

MILLER
MONSON
PESHEL
POLACEK
&
HOSHAW

Non-Revocable
Insurance
Trust

INFORMATION AND
AUTHORIZATION

CONFIDENTIAL

NAME _____

DATE _____

PLEASE BRING WITH YOU COPIES OF:

Present Wills, and/or trusts, if any.

Deeds to real property (for title purposes) and any information regarding title to property, cost, present fair market value, and property tax value.

Manner of title holding of any stock (how the ownership appears on the certificates), income tax basis and value of each stock.

Last three years' income tax returns.

Any available financial statements.

Copies of any gift tax returns filed.

Photo or snapshot of yourself and spouse.

Past appraisals of property, if any.

For encumbered property, copies of loan agreements, deeds of trust, security agreements and current loan balance information.

IF IN BUSINESS:

Any partnership or similar agreements.

Any corporate minute books and stock ledgers.

Summary plan description of any profit-sharing, pension plans or IRA agreements.

Any buy-sell agreements.

Last three years' income tax returns (partnership or corporation).

Table of Contents

MEMORANDUM TO PROSPECTIVE TRUSTOR(S)	Page 2
Preliminary Matters	Page 2
How a NRIT Works	Page 3
Basic Trust Terms and Goals	Page 4
Trustee	Page 5
Gift and Estate Tax Aspects	Page 6
Additional Terms	Page 7
Conclusion	Page 8
INSTRUCTION FORMS	Page 9
Memorandum for Estate Planning Clients Concerning Dual Representation and Potential Conflict of Interest	Page 19
Client Information Form	Page 22

MEMORANDUM TO PROSPECTIVE TRUSTOR(S):

We understand that you are interested in having our office prepare a Non-Revocable Insurance Trust (NRIT) for you.

The goal of this Memorandum is to provide you with information about the purposes and terms of a NRIT. If, after reviewing this Memorandum you determine that you wish to engage our services to prepare such a trust for you, you should complete all the information requested in this booklet and return the booklet to us. If the NRIT has been recommended to you by your advisor, unless we are otherwise expressly informed by you, we assume that you have obtained from your financial advisor the information necessary to determine that a NRIT is a proper vehicle for your needs. Of course, we will be happy to advise you regarding the appropriateness of the NRIT if you ask us to do so.

Preliminary Matters

In a typical case, the NRIT is prepared after a meeting with you, which may be attended by your financial advisor. At that meeting, the attorney will review the overall concepts of estate taxes, the need for life insurance to pay taxes and the benefits of a NRIT. In addition, the information you provide in the Instruction Forms will be reviewed during that meeting to verify its accuracy and completeness. If you wish, we can also have the terms of the NRIT mirror or otherwise coordinate with the terms of your existing estate plan. To do this, we will need to review your current estate planning documents to determine the distribution arrangements which you have made in the documents. Please keep in mind that the NRIT may ultimately control the distribution of a significant part of your estate, and that failure to mirror the terms of your current plan might result in a good portion of your assets being distributed in a fashion different than you had anticipated.

Variations in clients' needs can increase the amount of the overall fee. For example, if you wish to expand the basic NRIT to create a Dynasty Trust with generation skipping provisions, the cost would be increased. However, this is a very effective planning technique and many clients feel it is well worth the additional cost to be able to provide these benefits to their beneficiaries.

As you may know, a Dynasty (or generation skipping) Trust is used to avoid death tax at your children's deaths, while still giving them the use and benefit of trust property during their lifetimes. Dynasty Trusts can also have the benefit of protecting trust assets from the children's creditors and from being diverted away from the family line because of divorce or requests for funds by a beneficiary's spouse. If creditor protection is a significant issue, please be certain to discuss that with the drafting attorney, since that may affect the terms of the trust.

If you are interested in the Dynasty Trust, please let us know so these matters can be discussed at your meeting with the attorney.

How a NRIT Works

A NRIT is commonly used to hold insurance on your life(s) and typically names your children as beneficiaries of the trust. Because the insurance is owned by the NRIT, and not by you, the proceeds of the insurance will not be included in your taxable estate at death. This can significantly reduce the amount of estate tax that would otherwise be due and provide needed liquidity to pay estate taxes at what is typically the lowest effective cost.

