These questions are provided only as a helpful guide to Applicants. They should not be overly relied upon and are not a substitute for self-study and experience. The Board Certification Committee annually reviews, updates, and creates actual examination questions in an effort to ensure that the examination accurately tests those areas embraced by the Wills, Trusts, and Estates Certification Committee. Good luck on the exam.

**Sample Multiple Choice Questions (1-10)**

1. In 2020, D created separate irrevocable trusts, one for each of D’s three grandchildren, ages 3, 5 and 7, naming his sister, S, as Trustee. Each grandchild may withdraw the total contributions to his or her trust at age 21, but not before. D contributed $15,000 to each trust in 2018, 2019, and on January 1, 2020, and plans to continue to do so each year until each grandchild is 21. The trusts provide that if a grandchild dies before age 21, that grandchild has a general power of appointment. The trustee is empowered to make distributions of income and principal to or for the benefit of the beneficiary (grandchild) prior to age 21 for any purpose. **Which of the following is correct?**

(a) D should allocate generation skipping transfer tax exemption on a timely filed gift tax return for each gift.
(b) Each gift in trust is a taxable gift because each gift was one of a future interest. The filing of a gift tax return is necessary.

(c) D may act as trustee of each trust and avoid inclusion of the trust assets in D’s estate.

(d) Neither generation skipping transfer tax exemption allocation nor the filing of a gift tax return is necessary.

**Answer:** D, IRC §2503 (c) and IRC §2642 (c) (2)

2. W is a life insurance agent. Her assets consist of residual sales commissions amounting to over $700,000. **What kind of formula should be used to pass the unpaid commissions to W’s beneficiaries without immediate recognition of taxable income?**

(a) Pecuniary formula

(b) Fractional formula

(c) There will be no income tax regardless of the type of devise.

(d) There will be the immediate recognition of income tax regardless of the type of devise.

**Answer:** B. See IRC§691(a)(2).
3. D funds an irrevocable trust with $100,000. The trust states that funds are to be used solely for tuition expenses incurred by D’s three grandchildren at educational organizations as described in IRC §170(b)(1)(A)(ii). The trustee is directed to make tuition payments directly to the educational organizations which the grandchildren attend. No additional gifts were made by D. **What is the total taxable gift made by D?**

(a) $0.

(b) $67,000.

(c) $89,000.

(d) $100,000.

**Answer:** D. Reg. §25.2503-6(c) Example (2).
4. D executed his will on July 1, 2019. By Codicil executed December 30, 2020, D appointed three individuals as joint personal representatives. The personal representatives jointly executed a contract to purchase securities for the estate, notwithstanding the prior written objection of one personal representative delivered to the other two. The dissenting personal representative joined in execution of the contract on direction of the majority. Which of the following statements is correct?

(a) The transaction may be set aside upon petition by an interested person because the concurrence of all joint personal representatives is required on all acts connected with administration and distribution of the estate.

(b) Notwithstanding her written dissent, the dissenting personal representative may be held equally liable for the consequences of the purchase because she joined in execution of the contract and she will have no recourse against her co-personal representatives.

(c) Notwithstanding her written dissent, the dissenting personal representative may be held equally liable for the consequences of the purchase because she joined in the execution of the contract. However, she may recover any surcharge against her from her co-personal representatives.

(d) The dissenting personal representative will not be held liable for consequences of the act.

Answer: D. Fla. Stat. §733.615.
5. D executed a will in 2017 which provides as follows:

"Upon my death, my personal representative shall distribute one-half of my estate to my brothers, B1 and B2, and the other half of my estate in equal shares to my friends, F1 and F2."


D died in 2020. At the time of his death, D was survived by F2, B1, and the children of B2 and F1. D had no surviving wife or children.

Which of the following is correct?

(a) F1’s children will be beneficiaries of D’s estate, but B2’s children will not.

(b) B2’s children will be beneficiaries of D’s estate, but F1’s children will not.

(c) F1’s children and B2’s children will all be beneficiaries of D’s estate.

(d) B1 will receive one-half of D’s estate and F2 will receive one-half of D’s estate.

6. In December, 2019, Husband (H) and Wife (W) moved to the State of Florida from New York. In January, 2020 H signed a contract to purchase a condominium. H closed on the condominium and H and W moved into the condominium on February 2, 2020. That afternoon while unpacking heavy cartons from the move H suffered a massive heart attack. H was hospitalized for one month and then moved to a nursing home where he remained for four months until his rehabilitation. He is survived by W and two minor children. H died intestate. Which of the following is correct?

(a) The condominium purchased by H is protected homestead real property.

(b) The condominium passes to the two minor children under the laws of descent and distribution.

(c) The condominium passes to W under the laws of descent and distribution.

(d) The condominium does not qualify as protected homestead real property under the Florida Constitution.

