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March 18, 2021

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# **TRUST PLANNING AND ADMINISTRATION FROM START TO FINISH**

March 18, 2021

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## **DISCLAIMER**

The information and procedures set forth in this practice manual are subject to constant change and therefore should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein. Further, the forms contained within this manual are samples only and were designed for use in a particular situation involving parties which had certain needs which these documents met. All information, procedures and forms contained herein should be very carefully reviewed and should serve only as a guide for use in specific situations.

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**TRUST PLANNING AND ADMINISTRATION  
FROM START TO FINISH**



**Agenda**

9:00 A.M.	Program Begins
<b>10:30 A.M.</b>	<b>Break</b>
10:45 A.M.	Program Continues
<b>12:00 P.M.</b>	<b>Lunch Break</b>
1:00 P.M.	Program Continues
<b>2:30 P.M.</b>	<b>Break</b>
4:30 P.M.	Program Adjourns

March 18, 2021

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**TRUST PLANNING AND ADMINISTRATION  
FROM START TO FINISH**



**Faculty**

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March 18, 2021

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**Benjamin T. Ballou**

Hodges & Davis P.C., Merrillville



*Benjamin T. Ballou*, a Crown Point native, received his Bachelor of Arts degree in History from the University of Chicago in 1996, where he was a member of the varsity baseball team and served as its co-captain. Ben earned his law degree from Valparaiso University School of Law in 1999. While in law school, he was a member of the Moot Court Society and served as an Associate Justice of the Moot Court Society Executive Board. Active in community affairs, Ben has served as an Assistant Varsity Football Coach at Crown Point High School and a volunteer coach for youth sports.

Practice Areas Include:

Estate Planning

Probate and Trust Administration

Estate, Trust, Guardianship and Power of Attorney Litigation

Trial Practice

Health Care

Real Estate

Business Formation

Traffic and Misdemeanor Offenses

**Kristin Steckbeck Bilinski**  
**Dale, Huffman & Babcock**

Kristin is a Certified Trust and Estate Specialist (as certified by the Indiana State Bar Association's Trust and Estate Specialty Board) and a VA accredited attorney. She graduated *cum laude* from Indiana University's Maurer School of Law in 2007 and *magna cum laude* from the University of Notre Dame in 2004.

Kristin aims to provide first class legal services for clients in Bluffton, Fort Wayne, and all of Northeast Indiana in the areas of estate planning, estate and trust administration, elder law, guardianship, and special needs planning.

When not practicing law, Kristin lives outside of Roanoke, Indiana with her husband, Eric, and her two children – Robby (age 9) and Cora (age 6). In her (limited!) spare time she enjoys reading, metal working and jewelry arts, and skiing.

**GREGG S. GORDON** is the managing member of Gordon Law Office, LLC located in Martinsville, Indiana. While Mr. Gordon's practice is focused largely on litigation involving wills and trusts, he also has extensive experience in general business litigation. Mr. Gordon is a military veteran having served in the United States Air Force from 1980 through 1989 first with the Air Force Security Police and then as a Special Agent with the Air Force Office of Special Investigations. Mr. Gordon earned his B.S. *With Highest Distinction*, from Indiana University – Indianapolis in 1993 and his J.D. Cum Laude from the Indiana University School of Law – Indianapolis in 1996. Admitted to the Indiana Bar in 1996, Mr. Gordon completed the Indiana Trial Advocacy College in 2003 and civil mediation training in 2008.

Mr. Gordon is a frequent lecturer on probate litigation matters. He has been a presenter at numerous seminars with the Indiana Continuing Legal Education Forum, the Vincennes University Wills, Trusts, and Ethics Institute, the Indianapolis Bar Association, and the National Business Institute. He has been published in *Res Gestae* *Where There Is A Will, There Probably Is A Trust - Bringing Trusts into Line with Wills: Mental Capacity*, 50 *Res Gestae* 34 (September 2006) and has several reported opinions including *In re Trust of Rawlings*, 113 N.E.3d 675, 677 (Ind. Ct. App. 2018), *transfer denied sub nom. Rawlings v. Rawlings*, 123 N.E.3d 133 (Ind. 2019), *In re Markey v. Estate of Markey*, 38 N.E.3d 1003 (Ind. 2015), *Gast v. Hall*, 858 N.E.2d 154 (Ind. Ct. App. 2006), *In re Nobbe*, 831 N.E.2d 835 (Ind. Ct. App. 2005) and *Carter v. Estate of Davis*, 813 N.E.2d 1209 (Ind. Ct. App. 2004)

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**James W. Martin**

Martin & Martin, Merrillville



Owner, Martin and Martin, Merrillville, Indiana. Admitted to bar, 1986, Indiana.  
Education: Indiana University-Bloomington, B.S. in Accounting, 1983; Valparaiso University School of Law, J.D., 1986.

Presenter at the following Lake County Bar Association (LCBA) seminars: (1) Probate and Estate Administration – December 1, 2000; (2) Claims Against Non-probate Property – October 29, 2004; (3) Comparing Transfer on Death (TOD) With Trusts – November 20, 2013; (4) Wills vs. Trusts vs. TOD – November 4, 2016; (5) Numerous Legislative Updates.

Presenter at the following Indiana Continuing Legal Education (ICLEF) seminars: (1) Living Trusts vs. Wills – May 16, 1996; (2) Planning Your First ... Estate Under \$600,000 – June 27, 1996; (3) The Long and Winding Road to the Probate Court – November 5, 1997; (4) Estate Planning – December 17 & 18, 1997; (5) Trusts & Estate Planning: Concepts & Techniques – November 5, 1998; (6) Estate Planning CLE Seminar (Quebec, Canada) – July 10-17, 1999; (7) Disclaimers and Post Mortem Planning – September 22, 1999; (8) The Long and Winding Road to the Probate Court – November 10, 1999; (9) The Process of Probate Practice – October 12, 2001; (10) Hot Tips in Estate Planning – December 6, 2001; (11) Advanced Estate Planning, April 26-27, 2002; (12) Recent Statutory Developments in Probate and Estate Matters, August 28, 2002; (13) Disclaimers and Post Mortem Planning – February 28, 2003; (14) 30th Midwest Estate Tax & Business Planning Institute – June 4-6, 2003; (15) Basic Will and Trust Drafting – February 12, 2004; (16) Wills vs. Living Trusts – November 11, 2004; (17) "Untrustworthy" Non-Probate Transfers – May 20, 2005; (18) Making the Choice: Wills or Revocable Trusts – September 16, 2005; (19) Guardianships A to Z Revisited – August 11, 2006; (20) Estate Planning and Administration Potpourri – December 18, 2007; (21) Land Trusts 2008 – Still A Good Choice For Certain Clients – May 21, 2008; (22) The Full Spectrum of Estate Planning, Administration and Litigation – October 14, 2009; (23) Wills vs. Trusts and the New TOD Property Act – November 11, 2009; (24) The New TOD Law: What It Means for Your Estate Planning Practice – February 10, 2010; (25) 120 Hot Tips in Estate Practice – December 21, 2010; (26) 120 Hot Tips in Estate Practice – December 21, 2011; (27) A Comparison of Transfers – August 23, 2013; (28) Unique Issues in Estate Planning – November 20, 2015; (29) Estate Planning Trilemma: Trusts vs. Wills vs. TOD Property – February 18, 2016; (30) Federal Estate/Indiana Inheritance Tax Primer – October 6, 2017; (31) 6th Annual REALITY – May 10-11, 2018; (32) Estate Planning Trilemma: Wills vs. Trusts vs. TOD Accounts – October 15, 2019.

Chairman of the following ICLEF seminars: (1) Cutting Edge Tax Issues in Estate Planning – November 28, 2000; (2) Basic Will and Trust Drafting – February 12, 2004.

Presenter at the Trust and Estate Specialty Board (TESB) Course Reviews. Topic: Transfer on Death Property Act – November 2, 2012; Transfer on Death Property Act – November 3, 2016.

Memberships:

Lake County Bar Association - Probate and Trust Committee

Porter County Bar Association - Probate and Trust Committee

Indiana State Bar Association - Probate, Trust and Real Property Section

- Probate Review Committee (1991 – Present)

- Chair of Membership, Communications and Needs Committee (1991 – 2010)

- First District Representative (1997 – Present)

Indiana Probate Code Study Commission (1995 – 2013 and 2019 to present).

Board Certified Indiana Trust and Estate Lawyer (By TESB), 2007 – Present

Trust and Estate Specialty Board (TESB), 2008 – April 30, 2012 - Test Committee (2008 to 2016)

Fellow of the American College of Trust and Estate Counsel (2007 to Present).



## **JOHN M. O'DROBINAK**

### **Attorney at Law**

John M. O'Drobinak has practiced law in Lake County, Indiana, since 1960. He graduated cum laude from the University of Notre Dame in 1957, earning a Bachelor of Business Administration Degree, and received his Juris Doctor Degree from Indiana University in 1960. He has been a member of the American Bar Association, and is a member of the Indiana and Lake County Bar Associations. He has taught at Indiana University Northwest, and has been an Adjunct Professor at Valparaiso University School of Law, having taught in the areas of Wills, Trusts, Estate Administration and Estate Planning.

Mr. O'Drobinak is admitted to practice before all the State and Federal Courts in Indiana, as well as the United States Court of Appeals, for the Seventh Circuit. He has been active in numerous civic and charitable organizations throughout his career and has served as Chairman of the Board of Directors, and President of charitable organizations. He was a member of the Board of Directors of Centier Bank for over twenty-seven years. In that time, he supported and assisted in the creation and development of its Trust Department. He served as Chairman of the Board's Trust Committee until he left the Board. An Attorney with a broad range of experience, Mr. O'Drobinak's areas of concentration include elder law, estate planning, guardianships, trusts, probate work in court and business succession.

A widely sought speaker and seminar leader, Mr. O'Drobinak frequently makes presentations in the fields of estate planning, probate, and predisability planning. He has been interviewed on television and radio on numerous estate planning topics. He has also been a guest speaker before many civic, professional, employee and union groups on numerous occasions. He has been consulted by Attorneys from across Indiana and the Nation on various matters. He has also served as an expert witness in a variety of matters. At the present time, he is serving as an expert witness in an ongoing litigation matter. He was hired to testify in this matter by Attorney Robert Welsh, Partner, in the Law Firm of Harris, Welsh & Lukmann. He is also a Certified Mediator and has mediated a variety of matters in his field of experience.

Mr. O'Drobinak has regularly served as a panelist in seminars conducted for the benefit of both Judges and Attorneys in the areas of estate planning, probate and guardianship practice and procedures. He served as Probate Commissioner, Lake Superior Court, Room Two, for almost 19 years, from January, 1977, to November, 1995. In this position, he oversaw the administration of 8,000 to 10,000 probate administrations, and in excess of 2,000 guardianships. He has been a member of the American Bar Association, Indiana Continuing Legal Education Forum, serving on their Board of Directors and held the Office of Secretary, National College of Probate Judges, National Academy of Elder Law Attorneys, and Probate Committee of the Indiana Judicial Conference. He was the only non-Judge to serve on the Probate Committee of the Judicial Conference and was a substantial contributor to the materials that were originally published as the Judges' Probate Deskbook, which is used by Judges throughout the State of Indiana. In addition, he has authored "Guardian's Handbook" to provide information and assistance to anyone serving as a Guardian. He recently also authored "Estate Planner's Index" to aid estate planning Attorneys in finding relevant law to assist them in solving Client's problems. Both of these are in publication now. He also has had over twenty-five

(25) articles on various legal topics published nationally on internet publications for the benefit of the general public. In connection with the Seminars he has presented, a list which follows, he has had over sixty-five (65) articles published for the benefit of Indiana Lawyers. He currently is a member of the Indiana Bar Association, the Indiana Bar Foundation, the Lake County Bar Association, and is a member of the Committee on Character and Fitness for the Supreme Court of Indiana.

He is a Charter Member of the American Academy of Estate Planning Attorneys, a nationwide group of Attorneys whose practices are primarily oriented to estate planning. As a member of the Academy he served, for over twenty (20) years, as Chairman of the Education Advisory Board of the Academy, which he helped create. As a Member, he has qualified for the most prestigious honor granted by the Academy. He is one of less than 10% of the Members who have been granted "Fellow" status. To qualify for this it was necessary to detail numerous problems he has addressed and handled in his years of experience as an estate planner and handling estates, guardianships and trusts. It also was essential to provide information regarding his involvement in Court proceedings in his handling of probate, trust and guardianship matters, including contested hearings. A further requirement was to detail his activities in handling numerous trust administration matters. The final category consisted of obtaining recommendations from his fellow Attorneys and Judges regarding his abilities and character. Upon review of these materials, the Academy determined he qualified for, and was awarded, the status of being named the first Fellow of the American Academy of Estate Planning Attorneys.

He formerly served as a member of the Board of Directors of the Indiana Continuing Legal Education Forum, representing District 1 of the State, and was also the Secretary of the Board. In 2016 he received the "Excellence in Continuing Legal Education" Award from ICLEF for his years of service. He has also served as a panelist for Educational Seminars sponsored by the Lake County Bar Association, and as a presenter for Seminars sponsored by local financial institutions. He has been a panelist in the following Seminars, presented by the Indiana Continuing Legal Educational Forum. In each of these Seminars, the materials he has prepared have been published as part of the Seminar presentation:

1993 – "How to Avoid Probate - But Should You", ICLEF

1994 – "Guardianships A to Z", ICLEF; "Implementing the Plan - Probate Administration Workshop 100", ICLEF

1995 – "Guardianships A to Z", ICLEF

1996 – "Doing it Right - Probate Administration", ICLEF; "Living Trusts vs. Wills", ICLEF; "Using the Land Trust", ICLEF

1997 – "How To Find Your Way To Probate Court, But Should You?" ICLEF; "The Long and Winding Road To The Probate Court", ICLEF; "Probate Litigation", ICLEF

1998 – "Guardianships A to Z", ICLEF; "Secrets of a Successful Practice", ICLEF; "Trusts and Estate Planning – Concepts and Techniques", ICLEF; "Wills - Trusts Compared", ICLEF

1999 – "The Long and Winding Road To The Probate Court", ICLEF; "Probate/Estate Administration: Common Issues of Concern to the Bench/Bar", ICLEF

2000 – "Advanced Estate Planning", ICLEF; "Cutting Edge Tax Issues in Estate Planning", ICLEF

2001 – "Hot Tips in Estate Planning and Real Estate", ICLEF; "Testamentary Planning for Children", ICLEF; "Trust Administration – A Complete Systems Manual", ICLEF

2002 – “Estate Planning For Family”, ICLEF; “Paralegals Guide to Estate/Trust Administration”, ICLEF; “Section 529 or Education IRAs, You Choose”, ICLEF; “Trusts: Mastering and Applying to your Clients’ Needs”, ICLEF

2003 – “Current Issues in Indiana Guardianships”, ICLEF; “Elder Law”, ICLEF; “Estate Planning for Family”, ICLEF; “Planning with Special Needs Trusts”, ICLEF

2004 – “Incentive Trusts”, ICLEF; “Key Issues in Trust and Estate Planning”, ICLEF; “What Now? How To Handle The Unusual Estate Planning Case”, ICLEF; “Wills - Trusts Compared”, ICLEF; “Wills vs. Living Trusts”, “Year in Review”, ICLEF

2005 – “Making the Choice: Wills or Revocable Living Trusts”, ICLEF; “Probate Skill Series: Getting Started: Process, Procedure and Forms”, ICLEF; “Wills - Trusts Compared”, ICLEF

2006 – “Estate Litigation and Mediation”, ICLEF; “Guardianships From A to Z, Revisited”, ICLEF; “17th Annual Year in Review”, ICLEF

2007 – “18th Annual Year in Review”, ICLEF;

2008 – “Down But Not Out – Is There Life After the Banks Shut the Lights Off?” ICLEF; “Using the Land Trust”, ICLEF; “What Now? How To Handle The Unusual Estate Planning Case”, ICLEF; “19th Annual Year in Review”, ICLEF

2009 – “Guardianship Litigation”, ICLEF; “The Full Spectrum of Estate Planning, Administration and Litigation”; “Wills – Trusts Compared”, ICLEF; “Year In Review”, ICLEF

2010 – “Unique Situations In Estate Planning”, ICLEF; “Year In Review”, ICLEF

2011 – “Probate 101 Or Now You Have A System Too!”, ICLEF; “Year In Review”, ICLEF

2012 – “120 Hot Tips in Estate Planning”, ICLEF; “Year In Review”, ICLEF

2013 – “Estate and Trust Administration – Getting Started”, ICLEF; “Guardianships From Beginning To End”, ICLEF; “Year In Review”, ICLEF; “120 Hot Tips in Estate Planning”, ICLEF

2014 – “Masters Series Conference – Advanced Business Succession Planning”, ICLEF; “Year In Review,” ICLEF; “120 Hot Tips in Estate Planning”, ICLEF

2015 – “Unique Issues in Estate Planning,” ICLEF  
“Year in Review,” ICLEF, “5 Tips on Will and Trust Litigation,” ICLEF

2016 – “The Estate Planning Trilemma: Trusts vs. Wills vs. TOD Property”, ICLEF; “Year In Review,” ICLEF; “120 Hot Tips in Estate Planning” ICLEF

2017 – “Succession & Retirement Planning”, ICLEF;

2019 – “Trusts vs. Wills vs. TOD Property”, ICLEF.

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***“IGITUR QUI DESIDERAT PACEM,  
PRAEPARET BELLUM.”*** .....

**Gregg S. Gordon**

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These seminar materials and the seminar presentation are intended to stimulate thought and discussion, and to provide those attending the seminar with useful ideas and guidance in the areas of probate litigation. The materials and the comments of Mr. Gordon do not constitute, and should not be treated as, legal advice or other legal technique, device or suggestion, or any of the consequences associated with them. Although we have made every effort to ensure the accuracy of these materials and the seminar presentation, neither Mr. Gordon or Gordon Law Office, LLC assumes any responsibility for any individual's reliance on the written or oral information presented during the seminar. Each seminar attendee should verify independently all statements made in the materials and during the seminar presentation before applying them to a particular fact pattern, and should determine independently the consequences of using any particular device, technique or suggestion before recommending the same to a client or implementing the same on a client's or his or her own behalf.

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# **Section One**

# Trust Administration

A COMPLETE SYSTEMS MANUAL

*John M. O'Drobinak  
O'Drobinak & Nowaczyk, P.C.  
1806 Robinhood Blvd., Suite A  
Schererville, IN 46375*

# **DISCLAIMER**

The information and procedures set forth in this practice manual are subject to constant change and therefore should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein. Further, the forms contained within this manual are samples only and were designed for use in a particular situation involving parties which had certain needs which these documents met. All information, procedures and forms contained herein should be very carefully reviewed and should serve only as a guide for use in specific situations.

The Author hereby disclaims any and all responsibility or liability, which may be asserted or claimed arising from or claimed to have arisen from reliance upon the procedures and information or utilization of the forms set forth in this manual, by the attorney or non-attorney.



John M. O'Drobinak has practiced law in Lake County, Indiana, since 1960. He graduated cum laude from the University of Notre Dame in 1957, earning a Bachelor of Business Administration Degree, and received his Juris Doctor Degree from Indiana University in 1960. He is a member of the American Bar Association, Indiana Bar Association, and the Lake County Bar Association. He has lectured at Indiana University, and has served as an Adjunct Professor at the Valparaiso University Law School, having taught in the areas of Wills, Trusts, Estate Administration and Estate Planning.

Mr. O'Drobinak is admitted to practice before all the State and Federal Courts in Indiana. He has been active in numerous civic and charitable organizations throughout his career and presently serves on the Board of Directors of several charitable organizations. He has been a member of the Board of Directors of Centier Bank for more than twenty years. An attorney with a broad range of experience, Mr. O'Drobinak's areas of concentration include estate planning, guardianships, trusts, and probate.

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"Implementing the Plan - Probate Administration Workshop 100", ICLEF, 1994

"Guardianships A to Z", ICLEF, 1994, 1995, 1998

"Living Trusts vs. Wills", ICLEF, 1996

"Using the Land Trust", ICLEF, 1996

"Doing it Right - Probate Administration", ICLEF, 1996

"Probate Litigation", ICLEF, 1997

"How To Find Your Way To Probate Court, But Should You?", ICLEF, 1997

"The Long and Winding Road To The Probate Court", ICLEF, 1997, 1999

"Wills - Trusts Compared", ICLEF, 1998

"Trusts and Estate Planning - Concepts and Techniques", ICLEF, 1998

"Secrets of a Successful Practice", ICLEF, 1998

"Probate/Estate Administration: Common Issues of Concern to the Bench/Bar", 1999

"Cutting Edge Issues in Estate Planning", 2000

"Advanced Estate Planning", 2000

"Testamentary Planning for Children/Grandchildren", 2001

“Hot Tips in Estate Planning and Real Estate”, ICLEF, 2001  
“Trust Administration – A Complete Systems Manual”, ICLEF, 2001  
“Paralegals Guide to Estate/Trust Administration,” ICLEF, 2002  
“529 Plans vs. Education IRAs,” ICLEF, 2002  
“Estate Planning for Lawyers,” ICLEF, 2002, 2003  
“Mastering Trusts In Estate Planning,” ICLEF, 2002, 2003

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# TRUST ADMINISTRATION

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## I. PROLOGUE

Many individuals profess to be estate planners, many of whom are not lawyers. Most of them are concerned with selling a product, whether it is an estate plan, an investment, life insurance, etc. In almost all of these instances, their involvement with the Client is over once the “sale” has been completed. What happens to the Client when they have questions or problems? What happens upon the incapacity or death of the Client? What happens if the need for an amendment/restatement arises? Lawyers are the only ones qualified to assist a Client at these times. In addition, they are the only ones qualified to assist the Trustee and Beneficiaries when it comes to the administration of a Living Trust. The question that must be answered: “Is there really a need for an Attorney’s services after a Trust is executed?” should be addressed early on in your relationship with the Client.

It is a common belief among the public today that once a Living Trust has been executed, no further need exists for the services of an Attorney. In fact, many of the so-called estate planners, who are not lawyers, use that argument as a selling point for their services. In truth and in fact, they are guilty of misleading the person to whom they are trying to sell the estate plan.

What does the unsuspecting person do if there are problems in the handling of the Trust due to the replacement, incapacity or death of a Trustee, or if other problems arise? These salesmen are all non-lawyers. They may have the plan prepared by an Attorney from

another state who is not authorized to practice law in the state where the transaction takes place. To whom does the unsuspecting Client turn for advice and assistance when a problem arises?

The business/financial world has become attuned to the benefits of using Living Trusts. They also, however, have definite procedures that must be followed when the Trust is faced with the replacement, incapacity or death of a Trustee, or with distributions to beneficiaries. These procedural requirements necessitate the preparation of a variety of documents. These documents should only be prepared by an Attorney. When a non-professional has arranged for the preparation of the estate plan, where does the unsuspecting Successor Trustee, Beneficiary, etc. go for help? Most non-lawyer planners never address these circumstances with the prospective Client for obvious reasons. In almost all of these situations, the Client never talks with an Attorney in connection with the preparation of the estate plan. Also, they rarely, if ever, talk with the Attorney who prepared the plan.

The Attorney who has prepared the estate plan must be aware of what needs to be done when these procedural problems arise. An Attorney, who has not prepared the plan for him/her, must also know what to do in these instances. You are now faced with having to deal with an estate plan you did not prepare, for the benefit of someone you may, or may not know. If you are prepared, you have made a new Client, along with the Family of the Client. All too often, however, the Attorney is not any better prepared than the non-professional. Many of you have not had to guide a Successor Trustee through the takeover of a Trust. Many of you have never been involved in the distribution of Trust assets. Many

of you are unaware of the things that need to be done to ensure the Trust accomplishes the goals our Clients have planned for themselves and their loved ones. In addition, it is of the utmost importance that you make certain that these services are performed in the same professional, competent and efficient manner that your Clients have come to expect from you. If it is a new Client, it is equally as important because of the need to create confidence in the Client's mind and to establish a basis for a long term mutually beneficial relationship.

No matter how good an estate plan may be, how long it is, or what all it may cover, there will still be a need for the services of an Attorney at times during the administration of the Trust. The Client needs to be made totally 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. It is up to you to make these points very clear.

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. Each step in



the process of providing these services should start the same way. As a result, the establishment of a system in your Office to address these problems is a matter of necessity. This system must always operate in the same manner, no matter what the circumstances are that give rise to your involvement in the trust administration. This is true whether you handle very few, or many, of these situations at this time, or in the future, in your practice.

## **II. CREATING AN AWARENESS**

### **A. GENERAL**

Today, by the time a prospective Client comes to see you, they have a general idea about estate planning and some idea about Trusts. Some have read about them, and some have talked to “they” about them. However, many of them have erroneous assumptions and beliefs about the utility of a Living Trust. The most common of which are: 1. That there are no death taxes due if you use a Trust; and 2. There is no need for the services of an Attorney in the future. Neither of which are correct. These erroneous beliefs must be corrected before the estate planning process is completed.

When does this education process begin? How do you create this awareness of the benefits and liabilities associated with using a Living Trust as the primary estate-planning tool? There are many points that must be considered to accomplish the goal of making our Clients aware of all of the benefits of a Living Trust as their primary estate-planning document. You need to be certain that the death tax issue is totally clarified in their mind. You also need to inform them of the need for an Attorney’s services in the future, and why this need exists. For our purposes, we shall only be concerned with the concept of “Trust Administration”, and how Attorneys provide services at that time. To many Clients and Attorneys, these are foreign terms.

The understanding of these terms, as they apply to a Living Trust, must come from you. You begin this process at your first contact with the prospective Client. In many instances, if you do estate planning seminars, this is where the process should begin. If so,

you must utilize this opportunity to begin educating the public to the need for an Attorney's services after the Trust has been signed. If you do not do seminars, then your first contact with the Client will be at the initial conference in your Office.

At the seminar, when discussing the use of a Will as an estate-planning tool, there are two excellent opportunities to lay the groundwork for the need for Trust Administration with the use of a Trust. The first situation arises when you are talking about a Guardianship and the impact on it by using a Will as the primary estate-planning document. You need to discuss what the actual fees and expenses will be for a Guardianship for the Client. It is not enough to talk in generalities. You need to be specific, and at a minimum, indicate the costs and expenses incurred for at least one year of a Guardianship. This should include court costs, bond premiums, appraisal fees, guardian fees, attorney fees, and any other miscellaneous expenses that may be incurred. You must point out that all of these expenses are paid from the Client's assets. People relate to specific numbers far better than they do to general concepts. Once you have done this, this gives you a perfect opportunity later in your presentation to compare the fees and expenses incurred through the use of a Living Trust that addresses the same problem.

The second opportunity arises while you are talking about probate proceedings. If a Will is going to be used, in all likelihood there will be a probate proceeding. Again, do not deal in the abstract, you need to be specific. People have often heard stories of the high cost of probate, but you need to be specific for them. You need to discuss court costs, bond premiums (if applicable), publication costs, personal representative fees, attorney fees,

appraisal fees, and any other miscellaneous expenses that can be expected. Again, make certain that you clearly indicate these are all paid from the probate estate. By doing this, you have also provided yourself with the means to compare these expenses with those incurred through the use of a Living Trust to accomplish the same goals.

By now, you should have begun to create an awareness in the attendees' minds as to the costs and expenses most of them will incur in their own estates. Why? Simply because most of those individuals have used Wills, joint ownership, or intestacy, as their estate planning tools. You should clearly indicate that many of these costs apply in each of these instances, some more so than others.

The final opportunity to review these points at your seminar should arise during the Question and Answer session. If no one questions you about these matters, make absolutely certain in the last five to ten minutes of the session to again review the need for legal services, the time for them, the nature of the services, and the fact that a separate fee will be charged for them. In this way, when you hold your first conference with the Attendees and review the need for future services, you can remind them they heard about this at the Seminar.

If in fact you do not conduct public information seminars and your first contact is with your prospective Client in your Office, it is important that you discuss these same points, in the same manner. It may even be easier for you to make this comparison in your Office, as compared to a seminar. If the first contact was at a seminar, then you must reinforce everything you have discussed at the seminar about trust administration during

your first conference. Whether the first contact takes place at your seminar or the initial conference in your Office, when the discussion turns to the use of a Living Trust as the primary estate-planning tool, you have the opportunity to discuss directly with the Client the need for an Attorney's services after the Trust has been signed. While showing how a Trust avoids Guardianship and the expense thereof, frankly talk about the fact that they will still need the services of an Attorney. Discuss what will need to be done and the range of fees they can expect you to charge. In order to do that, you need to be fully aware of what you will need to do at that time.

The second opportunity arises during this conference while you are discussing avoiding probate. When you finish discussing how this takes place, again discuss the fact that even though a Living Trust is being used, there must still be some work done at that time. Detail the work and provide an estimated range of these fees.

Whether by seminar, conference, or both, you have the opportunity to clear up many discrepancies and misunderstandings about using a Trust as the primary estate planning tool. Use this time to your advantage, and get the message across regarding the need for an Attorney's services in the future.

## **B. INITIAL CONFERENCE**

The education of the Client as to the need for the Attorney's services in the future should continue, or begin, if this is the first contact with the Client, during the initial, and any subsequent, conferences prior to the execution of their estate plan. While discussing the

Client's need for estate planning, it is very important that you clear up all of the major misconceptions about the use of Living Trusts.

Many people believe that once a Trust is created and funded, there is no further need for the Attorney's services. Too many people, in discussing Trusts with prospective Clients, create the wrong impression. It is absolutely necessary that an Attorney be involved, at a minimum, at three different times after the Trust is signed. The first is the disability of the Trustee/Beneficiary, the second is death of the Trustee/Beneficiary, and the third is upon the termination of the Trust, for any reason. There may be many other reasons why there will be a need for your services at some time in the future, but there are at least three times when your services absolutely will be needed.

Because the Trust is viewed as a probate avoidance tool, the common belief is that no additional Attorney's services are needed, either during lifetime or after death. This must be dealt with in a straightforward informative manner. Most potential Clients have either a Will as their primary estate-planning tool, or they have no formal written plan at all. In this instance, their assets will be distributed according to the prevailing intestacy laws.

While reviewing their distribution plans, both during life and after death, it is extremely important that the Client be made aware of the Attorney fees that will be incurred in the future through utilizing their existing plan, whether by using a Will or the intestacy laws. These fees are incurred during an Estate proceeding, and also during a Guardianship proceeding, if applicable. If you are not familiar with how these fees are calculated, then you should quickly visit your local Probate Court and familiarize yourself with how the fees

are determined in each of these matters.

During the initial conference, you should compute the applicable fees for Guardianship and Probate proceedings based upon their existing estate plan and discuss them with the Client. Make sure that you also discuss all of the incidental associated expenses: court costs, bond premiums, publication costs, notice costs (certified mail, overnight mail, etc.), and other similar items.

Once they know these costs, you now contrast them against the attorney fees that will be due in the future if a Trust is being used. You are making it clear to the Client that there will be a need for the Attorney's services in the future. You should detail what these services will include. In addition, you are providing the Client with an estimate of what those fees will be at that time. Not only are you creating an awareness of the need for an Attorney's services in the future, you are also contrasting the costs and expenses of the administration of the Client's current estate plan through both guardianship and probate proceedings with the costs and expenses of dealing with these same problems through the use of a Trust. At the same time, you contrast the time that will need to be spent to finalize matters with the Client's existing plan with the amount of time that will be needed to accomplish the same goals through the use of a Trust.

By utilizing this method, you should indelibly etch into your Client's conscious awareness that there is a need for your services in the future. In addition, you are plainly showing them how they will dramatically save time and money, for themselves and their loved ones, through the use of a Trust. Whether you give them a copy of these fee

computations is totally up to you. Many Attorneys are not comfortable about quoting fee ranges for future work.

A second useful way to ensure that this point is clearly understood arises in your conference when it becomes apparent that the Client's estate is large enough to have Federal Estate Tax problems. In this instance, after discussing the Client's needs and wishes, and reviewing their asset values and ownership, you can compute the Federal Estate Tax utilizing the Client's existing plan. You have now provided your Client with the total picture of death taxes that are due, and fees that will be paid, all as they will be paid based upon his/her existing plan.

It is now a simple matter to compare these same things through the use of a Trust. You incorporate the tax saving features, along with the fee and expense saving aspects of a properly drafted Trust, and show your Client what the new total will be for these problems. The contrast is even more startling when you discuss the combination of death taxes and fees, instead of merely fees alone. Remember, however, not everyone has a death tax problem. Again, whether you provide a copy of these computations to your Client is up to you.

If you are clear and unequivocal in discussing the fee issues by comparing their existing plan with the use of a Trust, you should be able to overcome the lack of awareness of the need for your services in the future. The more you can do at the early stages of your relationship with the Client, the more fully they understand that there will be an absolute need for your services in the future.



### **C. DOCUMENT EXECUTION**

Even though you should have substantially clarified all of the misconceptions about the use of a Trust, there is still more work to do on these topics. There is an additional opportunity you have at the early stages of your relationship with your Client to clearly inform them of the need for your services in the future. This opportunity takes place at the time of the signing of the estate plan. It is important that you prepare your Staff person who handles the signing to again emphasize that your services will be needed in the future. If you do not use a Staff person to do the signings, but you do them, then it is up to you again to reinforce the fact that there will be a need for an Attorney's services in the future.

There are several different ways this can be done. Some of these can be accomplished through the use of documents in the Estate Planning Portfolio, Binder, or other packaging means you use to present the executed documents to your Clients. Have a "Key Advisors To Be Contacted" page. On this page, under "Attorney", your name, address, and telephone number should be listed there. You, or your signing person, should call this item to your Client's attention. It should be indicated that these are in the Portfolio to provide information on Trust Administration, and how you can be contacted, either at death, disability, or for any other reason to assist with the Administration.

The other ways of reinforcing the need for services in the future, are through the use of the two separate Memoranda, one to the "Surviving Trustee" and the other to the "Successor Trustee". You may want to place them in another section of the Portfolio, if you

have one. Both of these documents are intended to provide the Surviving/Successor Trustee with a simple explanation of what they need to do if they take over the administration of the Trust due to the incapacity, death, resignation, etc. of the prior Trustee. Although these instructions are intended to be informative to assist the Surviving/Successor Trustee with a smooth transfer of assets and control, they also clearly reinforce what you have previously discussed with the Client concerning ongoing Attorney services.

Quite often you become aware of the death or incapacity of one of your Clients. You expect to hear from the Surviving or Successor Trustee. However, no call comes. What do you do? What can you do? Ethically, can you contact the Successor Trustee who has not contacted you? Do you have a duty to see that your Client's estate plan is carried out properly? Many times the Successor Trustee is unaware that they have duties to begin performing and they appreciate your contacting them. Besides contacting them by telephone, if that is what you decided to do, you should also send them a letter putting them on notice of the fact that it may be time for them to take over the Trust due to the condition/death of the prior Trustee. You should refer them to the Memorandum in the Portfolio, which gives them an idea of the things they need to do. You should also send them a copy of the Memorandum to help them get started.

#### **D. POST EXECUTION**

Once the estate plan has been executed, should the Client be forgotten? Do you merely sit back and await future developments in your Client's life? If you do, you are not serving your Client's interests as well as you should. You have spent a considerable amount

of your time, your Staff's time and your resources to develop a strong relationship with your Client. You should now work to strengthen it.

Within several weeks after the execution of the Client's Plan, you should consider sending them a letter. This letter should briefly summarize all the discussion you and your Staff have had with them concerning the future problems that give rise to the need for your services. No matter what other letters you may send (returning recorded deeds, evaluations, etc.), this should not be incorporated into them. It should stand alone.

You are using this letter to reinforce your discussions about the need for an Attorney's services in the future. You do not want to clutter this letter up with other ideas. The only other thing you may wish to discuss is the importance of completing their funding of the Trust. You point out how important this is and how it can affect your involvement in the future.

Most Clients keep correspondence that comes from their Attorney on their estate planning matters. This letter serves as a continuing reminder to them of the things you discussed about future services and compensation. Every time they re-read it, it will reinforce your comments.

#### **E. DEATH**

By the time your Client dies, hopefully, you have created an overall awareness of the need for your services at that difficult time. If you have done this well enough, then those charged with the responsibility of administering the Trust have most likely been made aware by the Trustor of the things that need to be done at that time. Your relationship with

the Client has been a professional association. You may have learned something about the Client, as a person, and the Client's family. All too often, however, the Attorney is viewed as being remote and aloof. It is up to you to overcome this perception. You have the perfect opportunity to overcome this misconception through the use of the periodic review of their estate plan if you offer that service to your Clients. During these conferences, take a few minutes to chat with them about their families and their lives. Remind them of the future need for your services upon their incapacity or death. Remind them to discuss this with their Successor Trustee.

Another way to achieve this objective is through the timely use of a sympathy card. Hopefully you will soon have a system in place for Trust Administration purposes. This system begins with the first telephone call you receive regarding the incapacity or death of a Client. It can also begin with the obituary section in your local newspaper showing the death of a Client. No matter where the information comes from, you should immediately react to it.

The use of a sympathy card is a personal touch by you. It should be tastefully done. Remember, this is a high stress period of time for the Family/Loved Ones, and if you have done your job well, you have helped ease their burden. This card should be sent by you to the Family/Loved Ones as soon as you learn of the death. It should be hand addressed and signed by you and all of your Staff. This is one of the few times that a duty should not be delegated. The extra effort on your part is appreciated by the Family/Loved Ones.

## **F. SUMMARY**

The concept of estate planning must include a discussion of both the lifetime and death benefits that accrue to the Client and the Client's Loved Ones through the use of a Trust. Today, almost every Client has some understanding of estate planning and its benefits. They also know a great deal about the use of Joint Tenancy, Wills, Trusts, POD and TOD accounts, and other planning tools that can be used to plan their estate.

