

Information & Instructions: Irrevocable inter vivos trust

PREVIEW

1. This trust is irrevocable which means that once the gift is made to the trust, the maker or donor, cannot undo the gift and get the gift back.
2. Irrevocable trusts are generally used for tax purposes in order to take property out of the maker's gross estate for federal inheritance tax purposes.

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Form: Irrevocable inter vivos trust

PREVIEW

IRREVOCABLE INTER VIVOS TRUST

State of Texas

County of _____

This Trust Agreement is entered into on [date], by and between [names of Donors], [husband and wife], who are residents of [name of city], [Name] County, Texas, referred to as "Grantor", and [name of Trustee], referred to as "Trustee", in order to create an irrevocable Trust which shall be known as the "[name of Trust] TRUST", which shall be for the benefit of certain specified grandchildren of [names of Donors].

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1.1 For the consideration, purposes, and subject to the terms, provisions, conditions and limitations contained in this Agreement, Grantor has irrevocably conveyed, assigned, transferred and delivered to the Trustee full and complete title to the property described in Exhibit "A" which is attached to this Agreement, and is referred to "Trust Property", the receipt of which is acknowledged by the Trustee.

1.2 The Grantor reserves the right for themselves and for any other party, from time to time, by deed, will or in any other manner, to add to the principal of this Trust. Any property so added shall be held, administered, paid and delivered as part of the Trust created by this Agreement to which that property has been added.

1.3 Grantor has conveyed, transferred and assigned to the Trustee and for the benefit of the Beneficiaries, TO HAVE AND TO HOLD, the Trust Property and all other properties, real, personal or mixed, which Grantor or any other person may at any time add to this Trust, together with any and all rights and appurtenances unto the same belonging to or pertaining thereto, unto the Trustee and the Trustee's successors or substitutes in Trust, for the sole use and purpose of the Beneficiaries described below and subject to all of the terms, conditions, privileges, rights and powers, as set forth in this Agreement.

1.4 The assets listed in Exhibit "A" shall constitute irrevocable gifts given by [name of Donor] and by [name of Donor] to each of the Donors' grandchildren named below as Beneficiaries.

1.5 Each of these gifts is intended to and shall qualify for the annual gift tax exclusion as provided for the Internal Revenue Code.

2. BENEFICIARIES

2.1 The Beneficiaries of the [name of Trust] Trust shall be the grandchildren of [Donors' Names], as follows:

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- a. All children of [name of Donors' child] and spouse, [name].
- b. All children of [name of Donors' child] and spouse, [name].

2.2 The names of the specific Beneficiaries as of the date this Trust is created are as follows:
[beneficiaries' names]

2.3 The term "Beneficiary" shall include any grandchildren of the Grantor's children identified above who may be born subsequent to the creation of this Trust and for whom Grantor gives money or assets to the Trustee intended to qualify for the annual gift tax exclusion as provided for in Section 253 of the Internal Revenue Code.

3. TRUST ACCOUNT

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3.1 The Trustee shall maintain the Trust Estate in one common Trust Fund which shall be divided into separate accounts for each Beneficiary for the purposes of administration and accounting, referred to as each Beneficiary's "Trust Estate".

3.2 The Trustee shall provide to each Beneficiary or Guardian of that Beneficiary an annual accounting statement concerning the Trust Account for that Beneficiary's respective Trust Estate. The accounting will include a statement of the Trust's earnings and distributions.

4. INCOME DISTRIBUTIONS

4.1 The Trustee shall distribute, at those intervals as the Trustee may determine, to the Beneficiaries so much of the net income of the Trust that will, in the sole opinion of the Trustee adequately provide for their education, health, support and maintenance in accordance with their station in life.

4.2 Any income not distributed shall be accumulated and added to the corpus of the Trust.

4.3 Any distributions made under this provision need not be equal among Beneficiaries and shall not be charged against their respective Trust Estate.

4.4 If, in the opinion of the Trustee, one or more Beneficiaries of the Trust shall incur extraordinary expenses due to illness or other misfortunes, the Trustee shall have the right to invade the other Beneficiaries' income accounts to aid that unfortunate Beneficiary.

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5. CORPUS DISTRIBUTIONS

5.1 If the Trustee determines that the net income which is distributed under this Agreement to one or more Beneficiaries is inadequate, the Trustee [specify limits on authority, such as: in the Trustee's absolute and sole discretion] may supplement the income distribution out of the corpus of the Trust to the extent and in the manner that will adequately provide for the education, health, support and maintenance of the Beneficiaries in accordance with their station in life.