Answer: A. See In Re: Herr, 197 BR 939 (1996)
7. M was an unremarried widow residing in Miami-Dade County, Florida. M had two adult children and four grandchildren. Two of the grandchildren are the son and daughter of M's deceased son, S. At M's death, there were significant creditors' claims against her estate. M's Will left her only remaining asset, her home, to G, her granddaughter who was the daughter on one of M's surviving children. The Personal Representative brought a Petition to the court to determine homestead exemption. The creditors objected on the basis that the real property was not exempt. M's surviving children objected on the grounds that the property was not subject to devise as it was protected homestead property. Which of the following is correct?

(a) Because M devised the property to a grandchild, even though she was survived by two adult children, the real property lost its protected status as homestead and the creditors will prevail on their claims.

(b) The property is protected homestead property but the devise to G is void because M is survived by two adult children, who each will receive a one half interest in the property.

(c) The devise of the homestead property to G is void and the property will descend to the two surviving children and to the two grandchildren who are the children of the deceased child of M (one third each to the adult children and one sixth each to the two grandchildren).

(d) The real property passed to G as protected homestead.

8. D died in September 2020 leaving no assets subject to probate but a revocable trust holding substantial assets. D’s pour over will has not been admitted to probate. You represent D’s creditor, X, to whom D owed a substantial sum on a promissory note on which D defaulted one month prior to her death. **Which of the following is the correct action to enable X to ultimately collect the note from D’s trust?**

(a) File a claim with the trustee of D’s revocable trust.

(b) File a caveat in the probate court in the county of D’s domicile.

(c) File suit against the trustee of D’s revocable trust within two years after D’s death.

(d) Open a formal probate administration for D and file a claim.

**Answer: D**
9. Attorney planned to meet with a new client, Client, for the purpose of preparing a living trust and Will for the client. Before the initial meeting, Attorney received a telephone call from Client's son (S). S told Attorney: "I will accompany Client to the meeting with you. Client will be upset if Client knows the true amount of the fee for your services. Please quote to Client a lower fee than you actually charge and I will pay you the remainder of the fee." What action may the Attorney ethically take?

(a) Attorney may comply with the request, as long as Attorney maintains the confidentiality of Client's communications and independently exercises Attorney's professional judgment.

(b) Attorney may accept partial payment from each of Client and son, but must obtain Client's consent to the true financial arrangement.

(c) Attorney must collect the entire fee from Client and may not accept any payment from S.

(d) Attorney must withdraw from representation of Client in this matter.

Answer: B. Rule: 4-1.8(f)
10. Husband and wife own an account, as tenants by the entirety. Husband incurred many debts during his lifetime, which result in several judgments against him. As a result of the shock of the judgments against him, husband dies. What happens to the account?

(a) The Personal Representative of H’s estate is entitled to one-half (¼) of the account, W owns the rest.

(b) W owns the account free and clear of all judgments of H.

(c) W owns the account subject to the judgments against H.

(d) One-half (1/2) of W’s interest in the account is available to satisfy the judgments against H.

Answer: B. See Beal Bank SSB v. Almand & Associates, 780 So.2d 45 (Fla. 2001); Winters v. Parks 91 So.2d 649 (Fla. 1956).
These questions are provided only as a helpful guide to Applicants. They should not be overly relied upon and are not a substitute for self-study and experience. The Board Certification Committee annually reviews, updates, and creates actual examination questions in an effort to ensure that the examination accurately tests those areas embraced by the Wills, Trusts, and Estates Certification Committee. Good luck on the exam.

Sample Essay Questions

Predeath Essay

Your client, Husband, age 80, is married to Wife, age 75. It is a second marriage for each, Husband has one adult son (C) from his first marriage who is 40 years of age. C is the chief executive officer of a public company and is independently wealthy. C has two children, GC-1 and GC-2. Husband wants his grandchildren, GC1-1 and GC-2, to ultimately receive his estate.

Wife has two daughters, D-1 and D-2. Husband does not want Wife’s daughters to receive any of his holdings.

Husband’s current assets owned solely by Husband consist of the following:

1. Marketable securities of $15,000,000
2. Husband owns the residence in his own name which has a fair market value of $500,000.
3. A level term life insurance policy with a death benefit of 1,000,000 and an annual premium of 5,000.

Husband and Wife have a valid premarital agreement where they waive all rights in each other’s estates including homestead. Wife has no assets. Husband desires to maintain his lifestyle. In the event of Husband’s demise, he would like Wife to continue to receive
the income from all of his holdings. Husband would like to minimize all federal estate taxes and he would like to provide the maximum benefit to his grandchildren, GC-1 and GC-2.

Part 1: Describe the type of estate planning document and arrangements Husband should consider to provide flow of funds to Wife and to his grandchildren. In addition, discuss the risks associated with the foregoing.

Part 2: Describe the elections Husband must make to implement the recommendations in Part 1 above.

