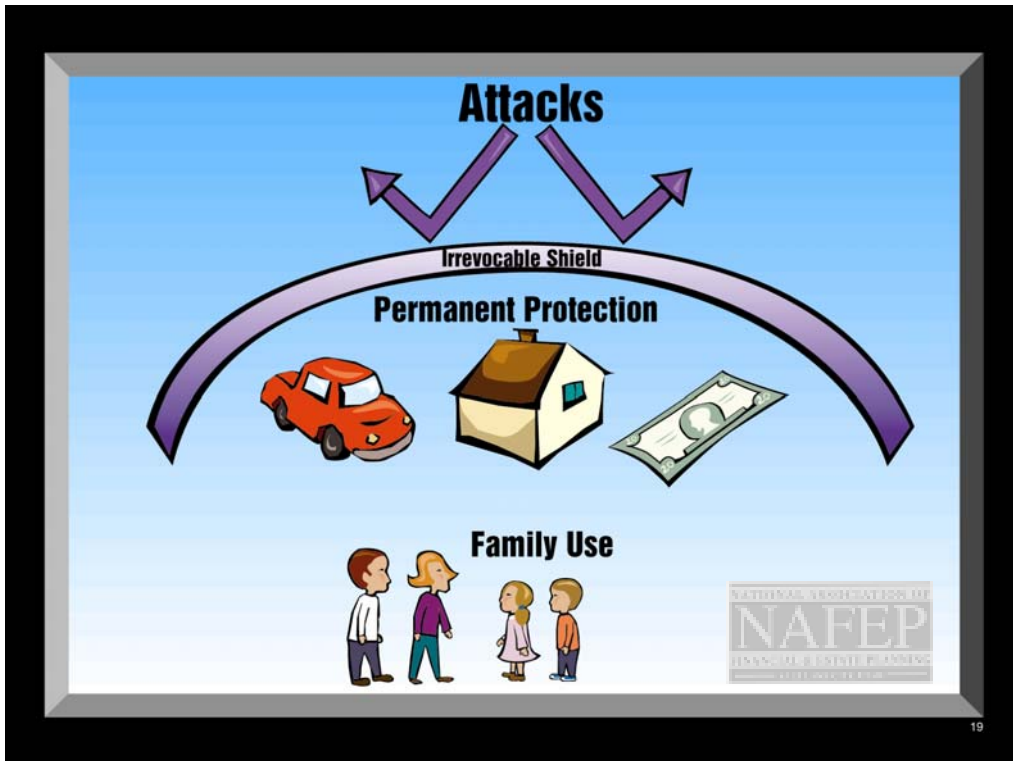

Estate Planning with Asset Protection[©]



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ESTATE PLANNING WITH ASSET PROTECTION

Premier II Life Estate Trust

Disclaimer. One of the important benefits of a Premier II Life Estate Trust is its ability to provide protection from lawsuits, liens and fraud. However, neither NAFEP, NAFEP Members nor anyone else can guarantee that your Premier II Life Estate Trust will never be compromised by a legal or fraudulent action. No one can predict with certainty that you will setup and use your trust correctly or how a judge may rule in a given case. This is an issue which is common to all types of legal entities and forms of ownership. The best that we can be safe in saying is that, if you are sued or a scam is attempted, the correct use of a life estate trust should allow you to fare significantly better than you would have fared without the trust.

In this Section of *The Answers To Life's Financial Risks*, we will discuss the basics of asset protection planning, specifically how to protect your assets from lawsuits, liens, other claims and fraud. As NAFEP members talk to families about estate planning, we find that they are not terribly worried about probate avoidance, estate taxes or taking care of their heirs. In other words, the benefits that a family would gain from a conventional living trust aren't really at the top of their priority list where their assets are concerned. These families are usually much more worried about keeping their savings and property safe and secure right now. They are worried about getting sued and other legal problems. Why is it that people are so worried about legal problems, scams and fraud? Why is their biggest concern the need to feel safe and secure? Well, check the facts out in the following topic.

Lawsuits And Other Financial Risks. What could cause a lawsuit against either your trust or against you individually? What threats and risks do your finances, your entire estate face on a routine basis?

1. According to the National Center for State Courts⁽¹⁾, 16 million civil litigation cases were filed in the most recent year surveyed. That's a litigation for every 13 adults in one year.
2. One of the biggest lawsuit threats is from auto accidents. According to a recent report from the U.S. Justice Department⁽¹⁾, auto accidents make up 60% of all tort lawsuits. This report also revealed that where a

wrongful death claim was involved in automobile lawsuits, the average award to the plaintiff was over two and one half million dollars. A million dollars of auto liability insurance doesn't begin to cover just the average claim of this type.

3. Rental property or dangerous equipment which you own carries the risk of accidents and therefore expensive litigation. According to another recent report from the U.S. Justice Department⁽²⁾, injuries and medical claims from rental property were the second leading type of tort lawsuit. Rental property owners live in constant fear of lawsuits from accidents, as well as medical claims due to mold or lead paint poisoning
4. A financial risk which has exploded since the 1980s is the cost of medical care. A weekend stay in the hospital can result in a tab of 250 thousand dollars. A more serious illness or accident will easily set a patient back more than 1 million dollars. Even with medical insurance, large amounts of medical expense are not covered and it is easy to incur costs well in excess of coverage limits. And consider the increased risk if you lose medical coverage or cannot obtain it. Medical costs could easily be the greatest risk of massive damage to the estates of people of all ages.
5. One common risk is joint tenancy forms of ownership on either real estate or financial assets. A lawsuit against either of the two joint tenants exposes the whole property to a judgment. For example, often a parent will name an adult child as a joint tenant on some asset. Later, the child may get sued, have tax problems or get divorced. Then the IRS or the divorcing spouse of the child takes part or all the property in a legal action or divorce settlement.
6. Another litigation source is problems with your creditors, possibly due to your inability to pay promptly, or perhaps just a dispute. However, we must caution that asset protection mechanisms may not avoid challenges from creditors for debts or liabilities which existed before the mechanism was put in place.

7. A widespread problem for elderly and vulnerable estate owners is rip-offs by con artists and unscrupulous relatives. Quite often these vulnerable persons end up as paupers, though they led financially comfortable lives before the rip-off.
8. Business owners are especially wide open targets for lawsuits. Lawsuits against businesses can come from employees, customers, creditors, subcontractors, competitors, and regulatory government agencies.
9. One concern that many single adults have is protecting their existing estate from a possible divorce suit after they become married. Married individuals with separately owned property often have these same concerns. These claims can be very expensive, and many times they are without merit, but they get their day in court anyway, and you never know what will happen in divorce court.
10. And a final source of trouble on our list is just being a litigation or scam target because you have an above average income or net worth.

And this is far from a complete list!

If You Are Sued And Lose, What Could Be Taken From You? Everything you own! A judgment exposes your entire net worth, your whole estate, even your home. There is no limit to your potential loss. So how can you protect your assets? To begin our explanation of how to obtain the safety and security you need, let's explain what does not give you asset protection, what leaves you very exposed.

The common and well known type of trust, usually referred to as a "living trust" (such as the NAFEP Premier I Living Trust discussed in Section 2 of this publication), provides no asset protection, no safety or security for you, your retirement or your family. Your assets can still be attacked and subjected to lawsuits, judgments, and creditors. This trust is also ineffective against con artists and dishonest relatives who will try to rip you off when your mind begins to falter. The first problem with the living trust is that it is fully revocable by the trust grantors. This design feature, which is common to all living trusts, allows the grantors to remove any amount of trust assets or

principal for their own use at any time. If you have the power to take trust assets for your own use, a court will order you to do just that to pay any judgment or legal claim against you. An additional design problem is that the grantors almost always are trustees of their living trust. As trustees they are the holders of the legal title to trust assets, the signer who is required to take money or assets out of the trust. This allows con artists and dishonest relatives to rip you off as easily as they could if the trust did not exist. When you are feeble minded, you still have the trustee's power to sign checks, deeds, etc., under the deceptive influence of dishonest people.

