

Script for Presentation of

“The Answers To Life’s Financial Risks”

Note to Presenter: A good handout or study guide to go with this presentation is NAFEP’s, 16 page, *The Answers To Life’s Financial Risks*, booklet. Instead of or in addition to that handout, you may print the graphics from Power Point, 3 to a page, with several horizontal lines drawn to the right (see example below). Giving this as a handout allows easy note taking by the clients. To do this, open the NAFEP Power Point file entitled, *Answers.....* Next select “File” from the toolbar, then “Print”. This opens the printer dialog box. In the printer dialog box, under the “Print Range” selection, choose “All”. Under the “Print What” selection choose “Handouts”. Under the “Handouts”, “Slides Per Page” selection choose “3”. At the bottom of the dialog box, check “Pure Black and White” and “Frame Slides”. Click the “OK” button to start the print job.



Example of 1/3 Page of Power Point Print Out

Note 2 to Presenter: The presentation is much more interesting and greatly increases the listeners’ understanding if you allow questions throughout. If someone asks a question which will be directly covered in a later graphic, it is best to tell the questioner that you will cover that question later on. Without questions this presentation takes about 35 minutes, and about 45 or 50 minutes with questions.

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SCRIPT

Graphic 1: NAFEP’s Logo

The estate planning programs we will discuss in this presentation were developed by the legal counsel for The National Association of Financial and Estate Planning. NAFEP has created a series of estate planning programs which range from basic to advanced in design. These programs will be presented to you as “The Answers To Life’s Financial Risks.”

Graphic 2: Map

NAFEP is a national network of estate planners, referred to as Associates. The associate members are independent professionals. These associates use various NAFEP programs and strategies to help their clients complete their estate, financial and business goals.

NAFEP provides training and certification for the associates called Certified Estate Advisor (CEA.) NAFEP provides continuing education to keep all its associates abreast of changes in the law, new concepts and strategies, pitfalls to avoid, and other important estate planning issues.

Each NAFEP Associate has the constant support of top NAFEP experts, on a case by case basis to help them with their clients.

Logo/Web Site Graphic

NAFEP is the most recommended estate planning service on the internet. Over 200 web sites list or recommend NAFEP as a top estate planning service. Here is a partial list of these sites. As you can see, many large and respected institutions, including law schools and major news media organizations are included in this list.

Graphic 3: Why

To begin our discussion, we pose the question, "Why do estate planning"? To answer that, let's define the word "estate". Your estate is everything of value that you own. This includes your residence and any other real estate, securities, vehicles, cash and all other assets.

We need to do estate planning to avoid dying "intestate". Dying intestate means dying without having created either a will or a trust which provides instructions for passing your estate on to your heirs. All property owners have done some estate planning for the distribution of their estate to their heirs whether they are aware of it or not. Without a will or a trust the inheritance law (laws of intestacy) of your state will determine how your property will pass to your heirs. If you have no heirs that fit the state's formula, the assets will be taken by the state.

Graphic 4: Avoid

Dying intestate is like taking your property and attempting to throw it to your heirs on the other side of a deep chasm, a chasm which is filled with hazards to your estate. These financial risks (otherwise known as: Probate, Creditors, Lawyers, and Estate Taxes) can damage or even destroy most of the value of your estate.

Graphic 5: Flatbed Truck

One of the best ways to get your estate over the intestate chasm is to build a bridge, otherwise known as a trust, to your heirs. This bridge allows the trustee of your trust to transport your estate safely over the financial risks; the hazards which are posed by creditors, probate, estate taxes and the legal system.

Graphic 6: Contract

This then raises the question, "What is a Trust"? A trust is a legal device, a contract, to take care of property in certain special ways. Trusts are created by a contract between two parties, grantor and the trustee. The grantor and the trustee create the contract for the benefit of a third party, known as beneficiaries. This contract is a private agreement, and is not regulated by laws or governmental agencies. This is an important feature, because private contracts have tremendous flexibility in what they can do for you.

In a trust contract the grantors are the individuals who own property which they wish to have managed and protected by a trust. Once their property is in the trust the grantors no longer hold the legal title in their personal names, though they may continue to have the exclusive rights to use that property, or to receive its income.

The trustee is the legal administrator of the trust and the legal title holder of the property. The grantor and the trustee relationship is determined by the trust contract.

The beneficiaries are the heirs of the grantors who receive benefits or income from the trust property. This benefit may start upon creation of the trust, or may wait until the grantors have died.

