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LIVING TRUST QUESTIONNAIRE AND RETAINER AGREEMENT FOR SAME-SEX MARRIED COUPLES

DESCRIPTION OF ESTATE PLAN DOCUMENTS AND FUNCTIONARIES

PLEASE READ THIS OVER CAREFULLY BEFORE FILLING OUT A QUESTIONNAIRE. IT WILL HELP YOU UNDERSTAND THE DIFFERENCE BETWEEN A WILL AND A TRUST, FOR EXAMPLE, AND DESCRIBES THE JOBS OF THE PEOPLE YOU WILL BE NOMINATING TO FULFILL CERTAIN FUNCTIONS.

A. OUR ESTATE PLANNING PACKAGES CONTAIN THE FOLLOWING:

WILL - If you do not have a trust, a Will tells the Probate Court what you want to happen to your assets after you die, and appoints an Executor to carry out those wishes. If you are setting up a trust, you only need a Will to the extent that you may have forgotten to put assets into the trust. Therefore, we draft what is called a "**pour-over**" Will which just means that you want all assets you forgot to put into trust during your lifetime to be put there upon your death. The trust in turn explains what you want to happen to your assets after you die, and appoints a Trustee to carry out those wishes (for this reason, most people appoint the same person to act as Executor and Trustee). If you follow our instructions and transfer your assets into your Trust during your lifetime, then Probate Court is avoided and the "pour-over" Will is primarily a safety feature.

DECLARATION OF TRUST (also known as "Living Trust") - A document that protects your assets from Probate Court after your death, and which also gives you unlimited freedom as to the handling of your own assets during your lifetime because you appoint yourself Trustee for your lifetime (or until you become incapacitated). The person who sets up and funds a trust is called a "Settlor"; therefore, during your lifetime, you are both the Settlor and the Trustee. The trust also appoints a Successor Trustee in the event of incapacitation or death of the Settlor (usually the same person as your Executor, but it doesn't have to be). **The Trustee you nominate will be the person who will be dividing and distributing your assets, or keeping them in trust for your beneficiaries.** We also ask that everyone provide the name of their

preferred banking institution in case none of the individuals nominated as Trustees can act (both Wells Fargo and Bank of America provide these services.)

PLEASE BE AWARE - A TRUST WILL NOT PROTECT YOU FROM PROBATE COURT UNLESS YOU TRANSFER ALL SIGNIFICANT ASSETS (WITH THE EXCEPTION OF ANY TAX-QUALIFIED RETIREMENT PLANS) INTO YOUR TRUST ACCORDING TO OUR INSTRUCTIONS TO YOU. The TOTAL amount of combined assets "outside" the trust cannot exceed **\$184,500 (as of 2024)** or the estate will have to go to Probate court. You can transfer your assets into your trust by addressing and mailing letters of request to each bank, broker, etc. who handles your funds - we provide the letters in your package when you come in to sign. We also provide a Grant Deed for one piece of real property to be put into trust; more than one piece of real property will require additional fees (\$275 for each additional in-state Deed; \$375 for each out-of-state Deed). As you acquire significant assets or real property, transfer them into the trust. Many people do not put their smaller day-to-day personal checking accounts into their trusts.

The reason why the trusts are so long and complicated is because, as your own trustee, you need to have very broad powers to do anything you like with your assets, and the nominated Trustee for after your death(s) must have certain powers as well, the enumeration of which takes many pages.

ADVANCE HEALTH CARE DIRECTIVE (FORMERLY KNOWN AS "DURABLE POWER OF ATTORNEY FOR HEALTH CARE") - Gives you the opportunity to make your own choices about your health care ahead of time in the event that you are not capable of communicating those desires in the future, and appoints someone to carry them out. It includes a list of options regarding extreme measures that you may or may not want taken. You should mail a copy of the fully signed and notarized document to your appointee and to your doctor. This document also includes a **NOMINATION OF CONSERVATOR** as follows: If you should ever become totally incapacitated and a danger to yourself or others, it may be necessary for you to have the Court appoint a Conservator to handle your personal care, and/or a Conservator to handle your financial affairs (usually the same person as your named successor trustee). This document allows you to name someone you trust to do this for you, and lets the Court know who you want to be appointed. You may name two different people to handle physical care and financial matters.

UNIFORM STATUTORY POWER OF ATTORNEY - If you should become incapacitated (ie: an operation, an accident) and need someone to handle non-trust business affairs for you, this document officially allows the person you name as your "attorney-in-fact" to sign checks, etc., during your incapacitation.

