

Irrevocable Life Insurance Trust Provisions

An experienced estate planning attorney will typically have his or her own ILIT templates, which are customized to fit a particular client's needs. Following are some provisions that the attorney might wish to consider incorporating into the basic template.

Accessing Living Benefits.

“Living benefits” can include long-term care benefits provided by policy riders, as well as accelerated benefits for terminal, chronic, or critical illness. There are several approaches to designing an ILIT to be able to utilize the living benefits features of the life insurance policies.

The Trustee can be given discretion to access living benefits

The Trustee, in its sole discretion, may apply under one or more insurance policies on the life of the Grantor owned by the trust for long term care benefits and/or critical, terminal, or chronic illness accelerated benefits payable under the provisions of, or riders to, such policies.

Or some third party, other than the insured, can be given the power to direct the Trustee to apply for such benefits.

Upon receipt of written notice from the Grantor's spouse or [named beneficiary of the trust who has reached the age of majority], the Trustee shall apply under one or more insurance policies on the life of the Grantor owned by the trust for long term care benefits and/or critical, terminal, or chronic illness accelerated benefits payable under the provisions of, or riders to, such policies. Such notice shall specify whether the Trustee is to apply for long term care benefits or for accelerated benefits for critical, terminal, or chronic illness, or for some combination of benefits, and in what amounts. The Trustee shall obtain and file all proofs and other documents required by the insurers in connection with such claims.

Distributing Living Benefits

Once the Trustee has received living benefits under the life insurance policies, the trust document must provide a way for those proceeds to be distributed appropriately. Clearly, the Trustee cannot distribute to the Grantor/Insured directly, as that would likely include the death benefits in the insured's estate.

One approach is to make distributions to one or more beneficiaries, who are then free to choose whether or not to pay the insured's LTC or medical expenses:

The Trustee shall pay or apply all or any part of the net income of the trust to or for the benefit of the Grantor's descendants, in such proportions, equal or unequal or all to one person, as the Trustee in its discretion deems advisable.

For this latter approach to work, it is important that the living benefits be characterized as "income" for trust accounting purposes. Generally, this can be provided for within the trust document:

The term "income" shall not include lump sum death proceeds of any life insurance policies which may be held by this Trust. It shall, however, include earnings on such proceeds, as well as long term care benefits and/or critical, terminal, or chronic illness accelerated benefits payable under the provisions of, or riders to, such policies, and death proceeds payable under some other settlement option under such policies.

Another alternative would permit the Trustee to exercise discretion to make distributions of *principal* as well as income to one or more of the Grantor's descendants.

The Trustee shall pay or apply all or any part of the net income or principal of the trust to or for the benefit of the Grantor's descendants, in such proportions, equal or unequal or all to one person, as the Trustee in its discretion deems advisable.

Perhaps the best approach – analogous to the manner in which death proceeds are used to create estate liquidity – is to give the Trustee discretion to make loans or purchase assets so as to put money in the hands of the Grantor without the risk of including the life insurance proceeds in the Grantor's estate. This can be done by expanding slightly the relevant provision in the Trustee Powers section:

To make bona fide loans to the Grantor or the Grantor's spouse, or to their respective estates, upon such terms and security as the Trustee shall determine consistent with arms-length dealing; to purchase assets from the Grantor or the Grantor's spouse, or from their respective estates, at their fair market value as of the date of such purchase or as of the making of a valid contract for such purchase.