



## ***Florida Wills & Trusts*** **January 2010 Update**

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### **Updated Product Features**

#### **Joint Revocable Inter Vivos Trust Added**

You may now draft a joint revocable trust for a married couple. Each spouse has a separate share of the trust, representing his or her interest in it; each share is fully revocable and amendable by the respective spouse. At the first spouse's death, that person's share of the trust either passes completely to the other spouse's share (a simple joint trust) or divides into further trusts for tax planning. For a further discussion of the use and operation of the joint trust, please see the **Memorandum on Joint Revocable Inter Vivos Trusts** at the end of this update letter. *Question 3. New Question 138.*

#### **More Options for Disclaimer Will**

The latest version of Lawgic presents the user with more options and greater flexibility. Based on feedback from loyal users who prefer to have more choices in the documents several questions will no longer be pre-answered or overwritten for the Disclaimer Will. These include items such as (among others) use of Special Trusts and the long list of Fiduciary Powers. See *Question Help at Question 2 for a complete list.*

#### **Neutral H/W Pronouns Question For Edited Mirror Documents No Longer Pre-Answered**

While Lawgic already provides an automated way to create mirror documents for each spouse by simply changing the answer to Question 18 (Client Identity/Gender), this question enables you to create mirror wills or trusts if you plan on heavily editing the document for the first spouse by using placeholders in the document. When you start a new answer file, this question is no longer pre-answered (previously the user had to go to the question independently) although the default is still set to "No." We recommend you review *Question Help* at this question which details how to use this powerful feature. *Question 82.*

#### **Small Caps Option Added to Name Styles**

You can now format the names of individuals and entities in SMALL CAPS. The formatting will be applied to the names of the client, his/her spouse and children, named trustees, personal representatives, agents, guardians, recipients of specific gifts, and other beneficiaries. *Question 88.*

## **New and Revised GRAT and QPRT Text and Questions**

Revisions made to questions, Law and Strategy and text relating to GRATs and QPRTs, including the following:

- (GRAT) - You may allow conversion of annuity payments to a calendar year basis (instead of limiting to the anniversary date).
- (GRAT) - Allows for a deferral of annuity payment in Trustees' discretion.
- (GRAT and QPRT) - A Power of Appointment over the remainder can now be included in a QPRT. A new warning alert screen has been added for the GRAT for married clients recommending the creation of a GRAT Codicil.
- (GRAT and QPRT) - A direct question has been added referring to a Receptacle Trust and its identification.
- (GRAT and QPRT) - The Spendthrift Clause is removed in certain trusts, specifically when a Receptacle Trust is used.
- The provisions dealing with the distribution of the trust assets at the end of the term have been revised (if not using a Receptacle Trust).
- The right for a Trustee to alter a beneficiary's right to receive distributions has been eliminated for the GRAT, QPRT, Trust for Minor and Grandchild's Trust.
- The Incorrect Valuation provision has been expanded to cover distributions of property in satisfaction of the right to receive an annuity.

*Questions 126, 127 and 128 and Question 194 through Question 201.*

## **New Option to Limit Nonmarital Gift**

This question is only asked if a Tax Formula is selected; it adds the phrase "if I die at a time when there is no Federal Estate Tax, the sum of \$3,500,000" to the Formula Gift, so that the formula does not pass all the estate assets to the nonmarital gift if the estate tax has been repealed. *New Question 288.*

## **New GRAT Codicil Added**

When a married client executes a GRAT, it is recommended that the client execute a codicil to his or her will that will ensure the availability of the marital deduction for whatever portion of the GRAT is included in his or her gross estate if he or she dies before the end of the GRAT term. The New York editors strongly recommend creating a separate GRAT Codicil after drafting the GRAT. This new document is available by selecting "GRAT Codicil" at Question 2 (Wills). The GRAT codicil permits the client to specifically bequeath the remaining GRAT and to appoint the GRAT remainder either to his or her surviving spouse outright or to a marital trust. *Question 2 and New Questions 1038 through 1043.*

## **New GRAT Codicil Template Added**

A new GRAT codicil template named "GRAT\_receptacle.xmp" has been added to expedite the creation of a GRAT and GRAT codicil. It can be accessed by selecting Templates at the Select Title/File screen.

## **Provisions Governing Trustees, Fiduciary Powers, Administration and Construction, Miscellaneous Provisions Articles Revised**

Some of the provisions in the Provisions Governing Trustees, Fiduciary Powers, and Administration and Construction articles have been clarified and new provisions have been added.