Graphic 7: Plan 1

An arrangement where the grantor holds all three positions, grantor, trustee and beneficiary, is known as a Revocable Living Trust. This trust really isn't a trust, however, because it is not a contract between two separate parties, grantor and trustee. There is, in fact, just one party in the revocable living trust, the grantor or grantors. This trust arrangement is not recognized by the laws and the courts as an independent entity. It is simply thought of as an extension of the grantors, or just a special way the grantors have their property titled.

The Premier I Revocable Living Trust, developed by NAFEP, is illustrated here. The grantors convey the legal title of their estate to the trust. This includes property such as: the family home, autos, investment accounts, etc. The grantors can change their minds about the trust and remove any property they have placed in it at any time. The grantors have complete control of and use of their estate while it is in the trust. The Premier I becomes unchangeable, or irrevocable, when the grantors die, or when they become mentally disabled. At that point a previously named successor trustee takes over. Irrevocability is necessary in living trusts at this point, to ensure that the plans and requirements of the grantors get carried out. Furthermore, the trust finally becomes a true trust at this point, a complete contract between grantors and a separate trustee.

Let's examine how the Premier I provides a safety net from some of the major financial risks to our estate.

Graphic 8: Long Term

If the grantors should become mentally disabled the successor trustee will take over administration and management of the trust estate. This management will be in accordance with the written requirements of the grantors. The successor trustee will use the property exclusively to provide for the health, maintenance, benefit and enjoyment of the grantors, or anyone else the grantors have named as beneficiary. So the Premier I provides a well planned mechanism to take care of the grantors and their estate when they face the serious financial risks caused by their incapacitation.

However, no revocable living trust, including the Premier I, will prevent Medicaid from taking your property if you apply for Medicaid benefits while you are in a nursing home. That kind of protection requires a more advanced type of trust which we will discuss shortly.

Graphic 9: Squad Car

One of the most beneficial aspects of the Premier I Living Trust is the way it zips past the incredibly risky probate detour. The reasons we want to avoid probate are:

1. It is expensive. Probate costs take an average of 6 to 10 percent out of the estate. This means that an estate worth only \$200,000 could cost from \$12,000 to \$20,000 to probate.
2. Probate is time consuming. In many cases probate drags on for years. This often happen when there is litigation among the heirs, or extensive creditor claims, or simply a lot of unsettled business.
3. Probate may lead to huge family battles, litigation, and bad feelings. To make matters worse, very often probate causes or allows the decedent's wishes to be ignored entirely.
4. Probate procedures are made public. Anyone can go to county records and obtain details of your probate estate, overriding all your privacy concerns.

The Premier I avoids probate very simply by having all your property titled in the name of the trust, rather than in your personal name. This allows the successor trustees, not the legal system, to handle your estate planning the way you want.

Graphic 10: Estate Taxes

For larger estates the Premier I Revocable Living Trust provides a valuable reduction of estate taxes for married couples. Each spouse has a \$650,000 to \$1,000,000 estate tax exemption for their share of the family estate. Without a trust, one of these exemptions will be lost when the first spouse dies. The Premier I has a feature known as an "A-B Trust Provision". This provision is like having an "A" and a "B" bank vault to hold one exemption coupon for each spouse. Each coupon is worth from \$650,000 to \$1,000,000 in exemptions. Using both exemption coupons will save your estate up to \$248,000 in taxes. The only way that married couples can keep

both exemptions is through the use of a properly designed trust. The A-B Provision is a standard feature of the Premier Plan I.

Graphic 11: Intended Heirs

An important benefit of the Premier I Revocable Living Trust is its ability to assure the grantors that their estate will, in fact, pass to their intended heirs, and in the manner that the grantors choose. There are two major issues here.

One issue regarding transferring the estate is pre-selecting the proper heirs and the manner and timing by which they receive their inheritance or benefits. As illustrated in this graphic, through a Premier I Trust you could, as an example, leave any part of your estate to your three heirs. The shares you leave the heirs can be different for each heir. You could also control the age or the conditions under which they receive their share. These conditions can be different for each heir.

A concern of each spouse is that, if he dies first, he wants assurance that his share of the joint estate will not be taken over by a new mate of the surviving spouse. But that often happens when property is simply held in joint tenancy or when it is all transferred to the surviving spouse by beneficiary arrangements or probate. When the surviving spouse takes over the estate, then remarries, the outsider spouse can end up taking over part or all of the estate. Since the surviving spouse automatically became the sole and outright owner of all the estate when the first spouse died, nothing can legally prevent the surviving spouse from giving the new spouse (or lover) whatever the two agree on. This can leave the original heirs without an inheritance. With the Premier I, the "B" bank vault we spoke of earlier provides an effective measure to prevent this problem.

