Sample Language for the
Family Trust, Disclaimer Trust, Marital Trust, Supplemental Needs Trust and Defective Grantor Trust

FAMILY TRUST – sample language

2. All the rest, residue and remainder of said trust estate shall be set aside as a separate trust to be designated as the Family Trust and shall be held, administered and disposed of as follows:

   a. The Trustee shall hold, manage, invest and reinvest said property and estate designated as the Family Trust and collect and receive the income thereof, deducting all expenses incident to the execution and administration of said Trust. The Trustee shall pay to, or expend for the benefit of my surviving spouse and any child of mine by my spouse, not necessarily in equal shares, during the life of my spouse, so much of the annual net income and so much of the principal of the Family Trust as the Trustee shall deem advisable for my surviving spouse's health, education, medical care, and support in reasonable comfort and for the health, medical care, education, and support in reasonable comfort of any child of mine by my spouse. The Trustee shall have no duty to equalize any unequal distributions or to take into account differences in benefits previously received by said children from the trust in making subsequent distributions. In making the aforesaid payments and expenditures, Trustee shall give priority first to such payments and expenditures to or for my spouse and only after my spouse is thus maintained shall payments or expenditures be made for or on behalf of my children by my spouse. The excess income shall be accumulated and added to the principal.

   In connection with making such payments to my spouse, the Trustee shall be generous in exercising discretion and shall take into consideration such factors as the cost of living, and the impact of federal, state and local taxes upon the net spendable funds of my spouse, and the Trustee is hereby exonerated from any liability in connection with making such payments in the exercise of Trustee's discretion. The Trustee is requested, however, to consider the advisability of having the funds of my said spouse exhausted before invading the principal and income of the Family Trust for the benefit of my said spouse.

   My said surviving spouse shall have the limited power to appoint by Will all or any part of the principal of the Family Trust to the issue of myself by my spouse, or any of them, outright or in trust, in such proportions and amounts as my such surviving spouse shall, in my surviving spouse's judgment determine, PROVIDED HOWEVER, that no exercise of such power shall be effective unless it shall make specific reference hereto. The Trustee shall pay over and distribute any portion so appointed in accordance with the terms of such appointment.

   b. Upon the death of the survivor of myself and my spouse, if my said spouse shall not have exercised the power of appointment hereinbefore conferred upon such surviving spouse as to all the principal and any accrued and undistributed income of said Trust, the Trustee shall divide the Trust, as it is then constituted, into as many equal portions as there shall be such children of myself by my said spouse either living at the time or represented by then living issue,
and shall forthwith pay over and distribute one such portion, free of any trust, to each of my said living children, and shall set out one such portion in trust under Paragraph c. hereinafter, for the then living issue of each of my children who shall have previously died.

**FAMILY TRUST: LIMITED POWERS OF APPOINTMENT**  
IRS Regulation 20.2041-(c)(2)

A power to consume, invade, or appropriate income or corpus, or both, for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent is, by reason of section 2041(b)(1)(A), not a general power of appointment. A power is limited by such a standard if the extent of the holder’s duty to exercise and not to exercise the power is reasonably measurable in terms of his needs for health, education, or support (or any combination of them). As used in this subparagraph, the words “support” and “maintenance” are synonymous and their meaning is not limited to the bare necessities of life. A power to use property for the comfort, welfare, or happiness of the holder of the power is not limited by the requisite standard. Examples of powers which are limited by the requisite standard are powers exercisable for the holder’s “support,” “support in reasonable comfort,” “maintenance in health and reasonable comfort,” “support in his accustomed manner of living,” education, including college and professional education,” “health,” and “medical, dental, hospital and nursing expenses and expenses of invalidism.” In determining whether a power is limited by an ascertainable standard, it is immaterial whether the beneficiary is required to exhaust his other income before the power can be exercised.

**DISCLAIMER TRUST (similar to the Family Trust)**  
Sample Language

A. If my spouse survives me, the Trustee shall distribute all trust property to my said spouse.

B. If my spouse survives me and disclaims (or my spouse’s agent under a power of attorney, conservator, or executor of my spouse’s estate) in whole or in part the property so distributable to my spouse, the Trustee shall continue to hold in trust any such disclaimed property IN TRUST in a trust named the Xxx Disclaimer Trust, and the Trustee shall hold, manage and distribute the trust property as follows:

(1) During my spouse’s lifetime, Trustee shall pay to or for the benefit of my spouse all of the net income of the trust not less frequently than quarter annually and so much of the principal of the trust as the Trustee shall determine is necessary or desirable for my spouse’s health, medical care, and support in reasonable comfort. My spouse shall have the right to request that any unproductive property for which a marital deduction is claimed for state or federal estate, inheritance, or succession tax purposes be made productive. Notwithstanding any other provision of this instrument, upon the death of my spouse, all income of any trust for which a federal or state marital deduction has been claimed and which is accrued or undistributed at my spouse's death shall be paid to the estate of my spouse.
Upon the death of my spouse, the Trustee shall first pay from the remaining principal of the trust, directly to the appropriate governmental authority or authorities or to the personal representative of my spouse's estate, as the Trustee deems advisable, without seeking reimbursement, recovery, or contribution from any person, the amount by which the estate, inheritance, and other death taxes (including interest and penalties, if any, but excluding any generation-skipping tax) payable in any jurisdiction by reason of my spouse's death shall be increased as a result of the inclusion of any part of the trust in the gross estate of my spouse for such tax purposes, as certified in writing by the personal representative of my spouse's estate.

Upon the death of the survivor of me and my spouse and after first satisfying any payment obligation in paragraph (2) above, the Trustee shall distribute the trust property remaining in the Xxx Disclaimer Trust to those beneficiaries and in the manner set forth in.

MARITAL TRUST (aka "a" Trust in an A/B scheme) – sample language

1. Commencing as of the date of my death and during the life of my spouse the trustee shall distribute to my spouse:
   (a) The entire net income of the trust in convenient installments, at least as frequently as quarter-annually; and
   (b) As much or all of the principal of the trust as the trustee, in trustee's sole and absolute discretion, from time to time believes desirable for the health, maintenance, education and support in reasonable comfort of my spouse, considering all circumstances and factors deemed pertinent by the trustee; provided, however, that no principal distributions shall be made out of the Marital Election Trust so long as any property remains in the trust named for my spouse and provided further that the Trustee may not make principal distributions to my spouse if my spouse has assets of her own sufficient to provide for her, in the Trustee's sole discretion.

SUPPLEMENTAL NEEDS TRUST:

DISTRIBUTION STANDARD – sample language

Connecticut General Stature section 17b-261(c):
(c) For the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant’s general or medical support. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant’s spouse shall be determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42 USC 1396p. The provision of this subsection shall not apply to a special needs trust, as defined in 42 USC 1396p(d)(4)(A).
DEFECTIVE GRANTOR TRUSTS:

TRUST DESIGNATION – sample language

This instrument shall be designated “The ZZZ Children Trust Agreement Dated MMM __, 20__” (hereinafter referred to as “Trust”). This Trust is and shall be treated as a Grantor Trust pursuant to the Internal Revenue Code of 1986, as amended at §671 et seq. (hereinafter referred to as “the Code”) and shall report income, deductions and credits pursuant to Treasure Regulations §1.671-3. The Trustee shall use the social security number of either Grantor as the Trust tax identification number (or EIN number) and shall comply with all reporting requirements set forth in Treasure Regulation 1.671-4(b)(2)(k)(a). Subsequent Treasure Regulations or amendments to the Code may result in the need to report tax related items in a manner other than that set forth herein.