Premier II Life Estate Trust Benefits. What we need is a way to put our assets into a fortress of protection. We need a family trust which gives us the privacy and security we are worried about, right now, while we are alive and healthy. To get the protection and privacy we need requires a more advanced family trust. The standard living trust just isn't up to the job. So NAFEP developed a structure specifically to provide the safety and security you need. This protection is: Legal, effective, simple and affordable. This is done with a trust which we call, the **Premier II Life Estate Trust**. The Premier II provides all the estate planning benefits which you receive from the standard living trust, which primarily are benefits that your heirs receive after your death. But this fortress goes far beyond the living trust to provide important new benefits while you are still alive:

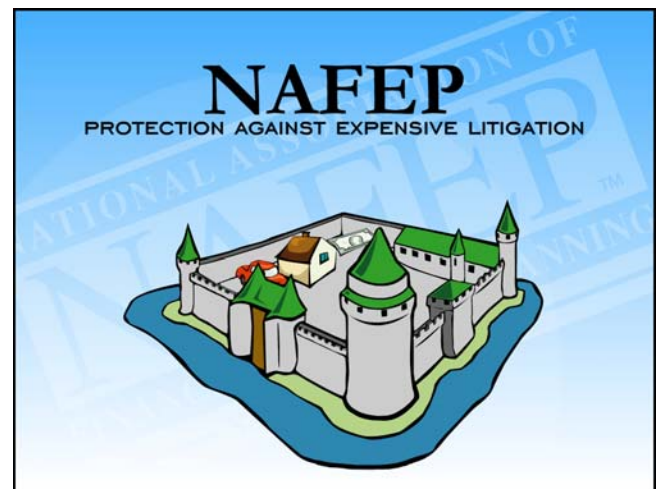


Figure 1

- **Asset Protection.** Protecting one's property from lawsuits, liens, judgments, creditors, huge medical claims, divorces, etc.

- **Protection From Rip Offs.** Protecting the assets of elderly or other vulnerable estate owners from con artists and unscrupulous relatives.
- **Financial Privacy.** With this protection the Premier II can shield financial activities and property ownership records from most private and bureaucratic snooping.
- **Limited Liability.** This feature means that the trust grantor can reduce or eliminate personal liability for damages, judgments and claims that may result from the ownership of property which has the potential of leading to an accident or medical claim.

The Premier II Life Estate Trust is a family friendly type of irrevocable trust, one which is completely flexible and simple to use by you, the Grantor and your heirs. Throughout the grantors' lifetime, they have full control and benefit of the property itself. No one but the grantors, not even the trustee, can change or affect this control and usage of your property. At the same time, the property is held safely behind the irrevocable wall of the trust. Irrevocability is a huge benefit to you, the grantor. Rather than being a problem or an enemy, it is your best friend, standing up to protect the assets in a time of need. Irrevocability simply means that you have provided a protective shield for your property. Since the outside attackers cannot revoke the trust they cannot get at the property that is held just for you and your family.



Figure 2

Maintaining Control Over Your Property. But, you may ask, how can I have control of something that is placed in an irrevocable trust? Don't I give up

the title to my assets to the trustee? The way you maintain control is actually quite simple. Let's give an example of how you do this in everyday life. Assume that you purchase a new car which you finance through the bank. You have possession and use of the car, but the banker holds or controls the legal title (in some states the lender puts a lien on the title, but the effect is the same). You get to use the car anyway you want, you buy insurance for it, repair it, register it each year, haul passengers and so forth.

In the meantime, the banker simply holds the title to your car. He has no role at all in your use and control of the vehicle. He doesn't get involved and doesn't even want to, even though he technically is a trustee of your car. That is, he has an obligation to the bank's owners and depositors to safeguard the money invested in your car. And, he has a fiduciary responsibility to protect your title so that no one can take away this mutual investment of yours and the bank, while at the same time doing nothing which inhibits you from receiving the full benefit of the vehicle. The only time the banker gets involved with you is when you want to sell the car. He will then readily cooperate by signing the title over to the new buyer. At all times you think of the car as yours, and give very little thought to the fact that the bank holds the title. That is because your use of the car is as complete and unaffected by the bank as your usage would be if you held the title. The banker, then, has a passive relationship with you in his role as trustee of your car, by simply holding the title.

The Premier II Life Estate Trust is carefully designed to provide this same type relationship with its trustee. The trustee has no day to day role in your life or interaction with your property. He merely holds the legal title so that no one can take it and the property away from you. Like the banker trustee above, this trustee and the trust itself have a passive role in your life. Only when you sell property, die or become mentally incapacitated will the trustee ever need to have some active involvement with you or your property. And that involvement will simply be to sign over the legal title should you decide to sell or give away some of your assets, and to deal with your property and heirs after you die.

Something few people realize is that most standard living trusts include provisions which create one or more *irrevocable* trusts upon the death of the first spouse. This arrangement is the "B" or "bypass" trust described in the previous Section of this publication. The irrevocable bypass trust normally has a trustee

who is someone other than the surviving spouse. The bypass trust is a life estate trust for the surviving spouse. Interestingly, the bypass trust also provides asset protection, financial privacy, and most of the benefits of the Premier II trust, while the property left in the surviving spouse's "A" trust does not have those benefits. Even though the bypass trust is irrevocable, the surviving spouse and the rest of the family continue to use the bypass trust property without the slightest problem from this irrevocability. Living trust attorneys must be comfortable putting clients into this type trust. They must understand that irrevocable trusts work well in actual usage. All we are doing with the Premier II is moving that same irrevocable mechanism forward in time so that both spouses receive full protection benefits right now.

This Concept is a "Life Estate". A major feature of the Premier II is that it is a "life estate" trust. The term "life estate" is a well known and understood legal term which means that a property owner has passed the legal title of certain property to someone else (the heirs), while retaining the life time use of that property. A life estate leaves all income, benefit and usage of the property to the life estate holder, the trust grantors. Life estates can be created with or without a trust. A well known estate planning practice is for a parent to deed real estate to his or her child, while retaining a life estate in the property. In this usage the life estate is created through the property deed itself and does not involve a trust, though a trust can create a much better life estate. The reason for using a life estate trust is that this technique leaves the control and usage of the property with the grantors while protecting the property from legal problems and con artists.

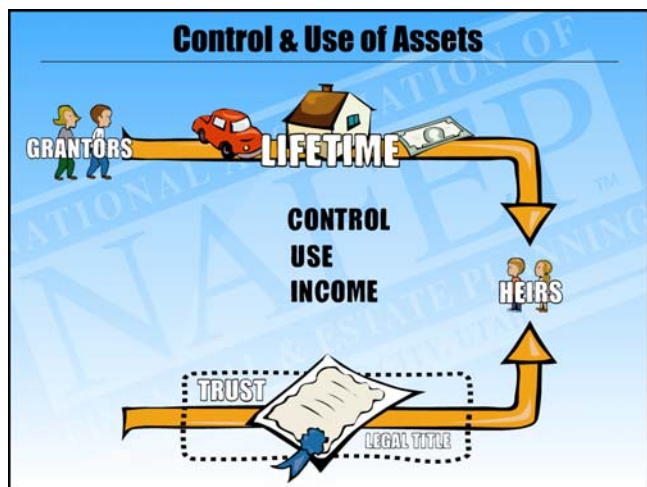


Figure 3

What this means, then, is that a life estate divides your property into two parts: One part is the legal title, which the trustee holds, and the other part is the equitable or economic interest which you hold and control. Your economic interest in the property is the control and use of, plus the income produced by the property. You get this throughout your lifetime. After your death, both parts of your property are merged together when the trustee passes everything out to your heirs. Note how similar this is to the process which happens where a bank is holding the title to a car when you decide to sell it. The similarity of these two events helps explain and reinforce the concept of the trustee's limited, passive, but necessary role during your life.