GRANT DEED - Transfers real property into trust.

ASSIGNMENT - Transfers business interests and/or debts owed to you into the trust.

FEES - Any additional hourly time not included with the 3 hours included in the flat fee to prepare your documents (1 hour initial meeting to understand your situation, 1 hour to review the draft we prepare and 1 hour to execute the documents) will be billed at our regular rates as follows:

Attorney @ \$375/hr. (includes phone & email communication)

Paralegal @ \$175/hr. (includes phone & email communication)

B. DESCRIPTION OF ESTATE PLANNING FUNCTIONARIES

YOU ARE ASKED TO NOMINATE PERSONS TO ACT AS THE FOLLOWING "FUNCTIONARIES" OF YOUR ESTATE PLAN. YOU MAY NAME THE SAME PERSON OR PERSONS FOR MANY FUNCTIONS IF YOU LIKE.

1. **Executor of your Will** - *The person(s) you name MUST be a US Citizen(s).* You are drawing up a "pour-over" Will, which, very simply put, means: "I give everything to my trust"; the trust, in turn, says how your assets are to be divided after your death. Most people nominate the same person for Executor and Trustee, since the Trustee is actually the one making the distributions. If a trust is properly funded according to our instructions to you, the Will probably will never have to be used.

2. **Trustee of the Trust.** During your lifetime the Trustee is you. You will be naming someone to administer the trust and distribute its assets, as you have directed, after your death. That same person may have to take over your financial affairs during your lifetime if you become incapacitated and unable to do so.

3. **Health Care Agent** (*nominated in your Advance Health Care Directive*). This attorney-in-fact makes medical decisions according to your wishes in case you are not able to communicate those wishes to medical personnel.

4. **Conservator** (*nominated in your Advance Health Care Directive*). This person or persons would handle all of your personal and financial affairs in extreme cases (eg: severe dementia) if the Court finds you incapable of handling them yourself (subject, however, to the succession of the successor trustee named in your trust).

5. **Attorney-in-Fact Under your Uniform Statutory Power of Attorney.** The person you name as this attorney-in-fact can take care of any financial affairs outside the trust - day-to-day banking and bill paying, for example - if you become incapacitated for any substantial period of time (e.g.: a lengthy hospital stay).

QUESTIONNAIRE AND RETAINER AGREEMENT

PLEASE NOTE: THE TRIPLE LETTER CODES THAT APPEAR BELOW ARE FOR OFFICE USE ONLY;
PLEASE DISREGARD WHEN FILLING OUT THIS FORM.

I. CONTACT INFORMATION

Date: _____ Status [] Married [] Registered Domestic Partners

(**AAA**) Name of Partner (**Partner #1**) _____

**NAME AS IT APPEARS ON YOUR VALID DRIVER'S LICENSE, CA PICTURE ID, OR
PASSPORT:**

(**BBB**) Name of Partner (**Partner #2**) _____

**NAME AS IT APPEARS ON YOUR VALID DRIVER'S LICENSE, CA PICTURE ID, OR
PASSPORT:**

Date of Birth (#1) _____ Date of Birth (#2) _____

US Citizen?(#1) _____ US Citizen?(#2) _____

SS# (#1) _____ SS# (#2) _____

(**CCC**) Address _____

(**ccc**) City, State, Zip _____

(**DDD**) Home Phone _____

Work Phone (#1) _____ Work Phone (#2) _____

Cell Phone (#1) _____ Cell Phone (#2) _____

E-mails: (**AaA**) 1: _____

(**BbB**)#2: _____

(**EEE**) County _____

II. PERSONAL INFORMATION

A. Estimated Market Value of Estate Assets

	<u>Owner Name</u>	<u>Community Property?</u>	<u>Separate Property?</u>
1. Total Stocks \$ _____	_____	_____	_____
Total bonds \$ _____	_____	_____	_____
Total Mutual Funds \$ _____	_____	_____	_____
Total CD's \$ _____	_____	_____	_____
Total Annuities \$ _____	_____	_____	_____
Total Savings \$ _____	_____	_____	_____
Total Checking \$ _____	_____	_____	_____

(Use the attached additional page to list accounts, if necessary.)

