TRUST ALPHABET SOUP

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Estate Planning Council of North Texas
October 19, 2022

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The author welcomes any corrections and suggestions for improvement to this outline.

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Wealth Preservation

Christine Wakeman is a member of Winstead's Wealth Preservation Practice Group. She is a fellow of the American College of Trust and Estate Counsel. She is board certified in Estate Planning and Probate Law by the Texas Board of Legal Specialization. Christine has experience in a range of estate and business planning matters involving fiduciaries, trusts, taxation and high net worth individuals and their families

Prior to practicing law, Christine was selected as a Cortez A.M. Ewing Public Service Fellow and served in the Washington, D.C. office of United States Senator Dr. Tom Coburn during her fellowship.

Representative Experience

- Design and prepare core estate planning documents, including wills, revocable trust agreements, and medical and financial powers of attorney
- Advise executors, trustees, and beneficiaries regarding the funding, administration, taxation, and distribution of estates and trusts Design, implement, and monitor transfer tax minimization strategies, including gifts to family trusts, installment sales to grantor trusts, grantor retained annuity trusts (GRATs), and irrevocable life insurance trusts (ILITs)
- Aid clients with shifting new investment opportunities, corporate stock, and other appreciating assets to their family members in a tax-efficient manner
- Assist families with the formation of limited partnerships and limited liability companies to own and manage family farms, ranchland, mineral interests, vacation residences, and other family assets
- Design and implement business succession plans for families and key employees
- Prepare, review, and negotiate premarital agreements and post-marital agreements
- Counsel clients relocating to Texas with regard to their estate planning and marital property matters
- Help clients protect their privacy through the anonymous acquisition of personal residences and other assets
- Assist clients making anonymous charitable donations and political contributions
- Structure charitable gifts in a tax-efficient manner, including the creation and qualification of charitable trusts and private foundations
- Prepare and review federal gift tax returns (IRS Forms 709) and federal estate tax returns (IRS Forms 706)
- Obtain private letter rulings from the IRS on estate, gift, and generation-skipping transfer (GST) tax matters
- Assist trustees with judicial and non-judicial modifications to irrevocable trusts through techniques such as trust decanting, trust combinations, and trust divisions
- Counsel corporate trustees, trust departments, and family offices regarding general administrative matters

Professional Activities

- American College of Trust and Estate Counsel, Fellow
- American Bar Association
    - Tax Section Member
    - Real Property, Trust, and Estate Law Section Member
- State Bar of Texas
    - Tax Section Member
    - Real Estate, Probate and Trust Law Section Member
- Texas Bar College Member
- State Bar of Texas Estate Planning & Probate Drafting Course
    - Course Director, 2021
- State Bar of Texas Intermediate Estate Planning & Probate Course: Practical Applications
    - Course Director, 2018
    - Planning Committee Member, 2015-2018
- Dallas Bar Association
    - Probate, Trusts & Estates Section Member
        - Treasurer/Secretary 2022-2023
        - Program Chair 2021-2022
        - Council Member, 2018-2019
- Dallas Association of Young Lawyers
    - Older, Wiser, Lawyers Committee Co-Chair, 2018-2019
- Dallas Estate Planning Council
    - Emerging Professionals Initiative
        - Chair, 2015-2016
        - Committee Member, 2015-2017
    - Board of Governors, 2014-2016
- Chartered Advisor in Philanthropy

Awards & Recognition

- Steven G. Condos Award for Outstanding New Member, Texas Bar College, 2017
- Best Lawyers in Dallas, D Magazine, 2016-2017, 2020-2022
- Best Lawyers in Dallas Under 40, D Magazine, 2018-2022
- Texas Super Lawyers Rising Star, Thomson Reuters, 2012, 2018-2022

Select Speeches

4/21/22: "Preparing Gift Tax Returns: Collected Views and Perspectives," State Bar of Texas 2022 Advanced Estate Planning Strategies Course, Santa Fe, New Mexico

4/20/22: "Gift Tax Returns: Beyond the Basics," Salt Lake Estate Planning Council, virtual presentation

2/1/22: "Gift Tax Returns: Beyond the Basics," Estate & Gift Tax Committee, American Bar Association Tax Section Virtual 2022 Midyear Tax Meeting

11/8/21: "Dos and Don'ts of Estate Planning for Millennials," Tulsa Estate Planning Forum, Tulsa, Oklahoma

9/22/21: "Divorcing the Highly Planned Family: Addressing Irrevocable Trusts," New York Life Advisor Webinar

8/4/21: "Marital Property Agreements: Family Law Attorneys' and Estate Planning Attorneys' Top Tips for Each Other," State Bar of Texas Advanced Family Law Conference, San Antonio, Texas (co-presented with Natalie L. Webb)

4/16/21: "Alphabet Soup: A Road Map of Trusts," State Bar of Texas Handling Your First (or Next) Trust 2021, Virtual Conference

8/6/20: "How to Blow It and Not Know It: Inadvertent Terminations of Subchapter S Elections and How to Fix Them," Texas Society of Certified Public Accountants Summit 2020, Virtual Conference

5/26/20: "#Goals: Estate Planning for the Next Generations," New York Life Nautilus Annual Meeting, Virtual Conference

3/4/20: "Performing a Pre-Mortem Autopsy: How to Dissect a Will Someone Else Drafted," North Texas Probate Bench Bar, Grapevine, Texas

12/6/19: "Dos and Don'ts of Estate Planning for Millennials," 2019 UT CLE Stanley M. Johanson Estate Planning Workshop, Austin, Texas

8/14/19: "How to Blow It and Not Know It: Inadvertent Terminations of Subchapter S Elections and How to Fix Them," Texas Society of Certified Public Accountants 2019 Advanced Estate Planning Conference, San Antonio, Texas

6/18/19: "#Goals: Estate Planning and Asset Protection for the Next Generations," State Bar of Texas Advanced Estate Planning and Probate Course, San Antonio, Texas

5/2/19: "#Goals: Estate Planning and Asset Protection for the Next Generations," Dallas Estate Planning Council, Dallas, Texas

1/25/19: "How to Blow It and Not Know It: Inadvertent Terminations of Subchapter S Elections and How to Fix Them," Houston Estate & Financial Forum, Houston, Texas

10/12/18: "GRRR (Gift Return Reporting Requirements) - Taming the Wild 709 Tiger," Notre Dame Tax and Estate Planning Institute, South Bend, Indiana

10/5/18: "GRRR (Gift Return Reporting Requirements) - Taming the Wild 709 Tiger," State Bar of Texas Estate Planning & Probate Drafting Course, Dallas, Texas

8/15/18: "GRRR (Gift Return Reporting Requirements) - Taming the Wild 709 Tiger," Texas Society of Certified Public Accountants 2018 Advanced Estate Planning Conference, San Antonio, Texas

6/14/18: "How to Blow It and Not Know It: Inadvertent Terminations of Subchapter S Elections and How to Fix Them," State Bar of Texas Advanced Estate Planning and Probate Course, Dallas, Texas

5/11/18: "GRRR (Gift Return Reporting Requirements) - Taming the Wild 709 Tiger," American Bar Association Tax Section May Meeting, Washington, D.C.

6/6/17: "A Spoonful of Sugar Helps the Premarital Agreement Go Down: Representing Perturbed Parties to Premarital Agreements," State Bar of Texas Intermediate Estate Planning and Probate Course, Houston, Texas

3/2/17: "GRRR (Gift Return Reporting Requirements) - Taming the Wild 709 Tiger," Tarrant County Probate Bar Association Meeting, Fort Worth, Texas

6/21/16: "Performing a Pre-Mortem Autopsy: How to Dissect a Will Someone Else Drafted," State Bar of Texas Intermediate Estate Planning and Probate Course, San Antonio, Texas

1/26/16: "GRRR (Gift Return Reporting Requirements) - Taming the Wild 709 Tiger," Houston Bar Association Probate, Trusts, and Estates Section Meeting, Houston, Texas

6/9/15: "GRRR (Gift Return Reporting Requirements) - Taming the Wild 709 Tiger," State Bar of Texas Intermediate Estate Planning and Probate Course, Dallas, Texas

5/8/14: "GRRR (Gift Return Reporting Requirements) - Taming the Wild 709 Tiger," Dallas Society of CPAs Convergence 2014, Dallas, Texas

Publications

6/18/22: "Marital Property Agreements: Family Law Attorneys' and Estate Planning Attorneys' Top Tips for Each Other" 14 Estate Planning Journal 525 (with Natalie Webb and Lacey Stevenson)

12/1/22: "Changes to Texas's Rule Against Perpetuities Are Here…For Now," Dallas Bar Association Headnotes, Vol. 46, No. 12, p. 24 (with Sean Doyle)

1/1/21: "How to Handle Crowdfunded Donations," Dallas Bar Association Headnotes, Vol. 46, No. 1, p. 18

12/1/18: "Where There is a Will is There a Way to Disclose?" Dallas Bar Association Headnotes, Vol. 43, No. 12, p. 16

12/1/16: "Estate Planning for Parents of Minors," Dallas Bar Association Headnotes, Vol. 41, No. 12, p. 19

4/1/10: "Coping with the Threat of a Retroactive Estate Tax," Journal of Tax Practice & Procedure (CCH), pp. 35-38; 48

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Trust Alphabet Soup

There is nothing more uncomfortable than someone talking over your head about a subject and feeling like you must act like you know what they are talking about. This very experience happened to me on my first day as a trusts and estates attorney. That day, a very senior attorney called me into his office for an assignment. I had a fresh yellow legal pad in hand, and I was ready and poised to furiously take notes. He tasked me with creating a chart comparing the differences between an "*ehz-bIT"* and a "*kWHIst*." I eagerly wrote down the terms. Despite all my preparation to be a trusts and estates attorney (I had taken *every* estate planning and trust course offered in law school, clerked in a large law firm's trusts and estates group, worked in US Trust's legal department and at the Internal Revenue Service with Estate Tax Attorneys), I had never heard these terms. At first, I did not let my lack of knowledge scare me. Surely good old Google would bail me out, right? I went back to my desk and started to furiously search the World Wide Web. Several minutes went by before I realized the senior attorney had used acronyms to describe these unknown (to me) trusts. I Googled to no avail. My phonetic spelling of "*ehz-bIT"* and a "*kWHIst"* was getting me nowhere. Eventually, I swallowed my pride and went down the hall to ask a senior associate, "What the heck is an '*ehz-bIT'* and what is a '*kWHIst'*?" The senior associate laughed and explained "*ehz-bIT"* stands for "E-S-B-T" or "Electing Small Business Trust" and "*kWHIst"* stands for "Q-S-S-T" or "Qualified Subchapter S Trust."

On my first day of work, I realized that trust acronyms and synonyms can mystify even licensed attorneys. I vowed one day to write a paper that helps demystify and define many of the trust terms that estate planners (sometimes cavalierly) throw around, and which may not be so obvious to a new or even a seasoned lawyer whose practice only focuses in small part on trusts and estates matters. This is that paper.

A special thanks goes out to my former colleague, mentor, and friend Kent McMahan for being a senior attorney who took the time to teach a junior associate so much. May he rest in peace. Further thanks is due to Kate Yanof for assisting me with the pronunciation guide for this paper and to M. Laurel Stephenson for being the kind senior associate who told me what an "*ehz-bIT"* and a "*kWHIst"* were (and for fielding many thousands more trusts and estates, and life, questions). Finally, I would like to express my gratitude to my father, Mike Shea, for editing this paper.

Terms and definitions are presented in alphabetical order.

A:

1. **A TRUST** [ay trUHst]

An "A Trust" is one of the trusts in what is commonly referred to as an A-B Trust plan or an A, B, C Trust plan. In these types of core estate plans for married couples, the "A Trust" is typically thought of as a "Survivor's Trust" or a "Revocable Trust" / "Management Trust" for the benefit of the surviving spouse. Upon the death of the first spouse, an "A Trust" is typically funded with the surviving spouse's separate property, community property, and/or property that the deceased spouse would give the surviving spouse outright except for the benefits that a "Revocable Trust" can provide (e.g., probate avoidance, financial management succession in the event of disability, etc.). An "A Trust" is typically designed to be flexible for the surviving spouse, and a surviving spouse usually thinks of "A Trust" property as "their property." An estate plan that incorporates an "A Trust" should either: (1) include an "A Trust" that is specifically designed to qualify for the unlimited marital deduction under Internal Revenue Code § 2046 or (2) distribute the assets intended for the "A Trust" outright to surviving spouse, but provide that the surviving spouse may elect to add them to the "A Trust" incorporated into the trust agreement. An "A Trust" will typically be included in the surviving spouse's estate for federal estate tax purposes under Internal Revenue Code §§ 2036, 2038, and others. An "A Trust" is most often considered a grantor trust for federal income tax purposes as to the surviving spouse, meaning all income and tax attributes to the trust should flow to the surviving spouse's IRS Form 1040, instead of it being necessary for the trustee to file an IRS Form 1041. In addition, an "A Trust" will typically not protect the surviving spouse against creditors under Texas Trust Code § 112.035, because the surviving spouse typically has the ability to direct assets in the "A Trust" to himself or herself without the consent of another person and/or in a manner that is not restricted to an "ascertainable standard" such as health, education, maintenance, and support. In short, an "A Trust" operates like a Revocable Trust for the benefit of a surviving spouse. See "Survivor's Trust." *Cf*. "B Trust" and "C Trust."