However, most of them have no realization of the impact, requirements and needs created in the future either on their Family or their financial affairs by the use of each of these methods, or by any combination of them. Part of the educational process for our Clients must include making them aware of what each of these methods means to them and their Loved Ones, during their life and upon their death. You must provide the information necessary to help them understand each process. You need to clearly identify the problems that are created, and those that are resolved through the use of each planning tool.

This educational program should start at the first contact with the Client, whether it is at a seminar or a first conference in your Office, and should continue through all subsequent contacts. This also includes the review conferences. Discuss the need for your additional services for each possible occurrence at every opportunity. Do not fail to discuss the fact that additional fees will be due. It is always a good idea to advise the Client of the potential range for these fees. However, make certain you indicate that this estimate is based upon the current status of how you bill for your work TODAY. This may not be true in the future, and is certainly not true if there are complications. If another member of the Family

is also present, it is all the more important that the need for future services and fees are discussed, and detailed.

Once you adapt these procedures to your own practice, your system has begun to be formalized. It is from this base that your Trust Administration practice will grow and flourish. More importantly, your Clients and their Families will be aware of your ability to perform the necessary legal services for lifetime incapacity or death administration. This provides another opportunity for your practice to grow, through their referrals to you of other family members or friends who are facing these types of problems. They also have the assurance that when the time comes, they can turn to you to handle any problems that may arise.

## **KEY ADVISORS TO BE CONTACTED**

**Accountant** \_\_\_\_\_

Phone \_\_\_\_\_ Firm \_\_\_\_\_

Address \_\_\_\_\_

**Attorney** JOHN M. O'DROBINAK

Phone 219/738-2292 Firm John M. O'Drobinak, P.C.

Address 5265 Commerce Drive, Suite A, Crown Point, IN 46307

**Auto Insurance Agent** \_\_\_\_\_

Phone \_\_\_\_\_ Firm \_\_\_\_\_

Address \_\_\_\_\_

**Bank** \_\_\_\_\_

Phone \_\_\_\_\_ Bank \_\_\_\_\_

Address \_\_\_\_\_

**Clergyman/Rabbi** \_\_\_\_\_

Phone \_\_\_\_\_ Church/Synagogue \_\_\_\_\_

Address \_\_\_\_\_

**Employer** \_\_\_\_\_

Phone \_\_\_\_\_ Firm \_\_\_\_\_

Address \_\_\_\_\_

**Financial Advisor** \_\_\_\_\_

Phone \_\_\_\_\_ Firm \_\_\_\_\_

Address \_\_\_\_\_

TO: SURVIVING TRUSTEE

FROM: JOHN M. O'DROBINAK

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 your Spouse.

A. INCAPACITY:

Upon the incapacity of one of you, it is necessary to obtain the attending Doctor's statement that the other is incapacitated. This is needed to permit you to deal with the Trust alone. I have the proper form for the Doctor to fill out and sign. As soon as you believe the other of you is unable to handle his/her affairs, contact me immediately. I will prepare the Doctor's statement and forward it to the attending Doctor immediately.

When it is returned, I 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.

Your Trust contains specific instructions to be followed under these circumstances. I will assist you in making certain that you continue the handling of your 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. I will explain these duties to you as well.

The charges that will be made for services in transferring control of your Trust to the one of you that is not incapacitated will be made at my hourly rate in effect at that time, and are paid by the Trust.

B. DEATH:

Upon the death of the first of you, generally nothing needs to be done in regard to the Trust prior to the funeral. You are well aware of your Spouse's funeral wishes. Funds for this purpose and any other immediate purpose can be made available for your use from the Trust accounts. Contact me and I will assist in obtaining these funds for your use.

After the funeral, you should contact me to obtain the advice and direction that you will need to carry out your duties as 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 \$675,000.00, and Indiana Inheritance Tax), if any, must be determined and paid.

When you contact me, I will discuss the procedural steps that need to be followed. Some of



them are:

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 Spouse to me so I can file it with the applicable Court, even though it may not be necessary to open an Estate;
4. If the Estate exceeds \$675,000, it will be necessary to prepare and file a Federal Estate Tax Return, Form 706. Upon 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 the death of the first of you. There may also be some additional tax to be paid to the State of Indiana. There may be reasons to use the alternate valuation date for federal estate tax purposes, which is six months after the date of death. 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. Prepare and file an Indiana Inheritance Tax Return, if necessary, and make payment of any tax that is due. If this tax is paid within nine months from the date of death, there is a 5% discount allowed;
6. Pay all unpaid bills of the deceased Party;
7. If applicable, divide the assets between the Martial Trust and the Family Trust as deemed appropriate by the surviving spouse and/or Trustee to ensure the maximum benefit and control of the assets by the surviving spouse;
8. Distribute the assets to the appropriate beneficiaries, if required, and obtain receipts for any distributions;
9. 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 if some are also held 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 first of you. This assumes prompt action on your part in contacting me 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.

The charges that will be made for services in winding up the affairs of the Trust when the

first of you dies, will include those for my services in the performance of the activities described above, an accountant's fees, if necessary, appraisal costs where appropriate or necessary, and death taxes that are due, if any.

As a practical matter, I 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 first of you to die.

If I can provide you with additional information regarding this matter, please let me know.

TO: SUCCESSOR TRUSTEE

FROM: JOHN M. O'DROBINAK

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. I 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 me immediately. I will prepare the Doctor's statement and forward it to the attending Doctor immediately.

When it is returned, I 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. I 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, I 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 my hourly 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 me and I will assist in obtaining these funds for your use.

After the funeral, you should contact me 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 \$675,000.00, and Indiana Inheritance Tax), 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 me so I can file it with the applicable Court; even though it may not be necessary to open an Estate;
4. If the Estate exceeds \$675,000, 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. Prepare and file an Indiana Inheritance Tax Return, if necessary, and make payment of any tax that is due. If this tax is paid within nine months from the date of death, there is a 5% discount allowed;
6. Pay all unpaid bills of the deceased Party;
7. Distribute the assets to the appropriate beneficiaries, if required, and obtain receipts for any distributions;
8. 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 if some are also held 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 me 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, I would suggest that you recommend to the beneficiaries of the Trust that they have an estate plan for themselves and their families. As you know, this estate plan has been accomplished through the use of a revocable living trust and other appropriate documents, which I 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 prior Trustee dies, will include those for my services in the performance of the activities described above, an accountant's fees, if necessary, appraisal costs where appropriate or necessary, and death taxes that are due, if any.

As a practical matter, I 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 I can provide you with additional information regarding this matter, please let me know.



*Our Deepest Sympathy*

*May the concern and sympathy  
of those who care help  
you through this difficult time.*

### **III. TRUSTEE REPLACEMENT**

#### **A. GENERAL**

There is a continual need for the services of the estate-planning Attorney during the life of the Client. The discussion of these services and why they are necessary should be covered in detail during the early estate-planning stage conferences, during the process of periodically reviewing the estate plan and by answering periodic questions from your Clients.

However, there are times that services are needed for unusual and unforeseen circumstances affecting the Client's estate plan. We have already discussed the effect of the death of the Client/Trustee upon the estate plan in more detail in the preceding materials. What happens upon the incapacity of a current Trustee? Suppose a Trustee resigns? Does the Trust permit another Trustee to be appointed to act on behalf of the Trust? What if no successors are named or are alive? What if the current Trustee is not properly performing his/her duties?

All of these questions, and more, must be answered to the satisfaction of all of the interested parties to the Trust. The answer to most of these questions can be found in the Trust document itself, or in your applicable State Trust Code. The major consideration for you, however, is that you are aware of these situations and how to deal with them.

#### **B. INCAPACITY**

The Trust should have a specific provision dealing with the incapacity of a 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 state substantive and 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. Generally, a Trust will 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. 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, your Office Staff should follow the same procedure that will be used for the death of the Client/Trustee. There is one variation, however. Either they, or 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.

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.

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 (Successor Trustee's Certification – Incapacity). These two documents will be needed by the Successor Trustee to assume control over the Trust corpus. 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.

A final matter of concern to you deals with the asset takeover by the Successor Trustee. If it is not the Spouse continuing to serve as Trustee, but a new Successor Trustee

is taking over, then it is absolutely necessary that the exact value of all assets be determined as of the date the Successor Trustee assumes jurisdiction and control of the assets. To assure the uniform application of your system, you should use the same procedure for gathering information and valuing assets that you use in a death administration. An exception to this rule may deal with real estate appraisals. It may not be necessary to have an appraisal made due to the circumstances that surround the incapacitated Trustee/Beneficiary. A question some time is raised about valuing stock, and other similar assets, at this time. The better procedure is for you to value all of the assets. The Successor Trustee can be held liable if the assets are not productive or appropriate investments for a Trust. Remember, the investment standard changes when a Successor Trustee who is not the Trustor assumes control. You need to determine whether the Prudent Man or the Prudent Investor Rule applies to the Trustee's actions. The requirements of these two rules are very different. You need to advise your Client carefully about this point.

The Successor Trustee is required by the Trust instrument, normally, as well as by the applicable Trust Code, to provide an accounting to the Beneficiaries, at least annually. To do this properly, it is necessary to value the assets as of a certain date. This 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?

An issue that must be addressed by a Successor Trustee is the accounting that may be required from the prior Trustee. In the event of the incapacity of the prior Trustee, no one may be competent to make such an accounting. If the prior Trustee was also the Trustor and Beneficiary, there may be no problem. Almost universally, the original Trustee in a Grantor Trust situation is never going to prepare an accounting for themselves. However, the whole picture changes where it is not the original Trustee being replaced.

Here again, the position of the Attorney in providing services to assist in the resolution of this problem must be communicated to all. The Beneficiaries have the right to know what has been happening to the Trust. Can you accept an accounting from an Attorney In Fact for the Principal, who was the prior Trustee? Can you accept an accounting from a Guardian for the Protected Person/Ward, who was the prior Trustee? These are questions that you must be prepared to answer.

If the problem of the accounting appears unresolvable, there are at least two options to consider. The first is directed to the Beneficiaries. Request a waiver from them as to whether you should require an accounting from the previous Trustee. A letter of explanation, along with a properly drafted Waiver, may very well solve the problem. The other option is to docket the Trust with the local Probate Court, and in connection with the docketing, request instructions as to the matter of the accounting. Generally, in this process, all interested persons will receive notice and will have the opportunity to be heard. Once the Court enters its order, the Successor Trustee has the protection needed to proceed with the proper management of the Trust's affairs. The matter of docketing a Trust will be

reviewed in more detail later in these materials.

The final matter that must be addressed is the obtaining of a new EIN for the Successor Trustee. A new reporting entity now exists and this information will be required by the third party asset holders. Obtain this number immediately as all asset holders will require it.

### **C. DEATH**

The death of the current Trustee immediately triggers either the appointment of a Successor Trustee under the terms of the document, or if there were Co-Trustees, the right of the surviving Trustee to serve alone. In the Co-Trustee situation, there is little that needs to be done to ensure the survivor has the legal right to act. In most instances a certified copy of the Decedent's death certificate is usually sufficient. However, there may be the need for a few other documents as well.

If the Co-Trustee situation is one between a Husband and Wife, you should have the survivor eliminate the name of the deceased Co-Trustee from the ownership of all Trust assets. This is especially true where the deceased Co-Trustee's social security number is the one that was used for reporting income earned by the Trust assets. This may not be a problem in the year of death, but certainly can lead to administrative difficulties in future years if not corrected.

At a minimum, two forms should be prepared for the surviving Co-Trustee. The first is an Attorney's Certification should be prepared for the surviving Co-Trustee to assist in

the transfer of ownership to the survivor's name alone. This should be accompanied by the Surviving Co-Trustee's Certification – Death. The use of these two forms should satisfy any holder of a Trust asset and permit the transfer of ownership into the survivor's name alone. You should also give serious consideration to attaching a photocopy of the death certificate of the prior Co-Trustee. Again, you are ensuring that all of the information needed is included with these two documents, and there is no need to produce the entire Trust document for an inquiring third party.

Obviously, this same procedure is utilized when the deceased Trustee was solely acting for the Trust. Remember that in this situation it is also advisable to use the Acceptance and Oath for the Successor Trustee to execute. This should be the final action in qualifying the Successor Trustee. In this situation, it is imperative that the Successor Trustee takes control of the Trust corpus as soon as possible. One additional factor to be considered here, may be the requirement of a release to obtain possession and control of the Trust assets. This release may need to be obtained from your local state taxing authority. If these are needed, they should be addressed and obtained at the earliest opportunity. Again, the matter of an accounting for the deceased Trustee is paramount in considering the duties of the Successor Trustee. Perhaps the same approach used in the incapacity situation may solve the problem here as well. If an estate is opened for the administration of the private affairs of the prior Trustee, the accounting could be prepared by the Personal Representative of that estate. If your state Trust Code does not address this issue, then determine the statutory procedure for the filing of an accounting on behalf of a deceased Personal

Representative, and follow it carefully to ensure the accounting issue is resolved. No one can reasonably criticize the use of this statutory procedure.

Although generally it is not a difficult process to place a surviving Co-Trustee, or a Successor Trustee in control of the Trust upon the death of a Trustee, the process is just beginning. The Trust Administration awaits in most of these situations. We shall discuss this in detail later in this material.

If the surviving Co-Trustee continues to handle the affairs of the Trust, and that person was a Co-Trustor, that person's social security number should be the final information that the asset holders will need to complete the transfer of ownership. There is no need for a new EIN. You should have already prepared and have available the Trustee's and Attorney's Certifications. This is true where you are dealing with a Grantor Trust. On the other hand, if the status of the Trust as a Grantor Trust is lost because of the death of the Co-Trustee, or if a new Successor Trustee has taken control of the Trust's affairs, it will be necessary to obtain a new EIN for the now acting Trustee to complete the transfer of control.

#### **D. OTHER REASONS**

##### **1. RESIGNATION**

As the Trustees of the Living Trusts you have drafted 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 these type of problems 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, the Attorney's Certification and the Successor Trustee's Certification need to be prepared and executed. You may wish to attach a copy of the Resignation to the Certification as well. The EIN issue must also be immediately addressed to permit this transition.

Here for the first time in the replacement of a Trustee, someone is available to prepare an accounting. If it is the original Trustor/Trustee/Beneficiary, then a great deal of time and effort can be saved if he/she will sign a waiver to the accounting requirement. If there are other Beneficiaries, the waiver request can be made as well. On the other hand, if the Beneficiaries do not waive the accounting, the resigning party must prepare an accounting. The Successor Trustee should immediately notify the Beneficiaries that an accounting has been requested. If there is some delay or problem in obtaining the accounting, they should also be advised of this. Obtaining, this accounting, when needed, is imperative for the Successor Trustee. This is the starting point for them in their own accountings that must be submitted in the future. Once the accounting is received, both you



and the Successor Trustee need to review it carefully to determine the propriety of the prior Trustee's conduct. Here again it might be appropriate to docket the Trust to finalize all accounting issues, or to enforce the accounting requirement.

## **E. CONCLUSION**

In each of the instances discussed for the replacement of a Trustee, it is necessary that you obtain all of the information you can concerning the assets held in the Trust. It makes no difference whether the Trustee is replaced due to his/her resignation, incapacity or death, your system needs to be in existence and functioning efficiently from the moment you receive the first call that your services are needed in these cases. Your system needs to be prepared and operational whether you receive one call or multiple calls per month, or per year. This can only be assured if you understand what needs to be done in each case.

When the Trustee is replaced for incapacity or resignation reasons, the information about the assets that are going to be taken over by the new Trustee has additional importance. The new Trustee should always execute a Receipt. This acknowledges what assets have now come under the jurisdiction of the new Trustee, to be administered according to the terms of the Trust.

This information regarding assets is equally as important to you. These assets need to be transferred into the name of the new Trustee. Here again, there are additional duties to be performed by you, the Attorney for the Trust, on behalf of the Trustee and the Trust.

Once you have the new Trustee in place, for whatever the reason, what should be

done regarding the Beneficiaries? A Notice should be prepared and sent to each of them, whether their interest is only a life estate, or whether it is a remainder interest. The 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 forestalling a lot of unrest, and a lot of extra work for you.

Hopefully, you now have some insight into these situations that will help you customize the system to your State Law and Office procedures. You also realize that if necessary, you can have access to the Courts to accomplish a particular goal in order to properly perform your professional services.

### **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. \_\_\_\_\_

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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 \_\_\_\_\_, 2001.

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: \_\_\_\_\_

[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,

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

JMO/sap  
Enclosure

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**

JOHN M. O'DROBINAK, 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 \_\_\_\_\_.

\_\_\_\_\_  
JOHN M. O'DROBINAK

STATE OF                                 )  
  ) SS:  
COUNTY OF                                 )

Before me, a Notary Public in and for said County and State, on \_\_\_\_\_, personally appeared JOHN M. O'DROBINAK, 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

Form SS-4 : Exact IRS form cannot be duplicated for this presentation. Following are the items on the Form which need to be completed.

**APPLICATION FOR EMPLOYER IDENTIFICATION NUMBER,**  
**SUCCESSOR TRUSTEE**

1. Name of Applicant  
[Name of Trsutee], dated [Date of Trust]
3. Executor, Trustee, "Care of" name  
[Name of Trustee], Successor Trustee
- 4a. Mailing Address  
[Address of Trustee]
- 5a. Business Address  
[Address of Incap. Trustor, if Trustee not in Lake County]
- 4b. City, state and ZIP code  
[Address of Trustee]
- 5b. City, state and ZIP code  
[Address of Incap. Trustor, if Trustee not in Lake County]
6. County and state where principal business is located.  
[County and State where Incap. Trustor resides]
7. Name of Principal officer, general partner, grantor, owner or trustor – SSN or ITIN may be required.  
[Name of Trustor(s), with social security numbers]
- 8a. Type of entity (check only one box)  
  

v Trust
9. Reason for applying (check only one box)  
  

v Created a trust (specify type) > [Name] Living Trust
10. Date business started or acquired:  
Date of Incapacity: [date of incapacity]
11. Closing month of accounting year:  
[Month]

Business Telephone Number  
[Telephone Number]

Fax Telephone Number  
[Fax Number]

Name and title > [Trustee name], Successor Trustee

Signature >                      *Signature of Trustee*

## 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\_PROT\_PERS», "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.

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2. Describe the Patient's mental and physical condition; and, if appropriate, describe the Patient's educational condition, adaptive behavior and social skills.

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3. State whether, in your opinion, the Patient is capable of making personal and financial decisions; and, if not, the kinds of decisions which the Patient can and cannot make. Include the reason for this opinion.

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4. Is the Patient capable of making decisions as to who she would like to make financial and medical decisions upon her incapacity? Yes\_\_\_\_\_ No\_\_\_\_\_. If No, please explain:

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5. Is the Patient capable of understanding what she owns and what distribution of her

property she would like at the time of her death? Yes\_\_\_\_\_ No\_\_\_\_\_. If No, please explain:

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6. Is the Patient capable of understanding and executing a Will? Yes\_\_\_\_\_ No\_\_\_\_\_. If No, please explain:

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

Signed: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Tele: \_\_\_\_\_

Dated: \_\_\_\_\_

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.

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Tele: \_\_\_\_\_

Tele: \_\_\_\_\_

DATE

Dr. \_\_\_\_\_  
Address  
Address

Re: «name\_prot\_pers»

Dear Dr. \_\_\_\_\_:

My Client and your Patient, «name\_prot\_pers», has requested my assistance in amending his/her estate plan. I have enclosed a Medical Report that I am requesting you complete and return to me as soon as possible. The purpose of the Medical Report is self-explanatory, as I am sure you will see when you complete this report for «name\_prot\_pers».

If you have any questions, please feel free to call. Thank you.

Very truly yours,

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

Enclosure  
JMO\sap

**ATTORNEY'S CERTIFICATION**

JOHN M. O'DROBINAK, 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 \_\_\_\_\_, Deceased, 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 death of the prior Trustees.

IN WITNESS WHEREOF, I have executed this certification on \_\_\_\_\_.

\_\_\_\_\_  
JOHN M. O'DROBINAK

STATE OF                                )  
  ) SS:  
COUNTY OF                                )

Before me, a Notary Public in and for said County and State, on \_\_\_\_\_, personally appeared JOHN M. O'DROBINAK, 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;
- 2a. The original Trustee, [Trustee], died on [date of death];
- 2b. One of the original Trustees, [name], died on [date of death], and that the other original Trustee, [name], died on [date of death].
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] 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    )

**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**

JOHN M. O'DROBINAK, 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's 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 \_\_\_\_\_.

\_\_\_\_\_  
JOHN M. O'DROBINAK

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, on \_\_\_\_\_, personally appeared JOHN M. O'DROBINAK, 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

### **Ancillary Fiduciaries**

If, for any reason, my Trustee deems it advantageous to act through an ancillary fiduciary, my Trustee may designate an ancillary Trustee qualified to serve in the jurisdiction where such ancillary fiduciary is to act and may delegate to such ancillary fiduciary such of the powers granted under my Trust Agreement as my Trustee deems advisable without being chargeable with loss, if any, arising out of such designation or delegation. My Trustee may specify whether any corporate fiduciary, or any person or persons acting in an ancillary capacity hereunder, shall serve with or without bond. Except as may be otherwise specifically provided, no such ancillary fiduciary need comply with the provisions of any Uniform Trustee's Accounting Act, the Uniform Trust Act or similar acts in force in any state where the fiduciary may be acting.



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 \_\_\_\_\_, 2001, 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 death of \_\_\_\_\_, who died on \_\_\_\_\_, \_\_\_\_\_ is to serve as Successor Trustee of the Trust.
2. 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 \_\_\_\_\_.
3. 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

#### **IV. TRUST ADMINISTRATION**

##### **A. GENERAL**

There is a basic concept about Trust Administrations that must never be forgotten. They are DIFFERENT than normal estate or guardianship administrations. Certainly there are many similarities. Certainly many of the procedural aspects are the same. However, you must remember that 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.

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. If your Staff is well trained in the old concepts, they need to be untrained and then retrained. They, and you, must learn that the old rules are gone and the new ones give you a far freer hand to accomplish the Deceased/Incapacitated Trustor's goals and objectives.

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.

The systematizing of your Trust Administration procedures begins with the un-training of yourself and your Staff. That is not as easy as it sounds. Not only are lawyers traditionalists, but their Staff is too, simply because of the way they operate their Offices. You have begun to break out of this mold because you utilize Living Trusts as an estate planning tool. Now it is necessary to reinvent (or possibly merely modify) the wheel.

## **B. GATHERING INFORMATION**

Any system should depend upon its foundation in simplicity, understandability, and its uniform, universal application to those matters for which it was created. Your Staff needs to be made a part of the development of your system from the beginning. They need to understand their role, and more importantly, how it fits into your overall operating system for Trust Administrations.

Your system should begin before you receive the first call from anyone with a

problem. Your Staff needs to be ready to respond before anyone contacts you for your services. Once the call is received, they need to know what to do, so that you can always rely on the fact that all preliminary work is done. A memo to your Staff outlining these procedures is the clearest initial way to begin the process. This memo should detail the procedure you want followed once your Office has been contacted.

Circulate the Memo. Once your Staff has had enough time to review it and think about it, hold an Office meeting with all the Staff. This also includes those who are not involved in administration matters. The initial contact procedure needs to be known by everyone so that the system can function, no matter who takes the call. Your Staff may have some suggestions as to how to improve this procedure.

As part of this process, a memo on Trust Administration files should also be circulated. The memo discusses each of the types of administration. During the Office meeting to discuss the other Memo, this one should be discussed as well. All files should be set-up the same way. Uniformity is the important aspect in this situation. Also during the Staff conference, you need to emphasize how important it is that all matters stay in the files and are placed in chronological order. Although it is up to you, the preferable method is to have the most recent documents, notes, correspondence, etc. on top. Whatever your preference, be certain that it is used in all files, on all matters.

Quite often you are aware of the death of a Client, but you have not received a call about the next step, i.e. Trust Administration. Previously, questions regarding this set of circumstances have been presented to you. What should you do under these circumstances?

Do you contact the Successor Trustee to advise them that there are things that need to be done for the Trust to continue to operate properly? On the other hand, do you have a duty to act toward someone with whom you have had no prior contacts? If you decide to send them a letter, it simply puts them on notice that they are responsible to take action relative to the Trust. Quite often this little memory jog will cause the Trustee to move along with the Administration. Even if they go to someone else, you have helped carry out the deceased Trustor's estate plan. Should this be part of your professional responsibility? That decision is up to you.

Suppose you do get a call from the Successor Trustee, but with no inclination to set an appointment to come in to see you. Again, the old idea that nothing needs to be done can still rear its ugly head even though you have done your best to educate your Clients. Do you simply forget about the call and do nothing? The far better procedure is to send the Trustee a letter, no later than two weeks after the first call. In this letter, you must make it clear that you are not doing anything relative to the Trust Administration because you have not been directed to do anything. You are now placing the burden on the Successor Trustee. Without this letter, you could be faced with the Successor Trustee someday saying "I thought the Attorney was doing something." Do not leave it to chance.

By following these two procedures, one if no call is received, the other if a call is received, you have taken steps to move the applicable Trust Administrations along. You have a professional responsibility in these situations. These letters carry out your professional responsibility. The deceased Trustor came to you to prepare the plan and

obviously expected you to implement it if something happened to him/her. You should send both letters out within two weeks of the death, or telephone call, whichever set of circumstances is applicable. You have now satisfied this obligation.

Once the call is received about setting up an appointment, your Staff person assigned to this responsibility should immediately schedule the appointment with the appropriate parties. This should be done within the next five (5) to ten (10) working days. It can certainly be made sooner, but it is not advisable to make it any later. The sense of timing for this appointment depends upon having the Trust Administration Questionnaire filled out. The initial letter sent to the Client, with the Questionnaire, should be sent out on the same day the first telephone call is received. This is why it is so important that everyone knows the procedure to follow. Trust Questionnaires are included for each reason for the change of the Trustee. Use the applicable one, depending on the circumstances, which dictated the call. If the call received by your Office is about the death of a Client, you should be interrupted to take that call. Explain to the people you are with that a Client has died and it is important that you take this call. Take the call, extend your sympathy, briefly discuss the next steps with them and turn them over to your Staff Person who sets the appointments. Both the caller and the Client/prospective Client in your Office will appreciate what you just did. The caller, because you took time to talk with them and put them at ease, and the person in your Office, because they saw your concern for your Clients and realize they and their families can expect similar treatment from you.

Any system can only accomplish its objectives if it is used consistently. As a result,

this process should be used in all instances in which a change of Trustee is involved, whether during lifetime or after death. The only exception arises if the issue of competency is involved. The materials have previously discussed this situation. The information to properly prepare the Physician's Report should be obtained during the first telephone call. You may wish to talk with the calling party in these situations. If you do not, your trust/probate administration person should. A time should be arranged for the caller to pick up the Report, and accompanying letter, to take them to the Physician immediately. They also need to be instructed that the Report should be returned to your Office immediately, upon it's being signed, but absolutely no later than at the time of the first conference.

When the applicable letter and questionnaire are sent, additional documents should be prepared immediately so that they are not forgotten. Depending on the circumstances that give rise to the need for your services, the applicable Engagement Agreement should be prepared, as well as the appropriate Request for Release of Information. There are additional documents that should be prepared as well. It should always be your goal to have all of the initial documents dealing with the early stages of a trust administration prepared for the first conference. You may not need them all, but it is better to have too many, than not enough. In addition, the Client will appreciate your being so well prepared to undertake the Trust Administration. Multiple copies should be prepared of all the forms. When you begin the process of gathering information, it is a better policy to forward originally executed documents, rather than photocopies.

Relying upon your system to function properly, you should be able to assume that all

of these things have been satisfactorily accomplished. As a result, you are just about ready for the initial conference. The file should be prepared, the Engagement Agreement, and all other initial documents should all be prepared and in the file. One major item remains to be done if the appointment deals with a Client's affairs. Your Trust Administration Paralegal needs to assure that this file is placed in your hands before the first conference. You must make time to review the Client's file prior to the conference. You need to reacquaint yourself with the distribution plan, Successor Trustee designations, assets, Attorneys In Fact, etc. This information helps you to be prepared for the conference and assures your Clients you are on top of the situation. They will appreciate this.

At the time of the first conference, you need to be prepared to find out as much information as you can about the basic problems which precipitated this conference. You need to first pursue the personal issues that have given rise to your involvement. If death, when and where. Have death certificates obtained, etc. Incapacity and replacement of a Trustee for other reasons are treated elsewhere in these materials. Thereafter, you need to review the information contained in the questionnaire. Review each page, ask questions, supplement the information with what you learn at the first conference. MAKE NOTES. In order to distinguish your notes made during the first conference, use a red pen. In this way, you can always go back and point out that these matters were discussed at the first conference. It is always advisable to compare the information in this questionnaire with what was contained in the original information given to you when the estate plan was prepared. When there are discrepancies, ask questions. Find out what has happened to

assets if they are no longer there. Perhaps the Client has simply overlooked some assets. At this point, it is important that you make certain the questionnaire has been signed by the Client. The reasons for this are obvious .

Once you have reviewed everything, and you have discussed what needs to be done, it is now time to execute the Engagement Agreement, and all of the other applicable forms. All during the conference, as something comes up where additional information is needed, you should use the Client Follow-Up Checklist. As the conference moves along, anything you want your Client to do is marked on this list. By the time the conference is over, they know what they have to do. Make a photocopy for your records and have both of them signed. The original goes to the Client, the copy, an originally executed one, stays in your file. You are just about ready to go forward with whatever work needs to be done. At this point, before the Client leaves, you should bring your Trust Administration Paralegal in to meet the Client. They are the ones who will primarily deal with the Client as the administration progresses, and should meet the Client as early as possible in the relationship.

### **C. ADMINISTRATION DUTIES**

Much of what needs to be done is now up to you and your Staff. As soon as the Client leaves (you should try to allow at least fifteen (15) minutes before the next appointment when you have an administration conference, and allow at least an hour for this first conference), you should have a brief conference with your Trust Administration

Paralegal to ensure that everything is covered. You should use at least fifteen (15) minutes to go over the instructions and ensure that all questions have been answered. The file, with all of the documents, is turned over to that person and the administration begins to move forward.

Hopefully, it will not be necessary to initiate any Court action. At a minimum, you need to take the necessary steps to introduce the Decedent's Will to probate. Generally, this should be done. You never know when an asset may turn up in the Decedent's name only. However, if it is necessary to take some other steps, you need to review the circumstances that give rise to this possibility and take the appropriate action, as seen later in this material. The information from the questionnaire will be used to supplement the appropriate petitions and the related forms. Hopefully, all of the information you need should be contained in the questionnaire, and if necessary, the Physician's Report. If not, the additional information that is needed is given to the Client, and this should provide you with all of the necessary information. Obviously, this will only happen if your Client has been diligent in acquiring the information, and if your Staff person is trained properly to know how to utilize the appropriate information. **NO SYSTEM CAN OVERCOME POOR TRAINING.** You're on your own for your in-office training. The time you spend doing this, is almost as beneficial to and for you, as the time you spend working on your practice and not in it. As a result, make time for training and re-training. Take all the time it takes to get your Staff trained and your system up and running. It will pay dividends in the future.

Your Staff person now follows your instructions. If an EIN number is needed for the



Family Trust, Administration Trust, or for a Successor Trustee, the application needs to be forwarded. Verification of values may well be needed. If so, the financial institutions, stockbrokerage firms and insurance companies need to be contacted immediately. A request letter needs to be prepared and sent where necessary. If there are Series E/EE Bonds involved, they need to be valued at date of death value, not face value. Your local bank may be able to provide you with a copy of the Redemption Schedule for the bonds. If you do a lot of valuations, you may wish to subscribe to receive the Redemption Schedules from the Department of the Treasury, Bureau of the Public Debt. These Redemption Schedules are published every six months, two copies per year (March to August, September to February). You can also order a software program that will do the valuations for you. In addition, you can use the Internet to obtain the necessary valuation/information. This information is included in the Forms Section immediately following these materials.

The valuation of stock is an important step and in many instances can be handled quite easily. The process should begin by obtaining the Cusip Numbers for each stock. Once you have that information, your local Bank's Trust Department may have access to stock valuations. This is a good way to develop your contacts with these sources of future business. On the other hand, if you wish to obtain your own valuations, you can obtain the necessary information through the Internet. This information is included in the FormsSection immediately following these materials.

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.

At some point in the early stages of an administration (usually during the first conference), you should discuss the fact that your Client needs to prepare an accounting for the assets in the Trust, the income generated by the Trust and the disbursements made from the Trust. Other than for death, most of the time the Successor Trustee does not take over at the first conference, you should revisit this topic with the Successor Trustee at the second conference. Explain the importance of keeping records and give them the Receipts and Disbursements Accounting Forms. Go over these documents with the Successor Trustee and explain how they are used and how they assist in the accounting process. An individual using a computer can quickly adapt these forms to use and provide the information needed. It is at this time that you must emphasize the necessity to prepare accountings in the future and the necessity to keep accurate records.

Once the Successor Trustee has taken over and assumed their duties, they should be sent a letter which briefly outlines some of their duties. It is impossible to detail them fully, but this puts them on notice of some of the major requirements. Ask them to sign one and return one to your Office for your file. In addition, you should review, in detail, with the

Successor Trustee, the types of records they should keep.

At this point, a substantial amount of work is underway, or has been completed. How do you know what progress has been made? How do you know where the requests for values stand? How do you know if there are any problems? Certainly you can have regular meetings with your Staff and review each file. Not many of you have the time to do this. Instead, the use of a File Summary helps you to quickly know where the administration stands at any time. You must impress your Staff person with the need to absolutely maintain the summary sheets on a current basis. As soon as something is done, it should be noted on these sheets. Through the use of this process, you can keep abreast of the progress of any administration. A final suggestion - put this information on some brightly colored paper so you can immediately find it in the file. On the other hand, this form can easily be adapted to your computer where the progress can be updated regularly, and where it is readily accessible to you.

As the work progresses, many things remain to be done. The death tax returns need to be completed, tax clearances obtained, assets may need to be transferred, etc. Your administration system should be well prepared to handle these situations at the appropriate time. The systematic gathering of the necessary information concerning asset values, serves as the basis for the preparation of any death tax returns that are due if you are dealing with the death of a Trustor. You need to develop a method of preparing these returns. Software programs are available to do the Federal Estate Tax Return, as well as many State Death Tax Returns. However, the correct designation as to where the assets are to appear in each

Return is of the utmost importance. You need to have a means to provide these instructions to the person actually preparing the Return. The 706 Asset Assignment Sheet is a simple way of providing this information to the person putting the Return together.

Depending on the mix of assets held in the Trust, your efforts will be directed and controlled by what needs to be done. If there is real estate and it is necessary to have title placed in the Successor or Co-Trustee's sole name, you may need to use an Affidavit of Survivorship. If the title to the real estate has been outside of the Trust, either in a tenancy by entireties or joint tenancy with rights of survivorship format, it is necessary to now place the title in the Trust. Here a little different Affidavit of Survivorship needs to be used. Once the proper affidavit has been recorded, you should now be able to deal with the real estate. It is good practice for you to contact one of the larger title companies in your area and show them your forms and discuss the procedure you propose to use, in advance of the need to clear title in a trust administration. You may wish to do this with multiple title companies. It is better to be prepared in advance and make changes to your documents, if needed, based upon these initial reviews.

When you proceed to transfer title to stock, brokerage accounts, mutual funds and other similar assets, it may well require the execution of a stock power by the current Trustee. The signature on this form must be guaranteed by an appropriate official (bank officer, stockbroker, etc.). It would be advisable for you to develop a relationship with an appropriate officer at your favorite Bank to assist in this procedure. In this way, you can be assured that each signature will be handled properly. Do not leave anything to chance.

Many transfer agents want an Affidavit of Domicile. The form with these materials has been accepted by every transfer agent to whom it has been sent. Even if you are not asked for it, send it along. Otherwise, you might get a second letter asking for it. This will delay the transfer process unnecessarily.

When you communicate with the asset holder (financial institution, stock transfer agent, brokerage house, etc.), make certain that your instructions are clear. In addition, make certain that you include all of the information they need to transfer title. The best way to accomplish this is by talking to the asset holder/transfer person in advance. Also, get a name and try to address the letter to that person. It makes it easier if you get information and the name of a contact person in advance. The ultimate letter of instruction may also require a signature guarantee. It is good procedure to determine this requirement in advance.

When you have Co-Trustees, some practical problems may arise in dealing with the day to day activities of a Trust Administration. These problems are compounded if one, or both, of the Co-Trustees do not live in your area. You need to address the question of which Co-Trustee you deal with at the outset of the Trust Administration. In most instances, one of the Trustees will assume control on behalf of both of them. In order to avoid problems, if this delegation has been made, you should formalize this decision. If your State law permits it, you can utilize a General Power of Attorney to delegate all powers to one of the Trustees. If in fact there is a limited agreement to delegate only some of the Trustees' powers, then you should use a Limited Power of Attorney. Another means that can be used, especially if

your Power of Attorney law does not permit a Trustee to grant a power of attorney, is an agreement, between the Trustees that defines the delegation of powers. You want to make certain that you have multiple copies of these documents. The third party asset holder may want an original of these documents for their records. Make certain you review the Trust document thoroughly to see if the Trustee can delegate all, or part, of their authority.

There are times that the Trustee may need help in the performance of his/her fiduciary responsibilities. They may be sick, but not incapacitated, going on a vacation, or assets may be located somewhere else. Under these circumstances, it may be advisable to consider the use of a Power of Attorney. Check your state law to make certain this can be done. It is possible there may be a provision in the Trust Code dealing with this authority. However, you are most likely to find the authority in the Power of Attorney statutes. Even if you do not find any specific authority, if you do not find any prohibiting authority, you may still wish to use the Power of Attorney.