2. 401K, IRA, KEOGH, Pension Benefits:

Amount: \$ _____ Owner's Name: _____
 Company _____ Current Beneficiary _____

Amount: \$ _____ Owner's Name: _____
 Company _____ Current Beneficiary _____

Amount: \$ _____ Owner's Name: _____
 Company _____ Current Beneficiary _____

Amount: \$ _____ Owner's Name: _____
 Company _____ Current Beneficiary _____

3. Real Estate:

(i) address _____

County _____

(ABC) Assessor's Parcel Number: _____

Value \$ _____ Total loans against property \$ _____

Owner Name _____

Community Property? _____ Separate Property? _____

(ii) address _____

County _____

Assessor's Parcel Number: _____

Value \$ _____ Total loans against property \$ _____

Owner Name _____

Community Property? _____ Separate Property? _____

(iii) address _____

County _____

Assessor's Parcel Number: _____

Value \$_____ Total loans against property \$_____

Owner Name _____

Community Property? _____ Separate Property? _____

4. Life Insurance: Face Value: \$_____ What Company?_____

Name of Insured: _____

Primary beneficiary:_____

Life Insurance: Face Value: \$_____ What Company?_____

Name of Insured: _____

Primary beneficiary:_____

Life Insurance: Face Value: \$_____ What Company?_____

Name of Insured: _____

Primary beneficiary:_____

Life Insurance: Face Value: \$_____ What Company?_____

Name of Insured: _____

Primary beneficiary:_____

5. Closely-held businesses, partnerships, LLCs, etc.:

Name of Business: _____

Which partner holds interest and how much: _____

STATE where each was formed: _____

6. Personal Property (Antiques, art collections, etc.)

Totals: (Partner #1) \$_____ (Partner #2) \$_____

7. Other Assets? _____

TOTALS Partner #1 (separate property): \$_____

Partner #2 (separate property): \$_____

Jointly Held Assets: \$_____

ACKNOWLEDGEMENT: By our signatures below, we acknowledge that the above constitutes a complete list of our assets.

Partner #1

Partner #2

ADDITIONAL SHEET FOR ACCOUNT INFORMATION

Bank/Investment Co	Type of Account	Last 4-digits of Acct #	Value

(Questionnaire - Estate Plan for Couples, 7.)

B. Children's Information

(FFF) How many children do you have together? _____

Do you have any deceased children who left living children of their own?
_____ If yes, name of deceased child: _____

Names and birthdates of these grandchildren:

How many children do you have separately? Partner #1:___ Partner #2:___

Do either of you have any deceased children who left living children of
their own? _____ If yes, name of deceased child: _____

Names and birthdates of these grandchildren:

(GGG) What are the names, birth dates, addresses, and Social Security numbers
of your children?

Children you have together:

Child #1: _____ Child #2: _____

Address: _____ Address: _____

birthdate _____ birthdate _____

SS# _____ SS# _____

Child # 3: _____ Child #4: _____

Address: _____ Address: _____

birthdate _____ birthdate _____

SS# _____ SS# _____

(Continue on back if necessary)

Children you have separately (Partner #1):

Child #1: _____ Child #2: _____

Address: _____ Address: _____

birthdate _____ birthdate _____

SS# _____ SS# _____

(**aaa**) Name of other parent: _____

(Continue on back if necessary)

Children you have separately (Partner #2):

Child #1: _____ Child #2: _____

Address: _____ Address: _____

birthdate _____ birthdate _____

SS# _____ SS# _____

(**bbb**) Name of other parent: _____

(Continue on back if necessary)

C. Naming of Functionaries

1. If your partner cannot act as **Executor** of your Will, who would you want to act? (This is usually the same person who will act as Trustee of your trust; your Will gives everything to your trust, and your Trust says how you want your estate distributed after your death.)

EACH PERSON NAMED MUST BE A LEGAL U.S. RESIDENT

(**HHH**) For Partner #1: _____

(hhh) For Partner #2: _____

2. If both of your children's parents are deceased who would you want to act as **Guardian of your child's or children's person(s)**? (This is the person the child would live with, the person who would make day-to-day decisions about the child's health and education.)

(JJJ) _____

IF YOU NAMED A COUPLE IN JJJ ABOVE, and they should divorce, which partner would you want the children to live with? _____

Who would you want to be Guardian of the Person(s) if the above-named cannot act?

(jjj) _____

3. If both of your children's parents are deceased who would want to act as **Guardian of your child's or children's estate**? (This is usually the same person as the Trustee.)