Model Answer

Part 1: There are many options Husband may consider in setting up his estate plan. As set forth above, Husband is not confined by the Wife’s elective share rights or Florida homestead rights. However, since Husband wants his assets to be distributed to his grandchildren at his death and nothing to his son or stepdaughters, transfers to Wife should be made to her in trust, with remainder payable to Husband’s grandchildren.

Husband may establish an intervivos revocable trust for his securities and his residence. While alive, Husband will control the revocable trust. Upon Husband’s death assuming Wife survives Husband, the trust assets will be placed in one or more irrevocable trusts for the exclusive lifetime benefit of Wife for her lifetime. Husband’s estate plan may direct up to Husband’s remaining federal estate tax exemption amount (“Share A”) to an irrevocable trust for the exclusive lifetime benefit of Wife for life that pays her all income (consistent with Husband’s intent); upon Wife’s death, remaining trust assets will be distributed to GC-1 and GC-2 (“Trust A”). After setting aside Share A, all remaining assets (“Share B”) could be distributed to an identical trust for Wife with remainder to GC-1 and GC-2; however, the trust holding the assets allocated to Share B would need to qualify for the federal estate tax marital deduction and the personal representative of Husband’s estate would need to make a valid QTIP election in order to defer estate taxes (“Trust B”). If Wife is granted access to principal, Husband’s documents should encourage the trustee to consider spending down the assets of Trust B first, before spending down the assets of Trust A (because the assets of Trust A will not be included in Wife’s taxable estate on her subsequent death and the personal representative of Husband’s estate will allocate Husband’s GST exemption to Trust A). Upon Husband’s death, his remaining GST exemption amount will be allocated to Trust A. Upon Wife’s death, the assets of Trust B will be included in Wife’s gross estate under Section 2044, and Wife will be the transferor for GST tax purposes; Wife’s remaining GST exemption amount (if any) can be allocated to Trust B at the time of Wife’s death.

Husband will not have enough GST exemption to prevent a GST tax at his death if all of Husband’s assets are devised to GC-1 and GC-2. To the extent Wife will have excess GST exemption at her death, Husband may consider establishing an irrevocable lifetime QTIP trust for Wife. Wife will be the life income beneficiary of the trust and GC-1 and GC-2 will be the remainder beneficiaries. In addition, the trust agreement could provide for Husband to receive the trust income for life if Wife predeceases him. The remainder will still be distributed to GC-1 and GC-2 after the death of both Husband and Wife. Retaining the income stream from the trust after Wife’s death will ensure that Husband has some
access to the funds transferred to the lifetime QTIP trust if needed to maintain his lifestyle, should his Wife predecease him. Generally, no gift tax liability is incurred when there is a transfer between spouses. Most spousal transfers are deductible under section 2523(a) of the IRC. However, the marital deduction is not available for transfers of a life interest. A transfer of life estate would qualify for the marital deduction if a qualified terminable interest (QTIP) election pursuant to section 2523(f) of the IRC was made. Since Husband is irrevocably transferring his ownership interest in these securities to the irrevocable intervivos QTIP trust, at the time of his death, he would not own any interest in them. The securities would not be included in Husband's gross estate. They will be included in Wife' gross estate pursuant to section 2044 of the IRC. Furthermore, once the QTIP election is made, Husband's contingent interest is not included in his estate under sections 2036 and 2038 of the IRC. Pursuant to section 2044(a) of the IRC, the transferor of the contingent interest is Wife and not Husband.

As an alternative to devising the residence to the Wife in trust for life, Husband may bequeath to Wife a life estate in the residence. Wife will have the right to live in the residence provided that she pays all maintenance costs related to the residence, such as all assessment, repairs and insurance. Upon Wife' demise or should she predecease Husband, the residence will be distributed to GC-1 and GC-2.

The life insurance policy should be removed from Husband's gross estate. The best solution is to establish an irrevocable life insurance trust (ILIT). Husband's existing life insurance policy will be transfer to the ILIT. The only caveat is that if Husband dies within three years of the transfer, the death proceeds (i.e., the $1.0 million) will be included in his gross estate under section 2035(a) of the IRC. Husband may avoid this result by canceling his existing policy and having the trustee of the ILIT purchase a new life insurance policy. However, this may not be a practical option considering that Husband is 80 years old. A second option would be for husband to sell the existing policy to the ILIT for its fair market value as determined for federal gift tax purposes. A sale would avoid application of the three-year rule under 2035. Provided that the ILIT was a grantor trust for federal income tax purposes, a sale to the ILIT should not cause the death benefit to be considered taxable income when the ILIT receives the death benefit.

