

Revocable Trust Manual

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The Michigan Credit Union League is pleased to present this manual to assist your credit union in offering accounts to revocable trusts.

If you have questions on the information in this manual, please contact the Operations Specialists at 1-800-262-6285.

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INTRODUCTION

Trusts are receiving ever-increasing attention from credit unions and their members. Increasingly, individuals with modest means are using these documents solely for the purpose of defining what happens to their property upon death.

Trusts come in a variety of forms. The two major categories are:

- Revocable trusts
- Irrevocable trusts

Revocable trusts are the focus of this manual, which has been designed to assist credit unions in understanding what is involved when offering accounts for revocable trusts to their members.

Irrevocable trusts are beyond the scope of this manual. Irrevocable trusts present a whole host of complications, from tax reporting laws, to the risks associated with funds being withdrawn for improper use.

Credit union managers, staff and board of directors will find the information in this manual useful. An educated, planned, decision regarding offering accounts for revocable trusts can be made by using this information tool.

Trust terminology has been included in this introduction. It is presented "up front" in an effort to assist readers with the trust terms that are used throughout the manual.

The MCUL "Revocable Trust Manual" is an informational piece only; it is designed to provide affiliated credit unions with thorough, accurate, timely, and well-organized information on accounts for revocable trusts. The contents are not legal advice. Should the credit union need legal or other professional advice, it should consult the appropriate professional.

TRUST TERMINOLOGY

Settlor/Grantor/Trustor

The individual who sets up the trust.

Trustee

The person named by the settlor to administer the trust according to the terms of the trust agreement. The settlor may name himself as trustee.

Settlor-Trustee

The term used when an individual has created a trust and named himself as trustee.

Successor Trustee

The person who succeeds the trustee upon his/her death, resignation, or inability to act as the "trustee."

The successor trustee is often a spouse or an adult child of the settlor-trustee.

Irrevocable Trust

A trust arrangement in which the settlor gives up his/her right to the assets during the term the agreement is in effect. A settlor is not permitted to terminate or amend this type of trust.

Revocable Trust

A trust arrangement that permits a settlor to manage and protect his/her assets during his/her lifetime. A settlor is allowed to revoke this type of trust and take back the property.

The assets placed in the trust are frequently not subject to probate. Sometimes referred to as a "living" or "inter vivos" trust.

SECTION I

MEMBERSHIP REQUIREMENTS

Explanation

Credit unions generally can only serve members. (Exceptions apply in some cases, most commonly with regard to service to other credit unions or to governmental agencies.) Therefore, an individual or other entity (such as a trust) must become a member before it can receive services from the credit union.

If a member wishes for a trust to receive services, such as being able to purchase a time certificate, the trust must also become a member of the credit union. Federal and state-chartered credit unions have different membership criteria for trusts, as follows:

For federal credit unions: For a revocable trust to join a federal credit union, it must either (1) be specifically named in the federal credit union's field of membership or (2) be an organization of such persons if the federal credit union has elected to include such organizations in its field of membership. NCUA, in an opinion letter dated February 25, 2000, states that, for federal credit union membership purposes, a trust qualifies as "an organization of such persons" if it is composed exclusively of such persons. NCUA further states that a trust is composed of its settlers, trustees, and beneficiaries. Note that not all of these persons must actually be members, but they must be eligible for membership. We believe that it may eliminate potential share insurance coverage issues in the future if all the settlers are actually members of the credit unions

For state-chartered credit unions: For a revocable trust to join a Michigan state-chartered credit union, at least one of the parties to the trust must be a member. This criterion is best met by having one settlor actually be a member in his/her own right since that is the party least likely to change. However, we believe that there could be potential share insurance coverage issues if less than all of the settlers are members of a state-chartered credit union in their own right.

It is critical that both the credit union staff and members understand these criteria for establishing accounts for revocable trusts. Credit union memberships are not transferable, and settlor membership criteria need to be met. This precludes the possibility of merely retitling the member's account into the name of the trust. (*Note:* Many attorneys who draft trusts are not familiar with credit union membership requirements and limitations.)

Credit unions should communicate the criteria for establishing accounts for revocable trusts to their memberships. This will assist members in their planning of such accounts, and will avoid potential misunderstandings and member discontent.

SECTION I

MEMBERSHIP REQUIREMENTS (Continued)

Accounts for trusts checklist:

- The membership criteria set forth above must be met.
- The trust must pay established par value in order to open the account.
- Accounts for trusts must have their own account number. (This member has a separate, distinct, identity.)
- The account for the trust cannot be a sub-account under the member's original account number.
- Trust membership must be approved by the membership officer just like other memberships.
- The trust is allowed one vote at the annual meeting, just like any other member.
(*Note: If there is more than one settlor-trustee, then the first named settlor-trustee should cast the trust's vote.*)
- The trust must receive its own separate account and tax statements.
- The trust must receive any other information that is routinely sent to members.
- The settlor must maintain his/her account as long as the account for the trust is open. (*Note: Credit unions need to take steps to make sure that natural person accounts necessary for The trust's membership is not inadvertently closed due to service charges and/or fees.*)

SECTION I

INSURANCE COVERAGE

NCUA

The funds that members deposit in Michigan credit unions (both state and federally chartered) are insured by the National Credit Union Share Insurance Fund (NCUSIF). The National Credit Union Administration (NCUA) has explained account insurance coverage in the NCUA Rules and Regulations and in NCUA's publication, "Your Insured Funds." Copies of the publication can be obtained from the Images & Ink Division of CUcorp for \$37.40 per 100 copies. This information is also available on NCUA's Web site at http://www.ncua.gov/ref/insured_funds/funds.pdf.

Accounts of revocable trusts are included in the definition of "testamentary accounts," and are covered as such. Please see Part 745.4 of NCUA Rules & Regulations for specific coverage details. This regulation can be accessed at NCUA's web site at www.ncua.gov. As noted earlier, we believe it may help to avoid possible share insurance coverage issues in the future if all settlors are members of the credit union.

Life Savings

Life savings insurance is a unique benefit that is offered by some credit unions. It is one of the characteristics that differentiate a credit union from a bank.