Trust Design For Lawsuit Protection. Let's briefly illustrate the structure of a typical Premier II Life Estate Trust. In most cases, but not all, we actually implement multiple trusts as we are illustrating here. Each of these trusts is an independent entity in the American legal system. That is, they are not legally tied together, but are each an outright owner of the property titles which are conveyed to the trusts. As in the car loan example above, the trustee will passively hold and protect the title to property which you continue to control and use. The family automobile has its distinct owner, the family home has a different and distinct owner, and the Primary Trust is a third, distinct owner of your financial assets. None of the ownerships are the same.

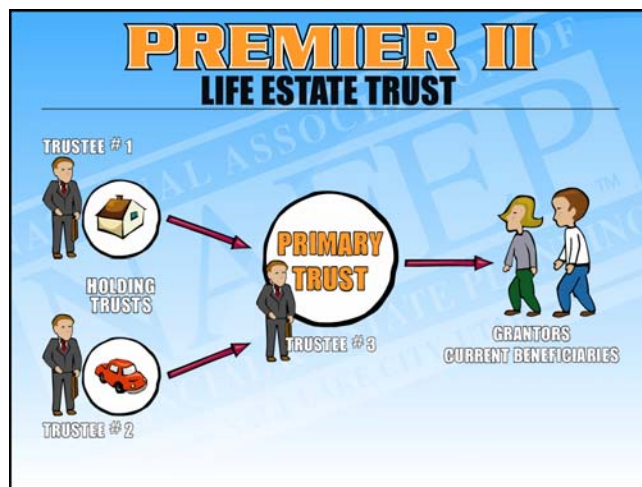


Figure 4

As a result, if something causes one of the trusts to be sued directly, such as an auto accident which is your fault, you will have that lawsuit isolated to that

one trust and leave the rest of your assets unaffected. A successful claimant in the auto accident example will be able to get the auto liability insurance, but they will have no claim against the other trusts or the assets in them.

If someone sues you directly, in a malpractice suit for example, well, you don't own anything. Legally speaking the grantor's heirs own the rights to the physical property in the trusts (though the Grantor owns lifetime control). The trustee is holds the legal title for the grantor's heirs, to give it to them after the grantor dies. These are the important ownership concepts which prevent a claimant against the grantor from attaching trust assets. In your Premier II trust, you are merely the person who gets to use the property. The legal title is held by the trustee, while your children or heirs have ultimate rights to the whole thing. And you cannot be forced to give up something you don't own, so all of the assets are isolated from lawsuits which are directed at you personally. Your income may be vulnerable to this type lawsuit, but your assets are out of harm's way.

Privacy Factor and Lawsuit Deterrence.

Another major benefit from the Life Estate Trust is the privacy of ownership which it creates. For example, all real estate ownership records are readily obtainable, public records. The internet and other sources of information will expose a lot more about your net worth. When creating your Premier II trust, a NAFEP member will assist you with choosing trust and trustee names which will eliminate the connection with you. Re-titling your assets into these names removes your existing name connections to property ownership records. Subsequent research and snooping by attackers and creditors won't compromise and expose you to unnecessary risk. Most likely the only way an attacker could determine what assets supported you, or were tied to you financially, would be by first obtaining a judgment against you. That of course requires that they have completed a successful lawsuit. Then the attacker could probe you to disclose your assets and sources of income in a separate, asset hearing. Just having a suit filed against you does not give an attacker a legal basis or mechanism to inquire or force you to divulge your financial resources. For an attacker to force disclosure from you, they must first win their lawsuit, a big hurdle itself, and then obtain a judgment.

Lack of information about your assets will discourage many or most legal attacks from ever getting off the ground. Legal attackers often fold if

they cannot determine in advance that their target has the resources to pay the judgment they might seek. Their attorneys won't even take on the case on a contingency basis without knowing the payoff is there. That forces the attacker to pay legal fees upfront and ongoing, which will be huge, before the attorney will go to work. If they do go forward, win the case and obtain a judgment, they still have to go through the asset hearing process to obtain information about your trust. Then they must mount essentially a whole new lawsuit to attack the trust itself, in order to have a chance at getting the assets which you cannot give them. This will likely be a much bigger hurdle than the original lawsuit was, and in fact this hurdle is probably insurmountable. You still have the powerful asset protection mechanism of your trust in place for this second challenge. Having to front the cost of two lawsuits, with little or no assurance of getting paid even if both are won, is a formidable deterrent to stop attackers from ever starting or finishing this process. For more information on this subject, read the topic below, "What Is The Premier II Track Record?"

Revoking the Irrevocable. If your family unit decided to, they could remove any or all the assets from the irrevocable protection of the trust. A trust is simply a private agreement between the grantors and the trustee for the benefit of the beneficiaries. Anything which can be agreed to in a private agreement, can be undone later if the parties change their mind.

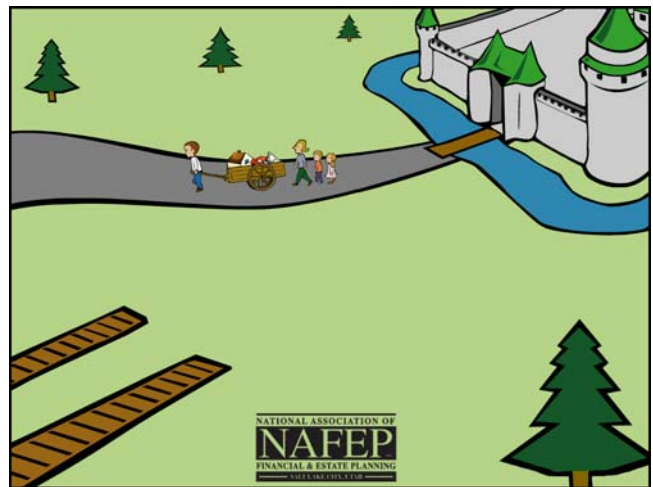


Figure 5

Does revoking or dissolving an irrevocable trust defy logic? Is this a radical concept or against the law? No, this simply means that trusts are somewhat like a

corporation. Technically, corporations are irrevocable too, because neither a minority shareholder nor an outsider can dissolve a corporation. The corporate shield of protection stands until a majority of the shareholders decide on their own to revoke or dissolve the corporation. Essentially the same thing applies to an irrevocable trust. The family unit as a whole may easily revoke the trust should they decide that would meet their needs better. But outsiders, a minority beneficiary and those who might prey on you cannot. To see the legal principle behind your right and ability to revoke an irrevocable trust, see the NAFEP research memo at the end of this Section entitled, *Can An Irrevocable Trust Be Modified, Revoked Or Amended?*

What Is The Premier II Track Record? NAFEP began offering the Premier II Life Estate Trust in early 1993. There are several thousand in place all across the U.S. As of the year 2005, approximately 20 Premier II clients have faced severe legal challenges that we are aware of. In every case the result has been what we suggest in the "Privacy Factor and Lawsuit Deterrence" topic above. That is, no attacker has gone after the trust. The furthest that any claimant went was to obtain a judgment against the Premier II client, and then settled for whatever they could get without attacking the trust. This has held true even in wrongful death claims (two auto wrecks and one industrial accident). In one bankruptcy case, which the client filed just over a year after putting the trust in place, neither the bankruptcy trustee nor any of the client's creditors chose to go after trust assets, though the existence of the trust was disclosed in court filings.