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5.2 The amount of the supplemental distribution shall not be charged against the Trust Estate of the particular Beneficiary receiving the same.

PREVIEW

5.3 If, in the sole opinion and discretion of the Trustee, one of the Beneficiaries of the Trust shall incur extraordinary expenses, due to illness or calamity, the Trustee shall have the right to distribute to that Beneficiary as much of the corpus of the Trust, including principal of the other Beneficiaries' share of Trust Funds, in order to aid that Beneficiary who shall have incurred an extraordinary expense due to illness or calamity.

5.4 Distribution of the entire corpus of the Trust is authorized if the Trustee shall determine the distribution to be in the best interest of the Beneficiary.

5.5 Notwithstanding any other provision of this Trust Agreement, any Beneficiary shall have the right by written and signed notice delivered to the Trustee during any calendar year in which any subsequent gift (as defined in Section 2512 of the Internal Revenue Code) is made to this Trust, from the date of the gift until the expiration of thirty (30) days after receipt by that Beneficiary of a Notice to Beneficiaries, as described in Paragraph [5.5], to withdraw from the Trust an amount not exceeding the lesser of his or her proportionate share of the fair market value of the gift on the date of the gift or the amount then specified in Section 253(b) of the Internal Revenue Code (or twice that amount if the gift is made by both Grantors).

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a. In no event may the amount withdrawn by any Beneficiary in any calendar year exceed the amount then specified in Section 253(b) of the Internal Revenue Code (or twice that amount if the gift is made by both Grantors).

b. This right shall not be cumulative and any amounts not withdrawn in any year may not be withdrawn in any subsequent year. In the event any Beneficiary is declared incompetent by any court, his or her legal guardian may exercise this right on his or her behalf.

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5.5 Within [seven (7)] days of receipt by the Trustee of a gift to the Trust, the Trustee shall notify each Beneficiary that a gift to the Trust has been made and describe the method by which the Beneficiary may withdraw, by written request, the portion of the contribution to which the Beneficiary has a withdrawal right.

a. The Trustee shall retain sufficient transferable assets in the Trust to satisfy all such withdrawal rights as are then outstanding. Each Beneficiary, as of the date of the creation of this Trust, has elected not to exercise, by written documents attached to this Trust, his or her right to withdraw the initial year contribution to be made to him or her by Grantor.

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6. TERMINATION

6.1 This Trust shall terminate, and all Trust principal and income shall be distributed in fee simple and free of Trust to the Beneficiaries, upon the deaths of both [names of Donors].

6.2 In the event that a Beneficiary predeceases the Grantor, the Beneficiary's Trust Estate shall pass to his or her spouse, if any.

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- a. In the event the predeceased Beneficiary's spouse does not survive, then that share shall be given to the Beneficiary's children, if any.
- b. In the event the predeceased Beneficiary's children have not yet reached the age of eighteen (18) years of age, then those shares shall remain in this Trust and be distributed in fee simple absolute at the time that each child reaches the age of [twenty-one (21)] years of age.

6.3 In the event the deceased Beneficiary is not survived by a spouse and/or children, that Beneficiary's Trust Estate shall pour over and enhance the Trust Estate of the remaining Beneficiaries and shall be distributed for and on behalf of the surviving Beneficiaries.

6.4 **PLEASE DO NOT COPY** In the event of any other provision of this Trust, the Trustee may at any time terminate the Trust if in the Trustee's sole judgment, the continued management of the Trust is no longer economical because of the small size of the Trust, and if that action shall be deemed to be in the best interests of the Beneficiary.

- a. In case of the termination of the Trust, the Trustee shall distribute forthwith the Trust estate so terminated to the Beneficiary, or to a custodian named for the Beneficiary under a Uniform Gift to Minor's Act, or to the Beneficiary's legal representative.
- b. Upon the distribution and delivery, this Trust shall terminate, and the Trustee shall not be liable or responsible to any person or persons whomsoever for the Trustee's actions.
- c. The Trustee shall not be liable for failing or refusing at any time to terminate the Trust as authorized by this paragraph.

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6.5 If, at the termination of this Trust as provided for in Paragraph 6.1 above, any Beneficiary or his or her issue entitled to distribution of a portion of this Trust shall not have attained the age of [twenty-one (21)], his or her share shall be retained in Trust and distributed to him or her in fee simple and free of Trust when he or she shall attain that age.