Questions relating to life savings coverage when funds are transferred from one account to another (*e.g., from the account of a natural member to the account of a trust*) should be referred to the credit union's life savings insurance carrier.

SECTION I

SECURITY MEASURES

A revocable trust is, among other things, an "estate planning tool" for individuals. It is a vehicle that allows individuals to protect and manage their assets during their lifetimes. Therefore, credit unions will find that such accounts may well carry large balances.

A credit union, as a member's financial institution, has the important responsibility of protecting all member assets. Security measures must be in place to ensure that trust documents, letters, and account agreements are safe, and that access to trust documentation is limited to authorized credit union personnel.

Security checklist:

- File all trust related documents in the credit union's safe, or a separate (fireproof) file cabinet.
- Assign the responsibility of opening accounts for trusts to a trained staff member(s).
- Code accounts holding trust assets so that access to such accounts is limited.
- Inform tellers of the individual(s) authorized to approve transactions.

SECTION I

CREDIT UNION SERVICES

➤ *Share drafts, loans, ATM cards, share certificates/CDs* ◀

Which of these services, if any, will your credit union offer to a trust?

The decision to offer credit union services to trusts is strictly a business decision. A credit union must weigh the administrative burden against the desire by some members to have such services.

It is important to note that a trust agreement must have language in it that identifies the powers of the trust. Powers, such as the power to borrow or guarantee loans, are not standard or routine and must be clearly identified in the trust document. Before a credit union enters into any type of contract with a trust, it must be certain that the trust has the power to enter into the contract involved. This will involve analyzing the trust documents, and there will be a cost to doing so.

Listed below are issues to consider when deciding whether or not to offer a particular service.

Share Draft Accounts

1. ➤ Drafts imprinted with the name of the trust, as opposed to the name(s) of the settlor-trustee(s), may not be accepted by a payee (or may be accepted hesitantly) for payment of personal debts.

Q. Does the settlor-trustee(s), your member(s), understand this potential problem?

A: Credit unions should alert members to this potential problem or not offer this service to trusts. The mismatch in names may generate calls to the credit union, which will then have to spend time and resources dealing with the matter.

2. ➤ Drafts imprinted with only the settlor-trustee(s) name(s), as opposed to the name of the trust, may expose the credit union to risk if the settlor-trustee(s) amends the trust agreement and fails to inform the credit union of the change.

Q. What are the credit union's options if the member insists on the drafts being imprinted with only the name(s) of the settlor-trustee(s)?

A: If the member's attorney insists that printing drafts in such a manner is no problem, you can require the member to have his/her attorney draft a "hold harmless" letter and have both the attorney and the members involved sign it. This letter will protect the credit union from any adverse action that may result from the name(s) of the settlor-trustee(s) appearing on the drafts, as opposed to the name of the trust, by requiring the attorney to defend the credit union and cover all costs. If the attorney declines, you may choose not to provide the service involved.

SECTION I

CREDIT UNION SERVICES (Continued)

Share Draft Accounts

3. ➤ Draft accounts held in the member's own name as opposed to using the name of the trust, allow the member to have this service without the problems presented above. The trust can (if the underlying trust document so permits) authorize overdrafts of the member's personal account to be covered with funds in a specified account owned by the trust.

Q. How does this work and whose name(s) should appear on the drafts?

A: Set up a zero balance draft account that will overdraw against a specific account held by the trust. The account held by the trust would then cover any overdrafts. This will resolve the issue for members who want to have a draft account. Moreover, it will resolve the issue concerning draft imprinting because the member's name(s) can be imprinted on the face of the drafts when the draft account is set up in this manner.

Loans-Borrowing & Guaranteeing

1. ➤ Restrictions and Authorizations

Q. Must all settlor-trustees consent to any borrowing? Will restrictions/authorizations cause administrative problems for the credit union?

A: The trust agreement should clearly indicate who must authorize borrowing activity. Loan officers should be informed of this information. Keep in mind, the power to "borrow" does not automatically include the power to "guarantee" or to pledge assets to debts owed by or incurred for the benefit of another. (See item 2 below.)

2. ➤ Guaranteeing Debts

Q. Do the borrowing powers of the trust (if any) permit it to act as a co-signer on a loan? What are the credit union's options if a settlor-trustee insists that the trust has this power but the document doesn't spell it out?

A: Ask the member to have his/her attorney draft an amendment to the trust clarifying the matter, or to give you a letter prepared and signed by the member's attorney where the attorney holds the credit union harmless (*i.e.*, a "hold harmless" letter).

SECTION I

CREDIT UNION SERVICES (Continued)

ATM Cards

1. ➤ Although a trust is a member in its own right, it is not a living, breathing entity. Therefore, the trust itself cannot actually conduct a transaction at an ATM machine with an ATM card. The settlor-trustee(s) would actually be using the card.

Q. Does the trust document place conditions on withdrawals?

A: If the trust document stipulates that, "All settlor-trustees must sign for withdrawals," then ATM privileges would not be possible.

If the trust document does not contain multiple authorization requirements, for example it states, "Any settlor-trustee is permitted to sign for withdrawals," the credit union could, if it is willing to accept some risk, allow the settlor-trustee(s) to have an ATM card.

The key risk is that without the verification of a signature, the credit union could have a difficult time holding the settlor-trustee(s) accountable for problems that result from the trust transacting business via an ATM machine/card.

Share Certificates & Certificates of Deposit (CDs)

1. ➤ There is no problem in permitting a trust to own a share certificate or CD. The share certificate or CD will simply reflect the name of the trust as owner. For example:

Name of Owner(s): John Doe Revocable Trust
Dated (Identify date trust was signed)

Also, be sure to include the trust's social security number (*i.e.*, *TIN*) -- the world is full of "Smith Family Revocable Trusts."

Note ® ® IRAs

Trusts are not permitted to own IRAs. It is permissible, however, for a trust to be the beneficiary of an IRA.

SECTION I

HANDLING THE ACCOUNT OF A TRUST WHEN ALL SETTLOR-TRUSTEES ARE DECEASED

Upon the death of all settlor-trustees, the assets in the trust will be controlled by the successor-trustee(s). The successor-trustee(s) has the responsibility of disbursing the trust assets to the named beneficiary(ies) and performing any other duties identified in the trust agreement or specified by law.