In one notable case of an unpaid debt in a deal gone bad, with a very aggressive litigant, the litigant easily won his lawsuit and got a judgment against the Premier II client. But then the litigant was thwarted by the existence of a well designed Premier II with an integrated corporation to run the trust client's business. After conducting an intense asset hearing and other aggressive tactics, such as attempting but failing to take the client's household possessions and safety deposit box contents, the litigant approached the client and offered to settle. No attempt whatever to break the trust was mounted, the cost and gamble to the litigant were apparently too high. The settlement result? The client paid 33 cents on the dollar for the total debt amount, and nothing for the litigant's legal fees. And that was against the protest and advice of the Premier II client's attorney who insisted that ten cents on the dollar was sufficient to

settle the case. Something else amazing about this case was that the client did not set up the trust until after the lawsuit was already in process. That definitely is not something you should rely on. A trust can be broken when it is set up after the legal claim or liability already exists. The client was fully informed of this risk in advance, but he decided that he had everything to gain and nothing to lose if the trust failed. So he went ahead with the Premier II, and his gamble paid off.

While some might say that the lack of a successful court defense of a Premier II is negative, quite the opposite case can be made. It is no coincidence that litigants keep backing off from attacking Premier II trusts. One after another they have decided not to gamble all the legal costs and time with such poor prospects of winning. The lawyers for the litigants may require that this part of the lawsuit be paid for by the litigant on an ongoing basis, with a big advance fee. In other words, no contingency basis from the attorney. The litigant doesn't know in advance what the trust owns or how much it is worth. They may have concerns that many of the trust assets have been domiciled in trust friendly states like Utah and Nevada. There is little or no case history for breaking this type trust. So there are powerful deterrents to inhibit a litigant from proceeding. And this is the best result of all for you. Preventing the lawsuit up front is much better than having to defend the trust in court, even if you win. If the litigant isn't willing to attack the trust, then at worst case you will force the litigant into a compromise you can live with.

None of the above cases are mentioned as a guarantee or legal opinion that your results will be the same. This information is simply presented as the outcome which NAFEP clients have related to us. For many reasons we cannot provide the names of the clients referred to above. There is no court case we can list where the trust itself was challenged, because to our knowledge that has not happened. And, we are confident that we would be informed if that kind of lawsuit did occur.

Trustee Arrangements. Now let's take a brief look at who your trustee can be. First of all, the trustee cannot be you, the trust grantor. As a trustee, the grantor would be deemed, correctly, to have full control of the title to trust assets. So, a judgment would force a grantor as trustee to give up the assets. That's one of the reasons the standard revocable living trust doesn't protect you. Also, if all three trusts have the same trustee and the same beneficiaries,

there is no legal distinction between the trusts. The reason we create three different trusts is to prevent a lawsuit against one trust from spilling over to the others. The separate trustee arrangement is the key to making that work. So we must have three different trustees.

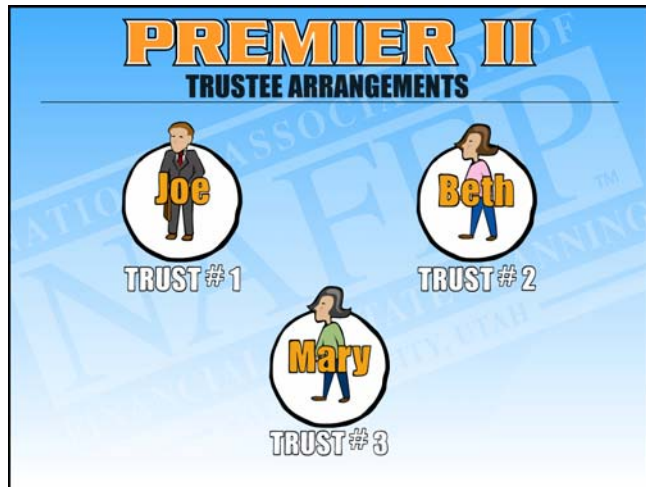


Figure 6

One trustee choice is to use your adult children. In Figure 6, next page, we are illustrating that the grantors have appointed their three adult children, Joe, Mary and Beth, as their three, separate trustees.

Another choice, and actually this is the most common trustee arrangement for a Premier II Life Estate Trust, is for each trust to have a separate corporate trustee along with one individual who serves as the common Co-Trustee. This can be the same individual for all three trusts. In this example, at Figure 7, Joe, the grantors' oldest child is the one, co-trustee with the three different corporate trustees. This arrangement provides security and peace of mind for the grantors, by using Joe the trusted heir, and also provides professional guidance by using corporate trustees. NAFEP can provide this critical, multi-corporate trustee arrangement for a nominal, annual fee.

Firing a Trustee. What would you do if you had problems with your trustee? First of all, you don't start out by appointing your worst enemy or some uncooperative person as trustee. You pick people that you trust and know you can work with, perhaps your children or other trusted individuals. Often you will also use NAFEP corporate co-trustees. And if you do

have problems, you fire the trustee. Either you, during your life, or the secondary beneficiaries (heirs) afterwards, may fire and replace a trustee including a corporate trustee, at any time. The trust provides this and many other safeguards for your protection.



Figure 7

Trust Operation and Management. The actual management of the Premier II is simple and uncomplicated. (Learning how it works is the hardest part!) The required activities are the same ones that have to be performed without a trust, and they are exactly the same that would be required with the standard living trust. This is due to the fact that with either a living trust or a Premier II Life Estate Trust, the primary function is passively holding legal title to your property. In daily operation the Primary and Holding Trusts can be thought of as just one entity, like a single living trust, and as a silent partner which does little more than protect the legal title to your property. The fact that there are a number of trusts involved is irrelevant in the normal routine.

It is important to eliminate any idea that this trust will be actively involved in owning or running your business or involved in your day to day financial affairs. Think of the trust and trustee the same as you do the bank and banker in the automobile loan topic above, *Maintaining Control Over Your Property*. The trust holds the title to assets, but has no other involvement in your day to day life. Mortgage payments and ongoing expenses for trust property are normally paid from the grantors' personal bank checking account. Setting up the life estate trust does not require new payments or check writing for

personal or business activities. And, be sure to keep personal and business bank checking accounts where they are, *not in the trust*. Pay for all food, entertainment, travel, personal bills and expenses, etc., from personal accounts, *not trust accounts*. All business and personal income is to be deposited directly into business and personal checking accounts, *never into a trust account*. It is very rare to have a reason or need to open any bank or checking account inside the trust during your life. If you have savings or investment accounts, those are normally placed in the trust. Anytime you have excess money in personal or business checking accounts, then put that in trust savings or investment accounts. The important points to take from this paragraph are: Do not combine business and personal financial activities with those of the trust (don't "co-mingle"). Co-mingling these non-trust activities with trust business does nothing but overly complicate your life, and may seriously jeopardize the asset protection capability of the trust.

Under the Premier II Trust, the grantors run and manage the trust property just as they did before. They continue to live in their personal residence, drive the cars, pay all taxes, insurance and maintenance costs, etc. The grantors personally receive any income which may be generated by trust assets. They are in control of their life estate. If a grantor or any party to the trust dies or becomes ill, all necessary functions will continue without interruption from probate, custodial or other legal proceedings. After the deaths of the grantors, their heirs may take over property management or they may have the property distributed to themselves, depending on how the trust was set up.

Tax Status. The Premier II Life Estate Trust is termed a "grantor" trust under federal tax law (based on the trust falling under multiple provisions of Sections 671 thru 678 of the federal Tax Code). This is the same tax classification which standard living trusts have. Grantor trusts do not pay any income or capital gains taxes which may be earned from assets inside the trust. That is because grantor trusts are tax neutral to the IRS. The IRS ignores the trust for tax purposes and views all the assets as if the grantor still owns them.

