

### Irrevocable Income-Only Trust

This sample irrevocable Trust form is designed for an unmarried Settlor, over age 65, whose assets are not likely to be subject to the Federal estate tax.

Type of Trust:	Irrevocable, income-only trust
Transfers to Trust Are:	Incomplete Gifts, So No Gift Tax Return Need Be Filed
Income Tax Ramifications:	Trust Income Taxed To Settlor
Estate Tax Ramifications:	Trust Assets Included in Settlor's Estate

This is a self-settled, self-trusteed, irrevocable, income-only trust, with a retained limited testamentary power to change beneficiaries and a lifetime right to remove and replace trustees. The trust is designed to pay income, and only income, to the Settlor for the Settlor's lifetime. The Trustee may distribute to or for the benefit of Settlor some or all of the net ordinary income of this Trust, in the Trustee's sole and absolute discretion. The Trustee may distribute principal to or for the benefit of one or more remainder beneficiaries.

This Trust is designed for use in states whose statutes, common law, and Medicaid rules recognize the validity of self-settled, income-only Trusts to protect the Trust principal from the claims of creditors.

The Settlor explicitly consents to the Trustee's noncompliance with the Prudent Investor Rule.

This Trust contains a contingent testamentary Special Needs Trust for potentially disabled beneficiaries. This Trust splits into dynasty-like sub-trusts for the remainder beneficiaries upon the death of the Settlor, to provide ongoing asset protection to the remainder beneficiaries.

**TRUST AGREEMENT ESTABLISHING  
THE JOHN DOE TRUST**

THIS TRUST AGREEMENT is made as of this day, February 23, 2009, by and between John Q. Doe as settlor (hereinafter the “Settlor”), and John Q. Doe as trustee (hereinafter the “Trustee”).

**RECITALS:**

The Settlor is a widower, has not remarried and has two children whose names are Jill Doe and Jack Doe; and

The Settlor desires to create an irrevocable trust to hold, IN TRUST, certain assets to provide for the management of those assets, both presently and during any future period of incapacity, and to provide for a simplified means of accomplishing both lifetime and post-death transfers of those assets.

Therefore, in consideration of the covenants herein contained and other valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Settlor hereby establishes the John Doe Trust upon the terms and conditions hereinafter set forth:

Article 1 Formation of Trust

Section 1.1 Name of Trust.

1.1.1 Trust Name.

1.1.1.1 This Trust and the trusts created hereunder may be referred to, in any other instrument, by any descriptive name including, but not limited to: *John Doe Trust*, or *John Doe Trust dated February 23, 2009* or *John Doe Trust UDT dated February 23, 2009* or *John Doe Trust UA dated February 23, 2009*, where UDT stands for “Under Declaration of Trust” and UA stands for “Under Agreement.”

1.1.1.2 Any transfers to this Trust or any trust created hereunder may refer to one of the aforesaid names or to the name(s) of the Trustee(s) as Trustee(s) under one of the aforesaid names, with or without specifying the date of the Trust, any change in Trustee, or any amendment to this trust instrument.

Section 1.2 Trust Property.

1.2.1 Type of Property This Trust May Hold.

1.2.1.1 The Trustee may hold or acquire any and all types of assets including, without limitation, insurance policies, monies, securities, real property and tangible personal property.

1.2.1.2 The Trustee may be named as beneficiary of any life insurance policy, employee benefit plan, retirement plan, or any other plan or asset, and the Trustee may elect the mode of payment which appears to be the most advantageous to this Trust and its beneficiaries, if not previously elected.

1.2.1.3 The Trustee may receive assets pursuant to Settlor’s Last Will and Testament.

1.2.2 Definition of “Trust Estate.”

1.2.2.1 All such assets shall be referred to as the “trust estate.”

1.2.2.2 Assets received by the Trustee may be listed, for convenience, on the attached Schedule of Trust Estate Property.