Once you have decided to use the Power, you need to draft it with an eye toward what you are specifically trying to accomplish. As a result, in this instance, it could be advisable to use a Limited Power of Attorney. Detail the purpose, the powers, and the term of the Power. You do not want to make a blanket grant of authority, except possibly in one situation. If you have Co-Trustees, and all powers must be exercised jointly, and one Trustee is either not convenient or not interested, the blanket Power may be appropriate in this instance. It would be preferable to have the reluctant Trustee resign, but that may not be practical. You may also want to use a delegation of authority concept by which one

Trustee delegates to the other certain powers that can be exercised. They can enter into a contract between themselves to address these matters.

In the process of distributing and dividing the Trust assets, you need to be able to organize them in a way that provides you with all the information you need about each asset. The Asset Allocation Schedule provides you with the organization needed to make the necessary decisions. The use of this schedule is typical of the type of record keeping necessary in a Trust Administration. The centralization of this information provides you with all of the data you need at a glance. It permits an organized approach to the difficult questions associated with dividing and/or distributing the trust assets. It also assists in designating distributions either in cash or in kind.

#### **D. CONCLUDING DUTIES**

As the conclusion of the administration approaches, there are fees to be paid, accountings to submit, distributions to be made and releases to be returned. Once the tax clearances are received, you should be ready to proceed to finalize the administration. The matter near and dear to us, fees, must be addressed at the first conference. The Engagement Agreement, once executed, sets the basis for fee determination and billing.

You will find some suggestions as to areas to cover in your billing procedure. These must be viewed by you as nothing more than suggestions. They need to be adapted to each Office. The final amount to be determined in each category should be based upon your overhead, profit margins, results accomplished, and many other factors too numerous to

mention. In larger offices, the billing may be more complex and substantially higher for a number of reasons. In smaller offices, it may be just the opposite. However, it may help you to organize your own billing process. In addition, some sample statements are enclosed for your review. The more important question is whether you bill by itemization, date and time or whether you bill as the statements show, by tasks and results accomplished. The Successor Trustee already knows all of the work that has been done and the results that were accomplished, so there should be little to be concerned about if you use either process.

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. 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. Generally, look at the fee determination procedure for a Personal Representative in your area and use that as a starting point. Look at the time spent, how much was excess time, what results were accomplished, etc. Good luck!

Quite often the most difficult problem you will face in a Trust Administration is the Trustee's Accounting. Most people do not understand the need to keep exact, precise records. The accounting can be an administrative nightmare. Hopefully your Clients will keep good records and this will not be a major problem for you.

The Successor Trustee's Accounting form is a very simplistic approach to this



problem. 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. Most Beneficiaries are interested in the bottom line. 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 should 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. Remember, it may first be necessary to clear title to the real estate by using the Affidavit of Survivorship. You may also 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.

As to the timing of a distribution, it can be made within a short period of time after the Trust Administration commences if there are no death tax returns due. If returns are due, you may wish to make a partial distribution early on, and hold the remainder until your tax clearances are issued. Once tax clearances have been issued, then final distribution can be made. In addition, questions arise as to whether distribution is to be made in kind or in cash. All of these questions need to be reviewed with the Trustee both early in the trust administration proceedings and later as matters begin winding down. You should keep your Paralegal informed on all of these matters. Of course if he/she is good at her job, they will keep you informed on these matters because he/she is in constant touch with the Trustee.

One area that is often overlooked in the administration area, is the date of death/alternate valuation values of the trust's assets. You usually assume the Client can understand the computations on any death tax returns that are filed. This is not a valid assumption in most instances. Suppose no death tax return was filed. The Client has a right and a need to know the final value of the assets for future reporting purposes. The Date of Death value letter gives them all of the information they need. If the alternate valuation date is used, simply change the wording. The Client has now received a clear, unequivocal statement as to the asset values.

Hopefully, you should now be able to proceed with a Trust Administration in a much more efficient manner than if you have had no operational system in place. These ideas should be adapted to your wishes and needs, the abilities of your Staff, and the objectives

you wish to accomplish. If you have a system in operation, some of these ideas may help you to refine what you are doing.

[Date]

[Client]  
[Address]  
[Address]

RE: ESTATE OF [Decedent]

Dear "Client":

Enclosed please find the Trust Administration Questionnaire. This contains questions concerning the assets and debts of the Decedent. It is necessary that we have this new information in order to properly administer the Trust and distribute the assets, if necessary. Please provide as much information as you can. All questions should be answered, and all schedules should be completed. If no information is to be listed on a schedule, state that. Answer as much as you can. Remember, the information that is needed about assets pertains to those of the Decedent, at the date of death. This includes all of the assets owned by the Trust, as well as those which were held outside of the Trust. 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 \$675,000, please be sure to complete the "Addendum" as well.

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".

If you have any questions regarding how to complete the enclosed forms, please do not hesitate to call my Office. You may ask for my legal assistant, \_\_\_\_\_, and she will help you with your questions.

Very Truly Yours,

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

JMO/sap  
Enclosures

## **TRUST ADMINISTRATION - DEATH**

### **INSTRUCTIONS**

Please take a few minutes to read these instructions and provide the information and documents requested. By doing that, we will be able to save a substantial amount of time in beginning to work on this matter.

Please bring all of the information and documents requested with you to your appointment with me. The following instructions are intended to help you provide the proper information:

- Page 1: Provide the information asked for in 1, 2, 3, and 4. You are the Fiduciary. Do not fill out the information in 5, 6, or 7. This will be completed during our conference. Please bring in the original will and copies of all trust agreements (not created in our Office) where the Decedent was grantor, trustee, or beneficiary. Also bring in a certified copy of the death certificate.
- Page 2: Pertains to real estate owned solely by the Decedent, by the Decedent's Trust or owned jointly with others. Do not fill in anything about the appraisal or fair market value. Please bring in copies of deeds, promissory notes, and deeds of trust for real estate owned. 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.
- Page 3: 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, or owned jointly with others. Please bring the most recent statement received for each account.
- Page 4: List all stocks and mutual funds owned solely by the Decedent, by the Decedent's Trust, or owned jointly with others. I will get the date of death value. 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.
- Page 5: List any Series E, EE, HH or other bonds owned solely by the Decedent, by the Decedent's Trust, or jointly with others. If possible, bring a copy of the bonds for our files.

- Page 6: Provide the information requested on all life insurance policies. If a claim for payment has already been made, please immediately request a Form 712 from the Company. Please make a copy of all correspondence and checks received for our file.
- Page 7: Provide the information requested on any annuity owned by the Decedent. Please make a copy of all correspondence and checks received for our file.
- Page 8: Provide the information requested for any IRA, Pension, 401k, Profit Sharing, or other similar type account. Please provide a copy of the most recent statement received for each of these accounts.
- Page 9: Provide the miscellaneous information requested. List any uncashed checks received by the Decedent since his/her death. Bring the title to any motor vehicles owned by the Decedent.
- Page 10: Provide, in full, the information requested about each beneficiary of the Decedent.
- Page 11: List all bills left unpaid at the 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.
- Page 12: Recapitulation – Fill in the totals for all previous pages and calculate the total value of the Estate.
- Page 13: Addendum – If the total value of the Estate exceeds \$650,000, provide the information requested.
- Page 14: Read, sign your name and date this page.

If you have trouble with any of the requested information, provide all that you can. We will review the rest of the information at our appointment. Remember to bring all of these documents with you.

### **TRUST ADMINISTRATION INFORMATION**

- 1.** DECEDENT'S NAME \_\_\_\_\_ SOC SEC NO \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE ESTABLISHED \_\_\_\_\_  
\_\_\_\_\_ DATE OF DEATH \_\_\_\_\_  
PLACE OF BIRTH \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
DECEDENT'S OCCUPATION \_\_\_\_\_  
(IF RETIRED, PROVIDE INFORMATION ABOUT PRIOR OCCUPATION)
- 2.** FIDUCIARY \_\_\_\_\_ REL TO DECEDENT \_\_\_\_\_  
ADDRESS \_\_\_\_\_ TEL HOME \_\_\_\_\_  
\_\_\_\_\_ TEL WORK \_\_\_\_\_
- 3.** DECEDENT'S SPOUSE \_\_\_\_\_ SOC SEC NO \_\_\_\_\_  
DATE OF BIRTH \_\_\_\_\_ DATE OF DEATH \_\_\_\_\_  
PLACE OF BIRTH \_\_\_\_\_ PLACE OF DEATH \_\_\_\_\_
- 4.** DATE OF MARRIAGE \_\_\_\_\_ PLACE OF MARRIAGE \_\_\_\_\_  
SPOUSE IS / IS NOT A U.S. CITIZEN NATURALIZATION DATE \_\_\_\_\_
- 5.** 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 \_\_\_\_\_
- 6.** 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) \_\_\_\_\_
- 7.** MISCELLANEOUS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 8.** FEE: \_\_\_\_\_ HOURLY: \_\_\_\_\_ FLAT FEE: \_\_\_\_\_ OTHER: \_\_\_\_\_  
BILLING MONTHLY/OTHER: CONTRACT: YES \_\_\_\_\_ NO \_\_\_\_\_ RETAINER: \_\_\_\_\_  
ADV. COSTS: \_\_\_\_\_ THANK YOU LETTER: YES \_\_\_\_\_ NO \_\_\_\_\_ DATE: \_\_\_\_\_ WHO: \_\_\_\_\_

**REAL ESTATE**

REAL ESTATE ADDRESS \_\_\_\_\_

NAMES/HOW TITLE HELD \_\_\_\_\_

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

REAL ESTATE ADDRESS \_\_\_\_\_

NAMES/HOW TITLE HELD \_\_\_\_\_

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

REAL ESTATE ADDRESS \_\_\_\_\_

NAMES/HOW TITLE HELD \_\_\_\_\_

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

REAL ESTATE ADDRESS \_\_\_\_\_

NAMES/HOW TITLE HELD \_\_\_\_\_

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

TOTAL VALUE OF REAL ESTATE: \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL PROPERTIES AND/OR INFORMATION**



**SAVINGS ACCOUNTS, CHECKING ACCOUNTS, C.D.s, ETC.**

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_  
BANK ADDRESS \_\_\_\_\_ DOD BALANCE \_\_\_\_\_  
ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_  
BANK ADDRESS \_\_\_\_\_ DOD BALANCE \_\_\_\_\_  
ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_  
BANK ADDRESS \_\_\_\_\_ DOD BALANCE \_\_\_\_\_  
ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_  
BANK ADDRESS \_\_\_\_\_ DOD BALANCE \_\_\_\_\_  
ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_  
BANK ADDRESS \_\_\_\_\_ DOD BALANCE \_\_\_\_\_  
ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_  
BANK ADDRESS \_\_\_\_\_ DOD BALANCE \_\_\_\_\_  
ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_  
BANK ADDRESS \_\_\_\_\_ DOD BALANCE \_\_\_\_\_  
ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_  
BANK ADDRESS \_\_\_\_\_ DOD BALANCE \_\_\_\_\_  
ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_  
BANK ADDRESS \_\_\_\_\_ DOD BALANCE \_\_\_\_\_  
ACCOUNT OWNERS \_\_\_\_\_

TOTAL VALUE OF BANK ACCOUNTS \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL ACCOUNTS AND/OR INFORMATION**

**STOCKS, MUTUAL FUNDS, ETC.**

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) \_\_\_\_\_

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 STOCKS \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL STOCKS AND/OR INFORMATION**

**SERIES E, EE, HH, OR OTHER BONDS:**[illegible]

TOTAL VALUE OF BONDS \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL BONDS AND/OR INFORMATION**

## LIFE INSURANCE

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

TOTAL VALUE OF INSURANCE \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL POLICIES AND/OR INFORMATION**

**ANNUITIES**

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

TOTAL VALUE OF ANNUITIES \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL ANNUITIES AND/OR INFORMATION**

**IRA, 401 k, PENSION PROFIT SHARING ETC.**

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

TOTAL VALUE \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL ACCOUNTS AND/OR INFORMATION**

**MISCELLANEOUS**

**OTHER ASSETS (INCLUDING VALUE)**

AUTOMOBILE \_\_\_\_\_ MAKE \_\_\_\_\_ MODEL/YEAR \_\_\_\_\_

VIN \_\_\_\_\_ OWNER \_\_\_\_\_ VALUE \_\_\_\_\_

AUTOMOBILE \_\_\_\_\_ MAKE \_\_\_\_\_ MODEL/YEAR \_\_\_\_\_

VIN \_\_\_\_\_ OWNER \_\_\_\_\_ VALUE \_\_\_\_\_

BOAT/TRAILER: MAKE \_\_\_\_\_ MODEL/YEAR \_\_\_\_\_

ID NO \_\_\_\_\_ VALUE \_\_\_\_\_

MOBILE HOME: MAKE \_\_\_\_\_ MODEL/YEAR \_\_\_\_\_

ID NO \_\_\_\_\_ VALUE \_\_\_\_\_

REAL ESTATE CONTRACT – Bring copy of contract with you. BALANCE OWED AT DEATH \_\_\_\_\_

SELLER/ADDRESS \_\_\_\_\_

BUYER/ADDRESS \_\_\_\_\_

REAL ESTATE LEASE – Bring copy of lease with you. PROPERTY ADDRESS \_\_\_\_\_

LESSOR/ADDRESS \_\_\_\_\_

LESSEE/ADDRESS \_\_\_\_\_

COIN COLLECTIONS \_\_\_\_\_

GUNS \_\_\_\_\_

FAMILY HEIRLOOMS/ANTIQUES \_\_\_\_\_

OTHER \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TOTAL VALUE OF MISCELLANEOUS \_\_\_\_\_

**BENEFICIARIES**

<b>BENEFICIARY</b> _____	RELATION TO DECEDENT _____
ADDRESS _____	DATE OF BIRTH _____
_____	SOCIAL SECURITY NO _____
TELEPHONE NO: HOME _____	WORK _____

<b>BENEFICIARY</b> _____	RELATION TO DECEDENT _____
ADDRESS _____	DATE OF BIRTH _____
_____	SOCIAL SECURITY NO _____
TELEPHONE NO: HOME _____	WORK _____

<b>BENEFICIARY</b> _____	RELATION TO DECEDENT _____
ADDRESS _____	DATE OF BIRTH _____
_____	SOCIAL SECURITY NO _____
TELEPHONE NO: HOME _____	WORK _____

<b>BENEFICIARY</b> _____	RELATION TO DECEDENT _____
ADDRESS _____	DATE OF BIRTH _____
_____	SOCIAL SECURITY NO _____
TELEPHONE NO: HOME _____	WORK _____

<b>BENEFICIARY</b> _____	RELATION TO DECEDENT _____
ADDRESS _____	DATE OF BIRTH _____
_____	SOCIAL SECURITY NO _____
TELEPHONE NO: HOME _____	WORK _____

<b>BENEFICIARY</b> _____	RELATION TO DECEDENT _____
ADDRESS _____	DATE OF BIRTH _____
_____	SOCIAL SECURITY NO _____
TELEPHONE NO: HOME _____	WORK _____

<b>BENEFICIARY</b> _____	RELATION TO DECEDENT _____
ADDRESS _____	DATE OF BIRTH _____
_____	SOCIAL SECURITY NO _____
TELEPHONE NO: HOME _____	WORK _____



### CREDITORS

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 _____

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

**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 \$675,000, PLEASE  
COMPLETE THE ATTACHED ADDENDUM AND SIGN THE DISCLOSURE AND RELIANCE  
STATEMENT FOLLOWING.**

**PLEASE REVIEW THE SIGNATURE PAGE FOLLOWING THE ADDENDUM, SIGN IT AND DATE  
IT, EVEN THOUGH YOU HAVE NOT FILLED OUT THE ADDENDUM.**

**ADDENDUM**

1.	<b><u>DID THE DECEDENT:</u></b>	<b><u>YES</u></b>	<b><u>NO</u></b>
	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 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 thereof 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. <b><u>DECEDENT'S MARITAL STATUS AT DEATH:</u></b>			
	_____ 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 Decedent's Estate, fairly and fully:*

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

*and has been prepared by me, or at my direction or with my permission, and may be relied upon by Attorney John M. O'Drobinak in proceeding with the administration of the Decedent'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 Decedent, as requested in the Questionnaire, I will immediately notify my Attorney, John M. O'Drobinak, and provide 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*

\_\_\_\_\_  
*Signature of Individual Preparing Questionnaire*

\_\_\_\_\_  
*Signature of Individual Preparing Questionnaire*

*Initial Client Letter - Incapacity*

[Date]

[Client]  
[Address]  
[Address]

RE: ESTATE OF [Incapacitated Person]

Dear "Client":

Enclosed please find the Trust Administration Questionnaire. This contains questions concerning the assets and debts of the Incapacitated Person. It is necessary that we have this new information in order to properly administer the Trust and distribute the assets, if necessary. Please provide as much information as you can. All questions should be answered, and all schedules should be completed. If no information is to be listed on a schedule, state that. Answer as much as you can. Remember, the information that is needed about assets pertains to those of the Incapacitated Person, at the date of incapacity. This includes all of the assets owned by the Trust, as well as those which were held outside of the Trust. In addition, include all assets in which the Incapacitated Person had a partial interest, eg. joint tenancy or tenancy in common property.

Please bring this information, along with the Physician's Report, with you when you come for your appointment on "date and time of appointment".

If you have any questions regarding how to complete the enclosed forms, please do not hesitate to call my Office. You may ask for my legal assistant, \_\_\_\_\_, and she will help you with your questions.

Very Truly Yours,

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

JMO/sap  
Enclosures

## **TRUST ADMINISTRATION – INCAPACITY**

### **INSTRUCTIONS**

Please take a few minutes to read these instructions and provide the information and documents requested. By doing that, we will be able to save a substantial amount of time in beginning to work on this matter.

Please bring all of the information and documents requested with you to your appointment with me. The following instructions are intended to help you provide the proper information:

- Page 1: Provide the information asked for in 1, 2, 3, and 4. You are the Fiduciary. Do not fill out the information in 5, 6, or 7. This will be completed during our conference. Please bring in copies of all trust agreements (not created in our Office) where the Incapacitated Person was grantor, trustee, or beneficiary.
- Page 2: Pertains to real estate owned solely by the Incapacitated Person, by the Incapacitated Person's Trust or owned jointly with others. Do not fill in anything about the appraisal or fair market value. Please bring in copies of deeds, promissory notes, and deeds of trust for real estate owned. Provide the name and address of the mortgage holder, the mortgage account number, and the date of incapacity balance owed on the mortgage for all real estate.
- Page 3: Provide all the requested information about any account at any financial institution in which the Incapacitated Person held an interest. Include accounts owned solely by the Incapacitated Person, by the Incapacitated Person's Trust, or owned jointly with others. Please bring the most recent statement received for each account.
- Page 4: List all stocks and mutual funds owned solely by the Incapacitated Person, by the Incapacitated Person's Trust, or owned jointly with others. I will get the date of incapacity value. If any of the Incapacitated Person'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 Incapacitated Person held stock certificates, bring copies of the certificates. If the shares were held electronically with the company, bring the most recent statement of holdings.

- Page 5: List any Series E, EE, HH or other bonds owned solely by the Incapacitated Person, by the Incapacitated Person's Trust, or jointly with others. If possible, bring a copy of the bonds for our file.
- Page 6: Provide the information requested on all life insurance policies. If possible, bring a copy of all policies and beneficiary designation pages for our file.
- Page 7: Provide the information requested on any annuity owned by the Incapacitated Person. Please bring the most recent statement received for each annuity.
- Page 8: Provide the information requested for any IRA, Pension, 401k, Profit Sharing, or other similar type account. Please provide a copy of the most recent statement received for each of these accounts.
- Page 9: Provide the miscellaneous information requested. List any uncashed checks received by the Incapacitated Person since his/her incapacity. Bring the title to any motor vehicles owned by the Incapacitated Person.
- Page 10: Provide, in full, the information requested about each beneficiary of the Incapacitated Person.
- Page 11: List all bills of the Incapacitated Person currently unpaid, or those caused by the incapacity. If possible, bring a copy of all bills received.
- Page 12: Read, sign your name and date this page.

If you have trouble with any of the requested information, provide all that you can. We will review the rest of the information at our appointment. Remember to bring all of these documents with you.

**TRUST ADMINISTRATION INFORMATION - INCAPACITY**

- 1.** INCAPACITATED PERSON'S NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_ SOC. SEC. NO. \_\_\_\_\_  
\_\_\_\_\_ DATE ESTABLISHED \_\_\_\_\_  
PLACE OF BIRTH \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
INCAPACITATED PERSON'S OCCUPATION \_\_\_\_\_  
(IF RETIRED, PROVIDE INFORMATION ABOUT PRIOR OCCUPATION)
- 2.** FIDUCIARY \_\_\_\_\_ REL TO INC. PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_ TEL HOME \_\_\_\_\_  
\_\_\_\_\_ TEL WORK \_\_\_\_\_
- 3.** INC. PERSON'S SPOUSE \_\_\_\_\_ SOC SEC NO \_\_\_\_\_  
DATE OF BIRTH \_\_\_\_\_ DATE OF DEATH \_\_\_\_\_  
PLACE OF BIRTH \_\_\_\_\_ PLACE OF DEATH \_\_\_\_\_
- 4.** DATE OF MARRIAGE \_\_\_\_\_ PLACE OF MARRIAGE \_\_\_\_\_  
SPOUSE IS / IS NOT A U.S. CITIZEN NATURALIZATION DATE \_\_\_\_\_
- 5.** SAFETY DEPOSIT BOX NUMBER/BANK \_\_\_\_\_  
WHOSE NAMES ARE ON BOX \_\_\_\_\_  
INVENTORY OF SAFETY DEPOSIT BOX \_\_\_\_\_  
BROKER NAME/TEL \_\_\_\_\_  
ACCOUNTANT NAME/TEL \_\_\_\_\_  
LIFE INSURANCE AGENT NAME/TEL \_\_\_\_\_
- 6.** 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) \_\_\_\_\_
- 7.** MISCELLANEOUS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 8.** FEE: \_\_\_\_\_ HOURLY: \_\_\_\_\_ FLAT FEE: \_\_\_\_\_ OTHER: \_\_\_\_\_  
BILLING MONTHLY/OTHER: CONTRACT: YES \_\_\_\_\_ NO \_\_\_\_\_ RETAINER: \_\_\_\_\_  
ADV. COSTS: \_\_\_\_\_ THANK YOU LETTER: YES \_\_\_\_\_ NO \_\_\_\_\_ DATE: \_\_\_\_\_ WHO: \_\_\_\_\_



**REAL ESTATE**

REAL ESTATE ADDRESS \_\_\_\_\_

NAMES/HOW TITLE HELD \_\_\_\_\_

MORTGAGE HOLDER \_\_\_\_\_ MORTGAGE BALANCE AT INCAPACITY \_\_\_\_\_

MORTGAGE HOLDER ADDRESS AND TELEPHONE \_\_\_\_\_

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

IS THERE CREDIT LIFE INSURANCE? \_\_\_\_\_ YES \_\_\_\_\_ NO

REAL ESTATE ADDRESS \_\_\_\_\_

NAMES/HOW TITLE HELD \_\_\_\_\_

MORTGAGE HOLDER \_\_\_\_\_ MORTGAGE BALANCE AT INCAPACITY \_\_\_\_\_

MORTGAGE HOLDER ADDRESS AND TELEPHONE \_\_\_\_\_

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

IS THERE CREDIT LIFE INSURANCE? \_\_\_\_\_ YES \_\_\_\_\_ NO

REAL ESTATE ADDRESS \_\_\_\_\_

NAMES/HOW TITLE HELD \_\_\_\_\_

MORTGAGE HOLDER \_\_\_\_\_ MORTGAGE BALANCE AT INCAPACITY \_\_\_\_\_

MORTGAGE HOLDER ADDRESS AND TELEPHONE \_\_\_\_\_

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

IS THERE CREDIT LIFE INSURANCE? \_\_\_\_\_ YES \_\_\_\_\_ NO

REAL ESTATE ADDRESS \_\_\_\_\_

NAMES/HOW TITLE HELD \_\_\_\_\_

MORTGAGE HOLDER \_\_\_\_\_ MORTGAGE BALANCE AT INCAPACITY \_\_\_\_\_

MORTGAGE HOLDER ADDRESS AND TELEPHONE \_\_\_\_\_

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

IS THERE CREDIT LIFE INSURANCE? \_\_\_\_\_ YES \_\_\_\_\_ NO

TOTAL VALUE OF REAL ESTATE: \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL PROPERTIES AND/OR INFORMATION**

**SAVINGS ACCOUNTS, CHECKING ACCOUNTS, C.D.s, ETC.**

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

TOTAL VALUE OF BANK ACCOUNTS \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL ACCOUNTS AND/OR INFORMATION**

**STOCKS, MUTUAL FUNDS, ETC.**

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

TOTAL VALUE OF STOCKS \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL STOCKS AND/OR INFORMATION**

**SERIES E, EE, HH, OR OTHER BONDS:**

[illegible]

TOTAL VALUE OF BONDS \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL BONDS AND/OR INFORMATION**

**LIFE INSURANCE**

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

TOTAL VALUE OF INSURANCE \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL POLICIES AND/OR INFORMATION**

**ANNUITIES**

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

TOTAL VALUE OF ANNUITIES \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL ANNUITIES AND/OR INFORMATION**

**IRA, 401 k, PENSION PROFIT SHARING ETC.**

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

TOTAL VALUE \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL ACCOUNTS AND/OR INFORMATION**

**MISCELLANEOUS**

**OTHER ASSETS (INCLUDING VALUE)**

AUTOMOBILE \_\_\_\_\_ MAKE \_\_\_\_\_ MODEL/YEAR \_\_\_\_\_  
VIN \_\_\_\_\_ OWNER \_\_\_\_\_ VALUE \_\_\_\_\_

AUTOMOBILE \_\_\_\_\_ MAKE \_\_\_\_\_ MODEL/YEAR \_\_\_\_\_  
VIN \_\_\_\_\_ OWNER \_\_\_\_\_ VALUE \_\_\_\_\_

BOAT/TRAILER: MAKE \_\_\_\_\_ MODEL/YEAR \_\_\_\_\_  
ID NO \_\_\_\_\_ VALUE \_\_\_\_\_

MOBILE HOME: MAKE \_\_\_\_\_ MODEL/YEAR \_\_\_\_\_  
ID NO \_\_\_\_\_ VALUE \_\_\_\_\_

REAL ESTATE CONTRACT – Bring copy of contract with you. BALANCE OWED \_\_\_\_\_  
SELLER/ADDRESS \_\_\_\_\_  
BUYER/ADDRESS \_\_\_\_\_

REAL ESTATE LEASE – Bring copy of lease with you. PROPERTY ADDRESS \_\_\_\_\_  
LESSOR/ADDRESS \_\_\_\_\_  
LESSEE/ADDRESS \_\_\_\_\_

COIN COLLECTIONS \_\_\_\_\_

GUNS \_\_\_\_\_

FAMILY HEIRLOOMS/ANTIQUES \_\_\_\_\_

OTHER \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TOTAL VALUE OF MISCELLANEOUS \_\_\_\_\_

**BENEFICIARIES**



**BENEFICIARY** \_\_\_\_\_ RELATION TO INC. PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_

**BENEFICIARY** \_\_\_\_\_ RELATION TO INC. PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_

**BENEFICIARY** \_\_\_\_\_ RELATION TO INC. PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_

**BENEFICIARY** \_\_\_\_\_ RELATION TO INC. PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_

**BENEFICIARY** \_\_\_\_\_ RELATION TO INC. PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_

**BENEFICIARY** \_\_\_\_\_ RELATION TO INC. PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_

**BENEFICIARY** \_\_\_\_\_ RELATION TO INC. PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_

### CREDITORS

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 _____

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

## 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 .....

**DISCLOSURE AND RELIANCE STATEMENT**

*The information contained in this Questionnaire pertaining to the Incapacitated Person's Estate, fairly and fully:*

- A. *Discloses all of the assets owned by the Trust, or in which the Incapacitated Person had any form of ownership interest;*
- B. *Discloses the value of all such assets or ownership interests;*
- C. *Discloses how these assets or ownership interest are owned; and*

*has been prepared by me, or at my direction or with my permission, and may be relied upon by Attorney John M. O'Drobinak in proceeding with the administration of the Incapacitated Person's affairs. I understand that in the event that I acquire any additional information regarding the assets or affairs of the Incapacitated Person, as requested in the Questionnaire, I will immediately notify my Attorney, John M. O'Drobinak, and provide him with the additional or corrected information.*

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

Date: \_\_\_\_\_

---

*Signature of Individual Preparing Questionnaire*

---

*Signature of Individual Preparing Questionnaire*

*Signature of Individual Preparing Questionnaire*

### ***Initial Client Letter – Resignation or Replacement***

[Date]

[Client]  
[Address]  
[Address]

RE: TRUST OF {name of Grantors}

Dear "Client":

Enclosed please find the Trust Administration Questionnaire. This contains questions concerning the assets of the Trust. It is necessary that we have this new information in order to properly administer the Trust and distribute the assets, if necessary. Please provide as much information as you can. All questions should be answered, and all schedules should be completed. If no information is to be listed on a schedule, state that. Answer as much as you can. Remember, the information that is needed about assets pertains to those of the Trust as of the date of the resignation/replacement of the prior Trustee. Include all assets owned by the Trust as well as all assets in which the Trust had a partial interest.

Please bring this information with you when you come for your appointment on "date and time of appointment".

If you have any questions regarding how to complete the enclosed forms, please do not hesitate to call my Office. You may ask for my legal assistant, \_\_\_\_\_, and she will help you with your questions.

Very Truly Yours,

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

JMO/sap  
Enclosures

## **TRUST ADMINISTRATION – RESIGNATION/REPLACEMENT**

### **INSTRUCTIONS**

Please take a few minutes to read these instructions and provide the information and documents requested. By doing that, we will be able to save a substantial amount of time in beginning to work on this matter.

Please bring all of the information and documents requested with you to your appointment with me. The following instructions are intended to help you provide the proper information:

- Page 1: Provide the information asked for in 1, 2, 3, and 4. You are the Fiduciary. Do not fill out the information in 5, 6, or 7. This will be completed during our conference. Please bring in copies of all trust agreements (not created in our Office) of which the prior Trustee was appointed. Also bring a copy of any prior accountings prepared by the prior Trustee.
- Page 2: Pertains to real estate owned by the Trust. Do not fill in anything about the appraisal or fair market value. Please bring in copies of deeds, promissory notes, and deeds of trust for real estate owned. Provide the name and address of the mortgage holder, the mortgage account number, and the current balance owed on the mortgage for all real estate.
- Page 3: Provide all the requested information about any account at any financial institution in which the Trust held an interest. Include only accounts owned by the Trust. Please bring the most recent statement received for each account.
- Page 4: List all stocks and mutual funds owned by the Trust. I will get the value. If any of the 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 Trust held stock certificates, bring copies of the certificates. If the share were held electronically by the company, bring the most recent statement of holdings.
- Page 5: List any Series E, EE, HH or other bonds owned solely by the Trust. If possible, bring a copy of the bonds for our file.

- Page 6: Provide the information requested on all life insurance policies in which the Trust is the Beneficiary. If possible, bring a copy of all policies and beneficiary designation pages for our file.
- Page 7: Provide the information requested on any annuity owned in which the Trust is the Beneficiary. Please bring the most recent statement received for each annuity.
- Page 8: Provide the information requested for any IRA, Pension, 401k, Profit Sharing, or other similar type account for which the Trust is the Beneficiary. Please provide a copy of the most recent statement received for each of these accounts.
- Page 9: Provide the miscellaneous information requested. List any uncashed checks received by the prior Trustee since his/her resignation/replacement. Bring the title to any motor vehicles owned by the Trust.
- Page 10: Provide, in full, the information requested about each beneficiary of the Trust.
- Page 11: List all bills currently unpaid by the Trust. If possible, bring a copy of all bills received.
- Page 12: Read, sign your name and date this page.

If you have trouble with any of the requested information, provide all that you can. We will review the rest of the information at our appointment. Remember to bring all of these documents with you.

**TRUST ADMINISTRATION INFORMATION – RESIGNATION/REPLACEMENT**

- 1.** GRANTOR'S NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_ SOC. SEC. NO. \_\_\_\_\_  
\_\_\_\_\_ DATE ESTABLISHED \_\_\_\_\_  
PLACE OF BIRTH \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
GRANTOR'S OCCUPATION \_\_\_\_\_  
(IF RETIRED, PROVIDE INFORMATION ABOUT PRIOR OCCUPATION)
- 2.** FIDUCIARY \_\_\_\_\_ REL TO GRANTOR \_\_\_\_\_  
ADDRESS \_\_\_\_\_ TEL HOME \_\_\_\_\_  
\_\_\_\_\_ TEL WORK \_\_\_\_\_
- 3.** GRANTOR'S SPOUSE \_\_\_\_\_ SOC SEC NO \_\_\_\_\_  
DATE OF BIRTH \_\_\_\_\_ DATE OF DEATH \_\_\_\_\_  
PLACE OF BIRTH \_\_\_\_\_ PLACE OF DEATH \_\_\_\_\_
- 4.** DATE OF MARRIAGE \_\_\_\_\_ PLACE OF MARRIAGE \_\_\_\_\_  
SPOUSE IS / IS NOT A U.S. CITIZEN NATURALIZATION DATE \_\_\_\_\_
- 6.** SAFETY DEPOSIT BOX NUMBER/BANK \_\_\_\_\_  
WHOSE NAMES ARE ON BOX \_\_\_\_\_  
INVENTORY OF SAFETY DEPOSIT BOX \_\_\_\_\_  
BROKER NAME/TEL \_\_\_\_\_  
ACCOUNTANT NAME/TEL \_\_\_\_\_  
LIFE INSURANCE AGENT NAME/TEL \_\_\_\_\_
- 6.** 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) \_\_\_\_\_
- 7.** MISCELLANEOUS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 8.** FEE: \_\_\_\_\_ HOURLY: \_\_\_\_\_ FLAT FEE: \_\_\_\_\_ OTHER: \_\_\_\_\_  
BILLING MONTHLY/OTHER: CONTRACT: YES \_\_\_\_\_ NO \_\_\_\_\_ RETAINER: \_\_\_\_\_  
ADV. COSTS: \_\_\_\_\_ THANK YOU LETTER: YES \_\_\_\_\_ NO \_\_\_\_\_ DATE: \_\_\_\_\_ WHO: \_\_\_\_\_

**REAL ESTATE**

REAL ESTATE ADDRESS \_\_\_\_\_

NAMES/HOW TITLE HELD \_\_\_\_\_

MORTGAGE HOLDER \_\_\_\_\_ MORTGAGE BALANCE \_\_\_\_\_

MORTGAGE HOLDER ADDRESS AND TELEPHONE \_\_\_\_\_

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

IS THERE CREDIT LIFE INSURANCE? \_\_\_\_\_ YES \_\_\_\_\_ NO

REAL ESTATE ADDRESS \_\_\_\_\_

NAMES/HOW TITLE HELD \_\_\_\_\_

MORTGAGE HOLDER \_\_\_\_\_ MORTGAGE BALANCE \_\_\_\_\_

MORTGAGE HOLDER ADDRESS AND TELEPHONE \_\_\_\_\_

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

IS THERE CREDIT LIFE INSURANCE? \_\_\_\_\_ YES \_\_\_\_\_ NO

REAL ESTATE ADDRESS \_\_\_\_\_

NAMES/HOW TITLE HELD \_\_\_\_\_

MORTGAGE HOLDER \_\_\_\_\_ MORTGAGE BALANCE \_\_\_\_\_

MORTGAGE HOLDER ADDRESS AND TELEPHONE \_\_\_\_\_

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

IS THERE CREDIT LIFE INSURANCE? \_\_\_\_\_ YES \_\_\_\_\_ NO

REAL ESTATE ADDRESS \_\_\_\_\_

NAMES/HOW TITLE HELD \_\_\_\_\_

MORTGAGE HOLDER \_\_\_\_\_ MORTGAGE BALANCE \_\_\_\_\_

MORTGAGE HOLDER ADDRESS AND TELEPHONE \_\_\_\_\_

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

IS THERE CREDIT LIFE INSURANCE? \_\_\_\_\_ YES \_\_\_\_\_ NO

TOTAL VALUE OF REAL ESTATE: \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL PROPERTIES AND/OR INFORMATION**



**SAVINGS ACCOUNTS, CHECKING ACCOUNTS, C.D.s, ETC.**

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

BANK \_\_\_\_\_ ACCT # \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_ BALANCE \_\_\_\_\_

ACCOUNT OWNERS \_\_\_\_\_

TOTAL VALUE OF BANK ACCOUNTS \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL ACCOUNTS AND/OR INFORMATION**

**STOCKS, MUTUAL FUNDS, ETC.**

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

STOCK NAME \_\_\_\_\_  
SHARES HELD \_\_\_\_\_ CUSIP \_\_\_\_\_ VALUE(H/L) \_\_\_\_\_  
STOCK OWNER(S) \_\_\_\_\_

TOTAL VALUE OF STOCKS \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL STOCKS AND/OR INFORMATION**

**SERIES E, EE, HH, OR OTHER BONDS:**

[illegible]

TOTAL VALUE OF BONDS \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL BONDS AND/OR INFORMATION**

## LIFE INSURANCE

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

LIFE INSURANCE COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
COMPANY ADDRESS/TELEPHONE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

TOTAL VALUE OF INSURANCE \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL POLICIES AND/OR INFORMATION**

**ANNUITIES**

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

ANNUITY COMPANY \_\_\_\_\_ POLICY # \_\_\_\_\_  
TYPE \_\_\_\_\_ FACE AMOUNT \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

TOTAL VALUE OF ANNUITIES \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL ANNUITIES AND/OR INFORMATION**

**IRA, 401 k, PENSION PROFIT SHARING ETC.**

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

COMPANY \_\_\_\_\_ ACCOUNT NO \_\_\_\_\_  
TYPE \_\_\_\_\_ DEATH BENEFIT VALUE \_\_\_\_\_  
BENEFICIARIES \_\_\_\_\_

TOTAL VALUE \_\_\_\_\_

**USE REVERSE SIDE FOR ADDITIONAL ACCOUNTS AND/OR INFORMATION**

**MISCELLANEOUS**

**OTHER ASSETS (INCLUDING VALUE)**

AUTOMOBILE \_\_\_\_\_ MAKE \_\_\_\_\_ MODEL/YEAR \_\_\_\_\_  
VIN \_\_\_\_\_ OWNER \_\_\_\_\_ VALUE \_\_\_\_\_

AUTOMOBILE \_\_\_\_\_ MAKE \_\_\_\_\_ MODEL/YEAR \_\_\_\_\_  
VIN \_\_\_\_\_ OWNER \_\_\_\_\_ VALUE \_\_\_\_\_

BOAT/TRAILER: MAKE \_\_\_\_\_ MODEL/YEAR \_\_\_\_\_  
ID NO \_\_\_\_\_ VALUE \_\_\_\_\_

MOBILE HOME: MAKE \_\_\_\_\_ MODEL/YEAR \_\_\_\_\_  
ID NO \_\_\_\_\_ VALUE \_\_\_\_\_

REAL ESTATE CONTRACT – Bring copy of contract with you. BALANCE OWED \_\_\_\_\_  
SELLER/ADDRESS \_\_\_\_\_  
BUYER/ADDRESS \_\_\_\_\_

REAL ESTATE LEASE – Bring copy of lease with you. PROPERTY ADDRESS \_\_\_\_\_  
LESSOR/ADDRESS \_\_\_\_\_  
LESSEE/ADDRESS \_\_\_\_\_

COIN COLLECTIONS \_\_\_\_\_

GUNS \_\_\_\_\_

FAMILY HEIRLOOMS/ANTIQUES \_\_\_\_\_

OTHER \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TOTAL VALUE OF MISCELLANEOUS \_\_\_\_\_

**BENEFICIARIES**

**BENEFICIARY** \_\_\_\_\_ RELATION TO GRANTOR \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_

**BENEFICIARY** \_\_\_\_\_ RELATION TO GRANTOR \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_

**BENEFICIARY** \_\_\_\_\_ RELATION TO GRANTOR \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_

**BENEFICIARY** \_\_\_\_\_ RELATION TO GRANTOR \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_

**BENEFICIARY** \_\_\_\_\_ RELATION TO GRANTOR \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_

**BENEFICIARY** \_\_\_\_\_ RELATION TO GRANTOR \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_

**BENEFICIARY** \_\_\_\_\_ RELATION TO GRANTOR \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_  
\_\_\_\_\_  
SOCIAL SECURITY NO \_\_\_\_\_  
TELEPHONE NO: HOME \_\_\_\_\_ WORK \_\_\_\_\_



**CREDITORS**

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 _____

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

## 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 .....	_____

## **DISCLOSURE AND RELIANCE STATEMENT**

*The information contained in this Questionnaire pertaining to the Trust, fairly and fully:*

- D. Discloses all of the assets owned by the Trust, or in which the Trust had any form of ownership interest;
- E. Discloses the value of all such assets or ownership interests;
- F. Discloses how these assets or ownership interest are owned; and

*has been prepared by me, or at my direction or with my permission, and may be relied upon by Attorney John M. O'Drobinak in proceeding with the administration of the Trust. I understand that in the event that I acquire any additional information regarding the assets or affairs of the Trust, as requested in the Questionnaire, I will immediately notify my Attorney, John M. O'Drobinak, and provide him with the additional or corrected information.*

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

Date: \_\_\_\_\_

---

*Signature of Individual Preparing Questionnaire*

---

*Signature of Individual Preparing Questionnaire*

---

Signature of Individual Preparing Questionnaire

## ENGAGEMENT AGREEMENT

**Re: Estate and/or Trust Administration Matters Pertaining To \_\_\_\_\_, "Decedent"**

This fee agreement details the arrangements I have made with John M. O'Drobinak, P.C., by John M. O'Drobinak, my "Attorney", concerning payment for his services relative to the above matter.