EACH PERSON NAMED MUST BE A U.S. CITIZEN

(KKK) _____

Who would you want to be Guardian of your children's **estate** if the above-named cannot act?

(kkk) _____

4. If your partner cannot make **health care** decisions for you, who would you want to do this? Please include addresses and phone numbers for these persons.

(LLL) **FOR PARTNER #1:** _____

(MMM) Address: _____

(mmm) Telephone Number: _____

(NNN) Do you want this same person to act as replacement Conservator of your Person should you be declared a danger to yourself and/or others if your spouse cannot act? _____

If not, then who would you want to be replacement Conservator of your Person? _____

(OOO) **FOR PARTNER #2:** _____

(PPP) Address: _____

(ppp) Telephone Number: _____

(QQQ) Do you want this same person to act as replacement Conservator of your Person should you be declared a danger to yourself and/or others if your spouse cannot act? _____

If not, then who would you want to be replacement Conservator of your Person? _____

5. If your partner cannot make financial decisions for you if you are incapacitated, who would you want to do this?

(RRR) Partner #1: _____

(rrr) Partner #2: _____

6. After both you and your partner are deceased, who do you want to act as Trustee of your Trust? (***This is the person who will be distributing your Trust estate according to your wishes and is usually the same person named as Executor.***)

(SSS) _____

Who would you want to act as Trustee if the person you named above cannot act?

(sss) _____

7. Do you want the same person you named as Trustee to act as Conservator of your Estate should you be declared a danger to yourself and/or others?

(TTT) Partner #1 (yes or No)_____? If no, who?_____

(ttt) Partner #2 (yes or no)_____? If no, who? _____

8. **PLEASE NAME A BANK OR INVESTMENT COMPANY TO ACT AS CORPORATE TRUSTEE IF ALL THE PERSONS YOU NAMED TO ACT AS TRUSTEE CANNOT DO SO. Please keep in mind that this is only a safety net to prevent your Trust from having to go to Court to be distributed. (WFB, BOA, and First Republic all have good trust departments and you do not have to bank with them to add them as a remote replacement Trustee.)**

(UUU) _____

D. Distribution of Estate

1. How do you want your joint estate distributed after you are deceased?

(Continue on back, if necessary)

2. If you are the first to die, would you want to make any special distributions to person other than your spouse or partner? _____
If yes, please describe:

(Continue on back, if necessary)

FOR OFFICE USE ONLY: (VVV) Date Estate Plan Drafted & Sent: _____

(WWW) Year of Trust: _____ (XXX) City for Deed _____

(ABC) Parcel No. for Deed _____

Date 2nd Payment Due: _____

(RETAINER AGREEMENT IS ON THE FOLLOWING PAGES)

III. RETAINER AGREEMENT AND FEE CONTRACT

This document (the "agreement") is the written fee contract that California law requires lawyers to have with their clients. We, the Law Offices of Ross McLauran Madden, will provide legal services to you, _____ on the terms set forth below.

1. CONDITIONS. This agreement will not take effect, and we will have no obligation to provide legal services, until you return a signed copy of this agreement and pay the initial deposit called for under Paragraph 4.

2. SCOPE OF SERVICES. You are hiring us as your attorneys, to prepare the following type of services/agreement:

Estate Plan for Married Couple

Attorney's services will not include litigation of any kind, whether in court, in administrative hearings or before government agencies or arbitration tribunals. Attorney shall take reasonable steps to keep Client informed of progress and to respond to Client's inquiries.

3. CLIENT'S DUTIES. You agree to be truthful with us, to cooperate, to keep us informed of developments, to abide by this agreement, to pay our bills on time and to keep us advised of your address, telephone number and whereabouts.

