

**Note to Professors:**

**This 'Revocable Trust' can be used as an illustration of a Lifetime Trust. It can be introduced in Chapter 2 – in a general discussion of estate planning (as one author does) - or can be used in Chapter 7 when the discussion focusses on trusts.**

## **Ward Cleaver Lifetime Trust**

### **Article 1**

By executing this instrument on this \_\_\_\_ day of \_\_\_\_\_  
Ward Cleaver intends to and hereby creates a revocable lifetime trust. This trust shall be referred to as the Ward Cleaver Lifetime Trust.

#### **Clause 1: Parties to this Trust**

Ward Cleaver is the Settler/Creator of this trust.

The Beneficiaries of this trust are:

Ward Cleaver (for his life only);

June Cleaver (upon the death of Ward Cleaver for her life only);

Wallace Cleaver (remainder interest in the trust corpus upon the deaths of Ward and June Cleaver);

Theodore Cleaver (remainder interest in the trust corpus upon the deaths of Ward and June Cleaver).

The Trustee of this trust is Ward Cleaver. The successor Trustees are Wallace and Theodore Cleaver, pursuant to provisions in Article 1. Professor L J. Grouchfield is the Protector of the Trust, and successor Trustee.

#### **Clause 2 Corpus of the Ward Cleaver Lifetime Trust**

The trust corpus of the Ward Cleaver Lifetime Trust shall be 1000 shares of common stock of Software Designers Inc. the fair market value thereof on the date of execution exceeds \$40,000 which by these presents are hereby transferred to Ward Cleaver in trust for the purposes set out in this instrument. It is intended that the trust corpus be supplemented by the residuary estate under the will of Ward Cleaver.<sup>1</sup> This trust shall be

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<sup>1</sup> Alternatively: The corpus of this trust is the residuary estate of Ward Cleaver.

governed by the version of Uniform Testamentary Additions to Trusts Acts in force in the jurisdiction.

### **Clause 3 Revocability of the Trust**

This trust shall be revocable according to the terms set out in Article 2, Clause 4.

## **Article 2**

### **Clause 1 Beneficial interest in this trust during the life of Ward Cleaver**

During the lifetime of Ward Cleaver, Ward Cleaver as trustee or the successor trustees, Wallace and Theodore Cleaver or Professor L. J. Grouchfield, will hold, administer, and distribute all property that constitutes the income and/or corpus of this trust for the benefit of Ward Cleaver according to the terms hereafter expressed. The income that is generated by trust corpus received by the trustee shall be paid over to Ward Cleaver at the discretion of the trustee to the extent necessary in the trustee's judgment for the health, education, support, comfort, welfare and happiness of Ward Cleaver, and for the purpose of maintaining Ward Cleaver's accustomed standard of living. Any income not so distributed according to the provisions above shall be added to the principal.

Nevertheless, if the income from this trust is insufficient to provide for the health, education, support, comfort, welfare and happiness, the trustee shall at the trustee's discretion pay over to Ward Cleaver as much of the corpus of this trust as is reasonably necessary for Ward Cleaver's health, education, support, comfort, welfare or happiness and to maintain his accustomed standard of living.

Ward Cleaver may at any time have paid to him from the trust principal up to 5% of the trust corpus each year without reference to financial need for any purpose.

## **Clause 2 Removal of Ward Cleaver as trustee**

If Ward Cleaver becomes incompetent to serve, the successor trustees, Wallace and Theodore Cleaver, shall immediately be constituted as trustees. A judgment of incompetence shall be made only after consultation between the successor trustees, medical professionals and Professor L. J. Grouchfield who must conclude that Ward Cleaver is unable to administer this trust due to physical or mental disability. If they so conclude, application should be made to place Ward Cleaver under a conservatorship pursuant to governing state law. Upon an application for a conservatorship pending judgment of incompetence pursuant to the process set out above, the successor trustees shall become interim trustees may distribute trust property for the purpose of paying to Ward Cleaver so much of the income and principal of the trust estate as is necessary for Ward Cleaver's health, education, support, comfort, welfare or happiness and to maintain his accustomed standard of living. Should a conservatorship of Ward Cleaver be so ordered, the successor trustees shall hold their position permanently.