Another option available to Husband is to include a contingent QTIP trust provision in the ILIT trust agreement. Under this provision, if the death proceeds are inculdible in Husband's estate then the proceeds should be placed in trust for Wife. The income would be distributed to Wife for life and the remainder to GC-1 and GC-2. Once the policy is transferred to the ILIT, Husband will not possess any of the incidents of ownership described in section 2042 of the IRC and the regulations promulgated thereunder. The policy would be removed from his estate.

Once Husband passes away, the ILIT will terminate and the death proceeds will be placed in trust. Wife will be the life income beneficiary of the trust and GC-1 and GC-2 will be the remainder beneficiaries.

Furthermore, in order to ensure that the transfer of the life insurance policy and the future premium payments qualify as gifts of present interest, crummey powers will be given to Wife, GC-1 and GC-2. Pursuant to Crummey v. Commissioner, a beneficiary of a trust,
who receives a future interest in the trust, may qualify the future interest as a present interest if he is given the right to make an outright demand for the property held in trust (i.e., crummey powers). This holding has been further extended to contingent remainder beneficiaries in Estate of Maria Cristofani v. Commissioner. Pursuant to Cristofani, a contingent remainder beneficiary may qualify his future trust interest as a present interest if he is granted crummey powers.

Part: 2 The elections that should be taken are as follows:

If Husband establishes an intervivos QTIP Trust: Husband will make a QTIP election pursuant to section 2523(f) of the IRC. If the QTIP election is made, on Wife’s death the trust corpus is included in her gross estate pursuant to section 2044 of the IRC. Pursuant to section 2652(a) and example 3 of Treasury Regulation 26.2652-1 (a)(5), upon her demise Wife is treated as the "transferor" for GST allocation purposes. Thus, Wife’s executor will allocate Wife’s available GST exemption to the assets held in this trust pursuant to section 2631 of the IRC.

ILIT: Husband will elect to allocate his available GST exemption to each premium payment held in this trust pursuant to section 2631 of the IRC. Since part of Husband’s GST exemption will be allocated to the entire trust, at the time of his death the inclusion ratio under section 2642 of the IRC will be zero and, thus, the tax rate for GST purposes will be zero. As a result, the entire trust corpus will be GST exempt, even though the amount distributed to GC-1 and GC-2 will be greater than the amount Husband originally transferred to the ILIT. Husband must continue to allocate his available GST exemption to the subsequent annual premiums, thus ensuring that at his death the inclusion ratio remains at zero.

Revocable Trust: Husband’s assets exceed his available federal estate tax exemption amount; as a result, a federal estate tax return will be required at Husband’s death. At Husband’s death, the personal representative will allocate Husband's remaining GST exemption to the assets held in Trust A pursuant to section 2631 of the IRC. At Husband’s death, the personal representative will make a QTIP election for the assets allocated to Trust B.
Transfer Tax Essay

John is an accountant and his wealthiest clients, Donny and his wife, Donna, both recently died. Donny and Donna used a long-time family friend (who had little estate planning experience) to prepare their estate planning documents, and John was appointed as Personal Representative of both estates.

Both estates have assets greater than $12 million. John has some federal transfer tax questions that are bothering him, and he is seeking your advice.

Donny died on April 1, 2020. At the time of his death, his remaining generation-skipping transfer tax exemption was $7 million and he had no remaining gift tax exemption. There is no tax apportionment clause in his Will. His Will provided as follows:

(a) A $5 million trust which paid income to Donna for her lifetime, and upon Donna’s death income to Donny’s son, Sonny for his lifetime, and upon Sonny’s death to Sonny’s children. A QTIP election was made for this Trust, and a “reverse QTIP election” was also made under IRC § 2652(a)(3).

(b) The residue of Donny’s estate went outright to Donna.

Donna died on October 1, 2020. At the time of her death, she had no remaining gift or generation skipping-transfer tax exemption. There is no tax apportionment clause in her Will. Her Will provided as follows:

(a) A gift of $1 million to each grandchild who survived Donna. Donna was survived by six grandchildren.

(b) A gift of $300,000 to a trust to provide for the care of Donna’s parrot. Upon the death of parrot, any remaining trust property is to be distributed to Donna’s grandchildren, per stirpes.

(c) The residue of Donna’s estate was to be distributed in equal shares to Donna’s two children, Sonny and Sandy. If either child did not survive Donna, such child’s children were to take their parent’s share of the residue of the estate. Donna’s Will provided that any child who did not survive Donna by at least one hundred twenty days was presumed to have predeceased her.

In 2017, Donna had established a Grantor Retained Annuity Trust, which reserved annuity payments to Donna for a term of four years. Donna had paid $1 million in gift tax on the value of the remainder interest in the GRAT when this trust was established.

