Irrevocable Life Insurance Trust Checklist

Transferring an Existing Policy or Purchasing a New Policy

The following chart details the procedures to follow when using an irrevocable life insurance trust (ILIT). This checklist can be used when the insured transfers an existing policy into the ILIT or the trustee of the ILIT applies for a new policy.

STEPS	ACTION REQUIRED	PARTY TO COMPLETE	TRANSFERRING EXISTING POLICY	PURCHASING NEW POLICY
1	Consider submission of Inquiry Application (COMB1167) prior to setting up ILIT to verify insurability.	Financial professional		●
2	Select a trustee.	Insured	●	●
3	Draft and execute trust; retain signed originals in file.	Attorney, insured and trustee	●	●
4	Obtain federal tax identification number for trust using IRS form SS-4.	Attorney	●	●
5	Open a non-interest bearing bank account in the name of: "(Name of trustee), for the (Name of trust) dated (Date of trust)."	Trustee	●	●
6	Gift cash to trust.	Insured	●	●
7	Send written notice to beneficiaries regarding withdrawal powers, if applicable.	Trustee	●	●
8	Apply for a policy with owner and beneficiary names as "(Name of trustee), trustee for the (Name of trust) dated (Date of trust)."	Trustee		●
9	Obtain from insurance company IRS Form 712 for each policy transferred. Give to attorney.	Financial professional	●	
10	Transfer policy to trust with new owner and beneficiary as "(Name of trustee), trustee for the (Name of trust) dated (Date of trust)". Copies of the trust and insurance policy should be retained by trustee. Change address for premium notification to trustee's address.	Insured, financial professional and attorney	●	
11	Annually, pay premium and send written notice to beneficiaries regarding withdrawal powers, if applicable.	Trustee	●	●

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Trustee Selection

Great care should be taken when selecting a trustee. Factors to consider include:

- The trustee may be an individual or a corporation authorized to exercise trust powers (such as a bank or trust company).
- The insured must not be the trustee because that may cause the life insurance proceeds to be included in the insured's taxable estate.
- If second-to-die insurance is used, neither spouse should be the trustee.
- A non-insured spouse may be a trustee as long as a second-to-die policy is not used. However, certain provisions must be included in the trust agreement to prevent adverse tax consequences.
- The trustee and the personal representative of the estate should probably not be the same person because conflicts may arise upon death. An example would be the consideration of a loan from the trustee to the personal representative for the payment of estate taxes or expenses.

The trustee must be familiar with the trust's provisions and the trustee's responsibilities under the trust document. Special efforts should be made to explain to the trustee the withdrawal powers that are granted to the beneficiaries.

Some of the responsibilities of the trustee regarding the insurance policies in the trust include:

- Notifying the beneficiaries of the contributions ("Crummey" withdrawal notices)
- Paying the premiums
- Managing and accounting for trust funds
- Periodic review of insurance policies

Draft Agreement

An attorney must draft the trust agreement. Because ILITs are complex legal documents, attorneys specializing in estate planning are recommended.

Funding the Trust

The grantor(s) must generally deposit a minimal amount (e.g., $10) into the trust to make it legally enforceable.

Trust's Federal Identification Number

The attorney or trustee may obtain the federal employer identification number for the ILIT.

The federal employer identification number assigned to the ILIT should be given to the insurance companies whose policies fund the trust.

The trustee should use the number in opening any trust bank account.

The trustee should use this number on any required fiduciary income tax return for the trust for any year.

Transfer of an Existing Policy

Your licensed financial professional will have forms that the insured can use to transfer ownership of the policy to the trust.

Before making the assignment, it should be determined whether the transfer will have any gift tax consequences. The attorney will need to know the value of the policy and the history of the insured's prior taxable gifts (if any) to determine the gift tax consequences. The value of the policy for transfer tax purposes is generally the interpolated terminal reserve of the policy plus the value of any unearned premium as of the date of the transfer less any outstanding loans. Your licensed financial professional can obtain this figure from the service office of the insurance company.

If the transfer of the policy to the trust is by gift, the insured must live three years after the date of the transfer to prevent the policy from being included in the insured's taxable estate.

Decision to Purchase a New Policy

Careful consideration should be given to the policy choice.