2. **Annual Exclusion Trust** [AN-yoo-uhl ik-sklOO-zhuhn trUHst]

Without special drafting to qualify as an "Annual Exclusion Trust," a gift to a trust will not qualify for the gift tax annual exclusion (in 2021 $15,000 per appointee per year for each donor). Generally, only gifts of a present interest in property qualify for the gift tax annual exclusion, and trusts by their very nature involve delayed use and benefit of asset by trust beneficiaries.[1] An "Annual Exclusion Trust" refers to one of two types of irrevocable gift trusts that are specifically designed to qualify for the gift tax annual exclusion under IRC § 2503: a "2503(c) Trust" or a "Crummey Trust." *See* "Crummey Trust" and "Twenty-Five Oh C Three Trust (2503(c) Trust).

3. **Ascertainable Standard Trust** [as-er-tEYn-ey-buhl STAN-derd trUHst]

An "Ascertainable Standard Trust" is a trust in which the trustee has the discretion to distribute trust assets subject to a standard that is reasonable, definitive, quantifiable, and discoverable.[2] The most common ascertainable distribution standard used in trusts is "health, education, maintenance, and support" or "HEMS." The grantor of a trust may elect to incorporate an ascertainable distribution standard into a trust for several reasons that are relevant for federal tax law purposes and state asset protection law purposes. For example, "a power to consume, invade, or appropriate income or corpus, or both for the benefit of the decedent which is limited by an ascertainable standard relating to the health education, support or maintenance" of a decent is not considered to be a general power of appointment that would make trust property includable in the decedent's estate for estate tax purposes.[3] Treasury Regulations associated with Code § 2041 provides a list of ascertainable standards including: support; support in reasonable comfort; maintenance in health and reasonable comfort; support in accustomed manner of living; education, including college and professional education; health; and medical, dental, hospital and nursing expenses and expenses of invalidism.[4] Whether a trust is an ascertainable standard can also be relevant for purposes of determining whether a trust is considered a "Grantor Trust" for federal income tax purposes.[5] *Cf.* "Discretionary Trust."

4. **APT / Asset Protection Trust** [Apt] / [A-seht pruh-TEK-shuhn trUHst]

An "APT" or "Asset Protection Trust" is typically a self-settled irrevocable trust specifically designed to hold assets of an individual and shield them from potential future creditors. Often an "APT" is designed so that the grantor can be designated as a permissible beneficiary of the trust allowing them to access the funds in the trust with the consent of an independent fiduciary within the meaning of Internal Revenue Code § 672. An "APT" requires both specific drafting requirements and to be sitused in, and governed by, the laws of one of the limited number of jurisdictions that allows self-settled trusts with asset protection features. APTs do not protect a grantor against pre-existing creditors. Most states, including Texas, do not allow self-settled asset protection trusts.[6] There are two different types of "APTs": domestic asset protection trusts ("DAPTs") and foreign asset protection trusts ("FAPTs"). Most "APTs" established by United States citizens are considered "grantor trusts" for federal income tax purposes. *See* DAPT and FAPT.

B:

1. **B Trust/ Bypass Trust** [bEE trUHst /BAHY-pass trUHst]

A "B Trust" and a "Bypass Trust" are synonymous. These names refer to one of the trusts in what is commonly referred to as an A-B Trust plan or an A, B, C Trust. In these types of core estate plans for married couples, the "B Trust" is typically thought of as an irrevocable "Bypass Trust" or "Credit Shelter Trust" that might be incorporated into an estate plan if a married couple had concerns about their assets being subject to the federal estate tax. In an A-B or A, B, C Trust plan, the "B Trust" is typically funded upon the first spouse's death using a formula clause to transfer the maximum amount of the assets of the first spouse to pass away that can be transferred without incurring estate tax (taking into consideration the deceased spouse's lifetime taxable transfers and specific bequests made at his or her death). The terms of a "B Trust" most often provide that the surviving spouse is either the sole beneficiary for his or her lifetime OR is the primary beneficiary for his or her lifetime, with some or all of the deceased spouse's descendants as secondary beneficiaries of the "B Trust". A "B Trust" is typically carefully drafted to ensure that the trust's assets will not be included in the estate of the surviving spouse (or any other person) for federal estate tax purposes at the beneficiary's death no matter how much the assets increase in value from the first spouse's death to the second spouse's death. However, if the assets of a "B Trust" are excluded from the surviving spouse's

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[1] *See* IRC 2503(a).

[2] Kelso, Christian S., *But What's an Ascertainable Standard? Clarifying HEMS Distribution Standards and Other Fiduciary Considerations for Trustees*, 10 Est. Plan. & Comm. Prop. L.J. 1 (2017).

[3] IRC § 2041(b)(1)(A).

[4] Treas. Reg. § 20.2041-1(c)(2).

[5] See Treas. Reg. § 1.674(b)-1(b)(5)(i).

[66] See Tex. Trust Code § 112.035(d) ("If the settlor is also a beneficiary of the trust a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate").

estate for estate tax purposes as intended, then the assets will not receive a basis adjustment at the surviving spouse's death. A "B Trust" is a complex trust for federal income tax purposes, and the trustee of such trust will file a Form 1041 annually. *See also* "Credit Shelter Trust." *Cf.* "A Trust" and "C Trust."

2. **BDIT / 678 Trust** [bEE-diht]

A "BDIT" or "Beneficiary Defective Inheritor's Trust" or "Beneficiary Defective Irrevocable Trust" or "678 Trust" is an third-party-settled "Irrevocable Trust" that is deemed to be owned by the beneficiary for federal income tax purposes, but not for estate tax, gift tax, and asset protection law purposes. The most distinguishing feature of a "BDIT" is that it is a trust specifically designed to be a "Grantor Trust" as to the primary beneficiary of the trust under Internal Revenue Code § 678, meaning the beneficiary of the trust is legally obligated to pay the income tax generated by trust assets. Virtually all other types of "Grantor Trusts" are taxable to the grantor who establishes and funds the trust for federal income tax purposes. The typical "BDIT" is settled by a client's parent, sibling, or close friend with $5,000.[7] After the initial funding, the client typically has the right to withdraw the entire $5,000 contributed by the client's friend or relative by virtue of: (1) the client's right to withdraw all assets of the "BDIT" per the terms of the trust agreement and (2) reliance on the logic of certain private letter rulings interpreting taxpayers' similar types of withdrawal rights as being considered a "partially released or modified" power that would trigger application of Internal Revenue Code § 678 even though the withdrawal right is considered a lapse under Internal Revenue Code § 2041.[8] Once the trust is considered a "Grantor Trust" as to the client/beneficiary, then the client can transact with the "BDIT" without triggering gain or loss for income tax purposes. Because "BDITs" are designed to be: (1) excluded from a client's estate for federal estate tax purposes, (2) "Grantor Trust" for federal income tax purposes to which a client can sell assets, (3) a creditor protected trust, and (4) a trust which the client, as beneficiary, can benefit from increases in the value of assets sold to the trust, it is sometimes referred to as a "have your cake and eat it too trust." Most other estate planning techniques do not allow clients who are trying to decrease their taxable estates for federal estate tax purposes to personally benefit from trusts that are established as part of their estate plan. Despite the potential advantage of "BDITs," many estate planners are inherently skeptical of "BDITs" for good reason. There is no binding legal precedent authorizing BDITs on which general taxpayers may rely, because a taxpayer may not rely on a letter ruling issued to another taxpayer.[9] In addition there are risks that sales to "BDITs" could be recharacterized as gifts, jeopardizing the efficacy of the entire technique. Finally, if a "BDIT" is found to not be considered a "Grantor Trust" as to the beneficiary, then sales of assets to the trust could unintentionally trigger income tax gain, penalties, and interest. While there are several private letter rulings issued on BDITs, it is important to note that the IRS has refused to rule on the tax attributes of a sale by a beneficiary to a "BDIT" for several years. *Cf.* "BDOT."

3. **BDOT** [bEE-dawt]

A "BDOT" or "Beneficiary Deemed Owner Trust" is a type of trust that is deemed to be owned by the beneficiary of the trust for federal income tax purposes, but not for estate tax, gift, tax, and asset protection law purposes. A "BDOT" is structured so that the beneficiary can withdraw all net taxable income (including capital gains) of the trust each year, making the trust a "Grantor Trust" as to the beneficiary under Internal Revenue Code § 678(a)(1), and therefore taxed at the beneficiary's rates rather than at the trust's high rate.[10] Out of an abundance of caution, many "BDOTs" are structured so that the beneficiary may withdraw the greater of all net taxable income or the "5 or 5" withdrawal amount under Internal Revenue Code § 2041. Whether the beneficiary actually withdraws the amount which he or she is given the right to withdraw is irrelevant to under Code, because it is the existence of the right that makes a trust a "BDOT." If the trust is a "Grantor Trust" as to the beneficiary, then the beneficiary can also sell assets to the trust or buy assets

[7] The fact that a "BDIT" is most often funded with $5,000 is not a coincidence. This is the maximum amount that an individual may have the ability to withdraw from trusts in a given year, where the non-exercise of the withdrawal right will be considered a lapse of the withdrawal right. To the extent an individual's withdrawal rights exceed the greater of $5,000 or 5% of the assets of the trusts over which such individual had a withdrawal right, a lapse will be considered a release of a power of appointment. If an individual releases a general power of appointment over a trust, this means all or a portion of the trust will be includible in his or her estate for federal estate tax purposes. *See* IRC 2041.

[8] *See* PLRs. 201216034; 201039010; 200747002; 200147044; 200104005; 200022035; 200011058; 200011054–200011056; 199942037; 199935046–199935047; 9812006; 9810006–9810008; 9810004; 9809005–9809008; 9745010; 9739026; 9625031; 9535047; 9504024; 9450014; 9448018; 9320018; 9311021; 9226037; 9140047; 9034004; 9009010; 8936031; 8827023; 8805032; 8701007; 8613054; 8521060; 8342088. *See also* Blattmachr, Gans & Lo, "A Beneficiary as Trust Owner: Decoding Section 678," 35 *ACTEC J.* 106, 114–117 (Fall 2009).

[9] IRC § 6110(k)(3).

[10] IRC § 678(a)(1) states that, "a person other than the grantor shall be treated as the owner of any portion of a trust with respect to which: (1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself." The reference to income in this section is a reference to taxable income instead of fiduciary accounting income, unless specifically specified otherwise. Treas. Reg. §1.671-2(b).

from the trust without triggering income tax consequences. An advantage to this technique is that it relies on the plain statutory language of Internal Revenue Code § 678(a)(1) instead of an interpretation of a statute that differs from the plain statutory language like a "BDIT" (where a lapse is treated as a partial release even though a lapse and a release are legally distinct). One potential disadvantage of a "BDOT" is that, if it is not established in a jurisdiction that allows for self-settled asset protection trusts (e.g., Texas), then if the beneficiary's withdrawal power of all net taxable income exceeds the "5 or 5" withdrawal amount under Internal Revenue Code § 2041, then the beneficiary will be treated as having made a transfer to the trust for creditor access purposes or it could be a deemed an addition to the trust for federal transfer tax purposes.[11]

4. **Blind Trust** [blahynd trUHst]

A "blind trust" is a trust in which the grantor of the trust does not know the nature of the trust's investments or how the assets are being invested and instead delegates decision-making powers to an independent trustee who does not communicate to the grantor of the trust (or any other interested party) during the trust term. Historically, these trusts have been used by politicians (including United States Presidents, Vice Presidents, Congressional members, and governors) to avoid the appearance of impropriety and conflict of interest with their personal investments. Federal politicians who utilize "Blind Trusts" may be subject to less stringent regulation and disclosure under the “Ethics In Government Act” of 1978 and other rules (e.g., they may not be require to report their specific investments, and may instead report the total value). However, lately "Blind Trusts" have been used increasingly in the private sector to sidestep insider trading and bad press among corporate leadership and board members.[12]

C:

1. **C Trust** [sEE trUHst]

A "C Trust" refers to one of the trusts in what is commonly referred to as an A, B, C trust plan. In this type of core estate plan for married couples, the "C Trust" is typically thought of as an irrevocable testamentary "Marital Trust" or "QTIP Trust" that might be incorporated into an estate plan if a married couple had concerns about their assets being subject to the federal estate tax. In an A, B, C trust plan, the "C Trust" is typically funded upon the first spouse's death either: (1) using a pecuniary formula clause to transfer the minimum amount necessary to make the estate tax owed at the first spouse's death zero dollars, or (2) the balance of the deceased spouse's assets after funding a pecuniary gift to a "Bypass Trust" equal to the deceased spouse's Basic Exclusion Amount. The terms of a "C Trust" are specifically designed to qualify for the unlimited estate tax marital deduction under Internal Revenue Code § 2056(b)(7) and generally must state: (1) the surviving spouse is sole beneficiary of the trust for his or her lifetime, (2) the surviving spouse is entitled to all the (fiduciary accounting) income from the trust property, payable at least annually, (3) no person has the power to appoint any part of the property to anyone other than the surviving spouse during the surviving spouse's lifetime, and (4) the executor of the estate of the deceased spouse must make a qualified terminable interest property election on a timely filed estate tax return for the deceased spouse. Assets remaining in a "C Trust" at the surviving spouse's death will be included in the estate of the surviving spouse for federal estate tax purposes, and the assets of a "C Trust" will receive a basis adjustment to fair market value as of the surviving spouse's death. A "C Trust" often is a "Simple Trust" for federal income tax purposes (if no principal distributions are made during the year), and the trustee of such trust will file a Form 1041 annually. *See also* "QTIP Trust. *Cf.* "A Trust" and "B Trust."