6.6 So long as a share of the Trust is held in Trust for a Beneficiary under the provisions of Paragraph [6.5], the Trustee shall distribute to that Beneficiary so much of the Trust income and corpus as the Trustee shall determine to be necessary to provide for the comfort, happiness, health, education, maintenance or support of that Beneficiary.

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6.7 Distribution of the entire corpus of the Trust Estate is authorized if the Trustee shall determine that distribution shall be to the best interests of the Beneficiary in accordance with the foregoing standard or because the share is so small that continued administration in Trust is no longer desirable.

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7. SPENDTHRIFT CLAUSE

7.1 No Beneficiary of the Trust shall have the right or power to anticipate, by assignment or otherwise, any income or corpus given to the Beneficiary by this Trust, nor in advance of actually receiving the same have the right or power to sell, transfer, encumber or in anywise charge the same; nor shall the income or corpus or any portion of the income or corpus be subject to any execution, garnishment, attachment, insolvency, bankruptcy, or legal proceeding of any character, or legal sequestration, levy or sale, or in any event or manner be applicable or subject, voluntarily or involuntarily, to the payment of the Beneficiary's debts.

8. MAXIMUM DURATION

8.1 Notwithstanding anything in this Trust to the contrary, the Trust created under this Agreement shall in all events terminate not later than twenty-one (21) years from and after the death of the survivor of each Beneficiary and all of his or her issue living at the time of the death of Grantor, both husband and wife.

8.2 If the Trust is terminated due to state or federal legal considerations, upon the termination the corpus and undistributed income of the Trust, or the assets and property as to which the Trust is terminated, shall be delivered and distributed in fee simple and free of Trust to those persons who would be entitled to the assets and property as if the expiration of the term were a termination of the Trust under the preceding provisions of this Trust.

9. APPOINTMENTS AND RESIGNATION OF TRUSTEE

9.1 Grantor appoints [name of Trustee] to act as Trustee of the Trust created by this Agreement.

- a. If [name of primary Trustee] dies, resigns, becomes incapacitated or otherwise ceases to act, Grantor appoints [name of successor Trustee] to act in [his or her] place as Trustee of the Trust created by this Agreement.
- b. If [name of successor Trustee] dies, resigns, becomes incapacitated or otherwise ceases to act, Grantor designates Grantor's attorney, [name], as Trustee.

9.2 Any Trustee may resign by giving at least [thirty (30)] days' written notice (unless waived by the person receiving the notice) to the Beneficiary of this Trust; provided, however, that, if the person entitled to receive notice is a minor or an incompetent, the notice shall be delivered to the minor's parents or guardian or to the incompetent's guardian.

10. DUTIES AND COMPENSATION OF TRUSTEE

10.1 The Trustee shall determine what is income and what is corpus of the Trust created by this Agreement, and what expenses, costs, taxes, and charges of any kind whatsoever shall be charged against income and what shall be charged against the corpus in accordance with the applicable laws of the State of Texas as they now exist and may from time to time be enacted, amended, or repealed.

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10.2 No Trustee appointed under this Trust Agreement shall at any time be held liable for any action or default of the Trustee or the Trustee's agent or of any other person in connection with the administration of the Trust Property, unless caused by the Trustee's own gross negligence or by willful commission by the Trustee of an act in breach of the Trustee's fiduciary duty.

10.3 No bond shall be required of the Trustees under this Agreement; if any bond is required by law, no surety shall be required on the bond.

10.4 Any Trustee who is not related by blood, adoption or marriage to the Grantor, and who does not waive compensation, shall receive fair and reasonable compensation for services rendered in an amount not exceeding the customary and prevailing charges for services of a similar character at the time and at the place the services are performed, and all Trustees shall be reimbursed for their reasonable costs and expenses incurred in connection with their fiduciary duties.

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11. POWERS OF TRUSTEE

11.1 In order to carry out the purposes of this Trust Agreement, the Trustee, in addition to all other powers granted by law and under the Texas Trust Code, shall have the following powers and discretions:

A. Retain Assets:

To continue to hold any and all property received by the Trustee or subsequently added to the Trust Estate or acquired pursuant to proper authority if and as long as the Trustee, in exercising reasonable prudence, discretion, and intelligence, considers that the retention is in the best interests of the Trust.

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B. Investments:

To invest and reinvest in every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, which persons of prudence, discretion, and intelligence might acquire for their own accounts.