In addition, in 2017, Donna had deeded her home to her daughter, Sandy. At the time of the gift, the home had a value of $1 million. Donna had filed a gift tax return for this transfer, and paid $400,000 in gift tax. Subsequent to the gift, Donna had leased the home back from her daughter, Sandy. The rent Sandy charged Donna was $5,000 per month, however, fair market rent was actually $12,000 per month.
At her death, Donna was the income beneficiary of a trust established by her grandfather upon his death in 1974. Donna received the income from the trust and the trustee had the right to invade principal for Donna’s “support, health, maintenance, well-being, happiness and comfort”. At Donna’s death, Big Bank, was serving as sole trustee of this trust.

Donna’s son, Sonny, did not survive Donna. Sonny died on May 1, 2020 in a horrible construction accident. Sonny was survived by three children, who all survived Donna. Sandy died on January 1, 2021, after being removed from life support, as a result of injuries suffered when a freak tornado caused when Sandy’s house to collapse around her. Sandy was survived by three children also.

Donna’s grandchild, Dandelion, is Personal Representative of Sonny’s estate and Sandy’s estate. Dandelion recently contacted John, and expressed dismay at the amount of taxes that may be due upon Donna’s death. This is one of the reasons that John has contacted you.

John has asked that you identify and explain to him the gift, estate and generation skipping tax issues that you see in the administration of Donny and Donna estates. John would like you to explain your answers so that he can understand the issues and explain them to the beneficiaries.

Please provide your advice to John. Include advice on any post-mortem actions you would recommend to reduce taxes.

**Model Answer**

1. A Federal estate tax return will be required for both estates. There was no unused estate tax exemption from Donny’s estate (who predeceased Donna), and so no estate tax exemption will be “ported” to Donna. Donny’s GST exemption (even if not fully used) cannot be transferred to Donna.

2. The $5 million trust established under Donny’s Will is subject to estate tax in Donna’s estate. Because a reverse QTIP election was made, it would not be subject to generation skipping tax in Donna’s estate, and Donny will be considered the transferor of the trust for GST purposes. The predeceased child exception would not apply, because even though Sonny predeceased Donna, Sonny had survived Donny.

3. The gifts of $1 million to each grandchild would be subject to estate tax. The gift of $1 million Dollars to Sonny’s children would not be subject to generation skipping tax because of the predeceased child exception. The gift of $1 million Dollars to each of Sandy’s children would be subject to generation skipping tax. The survival provision in Donna’s Will does not change this result because Sonny survived Donna by more than 90 days. Reg. § 26.2651-1(a)(2).

4. The gift to the pet trust would be subject to estate tax and generation skipping tax. Under Reg. § 26.2612-1(b)(2) there is no current person who is beneficiary of the trust,
and when a person becomes a beneficiary of the trust all such individuals are skip persons. Parrots do not qualify as persons.

5. The gift of the residue would be subject to estate tax. The gift to Sonny’s children would not be subject to generation skipping tax, the gift to Sandy’s children would be subject to generation skipping tax.

6. Estate taxes attributable to the specific gifts to grandchildren and the specific distribution to the pet trust will be paid from the residue of Donna’s estate. If the residue is insufficient to pay such estate taxes, then the non-residuary portion will pay the estate taxes proportionately. Estate taxes attributable to the residue shall be apportioned among the recipients of the residuary devise proportionately. Generation skipping transfer taxes will be apportioned as provided in IRC §2603.

7. The property in the GRAT will be subject to estate taxes. However, Donna will get credit for $1 million in gift tax she paid at the time of the gift since the property subject to the gift was includable in her estate.

8. The gift of the house would probably be considered a gift with a retained interest, resulting in the house being includable in Donna’s estate. If so, Donna would get credit for the gift tax paid.

9. Donna’s gross estate will include the value of the gift taxes for gifts made within 3 years of her death. Both the GRAT and the house were taxable gifts made within three years of death. Accordingly, the value of the gift taxes paid will be included in the value of Donna’s gross estate (even though property may be includable in her gross estate).

10. The trust established by Donna’s grandfather is probably not included in Donna’s estate because even though the standard for the invasion of trust principal is not an ascertainable standard, Donna is not a Trustee. There are no facts indicating Donna was serving as trustee, or that she should could remove and replace the trustee with herself. There are no facts indicating she held a power of appointment.
Trust Administration Essay

Client comes to you, a board certified wills, trusts and estates attorney, for advice and counsel. Client is a resident of Florida and is the trustee of a community property trust established under the Florida Trust Code (the “Trust”). The Trust was established and funded on August 1, 2021 by Husband (“H”) and Wife (“W”) as the settlors. H and W have been married for 20 years, are residents of Florida, and have 2 adult children from their marriage (“Children”). H and W have not entered into a marital agreement or any homestead waiver. The Trust can be amended or revoked by H and W during their lifetimes. The terms of the Trust provide that the Trust shall be irrevocable on the death of the first spouse.

The Trust owns a home in Florida that H and W reside in as their primary residence. H and W jointly own a secondary residence located in New York that H and W use in the summer months. H and W have expressed their desire to transfer their New York residence to the Trust.