**1.2.3** How Trust Estate Is Held. All assets transferred to the Trustee shall initially be held in a single trust for the benefit of the Beneficiaries set forth in Section 3.1, regardless of how such property was acquired or how previously titled (sole ownership, joint with survivorship, tenants by the entirety, community property, or otherwise), including policies of insurance, all property transferred to the Trustee, and all principal, receipts, reinvestments, refunds and replacements of such property.

Section 1.3 Appointment of Trustee.

**1.3.1** Original Trustee. The Settlor appoints himself as original trustee.

**1.3.2** Successor Trustees. Upon the death or incapacity (as defined in Article 7) of the Trustee, the Settlor hereby appoints the Settlor's daughter, Jill Doe, as Successor Trustee for all trusts created hereunder. If Jill Doe for any reason fails or ceases to act as Trustee, the Settlor hereby appoints the Settlor's son, Jack Doe, as Successor Trustee for all trusts created hereunder. If Jack Doe for any reason fails or ceases to act as Trustee, the Settlor hereby appoints the Settlor's sister, Susan Doe, as Successor Trustee for all trusts created hereunder.

**1.3.3** Signature Requirements. When two Co-Trustees are serving hereunder, the signatures and/or agreement of both Co-Trustees shall be required to transact business on behalf of the Trust. When more than two Co-Trustees are serving hereunder, the signatures and/or agreement of a majority of the Co-Trustees shall be required to transact business on behalf of the Trust.

Section 1.4 Appointment of Trust Protector.

1.4.1 Designation of Trust Protector.

1.4.1.1 Settlor hereby names John Q. Smith as the Trust Protector for this Trust and any trusts created hereunder.

1.4.1.2 All action taken by the Trust Protector shall be taken in the sole and absolute discretion of the Trust Protector and shall require notice to each Qualified Beneficiary.

1.4.2 Settlor's Powers.

1.4.2.1 **Power To Remove Trust Protector.** During Settlor's lifetime, Settlor may remove a Trust Protector at any time. Any Trust Protector so removed shall not be entitled to receive any reason, cause, or ground for such removal. Notice of removal shall be effective when made in writing and delivered to the Trust Protector at the Trust Protector's last known address.

1.4.2.2 **Power to Replace Trust Protector.**

1.4.2.2.1 If a Trust Protector is terminated, resigns, becomes disabled, dies, or cannot serve for any other reason, the Settlor may appoint an individual or corporate successor Trust Protector other than the Settlor.

1.4.2.2.2 At no time may the Settlor serve as Trust Protector.

1.4.3 Administrative Powers of Trust Protector.

1.4.3.1 The Trust Protector shall have the power to:

1.4.3.1.1 Remove any Trustee or Co-Trustee at any time and for any reason, and to appoint a replacement Trustee or Co-Trustee;