2. **Charitable Trust** [CHair-ih-tuh-buhl trUHst]

Texas Trust Code § 123.011 defines a "Charitable Trust" as a trust, the stated purpose of which is, to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity. The statute defines a "charitable entity" as a corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or another civic or public purpose described by Internal Revenue Code § 501(c)(3). A purely charitable trust is not subject to the rule against perpetuities and may therefore be a perpetual trust.[13] [14] In Texas, an attorney general is a necessary and

[11] *See* Tex. Trust Code § 112.035(f)(B)(3); also see Akers, Steve R. "Estate Planning Current Developments and Hot Topics" topic 16 (Dec. 2018) *available at* https://www.bessemertrust.com/sites/default/files/201902/Hot%20Topics%20Current%20Developments%20FINAL%20FOR%202018_02_22_19.pdf.

[12] See Esperti, Peterson & Keebler, *Irrevocable Trusts: Analysis with Forms* "Blind Trusts [New]" at 7.08.

[13] *Moore v. Sellers*, 201 S.W.2d 248 (Tex. Civ. App.—San Antonio 1947, writ ref'd).

[14] *Kettler v. Atkinson*, 383 S.W.2d 557 (Tex. 1964). A split interest trust (e.g., a "CLAT" or a "CRUT"), which partially benefits charity and partially benefits private individuals, is subject to the rule against perpetuities.

proper party to and may intervene in a court proceeding involving a "Charitable Trust."[15]

3. **CLAT** [Klat]

A "CLAT" or "Charitable Lead Annuity Trust" is an "Irrevocable Trust" that provides for payments to at least one qualifying charitable organization for a period of either: (1) a fixed term of years or (2) for the lives of one or more individuals. Any assets remaining at the expiration of the charitable lead term are distributed to one or more non-charitable remaindermen (e.g., the grantor's children or trusts for the grantor's children). A"CLAT" pays a guaranteed annuity to charity that is a fixed percentage of the *initial fair market value of the assets contributed to the "CLAT."* A "CLAT" can be an "Inter Vivos Trust" or a "Testamentary Trust." An inter vivos "CLAT" can be either a "Grantor Trust" or a "Non-Grantor Trust" for federal income tax purposes, depending on its terms. The grantor of an inter vivos "CLAT" taxed as a "Grantor Trust" receives an immediate income tax deduction upon funding the "CLAT," and the value of the gifted remainder interest that passes to non-charitable beneficiaries will be reduced by the charitable gift. However, in exchange for this preferential up front tax treatment, the grantor of a "CLAT" that is a "Grantor Trust" must recognize income generated by the "CLAT" throughout its lead term. Practically, this means that a "CLAT" can be an income tax *deferral* vehicle, but it may not reduce a grantor's overall income taxes significantly. On the other hand, the grantor of a "CLAT" that is a "Non-Grantor Trust" does not receive any income tax deduction, and such trust is taxed as a "Complex Trust." "CLATs" work most effectively when interest rates are low, because the "CLAT" need not increase much in value to satisfy annuity payments, therefore leaving a more substantial remainder for non-charitable beneficiaries at the expiration of the lead term. A testamentary "CLAT" has no income tax benefit to the grantor or the grantor's estate, but the grantor's estate generally receives an estate tax charitable deduction. "CLATs" are considered qualified split interest trusts. They are subject to the excise tax rules applicable to private foundations, and therefore, one must take care to operate them strictly in accordance with rules and regulations or face punitive taxes. "CLATs" are subject to an Estate Tax Inclusion Period ("ETIP"). Therefore, a "CLAT" grantor cannot leverage his or her generation-skipping transfer ("GST") tax exemption by allocating exemption when it is created. Because a grantor's GST tax exemption cannot be leveraged, "CLATs" are generally thought of as a single generation wealth shift strategy (i.e., something for wealthy people to consider using for their children, but probably not the best strategy to benefit grandchildren). The IRS has published sample "CLAT" forms in Rev. Proc. 2007-45. *Cf.* "CLUT."

4. **CLUT** [Kluht]

A "CLUT" or "Charitable Lead Unitrust" is an "Irrevocable Trust" that provides for payments to at least one qualifying charitable organization for a period of either: (1) a fixed term of years or (2) for the lives of one or more individuals. Any assets remaining at the expiration of the charitable lead term are distributed to one or more non-charitable remaindermen (e.g., the grantor's children or trusts for the grantor's children). A"CLUT" pays a guaranteed unitrust interest to charity based on the fair market value of the *annually valued* assets of the "CLUT". A "CLUT" can be an "Inter Vivos Trust" or a "Testamentary Trust." An inter vivos "CLUT" can be either a "Grantor Trust" or a "Non-Grantor Trust" for federal income tax purposes, depending on its terms. The grantor of an inter vivos "CLUT" taxed as a "Grantor Trust" receives an immediate income tax deduction upon funding the "CLUT," and the value of the gifted remainder interest that passes to non-charitable beneficiaries will be reduced by the charitable gift. However, in exchange for this preferential up front tax treatment, the grantor of a "CLUT" that is a "Grantor Trust" must recognize income generated by the "CLUT" throughout its lead term. Practically, this means that a "CLUT" can be an income tax *deferral* vehicle, but it may not reduce a grantor's income taxes significantly. On the other hand, the grantor of a non-grantor CLUT does not receive any income tax deduction, and such trust is taxed as a complex trust. A testamentary "CLUT" has no income tax benefit to the grantor or the grantor's estate, but generally receives an estate tax charitable deduction. "CLUTs" are considered qualified split interest trusts. They are subject to the excise tax rules applicable to private foundations, and therefore one must take care to operate them strictly in accordance with rules and regulations or face punitive taxes. Unlike a "CLAT," the grantor of "CLUT" can allocate his or her generation-skipping transfer ("GST") tax exemption on formation, so it is more common to use a "CLUT" to benefit more than one generation of a family than it is for a "CLAT." The IRS has published sample "CLUT" forms in Rev. Proc. 2008-45. *Cf.* "CLAT."

[15] Tex. Trust Code § 123.002.

5. **Constructive Trust** [K*uhn*-strUHk-tihv trUHst]

A "Constructive Trust" is not considered a trust for purposes of the Texas Trust Code.[16] Instead, a "Constructive Trust" is an equitable remedy imposed upon a person by a court on the grounds of public policy to prevent a wrongdoer, who was in a fiduciary or confidential relationship, from unduly profiting from his or her misdeeds.[17] With a "Constructive Trust," the harmed party typically is able to recover the property that is the subject of the dispute and prevent unjust enrichment of the wrongdoer.

6. **Complex Trust** [kALM-pleks trUHst]

A "Complex Trust" is a trust that is a separate taxable entity for federal income tax purposes. It requires its own taxpayer identification number, files a federal Form 1041, and is taxed at the trust level on its gross income less allowable deductions (including deductions for distributable net income). *Cf.* "Grantor Trust" and "Simple Trust."

7. **CRAT** [Krat]

A "CRAT" is a type of irrevocable split-interest trust in which a donor contributes property to the trust and retains for himself or herself (or other non-charitable beneficiaries) an annuity interest. Payments are either: (1) a fixed percentage *of the initial fair market value of the property contributed to the trust* or (2) a specified dollar amount. A "CRAT" can last for a term of years, a single life, or a joint life expectancy (often spouses' joint lives). At the end of the "CRAT" term, the remainder interest in the trust property passes to a charity specified in the trust agreement. In order to qualify for the income tax and gift tax charitable deduction, the following conditions must apply: (1) the fixed percentage of the net fair market value of the assets to paid to the non-charitable beneficiary needs to be at least 5%, and not more than 50%, and the charity's actuarial interest must be at least 10% of any assets transferred to the trust, (2) the trust term must be (a) 20 years or less or (b) must last until the death of the non-charitable beneficiaries, (3) no sum should be paid out to the grantor(s) except the fixed percentage specified, (4) the remainder interest must pass to a qualified charity at the end of the "CRAT" term, and (5) there is not a greater than 5% chance that the trust funds will be exhausted before the trust ends for "CRATs" that last for the lives of grantors.[18] If these conditions are met, the donor will receive an upfront income tax deduction for the present value of the remainder interest that is predicted to pass to charity at the end of the "CRAT" term based on prevailing interest rates at the time the trust is funded and the value of assets contributed to the trust. Because the amount predicted to pass to charity will increase as interest rates rise, "CRATs" are more effective at producing income tax charitable deductions when interest rates are high. A "CRAT" is exempt from the federal income tax while assets remain inside the trust, but the income and gains of the trust are taxed when they are distributed to the non-charitable beneficiary. Therefore, "CRATs" might be used to defer income taxes when the sale of a business is anticipated down the road. *Cf.* "CRUT."

8. **Credit Shelter Trust** [KRed-it SHehl-tuhr trUHst]

A "Credit Shelter Trust" is synonymous with a "Bypass Trust." This type of trust might be incorporated into an estate plan if a married couple had concerns about their assets being subject to the federal estate tax. A "Credit Shelter Trust" is typically funded upon the first spouse's death using a formula clause to transfer the maximum amount of the assets of the deceased spouse that can be transferred without incurring estate tax, and taking into consideration the deceased spouse's lifetime taxable transfers and specific bequests made at their death. The terms of a "Credit Shelter Trust" most often provide that the surviving spouse is either the sole beneficiary for his or her lifetime OR is the primary beneficiary for his or her lifetime, with some or all of the deceased spouse's descendants as secondary beneficiaries of the trust. A "Credit Shelter Trust" is typically carefully drafted to ensure that the trust's assets will not be included in the estate of the surviving spouse (or any other person) for federal estate tax purposes at a beneficiary's death, no matter how much the assets increase in value from the first spouse's death to the second spouse's death. However, if the assets of a "Credit Shelter Trust" are excluded from the surviving spouse's estate for estate tax purposes, then the assets will not receive a basis adjustment to fair market value at the time of the surviving spouse's death. A "Credit Shelter Trust" is a "Complex Trust" for federal income tax purposes, and the trustee of such trust will file a Form 1041 annually. *See also* "B Trust" and "Bypass Trust." *Cf.* "A Trust" and "C Trust."

[16] Tex. Trust Code § 111.003(2).

[17] *See Hull v. Fitz-Gerald*, 232 S.W.2d 93, 99 (Tex. Civ. App.—Amarillo 1950, *aff'd*, 237 S.W.2d 256 (Tex. 1951).

[18] IRC § 664.

9. **Crummey Trust** [KRuhm-ee trUHst]

A "Crummey Trust" is an "Irrevocable Trust" named for the type of trust described in *Crummey et al. v. Comm'r*, 397 F2d 82 (9th Cir. 1968), which is specifically designed to qualify for the gift tax annual exclusion. The default rule is that gifts of a future interest do not qualify for the gift tax annual exclusion under Internal Revenue Code § 2503(b).[19] A gift to a trust is typically a gift of a future interest, because a beneficiary is not presently entitled to receive all the trust assets—there is an element of delayed gratification. However, per the *Crummey* case, if the terms of a trust provide that the beneficiary of a trust has the right to withdraw assets contributed to a trust for a reasonable period, then the beneficiary's future interest in the trust is converted to a present interest in the trust with respect to the withdrawal right amount. Therefore, a contribution to a trust that contains *Crummey* withdrawal rights should qualify for the gift tax annual exclusion under Internal Revenue Code § 2503(b).