The major concern of the credit union is that the funds in the account are paid to the true successor-trustee(s). In other words, the identity of any person claiming to be the successor-trustee(s) must be verified. In addition, the death certificate that the successor-trustee(s) presents must also be verified.

Tellers that are approached by individuals claiming to be the successor-trustee of a member's revocable trust should immediately contact the manager/supervisor or trained credit union staff member. The manager, or trained staff member, can then proceed with verification procedures, which may involve contacting the member's attorney, the credit union's attorney, or both.

The following items summarize the procedure to follow before paying out funds to any person claiming to be the successor-trustee(s):

- Teller contacts manager/supervisor, or trained credit union staff member, to alert him/her to the claim of the successor-trustee(s).
- Manager/supervisor, or trained credit union staff member, pulls the trust's file.
- Manager/supervisor, or trained credit union staff member, matches the name(s) of the person(s) claiming to be the successor-trustee(s), to the name(s) that appears on the trust document, letter from the member's attorney, or Worksheet A (which the member's attorney would have filled out).
- If name(s) matches, manager/supervisor or trained credit union staff member, verifies that the identification of the successor-trustee(s) is valid.

Note: If the name does not match, the manager/supervisor, or trained staff member, is advised to contact the attorney listed on the trust document or letter, as well as the credit union's attorney. Proceed upon the advice of contacted counsel. (It is recommended that the credit union obtain counsel's instructions in writing.)

- The manager/supervisor, or trained credit union staff member, verifies the validity of the death certificate presented.
- The manager/supervisor, or trained credit union staff member, authorizes pay out of funds.

Note: Trusts holding large sums of money should be reviewed by the credit union's attorney before funds are paid out. The credit union must determine the dollar amount that will require the credit union's attorney to be contacted (for example, any trust holding over \$200,000).

SECTION I

HANDLING THE ACCOUNT OF A TRUST WHEN ALL SETTLOR-TRUSTEES ARE DECEASED (Continued)

Remember: The above stated steps do not have to be completed on the same day. The credit union may need time to verify the presented death certificate, as well as other items. In other words, payout of the funds from the accounts of trusts does not have to be immediate. Moreover, the account can remain open until all matters concerning the trust funds are resolved.

Record Retention

Upon paying out the funds from an account held by a trust, the credit union must retain the records used to establish the account for an indefinite time period.

It is important for these records to be kept in case the credit union is sued or challenged for distributing trust proceeds improperly.

It is recommended that the account card, trust agreement and any other related information be microfilmed or copied, and stored in a fireproof filing cabinet.

SECTION II

CASE STUDY

Fact No.1

John Doe wants to create a trust for his assets. He wants to manage the trust during his lifetime. He wants to name himself trustee, and his wife as the successor-trustee.

Fact No. 2

John Doe has his attorney draft a revocable trust specifying the exact terms and conditions for proper execution.

Fact No. 3

John Doe is a member of Finished Product Credit Union. He would like to open an account for his trust with his credit union.

TRUST CHECKLIST

There are questions that Finished Product Credit Union, as well as your credit union, will need to address before considering such an account.

Let's look at some questions that should be addressed when making the decision of whether or not to open accounts for trusts:

1. What kind of trusts will the CU take? Revocable Irrevocable

*** The assets placed by an individual into an irrevocable trust can no longer be used by that individual. Generally, individuals who have large estates and wish to make partial distribution of their assets to their heirs before death will set up this type of trust because of the tax advantages (i.e., income from the trust is generally not taxable to the creator of it). Due to the complexity of the tax laws, as well as the risks associated with funds being withdrawn for improper use, it is recommended that credit unions do not open accounts for this type of trust.

2. Will the CU only accept trusts where the grantor(s)/settlor(s) and the trustee(s)is/are the same person/people? Yes* No*

Note: This is identical to the trust that John Doe created in our facts above.

* This guide, as stated in the introduction, is designed to assist credit unions with a very specific type of trust. If your credit union will only accept revocable trusts where the settlor and trustee are one and the same, then it may use the MICH-526 (rev. 4/01). Any other types of trusts that your credit union may accept are beyond the scope of this guide. (Please see information above regarding irrevocable trusts.)

SECTION II

TRUST CHECKLIST (Continued)

3. Will the CU only accept trusts drawn up by an attorney licensed to practice in Michigan? Yes No

4. Will the CU require that a trust agreement clearly identify the successor-trustee(s)? Yes No

Note: Trust agreements that do not clearly identify successor-trustee(s) may cause the CU problems upon the death of the settlor-trustee(s).

5. What type of proof of the trust will the CU accept from the member? Trust document

Letter from
Settlor-Trustees'
Attorney

Either type of
proof

Both are required

6. What services will the CU offer to trusts? Regular Shares

CDs/Share Certificates

Draft accounts

Loans

ATM privileges

7. Will the CU place a maximum limit on the dollar amount a trust may hold in the CU? Yes No

Note: CUs must consider how trusts will affect their cash flow. CUs should also examine whether or not they will be able to invest or loan out the funds received from trusts at an acceptable rate of return.

SECTION II

TRUST CHECKLIST (Continued)

8. Will the CU need to base dividend rates on the dollar amounts held in the trust's account? (For example, a tiered-rate dividend system that would apply to all accounts.) _____ Yes _____ No
9. Who will be responsible for reviewing the trust document (letter or full trust) which the member brings into the credit union? The 3 Options are:
1. _____ Credit union's attorney.
 2. _____ Credit union staff member
 3. _____ Member's attorney; CU supplies member with a specific form to be filled out.
10. If option 2 in the above question was selected, then what type, and how many hours of training, will be required before the staff member is allowed to review and open such accounts? Examples include:
* Paralegal coursework
* 40-hour internship
11. Upon the death of the last settlor-trustee, who will be allowed to do a payout of the trust's funds to the successor-trustee(s)? _____ Manager/Supervisor
_____ Trained staff member
12. Will the CU set a dollar limit on the amount that may be paid to a successor-trustee(s) before the manager/supervisor, or trained staff member should call the CU's attorney? _____ Yes _____ No

Note: It is highly recommended that CUs include a dollar limit in their policies and procedures.