To keep the insurance proceeds from being taxed in your estate at your death, the insurance proceeds paid to the NRIT at your death will not be used directly to pay the estate tax. Instead, cash from the NRIT can be loaned to the family trust or estate or exchanged for non-cash assets in your family trust or estate. The trust or estate will then use that cash to pay the tax. The result will be a reduction of the value of your existing family trust or estate by the amount of taxes paid at your death. In contrast, the value of the NRIT will remain the same.

Because the loan repayment or the assets transferred from your family trust or estate to the NRIT after death will eventually be distributed to the beneficiaries named in the NRIT, the NRIT is an important dispositive instrument in your estate plan. Thus, you may want the NRIT to distribute its assets in the same manner as provided in your family trust or Will. However, you must understand that because a NRIT is not revocable or amendable, if you make changes to your estate plan in the future, the terms of your family trust or Will may differ from the terms of the NRIT.

When you transfer a life insurance policy to the NRIT, you relinquish all rights and powers over the policy (including the right to change beneficiaries). In order to avoid inclusion of the insurance proceeds in your estate(s), all rights and powers over the policies may only be exercised by the Trustee of the NRIT. Additionally, if you give an existing policy to the NRIT, as opposed to having the NRIT buy a new policy, the insured must live three years past the date of the gift

in order to have the policy removed from his or her taxable estate.

With regard to any policies that you are giving to the NRIT or planning to have the NRIT purchase, you acknowledge that you do not need the policy or its proceeds for your financial security now or in the future, and the transfer of the policy or cash to the NRIT at this time will not impair your financial security.

Basic Trust Terms and Goals

The trust terms will depend on which Plan Type you choose, the directions you provide in the Instruction Forms and any alternative trust terms discussed during the office conference(s) with the attorney.

The reason(s) that you would like to create a NRIT is/are (check any that apply):

- To provide liquid assets for the benefit of your chosen beneficiaries.
- To establish a fund which may be used to facilitate payment of estate tax at your death with the goal

of not including such fund in your taxable estate.

Other:

Trustee

Another important decision is whom you will name as the current and successor (future) Trustees of the NRIT. To prevent the assets in the NRIT from being subject to estate tax at your death, you (the Trustor(s)) should not be the Trustee(s) of the NRIT.

Possible Trustees typically include your adult issue (children and grandchildren), other relatives or friends, a corporate Trustee such as a bank or trust company, or individuals with specific backgrounds such as licensed attorneys, CPAs, former trust officers or financial planners. Please note that due to recent legislation, attorneys from our firm generally cannot act as a Trustee.

You understand that the duties of the Trustee of the NRIT will include the duties listed below, and you understand that the person (or persons) that you name as Trustee and/or successor Trustee must have the necessary willingness, knowledge and experience to carry out these duties:

Possible Duties During Lifetime of Insured

- Give notice to the beneficiaries of the gifts made to the trust and maintain a record of such notices.
- Select and purchase appropriate insurance policies and other investment vehicles.
- Make premium payments on insurance policies.
- From time to time, determine the soundness of the company issuing the insurance.
- Filing income tax returns, if necessary.

Possible Duties After the Death of the Insured

- File appropriate claims for life insurance policies and receive, invest and control the proceeds.
- Determine whether to loan cash to the decedent's estate/trust or buy assets from the estate/trust so the estate/trust may use the cash from the NRIT to pay estate tax.
- Manage, invest and distribute the assets pursuant to the terms of the NRIT.
- File any necessary income tax returns.
- Other duties consistent with holding insurance proceeds or other assets and carrying out the goals of your NRIT

Typically, we do not recommend choosing an adult child as a Trustee unless the child has the experience to invest and manage the assets of the NRIT.

However, you could name as initial Trustee a person who is capable of handling the simple initial duties (while you are alive), but who does not have a great deal of experience with investments. Until the death of the [surviving] Trustor, which triggers the payment of the insurance proceeds, the duties

of the Trustee basically involve sending notices to the beneficiaries that gifts have been made to the NRIT, paying insurance premiums with trust funds, and filing the necessary trust tax returns.

If you select an inexperienced person as the initial Trustee, the trust could provide that at the death of the Trustor (or the survivor in the case of survivorship insurance), at which time the trust will be fully funded with the proceeds of the insurance policy, a corporate Trustee or an individual with more experience could take over as Trustee or serve as Co-Trustee until the initial Trustee reaches a certain age or has more experience. Because the initial individual Trustee may be willing to serve with little or no fee, this alternative could be less expensive for the NRIT.