The Trust provides that on the death of the first spouse (“deceased spouse”), all of the Trust assets will be directed to an irrevocable Trust (“Marital Trust”) that pays income to the surviving spouse for life, and authorizes the Trustee to distribute principal to the surviving spouse’s health, education, maintenance and support. Furthermore, the Marital Trust provides that on the subsequent death of the surviving spouse, the remaining assets of the Trust will be distributed to the deceased spouse’s then living descendants, per stirpes.

A. Client requests your advice regarding the administration of the Trust. Specifically, Client asks:

A-1. Who are the qualified beneficiaries of the Trust while H and W are living?

A-2. Is the Client (as trustee) required to provide accountings to the qualified beneficiaries?

A-3. Can H and W transfer their New York residence to the Trust?

B. Assume H dies on January 1, 2022, survived by W, and the only asset of the Trust is the Florida home.

B-1. What happens to H’s share of the Florida home?

B-2. Who are the qualified beneficiaries of H’s share of the Trust after the death of H? Who are the qualified beneficiaries of W’s share of the Trust after the death of H?

B-3. Can W's share of the Trust be amended by W after the death of H?
Model Answer

A-1. Who are the qualified beneficiaries of the Trust while H and W are living? H and W are the only qualified beneficiaries of the Trust while H and W are living. See Fla. Stat. §736.1504(4).

A-2. Is the Client (as trustee) required to provide accountings to the qualified beneficiaries? It depends on whether the Trust is revocable or irrevocable. A community property trust may be established as a revocable trust or an irrevocable trust. See Fla. Stat. §736.1504(1)(d). A Trustee has duty to account in the case of an irrevocable trust. See Fla. Stat. §736.0813.


B-1. What happens to H’s share of the Florida home? Although owned by the Trust, the Florida home will be treated as homestead for all purposes under Florida law. Fla. Stat. §736.151. Accordingly, the devise limitations will be applicable on H’s death with respect to H’s share of the Florida home. On H’s, the attempted devise of H’s share of the Florida home to an irrevocable trust for W (the Marital Trust) will fail. See Article 4 Section X of the Florida Constitution. Fla. Stat. §732.4015. As result, the owners of H’s share of the Florida home will be W, who will hold a life estate, and the Children, who will hold a vested remainder in the Florida home. Fla. Stat. §732.401. In lieu of a life estate, W may elect to take an undivided one-half interest in H’s share of the Florida home as a tenant in common, with the remaining undivided one-half interest vested in the Children. Fla. Stat. §732.401.

B-2. Who are the qualified beneficiaries of H’s share of the Trust after the death of H? H’s share of the Trust becomes irrevocable on H’s death; as a result, the qualified beneficiaries of H’s share of the Trust are W and Children. Fla. Stat. §736.0103(19). However, note that there are no assets in H’s share of the Trust; on H’s death, H’s share of the Florida homestead vested immediately in W and Children (and is therefore not owned by the Trust).

Who are the qualified beneficiaries of W’s share of the Trust after the death of H? Pursuant to Fla. Stat. §736.1504(4), W is the only qualified beneficiary of W’s share of the Trust beginning on H’s death.

B-3. Can W’s share of the Trust be amended by W after the death of H? Yes, even though the Trust is irrevocable based on its terms, W may amend the Trust regarding the disposition of the Florida home. Fla. Stat. §736.1504(2).
Estate Administration Essay

(D), a widower, died on May 30, 2004. He was survived by 2 children (C1 and C2). C1 has two children of his own, (G1 and G2). D’s Will devises his estate equally to C1 and C2 and nominates them as his co-Personal Representatives. Among the assets owned by D at the time of his death were:

A. A judgment against C1, which D had purchased from the initial judgment creditor many years before his death. No written evidence of the purchase price can be found.

B. A note and mortgage executed by C1, encumbering land owned by C, which D purchased from the initial lender.

C. A certificate of deposit pledged as security for D’s guaranty of C1’s debt of $10,000 to Creditor. C1 defaulted on the debt and Creditor recovered the $10,000 from the certificate of deposit.

D. A parcel of real estate deeded to D by C1 several years before D died.

C1 denies liability on the judgment, note and mortgage claiming that D had forgiven them. C1 further denies any obligation to reimburse the estate for the $10,000 taken by Creditor from the certificate. C1 also claims the parcel of real estate, arguing that D had not owned the land individually, but rather had merely held it in trust for C1 in order to shield it from C1’s creditors. Finally, on May 25, 2005, C1 executed, filed and served a Disclaimer of his interest in D’s Estate. C2 petitions to remove C1 as a co-Personal Representative of the estate.

(1) Discuss the likely outcome of C2’s petition to remove C1 as co-Personal Representative?