- 1.4.3.1.2 Appoint a successor Trustee or Trustees, or a Co-Trustee;
    - 1.4.3.1.3 Appoint one or more special Trustees to act for any general, special, or limited purposes permitted under the Trust;
    - 1.4.3.1.4 Act as a mediator and/or arbitrator (and/or to hire on behalf of the Trust an independent mediator and/or arbitrator) to mediate and/or arbitrate disputes between beneficiaries, disputes between trustees, and disputes between trustees and beneficiaries.
  - 1.4.3.2 Any Trustee appointed by the Trust Protector pursuant to this Section shall be either:
    - 1.4.3.2.1 A professional Trustee or Trust Company; or
    - 1.4.3.2.2 An individual or individuals not subject to the control of the Settlor, not subject to the control of Trust Protector, and not subject to the control of any Beneficiary of this Trust, either directly or by attribution, as set forth in the relevant sections of the Code.
- 1.4.4** Power Over Trust Property. If the Trustee is not the Settlor, the Trust Protector shall have the power to approve the Trustee's distribution of principal, in any amount, during the life of the Settlor, to one or more Trust Beneficiaries; in this regard, the Trustee (if the Trustee is not the Settlor) shall not distribute any principal of the Trust during the life of the Settlor without the written approval of the Trust Protector.
- 1.4.5 When Beneficiaries May Appoint Successor Trust Protector.
  - 1.4.5.1 If no named Trust Protector or named Successor Trust Protector shall be willing and able to serve, the Trust Beneficiaries may appoint a Successor Trust Protector or Successor Trust Protector Committee. The votes allowed to each Beneficiary shall be in proportion to the size of his or her individual Trust share in relation to the size of the Trust assets as a whole, counting all Trust shares together.
  - 1.4.5.2 If no named Trust Protector or named Successor Trust Protector shall be willing and able to serve, and if Trust shares shall have already been divided, then regardless of the preceding sentence, each Beneficiary who is of majority age and competent to manage his or her own affairs (or the guardian of each Beneficiary who shall not have reached majority age or who shall be disabled) shall be empowered to name a separate Trust Protector or Trust Protector Committee for that Beneficiary's share if he or she so chooses, in his or her unfettered discretion.
  - 1.4.5.3 The Trust Protector so selected may not be subject to the control of any Trust Beneficiary, either directly or by attribution as set forth in the relevant sections of the Internal Revenue Code.
- 1.4.6** No Fiduciary Duty. No Trust Protector or member of the Trust Protector Committee shall have a fiduciary duty to act or to withhold actions based on his or her status as a member of the Trust Protector Committee.
- 1.4.7 Fees and Expenses.
  - 1.4.7.1 The Trust Protector, or the members of the Trust Protector Committee, shall be entitled to a reasonable fee for serving as a Trust Protector.
  - 1.4.7.2 If the Trust Protector is an accountant, attorney, or financial professional, and is

hired by the Trustee or the Trust Protector to render such professional services, then said Trust Protector may earn additional fees for rendering such professional services.

- 1.4.7.3 The Trustee shall reimburse the Trust Protector and/or members of the Trust Protector Committee for all reasonable expenses incurred on behalf of the Trust, including reviews by or consultations with accountants, attorneys, and financial professionals.

Section 1.5 Purpose of Trust.

**1.5.1** Estate Planning. Settlor is the parent of the Trust Beneficiaries, and desires to transfer certain assets out of Settlor's name and into this Trust to:

1.5.1.1 Consolidate the assets for investment purposes;

1.5.1.2 Protect the assets from probate upon Settlor's death; and

1.5.1.3 Establish the respective rights and responsibilities of the Beneficiaries in the assets, after Settlor's death.

**1.5.2** Income Tax Planning. It is Settlor's intention that this Trust be construed as a "Grantor Trust" under Internal Revenue Code Section 671 *et seq.*, and that all trust income (whether or not such income is distributed to Settlor), deductions, and credits incurred by this Trust are thereby reported on the Settlor's income tax returns.

**1.5.3** Estate Tax Planning. It is Settlor's intention that upon Settlor's death the assets remaining in this Trust be included as part of Settlor's gross taxable estate pursuant to Code Section 2036(a)(2).

Article 2 During Settlor's Lifetime

Section 2.1 Management and Distribution.

2.1.1 Management.

2.1.1.1 The Trustee shall hold, manage, invest, and reinvest the assets of the trust estate, and shall collect any income therefrom.

2.1.1.2 As stated in Section 1.5.2, all trust income shall be taxable to Settlor during Settlor's lifetime.

2.1.2 Income.

2.1.2.1 After deducting the expenses of administration of this trust, the Trustee may distribute to or for the benefit of Settlor some or all of the net ordinary income of this Trust, in the Trustee's sole and absolute discretion. Such distributions of income may be made monthly, quarterly, or annually, in the Trustee's sole and absolute discretion.

2.1.2.2 The term "ordinary income" means taxable income that does not qualify for capital gains treatment, such as interest, dividends, and rental income.

2.1.3 Principal (Including Gain on Principal).

2.1.3.1 The principal of this trust shall be at all times unavailable to the Settlor. The Settlor shall not have any right to compel the Trustee to distribute any principal or any gain (realized or unrealized) on principal to the Settlor or to any future spouse of Settlor; and the Trustee shall not, at any time, distribute any principal