Gift and Estate Tax Aspects

You understand that current law (which can always change) lets you make annual gifts directly to any person in the sum of \$11,000 per donee. Such gifts are excluded from gift or estate tax, as long as the gift

is of a "present interest". The trust will be drafted to conform to current gift tax law so that the gifts you make to the NRIT, including any money you give to the NRIT from which the Trustee will pay insurance premiums, will qualify as a present interest, and therefore qualify for the annual exclusion.

However, such gifts will qualify for the annual gift tax exclusion only if certain procedures are followed. These procedures include the Trustee notifying the trust beneficiaries of any gift you make to the NRIT and of their ability to withdraw the gift as described below. These procedures will be reviewed more fully in information given to you with the completed trust. It is very important that you and your Trustee follow these procedures carefully. Otherwise, gifts to the NRIT may not qualify for the annual gift tax exclusion.

Additional Terms

As you know, once the NRIT is established, you cannot revoke or modify it. Therefore, you may want to name a "Trust Advisor" (sometimes called a "Trust

Protector") to add additional flexibility to the NRIT. The "Trust Advisor" can be given a limited power to seek court approval to modify the terms of the NRIT for the benefit of the beneficiaries and/or their spouses and issue in order to address changes in their circumstances and/or the law. The "Trust Advisor" should be an individual other than the Trustor(s) or a trust beneficiary.

As touched upon above, in order to make each gift to the trust a "present interest" for gift tax purposes (and thus qualify for the \$11,000 per donee annual exclusion from gift tax), each beneficiary will have a right to withdraw his or her share of any gift to the trust within 30 days of the date the gift was made. This is called a "Crummey Power", after the court case of Crummey v. Commissioner. The Trustee will have a duty to notify the beneficiaries each time you make a gift to the NRIT. We will provide the Trustee with a form for giving the required notification. To the extent that the beneficiaries do not exercise their "Crummey Powers" to make withdrawals of the gifts within the 30 day period, the

gift will no longer be subject to withdrawal by the beneficiaries. While the beneficiaries will have a real ability to remove the amount gifted to them each year during the 30 day period, beneficiaries usually do not take advantage of this right as doing so may well discourage the Trustor from making future gifts to the trust.

Conclusion

If you wish to have us prepare a NRIT for you, please complete all information requested in this Booklet, (and, for married couples, sign the Conflict Memorandum on Pages 19-21) and either return the completed booklet to us or bring the booklet with you when you come in for your meeting with the attorney.

INSTRUCTION FORMS

Trustor(s) Names

Husband's Name	
Wife's Name	
Other Trustor's Name	

Name of Trust

Name of Trust (e.g., Smith Children's Trust)	
---	--

Estate Value

The current net value of your estate (including cash, securities, closely held businesses, real properties, life insurance, personal property, pension and profit sharing plans, annuities and any other assets, net of debts) is: \$ _____

The estimated value of your estate at the death of the [surviving] Trustor will be:

\$ _____

Approximately what percentage of the estate at the death of the [surviving] Trustor will consist of cash or other liquid assets? _____ %

Trustees

Recognizing that, as Trustors, you should not be the Trustee, please indicate the Trustee (or Co-Trustees) and successors you would like to name.

	Trustee Name	Address	City, State, Zip	Phone
Initial Trustee/ Co-Trustee				Bus _____ Res _____
Co-Trustee/ 1st Successor Trustee				Bus _____ Res _____
Subsequent Trustee or Co-Trustee				Bus _____ Res _____
Subsequent Trustee or Co-Trustee				Bus _____ Res _____

List additional successor Trustees, if desired, on an additional sheet of paper. Naming a Bank or Trust Company as the last named successor Trustee is recommended.

Beneficiaries

Indicate the beneficiaries of the NRIT and the share each is to receive. If the share is left blank, we will assume an equal share for each beneficiary.

Full Name	Address	Relationship to You	Date of Birth	% Share
	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/>			
	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/>			
	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/>			

Please add information for any additional beneficiaries on a separate sheet of paper and attach it to this booklet.

Trust Terms

General:

No distributions of trust assets will be made to beneficiaries until two years after the death of the [surviving] Trustor, except at the discretion of the Trustee. If all gifts are used to pay premiums and a survivor insurance policy is acquired, the only asset of the trust prior to the survivor's death would be the unmatured life insurance policy. Therefore, the distribution among the beneficiaries (described below) would only take place two years after the death of the [surviving] Trustor.

Separate Trusts:

After the death of the [surviving] Trustor, the insurance proceeds and any other assets that come to the trust will be divided into separate trusts for the beneficiaries.