I hereby retain my Attorney to perform all necessary services, except those specifically excluded in this Agreement, pertaining to the settlement of the Decedent's Trust and/or Estate. Unless I direct to the contrary in writing, he has full authority to retain real estate appraisers, real estate brokers, stockbrokers, accountants and/or any other person whose services are necessary to carry out the purposes of the services contemplated in this Agreement. All commissions, fees, and/or expenses of any kind associated with the services to be performed by any of these other individuals, shall be paid as an expense of settling the affairs of the Decedent, in addition to the fees and expense reimbursements paid to my Attorney.

The services my Attorney shall perform on my behalf, shall include, but not be limited to, preparing the necessary Court filings to admit Decedent's Will to probate, and to open an Estate, if necessary; as well as all other filings necessary to administer the Estate; preparing, supervising, and/or approving an inventory and verification of date of death values of the Decedent's assets; at his discretion, preparing all required death tax returns, both Federal and State, or arranging for others to prepare them, if applicable; allocating assets between trusts, if applicable; applying for taxpayer identification number (SS-4); research and other related matters as needed; obtaining Forms 712 for life insurance, if applicable; assisting in completing the transfer of the Decedent's assets as provided in the Decedent's Trust, Will or by law, and taking whatever Court action is needed to accomplish these transfers; and all necessary related conferences and telephone calls. My Attorney, however, is to take no court action without my prior approval. My signing of any necessary Court filings shall constitute my consent to the action being taken in Court. He shall have no responsibility for the preparation and/or filing of any Federal or State income tax returns necessary to be filed on behalf of the Decedent and/or the Fiduciary responsible to settle the Decedent's affairs, but has the right, as described above, to obtain the services of an accountant, including a C.P.A., to perform these services, if he so chooses.

As a part of the expense of settling the Decedent's affairs, I agree to pay my Attorney the following fees for services:

A. Attorney's Time/Hour: +

John M. O'Drobinak

All matters, except litigation	\$ xxx
Litigation, includes all time preparing for litigation	\$ xxx
Travel Time	\$ xxx

+When applicable, Court determined fees shall be in lieu of all others.

B. Paralegal Time/Hour: \*

_____, Probate/Trust Admin Paralegal	\$ xxx
Other Paralegals	\$ xxx
Travel Time	\$ xxx

\*All clerical and/or typing time is excluded.

- C. Court Determination, when applicable:  
All matters within the jurisdiction of a court for fee determination, shall be paid for in the amount awarded by the Court.

I further agree to reimburse all costs, expenses and funds advanced by my Attorney in performing the services required by this Agreement, including but not limited to recording fees, filing fees, title search, delivery service, telephone tolls, mileage, postage, fax expenses, word processing expenses, or any other expenses incurred by him. These costs shall be paid in the amounts actually incurred, or in lieu thereof, by reimbursement to my Attorney for these overhead expenses at the rate of 6% of the final fee to be paid, or any combination thereof.

Other than for Court awarded fees which are to be paid as stated in the Court's Order, I understand the fees and expenses shall be paid one-half upon the filing of the final death tax return, with the balance upon completion of all services required by this Agreement. I further understand these payments are to be made within 15 days of the date of receipt of the billing. If these fees and costs are not paid within thirty (30) days of the billing, interest at the rate of 12% per annum will be due on them. In the event of default, it is my understanding that my Attorney will be entitled to recover all expenses associated with enforcing this payment, including but not limited to reasonable attorney fees.

#### CLIENT

Dated: \_\_\_\_\_

I thank you for selecting me to perform these services for you, and providing me with the opportunity to assist you in the above matter. I agree to be bound by the terms of this Agreement.

#### ATTORNEY

Dated and Accepted:

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

## **ENGAGEMENT AGREEMENT**

**Re: Trust Administration Matters Pertaining To The \_\_\_\_ Living Trust, "Trust"**

This fee agreement details the arrangements I have made with John M. O'Drobinak, P.C., by John M. O'Drobinak, my "Attorney", concerning payment for his services relative to the above matter.

I hereby retain my Attorney to perform all necessary services, except those specifically excluded in this Agreement, pertaining to the administration of the Trust and/or Estate. Unless I direct to the contrary in writing, he has full authority to retain real estate appraisers, real estate brokers, stockbrokers, accountants and/or any other person whose services are necessary to carry out the purposes of the services contemplated in this Agreement. All commissions, fees, and/or expenses of any kind associated with the services to be performed by any of these other individuals, shall be paid as an expense of the administration of the Trust, in addition to the fees and expense reimbursements paid to my Attorney.

The services my Attorney shall perform on my behalf, shall include, but not be limited to, preparing the necessary Court filings to determine the incapacity of the prior Trustee, and/or to qualify the Successor Trustee, if necessary; as well as any other filings necessary to administer the Trust; preparing, supervising, and/or approving an inventory and verification of values of the Trust's assets; obtaining an accounting from the prior Trustee, if possible; allocating assets between trusts, if applicable; applying for taxpayer identification number (SS-4); research and other related matters as needed; assisting in completing the transfer of the Trust's assets to the Successor Trustee and taking whatever Court action is needed to accomplish these transfers; and all necessary related conferences and telephone calls. My Attorney, however, is to take no court action without my prior approval. My signing of any necessary Court filings shall constitute my consent to the action being taken in Court. He shall have no responsibility for the preparation and/or filing of any Federal or State income tax returns necessary to be filed on behalf of the Trust and/or the Fiduciary responsible to handle the affairs of the Trust, but has the right, as described above, to obtain the services of an accountant, including a C.P.A., to perform these services, if he so chooses.

As a part of the expense of handling the Trust's affairs, I agree to pay my Attorney the following fees for services:

A. Attorney's Time/Hour: +

John M. O'Drobinak

All matters, except litigation	\$ xxx
Litigation, includes all time	\$ xxx
preparing for litigation	
Travel Time	\$ xxx

+When applicable, Court determined fees shall be in lieu of all others.

B. Paralegal Time/Hour: \*

_____, Probate/Trust Admin Paralegal	\$ xxx
Other Paralegals	\$ xxx
Travel Time	\$ xxx

\*All clerical and/or typing time is excluded.

C. Court Determination, when applicable:

All matters within the jurisdiction of a court for fee determination, shall be paid for in the amount awarded by the Court.

I further agree to reimburse all costs, expenses and funds advanced by my Attorney in performing the services required by this Agreement, including but not limited to recording fees, filing fees, title search, delivery service, telephone tolls, mileage, postage, fax expenses, word processing expenses, or any other expenses incurred by him. These costs shall be paid in the amounts actually incurred, or in lieu thereof, by reimbursement to my Attorney for these overhead expenses at the rate of 6% of the final fee to be paid, or any combination thereof.

Other than for Court awarded fees which are to be paid as stated in the Court's Order, I understand the fees and expenses shall be paid as billed, with the balance upon completion of all services required by this Agreement. I further understand these payments are to be made within 15 days of the date of receipt of the billing. If these fees and costs are not paid within thirty (30) days of the billing, interest at the rate of 12% per annum will be due on them. In the event of default, it is my understanding that my Attorney will be entitled to recover all expenses associated with enforcing this payment, including but not limited to reasonable attorney fees.

CLIENT

Dated: \_\_\_\_\_

I thank you for selecting me to perform these services for you, and providing me with the opportunity to assist you in the above matter. I agree to be bound by the terms of this Agreement.

ATTORNEY

Dated and Accepted:

JOHN M. O'DROBINAK, P.C.

\_\_\_\_\_

By: John M. O'Drobinak

**ATTORNEY'S CERTIFICATION**

JOHN M. O'DROBINAK, 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 \_\_\_\_\_, Deceased, and the Surviving/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 acting 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 death of the prior Trustees.

IN WITNESS WHEREOF, I have executed this certification on \_\_\_\_\_.

\_\_\_\_\_  
JOHN M. O'DROBINAK

STATE OF INDIANA       )  
                                      ) SS:  
COUNTY OF LAKE       )

Before me, a Notary Public in and for said County and State, on \_\_\_\_\_, personally appeared JOHN M. O'DROBINAK, 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 Lake County

**SURVIVING/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 Surviving/Successor Trustee to the \_\_\_\_\_ Living Trust, dated [date of trust], as set out in Article Three of the Trust;
- 2a. The original Trustee, [Trustee], died on [date of death];
- 2b. One of the original Trustees, [name], died on [date of death], and that the other original Trustee, [name], died on [date of death].
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 Surviving/Successor Trustee, for and on behalf of the Trust.

IN WITNESS WHEREOF, I have executed this Certification on \_\_\_\_\_.

\_\_\_\_\_  
[name surviving/successor trustee]

STATE OF INDIANA       )  
                                      ) SS:  
COUNTY OF LAKE       )

Before me, a Notary Public in and for said County and State, on \_\_\_\_\_, personally appeared [Name of Surviving/Successor Trustee] 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:

Resident of Lake County

\_\_\_\_\_, Notary Public



In the Matter of the Trust Administration of the       )  
\_\_\_\_\_ Living Trust, dated \_\_\_\_\_,       )  
\_\_\_\_\_, Decedent       )

**TRUSTEE’S OATH AND ACCEPTANCE**

I hereby accept the responsibility of serving as Successor Trustee of the \_\_\_\_\_ Living Trust,  
dated \_\_\_\_\_, “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.

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

## **EMPLOYER IDENTIFICATION NUMBERS**

### **Living Trust – Successor Trustee**

Tax ID used by Successor Trustee once both Trustees or the sole Trustee are deceased or incapacitated

### **Living Trust – Family Trust**

Tax ID used by Surviving Trustee for Family Trust. Surviving Trustor will use his/her Social Security Number for the Survivor's Trust

### **Administration Trust**

Used as the “in limbo” tax-planning trust while assets are being determined and before they are split into the Surviving and Family Trusts

Form SS-4 : Exact IRS form cannot be duplicated for this presentation. Following are the items on the Form which need to be completed.

**APPLICATION FOR EMPLOYER IDENTIFICATION NUMBER,**  
**SUCCESSOR TRUSTEE**

1. Name of Applicant  
[Name of Trustee], dated [Date of Trust]
3. Executor, Trustee, "Care of" name  
[Name of Trustee], Successor Trustee
- 4a. Mailing Address  
[Address of Trustee]
- 5a. Business Address  
[Address of Incap. Trustor, if Trustee not in Lake County]
- 4b. City, state and ZIP code  
[Address of Trustee]
- 5b. City, state and ZIP code  
[Address of Incap. Trustor, if Trustee not in Lake County]
6. County and state where principal business is located.  
[County and State where Incap. Trustor resides]
7. Name of Principal officer, general partner, grantor, owner or trustor – SSN or ITIN may be required.  
[Name of Trustor(s), with social security numbers]
- 8a. Type of entity (check only one box)  
  

v Trust
10. Reason for applying (check only one box)  
  

v Created a trust (specify type) > [Name] Living Trust
10. Date business started or acquired:  
Date of Incapacity: [date of incapacity]
11. Closing month of accounting year:  
[Month]

Business Telephone Number  
[Telephone Number]

Fax Telephone Number  
[Fax Number]

Name and title > [Trustee name], Successor Trustee

Signature > *Signature of Trustee*

Form SS-4 : Exact IRS form cannot be duplicated for this presentation. Following are the items on the Form which need to be completed.

**APPLICATION FOR EMPLOYER IDENTIFICATION NUMBER,**  
**FAMILY TRUST**

1. Name of Applicant  
[Trustor Last Name] Family Trust, created under the terms of the \_\_\_\_ Living Trust, dtd [Date of Trust]
3. Executor, Trustee, "Care of" name  
[Name of Trustee], Trustee
- 4a. Mailing Address  
[Address of Trustee]
- 4b. City, state and ZIP code  
[Address of Trustee]
6. County and state where principal business is located.  
[County and State where Decedent resided]
7. Name of Principal officer, general partner, grantor, owner or trustor – SSN or ITIN may be required.  
[Name of Trustor(s), with social security numbers]
- 8a. Type of entity (check only one box)  
  

v Trust
10. Reason for applying (check only one box)  
  

v Created a trust (specify type) > [Name] Family Trust
10. Date business started or acquired:  
Date of death: [date of death]
11. Closing month of accounting year:  
[Month]

Name and title > [Trustee name], Trustee

Business Telephone Number  
[Telephone Number]

Fax Telephone Number  
[Fax Number]

Signature > *Signature of Trustee*

Form SS-4 : Exact IRS form cannot be duplicated for this presentation. Following are the items on the Form which need to be completed.

**APPLICATION FOR EMPLOYER IDENTIFICATION NUMBER,**  
**ADMINISTRATION TRUST**

1. Name of Applicant  
[Name of Trust], dated [Date of Trust]

3. Executor, Trustee, "Care of" name  
[Name of Trustee], Trustee

4a. Mailing Address  
[Address of Trustee]

4b. City, state and ZIP code  
[Address of Trustee]

6. County and state where principal business is located.  
[County and State where Decedent resided]

7. Name of Principal officer, general partner, grantor, owner or trustor – SSN or ITIN may be required.  
[Name of Trustor(s), with social security numbers]

8a. Type of entity (check only one box)

v Trust

10. Reason for applying (check only one box)

v Created a trust > [Name] Administration Trust

10. Date business started or acquired:  
Date of death: [date of death]

11. Closing month of accounting year:  
[Month]

Business Telephone Number  
[Telephone Number]

Fax Telephone Number  
[Fax Number]

Name and title > [Trustee name], Trustee

Signature > *Signature of Trustee*

**SERIES E/EE BONDS**  
**Redemption Schedules**

There are several choices when it comes to valuing these bonds:

- I. Your local bank has redemption schedules and you may be able to obtain copies from them.
- II. Redemption schedules are published every six months, two copies per year (March to August, September to February). The current cost of this subscription is \$5.00 per year per series. You can order your own redemption schedules from the Superintendent of Documents.

To Order:     A.     By phone: 202-512-1800  
                  B.     By fax: 202-512-2250  
                  C.     By mail:       Superintendent of Documents  
                                  PO Box 371954  
                                  Pittsburgh, PA 15250-7954  
                                  (provide you name, address and daytime telephone no.)

Payment can be made by:

- A.     Check/Money Order – payable to Superintendent of Documents
  - B.     VISA/Mastercard – provide account number and expiration date
- III. You can also view the redemption schedules on the Internet at [www.savingsbonds.gov/sav/savrdtbl.htm](http://www.savingsbonds.gov/sav/savrdtbl.htm). You must also have Adobe Acrobat Reader installed on your computer to view these schedules, which you can download a free version of this from the Adobe Acrobat website.
- IV. Also at the website [www.savingsbonds.gov/sav/savrdtbl.htm](http://www.savingsbonds.gov/sav/savrdtbl.htm), you may download the Savings Bond Wizard. In this program, you enter information about the bonds, such as bond number, issue date and amount, etc., and it will prepare a report with the requested valuations.

**STOCK VALUATIONS**  
**CUSIP Numbers**  
**Valuations**

1. If you do not have the Cusip numbers and/or ticker symbol of any stocks, you can obtain this information from:
  - a. <http://research.gsm.cornell.edu/research/search.html>
  - b. <http://ticker.markets.ap.org>

2. With the ticker symbol and cusip number, you can obtain a historical valuation from:

<http://www.bigcharts.com/historical> or  
<http://www2.marketwatch.com/quotes/historical.asp>

These sites rely primarily on the ticker symbol in looking up the historical valuation. You will need to be careful that you have gotten the correct ticker symbol for the stock – paying careful attention to common and preferred issues.

3. If you are unsure or have been unable to obtain the cusip and/or ticker symbol or you have not been able to obtain the historical valuation through the above websites, try searching for the stock company itself – most have their own websites which have stockholder services links which may supply the information you are needing. If not, you can obtain the contact information to call or write the stockholder company or the transfer agent to obtain what you need.

## **APPRAISAL AUTHORIZATION**

**Decedent:**

**Address:**

**Date of Death:**

**Attorney:**

John M. O'Drobinak  
5265 Commerce Drive, Suite A  
Crown Point, IN 46307  
219-738-2292

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: \_\_\_\_\_

Responsible Party

\_\_\_\_\_  
(Name of Party)

Witness:

\_\_\_\_\_

\_\_\_\_\_

Relationship of Responsible Party to Decedent:

Personal Representative \_\_\_\_\_

Surviving Trustee \_\_\_\_\_

Successor Trustee \_\_\_\_\_

Surviving Joint Tenant \_\_\_\_\_

Surviving Spouse \_\_\_\_\_

Heir/Beneficiary \_\_\_\_\_



Date

Name of Appraiser

Address

Address

Re: Estate of [Name of Decedent]

Date of Death: [Date of Death]

Real Estate Located at:

[Address of Real Estate]

Dear :

At the direction of the Trustee/Successor Trustee, I request that you make the formal appraisal of the above real estate for the Decedent's Estate. The contents of the appraisal, at a minimum, should include the items set forth in the Appraisal Requirements enclosed for your guidance.

The appraisal should determine the fair market value of the real estate as of the above date of death.

Please forward your written report and statement to us at your earliest opportunity.

You may contact [Name of Successor Trustee], the Successor Trustee, at [Telephone # of Succ. Trustee] should you need to make arrangements to enter the premises.

Thank you for your cooperation and assistance.

Very truly yours,

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

JMO/sap

Enclosures

cc: [Name of Successor Trustee]

## APPRAISAL REQUIREMENTS

Regardless of the form of the report, any report shall contain as a minimum the following:

- A. **Identification of the Property:** A clear and unequivocal statement, including both a legal description and at least a brief physical description; plus an indication of the property rights being appraised.
- B. **Statement or Purpose of Objective of the Appraisal:** Indication of the value to be estimated preferably defined from an authoritative source.
- C. **Indication of Date:** Date estimated value of real estate is determined.
- D. **The Date and Reasoning:** Analysis supporting the value conclusion. The omission of any of the three usual approaches to value should be explained and supported.
- E. **Indication of Value Estimate:** Final conclusion and recommendation, if any.
- F. **State Assumption and Special or Limiting Conditions.**
- G. **Certification by the Appraiser:** Specific elements to be included are listed in the SREA Standards of Professional Practice, Section I-A-7, in the Appendix.
- H. **Signature of the Appraiser.**

Even a "letter" or "market value" appraisal must contain these elements as a minimum.

## CASH RECEIPTS

[illegible]

NOTES:

## DISBURSEMENTS

[illegible]

NOTES:

**TRUST OF:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**COURT:** \_\_\_\_\_

**Cause No:** \_\_\_\_\_

**EIN:** \_\_\_\_\_

Decedent:

Address:

**706 Due:** \_\_\_\_\_

**IIT Due: 5%** \_\_\_\_\_ **Final** \_\_\_\_\_

SSN:

DOB:

DOD:

Successor Trustee:

Address:

Telephone:

Hm:

Wk:

Beneficiaries:

{Name, relationship, address, telephone #s, DOB, SSN for each}

Initial Conference with Attorney: \_\_\_\_\_

Request for Additional Information Given/Sent On: \_\_\_\_\_ Returned \_\_\_\_\_

TRUST OF: \_\_\_\_\_

**VERIFIED**

ASSETS OWNED BY DECEDENT: \_\_\_\_\_ DOD BALANCE \_\_\_\_\_

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.
- 16.
- 17.
- 18.
- 19.
- 20.
- 21.
- 22.
- 23.
- 24.
- 25.
- 26.

TRUST OF: \_\_\_\_\_

**ACTIONS TAKEN:**

---

**Spread Will/Open File**

Petition/Order for Probate of Will	_____
Attorney's Certification	_____
Trustee's Certification	_____
Engagement Agreement	_____
Release of Information	_____
Application for EIN	_____

**Valuation of Assets**

Request Mailed                      Response Received on

Appraisal for [address of real property]	_____
Appraisal for [address of real property]	_____
DOD balance to [bank/brokerage]	_____
DOD balance to [bank/brokerage]	_____
DOD balance to [bank/brokerage]	_____
DOD balance to [bank/brokerage]	_____
DOD balance to [bank/brokerage]	_____
DOD balance to [bank/brokerage]	_____
Annuity DOD balance to [bank/brokerage]	_____
Annuity DOD balance to [bank/brokerage]	_____
IRA DOD balance to [bank/brokerage]	_____
IRA DOD balance to [bank/brokerage]	_____
IRA DOD balance to [bank/brokerage]	_____
Valuation of Savings Bonds	_____
Stock valuations to Centier Bank	_____
Stock valuations to [stock company]	_____
Stock valuations to [stock company]	_____

TRUST OF: \_\_\_\_\_

Stock valuations to [stock company]	_____
Stock valuations to [stock company]	_____
Stock valuations to [stock company]	_____
Stock valuations to [stock company]	_____
Stock valuations to [stock company]	_____
Appraisal on [motor vehicle ID]	_____
Appraisal on [motor vehicle ID]	_____
Request for 712 for [insurance company]	_____
Request for 712 for [insurance company]	_____

**Consents to Transfer**

	Executed By Client	Mailed to Assessor	Returned	Forwarded to Client
[bank account #]	_____	_____	_____	_____
[bank account #]	_____	_____	_____	_____
[bank account #]	_____	_____	_____	_____
[bank account #]	_____	_____	_____	_____
[bank account #]	_____	_____	_____	_____
[bank account #]	_____	_____	_____	_____
[bank account #]	_____	_____	_____	_____
[IRA account #]	_____	_____	_____	_____
[IRA account #]	_____	_____	_____	_____
[savings bonds]	_____	_____	_____	_____
[stock ID]	_____	_____	_____	_____
[stock ID]	_____	_____	_____	_____
[stock ID]	_____	_____	_____	_____
[stock ID]	_____	_____	_____	_____
[stock ID]	_____	_____	_____	_____
[stock ID]	_____	_____	_____	_____
[stock ID]	_____	_____	_____	_____
[stock ID]	_____	_____	_____	_____



TRUST OF: \_\_\_\_\_

**Bank Accounts Released**

[bank account #]	_____
[bank account #]	_____
[bank account #]	_____
[bank account #]	_____
[bank account #]	_____
[bank account #]	_____
[bank account #]	_____

**Stocks Transferred/Sold**

	<u>Transfer/Sale Request Mailed</u>	<u>Confirmation of Transfer/Sale</u>
[stock ID]	_____	_____
[stock ID]	_____	_____
[stock ID]	_____	_____
[stock ID]	_____	_____
[stock ID]	_____	_____
[stock ID]	_____	_____
[stock ID]	_____	_____
[stock ID]	_____	_____

**Savings Bonds Transferred/Sold**

	<u>Transfer/Sale Request Mailed</u>	<u>Confirmation of Trans/Sale</u>
[bond ID]	_____	_____

**Insurance /Annuity/IRA  
Proceeds Paid to Beneficiaries**

	<u>Funds Pd/Trans.</u>	<u>712 Rec.</u>	<u>Confirm Trans</u>
[insurance company and policy #]	_____	_____	_____
[insurance company and policy #]	_____	_____	_____
[IRA company and #]	_____	_____	_____
[Annuity company and #]	_____	_____	_____

TRUST OF: \_\_\_\_\_

Distribution of Trust Assets Paid to:	Date:	Amount:	Receipt Rec.
---------------------------------------	-------	---------	--------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**TAX RETURNS:**

Indiana Inheritance Tax Return Filed

\_\_\_\_\_

Report of Appraisal/Tax Order Filed

\_\_\_\_\_

State Tax Clearance Received

\_\_\_\_\_

Payments

\_\_\_\_\_

Federal Estate Tax Return Filed

\_\_\_\_\_

Federal Tax Clearance Received

\_\_\_\_\_

Payments

\_\_\_\_\_

**CLOSING:**

Attorney Fees:

Amount: \_\_\_\_\_ Billed: \_\_\_\_\_ Paid: \_\_\_\_\_

Trustee's Fees:

Amount: \_\_\_\_\_ Paid: \_\_\_\_\_

Asset Valuation Letter Mailed to Client

\_\_\_\_\_

Closing Letter Mailed to Client/ File Closed

\_\_\_\_\_

**TRUST OF:** \_\_\_\_\_

**SPECIAL NOTES:**

[illegible]

**ESTATE OF:** \_\_\_\_\_

### Assignment of Assets for Federal Estate Death Tax Return

Schedule	Asset	Ownership	Valuation
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
TOTAL ALL ASSETS			\$

In the Matter of the Trust Administration of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_  
\_\_\_\_\_, Decedent

## AFFIDAVIT OF SURVIVORSHIP (SUCCESSOR TRUSTEE)

[\*\*name of Successor Trustee], being sworn upon [\*\*his/her], oath, states that:

1. [Name of Successor Trustee] is an adult and resides in Lake County, Indiana, and is the Successor Trustee of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, 'Trust'.
2. [\*\*name of deceased Trustee] along with [\*\*name of surviving Trustee], were owners of the following described real estate in Lake County, Indiana, to-wit:

[\*\*legal description]

pursuant to the terms of a Deed in Trust, dated \_\_\_\_\_, and recorded on \_\_\_\_\_, as Document Number \_\_\_\_\_, in the Recorder's Office, Lake County, Indiana.

3.       \*\*[name of deceased Trustee] and \*\*[name of surviving Trustee], were Co-Trustees of the Trust at the time they acquired title to the above-described real estate and so remained until the death of \*\*[name of deceased parent] on \*\*[date of death].
4.       \*\*[name of deceased Trustor] died on \*\*[date of death], that pursuant to the terms and conditions of the Trust, \_\_\_\_\_ is permitted to serve as the sole Trustee of the Trust.
5.       This Affidavit is made for the purpose of clearing title to the above parcel of real estate.

**\*\*[name of Successor Trustee],  
Successor Trustee of the \_\_\_\_ Living Trust**

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

My Commission Expires:

\_\_\_\_\_, Notary Public  
Resident of \_\_\_\_\_ County, IN

In the Matter of the Trust Administration of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_  
\_\_\_\_\_, Decedent

## AFFIDAVIT OF SURVIVORSHIP (CO-TRUSTEE)

[\*\*name of Co-Trustee], being sworn upon [\*\*his/her], oath, states that:

1. [Name of Co-Trustee] is an adult and resides in Lake County, Indiana, and is the Surviving Co-Trustee of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, 'Trust'.
2. [\*\*name of deceased Trustee] along with [\*\*name of Affiant], were owners of the following described real estate in Lake County, Indiana, to-wit:

[\*\*legal description]

pursuant to the terms of a Deed in Trust, dated \_\_\_\_\_, and recorded on \_\_\_\_\_, as Document Number \_\_\_\_\_, in the Recorder's Office, Lake County, Indiana.

3. **\*\*[name of deceased Trustee]** and **\*\*[name of Affiant]**, were Co-Trustees of the Trust at the time they acquired title to the above-described real estate and so remained until the death of **\*\*[name of deceased parent]** on **\*\*[date of death]**.
4. **\*\*[name of deceased Trustor]** died on **\*\*[date of death]**, that pursuant to the terms and conditions of the Trust, **[\*\*name of Affiant]** is permitted to serve as the sole Trustee of the Trust.
5. This Affidavit is made for the purpose of clearing title to the above parcel of real estate.

**\*\*[name of Son/Daughter]**

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

My Commission Expires:

\_\_\_\_\_, Notary Public  
Resident of \_\_\_\_\_ County, IN

In the Matter of the Trust Administration of the                     )  
\_\_\_\_\_ Living Trust, dated \_\_\_\_\_                     )  
\_\_\_\_\_, Decedent                     )

**AFFIDAVIT OF SURVIVORSHIP (CO-OWNER)**

[\*\*Name of Surviving Owner], being sworn upon [\*\* his/her] oath, states that:

1. [\*\*Name of Surviving Owner] is an adult and resides in Lake County, Indiana, and if the surviving owner of property held jointly with the Decedent.
2. [\*\*Name of Deceased Owner], along with [\*\*Name of Surviving Owner], were joint owners of the following described real estate in Lake County, Indiana, to-wit:

\*\*\*\* insert legal description \*\*\*\*

pursuant to the terms of a Deed, dated \_\_\_\_\_, and recorded on \_\_\_\_\_, Document Number \_\_\_\_\_, in the Recorder's Office, Lake County, Indiana.

3. [\*\*Name of Deceased Owner] and [\*\*Name of Surviving Owner] remained joint owners of the above described real estate until the death of [\*\*Name of Deceased Owner] on [\*\*Date of death].
4. This Affidavit is made for the purpose of clearing title to the above parcel of real estate.

\_\_\_\_\_  
[\*\*Name of Surviving Trustee],  
Surviving Joint Owner

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

\_\_\_\_\_.

My Commission expires:

Resident of Lake County, Indiana

\_\_\_\_\_  
, Notary Public

In the Matter of the Trust Administration of the        )  
\_\_\_\_\_ Living Trust, dated \_\_\_\_\_        )  
\_\_\_\_\_, Decedent        )

### AFFIDAVIT OF DOMICILE

[Name of Successor Trustee], Successor Trustee of the \_\_\_\_ Living Trust, dated \_\_\_\_,  
“Trust”, being sworn, states that:

1. He/She resides at [anem and address] and is the «pr\_relation\_to\_dec» of the Decedent and is the named Successor Trustee of the Trust and that [Name of Decedent] died on «date\_of\_death».
2. The Decedent died a resident of the State of Indiana and was a resident of this State for a period of \_\_\_\_ years immediately preceding \*\*[his/her] death.
3. The Decedent executed no will or other instrument within two years prior to death in which \*\*[he/she] states that \*\*[he/she] was a resident of any other state other than the State of Indiana.
4. The Decedent has voted in Indiana for many years and has filed his/her income tax returns for the most recent years from his/her Indiana address.
5. The certificates representing the attached shares were physically located in Lake County, Indiana.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name of Successor Trustee],  
Successor Trustee of the \_\_\_\_ Living Trust

Subscribed and sworn to before me \_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_  
, Notary Public  
Resident of        County, IN



## STOCK POWER

For Value Received, \_\_\_\_\_, hereby sells, assigns and transfers  
unto:

\_\_\_\_\_ shares, and any unissued shares of the \_\_\_\_\_ Stock of  
\_\_\_\_\_, standing in the name of \_\_\_\_\_, on the  
books and records of said Corporation, represented by Certificate No.(s) \_\_\_\_\_,  
and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer  
the said stock on the books of the within named Corporation, with full power of substitution in the  
premises.

Dated: \_\_\_\_\_

\_\_\_\_\_

Affix Medallion Signature  
Guarantee Imprint Below

**NOTICE:** The signature to this assignment must correspond with the name as written upon the face of the certificate(s) in every particular without alteration or enlargement or any change whatever. The signature of the person executing this power must be guaranteed by an eligible guarantor institution, such as a commercial bank, trust company, securities broker/dealer, credit union, or a savings association participating in a **Medallion program** approved by The Securities Transfer Association, Inc. No other form of signature verification can be accepted.



**GENERAL POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

I, [\*\*Name of Trustee], do hereby make, constitute and appoint [\*\*Name of Attorney in Fact], my true and lawful Attorney-in-fact in connection with the

This General Power of Attorney shall be effective immediately and shall remain in full force and effect until revoked by me in writing.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
[\*\* Name of Trustee]  
Trustee of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_

STATE OF INDIANA        )  
                                      ) SS:  
COUNTY OF LAKE        )

Subscribed and sworn to before me, a Notary Public in and for said County and State, this \_\_\_\_ day of \_\_\_\_\_, 2001.

