shelter Trust provisions when the estate tax, remarriage protection, or creditor protection are concerns? The Credit Shelter Trust uses "magic" language from the Internal Revenue Code, which must be carefully written into the document.</p>			
23	<p>Inheritance Protection for Children of Original Marriage</p> <p>If desired by the Trustors, does the trust document include provisions to restrict distributions in the event of remarriage by a surviving Trustor? When this provision is included, it must be reviewed to prevent accidental inclusion of restricted assets in the surviving Trustor's taxable estate.</p>			

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24	<p>Provision to Treat Survivors Trust as a Qualified Designated Beneficiary for Tax-Deferred Retirement Accounts</p> <p>Does the trust document include a provision to treat the Survivors Trust as a qualified Designated Beneficiary of a retirement account? This is helpful when Trustors designate (whether intentional or not) a Survivors Trust as beneficiary of a retirement account. To the extent that tax-deferred retirement accounts are held inside of a surviving Trustor's trust, they should be held separate from other assets in order to enhance the income tax deferral benefit.</p>			
25	<p>QTIP Marital Trust Provisions</p> <p>Does the trust document include valid QTIP Marital Trust when desired by a Trustor? This provision is commonly used to permit distributions to the surviving Trustor during his or her lifetime, but ensure that trust principal reverts back to the deceased Trustor's children at the surviving Trustor's death.</p>			
26	<p>Unambiguous Identification of Beneficiaries Upon Death</p> <p>Does the trust document clearly identify the primary and contingent beneficiaries? In general, a poorly drafted trust document will have ambiguous provisions in the event a primary beneficiary predeceases or disclaims inheritance. Estate and trust law precedent requires the use of specific language.</p>			
27	<p>Support and Education Trust Option for Younger Beneficiaries</p> <p>When the trust provides for younger beneficiaries, does the trust document include a Support and Education Trust provision? This option permits the successor Trustee to make distributions from a common fund until a specific triggering event occurs.</p>			

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28	<p>Flexibility to Use Different Methods of Distribution in Light of Unforeseen Events</p> <p>Does the trust document give the successor Trustee an appropriate amount of flexibility if, for example, a beneficiary becomes incapacitated or addicted to drugs? When unique circumstances exist, the successor Trustee should be permitted to use discretion regarding the method of distribution.</p>			
29	<p>Expressions of Intent to Guide Trustees on Making Distributions</p> <p>When discretionary distributions are permitted by a successor Trustee, does the trust document include guidelines regarding how and when to distribute assets to the beneficiaries? In general, a comprehensive trust document will include statements to help the Trustee interpret a Trustor's intent.</p>			
30	<p>Lifetime Inheritance Protection Provisions</p> <p>Does the trust document permit the Trustee to establish lifetime inheritance protection trusts for the beneficiaries? Most Trustors want to include this valuable option, even for responsible adult children. When properly drafted, the inheritance protection trust can provide excellent asset protection (from lawsuits and divorce) and provide generations of estate tax savings.</p>			
31	<p>Detailed Provisions Regarding Treatment of Tax-Deferred Retirement Accounts</p> <p>Does the trust document consider the treatment of tax-deferred retirement accounts when the trust is designated as beneficiary? Even a "simple" trust should address the complex issue of whether to include "conduit trust" or "accumulation trust" provisions. In general, a poorly drafted trust document will automatically include the "accumulation trust" option without properly coordinating the power of appointment language in other sections.</p>			

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32	<p>Special Needs Trust Options</p> <p>Does the trust document include a Special Needs Trust option for inheritance given to a disabled beneficiary? A Special Needs Trust will prevent the beneficiary's inheritance from making the child ineligible for government assistance such as SSDI payments. In general, a comprehensive trust document will include detailed provisions for a Care Manager to supervise the care of the disabled beneficiary.</p>			
33	<p>Testamentary Powers of Appointment</p> <p>Does the trust document include either limited or general powers of appointment for continuing trusts after the death of the Trustor? In most cases, powers of appointment are preferred because they enable greater flexibility in distribution of trust assets. However, careful drafting is required when a Trustor seeks to restrict the beneficiary from appointing assets to specific persons.</p>			
34	<p>Default Distribution of Inheritance if Beneficiary Fails to Exercise Power of Appointment</p> <p>When testamentary powers of appointment are included, does the trust document identify a default distribution plan if a trust beneficiary fails to exercise a power of appointment?</p>			
35	<p>Remote Contingent Distribution</p> <p>Does the trust document include a contingent distribution plan if all of the named beneficiaries are deceased and the trust has remaining funds? Many Trustors prefer to designate a favorite charity in this provision.</p>			