Income Payments:

Each beneficiary over age 21 will be entitled to receive the income from his/her trust; for any beneficiary under age 21, the Trustee will have discretion to pay the funds to or for the beneficiary's benefit or to accumulate the income in the trust.

distributed to the beneficiary's issue (children, grandchildren, etc.) subject to the same trust terms as outlined above. If there are no issue, then the property will go to the trusts for the other named beneficiaries.

Alternate Distribution:

If all the beneficiaries named above and all their issue were deceased without making other directions for distribution of the property, to whom would you wish the property to go? One simple answer might be to have it pass to your heirs at law (parents, brothers, nieces and nephews, etc.). Another alternative is to name friends or a charity or charities that you would like to benefit. Please indicate your preferences in the box below:

- One-half to heirs of each Trustor.
- To Trustor's heirs.
- Other distribution (please specify):

Generation Skipping (Dynasty Trust)

Generation Skipping is a technique whereby assets are held in trust for a beneficiary throughout his or her lifetime. Such trusts can provide the following benefits to the beneficiary:

- Where appropriate, control of the assets by the beneficiary as Trustee.
- All income from the assets.
- Availability of trust principal to the extent of need.
- Avoidance of death tax at the beneficiaries' deaths (for up to \$1,120,000 from each Trustor).
- Protection of assets from creditors.
- Avoidance of loss of assets from bad management by beneficiaries (when someone else is the Trustee).
- Avoidance of loss of assets through divorce.
- Avoidance of loss of assets through bankruptcy.

The basic NRIT terms do not contemplate such Generation Skipping Trust terms for the beneficiaries, but if you would like to explore this possibility for your trust, please let us know and we will review this with you at your office conference.

Changing Trustees

wishes. However, it is possible to give a third party the right to seek court approval to alter the terms of the beneficiaries' trusts. Such person is called a Trust Advisor. He or she cannot be a Trustor (you), or a trust beneficiary. Most corporate Trustees will not accept this responsibility. Naming a Trust Advisor can provide flexibility to meet changes in the beneficiaries' circumstances or a change in the law. You might consider naming a trusted relative or friend in this capacity.

- I do not want to have a Trust Advisor to make changes in the trust.
- I want to use the following person(s), in succession, as Trust Advisor(s).

Name	Address	City, State, Zip	Phone
	<hr/> <hr/>	<hr/> <hr/>	Bus _____ Res _____
	<hr/> <hr/>	<hr/> <hr/>	Bus _____ Res _____
	<hr/> <hr/>	<hr/> <hr/>	Bus _____ Res _____

Changing Trust Advisors

In order to have a Trust Advisor available for as long as possible, you may wish to give each Advisor the right to select a substitute Advisor if there is no other person already appointed as successor, or if the person appointed cannot serve. Recognizing that neither you nor the beneficiaries of the trust can serve, please indicate any specific background or qualification of the group from which the selection may be made (e.g., attorneys CPAs, former trust officers, financial planners or individual professional Trustees [possibly with ten years or some other level of experience]).

Proposed Gift

Note: You may wish to have your planning advisor assist you in completing this section.

Type of Gift:

1. Cash to purchase new policy(ies) - Amount \$ _____
2. Existing or new policy(ies) information:

	Policy #1	Policy #2	Policy #3*
Issuing company			
Policy # (if known)			
Insured			
Premiums (amount/frequency)			
Face value			

3. Information for existing policy(ies) only

Interpolated terminal reserve value of policy (Insurance Company should supply this information)			
Loans on policy			
Owner			
Income tax basis**			

*Attach additional pages if more than three policies will be gifted.

**Income tax basis is the total of premiums paid to date, less any loans against the policy.

4. Other property (please describe):

Memorandum for Estate Planning Clients Concerning Dual Representation and Potential Conflict of Interest

Dear Clients:

It is customary for multiple donors, usually a husband and wife to employ the same law firm to assist them in planning their estates. Our experience has been that most couples have a clear agreement as to how they want their assets distributed and, as a result, there generally is no conflict of interest regarding their estate plan.

Nevertheless, the Rules of Professional Conduct of the State Bar of California (the "Rules") limit our ability to represent multiple clients on a matter of common interest. Under the Rules, we may represent multiple clients who do not have conflicting interests. However, we must advise clients of any actual or reasonably foreseeable adverse effects that might arise from such multiple representation and obtain their consent.