My Commission Expires:

\_\_\_\_\_, Notary Public  
Resident of -\_\_\_\_- County, Indiana



**ASSET ALLOCATION SCHEDULE**  
**FAMILY & SURVIVORS TRUSTS (GST IF APPLICABLE)**

Type of Assets	Asset Value	Related Debts	Survivor's Share	Decedent's Share	Specific Bequests	Family Trust (Decedent's Assets)	Survivor's Trust (Decedent's Assets)	Survivor's Trust (Survivor's Share)	GST Share One (if applicable)	GST Share Two (if applicable)
Aircraft										
Animals										
Annuities (other than IRAs & Qualified Plans)										
Antiques										
Art										
Artistic Property										
Automobiles										
Boats										

**ASSET ALLOCATION SCHEDULE**  
**FAMILY & SURVIVORS TRUSTS (GST IF APPLICABLE)**

Type of Assets	Asset Value	Related Debts	Survivor's Share	Decedent's Share	Specific Bequests	Family Trust (Decedent's Assets)	Survivor's Trust (Decedent's Assets)	Survivor's Trust (Survivor's Share)	GST Share One (if applicable)	GST Share Two (if applicable)
Bond Accounts										
Bond Certificates (non US Govt)										
Books										
Certificates of Deposit										
Checking Accounts										
Coins										
Collectibles										
Computers & Other Office Equipment										

**ASSET ALLOCATION SCHEDULE**  
**FAMILY & SURVIVORS TRUSTS (GST IF APPLICABLE)**

Type of Assets	Asset Value	Related Debts	Survivor's Share	Decedent's Share	Specific Bequests	Family Trust (Decedent's Assets)	Survivor's Trust (Decedent's Assets)	Survivor's Trust (Survivor's Share)	GST Share One (if applicable)	GST Share Two (if applicable)
Copyrights										
Corporate Stock Cert. (non-closely held)										
Corporate Stock (closely held)										
Furniture & Fixtures										
Furs										
Guns										
Insurance Policies										
Intellectual Property										

**ASSET ALLOCATION SCHEDULE**  
**FAMILY & SURVIVORS TRUSTS (GST IF APPLICABLE)**

Type of Assets	Asset Value	Related Debts	Survivor's Share	Decedent's Share	Specific Bequests	Family Trust (Decedent's Assets)	Survivor's Trust (Decedent's Assets)	Survivor's Trust (Survivor's Share)	GST Share One (if applicable)	GST Share Two (if applicable)
Inventions										
IRA's										
Jewelry										
Leasehold Interest										
Limited Liability Company Interests										
Mobile Homes										
Mutual Funds										
Oil, Gas or Mineral Interest										



**ASSET ALLOCATION SCHEDULE**  
**FAMILY & SURVIVORS TRUSTS (GST IF APPLICABLE)**

Type of Assets	Asset Value	Related Debts	Survivor's Share	Decedent's Share	Specific Bequests	Family Trust (Decedent's Assets)	Survivor's Trust (Decedent's Assets)	Survivor's Trust (Survivor's Share)	GST Share One (if applicable)	GST Share Two (if applicable)
Partnership Interest										
Patents										
Plays/Books/Screenplays/Etc.										
Prof. Corporation Shares										
Promissory Notes										
Qualified Plans										
Real Property:										
- Principal Residence										
- Vacation Home										
- Investment Property										

**ASSET ALLOCATION SCHEDULE**  
**FAMILY & SURVIVORS TRUSTS (GST IF APPLICABLE)**

Type of Assets	Asset Value	Related Debts	Survivor's Share	Decedent's Share	Specific Bequests	Family Trust (Decedent's Assets)	Survivor's Trust (Decedent's Assets)	Survivor's Trust (Survivor's Share)	GST Share One (if applicable)	GST Share Two (if applicable)
Recreational Vehicles										
Royalty Agreements										
Savings Accounts										
Sole Proprietorships										
Stock Brokerage Accts										
Tools										
US Govt Bonds or Bills										

**ASSET ALLOCATION SCHEDULE – SUGGESTED DISTRIBUTION  
FAMILY AND SURVIVOR’S TRUST (GST IF APPLICABLE)**

Type of Asset	Asset Value	Related Debts	Survivor's Share	Decedent's Share	Specific Request	Beneficiary	Distribution
Automobiles							
Boats							
Bond Accounts							
Bond Certificates (non-Govt)							
Books							
Certificates of Deposit							
Checking Accounts							
Coins							

**ASSET ALLOCATION SCHEDULE – SUGGESTED DISTRIBUTION  
FAMILY AND SURVIVOR’S TRUST (GST IF APPLICABLE)**

Type of Asset	Asset Value	Related Debts	Survivor's Share	Decedent's Share	Specific Request	Beneficiary	Distribution
Collectibles							
Computers & other Office Equipment							
Copyrights							
Corporate Stock (non-closely held)							
Corporate Stock (closely held)							
Furniture & Fixtures							
Furs							
Guns							

**ASSET ALLOCATION SCHEDULE – SUGGESTED DISTRIBUTION  
FAMILY AND SURVIVOR’S TRUST (GST IF APPLICABLE)**

Type of Asset	Asset Value	Related Debts	Survivor's Share	Decedent's Share	Specific Request	Beneficiary	Distribution
Insurance Policies							
Intellectual Property							
Inventions							
IRA's							
Jewelry							
Leashold Interest							
Ltd Liability Company Interest							
Mobile Homes							

**ASSET ALLOCATION SCHEDULE – SUGGESTED DISTRIBUTION  
FAMILY AND SURVIVOR’S TRUST (GST IF APPLICABLE)**

Type of Asset	Asset Value	Related Debts	Survivor's Share	Decedent's Share	Specific Request	Beneficiary	Distribution
Mutual Funds							
Oil, Gas or Mineral Interest							
Partnership Interest							
Patents							
Plays/Books/Schreepays/Etc.							
Precious Metals							
Prof. Corporation Shares							
Promissory Notes							

**ASSET ALLOCATION SCHEDULE – SUGGESTED DISTRIBUTION  
FAMILY AND SURVIVOR’S TRUST (GST IF APPLICABLE)**

Type of Asset	Asset Value	Related Debts	Survivor's Share	Decedent's Share	Specific Request	Beneficiary	Distribution
Qualified Plans							
Real Property:							
- Principal Residence							
- Vacation Home							
- Investment Property							
Recreational Vehicles							
Royalty Agreements							
Savings Accounts							
Sole Proprietorship							
Stock Brokerage Accounts							

**ASSET ALLOCATION SCHEDULE – SUGGESTED DISTRIBUTION  
FAMILY AND SURVIVOR’S TRUST (GST IF APPLICABLE)**

[illegible]



## **FEE GUIDELINES**

Preparation of Petition and Order for Probate of Will, CCS; Court appearance To file documents;	xxx
Preparation of Attorney's Certification and Trustee's Certification;	xxx
Preparation of Medical Report, Correspondence to Doctor	xxx
Review of Offer to Purchase real property; review of title work; preparation of Trustee's Deed Attendance at Closing – hourly rate	xxx
Preparation of Affidavit of Survivorship	xxx
Preparation of Consents to Transfer and obtaining approval	xxx/each
Preparation and filing of Affidavit of No Inheritance Tax Due	xxx
Preparation and filing of Indiana Inheritance Tax Return	xxx
Preparation and filing of Federal Estate Tax Return	xxx
Preparation of Trust Accounting to Beneficiaries - Minimum	xxx
Preparation and Filing of Petition to Docket Trust	xxx
Preparation and Filing of Petition to Interpret Trust	xxx
Preparation and Filing of Petition to Remove Trust from Docket	xxx
Preparation and Filing of Petition to Terminate Interest	xxx
Preparation and Filing of Petition to Appoint Successor Trustee Preparation of Resignation/Acceptance-Oath	xxx
Preparation and Execution of Appointment of Ancillary Trustee/Acceptance-Oath	xxx
Preparation and Execution of Assignment of Beneficial Interest and Acceptance	xxx
Preparation and filing of Petition to Open and Close Estate as Insolvent – minimum	xxx
Contested hearings shall be charged at the applicable hourly rate, plus the above minimums	

DATE

TO: [Successor Trustee]

RE: Trust Administration for [Decedent]

**STATEMENT FOR LEGAL SERVICES RENDERED**

Conferences with Client; telephone conferences with Client; correspondence to Client; review of correspondence from Client; preparation of Petition and Order for Probate of Will, CCS; Court appearance to file documents; preparation and execution of Attorney's Certifications and Trustee's Certifications; preparation and execution of Affidavit of No Inheritance Tax Due; Court appearance to file Affidavit.

TOTAL AMOUNT DUE: \$ xxx

DATE

TO: [Successor Trustee]

RE: Trust Administration for [Decedent]

**STATEMENT FOR LEGAL SERVICES RENDERED**

Conferences with Client; telephone conferences with Client; correspondence to Client; review of correspondence from Client; preparation of Petition and Order for Probate of Will, CCS; Court appearance to file documents; preparation and execution of Attorney's Certifications and Trustee's Certifications; preparation of Application for Employer Identification Number; correspondence to IRS to obtain EIN; collection of date of death valuations from financial institutions; valuation of stocks and brokerage accounts; obtain appraisal of real property; preparation and execution of 6 Consents to Transfer @ \$\_\_\_\_/each; preparation and execution of Indiana Inheritance Tax Return; Court appearance to file Tax Return and pay taxes; review of Report of Appraisal; preparation and filing of Inheritance Tax Order; review of State Tax Clearance.

TOTAL AMOUNT DUE: \$ xxx

DATE

TO: [Successor Trustee]

RE: Trust Administration for [Decedent]

**STATEMENT FOR LEGAL SERVICES RENDERED**

Conferences with Client; telephone conferences with Client; correspondence to Client; review of correspondence from Client; preparation of Petition and Order for Probate of Will, CCS; Court appearance to file documents; preparation and execution of Attorney's Certifications and Trustee's Certification; collection of date of death valuations from financial institutions; valuation of stocks and brokerage accounts; obtain appraisal of real estate; preparation and execution of 6 Consents to Transfer @ \$\_\_\_\_/each; preparation and execution of Federal Estate Tax Return; correspondence to IRS and Indiana Department of Revenue regarding Federal Estate Tax Return; preparation and execution of Indiana Inheritance Tax Return; Court appearance to file Tax Return and pay taxes; review of Report of Appraisal; preparation and filing of Inheritance Tax Order; review of Federal and Estate Tax Clearance; correspondence to Indiana Department of Revenue enclosing Federal Tax Clearance.

Costs Advanced:

UPS Next Day Air to IRS with Federal Estate Tax Return

\$ xxx

TOTAL AMOUNT DUE: \$ xxx

DATE

TO: [Successor Trustee]

RE: Trust Administration for [Decedent]

**STATEMENT FOR LEGAL SERVICES RENDERED**

Conferences with Client; telephone conferences with Client; correspondence to Client; review of correspondence from Client; preparation and mailing of Physician's Medical Report; review of completed medical report; preparation and execution of Attorney's Certification and Trustee's Certification; preparation and execution of Acceptance and Oath of Successor Trustee; collection of date of death valuations from financial institutions; valuation of stocks and brokerage accounts; obtain appraisal of real estate; preparation of Successor Trustee's initial accounting to Beneficiaries.

TOTAL AMOUNT DUE: \$ xxx

DATE

TO: [Successor Trustee]

RE: Trust Administration for [Decedent]

**STATEMENT FOR LEGAL SERVICES RENDERED**

Initial conferences with Clients; review of documents; preparation of Petition to Docket Trust; conference with Client to execute documents; Court appearance to file documents and obtain Court hearing date; Notice to Beneficiaries regarding Hearing on Petition to Docket Trust; preparation of Affidavit of Service and Order Docketing Trust; Court appearance to file documents; preparation of Petition to Interpret Trust; conference with Client to execute documents; Court appearance to file documents and obtain hearing date; Notice to Beneficiaries regarding Hearing on Petition to Interpret Trust; preparation of Affidavit of Service and Order Interpreting Trust; Court appearance; telephone conferences with Clients; preparation of Petition and Order to Remove Trust for Trust Docket with Waivers and Consents; conferences with Clients to obtain signatures on documents; Court appearance to file documents; correspondence to all Beneficiaries regarding Court decisions and copies of Court documents.

TOTAL AMOUNT DUE: \$ xxx

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 \_\_\_\_\_, 2001.

\_\_\_\_\_  
[Successor Trustee]



## ACCOUNT VERIFICATION

TO: [Name of Financial Institution]

FROM: [Name of Successor Trustee]

RE: \_\_\_\_\_ Living Trust, dated \_\_\_\_\_

In order to assume my duties as Successor Trustee of the above Trust, I need to account for all assets that come into my control. As a result, please certify the balances and names on the accounts I have listed below as of [Date of incapacity/death].

Dated: \_\_\_\_\_  
[Name of Successor Trustee]

### **FOR BANK USE ONLY:**

I certify that on \_\_\_\_\_, 2001, the date set forth above in this request, there was on deposit in this institution to the credit of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, the following balance:

<u>Name on Account</u>	<u>Account Number</u>	<u>Balance</u>	<u>Date</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Name and Address of Institution: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Certifying Officer: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## CERTIFICATE OF INVESTMENTS

Description of Security	Units Owned	Value

I certify that the securities listed herein were exhibited to me by the Trustee of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, or are in an account with our Office, in the name of the Trust, and their value as of this date is set forth above.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Certifying Officer

TITLE: \_\_\_\_\_

INSTITUTION: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

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 \_\_\_\_\_, 2001.

\_\_\_\_\_  
[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 \_\_\_\_\_, 2001.

\_\_\_\_\_  
[name of beneficiary/heir]

Address

Address

Soc. Sec. #

**MAIL TAX BILLS TO:**

**TAX KEY NO:**

**ADDRESS OF REAL ESTATE:**

**TRUSTEE'S DEED**

**This Indenture Witnesseth that** [Name of Successor Trustee], as Successor Trustee, under the provisions of that certain Trust Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, and known as the \_\_\_\_\_ Living Trust, does hereby grant, bargain, sell and convey to:

**[NAME OF BUYER]**

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:

**[legal description]**

This conveyance is subject to State, County and City taxes for 1999 payable in 2000 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.

This Deed is executed pursuant to, and in the exercise of, the powers and authority granted to and vested in the Successor Trustee by the terms of the Trust Agreement dated\_\_\_\_\_, 19\_\_\_\_, known as the \_\_\_\_\_ Living Trust, as well as the powers and authorities in the Deed or Deeds in Trust, delivered to the Successor Trustee pursuant to the above described Trust Agreement.

IN WITNESS WHEREOF, [Name of Successor Trustee], as Successor Trustee, has executed this Deed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NAME, Successor Trustee

STATE OF                    )  
                                  )        **ss:**  
COUNTY OF                )

Before me, the undersigned, a Notary Public in and for said County and State, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, personally appeared \_\_\_\_\_, as Successor Trustee of the foregoing Trust Agreement, and acknowledged the execution of the foregoing Deed. In Witness Whereof, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires:

\_\_\_\_\_  
                                  , Notary Public  
Resident of        County, Indiana

This Document was Prepared By: John M. O'Drobinak, Attorney at Law, 5265 Commerce Drive, Suite A, Crown Point, Indiana 46307.

DATE

Client Name  
Address  
Address

RE: TRUST ADMINISTRATION OF (Decedent)  
Date of Death:  
Alternate Valuation Date:

Dear :

The following information is provided for the purpose of advising you as to the value of the Decedent's assets on the date of death/alternate valuation date:

<u>ASSETS</u>	<u>DOD VALUE</u>	<u>ALT. VALUE</u>
---------------	------------------	-------------------

TOTAL ALL PROPERTY:

Decedent's One-half interest in property:

As it was necessary to file a death tax return on behalf of the Decedent, the applicable death tax authorities have accepted the date of death value/alternate value as the value of the Decedent's assets. Please be advised that for all future purposes, the date of death value/alternate valuation should be used as the value of the assets. If you have any questions regarding any of these matters, please contact me immediately.

Very Truly Yours,

JOHN M. O'DROBINAK, P.C.

DATE

Client Name  
Address  
Address

RE: TRUST ADMINISTRATION OF (Decedent)  
Date of Death:  
Alternate Valuation Date:

Dear :

The following information is provided for the purpose of advising you as to the value of the Decedent's assets on the date of death/alternate valuation date:

<u>ASSETS</u>	<u>DOD VALUE</u>	<u>ALT. VALUE</u>
---------------	------------------	-------------------

TOTAL ALL PROPERTY:

Decedent's One-half interest in property:

As you know, it was not necessary to file a death tax return on behalf of the Decedent. Even though no return was filed, these values have been determined in the same manner as though it was necessary to file such a return. Please be advised that for all future purposes, the date of death value/alternate valuation date value is the one to be used. If you have any questions regarding any of these matters, please contact me immediately.

Very Truly Yours,

JOHN M. O'DROBINAK, P.C.



## **V. COURT PROCEEDINGS**

### **A. GENERAL**

Although a Living Trust is used to avoid Court action of any type, there may be certain situations where it is necessary to seek Court relief in order to properly proceed with the administration of the Trust. If at all possible, these instances should be avoided. However, when there is no other viable option, resort to the Court for the answers.

You need to be fully conversant with your State's Trust and Probate Codes. Many States have an interplay between these two Codes. In many instances, the procedure to accomplish a particular objective may not be clearly stated in the Trust Code. In those situations, always follow the same procedures in the Probate Code. In this way, you can be certain the Court will accept what you are trying to accomplish. It may not guarantee a favorable decision, but at least it should assure that you can properly have the matter before the Court for its consideration.

In addition, you need to be certain what Court has jurisdiction over the types of matters you wish to present. Generally, it will be the Court that has probate jurisdiction in your State. If you do not already know, you must determine whether the Court in which you will be doing your filing has local rules of procedure. You should immediately go to that Court and inquire as to whether they have such Rules. If so, obtain a copy immediately. Make certain you keep a copy, and give a copy to the person who will be doing the Trust/Estate/Guardianship Administration work in your Office. You should also review

these Rules with that person within a week after you provide them with a copy. The quickest way to bring disfavor upon your efforts before the Court is to violate a local Rule.

## B. **DOCKETING TRUST**

Your State has a procedure by which a Trust can be docketed. Make certain that you know the substantive law that permits this to be done. This is the beginning of the Court process. The Court needs to acquire jurisdiction over the Trust in order for you to obtain the required relief. The purpose for the docketing may be to obtain a Court order providing some direction, instruction, or accomplishing a particular objective. You may not detail the purpose for docketing the Trust in the original Petition. You may choose to do that in a second Petition in which the relief you are seeking is set forth in detail. The choice is up to you as to whether this should be done in two separate petitions, or one. Depending on the circumstances, if you decide on using two separate petitions, you may wish to file the second Petition at the same time the Petition to Docket the Trust is filed in order to save time.

It may be necessary to serve notice of the Petition to Docket on all interested persons. You need to also determine whether it is necessary to publish notice of the filing. You need to know whether your local State law requires a hearing on this matter. If so, if you can obtain waivers to the docketing from all interested persons, the procedure can then move forward more efficiently. If waivers cannot be obtained, the Court will normally set

the Petition for hearing and require that you serve notice of the filing and the hearing set to decide whether the Trust should be docketed.

On the date set for the hearing, you need to be prepared to prove that you have served the notice as required by your State law. In addition, if publication is needed, you must have the publisher's affidavit of publication. You need to determine, in advance, from the Court whether the Petitioner must be present for the hearing. You do not want to appear for the hearing and have the Court ask you where your Client is at that time. Of course, if you have information that someone will appear and object, you should have your Client with you and prepared to testify. You need to be prepared to present proof as to why the Trust should be docketed.

You should appear at this hearing with a properly prepared Order granting the relief sought in the Petition. This is true for any proceeding in which you appear in Court. Even if the Court changes it, you have prepared the most substantial portion of the Order for use by the Court. The Court generally appreciates a properly prepared Order even if it needs to be changed.

Once the Trust has been docketed, you can move on to resolve the purpose for which it was docketed. As a practical matter, it probably makes more sense that you file the Petition to Docket and the Petition seeking whatever relief you feel is needed at the same time. This saves time in getting the final matter before the Court.

It is important that you understand that in almost all instances, the Trust is before the Court only for the particular relief that you are seeking. If someone tries to raise other issues, they must raise them by the proper procedure, not through your Petitions. It is important to you to realize this so that you can assure your Client that the confidentiality of the Trust will be protected. You may even go so far as to request the Court for a protective order to hold the Trust in a sealed record to protect its confidentiality. Be prepared to explain to the Court why this is important.

### **C. PETITIONS FOR RELIEF**

There are many reasons why a Trust should be docketed. Some of the more common ones are to appoint a Successor Trustee when there are none named in the Trust; to accept the Resignation and Accounting from a Trustee; to interpret a particular provision of a Trust, to enforce the Accounting requirements of a Trust, and to determine title to assets. There are some unusual reasons as well as to why a Trust should be docketed. Some examples are to revise or modify a Trust, terminate an interest in a Trust or even to terminate the Trust.

The relief that is being sought should be carefully considered. It needs to be discussed thoroughly with your Client. The Trust was intended to avoid Court action and now you are recommending Court action. This needs to be explained in detail. The

advantages and disadvantages need to be presented and analyzed. The expense associated with these proceedings needs to be addressed, as well as the length of time it is expected to take to achieve the contemplated results.

The possibility of contested hearings needs to be reviewed. Witness lists discussed, exhibits discussed, time to prepare witnesses discussed, etc. If this begins to sound like you are preparing for a trial, you are. Never assume that the proceeding will flow smoothly, without opposition. You are in Court because you probably cannot achieve the desired result in any other way. Therefore, anticipate the worst and hope for the best.

No matter what relief you are seeking, the Court will require that you give notice to all interested persons. Again, publication may be necessary. If publication is required to docket the Trust, and also for the relief you are seeking, you should file the petition to docket at the same time you file your petition for relief. In this way, you simplify the notice requirements dramatically.

Another procedural aspect you must consider when the Court is involved for any reason deals with the capacity of the interested persons. If one or more of the interested persons is a minor, or an adult whose capacity is questionable, the issue of service of notice and representation is fundamental to a proper determination of all of the issues.

Because of the diversity of law and procedure, it is difficult to suggest one solution to this problem. The most reasonable suggestion is to ask the Court to appoint a Guardian Ad Litem for the incapacitated persons. Of course this can be negated if local law permits

parents to represent minors. The use of a Guardian Ad Litem to represent a class of interested persons is sometimes the best and most efficient way to solve the capacity issues surrounding some of the interested persons. Here again, check with your local Court as to what procedure they prefer.

The appointment of a Successor Trustee can be accomplished through this process. You should always try and suggest a Successor Trustee to the Court, if there is no conflict among the Beneficiaries. In connection with this appointment, you should also resolve the issue of the accounting that is due from the prior Trustee. You should have this included in the Court Order to protect all parties.

Another type of proceeding may be initiated in order to interpret a provision of the Trust. You must be extremely careful in this area. Your opinion is what the Successor Trustee is going to rely upon in administering the Trust. As a result, an issue of liability arises when there is some questionable or conflicting provision in a Trust.

In all situations where there is a possibility of multiple interpretations of some aspects of the Trust, you should recommend that the Court construe the Trust. Again, notice needs to be given as with the other proceedings.

At this hearing, if the Petitioner is the Trustee, a different role must be taken. In other proceedings, the Trustee/Petitioner needs to proceed with the evidence and carry the burden of proof. In this situation, the position is far more delicate. The Trustee/Petitioner should only present the conflict, state what possible interpretations there may be (among

others) and then let those affected by the various interpretations go forward with the burden of proof. The Trustee/Petitioner must maintain a neutral position in this matter. As Attorney for the Petitioner, you too must maintain the neutral posture. If the Trustee/Petitioner's personal interests are adversely affected by the various interpretations, then he/she may appear on their own behalf, along with separate Counsel, to present their personal position in the matter.

Almost every Trust document today contains a provision dealing with the premature termination of the Trust. Usually the conditions that trigger this action are very clearly set out in the Trust. If you find yourself with one of these situations, then the relief you are seeking, once the Trust is docketed, is the total termination of the Trust. Here, the Court will order Notice given to all known and unknown heirs and, almost certainly this hearing will require the publication of notice.

There may be other reasons for docketing the Trust as well. In each instance, the procedure will be the same. Make certain you know the substantive requirements of your State's laws, as well as the procedural requirements of the Court in which you practice.

#### **D. REMOVAL FROM DOCKET**

Once you have accomplished your objectives through the docketing of the Trust, you need to make certain that the Court proceedings are terminated. This is accomplished quite simply through the Petition to Remove Trust from the Docket. This should be done the same day that the Court either grants or denies the relief that you were seeking.

You want to ensure that the time the Trust is in Court is minimal. If in fact you have Waivers and Consents from all interested persons, then you should file the petition to docket, the petition for relief and the petition to remove from the docket all on the same day. It is important that the confidentiality of the Trust be protected. Since all Court proceedings of this type are matters of public record, you do not want to have this matter sitting open in Court records until you get around to it. In this instance, the process is simply to get into Court and to get out of Court as expeditiously as possible. Again, you may want to ask the Court for a Protective Order to keep the Trust and what went on confidential AFTER the Trust is removed from the Docket.

#### **E. REMEDIES**

A rather interesting thing is going to happen to you as your expertise in estate planning and trust administration grows and develops. People will come to your seminars and will make appointments to see you, not only to discuss their estate plan with you, but to also discuss their involvement in another Trust with you. These people need to have their questions answered about another Trust, one in which they are involved as a Beneficiary. Although many people have now heard about Trusts, very few of them know how they operate, what their rights are, what the performance standard for the Trustee is, etc.

You will begin to develop a new area of practice - the area that represents and protects Beneficiaries in Trusts. Most Attorneys do not know what to do when they become involved with Trusts. They do not understand the rights of a Beneficiary. They do not



know the standard of conduct that governs the actions of the Trustee.

Even though the information gathering part of your system may not fully fit these circumstances, you want to get all that you can. Ask the Client to provide you with all of the information they can, or that they have. Ask for copies of the Trust, any accountings, any correspondence, anything at all that pertains to the Trust. Make absolutely certain that you have the Beneficiary sign Requests for Release of Information about the Trust. In this instance, you should probably have the Client's signature notarized. Obviously, this should be included in the first correspondence to the Trustee.

Suppose your requests for information, accountings, or anything else that the Beneficiary is entitled to meets with no response. You should be aware of what your Client's rights are under your applicable Trust Code. It is of the utmost importance that you follow your statutory procedure. It is equally important that the Trust be docketed and under the jurisdiction of the proper Court.

If the conduct of the Trustee violates the standards of law applicable to fiduciaries, removal may be the option to consider. Unless the Trustee resigns voluntarily, it will require a Court Order to accomplish this. The Court needs to be advised as to the grounds that exist for removal. You should cover as much as you can in the Petition. In this instance, you may want to include the docketing and removal provisions all in one Petition. If a Guardian ad litem is needed, include that too. In this case, you want everything in front of the Court as soon as possible.

If the Trustee has not been providing accountings, or proper accountings, again the protection of the Court may need to be invoked. If your requests, along with the Client's, have been ignored, then you should seek an Order to compel the Trustee to provide an accounting. Once this accounting has been received, it may disclose grounds for removal.

In all instances in which the Court is involved, if an applicable statute is relevant to the action taken or the remedy being sought, your Petition should cite that authority. REMEMBER, never assume the Court knows the law. Make sure at least the Court knows where to find the law.

# LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF  
[NAME OF TRUST]

CAUSE NO.

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

[Name of Trustee] files Petition to Docket Trust with Waivers and Consents.  
Petition examined and approved. OPF.

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

Attorney #9729-45

5265 Commerce Drive, Suite A

Crown Point, IN 46307

(219) 738-2292

Estate

Party Represented

Name, Address and Telephone Number of Opposing Counsel  
(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

☐ Placed in case file

☐ Discarded after entry on the CCS

☐ Mailed to all counsel by: \_\_\_\_\_ Counsel \_\_\_\_\_ Clerk \_\_\_\_\_ Court

☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_

Judge

) ) SS: )

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

)  
 ) CAUSE NO. [Cause No.]  
 )

## PETITION TO DOCKET TRUST

[Name of Trustee], as Trustee of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, being sworn,  
shows the Court that:

1. [Name of Trustor] entered into a written Trust Agreement with [Name of Trustee] on [date of Trust], a copy of which Trust Agreement is attached to and made a part of this Petition. **\*\*[Or, Petitioner became the Successor Trustee upon the death of [Name of Decedent] on [date of death].**
2. The current income beneficiary is [Name of income beneficiary], the [Beneficiary's relationship to Trustor] of the [Name of Trustor] of the trust.
3. The beneficiaries of the Trust and their relationship to the Trustor and place of residence are:

### LIST BENEFICIARIES, RELATIONSHIP, ADDRESS

All of the beneficiaries are competent adults.

- 4a. All beneficiaries have consented to the docketing of the Trust with the Court by waivers attached to and made a part of this Petition.
- 4b. All beneficiaries should be given notice with regard to this Petition by certified mail/return receipt.
5. The assets of the Trust are as follows:

## LIST ASSETS



IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

**WAIVER OF NOTICE OF HEARING AND  
CONSENT TO DOCKETING OF TRUST**

NAME OF BENEFICIARY

# LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF  
[NAME OF TRUST]

CAUSE NO.

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

[Name of Trustee] files Petition to Docket Trust. Court sets hearing thereon for \_\_\_\_\_, 1999, at \_\_\_\_\_ a.m. OPF.

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

Attorney #9729-45

5265 Commerce Drive, Suite A

Crown Point, IN 46307

(219) 738-2292

Estate

Party Represented

Name, Address and Telephone Number of Opposing Counsel  
(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

☐ Placed in case file

☐ Discarded after entry on the CCS

☐ Mailed to all counsel by: \_\_\_\_\_ Counsel \_\_\_\_\_ Clerk \_\_\_\_\_ Court

☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_

Judge

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

## ORDER SETTING HEARING ON PETITION TO DOCKET TRUST

The Court having examined the Petition and being advised, finds that the Petition should be set for hearing and that notice should be given to all interested parties, namely, the Trustee, [Name of Trustee], and all beneficiaries, [Name all beneficiaries of income/remainder interest].

All of which is found and recommended this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

All of which is so ordered and approved this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

Judge, Lake Circuit Court



Date

<<Beneficiaries name\_\_age\_\_address>>

RE: Trust on <<name\_ of \_decedent>>

Dear \*\*{Mr. or Ms. }:

Enclosed are the following documents:

- A. Notice of Hearing - This advises you that a hearing will be held on \_\_\_\_\_, 1999, at \_\_\_\_\_ a.m., in the Lake Circuit Court, Crown Point, Indiana. This hearing is on the Petition filed in the above Trust matter;
- B. Petition To Docket Trust - This document is self-explanatory;
- C. Waiver and Consent.

I ask that you review the Petition carefully. If you have any questions, contact me. The hearing on this matter will be held on \_\_\_\_\_, 1999, at \_\_\_\_\_ a.m., as I indicated above. If you are satisfied that the Petition is acceptable, please sign the Waiver and Consent form and return two (2) of them to me. You should keep one for your records.

If the Petition is not acceptable, please contact me immediately so that I may resolve your questions. On the hearing date, I will appear in Court to advise the Court that there are either difficulties or that the Petition has been accepted. If the Petition is accepted, the Court will order that the relief requested in the Petition be granted. It is not necessary for you to attend the hearing if you agree with and accept the Petition. If you object to it, you have the right to appear at the hearing either by yourself, or represented by an Attorney.

Again, if there are any questions at all, please do not hesitate to contact me. I am enclosing a self-addressed envelope to assist you in returning the Waiver and Consent form to me.

Thank you.

Very Truly yours,

JOHN M. O'Drobinak, P.C.

By: John M. O'Drobinak

JMO:  
Enclosures

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

## **NOTICE OF HEARING ON PETITION TO DOCKET TRUST**

On \_\_\_\_\_, 19\_\_\_\_, the Court entered an Order fixing the \_\_\_\_day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ a.m., as the time for the hearing on such petition, to be held before the Lake Circuit Court in Crown Point, Indiana.

Dated at Crown Point, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

By: \_\_\_\_\_  
Deputy Clerk

JOHN M. O'DROBINAK, P.C.  
By: John M. O'Drobinak  
5265 Commerce Drive, Suite A  
Crown Point, IN 46307  
219-738-2292  
Attorney #9729-45

# LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF  
[Name of Trust]

CAUSE NO. \_\_\_\_\_

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

John M. O'Drobinak, Attorney, files Affidavit of Service. Hearing held on Petition to Docket Trust. Petition granted (OPF)

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

Attorney No. 9729-45

5265 Commerce Drive, Suite A

Crown Point, IN 46307

(219) 738-2292

Guardian

Party Represented

Name, Address and Telephone Number of Opposing Counsel  
(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

☐ Placed in case file

☐ Discarded after entry on the CCS

☐ Mailed to all counsel by: \_\_Counsel \_\_Clerk \_\_Court

☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_

Judge

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

) CAUSE NO. [Cause No.]  
)  
)

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

## ORDER APPROVING PETITION TO DOCKET TRUST

- a. The Court having examined the Petition and being advised, finds that the Court has jurisdiction of the trust; that all of the beneficiaries of the Trust have waived notice of hearing on the Petition and have consented to the docketing of the Trust as shown by the waivers attached to the Petition; that the Trustee has appeared in person and by Counsel, the Court now finds that the Trust should be docketed with the Court; and that the prayer of the Petition should be granted.
- b. The Court having examined the Petition and being advised, finds that the Court has jurisdiction of the Trust; that all of the beneficiaries of the Trust have been given due notice of the hearing on said Petition and said Trustee having appeared in person and by Counsel, the Court now finds that the Trust should be docketed with the Court; and that the prayer of the Petition should be granted.

All of which is found and recommended this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

All of which is so ordered and approved this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

Judge, Lake Circuit Court

# LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF  
[NAME OF TRUST]

CAUSE NO. [Cause No]

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

[Name of Trustee] files Petition to Appoint Successor Trustee with Waivers and Consents. Petition examined and approved. OPF. \_\_\_\_\_ files oath, and qualifies as Successor Trustee of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_.

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

Attorney #9729-45

5265 Commerce Drive, Suite A

Crown Point, IN 46307

(219) 738-2292

Estate

Party Represented

Name, Address and Telephone Number of Opposing Counsel  
(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

☐ Placed in case file

☐ Discarded after entry on the CCS

☐ Mailed to all counsel by: \_\_\_\_\_ Counsel \_\_\_\_\_ Clerk \_\_\_\_\_ Court

☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_

Judge

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

## **PETITION TO APPOINT SUCCESSOR TRUSTEE**

5a. All beneficiaries have consented to the appointment of a Successor Trustee by waivers attached to and made a part of this Petition.

5b. All beneficiaries should be given notice with regard to this Petition by certified mail/return receipt.

a. WHEREFORE, Petitioner prays for an Order of this Court authorizing the appointment of a Successor/Substitute Trustee, and appointing \_\_\_\_\_[name of new Trustee] as Trustee of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_ [date of trust].

)

)

)

b.

\_\_\_\_\_, 1999.

[Name of Petitioner]



STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF LAKE       )

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

IN THE MATTER OF THE TRUST OF       )  
[Name of Trust]                                )  
  )

) CAUSE NO. [Cause No.]

**WAIVER OF NOTICE OF HEARING AND  
CONSENT TO APPOINT SUCCESSOR TRUSTEE**

The undersigned, being an income/remainder beneficiary of the \_\_\_\_ Living Trust, waives notice of hearing on the Petition to Appoint Successor Trustee and hereby consents to the appointment of a Successor Trustee for the \_\_\_\_ Living Trust.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NAME OF BENEFICIARY

# LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF  
[NAME OF TRUST]

CAUSE NO. [Cause No]

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

[Name of Trustee] files Petition to Appoint Successor Trustee. Court sets hearing thereon for \_\_\_\_\_, 1999, at \_\_\_\_\_ a.m. OPF

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

Attorney #9729-45

5265 Commerce Drive, Suite A

Crown Point, IN 46307

(219) 738-2292

Estate

Party Represented

Name, Address and Telephone Number of Opposing Counsel  
(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

☐ Placed in case file

☐ Discarded after entry on the CCS

☐ Mailed to all counsel by: \_\_\_\_\_ Counsel \_\_\_\_\_ Clerk \_\_\_\_\_ Court

☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_

Judge

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

**ORDER SETTING HEARING ON PETITION  
TO APPOINT SUCCESSOR TRUSTEE**

The Court having examined the Petition and being advised, finds that the Petition should be set for hearing and that notice should be given to all interested parties, namely, the named Successor Trustee, [Name of Successor Trustee], and all beneficiaries, [Name all beneficiaries].

Probate Commissioner,  
Lake Circuit Court

Judge, Lake Circuit Court

Date

<<Beneficiaries name\_\_age\_\_address>>

RE: Trust on <<name\_ of \_decedent>>

Dear \*\*{Mr. or Ms. }:

Enclosed are the following documents:

- D. Notice of Hearing - This advises you that a hearing will be held on \_\_\_\_\_, 1999, at \_\_\_\_\_ a.m., in the Lake Circuit Court, Crown Point, Indiana. This hearing is on the Petition filed in the above Trust matter;
- E. Petition To Appoint Successor Trustee – This document is self-explanatory;
- F. Waiver and Consent.

I ask that you review the Petition carefully. If you have any questions, contact me. The hearing on this matter will be held on \_\_\_\_\_, 1999, at \_\_\_\_\_ a.m., as I indicated above. If you are satisfied that the Petition is acceptable, please sign the Waiver and Consent form and return two (2) of them to me. You should keep one for your records.

If the Petition is not acceptable, please contact me immediately so that I may resolve your questions. On the hearing date, I will appear in Court to advise the Court that there are either difficulties or that the Petition has been accepted. If the Petition is accepted, the Court will order that the relief requested in the Petition be granted. It is not necessary for you to attend the hearing if you agree with and accept the Petition. If you object to it, you have the right to appear at the hearing either by yourself, or represented by an Attorney.

Again, if there are any questions at all, please do not hesitate to contact me. I am enclosing a self-addressed envelope to assist you in returning the Waiver and Consent form to me.

Thank you.

Very Truly yours,

JOHN M. O'Drobinak, P.C.

By: John M. O'Drobinak

JMO: sap  
Enclosures

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

**NOTICE OF HEARING ON PETITION TO  
APPOINT SUCCESSOR TRUSTEE**

On \_\_\_\_\_, 19\_\_\_\_, the Court entered an Order fixing the \_\_\_\_day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ a.m., as the time for the hearing on such petition, to be held before the Lake Circuit Court in Crown Point, Indiana.

All persons claiming an interest in the Trust are now required to appear in said Court on such date and show cause, if any, why said Petition should not be approved.

Dated at Crown Point, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

Clerk of the Lake Circuit Court  
Lake County, Indiana

By: \_\_\_\_\_  
Deputy Clerk

JOHN M. O'DROBINAK, P.C  
By: John M. O'Drobinak  
5265 Commerce Drive, Suite A  
Crown Point, IN 46307  
219-738-2292  
Attorney #9729-45

# LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF

[Name of Trust]

CAUSE NO. \_\_\_\_\_

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

John M. O'Drobinak, Attorney, files Affidavit of Service. Hearing held on Petition to Appoint Successor Trustee. Petition granted (OPF) \_\_\_\_\_ files oath, and qualifies as Successor Trustee of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_.

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

Attorney No. 9729-45

5265 Commerce Drive, Suite A

Crown Point, IN 46307

(219) 738-2292

Guardian

Party Represented

Name, Address and Telephone Number of Opposing Counsel

(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

☐ Placed in case file

☐ Discarded after entry on the CCS

☐ Mailed to all counsel by: \_\_Counsel \_\_Clerk \_\_Court

☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_  
Judge

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

## **AFFIDAVIT OF SERVICE**

I affirm under the penalties for perjury that the above and foregoing is true and correct on \_\_\_\_\_, 1999.