SECTION II

TRUST CHECKLIST (Continued)

**How did your
credit union
answer the
questions?**



Your answers determine:

1. The types of trusts your credit union will establish accounts for, if any.
2. The dollar limitation that will be placed on such accounts (if any), and the dividend rate that will be paid.
3. The type of account card you will use.
4. The types of services you will offer trusts.
5. The contents of the policy the credit union Board of Directors will adopt regarding opening and maintaining accounts for trusts.
6. The tasks which credit union staff members must follow when opening accounts for trusts.

The simplest way to develop your credit union's policy for dealing with trusts is to review the responses you provided to the twelve (12) questions just presented.

A sample policy has been developed to assist credit unions in their efforts.

SECTION II

- **SAMPLE POLICY** -

Accounts for Revocable Trusts

The Board of Directors of _____ Credit Union hereby agrees to allow revocable trusts to have accounts at the credit union provided that all settlors hold membership in their own right.

It is hereby declared that because the trust is a member in its own right, it shall be allowed to vote, and receive its own statements, as well as any other information that is routinely sent to members. If there is more than one named settlor-trustee, the first named settlor trustee shall cast the trust's vote.

Staff members are directed to adhere to the following listed items when they are approached by members desiring to open accounts for trusts.

1. _____ Credit Union has made the decision to allow members to open accounts for revocable trusts. This credit union is not currently offering accounts to irrevocable trusts, or to revocable trusts that do not meet the criteria in section 2 below.
2. The type of revocable trust that the credit union will accept into membership is very specific. The member must be both the settlor and the trustee (settlor-trustee). This means that the member has created the trust and has the authority to manage it during his/her lifetime.
3. [Choose one]

Revocable trust agreements must be drawn up by a Michigan licensed attorney.

Revocable trust agreements may be drawn up by an attorney licensed in any one of the 50 states or District of Columbia.
4. To reduce operational burdens, the credit union has decided to only accept those revocable trust agreements where any successor-trustee(s) is/are clearly identified.
5. Members must present _____ as proof when requesting the credit union to open an account for a revocable trust.

SECTION II

- SAMPLE POLICY -
Accounts for Revocable Trusts

6. Only the following services may be offered to revocable trusts:

- _____
- _____
- _____

7. [Choose applicable responses]

The maximum dollar amount that may be placed into an account held by a revocable trust is _____.

Maximum limitations have not been placed on accounts held by trusts. Such accounts are, however, subject to the credit union's dividend policies.

The maximum dollar amount the credit union will allow all revocable trusts in the aggregate to hold is _____. This figure will be reviewed and adjusted _____. (For example, annually, semi-annually, quarterly, etc.)

8. Revocable trusts shall receive dividends in the same manner as share accounts held by other members. Staff members are directed to follow the dividend policy that has been established by the Board of Directors.

9. [Choose one]

- A. Trust + Credit Union Attorney: All trust agreements must be reviewed by the credit union's attorney, who shall upon review, communicate the information necessary to open the account and complete the appropriate account card. (The member will be charged a fee of \$xxxx for this review to be provided.)
- B. Trust + Credit Union Staff Member: All trust agreements will be reviewed by the designated, trained staff member for the purpose of obtaining adequate information to open the account and complete the appropriate account card.

The designated staff member is _____.

- C. Trust + Letter from Member's Attorney: All trust agreements must be accompanied by a letter or the credit union worksheet from the member's attorney before the credit union will open any accounts for the trust opening the account. The letter/worksheet must contain specific instructions on who will receive funds upon the death or incapacity of the member, as well as other pertinent information for completing the appropriate account card.

SECTION II

- SAMPLE POLICY -

Accounts for Revocable Trusts

The option that is selected shall be communicated to the membership so that members will be informed and prepared should they desire to establish such an account.

10. [To be included in policy if letter B was selected above.]

The staff member designated to open accounts for revocable trusts shall be trained to read trust documents, determine who has legal ownership to the trust assets, determine the powers of the trust, as well as who will receive the trust funds upon the death or incapacity of the settlor-trustee(s).

Training will encompass the following:

- _____
- _____

11. The Board of Directors authorizes the following individual(s) to handle the payout of a trust's funds upon the death of the last settlor-trustee(s):

[Check one or both, as applicable]

Manager/Supervisor

Trained staff member

12. If a revocable trust holds \$ _____ or more, the (manager/supervisor and/or trained staff member) must contact the CU's attorney prior to paying out funds to any successor-trustee(s).

Date Adopted

Board Officer's Signature

SECTION III

CHECKLIST - MEMBER'S ATTORNEY OPTION

Member Service Tip

Inform your membership about the types of trusts the credit union will accept as members, as well as the procedure that should be followed. Assemble an information packet on opening an account for a revocable trust at the credit union. This packet could include the worksheet that the member must take to his/her attorney, an account card, as well as an information sheet that spells out the services that trusts can receive.

Upon receiving a request from a member to open an account for a revocable trust, complete the following tasks:

1. _____ Provide the member with an information sheet, such as Worksheet A on the next page, to take to his/her attorney for completion.
2. _____ Provide the member with a Mich-526 (Rev. 4/01) account card (See Appendix A) to take to his/her attorney for review.
3. _____ Provide the member with an information sheet that spells out the services that the credit union will offer a revocable trust. This information will assist the member's attorney in completing the worksheet.

Note: The above 3 tasks can be incorporated into 1 if your credit union assembles a Revocable Trust information package.
4. _____ Ask the member if he/she would like to make an appointment for setting up the account.
5. _____ Complete the Mich-526 (rev. 4/01) in the presence of the member, utilizing the information provided by the member's attorney. Or review the completed card if the member's attorney has already completed the account card.
6. _____ Explain the services that the trust may utilize.
7. _____ Explain how the member should sign for withdrawals (*i.e., John Doe, Trustee*).

SECTION III

WORKSHEET A

Revocable Trust Information Sheet

_____ Credit Union, as a benefit to its members, is willing to open an account in the name of a member's revocable trust.