## **Clause 3 Powers of Successor Trustees**

If Ward Cleaver becomes incapable of giving informed consent for health care decisions, the settler, Ward Cleaver, hereby grants to the successor trustees the full power and authority to make health care decisions on the settler's behalf, including the right to consent, refuse to consent, withdraw consent to any health care treatment, service, or procedure to maintain, diagnose or treat Ward Cleaver's physical or mental conditions, and to receive and consent to the release of medical information. The successor trustee shall rely on any durable power of attorney for health care or similar document relating to health care decisions that has been executed by the settler when carrying out specific health care decisions relating to the settler. If no such durable power of attorney has been executed, the powers enumerated in this provision shall be given full force and effect.

## **Clause 4 Revocability of this trust in the lifetime of Ward Cleaver**

Ward Cleaver may at any time revoke this trust agreement in whole or in part by written document signed by Ward Cleaver and delivered to Professor Grouchfield or to one or both of the named successor trustee/s.

The power of Ward Cleaver to revoke or amend this trust is personal to him, and no guardian, conservator or other person shall exercise these powers.

### **Article 3**

#### **Clause 1 Beneficial interests in trust after the death of Ward Cleaver**

At the death of the Settler, Ward Cleaver, beneficial interest in the trust shall pass as follows:

To my wife, June Cleaver, should she survive me, in the following manner: I direct that my trustee pay over the income of the Trust to June in quarterly installments directly to her, and not in any circumstances to her creditors or her assigns.

Further, I direct that my trustee no less than one time each year make inquiry to determine whether the income interest above limited to June is sufficient for June Cleaver's health, education, support, comfort, welfare or happiness and to maintain his accustomed standard of living so long as she lives outside of a medical facility or nursing home. Should the trustee determine additional sums be necessary for her, I direct my trustee to pay over required sums to June Cleaver or her conservator.

In determining whether such additional sums are required, I vest in my trustee absolute discretion. If either of my sons, Wally and the Beaver, however, believe that additional sums are required for the aforementioned purposes, that is, June Cleaver's health, education, support, comfort, welfare or happiness and to maintain his accustomed standard of living, my trustee shall be required to pay such sum directly to June or her conservator and not to creditors or assigns. If it is required to preserve under state law the supplemental nature of this trust under prevailing Medicare/Medicaid benefits, funds derived from my estate shall be held in a separate account, but nevertheless subject to the terms of the paragraph.

## **Clause 2 Beneficial Interest after the death of June Cleaver**

Upon the death of my wife June Cleaver, or upon a written renunciation by June or her conservator of her interest in the trust tendered to the trustee at any time, the trust property shall be distributed in equal shares to my children Wallace and Theodore Cleaver.<sup>2</sup>

Provided that if either of both of my sons should predecease June and leave issue who survive June, then the share which would have passed to the deceased son or sons shall pass to the issue of my son or sons per stirpes. If either of my sons predecease June without leaving issue which survive June, then the share which would have passed the deceased son or his issue shall pass to the surviving son or his issue if his issue survives June.

Nevertheless, if any distributee under this clause is under the age of 25 at the time the trust property that under the terms of the trust abovementioned should pass to that distributee, the share of all distribute shall remain in the hands of the trustee. The trustee at his discretion may pay in quarterly installments directly to the distributee such sums as advisable for the comfortable support, health, maintenance and education of the distributee. Professor L. J. Grouchfield shall be constituted as trustee under such trust or trusts.

If, at the death of my wife June no issue shall survive her, the corpus shall pass to the Cornell Lab of Ornithology, Ithaca, New York.

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<sup>2</sup> Alternatively: Upon the death of my wife June, or upon a written renunciation by June or her conservator of her interest in the trust tendered to the trustee at any time, the trust property shall be distributed to my issue as June shall appoint by will or inter vivos writing.

In default of appointment, the corpus shall be distributed to my children Wallace and Theodore Cleaver if they survive to the death of June or her renunciation of her interest in the trust as provided above.