[Attorney]

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

## ORDER APPOINTING SUCCESSOR/SUBSTITUTE TRUSTEE

The Court having examined the Petition and being advised, finds that \_\_\_\_\_[Name of Designated Trustee] as the designated Trustee under the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, is now deceased / has renounced his/her right to serve as said Trustee and waived notice of hearing on the Petition/that all beneficiaries of the Trust have been given due notice of the hearing on the Petition, whereby a Successor/Substitute Trustee should be appointed, and the Petition granted.

All of which is found and recommended this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

All of which is so ordered and approved this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

## ***Trust Administration***



STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF LAKE       )

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

IN THE MATTER OF THE TRUST OF       )

[Name of Trust]

) CAUSE NO. [Cause No.]

)

### **ACCEPTANCE – OATH - RECEIPT**

I, \_\_\_\_\_, hereby accept appointment as Successor Trustee of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, "Trust". I agree to serve under the terms and conditions of the Trust, and to perform my duties as Trustee of this Trust according to its terms and the law. I further acknowledge delivery and receipt of the Trust assets set out in Exhibit A, attached hereto and made a part hereof.

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

### **SUCCESSOR TRUSTEE**

Dated: \_\_\_\_\_

\_\_\_\_\_  
"Successor Trustee"

(You may wish to notarize the Oath instead of using the affirmation.)

# LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF  
[NAME OF TRUST]

CAUSE NO. [Cause No]

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

[Name of Trustee] files Petition to Interpret Trust. Court sets hearing thereon for \_\_\_\_\_, 1999, at \_\_\_\_\_ a.m./p.m. OPF

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

Attorney #9729-45

5265 Commerce Drive, Suite A

Crown Point, IN 46307

(219) 738-2292

Estate

Party Represented

Name, Address and Telephone Number of Opposing Counsel  
(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

☐ Placed in case file

☐ Discarded after entry on the CCS

☐ Mailed to all counsel by: \_\_\_\_\_ Counsel \_\_\_\_\_ Clerk \_\_\_\_\_ Court

☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_

Judge

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

## PETITION TO INTERPRET TRUST

1. The \_\_\_\_\_ Living Trust was docketed by this Court on \_\_\_\_\_.
2. The \_\_\_\_\_ Living Trust contains the following ambiguous paragraph designated as Article \_\_\_\_\_ Item \_\_\_\_\_, which states as follows:  
  
*[recite paragraph in its full context]*
3. It is necessary that this Court interpret this ambiguous paragraph in order that this Trust may be administered correctly.
4. The beneficiaries of the Trust are:  
  
[list complete names and addresses of beneficiaries]
5. All beneficiaries of the Trust should be given notice with regard to this Petition by registered/certified mail.

I affirm under the penalties of perjury that the above and foregoing is true and correct on \_\_\_\_\_, 1999.

[Name of Trustee]

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

**ORDER SETTING HEARING ON PETITION TO  
INTERPRET TRUST**

Judge, Lake Circuit Court

STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF LAKE       )

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

IN THE MATTER OF THE TRUST OF       )  
  ) CAUSE NO. [Cause No.]  
[Name of Trust]                            )

**NOTICE OF HEARING ON PETITION TO INTERPRET TRUST**

Notice is hereby given that, in the above-entitled proceedings that on \_\_\_\_\_, 19\_\_\_\_,  
[Name of Trustee] filed a "Petition to Interpret Trust".

On \_\_\_\_\_, 19\_\_\_\_, the Court entered an Order fixing the \_\_\_\_day of \_\_\_\_\_,  
19\_\_\_\_, at \_\_\_\_\_ a.m., as the time for the hearing on such petition, to be held before the Lake  
Circuit Court in Crown Point, Indiana.

All persons claiming an interest in the Trust are now required to appear in said Court on  
such date and show cause, if any, why said Petition should not be approved.

Dated at Crown Point, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Clerk of the Lake Circuit Court  
Lake County, Indiana

By: \_\_\_\_\_  
Deputy Clerk

JOHN M. O'DROBINAK, P.C  
By: John M. O'Drobinak  
5265 Commerce Drive, Suite A  
Crown Point, IN 46307  
219-738-2292  
Attorney #9729-45

# LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF  
[Name of Trust]

CAUSE NO. [Cause No.]

---

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

John M. O'Drobinak, Attorney, files Affidavit of Service. Hearing held on Petition to Interpret Trust. Court enters Order interpreting Trust. (OPF)

JOHN M. O'DROBINAK, P.C.  
By: John M. O'Drobinak  
Attorney No. 9729-45  
5265 Commerce Drive, Suite A  
Crown Point, IN 46307  
(219) 738-2292

Guardian  
Party Represented

Name, Address and Telephone Number of Opposing Counsel  
(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

- ☐ Placed in case file
- ☐ Discarded after entry on the CCS
- ☐ Mailed to all counsel by: \_\_Counsel \_\_Clerk \_\_Court
- ☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_  
Judge

STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF LAKE       )

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

IN THE MATTER OF THE TRUST OF

[Name of Trust]

)  
) CAUSE NO. [Cause No.]  
)

**AFFIDAVIT OF SERVICE**

I hereby certify that a copy of the Order Setting Hearing on Petition to Interpret Trust was sent by certified mail, return receipt requested, on \_\_\_\_\_, to the persons listed below, as shown by the receipts attached:

\*\*[names and addresses served]

I affirm under the penalties for perjury that the above and foregoing is true and correct on \_\_\_\_\_, 1999.

\_\_\_\_\_  
[Attorney]

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

## ORDER INTERPRETING TRUST

The Court having examined the Petition and being advised, and notice of the hearing on the Petition having been served on all beneficiaries of the Trust by registered/certified mail, and the Trustee appearing in person and by Counsel, and the Court having heard evidence on the Petition, now finds that it would be in the best interests of this Trust estate and the beneficiaries that a ruling be made with regard to the said trust provision. That the most likely interpretation of the Trust provision is as follows:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that [Name of Trustee] is authorized to proceed with his/her administration of said Trust and that the interpretation of Article \_\_\_\_\_ Item \_\_\_\_\_ of said Trust Agreement shall be as follows:

All of which is found and recommended this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

All of which is so ordered and approved this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

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- A. If it is necessary for any reason that a Guardian ad litem needs to be appointed, simply inset the following paragraph into the applicable Petition:

**The Beneficiary, \_\_\_\_\_, is a minor, having been born on \_\_\_\_\_, whose interest needs to be protected, and that a Guardian ad litem should be appointed to protect the interest of the minor Beneficiary.**

- B. The applicable Order should have the following insertions:

In the Findings section:

**. . . that \_\_\_\_\_ is a minor Beneficiary of the Trust whose interests should be protected by a Guardian ad litem,**

In the Order section:

**\_\_\_\_\_ is hereby appointed Guardian ad litem for \_\_\_\_\_, a minor Beneficiary of the Trust, and is to qualify by filing oath,**

# LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF  
[NAME OF TRUST]

CAUSE NO. [Cause No]

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

[Name of Trustee] files Petition to Terminate Trust. Court sets hearing thereon for \_\_\_\_\_, 1999, at \_\_\_\_\_ a.m./p.m. OPF

JOHN M. O'DROBINAK, P.C.  
By: John M. O'Drobinak  
Attorney #9729-45  
5265 Commerce Drive, Suite A  
Crown Point, IN 46307  
(219) 738-2292

Estate  
Party Represented

Name, Address and Telephone Number of Opposing Counsel  
(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

- ☐ Placed in case file  
☐ Discarded after entry on the CCS  
☐ Mailed to all counsel by: \_\_\_\_ Counsel \_\_\_\_ Clerk \_\_\_\_ Court  
☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_  
Judge

STATE OF INDIANA	)	IN THE LAKE CIRCUIT COURT
	) SS:	SITTING AT
COUNTY OF LAKE	)	CROWN POINT, INDIANA
IN THE MATTER OF THE TRUST OF	)	
	) CAUSE NO. [Cause No.]	
[Name of Trust]	)	

**PETITION TO TERMINATE TRUST**

[Name of Trustee], as Trustee of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, being sworn, shows the Court that:

1. The \_\_\_\_\_ Living Trust was docketed by this Court on \_\_\_\_\_.
2. Under the terms and conditions of Article \_\_\_\_ of the Trust, the Trust may be terminated if:

*Insert the reasons provided in the Trust by which it can be terminated.*

3. The Petitioner believes it is in the best interests of the Trust, and its Beneficiaries, to terminate the Trust for the following reasons:

*Insert the reasons to support the request to terminate the Trust.*

4. The Beneficiaries of the Trust are:

*List the names and addresses of the Beneficiaries, including designation of whether they are current income and/or residuary beneficiaries.*

WHEREFORE, the Trustee prays the Court enter an Order setting the Petition for hearing, and after the hearing on the Petition, enter an Order directing that the Trust be terminated and the Trustee take such action as is necessary to terminate the Trust, and for all other relief which is proper in the premises.

I affirm under the penalties of perjury that the above and foregoing is true and correct on \_\_\_\_\_, 1999.

\_\_\_\_\_  
[Name of Trustee]

**IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA**

**ORDER SETTING HEARING ON PETITION TO  
TERMINATE TRUST**

Judge, Lake Circuit Court

LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF  
[Name of Trust]

CAUSE NO. [Cause No.]

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

John M. O'Drobinak, Attorney, files Affidavit of Service. Hearing held on Petition to Terminate Trust. Court enters Order Terminating Trust. (OPF)

JOHN M. O'DROBINAK, P.C.  
By: John M. O'Drobinak  
Attorney No. 9729-45  
5265 Commerce Drive, Suite A  
Crown Point, IN 46307  
(219) 738-2292

Guardian  
Party Represented

Name, Address and Telephone Number of Opposing Counsel  
(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

- ☐ Placed in case file  
☐ Discarded after entry on the CCS  
☐ Mailed to all counsel by: \_\_Counsel \_\_Clerk \_\_Court  
☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_  
Judge

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

## AFFIDAVIT OF SERVICE

[Attorney]

STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF LAKE       )

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

IN THE MATTER OF THE TRUST OF       )  
  ) CAUSE NO. [Cause No.]  
[Name of Trust]                            )

**ORDER TERMINATING TRUST**

[Name of Trustee], as Trustee of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, submits Petition to Terminate Trust.

The Court having examined the Petition and being advised, and notice of the hearing on the Petition having been served on all beneficiaries of the Trust by registered/certified mail, and the Trustee appearing in person and by Counsel, and the Court having heard evidence on the Petition, now finds that it would be in the best interests of this Trust estate and the beneficiaries that the Trust be terminated.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, is hereby terminated and [Name of Trustee] is hereby ordered to take any and all such actions necessary to terminate the Trust, to distribute the assets thereof, file a supplemental report showing such distributions, and shall thereafter be released from any further duties and liabilities in regard to the \_\_\_\_\_ Living Trust.

All of which is found and recommended this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Probate Commissioner,  
Lake Circuit Court

All of which is so ordered and approved this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Judge, Lake Circuit Court

## **REQUEST FOR RELEASE OF INFORMATION**

**Name of Trustee:**

**Name of Trust:** \_\_\_\_\_, **Living Trust, dated** \_\_\_\_\_, **“Trust”**

**Attorney:** John M. O'Drobinak  
5240 Fountain Drive  
Crown Point, IN 46307  
219-738-2292

I hereby authorize you to release to my Attorney, any and all information which he may request that you have in your possession, or that you have access to, pertaining to the Trust's affairs, both financial or otherwise. 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 Trust's affairs, both financial and/or otherwise. 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: \_\_\_\_\_

Responsible Party

\_\_\_\_\_  
(Name of Party)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Relationship of Responsible Party to Trust:

Heir/Beneficiary \_\_\_\_\_

Successor Trustee \_\_\_\_\_

Surviving Spouse \_\_\_\_\_

ADD NOTARY HERE



# LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF  
[NAME OF TRUST]

CAUSE NO. [Cause No]

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

[Name of Trustee] files Petition to Remove Trust from Trust Docket with Waivers and Consents. Examined and approved. OPF.

JOHN M. O'DROBINAK, P.C.

By: John M. O'Drobinak

Attorney #9729-45

5265 Commerce Drive, Suite A

Crown Point, IN 46307

(219) 738-2292

Estate

Party Represented

Name, Address and Telephone Number of Opposing Counsel  
(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

☐ Placed in case file

☐ Discarded after entry on the CCS

☐ Mailed to all counsel by: \_\_\_\_\_ Counsel \_\_\_\_\_ Clerk \_\_\_\_\_ Court

☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_

Judge

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

## **PETITION TO REMOVE TRUST FROM TRUST DOCKET**

1. The Trust was docketed for the specific purpose of [state reason].
2. *State the outcome of the reason the trust was docketed and when the Order was issued.*
3. There are no further proceedings contemplated in this matter regarding the Trust.
4. That all of the beneficiaries and the Trustee have consented to the removal of the Trust from the Trust Docket with the Court by their waivers attached to and made a part of this Petition.

I affirm under the penalties of perjury that the above and foregoing is true and correct on  
, 1999.

[Name of Trustee]

STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF LAKE       )

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

IN THE MATTER OF THE TRUST OF  
[NAME OF TRUST]

)  
) CAUSE NO. [Cause No.]  
)

**WAIVER OF NOTICE OF HEARING AND  
CONSENT TO REMOVE TRUST FROM TRUST DOCKET**

The undersigned, being an \*\*[income/remainder] beneficiary of the \_\_\_\_\_ Living Trust,  
hereby waives notice of hearing on the Petition to Remove Trust from Trust Docket and hereby  
consents to the removal of said Trust from Trust Docket with the Court.

Date: \_\_\_\_\_

\_\_\_\_\_

NAME BENEFICIARY

STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF LAKE       )

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

IN THE MATTER OF THE TRUST OF  
[Name of Trust]

)  
) CAUSE NO. [Cause No.]  
)

**ORDER APPROVING PETITION TO REMOVE TRUST FROM TRUST DOCKET**

[name of Trustee], as Trustee of the \_\_\_\_\_ Living Trust, submits Petition to Remove Trust from Trust Docket.

The Court having examined the Petition and being advised, finds that the Court has jurisdiction of the Trust; that all of the beneficiaries of the Trust have waived notice of hearing on the Petition and have consented to the removal of the Trust from the Trust Docket as shown by the waivers attached to the Petition; that the Trust should be removed from the Trust Docket of the Court; and that the prayer of the Petition should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the \_\_\_\_\_ Living Trust be and hereby is removed from the Trust Docket of this Court.

All of which is found and recommended this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Probate Commissioner,  
Lake Circuit Court

All of which is so ordered and approved this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Judge, Lake Circuit Court

# LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF  
[NAME OF TRUST]

CAUSE NO. [Cause No]

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

[Name of Trustee] files Petition to Docket Trust and Remove Trustee. Court sets hearing thereon for \_\_\_\_\_, 1999, at \_\_\_\_\_ a.m./p.m. OPF

JOHN M. O'DROBINAK, P.C.  
By: John M. O'Drobinak  
Attorney #9729-45  
5265 Commerce Drive, Suite A  
Crown Point, IN 46307  
(219) 738-2292

Estate  
Party Represented

Name, Address and Telephone Number of Opposing Counsel  
(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

- ☐ Placed in case file  
☐ Discarded after entry on the CCS  
☐ Mailed to all counsel by: \_\_\_\_ Counsel \_\_\_\_ Clerk \_\_\_\_ Court  
☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_  
Judge

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

)  
 ) CAUSE NO. [Cause No.]  
 )

## **PETITION TO DOCKET TRUST AND REMOVE TRUSTEE**

\_\_\_\_\_, being sworn, shows the Court that:

1. The \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, should be docketed by this Court, a copy of which Trust is marked Exhibit A, and is attached hereto and made a part hereof.
2. The currently acting Trustee of the Trust, \_\_\_\_\_, has failed, and continues to fail, to perform his/her duties as Trustee, for the following reasons:

*Insert all reasons that may apply under the circumstances involved in the management of the Trust – DO NOT LIST THE ARTICLES OF THE TRUST ALLEGEDLY VIOLATED.*

3. The Beneficiaries of the Trust are:

*List the names and addresses of the Beneficiaries, including designation of whether they are current income and/or residuary beneficiaries. Also, if a Guardian ad litem needs to be appointed, allege that in a separate pleading paragraph.*

4. The Trust, in Article \_\_\_, provides for the appointment of a Successor Trustee, who, in this instance would be \_\_\_\_\_.

*In the event no further Successor Trustees are named, you should make a request to have a particular person, financial institution named Successor Trustee.*

WHEREFORE, the Trustee prays the Court enter an Order setting the Petition for hearing, and after the hearing on the Petition, enter an Order removing the current Trustee and appointing a Successor Trustee, and for all other relief which is proper in the premises.

I affirm under the penalties of perjury that the above and foregoing is true and correct on \_\_\_\_\_, 1999.

NAME, Petitioner

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

**ORDER SETTING HEARING ON PETITION TO  
DOCKET TRUST AND REMOVE TRUSTEE**

Judge, Lake Circuit Court

LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF  
[Name of Trust]

CAUSE NO. [Cause No.]

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

John M. O'Drobinak, Attorney, files Affidavit of Service. Hearing held on Petition to Docket Trust and Remove Trustee. Court enters Order Docketing Trust and Removing Trustee. (OPF)

JOHN M. O'DROBINAK, P.C.  
By: John M. O'Drobinak  
Attorney No. 9729-45  
5265 Commerce Drive, Suite A  
Crown Point, IN 46307  
(219) 738-2292

Guardian  
Party Represented

Name, Address and Telephone Number of Opposing Counsel  
(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

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- ☐ Placed in case file  
☐ Discarded after entry on the CCS  
☐ Mailed to all counsel by: \_\_Counsel \_\_Clerk \_\_Court  
☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_  
Judge



IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

## AFFIDAVIT OF SERVICE

[Attorney]

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

)  
 ) CAUSE NO. [Cause No.]  
 )

## ORDER DOCKETING TRUST AND REMOVING TRUSTEE

\_\_\_\_\_, Petitioner, files Petition to Docket Trust and Remove Trustee.

The Court having examined the Petition and being advised, and notice of the hearing on the Petition having been served on all beneficiaries of the Trust by registered/certified mail, and the Trustee appearing in person and by Counsel, the Court, after evidence having been heard, now finds that the \_\_\_\_ Living Trust should be docketed with this Court, that sufficient grounds exist for the removal of \_\_\_\_\_ as Trustee of the Trust, that a Successor Trustee should be named, and \_\_\_\_\_ is a proper qualified person to serve as Successor Trustee of the Trust.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that:

1. The \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, is hereby docketed with this Court;
2. \_\_\_\_\_ is hereby removed as Trustee of the Trust;
3. \_\_\_\_\_ shall file an accounting of his/her activities as Trustee of the Trust from \_\_\_\_\_ to the date all assets are transferred to the Successor Trustee within thirty days of the date of such transfer;
4. \_\_\_\_\_ is hereby appointed Successor Trustee of the \_\_\_\_\_ Living Trust and is ordered to qualify by filing oath;
5. \_\_\_\_\_ shall immediately begin transferring the assets of the Trust to \_\_\_\_\_, his/her successor, upon qualification of such Successor Trustee, and shall cooperate in all respects with such Successor Trustee to complete the orderly and timely transfer of all such Trust assets.

All of which is so ordered and approved  
this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

Judge, Lake Circuit Court

# LAKE CIRCUIT COURT

IN THE MATTER OF THE TRUST OF  
[NAME OF TRUST]

CAUSE NO. [Cause No]

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

[Name of Trustee] files Petition for Accounting. Court orders Accounting to be filed on or before \_\_\_\_\_. OPF

JOHN M. O'DROBINAK, P.C.  
By: John M. O'Drobinak  
Attorney #9729-45  
5265 Commerce Drive, Suite A  
Crown Point, IN 46307  
(219) 738-2292

Estate  
Party Represented

Name, Address and Telephone Number of Opposing Counsel  
(Or, when appropriate: "Mailing list attached")

\*\*\*\*\*

(TO BE DESIGNATED BY THE COURT)

This CCS Entry Form shall be:

- ☐ Placed in case file  
☐ Discarded after entry on the CCS  
☐ Mailed to all counsel by: \_\_\_\_ Counsel \_\_\_\_ Clerk \_\_\_\_ Court  
☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE \_\_\_\_\_ APPROVED \_\_\_\_\_  
Judge

STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF LAKE       )

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

IN THE MATTER OF THE TRUST OF       )  
[Name of Trust]                               ) CAUSE NO. [Cause No.]  
  )

**PETITION FOR ACCOUNTING**

\_\_\_\_\_, being sworn, shows the Court that:

1.     The \_\_\_\_\_ Living Trust was docketed by this Court on \_\_\_\_\_.
2.     The Petitioner is a Beneficiary of the Trust, as shown in Article \_\_\_\_ of the Trust.
3.     \_\_\_\_\_ is the present acting Trustee of the Trust, and has been so acting since \_\_\_\_\_, due to the death/incapacity/resignation of the prior Trustee of the Trust.
4.     Under the terms and provisions of Article \_\_\_\_ of the Trust, the Trustee is required to provide the Beneficiaries with an annual accounting.
5.     Petitioner has made numerous written requests of the Trustee for an accounting and none has been forthcoming, all as shown by copies of the correspondence marked Exhibit A, attached hereto and made a part hereof.

WHEREFORE, the Trustee prays the Court enter an Order directing that \_\_\_\_\_, as Trustee of the \_\_\_\_\_ Living Trust, provide an accounting on his/her actions as Trustee, and for all other relief which is proper in the premises.

I affirm under the penalties of perjury that the above and foregoing is true and correct on \_\_\_\_\_, 1999.

\_\_\_\_\_  
[Name of Petitioner]



## VI. CONCLUSION

By this time, hopefully you have developed a method to handle internal office procedures to deal with a Trust Administration. Some are more formal than others. Some are more complex than others. No one system is going to fit everyone. However, ideas and concepts can be adapted. What makes you comfortable? How will your Staff respond? What are their strengths and weaknesses? What are your strengths and weaknesses? All of these questions, and many more, need to be addressed by you as you formalize your operating system to handle Trust Administrations.

These materials in no way address all issues or matters that should be included within your system. What they do, hopefully, is to give you some idea as to problems that need to be addressed, and at least one way in which they can be handled. All of these suggestions, forms, procedures, etc. must be molded to fit you, your Office Staff, your local State law, your local Court rules and requirements, and many other variables. The key to remember, however, is that this development and application process is an ongoing one. It never ends. You continue to update, supplement and implement, because not all Trust Administrations are the same.

The system you employ for Trust Administrations is basically the same system you should employ for normal estate and guardianship administrations. The concepts are the same, but estates and guardianships have more requirements. This is true because they are subject to more substantive law and procedural requirements than a Trust Administration. In

addition, you do not want to have different operating systems to accomplish the same basic objectives.

Whatever you do and however you choose to create your operating system, hopefully you now have some new ideas and thoughts of the things that need to be addressed, and at least one way to address them.

# **Supplemental Updated Forms**



Date

Name  
Street  
City State Zip

**RE: [patient name]**  
**DOB:**

Dear Dr. \_\_\_\_\_ :

I have been requested by \_\_\_\_\_ to represent him/her in connection with matters dealing with his/her interest in certain assets. It is my understanding that you are \_\_\_\_\_'s attending Physician. There is some concern about the ability of \_\_\_\_\_ to assist me in the representation of his/her affairs.

Please complete the enclosed Physician's Report and return it to me as soon as possible. The information contained therein will determine whether \_\_\_\_\_ is still capable of assisting me and participating in the handling of his/her affairs. As a result, with the current condition of \_\_\_\_\_, your prompt response would be greatly appreciated. A HIPAA authorization is enclosed. Please forward the requested information to my Office via facsimile at 219-756-0633, and return the originally executed form in the self-addressed, stamped envelope provided for your convenience.

If you have any questions, please feel free to contact me. Thank you for your prompt attention to this matter.

Very truly yours,

John M. O'Drobinak, P.C.

By: John M. O'Drobinak

JMO/  
Enclosure

## PHYSICIAN'S REPORT

\_\_\_\_\_, a physician holding an unlimited license to practice medicine in the State of \_\_\_\_\_, submits the following report on \_\_\_\_\_, **DOB:** \_\_\_\_\_, "Patient", based upon examination of the Patient.

1. Set forth the dates and purposes of all examinations of the Patient within the last one (1) year preceding the date of this Report.

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2. In your opinion, based upon your examination and observation of the Patient, is the Patient incapacitated as defined by Indiana law (see attached definition of "Incapacity"). Yes \_\_\_\_ No \_\_\_\_ If more than one cause for incapacity exists, describe the nature and type of each incapacity.

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

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4. Describe the Patient's mental and physical condition; and, if appropriate, describe the Patient's educational condition, adaptive behavior and social skills.

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5. In your opinion, is the Patient totally or only partially incapable of making personal and financial decisions affecting the disposition or control of his/her assets, or participating in any type of action or transaction, affecting his/her interests in assets in which he/she may have a direct or indirect interest? Totally Incapable \_\_\_\_\_ Partially Incapable \_\_\_\_\_ Capable \_\_\_\_\_  
If the Patient is partially incapable of making personal and/or financial decisions, please state the kinds of decisions which the Patient can and cannot make; and include the reasons for this opinion.

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6. In your opinion, what is the most appropriate living arrangement for the Patient; and, if applicable, describe the most appropriate treatment or rehabilitation plan. Include the reasons for your opinion.

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7. Can the Patient appear in Court without injury to his/her health? Yes \_\_\_\_\_ No \_\_\_\_\_  
If the answer is No, explain the medical reasons for your answer.

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I affirm, under the penalties of perjury, the above and foregoing is true and correct to the best of my knowledge and belief, based on my own examination and observation of the Patient.

Signed: \_\_\_\_\_

Address: \_\_\_\_\_

Tele: \_\_\_\_\_

Dated: \_\_\_\_\_

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.

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

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Tele: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Tele: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Tele: \_\_\_\_\_

**DEFINITION OF “INCAPACITY”**  
**AS DEFINED BY INDIANA LAW**

**I.C. 29-3-1-7.5, INCAPACITATED PERSON:**

It means an individual who:

- (1) cannot be located upon reasonable inquiry;
- (2) is unable:
  - (a) to manage in whole or in part the individual’s property;
  - (b) to provide self-care; or
  - (c) bothbecause of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity; or

**I.C. 12-7-2-61, DEVELOPMENTAL DISABILITY:**

(a) Except as provided in subsection (b), “developmental disability” means a severe, chronic disability of an individual that meets all of the following conditions:

- (1) Is attributable to:
  - 1. Intellectual disability, cerebral palsy, epilepsy, or autism; or
  - 2. Any other condition (other than a sole diagnosis of mental illness) found to be closely related to intellectual disability, because this condition results in similar impairment of general intellectual functioning or adaptive behavior or requires treatment of services similar to those required for a person with an intellectual disability.
- (2) Is manifested before the individual is twenty-two (22) years of age.
- (3) Is likely to continue indefinitely.
- (4) Results in substantial functional limitations in at least three (3) of the following areas of major life activities:
  - (A) Self-care.
  - (B) Understanding and use of language.
  - (C) Learning.
  - (D) Mobility,
  - (E) Self-direction.
  - (F) Capacity for independent living.
  - (G) Economic self-sufficiency.

(b) The definition in subsection (a) does not apply and may not affect services provided to an individual receiving:

- (1) home and community based Medicaid waiver; or
- (2) ICF/MR;

services through the division on June 20, 2011.

## **ENGAGEMENT AGREEMENT**

☒ Trust Administration, re: [DECEDENT], "Decedent"

☐ Estate Administration, re: \_\_\_\_\_, "Decedent"

and All Other Matters Pertaining Thereto

This Agreement details the terms of the contract arrangements the undersigned, "Client", has made with JOHN M. O'DROBINAK, P.C., "Attorney", concerning performing services relative to the above matter and the payment therefore.

Client hereby retains Attorney to perform all necessary services, except those specifically excluded in this Agreement, pertaining to the settlement of the above Decedent's matters. In the event that these services are for an Estate administration, such services are subject to the additional terms and conditions set forth in paragraph J. herein. Unless directed to the contrary in writing, Attorney has full authority to retain real estate appraisers, real estate brokers, stockbrokers, accountants and/or any other person whose services are necessary to carry out the purposes of the services contemplated in this Agreement. All commissions, fees, and/or expenses of any kind associated with the services to be performed by any of these other individuals, shall be paid as an expense of settling the affairs of the Decedent, and shall be paid by the Client immediately upon receipt of the billing therefore, in addition to the fees and expense reimbursements paid to the Attorney.

### **TRUST ADMINISTRATION**

The normal services for which the fee for Trust Administration services shall be computed upon and shall include, among other things, but not be limited to:

1. Preparing the necessary Court filings to admit the Decedent's Will to probate;
2. If necessary, to prepare the documents necessary to open the Decedent's Estate and perform the services set forth in the Estate Administration services which follow;
3. Preparing all documents necessary to administer the Decedent's Trust, including qualifying the Client as Successor Trustee; preparing, supervising, and/or approving an Inventory, based upon information provided by the Client within thirty (30) days of becoming Successor Trustee, and verification of date of death values of the Decedent's assets;
4. Preparing all required death tax returns, both Federal and State, if any, allocating assets between trusts, if applicable;
5. Applying for taxpayer identification number (SS-4);
6. Research and other related matters as needed;
7. Obtaining Forms 712 for life insurance, if applicable;
8. Assisting in completing the transfer of the Decedent's assets as provided in the Decedent's Trust, Will or by law, and taking whatever Court, or other, action is needed to accomplish these transfers;

9. All necessary conferences and telephone calls related to the performance of the services contemplated hereby;
10. Preparing all Notices and Certifications of Trust to Beneficiaries;
11. Assisting in making Partial and Final Distributions;
12. Assisting with Successor Trustee's informal accounting;
13. Preparing Memorandums (distribution, accounting, etc), Consents and Waivers to Accounting, and Receipts for all distributions;
14. If requested by a Residuary Beneficiary, preparing a 'formal' accounting, which will result in additional attorney fees;
15. If necessary, preparing and filing appropriate pleadings and formal Trust accounting with the Court, which will result in additional attorney fees;
16. Preparing of documents to Docket Trust, remove Trust from Docket, and obtain Court Order for relief requested, if granted, which will result in additional attorney fees;
17. Conduct any Court or any extraordinary action necessary to proceed with Trust administration or completion of same, which will result in additional attorney fees.

**All such work shall require the full and timely cooperation of the Client.**

### **ESTATE ADMINISTRATION**

The normal services for which the fee for Estate administration services shall be computed upon and shall include, among other things, but not be limited to:

1. Opening the Estate, including probating the Will if one is present, and qualifying the Personal Representative;
2. Applying for taxpayer identification number (SS-4);
3. Preparing and filing the Inventory;
4. Paying claims and collecting assets;
5. Research and other related matters as needed;
6. Obtaining Forms 712 for life insurance, if applicable;
7. Assisting in the settlement of any valid Claims against Decedent's Estate, whether by payment, negotiation, or a hearing thereon;
8. Assisting in completing the transfer of the Decedent's assets as provided in the Decedent's Will, or by law, and taking whatever Court, or other, action is needed to accomplish these transfers;
9. All necessary conferences and telephone calls related to the performance on the services contemplated hereby;
10. Preparing and filing non-extraordinary petitions;
11. Preparing and filing the Inheritance Tax Schedule (if applicable), obtaining the Court Order thereon and paying the taxes, or preparing and filing the Affidavit of No Inheritance Tax Due (if applicable);
12. Preparing and filing the Final Report and Accounting, obtaining the Court Order approving it, distributing assets, obtaining the discharge of the Personal Representative;
13. Preparing and serving all notices on interested parties and readily ascertainable creditors throughout the proceedings, or as awarded by the Court.

14. Conduct any Court or other action necessary to proceed with Estate administration or completion of same.

**All such work shall require the full and timely cooperation of the Client.**

Contested matters are not included in the above normal services, whether in connection with a Trust administration or Estate administration, and shall be paid for at the hourly rate provided in this Agreement.

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During either Trust or Estate administration, the Attorney is to take no court action without prior approval. Client shall have the exclusive authority, in Estates, to deal with all matters related thereto in compliance with the laws governing supervised administrations of estates. (I.C. 29-1-7, et seq.) The signing of any necessary Court filings shall constitute consent to the action being taken in Court. Attorney shall have no responsibility for the preparation and/or filing of any Federal or State Income Tax returns necessary to be filed on behalf of the Decedent and/or the Fiduciary responsible to settle the Decedent's affairs. At the Client's request, Attorney may obtain the services of an accountant, including a C.P.A., to perform these services. Otherwise, it shall be the Client's responsibility to arrange for the preparation and/or filing of such income tax returns.

**As a part of the expenses of settling the Decedent's affairs, or representing the undersigned's interests relative thereto, the undersigned agrees to pay the Attorney, fees for the performance of such services, consistent with the following criteria as determined by the Indiana Supreme Court and other applicable terms and conditions:**

- A. The time and labor required; the novelty, complexity, or difficulty of the questions involved and the skill and experience of the Attorney required to perform the services properly, shall all be considered in determining the final fee;
- B. The nature and extent of the responsibilities assumed by the Attorney and the results obtained. Included in this consideration are the services the Client performs, if any, and the character of the assets being administered, as well as the character of any non-probate assets being transferred;
- C. The sufficiency of assets properly available to pay for legal services, including those assets which are outside of the Trust, or the Estate, which require services to be performed by the Attorney relative to such assets;
- D. The timeliness with which the necessary services are performed consistent with the statutory requirements, the Court's Rules of Procedure, and the Rules of Professional Conduct applicable thereto;
- E. The Probate Code provides that the Personal Representative's Attorney in a supervised Estate shall be entitled to compensation which the Court deems to be just and reasonable. Courts may consider many factors, those set forth in paragraphs A. through D. above, as well as those additional criteria set out in the Indiana Code of Professional Conduct Rule 1.5, in determining the fee as follows:



- a. the likelihood, if apparent to the Client, that the acceptance of the particular employment will preclude other employment by the Attorney;
- b. the fee customarily charged in the locality for similar legal services;
- c. the time limitations imposed by the Client or by the circumstances;
- d. the nature and length of the professional relationship with the Client;
- e. the experience, reputation, and ability of the Attorney performing the services; and
- f. whether the fee is fixed or contingent.

F. **Where applicable**, the flat rates currently charged by the Attorney according to the Attorney's Flat Fee Schedule in effect at the date of this Agreement, or as they may increase from time to time during the existence of this Agreement, to perform any of the services contemplated by this Agreement;

G. **Where applicable**, the following hourly rates shall apply for the performance of any of the services contemplated by this Agreement, that are not included in the flat rate charges provided in F. above, or in the Court determined fees provided for in I. hereafter:

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Travel time shall be billed at one-half of the then applicable hourly rate of the individual.

Applicable hourly rates at time of execution may increase from time to time during the existence of this Agreement, and will be billed accordingly.

Time records will be billed at .10 per 6 minutes, per hour. Any telephone call or email will be billed at a minimum of .10 per hour. If the call or email is longer than one-half of the next billing tenth, it will be charged at the next higher tenth.

Examples: T/C = telephone call

T/C or email: 3 minutes = .10

T/C or email: 5 minutes = .10

T/C or email: in excess of 5 minutes = .20

Time records are kept carefully. The same procedure for billing in drafting any letter or other document will be used at the option of the Attorney, fees for services will be billed every two (2) months.

H. Probate estate fees, if any, shall serve as a guide for the Court in determining the fee in accordance with the criteria outlined in J. hereafter, as well as any applicable hourly rate chargeable for such services.

The Court, having jurisdiction over the Decedent's affairs, shall determine fees for services rendered in connection with any Court proceedings affecting the Decedent's

affairs consistent with this Agreement. Fees shall be paid immediately by the Client in the amount determined by the Court.

I. The fee customarily charged in our local area for similar legal services, especially in Probate administrations, may be considered by the Court.

J. **ATTORNEY GUIDELINES FOR PROBATE ADMINISTRATIVE SERVICES**  
As the estate lawyer, Attorney shall perform services for the estate at the request of the personal representative, as provided by law. Attorney represents and only owes a duty to the personal representative, as provided by law. Attorney has no duty to collect, possess, manage, maintain, monitor or account for estate assets, unless the Court specifically orders the Attorney to do so. Attorney is not liable for any loss suffered by the estate, unless caused by a breach of Attorney's duty to the personal representative.

K. **ATTORNEY FEE GUIDELINES FOR PROBATE ESTATE ADMINISTRATION SERVICES**

**ESTATE ADMINISTRATION FEES**

The application of all of the criteria set forth in Paragraphs A. through I. of this Agreement shall be applied to compute an attorney fee, when allowed by the Court, and shall include in the Court's discretion, a consideration of the hourly rate provided for in this Agreement, as well as the following schedule, in arriving at a fee, consistent with the requested fee for services rendered:

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\*Fees will be computed on an hourly basis as provided for in this Agreement only for extraordinary services or for services not specified above. Fee petitions requesting extraordinary fees must set forth services rendered with specificity, including the amount of time required to perform these services.

L. Any documents, other than those that are private and confidential to the Attorney, obtained during the performance of any of the duties to be performed by the Attorney hereunder, will be returned to Client, **upon request**, at the completion of the services contemplated herein. Any other documents remaining in the file upon completion of the services will be retained for six (6) years after the matter is closed, for any reason, and then the file will be destroyed.

When a contract for legal services has been entered into prior or subsequent to the opening of an Estate, and when a settlement has been reached, the Court reserves the right to approve or disapprove such fee contracts consistent with fee guidelines and/or Court policy.

**TRUST ADMINISTRATION:** The anticipated fee for services is based upon normal anticipated services. However, there are times when extraordinary services are necessary. Some examples causing these services are: representing the Trustee in the sale of real estate, preparing the documents needed to complete the transaction, attending the closing or reviewing all documents necessary to close the transaction; preparation of a FORMAL accounting; necessary to determine the accuracy of the information provided by the Client, which is used in preparing the accounting; Client fails to cooperate; Beneficiary fails to cooperate; ANY required Court filings (as none are anticipated), etc. There will be additional charges for the performance of extraordinary services at the rates provided for herein.