## **Rev. Proc. Charitable Remainder Trusts Title Revised to Include IRS Sample Forms**

The separate title, "Rev. Proc. Charitable Remainder Trusts," has been updated to reflect IRS changes made to the sample inter vivos charitable remainder unitrust and annuity trust instruments. Trusts generated under the Rev. Proc. title will mirror the sample forms found in IRS Revenue Procedures 2003-53, 2003-55, 2003-56, 2005-52, 2005-54, and 2005-55. Links to the full text of each procedure are also available under the Revenue Rulings and Procedures link in Resources from the HELP menu within the Lawgic program.

## **Software Upgrades**

### **New Tool Tips Describing Template Files Added to Template File Names**

As an alternative to clicking the "Description..." button on the Open Template screen, you can now hold your cursor over the name of a template file and a tool tip appears containing the description of the file. Template files are accessed by clicking the Templates button at the Select Title/File screen when you open the Lawgic program.

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To view those questions that are new in this update, or where **Law & Strategy**, choices, or default answers have changed, use the "**Up\_Jan10**" flag file. From inside Lawgic, open any existing answer file; on the **Flags** menu, click **Open Flags**, select the appropriate Title (click **OK**), and next select the "**Up\_Jan10**" flag file (and click **OK**). To view all flagged questions, click **Expand All** on the **Answers** menu and scroll the Navigator. Flagged questions will be indicated with **bold text**.

***Please continue to send us your suggestions on existing or new products. Contact our Technical Support Department at 1-877-2-LAWGIC (252-9442) or e-mail us at support@lawgic.com.***

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## **Memorandum on Joint Revocable Inter Vivos Trusts**

Prepared January 2010 by Richard L. Stockton, Holland & Knight LLP

Joint Trusts are useful in several situations, the most common of which is the couple who have held all their assets in joint names for 50 years and are unwilling to divide them into separate revocable trusts, even though there is a tax advantage to doing so. Also, clients may wish to be sure of having revocable trusts in place at both deaths, but are unsure about creating two revocable trust with few assets. In the Joint Trust prepared by Lawgic, each spouse typically owns 50% of the trust as a distinct separate share, though the percentage can vary, or specific assets can be assigned to one share or the other. Joint property that is contributed is generally divided so that half is in each share, creating essentially a tenancy in common for those assets; it is often advisable to split separately owned property into each share as well, allowing for both shares to be equal initially. This is helpful to insure both spouses have sufficient assets to fully fund a credit shelter trust regardless of the order of death.

If the shares are equalized, the language of the trust operates to keep each share in balance by charging expenses and crediting income equally to the shares, unless a Grantor evidenced an intent to do otherwise. At the first Grantor's death, the trust language divides that Grantor's share into typical Credit Shelter and Marital portions, and holds those as separate trusts. This creates 3 individual trusts and can increase complexity, although not significantly more than traditional dual-trust plans. To simplify somewhat, the Marital portion is sometimes poured over to the surviving spouse's share, which effectively "slides the dividing line" between the shares that existing before the first death, and leaves the balance of the predeceasing spouse's share as a Family Trust. The surviving spouse's remaining share is then like an ordinary revocable trust.

### **Advantages of Joint Trusts**

- Uses both spouses' exemptions without regard to who is wealthier or who dies first
- Administers the family assets in a familiar vehicle – a joint "account" held in trust
- Changes in asset composition, or amount, will not distort what each spouse owns at death. If individual trusts were used, it is possible to draw one of the spouses' trusts below the exemption amount by taking funds exclusively from it; a joint trust can be structured to rise and fall equally.
- Discounts have been allowed for partial ownership of real estate in a joint trust. Although similar discounts could be pressed if each spouse held an interest as a tenant in common, the latter would involve either probate or two separate trusts. The discount is not appropriate for property held as TBE or JTWRROS.

### **Disadvantages of Joint Trusts**

- Loss of control by wealthier spouse of assets contributed (assuming each spouse could unilaterally terminate the joint trust and receive as much as ½ the assets)
- Creditor protection is lost for some assets (the nature of the separate shares is more like a tenancy in common, and any Tenancy by the Entireties property is split and loses its protected status). Likewise, if one spouse has creditors, he or she might expose to those creditors the portion of assets received from the other spouse under the joint trust (without necessarily shielding the other spouse's half under the Preferential Transfers doctrine)
- More complex language is required for the Trust, as we cannot assume in the document who will die first
- The tax identification number for a multiple grantor trust is always a thorny issue with banks and other institutions; a single grantor Revocable Trust can use the Grantor's SSN, but what if there are 2 grantors? One approach is to pick the spouse with the longest life expectancy and use his or her SSN, with the idea that the spouses will file a joint income tax return, and it will all come out in the wash. If that is not feasible, a separate taxpayer id number can be obtained, although its use will require an additional (though simple) income tax return to be filed for the trust.