10. **CRUT** [KRuht]

A "CRUT" is a type of irrevocable split-interest trust in which a donor contributes property to the trust and retains for himself or herself (or other non-charitable beneficiaries) a variable annuity. Payments are a fixed percentage of assets but can vary in amount *based on the revaluation of the assets annually*: as assets increase in value, so does the annuity paid each year; as asset drop in value, so will the annuity paid each year. A "CRUT" can last for a term of years, a single life, or a joint life expectancy (often spouses' joint lives). At the end of the "CRUT" term, the remainder interest in the trust property passes to a charity specified in the trust agreement. In order to qualify for the income tax and gift tax charitable deduction, the following conditions must apply: (1) the fixed percentage of the net fair market value of the assets to paid to the non-charitable beneficiary needs to be at least 5%, and not more than 50%, and the charity's actuarial interest must be at least 10% of any assets transferred to the trust, (2) the "CRUT" assets must be valued at least annually, (3) the "CRUT" term must be (a) 20 years or less or (b) must last until the death of the non-charitable beneficiaries, and (4) no sum should be paid to the grantor(s) except the fixed percentage specified.[20] [21] If these conditions are met, then the donor will receive an upfront income tax deduction for the present value of the remainder interest that is predicted to pass to charity at the end of the "CRUT" term, based on prevailing interest rates. Because the amount predicted to pass to charity will increase as interest rates rise, CRUTs are more effective at producing income tax charitable deductions when interest rates are high. A "CRUT" is exempt from the federal income tax while assets remain inside the trust, but the income and gains of the trust are taxed when they are distributed to the non-charitable beneficiary. Therefore, "CRUTs" are frequently used to defer income taxes when a sale of a business is anticipated down the road. *See* "NICRUT," "NIMCRUT," and "Flip CRUT." *Cf.* "CRAT."

D:

1. **DAPT** [dApt or D-A-P-T]

1. A "DAPT" is a domestic "Asset Protection Trust." It is an "Asset Protection Trust" located in states that allow self-settled asset protection trusts. These states include Alaska, Connecticut, Delaware, Hawaii, Indiana, Michigan, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia, West Virginia and Wyoming.

2. A "DAPT" might also refer specifically to a Delaware "Asset Protection Trust." *Cf.* "WYQST."

2. **DING** [dING]

A "DING" is a Delaware "ING Trust." *See* "ING Trust." *Cf.* "NING," "SDING," and "WING."

3. **Directed Trust** [dih-REK-tid trUHst]

A "Directed Trust" is an "Irrevocable Trust" in which a person other than the trustee is given authority to direct, consent to, or disapprove a trustee's investment, distribution, or other decisions. While "Directed Trusts" have been around informally for a very long time, statutes governing directed trusts are relatively new in the trust world. Texas adopted a directed trust statute in 2015, which was codified as Texas Trust Code §114.0031. In 2019, the Texas "Directed Trust" statute was updated to clarify that a directed trustee (i.e., a person with the authority to direct, consent to, or disapprove the trustee's decisions is an "advisor" (as defined in the statute) and is a fiduciary. After the 2019 amendment to Texas Trust Code §114.0031, the only two exceptions to the rule that a directed trustee is a fiduciary are if a power holder's role is limited to either: (1) a power solely to remove and appoint trustees, trust advisors, trust committee members, or other protectors and the individual does not exercise the power to appoint himself or herself (*See* Texas Trust

[19] In 2021, a donor may transfer up to $15,000 per donee per year without using any of his or her basic exclusion amount under the gift tax annual exclusion.

[20] IRC § 664.

[21] Note the 5% probability test that applies to lifetime "CRATs" does not apply to "CRUTs."

Code §114.0031(e)); or (2) a power in a non-fiduciary capacity as required by the Internal Revenue Code for a grantor or other person to be treated as the owner of any portion of the trust for federal income tax purposes (*See* Texas Trust Code §114.0031(e-1)). Take note: a directed trustee is known by many different monikers other than "directed trustee," including but not limited to, a "special trustee," an "independent trustee," an "investment trustee," a "voting trustee," and a "trust protector."

4. **Discretionary Trust** [dih-skrESH-in-airy trUHst]

A "Discretionary Trust" is a trust in which the rights of the beneficiaries are not fixed or tied to any ascertainable standard. A trustee may have the discretion as to (1) which beneficiaries the trustee makes distributions and/or (2) the timing and amount of distributions to beneficiaries. Whether or not a trust is a "Discretionary Trust" can impact a trust's status as a "Grantor Trust" versus a "Non-Grantor Trust," whether a trust is includible in a grantor's or beneficiary's estate for federal estate tax purposes, and whether a trust's spendthrift clause operates to provide a trust beneficiary creditor protection. *Cf.* "Ascertainable Standard Trust" and "HEMS Trust."

5. **Domestic Trust** [duh-MES-tik trUHst]

A "Domestic Trust" is a trust in which a United States court has primary supervision over the administration of the trust, and one or more United States persons has the authority to control all substantial decisions with respect to the trust. *Cf.* "Foreign Trust."

6. **Dynasty Trust** [dIE-nuh-stee trUHst]

A "Dynasty Trust" is an "Irrevocable Trust" (also known as a perpetual trust) designed to pass wealth from generation to generation without incurring generation-skipping transfer ("GST") tax. With (1) proper trust drafting, (2) proper trust administration, and (3) the grantor allocating his or her GST tax exemption to assets transferred to the "Dynasty Trust," wealth is removed from the transfer tax system for as long as the trust (or successor trusts to the original trust) are in existence.

E:

1. **EGRIT** [EE-grit]

An "EGRIT" or an "Enhanced Grantor Retained Income Trust" is an "Irrevocable Trust" that is self-settled. Its intended purpose is to: (1) utilize a grantor's gift tax exemption, (2) allow the grantor to retain broad lifetime access to the assets contributed to the trust, (3) enable the grantor to direct the distribution of trust assets upon his or her death, and (4) secure a new income tax basis under Internal Revenue Code §1014(b) upon the grantor's death. An "EGRIT" is a relatively new trust strategy which aims to intentionally trigger the valuation rules of Internal Revenue Code § 2702 when the grantor of the trust retains an interest in the trust that is not considered a qualified annuity or unitrust interest. The grantor retains a right to income from the trust and may receive distributions of principal from the trust as well. Upon the grantor's death, the "EGRIT" should be included in the grantor's estate under Internal Revenue Code §§ 2036 and 2038, and therefore, the assets in the "EGRIT" will receive an income tax basis adjustment under Internal Revenue Code § 1014. However, the amount of the initial gift to the "EGRIT" (but not any growth or appreciation after that initial gift) should be excluded from adjusted taxable gifts under Internal Revenue Code § 2001, which provides that, for purposes of calculating estate tax, prior taxable gifts are not taxed at the taxpayer's death if they were covered by the taxpayer's Basic Exclusion Amount at the time the gift was made. Treasury guidance has indicated prior gifts that were shielded by exemption at the time gift was made won't be subject to a "claw back" tax at the taxpayer's death *even if* the Basic Exclusion Amount is a lesser amount at the time of the taxpayer's death. Gifts to this type of trust might be particularly attractive to a single person who wants to capitalize on the increased Basic Exclusion Amount ($11.7 million per person in 2021) before it is set to be approximately cut in half in 2026.[22]

2. **ESBT** [E-S-B-T] or [ehz-bIT]

An "ESBT" is one of only a few types of trusts that is qualified to own shares of an S corporation. To be an "ESBT" a trust must (1) not be a foreign trust, (2) not have ineligible beneficiaries, (3) not be an interest acquired by purchase (i.e., an acquisition in which the basis of the interest is determined under Internal Revenue Code § 1012), (4) not be a "QSST," (5) not be a tax-exempt trust, (6) not be a "CRAT" or a "CRUT," (7) have its trustee file a timely and proper election to treat the trust as an "ESBT," and (7) not have a trust agreement that prohibits making an ESBT election.[23] An "ESBT's" S corporation income will be taxed at the highest rates for federal income tax purposes. *Cf.* "QSST."

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[22] For a good discussion of "EGRITs" see Bergner, John and Chadwick, Jeffrey, *Optimizing Lifetime Gifts: Advising Clients in Uncertain Times*, ABA Tax Section Midyear Meeting, Boca Raton, Florida (January 2020).

[23] *See* IRC § 1361(e)(1). For a more detailed discussion on ESBTs see, Wakeman, Christine, *How to Blow It and Not Know It: Inadvertent Terminations of Subchapter S Elections and How to Fix Them*, 2019 Tex. Adv. Est. Plan & Probate Conf., ch. 11.

F:

1. **Family Trust** [fAM-uh-lee trUHst]

Believe it or not, a "Family Trust" is not a term of art in the trust world. It is commonly used to refer to several different types of trusts. For example, it is often used in the title of a "Revocable Trust." Other times it is used to refer to an "Irrevocable Trust" that benefits multiple family members, including but not limited to a "Credit Shelter Trust" or "Bypass Trust." When you see the term "Family Trust" you should know that you do not have a lot of data about the trust based on its name.

2. **Flip CRUT** [fliHp Krut]

A "Flip CRUT" is a variation on a "CRUT." It begins as a "NIMCRUT" and transforms or "flips" to a normal "CRUT" upon the occurrence of a specified event, such as the sale of a specific asset contributed to the trust that is not expected to generate much income. *See* "CRUT" and "NIMCRUT." *Cf.* "NICRUT."

3. **Foreign Trust** [fOHR-in trUHst]

A "Foreign Trust" is a trust that was organized in a foreign country and is subject to jurisdiction by a foreign country's courts and/or is governed by a foreign trustee. *Cf.* "Domestic Trust."

4. **FAPT** [F-A-P-T] or [fApt]

A "FAPT" is a foreign "Asset Protection Trust," meaning that it is an "Asset Protection Trust" located outside the United States in a country that allows for creditor protection for self-settled "Asset Protection Trusts." *See* "Asset Protection Trust." *Cf.* "DAPT."

G:

1. **GRAT** [grAt]

A "GRAT" or "Grantor Retained Annuity Trust" is a type of trust in which the grantor retains an annuity for a term of years. Typically, the "GRAT" is structured so that the value of the annuity stream during the "GRAT" terms equals the value of the property initially contributed to the trust. This is typically referred to as a "zeroed out GRAT" because it results in only a nominal gift (usually less than $10) for gift tax purposes. If the assets contributed to a "GRAT" increase in value beyond the value of the assets contributed to the "GRAT" plus interest based on the Internal Revenue Code § 7520 rate in effect at the time the trust is funded, then the remaining assets at the end of the annuity term pass to the grantor's intended beneficiaries (or trusts for their benefit) without incurring any additional gift tax. If the assets contributed to a GRAT decrease in value below the value of the assets contributed to the "GRAT" plus interest based on the Internal Revenue Code § 7520 rate in effect at the time the trust is funded, then all the "GRAT" assets return to the grantor and the attempted wealth shift fails. "GRATs" are popular among wealthy clients because: (1) they are a technique specifically approved by Treasury Regulations, (2) they are self-adjusting meaning that if the value of the assets contributed to the "GRAT" are challenged by the IRS, then the amount of the annuity can be recalculated without punitive gift tax consequences, (3) they are low risk because they are - "head's I win, tails I break even" estate planning, and (4) they are "Grantor Trusts" so the grantor can substitute assets out of the "GRAT" without triggering income tax realization. While "GRATs" have several advantages, there are several potential disadvantages of using "GRATs," including (1) it is extremely important to follow Treasury guidelines regarding "GRATs," because failure to do so will result in the initial contribution not being deemed to be a "qualified annuity interest" under Treas. Reg. § 25.2702-3, and then the entire contribution to "GRAT" could be deemed a taxable gift (with no reduction for the annuity retained by the grantor), (2) "GRATs" do not allow clients to leverage their GST exemption because clients are only able to allocate GST exemption at the end of the "GRAT" term, (3) the grantor must survive the initial term of the trust for a "GRAT" to work. *Cf.* "GRUT."

2. **Grantor Trust** [gran-tOHr trUHst]

A "Grantor Trust" is a trust that is treated as owned by the grantor (or another person) of the trust for federal income tax purposes by virtue of Internal Revenue Code §§ 672-679. With "Grantor Trusts" certain powers are retained by the grantor (or other person) with respect to the trust. A trust may be a "Grantor Trust" as to principal, income, or both principal and income. A trust can also be treated as a "Grantor Trust" as to a fractional share of a trust, which can occur when the trust is a "grantor trust" as to more than one contributor to the trust (e.g., a husband and wife). Furthermore, a trust could be treated as a "Grantor Trust" as to specific assets only. In determining whether a trust is a "Grantor Trust" for federal income tax purposes, the intention of the grantor is irrelevant; it is the existence of certain rights that makes a trust a "Grantor Trust." *Cf.* "Complex Trust" and "Simple Trust."[24]

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[24] For an excellent reference on "Grantor Trusts," *see* Newlon, Jeanne L., *Developments Involving Grantor Trusts*, ALI-ABA Estate Planning Course August 2010 *available at* https://www.venable.com/files/publication/0f37c6db-cc39-43b5-

3. **GRIT** [grIt]

A "GRIT" or "Grantor Retained Income Trust" is a type of trust in which the grantor retains an income interest in the trust for a term of years and makes a gift of the remainder interest to designated beneficiaries at the end of the trust term. Before the enactment of Internal Revenue Code § 2702, the value of the income interest reduced the value of the remainder interest for transfer tax purposes. Taxpayers would frequently try to leverage the effects of this technique by contributing non-income-producing assets to the trust, which would reduce the value of the remainder interest for transfer tax purposes but would not reduce the value of the property or add property to the grantor's estate. A "GRIT" is a "Grantor Trust" as to its grantor for federal income tax purposes. After the enactment of Internal Revenue Code § 2702 in 1990, "GRITs" became a less attractive estate planning strategy when the remainder beneficiaries were considered a "member of the transferor's family" (as defined in Internal Revenue Code § 2701(e)(1)) of the grantor. Internal Revenue Code § 2702 eliminated the estate tax advantages of "GRITs" intended to benefit a "member of the transferor's family." However, "GRITs" remain a viable strategy for some family members that do fall within that definition, such as the grantor's nieces and nephews. *Cf.* "EGRIT."