4. FIXED FEE/DEPOSIT/PAYMENT. Client agrees to pay a fixed fee of \$_____ for Attorney's services under this Contract (said fee includes fees of \$275 per Grant Deed for more than one in-state Deed, and \$375 for any out-of-state Deeds). The fixed fee includes up to 3 hours of attorney appointment time (one hour for initial client interview, one hour for the review appointment, and one hour for signing), plus preparation of the documents. Additional time will be billed at \$375/hour for attorney time, and \$175 for paralegal time. The fixed fee is payable one-half (\$_____) upon execution hereof, and one-half upon the earlier of a) the completion/execution of the service/agreement contracted for in Paragraph 2, above, or b) 30 days after our office has sent you a draft of the said documents contracted for, whether the documents have been completed by you or not. PLEASE BE ADVISED THAT PAYMENT OF THE SECOND HALF OF THE FEE WHEN DOCUMENTS HAVE NOT YET BEEN SIGNED BY YOU AND NOTARIZED WHERE NECESSARY DOES NOT PROVIDE YOU WITH AN ACTIVE TRUST AND ITS INHERENT PROTECTIONS; YOU MUST PROPERLY EXECUTE THE DOCUMENTS IN ORDER FOR THE TRUST TO BE COMPLETE. Attorneys shall have no obligation whatsoever to provide services to Client until the one-half deposit is paid. Attorneys reserve the right to send clients to Collections if they fail to meet the payment obligations stated in this paragraph, in which case any collection fees/percentages would be added to the amount due. Unless the fee retained would be unconscionable and except as provided in paragraph 7, the fixed fee will be earned in full and no portion of it will be refunded once any substantial services have been performed.

Attorney will deposit the retainer into the Attorney's operating bank account, subject to Client's rights under Rule 1.15(b) of the Rules of Professional Conduct of the California State Bar, to wit:

"(a) All funds received or held by a lawyer or law firm* for the benefit of a client, or other person* to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or

(Questionnaire - Estate Plan for Couples, 13.)

more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written* consent of the client, in any other jurisdiction where there is a substantial* relationship between the client or the client's business and the other jurisdiction.

(b) Notwithstanding paragraph (a) a flat fee paid in advance for legal services may be deposited in a lawyer's or law firm's operating account, provided: (1) the lawyer or law firm* discloses to the client in writing* (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed; and (2) if the flat fee exceeds \$1,000.00, the client's agreement to deposit the flat fee in the lawyer's operating account and the disclosures required by paragraph (b)(1) are set forth in a writing* signed by the client."

5. COSTS AND EXPENSES. In addition to the fixed fee, Client shall reimburse Attorney for extra copies of the Estate Plan (other than the original provided at the time of signing) at the rate of \$0.25 per page, and for recording fees for all Deeds prepared by Attorney.

6. STATEMENTS. Attorney shall send Client periodic statements letting client know the balance due for the Estate Plan. Client shall pay Attorney's statements according to Paragraph 4, above. Client may request a statement at intervals of no less than 30 days. Upon Client's request Attorney will provide a statement within 10 days.

7. DISCHARGE AND WITHDRAWAL. Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this Contract, Client's refusal to cooperate with Attorney or to follow Attorney's advice on a material matter or any other fact or circumstance that would render Attorney's continuing representation unlawful or unethical. If Attorney withdraws before completing Attorney's duties under this Contract, Client may be entitled to a refund of some or all of the fixed fee, depending on the facts and circumstances.

8. CONCLUSION OF SERVICES. When Attorney's services conclude, all unpaid charges shall immediately become due and payable. After Attorney's services conclude, Attorney will, upon Client's request, deliver Client's file to Client, along with any Client funds or property in Attorney's possession.

9. POTENTIAL CONFLICTS OF INTEREST. In the event that "Client" is a couple or other group of persons or entities, they acknowledge by the signing hereof that they have been informed by Attorney that:

a) their interests in this matter may presently diverge or be adverse and/or potentially diverge or be adverse in the future;

b) that such divergence does and/or may result in a conflict or conflicts between the said persons;

c) that under Rule of Professional Conduct 1.7 (a) and (b) as promulgated by the State Bar of California, Attorney shall not enter represent AAA and BBB without getting the their informed written consent that such actual present divergence and/or adversity and/or potential for future divergence and/or adversity exists, and that as a result Attorney may be representing persons with actual or potential adverse interests. ***By signing hereto, each person comprising Client acknowledges that they hereby give their informed written consent to Attorney in spite of such potential conflict of interest.***

10. EFFECTIVE DATE. This Contract will take effect when Client has performed the conditions stated in paragraph 1, but its effective date will be retroactive to the date Attorney first provided services. The date at the beginning of this Contract is for reference only. Even if this Contract does

not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.



LAW OFFICES OF ROSS McLAURAN MADDEN by: _____
Ross McLauran Madden

I/We have read and understood the foregoing terms and those set forth on the attached Rate Schedule and agree to them as of the date the Law Offices of Ross McLauran Madden first provided services. If more than one party signs below, we each agree to be liable, jointly and severally, for all obligations under this agreement.

Client Signature

Client Signature