C. Management of Securities:

To exercise, respecting securities held in the Trust estate, all the rights, powers, and privileges of an owner, including, but not limited to, the power to vote, give proxies, and to pay assessments and other sums deemed by the Trustee necessary for the protection of the Trust estate; to participate in voting Trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and in connection with those actions to deposit securities with and transfer title to any protective or other committee under those terms as the Trustee may deem advisable to exercise stock subscriptions or conversion rights; to accept and retain as an investment any securities or other property received through the exercise of any

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of the foregoing powers regardless of any limitations elsewhere in this instrument relative to investments by the Trustee.

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D. Form of Ownership of Trust Property:

To hold securities or other Trust property in the name of the Trustee as Trustee under this Trust Agreement or in the name of a nominee under those conditions where ownership will pass by delivery.

E. Business Interests:

To continue and operate, to sell or to liquidate, as the Trustee deems advisable at the risk of the Trust Property, any business or partnership interests received by the Trust Property.

F. Sell and Exchange:

To sell for cash or on deferred payments and on those terms and conditions as are deemed appropriate by the Trustee, whether at public or private sale, to exchange, and to convey any property owned by the Trust.

G. Division of Trust Property:

On any division of the Trust property into separate shares or Trusts, to apportion and allocate the assets of the Trust in cash or in kind, or partly in cash and partly in kind, or in undivided interests in the manner best deemed advisable in the discretion of the Trustee; after any division of the Trust, the Trustee may make joint investments with funds from some or all of the several Trust Estates, but the Trustee shall keep separate accounts for each Beneficiary.

H. Abandonment of Trust Assets:

To abandon any Trust asset or interest in an asset in the discretion of the Trustee.

I. Option:

To grant an option involving disposition of a Trust asset and to take an option for the acquisition of any asset by the Trust.

J. Lease:

To lease any real or personal property of the Trust for any purpose for terms within or extending beyond the duration of the Trust.

K. Property Management:

To manage, control, improve, and repair real and personal property belonging to the Trust.

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L. Development of Property:

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To partition, divide, subdivide, assign, develop, and improve any Trust property; adjust boundaries or differences in valuation on exchange or partition by giving or receiving consideration; and to dedicate land or easements to public use with or without consideration.

M. Repair, Alter, Demolish and Erect:

To make ordinary and extraordinary repairs, improvements and alterations on or in buildings or other Trust property, to demolish any improvements, to raise party walls or buildings, and to erect new party walls or buildings as the Trustee deems advisable.

N. Borrowing and Encumbering:

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To borrow money for any Trust purpose from any person, firm, or corporation, on the terms and conditions deemed appropriate by the Trustee and to obligate the Trust for repayment; to encumber the Trust or any of its property by mortgage, deed of Trust, pledge, or otherwise, using whatever procedures to consummate the transaction are deemed advisable by the Trustee; to replace, renew, and extend any encumbrance and to pay loans or other obligations of the Trust deemed advisable by the Trustee.

O. Natural Resources:

To enter into oil, gas, liquid or gaseous hydrocarbon, sulfur, metal and any and all other natural resource leases on terms deemed advisable by the Trustee, and to enter into any pooling, unitization, repressurization, community and other types of agreements relating to the exploration, development, operation and conservation of properties containing minerals or other natural resources; to drill, mine, and otherwise operate for the development of oil, gas and other minerals; to contract for the installation and operation of absorption and repressuring plants; and to install and maintain pipelines.

P. Insurance:

To procure and carry, at the expense of the Trust, insurance of the kinds, forms, and amounts deemed advisable by the Trustee to protect the Trust and the Trustee against any hazard.

Q. Enforcement of Hypothecations:

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To enforce any deed of Trust, mortgage, or pledge held by the Trust and to purchase at any sale under any of those instruments any property subject to any such hypothecation.

R. Extending Time of Payment of Obligations:

To extend the time of payment of any note or other obligation held in the Trust, including accrued or future interest, in the discretion of the Trustee.

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S. Adjustment of Claim:

PREVIEW

To compromise, submit to arbitration, release, with or without consideration, or otherwise adjust claims in favor of or against the Trust.

T. Litigation:

To commence or defend at the expense of the Trust any litigation affecting the Trust or any property owned by the Trust deemed advisable by the Trustee.

U. Administration Expenses:

To pay all taxes, assessments, and all other expenses incurred in the collection, care, administration, and protection of the Trust.