To properly open such an account, we require that the member(s) and his/her attorney complete and sign the following information sheet to ensure that _____ Credit Union is acting in a legal manner.

A. The trust's account should be titled as follows:

B. The taxpayer identification number that should be assigned to the account is:

(Note: This is the tax I.D. number of the first named settlor-trustee.)

C. The following person or persons are authorized to transact the trust's business in the capacity of settlor-trustee:

Name of Person

Check One:

- Any of the persons listed above may act on the account.
 All of the persons listed above must act on the account together.

D. At the time of the last settlor-trustee's death, the following person or persons may transact the trust's business in the capacity of successor-trustee:

Name of Person

Check One:

- Any of the persons listed above may act on the account.
 All of the persons listed above must act on the account together.
 Only the first-listed person may act on the account, unless unable to perform or deceased, then next listed person may act.

SECTION III

WORKSHEET A

Revocable Trust Information Sheet
(Page 2)

- E. The persons executing this document agree as follows:
1. The trust created by the member(s), and for which an account is being opened at the credit union, is a valid trust under Michigan law.
 2. The persons named in this document to transact business have the legal authority to deposit and withdraw funds from the account held in the name of the trust.
 3. The _____ Credit Union is under no obligation to track the use of the funds withdrawn by any of the persons named in this document.
 4. The _____ Credit Union does not have the authority to analyze and interpret the terms of this trust agreement. It is the duty and obligation of the member(s) and the member's attorney to provide the credit union with the proper instructions as to the treatment and handling of the trust account and any related tax reporting.
 5. The _____ Credit Union will act in accordance with the terms and conditions of the most recent information provided to the credit union regarding the provisions of the trust document. Furthermore, the credit union is not bound by any changes to the trust document of which it has not received written notice.
 6. This account is subject to such other terms and conditions as the credit union may establish from time to time. The credit union may change the terms and conditions of this account upon giving 15-day advance written notice. Notice may be given by U.S. mail, first class, postage prepaid, to the last known address of the Settlor-Trustee(s), as reflected in the credit union's records.

Member's Signature Date _____

Member's Signature Date _____

Attorney's Signature Date _____

Please Print or Type the following information:
Attorney's Name/Address/Telephone Number: _____

SECTION III

CHECKLIST - STAFF MEMBER OPTION

Credit unions have the option of allowing a trained staff member to review a member's trust document, as opposed to referring the document to the credit union's attorney, or requiring an information sheet from the member's attorney.

Credit unions that select this option must be committed to properly training the staff member who will open these accounts, as the credit union exposes itself to great risk if the account is improperly opened, maintained, or funds are paid out contrary to the terms of the trust agreement.

A worksheet has been developed to assist the staff member who is responsible for reviewing a member's trust agreement or letter from the member's attorney. It should reduce the chances that a staff member will misinterpret the powers of a trust agreement or trust letter.

Upon receiving a request from a member to open an account for a revocable trust, complete the following tasks:

1. _____ Ask the member for a copy of his/her attorney-drafted trust agreement.
2. _____ Set up an appointment for the member to return to the credit union to open the account.
3. _____ Review the member's trust agreement or letter from the member's attorney, completing Worksheet B.
4. _____ Complete the Mich-526 (rev. 4/01) in the presence of the member, utilizing the information that was documented on Worksheet B.
5. _____ Explain the services that the trust may utilize.
6. _____ Explain how the member should sign for withdrawals (i.e., John Doe, Trustee).

Note: Credit unions that have questions about whether or not their bond covers activities connected with accounts for revocable trusts (*i.e., opening the account, maintenance, improper withdrawals, etc.*) should contact their bond carrier.

SECTION III

WORKSHEET B

Revocable Trust Information Sheet

(To be used by authorized credit union staff only)

_____ Credit Union, as a benefit to its members, is willing to open an account in the name of a member's revocable living trust.

To properly open such an account, the designated staff member is required to complete and sign the following information sheet to ensure that the credit union understands: (a) who has legal ownership of the trust assets, (b) who will receive the trust funds upon the death or incapacity of the settlor-trustee(s), and (c) the power(s) of the trust itself.

A. The trust's account should be titled as follows:

Found on Page _____

B. The taxpayer identification number which should be assigned to the account is: _____

Found on Page _____

(Note: This is the tax I.D. number of the first named settlor-trustee.)

C. The following listed person or persons are authorized to transact the trust's business in the capacity of settlor-trustee:

Found on Page _____

Name of Person

Check one:

Any of the persons listed above may act on the account.

All of the persons listed above must act on the account together.

D. At the time of the last settlor-trustee's death, the following person or persons may transact the trust's business in the capacity of successor-trustee:

Found on Page _____

Name of Person

Check One:

Any of the persons listed above may act on the account.

All of the persons listed above must act on the account together.

Only the first-listed person may act on the account, unless unable to perform or deceased, then next person may act.

SECTION III

WORKSHEET B

Revocable Trust Information Sheet

E. The trust created by the member(s), and for which an account is being opened at the credit union, is a valid trust under Michigan law. (Circle applicable answer):

Yes No

F. The trust document authorizes the trust to borrow or the trust's assets to be pledged (as security for a personal loan). (Circle applicable answer.)

Yes No

G. The name, address and telephone number of the member's attorney is as follows:

Name: _____

Address: _____

Phone: _____

Staff member's signature

Date

APPENDIX A

MICH 526 Item #2162 (rev. 4/01)

APPLICATION FOR MEMBERSHIP AND ACCOUNT AGREEMENT FOR REVOCABLE TRUSTS INSTRUCTION SHEET

Use to establish an account for a revocable living trust. The provisions of the trust document will control the distribution of funds titled in the name of the trust.

- A. Insert account number.
- B. Insert full legal name of the Trust.*
- C. Insert date of trust document.*
- D. Insert name of settlor-trustee (1).
- E. Insert name of settlor-trustee (2), if applicable.*
- F. 1) Check (✓) box if all settlor-trustees are members of the credit union.
2) Check (✓) box if one or both settlor-trustee are not members of the credit union and/or not eligible for membership. If this box is checked, do not proceed.
- G. 1) Check (✓) box if settlor-trustee provided a trust document to open this account.
2) Check (✓) box if settlor-trustee provided a letter from an attorney to open this account.
- H. Insert name, address and telephone number of the attorney who drafted the trust document.
- I. Insert full legal name of trust. Name must match name listed in step B above.
- J. Insert name of credit union.