Graphic 12: Summary

In summary the four main things the Premier Plan I Living Trust accomplishes are:

1. Management during incapacitation
2. Probate Avoidance
3. Preserve Estate Tax Exemption
4. Control Transfer to Rightful Heirs

Graphic 13: Limitations

In spite of these benefits, there are a few limitations with the Revocable Premier I as well as all other revocable living trusts. They provide zero asset protection. Your assets will not be locked away from lawsuits, judgments and creditors. Revocable living trusts provide little or no privacy. Snoopy people or businesses can easily find most or all your assets. To achieve those benefits requires a more advanced type of trust. The NAFEP program which provides these extra benefits is called the "Premier II Life Estate Trust.

Graphic 14: Premier II

The Premier II provides all the standard estate planning measures which we just summarized for the Premier I, but the Premier II Trust goes far beyond the living trust to provide these extra benefits:

- ?? Asset protection. Protecting one's property from creditors, lawsuits, divorces, Medicaid, liens and judgments.
- ?? Financial Privacy. With this protection the Premier II can shield financial activities from most private and bureaucratic snooping.
- ?? Limited Liability. This feature means that the grantor can reduce or eliminate liability for damages, judgments and claims that may result from the ownership of certain properties.

At this point we need to point out that neither NAFEP nor its associate members can guarantee that your Premier II Trust will never be compromised by a legal action. No one can predict that you will set up and use your trust

correctly or how a judge may rule in a given case. We are confident though that, if you are sued, you will fare significantly better with the trust in place than you would without it.

Graphic 15: Threats

One of the biggest threats is from auto accidents. These accidents can literally cause millions of dollars in legal damages. If you cannot carry enough liability insurance, the rest of your property is at tremendous risk.

Another source of litigation problems is with your creditors, possibly due to your inability to pay promptly, or a dispute. However we caution you that trusts cannot be legally set up specifically to avoid existing creditors.

Any real estate, especially rental property, or equipment you own has the potential for some kind of accident and expensive litigation.

If you own a business you are especially open to lawsuits. Lawsuits against businesses can come from employees, customers, creditors, subcontractors, competitors, and regulatory government agencies.

One concern that many single adults have is protecting their assets from a possible divorce suit after they become married. Married individuals with separately owned property often have divorce concerns as well.

Graphic 16: Other Threats

There are many other avenues where lawsuits may originate. One of the most dangerous is from owning property in Joint Tenancy. A lawsuit against either joint tenant exposes the whole property to a judgment. For example, a parent may name an adult child as a joint tenant on a piece of property. Later, the child gets into a divorce suit, and the divorcing spouse of the child takes part or all of the property in the settlement.

Graphic 17: Control & Use

This graphic illustrates what happens to the control, ownership and use of the assets that are placed in a Premier II Life Estate Trust. 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. The legal title, however, is held by the trustee, in trust for the heirs. During the grantor's lifetime the trustee's role is mostly passive, his only function is to hold the legal title. Upon the death of the last of the grantors, the control and benefit of the property, along with the legal title, are merged together when the trustee passes everything out to the heirs.

Graphic 18: Premier II

This diagram shows a typical Premier Plan II. This is first of all a conventional estate planning arrangement developed by NAFEP for holding and managing a family's property. Each of the three trusts is treated as an independent entity in the American legal system. This is because they are each irrevocable, they each have a different trustee, and none of the trustees are the grantor. That makes each one a separate owner, so the assets in each trust are owned separately from the assets in the other trusts. The family auto has a different owner than the family home. If something causes one trust to be sued, such as an auto accident, the plaintiff has no cause of action against the other two trusts. The other two are independent of and unrelated to the automobile trust. In this example the plaintiffs, if they won a judgment, could only get the automobile and any related insurance settlement. They could not reach the house or the financial assets.

If someone sues the grantor directly and obtains a judgment against him, that judgment cannot be applied to assets of any of the trusts. Remember that the legal title is held irrevocably by a separate trustee. Legally speaking the grantor's heirs own the property in the trusts (though the Grantor owns lifetime control). That is why the courts will not allow a claimant against the grantor to attach trust assets.

Another major factor in asset protection is the privacy involved. The property in the trusts is titled in the trust's name. Routine snooping by outsiders will not reveal any property ownership by the grantors. It will be very

expensive for outsiders to ever find out what the grantors do own (which legally is nothing!) The sheer cost and complexity of finding this out will discourage a large number of legal attacks from getting off the ground.