4. **GRUT** [grUHt]

A "GRUT" or "Grantor Retained Unitrust" is a trust similar to a "GRAT" except that the annual payment amount with a "GRUT" is not a fixed amount based on the initial assets contributed to the trust. Instead, it is a percentage of the value of the trust each year, so that the amount of the grantor's annual payment becomes an amount that floats with value of the trust assets. "GRUTs" are uncommon, because they are not nearly as effective an estate planning tool as GRATs. If a taxpayer wants to take advantage of post-creation appreciation in a trust, a "GRAT" is a more attractive technique. The reason is, for gift tax purposes, "GRAT" payments are fixed at the contribution date and do not increase if the value of the assets inside the trust increase (as is the case with a "GRUT"). Therefore, "GRATs" allow more assets to pass to beneficiaries tax-free at the end of the trust term. *Cf.* "GRAT."

5. **GST Non-Exempt Trust** [G-S-T non-ig-zempt trUHst]

A "GST Non-Exempt Trust" is a trust that has an inclusion ratio of greater than zero for purposes of the generation-skipping transfer (GST) tax. This means that distributions from a transferor (e.g., a client who is a grandparent) to a trust with only "skip person"[25] beneficiaries will be treated as subject to the GST tax. This is known as a "direct skip" trust. Furthermore, distributions from a trust considered an "indirect skip" trust (because it has one or more non-skip person beneficiaries) to a skip person will be subject to GST tax. A "GST Non-Exempt Trust" could have a GST inclusion ratio of one, meaning that "GST transfers" are fully subject to the 40% GST tax. Alternatively, a "GST Non-Exempt Trust" could have a partial inclusion ratio, meaning that only a fraction of the "GST transfer" is considered subject to the 40% GST tax.

6. **GST Trust** [G-S-T trUHst]

1. The term "GST Trust" is commonly used to refer to a trust that has an inclusion ratio for generation-skipping transfer ("GST") tax purposes of zero. This means that assets can pass from generation-to-generation (if held in trust and for the duration allowed by the trust agreement and applicable law) without incurring transfer taxes. *See* "Dynasty Trust."

2. The term "GST Trust" can also refer to the defined term in Internal Revenue Code § 2632(c)(3)(B) which means a trust that *could* have a generation-skipping transfer ("GST") with respect to the transferor *unless* one of the enumerated exceptions applies, including:

> (i) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons—
>
> > (a) before the date that the individual attains age 46,
> >
> > (b) on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or
> >
> > (c) upon the occurrence of an event that, in accordance with regulations prescribed by the Secretary, may

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[25] A "skip person" is defined in Internal Revenue Code § 2613 and associated Treasury Regulations to mean (1) a family member who is two generations or more below the transferor (e.g., a grandchild) and (2) a non-family member who is 37.5 years younger than the transferor.

reasonably be expected to occur before the date that such individual attains age 46,

(ii) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to, or may be withdrawn by, one or more individuals who are non-skip persons and who are living on the date of death of another person identified in the instrument (by name or by class) who is more than 10 years older than such individuals,

(iii) the trust instrument provides that, if one or more individuals who are non-skip persons die on or before a date or event described in clause (i) or (ii), more than 25 percent of the trust corpus either must be distributed to the estate or estates of one or more of such individuals or is subject to a general power of appointment exercisable by one or more of such individuals,

(iv) the trust is a trust any portion of which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer,

(v) the trust is a charitable lead annuity trust (within the meaning of Internal Revenue Code § 2642(e)(3)(A)) or a charitable remainder annuity trust or a charitable remainder unitrust (within the meaning of Internal Revenue Code § 664(d)), or

(vi) the trust is a trust with respect to which a deduction was allowed under Internal Revenue Code §2522 for the amount of an interest in the form of the right to receive annual payments of a fixed percentage of the net fair market value of the trust property (determined yearly) and which is required to pay principal to a non-skip person if such person is alive when the yearly payments for which the deduction was allowed terminate.

For purposes of the exceptions to the rule stated in Internal Revenue Code §2632(c)(3)(B), the value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in Internal Revenue Code §2503(b) with respect to any transferor, and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.

Why does the definition of "GST Trust" matter for purposes of the Internal Revenue Code? If a trust is considered a "GST Trust" under the Internal Revenue Code, then gift transfers to a trust which are considered indirect skips will automatically result in allocation of the transferor's available GST tax exemption to the trust (unless the transferor made an affirmative election on a gift tax return to change the automatic allocation rules in some way) even if the grantor takes no action or fails to timely file Form 709 (US Gift and GST Tax Return).[26] However, if the trust is not considered a "GST Trust," then the transferor's available GST exemption will not be automatically allocated to gift transfers to the trust (unless the transferor made an affirmative election on a gift tax return to change the automatic allocation rules in some way). Importantly, a trust's designation as a "GST Trust" under the Internal Revenue Code is not necessarily fixed. A trust could be treated as a "GST Trust" with respect to a transfer to the trust in one year but not the next year.

7. **Gun Trust** [Guhn trUHst]

A "Gun Trust" is typically a "Revocable Trust" set up to deal with owning, transporting, and transferring firearms. Many types of firearms are subject to regulation under the National Firearms Act of 1934 ("NFA"). In the typical "Gun Trust" the grantor will name a trustee who can legally possess the firearms and accessories that the grantor will transfer to the trust. Typically, the grantor names himself or herself as the initial trustee and one or more successors. Typically, the grantor of the trust is also the initial beneficiary of the trust, but the trust agreement names one or more remainder beneficiaries who are eligible to receive the assets owned by the trust upon the grantor's death. After the "Gun Trust" is set up, the grantor of the "Gun Trust" no longer is the registered owner of the firearms, rather the trust is considered the owner for purposes of NFA and other regulations. A "Gun Trust" can have several advantages. One advantage is that a "Gun Trust" can have co-trustees. Under the NFA, if a person purchases an NFA firearm, the owner is listed as the transferee on the ATF tax stamp, which operates like a certificate of title for firearms. This means that (1) only the purchaser who is listed on the ATF tax stamp and (2) a lawful person who is in the direct physical presence of the purchaser, are allowed to use or possess the NFA firearm. Consequently, the purchaser's spouse, adult child, sibling, or anyone else cannot lawfully use the NFA firearm (even with the permission of the purchaser)

[26] IRC § 2632(c)(1).

without committing a felony unless in the purchaser's physical presence. However, if an NFA firearm is purchased using a "Gun Trust" then any co-trustee of the "Gun Trust" may independently use the NFA firearm (if they would qualify as a lawfully owning the NFA firearm in their individual capacity). A second advantage of a "Gun Trust" is that it can help avoid confiscation of firearms in the event of a firearm owner's incapacity, because it should provide the means of transfer of the firearms to an alternative beneficiary in the event of the grantor's incapacity. Third, titling assets in the name of "Gun Trust" can help firearms avoid probate, which can be helpful in some jurisdictions that highly regulate the transfer of weapons through the probate process like New York. While "Gun Trusts" offer many advantages, they should not be drafted casually. There could be civil and criminal charges associated with improperly executing a "Gun Trust" or drafting one for an unqualified person.[27]

H:

1. **HEET** [hEEt]

A "HEET" or "Health and Education Exclusion Trust" is an "Irrevocable Trust" that can be an "Inter Vivos Trust" or a "Testamentary Trust." Typically, a "HEET" is a "GST Non-Exempt Trust." A "HEET" has a charitable beneficiary with a substantial interest in the trust (often a unitrust beneficial interest) along with non-charitable beneficiaries (often descendants of the grantor) whose beneficial interest in the trust are typically limited to distributions for health and education. Under current law, qualifying health and education distributions from a "HEET" to "skip persons"[28] are excluded from the generation-skipping transfer ("GST") tax.[29] Therefore, a "HEET" can be used to avoid imposition of the GST tax on certain distributions to skip persons. There are a few drawbacks to "HEETs." Transfers to HEETs are not transfer-tax efficient, because they do not occur outside of the transfer tax system, and the grantor is not entitled to a charitable gift tax or estate deduction for transfers to a "HEET." Second, a "HEET" must be drafted carefully to give the charitable beneficiary a significant economic interest in the trust, or else the "HEET" may not be considered to have a non-skip person as a beneficiary. It can be difficult to ascertain what qualifies as a "significant" beneficial interest for a charitable beneficiary, but the grantor must take pains to meet this criterion. Otherwise, the "HEET" could be treated as two separate shares for GST purposes- one for charity and one for individual beneficiaries - and the grantor's GST minimization objectives could be undermined. Finally, "HEETs" have been on Treasury's chopping block. In the past, Treasury has recommended that only payments from an individual (and not a trust) to a medical service provider or educational institution should qualify for the health and education exclusion from GST tax. It is possible that a client might rely on current law in forming an irrevocable "HEET" only to see the benefits of "HEET" eliminated by future changes to the law.[30]

2. **HEMS Trust** [hEMz trUHst]

A "HEMS Trust" or "Heath, Education, Maintenance, and Support Trust" is a trust in which the trustee is authorized to distribute to one or more beneficiaries to provide for such beneficiaries' heath, education, maintenance, and support. A "HEMS Trust" is considered an "Ascertainable Standard Trust." *See* "Ascertainable Standard Trust."

I:

1. **IDIT/IDGT** [ayh-diht] /[id-jit]

"IDIT" is an acronym for an "Intentionally Defective Irrevocable Trust." "IDIT" is synonymous with "IDGT," which stands for "Intentionally Defective Grantor Trust." This trust is an "Inter Vivos Trust" which is both an "Irrevocable Trust" and a "Grantor Trust." The grantor is responsible for the federal income tax associated with the trust, but if properly drafted and administered, the trust should be excluded from the grantor's estate for federal income tax purposes. The grantor of an "IDIT" often uses the trust to facilitate an installment sale transaction, where the grantor sells assets to the trust in exchange for a promissory note. Because the "IDIT" is deemed to be owned by the grantor, the installment sale should not trigger income tax gain on the sale of the assets. In addition, interest payments back to the grantor from the trust related to the promissory note should not be taxable income to the grantor. The grantor hopes that assets sold to an "IDIT" increase in value after the installment sale so that the growth and appreciation in the assets' value occurs outside of the grantor's estate for estate tax purposes. The word "defective" implies there is something wrong with an "IDIT." A bit of historical context might be helpful to understand why the word "defective" is associated with this very popular and

[27] Willi, Traci J. and Willi, James N., *What is an NFA Gun Trust and Why Does My Client Need One?* ABA Taxation 2017 Joint Fall CLE Meeting Austin, Texas (September 2017).

[28] *See supra* footnote 25 for definition of "skip person."

[29] The "health" and "education" distributions must meet the definition for such terms under IRC § 2503(e) and associated Treasury Regulations.

[30] *See* General Explanations of the Administration's Fiscal Year 2014 Revenue Proposals at p. 158 *available at* https://www.treasury.gov/resource-center/tax-policy/ Documents/General-Explanations-FY2014.pdf#page=158.

effective type of "Irrevocable Trust." The "Grantor Trust" rules of Internal Revenue Code §§ 672-679 were enacted in 1954, when the top income tax rate was 91%.[31] Wealthy Americans set up trusts to divert income-producing assets to entities and/or beneficiaries which would be taxed at a lower marginal tax rate. The "Grantor Trust" rules were therefore implemented to generate income for the IRS, as the rules sought to treat trusts with certain characteristics as being owned by the grantor (or others) for federal income tax purposes and close a loophole for high net-worth Americans trying to dodge income tax. When the "Grantor Trust" rules were first implemented, it was a common goal for estate planners to draft trusts to avoid "Grantor Trust" status so that the trust's assets could be taxed at a lower marginal income tax rate. Given the current compressed income tax rate for trusts, there are generally not income tax savings to be had by transferring income-producing assets to "Non-Grantor Trusts" today. However, estate planners often use "IDITs" to decrease a grantor's overall estate and gift tax liability. If the grantor is obligated to pay the federal income tax generated by an "IDIT" because of the "Grantor Trust" rules, then the grantor's assets that will be subject to federal estate tax at his or her death will be depleted, while assets that should be shielded from estate tax at the grantor's death grow without being burdened by income tax. *See* "Grantor Trust" and "Irrevocable Trust."