Steps K through N should be completed by the settlor-trustee(s).

- K. Insert name of settlor-trustee (1). Name must match name in step D above.
 - L. Insert address and telephone number(s), driver's license number, and social security number of settlor-trustee (1).
 - M. If ID other than a driver's license is used, insert type and number of ID used to identify settlor-trustee (1). For example, passport, state ID, employee ID, etc.
 - N. Insert name, address and telephone number(s), driver's license or other ID number, and social security number of settlor-trustee (2), if applicable.
- * Go to trust document or letter from settlor-trustees' attorney for this information.

ACCOUNT NO. 026758	A	APPLICATION FOR MEMBERSHIP AND ACCOUNT AGREEMENT FOR REVOCABLE TRUSTS
PART I: GENERAL TRUST INFORMATION		
Name of Trust:	B	John Doe Revocable Trust Agreement
Date of Trust Document:	C	March 20, 1992
Established by:	D	John Doe
	E	(Print Name)
	F	Settlor-Trustee (1)
	G	Settlor-Trustee (2)
	F	All Settlor-Trustees are members of the credit union? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	G	If no, the trust is ineligible for membership.
	G	Proof of Trust: <input checked="" type="checkbox"/> Trust Document <input type="checkbox"/> Letter from Settlor-Trustees' Attorney
	H	Name/Address/Telephone Number of Settlor-Trustees' Attorney Daniel N. King Howard & Howard, P.C. 1400 N. Woodward, Ste 250 Bloomfield Hills, MI 48304 313-645-1483
PART II: MEMBERSHIP INFORMATION FOR TRUST		
The	I	John Doe Revocable Trust Agreement
	J	Trust
	J	submit this form to the Finished Product
	J	Credit Union for two purposes. First, the trust hereby applies for membership in the credit union. Second, the trust requests the credit union to open a share/deposit account in the name of the trust listed above.
Name of Settlor-Trustee (1):	K	John Doe
Address/Telephone Number(s):	L	3000 Trailblaze Dr., Washington Heights. MI 48000 390-7500 (W) 728-5300 (H)
Driver's License No.:	M	D-198-888-765-000 TIM 611-55-0182
Other ID used to establish account:	M	
Name of Settlor-Trustee (2):	N	
Address/Telephone Number(s):	N	
Driver's License No.:	N	TIM
Other ID used to establish account:	N	
<small>*Taxpayer Identification Number</small>		
<small>Item 2162 MICH01 225 (Rev. 1/01) © 2001 Citicorp Images & Ink • 1-800-435-2024</small>		

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APPLICATION FOR MEMBERSHIP AND ACCOUNT AGREEMENT FOR REVOCABLE TRUSTS
INSTRUCTION SHEET CONTINUED

- O. 1) Check (✓) box if any settlor-trustee may sign for withdrawals.*
- 2) Check (✓) box if all living settlor-trustees may sign for withdrawals.*

Steps P through U must be completed by the settlor-trustee(s).

- P. Signature of settlor-trustee (1).
 - Q. Date of signature.
 - R. Signature of settlor-trustee (2).
 - S. Date of signature.
 - T. Signature of settlor-trustee (1).
 - U. Date of signature.
 - V. As indicated on the card, the successor trustee is the person who succeeds the settlor-trustee(s) upon his/her death, resignation, or inability to act as the trustee. Sometimes there is more than one successor trustee. Moreover, the successor trustee may have equal or successive rights to the first-named successor trustee.
- This information is contained in the trust document and should be reviewed by the Manager or other supervisory personnel at the credit union. He/She may decide to contact the settlor-trustee's and/or the credit union's attorneys for instructions.
- Note:** Disbursement of these funds does not have to be immediate. Therefore, credit union's are urged to verify the identity and rights of any person claiming to be the successor trustee **before** any funds are paid out of the trust account.
- W. Signature of individual authorized to approve application.
 - X. Date of approval.
 - Y. Check (✓) title of individual in step W above.

* Go to trust document or letter from settlor-trustees' attorney for this information.

PART III: TERMS AND CONDITIONS OF ACCOUNT

The following terms and conditions apply to this account:

- (a) All sums paid to the credit union in share deposits (less credits allowed) by law and/or provided for by contract, shall be paid or proper withdrawal demand. Such demand must be made by the Settlor-Trustee as indicated below. The credit union has no responsibility to follow the application of the funds withdrawn from this account.
- (b) Only methods approved by the credit union may be used to make withdrawals from this account.
- (c) All non-cash payments received in this account will be credited subject to final payment.
- (d) Any objection to an item shown on a periodic statement of this account must be made in writing to the credit union within 60 days after the statement is mailed. If the objection is not made in writing within 60 days, it is waived.
- (e) This account is subject to the credit union's right to require advance notice of withdrawals, as provided in the credit union's bylaws.
- (f) This account is also subject to such other terms and conditions as the credit union may establish from time to time. The credit union may change the terms and conditions of this account upon giving a 30-day advance written notice. Notice may be given by U.S. mail, first class, postage prepaid, to the last known address of the Settlor-Trustee(s), as reflected in the credit union's records.
- (g) The credit union will act in accordance with the terms and conditions of the most recent information provided to the credit union regarding the provisions of the trust document. Furthermore, the credit union is not bound by any changes to the trust document of which it has not received written notice.

CHECK ONE:

Any Settlor-Trustee may sign withdrawals All living Settlor-Trustees must sign withdrawals

Signature of Settlor-Trustee (1) **P** *John Doe* Date **Q** *3-20-02*

Signature of Settlor-Trustee (2) **R** _____ Date **S** _____

Part IV: TIN CERTIFICATION AND BACKUP WITHHOLDING INFORMATION

Under penalties of perjury, I certify that: (1) The number shown on this form is my correct taxpayer identification number, and (2) I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a U.S. person (including a U.S. resident alien).