Since the grantors still own the trust assets for tax purposes, any income and capital gains taxes, along with depreciation from the property, will continue to be reported on the grantors' personal tax return. This will result in no change in the amount of the grantors' tax payments or how their tax returns are prepared.

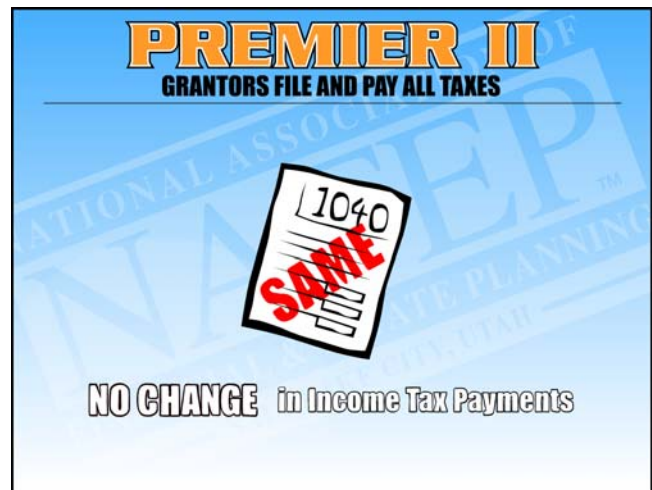


Figure 8

Since grantor trust assets are treated by the IRS as if the grantor still owns them, several other tax principles apply:

1. There are no gift taxes from putting assets into one of these trusts. A Premier II is intentionally designed to prevent transfers to it from becoming a completed gift, even though the transfer is irrevocable.
2. All property will continue to be included in the taxable estate of the grantors.
3. Property will receive the step up in basis allocations on the death of the grantors.
4. The grantors can still use their capital gains exemptions on the sale of their personal residence.

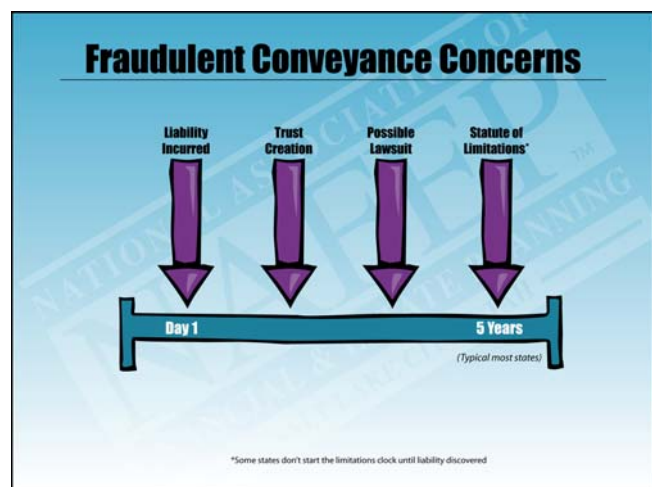


Figure 9

Fraudulent Conveyance. Technically, asset protection safeguards only apply to assets you place in trusts before there are problems. Once a damage, debt, or liability has occurred, even if no lawsuit has been filed, setting up the trust may not "legally" protect your assets from that specific liability. On the other hand each state does have a statute of limitations which prevents a litigant from suing after a few years (usually four or five years). After that any property in the trust is generally home free, even for pre-existing problems. Figure 9 is a time line illustration of this principle.

Setting up a trust after a liability has occurred could be ruled as a "fraudulent conveyance" (a specific legal term) by a judge in the second or third round of a lawsuit against you. But, most of the time lawsuits don't get to that stage. And a fraudulent conveyance ruling won't send you to prison either, these laws aren't used that way. Fraudulent conveyance laws are primarily designed to give a litigant a remedy to place a claim on and retrieve assets which were transferred by their owner after the litigant's claim occurred. Fraudulent conveyance is very difficult and expensive for a litigant to prove, however. So even if you transfer assets to your trust after a liability occurs, often you have everything to gain and nothing to lose by setting up asset protection anyway (see the earlier topic, *What Is The Premier II Track Record?* for an example). This subject is somewhat complex though, so be sure to consult with an attorney if you have questions.

Liability Insurance For Asset Protection?

Couldn't liability insurance be used to cover the costs of potential litigation and judgments? Well maybe in some cases, but there are many risks associated with this as your primary strategy. One is the on-going cost of the insurance that has to be paid from now on, whereas the trust is a one time cost. Of more concern though is that liability insurance doesn't cover nearly all the risks you face. In our earlier topic, "Lawsuits and Other Financial Risks", we listed ten major financial risks. The last seven of these are not covered by liability insurance. Another problem is that liability insurance policies do not fully cover the very exposure you think you are covered for. For example, lead paint in rental property is not covered by insurance, but lead paint poisoning represents a large liability. If the wrong person is driving your car when they kill someone else, your coverage won't pay. There are a hundred things you won't know about in advance, but which your insurance carrier will use, legally, to keep from paying your loss. Don't forget

about all the fine print and legalese in your policy which you either don't read or don't understand.

Another problem is, how much coverage do you need? Attorneys usually sue for more than your coverage limits no matter how large. If they win more than your limit, your assets have to be used to pay the difference. If you purchase a bigger liability limit, that attracts more lawsuits due to the larger payoff. High coverage amounts can cause the very problem you are trying to avoid. Go back and read the topic, "Privacy Factor and Lawsuit Deterrence" for a better understanding of the need and the mechanism to avoid a payoff target for your attackers. The minute your attacker smells a payoff from a liability policy, they have all the incentive they need to go forward. Reliance on liability insurance as your primary asset protection strategy is a huge gamble and risk, covering only one third of your at risk categories, and not fully covering the applicable categories.

Your Attorney's Objections. If your attorney reviews this publication or your plan to use a Premier II Life Estate Trust, he/she may object to you that the asset protection feature won't work. The attorney's reason will most likely be based on the legal principle known as "self settled trust". Self settled means self created and funded. A self settled trust is one in which the creator, grantor, of the trust has placed his/her property in the trust and retained use or control of the property. The attorney may then say that the Premier II is self settled, and in your state self settled trusts are ineffective at keeping your creditors at bay.

What the attorney is unaware of in this case is that the self settled rule doesn't apply to this specific trust design. The self settled issue is only a problem to the extent that either you, the grantor, or the trustee have the power to return trust property to you. A creditor can only reach that which you can reach or the trustee can reach for you. Since neither you nor the trustee have the power to remove trust principal for your benefit, the trust does provide the legal barriers to lawsuits which we described above. There is, however, a direct and easy way for you to receive trust principal should you ever need or desire that. And, that is via a very simple permission from one of the remainder or secondary beneficiaries of the trust, any one of your children or other heirs. As remainder or secondary beneficiaries, your children or heirs are the ultimate owners of everything in the trust. They are treated, then, as "adverse parties" to you, meaning that they have an arms length, third party

relationship with you as far as the trust is concerned. As an adverse party, any one of them can give you "permission" to receive principal from the trust, up to everything in it. This adverse party permission, coming neither from you nor the trustee, avoids the self settled rule which your attorney may be concerned about, while still allowing reasonable access to your trust principal.

Further, six states now have trust friendly asset protection statutes. These include Utah and Nevada where NAFEP has legal residency or domicile. These statutes over ride the rule against self settled trusts. With additional planning you can domicile financial assets in one of these states and mount a powerful defense against the self settled argument.

There is a much more detailed and legalistic explanation of the avoidance of the self settled rule and other principles behind the Life Estate Trust asset protection capability. These are provided in a NAFEP publication entitled, *Asset Protection Legal Pack*. Should either you or your attorney want to review the legal citations and arguments provided there, ask your NAFEP member for a copy.