Graphic 19: Attacks

Irrevocability is a benefit to you, not a problem. Irrevocability simply means that you have provided a permanent shield to protect your property. But, if the family decided to, they can easily take down the shield by revoking the trust. Remember, a trust is a private agreement between the grantors and the trustee for the benefit of the beneficiaries. When all are in agreement, the trust can be changed in any way or even revoked. Our associate can provide you with our attorney's opinion letter and some independent reference material regarding revocation of the trust. This means that trusts are irrevocable somewhat like a corporation. No minority shareholder nor 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 revoke the trust, but no outsiders. Since outsiders cannot revoke the trust they cannot get at the property that is in it.

Graphic 20: Trustee Distinctions

It is important to understand that each trust in a Premier II program must have a different trustee, and the trustee cannot be the grantor. If the grantor is the trustee he is deemed to have so much control over the trust that a court could force him to make the trust assets available to satisfy a judgment. Also, if all three trusts have the same trustee and the same beneficiaries, there is no legal distinction between them. The plaintiff's attorney could get a judge to merge the three trusts together into a single entity, a single defendant in a lawsuit. The reason we created three different trusts in the first place 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.

Graphic 21: Trustee Arrangements

Let's use this graphic to illustrate the possible trustee choices and arrangements.

First, each Trust could have a different corporate trustee.

A second choice is for each trust to have a different corporate trustee along with one individual serving as a Co-Trustee. This can be the same individual for all the trusts.

The third choice is for each trust to have a different person acting as trustee. Again, one other person could serve as Co-trustee, and the Co-trustee could be the same person on all trusts.

In any case where human trustees are chosen, they can be adult beneficiaries of the trust, the children of the grantors.

Graphic 22: Premier II Trustees

Let's illustrate the trustee arrangements with a typical Premier II structure, three different trusts. In this example we have corporate trustees, using three different corporations as trustees of the three different trusts. We have the option of using one person as Co-trustee with any one, or all three of the trusts. In this example we are using Joe, the oldest son, as the optional Co-trustee with each trust.

One of the problems that many families have in setting up a Premier II program is they do not have enough adult children, or enough children whom they depend on, to provide a different trustee for each trust. That is one of the reasons to choose corporate trustees.

What happens if you want to remove a trustee? The grantors and the surviving beneficiaries have the power to fire and replace the trustees at any time.

But, where can you get a corporate trustee? That is one of the services that NAFEP provides. Through his association with NAFEP your associate makes that service available to you at a very nominal annual cost.

Graphic 23: Taxation

We have discussed how both the Premier I Revocable Living Trust and Premier II Irrevocable Life Estate Trust preserve the estate tax exemptions of both grantors. There are other kinds of taxes involved with your property that need discussion. Both the Premier I and II are “Grantor Type” Trusts under federal tax law. Grantor trusts do not pay any income or capital gains taxes which may be incurred by property inside the trust. That is because grantor trusts are tax neutral to the IRS. The IRS views all the assets as if the grantor still owns them.

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

1. There are no gift taxes from putting assets into one of these trusts.
2. All property will continue to be included in the grantors' taxable estate.
3. All property will receive a step up in basis upon the death of the grantors.
4. The grantors can keep their \$250,000/\$500,000 capital gains exemption on the sale of their personal residence.
5. All deductions from mortgage interest, property taxes, rental maintenance, etc. flows through to the grantors just as if the trusts did not exist.

If a Premier II trust has income producing assets, that is, if the trust receives either 1099 or K-1 tax statements, then the Premier II must have its own Tax ID number. It then must file an annual tax return, but this is only a simple, one page information return.

Graphic 24: Pay Taxes

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 grantor's personal tax return. This will result in no change in the amount of tax payments or how tax returns are prepared.

Graphic 25: Fraudulent Conveyance

The asset protection safeguards only apply to assets you place in trust before there are problems. If you create a Premier II Life Estate Trust after a liability has occurred, even if no lawsuit has yet been filed, setting up a trust may not protect your assets from that specific liability. On the other hand, each state does have a statute of limitations that prevents a litigant from suing after a few years, usually four or five. After that, any property in the trust is generally home free, even for pre-existing problems.