Certification instructions: You must check all items 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. Check only item 3 and complete a W-9 BEN if you are not a U.S. person.

Signature of Settlor-Trustee (1) **T** *John Doe* Date **U** *3-20-02*

PART V: SUCCESSOR TRUSTEE INFORMATION

The Successor Trustee is the person who succeeds the Settlor-Trustee(s) upon his/her (their) death, resignation, or inability to act as the Trustee(s). Often a surviving spouse or an adult child will be the Successor Trustee. If someone presents ID and claims to be the Successor Trustee, the teller should immediately contact the manager/supervisor at the credit union. He/she will make the appropriate decision based on the trust document and consultation with the Settlor-Trustee's and/or the credit union's attorney, if necessary.

(CREDIT UNION USE ONLY)

Membership of all Settlor-Trustees and application approved by:

Signature *Adam Approver* Date **X** *3-20-02*

Membership Officer Secretary of the Board Treasurer of the Board

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APPENDIX B

Checklist for Auditing Accounts Owned by Trusts

Credit unions that have opened accounts for their members' trusts prior to developing a policy are advised to conduct an audit of these accounts to ascertain any actions that may be necessary in order for the account to conform to the established policy.

<u>Items to check:</u>	<u>Responses*</u>	
➤ Settlor-trustees -- Are they all members of the credit union? <u>Note:</u> A joint owner is not a full-fledged member.	Yes	No
➤ Trust agreement or letter from attorney regarding the trust -- Does the CU have a copy of either or both on file?	Yes	No
➤ Withdrawal privileges -- May any settlor-trustee withdraw, or must <u>all</u> settlor-trustees act on the account together?	Any	All
➤ Successor-trustee(s) -- Is the CU clear on who the successor-trustee(s) is/are?	Yes	No
➤ Loan accounts -- Does the trust have the power to borrow? <u>Note:</u> If the trust does not have the power to borrow or if the credit union does not make loans to trusts, the member needs to be informed that the credit union will not make loans to the trust.	Yes	No
➤ Draft account -- Is it a sub-account of the trust? If so, is the name of the trust printed on the drafts?	Yes	No
➤ IRAs -- Does the trust own any? <u>Note:</u> Trusts are not permitted to own IRAs; it is permissible, however, for a trust to be a beneficiary of an IRA.	Yes	No

* "No" responses require action. In some cases it may be a simple request for the member to provide information; in other cases the credit union will need to explain to the member (by letter or personal contact) the change that must occur to correct the situation.

APPENDIX C

FREQUENTLY ASKED QUESTIONS

Q. What is a trust?

A. A trust is a contractual arrangement (the "trust") whereby one or more people (referred to as "settlers," "grantors," or "trustors") contract with one or more other persons (the "trustees") to own and manage their (the settlers) assets. The document may also provide for one or more successor trustees who can act for the trust if the original trustee(s) are unable or unwilling to do so. The assets may be managed for the benefit of people known as "beneficiaries." The beneficiaries may be the grantors themselves and/or other people named in the trust.

Q. What does a credit union need to know about trusts?

A. Volumes have been written on the subject of trusts, and credit union staff members should consult with an attorney familiar with the subject should a question arise that they don't know the answer to. The question does not lend itself to a simple answer. However, the following questions and answers should help to provide guidance on some of the more common issues.

Q. What are some typical duties of trustees?

A. Trustees manage the assets covered by the trust, such as by making investments, disbursing money according to the terms of the trust, etc. The trust will spell out what the trustee is to do with the assets of the trust following the death of all of the settlers. Trustees also have duties specified by law. For example, they may have some responsibility to use trust assets to pay estate taxes and debts related to the estate of the settlor(s).

Q. Can members retitle or transfer their accounts to a living trust?

A. No. Because of the membership requirements for credit unions, member accounts can't be retitled. This contrasts with banks, which can retitle accounts because they don't need to be concerned about membership and eligibility for service.

Q. Can a trust have an account at the credit union?

A. Yes, provided that it meets the eligibility requirements related to settlers, trustees, and beneficiaries.

Q. Do all the settlers, trustees, successor-trustees, and beneficiaries have to be either members or fall

within the credit unions' field of membership?

A. The answer to this one differs for state and federal credit unions and is quite involved. Rather than attempting to summarize it all here, we encourage you to refer to page 3 of the Revocable Trust Manual for a complete explanation.

Q. What is the difference between a "revocable" trust and an "irrevocable" trust?

A. A revocable trust, sometimes called a living trust, is one that the settlor(s) on their own have the right to terminate. An irrevocable trust cannot be terminated by the settlors unless all of the beneficiaries consent. And often, the class of beneficiaries cannot be determined prior to the death of the settlors (due to contingencies some trusts contain) or one or more of the beneficiaries may be minors, so such consent is not always easily obtained.

Q. Who can act on behalf of the trust?

A. The trustee. If there is more than one trustee, the trust document will state whether any one of them may act for the trust or whether they must all act together.

Q. How should a credit union document an account arrangement with a trust?

A. The League has a specific form (MICH 526, available through the Images & Ink Division of CUcorp) that can be used when the settlors also serve as the trustees. If this isn't the case, the general membership card can generally be customized and used. We recommend getting a copy of the trust document itself, although if the credit union's attorney advises in writing that an alternative approach will work, the credit union could consider following that approach instead.

Q. What if a question arises concerning specific features of the trust?

A. Depending on the circumstances, a credit union may want to contact the attorney who drafted the trust for written information or it may want to get an opinion from its own attorney. The more money that is involved, the more important it is that the credit union speak with its own attorney. Advice is most likely to be needed when one of the settlors dies.

Q. Can a trust be involved with a loan?

A. As a general proposition, trusts can incur debt. However, the trust document needs to be reviewed to determine whether the specific transaction involved is authorized prior to the credit union entering into a loan or loan related transaction with a trust. A general authority to borrow isn't always sufficient (it wouldn't cover guarantees, for example). The costs of such a review may make the proposed transaction uneconomical.