2. **ILIT** [ahy-lit]

An "ILIT" or "Irrevocable Life Insurance Trust" is an "Inter Vivos Trust" and an "Irrevocable Trust" established to hold insurance on the life of the grantor. A client might want to incorporate an "ILIT" in his or her estate plan to remove life insurance proceeds from their taxable estate for estate tax purposes. Under Internal Revenue Code § 2042(2), insurance proceeds can be excluded from the grantor's gross estate for estate tax purposes if he or she does not possess any "incidents of ownership" over the insurance policy at his or her death and for the three-year period preceding his or her death. Enter the "ILIT" as a way for the grantor to relinquish "incidents of ownership" over an insurance policy. If the grantor sets up an insurance trust, names a person other than himself or herself as trustee, and the trustee acquires an insurance policy on the life of the grantor and names the trust as the beneficiary of that policy, then the policy proceeds could be excluded from the grantor's gross estate. For an "ILIT" to work, the grantor cannot possess other "incidents of ownership" or powers over the policy, such as the right to name the beneficiary, the right to surrender or cancel the policy, the right to assign the policy, the right to pledge the policy, or otherwise possess or enjoy any other economic benefits of the policy, or the proceeds will be included in the grantor's estate.[32] A grantor's lifetime gifts to an "ILIT" will use up a portion of the grantor's Basic Exclusion Amount to the extent gifts to the "ILIT" are not covered by the gift tax annual exclusion. If the owner of a life insurance policy would like to transfer an existing insurance policy to an "ILIT," then he or she must be aware that Internal Revenue Code § 2035 will cause insurance policy proceeds to be included in the grantor's estate if the grantor dies within three years of the existing policy being transferred to the "ILIT."

3. **ING Trust** [ING trUHst]

An "ING Trust" is an acronym for an "Intentionally Non-Grantor Trust" or, alternatively, an "Irrevocable Non-Grantor Trust." An "ING Trust" is typically used to achieve income tax savings for a grantor. An "ING Trust" is set up in a jurisdiction with little or no income tax, which often means a grantor sets up an "ING Trust" in a jurisdiction other than the one in which he or she resides. An "ING Trust" is typically thought of as a great vehicle for making gifts of income, but not of wealth. A grantor typically sets up the trust in a favorable jurisdiction (that will not impose a state income tax on trust assets regardless of where the grantor lives) and appoints a corporate trustee in that state. The timing, amount, and beneficiaries of trust distributions are made at the direction of a distribution committee which contains members who have an "adverse" interest in the trust as defined in Internal Revenue Code § 672 (i.e., a beneficiary of the trust). This allows the income, to be directed to those who might be in a lower income tax bracket than the grantor. Depending on whether or not certain powers are retained by the grantor, contributions to an "ING Trust" can be either an incomplete gift (which will not use up the client's estate and gift tax exemption upon funding) or a completed gift (which would utilize a portion of the client's unused gift tax exemption amount). *See* "DING," "NING," and "WING."

4. **Inter Vivos Trust** [n-ter -vahy-vohs trUHst] / [in-ter - vee-vohs trUHst]

An "Inter Vivos Trust" is a trust created during the grantor's lifetime. For example, a "Revocable Trust" or "Living Trust" is a form of revocable "Inter Vivos Trust." However, "Inter Vivos Trusts" can also be "Irrevocable

[31] *See* Historical Highest Marginal Income Rates, Tax Policy Center Online, *available at* https://www.taxpolicy center.org/statistics/historical-highest-marginal-income-tax-rates.

[32] Treas. Reg. § 20.2042-1(c)(2).

Trusts." An "IDIT"/"IDGT" is an example of an irrevocable "Inter Vivos Trust." An "Inter Vivos Trust" can also be either a "Grantor Trust" or a "Non-Grantor Trust" depending on how it is structured.

5. **Irrevocable Trust** [ih-rih-vOH-kuh-bull trUHst]

An "Irrevocable Trust" is a trust in which the grantor of the trust gives up the power to revoke or alter the trust after it is created. An "Irrevocable Trust" is not completely unalterable. The trust agreement could provide that someone other than the grantor could alter, amend, modify, or terminate the trust. In addition, a court may alter, amend, modify, reform, or terminate a trust. An "Irrevocable Trust" can be an "Inter Vivos" or "Testamentary Trust." Under Texas law, a trust is considered revocable unless the trust agreement expressly states that the trust is irrevocable.[33] *Cf.* "Revocable Trust."

J:

1. **Joint Trust** [jOYnt trUHst]

A "Joint Trust" is a trust that is funded by more than one individual. Most often, a "Joint Trust" is created by a married couple for administrative convenience and to coordinate the flow of assets to a married couple's descendants. An "A, B, C Trust" is an example of a joint "Revocable Trust" estate plan for a married couple.

K:

The author could not think of a trust that starts with the letter K. If you can, please contact the author so that she can update this paper.

L:

1. **LEPA Trust** [lee-pUH trUHst]

A "LEPA Trust" is a form of "Marital Trust" that is specifically designed so that contributions to the trust qualify for the unlimited estate and gift tax marital deduction. Under Internal Revenue Code § 2056(b)(5), property passing to a trust for a spouse requires (1) the spouse is entitled to all the income from the trust for life, payable at least annually, (2) the spouse is granted the power to appoint trust property to the spouse or the spouse's estate, and (3) no person has the power to appoint any part of the trust to any person other than the spouse. Unlike a "QTIP Trust" no special election must be made on a gift tax return or an estate tax return for a trust to qualify as a "LEPA." A "LEPA Trust" does contain some disadvantages as compared to a "QTIP Trust." A LEPA cannot utilize the generation-skipping transfer ("GST") tax exemption of the first spouse to pass away, if the deceased spouse's available GST tax exemption exceeds his or her estate tax exemption. In contrast, with a "QTIP Trust" there is a possibility of a reverse QTIP election for GST tax purposes,[34] allowing a deceased spouse's excess GST exemption to be preserved even though the "QTIP Trust" assets will be included in the surviving spouse's estate for estate tax purposes. *Cf.* "QTIP Trust."

2. **Living Trust** [LIH-ving trUHst]

A "Living Trust" is a "Revocable Trust" that is typically used as a substitute for a traditional last will and testament. A "Living Trust" is revocable by its grantor(s) and is often used to make the dispositive terms of the grantor's estate plan private. It can also be utilized to avoid or minimize probate, because assets titled in the name of a "Living Trust" prior to the grantor's death should avoid probate. A "Living Trust" might also be used as a "Management Trust" to help manage the grantor's financial assets without the need for the intervention of a guardian or conservator. A "Living Trust" is a "Grantor Trust" during the life of the grantor. *See* "Management Trust" and "Revocable Trust." *Cf.* "Irrevocable Trust."

M:

1. **Management Trust** [mAN-idge-mint trUHst]

1. The term "Management Trust" is sometimes used synonymously with "Living Trust."

2. Under Texas law, the term "Management Trust" might also refer to a trust governed by Texas Estates Code Chapter 1301. Under Chapter 1301, the term "Management Trust" means a trust created under § § 1301.053 or 1301.054. 1301 "Management Trusts" are most often used: (1) where a guardianship for a minor involves a large estate that would be turned over to the ward at age eighteen absent the creation of a "Management Trust" or (2) where a corporate trustee will manage a large sum of money for an incapacitated person. The "Management Trust" must contain required terms set forth in Texas Estates Code § 1301.101, including that the ward or incapacitated person is the sole beneficiary of the trust and that the trustee may distribute to the beneficiary

[33] Tex. Trust Code § 112.051(a).

[34] A reverse QTIP election permits the executor of the first spouse to pass away to elect that a "QTIP Trust" will be treated for GST tax purposes as property transferred by the first spouse to pass away (thus using the GST tax exemption of the first spouse to pass away) even though the "QTIP Trust" property will be treated as belonging to and being transferred by the surviving spouse for estate tax purpose.

for health, education, maintenance, and support, and a corporate trustee will serve without bond.

2. **Marital Trust** [mAIR-ih-tuhl trUHst]

A "Martial Trust" is most often an "Irrevocable Trust" created at the death of the first spouse for the benefit of the surviving spouse. If a "Marital Trust" is drafted to be either a "QTIP Trust" or a "LEPA Trust" it will qualify for the unlimited estate tax marital deduction. "Marital Trusts" will be included in the estate of the surviving spouse and are "Simple Trusts" for federal income tax purposes (unless principal distributions are also made from the trust). "Marital Trusts" might also be created during a grantor's lifetime to transfer assets for the benefit of the grantor's spouse but ensure remaining assets at the grantor's spouse's death will revert back to the grantor's intended beneficiaries instead of the spouse's intended beneficiaries. *See* "C Trust," "LEPA Trust," and "QTIP Trust." *Cf*. "B Trust/Bypass Trust."

N:

1. **NIMCRUT** [nIHm-krut]

A "NIMCRUT" or "Net Income with Makeup Charitable Remainder Unitrust" is a variation of a "CRUT" (which pays a fixed percentage of the value of trust assets, regardless of income). A "NIMCRUT" is like a "NICRUT" in that the trust pays the lesser of a fixed percentage of the trust's assets *or* the income actually received by the trust. However, with a "NIMCRUT", if the trust's income is less than the fixed percentage unitrust payment in a given year, the deficiency can be paid in a future year when the trust has income that exceeds the fixed percentage unitrust payment for the year. Said differently, makeup payments can be made with a "NIMCRUT" in better performing years to compensate for years in which the "CRUT" had reduced income. *See* "CRUT." *Cf.* "Flip CRUT" and "NICRUT."

2. **NICRUT** [nahy trUHst]

A "NICRUT" or "Net Income Charitable Remainder Unitrust" is a variation of a "CRUT" (which pays a fixed percentage of the value of trust assets, regardless of income). A "NICRUT" pays either a fixed percentage or the income actually received by the trust, whichever is less. *See* "CRUT." *Cf.* "Flip CRUT" and "NIMCRUT."

3. **NING** [nING]

A "NING" is an "ING Trust" or "Intentionally Non-Grantor Trust" / "Irrevocable Non-Grantor Trust" sitused in Nevada. *See* "ING." *Cf.* "DING," "SDING," and "WING."

4. **Non-Grantor Trust** [nahn-grant-OR trUHst]

A "Non-Grantor Trust" is a trust that is taxed for federal income tax purpose as a separate taxable entity. A "Non-Grantor Trust" is either a "Complex Trust" or a "Simple Trust." It has its own taxpayer identification number (or EIN), pays its own income tax, and files an annual IRS Form 1041 to report its income to the Internal Revenue Service. A "Non-Grantor Trust" pays the top income tax rate based on a compressed income bracket as compared to individual taxpayers, but may report deductions for certain distributions to trust beneficiaries. *See* "Complex Trust" and "Simple Trust." *Cf*. "Grantor Trust."

O:

1. **Offshore Trust** [AWF-shohr trUHst]

An "Offshore Trust" is a trust sitused outside of the United States. The term is most often used to describe a trust that is used for asset protection or attempted income tax minimization. A "FAPT" is a form of "Offshore Trust." *See* "FAPT." *Cf*. "DAPT."

P:

1. **Pet Trust** [pet trUHst]

A "Pet Trust" is a trust created with the principal aim of taking care of one or more of the grantor's pets in the event of the grantor's death or disability. There are two main types of "Pet Trusts": (1) a traditional or common law "Pet Trust" and (2) a statutory "Pet Trust." A traditional "Pet Trust" focuses on typical trust principles. A trustee provides distributions to a beneficiary who is a person appointed to care for the pet(s), as long as that person properly cares for the pet(s). In essence, while the focus of a traditional "Pet Trust" is on animals, the official beneficiary is a person. In contrast, a statutory "Pet Trust" is a simple trust authorized by law in all fifty states. Default state law fills in the gaps when a grantor leaves a gift in trust for the care of pets. In Texas, Trust Code § 112.037 governs statutory "Pet Trusts." A statutory pet trust may last as long as a pet living during the grantor's lifetime is living. However, a statutory "Pet Trust" could not provide for the offspring of the grantor's pet born after the grantor's death.[35] Unlike a traditional "Pet Trust," a statutory "Pet Trust" has no human beneficiary. *See* "Purpose Trust."

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[35] Beyer, Gerry W., *Trusts and Planning Issues for the Family Pet or Other Valuable Animal*, 2005 Adv. Est. Plan. & Probate, ch. 3.

2. **Privacy Trust** [pRY-vuh-see trUHst]

A "Privacy Trust" is a trust used to achieve privacy goals for individuals. It can be used to conceal ownership of private investments, bank accounts, financial accounts, interests in entities, and real estate holding. With a "Privacy Trust," the grantor names a person or corporate trustee that cannot easily be connected to the grantor, in whose name legal title to all the trust's assets will vest. That way the trustee's name will appear on public and private records related to the trust instead of the grantor's name.