Setting up a trust after a liability has occurred could be ruled as a fraudulent act by a judge hearing a lawsuit against you. A fraudulent conveyance will not send you to prison though. Fraudulent conveyance is not a criminal felony act. Fraudulent conveyance laws are in place primarily to give a litigant a remedy to place a claim on trust assets that went into trust after a liability occurred. Fraudulent conveyance is difficult and expensive for a litigant to prove, by the way. So, even if a transfer is technically illegal, often you have everything to gain and nothing to lose by protecting your assets even with existing liabilities. This subject is somewhat complex though, so be sure to consult with your attorney or a NAFEP Associate if you have questions.

Graphic 26: Long Term Care

One of the unfortunate problems with smaller estates is that while an individual is alive, his or her estate property can get eaten up by long term care or nursing home costs. As you and your estate go into the long term health care system your wealth is quickly eroded, so that there is little left over for your heirs. In most areas of the country nursing home rates average \$36,000 or more per person, per year. That is \$72,000 per year if both spouses are under nursing care. Five years in a nursing home could easily cost \$180,000 for one or \$360,000 for two, in today's dollars. When the nursing home patient owns assets or property a very large portion of the property must be liquidated to pay the health care costs before Medicaid will help. About the only valuable assets that the patient's family can keep is the family home, but then only as long as a spouse or dependent child lives in it.

When the second spouse dies or also needs long term care, even the family home must be sold before Medicaid will help.

Graphic 27: Medicaid

In a properly structured Premier II Trust program the grantor's property should be able to escape these forced Medicaid liquidations. Some or all of the grantor's income, including social security, may be used up to take care of his or her long term care costs. Medicaid would pick up the balance. Though the income is not protected the trust will preserve the bulk of the grantor's estate and allow it to pass to the heirs.

There is a period of ineligibility for Medicaid assistance after the trust is set up. This so called "Lookback" period is a maximum of 60 months, or 5 years. This means that the grantors must place their assets into an appropriate trust, like the Premier II Life Estate Trust, five years before either of them applies for Medicaid benefits. This makes it wise to do your estate planning as soon as possible. Even if you are elderly you may get past the 60 month waiting period if you act quickly enough.

Graphic 28: Rounding

Besides the trusts, themselves, there are several other important documents that are needed in good estate planning. Both the premier I and II programs automatically include any of these documents that are important to your estate plan. NAFEP's associate will be happy to go over each of these documents if you have any questions about them.

Graphic 29: Premier II

Up to this point we have discussed the Premier II Life Estate Trust in general terms. Now, we want to highlight a specific program that fits the majority of family's who want asset protection. This is a diagram of the standard Premier II program. This plan is designed to start with three trusts, a Primary and two Holding Trusts. You put the family home in one Holding Trust and your autos in another. Any investment accounts or other paper assets will go in the Primary Trust. If you own other physical assets, you may need more Holding Trusts, but this illustration covers most families. Also included in the Life Estate Trust plan are the accessory documents which we referred to just a moment ago.

This program provides the basic estate planning, asset protection, financial privacy, Medicaid planning and so forth that is important to you. But the special beauty of it is that you don't give up control over the assets. The trusts are irrevocable, but as we discussed earlier, that is not a problem for you, it is a problem for your attackers. The life estate feature guarantees that you and your spouse have control and benefit of all your property for the rest of your lives. After that your heirs will inherit what is left in the timing and manner you have chosen.

As we discussed earlier, each trust needs a trustee separate from yourselves for the asset protection benefit to work. Trustees may be the beneficiaries (your children) if they are adults, or any other adult who is not closely related to you. Your NAFEP Associate can arrange for NAFEP to provide three corporations to act as trustees. Then, we recommend that you allow the Associate to act as the senior trust officer over the complete system. His role as trust officer is largely a figurehead position, because you will be doing all the work, just as you do now. He will be in a position though to provide on-going professional guidance and advice for your trusts as needed. If you have any concerns over the integrity of this trustee plan, don't forget that you may appoint any of your friends or family to act as co-trustee. That will completely guarantee that nothing bad can happen, since the co-trustee's written approval is required on everything significant. And don't forget that you have the power to fire any trustee whom you think isn't acting in your best interests. Those two safeguards leave you and your family in the driver's seat with this trust. And, with the Premier II Life Estate Trust you have a much better vehicle to drive.

Graphic 30: Conclusion

In conclusion, we would like you to consider a few points. First, wouldn't it be great to know that your property is protected from life's financial risks? Wouldn't it be great knowing that your house is in order and that your rightful heirs will inherit your assets with the least amount of hassle and expense possible? You can have that kind of security and planning with a Premier Plan Trust Program.