Q. What about issuing credit cards, ATM cards, or debit cards to a trust?

A. Because of how these services are offered, all of them could result in circumstances where the trust would owe money to the credit union or at least appear to owe money. This will give rise to two issues. First, if the trust is the only party obligated and it becomes insolvent, there is no one from whom the credit union can collect. Second, a trust can obligate itself for debts only as specifically provided for in the trust documents. The power to borrow, for example, does not include the power to guarantee the debts of someone else. The credit union will need to determine if the trust has the relevant power before allowing the arrangement involved, and costs associated with making such a determination will likely make it impractical. Even if settlors want to put their savings into an account owned by their trust, the credit union would be wise to keep all credit arrangements in the names of the individuals concerned and not involve the trust.

Q. What types of savings, etc. accounts can a trust have at a credit union?

A. A trust can have various types of savings accounts. All accounts, including draft accounts, owned by the trust should be in the name of the trust itself followed by a listing of the trustees. This includes drafts printed for draft accounts. Otherwise, the documents (drafts) won't accurately reflect account ownership. Keep in mind that trusts generally do not pass into estates and can be sold, so the fact that the owners and the trustees are one and the same today doesn't guarantee that such will always be the case. It may be wise just to not let trusts have draft accounts, since tracking signatures by trustees on instruments may be more trouble than it is worth, and the amounts involved generally aren't that large. Note that a trust may not own an Individual Retirement Account, and members who seek to have their trusts listed as beneficiaries of Individual Retirement Accounts should be told to consult with their tax advisors since negative consequences could result.

Q. Can a trust have a safety deposit box at a credit union?

A. Yes, if the trust document contains the appropriate authority to enter into a safe deposit box contract.

Q. What does CU do when the (last) settlor passes away?

A. It will depend on the account balance. If it's small, just make a business decision on what documentation CU wants to receive and verify before it pays the funds to whomever has become the trustee. As the balance gets larger, the CU should consider calling the attorney who drafted the trust and ask for guidance. (You drafted this thing. Tell us that it's still valid and how it now works.) As the balance gets still larger, the CU should call its attorney for written guidance. The CU's attorney will want to check with the drafter and possibly take a variety of steps before giving the CU guidance on funds disbursement.

Q. Can a trust be an account beneficiary?

A. Yes, and it may be simpler for CU to deal with trusts in this manner. That way, the CU only gets involved with authority issues, etc. once. It should get information on the trust at the time of beneficiary designation to facilitate performing the steps listed in the previous question.

Q. Can a trust be a joint owner on an account?

A. The credit union should not allow such an arrangement. Depending on the specific facts of the situation (including the state the member lives in at the time of death), it could create problems with determining when the trust actually became the owner of the funds. If it's determined the trust really only gained rights at the time of death, there may well be legal consequences. This could land the matter in Probate Court, and the credit union might end up being held responsible for creating a variety of problems. In any event, the trust would not be actively using any such an account while the other party is still alive, so using joint ownership will serve no useful purpose. The likely goal can be much better achieved by designating the trust as the beneficiary of the account. Michigan law provides for a clean passage of title if the trust is named as a beneficiary (as opposed to a joint owner) and that would be a much better and less risky way to go. The arrangement followed by the Michigan law involved has also been adopted as law by a large number of other states.

Q. How should CU handle a check payable to a trust that is presented to the CU? What if the name doesn't exactly match the name we have on our account records?

A. Like any instrument payable to a non-natural person, the CU should required it to be deposited in full and not cash it. A separate instrument should be used for a withdrawal if the trustee wants to receive some cash. The credit union should insist on an exact match between the name of the payee as shown on the check and the name on the account. If there are any discrepancies, if there are extra words, symbols, etc. on the check, or there is anything about the check that the credit union doesn't understand, it should decline to accept the item and suggest that the presenter have the check reissued with a payee name that exactly matches the CU's records. Since many trusts have similar names, the CU may want to require that such a check, particularly if it is for a large amount, contain some sort of unique identifier (such as a TIN) in addition to an exact name match.

Q. Can CU deny services to a trust?

A. Yes. A trust is not in any protected category. As long as the CU is consistent, it may, for example, state that no trust will be allowed to have a draft account or an ATM card.

Q. Does a levy on a member personally reach the assets held by a revocable trust of which he/she is a settlor?

A. The CU will need to consult with its attorney on this one. It will depend on the form of levy received and the authority at that time of the settlor over the trust.

Q. A member of our credit union, who is the trustee for an irrevocable trust, has asked to open an account for the trust. Can we do this? Are there any risks?

A. If the irrevocable trust meets all of the qualifications for membership, yes. The criteria are the

same as for revocable trusts, but chances are there will be membership eligibility problems due to some or all of the beneficiaries not being eligible for membership. Keep in mind that any trust becomes irrevocable after the death of the last settlor. As for risks, they are likely to be higher because the person the credit union is dealing with (the trustee) is not the actual owner of the funds. If something goes wrong, there may be allegations that the CU should have known of the impropriety. It would be easy for a staff member to not see a problem, for example, if the trustee of such a trust asked to apply some funds from the trust's account to his/her car loan. The credit union could end up having to give back the money long after the borrower and the car are gone. Keep in mind that the focus of our manual is on revocable trusts, not irrevocable trusts.

Q. We had a person come into the credit union with documents showing that he held a power of an attorney from a member who is the trustee on a credit union account owned by the trust. Can the person holding the power of attorney make decisions regarding the trust?

A. No. A trustee cannot authorize someone else to act on behalf of the trust unless the trust document specifically provides for such a power. Such a power would be exercised by a document relating to the trust, such as an amendment or a designation by the settlor(s) of additional trustees, that references the trust. In no event would the document used be titled as a "power of attorney" and in no event could such a document be used if it does not make specific reference to the trust.

Q. A member wants to transfer money from a business account to an account owned by a trust. Is this allowed?

A. A business should never be allowed to transfer (as such) money to an account at the credit union that isn't owned by the same business. If a business issues a check payable to a trust, that check can be accepted like any other check payable to the trust. The use of an instrument is needed to ensure a clear separation of the identities of the two parties involved should litigation arise concerning either party (or the IRS conduct an audit) in the future.