If after reviewing the *Legal Pack*, your attorney still isn't convinced (not likely, but it could happen), ask what he/she proposes for an alternative. Also, ask your attorney to consider all the information in the above topic, "What Is The Premier II Track Record?", especially the third paragraph. If your attorney doesn't offer something concrete in response, you have to ask yourself, "Do I just want to go naked, do nothing and have no protection at all because my attorney thinks I might lose a well mounted and aggressive legal challenge? Or isn't the Premier II Life Estate Trust far better than doing nothing?" No matter what the legal subtleties and possibilities are, the Premier II will in *all* cases present a formidable set of hurdles for an attacker. Most attacks will never get off the ground with Premier II planning in place. Go back and read the earlier topic "Privacy Factor and Lawsuit Deterrence" for an explanation of how the trust is unlikely to ever be challenged to begin with.

Will Your Protection Fly? As we discussed earlier, your biggest concern about your estate is safety and security. One of the best tools for giving you the peace of mind you need is the Premier II Life Estate Trust. You know, choosing the right trust is kind of like picking an airplane to fly. A living trust and most other protective steps are like flying a small private plane. The Premier II Life Estate Trust, on the other hand, is like flying an F16 fighter jet. Both planes will take you towards your destination. But which one would you rather fly when trouble appears?



Figure 10

End Notes:

(1) According to data taken from *State Court Guide to Statistical Reporting*, survey results published by National Center for State Courts (NCSC), <http://www.ncsconline.org/>. NCSC is an independent, nonprofit, tax-exempt organization serving the state court system.

(2) According to data taken from *Civil Justice Survey of State Courts, 2001*, reported in the April, 2004 Bureau of Justice Statistics Bulletin, <http://www.ojp.usdoj.gov/bjs/pubalpb2.htm#civil>

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AUXILIARY ESTATE PLANNING TOOLS

No estate plan is complete and the risks are not all addressed without some special tools. *Each Premier I Living Trust and Premier II Life Estate Trust includes a critical set of "accessory" documents. They are:*

Pour Over Will. When a family estate planning trust is used, a *standard* will is unnecessary. Instead, a special type known as a "pour over" will is needed. The purpose of this will is to handle anything which failed to get in trust before your death. The will causes these unplanned assets to be "poured" into the trust after your death. This allows those assets to be conveyed to heirs with the same planning that all the other trust assets have. Probate will be necessary for the "pour over" property, but at least a good planning and risk avoidance mechanism is in place.

Durable Power of Attorney. A durable power of attorney gives another person the power to perform certain legal and financial things for you if you are unavailable or unable to do it yourself. The durable power of attorney is given to some trusted person. This document empowers the specified person to handle your personal financial and legal affairs and to place property into trust that may have been overlooked, or to sign your name in an emergency situation. The durable power of attorney is normally used when you are away or when you become incapacitated. This document ceases to exist upon your death (at which time the trust and pour over will take over). Powers of attorney are a mainstay and an important tool in good estate.

Advanced Medical Directive (AMD). Formerly known as a "living will", this document tells physicians the kind of life support you want or don't want in life ending situations. It is used in cases where you are

terminally ill or injured, in a permanent vegetative state and with no hope for recovery, as determined by at least two physicians. In some states AMDs are binding on your doctor and in others they are not. In states where AMDs are not binding the documents still serve as a formal request and a guide for the treatment of your terminal illness. A physician may choose to ignore the AMD in states where they are not binding, so talk to your doctor in advance and find out his or her reaction. If it is negative you may want to find another physician who will agree to honor your requests. Many states have adopted a specific version of AMD, and NAFEP is careful to furnish that version to you. A major problem with AMDs was the passage of the federal Health Insurance Portability and Accountability Act (HIPAA). Without special HIPAA language in your AMD, it can easily fail to work in the most crucial situations. NAFEP documents always include HIPAA provisions.

Durable Power of Attorney for Health Care. This document gives a health care or medical power of attorney to someone you closely trust. The person holding the power is able to make medical choices for you when you are unable to make them yourself. This can be extremely useful in emergency situations. These documents are not recognized in all states either, but they can still be used as a request and a guide. Many states have combined this document with the AMD above, and NAFEP always provides the proper, combined version. A major problem with health care powers was the passage of the federal Health Insurance Portability and Accountability Act (HIPAA). Without special HIPAA language in your health document, it can easily fail to work in the most crucial situations. NAFEP documents always include HIPAA provisions.

* * * * *

FREQUENTLY ASKED QUESTIONS

Q. How do I set up a Premier II Life Estate Trust and get it operational?

A. To set up this or any other trust requires two basic actions: (1) The grantor(s) and trustee(s) sign and notarize all appropriate trust documents, and (2) the intended property is re-titled into the name of the trust. Re-titling assets into the name of the trust activates the trust and puts it into full effect. With the Premier II, once that is done the trust is fairly static day to day, and you basically go on with your life after that. To re-title real estate, you retain a title company to prepare a deed. They will have you sign the deed and will record it for you at the appropriate county recorder. This service generally costs \$150 to \$250, but can be higher in some states. Automobiles, RVs and other titled property are re-titled into the appropriate trust's name at your Department of Motor Vehicles or wherever. Untitled property is listed on a bill of sale (included with each Premier II trust) and signed by the grantors. There are of course some details to this re-titling which we didn't cover here, but the details are provided in the *Premier II Life Estate Trust Set Up and Operating Guide* which is included with each Premier II trust.

Q. Please explain how the Premier II Life Estate Trust operates day to day, and how to avoid inconveniencing our daily lives while having everything protected.

A. (See the topic "Trust Operation and Management" on page 17 for a more thorough discussion of this topic.) Day to day, all the trusts do are sit passively, holding legal title to the grantors assets. There is little activity and interaction with the grantors and the outside world. The grantors keep their personal bank account, personal expenses and activities out of the trust. If an asset produces income, that income can be taken immediately, without restriction, by the grantors, or left in the trust to add to principal. Trust financial accounts can be arranged so that income is paid automatically and directly to the grantors if that works in a given situation. There is a NAFEP form available which the trustee signs and gives to a broker-dealer (stock brokerage), which allows the grantors to manage and/or trade a trust brokerage account. If this arrangement is created, trustee interaction with investment account management is not needed. But, the grantors cannot be signers on or owners of a financial account, they cannot write themselves a check or liquidate an account. That

activity would require a trustee signature. As explained in another question below, rental property is managed by the grantor, not the trustee. Occasionally an asset is sold from the trust and the trustee has to sign a transfer document. But other than that, not much goes on in the trust, the trustee does almost nothing and the grantors manage almost all details. The trust causes very little change to the day to day lives of the grantors until they either become incapacitated or die. The only difference in operating a Premier II Life Estate Trust and a revocable living trust, day to day, is that the trustee, rather than the grantor, is required to sign transfer documents. As for keeping the asset protection intact, it is actually difficult to damage asset protection as long as the grantor is not allowed to take trust principal without observing protocol, and does not commingle personal business with trust business.

Q. I have numerous pieces of real estate or other risky assets (assets which can lead to lawsuits). Do I combine these into one or both of the Holding trusts included with the Premier II Life Estate Trust? If not, how many Holding trusts do I need and how do I arrange to create these?