The following are typical circumstances in which a conflict of interest may arise:

1. Since we would be representing both of you, each of you would be our client. As a result, information would be fully disclosed by us to both of you, unless one of you informs us of his or her desire that a particular item of information be considered confidential and be withheld from the other of you. If either of you informs us that confidentiality from the other must be maintained with respect to a particular item of information, we will be required by law to advise the other that such a request has been made, without divulging the subject matter, and will inquire whether the other objects to us withholding the communication or item of information from him or her. As a practical matter, this rule effectively prohibits us from agreeing with either of you to withhold information from the other. Of course, anything either of you discusses with us is privileged from disclosure to third parties.

2. If you have a difference of opinion concerning your proposed trust or any other work we may perform for both of you, we can point out the pros and cons of such differing opinions. The Rules prohibit us, as the lawyer for both of you, from advocating the position of one of you over the position of the other.
3. Although we doubt that it will happen, if conflicts do arise between you of such nature that make it impossible in our judgment to perform our obligations to each of you in accordance with this letter, it would become necessary for us to withdraw as your joint attorney and to advise one or both of you to obtain independent counsel.
4. Certain techniques of planning which may currently be implemented with a view toward preserving the estate for the family unit as a whole may be objected to by the survivor of you after the first death. For example, as an estate tax minimization device (viewing the aggregate estate tax after both deaths), we may implement a plan which could result in less value passing to a trust more directly controlled by the survivor (and more value passing to a trust designed to ultimately benefit your next generation). You recognize that our planning is typically designed to benefit the two of you as a unit, as opposed to being solely designed to benefit the survivor of you. We will, of course, design the planning to attempt to achieve your goals as communicated to us.
5. Additionally, there may be other techniques of estate planning currently implemented for purposes of estate tax minimization that could have adverse effects on one party or the other in case of a dissolution of the marriage or disagreements that may later develop between you concerning the management of your property. For example, gifts of property may be made by one spouse to increase the estate of the other as an estate tax minimization device, particularly where one spouse's ownership of property substantially exceeds the other, or where it is advantageous to make gifts of insurance from an estate planning point of view. Such gifts result in one spouse acquiring ownership of property which would not otherwise have been his or hers.

6. We represent only you and not your heirs or beneficiaries under your Wills or Trust(s). Thus, unless we obtain your permission, we will not disclose to anyone, other than each of you, the contents of your estate plan during your lifetimes and, after death, will only disclose information to those people who are your executor(s) and/or Trustee(s) and the beneficiaries of your estate plan.
7. Conflicts may arise over decisions as to how to characterize ownership of individual items of property (i.e., as separate property, as community property or as quasi-community property), how property should be disposed of, and who should serve as fiduciaries (i.e., executor, trustee, guardian).
8. At no time will we have any responsibility to anyone who is an heir and/or a beneficiary of your estate plan. In drafting your estate plan, we shall have no responsibility to anyone other than you.

Our goal is to produce the desired legal results that you as clients desire. To that end, we look forward to a long, satisfying and pleasant relationship with you.

By signing below, you are acknowledging that you have read and understood this letter and wish us to proceed with your representation.

Very truly yours,

MILLER, MONSON, PESHEL, POLACEK & HOSHAW
A Partnership of Professional Law Corporations

ACKNOWLEDGED:

Signature

Date

Signature

Date

(If you have already provided this information, disregard this form)

LAW OFFICES OF
Miller, Monson, Peshel, Polacek & Hoshaw
A Partnership of Professional Law Corporations

NEW CLIENT INFORMATION

Date: _____

Name: _____
 First Middle Last

Birthdate: _____ Social Security Number: _____

If married, name of spouse: _____

Spouse's birthdate: _____ Social Security Number: _____

Residence Address: _____

Residence Telephone Number: (____) _____

Residence Fax Number: (____) _____ Residence e-mail _____

Business Address: _____

Business Telephone Number: (____) _____

Business Fax Number: (____) _____ Business e-mail _____

Cellular Telephone Number: (____) _____

Where would you prefer correspondence from our office be sent:

Residence Business

Would it be satisfactory to send you e-mail news of tax law changes and new techniques? Yes No

In order that we may avoid any potential conflict of interest, please list the name of any corporations, partnerships, or other businesses with which you are associated, and the names of any other parties involved in the matter for which you are seeking legal representation:

Your accountant's name: _____

Who referred you to our firm? _____

Thank you.

Miller, Monson, Peshel, Polacek & Hoshaw

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San Diego, CA 92101

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