SEE ADDENDUM:   X   YES            NO

ANTICIPATED FEE: \$   TBD  

PAYABLE:            YES            NO

- a. One-half (1/2) within fourteen (14) days of the date of signing this Agreement.
- b. Balance prior to final distribution of the assets in the Trust administration.

**ESTATE ADMINISTRATION:** Estate Attorney fees are solely determined by the Court, as are the Personal Representative's fees. Court awarded fees are due immediately upon receipt of the Court Order, unless the Order provides some other time of payment.

**GENERAL FEE MATTERS:** The Client further agrees to reimburse all costs, expenses and funds advanced by the Attorney in performing the services required by this Agreement, including but not limited to recording fees, filing fees, title search, delivery service, telephone tolls, mileage, postage, fax expenses, word processing expenses, or any other expenses incurred by Attorney. These costs shall be paid in the amounts actually incurred, or in lieu thereof, by reimbursement to the Attorney for these expenses at the rate of 6% of the final fee to be paid, or any combination thereof.

The Client understands that all fees and expenses due the Attorney are due and payable within 15 days of the date of receipt of the billing. If these fees and costs are not paid within thirty (30) days of the billing date, interest at the rate of 12% per annum shall be due on them from the date of billing. In the event of the failure of Client to pay the fees and/or expenses as provided for herein, the Attorney shall be entitled to recover all expenses associated with enforcing this payment, including but not limited to, the right to file suit therefore, and shall be entitled to reasonable attorney fees for any such collection efforts.

### **TERMINATION**

Either Party to this Agreement may terminate the Agreement with a ten (10) day written notice provided to the other Party as follows: to Client, at the residential address of Client; and to Attorney, at the Office address of Attorney.

Fees due the Attorney shall be based on the percentage of completion of the administration of the matter, or as determined by the Court, and shall be paid within the time period provided for herein

after billing. If the Agreement is terminated because of Client's lack of cooperation, after written notice to Client citing such reason, Attorney's fee shall equal 75% of the fee that would have been allowed to Attorney had Attorney's services been completed as provided for herein.

As used herein, the singular shall include the plural, and the male shall include the female, wherever it is warranted for proper interpretation of this document.

The Parties have executed this Agreement for the uses and purposes set forth herein on the date when accepted by the Attorney. By the execution of this Agreement, the Parties acknowledge that they have read the Agreement and each has retained an executed copy hereof.

**CLIENT**

By execution of this Agreement, I acknowledge that I have read it and understand the terms and conditions contained in it. I agree to be bound by the terms of the Agreement.

Dated:

\_\_\_\_\_  
Successor Trustee

**ATTORNEY**

Thank you for selecting us to perform these services for you, and providing us with the opportunity to assist you in the above matter. We agree to be bound by the terms of this Agreement.

Dated and Accepted:

JOHN M. O'DROBINAK, P.C.

\_\_\_\_\_  
By: John M. O'Drobinak

### **ADDENDUM**

The following non-ordinary services will result in an additional charge for providing them:

- X        Sale of Real Estate
- X        Court Hearings – whether contested or not
- X        Extreme difficulties with heirs (beneficiaries)
- X        Court type accounting
- Preparation of Family Settlement Agreement
- Final fee will receive 1/3 professional courtesy credit for Attorneys

DATE

Dr. \_\_\_\_\_

**Re:** \_\_\_\_\_  
**DOB:** \_\_\_\_\_

Dear Dr. \_\_\_\_\_:

I am the Estate Planning Attorney for \_\_\_\_\_. In connection with that, I need to determine whether \_\_\_\_\_ has the required capacity to understand and execute any additional Estate Plan documents. As a result, I have been instructed by him to forward the enclosed Physician's Report as it is my understanding you are his attending Physician.

Please complete the enclosed Physician's Report and return it to me as soon as possible. Depending upon the information it contains, it will be used to determine whether \_\_\_\_\_ is capable of understanding and executing his Estate Plan documents. As a result, your prompt response would be greatly appreciated. A HIPAA authorization is enclosed. Please forward the information requested to my Office via facsimile at 219-865-2362, and the originally executed form in the self-addressed, stamped envelope provided for your convenience.

If you have any questions, please feel free to call. Thank you for your assistance in this matter.

Very truly yours,

O'DROBINAK & NOWACZYK, P.C.

By: John M. O'Drobinak

JMO\maa  
Enclosure

## PHYSICIAN'S REPORT

**Dr.** \_\_\_\_\_, a physician holding an unlimited license to practice medicine in the State of Indiana, submits the following report on \_\_\_\_\_, "Patient", based upon examination of the Patient.

1. Set forth the dates of all examinations of the Patient within the last one (1) year preceding the date of this Report.

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2. Describe the Patient's mental and physical condition.

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3. In your opinion, based upon your examination and observation of the Patient, is the Patient incapacitated as defined by Indiana law (see attached definition of "Incapacity")?

Yes \_\_\_\_ No \_\_\_\_

If more than one cause for the incapacity exists, describe the nature and type of the incapacity.

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4. In your opinion, state whether the Patient is capable of:

A. Knowing what assets he/she owns: Yes \_\_\_\_\_ No \_\_\_\_\_

B. Knowing the value of what he/she owns: Yes \_\_\_\_\_ No \_\_\_\_\_

C. Who his/her natural heirs would be and

what their share would be: Yes \_\_\_\_\_ No \_\_\_\_\_

D. Knowing whether the natural heirs have shown by their treatment/conduct of the Patient that they have interest and concern for the wellbeing of the Patient, or whether the opposite is true: Yes \_\_\_\_\_ No \_\_\_\_\_

E. Knowing what distribution of his/her assets he/she wants to make at his/her death: Yes \_\_\_\_\_ No \_\_\_\_\_

Please include the reasons for your opinion:

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5. In your opinion, is the Patient capable of making a knowing and voluntary decision as to whom they want to make financial, health, and medical decisions for him/her upon their incapacity? Yes \_\_\_\_\_ No \_\_\_\_\_ If No, please explain:

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6. In your opinion, is the Patient capable of understanding and knowingly and voluntarily directing that gifts be made from his/her assets? Yes \_\_\_\_\_ No \_\_\_\_\_ If No, please explain:

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---

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7. In your opinion, is the Patient capable of understanding and knowingly and



voluntarily executing a Will, Trust, Power of Attorney, or other similar document affecting the disposition or control of their assets? Yes \_\_\_\_ No \_\_\_\_ If No, please explain:

---

---

---

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

Signed: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Tele: \_\_\_\_\_

Dated: \_\_\_\_\_

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.

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Tele: \_\_\_\_\_

Tele: \_\_\_\_\_

**DEFINITION OF “INCAPACITY”**  
**AS DEFINED BY INDIANA LAW**

**I.C. 29-3-1-7.5, INCAPACITATED PERSON:**

It means an individual who:

- (1) cannot be located upon reasonable inquiry;
- (2) is unable:
  - (a) to manage in whole or in part the individual’s property;
  - (b) to provide self-care; or
  - (c) bothbecause of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity; or

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(a) Except as provided in subsection (b), “developmental disability” means a severe, chronic disability of an individual that meets all of the following conditions:

- (1) Is attributable to:
  - 1. Intellectual disability, cerebral palsy, epilepsy, or autism; or
  - 2. Any other condition (other than a sole diagnosis of mental illness) found to be closely related to intellectual disability, because this condition results in similar impairment of general intellectual functioning or adaptive behavior or requires treatment of services similar to those required for a person with an intellectual disability.
- (2) Is manifested before the individual is twenty-two (22) years of age.
- (3) Is likely to continue indefinitely.
- (4) Results in substantial functional limitations in at least three (3) of the following areas of major life activities:
  - (A) Self-care.
  - (B) Understanding and use of language.
  - (C) Learning.
  - (D) Mobility,
  - (E) Self-direction.
  - (F) Capacity for independent living.
  - (G) Economic self-sufficiency.

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- (1) home and community based Medicaid waiver; or
- (2) ICF/MR;

services through the division on June 20, 2011.

# LEGAL ASSISTANT'S GUIDE TO TRUST ADMINISTRATION

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A Companion Manual To:  
Trust Administration  
A Complete Systems Manual

**John M. O'Drobinak  
O'Drobinak & Nowaczyk, P.C.  
1806 Robinhood Blvd., Suite A  
Schererville, IN 46375**

**LEGAL ASSISTANT'S GUIDE TO TRUST ADMINISTRATION:**  
**A Companion Manual To:**  
**Trust Administration: A Complete Systems Manual**

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## I. INTRODUCTION

The public generally knows little or nothing about the process of Trust Administration. Unfortunately this is also true for most legal assistants. Estate planning has become a hot topic in today's world. People are getting information about various options to see how they can benefit from some sort of estate plan. As more and more people turn to the use of Living Trusts, a greater demand arises for qualified Attorneys to prepare these plans and to administer them. In addition, there is, and will continue to be, a need for qualified Assistants who are knowledgeable on these subjects. Once you have become familiar with the Trust Administration system, you will have a skill that is distinguishable from a large part of your colleagues.

The key to a *smooth* trust administration is the creation of a system that your Office follows consistently with each Client, whether due to death, incapacity or resignation of the Trustee. This means the Attorney, you, and all of the rest of the Staff must know the system and how it operates. However, the key to a *successful* trust administration is the use of the system regularly and expeditiously, plus the addition of the personal touch with your Clients. It is important that the Attorney and you find a balance between a personal relationship and a professional relationship with the Client. Your compassion and understanding will play a big part in their satisfaction, as will your guidance and work accomplishments.

Hopefully, the Attorney has created an awareness of the future legal services that will be needed upon the death, incapacity or resignation of the Trustee. The Successor Trustee(s) and the Client's family should all know to contact your Office when one of the above situations arises. The Attorney, Office Staff, and you, must be prepared to deal with them prior to your first personal contact with them.

It is important that you understand that trust administration is different than handling probate or guardianship matters. Probate/guardianship matters are governed by court procedures and statutory law. Both of which have strict requirements. This is not the same for trusts. The law is not as clear, there should be no court procedures (or very few), no time limit restrictions, and few strict statutory requirements. As a result, your familiarity with all of these things, and your comfort level, are all inapplicable to this new process, i.e. trust administration.

You need to untrain yourself, the Staff, and your Attorney. Since there are no time restrictions, everything is basically up to you, and your Attorney, as to how timely and efficiently you handle everything. This will determine when and how soon the trust administration will be completed. The administration of a trust rests solely on the shoulders of your Attorney and you. Maybe you begin to see how important it is that you have a system in place. Before you proceed with developing your own system, you need to read and become familiar with the materials in the companion, “TRUST ADMINISTRATION – A COMPLETE SYSTEMS MANUAL.” You will find that the information contained in the Manual can assist you in creating the system for your Office.

## **II. THE PROCESS BEGINS**

Many Clients believe that once they use a Trust, there are no further death tax problems or any further need for your Attorney's services. Nothing could be further from the truth. It is up to your Attorney to educate his/her Clients of the continuing need for the attorney's services. This need can arise during reviews, or when caused by death, resignation, incapacity or removal of a Trustee, or for the amendment or restatement of the Client's Estate Plan.

How can you help in this process? If your Office uses the Most Common Questions as part of the estate plan materials, familiarize yourself with its contents. You never know when a Client may ask you one of those questions. You need to know the answers. Also, because of changes in the Office procedure, there may be a need to update these periodically. You can help by making this periodic review.

This is also true with the Key Advisors list, if you use one as part of the estate planning materials. Make certain that all of the current information is correct about your Office. Check the name, address and telephone number to be sure they are accurate. You may also want to include your fax and email address. Be sure you check with your Attorney about this.

The instructions to the Surviving/Successor Trustees are extremely important. Again, it is assumed that something similar to these is incorporated into your materials. Whether they are placed in a portfolio, or in some sort of a package, this information needs to be called to the Client's attention (the same as all of the above items). If you are the signing person too, then you can be sure that all of this critical information is explained to the Client. If you are not, then make certain that the signing person points out all of this information to the Client. By doing this, you are supplementing the things that have already been discussed by your Attorney.

Several weeks after the estate plan is signed, the follow-up letter to the Client discussing the settling of their estate **MUST** be sent. In addition, a copy must be placed in the file. If this is your function, you will be in a position to be certain it is done correctly. If this is up to someone else to do, it is recommended that periodic checks be made to ensure that this critical letter is sent. By placing a copy in the file, your Attorney can refer to it during any future review conferences.

Although all of these items are part of the planning and execution stages of a Client's estate plan, more realistically, they are the initial stages of your Office's system. Whether you function in these stages as well as the trust administration stage, or just in the trust administration stage, it is imperative that there be oversight and review of these stages at all times. Outside of the Attorney, there is probably no one better suited to do this in your Office than you. Make certain that you discuss this with your Attorney. He needs to advise the Staff if you are going to monitor the first stages of your system, i.e. the providing of written information to the Client to supplement what the Attorney has already told him/her. You will have an understanding of Trust Administration and will fully understand the importance of seeing that all of these steps are followed correctly.



### **III. DEVELOPING YOUR SYSTEM**

Prior to receiving that first telephone call from someone about a trust administration matter, your system must already be in place. Everyone in the Office, not merely you, needs to know how the system operates. Every Office is unique. The system needs to fit the people in the Office, yet the people in the Office must fit into the system.

It is up to your Attorney to develop and organize the system. However, you need to point out to your Attorney that it is important to the development and implementation of the system that you and your co-workers should be a part of the planning process. Remember, you are the ones who will be primarily responsible to operate the system. You need to be comfortable with it. Through these planning stages, the determination will be made as to who is going to do what and what procedures are to be followed in all instances. You can, and should, have valuable input into this planning stage.

Once the initial planning is completed, your Appointment Memorandum should be finalized and circulated. This memo details to all of the firm members how the system commences. (See: Memorandum Re: Appointments). The document should detail who takes the calls, what information is needed, and what is to be done once the call is completed. It should also set out who is responsible to perform the duties outlined in the Memo. It can be one person, or several. The important point is what best suits your Office. As your system grows and is customized the way it best fits your Office, be absolutely certain to amend the Memo as changes are made in order that everyone is kept up to date.

At the same time that the Appointment Memorandum is being worked on, the Memorandum Re: Trust Administration files needs to be completed. This will result in consistency for every trust administration file, no matter what the reason is for the trust administration. By following this

procedure, it will be easy for you and your Attorney to always find the information you are seeking. Use an expandable folder, and a separate folder to fit into it for each of the following topics, not necessarily in this order:

Court Documents: Petition for Probate of Will, Disclaimers, etc.

Important Documents: Death Certificates, EIN applications, Trust certifications, etc.

Assets: All information received to arrive at values.

Expenses: Copies of bills paid, lists of expenses and payments.

Notes/Miscellaneous: Questionnaire, Office To Do Checklist, conference notes, etc.

Correspondence: of all types

Death Tax Returns: copies of the 706/state tax returns

**[It is strongly recommended that all matters in each file be acco-fastened, with the most recent on top.]**

#### **IV. FIRST CONTACT – HOW THE SYSTEM WORKS**

The initial contact from a family member, or friend, advising you of a matter regarding the trust is very important. If dealing with a death, the family, as you would expect, is normally very emotional. This is especially true if you are dealing with the surviving spouse. If dealing with incapacity or resignation, there may have been a situation which has arisen, whether medical or financial, which requires prompt attention. If it involves placing a loved one in a nursing home or the deterioration of the mental capacity of a loved one, this is equally as emotional. You must show compassion with whatever crisis they are going through. It is important that you understand that they are looking to you for guidance. They need to feel confident that you know what you are doing and that you can help them get through it. They need the objectivity and professionalism that you and the rest of the Staff bring to these matters. It is important that this be exhibited in all instances. This is why the system needs to be in place prior to their contact – they don't need to be passed from one person to the next within your Office trying to find out who can help them and answer their questions.

You should always take the initial call, if at all possible. If you can't, return the call as soon as possible. It is far better to put aside whatever you are doing and take their call instead of calling back. Some people will actually be sitting waiting for you to call, just because some of them may have no clue as to what needs to be done. This is especially true if their spouse took care of all the financial matters. You need to provide them with assurance that they do not need to be overly concerned about the Trust at the moment and that everything will be OK. They need to feel that you will help them through everything, as this will put their mind at ease. This will allow them time to mourn for the loss of a loved one, or deal with their emotions arising from the circumstances that caused them to place the initial call to you.

Once you know that someone has called regarding a trust administration matter, pull the trust file (if your Office prepared it) and review it. Who are the relevant parties? What was the value of the estate at the time of creation? Briefly review the notes to see if there are any matters that the Trustee was dealing with through your Office previously? If you have time, do this before you take the call, or return the call. If you do not have time, then you should do this immediately after you finish the call. If you find something significant, make certain you call it to your Attorney's attention before the first conference.

When you take the call, you need to immediately find out to whom you are speaking, the surviving or successor Trustee, a beneficiary, or an interested party. If it is an outside party, be polite but tell them that you cannot discuss the Trust's matters with them without consent from the Trustee/Successor Trustee. Advise them that once the Trustee has met with the Attorney, all interested parties will be contacted regarding the administration of the assets. If a beneficiary is the calling party, urge them to have the Trustee call the Office as soon as possible to begin the process. Once this is done, within a reasonable time after the administration begins, all beneficiaries will be contacted. If it is the Surviving/Successor Trustee, continue with the collection of information and scheduling of an appointment. Regardless of who calls you, they will tell you the situation which precipitated the call: the death, incapacity or resignation of a trustee. If not, make certain you find out what precipitated the call. Sometimes people are hesitant to discuss the matter with a Staff person. Make it clear you are doing this at the direction of your Attorney.

If the call is about the death of a Trustee, the initial stages of this call should be taken by the Attorney. This should be done even if he/she is tied up. They can excuse themselves by telling the person they are with that in this difficult time, it is important the Attorney have a brief discussion

with the caller. The individual(s) your Attorney is with will see the concern you all have for your Clients and can come to expect the same kind of concern and service for their matters, as well.

If you have been advised of the death of a Client who has a trust, you should immediately send a sympathy card to the Family. Have everyone in the Office sign the card. Give the blank envelope and the card to the Attorney to complete. You should have the correct name and address of the Family available so the Attorney can easily address the envelope and return it to you to be mailed. It is important that you insist the Attorney address the envelope and sign the card personally – the Family will appreciate the extra effort on his part.

If the beneficiary or an interested party has called and advised you of the death of a Trustee, but you haven't yet heard from the Successor or Surviving Trustee, make a note on your calendar to do a follow-up in two weeks. If by that date you have not heard from the Successor or Surviving Trustee, with your Attorney's approval, send them the Client No Contact follow-up letter. The Attorney should sign this letter. Some people may just need time to deal with the death. Some people may not be aware of the fact that things need to be done and that it is their responsibility to see that they are done. The two weeks allows them time to do so and gently reminds them that there are things to be done – especially with a tax planning trust – and it is important that they contact your Office, or another firm if they so wish, to proceed with the trust administration.

There may be times when the Successor/Surviving Trustee calls you to advise you of the death of the Client. They may not realize at that time that things need to be done with trust administration, they just wanted the Office to know of the death. They may just be asking if any changes need to be made to the trust due to the death. This is your first opportunity to let them know that it is important for them to meet with your Attorney to determine what needs to be done in the trust administration – it may be nothing, it may be a lot. If the Surviving Trustee

(normally a spouse) is having difficulty understanding this, try to schedule a time for them to meet for a “review” of the trust and let your Attorney explain what needs to be done. That person may not want to do that either. A Successor Trustee may want to talk to the Family first before scheduling an appointment to proceed with the administration. Sometimes they just want to think about it a little longer. Sometimes they deny the fact that things need to be done, or unfortunately, they are trying to avoid or side-step the tax authorities and do not make an appointment. At this point, again mark your calendar for about two weeks. If you haven’t heard from them again by that point, again with your Attorney’s approval, send them the Client Contact follow-up letter.

It is important that one or the other of these letters be sent depending upon the applicable circumstances. If there has been no contact, sometimes the surviving/successor Trustee does not know things need to be done. Your Client expected the estate plan that was made would be carried out. This letter carries out your Attorney’s professional responsibility in advising those charged with carrying out the decedent’s wishes that things need to be done. If they choose to do nothing, or use the services of another attorney, so be it. However, your Attorney’s professional responsibility has been carried out.

If there has been a contact and no appointment has been made, can you be assured that the surviving/successor Trustee does not think that call was enough for your Attorney to start working on the trust administration? You cannot leave this to chance. This letter clearly indicates that nothing will be done until they call, set an appointment and provide information. The reasons for this letter should be obvious to you.

The person calling may also call just to ask a few questions. Based upon those questions, you realize one of the situations has occurred which will require some sort of trust administration. For example, the original Trustee is now in a nursing home and the Successor Trustee has been

using the POA to handle matters. In a matter dealing with incapacity, either mentally or physically, it is always advisable to have the Physician's Report prepared. This Report can be used to transfer full trustee authority to the Successor Trustee or also, if conditions permit, to have the current Trustee resign. You can explain this to them or have the Attorney call them to discuss these matters with them – your Attorney may decide its not really necessary to proceed any further. Let him make that decision. If he feels things should be done but the Successor Trustee doesn't, you can adjust the contact letters accordingly to address the specific situation.

Remember, these letters serve at least two important purposes. First, to let the Family/Successor Trustee know, or to remind them, that there are things that need to be done and your Office can assist them in the process. Second, to protect the Attorney so that the Family/Successor Trustee cannot say that they thought the Attorney was working on things.

When the call is first received, whether from the Surviving/Successor Trustee, or someone else, there will be questions they want answered. Explain to them that all their questions will be addressed and answered at their conference with your Attorney. Listen to them though and see if there are things which need to be addressed prior to the conference. Answer what you can and if you don't know the answer, make a note and speak with your Attorney about it. Depending on the situation, he can either give you the answer and you call the Client back, or he may wish to speak with them directly. Do not try to answer too many questions up front as you may unintentionally give wrong information or advice. There may be situations that you don't know about and what might be a simple answer in most circumstances may complicate matters in some unusual circumstances. The more knowledgeable you are about trust administration and where problems might lie, the more you will know what to ask before answering any questions. Also, the more you

will know not to answer. It works both ways. For example, the Trustee may ask if it is OK to make the specific distributions of personal property and divide up the household furnishings among all the heirs while everyone is in town for the funeral. Sounds easy enough to do. But first you need to find out some things: (1) Are all of the items of specific personal property available to be distributed? One daughter may be given the emerald cocktail ring and one daughter the diamond wedding ring. However, they can't find the emerald cocktail ring to give to her. If they can't find the ring, she just won't get it. There is a possibility that might make her bitter since her sister will then be getting the diamond wedding ring and she gets nothing. Worst of all, her bitterness could carry over into the distribution of other personal items and the trust administration. There is no better source for problems than a beneficiary believing they have not been treated fairly. The same thing can happen with specific distributions of household furnishings. (2) Will everyone agree on who gets what without any problems? If they feel anyone in their family will cause problems, have them wait and speak with the Attorney before doing anything. They need to understand that although they are dealing with their beloved family, they need to protect themselves as the Trustee of the Trust now.

With incapacity or resignation, it is preferable to have your Attorney talk with the person prior to scheduling an appointment. A Physician's Report may need to be completed and reviewed before any course of action is determined. Once the Report is reviewed, the Attorney can tell you if it is necessary to schedule an appointment. It may simply be that a few documents need to be signed, such as a resignation and new trust certifications issued. Sometimes a resignation is more involved and additional documents need to be done, such as accountings, receipts and releases. The Attorney will determine that when he speaks with the Client. Make sure all the information is collected in order to prepare the forms, even if an appointment is not needed. You should always



have the Client hand deliver the Report to the Attending Physician. Most Physicians are more likely to respond more quickly with that personal interaction. Find out from the Client how they wish to handle it. Make a note on your calendar to follow-up within five business days if you have not received it back. Once it is returned, immediately give it to the Attorney for review and instruction.

Whatever the reason for the first call, schedule an appointment five to ten business days from the call. This gives them plenty of time to complete the paperwork you will be sending to them for the appointment. Explain that you are sending them the questionnaire and what's on it. They can be looking for some of the information that will be needed while waiting for the questionnaire to arrive. Assure them that they are welcome to call you should they have any questions while completing it. Also make sure they know to complete it as best as possible as it will make the appointment go more efficiently. Collect the information needed to complete all the forms that will be ready for their signature at the appointment. (The information that is needed should be listed on the Memorandum Re: Appointment so that whoever is taking the calls knows what additional information they need to obtain).

You are now at the point in your system where you should prepare the questionnaire (death, incapacity or resignation) and mail it to the Client with the initial Client letter. Always include the date and time of the appointment in the letter. From the initial information collected from the Surviving/Successor Trustee on the telephone, prepare the release of information, appraisal authorization, certifications, EIN application, engagement agreement and any other applicable documents, so they are ready for execution at the first conference with the Attorney. As the certifications need to be notarized, and it is important to get the EIN quickly so they can start paying bills and such, it is easier to have them executed at the first appointment so you can begin your work

immediately thereafter. In addition, you want to begin the process of valuing the assets immediately. The preparation of all of these documents in advance helps the administration to begin moving along rather quickly. You also need to fill out and prepare all of the other items listed on the Pre- Conference Checklist.

All of this information should be completed and placed in an expandable folder. Do not put a name on this file yet. If it turns out no administration is necessary, the file can still be used in the future. If an administration will be opened, you can add the appropriate name to the file after the conference. Having all of the information completed on the checklist prior to the first conference makes things easier for your Attorney at the conference. In addition, it makes a very favorable impression on the Client that all of these documents are prepared and ready for them. They can see that you are ready to jump start the administration. The more you can organize in advance, the smoother the administration begins. The importance of this initial stage of organization cannot be over emphasized.

Prior to the appointment, your Attorney should be given the trust file for review. You should review with him/her any matters which have been dealt with prior to the conference and any areas where you anticipate there might be problems. Give him an idea of what type of person he is dealing with (has the person been very pleasant or absolutely awful). Have you run into any problems prior to the conference? He should be aware of this so he can address them directly with the Client if necessary. Make absolutely certain that he takes the necessary time to review the important parts of the file: Who gets what? Who are the Successor Trustees? Who receives any distribution of personal property? What assets were there when the plan was originally made? Are there any other unusual items, or factors, that must be considered? Although this entire pre-conference preparation may seem like it will take a lot of time, that is not correct. If you are well

prepared and your system is thorough and efficient enough, you will have less than one hour of your time involved in this preparation. Also, take the necessary time to review the documents you have prepared to make sure everything is in order to be signed by the Client.

## V. **THE FIRST APPOINTMENT**

At some time during at the initial appointment stage while the Client is at your Office to meet with your Attorney, either before, during or after, an effort should be made to try to meet the Client and introduce yourself. It is always best if your Attorney invites you into the conference and introduces you to the Client. If he/she forgets to, interrupt them with the intercom and remind them of this. Since an hour has been set for the appointment, if forty-five (45) minutes have gone by and you have not heard from your Attorney, call them on the intercom to remind them. They will be dealing with you a great deal after the appointment and it helps them to put a face to a name – makes you more approachable and personable to deal with. Although you generally will not participate in the first conference, other than meeting with the Client, if you have done your work properly, the conference will move along smoothly. It should also set the pattern for the rest of the administration.

Once the appointment is over, give your Attorney a few minutes to make his notes. Although it is preferable to meet with him immediately after the conference, absolutely before the day is over, sit down and go through his notes with him. If he/she is not in the habit of meeting with you shortly after the conference, urge him/her to do so. It is always advisable to talk while things are still fresh. Find out what is to be done and where any problems might arise. At this time, the Office To Do Checklist should be completed and reviewed in detail. This is the document that provides you with the instructions as to what you need to do next. This is your road map for the commencement of the administration. You should review it carefully. This conference with your Attorney to review the “To Do” list generally takes no more than 15 minutes. That is enough time to go over everything. If it is necessary to meet for a longer time, do so. It is important that the trust administration begin quickly and efficiently. If you are given any oral instructions, add them to

this list so they are not forgotten. Anything unusual on the list, ask your Attorney about it immediately.

As the administration progresses, your Attorney may instruct you that other things need to be done. For the benefit of everyone, the Supplemental Office To Do Checklist should be used for such matters. When you receive it, review it immediately. If it is not clear, ask questions and make notes on the supplemental document. This way, you will not forget what needs to be done.

## **VI. NOW YOUR WORK BEGINS**

Once you have received your work assignment, it is time to set up your trust administration file according to the actions that need to be taken. Refer to the file setup memo that should have been created when you first began organizing your system. Also, immediately set-up the file summary sheet. This is simply done by referring to the Questionnaire from the Client and the Office-to-Do Checklist from the Attorney. Go through step by step and list the information regarding the decedent, successor trustee and heirs, the assets and the actions to be taken. Save the sheet on your computer so it can be updated when significant changes are made. This summary should be printed on brightly colored paper so that it can be easily found in the file. It is important that you keep this updated with the work that has been done to date. When something is done on the trust administration, enter it immediately. Do not put it off until later. Because it will not get done. After the initial conference with your Attorney, you basically are given the responsibility of pursuing and overseeing the administration. The Attorney is not involved in the day to day details of asset collection, asset valuation, transfers, etc., unless his guidance is needed for some unusual situations. However, when a Client calls regarding something that pertains to the trust administration, your Attorney will need to have an easily accessible summary of where things stand. A quick overview of the file summary sheet should give him/her a good idea of what progress has been made in the administration.

When a death is involved, the Will should always be filed with the Court. There are many reasons for this. You probably should talk with your Attorney about this so he/she can explain why it is always advisable to file the Will with the Court. Prepare the Petition for Probate of Will and either mail it to the Client for execution or have him/her come in to sign it. Remind him/her that although the Will is going to Court, a probate estate is not being opened. They sometimes

forget what they were told by your Attorney and think they are opening an estate.

Mail the Letter of Instruction to the Surviving/Successor Trustee which briefly outlines his/her duties. This letter does not detail all the actions fully, but it sets out the major items for them to be aware of and take action on. It helps them begin to focus on their duties and responsibilities. Depending on their involvement in the trust administration, they may have fewer or more duties to perform. These will be decided as the administration progresses. The main thing you need to reinforce is the necessity of retaining all records of their actions. It may also be necessary, generally, to contact an accountant to prepare the final personal income tax returns and the fiduciary income tax returns. Generally, if the decedent utilized the services of an accountant, it makes good sense to continue to use the services of that person. If there is no accountant familiar with the decedent's affairs, your Attorney should have a list with the names and contact information of qualified accountants that you can refer them to should they ask. Your Attorney should always advise you when it is appropriate to make this referral. They should also indicate to you if they prefer this recommendation go to a specific accountant, or merely a generic referral.

Prepare the appraisal request, asset valuation requests, 712 requests and EIN application letter. Send all of them out as quickly as possible. Sometimes Series E or EE Bonds are held in the Trust. These must be valued at date of death values and not the face value of the bonds. You may be able to obtain copies of redemption tables from your local bank. However, a better practice is to order these redemption materials from the Superintendent of Documents. You receive two updates per year. This way, this information will always be on hand in the Office, both for the planning and administration stages. If you have access to the internet and have Adobe Acrobat Reader, you can also download the redemption tables at [www.savingsbonds.gov/sav/savrdtbl.htm](http://www.savingsbonds.gov/sav/savrdtbl.htm). You can also use

the internet to locate valuations on stocks. You can go to <http://research.gsm.cornell.edu/research/search.html> and <http://ticker.markets.ap.org> to look up the ticker symbol and cusip numbers. Once you have that information, you can go to <http://www.bigcharts.com/historical> to look up the high/low/close values for the stocks on a certain date. Prepare the limited Power of Attorney forms necessary if your Office will be assisting in any of the fiduciary duties. Mark your calendar to follow-up on the Client checklist. Make sure they bring you all of the additional information that has been requested. It is extremely important that you also mark your calendar for the tax return due dates – federal and state. Also set up a reminder for asset valuations at some point prior to the due dates (at approx. 4 months after the date of death) so that you can follow-up on those valuations you haven't yet received. Give yourself a due date to have all the information to the Attorney or the Accountant to prepare the returns. Remind your Attorney, at least two months in advance and regularly thereafter, of the due dates for the death tax returns. Also, as soon as you discover there are problems in getting some valuation information, notify your Attorney immediately.

It is important for you to have a chance to sit down and visit with the Client also – preferably within a month of the Attorney's appointment. You can use this appointment to execute documents and follow-up on some things too. This is a good time to go over the Client Follow-Up Checklist with them. This will develop your personal relationship with the Client and set the stage on how the administration will progress. Find out if they have any problems. Do they have any questions? If so, try to answer them, but if they are beyond your knowledge/experience, have your Attorney answer them. If your Client calls and you are unavailable, make sure you get back to the Client in a reasonable length of time. You need to impress on the Client you will not always be available to talk to them when they call. However, you will respond to them in a



reasonable time. You should also discourage “drop in” visits. Make it clear that you operate with appointments, just as your Attorney does. If you set these ground rules early on in the relationship, it will avoid a lot of problems as time goes by.

Find out how the Client prefers to handle execution of documents. Does he/she want them to be mailed? Does he/she want to come into the Office to sign them? As some documents will need to be notarized, find out if they have access to a notary. There are advantages and disadvantages to handling things through the mail. On the one hand, it is in a way more time efficient for you as you can simply drop it in the mail and work on something else. If they come in, you have to take the time to go over the documents and get them executed. Through using the mail, the Client has a sufficient amount of time to thoroughly review the documents in their spare time prior to signing. However, the mail tends to delay things somewhat and you also have the chance of the documents getting lost. It is recommended that for important time sensitive documents, you have the Client come in to sign them.

It is also advisable to find out if they deal with a certain bank, a particular branch of that bank, or a certain stockbroker, or do they simply use the corporate customer service. Try to use their contact whenever possible. It helps to deal with a person familiar with the decedent, the Family, or the Successor Trustee when you can. Sometimes they can be very helpful as they know what has taken place with the Trust in the past and the Family will be more comfortable dealing with them. In your dealing with various institutions, you will develop relationships with certain people who assisted you through an administration. They are probably in a position to be able to assist you in the future or guide you in the right direction when another situation arises. Make a note in your rolodex of their name and contact information. Make sure you thank them for all their help, maybe even send a little thank you letter when things are finalized. If they have been

extremely helpful with a matter, send a copy to their superior. Everyone deserves a pat on the back for a job well done. When you need their assistance in the future, they will be willing to help to the point they can, even if they are not directly involved in the matter.

Talk with the Client, as needed, and see what things they are dealing with. Where are they running into problems, if any? Can you help them? When they have not had much experience dealing with making claims for benefits, doing research into asset holding and transfers of assets, you do. When they run into a huge problem, you might easily resolve it through your contacts and/or experience dealing with that situation. They will appreciate your extra effort to help them.

Also reinforce the need for excellent record keeping. Be honest with them. Every one 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 understand that there are no silly questions – to call you at any time should they have doubts about what to do. Although your Attorney generally talks with them about accountings, make sure they keep records of every receipt coming in and every payment or distribution going out. 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 Surviving/Successor Trustee and his/her actions. Another reason to reinforce this is that the information will be needed for both estate and fiduciary income tax returns.

Find out the level of involvement the Trustee wishes to have. Sometimes a Trustee may want to do the majority of the legwork and sometimes they will prefer to rely on you to do

pretty much everything, for whatever their reasons. They can be of great assistance to you, but you need to make sure they keep you informed and updated as to what they are doing – to avoid duplication of work and to make sure it was done correctly. Have them make copies of everything for your review and for your file.

After your meeting with the Client, determine your confidence level in the Client. Can you fully trust what he/she tells you? Does he/she truly speak on the behalf of the beneficiaries or do you need to discuss some matters directly with the beneficiaries? This is important when dealing with the distributions – some people want cash, some people want in-kind distributions. As the beneficiary's personal taxes can be affected by how they take their distributions, you should get their input. Remember, you only do this (contact beneficiaries) when you are authorized to do so by your Attorney.

Another thing you should begin collecting information on is the pattern for distribution to the heirs. Depending on if the federal and state death tax returns will need to be prepared, distributions can start immediately or will be delayed until the filing of the returns to ensure assets are available to pay the taxes. Recommend that the Trustee talk with the heirs and let you know what they wish to liquidate, sell or transfer. Once you become aware of this, you can begin calling the financial institutions, brokerage houses, etc., to find out what they will need to liquidate, sell or transfer the assets. Here again, if you have made contacts with individuals at these places in the past, use them again. Even if they can not help you this time, they can tell you who can. Find out what is going to be done with the real estate. If they are selling, make sure they forward the listing agreements, contracts to purchase and titlework for your Attorney to review, before they sign anything. At the appropriate time, you will need to prepare the Trustee's Deed.

Once you have gathered all of the asset values, it is time to present the information to

your Attorney. Make certain that you have both the date of death values, and the alternate valuation date values if a Federal Estate Tax Return is to be filed. Beside the asset values, you also need to have all of the information about expenses that have been paid. You need to talk with the Attorney as to the amount of fee to be taken for the services rendered in the trust administration. Don't forget to inquire early on as to whether the Trustee will be taking a fee, and if so, you need the amount from your Attorney. Very early on in the administration, the Trustee should be advised to keep track of their time spent and what they have done in the administration affairs. Probably the best time for you to discuss this with the Client is when they come to see you for the first time. Emphasize the fact that they need to keep a daily diary of the time spent and what they did during the entire trust administration. This will help tremendously in arriving at a reasonable fee for the Trustee.