A. For numerous risky assets (assets which can lead to lawsuits), you very well may need more than the two Holding trusts which come standard with the Premier II. Additional Holding trusts may be ordered at the time the Premier II is created, or at any later date. These add on Holding trusts are quite inexpensive and will make economic sense for many of the additional, risky assets you own. Be aware that Holding trusts can be filled, emptied and re-filled over and over. You can move a succession of various types of assets into and out of any given Holding trust. The way to determine how many Holding trusts you need initially is by analyzing the amount of equity you want to protect, or conversely, how much equity you are willing to sacrifice to a legal attack. If your residence, for example, is worth \$300,000, but you have a \$100,000 mortgage against it, your equity is only \$200,000. When you place the residence in a Holding trust, you are only protecting that \$200,000 equity. That is all you own (but, don't forget to factor in future appreciation in the home as additional equity to protect). The lender has the other \$100,000 protected for itself with its mortgage. \$200,000 is probably more than you are willing to lose unnecessarily, so it would be unwise to place a rental property or an automobile in that same Holding trust. That would expose your \$200,000 equity in the residence to the inherent risks

which come with trust ownership of the rental property or automobile. For a relatively small amount of money you can add two more Holding trusts, one for the automobile and one for the rental property. If your equity in the automobile is only worth \$10,000, that isn't a lot to lose in a lawsuit. In that case you might want to put another low value automobile, boat, ATV, etc. in the same Holding trust with the automobile. You can put numerous items in one Holding trust. Just assess the total equity involved and be aware that each asset in that Holding trust is exposed to the risks of each of the other assets in that same trust. If you can afford to lose the total equity involved, then one Holding trust is sufficient for that group of assets.

Q. Should the grantors' stock, membership units or shares in a corporation, LLC or partnership be put into the Premier II Life Estate Trust for: (a) avoiding probate, (b) privacy and (c) asset protection?

A. Privately held shares, partnership interests or LLC member units should be put in a Holding trust, for all three reasons listed in the question. Publicly traded shares can go in the Primary trust. Privately held shareholders, partners or LLC members are sometimes individually subject to lawsuits against their business entity, because the claimant was able to penetrate the corporate (LLC) veil of limited liability. Because of that piercing possibility, privately held shares need to be isolated into a Holding trust, just like any other risky asset.

Q. How do I protect the assets (not the shares) of my corporation, or LLC, partnership or proprietorship? Do I put corporate or other business assets in the trust, and if so, how do I do this?

A. Assets inside your business entity (C or S corporation, LLC or partnerships) are fully exposed to legal attacks which are directed at the entity itself. These attacks may come from employees, customers, creditors, competitors, sub-contractors or regulatory agencies. In many cases it will be possible to transfer assets out of the entity and into Holding trusts (the risky assets) or into the Primary trust (certain financial assets). In that case the entity should sign an agreement with the Premier II trust, agreeing to lease the assets, but not own them (a NAFEP member can assist with this agreement, your questions and the details). Subsequent attacks against the entity will not be able to reach the assets which have been moved

out. *However*, there can be negative tax consequences if you transfer appreciated assets from a C or S corporation to a trust. This is probably not a problem if the assets have depreciated in value. In either case, you must consult with your own tax advisor about potential capital gains tax consequences from this type transfer. Partnerships, and LLCs which are taxed as a partnership, do not present this problem. For the stock, membership units or shares of the entity, see the previous question about protecting these assets. Inventory and accounts receivables cannot be transferred from the business entity to a trust for practical issues. You need to keep those owned by the entity for day to day management, accounting, etc. A solution which helps protect these assets, but which is less certain than placing them in a trust, is to arrange for the Primary trust to place a UCC lien on the inventory and receivables. The UCC is a lien on non-real estate assets (called personal property), is fairly simple to do and is a somewhat uniform procedure in all 50 states. A NAFEP member can assist with implementing this.

Q. Will our personal bank account be affected, how do we write checks from the trust, will the bank account be protected?

A. Never put your personal, day to day operational bank account in the trust! (See the topic "Trust Operation and Management" on page 17, second paragraph for a more thorough discussion of this topic.) This overly complicates your life and offers little benefit. This also commingles trust business with your personal business and could damage the asset protection abilities of the trust.

Q. What if I want to change beneficiaries, or make changes in what I leave them? Does the Premier II Life Estate Trust, being irrevocable, cause a problem in making beneficiary changes?

A. The Premier II Trust allows the grantor(s) the right to change the identity of the secondary beneficiaries (the heirs of the grantors), and/or to change the trust share or property which secondary beneficiaries are to receive. This future planning capability is provided for in the trust. But, if a trust grantor wants to make some beneficiary change, they do this by rewriting their will. The grantors do not make beneficiary changes with a direct amendment to the trust. And, the trust provision which allows beneficiary changes does not allow the grantors to make any other trust changes by their will. Each Premier II Trust is supplied

with one will for each trust grantor. If a grantor wants to make beneficiary changes, he/she first creates an updated version of his/her will, and simply states what beneficiary changes he/she wants to effect in the trust. If there are two grantors to the trust, husband and wife, each one of them must change their will if they both want the change.

Q. How does a Trust acquire credit in order to purchase property?

A. Generally there is no need for the trust to acquire credit. Typically, the trust grantors would purchase the property under their names and use their creditworthiness. They would transfer the purchased property to the trust at the escrow closing of the purchase or shortly thereafter. This means that the grantors would personally guarantee the mortgage on the property. The end result is the same thing which happens to mortgaged property which the grantors own before the trust is created, and which they subsequently transfer to the new trust.

Q. How does the trust pay for the mortgage on real estate or other types of property?

A. The trust does not pay mortgages or loans (or property taxes, insurance, maintenance, etc.). The grantors continue to pay for these the same as they did before the trust was formed. All that the trust does is passively hold legal title to assets which the grantors have full possession and control of, and for which the grantors remain personally responsible for all costs of ownership. It is, therefore, the legal title to the equity in the property which the trust passively holds and protects from legal difficulties of the grantors. The mortgages stay in place to protect the lenders' position with the property.

Q. How does one transfer mortgaged property into a Trust?

A. If there is a mortgage on the real estate, the lender's permission should be sought before transferring the property into trust. There may be a "due on sale" clause in the mortgage agreement. If so, the lender could call the note due where it hasn't given advance permission for the trust transfer. Various state and federal laws prohibit the mortgage company in most cases from denying this permission for trust transfers for intra-family usage. The lenders rarely give any difficulty in granting permission, but if they do the law is on the grantors' side. The purpose of advance permission is to avoid a conflict or nasty

surprise later over the lender's attempts to call the note.

Mechanically, any real estate can be easily and quickly transferred to a trust by simply having a deed prepared, signed by the grantors, and recorded. That is all it takes to make a complete and effective transfer of the property to the trust. The existence of a mortgage has no effect at all on the completeness or the legality of the transfer. But, as stated above, there is the "due on sale" issue to consider, and prudence suggests that you take care of that first. Admittedly, a great many NAFEP trust clients don't contact their mortgage company, and never have a problem. Again, the title transfer is valid no matter what, and the trust will work just as intended. But the mortgage company is still in control of the mortgage and the debt owed and can call the note.

Q. Describe how the Trust sells a house.

A. The sale of real property by a trust is very similar to a sale by an individual. The only difference is, the seller of the property is the trust (using the trust name and date). Once a buyer is located, the real estate company creating the buy-sell contract will treat the trust as the seller, rather than the grantors. As long as the buy-sell contract is in the trust's name, there will be no problems with the sale. The Trustee is the one who signs for the trust. With the standard revocable living trust, the trustee is the grantor, whereas in a life estate trust, the trustee is a separate individual or the primary officer of a corporate trustee.

Q. How does a life estate trust handle rental property income and rental property management?

A. Rental real estate is to be placed in one or more Holding trusts, depending on the amount of equity you want to have separately protected. But we recommend that the grantor either set up an LLC to receive the rental property income, or that the grantor receive the income directly. With rental property, it is helpful to have one LLC act as the property management company for all Holding trusts which hold rental property. If a property accident causes a lawsuit, the plaintiff will always sue the owner (the Holding trust) and the manager. It is best if that manager is an LLC, not the grantor/client, to prevent the grantor from being sued personally. If the grantor is acting as the property manager, and then is sued, his/her sources of income can be attacked. Using an LLC as property manager shuts off that

possibility. If you allow the rental income to be received directly in the Holding trust, then the trustee is more exposed to legal hassles from resulting lawsuits. The trustee would even have some personal liability exposure, if as trustee he managed the property and failed to adequately protect the tenants. So the management role needs to be moved away from the Holding trust, either directly to the grantor or preferably to an LLC.