(2) Discuss the merits of C1’s claims that D had forgiven the note, mortgage and judgment, including evidentiary considerations.
(3) **Discuss the merits of C1’s claim that D had owned the realty as trustee for C1, including evidentiary issues.**

(4) **After C1’s claims are resolved by settlement, G1 and G2 sue C2, claiming that because of C1’s Disclaimer, C1’s one-half of the estate should have been distributed to them. Discuss the merits of their claim.**

**ESTATE ADMINISTRATION ESSAY MODEL ANSWER**

1. **(C1) has a clear and actual conflict of interest with the estate and should be removed. Florida Statutes Section 733.504(9); Estate of Gainer (Duncan v. Davis), 579 So. 2d 739 (Fla. 1st DCA 1991); Estate of Bell (Hunter v. Johnson), 573 So. 2d 57, 59 (Fla. 1st DCA 1990); Vaughn v. Batchelder, 633 So. 2d 526 (Fla. 2d DCA 1994).**

2. **With respect to the judgment, note and mortgage, C1 should not be permitted to use any evidence of verbal communications between himself and (D) to the effect that they had been satisfied as a gift to him. (Fla. Stat. 90.602; Estate of Bell Hunter v. Johnson), 573 So. 2d 57 (Fla. 1st DCA 1990). If other witnesses heard such communications, however, the transactions could be established. In that event, (C2) should argue that the gifts constituted advancements to C1. West v. Coogler, 427 So.2d 813 (Fla. 5th DCA 1983).**

3. **With respect to the realty, C1’s claim should be denied (in the absence of a written agreement) even if he can prove, through disinterested witnesses, such a verbal agreement.**

4. **The claims of (G1 and G2) should be denied because the Disclaimer was untimely. (Fla. Stat Section 732.801). It also appears likely that the Disclaimer was invalid due to C1’s insolvency at the time he executed it**
Homestead Essay

Husband ("H") and wife ("W"), as tenants by the entireties, purchased Home 1. H subsequently filed for divorce, and permanently moved from Home 1. H then purchased Home 2 for $300,000 in his individual name where he continuously resided for one year until his death on September 30, 2020.

At the time of H’s death, title to Home 2 was held by H’s Revocable Trust in which W had no interest either before or after H’s death. At the time of H’s death, H was survived by W, but their divorce was not yet final. W continuously resided in Home 1 at all times through H’s death.

While residing at Home 2, H received his mail at the Home 2 address, filed tax returns using the address of Home 2, obtained a driver’s license listing Home 2 as his address, and made $50,000 in various improvements to Home 2.

W consults you as to whether Home 2 is H’s homestead property under the Florida Constitution for purposes of descent and devise.

Please state the legal basis for your opinion. Assume that both Home 1 and Home 2 were located in municipalities, on less than half an acre.

Model Answer

Yes, Home 2 is H’s homestead property under the Florida Constitution for purposes of descent and devise. The actions of H, while residing at Home 2, clearly indicate an intent to permanently reside there, and not Home 1. The fact that Home 2 was titled in H’s Revocable Trust will not prevent Home 2 from being considered H’s homestead property. The ownership of homestead property by the trustee of a revocable trust is essentially disregarded for purposes of determining whether the property can be devised. See In Re Estate of Johnson, 397 So. 2d 970 (Fla. 4th DCA 1981).
PROBATE & TRUST LITIGATION ESSAY

You receive a call from John, a trust officer at Starbucks Bank and Trust Company of Florida, N.A. John’s client, Helen, is a 92 year old woman with a revocable living trust. Helen has also been your estate planning client for many years, and you prepared Helen's revocable living trust four years ago, but haven't seen Helen since then. Starbucks has been serving as trustee of the trust for 4 years. The trust has $22 million in marketable securities.

Helen has no immediate family. The beneficiary of the living trust on Helen’s death is the American Red Cross. Helen lives in Miami, FL.

John has just received a call from Frank, an attorney in Orlando. Frank told John that he met Helen on July 1, 2006, that he is Helen's new attorney, and that Helen had signed a revocation of her living trust on July 1, 2006. Frank further says that Helen had established a new living trust that same day with her step-niece, Carol, and Frank as trustees. Frank further says that Helen has given Carol a durable power of attorney, which gives Carol the power to transfer Helen’s assets to her new revocable trust. Frank told John he is faxing to John copies of the revocation of trust and power of attorney, together with transfer instructions so the assets can be transferred to a new living trust.

Frank further told John that Helen was unhappy with Starbucks, and Helen hired Frank to remove them as trustee. Carol and Frank are old friends. Frank tells John he is not to communicate with Helen because she doesn’t want to be bothered with this, and to please transfer the assets immediately.

John tells you that although he has known Helen for 4 years, he has never met or heard of Carol. He says that Helen never told John she was unhappy with Starbucks, in fact she frequently said she was pleased with them. John also says he noticed Helen seemed to decline physically and mentally in recent years and has been increasingly forgetful.
John also says that this is an important account for him and he very much wants to keep the business, or at least delay the transfer until he receives his next bonus.