Policy Application

The trustee, not the insured, should apply for the policy. The trustee of the ILIT will own the policy. If there are multiple trustees, all trustees must sign the application unless terms of the trust agreement or state law specifies otherwise.

If the insured applies for the policy and later gifts it to the trust, the death proceeds will be included in his/her estate if he/she dies within three years of the transfer.

The trustee must sign a trustee statement and agreement Form COMB 86044 or provide a copy of the executed trust agreement.

Use the federal ID number of the trust when completing the tax certification portion of the application.

The insured should contact his/her attorney if a new policy is acquired, if there is a change in the existing insurance, or if premiums change.

All premium notices and other correspondence relating to the policy should be sent to the trustee of the ILIT. The mailing address should not be the insured's address.

Gifts to the ILIT

The grantor(s) should gift cash to the trust to allow the trustee to pay the policy premiums and administrative costs.

The gift to the trust should be by check payable to the trustee and should be made far enough in advance of the premium due date to enable proper notice to the beneficiaries.

The amount of the gift should not be the exact amount of the insurance premiums to be paid. A nominal additional amount should be gifted in order to keep a bank account open.

If the spouse is a beneficiary of the ILIT (single life policies only), then each gift to the ILIT must come from an account that is in the insured's name, not an account held jointly with the spouse. If the spouse is a beneficiary, the spouse should never make a gift to the ILIT.

In community property states, the grantor should transfer his/her separate property to the ILIT.

Bank Account

The trustees should open a bank account in the name of the trust.

Preferably, the account should be non-interest bearing without charges (so that a trust tax return is not required).

The account should contain enough funds to permit the account to remain open (without excessive bank charges) between premium due dates.

If the trust has no income (which is usually the case before death proceeds are received), then a trust tax return is not required until the time death proceeds are received.

Notices

The beneficiaries must know about their withdrawal rights for each cash contribution to the ILIT. The trustee should send out written notices to the beneficiaries (or their guardians) apprising them of their withdrawal rights.

- Written evidence is the best evidence. Regular written notices should be given to the beneficiaries whenever possible.
- Notices should be sent in duplicate. The beneficiaries or their guardians should sign both copies, keep one and return the other to the trustee.

- The trustee should keep all notices to substantiate that they were given.

Although it is highly unlikely, if a beneficiary exercises a withdrawal right, the trustee must distribute an amount from the ILIT equal to the amount properly demanded.

If the client decides to change or revoke any beneficiary's right to withdraw from the trust, the attorney should be consulted in advance in order to avoid adverse tax consequences.

Premium Payments

The trustee should pay premiums due on policies owned by the trust from the trust bank account. Premium payments made from gifted funds should not be made before the expiration of the beneficiaries' withdrawal period.

However, if any trust-owned policies are being provided for the client by the client's employer on a group term basis, those premiums may be paid directly to the insurance company.

Miscellaneous Notes

Tax Returns: An ILIT must generally file a fiduciary income tax return Form 1041 for each year that it has gross income of $600 or more. The ILIT 's tax return is due by April 15 of the following year. The trustee should consult with a tax return preparer concerning any income tax returns for the trust.

Gift Tax Returns: An annual gift tax return (Form 709) must be filed for each year in which the following occurs:

- Annual gifts to the trust are not covered by withdrawal rights of beneficiaries (i.e., the gifts exceed such rights).

- The insured's gifts, when aggregated with other gifts from the insured to the same beneficiaries during the calendar year, exceed the annual gift tax exclusion, ($12,000 per donor in 2007 and 2008, indexed).

- The insured and his/her spouse are electing to "split gifts" for gift tax purposes, thereby increasing the amount that can be gifted to the trust without gift tax consequences.

If a gift tax return is required, it must be filed by April 15 of the following year. The trustee should consult with a tax return preparer if such an obligation exists.

Collection of Insurance Proceeds: At the insured's death, the trustee will submit the appropriate documents to Prudential and collect the death proceeds for each policy held in the trust.

Administration and Distribution after Insured's Death: After the insurance proceeds are collected, the trustee is responsible for investing and administering the trust estate and making distributions to the trust beneficiaries as provided by the terms of the trust agreement.

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