



CONFIDENTEM

PRIVATE OFFICE

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REVOCABLE SETTLOR RESERVED POWERS TRUST

CORNERSTONE OF A FAMILY'S ESTATE AND SUCCESSION PLAN

This document is a supplement to “The Last Will and Testament, Foundation of an Effective Estate and Succession Plan”.

A Will is the foundation of an individuals' estate and succession plan; nevertheless there are shortcomings, but these can often be resolved by combining the Will with a trust.

Shortcomings of a Will include:

- It is a public document, exposing the individual's wealth to public scrutiny.
- The Will only comes into force after death, it does not allow for the management of financial affairs in the event of mental incapacity.
- Assets are subject to probate, meaning assets are frozen until probate is obtained.
- Testamentary provisions for young children in a Will are basic; far more sophisticated provisions can be built into a trust.
- Changes require either the attachment of a codicil or a rewrite and execution of the Will.
- A Will typically lacks the flexibility and discretion to deal with unknown future events such as tax issues, divorce or creditor issues of beneficiaries.
- A Will can be contested; if using a trust, settlements made during the lifetime of the settlor can significantly reduce the opportunity for a party to contest the settlement and succeed.

THE REVOCABLE SETTLOR RESERVED POWERS TRUST (SRPT)

The SRPT is, in effect, a 'living trust', settled during the settlor's lifetime. The settlor(s) retain control over the assets during their lifetime by holding the power to revoke the trust and to appoint various parties to the trust, including the investment director (who can be the settlor). In addition, the settlor(s) will typically be the principal beneficiaries during their lifetime. This enables them to distribute capital or income to themselves at any time.

Key benefits of an SRPT to offset the shortcomings of a Will include:

- This is a private transfer of asset ownership to the trustee. Both the transfer and future intentions of asset distributions, as directed to the trustee, is outside the public domain.
- The trustee can utilise their discretion to take action during the settlors' lifetime. For example if the settlor(s) becomes mentally incapacitated, the trustee can ensure that the financial requirements for their care and welfare are met, whilst taking over the investment management of the trust assets in accordance with the settlors' guidance (set out in the letter of wishes).
- A trust is not subject to probate administration; as the assets have already been transferred to the trustee, immediate action can be taken.
- Where young children are involved, the trustee can be guided to take appropriate action. The letter of wishes, attached to the trust deed, can specify how to meet educational and welfare costs, and create an equitable distribution plan for the beneficiaries, both in terms of amount and timing of such distributions.
- Changes to the settlor(s) wishes post their demise or mental incapacity can be made by amending the letter of wishes.



The letter of wishes, although not legally binding, provides guidance to the trustee on the exercise of their powers under varying scenarios.

- An SRPT allows the trustee to exercise their discretion (post the demise of the settlor(s)). This can be very important in planning the distribution of assets. For example, a beneficiary may be in the midst of a divorce or creditor proceedings, so it would be inopportune for them to receive the benefits at such time. The trustee can use their discretion to adjust the timing of distributions. The settlor(s) can also appoint a protector, whose role is to protect the interests of the beneficiaries. A protector may have varying powers, including the power to change the trustee, and the requirement that they approve distributions.

SRPT OR STANDBY SRPT

It is highly unlikely that all assets can be settled to the Trust during the settlor(s) lifetime. Normally bankable assets are the prerequisite, whilst real estate, private equity and other assets may be settled post demise by having the Will “pour” these assets into the Trust. An excellent example is Michael Jackson’s Will, available online, which pours his assets into his Living Trust, thus protecting the privacy of his eventual intentions.

The question for many families is whether to substantially settle an SRPT during their lifetime or to establish the SRPT as a Standby Trust. The Standby Trust is a fully established SRPT, with an attached letter of wishes. However it is only settled with a nominal sum (\$10). The settlor(s) then draft their Will(s) to leave their estate or specific assets to the Trust on their demise. The result is a lower cost structure in place for the family which comes into force on death, notwithstanding that it does not solve many of the issues identified with a Will (i.e. probate).

In addition to having the Will pour assets into the SRPT or Standby SRPT, in order to cater for mental incapacity, a Lasting Power of Attorney can be put into place which will allow the attorney to transfer assets to the Trust when mental incapacity is proven, and where the settlor will then benefit from the management of a professional trustee who, under the terms of the trust, can cater for their welfare needs.

SUMMARY

The SRPT or Standby SRPT is a highly attractive asset holding and succession planning tool. It is generally tax neutral (during the settlor’s lifetime), and gives considerable peace of mind to the settlor(s) that they have a platform for the professional management and administration of their assets post their demise or mental incapacity. The choice is normally driven by cost considerations or familiarity. The Standby Trust provides an entry level solution, which can be built up as the family’s wealth or comfort level increases; whilst for the more experienced and higher net worth families, the fully settled version can be established from outset.

For further information, please contact:

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The information given in this memorandum should be used as a guide only.
Before making significant business decisions, professional advice should be obtained.