Even if there are many Holding trusts containing rental property, the one LLC with its one bank account will receive all the rental income. The grantor will be the owner of the LLC and will automatically be entitled to and easily receive all net rental property income.

Q. Do we need separate tax ID numbers for each trust in the Premier II structure? How does the trust pay taxes, what is the trust tax rate?

A. The standard NAFEP design is that the Primary and Holding Trusts all have the same federal tax ID number (which NAFEP procures). But, we generally do not place anything in a Holding trust which causes a 1099 tax form to be generated. Holding trusts should only hold non-income producing, physical assets and real estate (except for privately held corporate, LLC or partnership shares). Real estate in a Holding trust may generate income, but that doesn't cause a 1099 to be reported to the IRS.

Rental income is to be collected in a manner which it allows it to flow to the grantors and to appear directly on their personal tax return. Financial assets are placed in the Primary trust, and any resulting 1099, from an investment account for example, will identify and be directed to the Primary trust. But even that income is payable to the grantors and reported on their tax return. So the trusts' tax ID number exists solely for the purpose of telling the IRS that trust 1099 income belongs to and is taxed to the grantor. The trust itself never recognizes income or pays taxes. However, the Primary trust normally will need to have a 1041 tax return prepared and filed as a "grantor trust" return. A full description of this trust return and how to prepare it are included with each Premier II Life Estate Trust document package.

HOW THE PREMIER I AND II TRUSTS ARE REPRESENTED

The Premier I and II Trusts described in this publication are represented by independent members of The National Association of Financial and Estate Planning (NAFEP). These professionals have the ongoing resources and support of NAFEP as they work with their clients. Their role is to provide preliminary information and to act as the coordinator of their clients' estate plan. All final advice, recommendations and document creation come from a NAFEP attorney who is an estate planning expert.

WHAT DOES IT COST?

Prices cannot be quoted in this publication because there are so many variables to consider. We can say though that the costs are extremely competitive, flat fees, stated in advance. You will know your exact cost before committing yourself or spending any money. NAFEP members will be happy to discuss the flat fee of your plan in part of a free, initial information session.

If NAFEP corporate trustees are used there are nominal annual fees charged for that. These minimal fees are also discussed up front, and are well worth the expert attention and consulting that go with that role. Knowledgeable trustees help assure that the trust delivers the benefits which they are capable of.

CONCLUSION

An individual analysis is needed to determine the best plan for your situation. We recommend that you meet with a NAFEP member in an initial information sharing session. If the information you receive sounds appealing, then a NAFEP attorney can be retained by you to put together a working program. Contact the NAFEP member whose identity is included with this material, or phone NAFEP in Salt Lake City, Utah for the name and number of the nearest member. (Look up NAFEP at www.nafep.com) NAFEP believes its Premier I and II Trusts offer the best of what is available today in estate planning, and that they truly are *The Answers To Life's Financial Risks*.



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RESEARCH MEMO: Can An Irrevocable Trust Be Modified, Revoked Or Amended?

Since the trust is a private contract involving three parties, with no governmental regulation and no laws to the contrary, then yes, if all parties agree, the parties can do whatever they want to do, including revocation of an irrevocable trust.* The trustee is bound to take care of the interests of all beneficiaries. The trustee cannot violate any rights of the beneficiaries, so he cannot agree to revoke or terminate the trust unless all the beneficiaries and the grantors agree to it. If all the beneficiaries and grantors request the revocation of the trust in writing, and agree to hold the trustee free of any liability in following the request, the trustee is relieved of any further legal responsibilities and risks he has in holding, investing and preserving trust property for their benefit. The grantors provided the property used to create the trust and specified the provisions in the trust. They are in a key position to know whether or not the trust continues to serve its purpose, or whether the trust is still required to serve the needs of the family. And, the grantors are one of the two parties, with the trustee as the other, of the trust contract. The beneficiaries know whether or not their best interests are served by retaining or terminating the trust. The trustee has no legal need to second guess the desires and decision made by the other parties. Being relieved of further legal responsibility, the trustee can conclude that his fiduciary responsibility is ended. He must then act jointly with the other parties to revoke the trust. In fact, as shown in the footnote below, various states have even enacted statutes which allow the settlor (grantor) and beneficiaries acting together to terminate a trust (New York, Wisc. & Okla.). The trustee has nothing to say about it.

And, if all parties agree to a revocation, who could overrule or interfere? No one. Since there is no injured party when all trust parties agree to revoke the trust, there is no one to complain. Without a complaint or petition made before a court, there can be no interference in the trust termination by the legal system. Nor will the legal system even be aware that the termination took place.

With a NAFEP, Premier II Life Estate Trust (irrevocable, grantor and asset protection trust), there is a built-in mechanism which provides a straightforward and simpler method of revocation than what we referred to above. Any secondary beneficiary, possessing at least ten percent of the remainder trust interests, in other words, a ten percent secondary beneficiary, can unilaterally agree to allow the grantors to withdraw any amount of trust principal, up to the whole of the principal. Therefore only one of the secondary beneficiaries is required to allow effective revocation, by allowing the grantors to take part or all the trust principal back out of the trust. Specific trust provisions prevent the other secondary beneficiaries from holding the one cooperating secondary beneficiary liable for giving up trust principal. The trustee also is held harmless for participating in the return of principal when the return is based on the written request of one eligible, secondary beneficiary.

Q. What if some or all the beneficiaries are all under legal age?

A. Their parents or other legal guardians may act for them. If their parents or guardians are also the grantors, then the grantors and trustee acting together can revoke or terminate the trust. In this case, the grantors represent both themselves and the beneficiaries.

* Footnote:

The following commentary is from *TRUSTS*, Sixth Edition by George T. Bogert, published by West Publishing Company:

"If the settlor (grantor), trustee, and all beneficiaries join in a modification, it would seem that thereafter no one can object to the execution of the changed trust." *Burling v. Newlands*, 112 Cal. 476, 44 P. 810; *Sayers v. Baker*, Tex. Civ. App., 171 S.W.2d 547 (1943).

"If the settlor is the sole beneficiary, he should be allowed to alter the trust even though he reserved no power to do so." *Frentzel v. Siebrandt*, 161 Neb. 505, 73 N.W.2d 652 (1955).

(Continued Next Page)

"If all the beneficiaries are competent and agree with the trustee on a change in the trust terms they will not be heard to complain of administration in accordance with the change..." *In re Newhouse's Estate*, 29 Misc. 2d 1021, 212 N.Y.S.2d (1960); *Fiyv. Stetson*, 176 Pa.Super. 171, 106 A2d 662 (1954).

"And if the beneficiaries acquiesce in an attempt by the settlor to change the trust, they will not be allowed to question the validity of the alteration after the trustee has acted upon it." *County Tr. Co. v. Young*, 287 N.Y. 801, 40 N.E.2d 1019 (1942); *Hurst v. Taubman*, Okl., 275 P.2d 877 (1954).

"In New York voluntary trusts of both realty and personalty have been made revocable by the settlor, upon the written consent of 'all persons beneficially interested'...: N.Y-McKinney's EPTL 7-1.9. There is similar legislation in Okla. and Wis; see 60 Okl.St. Ann. Section 175.41, Wis.S.A 701.12 (settlor and all beneficiaries may terminate)