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36	<p>Guidance to Trustee on Determination of Income and Principal Distributions</p> <p>Does the trust document provide guidance to the successor Trustee regarding allocation of income and principal after the death of a Trustor. State law sets forth general rules, but they often fail to articulate how these determinations are made. Under the new Arizona Trust Code, it is permissible to include “Unitrust” provisions, which permit distributions out of both income and principal to address the conflict of interest between income and remainder beneficiaries.</p>			
37	<p>Trust Accounting Guidelines</p> <p>Does the trust document include a provision that establishes accounting guidelines and reporting requirements? The Arizona Trust Code has suggested provisions, but other options are permitted. The trust document should include a provision that provides guidance and consistency to this process.</p>			
38	<p>Trust Advisor Provisions</p> <p>Under the Arizona Trust Code, the trust document may designate a trust protector. In general, a comprehensive trust document will include these provisions in order to protect the long-term integrity of the trust. A trust protector may modify the terms and conditions of the trust in order to comport with the Trustor’s original intent.</p>			
39	<p>Authorization for Delegation of Trustee Duties</p> <p>Does the trust document permit the successor Trustee to delegate authority to various agents? Successor Trustees are often unable by themselves to carry out all of the necessary tasks associated with the administration and ultimate termination of the trust.</p>			

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40	<p>Authorization for Merger and Severance of Continuing Trusts</p> <p>Does the trust document permit the successor Trustee to combine or sever trusts for greater flexibility and asset management?</p>			
41	<p>Authorization for Common Investments</p> <p>Does the trust document enable the trustee to invest the funds of various sub-trusts in common investments where such investment would be beneficial to affected trust beneficiaries?</p>			
42	<p>Authorization for Termination of Continuing Trusts</p> <p>Does the trust document enable the trustee to terminate trusts early under appropriate circumstances? Events may transpire where it is no longer economically feasible for the trust to continue.</p>			
43	<p>Authorization for Payment of Beneficiary's Funeral Expenses</p> <p>Does the trust document include a provision enabling the successor Trustee to pay the funeral expenses, burial or cremation expenses upon the death of a beneficiary?</p>			
44	<p>Expanded Closely Held Business Operations Authority to Trustee</p> <p>Does the trust document include expanded Trustee power authority if a Trustor owns a closely-held business? The Trustee should be authorized to serve as an officer, director, manager, or in any other capacity or any proprietorship, partnership, joint venture, corporation or other enterprise in which the trust has an interest.</p>			

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45	<p>Special S-Corp Stock Provisions</p> <p>Does the trust document include special provisions to enable the trust to hold S-Corp stock after the death of a Trustor? The successor Trustee must have discretion to hold S-Corp stock as a separate “electing small business trust” or as a separate “qualified subchapter S trust.”</p>			
46	<p>Coordination with Buy-Sell Agreement</p> <p>Does the trust document include provisions to coordinate Trustee authority with a separate buy-sell agreement of a closely-held business? Specific trust provisions are needed to ensure that the Trustee is bound by and follows the terms of any buy-sell agreement entered into by a Trustor.</p>			
47	<p>Professional Practice Provisions</p> <p>Does the trust document include provisions to enable the trust to appropriately address state laws that regulate “professional practices?” These provisions are appropriate when a Trustor owns a medical, dental, legal, veterinary, accounting, architectural, engineering or other professional practice.</p>			
48	<p>Comprehensive Definitions</p> <p>Does the trust document include comprehensive definitions of important legal terms? For example, a definition of the term “issue” is important to clarify whether adopted or stepchildren (and grandchildren) should be included as beneficiaries.</p>			
49	<p>Complete Funding of Trust</p> <p>Is there evidence that the trust is properly funded? An unfunded or partially funded trust does not avoid probate. Regular maintenance is required to ensure that all assets otherwise subject to probate are retitled in the trust name. In addition, all life insurance and many retirement accounts should designate the trust as a primary or contingent beneficiary.</p>			

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50	<p>Magic Wand Funding Provisions</p> <p>Does the trust document include a Magic Wand funding provision? This provision supports the argument that assets are immediately titled to the trust at the time of execution. It increases the likelihood that financial institutions would treat the trust as the owner of the asset even if a Trustor dies during the funding process, but before institutional forms are submitted and accepted by the financial institution.</p>			

Notes:
