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Survivor's Guide to Probate and Trust Administration

November 6, 2020

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SURVIVOR'S GUIDE TO PROBATE & TRUST ADMINISTRATION

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Agenda

- 8:55 A.M.** **Welcome & Introduction**
- *Amy K. Nowaczyk, Seminar Chair*
- 9:00 A.M. The Initial Client Conference
- *Amy K. Nowaczyk*
- 10:00 A.M. Probate Administration
- *Laura M. Vogler*
- 10:30 A.M.** **Break**
- 10:45 A.M. Probate Administration (continued)
- *Laura M. Vogler*
- 11:45 A.M. Trust Administration
- *Cori A. Mathis*
- 12:15 P.M.** **Lunch Break**
- 1:15 P.M. Trust Administration (continued)
- *Cori A. Mathis*
- 2:15 P.M. Unique Issues in Estate and Trust Administration - Faculty Round
Table Discussion -- Transfer on Death Plans; Digital Assets; Beneficiary
in Prison; Distributions to Minors or Subtrusts; Push Back from 3rd
party Financial Institutions; Successor Trustee/Executor Who Drags
Their Feet
Panel: *Amy K. Nowaczyk, Cori A. Mathis, Laura M. Vogler, America L. McAlpin*
- 2:30 P.M.** **Break**
- 2:45 P.M. Unique Issues in Estate and Trust Administration - Faculty Round
Table Discussion (continued)
Panel: *Amy K. Nowaczyk, Cori A. Mathis, Laura M. Vogler, America L. McAlpin*
- 3:30 P.M. Ethical Issues: Fiduciary duties; Conflicts of interest; Who is our
client and Fee Agreements
- *America L. McAlpin*
- 4:30 P.M.** **Adjournment**

November 6, 2020

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SURVIVOR'S GUIDE TO PROBATE & TRUST ADMINISTRATION



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Amy Nowaczyk is a junior partner at O'Drobinak & Nowaczyk, P.C. Amy's background in psychology and law have given her a unique perspective on estate planning and elder law issues. Her education and experience have enabled her to identify the needs of her clients in order to create customized estate plans that help her clients avoid probate, control the distribution of their estate, and protect their assets from the high cost of long term nursing care. Clients frequently praise Amy's ability to make them feel comfortable and at ease while discussing difficult subjects such as their disability and death.

Amy received her Bachelor of Science degree in Psychology from Valparaiso University, her Master Degree in Industrial/Organizational Psychology from Illinois Institute of Technology, and her Juris Doctor from Valparaiso University School of Law. During law school, Amy clerked in the Lake County, Indiana, Circuit Court (Probate Division) for the Honorable George C. Paras.

Before her career in law, Amy practiced as an Industrial/Organizational Psychologist for a public safety consulting firm near Chicago, Illinois. In this role, Amy developed and administered entry-level selection assessments and promotional assessments for police and fire departments across the United States. She has been an adjunct professor at Kaplan University, Argosy University, and Purdue North Central.

Amy is a member of the American Bar Association, the Indiana Bar Association, the Lake County Bar Association, the National Academy of Elder Law Attorneys, the American Academy of Estate Planning Attorneys, and the American Psychological Association.

Amy has served as a panelist in Seminars for the Indiana Continuing Legal Educational Forum:

"Guardianships from Start to Finish", ICLEF, 2013
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Amy has been a lifelong resident of Crown Point, Indiana, where she resides with her husband and four children.

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Laura is always looking for the best way to serve her clients. She focuses primarily on estate planning, estate & trust administration, and elder law. With an emphasis on long term care planning, nursing home Medicaid qualification, and guardianships, Laura works hard to take away the uncertainty from an unknown or stressful situation. Her background in customer service provides her with a distinctive ability to build strong and lasting relationships with her clients.

Laura earned her J.D. from Valparaiso University Law School, and her B.A. in Corporate Communications from Dominican University in Illinois. Laura is admitted to practice in Indiana.

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Cori Mathis is an associate at O'Drobinak & Nowaczyk, P.C. She devotes her law practice to medicaid planning and estate planning. She also represents clients in guardianship proceedings and estate and trust administration. She works hard to explain complicated subjects in simple terms so that families understand their options. She has conducted many seminars for the community on elder law and estate planning issues.

Cori earned her Bachelor's Degree, cum laude, from the University of Illinois Urbana-Champaign in political science and speech communications. She received her Juris Doctor from DePaul University College of Law.

Cori is admitted to the State Bars of Indiana and Illinois. She is admitted to practice in the U.S. District Courts for the Northern District of Indiana and the Northern District of Illinois, as well as the Seventh Circuit Court of Appeals, the U.S. Court of Appeals for the Federal Circuit, and the U.S. Supreme Court. She is a member of the Indiana Bar Association, Lake County Bar Association, and Women Lawyers Association of Indiana.

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PowerPoint Presentation

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Appendix B

Example of Psychological Assessment Report

Appendix C

Capacity Assessment Algorithm for Lawyers

Appendix D

Dementia Overview

Section One

The Initial Client Consultation

Amy K. Nowaczyk
O'Drobinak & Nowaczyk, PC
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Section One

The Initial Client Consultation.....Amy K. Nowaczyk

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TELEPHONE SCRIPT REGARDING ESTATE ADMINISTRATIONS

INITIAL CALL

Death of Client:

I'm sorry to keep you waiting, this is [your name]. Please accept our sympathy to you and your Family as I understand that your [relationship to Decedent] has passed away. I am looking at their file, and note that you are the named Personal Representative in their Last Will. Could you give me their date of death for our records? Please hold and I will transfer your call directly to the Attorney. (*If the attorney is available, ideally he/she should speak briefly to the family/Personal Representative/Successor Trustee to offer condolences)

Death of Non-Client:

I'm sorry to keep you waiting, this is [your name]. I will need some information on the individual who has passed away. Could you please give me their name and date of death? I'm sorry to hear of their passing; please accept our sympathy to you and your Family. Did he/she have a Will? If yes – are you the named Personal Representative in this Will? Were you referred to us or how did you get the Attorney's name?

AFTER SPEAKING WITH THE ATTORNEY

Our procedure in this matter is for you meet with the Attorney, so that you are advised as to how to proceed, and what Court documents may need to be filed in this Estate administration. I will mail you a questionnaire on which you will list all of the Decedent's assets, how they are currently titled, any known beneficiary designations, and the approximate value as of the date of death. We ask that the questionnaire be completed so that you can bring it with you to the appointment, along with an original death certificate and the original Will. The Attorney will answer all of your questions at that time. May I have your address and telephone number? Would you prefer I email the information to you?

[Client/non-client may now make an appointment, so the date/time is included in the initial letter. We urge them to do this so that too much time does not lapse. On the other hand, they may wish to contact us after completion of the questionnaire to do so.]

Initial Client Letter – Estate

Date

PersRep name
PersRep St Addr
PersRep CityStateZiop

RE: ESTATE OF Decedent name

Dear PersRep Name:

Please accept our deepest sympathy on the death of your [relationship to Decedent]. Enclosed you will find the Estate Administration Questionnaire. This contains questions concerning the assets and debts of the Decedent. It is necessary that we have this current information in order to properly administer the Estate and distribute the assets, if necessary. Please provide as much information as you can. To the best of your ability, all questions should be answered, all schedules completed, and all requested supporting documents should be brought with you. Remember, the information that is needed about assets pertains to those of the Decedent alone, at the date of death. In addition, include all assets in which the Decedent had a partial interest, eg. joint tenancy or tenancy in common property. In the event the Decedent's Estate is larger than \$11,580,000, please be sure to complete the "Addendum" as well. **Do NOT to transfer any assets until we advise you to proceed.**

Please bring this information, along with a death certificate and the original Last Will and Testament with you when you come for your appointment on [date and time of appointment] or [which needs to be scheduled].

If you have any questions regarding how to complete the enclosed forms, please do not hesitate to call my Office.

Very truly yours,

O'DROBINAK NOWACZYK, P.C.

By: Amy K. Nowaczyk

AKN/jkn
Enclosure

Initial Client Letter – Trust

Date

Trustee name
Trustee St Addr
Trustee CityStateZiop

RE: Trust Estate of

Dear Trustee Name:

Please accept our deepest sympathy on the death of your [relationship to Decedent]. Enclosed is the Trust Administration Questionnaire that contains questions concerning the assets and debts of the Decedent. It is necessary that we have this current information in order to properly administer the Estate and distribute the assets, if necessary. Please provide as much information as you can. To the best of your ability, all questions should be answered, all schedules completed, and all requested supporting documents should be brought with you. Remember, the information that is needed about assets pertains to those of the Decedent alone, at the date of death. In addition, include all assets in which the Decedent had a partial interest, eg. joint tenancy or tenancy in common property. In the event the Decedent's Estate is larger than \$11,580,000, please be sure to complete the "Addendum" as well. Do NOT to transfer any assets until we advise you to proceed.

Please bring this information, along with a death certificate and the original Last Will and Testament with you when you come for your appointment on [date and time of appointment] or [which needs to be scheduled].

If you have any questions regarding how to complete the enclosed forms, please do not hesitate to call my Office.

Very truly yours,

O'DROBINAK NOWACZYK, P.C.

By: Amy K. Nowaczyk

AKN/jkn
Enclosure

SYMPATHY CARD

With Deepest

Sympathy



Mrs Jones,

We are so sorry to learn of your husband's passing. We hold you close in our thoughts and please know we are here if you need us.

Sincerely,
Amy

May peace and Comfort
find you during this
difficult time.
Kija

I'm so sorry for your
loss. You and your
family are in my
Thoughts and prayers.
Melissa

WITH *heartfelt condolences* AND

kindest thoughts IN YOUR TIME OF SORROW

You are in our
thoughts and
prayers.
Nancy

With Deepest Sympathy!
-Angie

O'DROBINAK & NOWACZYK, P.C.

So very sorry
for your loss
Kathy

My condolences to you and
your family during this
difficult time. - Pat

Estate & Trust Administration Questionnaire

ASSET INFORMATION

You are the Trustee/Personal Representative. Please bring in the original Will and all Codicils, along with any Trust that we did not prepare in which the Decedent had an interest. In addition, bring in a certified copy of the decedent's death certificate

1. DECEDENT:

NAME _____ SOC SEC NO _____
ADDRESS _____ DATE ESTABLISHED _____
_____ DATE OF DEATH _____
PLACE OF BIRTH _____ DATE OF BIRTH _____
OCCUPATION _____

TRUSTEE/PERSONAL REPRESENTATIVE INFORMATION:

NAME _____ REL _____
ADDRESS _____ TEL HOME _____
_____ TEL WORK _____
EMAIL ADDRESS: _____ FAX _____
CELL PHONE: _____

3. SPOUSE OF DECEDENT INFORMATION:

NAME _____ SOC SEC NO _____
ADDRESS _____ DATE OF DEATH _____
_____ PLACE OF DEATH _____
DATE OF BIRTH _____ PLACE OF BIRTH _____
PLACE OF MARRIAGE _____ DATE OF MARRIAGE _____
SPOUSE IS / IS NOT A U.S. CITIZEN _____ NATURALIZATION DATE _____

4. SELF-PROVED WILL (Y/N) _____ SPREAD WILL/OPEN EST(CIRCLE ONE)

SAFETY DEPOSIT BOX NUMBER/BANK _____
INVENTORY OF SAFETY DEPOSIT BOX _____
BROKER NAME/TEL _____
ACCOUNTANT NAME/TEL _____
LIFE INSURANCE AGENT NAME/TEL _____

5. PROBABLE VALUE OF ESTATE'S REAL PROPERTY _____
PROBABLE VALUE OF ESTATE'S PERSONAL PROPERTY _____
PROBABLE VALUE OF ESTATE'S ANNUAL RENTS, ISSUES AND PROFITS (INCOME) _____

6. Where you referred by anyone? Yes No
If so, who? _____
May we send them a "thank you" note? Yes No

REAL ESTATE

This section is for real estate that is owned solely by the Decedent, in the Decedent's Trust and/or owned jointly with others. Please bring in copies of deeds, promissory notes and/or real estate contracts. Provide the name and address of the mortgage holder, the mortgage account number, and the date of death balance owed on the mortgage for all real estate.

PARCEL 1 - REAL ESTATE ADDRESS _____

WHOSE NAME(S) TITLE IN _____

MORTGAGE HOLDER _____ MORTGAGE BALANCE AT DEATH _____

MORTGAGE HOLDER ADDRESS AND TELEPHONE _____

FAIR MARKET VALUE _____ ORDER APPRAISAL (Y/N) BY: _____

IS THERE CREDIT LIFE INSURANCE? ____ YES ____ NO

DO YOU INTEND TO:

- A. SELL: ____ YES ____ NO IF SO, HOW SOON? _____
WILL YOU USE ____ BROKER ____ SELL BY YOURSELF
- B. RENT: ____ YES ____ NO MONTHLY RENT \$ _____ TO WHOM: _____
- C. HOW SOON WILL YOU CLEAN OUT THE REAL ESTATE

- D. WILL SOMEONE OCCUPY REAL ESTATE WITHOUT PAYING RENT ____ YES ____ NO
IF SO, BY WHOM AND WHY? _____

PARCEL 2 - REAL ESTATE ADDRESS _____

WHOSE NAME(S) TITLE IN _____

MORTGAGE HOLDER _____ MORTGAGE BALANCE AT DEATH _____

MORTGAGE HOLDER ADDRESS AND TELEPHONE _____

FAIR MARKET VALUE _____ ORDER APPRAISAL (Y/N) BY: _____

IS THERE CREDIT LIFE INSURANCE? ____ YES ____ NO

DO YOU INTEND TO:

- A. SELL: ____ YES ____ NO IF SO, HOW SOON? _____
WILL YOU USE ____ BROKER ____ SELL BY YOURSELF
- B. RENT: ____ YES ____ NO MONTHLY RENT \$ _____ TO WHOM: _____
- C. HOW SOON WILL YOU CLEAN OUT THE REAL ESTATE

- D. WILL SOMEONE OCCUPY REAL ESTATE WITHOUT PAYING RENT ____ YES ____ NO
IF SO, BY WHOM AND WHY? _____

PARCEL 3 - REAL ESTATE ADDRESS _____

WHOSE NAME(S) TITLE IN _____

MORTGAGE HOLDER _____ MORTGAGE BALANCE AT DEATH _____

MORTGAGE HOLDER ADDRESS AND TELEPHONE _____

FAIR MARKET VALUE _____ ORDER APPRAISAL (Y/N) BY: _____

IS THERE CREDIT LIFE INSURANCE? _____ YES _____ NO

DO YOU INTEND TO:

- A. SELL: ___ YES ___ NO IF SO, HOW SOON? _____
WILL YOU USE ___ BROKER ___ SELL BY YOURSELF
- B. RENT: ___ YES ___ NO MONTHLY RENT \$ _____ TO WHOM: _____
- C. HOW SOON WILL YOU CLEAN OUT THE REAL ESTATE

- D. WILL SOMEONE OCCUPY REAL ESTATE WITHOUT PAYING RENT ___ YES ___ NO
IF SO, BY WHOM AND WHY? _____

TOTAL VALUE OF REAL PROPERTY: _____

USE REVERSE SIDE FOR ADDITIONAL PROPERTIES AND/OR INFORMATION

SAVINGS, CHECKING, POD, TOD, and, C.D. ACCOUNTS

Provide all the requested information about any account at any financial institution in which the Decedent held an interest. Include accounts owned solely by the Decedent, by the Decedent’s Trust, (if there was one), owned jointly with others, POD accounts, or TOD accounts. Please bring the most recent statement received for each account. In answering “type of account”, indicate if it was a checking, savings, CD, and whether it was a POD or TOD account.

1. BANK _____ ACCT # _____
BANK ADDRESS _____ DOD BALANCE _____
ACCOUNT OWNERS _____
TYPE OF ACCOUNT _____

2. BANK _____ ACCT # _____
BANK ADDRESS _____ DOD BALANCE _____
ACCOUNT OWNERS _____
TYPE OF ACCOUNT _____

3. BANK _____ ACCT # _____
BANK ADDRESS _____ DOD BALANCE _____
ACCOUNT OWNERS _____
TYPE OF ACCOUNT _____

4. BANK _____ ACCT # _____
BANK ADDRESS _____ DOD BALANCE _____
ACCOUNT OWNERS _____
TYPE OF ACCOUNT _____

5. BANK _____ ACCT # _____
BANK ADDRESS _____ DOD BALANCE _____
ACCOUNT OWNERS _____
TYPE OF ACCOUNT _____

6. BANK _____ ACCT # _____
BANK ADDRESS _____ DOD BALANCE _____
ACCOUNT OWNERS _____
TYPE OF ACCOUNT _____

TOTAL VALUE OF SAVINGS, CHECKING, POD, TOD, and, C.D. ACCOUNTS _____

USE REVERSE SIDE FOR ADDITIONAL ACCOUNTS AND/OR INFORMATION

BROKERAGE ACCOUNTS, STOCKS, MUTUAL FUNDS, ETC.

List all brokerage accounts, stocks and mutual funds owned solely by the Decedent, the Decedent's Trust (if there was one), owned jointly with others, or TOD accounts. If any of the Decedent's stock was held in a brokerage account, please bring the last statement received. Also, do the same for any mutual funds or dividend reinvestment accounts owned. If the Decedent held stock certificates, bring copies of the certificates. If shares are held electronically with the company, please bring a copy of the most recent statement of holdings.

IF THERE IS A BROKERAGE ACCOUNT:

NAME OF BROKERAGE HOUSE _____
NAME OF STOCKBROKER _____
ADDRESS _____
TELEPHONE NUMBER _____ EMAIL ADDRESS _____
ACCOUNT NUMBER _____ VALUE OF ACCOUNT _____
NAME(S) ON THE ACCOUNT _____

NAME OF BROKERAGE HOUSE _____
NAME OF STOCKBROKER _____
ADDRESS _____
TELEPHONE NUMBER _____ EMAIL ADDRESS _____
ACCOUNT NUMBER _____ VALUE OF ACCOUNT _____
NAME(S) ON THE ACCOUNT _____

NAME OF BROKERAGE HOUSE _____
NAME OF STOCKBROKER _____
ADDRESS _____
TELEPHONE NUMBER _____ EMAIL ADDRESS _____
ACCOUNT NUMBER _____ VALUE OF ACCOUNT _____
NAME(S) ON THE ACCOUNT _____

IF THERE IS NO BROKERAGE ACCOUNT:

STOCK NAME _____
SHARES HELD _____ CUSIP _____ DOD VALUE(H/L) _____
STOCK OWNER(S) _____

STOCK NAME _____
SHARES HELD _____ CUSIP _____ DOD VALUE(H/L) _____
STOCK OWNER(S) _____

STOCK NAME _____
SHARES HELD _____ CUSIP _____ DOD VALUE(H/L) _____
STOCK OWNER(S) _____

STOCK NAME _____
SHARES HELD _____ CUSIP _____ DOD VALUE(H/L) _____
STOCK OWNER(S) _____

STOCK NAME _____
SHARES HELD _____ CUSIP _____ DOD VALUE(H/L) _____
STOCK OWNER(S) _____

STOCK NAME _____
SHARES HELD _____ CUSIP _____ DOD VALUE(H/L) _____
STOCK OWNER(S) _____

TOTAL VALUE OF BROKERAGE ACCOUNTS, STOCKS, MUTUAL FUNDS _____

USE REVERSE SIDE FOR ADDITIONAL STOCKS AND/OR INFORMATION

LIFE INSURANCE

Provide the information requested on all life insurance policies insuring the Decedent's life. Include the name of the Beneficiary, if known. Please make a copy of all correspondence and checks received for our file.

1. LIFE INSURANCE COMPANY _____ POLICY # _____
TYPE _____ FACE AMT _____ DEATH BENEFIT VALUE _____
COMPANY ADDRESS/TELEPHONE _____
BENEFICIARIES _____
HAVE YOU APPLIED FOR THE BENEFITS ___ YES ___ NO
IF NOT, WHY NOT _____
HAVE YOU RECEIVED, OR REQUESTED A FORM 712 ___ YES ___ NO

2. LIFE INSURANCE COMPANY _____ POLICY # _____
TYPE _____ FACE AMT _____ DEATH BENEFIT VALUE _____
COMPANY ADDRESS/TELEPHONE _____
BENEFICIARIES _____
HAVE YOU APPLIED FOR THE BENEFITS ___ YES ___ NO
IF NOT, WHY NOT _____
HAVE YOU RECEIVED, OR REQUESTED A FORM 712 ___ YES ___ NO

3. LIFE INSURANCE COMPANY _____ POLICY # _____
TYPE _____ FACE AMT _____ DEATH BENEFIT VALUE _____
COMPANY ADDRESS/TELEPHONE _____
BENEFICIARIES _____
HAVE YOU APPLIED FOR THE BENEFITS ___ YES ___ NO
IF NOT, WHY NOT _____
HAVE YOU RECEIVED, OR REQUESTED A FORM 712 ___ YES ___ NO

4. LIFE INSURANCE COMPANY _____ POLICY # _____
TYPE _____ FACE AMT _____ DEATH BENEFIT VALUE _____
COMPANY ADDRESS/TELEPHONE _____
BENEFICIARIES _____
HAVE YOU APPLIED FOR THE BENEFITS ___ YES ___ NO
IF NOT, WHY NOT _____
HAVE YOU RECEIVED, OR REQUESTED A FORM 712 ___ YES ___ NO

TOTAL VALUE OF LIFE INSURANCE _____

USE REVERSE SIDE FOR ADDITIONAL POLICIES AND/OR INFORMATION

ANNUITIES

Provide the information requested on any annuity owned by the Decedent. Include the name of the Beneficiary, if known. Please make a copy of all correspondence and checks received for our file.

1. ANNUITY COMPANY _____ POLICY # _____
TYPE _____ FACE AMOUNT _____ DEATH BENEFIT VALUE _____
BENEFICIARIES _____
HAVE YOU APPLIED FOR THE BENEFITS ___ YES ___ NO
IF NOT, WHY NOT _____

2. ANNUITY COMPANY _____ POLICY # _____
TYPE _____ FACE AMOUNT _____ DEATH BENEFIT VALUE _____
BENEFICIARIES _____
HAVE YOU APPLIED FOR THE BENEFITS ___ YES ___ NO
IF NOT, WHY NOT _____

3. ANNUITY COMPANY _____ POLICY # _____
TYPE _____ FACE AMOUNT _____ DEATH BENEFIT VALUE _____
BENEFICIARIES _____
HAVE YOU APPLIED FOR THE BENEFITS ___ YES ___ NO
IF NOT, WHY NOT _____

4. ANNUITY COMPANY _____ POLICY # _____
TYPE _____ FACE AMOUNT _____ DEATH BENEFIT VALUE _____
BENEFICIARIES _____
HAVE YOU APPLIED FOR THE BENEFITS ___ YES ___ NO
IF NOT, WHY NOT _____

5. ANNUITY COMPANY _____ POLICY # _____
TYPE _____ FACE AMOUNT _____ DEATH BENEFIT VALUE _____
BENEFICIARIES _____
HAVE YOU APPLIED FOR THE BENEFITS ___ YES ___ NO
IF NOT, WHY NOT _____

TOTAL VALUE OF ANNUITIES _____

USE REVERSE SIDE FOR ADDITIONAL ANNUITIES AND/OR INFORMATION

IRA, 401 k, PENSION PROFIT SHARING ETC.

Provide the information requested for any IRA, Pension, 401k, Profit Sharing, or other similar type account owned by the Decedent. Include the name of the Beneficiary, if known. Please provide a copy of the most recent statement received for each of these accounts.

1. COMPANY _____ ACCOUNT NO _____

TYPE _____ DEATH BENEFIT VALUE _____

BENEFICIARIES _____

HAVE YOU APPLIED FOR PROCEEDS ___ YES ___ NO

IF NOT, WHY NOT _____

IF THE ANSWER WAS YES, THE NAMES OF AND HOW MUCH DID EACH BENEFICIARY RECEIVE

\$ _____

2. COMPANY _____ ACCOUNT NO _____

TYPE _____ DEATH BENEFIT VALUE _____

BENEFICIARIES _____

HAVE YOU APPLIED FOR PROCEEDS ___ YES ___ NO

IF NOT, WHY NOT _____

IF THE ANSWER WAS YES, THE NAMES OF AND HOW MUCH DID EACH BENEFICIARY RECEIVE

\$ _____

3. COMPANY _____ ACCOUNT NO _____

TYPE _____ DEATH BENEFIT VALUE _____

BENEFICIARIES _____

HAVE YOU APPLIED FOR PROCEEDS ___ YES ___ NO

IF NOT, WHY NOT _____

IF THE ANSWER WAS YES, THE NAMES OF AND HOW MUCH DID EACH BENEFICIARY RECEIVE

\$ _____

TOTAL VALUE OF IRA, 401 k, PENSION PROFIT SHARING ETC. _____

USE REVERSE SIDE FOR ADDITIONAL ACCOUNTS AND/OR INFORMATION

MISCELLANEOUS
OTHER ASSETS (INCLUDING VALUE)

Provide the miscellaneous information requested. List any uncashed checks received by the Decedent since his/her death under Miscellaneous. Bring the title to any motor vehicles owned by the Decedent.

VEHICLES:

MAKE _____ MODEL _____ YEAR _____ MILEAGE _____ 2 DR or 4 DR
VIN _____ OWNER _____ VALUE _____
WHAT WILL BE DONE WITH EACH VEHICLE _____
IF SOLD, TO WHOM, FOR HOW MUCH _____
IF DISTRIBUTED, TO WHOM, AT WHAT VALUE _____

MAKE _____ MODEL _____ YEAR _____ MILEAGE _____ 2 DR or 4 DR
VIN _____ OWNER _____ VALUE _____
WHAT WILL BE DONE WITH EACH VEHICLE _____
IF SOLD, TO WHOM, FOR HOW MUCH _____
IF DISTRIBUTED, TO WHOM, AT WHAT VALUE _____

BOAT/TRAILER: MAKE _____ MODEL/YEAR _____
ID NO _____ VALUE _____
OWNER _____

MOBILE HOME: MAKE _____ MODEL/YEAR _____
ID NO _____ VALUE _____
OWNER _____

HAS ANY REAL ESTATE BEEN SOLD ON CONTRACT OR RENTED ___ YES ___ NO
IF SO, PROVIDE DETAILS AND COPIES OF ALL DOCUMENTS _____

ARE THERE ANY COLLECTIBLES ___ YES ___ NO
COINS ___ STAMPS ___ GUNS ___ ANTIQUES ___ OTHER (EXPLAIN) _____

USE REVERSE SIDE FOR ADDITIONAL INFORMATION

PERSONAL PROPERTY

This list includes, but is not limited to, furniture, jewelry, art, stamp collection, coin collection, antiques, or any other type of collector's items of any significant value.

ARE THERE ANY COLLECTIBLES ___ YES ___ NO
COINS ___ STAMPS ___ GUNS ___ ANTIQUES ___ OTHER (EXPLAIN)

ARE THERE ANY ITEMS INSURED UNDER A RIDER TO THE HOME OWNER'S POLICY
___ YES ___ NO

IF SO, WHAT

PROVIDE A COPY OF THE INSURANCE RIDER

USE REVERSE SIDE FOR ADDITIONAL INFORMATION

BENEFICIARIES / HEIRS

1. HEIR _____ RELATION TO DECEDENT _____
ADDRESS _____ DATE OF BIRTH _____
_____ CELL NO: _____
TELEPHONE NO: HOME _____

2. HEIR _____ RELATION TO DECEDENT _____
ADDRESS _____ DATE OF BIRTH _____
_____ CELL NO: _____
TELEPHONE NO: HOME _____

3. HEIR _____ RELATION TO DECEDENT _____
ADDRESS _____ DATE OF BIRTH _____
_____ CELL NO: _____
TELEPHONE NO: HOME _____

4. HEIR _____ RELATION TO DECEDENT _____
ADDRESS _____ DATE OF BIRTH _____
_____ CELL NO: _____
TELEPHONE NO: HOME _____

5. HEIR _____ RELATION TO DECEDENT _____
ADDRESS _____ DATE OF BIRTH _____
_____ CELL NO: _____
TELEPHONE NO: HOME _____

6. HEIR _____ RELATION TO DECEDENT _____
ADDRESS _____ DATE OF BIRTH _____
_____ CELL NO: _____
TELEPHONE NO: HOME _____

DOES THE TRUST/WILL SPECIFICALLY DISINHERIT ANY INDIVIDUALS? ___ YES ___ NO

IF SO, PLEASE PROVIDE THEIR NAMES AND ADDRESSES:

USE REVERSE SIDE FOR ADDITIONAL INFORMATION

CREDITORS

List all unpaid bills at the time of Decedent's death, or those caused by the Decedent's death, including all funeral expenses. If the funeral bill has been paid in full, please bring us a copy of the Receipt. Also, list all bills paid since you took over handling the affairs.

CREDITOR _____ TELE _____
ADDRESS _____ AMOUNT OF DEBT _____
_____ WHAT FOR _____

CREDITOR _____ TELE _____
ADDRESS _____ AMOUNT OF DEBT _____
_____ WHAT FOR _____

CREDITOR _____ TELE _____
ADDRESS _____ AMOUNT OF DEBT _____
_____ WHAT FOR _____

CREDITOR _____ TELE _____
ADDRESS _____ AMOUNT OF DEBT _____
_____ WHAT FOR _____

CREDITOR _____ TELE _____
ADDRESS _____ AMOUNT OF DEBT _____
_____ WHAT FOR _____

CREDITOR _____ TELE _____
ADDRESS _____ AMOUNT OF DEBT _____
_____ WHAT FOR _____

CREDITOR _____ TELE _____
ADDRESS _____ AMOUNT OF DEBT _____
_____ WHAT FOR _____

CREDITOR _____ TELE _____
ADDRESS _____ AMOUNT OF DEBT _____
_____ WHAT FOR _____

USE REVERSE SIDE FOR ADDITIONAL INFORMATION

RECAPITULATION

TOTAL VALUE OF REAL PROPERTY: _____

TOTAL VALUE OF SAVINGS, CHECKING ACCOUNTS, CD'S, ETC: _____

TOTAL VALUE OF STOCKS, MUTUAL FUNDS, ETC: _____

TOTAL VALUE OF SERIES E, EE, HH, OR OTHER BONDS: _____

TOTAL VALUE OF LIFE INSURANCE: _____

TOTAL VALUE OF ANNUITIES: _____

TOTAL VALUE OF IRA, 401k, PENSION PROFIT SHARING ETC: _____

TOTAL VALUE OF MISCELLANEOUS: _____

TOTAL VALUE OF ESTATE _____

* * * * *

IF THE TOTAL VALUE OF THE ESTATE LISTED ABOVE EXCEEDS \$11,580,000 PLEASE COMPLETE THE ATTACHED ADDENDUM AND SIGN THE DISCLOSURE AND RELIANCE STATEMENT FOLLOWING.

PLEASE REVIEW THE SIGNATURE PAGE FOLLOWING THE ADDENDUM AND SIGN AND DATE IT.

ADDENDUM

1.	<u>DID THE DECEDENT:</u>	<u>YES</u>	<u>NO</u>
A.	Ever file any gift tax returns?	_____	_____
B.	Pay any gift taxes within 3 years of date of death?	_____	_____
C.	Have any insurance on his/her life that was not included on the Questionnaire?	_____	_____
D.	Own any insurance on someone else's life?	_____	_____
E.	Own any Joint Tenancy with Right of Survivorship property with someone other than a Spouse and it was not included on the Questionnaire?	_____	_____
F.	Receive any annuity payments immediately before death?	_____	_____
G.	Own any art or collectibles valued in excess of \$3,000, or any collections whose value is in excess of \$10,000?	_____	_____
H.	Estate, spouse, or anyone else receive, or will receive, any Bonus or Award because of Decedent's employment or death?	_____	_____
I.	Own a safe deposit box? If yes, at what Bank and whose names were on the Box: _____	_____	_____

2. DECEDENT'S MARITAL STATUS AT DEATH:

_____ Single

_____ Married

_____ Widow/Widower:

Name of Deceased Spouse: _____ Date of Death: _____

_____ Legally Separated:

Name of Separated Spouse: _____

_____ Divorced:

Name of Divorced Spouse: _____

Date Divorce was final: _____

DISCLOSURE AND RELIANCE STATEMENT

The information contained in this Booklet pertaining to the Individual's Estate, fairly and fully:

- A. Discloses all of the assets owned, or in which there was any form of ownership interest by the Individual;*
- B. Discloses the value of all such assets or ownership interests;*
- C. Discloses how these assets or ownership interests are owned;*

and has been prepared by me, or at my direction or with my permission, and may be relied upon by O'Drobinak & Nowaczyk, P.C. in proceeding with the administration of the Individual's affairs.

I understand that in the event that I acquire any additional information, or any corrected information regarding the assets or affairs of the Individual, as requested in the Questionnaire, I will immediately notify my Attorney and provide her/him with the additional or corrected information.

I declare under the penalties for perjury that the above and foregoing is true and correct.

Dated: _____

Signature of Individual Preparing Questionnaire

Dated: _____

Signature of Individual Preparing Questionnaire

Estate & Trust Administration

Client Follow-up Checklist

CLIENT FOLLOW-UP CHECKLIST

IN THE MATTER OF _____, Dated: _____

TRUST ADMINISTRATION

ESTATE

In order to proceed as quickly as possible, it is necessary that you provide me with the information asked for at each item below that is checked. If you have any questions about any of these matters, please call me immediately.

1. **REAL ESTATE:**

___ a. Immediately arrange for an appraisal of the real estate located at:

(Provide us with the name and address of the appraiser **BEFORE** the appraisal is made).

___ b. Provide the deed for the following real estate:

___ c. Provide the name and address of the mortgage holder, the mortgage account number, the date of death balance owed on the mortgage for the following real estate, and a copy of the statement showing that balance as of date of death:

___ d. Do you intend to sell ___ YES ___ NO, or rent the real estate ___ YES ___ NO?
If so, how soon? Explain.

If you intend to sell the real estate, I should review the Listing Contract before you sign it.

I should review the Offer to Purchase before you sign it. For estates, appropriate pleadings may need to be filed with the Court for approval of sale.

___ e. Will the real estate be distributed to one of the heirs? _____ YES _____ NO
If so, the name and address of the heir and the value placed on the real estate:

___ f. Protection: Immediately notify Insurance Agent if the house is vacant; forward mail immediately; stop newspaper delivery; if there is snow on the ground, shovel it off, if grass, cut it; buy multiple timers to have lights and TV's go on and off at different times; have someone visit the house daily.

___ g. Other: _____

2. **BANK ACCOUNTS:**

___ a. Transfer the accounts, in Indiana, into your name as Trustee of the Trust or the "Estate of _____" immediately and leave them in the Indiana Bank.

___ b. Checking Account: Open a new checking account in an Indiana Bank in your name as Trustee or in the name of the Estate into which ALL income/assets/and disbursements are made. An EIN for the trust/estate will be provided to you, to be used as the ID number of this account.

___ c. ALL accounts are to remain in Indiana.

___ d. POD/TOD Accounts: Contact the beneficiaries regarding these accounts immediately. It will be up to them to take action on these accounts.

___ e. Arrange with the Bank where you have opened the new checking account, to send us copies of the monthly statement on the account.

___ f. Other: _____

3. **STOCK/MUTUAL FUNDS/BROKERAGE ACCOUNTS:**

___ a. Provide copies of all stock certificates that the Individual's name was on at death (or titled in the name of the Trust), copies of all mutual fund/brokerage account statements for the month prior to, and the month of, the Individual's death.

___ b. Determine if you intend to sell the stock, etc. ___ YES ___ NO, or distribute it in kind. ___ YES ___ NO If in kind, will it be divided equally? ___ YES ___ NO
Explain: _____

- ___ c. Transfer the brokerage account into your name as Trustee / Estate of and leave it at a brokerage house in Indiana.
- ___ d. Arrange with the brokerage house to send us copies of the monthly or quarterly statement on the account.
- ___ e. ALL stock, mutual funds, brokerage accounts are to remain in Indiana.
- ___ f. Other: _____

4. **BONDS**

- ___ a. Provide a list of all Series E, Series EE, Series HH, or other bonds that the Individual's name was on at death, or at the present time, setting out the denomination, type, Serial Number, date of issue, interest rate (if known), date of last interest payment received, and date of next interest payment received (if known). Provide copies of all bonds. Provide the names of any other person(s) that appear on the bonds.
- ___ b. Do you intend to redeem the bonds? ___ YES ___ NO. If yes, do so immediately.
- ___ c. Other _____

5. **LIFE INSURANCE**

- ___ a. Provide copies of all policies insuring the Decedent's life, as well as all correspondence sent, or received, concerning the claim for payment of death benefits. If you have received a Form 712, provide it to me. If you have already received the death proceeds, provide a photo copy of the payment check, or anything that shows the amount paid and to whom. Provide copies of all policies owned by the Decedent that insured someone else's life.
- ___ b. If unknown, determine who the beneficiaries are. If it is a Third Party, other than you, give them the policies and tell them to proceed to collect the death benefit.
- ___ c. Have you applied for the death benefits? ___ YES ___ NO. If not, do so immediately.
- ___ d. If the Trust/Estate is the named Beneficiary, deposit the proceeds into a bank account in Indiana.
- ___ e. Other _____

6. **ANNUITIES:**

- ___ a. Provide copies of all annuities owned by the Individual, as well as all correspondence sent, or received, concerning the claim for payment of the annuity benefits. If you have already received the death proceeds, provide a photo copy of the payment check, or anything that shows the amount paid and to whom.
- ___ b. If unknown, determine who the beneficiaries are. If it is a Third Party, other than you, give them the policies and tell them to proceed to contact the company(ies) immediately.
- ___ c. Have you applied for the benefits. ___ YES ___ NO. If not, do so immediately.
- ___ d. If the Trust is the named Beneficiary, deposit the proceeds into a bank account in Indiana.
- ___ e. Other: _____

7. **IRA's, 401k's, etc.:**

- ___ a. Provide copies of all contracts, documents, recent account statement pertaining to any type of retirement benefits owned by the Individual.
- ___ b. If unknown, determine who the Beneficiaries are. If it is a Third Party, other than you, notify them immediately.
- ___ c. Have you applied for the benefits? ___ YES ___ NO. If not, do so immediately.
- ___ d. If the distribution has already been made, please provide the names of the distributees, and how much each person received.
- ___ e. Other: _____

8. **MISCELLANEOUS**

- ___ a. Motor Vehicles/Recreational Vehicles, etc.: Provide copies of the title for each vehicle in the Individual's name at death.
- ___ b. The name of the person purchasing the vehicle, if any, the amount paid and the relationship to the Individual. Person: _____ \$ Paid: _____
- ___ c. If someone is going to keep the vehicle, who is it and at what value.

- ___ d. Any vehicle is to remain in Indiana until transferred to a Beneficiary or sold.
- ___ e. Real Estate Leases/Installment Sales Contracts: Provide copies of any leases or installment sales contracts that the Individual was involved in. Are the payments current? The names and addresses of the Tenants or the Purchasers;
- ___ f. Provide information about any other asset the Individual may have owned alone, jointly, or any other way, at death.
- ___ g. Other: _____

9. **HOUSEHOLD FURNISHINGS/PERSONAL POSSESSIONS:**

- ___ a. Provide a list of all items insured under a separate rider to the Individual's homeowner insurance policy. Also, provide a copy of the policy and the rider. If any antiques, art objects, collectibles, etc. were owned by the Individual, provide a list of them and their value.
- ___ b. Have the beneficiaries divided the household furnishings/personal possessions as provided in the Estate Plan. If not, why? _____
 How soon do you plan to divide these assets, and how? _____

- ___ c. Do you plan to hold a sale ___ YES ___ NO If so, how soon? _____
- ___ d. Provide the beneficiaries with a copy of the Memo on Household Furnishings.
- ___ e. How do you intend to dispose of the remaining items? _____

- ___ f. All items to remain in Indiana, except those taken by a Beneficiary or sold.
- ___ g. Other: _____

10. **OTHER DOCUMENTS:**

Provide the following original documents to us:

- ___ a. Last Will & Testament
- ___ b. Trust
- ___ c. Death Certificate
- ___ d. Spouse's Death Certificate
- ___ e. Other: _____

11. **OTHER INFORMATION REQUIRED:**

Provide the following information:

- ___ a. Name, address, telephone number of all heirs/beneficiaries.
- ___ b. Name, address, amount owed, and the reason for the debt for each of the Individual's creditors. List all expenses paid for, or on behalf of, the Decedent since the date of death.
- ___ c. Income Tax Returns: Provide copies of the Individual's income tax returns for the last three years prior to death.
- ___ d. Business Interests: If the Individual owned an interest alone, or with others, in any business, provide information about the business as to type, whether it was a sole proprietorship, partnership, corporation, LLC, etc. Copies of any documentation showing the ownership interest, stock certificates, partnership agreement, buy-sell agreements, etc., once this information is provided, you will be advised as to what additional information will be needed, if any.
- ___ e. ALL business records must be kept in Indiana.
- ___ f. Keep a diary. Show the date on which you performed services for the Trust/Estate, what you did, what you accomplished, and how much time you spent.
- ___ g. Other: _____

12. **FURTHER CONDITIONS:**

It is necessary that I receive the above information in order to begin and complete the handling of the Decedent's affairs. Once I receive this information and review it, it may be necessary to provide me with additional information. In that event, I will notify you of what else is needed.

ATTORNEY

Dated: _____

I acknowledge receipt of the above check list and understand it is my responsibility to furnish this information to my Attorney as quickly as possible. I further acknowledge that until this information is furnished, the Attorney will not be able to begin, or complete, the handling of the Decedent's affairs.

CLIENT

Dated: _____

Dated: _____

Section Two

Probate Administration

Laura M. Vogler
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Section Two

Probate Administration..... Laura M. Vogler

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INTRODUCTION

During this presentation, I will cover the Probate process. This will include some references to statutes but mostly the practical timeline and filings.

There are three things that you must know in order to have a successful probate practice.

They are:

- A. A clear understanding of the Probate Code;
- B. An awareness of your Court's local rules;
- C. A system for the operation of your probate practice.

First, it will guide you to a solution for a problem you may have. Knowing the Probate code, which can be found in Title 29 of the Indiana Code, will allow for instruction for most instances in a Probate proceeding. It is important to stay updated on any changes to the Code. If you practice in this area, or plan to, I strongly urge you to join the Probate, Trust and Real Property section of the Bar. They have an active listserv that has proven to be extremely helpful.

The second thing you **must** do, is to become familiar with your local Court rules. If there are none, you will rely on the Probate Code and Trial Rules. If your local Court has rules, become familiar with them. If you are deviating from the local rules and the Court permits you, make sure your Order contains a statement that the Court has deviated from its rules for good cause shown. You will also find each Judge may do things a bit differently. I suggest you take note of these idiosyncrasies.

The third thing you need to have in operation is a probate administration system. This system needs to address the handling of a probate matter from the first telephone call made to

your office through the completion of the Administration. A system saves you time by not having to reinvent the wheel with each case. It saves your Paralegal time, because she/he does not have to constantly check with you on what needs to be done and how. Without a system in place, it is very difficult to provide for a continued, efficient probate practice.

The forms included in this presentation will show you how to set up such a system and will take you through the filing of an Inventory. I will explain it as we go along.

Also keep in mind, a number of documents will be given to your Clients. Remember, they are not lawyers. You want to use documents that are brief and written in understandable language. There is no doubt a number of documents can be made longer and more complicated. The problem with that is the Client probably won't read them, and even if they do, they very well may not understand it. This will lead to more of your, or your Paralegal's, time, to explain them.

It is also good to set expectations for your clients. Expectations include:

- A. What documents will be filed.
- B. Timeline of events.
- C. Who will be their main contact.

These expectations will allow for your probate process to occur more smoothly. It will hopefully cut down on questions, confusion and time.

Hopefully, these materials will help you to understand the probate process and systemize your procedures bringing a more efficient practice.

SUPERVISED/UNSUPERVISED ADMINISTRATION

A. GENERAL:

Prior to initiating the administration of any estate, the estate lawyer must analyze all facts in light of the probate process. Pertinent facts include:

1. The decedent's domicile (state, county) at the time of death must be determined in order to assess the proper venue for the estate administration. See IC 29-1-7-1. Ancillary administration may be required in a foreign state if the decedent owned real property outside the State of Indiana at the time of his death.
2. A determination must be made as to existence or non-existence of a Will (testate vs. intestate), which in turn will affect the determination of who will act as the representative of the estate and will also determine the potential beneficiaries of the estate.
3. Assess the nature and extent of decedent's probate assets and have the Personal Representative take possession of such assets in order to preserve them.

B. IDENTIFYING PROBATE ASSETS:

Once you have determined what assets the decedent owned, individually, at the time of death, it is essential to separate the probate from the non-probate assets. Generally, the following assets are non-probate assets or assets for which the Court will not review the distribution or administration:

- (1) Life insurance. Beneficiary designation statement controls unless estate is specifically named as the beneficiary of the proceeds, no beneficiary named or beneficiary predeceased.

- (2) Accounts held jointly with rights of survivorship. Title vests in surviving joint tenant at the moment of death by operation of law.
- (3) Transfer on death (T.O.D.). Paid to beneficiary designated on instrument (i.e. certain savings bonds, bank accounts, deed etc.).
- (4) Tenancy by entireties. Real property titled in the names of a husband and wife which vests title in surviving spouse at the moment of first spouse's death.
- (5) Employee benefits. Typically paid to a designated beneficiary.
- (6) Revocable Living Trusts. The trust document provides for the control and distribution of assets unless the trust funds are made payable to decedent's estate.

Be certain to keep in mind that the categorization of decedent's assets as probate or non-probate has no bearing on the taxable estate. The Internal Revenue Service (for Federal Estate Tax purposes) can impose a tax on all property interests of a decedent, whether probate or non-probate in nature, individually or jointly held. (Note: No Indiana Inheritance Tax for individuals who died after December 31, 2012.)

C. TYPE OF ADMINISTRATION:

The lawyer for a decedent must first determine that administration is appropriate. If the amount of the probate assets is small enough, court administration may not be necessary.

1. **Small Estate:** Small estates can be handled by Small Estate Affidavit under the provisions of IC 29-1-8-1. In general, this procedure is available if the value of decedent's gross probate assets do not exceed \$50,000 (minus liens, encumbrances, reasonable funeral expenses). The affidavit cannot be utilized until forty-five days after date of death. While avoiding court administration can reduce costs, allow for more rapid

distribution of assets and limit public knowledge, it also has its risks. Be cautious of unexpected creditor's claims.

- a. If your client is unable to determine the value of assets but know who holds the assets, you can utilize I.C.29-1-8-1.5. The use of the Affidavit under this code section gives you the right to acquire information about the value of that particular asset of the decedent. Once you have acquired all of the information about the assets in the decedent's name alone, you can determine whether the Estate can be handled summarily. However, if there is a Will, you may choose to Spread the Will of Record. Either way, the assets transferred under the Small Estate Affidavit are to be transferred according to the Will.
- b. There are instances that you may decide to open an Estate even if a Small Estate Affidavit may apply, such as, if access to the assets is needed prior to the forty-five days, appointing a Personal Representative for other reasons, etc.

2. **Devolution Affidavit:**

A Devolution Affidavit pursuant to IC 29-1-7-23 can be used for real estate to pass to the heirs/beneficiaries. Typically, this occurs when the only asset in in the decedent's "estate" is real estate. If there are other assets, the \$50,000 limit outlined above applies, including the real estate in question. Further requirements are: seven months must pass from date of death and no letters testamentary/letters of administration are issued by the Court.

If there is a Last Will and Testament, the attorney must spread the will of record and include that information on the Devolution Affidavit. Title Companies will rely on the Devolution Affidavit to follow title.

3. **Probate Estate:** If the dollar amount of the assets calls for administration then you must determine what type of administration is most appropriate. The administration of an estate can take two forms: either supervised or unsupervised administration.

- a. Supervised administration is governed by statutes and local court rules. Numerous filings are required by statute including inventories, petitions for distribution or sale, and accountings. As a result, the administration may be more time consuming and more costly from a legal perspective. However, supervised administration serves a very real function in providing added protection to the Personal Representative for the fiduciary decisions which he/she makes during the term of administration and in protecting the interests of beneficiaries. It also protects the Attorney by the Court order providing directions and instructions on the matters to be done, and how to do them.
- b. Unsupervised administration is a simplified and potentially efficient means of administering an estate with little court involvement. The important thing for the Attorney to remember is that you will play a decisive role as to which type of administration is selected. The issues which should legitimately come into play when selecting the type of administration involve the relationship among the devisees or heirs (whether the relations are good or estranged), blood versus non-blood relations, the choice of Personal Representative (professional versus family member), identity of beneficiaries (individuals or entities), the residence of the fiduciary and the beneficiaries, and the nature of the assets in the Estate.

If unsupervised administration is selected, it can always be changed to supervised administration if an issue causes concern later, or vice versa, by filing the appropriate petition with the Court.

D. QUESTIONS TO CONSIDER TO DETERMINE TYPE OF ADMINISTRATION:

To determine what form of administration is most appropriate under the circumstances, some things to consider are:

- 1) Is the Estate solvent?
- 2) Does the Will authorize or direct Unsupervised Administration? Does the Will prohibit Unsupervised Administration?
- 3) Will a Federal Estate Tax return be required in the Estate? Are the assets difficult to value?
- 4) Are there Co-Personal Representatives of the Estate? What type of relationship exists between them? Between them and the beneficiaries?
- 5) Is the decedent's spouse a subsequent childless spouse? Did the couple have a Prenuptial Agreement?
- 6) Do the heirs get along with the potential Personal Representative?
- 7) Are there any major creditors?

Use common sense in determining which form of administration to utilize. If you are serving as Personal Representative, supervised administration will provide added protection. If this is your first administration, the more formalized and established supervised administration provisions will more efficiently guide you through the system and force you to be better organized.

One issue that tends to drive many lawyers' choice of the form of administration is Attorney fees. In the unsupervised arena, Attorney fees are a matter of private contract. The Court does not involve itself with the amount or timing of the payment of Attorney's fees. In the supervised arena, Attorney fees are payable only upon Court Order and typically not until the final accounting is approved and the estate is ready to be closed. This should not be your determining factor, especially if there are other considerations that would lead to a Supervised Estate.

E. SUPERVISED vs. UNSUPERVISED ADMINISTRATION:

The statutory provisions for supervised administration can be found at I.C.29-1-7-1 et. seq., and for unsupervised administration at I.C.29-1-7.5-1 et. seq.

The major difference with supervised vs. unsupervised administration is the amount of Court involvement required in the process. In general, a Court has no authority to act (or approve acts) in an unsupervised administration. If there is a need for the Court to determine any action, many Judge's will convert the estate to Supervised, especially if there is a contesting interested party.

1. CONDITIONS FOR OPENING:

Unsupervised Administration:

There are two ways a Court may approve Unsupervised Administration. IC 29-1-7.5-2(a) allows for unsupervised administration if the estate is solvent, the Personal Representative is qualified (see IC 29-1-10-1), all beneficiaries consents to the unsupervised administration and the Will does not request Supervised Administration. This section is used mostly when the Will is silent to supervised or unsupervised administration.

Indiana Code 29-1-7.5-2(b) allows for unsupervised administration without the consent of all beneficiaries if the Will specifically authorizes unsupervised administration. The estate must still be solvent and the Personal Representative must be qualified to administer the estate without Court supervision. However, the statute says the court “may” grant administration under these clauses. In certain counties, the Court requires consents whether the Will allows for unsupervised administration or not. (even if the Local Rules do not speak to this). It may be good practice to call the Court’s Probate Clerk to ask if the Judge has a preference and accommodate those preferences. This will spare you the embarrassment of going back to your client and the time wasted.

Supervised Administration:

No preliminary requirements. Unlike an Unsupervised Administration, any interested person or a personal representative named in the Will may petition the Court for the administration.

2. WHAT TO FILE TO OPEN ESTATE:

When filing to open an estate, the distinction between supervised and unsupervised does not so much change what is filed. You will file a Petition to open the Estate, notice to beneficiaries and creditors, notice of administration, proof of notification and publication, Personal Representative’s Oath, Order, Proof of Original Will due to electronic filing, and Letters of Administration/Testamentary (some counties prefer to create their own Letters). The distinction comes mostly with if there is a Will or not (Testate vs. Intestate).

TESTATE

When there is a Last Will and Testament, the Will gives the direction of who is the likely Personal Representative and who the beneficiaries are. When Petitioning for the open of an Unsupervised or Supervised Estate, it is important to request the court admit the Will for Probate and the order state the Will has been admitted for Probate. Ultimately, the petition is requesting the Will be admitted for Probate, appointment of a Personal Representative and either Supervised or Unsupervised Administration. Proof of Will needs to be filed since most, if not all courts, are no longer accepting original Wills. When a Will is produced and probated, the Court will issue Letters Testamentary.

INTESTATE

When there is not a Last Will and Testament, the heirs at law are determined by laws of intestacy which can be found in IC 29-1-2-1 et. seq. In this case, the Petition to open an estate would request the appointment of a Personal Representative and either supervised or unsupervised administration. The court would then issue Letters of Administration.

3. NOTICE TO HEIRS, DEVISEES, AND LEGATEES:

Unsupervised Administration:

The Clerk of the Court shall mail Notice of the filing of a Petition for Probate to the heirs, devisees, and legatees listed in the opening documents. The form of the Notice is outlined in Indiana Code §29-1-7.5-1.5(b). Note, this notice cannot be waived, even if there is a consent to unsupervised administration on file.

Supervised Administration:

Notice shall be served by mail on each heir, devisee and legatee whose names and addresses appear in the Petition for Probate. IC 29-1-7-7. This notice can be waived by each heir, devisee and legatee pursuant to IC 29-1-7-4.5, unlike in unsupervised administrations. The waiver must state that a copy of any petition is presented to the person waiving notice and/or consenting to the petition.

4. NOTICE TO CREDITORS:

Unsupervised Administration:

Pursuant to Indiana Code §29-1-7.5-1(b) Notice to creditors must be provided as defined in §29-1-7-7(c) and §29-1-7-7(d). Therefore, the requirements for Notice to creditors is the same as in the supervised arena.

Supervised Administration:

Notice of administration is to be provided pursuant to Indiana Code §29-1-7-7. Notice shall be published in a newspaper of general circulation in the county where the decedent's estate is pending once a week for two weeks. Notice of Administration should also be mailed directly to any known, reasonably ascertainable creditor within one month of publication. This allows for a three month claim period starting at first date of publication.

For decedents over the age of 55 at time of death and who died after June 30, 2018, FSSA/Medicaid must be directly notified. This has become a permanent addition to our form set and is only removed if the decedent is under 55.

If a creditor becomes known after the first month of publication, this could extend the three month creditor response period. For example, if a creditor is

realized six weeks after publication, the creditor has two months from date of notice to file a claim, extending their period by two weeks. However, most creditors have nine months from date of death to file a claim if they were not noticed. Therefore it is very important to determine creditors as soon as possible to cut off their timeline.

5. PERSONAL REPRESENTATIVE'S BOND:

Unsupervised Administration:

Pursuant to Indiana Code §29-1-7.5-2.5 no bond is required to be filed on behalf of an unsupervised Personal Representative unless the Will provides that a bond shall be filed, or the Court determines that a bond is necessary in order to protect creditors, heirs, devisees, or legatees.

If, however, the Personal Representative is an out-of-state resident, they shall execute and file a bond in an amount to be determined by the Court. Some Courts will waive bond in this circumstance if there is a local Co-Personal Representative or if the Attorney of Record keeps the Estate checking account under their supervision. This is Court specific and may require a specific request for the judge to consider.

Also, be sure to check the Local Rules to determine if this has already been addressed.

Supervised Administration:

Indiana law states that a Personal Representative is not required to execute and file a bond unless the Will provides for a bond or the Court determines that a bond is necessary to protect creditors, heirs, devisees, or legatees. (I.C. 29-1-11-1).

Some County Court's Local Rules require the posting of a minimum bond. If the Personal Representative is an out-of-state resident, a higher bond may be required. Before opening an estate in any given county, be certain to check that county's local rule regarding bonds.

6. PERSONAL REPRESENTATIVE'S AUTHORITY TO ACT

Unsupervised Administration:

This is the area where unsupervised and supervised administration differ the most. Pursuant to Indiana Code §29-1-7.5-3 the unsupervised Personal Representative can perform numerous acts without the prior approval of the Court. The Personal Representative can do the following without a order from the Court:

- 1) retain the decedent's assets;
- 2) receive assets of the decedent's;
- 3) perform, compromise or refuse to perform on decedent's contracts, including executing and delivering deeds of conveyance on real property or deliver a deed in escrow;
- 4) satisfy written binding charitable pledges of the decedent;
- 5) deposit and invest liquid assets;
- 6) acquire or dispose of an asset for cash or credit;
- 7) make repairs to buildings or structure;
- 8) subdivide, develop, or dedicate land to public use;
- 9) enter for any purpose into a lease as lessor or lessee;
- 10) abandon property;
- 11) enter into a mineral lease;

- 12) vote stock;
- 13) pay calls or assessments on securities;
- 14) hold securities in the name of a nominee;
- 15) insure estate assets;
- 16) borrow money and advance money for the protection of the estate;
- 17) compromise a fair and reasonable settlement of any debt or renew, extend or modify the terms of obligations owed to the estate;
- 18) pay taxes, assessments and compensation of Personal Representative and other expenses of administration;
- 19) sell or exercise stock subscription or conversion rights;
- 20) allocate income and expense items to estate income or principal;
- 21) employ advisors (e.g., lawyers and certified public accountants) to assist in the performance of the PR's administrative duties;
- 22) prosecute and defend claims;
- 23) sell, mortgage or lease real or personal property;
- 24) continue any unincorporated business of decedent;
- 25) incorporate decedent's business;
- 26) satisfy and settle claims;
- 27) distribute assets; and
- 28) perform any other act necessary or appropriate to administering the estate.

Supervised Administration:

The actions of Personal Representatives in supervised estates are controlled by numerous code provisions. IC 29-1-13 et. seq. provides rules and guidance for

the collection and management of decedent's assets. IC 29-1-15 et. seq. provides rules for the sale, mortgage, lease or exchange of real and personal property belonging to the estate. Unless the Will grants the Personal Representative the power to sell without Court authority [29-1-15-2], under IC 29-1-15-8, a supervised Personal Representative must first petition the Court in order to sell, mortgage or lease personal property. The petition is generally heard without Notice. After the hearing, the Court may order the sale, mortgage or lease at public or private sale.

This rule has its exceptions. IC 29-1-15-2 states that if the Personal Representative is given the power to sell, mortgage, lease or exchange property without Court authority under the terms of the Will, the Personal Representative may proceed without an order of the Court. Furthermore, IC 29-1-15-9 allows a limited exception for the Personal Representative to sell personal property without notice, if the property is perishable in nature or will depreciate in value rapidly or the estate will incur loss or expense in retaining the property or if the proceeds of such sale are needed to fund the survivors allowance. The Personal Representative will remain responsible for the actual value of the property unless he/she reports the sale to the Court and the Court thereafter approves the sale.

The provisions for the sale, mortgage or lease of real property begin at IC 29-1-15-11. The Personal Representative in a supervised estate may file a petition to sell, mortgage or lease real property. The Court shall fix a time and place for hearing on the petition. Notice of the hearing shall be provided to all heirs and leinholders (unless the notice is waived). At the hearing, the Court may

order the sale, mortgage or lease of such real property. Pursuant to IC 29-1-15-13 the Court's order shall describe the property, direct whether the sale shall be public or private, direct that the sale shall be for fair market value at private sale or 2/3 of fair market value if at public sale. The order shall also outline the financial terms. However, the heirs may waive notice of the hearing on the Petition and the Court can order the sale immediately. IC 29-1-15-16.5 does not allow for a Personal Representative to acquire a beneficial interest in a such a real estate transaction without explicit direction from a Will/Trust, Consent from all beneficiaries, Court Order or adjudicated family settlement agreement. This applies to supervised or unsupervised.

Once the sale has been made, the Personal Representative may file a verified report of their actions to the Court. It is no longer required to have the Judge sign the Deed of such transfer.

7. **INVENTORY:**

Unsupervised Administration:

Pursuant to IC 29-1-7.5-3.2 the Personal Representative must prepare a verified inventory of all estate assets within two (2) months after their appointment. The Personal Representative must also furnish a copy of the inventory to any distributee who requests a copy. The Personal Representative may file a Verified Certification of Preparation of Inventory with the Court. Further, the statute now provides that a Court may NOT require the Personal Representative to file the inventory.

Supervised Administration:

IC 29-1-12-1 provides that within two months of the Personal Representative's appointment, they shall prepare a verified inventory of the estate's assets. Furthermore, the Personal Representative shall furnish a copy of the inventory to interested persons who request it, UNLESS the original inventory was filed with the Court. Some local Court rules require the filing of the inventory in supervised estates.

8. CLAIMS AGAINST THE ESTATE

In either an Unsupervised or Supervised estate, Claims against the estate are handled the same. IC 29-1-14-1 states that,

(a) except as provided in IC 29-1-7-7, all claims against a decedent's estate, other than expenses of administration and claims of the United States, the state, or a subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, shall be forever barred against the estate, the personal representative, the heirs, devisees, and legatees of the decedent, unless filed with the court in which such estate is being administered within:

(1) three months after the date of the first published notice to creditors; or

(2) three months after the court has revoked probate of a will, in accordance with IC 29-1-7-21, if the claimant was named as a beneficiary in that revoked will; whichever is later.

(b) No claim shall be allowed which was barred by any statute of limitations at the time of decedent's death.

(c) No claim shall be barred by the statute of limitations which was not barred at the time of the decedent's death, if the claim shall be filed within:

(1) three months after the date of the first published notice to creditors; or

(2) three months after the court has revoked probate of a will, in accordance with IC 29-1-7-21, if the claimant was named as a beneficiary in that revoked will; whichever is later.

(d) All claims barrable under subsection (a) shall be barred if not filed within nine months after the death of the decedent.

The Personal Representative must allow or disallow any claim filed within fifteen days of its allowable time period (3 months from date of publication, adjusted timeline for late notified creditors or after 9 months for those not sent notice of administration) pursuant to IC 29-1-14-10. Any claim disallowed shall be set for trial upon petition for such action by either party. Note, the statute speaks to “notations” to be made in the margins of the claims to allow or disallow. It has become my standard practice to file a motion to allow or disallow the claims and the reasons for the determination, rather than make any “notations” on existing filings. If there are multiple claims, one motion to allow/disallow all

claims is sufficient. Even if a claim is filed “untimely,” it is important to disallow and note that timeliness is the issue.

There is also a priority of payment of claims, pursuant to IC 29-1-14-9:

(a) All claims shall be classified in one (1) of the following classes. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) Costs and expenses of administration, except funeral expenses, expenses of a tombstone, and expenses incurred in the disposition of the decedent's body.

(2) Reasonable funeral expenses, expenses of a tombstone, and expenses incurred in the disposition of the decedent's body. However, in any estate in which the decedent was a recipient of public assistance under IC 12-1-1 through IC 12-1-12 (before its repeal) or any of the following, the amount of funeral expenses having priority over any claim for the recovery of public assistance shall not exceed the limitations provided for under IC 12-14-6, IC 12-14-17, and IC 12-14-21. [Please see statute for listing of Government Benefit Programs Effected].

(3) Allowances made under IC 29-1-4-1.

(4) All debts and taxes having preference under the laws of the United States.

(5) Reasonable and necessary medical expenses of the last sickness of the decedent, including compensation of persons attending the decedent.

(6) All debts and taxes having preference under the laws of this state; but no personal representative shall be required to pay any taxes on any property of the decedent unless such taxes are due and payable before possession thereof is delivered by the personal representative pursuant to the provisions of IC 29-1.

(7) All other claims allowed.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, nor shall a claim due and payable be entitled to a preference over claims not due.

9. DISTRIBUTIONS TO HEIRS, DEVISEES, AND LEGATEES:

Unsupervised Administration:

IC 29-1-7.5-3(27) gives an unsupervised Personal Representative full authority to distribute assets of the estate upon any terms. Therefore, partial distributions can be made at any time so long as adequate assets remain to pay debts and expenses of administration. IC 29-1-7.5-3.4 and 2.6 provides the conveyance language for the distribution of real property.

Supervised Administration:

In a supervised estate, distributions to heirs, devisees and legatees are not allowed until entry of a final decree of distribution upon the filing of the Final Account with some limited exceptions provided by I.C. 29-1-17-1.

The procedure for distribution is very formal. I.C. 29-1-17-1 allows the Personal Representative to petition for a partial distribution during the term of

administration if the property is perishable in nature, would materially depreciate if distribution were delayed or if estate funds would be required to store the asset. The distributee must consent to accepting the property and agree to return the property's value if the Court later determines that the property is needed to pay claims or expenses. The Court can also require the distributee to provide security for the distribution.

IC 29-1-17-1(c) allows for a Decree of Partial Distribution after the expiration of the time limit for filing claims, but before the Final Account is filed or approved. The Court may decree such distribution with notice to interested persons. The decree is conclusive as a decree of final distribution.

10. CLOSING THE ESTATE:

Unsupervised Administration:

Pursuant to IC 29-1-7.5-3.8 an unsupervised estate must be promptly closed. If the estate has not been closed within one year of the grant of Letters, the Personal Representative shall file a statement with the Court explaining the reason for delay in the closing.

IC 29-1-7.5-4 allows for an unsupervised estate to be closed after the three month claim period has expired by the filing of a Verified Closing Statement which states the following:

- 1) Notice was published to creditors and more than three months have passed since the first publication;
- 2) Notice was mailed as provided in IC 29-1-7-7(c) to heirs, devisees and legatees and under IC 29-1-7-7(d) to known creditors;

- 3) the estate has been fully administered by resolving and/or paying all claims, expenses of administration, estate, inheritance and other death taxes; (if a fiduciary tax return is the only thing holding up the closure, it has been my experience that the Court will allow for the closure to occur when stating we have made arrangement for final tax obligations. This is only practical if the fiduciary taxes will not be paid by the estate, but by the beneficiaries via K-1).
- 4) any Deed for real estate has been executed and recorded;
- 5) all assets have been distributed;
- 6) a copy of the closing statement has been sent to all distributees and creditors, and the Personal Representative has furnished a full account, in writing, to all distributees; and
- 7) the names and addresses of all distributees, creditors or claimants who were sent a copy of the closing statement.

Supervised Administration:

IC 29-1-16-2 requires the prompt closing of a supervised estate. Unless good cause is shown for delay, the estate shall not remain open for more than one year.

After the claim period has expired and all claims have been paid, settled or disallowed, the Personal Representative shall prepare and file their Final Account and petition the Court for a Decree of Final Distribution. (I.C.29-1-17-2). Notice of such final account shall be given to all interested persons.

The Decree of Final Distribution is a conclusive determination of the persons who are the Successors in interest to the estate of the decedent and the extent of their interest, subject only to the right of appeal and the right to reopen the decree. The

decree is a final adjudication of the transfer of title, right and interest of the decedent to the distributees. (I.C. 29-1-7-2(d)).

All accountings shall include three schedules as required by I.C.29-1-16-4. The first schedule shall show the property chargeable to the Personal Representative, the second schedule shall show payments, charges, losses and prior distributions, and the third schedule shall show the balance and identity of the remaining estate assets. All receipts for disbursements shall be filed with the account (e.g. canceled checks). Many Courts will accept an Affidavit in Lieu of Vouchers that states all records are available upon request. This cuts down on the amount of filing and review by the Court. If the accounting is a final account, a fourth schedule shall be attached showing the proposed distribution of the assets remaining in the estate.

The Personal Representative has the option of filing intermediate accountings prior to the filing of the final account. Many Court's local rules require the filing of an intermediate account after one year if the estate has not yet been closed.

Upon the filing of any accounting a hearing is scheduled and notice may be given. If the accounting is a Final Account, IC 29-1-16-6(a) requires that the Clerk set a date for written objection to the Final Account to be filed. The date shall be at least 14 days prior to the date set for the hearing on the Final Account. Notice shall be mailed by the Clerk to all persons entitled to share in the final distribution. However, the heirs may waive Notice to any intermediate or final accounting permitting the Court to act immediately.

If the accounting is an intermediate accounting, the Personal Representative can petition the Court to finalize all matters reported in the account, so long as the provisions for hearing and Notice are followed the same as for a final account.

Pursuant to I.C. 29-1-17-13 a Supplemental Report must be filed showing compliance with the terms of the Decree of Final Distribution. Receipts should be available in case the Court requests them. Once the Supplemental Report is filed the Court will enter an Order of Discharge.

11. RELEASE FROM LIABILITY FOR PERSONAL REP:

Unsupervised Administration:

Pursuant to I.C. 29-1-7.5-4(b) if no proceeding is brought against the Personal Representative within three months after the Closing Statement is filed, the appointment of the Personal Representative terminates and the estate is closed by operation of law. All claims against the Personal Representative are barred unless commenced within three months unless such claim is based on fraud, misrepresentation or inadequate disclosure. (I.C. 29-1-7.5-6).

Supervised Administration:

Pursuant to I.C. 29-1-17-13 upon the filing of a Supplemental Report, the Court will enter an order discharging the Personal Representative. This discharge releases the Personal Representative from their duties and operates as a bar to any suit which is not commenced within one year from the date of discharge even if based solely upon mistake, fraud or willful misconduct on the part of the Personal Representative.

12. CLAIMS AGAINST DISTRIBUTEES:

Unsupervised Administration:

If a claim remains undischarged and is not barred, the claimant may prosecute the claim against the distributee. (I.C. 29-1-7.5.5). The distributee is potentially liable only to the extent of their distribution and the cost shall be satisfied as if the claim had been paid by the estate.

This claim as well as the right of any distributees to recover property improperly distributed shall be forever barred at the later of three years after the decedent's death or one year after the closing statement is filed. (I.C. 29-1-7.5-7).

Supervised Administration:

Pursuant to I.C. 29-1-14-8 a claimant can bring an action on a contingent claim against a distributive share within three months of when the claim becomes absolute. No distributee shall be liable in an amount in excess of their distributive share. If however one distributee is unable to pay their proportionate share the remaining distributee shall be liable for the share of the other distributees share of the claim.

Practice tip – don't make any partial distributions unless the estate is ready for closure or you are confident there are enough funds remaining in the estate to pay for known creditor claims. If there is a question of outstanding creditors out in the world, be cautious. Your client and beneficiaries will pressure you to distribute but explaining these issues can help to quell their urgency.

13. LAWYER'S FEES AND PERSONAL REPRESENTATIVE'S FEES:

Unsupervised Administration:

The Personal Representative has the authority to determine, contract and pay professional fees and the Personal Representative's fee without an order from the Court. The lawyer's fee is considered a matter of private contract.

Supervised Administration:

IC 29-1-10-13 deals with compensation of the Personal Representative and the lawyer for the estate. The Personal Representative generally is allowed such compensation for his services as the Court deems just and reasonable. The Personal Representative should keep thorough time and expense records. An Attorney performing services for the estate shall have such compensation out of the estate as the Court shall deem just and reasonable. The Court must determine these fees. The compensation shall be allowed when the final account has been filed and approved. However, during the term of administration the Personal Representative and the Attorney may petition for an allowance of compensation. Carefully watch the local Court rules with regards to attorney/PR fees allowed and any partial fees. Carefully itemize your time sheets because you will have to present the records to the Court when petitioning for a fee.

F. MISCELLANEOUS

1) Spread the Will of Record (Admit Will for Probate without Administration):

In certain circumstances, a Will should be admitted to Probate but not administered. This is typically done to preserve the validity of the Will when estate administration is not necessary. There is a three-year time limitation on admitting a Will to Probate. IC 29-1-7-15.1(g). It can also play an important role in any potential Will Contest. Other reasons to Spread the Will of Record:

- a. Use of devolution affidavit discussed above;
 - b. When assets may be discovered at a later date;
 - c. When assets have a Testamentary Trust named as a beneficiary but Probate would not be required otherwise.
- 2) **Taxes:** It is very important to make sure tax issues are acknowledged and dealt with within an estate administration.
- a. **Individual Tax Returns:** Be sure the decedent's final income tax return has been or will be filed. Typically, in our office, we either work with the decedent's usual tax preparer or offer a referral.
 - b. **Fiduciary Tax Returns:** An estate will likely require a Fiduciary Tax Return to be filed (IRS Form 1041). This is required if real estate is sold during the estate administration and/or if the estate amassed more \$600 or more of income from date of death to date of estate closure. In estates that span multiple years, multiple fiduciary tax returns will be required. If the decedent's typical tax preparer does these returns, we will continue to work with this person. If not, we offer a referral. In our office, we have a couple of referrals that offer flat rates when working with our estate files. This puts our clients at ease and allows for easily finalizing our accounting. Typically, the tax return is the last piece before closure.
 - c. **Federal Estate Tax Return (Form 706):** This is a requirement when all assets owned by the decedent (individually or joint) exceed the federal estate tax exemption. Could also be utilized for Portability. Whether a

probate estate is required or not does not affect the need for a Form 706 filing.

d. EIN: When it is determined an estate needs to be opened, an EIN will be applied for. Even if a tax return is not required, it is necessary to open an Estate checking account. Please note: if you have a concurrent estate administration and trust administration, there is an option for one EIN. Speak with your preferred tax professional about that election which will simplify your tax filings.

3) Surviving Spouse and Family Allowances: IC 29-1-4-1. A surviving spouse, who was domiciled in Indiana at the time of decedent's death, is entitled to an allowance of \$25,000. If not spouse, decedent's children under eighteen at time of death are entitled to the allowance to be split equally amongst the children. The election for the allowance must be made within ninety days of order to commence administration. You must specify whether it is against personal property, real property or both. The allowance is not chargeable against the distributive share of the surviving spouse or the children. In my opinion, notice of administration should be sent to the spouse/children as they are an interested party/creditor.

4) Taking Against the Will: IC 29-1-3-1. When a married individual marries testate, the surviving spouse is entitled to take against the will. Surviving spouse, upon election, is entitled to one-half of the net personal and real estate of the testator. However, if the surviving spouse is a second, subsequent, childless spouse and decedent had children from another relationship, the subsequent spouse, upon election, can take one-third of personal estate plus twenty-five

percent of the FMV of real property minus liens and encumbrances. The election is a filing/claim within the estate and must be filed within three months after the date of the order probating the Will. In my opinion, the spouse should receive notice of administration as he/she is an interested party/creditor.

5) Minor or Legally Disabled Beneficiaries: In an Unsupervised Administration, IC 29-1-7.5-3(a)(28) allows for the Personal Representative to distribute funds to the distributee, to the distributee's guardian, to the custodian under UTMA or UCTA (Uniform Custodial Trust Act) or paying the amount to the trustee of a trust established by the decedent or created by the Personal Representative in section (b) of the same section. IC 29-1-7.5-3(b) allows for the Personal Representative to create a trust for the purposes of a minor. Arguably, a transfer to a minor under UTMA, even in an Unsupervised Estate, requires a court order if the transfer is over \$10,000 (IC 30-2-8.5-21) even though the Probate Code does not specify this. When none of the allowable options work, the attorney may petition the court of authority to create whatever type of trust may be appropriate (Special Needs Trust).

In a Supervised Estate, the attorney may utilize UTMA as above, requiring a court order if transfer is over \$10,000. If the Will is silent to how distributions are handled for minors or legally disabled individuals, it may require petitioning the court to create a trust or allow a specific type of transfer.

6) Will Contests: Provisions can be found in Chapter 7 of the probate code, beginning at IC 29-1-7-16. A Will Contest must be filed by plaintiff within three months after the Will and admitted for Probate. It must be filed as a separate

cause of action. The complaint must allege the testator was of unsound mind; there was undue execution of the Will; the Will was executed under duress or obtain by fraud; OR any other valid objection to the Will's validity or the probate of the Will. If the Estate was Unsupervised, it will be converted to Supervised.

7) Representing a Beneficiary: This presentation concentrates on representing the Personal Representative or the Estate. In some circumstances, you may be hired to represent a beneficiary or beneficiaries. There are many reasons a beneficiary may hire their own counsel. The most common reasons, in my experience, are as follows:

- a. Simply to be sure the PR is doing everything correctly.
- b. The beneficiary doesn't agree with decisions the personal representative or attorney is making.
- c. A surviving spouse or guardian of children want to exercise their election.
- d. The Beneficiary wants to contest the Will.

As attorney for an heir, keeping track of timelines is just as important as when representing the PR/estate. Be sure to file your appearance so you can keep up with the filings.

As attorney for the PR/Estate, it can sometimes make it easier when another attorney becomes involved. It allows for two emotionally disinterested parties to discuss rationally.

8) Miscellaneous Practice Tips:

- a. **Accounting:** Since the Personal Representative is required to keep an accounting of all transactions and required to file the same in a Supervised

Estate, I have found it helpful to play a major role in the accounting. In our office, we keep an ongoing ledger and accounting, so we are not scrambling to create one before closure. We require that all estate account bank statements be sent to us which is usually arranged directly with the financial institution. This also deters/keeps us informed of any inappropriate use of estate funds.

- b. Check Book/Ledger:** Furthering the discussion above, it is our practice to hold the check book for the estate in most cases. Of course, this comes with client permission and approval. This allows for a more streamlined accounting practice and consistent communication with personal representative. The PR still approves and signs each check or electronic payment, which can be done by mail or visiting the office. As discussed briefly above, in the case of out-of-state Personal Representatives, the Court may prefer that the Attorney's office keep the check book and have authorization to make payments. This is outlined in a Court Order and approved by the client.
- c. Consistent Communication:** Keeping consistent communication with the client will also streamline the process. In most cases, there is a waiting period during the creditor period where we may just be in a holding pattern. Creating that expectation and periodically reaching out to be sure no pertinent mail or checks have been received by the client is good practice.

AUTHORIZATION FOR RELEASE OF INFORMATION

Decedent's Name: [name of decedent]

Decedent's Address: [street address]
[city, state zip]

Decedent's SSN: [soc. sec. no.]

Date of Death: [month day, year]

I hereby authorize you to release to [ATTORNEY] and/or [PARALEGAL] Gutwein Law or any of its attorneys and/or paralegals, any and all information which they may request that you have in your possession, or that you have access to, pertaining to the above-named Decedent's financial affairs. This includes the authority to provide them with copies of any and all documents which you may possess, or have access to, relating to said Decedent's financial affairs, including but not limited to, any and all accounts of said Decedent, individually or jointly with others, including asset holdings, interest and dividend information, gains and losses, 1099 information and year end print outs.

It is understood that this authorization is subject to revocation by me, at any time, and shall remain valid until revoked. Any action you take to release the requested information in reliance on this authorization prior to its revocation, shall not be affected by a subsequent revocation.

Dated this ____ day of _____, [year].

[personal representative's name], as Personal Representative of the Estate of [decedent's name]

STATE OF INDIANA)

[COUNTY NAME] COUNTY)

Before me, the undersigned, a Notary Public in and for said County and State, this ____ day of _____, [year], appeared [personal representative's name], Personal Representative of the Estate of [decedent's name], and acknowledged the execution of the foregoing Authorization for Release of Information to be [his/her/their] voluntary act.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Notary Public
Printed: _____
County of Residence: _____
My Commission Expires: _____

Sample Estate Opening Documents for Supervised or Unsupervised, Testate or Intestate

STATE OF INDIANA) IN THE [COUNTY NAME] CIRCUIT COURT
) SS:
COUNTY OF [COUNTY NAME])
IN THE MATTER OF THE)
[UN]SUPERVISED ESTATE OF)
[DECEDENT'S NAME], Deceased)

APPEARANCE BY ATTORNEY

Party Classification: Initiating [X] Responding [X] Intervening [X]

The undersigned attorney and all attorneys listed on this form now appear in this case for

the following party member(s): [name of petitioner], Petitioner

Applicable attorney information for service as required by Trial Rule 5(B)(2) and for case information as required by Trial Rule 3.1 and 77 (B) is as follows:

Name: Gutwein Law
[Attorney Name] Attorney No. [number]
Address: 250 Main Street, Suite 590 Phone: 765.423.7900
Lafayette, IN 47901 Fax: 765.423.7901
Email: [attorney.name]@gutweinlaw.com

There are other party members: Yes [X] No [X]

If first initiating party filing this case, the Clerk is requested to assign this case the following Case Type Under Administrative Rule 8(b)(3): [EU or ES]

I will accept service by FAX at the above-noted number: Yes [X] No [X]

This case involves support issues: Yes [X] No [X] (If yes, supply social security numbers for all family members on continuation page).

There are related cases: Yes [X] No [X] (If yes, list on continuation page).

This form has been served on all other parties. Yes [X] No [X]

Additional information required by local rule: _____

[Attorney Name]

STATE OF INDIANA) IN THE [COUNTY NAME] CIRCUIT COURT
) SS:
 COUNTY OF [COUNTY NAME])

IN THE MATTER OF THE)
 [UN]SUPERVISED ESTATE OF)
 [DECEDENT'S NAME], Deceased)

**PETITION FOR [PROBATE OF WILL], ISSUANCE OF LETTERS OF ADMINISTRATION,
 AND FOR [UN]SUPERVISED ADMINISTRATION**

Petitioner, [name of petitioner], an interested person as shown herein, and respectfully represents to the Court as follows:

- A. That [name of decedent], age [number], died [testate/intestate] on [date of death], while domiciled in [county name] County, Indiana.

That Petitioner herein, [name of petitioner], is an interested person in the decedent's estate in that [he/she] is the [relationship to decedent] and [the named Personal Representative under decedent's Last Will and Testament] or [one of the heirs at law].

That decedent is believed to have died testate, leaving a Last Will and Testament dated [date will was executed]; that such Will is submitted to the Court herewith; that after making such Will the marital status of the decedent was not changed by divorce or annulment.

That the name, age, relationship to such decedent and place of residence of the [beneficiaries/ heirs at law] of such decedent's estate [is/are]:

Name	Age	Relationship	Address

[Use if Unsupervised: OPTION 1 That the decedent's Will directs the Personal Representative to proceed under unsupervised administration] **OPTION 2**[or That the decedent's Will does not require court supervision.]

That to the petitioner's best knowledge, the decedent's estate is believed to be solvent and to consist of the following property:

Value of Real Property: Undetermined at this time.

Value of Personal Property: Undetermined at this time.

That the decedent's creditors are unknown as of the time of the filing of this petition.

[Use for Testate: That the name and place of residence of the persons seeking appointment as Personal Representative is **[name of personal representative and address]**; Telephone: **[number].]** **[Use for Intestate:** That the name and place of residence of the petitioner entitled to be appointed personal representative of the estate of the decedent pursuant to IC§29-1-10-1 is **[name of personal representative and address]**; Telephone: **[number].]**

That the name and business address of the legal counsel who will represent the personal representative is **[Attorney Name]** of the law firm Gutwein Law, 250 Main Street, Suite 590, Lafayette, IN 47901; Telephone: 765.423.7900.

WHEREFORE, Petitioner asks the Court for an order **[Use if testate:** probating the decedent's Will], appointing or qualifying Petitioner herein as the Personal Representative of the decedent's estate, directing Letters of Administration be issued upon the taking of an oath, **[Use if Supervised:** waiving the posting of bond if counsel for the estate keeps and manages the

checkbook,] and that Petitioner be authorized to proceed with [un]supervised administration of the decedent's estate, and for all other relief which is proper in the premises.

[name of petitioner], Petitioner

I hereby affirm under the penalties for perjury that the above and foregoing representations are true and correct as I verily believe.

[name of petitioner]

GUTWEIN LAW

[Attorney Name], Attorney No. [number]
250 Main Street, Suite 590
Lafayette, IN 47901
Telephone: 765.423.7900
Facsimile: 765.423.7901
E-mail: [attorney email]@gutweinlaw.com

STATE OF INDIANA) IN THE [COUNTY NAME] CIRCUIT COURT
) SS:
COUNTY OF [COUNTY NAME])

IN THE MATTER OF THE)
[UN]SUPERVISED ESTATE OF)
[DECEDENT'S NAME], Deceased)

**ORDER [PROBATING WILL], APPOINTING PERSONAL REPRESENTATIVE,
AND ORDERING [UN]SUPERVISED ADMINISTRATION**

Petitioner, [name of petitioner], has filed [his/her] verified Petition for the [Probate of Decedent's Will,] Issuance of Letters of Administration, and for [Un]supervised Administration of decedent's estate, which petition is on file with the Court and a part of the Court's record.

And the Court, being duly advised, does hereby find as follows:

1. That [name of decedent] died on or about [date of death], and at the time of death was domiciled in [county name] County, Indiana.

[Use if testate: That decedent left a Last Will and Testament dated [date will was signed], which was duly executed in all respects according to law and was not revoked by the decedent and is entitled to be admitted to probate.

[Use if Unsupervised: That the decedent's Will did not require supervised administration.]

OR

[Use if intestate: That decedent died intestate according to the petition filed.]

That Letters should be issued as requested in such petition.

That [name of personal representative] is appointed Personal Representative of the Estate of [name of decedent] and shall qualify as such upon taking an oath as Personal Representative; *[Use if Supervised:* that the Court hereby waives the

posting of bond as counsel for the estate is hereby directed to keep and manage the checkbook for the estate.]

That upon [name of personal representative] taking an oath, the Clerk of the Circuit Court of [county name] County, Indiana shall issue [Un]supervised Letters Testamentary to [name of personal representative].

That [name of personal representative] as Personal Representative of the Estate of [name of decedent] is hereby authorized to proceed under the statutory provisions of the Indiana Code governing [Un]supervised administration of estates.

That the Personal Representative is directed to notify all reasonably ascertainable creditors of the decedent and to comply with the notice requirements of IC §29-1-7-7 and the duties imposed by IC §29-1-7-7.5.

Dated _____.

Judge, [county name] Circuit Court of Indiana

STATE OF INDIANA) IN THE [COUNTY NAME] CIRCUIT COURT
) SS:
COUNTY OF [COUNTY NAME])

IN THE MATTER OF THE)
[UN]SUPERVISED ESTATE OF)
[DECEDENT'S NAME], Deceased)

OATH OF PERSONAL REPRESENTATIVE

[Personal representative's name] affirms that [he/she] will faithfully discharge the duties as Personal Representative of the Estate of [decedent's name], deceased, according to law.

Dated _____.

[Personal representative's name]

I hereby affirm under the penalties for perjury that the above and foregoing representations are true and correct as I verily believe.

[Personal representative's name]

STATE OF INDIANA) IN THE [COUNTY NAME] CIRCUIT COURT
) SS:
 COUNTY OF [COUNTY NAME])
 IN THE MATTER OF THE)
 [UN]SUPERVISED ESTATE OF)
 [DECEDENT'S NAME], Deceased)

**CONSENT FOR APPOINTMENT OF PERSONAL REPRESENTATIVE AND UNSUPERVISED
 ADMINISTRATION**

[name of beneficiary], a beneficiary in the estate of [decedent's name], deceased, and states that [he/she] is an adult over the age of eighteen (18) years and has knowledge of the petition of [personal representative's name] to qualify and serve as personal representative of the estate of [decedent's name]. That the beneficiary herein further states that [he/she] joins in said petition, and that [he/she] consents to the administration of the estate without Court supervision, and agrees to the personal representative serving without bond. The beneficiary further states that [he/she] understands that the Court will not be overseeing the activities of the personal representative of the estate in any way, unless notified by the beneficiary or another interested party to revoke the order of unsupervised administration and require the personal representative to proceed according to supervised administration.

Dated _____.

 [name of beneficiary], Beneficiary of the
 Estate of [decedent's name]

I hereby affirm under the penalties for perjury that the above and foregoing representations are true and correct as I verily believe.

 [name of beneficiary]

NOTICE OF UNSUPERVISED ADMINISTRATION
IN THE CIRCUIT COURT OF [COUNTY NAME] COUNTY, INDIANA

Notice is hereby given that on _____, [year], [personal representative's name] was appointed as Personal Representative of the Estate of [decedent's name], who died on [date of death], [leaving a Will]. The estate will be administered without court supervision.

As a distributee of the estate, you are advised of the following information:

- 1) The Personal Representative has the authority to take actions concerning the estate without first consulting you.

The Personal Representative may be serving without posting a bond with the court. You have the right to petition the court to set a bond for your protection. You also have the right to petition the Court to remove a corporate personal representative not later than thirty (30) days after this notice if the ownership or control of the corporate personal representative has changed since the execution of the decedent's Will.

The Personal Representative will not obtain court approval of any action, including the amount of attorney fees or Personal Representatives' fees.

Within two (2) months after the appointment of the Personal Representative, the Personal Representative must prepare an inventory of the estate's assets. You have the right to request and receive a copy of this inventory from the Personal Representative. However, if you do not participate in the residue of the estate and receive only a specific bequest in money or personal property that will be paid, you are entitled only to the information concerning your specific bequest and not to the assets of the estate as a whole.

The Personal Representative is required to furnish you with a copy of the closing statement that will be filed with the court and, if your interests are affected, with a full account in writing of the administration of the estate.

You must file an objection to the closing statement within three (3) months after the closing statement is filed with the court if you want the court to consider your objection.

If an objection to the closing statement is not filed with the court within three (3) months after the filing of the closing statement, the estate is closed and the court does not have a duty to audit or make an inquiry.

IF AT ANY TIME BEFORE THE ESTATE IS CLOSED YOU HAVE REASON TO BELIEVE THAT THE ADMINISTRATION OF THE ESTATE SHOULD BE SUPERVISED BY THE COURT, YOU HAVE THE RIGHT TO PETITION THE COURT FOR SUPERVISED ADMINISTRATION. IF YOU DO NOT UNDERSTAND THIS NOTICE, YOU SHOULD ASK YOUR ATTORNEY TO EXPLAIN IT TO YOU.

The Personal Representative's address and telephone number is: [personal representative's name and address]; Telephone: [number]. The attorney for the Personal Representatives is [Attorney Name] of the law firm of Gutwein Law, 250 Main Street, Suite 590, Lafayette, IN 47901; Telephone: 765.423.7900.

Dated at [city estate is being opened in], Indiana, _____.

Clerk of the [county's name] Circuit Court

STATE OF INDIANA) IN THE [COUNTY NAME] CIRCUIT COURT
) SS:
 COUNTY OF [COUNTY NAME])

IN THE MATTER OF THE)
 UNSUPERVISED ESTATE OF)
 [DECEDENT'S NAME], Deceased)

**ATTORNEY'S CERTIFICATE OF MAILING OF
 NOTICE OF UNSUPERVISED ADMINISTRATION**

I hereby certify that a copy of the attached notice of unsupervised administration in the above-designated estate has been served upon the following by placing a copy in the United States mail, postage prepaid.

Name	Address

 [Name of Attorney], Attorney for [Name of Personal Representative], Personal Representative of the estate of [Name of Decedent], deceased

NOTICE OF ADMINISTRATION

IN THE CIRCUIT COURT OF [COUNTY'S NAME] COUNTY, INDIANA
In the Matter of the [Un]supervised Estate of [Decedent's name], Deceased

Notice is hereby given that on _____, [personal representative's name] was appointed Personal Representative of the Estate of [decedent's name], Deceased, who died on [date of death].

All persons having claims against this estate, whether or not now due, must file the claim in the office of the Clerk of this Court within three (3) months from the date of the first publication of this notice, or within nine (9) months after the decedent's death, whichever is earlier, or the claims will be forever barred.

Dated at [city estate is being opened in], Indiana, on _____.

Clerk of the [county name] Circuit Court

[Attorney Name], Attorney No. [number]
GUTWEIN LAW
250 Main Street, Suite 590
Lafayette, IN 47901
Telephone: 765.423.7900
Facsimile: 765.423.7901
E-mail: [attorney email]@gutweinlaw.com

Attorney for Personal Representative

STATE OF INDIANA) IN THE [COUNTY NAME] CIRCUIT COURT
) SS:
 COUNTY OF [COUNTY NAME])

IN THE MATTER OF THE)
 [UN]SUPERVISED ESTATE OF)
 [DECEDENT'S NAME], Deceased)

**ATTORNEY'S CERTIFICATE OF MAILING OF
 NOTICE OF ADMINISTRATION**

I hereby certify that a copy of the attached notice of unsupervised administration in the above-designated estate has been served upon the following by placing a copy in the United States mail, postage prepaid.

If the decedent was 55 or older when they passed away, IC 29-1-7-7(d) requires that Medicaid Estate Recovery is notified.

Name	Address
Medicaid Estate Recovery Program Indiana Family and Social Services Administration	402 W Washington Street, W382, MS 07 Indianapolis, IN 46204

 [Name of Attorney], Attorney for [Name of Personal Representative], Personal Representative of the estate of [Name of Decedent], deceased

STATE OF INDIANA) IN THE [COUNTY NAME] CIRCUIT COURT
) SS:
COUNTY OF [COUNTY NAME])

IN THE MATTER OF THE)
[UN]SUPERVISED ESTATE OF)
[DECEDENT'S NAME], Deceased)

**PROOF OF WILL AND AFFIDAVIT REGARDING ORIGINAL WILL
OFFERED FOR PROBATE ELECTRONICALLY**

The undersigned hereby alleges and represents as follows:

1. Affiant possesses the Decedent's original Last Will and Testament.
2. Affiant is filing a true and accurate copy of the Last Will and Testament.
3. Affiant will retain the original Last Will and Testament until the Decedent's estate is closed and the Personal Representative is released from liability, or the time to file a will contest has expired, whichever is later.
4. Affiant will file the original Last Will and Testament upon order of the Court or as otherwise directed by statute.

Dated _____.

I affirm under penalties for perjury that the above representations are true and correct.

[Attorney's name]

STATE OF INDIANA)
)
COUNTY OF TIPPECANOE)

[Name of Attorney], Attorney for [Name of Personal Representative], Personal Representative of the estate of [Name of Decedent], deceased, personally appeared before me, a Notary Public, on

_____, and after being duly sworn, stated that the above representations are true and correct to the best of [his/her] knowledge and belief, and signed or affirmed signing the above document.

To acknowledge this action, I am signing below and placing my notary seal on this document.

Printed: _____
Notary Public
County of Residence: _____
My Commission Expires: _____

LETTERS TESTAMENTARY

Cause No. [cause number]

STATE OF INDIANA, [COUNTY NAME] COUNTY, SS:

I, Clerk of the [county name] [Circuit/Superior] Court, for the County of [county name], in the State of Indiana, do hereby certify that the Letters Testamentary on the Unsupervised Estate of [name of decedent], deceased, who died testate are granted to [name of personal representative] and the said having qualified as such Personal Representative, [name of personal representative] is authorized to take upon herself the administration of such unsupervised estate according to law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court,

_____, [year].

Clerk of the [county name] [Circuit/Superior] Court,
State of
Indiana

STATE OF INDIANA) IN THE TIPPECANOE CIRCUIT COURT
) SS:
[COUNTY] COUNTY) PROBATE NO. [CAUSE No]

IN THE MATTER OF THE ESTATE)
)
OF [DECEDENT NAME], Deceased)

SUBMISSION OF PROOF OF PUBLICATION OF NOTICE OF ADMINISTRATION

Comes now [Name of Personal Representative], as Personal Representative of the Estate of [Decedent Name], by counsel, [Attorney Name], and advises the Court that the Notice of Administration in the above matter was published in the [Name of Publication] on [Date of 1st publication], and [Date of 2nd Publication], a copy of said Proof of Publication is attached hereto and made a part hereof.

Respectfully submitted,

[Attorney Name], Attorney No. [Attorney No.]

[Attorney Name] Attorney No. [Attorney No.]
GUTWEIN LAW
Lafayette, IN 47901
Phone: (765) 423-7900
Fax: (765) 423-7901
E-mail: [Attorney e-mail]@gutweinlaw.com

STATE OF INDIANA) IN THE [COUNTY NAME] CIRCUIT COURT
)
) SS:
 [COUNTY NAME] COUNTY) [CAUSE NO.]
)
)
 IN THE MATTER OF THE)
)
 [UN]SUPERVISED ESTATE OF)
 [DECEDENT'S NAME], Deceased)

VERIFIED CERTIFICATION OF INVENTORY

[Name of attorney], attorney for [name of PR], personal representative of estate of [decedent's name], deceased, certifies that a Personal Representative's Inventory conforming with the requirements of IC §29-1-7.5-3.2 has been prepared and a copy is available to any distributee who requests a copy thereof.

The undersigned hereby affirms, under the penalties for perjury, that the foregoing representations are true and correct to the best of [his/her] knowledge and belief.

Dated: _____

 [Name of attorney], Attorney for [name of PR], personal representative of the estate of [decedent's name], Deceased

 [Attorney Name], Attorney No. [number]
 GUTWEIN LAW
 250 Main Street, Suite 590
 Lafayette, IN
 Telephone: (765) 423-7900
 Facsimile: (765) 423-7901
 E-mail: [Attorney email]@gutweinlaw.com

Sample Closing Statement for Unsupervised Estate

STATE OF INDIANA) IN THE [COUNTY NAME] CIRCUIT COURT
) SS:
 [COUNTY NAME] COUNTY) [CAUSE NO.]
)
 IN THE MATTER OF THE)
 [UN]SUPERVISED ESTATE OF)
 [DECEDENT'S NAME], Deceased)

**PERSONAL REPRESENTATIVE’S VERIFIED
 CLOSING STATEMENT TO CLOSE ESTATE UPON
 COMPLETION OF ADMINISTRATION**

Comes now [name of personal representative], as Personal Representative of the Estate of [decedent's name], deceased, who having been duly sworn upon oath, alleges as follows:

That on [date of death], the decedent herein died [in]testate and at the time of such death had property in [county name] County, Indiana.

That your petitioner was appointed Personal Representative of the decedent’s estate on [date letters were issued], and Letters of Administration were issued to petitioner on [date letters were issued], and said petitioner was authorized to proceed under the provisions of the Indiana Code governing unsupervised estates.

That notice of the appointment as Personal Representative of the estate of [decedent's name] was first published to creditors on [date of first publication], pursuant to I.C. 29-1-7-7(b), in the [name of newspaper notice was published], and that three (3) months have elapsed since the first published notice to creditors, and that all known creditors and reasonably ascertainable creditors have been appropriately notified as provided under I.C. 29-1-7-7(c).

That the Personal Representative has fully administered the estate of the decedent in that [he/she] has collected all the assets of the estate that came to [his/her] knowledge; has made payment, settlement, or other disposition of all claims which were presented; and has paid expenses of administration, Federal and State Income Taxes of the deceased and [any Federal and State Estate Taxes] **OR [has made arrangements to have IRS Form 1041 prepared and filed. Any income or loss of the estate will be distributed to the beneficiaries by Schedule K-1’s therefore no tax will be due].**

That any claims filed in the decedent’s estate have been paid, released and/or otherwise adjudicated.

That a copy of the closing statement has been sent to all distributees, namely [names and addresses of individuals who received a copy].

That all the assets of said estate have been administered upon, and no reasons exist why this estate cannot be closed at this time. That said petitioner has forwarded a copy of [his/her/its] accounting to all heirs and distributees.

WHEREFORE, your petitioner herein, [name of personal representative], as Personal Representative of the Estate of [decedent's name], deceased, files this statement for the purpose of

closing this estate and terminating the appointment of the undersigned pursuant to IC §29-1-7.5-4 on this _____ day of _____, [year].

[name
of personal representative], Personal Representative of
the Estate of [decedent's name], deceased

STATE OF INDIANA)
) SS:
COUNTY OF TIPPECANOE)

[name of personal representative], Personal Representative of the Estate of [decedent's name] personally appeared before me, a Notary Public, on _____, [year] and signed or affirmed signing the above document.

To acknowledge this action, I am signing below and placing my notary seal on this document.

Printed: _____
Notary Public
County of Residence: _____
My Commission Expires: _____

[Attorney Name], Attorney No. [number]
GUTWEIN LAW
250 Main Street, Suite 590
Lafayette, IN
Telephone: (765) 423-7900
Facsimile: (765) 423-7901
E-mail: [attorney email]@gutweinlaw.com

Sample Petition to Spread Will of Record

STATE OF INDIANA) IN THE [COUNTY NAME] CIRCUIT COURT
)
) SS:
 [COUNTY NAME] COUNTY) [CAUSE NO.]
)
)
 IN THE MATTER OF THE)
)
 LAST WILL AND TESTAMENT OF)
 [DECEDENT'S NAME], Deceased)

PETITION FOR PROBATE OF WILL WITHOUT ADMINISTRATION

[Name of petitioner], petitioner, an interested party, being first duly sworn, says:

That the decedent, [name of decedent], age [number], died testate on [date of death], and at the time of such death was domiciled in [name of county] County, Indiana.

That the decedent died leaving a Last Will and Testament dated [date Will was executed]. Such will is submitted to the Court herewith.

That the name, age, relationship to the decedent, and addresses of the named beneficiaries in [his/her] Last Will and Testament are:

Name	Age	Relationship	Address
------	-----	--------------	---------

That the probate value of the decedent’s probate estate is unknown, and the petitioner is merely requesting Probating the Will and spreading the same of record as there are not sufficient probate assets to require appointing and qualifying the personal representative.

That the personal representative named in the decedent’s Last Will and Testament is [name of personal representative], residing at [address].

WHEREFORE, the Petitioner herein prays the Court for an order probating the decedent’s Last Will and Testament and having the same spread of record.

[name of petitioner], Petitioner

STATE OF INDIANA)
) SS:
COUNTY OF TIPPECANOE)

[Name of client/title/company] personally appeared before me, a Notary Public, on _____, [year] and signed or affirmed signing the above document.

To acknowledge this action, I am signing below and placing my notary seal on this document.

Printed: _____
Notary Public
County of Residence: _____
My Commission Expires: _____

GUTWEIN LAW

[Attorney Name], Attorney No. [number]
250 Main Street, Suite 590
Lafayette, IN 47901
Telephone: (765) 423-7900
Facsimile: (765) 423-7901
E-mail:

STATE OF INDIANA)	IN THE [COUNTY NAME] CIRCUIT COURT
)	SS:
[COUNTY NAME] COUNTY)	[CAUSE NO.]
)	
IN THE MATTER OF THE)	
LAST WILL AND TESTAMENT OF)	
[DECEDENT'S NAME], Deceased)	

ORDER PROBATING WILL WITHOUT ADMINISTRATION

Comes now [name of petitioner] having filed [his/her] verified Petition for the Probate of Decedent's Will Without Administration, which petition is on file with the Court and a part of its record.

Further, there is now produced in open Court and submitted to the Court an instrument in writing purporting to be the Last Will and Testament of [name of decedent]. The Court having examined the same, having heard evidence and being duly advised now finds:

That such decedent died on or about [date of death], and at the time of such death was domiciled in [county name] County, Indiana.

That such written instrument purporting to be such decedent's Last Will and Testament was duly executed in all respects according to law, has been duly proved, is the Last Will and Testament of such decedent, and is entitled to be admitted to probate in such County and that such will, written testimony, and Petition are on file with the Court.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the written instrument purporting to be the Last Will and Testament of [name of decedent] be and it is hereby admitted to probate and spread of record.

All of which is ordered on this _____ day of _____, [year].

Judge, [county] Circuit Court

Sample Small Estate Affidavit

STATE OF INDIANA)
) SS: RE: [name of decedent], Deceased
[COUNTY NAME] COUNTY)

AFFIDAVIT FOR TRANSFER OF PERSONAL PROPERTY

[name of affiant], being first duly sworn upon [his/her] oath, states as follows:

The above named decedent died [intestate/testate] on [date of death], while domiciled in [county name] County, Indiana.

That forty-five (45) days have elapsed since the death of the decedent.

That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.

That the following named persons are the only heirs of the decedent:

NAME	RELATIONSHIP	INTEREST	ADDRESS

The value of the decedent's gross probate estate less liens and encumbrances does not exceed the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) as provided by IC § 29-1-8.

The following is a full description of all the personal property belonging to the decedent, together with the estimated value thereof according to the best knowledge and information of the claimant herein:

PROPERTY DESCRIPTION	ESTIMATED VALUE

Affiant requests that the above described personal property of the decedent, [name of decedent], be transferred to [name of affiant] pursuant to [laws of intestate distribution or in accordance with the provisions of the decedent's Last Will and Testament], in accordance with the provisions of IC § 29-1-8-1 and § 29-1-8-2.

The affiant has notified each person listed above and is entitled to the payment or delivery of the property and requests immediate distribution to [him/her], pursuant to the provisions of IC § 29-1-8-3 on behalf of each person listed in item 4.

WHEREFORE, affiant herein hereby requests that [name of person holding property], namely [describe the property] transfer the same to the affiant, pursuant to the Indiana Code and that the distribution of said property to the affiant herein shall release [name of person holding property] from any liability with regard to the proper application and disbursement of decedent's personal property; that the affiant herein, [name of affiant], hereby charges [him/her]self with the responsibility of proper disbursement of the funds according to the provisions of the Indiana Code, and hereby agrees to hold harmless [name of person holding property] from any liability with regard to the transfer of said personal property.

[name of affiant], Affiant

STATE OF INDIANA)

)SS:

COUNTY OF [COUNTY NAME])

[Name of client/title/company] personally appeared before me, a Notary Public, on _____, [year] and, after being duly sworn, stated that the above representations are true and correct to the best of [his/her/their] knowledge and belief, and signed or affirmed signing the above document.

To acknowledge this action, I am signing below and placing my notary seal on this document.

Printed: _____
Notary Public
County of Residence: _____
My Commission Expires: _____

This instrument prepared by [name of attorney] of the law firm of GUTWEIN LAW, 250 Main Street, Suite 590, Lafayette, IN; Telephone: (765) 423-7900.

Sample Check Register when managing the Estate checking account

		Estate of			
		Bank Name:			
		Account Number:			
Date	Description	Debit	Credit	R	
	Opening Balance - put in bolded box			1,000.00	
				1,000.00	
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						1,000.00
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Sample Inventory - Supervised or Unsupervised

STATE OF INDIANA) IN THE TIPPECANOE CIRCUIT COURT
) SS:
 TIPPECANOE COUNTY) CAUSE NO.

IN THE MATTER OF THE ESTATE)
 OF)
 [DECEDENT], Deceased)

PERSONAL REPRESENTATIVE'S INVENTORY

The following listed items are all of the property of the above decedent subject to administration which the Personal Representative has knowledge. All known encumbrances, liens, and other charges on any item are also stated.

	Appraised Value
Real Property	
None	\$0.00
Total	\$0.00
Furniture and Household Goods	
None	\$0.00
Total	\$0.00
Emblements and Annual Crops Raised by Labor	
None	\$0.00
Total:	\$0.00
Corporate Stock	
None	
Total	\$0.00
Mortgages, Bonds, Notes and Other Written Evidence of Debt	
None	\$0.00
Total	\$0.00
Bank Accounts, Money, Insurance Payable to Estate	
Total	\$0.00
All Other Property	
	\$0.00
Total	\$0.00

RECAPITULATION

Value of Real Estate:	\$0.00
Value of Furniture, Household Goods:	\$0.00
Value of Emblements, Annual Crops	\$0.00
Value of Corporate Stock:	\$0.00
Value of Mortgages, Bonds, Notes:	\$0.00
Value of Bank Accounts, Money:	\$0.00
Value of All Other Property:	\$0.00
Total Personal Representative's Inventory:	\$0.00

I affirm, under the penalties for perjury, that the foregoing inventory contains a complete statement of all the probate estate of said decedent which has come to my knowledge listed at its fair market value.

Dated this ____ day of _____, [Year].

Signed: _____
Printed: [Personal Rep Name], Personal

GUTWEIN LAW

[Attorney Name], Attorney No. [number]
250 Main Street, Suite 590
Lafayette, IN 47901
Telephone: (765) 423-7900
Fax: (765) 423-7901
E-Mail: [Attorney email]@gutweinlaw.com

**Final Accounting to Closing Statement for Estate of
Schedule B - Disbursements**

Expenses:

<u>Date</u>	<u>Check #</u>	<u>Debit (-)</u>	<u>Credit (+)</u>
-------------	----------------	------------------	-------------------

Total Expenses:	<u>\$0.00</u>
------------------------	---------------

Prior Distributions:

<u>Date</u>	<u>Check#</u>	<u>Amount</u>
-------------	---------------	---------------

Total Prior Distributions:	<u>\$0.00</u>
Total Expenses and Prior Distributions:	<u>\$0.00</u>

Final Accounting to Closing Statement for Estate of

Schedule C - Recapitulation:

Total Inventory/ Income	\$0.00
Less Total Expenses and Prior Distributions	<u>\$0.00</u>
Amount available for distribution	\$0.00
Total Prior Distributions:	\$0.00
Amount Available for Distribution:	<u>\$0.00</u>
Total Proposed Distributions:	\$0.00

Balance Consists of the Following Assets:

Accounts

Estate Checking Account \$0.00

Total: \$0.00

Proposed Distribution:

0% **Beneficiary Name** **\$0.00**

Prior Partial Distribution
Prior Personal Property Distribution
Estimated Final Distribution \$0.00
Total Distribution \$0.00

0% **Beneficiary Name** **\$0.00**

Prior Partial Distribution
Prior Personal Property Distribution
Estimated Final Distribution \$0.00
Total Distribution \$0.00

0% **Beneficiary Name** **\$0.00**

Prior Partial Distribution
Prior Personal Property Distribution
Estimated Final Distribution \$0.00
Total Distribution \$0.00

Total Of all Distributions \$0.00
Less Total Proposed Distributions \$0.00
Balance after Final Distributions \$0.00

[should equal zero]

SUPERVISED

- Petition Verified by Petitioner?
(Required by Local Rule 4 & IC 29-1-1-9) (All Petitions) (Notary NOT acceptable)
- Appearance of attorney (or pro se litigant)
- Report of Estate Opened (formerly Mental Health Report)
- Oath and Acceptance
- Personal Representative's Information Sheet (with attached copy of driver's license as required)
- Indiana Rules on Access to Court Records Rule 5 Notice of Exclusion of Confidential Information from Public Access (because of PR Information Sheet and Report of Estate Opened)
- Court's Instructions to Personal Representative of Supervised Estate (Signed by petitioner and attorney)
- Trial Rule 86(F) Affidavit (Only When a Will is probated)
- Will Self proved? or Proof of Will?
- Order
- Notice of Administration
- Nomination of Resident Agent (if Petitioner is out-of-state)
- Consent of Resident Agent (goes along with Nomination of Resident Agent)

UNSUPERVISED

- Petition Verified by Petitioner?
(Required by Local Rule 4 & IC 29-1-1-9) (All Petitions) (Notary NOT acceptable)
- Appearance of attorney (or pro se litigant)
- Report of Estate Opened (formerly Mental Health Report)
- Oath and Acceptance
- Personal Representative's Information Sheet (with attached copy of driver's license as required)
- Indiana Rules on Access to Court Records Rule 5 Notice of Exclusion of Confidential Information from Public Access (because of PR Information Sheet and Report of Estate Opened)
- Court's Instructions to Personal Representative for Unsupervised Estate (Signed by petitioner and attorney)
- Trial Rule 86(F) Affidavit (Only When a Will is probated)
- Consent to Unsupervised Administration of Heirs/Benefs.

Two reasons why Consents are required: (1) No Will (Intestate); (2) Will does not authorize Unsupervised Administration.
- Will Self proved? or Proof of Will?
- Order
- Notice of Unsupervised Administration (newspaper)
- Notice of Unsupervised Administration (heirs/benefs.) (IC 29-1-7.5-1.5)
- Nomination of Resident Agent (if Petitioner is out-of-state)
- Consent of Resident Agent (goes along with Nomination of Resident Agent)

PROBATE WILL/NO ADMINISTRATION

- Petition for Probate of Will With No Administration Verified by PR?
- (Required by Local Rule 4 & IC 29-1-1-9) (All Petitions) (Notary NOT acceptable)
- Attorney Appearance
- Report of Estate Opened (formerly Mental Health Report)
- Indiana Rules on Access to Court Records Rule 5 Notice of Exclusion of Confidential Information from Public Access (because of Report of Estate Opened)
- Trial Rule 86(F) Affidavit
- Will Self proved? or Proof of Will?
- Order Admitting Will to Probate With No Administration
(e.g., for "Pour-Over" Will, etc.)

Application for Employer Identification Number

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)
 ▶ Go to www.irs.gov/FormSS4 for instructions and the latest information.
 ▶ See separate instructions for each line. ▶ Keep a copy for your records.

OMB No. 1545-0003

EIN

Type or print clearly.	1 Legal name of entity (or individual) for whom the EIN is being requested	
	2 Trade name of business (if different from name on line 1)	3 Executor, administrator, trustee, "care of" name
	4a Mailing address (room, apt., suite no. and street, or P.O. box)	5a Street address (if different) (Don't enter a P.O. box.)
	4b City, state, and ZIP code (if foreign, see instructions)	5b City, state, and ZIP code (if foreign, see instructions)
	6 County and state where principal business is located	
	7a Name of responsible party	7b SSN, ITIN, or EIN
8a Is this application for a limited liability company (LLC) (or a foreign equivalent)? <input type="checkbox"/> Yes <input type="checkbox"/> No		8b If 8a is "Yes," enter the number of LLC members ▶
8c If 8a is "Yes," was the LLC organized in the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No		
9a Type of entity (check only one box). Caution: If 8a is "Yes," see the instructions for the correct box to check.		
<input type="checkbox"/> Sole proprietor (SSN) _____ <input type="checkbox"/> Estate (SSN of decedent) _____ <input type="checkbox"/> Partnership _____ <input type="checkbox"/> Plan administrator (TIN) _____ <input type="checkbox"/> Corporation (enter form number to be filed) ▶ _____ <input type="checkbox"/> Trust (TIN of grantor) _____ <input type="checkbox"/> Personal service corporation _____ <input type="checkbox"/> Military/National Guard <input type="checkbox"/> State/local government _____ <input type="checkbox"/> Church or church-controlled organization _____ <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> Federal government _____ <input type="checkbox"/> Other nonprofit organization (specify) ▶ _____ <input type="checkbox"/> REMIC <input type="checkbox"/> Indian tribal governments/enterprises _____ <input type="checkbox"/> Other (specify) ▶ _____ Group Exemption Number (GEN) if any ▶ _____		
9b If a corporation, name the state or foreign country (if applicable) where incorporated	State	Foreign country
10 Reason for applying (check only one box)		
<input type="checkbox"/> Started new business (specify type) ▶ _____ <input type="checkbox"/> Banking purpose (specify purpose) ▶ _____ <input type="checkbox"/> Hired employees (Check the box and see line 13.) <input type="checkbox"/> Changed type of organization (specify new type) ▶ _____ <input type="checkbox"/> Compliance with IRS withholding regulations <input type="checkbox"/> Purchased going business _____ <input type="checkbox"/> Other (specify) ▶ _____ <input type="checkbox"/> Created a trust (specify type) ▶ _____ <input type="checkbox"/> Created a pension plan (specify type) ▶ _____		
11 Date business started or acquired (month, day, year). See instructions.		12 Closing month of accounting year
13 Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14.		14 If you expect your employment tax liability to be \$1,000 or less in a full calendar year and want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability generally will be \$1,000 or less if you expect to pay \$5,000 or less in total wages.) If you don't check this box, you must file Form 941 for every quarter. <input type="checkbox"/>
Agricultural	Household	
15 First date wages or annuities were paid (month, day, year). Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year) ▶		
16 Check one box that best describes the principal activity of your business.		
<input type="checkbox"/> Construction <input type="checkbox"/> Rental & leasing <input type="checkbox"/> Transportation & warehousing <input type="checkbox"/> Accommodation & food service <input type="checkbox"/> Wholesale-agent/broker <input type="checkbox"/> Real estate <input type="checkbox"/> Manufacturing <input type="checkbox"/> Finance & insurance <input type="checkbox"/> Other (specify) ▶ _____ <input type="checkbox"/> Wholesale-other <input type="checkbox"/> Retail		
17 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.		
18 Has the applicant entity shown on line 1 ever applied for and received an EIN? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If "Yes," write previous EIN here ▶		
Third Party Designee	Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.	
	Designee's name	Designee's telephone number (include area code)
	Address and ZIP code	Designee's fax number (include area code)
Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.		Applicant's telephone number (include area code)
Name and title (type or print clearly) ▶		Applicant's fax number (include area code)
Signature ▶	Date ▶	

Do I Need an EIN?

File Form SS-4 if the applicant entity doesn't already have an EIN but is required to show an EIN on any return, statement, or other document.¹ See also the separate instructions for each line on Form SS-4.

IF the applicant...	AND...	THEN...
started a new business	doesn't currently have (nor expect to have) employees	complete lines 1, 2, 4a-8a, 8b-c (if applicable), 9a, 9b (if applicable), and 10-14 and 16-18.
hired (or will hire) employees, including household employees	doesn't already have an EIN	complete lines 1, 2, 4a-6, 7a-b, 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10-18.
opened a bank account	needs an EIN for banking purposes only	complete lines 1-5b, 7a-b, 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10, and 18.
changed type of organization	either the legal character of the organization or its ownership changed (for example, you incorporate a sole proprietorship or form a partnership) ²	complete lines 1-18 (as applicable).
purchased a going business ³	doesn't already have an EIN	complete lines 1-18 (as applicable).
created a trust	the trust is other than a grantor trust or an IRA trust ⁴	complete lines 1-18 (as applicable).
created a pension plan as a plan administrator ⁵	needs an EIN for reporting purposes	complete lines 1, 3, 4a-5b, 7a-b, 9a, 10, and 18.
is a foreign person needing an EIN to comply with IRS withholding regulations	needs an EIN to complete a Form W-8 (other than Form W-8ECI), avoid withholding on portfolio assets, or claim tax treaty benefits ⁶	complete lines 1-5b, 7a-b (SSN or ITIN as applicable), 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10, and 18.
is administering an estate	needs an EIN to report estate income on Form 1041	complete lines 1-7b, 9a, 10-12, 13-17 (if applicable), and 18.
is a withholding agent for taxes on nonwage income paid to an alien (that is, individual, corporation, or partnership, etc.)	is an agent, broker, fiduciary, manager, tenant, or spouse who is required to file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons	complete lines 1, 2, 3 (if applicable), 4a-5b, 7a-b, 8a, 8b-c (if applicable), 9a, 9b (if applicable), 10, and 18.
is a state or local agency	serves as a tax reporting agent for public assistance recipients under Rev. Proc. 80-4, 1980-1 C.B. 581 ⁷	complete lines 1, 2, 4a-5b, 7a-b, 9a, 10, and 18.
is a single-member LLC (or similar single-member entity)	needs an EIN to file Form 8832, Entity Classification Election, for filing employment tax returns and excise tax returns, or for state reporting purposes ⁸ , or is a foreign-owned U.S. disregarded entity and needs an EIN to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business	complete lines 1-18 (as applicable).
is an S corporation	needs an EIN to file Form 2553, Election by a Small Business Corporation ⁹	complete lines 1-18 (as applicable).

¹ For example, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco, or firearms returns, must have an EIN. A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club, etc.), or farmers' cooperative must use an EIN for any tax-related purpose even if the entity doesn't have employees.

² However, don't apply for a new EIN if the existing entity only (a) changed its business name, (b) elected on Form 8832 to change the way it is taxed (or is covered by the default rules), or (c) terminated its partnership status because at least 50% of the total interests in partnership capital and profits were sold or exchanged within a 12-month period. The EIN of the terminated partnership should continue to be used. See Regulations section 301.6109-1(d)(2)(iii).

³ Don't use the EIN of the prior business unless you became the "owner" of a corporation by acquiring its stock.

⁴ However, grantor trusts that don't file using Optional Method 1 and IRA trusts that are required to file Form 990-T, Exempt Organization Business Income Tax Return, must have an EIN. For more information on grantor trusts, see the Instructions for Form 1041.

⁵ A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.

⁶ Entities applying to be a Qualified Intermediary (QI) need a QI-EIN even if they already have an EIN. See Rev. Proc. 2000-12.

⁷ See also *Household employer agent* in the instructions. **Note:** State or local agencies may need an EIN for other reasons, for example, hired employees.

⁸ See *Disregarded entities* in the instructions for details on completing Form SS-4 for an LLC.

⁹ An existing corporation that is electing or revoking S corporation status should use its previously-assigned EIN.

Instructions for Form SS-4



Department of the Treasury
Internal Revenue Service

(Rev. December 2019)

Application for Employer Identification Number (EIN)

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Use these instructions to complete Form SS-4, Application for Employer Identification Number (EIN). Also, see *Do I Need an EIN?* on page 2 of Form SS-4.

Future Developments

For the latest information related to Form SS-4 and its instructions, such as legislation enacted after they were published, go to IRS.gov/FormSS4.

What's New

Line 14. Replaced \$4,000 with \$5,000 in the discussion providing parameters on when an employer can elect to file Form 944.

Purpose of Form

Use Form SS-4 to apply for an EIN. An EIN is a 9-digit number (for example, 12-3456789) assigned to sole proprietors, corporations, partnerships, estates, trusts, and other entities for tax filing and reporting purposes. The information you provide on this form will establish your business tax account.



See Form SS-4PR (for Puerto Rico) for the Spanish-language version of Form SS-4.



An EIN is for use in connection with your business activities only. Don't use your EIN in place of your social security number (SSN) or individual taxpayer identification number (ITIN).

Reminders

Apply for an EIN online. For applicants in the U.S. or U.S. possessions, you can apply for and receive an EIN free of charge on IRS.gov. See *How To Apply for an EIN*, later.

File only one Form SS-4. Generally, a sole proprietor should file only one Form SS-4 and needs only one EIN, regardless of the number of businesses operated as a sole proprietorship or trade names under which a business operates. However, if a sole proprietorship incorporates or enters into a partnership, a new EIN is required. Also, each corporation in an affiliated group must have its own EIN.

EIN applied for, but not received. If you don't have an EIN by the time a return is due, write "Applied For" and the date you applied in the space shown for the number. Don't show your SSN as an EIN on returns. If you don't have an EIN by the time a tax deposit is due, send your payment to the Internal Revenue Service Center for your filing area as shown in the instructions for the form that you are filing. Make your check or money order payable to the "United States Treasury" and show your name (as shown on Form SS-4), address, type of tax, period covered, and date you applied for an EIN.



For information about EINs and federal tax deposits, see Pub. 15, Pub. 51, and Pub. 80.



To ensure fair and equitable treatment for all taxpayers, EIN issuances are limited to one per responsible party, per day. For trusts, the limitation is applied to the grantor, owner, or trustor. For estates, the limitation is applied to the decedent (decedent estate) or the debtor (bankruptcy estate). This limitation is applicable to all requests for EINs whether online, telephone, fax, or mail.

How To Apply for an EIN

You can apply for an EIN online (only for applicants in the U.S. or U.S. possessions), by telephone (only for applicants outside of the U.S. or U.S. possessions), by fax, or by mail, depending on how soon you need to use the EIN. Use only one method for each entity so you don't receive more than one EIN for an entity.

Apply for an EIN online. If you have a legal residence, principal place of business, or principal office or agency in the U.S. or U.S. possessions, you can receive an EIN online and use it immediately to file a return or make a payment. Go to the IRS website at IRS.gov/Businesses and click on *Employer ID Number (EIN)*.

The principal officer, general partner, grantor, owner, trustor, etc., must have a valid taxpayer identification number (SSN, EIN, or ITIN) in order to use the online application. Taxpayers who apply online have an option to view, print, and save their EIN assignment notice at the end of the session. Authorized third-party designees, see instructions under *Line 18*.



If you have NO legal residence, principal place of business, or principal office or agency in the U.S. or U.S. possessions, you can't use the online application to obtain an EIN. Please use one of the other methods to apply.

Apply by telephone—option available to international applicants only. If you have NO legal residence, principal place of business, or principal office or agency in the U.S. or U.S. possessions, you may call 267-941-1099 (not a toll-free number), 6:00 a.m. to 11:00 p.m. (Eastern time), Monday through Friday, to obtain an EIN.

The person making the call must be authorized to receive the EIN and answer questions concerning Form SS-4. Complete the Third Party Designee section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of Form SS-4. The designee's authority terminates at the time the EIN is assigned and released to the designee. You must complete the signature area for the authorization to be valid.

Note. It will be helpful to complete Form SS-4 before contacting the IRS. An IRS representative will use the information from Form SS-4 to establish your account and assign you an EIN. Write the number you're given on the upper right corner of the form and sign and date it. Keep this copy for your records.

If requested by an IRS representative, mail or fax the signed Form SS-4 (including any third-party designee authorization) within 24 hours to the IRS address provided by the IRS representative.



The IRS no longer issues EINs by telephone for domestic taxpayers. Only international applicants can receive an EIN by telephone.

Apply by fax. Under the Fax-TIN program, you can receive your EIN by fax generally within 4 business days. Complete and fax Form SS-4 to the IRS using the appropriate fax number listed in *Where To File or Fax*, later. A long-distance charge to callers outside of the local calling area will apply. Fax-TIN numbers can only be used to

apply for an EIN. The numbers may change without notice. Fax-TIN is available 24 hours a day, 7 days a week.

Be sure to provide your fax number so the IRS can fax the EIN back to you.

Apply by mail. Complete Form SS-4 at least 4 to 5 weeks before you will need an EIN. Sign and date the application and mail it to the appropriate address listed in *Where To File or Fax*, later. You will receive your EIN in the mail in approximately 4 weeks. Also, see *Third-Party Designee*, later.

Call 800-829-4933 to verify a number or to ask about the status of an application by mail.



Form SS-4 downloaded from IRS.gov is a fillable form and, when completed, is suitable for faxing or mailing to the IRS.

Where To File or Fax

If you have a principal place of business, office or agency, or legal residence in the case of an individual, located in:	File or fax to:
One of the 50 states or the District of Columbia	Internal Revenue Service Attn: EIN Operation Cincinnati, OH 45999 Fax: 855-641-6935
If you have no legal residence, principal office, or principal agency in any state or the District of Columbia (international/U.S. possessions)	Internal Revenue Service Attn: EIN International Operation Cincinnati, OH 45999 Fax: 855-215-1627 (within the U.S.) Fax: 304-707-9471 (outside the U.S.)

How To Get Tax Help, Forms, and Publications



Tax help for your business is available at IRS.gov/Businesses.

You can download or print all of the forms and publications you may need on IRS.gov/FormsPubs. Otherwise, you can go to IRS.gov/OrderForms to place an order and have forms mailed to you. You should receive your order within 10 business days.

Related Forms and Publications

The following forms and instructions may be useful to filers of Form SS-4.

- Form 11-C, Occupational Tax and Registration Return for Wagering.
- Form 637, Application for Registration (For Certain Excise Tax Activities).
- Form 720, Quarterly Federal Excise Tax Return.
- Form 730, Monthly Tax Return for Wagers.
- Form 941, Employer's QUARTERLY Federal Tax Return.
- Form 944, Employer's ANNUAL Federal Tax Return.
- Form 990-T, Exempt Organization Business Income Tax Return.
- Instructions for Form 990-T, Exempt Organization Business Income Tax Return.
- Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
- Form 1024, Application for Recognition of Exemption Under Section 501(a).
- Schedule C (Form 1040 or 1040-SR), Profit or Loss From Business (Sole Proprietorship).
- Schedule F (Form 1040 or 1040-SR), Profit or Loss From Farming.
- Instructions for Form 1041 and Schedules A, B, G, J, and K-1, U.S. Income Tax Return for Estates and Trusts.
- Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

- Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.
- Instructions for Form 1065, U.S. Return of Partnership Income.
- Instructions for Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return.
- Instructions for Form 1120, U.S. Corporation Income Tax Return.
- Form 1120-S, U.S. Income Tax Return for an S Corporation.
- Form 2290, Heavy Highway Vehicle Use Tax Return.
- Form 2553, Election by a Small Business Corporation.
- Form 2848, Power of Attorney and Declaration of Representative.
- Form 8821, Tax Information Authorization.
- Form 8822-B, Change of Address or Responsible Party — Business.
- Form 8832, Entity Classification Election.
- Form 8849, Claim for Refund of Excise Taxes.

For more information about filing Form SS-4 and related issues, see:

- Pub. 15, Employer's Tax Guide.
- Pub. 51, Agricultural Employer's Tax Guide.
- Pub. 80, Federal Tax Guide for Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.
- Pub. 538, Accounting Periods and Methods.
- Pub. 542, Corporations.
- Pub. 557, Tax-Exempt Status for Your Organization.
- Pub. 583, Starting a Business and Keeping Records.
- Pub. 966, Electronic Choices to Pay All Your Federal Taxes.
- Pub. 1635, Understanding Your EIN.

Specific Instructions

Follow the instructions for each line to expedite processing and to avoid unnecessary IRS requests for additional information. Generally, enter "N/A" on the lines that don't apply.

Line 1. Legal name of entity (or individual) for whom the EIN is being requested. Enter the legal name of the entity (or individual) applying for the EIN exactly as it appears on the social security card, charter, or other applicable legal document. An entry is required.

Individuals. Enter your first name, middle initial, and last name. If you're a sole proprietor, enter your individual name, not your business name. Enter your business name on line 2. Don't use abbreviations or nicknames on line 1.

Trusts. Enter the name of the trust as it appears on the trust instrument.

Estate of a decedent. Enter the name of the estate. For an estate that has no legal name, enter the name of the decedent followed by "Estate."

Partnerships. Enter the legal name of the partnership as it appears in the partnership agreement.

Corporations. Enter the corporate name as it appears in the corporate charter or other legal document creating it.

Plan administrators. Enter the name of the plan administrator. A plan administrator who already has an EIN should use that number.

Line 2. Trade name of business. Enter the trade name of the business if different from the legal name. The trade name is the "doing business as" (DBA) name.



Use the full legal name shown on line 1 on all tax returns filed for the entity. (However, if you enter a trade name on line 2 and choose to use the trade name instead of the legal name, enter the trade name on all returns you file.) To prevent processing delays and errors, use only the legal name (or the trade name) on all tax returns.

Line 3. Executor, administrator, trustee, "care of" name. For trusts, enter the name of the trustee. For estates, enter the name of the executor, administrator, personal representative, or other fiduciary. If the entity applying has a designated person to receive tax information, enter that person's name as the "care of" person. Enter the individual's first name, middle initial, and last name.

Lines 4a–4b. Mailing address. Enter the mailing address for the entity's correspondence. If the entity's address is outside the United States or its possessions, you must enter the city, province or state, postal code, and the name of the country. Don't abbreviate the country name. If line 3 is completed, enter the address for the executor, trustee, or "care of" person. Generally, this address will be used on all tax returns.

If the entity is filing Form SS-4 only to obtain an EIN for Form 8832, use the same address where you would like to have the acceptance or nonacceptance letter sent.



File Form 8822-B to report any subsequent changes to the entity's mailing address.

Lines 5a–5b. Street address. Provide the entity's physical address only if different from its mailing address shown on lines 4a–4b. Don't enter a P.O. box number here. If the entity's address is outside the United States or its possessions, you must enter the city, province or state, postal code, and the name of the country. Don't abbreviate the country name.

Line 6. County and state where principal business is located. Enter the entity's primary physical location.

Lines 7a–7b. Name of responsible party. Enter the full name (first name, middle initial, last name, if applicable) and SSN, ITIN, or EIN of the entity's responsible party.

Responsible party defined. The "responsible party" is the person who ultimately owns or controls the entity or who exercises ultimate effective control over the entity. The person identified as the responsible party should have a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the person, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets. **Unless the applicant is a government entity, the responsible party must be an individual (that is, a natural person), not an entity.**

- For entities with shares or interests traded on a public exchange, or which are registered with the Securities and Exchange Commission, "responsible party" is (a) the principal officer, if the entity is a corporation; or (b) a general partner, if a partnership. The general requirement that the responsible party be an individual applies to these entities. For example, if a corporation is the general partner of a publicly traded partnership for which Form SS-4 is filed, then the responsible party of the partnership is the principal officer of the corporation.
- For tax-exempt organizations, the responsible party is generally the same as the "principal officer" as defined in the Form 990 instructions.
- For government entities, the responsible party is generally the agency or agency representative in a position to legally bind the particular government entity.
- For trusts, the responsible party is a grantor, owner, or trustor.
- For decedent estates, the responsible party is the executor, administrator, personal representative, or other fiduciary.



File Form 8822-B to report any subsequent changes to responsible party information.

If you're applying for an EIN for a government entity, you may enter an EIN for the responsible party on line 7b. Otherwise, you must enter an SSN or ITIN on line 7b. But, leave line 7b blank or enter "N/A," "foreign," or similar language, if the responsible party doesn't have and is ineligible to obtain an SSN or ITIN.

Lines 8a–8c. Limited liability company (LLC) information. An LLC is an entity organized under the laws of a state or foreign country as a limited liability company. For federal tax purposes, an LLC may be treated as a partnership or corporation or be disregarded as an entity separate from its owner.

By default, a domestic LLC with only one member is disregarded as an entity separate from its owner and must include all of its income and expenses on the owner's tax return (for example,

Schedule C (Form 1040 or 1040-SR)). For more information on single-member LLCs, see *Disregarded entities*, later.

Also, by default, a domestic LLC with two or more members is treated as a partnership. A domestic LLC may file Form 8832 to avoid either default classification and elect to be classified as an association taxable as a corporation. For more information on entity classifications (including the rules for foreign entities), see Form 8832 and its instructions.

If the answer to line 8a is "Yes," enter the number of LLC members. If the LLC is owned solely by an individual and his or her spouse in a community property state and they choose to treat the entity as a disregarded entity, enter "1" on line 8b.



Don't file Form 8832 if the LLC accepts the default classifications above. If the LLC timely files Form 2553, it will be treated as a corporation as of the effective date of the S corporation election as long as it meets all other requirements to qualify as an S corporation. The LLC doesn't need to file Form 8832 in addition to Form 2553. See the Instructions for Form 2553.

Line 9a. Type of entity. Check the box that best describes the type of entity applying for the EIN. If you're an alien individual with an ITIN previously assigned to you, enter the ITIN in place of a requested SSN.



This isn't an election for a tax classification of an entity. See Disregarded entities, later.

Sole proprietor. Check this box if you file Schedule C or Schedule F (Form 1040 or 1040-SR) and have a qualified plan, or are required to file excise, employment, alcohol, tobacco, or firearms returns, or are a payer of gambling winnings. Enter your SSN or ITIN in the space provided. If you're a nonresident alien with no effectively connected income from sources within the United States, enter "N/A." You don't need to enter an SSN or ITIN.

Corporation. This box is for any corporation other than a personal service corporation. If you check this box, enter the income tax form number to be filed by the entity in the space provided.



If you entered "1120-S" after the Corporation checkbox, the corporation must file Form 2553 no later than the 15th day of the 3rd month of the tax year the election is to take effect. Until Form 2553 has been received and approved, you will be considered a Form 1120 filer. See the Instructions for Form 2553.

Personal service corporation. Check this box if the entity is a personal service corporation. An entity is a personal service corporation for a tax year only if:

- The principal activity of the entity during the testing period (generally the prior tax year) for the tax year is the performance of personal services substantially by employee-owners, and
- The employee-owners own at least 10% of the fair market value of the outstanding stock in the entity on the last day of the testing period.

Personal services include performance of services in such fields as accounting, actuarial science, architecture, consulting, engineering, health (including veterinary services), law, and the performing arts. For more information about personal service corporations, see the Instructions for Form 1120 and Pub. 542.



If the corporation is recently formed, the testing period begins on the first day of its tax year and ends on the earlier of the last day of its tax year, or the last day of the calendar year in which its tax year begins.

Other nonprofit organization. Check the *Other nonprofit organization* box if the nonprofit organization is other than a church or church-controlled organization and specify the type of nonprofit organization (for example, an educational organization).



If the organization also seeks tax-exempt status, you must file either Form 1023 (or Form 1023-EZ) or Form 1024. See Pub. 557 for more information.

If the organization is covered by a group exemption letter, enter the four-digit group exemption number (GEN) in the last entry. (Don't

confuse the GEN with the 9-digit EIN.) If you don't know the GEN, contact the parent organization. See Pub. 557 for more information about group exemption letters.

If the organization is a section 527 political organization, check the *Other nonprofit organization* box and specify "Section 527 organization" in the space to the right. To be recognized as exempt from tax, a section 527 political organization must electronically file Form 8871, Political Organization Notice of Section 527 Status, within 24 hours of the date on which the organization was established. The organization may also have to file Form 8872, Political Organization Report of Contributions and Expenditures. Go to IRS.gov/PolOrgs for more information.

Estate. An estate is a legal entity created as a result of a person's death. Enter the SSN or ITIN of the deceased person in the space provided.

Plan administrator. If the plan administrator is an individual, enter the plan administrator's taxpayer identification number (TIN) in the space provided.

REMIC. Check this box if the entity has elected to be treated as a real estate mortgage investment conduit (REMIC). See the Instructions for Form 1066 for more information.

State/local government. State and local governments generally have the characteristics of a government, such as powers of taxation, law enforcement, and civil authority. If you're unsure whether or not your organization is a government, search "What are government entities?" at IRS.gov for clarification.

Federal government. The federal government is made up of the Executive, Legislative, and Judicial branches, as well as independent federal agencies. Unions, VFW organizations, and political organizations aren't federal agencies.

Other. If not specifically listed, check the *Other* box and enter the type of entity and the type of return, if any, that will be filed (for example, "Common trust fund, Form 1065" or "Created a pension plan"). Don't enter "N/A." If you're an alien individual applying for an EIN, see the instructions for *Lines 7a-7b*.

- **Household employer.** If you're an individual that will employ someone to provide services in your household, check the *Other* box and enter "Household employer" and your SSN. If you're a trust that qualifies as a household employer, you don't need a separate EIN for reporting tax information relating to household employees; use the EIN of the trust.

- **Household employer agent.** If you're an agent of a household employer that is a disabled individual or other welfare recipient receiving home care services through a state or local program, check the *Other* box and enter "Household employer agent." For more information, see Rev. Proc. 84-33 and Rev. Proc. 2013-39. If you're a state or local government, also check the state/local government box.

- **QSub.** For a qualified subchapter S subsidiary (QSub) check the *Other* box and specify "QSub." See Rev. Rul. 2008-18, 2008-13 I.R.B. 674, if the QSub election is made pursuant to a reorganization under section 368(a)(1)(F), and *Disregarded entities* below.

- **Withholding agent.** If you're a withholding agent required to file Form 1042, check the *Other* box and enter "Withholding agent."

Disregarded entities. A disregarded entity is an eligible entity that is disregarded as separate from its owner for federal income tax purposes. Disregarded entities include single-member limited liability companies (LLCs) and certain qualified foreign entities. See the instructions for Forms 8832 and 8869, and Regulations section 301.7701-3 for more information on domestic and foreign disregarded entities.

The disregarded entity is required to use its name and EIN for reporting and payment of employment taxes: to register for excise tax activities on Form 637; to pay and report excise taxes reported on Forms 720, 730, 2290, and 11-C; to claim any refunds, credits, and payments on Form 8849; and where a U.S. disregarded entity is wholly owned by a foreign person, to file information returns on Form 5472. See the instructions for the employment and excise tax returns and Form 5472 for more information.

Complete Form SS-4 for disregarded entities as follows.

- If a disregarded entity is filing Form SS-4 to obtain an EIN because it is required to report and pay employment and excise

taxes, or for non-federal purposes such as a state requirement, check the *Other* box for line 9a and write "Disregarded entity" (or "Disregarded entity-sole proprietorship" if the owner of the disregarded entity is an individual).

- If the disregarded entity is requesting an EIN for purposes of filing Form 5472, as required under section 6038A for a U.S. disregarded entity that is wholly owned by a foreign person, check the *Other* box for line 9a and write "Foreign-owned U.S. disregarded entity-Form 5472."

- If the disregarded entity is requesting an EIN for purposes of filing Form 8832 to elect classification as an association taxable as a corporation, or Form 2553 to elect S corporation status, check the *Corporation* box for line 9a and write "Single-member" and the form number of the return that will be filed (Form 1120 or 1120-S).

- If the disregarded entity is requesting an EIN because it has acquired one or more additional owners and its classification has changed to partnership under the default rules of Regulations section 301.7701-3(f), check the *Partnership* box for line 9a.

- If a foreign eligible entity is requesting an EIN for purposes of filing Form 8832 to elect classification as a disregarded entity, check the *Other* box for line 9a and write "foreign disregarded entity."

Line 10. Reason for applying. Check only one box. Don't enter "N/A." A selection is required.

Started new business. Check this box if you're starting a new business that requires an EIN. If you check this box, enter the type of business being started. Don't apply if you already have an EIN and are only adding another place of business.

Hired employees. Check this box if the existing business is requesting an EIN because it has hired or is hiring employees and is therefore required to file employment tax returns. Don't apply if you already have an EIN and are only hiring employees. For information on employment taxes (for example, for family members), see Pub. 15, Pub. 51, or Pub. 80.



You must make electronic deposits of all depository taxes (such as employment tax, excise tax, and corporate income tax) using EFTPS. See Pub. 15, Pub. 51, Pub. 80, and Pub. 966.

Banking purpose. Check this box if you're requesting an EIN for banking purposes only, and enter the banking purpose (for example, a bowling league for depositing dues or an investment club for dividend and interest reporting).

Changed type of organization. Check this box if the business is changing its type of organization. For example, the business was a sole proprietorship and has been incorporated or has become a partnership. If you check this box, specify in the space provided (including available space immediately below) the type of change made. For example, "From sole proprietorship to partnership."

Purchased going business. Check this box if you purchased an existing business. Don't use the former owner's EIN unless you became the "owner" of a corporation by acquiring its stock.

Created a trust. Check this box if you created a trust, and enter the type of trust created. For example, indicate if the trust is a nonexempt charitable trust or a split-interest trust.

Exception. Don't file this form for certain grantor-type trusts. The trustee doesn't need an EIN for the trust if the trustee furnishes the name and TIN of the grantor/owner and the address of the trust to all payers. However, grantor trusts that don't file using Optional Method 1 and IRA trusts that are required to file Form 990-T must have an EIN. For more information on grantor trusts, see the Instructions for Form 1041.



Don't check this box if you're applying for a trust EIN when a new pension plan is established. Check the Created a pension plan box.

Created a pension plan. Check this box if you have created a pension plan and need an EIN for reporting purposes. Also, enter the type of plan in the space provided. For more information about pension plans, visit IRS.gov and enter "Types of retirement plans" in the search box.



Check this box if you're applying for a trust EIN when a new pension plan is established. In addition, check the Other box on line 9a and write "Created a pension plan" in the space provided.

Other. Check this box if you're requesting an EIN for any other reason, and enter the reason. For example, a newly formed state government entity should enter "Newly formed state government entity" in the space provided. A foreign-owned U.S. disregarded entity required to file Form 5472 should enter "Foreign-owned U.S. disregarded entity filing Form 5472" in the space provided.

Line 11. Date business started or acquired. If you're starting a new business, enter the starting date of the business. If the business you acquired is already operating, enter the date you acquired the business. For foreign applicants, this is the date you began or acquired a business in the United States. If you're changing the form of ownership of your business, enter the date the new ownership entity began. Trusts should enter the date the trust was funded or the date that the trust was required to obtain an EIN under Regulations section 301.6109-1(a)(2). Estates should enter the date of death of the decedent whose name appears on line 1 or the date when the estate was legally funded.

Line 12. Closing month of accounting year. Enter the last month of your accounting year or tax year. An accounting or tax year is usually 12 consecutive months, either a calendar year or a fiscal year (including a period of 52 or 53 weeks). A calendar year is 12 consecutive months ending on December 31. A fiscal year is either 12 consecutive months ending on the last day of any month other than December or a 52-53 week year. For more information on accounting periods, see Pub. 538.

Individuals. Your tax year will generally be a calendar year.

Partnerships. Partnerships must adopt one of the following tax years.

- The tax year of the majority of its partners.
- The tax year common to all of its principal partners.
- The tax year that results in the least aggregate deferral of income.
- In certain cases, some other tax year.

See the Instructions for Form 1065 for more information.

REMICs. REMICs must have a calendar year as their tax year.

Personal service corporations. A personal service corporation must generally adopt a calendar year unless it meets one of the following requirements.

- It can establish a business purpose for having a different tax year.
- It elects under section 444 to have a tax year other than a calendar year.

Trusts. Generally, a trust must adopt a calendar year except for the following trusts.

- Tax-exempt trusts.
- Charitable trusts.
- Grantor-owned trusts.

Line 13. Highest number of employees expected in the next 12 months. Complete each box by entering the number (including zero (-0-)) of *Agricultural, Household, or Other* employees expected by the applicant in the next 12 months.

If no employees are expected, skip line 14.

Line 14. Do you want to file Form 944? If you expect your employment tax liability to be \$1,000 or less in a full calendar year, you're eligible to file Form 944 annually (once each year) instead of filing Form 941 quarterly (every 3 months). Your employment tax liability will generally be \$1,000 or less if you expect to pay \$5,000 or less in total wages subject to social security and Medicare taxes and federal income tax withholding. If you qualify and want to file Form 944 instead of Forms 941, check the box on line 14. If you don't check the box, then you must file Form 941 for every quarter.



Once you check the box, you must continue to file Form 944, regardless of the amount of tax shown on your return, until the IRS instructs you to file Form 941.



For employers in the U.S. possessions, generally, if you pay \$6,536 or less in wages subject to social security and Medicare taxes, you're likely to pay \$1,000 or less in employment taxes.

For more information on employment taxes, see Pub. 15, Pub. 51, or Pub. 80.

Line 15. First date wages or annuities were paid. If the business has employees, enter the date on which the business began to pay wages or annuities. For foreign applicants, this is the date you began to pay wages in the United States. If the business doesn't plan to have employees, enter "N/A."

Withholding agent. Enter the date you began or will begin to pay income (including annuities) to a nonresident alien. This also applies to individuals who are required to file Form 1042 to report alimony paid to a nonresident alien. For foreign applicants, this is the date you began or will begin to pay income (including annuities) to a nonresident alien in the United States.

Line 16. Check the one box on line 16 that best describes the principal activity of the applicant's business. Check the *Other* box (and specify the applicant's principal activity) if none of the listed boxes applies. You must check a box.

Construction. Check this box if the applicant is engaged in erecting buildings or engineering projects (for example, streets, highways, bridges, and tunnels). The term "construction" also includes special trade contractors (for example, plumbing, HVAC, electrical, carpentry, concrete, excavation, etc., contractors).

Real estate. Check this box if the applicant is engaged in renting or leasing real estate to others; managing, selling, buying, or renting real estate for others; or providing related real estate services (for example, appraisal services). Also, check this box for mortgage real estate investment trusts (REITs). Mortgage REITs are engaged in issuing shares of funds consisting primarily of portfolios of real estate mortgage assets with gross income of the trust solely derived from interest earned.

Rental & leasing. Check this box if the applicant is engaged in providing tangible goods such as autos, computers, consumer goods, or industrial machinery and equipment to customers in return for a periodic rental or lease payment. Also, check this box for equity real estate investment trusts (REITs). Equity REITs are engaged in issuing shares of funds consisting primarily of portfolios of real estate assets with gross income of the trust derived from renting real property.

Manufacturing. Check this box if the applicant is engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products. The assembling of component parts of manufactured products is also considered to be manufacturing.

Transportation & warehousing. Check this box if the applicant provides transportation of passengers or cargo; warehousing or storage of goods; scenic or sight seeing transportation; or support activities related to transportation.

Finance & insurance. Check this box if the applicant is engaged in transactions involving the creation, liquidation, or change of ownership of financial assets and/or facilitating such financial transactions; underwriting annuities/insurance policies; facilitating such underwriting by selling insurance policies or in providing other insurance or employee-benefit related services.

Health care & social assistance. Check this box if the applicant is engaged in providing physical, medical, or psychiatric care; or in providing social assistance activities, such as youth centers, adoption agencies, individual/family services, temporary shelters, daycare, etc.

Accommodation & food services. Check this box if the applicant is engaged in providing customers with lodging, meal preparation, snacks, or beverages for immediate consumption.

Wholesale-agent/broker. Check this box if the applicant is engaged in arranging for the purchase or sale of goods owned by others or purchasing goods on a commission basis for goods traded in the wholesale market, usually between businesses.

Wholesale-other. Check this box if the applicant is engaged in selling goods in the wholesale market generally to other businesses for resale on their own account, goods used in production, or capital or durable nonconsumer goods.

Retail. Check this box if the applicant is engaged in selling merchandise to the general public from a fixed store; by direct, mail-order, or electronic sales; or by using vending machines.

Other. Check this box if the applicant is engaged in an activity not described above. Describe the applicant's principal business activity in the space provided.

Line 17. Use line 17 to describe the applicant's principal line of business in more detail. For example, if you checked the *Construction* box on line 16, enter additional detail such as "General contractor for residential buildings" on line 17. An entry is required. For mortgage REITs, indicate mortgage REIT; and for equity REITs, indicate what type of real property is the principal type (residential REIT, nonresidential REIT, miniwarehouse REIT, etc.).

Line 18. Check the applicable box to indicate whether or not the applicant entity applying for an EIN was issued one previously.

Third-Party Designee. Complete this section only if you want to authorize the named individual to answer questions about the completion of Form SS-4 and receive the entity's newly assigned EIN. You must complete the signature area for the authorization to be valid. The designee's authority terminates at the time the EIN is assigned and released to the designee. EINs are released to authorized third-party designees by the method they used to obtain the EIN (online, telephone, or fax); however, the EIN notice will be mailed to the taxpayer.



If the third-party designee's address or telephone number matches the address or telephone number of the taxpayer, the application must be mailed or faxed.

Signature. When required, the application must be signed by (a) the individual, if the applicant is an individual; (b) the president, vice president, or other principal officer, if the applicant is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the applicant is a partnership, government entity, or other unincorporated organization; or (d) the fiduciary, if the applicant is a trust or an estate. Foreign applicants may have any duly authorized person (for example, division manager) sign Form SS-4.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to comply with section 6109 and the regulations thereunder, which generally require the inclusion of an

employer identification number (EIN) on certain returns, statements, or other documents filed with the Internal Revenue Service. If your entity is required to obtain an EIN, you're required to provide all of the information requested on this form. Information on this form may be used to determine which federal tax returns you're required to file and to provide you with related forms and publications.

We disclose this form to the Social Security Administration (SSA) for their use in determining compliance with applicable laws. We may give this information to the Department of Justice for use in civil and/or criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, and to federal law enforcement and intelligence agencies to combat terrorism.

We will be unable to issue an EIN to you unless you provide all of the requested information that applies to your entity. Providing false information could subject you to penalties.

You're not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	8 hr., 36 min.
Learning about the law or the form	42 min.
Preparing, copying, assembling, and sending the form to the IRS	52 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send us comments from [IRS.gov/FormComments](https://www.irs.gov/FormComments). Or you can write to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Don't send Form SS-4 to this address. Instead, see *Where To File or Fax*, earlier.



PROBATE ADMINISTRATION

November 6, 2020

Introduction

- Probate Code
- Local Rules
- Process
- Client Expectations

Initial Analysis

- The decedent's domicile (state, county) at the time of death See IC 29-1-7-1. Ancillary administration may be required
- Determine the existence or non-existence of a Will (testate vs. intestate). Testate follows terms of will. Intestate follows laws of intestacy
- Assess the nature and extent of decedent's probate assets and have the Personal Representative take possession of such assets in order to preserve them.

Identify Probate Assets

- Typically not Probate Assets – life insurance, retirement accounts, trust owned assets, JTWRS, TOD, Beneficiary driven
- How to determine what and how much?
 - Utilize I.C.29-1-8-1.5 which allows you to request information.
 - Decedent's mail, email, checking account deductions
- Whether the assets are considered Probate assets or not does not effect federal estate tax.

Type of Administration

- Small Estate
- Devolution Affidavit
- Probate Estate
 - Supervised or Unsupervised

Small Estate Affidavit

- Small Estate Affidavit under the provisions of IC 29-1-8-1.
- Value of decedent's gross probate assets do not exceed \$50,000 (minus liens, encumbrances, reasonable funeral expenses).
- 45 days after date of death.
- While avoiding court administration can reduce costs, allow for more rapid distribution of assets and limit public knowledge, it also has its risks. Be cautious of unexpected creditor's claims.

Devolution Affidavit/Real Property Title Passage Affidavit

- IC 29-1-7-23 can be used for real estate to pass to the heirs/beneficiaries.
- Two instances for use: Real Estate is the only asset in in the “estate” or total assets including the real estate equity is less than \$50,000.
- 7 months must pass from DOD and no letters are issued by the Court. (If a Will exists, then you must spread the will of record. Title Companies will rely on the Devolution Affidavit to follow title.

Probate Estate - Supervised

- General Probate Code and Local Rules
- More filings required and court approval required
- More time intensive and costly
- Arguably, better protection for Personal Representative

Probate Estate - Unsupervised

- Chapter 7.5 of the Probate Code
- Less court interaction and requirements. Simplified process
- Can be converted to Supervised at any time

What to Consider when choosing Supervised or Unsupervised

- Is the Estate solvent?
- Does the Will authorize or direct Unsupervised Administration? Does the Will prohibit Unsupervised Administration?
- Will a Federal Estate Tax return be required in the Estate? Are the assets difficult to value?
- What are the relationships between the PR and Beneficiaries?
- Is the decedent's spouse a subsequent childless spouse? Did the couple have a Prenuptial Agreement?
- Are there any major creditors?

Conditions for Opening - Unsupervised

- There are two ways a Court may approve Unsupervised Administration.
 - IC 29-1-7.5-2(a): if the estate is solvent, the Personal Representative is qualified (see IC 29-1-10-1), all beneficiaries consent to the unsupervised administration and the Will does not request Supervised Administration.
 - IC 29-1-7.5-2(b): No consent required if the Will specifically authorizes unsupervised administration. (must still be solvent and PR qualified).
 - However, statute says court “may” grant administration under these clauses. Some counties require consents no matter what.

Conditions for Opening - Supervised

- No preliminary requirements. Unlike an Unsupervised Administration, any interested person or a personal representative named in the Will may petition the Court for the administration.

What to file

- Mostly the same filings between Supervised and Unsupervised except consents and terminology.
- Testate
 - Request Will be admitted to probate/order admitting.
Letters Testamentary
 - Affidavit for Proof of Original Will since original Wills are no longer filed
- Intestate
 - Letters of Administration appointing Personal Representative
 - Laws of intestacy apply

Notice to Heirs, Devisees, and Legatees

- Unsupervised
 - Notice of the filing of a Petition for Probate must be mailed heirs, devisees, and legatees listed in the opening documents.
 - The form of the Notice is outlined in Indiana Code §29-1-7.5-1.5(b).
 - Clerk signs the notices and returns electronically. Attorney is now responsible for mailing and filing proof of mailing.
 - Note, this notice cannot be waived, even if there is a consent to unsupervised administration on file.

Notice to Heirs, Devisees, and Legatees

- Supervised
 - Notice is served by mail on each heir, devisee and legatee whose names and addresses appear in the Petition for Probate. IC 29-1-7-7.
 - This notice can be waived by each heir, devisee and legatee pursuant to IC 29-1-7-4.5, unlike in unsupervised administrations. The waiver must state that a copy of any petition is presented to the person waiving notice and/or consenting to the petition.

Notice to Creditors

- Unsupervised
 - IC 29-1-7.5-1 (b) states notice to creditors must be provided as defined in §29-1-7-7(c) and §29-1-7-7(d). Therefore, the requirements for Notice to creditors is the same as in the supervised arena.-

Notice to Creditors

- Supervised
 - Notice published in a newspaper. Once a week, 2 weeks.
 - Notice of Administration mailed to any known, reasonably ascertainable creditor within one month of publication.
 - 3 month claim period starting at first date of publication. (2 months from any notice sent after the first month of period).
 - 55 at time of death and DOD is after 6/30/18, FSSA/Medicaid must be notified.
 - Determine creditors as soon as possible

Personal Representative's Bond

- Unsupervised
 - IC 29-1-7.5-2.5 no bond is required unless the Will provides it is required, or the Court determines that a bond is necessary to protect creditors or devisees.
 - Out-of-state PR will need to file bond unless court approves a local Co-PR or if the Attorney of Record keeps the Estate checking account under their supervision. Court specific.
 - Check Local Rules to determine if this has already been addressed.

Personal Representative's Bond

- Supervised
 - PR is not required to execute and file a bond unless the Will provides for a bond or the Court determines that a bond is necessary to protect creditors or devisees. (I.C. 29-1-11-1).
 - Some County Court's Local Rules require the posting of a minimum bond. If the PR is an out-of-state resident, a higher bond may be required. Before opening an estate in any given county, be certain to check that county's local rule regarding bonds.
 - Some Courts willing to entertain co-PR and attorney checkbook supervision as in unsupervised.

PR's Authority to Act

- Unsupervised
 - Authority is listed in IC 29-1-7.5-3. There is a long list of acts the PR can perform without the prior Court approval.
 - The authority given will allow the PR to obtain, retain, manage, sell, distribute, etc. Basically, everything needed to manage the estate assets of a basic estate from open to close.

PR's Authority to Act

- Supervised
 - IC 29-1-13 et. seq. - collection and management of assets.
 - IC 29-1-15 et. seq. sale, mortgage, lease or exchange of real and personal property belonging to the estate.
 - Unless the Will grants the PR the power to sell without Court authority [29-1-15-2], under IC 29-1-15-8, a supervised PR must first petition the Court in order to sell, mortgage or lease personal property.
 - IC 29-1-15-11 – sale, mortgage or lease of real property. Petition and hearing with notice to all heirs and leinholder, unless notice is waived. (no need for judge to sign deed).

Inventory

- Unsupervised
 - IC 29-1-7.5-3.2 PR to prepare a verified inventory within 2 months of appointment.
 - The PR must also furnish a copy of the inventory to any distributee who requests a copy.
 - The PR may file a Verified Certification of Preparation of Inventory with the Court.
 - The Court may NOT require the PR to file the inventory.

Inventory

- Supervised
 - IC 29-1-12-1 PR must file a verified inventory within 2 months of their appointment.
 - The PR shall furnish a copy of the inventory to interested persons who request it, UNLESS the original inventory was filed with the Court.
 - Some local Court rules require the filing of the inventory in supervised estates.

Claims Against the Estate

- Generally, all claims must be filed within the three-month creditor period which is triggered by the first published notice to creditors. (or two months from date of Notice sent to creditor if after first month of creditor period) IC 29-1-14-1
- If known or reasonably ascertained creditor did not receive Notice of Administration, they must file a claim within 9 months from DOD. IC 29-1-14-1
- Exceptions are: expenses of administration and claims of the United States, the state, or a subdivision of the state. IC 29-1-14-1

Claims Against the Estate

- The PR must allow or disallow fifteen days from end of creditors allowable time period (3 months from date of publication, adjusted timeline for late notified creditors or after 9 months for those not sent notice of administration) pursuant to IC 29-1-14-10.
- Any claim disallowed shall be set for trial upon petition for such action by either party.
- Note, the statute speaks to “notations” made in the margins of the claims to allow or disallow. Instead of notations, a motion to allow/disallow the claims and the reason for the determination is sufficient (one motion for multiple claims)

Priority of Claims

- There is a priority of payment of claims, pursuant to IC 29-1-14-9.
- If the assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in priority.
- If there are many claims within the same category/priority, they will be prorated.

Distributions

- Unsupervised
 - IC 29-1-7.5-3(27) gives an unsupervised PR full authority to distribute assets of the estate upon any terms.
 - Partial distributions can be made at any time so long as adequate assets remain to pay debts and expenses of administration.
 - IC 29-1-7.5-3.4 and 2.6 provides the conveyance language for the distribution of real property.

Distributions

- Supervised
 - Must file a proposed final decree of distribution with the Final Account. IC 29-1-17-1
 - IC 29-1-17-1 (c) allows for a Decree of Partial Distribution after the expiration of the time limit for filing claims, but before the Final Account is filed or approved. The Court may decree such distribution with notice to interested persons. The decree is conclusive as a decree of final distribution.
 - Distributee must consent to receive the property, agree to give back if necessary

Closing the Estate - Unsupervised

- An unsupervised estate must be promptly closed. If not closed within 1 year of Letters, must file an explanation.
- IC 29-1-7.5-4 allows for an unsupervised estate to be closed after the three month claim period has expired by the filing of a Verified Closing Statement

Closing the Estate - Supervised

- IC 29-1-16-2 requires the prompt closing of a supervised estate. 1 year is the goal for closure.
- After the claim period has ended and claims are settled, the PR shall file their Final Account and petition the Court for a Decree of Final Distribution. (I.C.29-1-17-2). Notice of such final account shall be given to all interested persons.

Supervised - Accounting

- All accountings are to be set up in a specific manner. Check IC.29-1-16-4 and sample provided.
- A hearing is scheduled and notice may be given. If the accounting is a Final Account, IC 29-1-16-6(a) requires that the Clerk set a date for written objection to the Final Account to be filed, at least 14 days prior to hearing date.
- Notice shall be mailed to all persons entitled to share in the final distribution. Can be waived.
- A Supplemental Report must be filed showing compliance with the terms of the Decree of Final Distribution. Receipts should be available in case the Court requests them.

Release from Liability

- Unsupervised
 - If no proceeding is brought against the PR within three months after the Closing Statement is filed, the appointment of the Personal Representative terminates and the estate is closed by operation of law. All claims against the PR are then barred unless such claim is based on fraud, misrepresentation or inadequate disclosure. (I.C. 29-1-7.5-6).

Release from Liability

- Supervised
 - Upon the filing of a Supplemental Report, the Court will enter an order discharging the Personal Representative. This discharge releases the Personal Representative from their duties and operates as a bar to any suit which is not commenced within one year from the date of discharge even if based solely upon mistake, fraud or willful misconduct on the part of the Personal Representative.

Claims Against Distributees

- Unsupervised
 - If a claim remains undischarged and is not barred, the claimant may prosecute the claim against the distributee. The distributee is potentially liable only to the extent of their distribution.
 - This claim as well as the right of any distributees to recover property improperly distributed shall be forever barred at the later of three years after the decedent's death or one year after the closing statement is filed. (I.C. 29-1-7.5-7).

Claims Against Distributees

- Supervised
 - Pursuant to I.C. 29-1-14-8 a claimant can bring an action on a contingent claim against a distributive share within three months of when the claim becomes absolute. No distributee shall be liable in an amount in excess of their distributive share. If however one distributee is unable to pay their proportionate share the remaining distributee shall be liable for the share of the other distributees share of the claim.

PR and Attorney Fees

- Unsupervised
 - The Personal Representative has the authority to determine, contract and pay professional fees and the Personal Representative's fee without an order from the Court. The lawyer's fee is considered a matter of private contract.

PR and Attorney Fees

- Supervised
 - The PR and Attorney for the estate can be paid out of the estate as the Court shall deem just and reasonable.
 - The Court must determine these fees.
 - The compensation shall be allowed when the final account has been filed and approved.
 - The PR and the Attorney may petition for fees before the final account.
 - Check your local rules for specific instruction and computation.
 - Keep good records of time and expenses to show reasonableness.

Miscellaneous

- **Spreading the Will of Record**
 - In certain circumstances, a Will should be admitted to Probate but not administered.
 - Preserve the validity of the Will (three years to probate)
 - Use of devolution affidavit discussed above;
 - When assets may be discovered at a later date;
 - When assets have a Testamentary Trust named as a beneficiary but Probate would not be required otherwise.

Miscellaneous, contd.

- **Taxes**
 - **Individual Tax Returns:** Be sure the decedent's final income tax return has been or will be filed.
 - **Fiduciary Tax Returns:** Form 1041. Filed if real estate is sold during the admin and/or if the estate amassed more than \$600 of income from date of death to end of tax year. In estates that span multiple years, multiple fiduciary tax returns will be required.
 - Cultivate a relationship with a CPA. Flat fees allow for an easy final accounting.

Miscellaneous, contd.

- **Taxes**
 - **Federal Estate Tax Return (Form 706):** Required when assets owned by the decedent (individually or joint) exceed the estate tax exemption.
 - Portability
 - Whether a probate estate is required or not does not affect the need for a Form 706 filing.
 - **EIN:** Apply for EIN when Estate is opened. Necessary to open an Estate checking account even if no fiduciary tax return is required.
 - Please note: if you have a concurrent estate and trust administration, there is an option for one EIN.

Miscellaneous, contd.

- **Family and Surviving Spouse Allowances**
 - A surviving spouse, who was domiciled in Indiana at the time of decedent's death, is entitled to an allowance of \$25,000.
 - If no spouse, the children under 18 at time of death are entitled; to be split equally amongst the children.
 - The election must be made within 90 days of order commencing administration. Specify whether against personal or real property or both.
 - The allowance is not chargeable against the distributive share of the surviving spouse or the children.

Miscellaneous, contd.

- **Taking Against the Will**

- Surviving spouse, upon election, is entitled to one-half of the net personal and real estate of the testator.
- If the surviving spouse is a second, subsequent, childless spouse and decedent had children from another relationship, the subsequent spouse, upon election, can take one-third of personal estate plus twenty-five percent of the net real property.
- The election is a filing/claim within the estate and must be filed within three months after the date of the order probating the Will.

Miscellaneous, contd.

- Will Contests
 - Provisions can be found in Chapter 7 of the probate code, beginning at IC 29-1-7-16.
 - A Will Contest must be filed by plaintiff within three months after the Will and admitted for Probate.
 - It must be filed as a separate cause of action.
 - The complaint must allege the testator was of unsound mind; there was undue execution of the Will; the Will was executed under duress or obtain by fraud; OR any other valid objection to the Will's validity or the probate of the Will.
 - Unsupervised estate will be converted to Supervised.

Miscellaneous, contd.

- **Representing a Beneficiary/Distributee**
 - The most common reasons for representation are as follows:
 - Simply to be sure everything is done properly.
 - The beneficiary doesn't agree with decisions the personal representative or attorney is making.
 - A surviving spouse or guardian of children want to exercise their election.
 - The Beneficiary wants to contest the Will.

Misc. Practice Tips

- **Accounting**

- Stay ahead of the accounting. We require that all estate account bank statements be sent to us (can be arranged directly with the financial institution) This also deters/keeps us informed of any inappropriate use of estate funds.

- **Checkbook/Ledger**

- With client approval, consider holding the estate checkbook. The PR still approves and signs each check or electronic payment, which can be done by mail or visiting the office. Allows for more streamlined ledger/accounting. Some clients prefer it, the weight lifted.

Misc. Practice Tips

- **Consistent Communication built into your process**
 - Have form letters that accompany activity within the estate.
- **Process simplified**
 - Create forms to be utilized in typical scenarios



QUESTIONS?



Section Three

TRUST ADMINISTRATION

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Section Three

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I. INTRODUCTION

These materials cover the general Trust administration process for a Revocable Living Trust. When we speak about married couples, you can assume that the couple had one Living Trust, rather than an A-B or A-B-C Trust. Unless expressly stated otherwise, you can also assume that the Trustor(s) of the Living Trust served as the initial Trustee(s).

In very basic terms, a Trust is a fiduciary relationship between a person who, as Trustee, holds title to property and another person for whom, as beneficiary, the title is held.

No matter how good an estate plan may be, how long it is, or what all it may cover, there will likely still be a need for the services of an Attorney at times during the administration of the Trust. A Trust is designed to avoid the probate court process, and if properly funded, it will. However, there is still legal work to be done after the Trust Agreement is executed and the Trust is funded. The Client needs to be made aware of the fact that there will absolutely be a need for additional services by an Attorney as time goes by. They also need to be made aware that any services performed by the Attorney during the administration of the Trust will be compensated for at that time. The fee paid for the estate plan does not include services which may be performed in the future. All Clients need to be made to understand this.

In order to fully discuss this, you must be aware of the nature and extent of the legal services to be performed upon the change of a Trustee due to death, incapacity or resignation, upon the distributions of assets, or upon the termination of the Trust, for any reason. Hopefully these materials will provide you with enough information to create an awareness of the type of services that may be needed. In addition, these materials should provide you with information and ideas that you may utilize in creating an operating system for the purpose of ensuring that this work flows smoothly through your office.

II. TRUSTEE REPLACEMENT BEFORE THE DEATH OF TRUSTOR

A. GENERAL

What happens when the initial Trustee(s) becomes incapacitated? Suppose the initial Trustee(s) resigns? The answer to these questions can be found in the Trust Agreement itself or in the Indiana Trust Code which can be found at I.C. 30-4 *et al.* It is very important that you read the Trust Agreement and the Trust Code.

In order to prepare the named Successor Trustee to take over from the initial Trustee(s), you may consider including general instructions for the Successor Trustee in the original estate plan (see Forms). Otherwise, instructions can be given to the Successor Trustee when they begin to act.

B. INCAPACITY

A well drafted Trust should provide a standard by which a Successor Trustee can assume all duties and responsibilities of the acting Trustee. Obviously, if the Trustee is declared incapacitated/incompetent by a valid Court Order, that should automatically trigger the takeover by the designated Successor Trustee, who will immediately assume responsibility for the administration of the Trust. In most instances, a Court of competent jurisdiction will make this Court determination. You need to carefully review these proceedings to assure that your local procedural laws have been strictly followed. This may seem strange, but Courts have been “led” into situations where they really have no jurisdiction in these types of proceedings. Once the Court has made a valid determination, you should obtain at least one certified copy of the Order of Incapacity. This will be needed to support the right of the Successor Trustee to act on behalf of the Trust.

One of the goals of a properly drafted estate plan is to avoid a Court controlled guardianship or conservatorship. The use of a Trust and Powers of Attorney normally can avoid these problems, if they are properly drafted. The circumstances that trigger the right of the designated Successor to

assume control of the Trust, or the Attorney In Fact to begin acting, must be clearly stated in the relevant document.

When consulted relative to this type of problem, your advice cannot rely on the comments of the Spouse, Children, loved ones, or the designated Successor Trustee to make the decision as to whether the individual in question is incapacitated. The standard to be followed should be clearly stated in the Trust. A Trust should call for the certification by a physician that the individual is unable to handle his or her own affairs due to a physical or mental problem. The Trust may require certifications by two physicians to make this determination. Make certain you follow the standard set out in the Trust. If it is silent, the Trust Code states that a Trustor is presumed to have capacity until the trustee receives from at least one (1) licensed physician written certification that the settlor lacks the capacity to revoke the trust.

Also, be certain that there is an attending Physician. This should include ensuring that the individual whose capacity is in question has a current examination by a qualified physician/psychiatrist, etc. When you are contacted relative to this problem, you should immediately obtain the name and address of the attending physicians. With this information, the Physician's Report should be immediately prepared. The letter explaining the reason for the request should accompany it (see Forms).

Normally, if you take the time to mail this to the Physician, it will take at least several weeks to receive a response. A better procedure for you to follow is to have an involved family member hand-carry the Report and letter to the Physician. They can usually prevail upon the Doctor to fill out the Report expeditiously and also arrange to pick it up from the Doctor's Office within a few days time. In the meantime, the information-gathering questionnaire should be sent out to gather as much information as possible prior to the first conference.

Assuming that the Report comes back stating the individual is incapacitated, you now need to qualify the Successor Trustee. This should be done very quickly. The Trust assets need to be protected and managed. The Beneficiary, or the Beneficiary's Family, needs to have the assurance that the Beneficiary's financial care will be expeditiously and properly handled by the new Trustee.

The Successor named in the Trust should execute an Acceptance and Oath once the Physician's Report clearly indicates the individual in question is incapacitated. The Acceptance signifies their willingness to accept the appointment as Successor Trustee according to the terms of the Trust. The Oath is their undertaking that they will perform their duties as set out in the Trust as required by law (see Forms).

Additional documentation is also needed to ensure the orderly transfer of authority to the Successor Trustee. You need to prepare an Attorney's Certification to fit the current situation. In addition, the Successor Trustee also needs to sign a certification. These two documents will be needed by the Successor Trustee to assume control over the Trust corpus. (see Forms) You may wish to include the Physician's Report with one, or both, of these certifications. If you do, you absolutely must make certain that you have the written approval of the holder of the Health Care Power Of Attorney before you release this information. Generally, in most instances, it is not necessary to include the Physician's Report with either certification. Occasionally, however, someone inquires about the right of the Successor Trustee to assume control of the Trust. The Report resolves these issues.

You should also be aware of the fact that the Report also triggers the use of the Client's Powers of Attorney. The physician's statement that the individual is unable to handle his/her affairs generally gives the Attorney In Fact the right to act for the principal. You should be prepared to discuss this in detail with the proper parties.

If it is not the Spouse continuing to serve as Trustee, but a new Successor Trustee is taking over, then the exact value of all assets should be determined as of the date the Successor Trustee assumes jurisdiction and control of the assets. The valuation date should be the same one as the date on which the Acceptance and Oath has been executed by the Successor Trustee. This should be done immediately after the Physician's Report has been received. This Report initiates the procedure by which the Successor Trustee assumes control. What better date for a starting point for the Successor Trustee's accounting than the date on which the Acceptance and Oath were signed?

The new Trustee should execute a Receipt of Trust Assets (see Forms). This acknowledges what assets have now come under the jurisdiction of the new Trustee, to be administered according to the terms of the Trust.

Once you have the new Trustee in place, a Notice should be prepared and sent to each beneficiary (see Forms). Beneficiaries have the right to know who is handling the Trust, and why a change in the Trustees was made. By notifying the beneficiaries, you are hopefully easing any uncertainty or concerns that there may be.

Unless the terms of the Trust provide otherwise or unless waived in writing by an adult, competent beneficiary, a Successor Trustee must deliver a written statement of accounts to each income beneficiary or the income beneficiary's personal representative annually. The statement shall contain at least: (1) all receipts and disbursements since the last statement; and (2) all items of trust property held by the trustee on the date of the statement at their inventory value. Upon the beneficiary's written request, the Trustee must also provide access to the Trust's accounting and financial records concerning the administration of Trust property and the administration of the Trust. I.C. 30-4-3-6. Notice the reference to inventory value in subsection (2) above. It is important for a Successor Trustee to inventory all property which comes into his or her possession or control. You may consider using the Receipt of Trust Assets for this purpose (see Forms).

In order to avoid the time and expense of a formal accounting, consider requesting a waiver of formal accounting from the Beneficiaries and instead providing the Beneficiaries an informal accounting to include copies of bank statements.

C. RESIGNATION

As the Trustee(s) of a Living Trusts advance in age, another situation arises that will require your services and attention. The pressure of handling the day to day affairs of the Trust may be too much for the now aging, and perhaps, infirm Trustee. How can they quickly and smoothly remove themselves from these problems and continue to have the Trust handle their affairs? Suppose a Trustee just does not like performing the duties of Trustee. Suppose a Trustee is moving from the area and does not want to move the situs of the Trust, or simply wants to give up the management of the Trust when they move.

The simple answer to this problem is to have the Trustee resign in favor of the Successor Trustee named in the Trust document. The new Successor Trustee then signs an acceptance and oath to qualify for their new position. Just as we have seen previously, an Attorney's Certification and a Successor Trustee's Certification need to be prepared and executed (see Forms). You may wish to attach a copy of the Resignation to the Certification as well. And similar to when initial Trustees become incapacitated, a Receipt of Trust Assets should be signed by the new Trustee, Notices should be sent to beneficiaries, and accounting to beneficiaries should be addressed.

D. DEATH

The death of the current Trustee(s) immediately triggers the appointment of a Successor Trustee under the terms of the document. If the deceased Trustee was not the Trustor, you will follow a similar procedure to certify the new Successor Trustee as discussed when a Trustee becomes incapacitated or resigns. However, if the deceased Trustee was also the Trustor, you will also now begin Trust Administration.

III. TRUST ADMINISTRATION

A. GENERAL

Trust Administrations is different than normal estate or guardianship administrations. Trust Administrations are presumed to progress more quickly, more efficiently and less expensively. In connection with Trust Administration, it is not necessary to deal with the cumbersome substantive law and procedural requirements of the probate or guardianship systems. As you know, the Living Trust specifically avoids these systems so long as the Trust was properly funded.

As a result, Trust Administration requires a different mental approach than the probate/guardianship one. You and your Staff must recognize, understand and operate within an environment which is directed at getting it done as efficiently and economically as possible. You do not normally face the time and procedural restraints in this process that are present in the probate/guardianship world.

You must realize that far more responsibility rests on your shoulders, far more than in the more traditional probate/guardianship administration systems. In these cases, other than for something highly unusual, there is no Court looking over your shoulder. It is your full responsibility to see that things are done correctly and promptly. Your Staff must come to realize this as well. In addition, if you have a well-qualified Trustee, you should utilize that person to help move the administration along more quickly. The more you use that individual, the more they become a convert to the use of a Trust as an estate planning tool. This is true provided that you move the administration along in a timely manner. You should be able to make the determination concerning the capabilities of the Trustee at the time of your first conference, if your system is

functioning properly. How well they perform with the Trust Administration Questionnaire will help you make your evaluation.

B. GATHERING INFORMATION

The first task is to inventory the assets of the decedent. This involves determining the title, or ownership of all assets. The next step is obtaining a date-of-death valuation of these assets. If the Trustee completes a Trust Administration Questionnaire, that questionnaire should provide you with this information.

Bank accounts, stock, bonds, CDs, brokerage accounts, personal property, and real estate should have been titled in the name of the Trust during the Trustor's life, and the Trustor should have designated the Trust as the beneficiary of retirement accounts and life insurance (see Forms). However, either intentionally or by accident, this may not have been done. The Trustor may have had assets in their name alone without designated beneficiaries, they may have had jointly owned assets, and/or they may have Trust assets. You must first determine how each of the assets are titled and identify the designated beneficiaries of assets before you determine next steps.

If there are assets that remained part of the decedent's Estate, you must value them in order to determine whether they can be transferred out of the decedent's name using a Small Estate Affidavit or whether you will need to open an Estate. Assuming the decedent died after June 30, 2006, if the value of the gross probate estate, wherever located, less liens, encumbrances, and reasonable funeral expenses, exceeds fifty thousand dollars (\$50,000), you will need to open an Estate. Otherwise, you can prepare a Small Estate Affidavit.

You will also need to know if the decedent had a Last Will and Testament in order to determine the heirs of any Estate assets. Very often when a Living Trust has been created, the Will is going to have a "pour-over" provision. This provision directs that any asset not placed into the

Trust during the deceased's lifetime will be put into the Trust at death and distributed according to the terms and conditions of the Trust. While this will not avoid the probate process if the Estate assets exceed the statutory limit, at least your client will have peace of mind knowing the Estate assets will eventually make their way under the controls of the Living Trust.

C. **DUTIES**

The duties of the Trustee very generally are as follows: collect and maintain control over the assets of the Trust; preserve the Trust property and keep it separate from the Trustee's individual property; maintain clear and accurate records; make the Trust property productive for both the income and remainder beneficiary; pay any taxes owed; and make the distributions dictated by the Trust.

The Trustee is responsible to the beneficiaries. The fiduciary nature of the Trustee's duties imposes the obligation of good faith upon the Trustee in carrying out his or her responsibilities. A Trustee has the further duty to keep the beneficiaries reasonably informed as to the administration of the Trust and of the material facts necessary for the beneficiaries to protect their interests.

Trustees have the duty to administer a Trust *according to the terms of the Trust*. Remember to read the Trust. When the Trust is silent on an issue, the Trustee has statutorily imposed fiduciary duties. Also be aware of Indiana Code 30-4-2.1, which contains rules for interpretation of trusts.

All Trust assets must be valued as of the *date of death*. Financial institutions, stock brokerage firms, and insurance companies need to be contacted immediately. If there are Bonds and/or stocks involved, they need to be valued at date of death.

If there is real estate in the Trust, it may be necessary to have it appraised. This can be determined during the first conference. If an appraisal is needed, you should always offer the Client the opportunity to designate the appraiser. If they don't want to, then you should have a list of

qualified appraisers for different types of property from which to choose someone. Have the Client sign the Authorization if you choose the appraiser. Even if you do not choose the appraiser, you need to find out who is going to make the appraisal and then you need to send a letter explaining what is needed and the requirements of the appraisal to avoid “drive by” or “market” type appraisals.

If an EIN has not yet been obtained for the Trust, it should now be obtained. In a revocable Living Trust, there is usually no change in the tax status of the Trustor until the Trustor dies. While the Trustor is alive, the tax id number of the Trust is the Trustor’s social security number. Once the Trustor dies, the Successor Trustee must obtain an EIN and is responsible for filing fiduciary income tax returns. All Trust accounts should be transferred into a new Trust account under that EIN number. You should provide a letter of instruction to the Successor Trustee explaining this (see Forms). Direct your Trustee to a CPA that has experience with fiduciary tax returns.

Assuming a full estate does not need to be opened, you should introduce the decedent’s Will to probate in order to validate the it (see Forms). This is also called spreading the Will of record. You never know when an asset may turn up in the Decedent’s name only.

The Successor Trustee must notify the Beneficiaries of the Trustor(s) death and the respective Beneficiary’s interest in the Trust. A form Notice is included in these materials (see Forms), which should be provided to each Beneficiary along with the Trust Certification. Note the 90-day Trust contest deadline referenced in the Notice.

Unless the Trust states otherwise, when a Trustor dies and a written request is made by an income beneficiary or remainderman, the Trustee must promptly provide a copy of the complete trust instrument to the income beneficiary or remainderman. This does not prohibit the terms of the trust from requiring the Trustee to separately provide each beneficiary only the portions of the trust

instrument that describe or pertain to that beneficiary's interest in the trust and the administrative provisions of the trust instrument that pertain to all beneficiaries of the trust. A 2016 Court of Appeals case held that a Trustee has no duty pursuant to Indiana Code 30-4-3- to provide a specific distribute of a Trust (as opposed to an income beneficiary or remainder beneficiary) a complete unredacted copy of the Trust because they have no interest “in the administration of the trust for the preservation of assets[,]” as “the management of trust assets would not affect the amount of the distribution.” *Schrage v. Seberger Living Trust*, 52 N.E.3d 45, 54 (Ind. Ct. App. 2016).

The Trust may set out the Trustee’s role in paying bills. It may require all legally enforceable debts to be paid, or it may provide that payment is discretionary with the Trustee. Be mindful of the fact that creditors of a Trustor have the ability to reach certain nonprobate assets, including those which are held in a Trust. Creditor’s rights against such assets can be found in Indiana Code 32-17-13-3 and include the following order of priority in which nonprobate transferees are liable:

- (1) As provided in the deceased transferor's will or other governing instrument.
- (2) To the extent of the value of the nonprobate transfer received or controlled by the trustee of trusts that can be amended, modified, or revoked by the decedent during the deceased transferor's lifetime. If there is more than one (1) such trust, in proportion to the relative value of the trusts.
- (3) Other nonprobate transferees in proportion to the values received.

Explain to the Successor Trustee the importance of keeping records and give them the Receipts and Disbursements Accounting Forms (see Forms). Go over these documents with the Successor Trustee and explain how they are used and how they assist in the accounting process. Be honest with them. Everyone wants to think that their family is a loving one and no one would ever cause problems. Unfortunately, matters like this can sometimes bring out the worst in people. They need to be aware of their duties and their responsibilities. They need to look at being the Trustee as

a job, not a family favor. They need to make sure they can back up every action that they take during the course of the trust administration. Make sure they keep records of every receipt coming in and every payment or distribution going out, as well as copies of all bank statements and images of all checks. This is true, even if it appears, or it actually happens, that the accounting is waived. They may not foresee the necessity of an accounting to begin with, but one of the heirs may feel it is a necessity as the trust administration nears its end. It protects the Successor Trustee and his/her actions.

The issue of the Trustee's fee should be discussed at the first interview. Are they going to take one, or not? In addition, it should be raised periodically throughout the trust administration. Unless the terms of the Trust provide otherwise, a Trustee is entitled to reasonable compensation from the trust estate for acting as Trustee. In the most cases, the fees will be determined on the basis of an hourly rate and may be influenced by the individual's experience, knowledge, and expertise. If the terms of the Trust specify the Trustee's compensation, the Trustee is entitled to be compensated as specified, but the court may allow more or less compensation if (1) the duties of the trustee are substantially different from those contemplated when the trust was created; or (2) the compensation specified in the terms of the trust would be unreasonably low or high.

Whether the Trustee takes a fee or not, you should advise him to keep detailed records as to the time spent on Trust matters, what was done during that particular time, and what expenses were incurred due to performing services for the Trust. Copies of the bills should be kept. You will undoubtedly be asked to determine the fee for a non-professional Trustee. Look at the time spent, how much was excess time, what results were accomplished, etc. Good luck!

D. CONCLUDING DUTIES

Once all fees and taxes are paid and all administrative duties have been completed, final distribution to the beneficiaries can be made and Receipts and Releases can be obtained. The job of the Trustee is not to make his or her own decisions regarding the disposition of assets, but to carry out the terms of the Trust. Only after the bills and taxes are paid, and all assets are received, the Trustee should follow the terms of the Trust and pay out any assets due to the beneficiaries.

The Successor Trustee's Accounting form is a very simplistic approach (see Forms). This format is easy to understand, organizes the information into categories anyone can understand, and summarizes the information in a manner that flows simply from each section of the Accounting. The Accounting contains a proposed distribution section for the Beneficiaries to review. In order to ensure the veracity of the information submitted to you, you can use the Account Verification and Stock Verification forms. Through their use, you are able to verify the balances in accounts as of a particular date (use the same date as in the Accounting), and the same with stock holdings. You do not want to finish an accounting and discover that the assets are not there.

If you are fortunate, you may be able to obtain a Waiver and Consent from all of the Beneficiaries. If so, the Accounting will be waived and you can move to distribution rather quickly. When distribution is made, whether through an Accounting or by Waivers and Consents, all distributees should sign a Receipt and Release. Without this, the distribution should not be made. This is the final proof that the terms of the Trust have been followed.

Quite often there is real estate held in the Trust. Now that the administration is about to close, it is necessary to transfer title to the appropriate distributee. You may wish to order a preliminary opinion of title to the parcel, in the minimum amount, from one of your local title companies. In this way you can verify that title is clear to the parcel. If not, then you can take

whatever action is needed to clear it to be able to deliver a clear title to it. Once you are satisfied that everything is satisfactory, you should convey the title by the use of a Trustee's Deed (see Forms).

As to the timing of final distribution, a Trustee should be advised not to make any distributions for at least 120 days as Indiana Code Section 30-4-6-14(b) states:

“More than one hundred twenty (120) days after the death of the settlor of a trust that was revocable at the settlor's death, the trustee may distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for the distribution unless: (1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or (2) a potential contestant notifies the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced not later than sixty (60) days after the contestant sends the trustee the notification.

However, also confirm that the 90-day Trust contest deadline has passed before making final distribution and if there is any concern of creditor's claims, complete distribution should not be made until 9 months after death.

Although beyond the scope of this seminar, a Trust may have complex distribution plans and/or special needs provisions. In these cases, the Successor Trustee may not be quickly discharged of their duties upon final distribution, but rather, may continue to manage sub-trusts for the benefit of a beneficiary. The longer the funds are held in Trust the more important it will be for the Trustee to manage them and invest them appropriately. The Uniform Prudent Investor Act requires the Trustee to consider such factors as general economic conditions, inflation, deflation, tax consequences, projected income, appreciation, other resources of beneficiaries, liquidity and an asset's special value. Indiana Code 30-4-3.5-2(c). It is possible to opt out of the Prudent Investor Rule, but it must be specifically stated in the Trust and the investment policy that should be used must be stated.

FORMS

TO: SUCCESSOR TRUSTEE

FROM: O'DROBINAK & NOWACZYK

SUBJECT: WHAT TO DO WHEN YOU TAKE OVER THE TRUST

The purpose of this memorandum is to provide you with an outline of the procedures that should be followed upon either the incapacity or death of the prior Trustee. All the important papers needed to begin either of these processes are located in the Estate Planning Portfolio. Copies are also available at my Office.

A. INCAPACITY:

Upon the incapacity of the prior Trustee, it is necessary to obtain the attending Doctor's statement that the Trustee is incapacitated. This is needed to permit you to take over the administration of the Trust. We have the proper form for the Doctor to fill out and sign. As soon as you believe the Trustee is unable to handle his/her affairs, contact us immediately. We will prepare the Doctor's statement and forward it to the attending Doctor immediately.

When it is returned, we will prepare the other documents necessary for you to continue handling the affairs of your Trust. It is usually a simple matter to continue the day to day activities of the Trust.

The Trust contains specific instructions to be followed under these circumstances. We will assist you in making certain that you continue the handling of the Trust as required by the terms of the Trust agreement.

The Doctor's statement also triggers the appointment of the people named to act for the incapacitated person under the Property and Health Care Powers of Attorney. If you are also named to act in these documents, we will explain these duties to you as well.

The charges that will be made for services in transferring control of the Trust to you will be made at the appropriate rate in effect at that time, and are paid by the Trust.

B. DEATH:

Generally, nothing needs to be done in regard to the Trust prior to the funeral of the Trustor. The Estate Planning Portfolio may contain an outline of the funeral and burial plans to be followed. Funds for this purpose and any other immediate purpose can be made available for your use from the various Trust accounts. Contact us and we will assist in obtaining these funds for your use.

After the funeral, you should contact us to obtain the advice and direction that you will need to carry out your duties as Successor Trustee. If all of the assets have been transferred to the Trust,

much of the Estate will be able to be transferred within a short period of time. All debts must be paid and all death taxes (Federal Estate Tax if the Estate is over \$11.58M, if any, must be determined and paid.

When you contact me, we will discuss the procedural steps that need to be followed. Some of these are as follows:

1. Collect information on the value of all assets, in order to prepare a complete inventory of all the assets of the Trust;
2. If necessary, arrange for an appraisal of certain assets such as real estate, jewelry, etc.;
3. Deliver the Will of the deceased Trustor to us so we can file it with the applicable Court; even though it may not be necessary to open an Estate;
4. If the Estate exceeds \$11.58M, it will be necessary to prepare and file a Federal Estate Tax Return, Form 706. Upon its completion, we will know if there is any tax due the federal government. If there is tax due, payment must be enclosed when the Form 706 is filed. This Return must be filed within nine months after death. There may be reasons to use the alternate valuation date for federal estate tax purposes, which is six months after the date of death. There may also be some additional tax to be paid to the State of Indiana. The determination to use the actual date of death or the alternate valuation date in making tax calculations, should not be made until the tax implications of which date is most beneficial to the beneficiaries is considered;
5. Pay all unpaid bills of the deceased Settlor;
6. Distribute the assets to the appropriate beneficiaries, if required, and obtain receipts for any distributions;
7. Prepare a final accounting for the benefit of the beneficiaries.

My past experience has shown that if all the assets are held in the Trust, or in Joint Tenancy, and no death tax returns are due, the transfer process can be closed in two to four months after the death of the prior Trustee. This assumes prompt action on your part in contracting us to begin the process. If death tax returns are due, it will take longer to complete the transfer process. If the alternate valuation date is used, the settlement process will be prolonged. In addition, if an audit is conducted of the Federal Estate Tax Return, if one is filed, the process can further be delayed.

As the process continues, we would suggest that you recommend to the beneficiaries of the Trust that they have an estate plan created for themselves and their families as well. As you know, this estate plan has been accomplished through the use of a revocable living trust and other appropriate documents, which we prepared. It is advisable for the beneficiaries to receive their distributions and immediately incorporate them into their estate plans.

The charges that will be made for services in winding up the affairs of the Trust when the Trustor dies, will include those for my services in the performance of the activities described above, any accountant's fees, if necessary, appraisal costs where appropriate or necessary, and death taxes that are due, if any.

As a practical matter, we have found that the cost of settling a Trust, where all assets are held in the Trust, is substantially less than the cost that would normally be incurred through the probate system. The finalization of that fee will be determined by the work that is necessary to conclude the affairs of the Trust at that time.

If we can provide you with additional information regarding this matter, please let us know.

[Date]

[Doctor]
[Address]
[Address]

RE: [Name of incapacitated person]

Dear Dr. [Name]:

I have been requested by [Client] to forward to you the enclosed Physician's Report. It is my understanding that you are [Incapacitated Person]'s attending Physician. As you know, there is some concern about the ability of [Incapacitated Person] to handle his/her affairs.

Would you please fill out the enclosed report and return it to me as soon as possible. Depending upon the information it contains, it will be used to determine whether [Incapacitated Person] is still capable of handling the affairs of his/her Living Trust. This determination must be made before a Successor Trustee can assume the management of the Trust. As a result, your prompt response would be greatly appreciated.

If you have any questions, please feel free to contact me.

Very Truly Yours,

[FIRM]

By: [ATTORNEY]

Enclosure

PHYSICIAN'S REPORT

[Name of Physician], a physician holding an unlimited license to practice medicine in the State of _____, submits the following report on [Name of Incapacitated Person], "Patient", based upon examination of the Patient.

1. Set forth the dates of all examinations of the Patient within the last one (1) year from the date hereof. _____

2. In your opinion, based upon your examination and observation of the Patient, is the Patient incapacitated. Yes _____ No _____. If so, describe the nature and type of incapacity. _____

3. In your opinion, based upon your examination and observation of the Patient, how long has the Patient been incapacitated? _____

4. Describe the Patient's mental and physical condition. _____

5. In your opinion, is the Patient totally or only partially incapable of making personal and financial decisions. Totally Incapable _____ Partially Incapable _____ Capable _____. If the Patient is partially incapable of making personal and/or financial decision, the kinds of decisions which the Patient can and cannot make. Include the reasons for this opinion. _____

6. Is the Patient capable of continuing to serve as Trustee? Yes _____ No _____

7. Is the Patient capable of consenting to the appointment of a Successor Trustee?
_____ Yes _____ No

8. Is the nature of the Patient's incapacity such that it prevents the Patient from making a knowing and voluntary Waiver or Consent? _____ Yes _____ No

9. Is the nature of the Patient's incapacity such that it prevents the Patient from making a knowing and voluntary resignation of his/her right to serve as Trustee of their Trusts?
_____ Yes _____ No

I affirm, under the penalties of perjury, the above and foregoing is true and correct to the best of my knowledge and belief on this _____, 2020.

Signed: _____

Address: _____

Telephone: _____

If the description of the Patient's mental, physical and educational condition, adaptive behavior or social skills is based on evaluations by other professionals, please provide the names and addresses of all professionals who are able to provide additional evaluations. Evaluations on which the report is based should have been performed within three (3) months of the date of the filing of the Petition.

Name and addresses of other persons who performed evaluations upon which this report is based:

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

IN THE MATTER OF THE
TRUST ADMINISTRATION OF THE
_____ LIVING TRUST, DATED _____

SUCCESSOR TRUSTEE'S ACCEPTANCE & OATH

I hereby accept the responsibility of serving as Successor Trustee of the _____ Living Trust, dated _____, "Trust", and that I swear that I will faithfully discharge my duties as Successor Trustee of the Trust as set forth therein, according to all applicable law.

SUCCESSOR TRUSTEE

Dated: _____

"Successor Trustee"

Subscribed and sworn to before me, a Notary Public in and for said County and State, on _____.

Notary Public
Resident of _____ County

My Commission expires:

ATTORNEY’S CERTIFICATION

[ATTORNEY], being first duly sworn upon oath, states and certifies that:

1. I am an Attorney licensed to practice law in State of Indiana, and represent the Estate of _____, Incapacitated Person, and the Successor Trustee of the [Trustor’ last name] Living Trust.
2. At the request of [names of original Trustors], I prepared a Revocable Living Trust for them. This document was executed by them on [date of trust] and is known as the [Trustors’ last name] Living Trust.
3. To the best of my knowledge, this document is still in full force and effect and has not been amended, and the Trustee currently authorized to serve is [name of Trustee].
4. Attached hereto and incorporated herein by reference are true and correct copies of pages from the [Trustors’ last name] Living Trust, showing the Declaration of Trust, the order of succession of Trustees, powers granted to the Trustees, and the execution page of the Trust.
5. The provisions of the [Trustors’ last name] Living Trust which are not attached hereto, deal with the distribution of the Trust assets and do not affect or modify the Trustee’s powers.
6. [name of successor trustee] is the duly authorized and acting Trustee of the [Trustors’ last name] Living Trust dated [date of trust], and has the full power and authority to solely act for and on behalf of the Trust by reason of the incapacity of the prior Trustees.

IN WITNESS WHEREOF, I have executed this certification on _____.

[ATTORNEY]

STATE OF)
) SS:
COUNTY OF)

Before me, a Notary Public in and for said County and State, on _____, personally appeared [ATTORNEY], who acknowledged the execution of the foregoing instrument as his free and voluntary act.

Given under my hand and notarial seal on _____.

My Commission Expires: _____, Notary Public

Resident of _____ County

SUCCESSOR TRUSTEE’S CERTIFICATION

[name of successor trustee], being first duly sworn upon oath, states and certifies that:

1. Affiant is the duly appointed and acting Successor Trustee to the _____ Living Trust, dated [date of trust], as set out in Article Three of the Trust;
2. The original Trustee, [name of Trustee], is incapacitated and unable to act, as stated in the Physician’s Statement which is attached hereto.
3. The _____ Living Trust is in existence and is in full force and effect;
4. There have been no amendments made to the Trust since its creation;
5. As of the date hereof, Affiant has not received any written notices or directions of any amendment, rescission or revocation of the Trust;
6. Attached hereto and incorporated herein by reference are true and correct copies of pages of the _____ Living Trust, showing the Declaration of Trust, the order of succession of Trustees, powers granted to the Trustees, and the execution page of the Trust.
7. The provisions of the _____ Living Trust which are not attached hereto, deal with the distribution of the Trust assets and do not affect or modify the Trustee’s powers.
8. This Certification is made for the purpose of showing the current status of the _____ Living Trust, dated [date of trust], and Affiant has the right to act and is acting as Successor Trustee, for and on behalf of the Trust.

IN WITNESS WHEREOF, I have executed this Certification on _____.

[name successor trustee]

STATE OF)
) SS:
COUNTY OF)

Before me, a Notary Public in and for said County and State, on _____, personally appeared {Name of Successor Trustee}, who acknowledged the execution of the foregoing instrument as his/her free and voluntary act.

Given under my hand and notarial seal on _____.

My Commission Expires:

, Notary Public

Resident of _____ County

In the Matter of the Trust Administration of the _____)
_____ Living Trust, dated _____,)
_____, Decedent)

RECEIPT OF TRUST ASSETS

I, _____, Successor Trustee of the _____ Living Trust, dated _____, “Trust”, hereby acknowledge receipt of those assets of the Trust that are set forth in Exhibit A, attached hereto and made a part hereof.

Dated: _____

[Name], Successor Trustee

Subscribed and sworn to before me, a Notary Public in and for said County and State, on [date].

My commission expires: _____

, Notary Public
Resident of Lake County, Indiana

(YOU MAY WISH TO USE AN AFFIRMATION INSTEAD OF THE NOTARIZATIONS)

In The Matter of the Trust Administration of)
The _____ Living Trust, dated _____)
_____, Decedent)

NOTICE TO BENEFICIARY

This is to notify you that as of _____, 2020, the undersigned is the duly qualified and acting Trustee of the _____ Living Trust, "Trust", dated _____. As a Beneficiary of the Trust, you are entitled to be advised as to the change of Trustees that has taken place in the Trust.

[Choose one of the following reasons to insert here:]

1. Under the terms and conditions of Article Three of the Trust, upon the incapacity of _____, _____ is to serve as Successor Trustee of the Trust. _____ was declared incapacitated by his/her attending Physician, Dr. _____, on _____.
2. Under the terms and conditions of Article Three of the Trust, if _____ is unwilling to serve as Trustee for any reason, _____ is to serve as Successor Trustee of the Trust. _____ resigned as Trustee on _____.]

In the future, all inquiries regarding the Trust should be directed to:

_____,
Trustee of the _____ Living Trust, dated _____
[Address]
[Address]
Telephone: _____

Dated: _____

NAME, Trustee of the _____ Living Trust

In the Matter of the Trust Administration of the)
_____ Living Trust, dated _____,)
_____, Decedent)

RESIGNATION OF TRUSTEE

I, _____, Trustee of the _____ Living Trust, "Trust", dated _____ hereby resign as Trustee of the Trust. I hereby relinquish all my powers and duties as Trustee of the Trust, to _____, the Successor Trustee named in the Trust. This resignation is effective as of this date.

TRUSTEE

Dated: _____

"Trustee"

STATE OF)
) SS:
COUNTY OF)

Before me, a Notary Public in and for said County and State, personally appeared _____, "Trustee", who acknowledged the execution of the foregoing Resignation of Trustee as his free and voluntary act on _____.

Notary Public
Resident of _____ County

My Commission expires:

ATTORNEY’S CERTIFICATION

[ATTORNEY], being first duly sworn upon oath, states and certifies that:

1. I am an Attorney licensed to practice law in State of Indiana, and represent the _____ Living Trust, dated _____, and the Successor Trustee of the [Trustor’ last name] Living Trust.
2. At the request of [names of original Trustors], I prepared a Revocable Living Trust for them. This document was executed by them on [date of trust] and is known as the [Trustors’ last name] Living Trust.
3. To the best of my knowledge, this document is still in full force and effect and has not been amended, and the Trustee currently authorized to serve is [name of Trustee].
4. Attached hereto and incorporated herein by reference are true and correct copies of pages from the [Trustors’ last name] Living Trust, showing the Declaration of Trust, the order of succession of Trustees, powers granted to the Trustees, and the execution page of the Trust.
5. The provisions of the [Trustors’ last name] Living Trust which are not attached hereto, deal with the distribution of the Trust assets and do not affect or modify the Trustee’s powers.
6. [name of successor trustee] is the duly authorized and acting Trustee of the [Trustors’ last name] Living Trust dated [date of trust], and has the full power and authority to solely act for and on behalf of the Trust by reason of the resignation/replacement of the prior Trustees.

IN WITNESS WHEREOF, I have executed this certification on _____.

[ATTORNEY]

STATE OF)
) SS:
COUNTY OF)

Before me, a Notary Public in and for said County and State, on _____, personally appeared [ATTORNEY], who acknowledged the execution of the foregoing instrument as his free and voluntary act.

Given under my hand and notarial seal on _____.

My Commission Expires: _____
_____, Notary Public
Resident of _____ County

SUCCESSOR TRUSTEE’S CERTIFICATION

[name of successor trustee], being first duly sworn upon oath, states and certifies that:

1. Affiant is the duly appointed and acting Successor Trustee to the _____ Living Trust, dated [date of trust], as set out in Article Three of the Trust;
2. The original Trustee, [name of Trustee], resigned on _____, as shown on the Resignation which is attached hereto.
3. The _____ Living Trust is in existence and is in full force and effect;
4. There have been no amendments made to the Trust since its creation;
5. As of the date hereof, Affiant has not received any written notices or directions of any amendment, rescission or revocation of the Trust;
6. Attached hereto and incorporated herein by reference are true and correct copies of pages of the _____ Living Trust, showing the Declaration of Trust, the order of succession of Trustees, powers granted to the Trustees, and the execution page of the Trust.
7. The provisions of the _____ Living Trust which are not attached hereto, deal with the distribution of the Trust assets and do not affect or modify the Trustee’s powers.
8. This Certification is made for the purpose of showing the current status of the _____ Living Trust, dated [date of trust], and Affiant has the right to act and is acting as Successor Trustee, for and on behalf of the Trust.

IN WITNESS WHEREOF, I have executed this Certification on _____.

[name successor trustee]

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, on _____, personally appeared [Name of Successor Trustee], who acknowledged the execution of the foregoing instrument as his/her free and voluntary act.

Given under my hand and notarial seal on _____.

My Commission Expires:

, Notary Public
Resident of _____ County

XX, 2020

Mr. xxxxxxxxx

RE: Change of Beneficiary
All Qualified Annuity/IRA/Retirement Accounts
Life Insurance

Dear Mr. xxxxxxxxx:

You DO NOT CHANGE OWNERSHIP of your Qualified Annuity/IRA/ s or life insurance policies. You will need to request Change of Beneficiary forms only. You will then change the beneficiary to reflect the following:

**All Qualified Annuity/IRA/Retirement Accounts
and Life Insurance Policies and NonQualified Annuities:**

Primary Beneficiary: (You do not need a contingent beneficiary)

The Then Trustee of the XX Living Trust, dated XX, 2020

This is the preferred wording that we recommend for your Primary Beneficiary. However, we have no control over a third party and what they will accept on their forms.

If you should have any questions regarding this matter, please contact my office.

Thank you.

Very truly yours,

[FIRM]

By: [Attorney]

REQUEST FOR RELEASE OF INFORMATION

Decedent: **xxxxxxx**

Address:

Social Security No: **xxx**

Date of Death: **xxxx, 2020**

Attorney: **[ATTORNEY]**
 [FIRM]
 [Address]
 [PHONE]

I hereby authorize you to release to my Attorney, any and all information which she may request that you have in your possession, or that you have access to, pertaining to the Decedent's financial affairs. This includes the authority to provide him with copies of any and all documents which you may possess, or have access to, relating to the Decedent's financial affairs. I agree to be responsible for the payment of any fees, costs or expenses incurred in connection with the providing of this information.

It is understood that this authorization is subject to revocation by me, at any time, and shall remain valid until revoked. Any action you take to release the requested information in reliance on this authorization prior to its revocation, shall not be affected by a subsequent revocation.

Dated: xxxxxx ____, 2020 Responsible Party

xxxxxx

Witness:

Relationship of Responsible Party to Decedent:

Personal Representative _____ Surviving Trustee _____

Successor Trustee x Surviving Joint Tenant _____

Surviving Spouse _____ Heir/Beneficiary x

APPRAISAL AUTHORIZATION

Decedent: **xxxxxxx**

Address:

Date of Death: **xxxx, 2020**

Attorney: [ATTORNEY]
 [FIRM]
 [Address]
 [PHONE]

I hereby authorize my Attorney to arrange for the appraisal of the real estate described above. The appraisal is to be sent directly to him. I agree to cooperate with the Appraiser so that the appraisal can be completed in a timely manner. I further agree to be responsible for the payment of the appraisal fee and any expenses associated with it.

Dated: xxxxxx ____, 2020

Responsible Party

 xxxxxx

Witness:

Relationship of Responsible Party to Decedent:

Personal Representative _____	Surviving Trustee _____
Successor Trustee _____	Surviving Joint Tenant _____
Surviving Spouse _____	Heir/Beneficiary _____

**In the Matter of the Trust Administration of the)
xxxxxx Living Trust, dated xxxxxx and any)
amendments thereto)
xxxxxx, Decedent)**

TRUSTEE’S OATH AND ACCEPTANCE

By execution hereof, I hereby accept the responsibility of serving as Successor Trustee of the xxxxxx Living Trust, dated xxxxxx and any amendments thereto, “Trust”; further, I accept all of the terms and conditions of the Trust; and swear that I will faithfully discharge my duties as Successor Trustee of the Trust as set forth therein, according to all applicable law.

By serving as Successor Trustee, I do further agree that the laws of the State of Indiana shall govern and control the administration of the Trust, and do further agree to submit personally to the jurisdiction of Indiana law and Indiana Courts in any proceeding that relates to the administration of the Trust, and/or the enforcement of the terms thereof, and/or the performance of my duties as Trustee.

By agreeing to serve as Successor Trustee, I further acknowledge that all assets of the Trust shall remain in the State of Indiana. The voluntary removal of any assets from the State of Indiana of the Trust, other than for distributions to a Beneficiary, shall be deemed a breach of the terms of the Trust and shall constitute grounds for my removal as Successor Trustee by the appropriate Court of the State of Indiana.

I affirm under the penalties for perjury that the above and foregoing is true and correct.

Dated: xxxxx, 2020

xxxxxx, Successor Trustee

State of Indiana, County of Lake) ss:

Before me, a Notary Public in and for said County and State, on xxxxx, 2020, personally appeared Xxxxxx, who acknowledged the execution of the foregoing instrument as his free and voluntary act.

Given under my hand and notarial seal on xxxxx, 2020.

Notary Public

ATTORNEY’S CERTIFICATION

[ATTORNEY], being first duly sworn upon oath, states and certifies that:

1. I am an Attorney licensed to practice law in the State of Indiana, and represent the Estate of xxxxxx, Deceased, who died on Xxxxxx, 2020, and the Successor Trustee of the xxxxxx Living Trust.
2. At the request of xxxxxx, my Office prepared a Revocable Living Trust for her. This document was executed by her on xxxxxx and is known as the xxxxxx Living Trust.
3. To the best of my knowledge, this document is still in full force and effect and has not been further amended, and the Trustee currently authorized to serve is Xxxxxx.
4. Attached hereto and incorporated herein by reference are true and correct copies of pages from the xxxxxx Living Trust, showing the Declaration of Trust, the order of succession of Trustees, powers granted to the Trustees, and the execution page of the Trust.
4. The provisions of the xxxxxx Living Trust which are not attached hereto, deal with the distribution of the Trust assets and do not affect or modify the Trustee’s powers.
6. Xxxxxx is the duly authorized and acting Trustee of the xxxxxx Living Trust dated xxxxxx and any amendments thereto, and has the full power and authority to solely act for and on behalf of the Trust by reason of the death of the prior Trustee.

IN WITNESS WHEREOF, I have executed this certification on Xxxxxx, 2020.

[ATTORNEY]

State of Indiana, County of Lake) ss:

Before me, a Notary Public in and for said County and State, on Xxxxxx, 2020, personally appeared [Attorney], who acknowledged the execution of the foregoing instrument as his free and voluntary act.

Given under my hand and notarial seal on Xxxxxx, 2020.

Notary Public

SUCCESSOR TRUSTEE’S CERTIFICATION

Xxxxxx, being first duly sworn upon oath, states and certifies that:

1. Affiant is the duly appointed and acting Successor Trustee to the xxxxxx Living Trust, dated xxxxxx and any amendments thereto, as set out in Article Three of the Trust.
2. The original Trustee, xxxxxx, died on Xxxxxx, 2020.
3. The xxxxxx Living Trust is in existence and is in full force and effect.
4. There have been no amendments made to the Trust since its creation.
5. As of the date hereof, Affiant has not received any written notices or directions of any amendment, rescission or revocation of the Trust.
6. Attached hereto and incorporated herein by reference are true and correct copies of pages of the xxxxxx Living Trust, showing the Declaration of Trust, the order of succession of Trustees, powers granted to the Trustees, and the execution page of the Trust.
7. The provisions of the xxxxxx Living Trust which are not attached hereto, deal with the distribution of the Trust assets and do not affect or modify the Trustee’s powers.
8. This Certification is made for the purpose of showing the current status of the xxxxxx Living Trust, dated xxxxxx and any amendments thereto, and Affiant has the right to act and is acting as Successor Trustee, for and on behalf of the Trust.

IN WITNESS WHEREOF, I have executed this Certification on Xxxxxx, 2020

XXXXXX

State of Indiana, County of Lake) ss:

Before me, a Notary Public in and for said County and State, on Xxxxxx, 2020, personally appeared Xxxxxx, Trustee, who acknowledged the execution of the foregoing instrument as her free and voluntary act.

Given under my hand and notarial seal on Xxxxxx, 2020.

Notary Public

In the Matter of the Trust Administration of the)
xxxxxx Living Trust, dated xxxxxx)
and any amendment thereto)
xxxxxx, Decedent)

RECEIPT

I, [Attorney], Attorney at Law, hereby acknowledge receipt of the following original documents:

_____ Last Will and Testament

_____ Trust documents

_____ Death Certificate

_____ Others:

Dated: Xxxxxx, 2020

[FIRM]

By: [Attorney]

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

IN THE LAKE SUPERIOR COURT
SITTING AT
CROWN POINT, INDIANA

IN THE MATTER OF THE ESTATE OF)
) ESTATE NO.
XXXXXXXX, DECEASED)

PETITION FOR PROBATE OF WILL

xxxxxx, Petitioner, being sworn, shows the Court that:

1. xxxxxxxx died on xxxx, 2020, domiciled in Lake County, Indiana.
2. Petitioner is interested in Decedent's estate by reason of being the Daughter of the Decedent pursuant to I.C. 29-1-7-4(a)
3. Decedent died testate, leaving a Last Will and Testament dated December 10, 2014, and is delivered to the Court herewith.
4. The legatees and devisees of Decedent are:

xxxxxxx Living Trust, dated xxxxxxxx
Xxxxxxx
[address]

5. The creditors of the Decedent are unknown to Petitioner at this time.
6. There are no pretermitted children of Decedent.
7. The probable value of Decedent's real property is \$.00

The probable value of Decedent's personal property is \$.00

The probable value of the annual rents, issues and profits of all property of the estate is \$.00

IN THE MATTER OF THE ESTATE OF)
)
XXXXXXXXXXXXXXXXXXXXX, DECEASED)

8. The name and address of the Interested Person named in the Decedent's Last Will and Testament is:

Xxxxxxx
[address]

9. The name and business address of the Attorney who will represent the Personal Representative is:

[ATTORNEY]
[FIRM]
[Address]
[PHONE]

WHEREFORE, the undersigned prays the Court that Decedent's Will may be probated.

I affirm under the penalties of perjury that the above and foregoing is true and correct.

Dated: Xxxxxxx ____, 2020

XXXXXXX

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

IN THE LAKE SUPERIOR COURT
SITTING AT
CROWN POINT, INDIANA

IN THE MATTER OF THE ESTATE OF)
) ESTATE NO.
XXXXXXXX, DECEASED)

ORDER OF PROBATE OF WILL

XXXXXXX has submitted to the Court a document purporting to be the self-proved Last Will and Testament of xxxxxxxx, Deceased, and a Petition for its probate. The document and Petition are submitted to the Court, and the Court having examined them, and being advised, finds that the allegations of the Petition are true, and that:

1. The Decedent died on or about xxxx, 2020, and at the time of death was domiciled in Lake County, Indiana.
2. The document submitted as Decedent's Last Will and Testament has been proved as a self-proved Will, is the Last Will and Testament of Decedent, and as such should be admitted to probate in this County.

IT IS THEREFORE ORDERED AND DECREED by the Court that:

The document submitted is the Last Will and Testament of the Decedent, and hereby is admitted to probate and record as such. As there is no other action in this matter, this Estate is hereby closed.

All of which is found and recommended this ____ day of _____, 2020.

Probate Commissioner, Lake Superior Court

All of which is so ordered and approved this ____ day of _____, 2020.

Judge, Lake Superior Court

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

IN THE LAKE SUPERIOR COURT
SITTING AT
CROWN POINT, INDIANA

IN THE MATTER OF THE ESTATE OF)
) ESTATE NO.
XXXXXXXXXXXXXXXXXXXXX, DECEASED)

**NOTICE OF EXCLUSION OF CONFIDENTIAL INFORMATION
FROM PUBLIC ACCESS**

Contemporaneous with the tender of this notice, [Attorney], Attorney for Petitioner has tendered confidential information under the Indiana Rules on Access to Court Records. [Attorney] provides this notice that the confidential information is to remain excluded from public access in accordance with the authority listed below:

Name or description of document: ACR Grounds for Exclusion

[ATTORNEY]
[FIRM]
[Address]

In the Matter of the Trust Administration of the)
XXXXXXXXX Living Trust, dated XXXXXXXX,)
and any amendment thereto)
XXXXXXXXX, Decedent)

NOTICE TO BENEFICIARY

This is to notify you that as of xxxxxx ___, 2020, the undersigned is the duly qualified and acting Trustee of the xxxxxxxx Living Trust, "Trust", dated xxxxxxxx, which Trust is still in existence. As a Beneficiary of the Trust, you are entitled to be advised as to the change of Trustees that has taken place in the Trust.

Under the terms and conditions of Article Three of the Trust, upon the death of xxxxxxxx, who died on xxxx, 2020, XXXXXXXX is to serve as Successor Trustee of the Trust.

In the future, all inquiries regarding the Trust should be directed to:

xxxxxx, Trustee
XXXXXXXXX Living Trust, dated xxxxxxxx
[address]
[Phone]

A person must commence a judicial proceeding to contest the validity of a Trust that was revocable at the Settlor's death at the earliest of the following:

- (1) Ninety (90) days from the date you received a copy of the Trust certification and the information contained in this Notice; or
- (2) Three (3) years after the Settlor's death.

Dated: XXXXXXXX ___, 2020

XXXXXXXXX, Successor Trustee
XXXXXXXXXX Living Trust

[ATTORNEY]
[FIRM]
[Address]
[PHONE]
[FAX]
[EMAIL]

TRUST CERTIFICATION

The undersigned, as Trustee, "Trustee" of the XXXXXXXXX Living Trust, "Trust" dated XXXXXXXXX, hereby certifies as follows:

1. The Trust was originally executed on XXXXXXXXX, and is still in existence;
2. The Settlor/Trustor of the Trust was XXXXXXXXX;
3. The currently acting Trustee is:
XXXXXXX
[address]
[phone number]
4. The powers of the Trustee are set forth in Exhibit A, attached hereto and made a part hereof;
5. The Trust is an irrevocable trust and no person has the power to revoke the Trust;
6. The title to any Trust property is to be held as follows:

XXXXXXX, Trustee, or her successors in Trust, under the XXXXXXXXX Living Trust, dated XXXXXXXXX, and any amendments thereto;
7. The Trust has not been revoked, modified or amended in any manner that would cause the representations contained herein to be incorrect;
8. This Certification is made pursuant to the terms and conditions of I.C. 30-4-4-5.

IN WITNESS WHEREOF, XXXXXXXX, as Successor Trustee of the XXXXXXXXX Living Trust has executed this Certification of Trust on XXXXXXXX ____, 2020.

XXXXXXX, Successor Trustee

State of Indiana)
County of Lake) **ss:**

Before me the undersigned, a Notary Public for said County and State, personally appeared XXXXXXXX, and acknowledged the execution of the foregoing instrument on XXXXXXXX ____, 2020.

Notary Public

Xxxxxxx ___, 2020

Mr. XXXXXXX

RE: Trust Administration for XXXXXXXXX

Dear Ms. XXXXXXXXX:

Due to the death of xxxxxxxx, the assets held in the xxxxxxxx Living Trust need to be re-titled with your name as Trustee. The name in which all assets should be held is as follows:

**XXXXXXX, Trustee, or her successors in Trust, under the
XXXXXXXXXX LIVING TRUST, dated xxxxxxxx,
and any amendments thereto**

You will need to contact each institution that holds accounts in the Trust and request the change to the account ownership as stated above. This will also be the title to all new accounts you open in the future.

Please be sure to follow-up with these asset holders in a few weeks and make sure the changes have been made as you requested. If you have any problems with the re-titling of accounts, please contact me immediately.

If you have any questions, please do not hesitate to call me.

Very truly yours,

[FIRM]

By: [Attorney]

IN THE MATTER OF THE)
TRUST ADMINISTRATION OF)
_____ LIVING TRUST, DATED _____,)
_____, DECEDENT)

SUCCESSOR TRUSTEE'S ACCOUNTING

I. As Successor Trustee of the _____ Living Trust, dated _____, I am chargeable with the following assets valued as of the date of death/incapacity of _____ on _____, 1999:

Total Chargeable Assets: \$ xxxxx.xx

II. As Successor Trustee of the _____ Living Trust, dated _____, I am chargeable with the following additional assets:

Total Additional Assets: \$ xxxxxx.xx

III. As Successor Trustee of the _____ Living Trust, dated _____, I claim credit for the following payment of expenses in this Trust Administration:

Total Credits/Payments: \$ xxxxxx.xx

IV. As Successor Trustee of the _____ Living Trust, dated _____, I claim credit for the following previous distributions made to the Beneficiaries of this Trust:

Total Distributions: \$ xxxxxx.xx

V. Recapitulation:

Total Chargeable Assets:	\$ xxxxxx.xx	
Total Additional Assets:	<u>xxxxxx.xx</u>	
Total Assets:		\$ xxxxxx.xx
Total Credits – Payments	\$ xxxxxx.xx	
Total Distributions:	xxxxxx.xx	
Total Credits/Distributions:		\$ xxxxxx.xx
TOTAL AVAILABLE TO DISTRIBUTE		<u>\$ xxxxxx.xx</u>

Assets available to Distribute are:

1. Cash
2. Etc.
3. Etc.

VI. Proposed Distribution:

A. Beneficiary _____

Cash	\$ xxxxxx.xx	
Assets in kind:		
_____	\$ xxxxxx.xx	
_____	\$ xxxxxx.xx	
Total:		\$ xxxxxx.xx

B. Beneficiary _____

Cash	\$ xxxxxx.xx	
Assets in kind:		
_____	\$ xxxxxx.xx	
_____	\$ xxxxxx.xx	
Total:		<u>\$ xxxxxx.xx</u>

TOTAL ASSETS TO BE DISTRIBUTED: \$ xxxxxx.xx

I affirm under the penalties for perjury that the above and foregoing is true and correct as of this _____ day of _____, 2020.

[Successor Trustee]

In The Matter of the Trust Administration of the _____)
_____ Living Trust, dated _____,)
_____, Decedent)

WAIVER AND CONSENT

[Name of person waiving accounting], as [beneficiary of trust estate], being sworn, states that:

1. He/She is the _____ of the _____ Living Trust, dated _____.

[should be whoever is waiving the accounting and their relationship to the Trust, i.e., general distributee, specific distributee, etc.]

2. He/She is familiar with the management of the affairs of the _____ Living Trust, dated _____, and of the duties performed by _____, the Successor Trustee of the Trust, and hereby waives the requirement of receiving an accounting of the affairs of the Trust from the date of Decedent's death to the current date.

I affirm under penalties for perjury, the above and foregoing is true and correct on _____, 2020.

[name of person filing waiver/consent],
[relationship of person to Decedent's Trust]

In The Matter of the Trust Administration of the _____)
_____ Living Trust, dated _____,)
_____, Decedent _____)

RECEIPT AND RELEASE

Received of _____, Successor Trustee of the above-entitled Trust, the following described property:

[list assets and values of distributive shares]

I acknowledge that such assets represent all of my distributive share in the Trust Estate of _____ and I accept the distribution as full and complete satisfaction of my interest in the Trust Estate.

The undersigned does release and forever discharge _____ as Successor Trustee of the _____ Living Trust, of and from the claim for the distributive share, and of and from all actions, claims and demands whatsoever, for or by reason thereof, or of any other act, matter, cause, or thing whatsoever arising out of the aforesaid Trust Estate of _____, Deceased, or the administration thereof, as well as his/her agents, attorneys, accountants and/or other representatives.

I affirm under penalties of perjury that the foregoing is true and correct on _____, 2020.

[name of beneficiary/heir]
Address
Address
Soc. Sec. #

**MAIL TAX BILLS TO
AND GRANTEE'S ADDRESS:**

TAX KEY NO:

REAL ESTATE ADDRESS:

TRUSTEE'S DEED

This Indenture Witnesseth that xxxxxxx, as Trustee of the xxxxxx Living Trust dated xxxxxxxx, does hereby grant, bargain, sell and convey to:

XXXXXXXXXXXXXXXXXX

of Lake County, Indiana, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, a certain parcel of real estate in Lake County, Indiana, to-wit:

[insert legal description]

This conveyance is subject to State, County and, City taxes for 2020 payable in 2021, and all subsequent years; all special assessments levied prior to and payable subsequent to the date hereof; building and zoning ordinances now or hereafter in effect; easements; restriction of record and questions of survey. Grantor expressly limits said Warranties only against the acts of the Grantor and all persons claiming by, through or under the Grantor.

This Deed is executed pursuant to, and in the exercise of, the powers and authority granted to and vested in the Trustee by the terms of the unrecorded Trust Agreement dated the xxx day of xxxxxxxx and known as the xxxxxxx Living Trust, as well as the powers and authorities in the Deed or Deeds in Trust, under which title to the above described real estate is held and that the Trustee has full power and authority to execute this document as of the date of execution/closing.

IN WITNESS WHEREOF, xxxxxxx, as Trustee, has executed this Deed this _____ day of xxxxxxx, 2020.

**XXXXXXXXXXXXXXXXXXXX, as Trustee of the xxxxxxxx
Living Trust, dated xxxxxxxx**

Witness:

Printed Name: _____

STATE OF INDIANA)) SS
COUNTY OF LAKE))

I am a Notary Public in and for said County and State, and do hereby certify that XXXXXXXXXX, as Trustee, personally known to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered the instrument as her free and voluntary act, for the uses and purposes set forth therein.

GIVEN under my hand and Notarial Seal on xxxxxxxxxxxx _____, 2020.

Notary Public

STATE OF INDIANA)) SS
COUNTY OF LAKE))

Before me the undersigned, a Notary Public for said County and State, personally appeared _____, being known or proved to me to be the person whose name is subscribed as a witness to the foregoing instrument, who being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by XXXXXXXXXX, as Trustee, in the foregoing subscribing witness' presence.

Notary Public

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

/s/ [Attorney] _____
[Attorney]

Prepared by: Attorney [Name], [Address]; [phone]

Trust Administration



O'Drobinak & Nowaczyk, P.C.

An Elder Law & Estate Planning Firm

Cori A. Mathis

Schererville, Indiana



What is a Trust and what type of Trust are we talking about today?

- Revocable Living Trust
- written agreement created and effective during the Trustor's life and revocable as long as Trustor is alive and mentally competent
- Fiduciary relationship between the Trustee who manages the property and the beneficiary for whom title is held



Three Positions in a Trust

- Trustors
- Trustees
- Beneficiaries



Benefits of a Living Trust

- Probate Avoidance
- Privacy
- Assets controlled under one plan



How does it work?



- A Living Trust is just another way to hold title to assets



Funding - Put Assets Into the Trust



When the Trustee is a Trustor, it's business as usual ...

- ...your Client(s) are in control!
The trust can be amended or revoked
 - No change in property tax
 - No income tax change
 - No new tax forms



When does a Trustee need to be replaced?

- Incapacity
- Resignation
- Death



Naming a Successor Trustee – basic provisions

- IC 30-4-2-11
- A Trustee must:
 - have the capacity to take, hold, and deal with property; and
 - must be at least eighteen (18) years of age;
 - be of sound mind and of good moral character
 - If the trustee is a corporation, it must have the power to take, hold, and deal with property and have the power to act as trustee.



Incapacity of the Trustee

- Determination
 - Physician's Report
 - Court Order



Incapacity of the Trustee

- Documentation
 - Successor Trustee instructions
 - Acceptance & Oath
 - Attorney's Certification
 - Successor Trustee Certification
 - Receipt of Trust Assets
 - Notice to Beneficiaries
 - Accounting



Trustee resigns

- Determination
 - Written resignation



Trustee resigns

- Documentation
 - Successor Trustee instructions
 - Acceptance & Oath
 - Attorney's Certification
 - Successor Trustee Certification
 - Receipt of Trust Assets
 - Notice to Beneficiaries
 - Accounting



Trustee dies

- If the Trustee was not the Trustor:
 - Successor Trustee instructions
 - Acceptance & Oath
 - Attorney's Certification
 - Successor Trustee Certification
 - Receipt of Trust Assets
 - Notice to Beneficiaries
 - Accounting



Trustee dies

- If the Trustee was the Trustor:
 - Trust Administration ...



Basic Provisions – Trustee duties and responsibilities

- Drafter has flexibility - Read the Trust
- If silent, default to statutes (See I.C. 30-4-3-1.3, et seq)
- The fiduciary nature of the trustee's duties imposes the obligation of good faith



Basic Provisions – Trustee duties and responsibilities

- Collect and maintain control over Trust assets
- Preserve Trust property & do not commingle
- Maintain clear and accurate records
- Keep beneficiaries reasonably informed
- Pay expenses and taxes
- Distribute to beneficiaries



Collect and maintain control of Trust assets

- Trust Administration Questionnaire
- Be aware of assets outside of the Trust
 - Beneficiary accounts
 - Death Certificate
 - Estate assets
 - Probate?
 - Small Estate Affidavit?
 - Last Will and Testament?



Collect and maintain control of Trust assets

- Date of death valuation
 - Appraisals
 - Financial records
- EIN
- Spread the Will of Record



Notify Beneficiaries

- Acceptance & Oath
- Attorney's Certification
- Successor Trustee Certification
- Receipt of Trust Assets
- Notice to Beneficiaries (90 days)
- Trust Certification
- Trust Agreement (or excerpts)



Clear and Accurate records

- Bank statement with check images
- Receipts and Disbursements
- Time log



Trustee Fee

- Will Trustee take a fee?
- Individual trustees - hourly
- Corporate trustees - usually a percentage based system



Preserve Trust assets

- Date of death valuation
- Going forward - Default is Uniform Prudent Investor Act
 - General economic conditions
 - Inflation
 - Deflation
 - Tax consequences
 - Projected income
 - Appreciation
 - Etc.



Pay expenses and taxes

- CPA with experience preparing fiduciary tax returns
- Trust may set out Trustee's role in paying bills
- The statute establishes a priority in which nonprobate transferees are liable (IC 32-17-13):
 - As provided in the decedent's will or other governing instrument.
 - Revocable Trusts, proportionately, if more than one.
 - All other eligible nonprobate transfers, proportionately.



Distribution

- Be aware of 90 days and 120 days
- Trustee's Deed
- Accounting (bank statements)
- Receipt and Release



Section Four

Round Table Discussion

Common and Unusual tricks, tips and traps in Estate and
Trust Administration

Section Four

Round Table Discussion – Common and Unusual Tricks, Tips and Traps in Estate and Trust Administration.....Panel

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Beneficiary in Bankruptcy

If an heir/beneficiary is in bankruptcy, their inheritance is an asset and property of the bankruptcy estate. The beneficiary's interest must be turned over to the bankruptcy trustee. Usually, the bankruptcy trustee will notify you with Form 309A – Notice of *Bankruptcy*, and ask for an inventory. The bankruptcy trustee will then determine the bankruptcy estate interest of the beneficiary's inheritance and a notice will be issued, in writing, if the bankruptcy trustee will continue to assert an interest or if they feel "it is not worth pursuing". Do not assume the bankruptcy no longer affects the beneficiary's inheritance until you are notified in writing. You cannot make a distribution unless the bankruptcy trustee consents, approves, etc. If you release the distribution directly to the bankruptcy beneficiary you could face sanctions.

Information to identify the case:
 Debtor 1: _____
 First Name Middle Name Last Name

 Social Security number or ITIN: _____
 EIN: ____-____-____

 Debtor 2: _____
 (Spouse, if filing) First Name Middle Name Last Name

 Social Security number or ITIN: _____
 EIN: ____-____-____

United States Bankruptcy Court: Northern District of Indiana

Date case filed for chapter: 7

Case number: _____

Official Form 309A (For Individuals or Joint Debtors)**Notice of Chapter 7 Bankruptcy Case -- No Proof of Claim Deadline**

12/15

For the debtors listed above, a case has been filed under chapter 7 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors or the debtors' property. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

The debtors are seeking a discharge. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 9 for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

	About Debtor 1:	About Debtor 2:
1. Debtor's full name		
2. All other names used in the last 8 years		
3. Address		
4. Debtor's attorney Name and address		Contact phone Email: _____
5. Bankruptcy trustee Name and address		Contact phone Email: _____

For more information, see page 2 >

<p>6. Bankruptcy clerk's office</p> <p>Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at www.pacer.gov.</p>	<p>5400 Federal Plaza Suite 2200 Hammond, IN 46320</p>	<p>Hours open: 9:00 a.m. – 4:00 p.m. Monday – Friday</p> <p>Contact phone 219-852-3480</p> <p>Date: 7/10/20</p>
<p>7. Meeting of creditors</p> <p>Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend. Creditors may attend, but are not required to do so.</p>	<p>Δ..</p> <p>The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.</p>	<p>Meeting to be held telephonically:</p> <p>Telephone Number: 877-407-5726, Access Code: 7349246</p>
<p>8. Presumption of abuse</p> <p>If the presumption of abuse arises, you may have the right to file a motion to dismiss the case under 11 U.S.C. § 707(b). Debtors may rebut the presumption by showing special circumstances.</p>	<p>The presumption of abuse does not arise.</p>	
<p>9. Deadlines</p> <p>The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.</p>	<p>File by the deadline to object to discharge or to challenge whether certain debts are dischargeable: Filing deadline: 10/13/20</p> <p>You must file a complaint:</p> <ul style="list-style-type: none"> • if you assert that the debtor is not entitled to receive a discharge of any debts under any of the subdivisions of 11 U.S.C. § 727(a)(2) through (7), or • if you want to have a debt excepted from discharge under 11 U.S.C § 523(a)(2), (4), or (6). <p>You must file a motion:</p> <ul style="list-style-type: none"> • if you assert that the discharge should be denied under § 727(a)(8) or (9). <hr/> <p>Deadline to object to exemptions: Filing deadline: 30 days after the conclusion of the meeting of creditors</p> <p>The law permits debtors to keep certain property as exempt. If you believe that the law does not authorize an exemption claimed, you may file an objection.</p>	
<p>10. Proof of claim</p> <p>Please do not file a proof of claim unless you receive a notice to do so.</p>	<p>No property appears to be available to pay creditors. Therefore, please do not file a proof of claim now. If it later appears that assets are available to pay creditors, the clerk will send you another notice telling you that you may file a proof of claim and stating the deadline.</p>	
<p>11. Creditors with a foreign address</p>	<p>If you are a creditor receiving a notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.</p>	
<p>12. Exempt property</p>	<p>The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at www.pacer.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 9.</p>	

Beneficiary in Prison

A beneficiary who is in prison can still receive an inheritance, unless of course the beneficiary caused the death of the decedent. Do not be surprised if you receive a letter from the imprisoned beneficiary before you even send out any correspondence. Ideally, the beneficiary will execute a Power of Attorney on the “outside” who you, as the attorney, can contact. It is very difficult to communicate with a beneficiary in prison, even via U.S. Mail. If the beneficiary appoints a POA, then you can deal directly with that fiduciary to review accountings, sign necessary waivers, and receive distributions.

If this is an estate, one option could be to open an unsupervised estate. Under IC 29-1-7.5-3(b), a personal representative can establish a trust without court order:

(b) A personal representative who administers an estate under this chapter may, without court order, establish a trust to make distributions to a distributee who is under a legal disability or whom the personal representative reasonably believes is incapacitated. In establishing a trust under this subsection, a personal representative may exercise:

(1) the authority given to custodians under the Indiana Uniform Transfers to Minors Act (IC 30-2-8.5) to create a trust that satisfies the requirements of Section 2503(c) [FN1] of the Internal Revenue Code and the regulations adopted under that Section; or

(2) the authority given to an attorney in fact under IC 30-5-5-15(a)(3) to establish a revocable trust for the benefit of a principal.

When a Beneficiary is Disabled and Receiving Government Benefits:

It is very important to speak with each beneficiary to find out more information about their circumstances. If the beneficiary is disabled and receiving means based social security payments (SSI) or Medicaid, proper planning will need to be utilized before distribution.

If the beneficiary is a disabled adult, receiving one or both of the above benefits, you will want to inquire if the beneficiary is able to make their own decisions or if they have a POA or Guardian that helps them.

If the distribution is small, you may want to consider a spend down of the funds. A spend down consists of spending the funds prior to the following first of the month. This means you will want to distribute early in a month so there is ample time to spend funds. Some items that can typically be purchased by a disabled adult receiving benefits are: a vehicle, residence, upgrades to residence, education, vacation. It will be important to consult with an Elder Law or Disability attorney to determine what benefits are in play and what are appropriate expenses for the spend down.

If the distribution is large and impractical to spend down in a month, you may want to consider a special needs trust or a pooled special needs trust, like the ARC. It will need to be a First Party Special Needs Trust, unless the Will/Trust already speaks to a testamentary special needs trust.

Some trusts/wills have provisions that allow for you to create a special needs trust if a beneficiary is disabled.

The Beneficiary is a Minor

If a beneficiary is a minor and the estate plan does have provisions for the funds' protection, the personal representative will want to determine who is to receive the funds on the minor's behalf.

Look to the Will or Trust to see if it outlines what happens to the funds if the beneficiary is a minor. If nothing is specified then, in an Unsupervised Administration, IC 29-1-7.5-3(a)(28) allows for the Personal Representative to distribute funds to the distributee, to the distributee's guardian, to the custodian under UTMA or UCTA (Uniform Custodial Trust Act) or paying the amount to the trustee of a trust established by the decedent or created by the Personal Representative in section (b) of the same section. IC 29-1-7.5-3(b) allows for the Personal Representative to create a trust for the purposes of a minor.

UTMA can be utilized, however, anything over \$10,000 would require a court order when there is an estate. (Supervised or Unsupervised - Some conservative judges would require the estate to convert to supervised if this were required in an unsupervised estate).

30-2-8.5-24 outlines language for how to transfer specific assets.

30-2-8.5-20 outlines how to transfer by Will or Trust

30-2-8.5-21 outlines other fiduciary transfers

30-2-8.6 et. seq. outlines the UCTA

A court can allow the Trustee or Personal Rep to create a trust for the benefit of a minor which allows for creative trust drafting after proper hearing and review.

Guardianships and Estates

When the decedent had a court appointment guardian, the same rules outlined in today's CLE apply except there will be a formal transfer of assets from the guardianship to the Personal Representative of the Estate.

Assuming there were assets in the Guardianship Estate, there will need to be a formal accounting in the Guardianship proceeding and a petition for closure outlining the transition of the Guardianship assets.

If there is a probate estate, the final accounting needs to be served on the Personal Rep and when the accounting is approved in the Guardianship cause number, the Guardian can transfer the assets into the custody of the Personal Rep. There will need to be a supplemental report filed within the Guardianship cause to show the transfer has been made. I also suggest getting a "receipt" from the Personal Rep and filing it along with the supplemental report.

Once that transfer has been made from Guardian to Personal Rep, the Estate moves forward as previously outlined in this course.

What if the Guardian and the Personal Representative are the same person? You will still need to go through the same process since they are different fiduciary roles.

What if there won't be a probate estate? You will still create a final accounting for the court and a petition to close the guardianship. In the petition to close, instead of outlining a transfer to the Personal Rep of the estate, you will state there is no need for an estate and assets can be distributed using a Small Estate Affidavit. If this is the case, you will want to wait the 45 days from date of death.

What if there will be no probate estate but there are expenses/funeral costs? Guardian can still plan a funeral and use Guardianship assets to do so prior to closure of the Guardianship.

In some cases, you will not represent the Guardian, therefore you just want to keep in contact with the attorney for the guardianship. If you are handling both, it makes for a smooth transition.

Sample

Family Settlement Agreement

ESTATE FAMILY SETTLEMENT AGREEMENT

This Agreement is entered into by and between Mary E. Jones, "JONES", and Susan White, Dennis M. Smith, Cindy Child, Edward Smith, Janice Kidd, and John A. Smith, "HEIRS", effective as of the date of the last signature below.

RECITALS

1. All the Parties hereto are the Children and HEIRS of Sam J. Smith and Dorothy M. Smith, both of whom are deceased, "DECEDENTS";
2. The Parties are desirous of settling any issues relative to the HEIRS of Sam J. Smith, "SAM", and Dorothy M. Smith, "DOROTHY", and the distribution of the assets in the Smith Family Trust, "TRUST";
3. JONES has been overseeing and caring for the DECEDENT's real estate, including maintaining and paying all expenses associated with it since the death of her Father, SAM;
4. The HEIRS are desirous of compensating JONES for all of her efforts on behalf of their Father, SAM, in caring for him prior to his death, his Residence after his death, which has been sold, now through her efforts, and for other matters for the benefit of their Family;
5. SAM and DOROTHY, prior to their respective deaths, executed a Living Trust, entitled TRUST, dated August 2, 2004, which provided for the disposition of the TRUST assets upon the death of the Survivor;
6. SAM and DOROTHY subsequently made informal, handwritten changes to the Residuary Beneficiaries of the TRUST, by which they disinherited two Children, David J. Smith and Mary E. Jones, "JONES", for reasons known by all Parties hereto;
7. All Parties to this Agreement wish to honor these disinheritance provisions, even though they were made informally, because they evidenced the true intentions of our Parents in distributing their assets, upon their death;
8. Notwithstanding the disinheritance provisions of the TRUST, as informally modified by SAM and DOROTHY, HEIRS are desirous of benefitting JONES for her many efforts on behalf of DOROTHY, SAM and the entire Smith Family;
9. The HEIRS desire that all funds remaining in the Estate of SAM be distributed to JONES in recognition of her efforts for caring for SAM, and for other matters as well, all of which are well known to the HEIRS;

COVENANTS

For and in consideration of the terms and conditions hereof, their performance and other good and valuable consideration, the receipt of which is acknowledged, the Parties hereto agree as follows:

1. JONES is to receive all funds remaining in the Estate of SAM as an Inheritance, in appreciation of her many services for the benefit of the SMITH FAMILY which she may use for her own personal use, after payment of any remaining expenses;
2. JONES shall take whatever action is necessary to make this distribution, and if necessary to advise the Court that by execution hereof, all of the HEIRS waive notice of any proceeding that may be held in SAM's Estate and consent to any and all relief required in any matters that are now, or hereafter, before the Court necessary to carry out the terms of this Agreement;
3. JONES, from the remaining funds in the Estate, shall pay any and all expenses still outstanding and thereafter, the remaining funds are to be distributed to her, as her own inheritance;
4. The Parties hereto all agree that the purpose of this Agreement is to carry out the terms of the TRUST, as informally modified by SAM and DOROTHY, including the Last Will and Testament of SAM, which was also informally modified, and to benefit JONES for her years of unselfish caring for DOROTHY, SAM, and generally the SMITH FAMILY;
5. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall be deemed one document and binding upon all of the signatories hereto, their respective heirs, successors, assigns and personal representatives.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set out opposite their signature, and each of them acknowledges they have executed this Agreement for the uses and purposes set forth herein, and each, by execution hereof, further acknowledges that they, and each of them, affirm under the penalties for perjury, that the above and foregoing is true and correct and may be relied upon for the uses and purposes set forth herein.

FAMILY SETTLEMENT AGREEMENT

This Agreement is entered into on _____, 2019, by and between Thomas C. Seuss, Valerie Jones, Brad Seuss, and Buddy Seuss, "Beneficiaries", and Helen Seuss, Spouse of Bart Seuss, deceased, "Spouse", and Court-appointed Personal Representative of the Estate of Bart Seuss, deceased, "Personal Representative".

RECITALS

1. Bart Seuss, "Decedent", died intestate on June 8, 2019;
2. During the administration of Decedent's assets, it was discovered that an account at Chase Bank, "Asset", was solely owned by the Decedent;
3. That the date-of-death value of the Asset was \$250,048.81, and as a result, an Estate was opened and a Personal Representative appointed in order to administer the Asset;
4. Beneficiaries and Spouse are the heirs-at-law as allowed under Indiana law, and are entitled to the distribution of this Asset in accordance with I.C. 29-1-2-1;
5. That pursuant to said statute, the Spouse shall receive one-half (1/2) of the Asset and the remaining one-half (1/2) shall be divided between the Beneficiaries on an equal basis.

COVENANTS

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, their full performance, and other good and valuable consideration, the Parties agree as follows:

1. The Beneficiaries, by signing this Family Settlement Agreement, agree to waive their individual distributive shares so that Spouse receives the full distribution of the Asset;
2. Each Party hereby releases and forever discharges each of the other Parties, both in their individual and/or beneficiary capacities, if applicable, their attorneys, agents, accountants and representatives, from and against any and all claims, demands, and/or causes of action of any nature or kind, whether in existence now or arising hereafter, out of, or in any way connected with, the Estate, and/or its administration.
3. The Personal Representative shall administer the Asset accordingly and make full distribution to the Spouse;
4. This Agreement shall be governed by the laws of the State of Indiana, and shall be binding upon all of the Parties, their heirs, personal representatives, trustees, fiduciaries of any kind, successors and assigns.

5. This Agreement may be executed in counterparts by the Parties. When so executed, each counterpart shall have the same effect as though each Party executed a single document.

Each of us hereby affirm under the penalties of perjury that the above and foregoing is true and correct.

BENEFICIARIES:

Dated: _____

Dated: _____

Dated: _____

Dated: _____

SPOUSE AND PERSONAL REPRESENTATIVE

Dated: _____

Helen Seuss

**TRANSFER ON DEATH DEED -
REVOCATION**

**MAIL TAX BILLS TO:
AND GRANTEE'S ADDRESS:**

TAX KEY NO.

ADDRESS OF REAL ESTATE

REVOCAION OF BENEFICIARY DESIGNATION

The undersigned being first duly sworn upon his oath states:

1. That Affiant is the owner of a parcel of real estate commonly known as [address]. more particularly described as follows:

[insert legal description]

2. Affiant executed a Transfer on Death Deed that was recorded on xxxx, as Document Number xxxx in the Office of the Recorder of xxxx County, Indiana, with xxxxxx, as Primary Beneficiary.

3. That Affiant hereby revokes that beneficiary designation and revokes the Transfer on Death Deed so that Affiant is not transferring on death pursuant to the Transfer on Death Deed.

4. Affiant simultaneously with this Revocation is executing a Quit Claim Deed.

5. Affiant makes this Affidavit in order to place the revocation of said Transfer on Death Deed and said Primary Beneficiary of record in the Office of the Recorder of xxxxxx County, Indiana.

Dated this _____ day of _____, 2020.

STATE OF INDIANA)
)
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that xxxxxxxxx, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this _____ day of _____, 2020.

Notary Public

EXECUTED AND DELIVERED in my presence:

Witness: _____
Printed Name

STATE OF INDIANA)
) **SS:**
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, being known to me to be the person whose name is subscribed as a witness to the foregoing instrument, who, being duly sworn by me, deposes and says that the foregoing instrument was executed and delivered by xxxxxx in the above-named subscribing witness's presence, and that the above-named subscribing witness is not a party to the transaction described in the foregoing instrument and will not receive any interest in or proceeds from the property that is the subject of the transaction.

Witness my hand and Notarial Seal this ____ day of _____, 2020.

Commission Number:
County of Residence: Lake
Commission expiration date:

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

Document Prepared By:

**DISTRIBUTION OF
PERSONAL PROPERTY**

MEMORANDUM REGARDING
HOUSEHOLD FURNISHINGS AND PERSONAL POSSESSIONS

One of the biggest emotional problems you will face is disposing of the Decedent's household furnishings and/or personal possessions. Some of the heirs may very well say, "Mom promised me that", "Dad promised I could take what I want", etc. You cannot accept any of these statements and follow these alleged instructions. You have no way of verifying these things.

It may very well be that the Decedent marked various items of major importance with someone's name. Check these and see if that was done. If so, then give those items to the person whose name is on it.

In the absence of this, you should take the following action:

1. Determine whether there is a Distribution Memorandum, or some similar written, signed document. If so, carry out those written instructions and make the distributions;
2. If you are going to sell the real estate, whatever plan you use to dispose of the household furnishings and personal possessions, do NOT empty the house of these items until the real estate is sold and there are just a few weeks left before closing. Insurance companies do not like to insure residential property that is void of all household furnishings.
3. If there are no written instructions, set a date and time (not too far away) and advise the heirs to meet at the house to divide these assets. Everyone should draw a number to establish the order of choosing items, one item per round. Then take turns, what's left is what no one wants;
4. The items no one wants can be donated to charity. Pick one, call them and make sure they will pick the items up to save you the trouble of delivering them;
5. If the furnishings or possessions include items of some value, retain an appraiser to value them. If you need the name of an appraiser, let me know and I can provide you with one. You may then want to "sell" these items to an heir, or let them take it at that value as part of their share. Another choice is to sell it to someone who specializes in the resale of these items;
6. You may want to sell smaller items on eBay. This of course will require some work on your part to post it, pack it, and then mail it. If someone helps you, they should be compensated for their time;
7. Hire an auctioneer or other professional to conduct an estate sale if none of the above methods are satisfactory. Remember there is a commission charged for this sale, and possibly expenses as well. Your desire here is to leave the residence totally empty when they are done. How you hire the company is up to you, but remember to check references;

8. If the heirs are not satisfied with any of the above, tell them to conduct the estate sale. Again, nothing is to be left when they are finished. They MUST account to you for all income and all expenses. All funds are turned over to you. You may compensate them, but NOT more than you would have paid a professional.

If you have any questions, or run into any problems that are not addressed here, contact me before you proceed.

Thank you,

[FIRM]

By: [Attorney]

I hereby acknowledge receipt of this Memorandum from [Attorney].

Dated: Xxxxxxx ____, 2020

Xxxxxxx

An Uncooperative Trustee/Personal Representative

September 1, 2020

Mr. Peter C. Seuss
606-N State Road
Whoville, IN 44444

RE: Trust Administration of Constance G. Seuss

Dear Peter:

On March 5, 2020, I sent you a letter inquiring about an update in this Trust Administration as well as an update on the Liens on Real Estate. A copy of which is attached. Unfortunately, you have not provided us with any information.

You have cut off all communications with us regarding this Trust administration. You have a fiduciary responsibility as the Successor Trustee of the Seuss Living Trust to perform your duties in order to proceed in a timely manner with administering all of the Decedent's assets. If, in fact, you have been remiss in your duties, you may be held liable for damages. This includes your uncooperativeness or unwillingness to communicate with me and to provide information as requested.

If you do not provide us with information that shows you have been performing your fiduciary duties, you need to know that I will withdraw from representing you. It is up to you. I am required to give you a ten (10) day notice of my withdrawing my representation of you. At the end of the ten-day period, unless I hear from you, I will be withdrawing from representing you.

Very truly yours,

O'Drobinak & Nowaczyk, P.C.

By: Amy K. Nowaczyk

AKN/maa
Enclosure

October 6, 2020

Mr. Peter C. Seuss
606-N State Road
Whoville, IN 44444

RE: Trust Administration of D. G. Seuss

Dear Peter:

In accordance with the ten (10) day notice that was sent to you on September 1, 2020, please be advised that your files have been closed.

Very truly yours,

O'Drobinak & Nowaczyk, P.C.

By: Amy K. Nowaczyk

AKN/maa

Section Five

Ethics in Estate Planning and in Dealing with the Impaired/Incapacitated Client

America L. McAlpin

Of Counsel, O'Drobinak & Nowaczyk, P.C.
Schererville, Indiana

Section Five

Ethics in Estate Planning and in Dealing with the Impaired/Incapacitated Client..... America L. McAlpin

PowerPoint Presentation

Appendix A

Case Example #2: Guardianship

Appendix B

Example of Psychological Assessment Report

Appendix C

Capacity Assessment Algorithm for Lawyers

Appendix D

Dementia Overview

ETHICS IN ESTATE PLANNING and IN DEALING WITH THE IMPAIRED/ INCAPACITATED CLIENT

America L. McAlpin

O'DROBINAK & NOWACZYK, P.C.

1806 Robinhood Blvd., Suite A

Schererville, Indiana 46375



I can BEE HONEST

**by showing I am truthful
and trustworthy, and not
lying, cheating, or stealing.**

ETHICS IN ESTATE PLANNING

INDIANA RPC's now include Amendments made through 7/3/2019:

- **Preamble: A Lawyer's Responsibilities:** ...“Whether or not engaging in the practice of law, lawyers should conduct themselves honorably.”
- **1.1 Competence:** Evaluate and expand knowledge of estate planning tools and practices; possibly refer out matters outside of one's skill level.
- **1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer:**
 - “...a lawyer shall abide by a client's decisions concerning the objectives of representation...”;
 - “...shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct...”.

ETHICS IN ESTATE PLANNING

- **1.3 Diligence:** “...act with reasonable diligence and promptness...”; should avoid procrastination. If a lawyer “...has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing...”.
- **1.4 Communication:** “... the information to be provided is that appropriate for a client who is a comprehending and responsible adult... fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14.”
- **1.5 Fees:** “... fee customarily charged in the locality for similar legal services...”; consider the time, difficulty of the needed estate plan, and the skill and experience of the lawyer.

ETHICS IN ESTATE PLANNING

- **1.6 Confidentiality of Information:** sharing information on client assets, net worth, family matters; sharing information with other service providers, e.g. investment and tax professionals; “authorized disclosure”.
- **1.7, 1.8, 1.10:** Conflicts of interest, current client, specific rules. Comments are helpful regarding:
 - **1.6--Authorized Disclosure;**
 - **1.7—Interest of Person Paying for Lawyer’s Service;**
 - **1.8—Gifts to Lawyers.**

ETHICS IN ESTATE PLANNING

- **1.18 Duties to Prospective Client: Definition:**
- “...(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.”
- “... Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody...”.
- **8.4 Misconduct:** Catch-all provision; a lawyer shall not: “... violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another”. Lists specific and general acts of misconduct.

ETHICS IN ESTATE PLANNING

- **Guidelines 9.1—9.10 on the USE OF NON-LAWYER ASSISTANTS:**

- **Introduction**

- **“Subject to the provisions in Rule 5.3, all lawyers may use non-lawyer assistants in accordance with the following guidelines:”**

Guidelines listed pertain to Supervision, Permissible Delegation, Prohibited Delegation, Duty to Inform, Identification on Letterhead, Client Confidentiality, Charge for Services, Compensation, Continuing Legal Education *and*

- **“Guideline 9.10. Legal Assistant Ethics: “All lawyers who employ non-lawyer assistants in the State of Indiana shall assure that such non-lawyer assistants conform their conduct to be consistent with the following ethical standards:”**

--Defines “assistants”; Lawyer is responsible for assistants and to client; No unauthorized practice of law; No conflicts of interest; Preserve client confidentiality before during and after representation. **So assistants are governed by the RPC’s.**

DEALING WITH THE IMPAIRED/ INCAPACITATED CLIENT

1.14 Client with Diminished Capacity:

“(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6...”

- **Other possible recourse, legal services:**

- Obtain neurological, psychiatric, psychological evaluations to determine competency.**

- Guardianships, Protective Orders—temporary or permanent .**

Also consider 1.6 provisions and strictures regarding communications, and comments to 1.8 re:

- **Family; Heirs; Beneficiaries requests for information regarding estate planning done by parents, relatives.**
- **Consider possible conflicts of interest, undue influence regarding family members.**

DEALING WITH THE IMPAIRED/ INCAPACITATED CLIENT

Your Right to Decide – ISDH Pamphlet explaining
Indiana medical advance directives.

Downloadable at:

<https://www.in.gov/isdh/files/Advance%20Directive%20Brochure%20-%20Posted%20Version%20Nov%202018.pdf>

**Assessment of Older Adults with Diminished
Capacity: A Handbook for Lawyers**

Downloadable at:

https://www.americanbar.org/groups/law_aging/resources/capacity_assessment/

Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers

EXAMPLES OF “HANDBOOK” CONTENTS INCLUDE:

- **Capacity Worksheet for Lawyers;**
- **Legal Standards of Diminished Capacity;**
- **Lawyer Assessment of Capacity.**

Attached appendices are from several included in the “Handbook”:

- A. Sample attorney referral letter: “RE Referral of Mr. Doe for Mental Health Assessment”.**
- B. Example of a Psychological Assessment Report.**
- C. Capacity Assessment Algorithm for Lawyers .**
- D. Dementia Overview.**

DEALING WITH THE IMPAIRED/ INCAPACITATED CLIENT

- **Assessment of Older Adults with Diminished Capacity:
A Handbook for Lawyers**

This book offers ideas and makes suggestions for attorneys who wish to balance the competing goals of autonomy and protection as they confront the difficult challenges of working with older adults with problems in decision-making capacity. Initial publication 2005, reprinted 2007.

- Downloadable free at:
<https://www.apa.org/pi/aging/resources/guides/diminished-capacity.pdf>
- Order download or print copy at:
<https://www.americanbar.org/products/inv/book/213590/>

DEALING WITH THE IMPAIRED/ INCAPACITATED CLIENT

- **PRACTICAL Tool for Lawyers: Steps in Supported Decision Making**

- A Guardianship Practice Tool described at:

https://www.americanbar.org/groups/law_aging/resources/capacity_assessment/

This resource guide aims to help lawyers identify and implement decision-making options for persons with disabilities that are less restrictive than guardianship. “PRACTICAL” is an acronym for nine steps lawyers can use in case analysis to identify legal and practical approaches to heighten self-determination before moving ahead with guardianship.

- The PRACTICAL Tool aims to help lawyers identify and implement decision-making options for persons with disabilities that are less restrictive than guardianship. It is a joint product of four American Bar Association entities – the Commission on Law and Aging, Commission on Disability Rights, Section on Civil Rights and Social Justice, and Section on Real Property, Trust and Estate Law, with assistance from the National Resource Center for Supported Decision-Making.

- “PRACTICAL” is an acronym for nine steps for lawyers to identify these options. The lawyer can use the PRACTICAL checklist of steps during the client interview and immediately after to assist in case analysis. The steps blend in naturally with the case interview process. Lawyers serving in different roles may use the steps differently than is proposed in these materials.

- Downloadable free at:

- https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool/

-

**ETHICS IN ESTATE PLANNING and
DEALING WITH THE IMPAIRED/INCAPACITATED CLIENT**

Thank You for Your Attention!

APPENDIX A

CASE EXAMPLE #2: Guardianship

A. Example of Attorney Model Referral Letter

RE: Referral of Mr. Doe for Mental Health Assessment

Dear _____:

As we discussed by telephone, I am writing to make a referral of Mr. Doe for a mental health assessment, with primary emphasis on financial management abilities and, to a lesser extent, health care decision-making capacity. I am representing Mr. Conservator, who is the court-appointed conservator for Mr. Doe. Mr. Doe has consented to the assessment and either he or Mr. Conservator will contact you to arrange an appointment. Mr. Doe also has consented to release of the assessment results to Mr. Conservator, as well as to me as counsel for Mr. Conservator (see attached release). Mr. Doe has consented to your contacting his son for additional information. Mr. Conservator has agreed to payment for the proposed assessment from the funds of Mr. Doe, but will need a statement of the procedure's cost in advance. Below is background information that may be of help in conducting the assessment and preparing the report.

Background: According to Mr. Conservator, Mr. Doe is a Korean War veteran, age 72, a widower with four adult children. He has multiple chronic medical conditions as detailed in his records (attached), as well as a history of alcohol problems, various mental problems, and possibly some degree of dementia. Mr. Conservator reports that Mr. Doe shows some degree of confusion, yet still seems to have some understanding of his financial situation. Mr. Conservator was appointed by the County Probate Court to serve as conservator in 1995. In that capacity, he manages all of the income of Mr. Doe (military benefits, Social Security, small pension). Mr. Doe has no substantial assets and lives with his son. Mr. Conservator provides Mr. Doe with a stipend of \$600 per month for food, gas, and other spending. Mr. Conservator reports that he was selected as conservator due to evidence of quarrels among Mr. Doe's children. Mr. Doe has expressed confidence in his son. However, the son has medical and neurological problems of his own due to an auto accident.

Triggering Issue: Recently, Mr. Doe has had specific needs for larger amounts of cash, and has expressed frustration to Mr. Conservator that he lacks control of his income and must make requests in order to use it. Mr. Doe states that he has the capacity to manage his own funds, but that if he cannot do so, he would like his son to be the conservator. Mr. Conservator as court-appointed fiduciary understands that he is under a duty to seek the least restrictive alternative and maximize the autonomy of the conservatee. He needs professional advice on evaluating the specific abilities of Mr. Doe to manage money and avoid undue influence before taking any action before the court.

In addition, Mr. Conservator noted that Mr. Doe has discussed the importance of making his own health care decisions, and Mr. Conservator inquired about the possibility of having Mr. Doe execute an advance directive. Please include in the assessment an evaluation of Mr. Doe's capacity to make health care decisions and to appoint a health care agent.

Relevant State Law Provisions: In this state, a court may appoint a conservator if an individual is "incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to manage property or financial affairs or provide for his or her support or for the support of his legal dependents without the assistance of a conservator. A finding that the individual displays poor judgment, alone, shall not be considered sufficient evidence that the individual needs a conservator." [citation] A conservator has broad financial powers, unless limited by the court (in an order appointing a "limited conservator"), including the power to make gifts, convey property, engage in estate planning or create a trust, but must make decisions based on the values and preferences, as well as the best interests of the protected individual.

In this state, capacity to make health care decisions is based on the ability of an individual to "understand the significant benefits, risks, and alternatives to proposed health care" [citation]. Capacity to appoint a health care agent is

based on a person's ability to "understand the nature and effect" of such an appointment [citation]. The level of capacity needed to appoint an agent is generally lower than that needed to make complex health care decisions or to give instructions about such decisions in advance.

Specific Assessment Request: Mr. Conservator requests that the following information be included in your assessment report:

- Mental health diagnosis
- Tests conducted
- Analysis of test results
- Applicability of results to situation at hand
- Specific assessment of the ability of Mr. Doe to –
 - Understand basic financial concepts
 - Understand the sources and amounts of his income
 - Make financial judgments
 - Pay bills
 - Make monetary calculations, including making change on a transaction
 - Contract for goods or services
 - Avoid exploitation or undue influence
- Assessment of Mr. Doe's capacity to execute an advance directive for health care.

Please send your report and invoice to Mr. Conservator at [address], with a copy of the report to me at this office, and a copy to Mr. Doe at [address]. I appreciate your help with this case and look forward to working with you in the future.

APPENDIX B

B. Example of Psychological Assessment Report

Name: Mr. Patient	Education: 6
Sex: Male	Occupation: Real estate/construction business owner
Race: Caucasian	Marital Status: Widowed
Age: 76	Handedness: Right
DOB: x/xx/29	Date Seen: x/xx/xx
MRN: xxxxxxxx	Date of Report: x/xx/xx

I. BACKGROUND INFORMATION Mr. Patient was referred as an outpatient to the Neuropsychology Clinic by his attorney, Mr. Legal, Esq., for evaluation of the patient's cognitive and emotional status, and capacities to contract (execute a buy/sell agreement), manage his overall business and financial affairs, and make a will.

History of Present Illness: Mr. Patient reportedly has a 3- to 5-year history of memory problems, which reportedly developed insidiously and have gotten progressively worse over time. He reportedly has not been previously evaluated for these problems.

In interview, Mr. Patient stated that he does not have any problems with his memory. He also generally denied any other cognitive or functional problems. He stated that he does not have any help at home, but that his daughter comes by sometimes to help him pay bills or to bring him groceries. He denied problems with his driving. Regarding mood or personality changes, he reported that he is "doing fine" and denied any symptoms of depression or anxiety. Upon inquiry by the examiner, he expressed only a vague knowledge of a buy-sell agreement regarding his business that has reportedly been prepared by his brother.

Mr. Patient's daughter, Ms. Daughter, described a much more serious situation. Ms. Daughter said that her father has had memory problems for at least 5 years, and that his memory has become noticeably worse over the past 3 years. She said that she first noticed something was different when she left her accounting job in the family business in 1998 over some disagreements with her uncle James, who co-owns the business with her father. She said that her father did not seem to be taking up for her, which was uncharacteristic of him. She said that she later realized that her father was forgetting about these disagreements and his role in resolving them. Ms. Daughter reported that he currently asks the same question repeatedly, forgets conversations, and constantly misplaces items. She said that he has more trouble remembering people's names. She said that he has comprehension problems, but pretends to understand people when they talk to him. She reported that when they go to restaurants, he gets lost on his way back from the restroom. She reported that he has not driven since July 2000 when he had lung surgery. She said that just prior to that, he complained to her about getting lost while driving in a familiar area.

Regarding functional changes, Ms. Daughter reported that her father has no meaningful activities around the home. He has had full-time caregivers since July 2000. She noted that he still cannot remember their names. She reported that prior to these home health care arrangements, her father was not bathing and was wearing the same clothes every day. She reported that she has handled all of her father's bill paying since October 2000. She said that she also tries to supervise his business transactions. Ms. Daughter reported that her father co-owns an excavation business Happy Valley Construction, with his brother James. The business is located in Columbus, Georgia.

Mr. Patient reportedly has a separate business where he also buys, develops, and sells real estate. Ms. Daughter stated that her father has agreed on several occasions to consult her before signing any business documents, but then forgets to do this.

Ms. Daughter reported several poor business decisions her father has made recently. She said that in the past year he sold a piece of real estate for \$10,000 that was worth \$100,000. She also reported that he has made almost \$500,000 in loans to the family business over the past 2 years, and that these loans have not been repaid. She reported that her father initially loaned \$200,000 to Happy Valley in 1998, \$90,000 of which went to his nephew, who also works for the company. She stated that there does not appear to be a note for the loan to his nephew. She reported that the remaining \$300,000 was loaned out in October 2000.

Ms. Daughter also expressed concern about a proposed buy-sell agreement that was presented to her father by his brother while she was out of town. This agreement reportedly presents terms that are very favorable to the brother. It apparently states that if her father dies, the company will go to her uncle James and the money owed by the

company to her father will be forgiven. She noted that in this buy/sell agreement, some property that belongs to her father is listed instead as company property. Upon learning of this agreement, Ms. Daughter encouraged her father to contact his attorney Mr. Legal to discuss this.

Finally, Ms. Daughter expressed concern about whether her father may have recently signed a new will. Although he has no recollection of signing a new will, she indicated that he had stated that his brother had recently mentioned the “need” for a new will.

Regarding mood or personality changes, Ms. Daughter reported that her father is more laid back and even indifferent. She said that he used to be very focused on and concerned about his business affairs, but now seems often indifferent to them. She denied symptoms of anxiety or depression, but noted that he naps a lot during the day. She also stated that he always wants to eat because he forgets that he has already eaten.

Social/Academic/Occupational History: Mr. Patient reportedly was born and raised in Columbus, Georgia. He reported that he had 4 brothers and sisters. The patient’s father was a farmer and iron smith. The patient was reportedly married for 40 years when his wife died in 1990. He reported that he has two daughters and one son with a disability. He currently lives alone.

Mr. Patient reportedly completed 6 years of education. He reportedly buys and sells real estate and co-owns an excavation business called Happy Valley Construction Company, Inc. Mr. Patient reportedly started the excavation business and then brought his brothers into the business at a later time.

Prior Medical History: Mr. Patient’s medical history reportedly is significant for diabetes and history of blood clots. Surgical history reportedly includes four-way coronary artery bypass graft (1989) and partial lung resection (2000). The patient reportedly does not drink alcohol and does not smoke. There is reportedly no history of alcohol or other substance abuse.

Family medical history is reportedly positive for myocardial infarction in his brother, stomach cancer in his sister, skin cancer in his sister, and possible AD in his mother.

Psychiatric History: Mr. Patient reportedly has no history of mental health treatment. As noted above, he reportedly has had no prior evaluations for his memory problems.

Medications: Coumadin, Exelon, Prevacid, Tenormin, ginkgo biloba, Ambien, Detrol, Claritin.

II. BEHAVIORAL OBSERVATIONS Mr. Patient presented as a well-groomed, nicely dressed 76 year-old Caucasian man. He was accompanied to the evaluation by his daughter, Ms. Daughter.

In interview, the patient’s speech was fluent and reasonably goal-directed but lacked spontaneity. Responses were terse and impoverished. Comprehension appeared generally intact. Affect was mildly constricted, and mood was pleasant but irritable. Insight was judged to be very poor. There was no indication or report of formal hallucinations or delusions, or of a thought or perceptual disorder. There was no indication or report of suicidal ideation, plan, or intent.

During testing, Mr. Patient was alert and pleasant but would quickly become irritable and uncooperative with testing. He exhibited mild performance anxiety. He displayed task frustration by abandoning or avoiding tasks. He showed no response to encouragement from the psychometric technician. He displayed inability to complete some tasks due to comprehension problems. He made a few perseverative and intrusion errors. He required constant redirection to task. He showed a complete lack of test-taking strategies.

At one point, he refused to continue testing and started to leave, but was persuaded by his daughter to continue. Because of his reluctance to participate, and the examiner’s concern that he would prematurely terminate the testing, only an abbreviated test battery could be administered. Nevertheless, sufficient information was obtained to respond fully to the referral questions. Overall, the patient appeared to put forth variable but acceptable effort during the testing. Much of his reluctance to participate related to tasks that he appeared unable to perform. Overall, the current test results are an accurate representation of Mr. Patient’s current levels of cognitive and emotional functioning, and of his current financial abilities.

III. TESTS ADMINISTERED

- California Verbal Learning Test - II (CVLT-II)
- Clinical Interview
- Cognitive Competency
- Executive Clock Drawing Task (CLOX)
- Financial Capacity Instrument (FCI)⁵⁴
- Geriatric Depression Scale (GDS)

Mattis Dementia Rating Scale (DRS)
Token Test
Trails A and B
WAB Auditory Comprehension
Wide Range Achievement Test-3 (reading subtest)

IV. SUMMARY OF RESULTS

Please see attachment.

V. IMPRESSIONS AND SUMMARY

Neuropsychological Findings:

1. Probable dementia, currently moderate (DRS=89/144, CDR= 2.0).

The neuropsychological test results were consistent with probable moderate dementia. Evidence for this impression included severe impairment on a dementia screening instrument and impairments in high-load verbal learning, recall, and recognition memory (severe to profound), simple short-term verbal recall (severe), orientation to time (severe), orientation to place (severe), simple auditory comprehension (severe), reading abilities (moderate), visuospatial construction of a clock drawing (mild), simple visuomotor tracking (mild), propositional auditory comprehension (moderate), and spontaneous construction of a clock drawing (severe). The patient was unable to complete a measure of visuomotor tracking/set flexibility. In addition, the patient's daughter reported that he has had progressive memory and other cognitive problems for as long as five years.

Functional testing and interview data were also consistent with moderate dementia. Mr. Patient was severely impaired on a cognitive measure of everyday problem solving abilities. On a functional measure of financial capacity, the patient showed intact performance only on simple tasks of naming coins/currency, coin/currency relationships, and single and multi-item grocery purchases. He demonstrated significant impairment on tests of counting coins/currency, understanding financial concepts, making change for a vending machine, tipping, conceptual understanding of a checkbook/register, pragmatic use of a checkbook/register, conceptual understanding of a bank statement, use of a bank statement, detection of telephone fraud, conceptual understanding of bills, identifying and prioritizing bills, and knowledge of his personal financial assets and activities. In addition, the patient's daughter indicated that he has home health care aides around the clock. She reported that prior to these arrangements, the patient was not bathing and wore the same clothes every day. She said that he currently has no meaningful activities around the home.

As discussed above, due to the patient's reluctance to participate fully in the testing, only an abbreviated test battery was administered. Some cognitive domains were not assessed (e.g., expressive language, general intellectual abilities), and other domains were not assessed as comprehensively as they normally would be.

2. Possible Alzheimer's disease.

Mr. Patient's neurocognitive profile was consistent with possible AD. High-load verbal learning, recall, and recognition memory were moderately to severely impaired and he was unable to benefit from semantic or recognition cueing. He showed 0% recall after a short delay, which is consistent with the rapid decay of information over delay seen in AD. In addition, he had 0% short-term recall of verbal items from the memory subtest of the DRS. Mr. Patient demonstrated characteristic impairments on measures of executive function (simple visuomotor tracking, propositional auditory comprehension, and spontaneous construction of a clock drawing) and inability to complete a measure of visuomotor tracking/set flexibility.

Clinical course was consistent with AD. Mr. Patient's cognitive difficulties reportedly have been slowly progressive over the past 5 years. He also has a family history of possible AD.

In the examiner's judgment, it is highly probable that Mr. Patient has AD. However, he needs a neurological work-up for dementia before the clinical diagnosis can be established conclusively.

Capacity Findings:

1. Probable current incapacity to enter into contracts. This incapacity would include loan agreements, real estate contracts, and corporate buy/sell agreements.

The history, interview information, and test data indicated that Mr. Patient is probably incapable currently of entering into contracts such as the proposed buy-sell agreement. Ms. Daughter reported that her father has recently

sold some real estate at a fraction of what it is worth. She said that he has also made several large loans to his business recently, but seems generally unaware of these loans and the fact that they are not being repaid. He had very little specific knowledge regarding the proposed buy-sell agreement and seemed confused about its purpose.

Contractual capacity is a higher order legal competency which draws upon a variety of cognitive abilities, including memory, conceptual knowledge, reading ability, mental flexibility/executive function, and judgment. As discussed above, Mr. Patient is suffering from a moderate progressive dementia, probably of the Alzheimer's type, and he currently demonstrates significant deficits in all cognitive domains tested, including attention, memory, comprehension, and executive function. Screening for reading abilities revealed that Mr. Patient currently reads at the 2nd grade level (2%ile for age), which reflects a decline from estimated premorbid levels.

In the examiner's opinion, Mr. Patient no longer possesses the abilities to read and comprehend contractual documents, to recall essential information and details about contractual matters, to have the mental flexibility and judgment to negotiate effectively, or to make such business decisions in his best interest. In summary, he is no longer capable of entering into contracts, and it is likely that he has lacked this capacity for several years.

2. Probable current incapacity to make a new will.

Interview and test data indicated that Mr. Patient is probably incapable currently of making a new will. Mr. Patient was unable to provide an adequate description of a will, stating only "It's where you put stuff in different people's names." He was also unable to set forth the nature and extent of his property to be listed within a will, describing his assets initially only as "farmland." When specifically prompted about items of property including his business, home, bank accounts, and stocks, he stated that he wanted these things to go to his children. When asked about debts owed to him, he stated that no one owed him any money. When reminded that he had loaned money to his business, and that repayment of these loans could be made to his estate after his death, he acknowledged that these debts were still outstanding. However, he could not recall the exact amount of the loans. Mr. Patient's lack of knowledge of assets/property to be passed in his will was also reflected in his poor performance on Domain 8 of the FCI, which tests general knowledge of personal assets and estate arrangements.

Mr. Patient did know the objects of his bounty and did indicate a general plan of distribution, stating that he would want his property to pass to his children equally. However, on testing Mr. Patient indicated that he had not yet made a will, whereas his daughter reported that he has a current will.

It is the examiner's judgment that Mr. Patient currently lacks testamentary capacity.

3. Probable current incapacity to manage business-related and everyday financial affairs.

History, interview, and test data indicated that Mr. Patient is also currently incapable of managing his overall financial affairs and making business-related decisions. In interview, Mr. Patient demonstrated inaccurate knowledge of his financial and business affairs. For example, the patient indicated that he goes into work at his excavation business every day, even occasionally running construction equipment, whereas the patient's daughter reported that he is retired and that his brother operates and manages the business on his own. She reported that her father continues to manage his own finances, but makes poor business decisions (e.g., recently sold some property for 10% of what it was worth). She reported that her father has agreed several times not to sign anything without letting her review it first, but then forgets to consult her.

Functional testing of financial abilities revealed overall severe impairment in financial capacity. On testing, Mr. Patient demonstrated intact performance on tasks of naming coins/currency, coin/currency relationships, and single and multi-item cash purchases. However, he was impaired on tests of counting coins/currency, understanding financial concepts, making change for a vending machine, tipping, conceptual understanding of a checkbook, use of a checkbook, conceptual understanding of a bank statement, use of a bank statement, detection of telephone fraud, conceptual understanding of bills, identifying and prioritizing bills, and knowledge of personal financial activities. Taken together, these findings indicate that he is no longer capable of managing any aspect of his business and financial affairs.

4. Probable vulnerability to undue influence.

In addition to his capacity impairment, it is very likely that Mr. Patient is currently vulnerable to undue influence in his business and other activities. Early on in their disease course, as their short-term memory and comprehension abilities erode, patients with AD become increasingly vulnerable to the influence of others. It is likely that Mr. Patient's reported recent poor business decisions may reflect such a vulnerability. For example, during testing Mr. Patient failed to detect a telephone credit card scam situation and agreed to provide his credit card number over the phone to an unknown caller.

VI. RECOMMENDATIONS

1. We recommend that Mr. Patient be referred to the UAB Memory Disorders Clinic for a full neurological and dementia evaluation.
2. Continued pharmacotherapy with cholinesterase inhibitors appears to be appropriate.
3. Mr. Patient and his family should consider legally securing his business, financial, and personal affairs as soon as possible. Mr. Patient could potentially benefit from formal guardianship and conservatorship.
4. Mr. Patient's cognitive and emotional status should continue to be closely monitored. This evaluation would provide a useful baseline if follow-up testing were indicated.

The results of this evaluation are confidential.

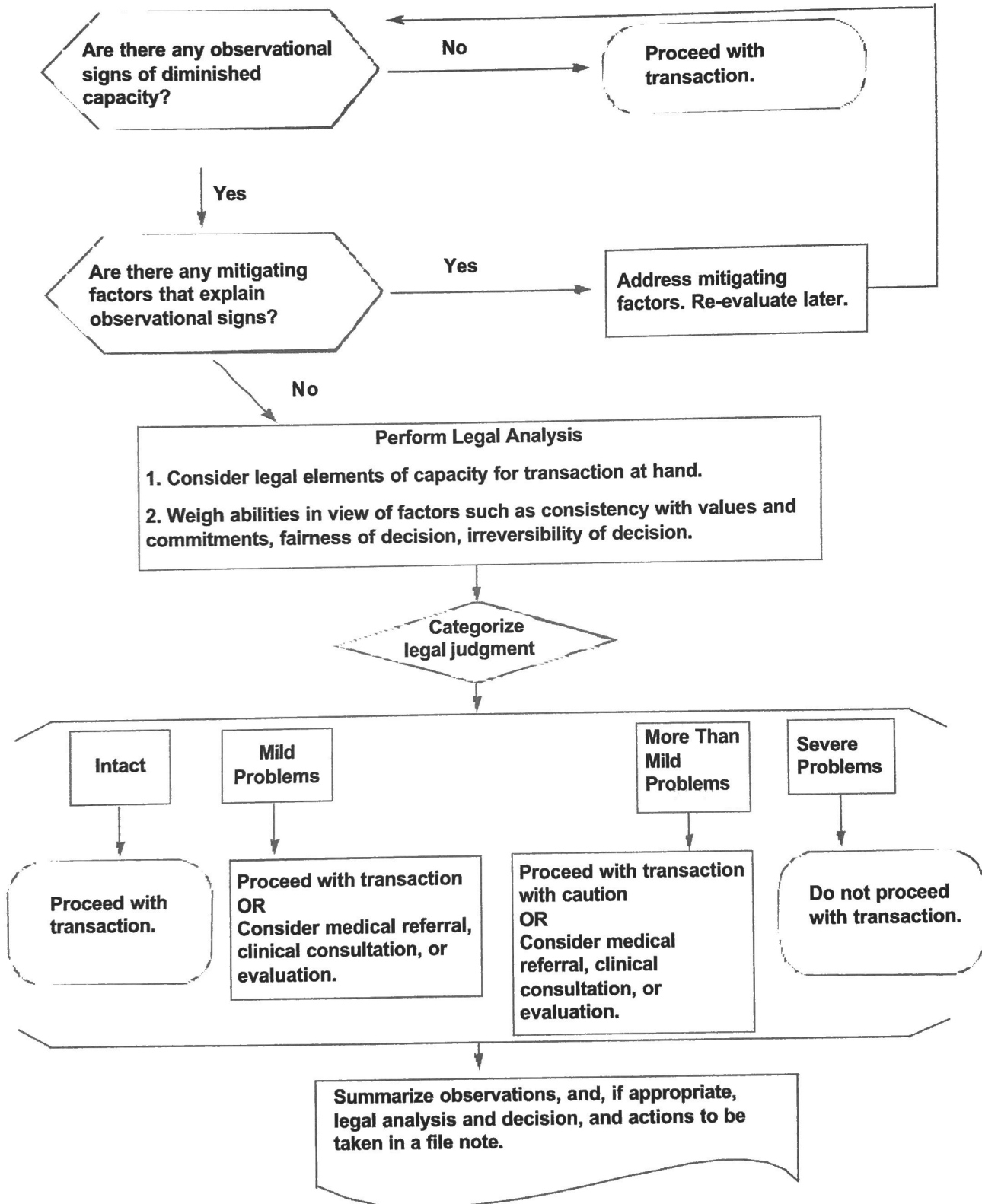
C. Note on Post-Assessment Action by the Attorney

Based on this assessment, Mr. Patient's attorney concluded that she should not proceed in doing Mr. Patient's will, nor with execution of the buy-sell agreement. The attorney informed Mr. Patient of the assessment results and provided a copy to Mr. Patient and, with his permission, to his daughter. (However, if Mr. Patient had not given permission, the attorney would have to determine whether disclosure might be a necessary action to protect the legal interests of his client under Model Rule 1.14.)

The attorney advised Mr. Patient and his daughter that it is time for his daughter to handle his financial affairs as his legal agent. The attorney provided the daughter with a background brochure explaining the responsibilities and tips for carrying out the responsibilities of a fiduciary under a durable power of attorney. Finally, the attorney reinforced the assessor's recommendation for referral to the UAB Memory Disorders Clinic.

APPENDIX C

Appendix 1: Capacity Assessment Algorithm for Lawyers



APPENDIX D

Appendix 4: Dementia Overview¹

What is dementia?

Dementia is a syndrome characterized by decline in memory in association with either decline in other cognitive abilities, e.g., judgment and abstract thinking, or personality change. The resulting impairment must be severe enough to interfere with work or usual social activities or relationships.² The requirement for decline distinguishes dementia from life-long mental retardation, although a person with mental retardation can develop dementia if his or her cognitive abilities decline from a previous level. The requirement also means that a person with high previous intelligence can have dementia if his or her cognitive abilities decline to average levels, and this decline interferes with work or usual social activities or relationships.

Outdated terms: terms that were used in the past, such as *senility*, *chronic brain syndrome*, and *hardening of the arteries*, are rarely used now because they are imprecise and inaccurate.

What causes dementia?

Dementia can be caused by more than 70 diseases and conditions. The most common cause is Alzheimer's disease, which is present in 60 percent to 75 percent of dementia cases in the United States. The second most common cause is vascular or multi-infarct disease, which is present in 10 percent to 20 percent of cases. Alzheimer's disease and multi-infarct disease often co-exist in a condition referred to as *mixed dementia*. Other diseases and conditions that can cause dementia include Lewy body disease, fronto-temporal disease (including Pick's disease), Creutzfeldt-Jacob disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis (Lou Gehrig's disease), and AIDS.³

Reversible dementia. In a small minority of people with dementia, the condition may be partially or completely reversible with treatment of underlying causes, such as chronic infections, thyroid disease, and normal-pressure hydrocephalus.^{2,4} Unfortunately, these situations are rare.

How common is dementia?

The total number of people with dementia in the United States is not known. That is because most people with dementia do not have a diagnosis, and no study with a nationally representative sample and procedures for diagnosing dementia has been completed.

Estimates of the number of people with Alzheimer's disease come from studies of smaller community samples. Results of two widely cited studies indicate that 2 percent of people age 65 to 74 have Alzheimer's disease, with the proportion increasing to 8 percent to 19 percent of people age 75 to 84, and 29 percent to 42 percent of people age 85 and over.^{5,6} Combining these proportions and U.S. Census data indicates that 2.6 million to 4.5 million people age 65 and over (7 percent to 13 percent of all people age 65 and over) had Alzheimer's disease in 2000. Since prevalence rises rapidly with age, the total number of people with Alzheimer's disease will increase greatly as the age groups 75 to 84 and 85+ grow in coming decades. Alzheimer's disease occurs in a small proportion (probably less than one percent) of people under age 65. That proportion may increase in the future as the disease is recognized earlier.

Assuming that Alzheimer's disease is present in 60 percent to 75 percent of all cases of dementia in the U.S. and that it affected 2.6 to 4.5 million people age 65 and over in 2000, one could estimate that 3.4 to 7.5 million people age 65 and over had dementia in 2000. Preliminary data from the Health and Retirement Survey indicate that there may be 400,000 people under age 65 with dementia, for a total of 3.9 to 8 million people with dementia in all age groups in 2000.

What are the symptoms of dementia?

As noted above, dementia is characterized by decline in memory associated with decline in other cognitive abilities or personality change. Many descriptions of the symptoms of dementia focus primarily on symptoms of Alzheimer's disease. Symptoms of other dementing diseases and conditions are often described

1. Prepared by Katie Maslow, M.S.W., of the Alzheimer's Association, Washington, D.C.
2. American Psych. Ass'n, *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)* (4th ed. 1994).
3. Paul T. Costa et al., *Recognition and Initial Assessment of Alzheimer's Disease and Related Dementias*, 19 Clinical Practice Guideline (1996).
4. Charles Cefalu and George T. Grossberg, *Diagnosis and Management of Dementia*, 2 Am. Fam. Physician Monograph (2001).
5. Ron Brookmeyer et al., *Projections of Alzheimer's Disease in the United States and Public Health Impact of Delaying Disease Onset*, 88 Am. J. Pub. Health 1337-1342 (1998).
6. Liesi E. Hebert et al., *Alzheimer's Disease in the U.S. Population: Prevalence Estimates Using the 2000 Census*, 60 Arch. Neurol. 1119-1122 (2003).

only as they differ from the symptoms of Alzheimer's disease.

Alzheimer's disease generally begins gradually. Its causes are not known, but much has been learned in recent years about the risk factors, biology, and course of the disease (see *Unraveling the Mystery*⁷). The earliest symptoms of Alzheimer's disease are usually memory problems, especially problems with learning and recall of new information. Other early symptoms include difficulty with language (e.g., word-finding) and disturbances in visuospatial skills that can result in getting lost in a familiar setting. Deficits in executive functions (e.g., planning, organization, and judgment) are also common. These cognitive changes limit the person's ability to work and carry out activities that are needed for independent living, e.g., driving, shopping, cooking, and managing finances. The person may or may not be aware of, and be disturbed by, these changes.^{3,8,9}

Alzheimer's disease is progressive. Over time, the person's cognitive deficits worsen, and other kinds of symptoms appear. Many people with Alzheimer's disease are depressed. Some become withdrawn, apathetic, and/or irritable. Agitation is common, and some people with Alzheimer's disease develop psychiatric and behavioral symptoms, e.g., delusions, aggression, wandering, and inappropriate sexual behaviors. Most people with the disease require 24-hour supervision at least in the middle stage of their illness. Eventually, they become unable to bathe, dress, toilet, and feed themselves. Gait and swallowing difficulties are also common in the late stage of the disease.^{3,7} Death usually occurs sooner than would be predicted on the basis of population data.¹⁰

Vascular or multi-infarct dementia differs from Alzheimer's dementia in that it generally begins more abruptly and exhibits a step-wise progression of symptoms. This is because the condition is usually caused by a stroke, multiple small strokes, or changes in blood supply to the brain that result in specific brain lesions. A person's cognitive and other symptoms depend on the type, location, and extent of these lesions; thus, symptoms vary greatly from one person to another.^{3,11}

Lewy body disease differs from Alzheimer's disease in that it usually progresses more rapidly. Visual hallucinations, fluctuating cognitive abilities, changing attention and alertness, and motor signs of parkinsonism are also more common.^{8,12}

Fronto-temporal disease (including Pick's disease) differs from Alzheimer's disease in that learning ability and visuospatial skills are often less affected, and noncognitive symptoms are more common. Patients frequently exhibit profound apathy, distractability, and impulsivity.^{3,8}

Can stages of dementia be identified?

Various staging systems have been developed for dementia. These systems are useful because they provide a conceptual framework that often helps families, care providers, and others understand where their relative or client is in the course of his or her illness, and therefore, think about and plan for the person's current and future care. Some relatively simple staging systems identify only 3 stages (mild, moderate, and severe) and define the stages in very general terms. Other staging systems are more complex and precise. An example of the latter type is the Global Deterioration Scale, a 7-stage system based on the severity of a person's cognitive and self-care deficits and psychiatric and behavioral symptoms.¹³ Despite the usefulness of this and other staging systems, it is important to remember that the progression of dementing diseases and conditions and the timing of particular symptoms vary greatly from one person to another. Thus few patients progress through the stages exactly as they are defined in any system.

How can cognitive changes that are common in normal aging be distinguished from dementia?

It is often very difficult to distinguish memory problems and other cognitive changes that are common in normal aging from the early symptoms of dementia, in part because cognitive changes in normal aging are not well understood.^{2,3,14} In its dementia guideline, the American Medical Association points out that a person with dementia will eventually become unable to maintain independent functioning, whereas independent function-

7. Nat'l Inst. Health, U.S. Dep't of Health and Hum. Servs, *Alzheimer's Disease: Unraveling the Mystery* (NIH Pub. No. 02-3782) (2002).

8. Jeffrey L. Cummings & Greg Cole, *Alzheimer's Disease*, 287 JAMA 2335-2338 (2000).

9. Claudia H. Kawas, *Early Alzheimer's Disease*, 349 New Eng. J. Med. 1056-1063 (2003).

10. Eric B. Larson et al., *Survival After Initial Diagnosis of Alzheimer's Disease*, 140 Annals of Internal Med. 501-509 (2004).

11. David L. Nyenhuis & Philip B. Gorelick, *Vascular Dementia: A Contemporary Review of Epidemiology, Diagnosis, Prevention, and Treatment*, 46 J. Am. Geriatrics Soc'y 1437-1448 (1998).

12. Estrella Gomez-Tortosa et al., *Dementia with Lewy Bodies*, 46 J. Am. Geriatrics Soc'y 1449-1458 (1998).

13. Barry Reisburg et al., *The Global Deterioration Scale for Assessment of Primary Degenerative Dementia*, 139 Am. J. Psyc. 1136 (1982).

14. Ronlad C. Peterson et al., *Current Concepts in Mild Cognitive Impairment*, 58 Arch. Neurol. 1985-1992 (2001).

ing is preserved in normal aging. To distinguish dementia and normal aging without waiting to see whether the person's functioning worsens, the guideline suggests several comparisons: for example, in dementia, the person's family is likely to be more concerned about his or her forgetfulness, whereas in normal aging, the person may be more concerned; similarly, in dementia, there is likely to be notable decline in memory for recent events and ability to converse, whereas in normal aging, the person remembers important events and maintains the ability to converse.¹⁵ These and other comparisons are helpful but not definitive in distinguishing the two conditions.

Mild Cognitive Impairment is a condition that is receiving increasing attention as researchers attempt to understand the causes of Alzheimer's disease and find ways to prevent and treat it. For research purposes, it is efficient to study people who are at high risk for the disease, and many elderly people are now enrolled as subjects in observational studies and clinical trials where they are diagnosed as having mild cognitive impairment. An unknown number of elderly people are also being diagnosed with mild cognitive impairment outside of research settings. Many researchers and clinicians believe that all people with mild cognitive impairment will eventually transition to Alzheimer's disease.¹⁶ Reported rates of transition range from 6 percent to 25 percent per year in individuals age 66 to 81 at the start of the study.¹⁷ Some clinicians and advocates question the wisdom of diagnosing mild cognitive impairment in people who are quite old at time of diagnosis, may be upset by the diagnosis, may not transition for four or more years, and may be denied insurance and/or admission to certain residential care facilities if the diagnosis is known.

Why is it important to diagnose dementia and the underlying cause of the dementia?

Some physicians are reluctant to diagnose dementia or its underlying cause because they think the conditions are hopeless and are hesitant to call attention to them

unless asked by the family.¹⁸ Over the past decade, dementia and its causes are being diagnosed more often, primarily because of the availability of medications for Alzheimer's disease and greater general awareness of Alzheimer's and dementia. Still many people with dementia have not been diagnosed.¹⁹ Physicians may be aware of a patient's cognitive deficits even if they have not conducted a formal evaluation, but even when a formal diagnosis is made, the patient and family may not be told, and the diagnosis may not be entered into his or her medical record.²⁰

Diagnosis of dementia is important because it allows the person, and perhaps more so his or her family, to understand what is happening to the person and increases the likelihood that they will access available information and supportive services. It also increases the likelihood that physicians will initiate treatments and be alert to limitations in the person's ability to report symptoms accurately, manage medications safely, and understand and comply with other recommendations. Early diagnosis is important because it gives the person and family time to make financial, legal, and medical decisions while the person is capable.

How can dementia be diagnosed?

Dementia and Alzheimer's disease can be diagnosed with high accuracy (90 percent or higher) when standardized diagnostic criteria are used.²¹ Diagnosis of vascular or multi-infarct disease, Lewy body disease, and fronto-temporal disease is often more difficult because many people with these conditions have atypical or nonspecific symptoms.²⁰ The first steps in diagnosis are a focused history and physical, mental status testing, and discussions with the family, if any. Laboratory tests are often used, primarily to rule out reversible or partially reversible causes of dementia. There is disagreement about the value of neuroimaging procedures, but virtually all experts agree that these procedures are useful for younger patients and patients with unusual symptoms.

15. American Med. Ass'n, *Diagnosis, Management, and Treatment of Dementia: A Practical Guide for Primary Care Physicians* (1999).

16. John C. Morris et al., *Mild Cognitive Impairment Represents Early-Stage Alzheimer's Disease*, 58 Arch. Neurol. 397-405 (2001).

17. Ronald C. Peterson et al., *Practice Parameter: Early Detection of Dementia: Mild Cognitive Impairment (An Evidence-Based Review)*, 56 Neurol. 1133-1142 (2001).

18. Linda Boise et al., *Diagnosing Dementia: Perspectives of Primary Care Physicians*, 39(4) Gerontologist 457-464 (1999).

19. Linda Boise et al., *Dementia Assessment in Primary Care: Results from a Study in Three Managed Care Systems*, 59A J. Gerontology: Med. Sciences 621-626 (2004).

20. James Chodosh et al., *Physician Recognition of Cognitive Impairment; Evaluating the Need for Improvement*, 52 J. Am. Geriatrics Soc'y 1051-1059 (2004).

21. David S. Knopman et al., *Practice Parameter: Diagnosis of Dementia (An Evidence-Based Review): Report of the Quality Standards Subcommittee of the American Academy of Neurology*, 56 Neurol. 1143-1153 (2001).

Delirium and depression can present with symptoms similar to dementia. Recognition and differential diagnosis of these three conditions is important. Delirium is an acute condition that can and should be treated quickly. Depression is also treatable in older people. In addition, however, people with dementia are at increased risk of developing delirium, and many people with dementia also have depression; thus, the three conditions often coexist. Effective treatment of coexisting delirium and/or depression may improve cognitive functioning in a person with dementia, although research suggests that treatment for depression often does not have as much effect as expected on the person's cognitive functioning.

Treatment of dementia

Many medical associations and other groups have developed guidelines and consensus statements about treatment of dementia.²² These documents differ in length, primary focus, and intended audience, but their recommendations are similar. While acknowledging that the effects of available medications for Alzheimer's disease are often modest, the documents generally recommend an initial trial of the medications. Aggressive treatment of cardiovascular conditions is recommended since these conditions can cause vascular dementia and hasten onset of symptom development in people with Alzheimer's disease. The guidelines and consensus statements recommend careful evaluation of mood and behavioral symptoms and efforts to manage these symptoms nonpharmacologically, if possible. They also recommend treatment of depression, attention to safety issues (e.g., driving, wandering, and firearms), referrals to community services, and involvement and support of family caregivers.^{3,7,8,14,23,24,25}

Coexisting medical conditions in people with dementia

Many people with dementia also have other serious medical conditions. Medicare fee-for-service claims for 1999 show, for example, that 30 percent of beneficiaries with dementia also had coronary heart disease, 28 percent also had congestive heart failure, 21 percent also had diabetes, and 16 percent also had thyroid disease.²⁶ These medical conditions and the medications and other procedures that are used to treat the conditions can worsen cognitive and other symptoms in a person with dementia. At the same time, dementia clearly complicates the treatment of the other conditions. Families and other informal and paid caregivers of people with dementia and co-existing medical conditions are often coping with extremely difficult care situations.

Where do people with dementia live?

No precise information is available about where people with dementia live, but available data suggest that at any one time, about 20 percent of all people with dementia are in nursing homes; about 10 percent are in assisted living or other residential care facilities; and the remaining 70 percent are at home alone or with a family member or other informal caregiver.

People with dementia who live alone: Studies indicate that about 20 percent of people with dementia live alone.^{27,28} About half of these people have a relative or friend who functions as a caregiver, but the other half have no one. Some of these individuals have mild dementia, but many have moderate to severe dementia. They may come to the attention of attorneys when a landlord, neighbor, or law enforcement official realizes they are unable to care for themselves and may create safety problems for others. Lack of an available surrogate decisionmaker may make them difficult clients.

22. Katie Maslow et al., *Guidelines and Care Management Issues for People with Alzheimer's Disease and Other Dementias*, 10 Disease Mgmt. Health Outcomes 693-706 (2002).
23. George T. Grossberg & Abhilash K. Desai, *Management of Alzheimer's Disease*, 58A J. Gerontology Med. Sciences 331-353 (2003).
24. Gary W. Small et al., *Diagnosis and Treatment of Alzheimer's Disease and Related Disorders: Consensus Statement of the American Association for Geriatric Psychiatry, the Alzheimer's Association, and the American Geriatric Society*, 278 JAMA 1363-1371 (1997).
25. Rachelle S. Doody et al., *Practice Parameter: Management of Dementia (An Evidence-Based Review): Report of the Quality Standards Subcommittee of the American Academy of Neurology*, 56 Neurology 1154-1166 (2001).
26. Julie P.W. Bynum et al., *The Relationship Between a Dementia Diagnosis, Chronic Illness, Medicare Expenditures, and Hospital Use*, 52 J. Am. Geriatrics Soc'y 187-194 (2004).
27. Krista L. Prescott et al., *Elders with Dementia Living in the Community With and Without Caregivers: An Epidemiological Study*, 11 Int'l Psychogeriatrics 235-250 (1999).
28. Pamela Arnsberger Webber et al., *Living Alone with Alzheimer's Disease: Effects on Health and Social Service Utilization Patterns*, 34 Gerontologist 8-14 (1994).