5. Employment of Attorneys, Advisors, and Other Agents:

To employ any attorney, investment advisor, accountant, broker, tax specialist, or any other agent deemed necessary in the discretion of the Trustee; and to pay from the Trust reasonable compensation for all services performed by any of those persons.

W. Termination by Trustee of Small Trust:

To terminate the Trust, in the discretion of the Trustee, as previously set forth.

X. Distribution:

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On any partial or final distribution of the Trust, to apportion and allocate the assets of the Trust in cash or in kind, or partly in cash and partly in kind, or in undivided interests in the manner deemed advisable at the discretion of the Trustee and to sell any property deemed necessary by the Trustee to make the distribution.

Y. Complete Authority:

To do all the acts, to take all proceedings, and to exercise all the rights, powers, and privileges which an absolute owner of the property would have, subject always to the discharge of the Trustee's fiduciary obligations; the enumeration of certain powers in this Trust Agreement shall not limit the general or implied powers of the Trustee; the Trustee shall have all additional powers that may now or hereafter be conferred on the Trustee by law or that may be necessary to enable the Trustee to administer the Trust in accordance with the provisions of this Trust Agreement, subject to any limitations specified in this Trust Agreement.

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Z. Fiduciary Capacity:

All powers given to the Trustee by this Trust Agreement are exercisable by the Trustee only in a fiduciary capacity. No power given to the Trustee under this Agreement shall be

PREVIEW

construed to enable the Trustee or any other person to purchase, exchange, or otherwise deal with or dispose of the principal or income from the Trust unless an adequate consideration is received. The Trustee shall not use the income or principal of the Trust to pay premiums of insurance on the life of the Grantor. No person, other than the Trustee, shall have or exercise the power to vote or direct the voting of any corporate shares or other securities of this Trust, to control the investment of this Trust either by directing investments or reinvestments, or to reacquire or exchange any property of this Trust by substituting other property of equivalent value.

12.
WARD TRUST

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12.1 If any share of the Trust Property is scheduled to be distributed to a Beneficiary who has not yet attained the age of [twenty-one (21)] years or to a person who, in the absolute judgment of the Trustee, is incapacitated by reason of legal incapacity or physical or mental illness or infirmity, referred to as the "Ward", the Trustee shall continue to hold that share in this Trust for the benefit of that Ward.

12.2 When any minor Ward attains the age of [twenty-one (21)] years or when any Ward, in the absolute and uncontrolled judgment of the Trustee, becomes legally, mentally and physically capable of receiving [his or her] share, all remaining income and principal of that share of the Trust shall be distributed to that Ward.

13.
GOVERNING LAW

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13.1 This Trust Agreement shall be construed in accordance with the laws of the State of Texas.

14.
ADMINISTRATIVE PROVISIONS

Severability

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14.1 If any part, clause, provision, or condition of this Trust Agreement is held to be void, invalid, or inoperative, that voidness, invalidity, or inoperativeness shall not affect any other clause, provision, or condition of this Agreement; but the remainder of this Trust Agreement shall be effective as though that clause, provision, or condition had not been contained in this Agreement.

Interpretative Clause

14.2 As used in this Trust Agreement, the masculine, feminine or neuter gender, and the singular or plural number shall each be deemed to include the others whenever the context so indicates.

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14.3 To the same extent as if it were the original, anyone may rely on a copy of this Trust Agreement certified by a Notary Public to be a true copy of this Trust Agreement.

15. TRUST IRREVOCABLE

15.1 The Trust is irrevocable. Neither Grantor, the Trustee, nor the Beneficiary shall have any right to alter or amend the Trust in any respect. Grantor shall have no further right, title or interest in the Trust Property or any income derived from it.

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16.1 The Trustee, by executing this Agreement, accepts this Trust and agrees to hold any property acceptable to the Trustee added in accordance with the terms and conditions of this Agreement. This Agreement shall extend to and be binding upon the heirs, executors, administrators, legal representatives and successors, respectively, of the parties to this Agreement.

Signed on _____.

THIS DOCUMENT

[Spouse], GRANTOR

WITNESS

THANK YOU

[Name], TRUSTEE

Subscribed and sworn to before me **PREVIEW** _____, [Donors],
_____[Trustee] and by the witnesses _____
and _____, on _____.

Notary Public, State of Texas

Notary's typed or printed name

PLEASE DO NOT COPY My commission expires:

[or Notary's Stamp]

THIS DOCUMENT

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