3. **Purpose Trust** [pURR-puhs trUHst]

In a "Purpose Trust" (also known as a "Special Purpose Trust") there are typically no beneficiaries to whom the Trustee owes fiduciary duties. Instead, a "Purpose Trust" exists to carry out some non-charitable purpose. A "Purpose Trust" defies the common law "beneficiary principle" that a trust must have a (human) beneficiary. Examples of purpose trusts include "Pet Trusts" and "Cemetery Trusts" (used for the care and upkeep of a cemetery, tomb, or monument).

Q:

1. **QDOT** [kyOO-daught]

A "QDOT" or "Qualified Domestic Trust" is an "Irrevocable Trust" typically used in a married couple's core estate plan where one or both spouses are not United States citizens. The unlimited United States estate tax marital deduction only applies to gifts to spouses who are United States citizens. Testamentary bequests to non-citizens spouses are only entitled to a $60,000 exemption under the general rule. However, if a bequest to non-United States citizen spouse utilizes a "QDOT," such trust will operate to defer taxes to a non-citizen spouse until assets are actually distributed to the surviving spouse.[36] "QDOTs" are subject to several statutory and regulatory requirements, including that: (1) at least one trustee must be a United States person, (2) the United States trustee must have the right to withhold estate tax from distributions, (3) the executor must make a "QDOT" election on a timely filed estate tax return, and (4) if the "QDOT" assets exceed $2 million, then one trustee must be a corporate trustee or must furnish a bond or a letter of credit to the IRS in an amount equal to at 65% of the fair market value of the "QDOT's" assets.[37] In addition, "QDOTs" must follow the other rules for a "Marital Trust" (e.g., all fiduciary accounting income must be distributed to the surviving spouse at least annually). While there are several requirements associated with "QDOTs," they are an important option for deferring estate tax to a non-United States citizen spouse at the first spouse's death. *See* "LEPA Trust," "Marital Trust," and "QTIP Trust."

2. **QPRT** [kyOO-pUHRt]

A "QPRT" or "Qualified Personal Residence Trust" is a type of trust described in Internal Revenue Code § 2702 and associated Treasury Regulations. With a "QPRT," the grantor transfers a personal residence to a trust. The Grantor retains the right to live in the residence for a fixed number of years (the "term"). After the expiration of the term, the property passes to remainder beneficiaries designated in the trust agreement for the "QPRT." A "QPRT" can be a wonderful estate planning technique because it can allow a person to transfer a treasured family abode at a fraction of the transfer tax cost that an outright transfer of the same residence would incur. However, there are a few drawbacks to "QPRTs." First, the amount of the gift is calculated based on the age of the grantor, the term of the trust, the value of the residence contributed, and the prevailing Internal Revenue Code § 7520 rate. "QPRTs" work best in high interest rate environments. Because we are experiencing an extended period of historically low interest rates, "QPRTs" are less efficient from a transfer tax perspective than they once were. Another disadvantage of a "QPRT" is that the grantor must survive the term or else the residence will be included in the grantor's estate for estate tax purposes. GST exemption cannot be allocated to a QPRT at the time of funding, making "QPRTs" generally a single generation wealth shifting strategy. Finally, because a "QPRT" is a statutory and regulatory creation, there are several very specific rules that must be followed, or the technique will fail and could result in a gift of the value of the entire residence with no reduction for the interest retained by the grantor.[38]

3. **QSST** [Q-S-S-T] or [kyOO-sit] or [kWHIst]

A "QSST" or "Qualified Subchapter S Trust" is one of only a few types of trusts that is qualified to hold shares of an S corporation. To be a "QSST" a trust must: (1) require that there be only one income beneficiary of the trust, (2) require that during the lifetime of the income beneficiary, principal may only be distributed to such beneficiary, (3) require that if the trust terminates during the life of the income beneficiary, the remaining trust assets must be distributed to the income beneficiary, (4) require that all current trust income be distributed to the

[36] *See* IRC § 2056(d)(1)-(2).
[37] Treas. Reg. § 20.2056A-2(d)(1)(ii).
[38] *See* Treas. Reg. § 25.2702-5(c).

current income beneficiary, (5) have a United States citizen or resident as its primary beneficiary, and (6) have the trust's income beneficiary (not the trustee) timely file a proper election with the Internal Revenue Service. The S Corporation's income will be taxed to the beneficiary of the "QSST" not to the trust.[39] *Cf*. "ESBT."

4. **QTIP Trust** [kyOO-tihp trUHst]

A "QTIP Trust" or "Qualified Terminable Interest Property Trust" is an "Irrevocable Trust." It is a type of "Marital Trust" that qualifies for the unlimited gift tax or estate tax marital deduction.[40] A "QTIP Trust" is often used by wealthy clients because it allows a decedent to benefit a surviving spouse during such spouse's lifetime, while ensuring that remaining assets in the trust at the surviving spouse's death will be controlled by wishes of the first spouse to die. It also provides asset protection for the surviving spouse as it is most often a "Spendthrift Trust." Finally, a "QTIP Trust" provides post-mortem estate planning flexibility by allowing the executor of the deceased spouse's estate to make a partial QTIP election (resulting in treating a portion of the QTIP assets as a "Marital Trust" and a portion of the QTIP assets as a "Bypass Trust") and the possibility of a "reverse QTIP election" (allowing the first spouse to pass away to be treated as the transferor of "QTIP Trust" assets for generation-skipping transfer ("GST") tax purposes but not estate tax purposes in the event the deceased spouse passes away with a GST tax exemption that exceeds his or her Basic Exclusion Amount). A "QTIP Trust" must meet certain requirements, including: (1) the surviving spouse must receive all (fiduciary accounting) income, at least annually, (2) the surviving spouse must be the sole beneficiary during his or her lifetime and no one (including the surviving spouse) may have a lifetime power of appointment over trust assets in favor of anyone other than the surviving spouse, (3) the surviving spouse must have the right to demand that non-income producing property held by the "QTIP Trust" be converted to income-producing property (4) a timely filed QTIP election must be made by the donor spouse on a Form 709 gift tax return (for gifts to a lifetime "QTIP Trust") or by the deceased spouse's executor on a Form 706 estate tax return (for testamentary "QTIP Trusts"). A "QTIP Trust" will be included in the surviving spouse's estate for estate tax purposes per Internal Revenue Code § 2044.

R:

1. **Rabbi Trust** [RABB-eye trUHst]

A "Rabbi Trust" is a trust used to support non-qualified benefits that employers provide to their employees. It is often used by a company to provide high level employees benefits in addition to their normal compensation package. It was named for the PLR that approved this sort of trust, in which a congregation sought to establish a trust for the benefit of its rabbi with sums in the trust to be invested and managed by trustees.[41] Like a "Spendthrift Trust" the employee beneficiaries of a "Rabbi Trust are unable to assign or pledge the trust's property. "Rabbi Trusts" are "Irrevocable Trusts." Once the employer contributes to a "Rabbi Trust," the employer may not take back the contribution. However, "Rabbi Trust" asset are subject to clams of the employer's general creditors (e.g., if the employer declares bankruptcy). "Rabbi Trusts" are treated as "Grantor Trusts" as to the employer while funds are held inside the trust. Contributions to a "Rabbi Trust" are not taxed to the employee until distributions are made out of the trust to the employees.

2. **Remainder Trust** [ree-mEHn-duhr trUHst]

A "Remainder Trust" is yet another term that is not a precise term of art in the trust world. It might refer to a trust that is funded with remaining assets from a terminating trust. For example, it is common for assets remaining at the end of a "GRAT," "CLAT," or "QPRT" to pour over to a "Remainder Trust" as the remainder beneficiary of the original trust. The term might also serve as an informal reference to a "CRAT" or "CRUT" – both forms of "Charitable Remainder Trusts – that pay a sum to the grantor for the trust's term and pays the remainder to one or more charities after the expiration of the trust's term.

3. **Revocable Trust** [re-VOH-kuh-bull trUHst] or [rev-uh-kuh-bull trUHst]

A "Revocable Trust" is a trust that may be revoked by the trust's grantor or another person who is deemed to be the trust's grantor (e.g., by virtue of the release of a power of appointment). Under Texas law, a trust is revocable by its grantor by default, unless the trust agreement expressly provides that the trust is irrevocable.[42] A "Revocable Trust" is taxed as a "Grantor Trust" for federal income tax purposes. *See* "Living Trust" and "Management Trust." *Cf*. "Irrevocable Trust."

[39] For a more detailed discussion of "QSSTs" *see* Wakeman, Christine *supra* footnote 23.
[40] IRC §§ 2056(b)(7), 2553(f).
[41] PLR 8113107.
[42] Tex. Trust Code § 112.051.

4. **Residence Trust** [rEZ-ih-dents trUHst]

A "Residence Trust" is a trust designed for the purpose of holding a personal residence. A "Residence Trust" might be an irrevocable "Qualified Personal Residence Trust" or "QPRT" governed by Internal Revenue Code § 2702 and associated Treasury Regulations. Alternatively, a "Residence Trust" might be a non-qualified "Revocable Trust" and/or "Privacy Trust" designed to shield the owner's identity from public records but still give the beneficial owner access to the home and qualify the owner for the property tax homestead exemption and the homestead exemption against creditors.[43] *See* "QPRT."

S:

1. **SDING** [stING]

A "SDING" is an "ING Trust" or "Intentionally Non-Grantor Trust" / "Irrevocable Non-Grantor Trust" sitused in South Dakota. *See* "ING." *Cf.* "DING," "NING," and "WING."

2. **Shark Fin CLAT** [SHahrk fIHn klAT]

A "Shark Fin CLAT" is considered the most aggressive form of a "CLAT." Like a "GRAT," the IRS has ruled that "CLAT" annuity payments need not be the same amount each year. Rather, increases in a "CLAT's" annuity payments are permitted, as long as payments are determinable at the outset of the trust's creation.[44] In contrast to GRATs,[45] there is no regulatory guidance on permissible escalation of annuity payments for "CLATs." While some practitioners feel most comfortable using GRAT rules for guidance on increasing "CLAT" payments (i.e., limiting payment increases to 120% of the payment amount in the prior year), other practitioners believe that if certain escalation techniques are not expressly prohibited, they are allowed. The "Shark Fin CLAT" is characterized by modest level payments at the beginning of the "CLAT" term with a balloon payment at the end of the term. It gets its name from graphical representation of the annuity payments – flat at the beginning with a spike at the end that resembles a shark fin. *See* "CLAT."

3. **Simple Trust** [sIM-pull trUHst]

A "Simple Trust" is a type of "Non-Grantor Trust." It must (1) distribute trust (fiduciary accounting) income to its beneficiary or beneficiaries annually, (2) make no distributions of principal, and (3) make no distributions to charity. Essentially, with this type of trust, the trust income is considered taxable to the beneficiaries. While the trustee of a "Simple Trust" is required to file a Form 1041 annually, the trustee is allowed to take a deduction for any amount of trust income distributed to the beneficiary or beneficiaries. However, the trust itself may be required to pay capital gains tax on earnings (which is often not considered to be trust "income" under fiduciary accounting principles). *Cf.* "Complex Trust" and "Grantor Trust."

4. **SLAT** [slAt]

A "SLAT" or a "Spousal Lifetime Access Trust" is an "Inter Vivos Trust" and an "Irrevocable Trust" in which one spouse makes a gift to a trust for the benefit of the other spouse and potentially other members of the family. A "SLAT" operates like a "Bypass Trust" created during the lifetime of the grantor. The goal of a "SLAT" is to remove assets from the grantor's estate and the grantor's spouse's estate for federal estate tax purposes. It operates like an "IDIT" / "IDGT" with some additional benefits. First, in giving assets for the benefit of a spouse, a married couple can have all the benefits of an "IDIT"/"IDGT" without having to feel like they have given away all assets to their children. A "SLAT" also can be an attractive option for wealthy clients with young children who want to defer how trusts for children should be structured until a later date, and give the grantor and/or the grantor's spouse more time to figure out the best trust structure that benefits their children. In this case the SLAT beneficiary is usually given a testamentary power of appointment that could be exercised in favor of descendants post trust creation. While a "SLAT" offers many estate planning advantages to a harmonious married couple, there are a few potential negatives associated with this type of trust. First, the majority view is that a SLAT must be a "Grantor Trust" as to the grantor spouse during the shorter of (1) the lifetime of the grantor or (2) the lifetime of the grantor's spouse under Internal Revenue Code § 677. Most practitioners believe that by default a "SLAT" will be considered a "Grantor Trust" even if the grantor and the grantor's spouse later divorce.[46] This could be a major disadvantage if the grantor and the grantor's spouse divorce, because the grantor could be legally obligated to

[43] *See* Tex. Prop. Code § 41.0021 and Tex. Tax Code § 11.13.

[44] *See* Rev. Proc. 2007-45, §§3 and 5.02(2); Rev. Proc. 2007-46, §§3 and 5.02(2); PLR 201216045.

[45] *See* Treas. Reg. § 25.2702-3(b)(1)(ii)(A)-(B) (GRAT annuity payments cannot exceed 120 percent of the stated dollar amount payable in the preceding year or the annuity interest will not be considered "qualified annuity interests").

