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MEMORANDUM
TRUST STRUCTURE – CHILDREN
BASIC CONSIDERATIONS

Trusts can be implemented to serve many purposes – your personal and family situation, asset structure, and personal preferences dictate the type and design of the trust, and timing and mechanics of trust funding.

Part of the estate planning discussion focusses on the structure of the trusts to be established for children after parents have died. This memo will review the basic design considerations in this regard. Keep in mind that there is no "right and wrong" here… the structure should reflect your purposes and priorities. Keep in mind also that there are additional "2d level" design aspects as well.

Design of the trusts for each of your children can implement your priorities regarding one or more of (i) spending management, (ii) "asset protection" and (iii) potential estate tax in the children's generation.

Basic Trust Design[1]	**Spending Management**	**Asset Protection**	**Potential Estate Tax – Children's Generation**[4]
Immediate distribtion following parent(s)' death(s)	No management – the beneficiary is free to use/save/spend funds as he/she desires	Trust property held by the beneficiary – all property exposed to the beneficiary's creditors[2]	Assets subject to estate tax in beneficiary's estate
Mandatory distribution at specific ages	Trustee controls spending until the child reaches the age(s) stated in the trust	Limited protection since trust property will be distributed to the beneficiary	Assets subject to estate tax in beneficiary's estate if beneficiary reaches age for mandated distribution
No Mandatory Distribution	Distributions only in the trustee's discretion	Best structure for insulation of a beneficiary's trust from his/her creditors[3]	Assets in the beneficiary's trust protected from estate tax

1 – Under any structure, prior to any required distribution, the trustee will have discetion to distribute trust property to (or for the benefit of) the beneficiary.

2 – Immediate distribution provides no creditor protection.

3 - The "no mandatory distribution" structure does create protection. The creditor may nonetheless seek to collect a judgment from the trustee and could thus force a settlement. The more independent the trustee the stronger the protection – i.e., there is no protection if the beneficiary is his/her own trustee; there is strong protection if the trustee is a bank/trust company or an unrelated individual; and there is arguably protection if a related person is trustee. Other design aspects impact on this as well. For example, a plaintiff will argue for a lower level of asset

protection if the beneficiary has authority to "remove and replace" the independent trustee; and certain types of creditors (e.g., divorce creditors) may have more success than others. These details will be determined in planning discussions with counsel.

4 – Insulating assets from estate tax may or may not be financially advantageous. The trust might grant or authorize the independent trustee to grant/revoke "powers of appointment" to subject the assets to estate tax if appropriate. Note that the "estate tax insulation" can be achieved even if the beneficiary is the trustee with authority to make distrbuitons to himself/herself, but this is appropriate only if the trust purpose is not also spending management or creditor protection.

This memo is for information purposes only and is provided only with the understanding and agreement that no planning decisions may be made based solely on this memo. Each situation is unique; all aspects and full, in-person discussion with counsel is needed to implement an appropriate trust design.

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