John would like you to represent Starbucks and stop the transfer of assets, and would like to pay your fees from the trust. **Please discuss whether you can represent Starbucks.** Whether or not you can represent Starbucks, please discuss what recommendations Starbucks’s attorney should give to Starbucks. Please explain what options and causes of action are available, and what possible defenses may arise. Please also discuss any ethical issues possibly encountered by either attorney related to the causes of action and defenses, and whether it is proper to pay Starbucks’s attorney from the trust.

**PROBATE AND TRUST LITIGATION MODEL ANSWER**

1. You cannot represent Starbucks if the position of Starbucks is adverse to the position of a current or former client (Helen) in the same or a substantially related matter. Rule of Professional Conduct 4-1.9. Nor may you use information obtained in your prior representation of Helen (estate planning) to the disadvantage of Helen. The problem here is you don’t know what Helen’s actual interests are, that is, whether the changes signed by Helen express her true wishes or are the result of lack of capacity or undue influence. It is also unclear if this matter is substantially related to the prior estate planning. There is no clear answer to this question, but it is probably not prudent to represent Starbucks.

2. If you represent Starbucks, you would first try to keep the assets with Starbucks by challenging the revocation of the old living trust by Helen. Revocation of the old trust may be challenged on lack of capacity but not undue influence. See Florida National Bank v. Genova 460 So. 2d 895 (1984).
If a challenge to the revocation was not effective, the revocation has the effect of transferring ownership of the trust assets back to Helen. Carol is trying to use the power of attorney to transfer the assets from Helen to the new revocable trust. You could challenge the validity of the power of attorney. As an alternative, an emergency temporary guardianship may be sought to hold assets in guardianship. The guardianship would suspend the authority of the attorney-in-fact to transfer the assets. Carol may argue that no guardianship is necessary because of less restrictive alternatives. See Smith v. Lynch, 921 So. 2d 1197 (4th DCA, 2002). But this situation is distinguishable from Smith, which involved a loving husband and a modest estate. Also the guardian would have authority to immediately contest the validity of the new living trust on the basis of both the undue influence and lack of capacity. F.S. 737.2063. You could ask to have Starbucks appointed as emergency temporary guardian.

Fees can be paid by trust until actual distribution, whether or not revocation is valid. See F.S. 737.402.

Ethical issues include:

(a) Can’t litigate so John can receive bonus. This would be totally improper.

(b) Did Frank properly become involved in the case? Even if Frank had some concerns as to Helen’s capacity, he was probably justified in doing the new documents as long as Helen did not appear completely incompetent. However, Frank’s appointment as Trustee upon first meeting Helen raises strong concerns about his having a conflict of interest in doing these documents.

(c) Is there adequate evidence for Starbucks to seek any relief at all? Starbucks shouldn’t challenge the transfer simply because it doesn’t want to lose an account. But there are sufficient indicia of undue influence in this case to let a court decide the issues. These include Helen’s age, the out-
of-town new lawyer who knows Carol, Frank’s appointment as Trustee, Helen’s forgetfulness, Helen not complaining about Starbucks to John, and the use by Carol of the power of attorney to transfer the assets. It is also unclear if Frank is now representing Carol in the use of the power of attorney, along with Helen.

(d) Representation of Starbucks discussed in (1) above.
Other Taxes Essay

D dies on June 1, 2020 at age 62. D is the owner of an IRA and has named both his wife (age 58) and son (age 32) as co-beneficiaries. Neither son nor wife are disabled or chronically ill. Are distributions from the IRA required in 2020? What options are available to wife and son if the goal is to defer distributions from the IRA as long as possible?

Model Answer

Because D died before the required beginning date, no distributions from the IRA are required in 2020.

Wife and son should consider dividing the IRA into separate accounts before December 31, 2021 so that wife can take advantage of the special distribution rules that apply when a surviving spouse is the sole beneficiary of an IRA. Wife and son can divide the account into separate IRAs, one payable to each of them. The rules regarding distributions will apply as if wife’s share of the IRA had been left directly to wife, and as if son’s share of the IRA had been left directly to son.

Wife, as the surviving spouse and sole beneficiary of her separate account, is an “eligible designated beneficiary,” and wife is not limited to the 10-year rule. Wife can either roll over the IRA to her own IRA, or leave it in D’s IRA as an inherited IRA. If wife elects to roll over the IRA, she could name her own beneficiary and delay distributions until she reached 72. Alternatively, she could leave it in D’s IRA and start withdrawals over her life expectancy at such time as D would have attained 72 years of age.

Son is not an “eligible designated beneficiary” of the IRA. Son, as the sole beneficiary of his separate account, would be subject to the 10-year rule and the entire IRA must be distributed by December 31, 2030.