[46] IRC § 672(e)(1)(A) provides that the grantor is treated as holding any power or interest of the grantor's spouse with respect to any individual "who was the spouse of the grantor at the time of the creation of such power or interest." Many practitioners believe that in a divorce context, § 672(e)(1)(A) applies to prevent IRC § 677 from applying. *But see* IRC § 677(a) (providing an exception to the rule that a grantor will be treated as the owner of any portion of the trust whose income is distributed to the grantor's spouse *if* the distribution requires

pay income tax bills for a former spouse he or she now despises – a painful proposition. There are potential ways to address this risk, but it is a risk nevertheless. Another risk associated with "SLATs" is the "reciprocal trust doctrine." Under the "reciprocal trust doctrine," if two parties create identical or a nearly identical trust for the benefit of one another, the Internal Revenue Service will treat the trusts as self-settled trusts for federal estate tax purposes, essentially rendering them ineffective for estate tax purposes.[47] However, there have been court cases and private letter rulings that imply that incorporating differences in trusts (e.g., different powers of appointment) will allow taxpayers to avoid the "reciprocal trust doctrine."[48]

5. **SNT** [S-N-T]

A "SNT" refers to both a "Special Need Trust" and a "Supplemental Needs Trust," which are essentially synonymous terms. These types of trusts are designed to supplement, not replace, public assistance programs provided by Medicaid, Medicare, Social Security, and SSDI, and other programs available to persons with disabilities. "SNTs" must be drafted carefully to prevent the assets inside the trust from being considered as "countable resources" that could reduce or eliminate a disabled person's access to means-tested public assistance benefits. Often public assistance benefits provide only minimal levels of support, and "SNTs" fill in the gaps. A "SNT" is a trust designed to provide for a beneficiary's particular needs. A third-party "SNT" is created by a grantor other than the disabled person, and generally is not required to be a "Medicaid Payback Trust" that will be required, upon the beneficiary's death, to repay Medicaid for any funds expended for the beneficiary's benefit during his or her lifetime. A trust a beneficiary creates for himself or herself and court-created trusts for disabled beneficiaries are referred to as "Self-Settled SNTs," "First Party SNTs,"(d)(4)(A) Trusts" (named for 42 USC 396(d)(4)(A) the statute authorizing such trusts), or "Medicaid Payback Trusts."[49]

6. **SPAT** [spAT]

A "SPAT" is a "Special Power of Appointment Trust." A "SPAT" is a type of trust in which the grantor gives the beneficiary a power of appointment, which creates the possibility that the transferred property will return to the donor through an exercise of the power of appointment in the grantor's favor. Many practitioners view "SPATs" as risky. The IRS could argue that all of a "SPAT's" assets are included in the donor's taxable estate under Internal Revenue Code § 2036 under the theory that there was an implied agreement between the grantor and the beneficiary that the beneficiary would return the assets to the grantor. If a client desires to create a "SPAT," the beneficiary who exercises a power of appointment in favor of an appointive trust for the benefit of the grantor should not give the grantor a power of appointment over the appointive trust, or else the appointive trust assets could be included in the initial grantor's estate under Internal Revenue Code § 2038. This situation could result in inclusion under Internal Revenue Code § 2038 because the IRS might argue that such power of appointment constitutes a power to alter, amend, revoke, or terminate the trust. Texas Trust Code § 112.035(d)(2) provides protections to a donor who receives assets back from their spouse through an inter vivos "QTIP" or "SLAT" via an exercise of a testamentary power of appointment. However, this protection is not explicitly extended to "SPATs" among non-spouses. If a client wants to utilize a "SPAT" for anyone other than a spouse, they should consider establishing such a trust in a "DAPT" state, which might provide additional protections to the grantor of a "SPAT."

7. **Spendthrift Trust** [spENd-thrift trUHst]

The terms of a "Spendthrift Trust" provide that the interest of a beneficiary in the income or principal of the trust (or both) may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.[50] Under Texas law, "Spendthrift Trust" terms are implied in a trust if the trust agreement merely states it is a "Spendthrift Trust." A

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the approval or consent of any "adverse party" as defined in IRC § 677) and Raatz, Les, "Divorce, SLATs and the Grantor Trust Section 677 Ghost: Time for an Exorcism," *Trusts & Estates* (August 2015) *available at* https://www.dickinson-wright.com/-/media/documents/documents-linked-to-attorney-bios/raatz-divorce-slats-and-677-815-article.pdf?la=en&hash=330718DEEEFE89460389AE81039BA4F33CB43FD8.

[47] *See e.g. Lehman v. Comm'r*, 109 F.2d 99 (2d Cir. 1940) (But note these transfer were made before IRC § 2036 was impended) and *U.S. v. Grace*, 395 U.S. 316 (1969) (in which the Supreme Court held that reciprocal trust doctrine applies when the trusts are interrelated and the arrangement between the parties leaves the settlors in approximately the same economic position as they would have been in if they had created the trusts naming themselves as life beneficiaries).

[48] *See Estate of Herbert Levy*, T.C. Memo. 1983-453 (1983) (holding that nearly identical trusts in which one spouse had a broad non-general lifetime power of appointment and the other spouse had no lifetime power of appointment were not reciprocal trusts) and PLR 9643013 (holding that nearly identical trusts set up by spouses were not reciprocal where one spouse had a power of appointment in favor of issue and spouses and the other spouse did not have a power of appointment). For an excellent discussion on the "reciprocal trust doctrine" *see* Steiner, Bruce D. and Shenkman, Martin M., "Beware of the Reciprocal Trust Doctrine: If Not Set Up Properly, a Popular Strategy Could Backfire," *Trusts & Estates* (April 2012) *available at* https://www.kkwc.com/wp-content/uploads/2015/04/uf_Beware_of_the_Reciprocal_Trust_Doctrine.pdf.

[49] *See* Weeks, Tresi Moore, *Special Needs Trusts*, State Bar of Texas 31st Annual Estate Planning and Probate Drafting (October 2020) ch. 12.

[50] Tex. Trust Code § 112.035(a).

"Spendthrift Trust" is used to prevent creditors from being able to satisfy claims against a beneficiary with trust assets while they are held inside the trust (i.e., before they are distributed to the beneficiary). Under Texas law, a self-settled trust does provide creditor protection benefits to the grantor of a trust. [51]

8. **Survivor's Trust** [sir-VIV-uhrs trUHst]

A "Survivor's Trust" is typically the "A Trust" under an A-B estate plan or an A, B, C estate plan for a married couple. It is essentially a "Revocable Trust" for the benefit of a surviving spouse, which is often funded with the surviving spouse's property and/or assets to which the deceased spouse wishes for the surviving spouse to have unfettered access. A "Survivor's Trust" is a "Grantor Trust" with respect to the surviving spouse. *See* "A Trust" and "Management Trust." *Cf*. "B Trust"/"Bypass Trust," "C Trust," "Marital Trust," "LEPA Trust," and "QTIP Trust."

T:

1. **Testamentary Trust** [test-uh-mEN-ter-ee trUHst or tESt-uh-men-ter-ee trUHst]

A "Testamentary Trust" is a trust that is created at the death of the grantor of the trust. For example, a "T CLAT" is a short form for "Testamentary CLAT," and it is created at the death of its grantor. Because a "Testamentary Trust" is created at the death of a grantor, making him or her, unavailable to modify or revoke a trust, a testamentary trust is an "Irrevocable Trust" and is almost always also a "Non-Grantor Trust." However, an "Irrevocable Trust" or a "Non-Grantor Trust" is not necessarily a "Testamentary Trust." *Cf.* "Inter Vivos Trust."

2. **Totten Trust** [tAUGHt-en trUHst]

A "Totten Trust" is a payable-on-death ("POD") bank account by another name. With this type of account, the account owner has the use and benefit of the account during his or her lifetime. At the account owner's death, legal title to and benefit of the account passes to the beneficiary named in the account contract without the account being required to go through the probate process.

3. **Twenty-Five Oh Three C (2503(c)) Trust / 2503(c)** [twentEE-five oh thrEE sEE trUHst]

A "2503(c) Trust" is a trust that meets the definitional requirements set forth in Internal Revenue Code § 2503(c). This Internal Revenue Code section provides an exception to the general rule that only gifts of a present interest qualify for the gift tax annual exclusion. A client can take advantage of the gift tax annual exclusion to make gift transfers to donees each year without reducing the client's Basic Exclusion Amount. The first $15,000 gifted to or for the benefit another person is not counted as utilizing the client's Basic Exclusion Amount if the gift is of present interest *or* if the gift is to a "2503(c) Trust" in which: (1) the trustee has the power to distribute trust property and income for the minor's benefit until the minor attains age 21, (2) the child must receive the trust property at age 21, and (3) the trust property must be includible in the child's estate if he or she does not survive the trust term, either (a) because the trust agreement provides that the assets are payable to the minor's estate or (b) because the minor is granted a general power of appointment over the remaining trust assets. *Cf*. "Crummey Trust" and "Twenty-Six Forty-Two C (2642(c)) Trust."

4. **Twenty-Six Forty-Two C (2642(c)) Trust / 2642(c) Trust** [twentEE-six fortEE-tEW sEE trUHst]

A "2642(c) Trust" is a trust that meets the definitional requirements set forth in Internal Revenue Code § 2642(c) so that contributions to the trust qualify for the Generation-Skipping Transfer ("GST") tax annual exclusion. Only certain types of trusts qualify for the gift tax annual exclusion, and even fewer trusts qualify for GST tax annual exclusion. In fact, it is very common for a gift to a trust to qualify for the gift tax annual exclusion but not qualify for the GST tax annual exclusion. In such event, there will be a mismatch in the amount of Basic Exclusion Amount versus GST exemption that the taxpayer has used with respect to the transfer. A trust is a "2642(c) Trust" if (1) the trust has a single beneficiary during the initial trust term, (2) the beneficiary of the trust is a "skip person" with respect to the transferor to the trust,[52] and (3) if the beneficiary dies before the trust is completely distributed to the beneficiary, then the remaining trust assets must be included in the beneficiary's estate for federal estate tax purposes. A "2642(c) Trust" provides a way for a grandparent to provide for a grandchild without tapping into their GST tax exemption and without incurring GST tax.

[51] *Id*. at § 112.035(d). However, note that in certain circumstances the beneficiary of a trust will not be considered a Settlor of a trust and thus denied spendthrift protection (e.g., Donor creates an inter-vivos "QTIP Trust" or "SLAT" and the beneficiary spouse exercises a power of appointment in favor the donor spouse). *Id*. at 112.035(f)-(h).

[52] *See supra* note 25.

U:

1. **Unitrust** [yOO-ni-trUHst]

A "Unitrust" is a trust in which a beneficiary receives annually, a fixed percentage of the fair market value of its assets based on the floating value of the trust assets. If the trust's assets increase in value, then the unitrust payment will increase in amount. If the trust's assets decrease in value, then the unitrust payment will decrease in amount. *See* "CLUT," "CRUT," and "GRUT."

2. **UTC Trust** [U-T-C trUHst]

A "UTC Trust" is a trust governed by the Uniform Trust Code adopted by a particular state. The Uniform Trust Code ("UTC") is a model law in the United States, which is adopted in some form by at least 34 states, including: Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. While there are some variances among the trust laws that UTC states adopt, typically, the similarities outweigh the differences.

V:

1. **Voting Trust** [vOH-ting trUHst]

A "Voting Trust" is a trust created to combine the voting power of shareholders, partners, or members of an entity by temporarily transferring their voting power to the trustee of the trust. Sometimes, the trustee is obligated to vote the shares based on the wishes of a majority of the beneficiaries of the trust. "Voting Trusts" might also be used as solution if one or more shareholders, partners, or members has a conflict of interest with respect to the business, to pool the voting power of shareholders, partners, or members, or to help prevent hostile takeovers of businesses. If a company is regulated by the Securities and Exchange Commission ("SEC"), the company must file a copy of the "Voting Trust" agreement with the SEC. Furthermore, under Texas Business Organizations Code § 6.251, companies operating in Texas must follow specific steps relating to "Voting Trusts." Specifically, a copy of the "Voting Trust" agreement must be deposited with the entity at the entity's principal or registered office and must be available for examination by an owner or holder of a beneficial interest in the "Voting Trust."

W:

1. **WING** [WHing]

A "WING" is an "ING Trust" or "Intentionally Non-Grantor Trust" / "Irrevocable Non-Grantor Trust" sitused in Wyoming. *See* "ING." *Cf.* "DING," "NING," and "SDING."

2. **WYQST** [wahy-kWHIst]

A "WYQST" or "Wyoming Qualified Spendthrift Trust" is an "Asset Protection Trust" sitused in Wyoming.

X:

The author could not think of a trust that starts with the letter X. If you can, please contact the author so that she can update this paper.

Y:

The author could not think of a trust that starts with the letter Y. If you can, please contact the author so that she can update this paper.

Z:

The author could not think of a trust that starts with the letter Z. If you can, please contact the author so that she can update this paper.