Just as in probate matters, the attorney's fee in a trust administration can be a source of contention. It is always advisable for your Attorney to discuss fees at the initial conference. If at all possible, an estimate of this range of the fee should be given. The final method for computing the fee should always be discussed. Your Attorney should make notes of this discussion during the first conference. This can be of considerable help when it comes to preparing the fee statement. The fee discussion should always carry with it the statement that this is the fee range, provided there are no "complications". If you have kept your Client advised, the Client will know if there have been any complications. When you are directed to prepare a statement, do so following standard office procedure. Then go back to the initial conference and see what fee range was discussed. Provide this information to your Attorney, along with a draft of the statement. The statement can be on a straight hourly basis or on a work done-results accomplished basis. Your Office may use other ways in which to bill. You need to be aware of many things in preparing this statement. It is

good practice for both you and your Attorney to keep track of the time each of you has spent in trust administration matters.

Every Office might have a different procedure for the death tax returns. Some Attorneys have an accountant prepare the returns, while others prepare the returns personally. Whichever you do, customize your information and administration system accordingly. Whether an accountant or the attorney prepares the return, they must have ample time to do so. You should become familiar with the contents of the return and what information will be needed to complete the return. It is recommended that you talk with someone, whether an attorney or accountant who has prepared these types of returns, and have them explained to you. The main thing you will need to be concerned with is the valuations and ownership of the assets. The placing of these assets on schedules and the answering of the standard questions will be answered by the preparer. When the Attorney originally meets with the Client, he/she should provide a rough estimate of any death taxes due. This is important when you are coming close to the due date of the returns. You may need to liquidate assets to pay the taxes – this requires some time. When you know the return is going to be filed shortly before the due date, make a note on your calendar to begin liquidation of assets early enough to ensure there are funds on hand to pay these taxes. Remember that even with an extension to file the return, the taxes will still need to be paid to avoid penalty.

Once the valuations are received, prepare a list for the Trustee and the tax preparer to review. Have the Trustee review and make sure there are not any additional assets that may have been overlooked. Have the tax preparer review the list and see where additional information is needed. It is best to take a little time here than go back and amend the return at a later date. Also make sure that if any disclaimers are going to be filed, that they are done so within the nine month time frame from the date of death.

Once the returns are completed, have the Client come in to the Office to sign it immediately, if possible. Meet with them and go over the returns with them. Go through the return with them so they know what they are signing. This is also a backup to make sure all assets are included. When you call to set the death tax returns signing appointment, tell the Client how much is owed to pay the death taxes, as well as how to make the checks payable. Be sure you tell them they must bring the checks with them to the appointment.

Have them sign the returns and collect the money for taxes due. Send to the appropriate tax service centers prior to the due date. Always mail Certified Mail/Return Receipt or overnight so that you can track its receipt. If you run into a problem down the road with the timeliness of the filing, you will need proof that you filed it on time. This is a small extra cost to assure your non-liability in the future.

After the tax returns are filed, put follow-ups in your calendar to check tax clearance status. Mark your calendar for 6 to 9 months for federal estate returns. If you are only filing state inheritance tax returns, call your state inheritance tax division to get the approximate turn-around time for state clearance and then mark your calendar accordingly. Let the Client know this time frame so they are not constantly calling to ask about the receipt of tax clearances.

When the clearances are received, the accounting and distribution process begins. While the Federal Estate Tax Return is being prepared, your Attorney should have filled out the Asset Allocation Schedule. If there is tax planning involved, it is filled out one way. If it is a non-tax planning trust, it is filled out another way. You need to review this schedule and find out if distributions are going to be made in cash or kind, or a mixture of both. If in cash, those assets need to be liquidated. If in kind, the division needs to be determined. Your Attorney should provide you with all of this information.

The time frame for distributions can be anywhere from shortly after the administration starts, sometime in the middle of it, or you wait until after the receipt of tax clearances from the tax authorities. The Client should be made aware of this during his/her initial conference with the Attorney.

If no death tax returns need to be filed, you can begin the transfers almost immediately. If death tax returns must be filed, you should wait until the returns are completed and the taxes paid to begin distribution (in a majority of cases). Once the taxes are paid and the trustee and attorney fees determined, you can make a partial distribution, while still holding a reserve of either liquidated, or easily liquidated. This amount can be determined by your Attorney and by the tax preparer in case additional taxes or expenses come up that must be paid.

You need to determine at this point if an accounting is going to be necessary. Before distribution of any assets, you need to find out if there will be any problems with the heirs. If it is determined that no accounting will need to be done, prepare a Waiver and Consent for each of the beneficiaries to sign. By this time, the Successor Trustee should now understand why this needs to be done. Most of the time, the Trustee is a family member and does not see where there can be problems. You must explain to them that you are looking out after their best interests as Trustee and protecting them from future liability. Unfortunately, many very loving families can be torn apart by the administration of the estate of a loved one. Greed and jealousy are evil influences upon these situations and can turn a loving family into a hateful war party. If the Trustee thinks there is a possibility of a problem or the beneficiaries have asked for an accounting, you should prepare your accounting, which shows all the receipts and disbursements and details the proposed schedule of distribution. Have the beneficiaries all review the accounting and proposed distribution schedule. Once they are satisfied, they must sign a waiver and consent acknowledging that they agree with

the accounting and proposed distribution. Once all the assets are distributed, it will be hard to have the distributees return them back to the Trust to resolve the dispute, or pay additional expenses. Make sure to note that the proposed distribution is subject to any incidental expenses or income which may come to the attention of the Trustee/Attorney as the trust administration winds down. If tax returns were filed, explain that a reserve amount of liquid assets are being held and the reason for it.

Hopefully, you will already know what is to be done with the assets for distribution. Are they to be liquidated or transferred? Hopefully, you will already have obtained the information needed to complete the liquidation or transfer of the assets. You should also, all along the way, but especially now, pay the claims/debts so that there are no unfinished items of business.

If there is real estate in the Trust, how is it to be handled? If title was held outside the Trust, was the property held by joint tenancy/tenancy by the entireties? Will an Affidavit of Survivorship need to be recorded to clear title to the property? Will a certified copy of the death certificate be requested? Will a Trustee's Deed need to be prepared and recorded? These are just some of the questions that need to be answered in finalizing the issues of any real estate owned by the Trust. Ask your Attorney early on in the administration what is going to take place with the real estate. That way you can be prepared as the administration proceeds.

Individual stocks, brokerage accounts, mutual funds and other similar assets require several documents to make the transfer/liquidation. Call ahead of time and find out what documents will be necessary to complete the sale/transfer. Again, get the name of the person you are dealing with. Add it to your database. It is always beneficial to be able to call someone and speak to them by name. It makes them feel good. Always try to keep a good relationship with these contact people. They can make life easier for you, or more difficult. A lot has to do with how you handle



yourself, and them. As part of this process, get the name of an individual/department to whom the documents are to be sent. Also, find out if they can send the proceeds check and/or certificates to your Office once completed. Normally, the following documents are needed to complete the transfer/sale of these assets: stock powers, affidavit of domicile, trust certifications (dated within the last 60 days), certified copy of death certificate, tax waiver (varies state by state) and a letter of instruction that had the signature guaranteed. This letter of instruction needs to detail specifically what is to be done. Include the Trust EIN, if applicable. If the assets are to be transferred, include the name, address and social security number of each distributee. Be absolutely sure that you determine whether any of the documents need to be notarized, whether signatures require a medallion guarantee, or whether a simple affirmation is adequate. Get as much information as you can, so the first effort to sell/transfer can also be the final effort. When you call a corporate headquarters to find out this information, the customer service individuals are normally just reading from a screen or book as to what is required, and might not always know the minute details – you will have to specifically ask questions? For example, they may just tell you they need a death certificate – they do not state whether it must be certified or just a photocopy. Another thing to keep in mind is how the asset will be transferred. For example, you have a brokerage account with stocks and a cash account. This account is to be divided equally between two beneficiaries. Will the letter of instruction have to be detailed to the penny as to who gets what or can you use a percentage (50% to Heir A and 50% to Heir B)? In most instances, all you will have is the date of death values of the account – this does not include dividend or interest payments paid since the date of death. Most companies request that you be as specific as possible and also include a percentage for them to make any adjustments as necessary. Most of the time they will call to verify these adjustments with you and get your approval before the transfer is made. If the shares are held electronically and

are to be distributed to the beneficiaries by opening up a new ADS account with the company, they will probably need the beneficiaries to fill out an account application. Order these now so they can be completed and submitted with the letter of instruction.

Another matter that needs to be addressed in this letter is how the dividends on the stock are to be sent to the new shareholder. Will they go into a dividend reinvestment program (DRIP), or are they to be sent to the new shareholder in the form of a check or directly deposited into a bank account specified by the new shareholder. Not all companies have DRIPs, so you need to determine if the companies involved have such a program. Not all companies do direct deposits. You, or your Attorney, need to find out from the Client what their wishes are in this matter. Again, the more you can find out on the front end, the better off you will be in completing the transfers. It is important to keep in mind that once the transfers have been made to the distributees, you might not have the authority to act any further to set up the accounts for the distributees. If something needs to be done after the transfer, the distributees will have to deal directly with the stock company. Send them a memo explaining this to them.

In the letter of instruction, your Attorney should sign the letter in addition to the Trustee and include an authorization signed by the Trustee authorizing the company to speak with you or your Attorney regarding the transfer/sale of the assets. Generally, it is the signature of the Trustee that must be guaranteed and not that of your Attorney. Most companies are sticklers for the privacy of their Clients, which they should be, and will not always discuss the transfer with you, unless they have the authorization right there to review. You should also always request that the proceeds check or new stock certificates, or both, be sent directly to your Office (or at least confirmation of the transfers/sale). You then can forward whatever is necessary to the beneficiaries. The reason for this is that should the distributions be done incorrectly, all of the documents are immediately

available in your Office to correct the problem. Otherwise, you will have to contact the beneficiaries and wait for them to return the documents to you before you can correct the problem. If they do not send you the actual checks or certificates and you only receive a confirmation, you still have the opportunity to make sure the transfers were done correctly. Suppose, however, you do not receive anything. In that case, tell the beneficiaries to contact you prior to depositing the checks or when they receive the certificates. Have them make a copy of all documentation they received and forward it to you for your records. This is the only way for you to know the transfers were done correctly. It is important to follow through with this. It is easier to correct the problem as soon thereafter as possible than to let a significant amount of time pass by.

When dealing with the administration of a tax-planning trust, you will be dealing with the division of assets between the survivor's trust and the family trust. The Attorney, accountant and the family's financial planner will be an important part of this process. It is best to schedule a meeting between the surviving spouse, the attorney, their accountant and their family financial advisor. Get all parties involved. The division is very important and must be dealt with according to the guidelines set forth in the trust. The accountant and financial planner have a dual role in this division of assets. First – they will contribute their expertise to the division as to what is best for the surviving spouse. You must remember that the accountant will be dealing with the fiduciary returns and will know how the division of assets will affect the returns. He also needs to know this information in order to do the necessary bookkeeping for the surviving spouse in the future. The financial planner will be setting up the accounts and will need to know how to handle the principal and income distributions, and will also be able to provide expertise into the market conditions best suiting the division. Second – both the accountant and financial planner will be actively involved in the future actions of the Surviving and Family Trusts, even more so than the Attorney. They

must know what they are dealing with so as to advise the Client properly and not cause the Client to lose their estate planning benefits. If they meet with the Attorney and see how all the parties are involved in the estate plan, they will be more likely to seek the Attorney's advise in matters when changes are to be made in the investments, tax returns, etc., or in simply advising the mutual Client on the best course of action to take.

Once the division is established, you will make the transfers accordingly. You will need the EIN for these transfers. This should have been obtained earlier during the trust administration. You will also draft a letter to the Surviving Spouse so he/she can refer to the letter and certification in future dealings with the two trusts. This letter will contain a detailed division of the assets so they know exactly how they are held and when and how to use what money. Tax Planning is very confusing for most Clients and will require a little additional attention to make sure they understand it. Sometimes, a follow-up meeting might be necessary with the Attorney so he/she can reinforce the issues surrounding the tax planning trust. Advise the Attorney if you feel the Client, Accountant or Financial Planner is confused so he/she can take whatever actions he/she feels necessary to assure the proper carrying out of the Client's estate plan.

Assuming the matter of the accounting has been resolved simply and quickly, the distribution process should either begin or continue. It is of the utmost importance that any distribution is conditioned upon signing the Receipt and Release. These should be sent to all beneficiaries receiving any distribution. Again, your instructions will come from your Attorney on this point. Once the Receipt and Release is received, you should advise your Attorney. Keep him/her informed as to how many are outstanding, when they have all been received and if there is a problem with someone. He needs to know this information. Under normal circumstances, no

distribution should be made unless the Receipt and Release have been signed and returned to you.

As the process winds down, when assets are distributed in kind, the distributee needs to know the date of death value of the assets if no Federal Estate Tax Return was filed. On the other hand, if one was filed, they need to know the values that were used, date of death or alternate valuation date values. This letter needs to be prepared and sent to the applicable people. This information is used by them in the future to determine the gain or loss on the sale of any of the items.

Once the distributions have been made, the Receipts and Releases signed, the letter of instruction as to the Trustee's duties relative to the Family Trust has been sent, and the final tax returns have been filed, you can now close the trust administration. Nothing further should need to be done. Nothing should stand in the way of closing the Trust Administration. Your job should be finished – on this one.

## **VII. TRUSTEE REPLACEMENT**

Although the majority of your work in trust administration will deal with the death of a Trustee, there will be many times in which action will need to be taken while the current Trustee is still alive. The current Trustee could become incapacitated, either physically or mentally, and as a result, is unable to continue to serve as trustee. The Trustee might wish to resign due to circumstances in his/her life and it would be in the best interests of the beneficiaries that a successor be appointed to oversee the Trust. There may be times when it would be best to appoint an Ancillary Trustee to handle some matters with regard to the Trust. There are times in which the current Trustee is not handling the affairs of the Trust in a responsible manner and the beneficiaries have requested he/she be removed and a successor appointed. All these matters will require a certain level of administration to turn control of the Trust over to a Successor Trustee or Ancillary Trustee.

When dealing with the incapacity of the current Trustee, it is important that you do not simply rely on the word of the Family. Unfortunately, you will find that there are times in which a loved one has other influences that affect their outlook on matters other than the welfare of the Trustee/beneficiary, i.e. greed. You need to proceed carefully in this matter. Should you become aware of anything like this, you should have your Attorney talk with the Family in these cases and let him/her make a determination of the course of action to take in this matter. Review the Trust documents to find out the requirements for a Successor Trustee taking over control of the trust. Once the Attorney has talked with a family member, prepare the Physician's Report and arrange for the Family to hand deliver the Report to the Physician to complete. You can also give the Family the Questionnaire for Trustee Replacement for them to complete while they are waiting for the completion of the Physician's Report. Once the Report is received, the Attorney will review and

give you instructions. You should wait to schedule an appointment between your Attorney and the Family/Successor Trustee until the Physician's Report has been returned to your Office and your Attorney has reviewed it. Your Attorney may require clarification on a few points before a Successor Trustee can be appointed. Your Attorney may also find that there is no need to appoint a Successor Trustee based upon the information provided by the Physician.

When your Attorney is confident about the incapacity of the current Trustee and the Physician's Report comes back verifying the incapacity of the Trustee, you will need to schedule an appointment for the Successor Trustee to meet with your Attorney as soon as possible to protect the assets of the Trust and take care of the beneficiaries. You will need to prepare the necessary documents for the Successor Trustee to sign at their appointment: the acceptance and oath, and the appropriate trust certifications for incapacity. All these documents, along with the Physician's Report when necessary, will be put together with the new Affidavit of Trust and attachments into a packet for the Successor Trustee to show his/her power to act on behalf of the Trust. Once the Successor Trustee has assumed control of the trust assets, you will need to have the assets valued in the same manner as you would for the death of a Trustee. This establishes the basis from which the Successor Trustee will be responsible, as he/she will be held liable for the gains/losses to the Trust from that point forward. You will also need to file for an EIN for the Successor Trustee immediately. Once the EIN is received, the assets will need to be retitled into the Successor Trustee's name. You will be needed to assist in this process also. This process is the same used in transferring assets in the event of the death of a Trustee. Once the assets are transferred, you will need to prepare the Receipt of Trust Assets and have it signed by the Successor Trustee, to which is attached the list of assets and their valuations. You will also need to send the Letter of Instruction to the Successor Trustee which explains their duties.

When the Successor Trustee takes over, it may be necessary to prepare an accounting of behalf of the prior Trustee for the beneficiaries. This will be decided by your Attorney as to what is best for the beneficiaries of the Trust. When you notify them of the change in Trustees, you can request a Waiver of Accounting, if that is applicable in light of all of the circumstances. If all beneficiaries sign Waivers, an official accounting does not need to be prepared. However, the valuations should still be done for the Successor Trustee's protection. If the beneficiaries request an accounting, you would prepare this in the same manner as you would in a trust administration for a deceased Trustee, as discussed earlier.

With Resignations, the same process needs to be followed for the appointment of the Successor Trustee due to incapacity. It is important to have the Attorney speak with the current Trustee before proceeding with preparing the documents. You will need to be certain that the resigning Trustee is mentally capable of understanding what they are doing. If there are any questions as to the resigning Trustee's capacity, your Attorney may instruct you to obtain the Physician's Report. At your Attorney's instruction and, if necessary, assuming the Report comes back saying the Trustee is capable of making this decision, you will need to prepare the Resignation to be signed by the resigning Trustee and the Acceptance, Oath, Certifications for Resignation, etc. to be signed by the Successor Trustee. An EIN will need to be obtained and the beneficiaries notified of the change in Trustees. An accounting may also need to be prepared by the prior Trustee to establish the basis for the Successor Trustee to begin his/her administration. Your Attorney should always review this accounting with the Successor Trustee and when appropriate, forward to the beneficiaries for review, unless they have signed a Waiver of Accounting.

There may be times when the appointment of an Ancillary Trustee may be required or requested to handle certain aspects of the Trust administration. Your Attorney should speak with



the Trustees to determine if this is necessary and meet the requirements stipulated in the Trust for the appointment of an Ancillary Trustee. Upon your Attorney's instruction, you will prepare the Appointment of Ancillary Trustee, Acceptance-Oath-Receipt and Certifications for Ancillary Trustee. Contact the signing parties and see how they wish to handle the execution of the documents, making them aware that the documents must be notarized. Prepare the Trust Certification packets once all the documents are executed and forward them to the Ancillary Trustee. The assets that will be administered by the Ancillary Trustee will need to be transferred to him/her. Find out if the Ancillary Trustee needs your assistance in doing this. If not, follow-up to make sure this was done correctly.

The removal of a Trustee can be complicated and must have intense involvement by your Attorney. The majority of the time, this will involve some wrong-doing by the Trustee, intentionally and unintentionally. Your Attorney will need to verify the actions taken by the Trustee and make sure there are adequate grounds for removal. Removal may require Court action or just the resignation of the Trustee, depending on the circumstances. Again, issues of accountings and qualifying the Successor Trustee will require your involvement.

## **VIII. COURT PROCEEDINGS**

Although one of the benefits to having a Living Trust is to avoid Court involvement, there are times when it may be necessary to seek Court action to resolve a situation regarding the Trust. In order to properly present the actions to the Court, you will need to be familiar with your state's trust and probate procedures. Most Courts have "Rules of Procedure". Your Attorney should get you a copy of this. You need to read it and familiarize yourself with it. Keep it near at hand so you can refer to it as needed. The majority of the forms you will file with the Court will be drafted and filed in much the same way as are Petitions and Orders in probate matters. Generally, the requirements for notices in trust proceedings will be similar to, or identical with, those needed in probate matters. However, you need to be aware where the differences lie between trust and probate procedures. Seek your Attorney's guidance carefully throughout all Court proceedings. Find out from him/her how many copies of each document are needed. Keep a record so you will know that in the future.

In order to bring any matter before the Court regarding a Trust, it needs to be docketed. This Petition should simply put the Trust before the Court – it should not state the purposes for which you are seeking action. Before you complete the Petition, you will need to gather information regarding all of the income and residuary beneficiaries of the Trust, their addresses and relationships to the Trustor. If your information gathering system is effective, you should already have all of this information necessary. You should also have already obtained the valuations of assets as explained previously. This information will generally be placed in the Petition. Your Attorney will provide you with the necessary information to prepare these documents, as well as any others that need to be filed.

With the docketing of the Trust and most petitions seeking relief, you will have the option

of either filing waivers and consents by the beneficiaries to avoid a hearing date or scheduling a hearing date. In the event a hearing is scheduled, it will be necessary to serve notice upon the interested parties. It may even be necessary to publish notice, depending upon local laws and procedures. If a hearing date is scheduled, you need to make sure all notices are served properly. Proof of the serving of these notices in a timely manner is extremely important. Make sure that this procedure receives top priority from you. You may need to coordinate with your Attorney and the Client whether the Client needs to attend the hearing. It is recommended that if a hearing is scheduled, you should arrange for the Client to attend, especially if you were unable to obtain all the waivers and consents. If someone were to appear and object, all petitioning parties should be there to testify. The Petitions should also state the applicable statute that is relevant to the action taken or remedy sought. Your Attorney will provide you with this information. If the Court is not familiar with all aspects of the Trust code, this will make it easier for the Court to research it.

If notices must be sent to the interested parties, these will need to be sent certified mail/return receipts. If a question comes up regarding the timeliness of the notice, you will need to back up your work. It is recommended that you attach each certified mail form to a blank piece of paper when you mail the notices. When you receive the return receipt, immediately attach it to the corresponding certified mail form on this paper. This avoids losing the return receipts. Attach all proofs of mailing to an Affidavit of Service to be signed by your Attorney and have it ready to be filed with the Court at the hearing. The notices and/or waivers should be sent to the beneficiaries with a letter from your Attorney explaining what is enclosed in the envelope. Some people panic when they receive a notice from an Attorney and will not sign anything unless they know exactly what they are signing. Be prepared to answer their questions should they call.

If publication is required, make certain that you know what newspaper(s) to publish in,

how far in advance must they have the notice in order to timely publish it, how many publications are required, and what is the cost of the publication. You need to be certain the paper receives the notice in a timely manner. Also, you will need to arrange for the Proof of Publication affidavit to be sent to you prior to the hearing date. Your Attorney will need to take this to the hearing as well.

A proper Order should be drafted for the Attorney to take to Court with him, whether at the filing of the Petition or at the hearing. This Order should be prepared granting the relief sought in the Petition. The Court may change it somewhat, but will appreciate the substantive portion being completed. Again, your Attorney will provide you with the proper instructions to prepare this document.

There are many reasons to docket a Trust and request Court direction. Some of these include the appointment of a Successor Trustee, accepting the Resignation and/or Accounting from a Trustee, interpreting a provision of the Trust, and even modifying or terminating the Trust. Prior to beginning any Court interaction, your Attorney needs to have discussed the matter carefully with the Client. Your Attorney will explain both the advantages and disadvantages of Court involvement. This includes the added expense and time that will be needed to accomplish the requested relief. Once everything is reviewed, there may not be adequate grounds to request the relief sought in the Petition. The parties involved may find that the relief that will be sought is not worth the time, effort and money that will be necessary to proceed. Because of all these reasons, it is important that you do not advise the Client to proceed in this direction. If you have developed a relationship with the Client, they may ask you what you think they should do. Never insert yourself into any decision making situations with the Client. Do not even venture to give your opinion on any matter. Remember, your Attorney will make the recommendations and will instruct you as to the preparation of all documents.

No matter what relief you are seeking in your Petition, hope for the best but prepare for the worst. Make sure all things are done strictly according to Court procedures and upon your Attorney's direction. Keep good records and notes of all conferences with the parties involved – what they are asking, what were your answers, etc. Although the likelihood is very small, if you are ever called to testify, your notes will refresh your memory as to what has taken place. It is also important to keep the Attorney updated with your dealings with the interested parties. Let him know what problems are arising and what the parties attitudes have been regarding the relief being sought. This is important information and may influence a course of action being taken. This is the real value to your keeping records of all of your discussions with the Client, beneficiaries, third parties, etc.

Once the objectives of docketing the Trust have been resolved, you should be prepared to immediately remove the Trust from the docket. It is recommended that the Petition to Remove the Trust from the docket be prepared at the same time the Petition to Docket the Trust is prepared. In this way, it is ready when it is needed. Remember, a Trust was designed to avoid Court action and keep the privacy of the Trustors. There should not be any problems obtaining the Waivers from the beneficiaries at this point, if they are necessary, as they are already aware of the outcome of the relief sought.

A great deal of the time, your Attorney will be representing the Trust in Court actions. People will associate him/her with Trust actions and may approach him/her requesting assistance or directions as the beneficiary of some other individual's Trust. You will need to be familiar with the rights of the beneficiaries. With this knowledge it becomes a little easier for you to understand what you are doing. You should always ask your Attorney questions if there are things you do not understand. Although a Trustee is not under the supervision of the Courts, he/she has the same

responsibilities to account for his/her actions to the beneficiaries when requested or directed as a personal representative of an estate has. There may be times when a Trustee is violating his fiduciary responsibility. This might involve Court action, it might not. Normally your Attorney will try to resolve matters without getting the Court involved. The Trustee may simply have not been advised properly by an attorney and was not aware of his/her responsibilities.

As explained in the trust administration for a deceased Trustor, the Will should always be probated with the Court to assure that the Decedent's wishes in his/her estate plan are followed. If an asset is found in the sole name of the Decedent, the Will shows it to be transferred to the Living Trust. As a result, you need to be familiar with the process of probating a Will in your area.

There may be times when you must deal with the creditors of a Decedent. Although the Trust directs the Trustee to pay all valid and legally enforceable debts, there may be times when a probate estate may need to be opened simply to deal with this matter. You will need to be familiar with your state's probate laws to do so. If the Trust was funded properly, there will be no assets in the estate. You will follow the statutory requirements in the opening of the estate, including notice to the creditors, the filing of any inventory or accountings, and ultimately a hearing will be scheduled to determine the validity of any claims filed. Once this is done, you will be directed to prepare the documents to close the estate as insolvent. Opening an estate for creditor purposes involves the same costs and time of administration for probate proceedings. Your Attorney will discuss this matter carefully with the Client prior to initiating this action. Your responsibility is to know and understand the basic actions necessary to open and close an estate proceeding in the event it is necessary to assist in the trust administration.

## **IX. CONCLUSION**

No matter what set of circumstances may have given rise to the trust administration, generally, it should not be too difficult. This is simply due to the fact that your Office is in charge and handles everything. Generally, no Court involvement, no Court rules to follow, no time limits that must be adhered to, etc. It requires a new outlook on how it is to be handled. You must recognize that although in some aspects it resembles a probate or guardianship proceeding, it is substantially different. You must remember that the only time limits in a Trust administration are those for the filing of the death tax returns. Therefore, there is nothing to delay the administration – only your Office, your Attorney, and/or you.

Early on, you and your Attorney need to determine how you are going to work together in this relationship. Does your Attorney give you all the directions, oversee everything, or do you just do everything and present the documents/information to him/her? Neither one of these positions is a good one. The proper format is a blend of both. Instructions from your Attorney, overseeing as needed, and you going forward with the guidance given and the knowledge you can go back to him/her as needed. Your system should guide your actions.

No matter what course your Office follows, there is a lot of responsibility which falls on your shoulders. This burden can be eased by the installation and implementation of a procedural system to deal with trust administrations. This requires work by you and your Attorney to create the system, implement it and keep it operating efficiently and effectively. It needs to be reviewed periodically and updated. Where it is cumbersome, simplify it. Where it is too basic, add more to it. Take it, tinker with it, and get it to fit your Office and the people working there. You need to have substantial input into it, since you will be the one primarily using it. Talk with your Attorney, find out his/her goals and objectives as they pertain to the system. Then add your own, so he

understands them. From this mutuality, your operating system will evolve into an effective tool for all in your Office to use. You will also soon find that it is easily adaptable to both probate and guardianship proceedings as well. How well it all works it totally up to you and your Attorney.



# **Section Two**

**TRUST ADMINISTRATION FROM START TO FINISH**

**Section 2**  
**Trustee Rights and Remedies**  
**Dealing with Difficult Beneficiaries/Institutions**

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**DISCLAIMER**

**The authors make no warranties about the legal conclusions stated herein  
and this is not intended as legal advice to any individuals.**

## Section Two

### **Trustee Rights and Remedies-Dealing with Difficult Beneficiaries and Institutions ..... James W. Martin and Benjamin T. Ballou**

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**I. INTRODUCTION.** Your legal assistant takes a message from a potential client who has been named as a Successor Trustee of a Trust and in is need of legal counsel. You run your conflicts check and it comes back clear. Your legal assistant sets up a meeting with the potential client. You have your process in place to make sure the potential client brings in all relevant information/documentation in order to make the meeting productive. The meeting takes place, the potential client engages you, and you start the Trust administration process. Everything is moving along quite well, but all of the sudden, you encounter issues with gathering asset information from institutions, the beneficiaries are causing problems, the Trust documentation is ambiguous, etc. How do you advise your Trustee? What tools are available to you to address these obstacles during the administration? Is Court involvement necessary? The purpose of these materials is to provide you with guidance and statutory authority to address common, and not so common, issues that you may encounter during what you thought would be a smooth administration. When in doubt, review the Trust Code and the rights and remedies available to a Trustee to solve these problems.

**II. POWERS OF A TRUSTEE.** The Trust Code lists out numerous powers that a Trustee may avail himself/herself of during the Trust administration. Subject to the terms of the Trust and subsection (c), I.C. § 30-4-3-3 lists out twenty-seven (27) powers available a Trustee. Familiarize yourself with this statute as it provides a lot of flexibility and authority to your client to carry out the Trust administration.

**III. DUTIES OF A TRUSTEE.** More importantly, you must become familiar with the Trustee's duties under the Trust terms and the Trust Code in order to advise your client properly. I.C. § 30-4-3-6 sets forth twelve (12) statutory duties that a trustee must adhere to, subject to the terms of the Trust.

**IV. COMMON, AND NOT SO COMMON, ISSUES ENCOUNTERED BY A TRUSTEE.**

**A. A financial institution will not cooperate with my requests, now what?** As part of the Trust administration, you and your client will need to reach out to financial institutions to confirm that the Trust is the owner of an asset or is named as beneficiary. The documents you will need when sending a letter requesting information is a Certification or Affidavit of Trust (I.C. § 30-4-4-5); a death certificate, and an Authorization signed by your client authorizing the institution to speak to you and provide the information requested. Most institutions are cooperative and comply with the request. However, what if they do not? What can you do then?

- i. Send a copy of I.C. § 30-4-4-5(f) to the institution. This statute provides that “a person who acts in reliance on a certification of

trust without knowledge that the representations contained in the certification of trust are incorrect: (1) is not liable to any person for acting in reliance on the certification of trust; and (2) may assume without inquiry the existence of the facts contained in the certification of trust. This statute is a helpful reminder to institutions that they are not liable for relying on the certification of trust and providing the requested information, even if untrue.

ii. Send a copy of I.C. § 30-4-4-1 to the institution. A third person dealing with the Trustee or assisting the Trustee with a transaction (1) may assume without inquiry that the Trustee has the powers he/she purports to exercise and has exercised them properly; and (2) shall not be responsible for the application of money or property paid or delivered to the Trustee.

iii. File a Petition/Complaint with the Court under I.C. § 30-4-6-5<sup>1</sup> (a “TR” action in a designated probate court, if at all possible)<sup>2</sup> and request an order directing the institution to provide the requested information. Although not ideal, this may be the last resort to obtain the information.

iv. Unfortunately, the Trust Code does not provide a “hammer clause” for the recovery of damages, attorney’s fees and costs, and pre-judgment interest similar to the Probate Code [I.C. § 29-1-8-1.5(f) and (g)] when a third party refuses to comply with a small estate discovery affidavit, the Guardianship Code [I.C. § 29-3-9-12] when a third party fails to comply with a guardian’s written demand or instruction, and the Power of Attorney Act [I.C. § 30-5-9-9] which provides for the recovery of treble damages, attorney’s fees and prejudgment interest on the actual damages incurred if the power of attorney is not honored timely by a third party. Having a “hammer clause” in a Trustee’s tool kit would be ideal when dealing with uncooperative institutions.

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<sup>1</sup> Docketing a Trust is not required to bring a Trust-related issue before the Court. See *Schrage v. Audrey R. Seberger Living Trust*, 52 N.E.3d 54 (Ind. Ct. App. 2016).

<sup>2</sup> Jurisdiction in this state for all matters arising under this article shall be with the court exercising probate jurisdiction. I.C. § 30-4-6-1. Venue is determined pursuant to I.C. § 30-4-6-3 and Ind. Trial Rule 75.

**B. A beneficiary won't stop calling and keeps requesting updates and information. What do I have to provide?** A Trustee has a duty to keep certain beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for the beneficiaries to protect their interests. I.C. § 30-4-3-6(7). A determination of the type of beneficiary who is making the request must be made. The statute requires the Trustee to keep a current income beneficiary reasonably informed. The Trustee's duty also extends to a beneficiary who will become an income beneficiary upon the expiration of the term of the current income beneficiary, if the trust becomes irrevocable by the terms of the trust instrument or the death of the Settlor. In other words, not all beneficiaries can avail themselves of the rights provided under this statute (e.g., a "specific distributee" entitled only to a specific gift or asset, a remainder beneficiary who is not a current income beneficiary, etc.).

The Trustee satisfies this duty by providing a beneficiary, or upon a beneficiary's written request, access to the trust's accounting and financial records concerning the administration of trust property and the administration of the Trust. However, what is required to be disclosed? All source documents? Tax returns and tax documentation? Invoices? Bills? Monthly bank statements? Quarterly financial statements? Where is the line drawn? The authors believe it is a case-by-case determination and fact sensitive. When in doubt, the Trustee can file a Petition/Complaint with the Court under I.C. § 30-4-6-5 (a "TR" action in a designated probate court, if at all possible) and request instruction from the Court pursuant to I.C. § 30-4-3-18(a) which states that "if there is reasonable doubt with respect to any matter relating to the administration of the trust, the trustee is entitled to be instructed by the court." This process protects the Trustee via Court Order and allows the Trustee to proceed accordingly.

Alternatively, a nonjudicial settlement agreement pursuant to I.C. § 30-4-5-25 could be utilized. The resolution of a dispute arising out of the administration of the Trust is a matter that can be resolved by a nonjudicial settlement agreement. I.C. § 30-4-5-25(d) (8).

**C. A specific distributee requests an entire copy of the original Trust and all amendments thereto. What do I have to provide?** When a Trust becomes irrevocable by its terms or because of the Settlor's death, an income beneficiary or remainderman can request a complete copy of the trust instrument. I.C. § 30-4-3-6(a)(8). A Trust, however, by its terms may require the Trustee to only provide portions of the Trust instrument to a beneficiary that describe or pertain to that beneficiary's interest in the Trust. What if a "specific distributee" requests a complete copy of the Trust? See *Schrage v. Seberger Living Trust*, 52 N.E.3d

45 (Ind. Ct. App. 2016). Schrage, a beneficiary entitled to a specific cash bequest (a “specific distributee”) was not entitled to a complete, unredacted copy of the Trust.

**D. The Trust is ambiguous and is subject to varying interpretations. What can/should the Trustee do?** Most importantly, the Trustee and you, as legal counsel, **should not** take a position on the issue. The Trustee has a duty of impartiality and neutrality under Indiana law and must treat all beneficiaries equally. This is even more true if the Trustee is also a beneficiary. Here are your options:

i. File a Petition with the Court under I.C. § 30-4-6-5 (a “TR” action in a designated probate court, if at all possible) and request instruction from the Court pursuant to I.C. § 30-4-3-18(a) which states that “if there is reasonable doubt with respect to any matter relating to the administration of the trust, the trustee is entitled to be instructed by the court.” This process protects the Trustee via Court Order and allows the Trustee to proceed accordingly.

ii. If the ambiguity relates to the question of who are the beneficiaries of the Trust, file a Petition with the Court under I.C. § 30-4-6-5 (a “TR” action in a designated probate court, if at all possible) and I.C. § 30-4-3-34 to have the Court make a determination of the heirs of the Settlor or any person named in the trust. Notice to interested parties must be served, and publication to any unknown heirs, must take place and a hearing held. The statute and its process is similar to the Probate Code (I.C. 29-1-6-6).

iii. Propose a nonjudicial settlement agreement pursuant to I.C. § 30-4-5-25. The interpretation or construction of the terms of a trust is a matter that can be resolved by a nonjudicial settlement agreement. I.C. § 30-4-5-25(d)(1).

**E. The predecessor Trustee (not the Settlor) committed breaches of Trust and either resigned or was removed. What liability does the Successor Trustee have?** Generally, a person who becomes a successor trustee of a revocable trust upon the death, resignation, or incapacity of a trustee who is also a Settlor is not liable for any act or failure to act by the Settlor while the Settlor was the trustee. I.C. § 30-4-3-1.3(f). **However**, I.C. § 30-4-3-13 states that a Successor Trustee becomes liable for a breach of trust of the predecessor Trustee if he/she (1) fails to take whatever action is necessary to compel the predecessor trustee to deliver the trust property; or (2) fails to make a reasonable effort to compel a redress of a breach of trust committed by the predecessor Trustee. The first step would



be to speak to the Trust beneficiaries to determine whether it is legally and economically viable to pursue the predecessor Trustee for breaches of Trust. If the beneficiaries do not want to expend the funds to do so, written acknowledgments and releases should be obtained from the beneficiaries to protect your client. If they do want your client to pursue the predecessor Trustee, litigation can be initiated as mentioned above against the predecessor Trustee.

**F. You represent Co-Trustees of the Trust and one of them is not cooperating or participating in a meaningful fashion. What should be done?** Unless the terms of the Trust provide otherwise, if there are two (2) or more trustees, each trustee has a duty to (1) participate in the administration of the Trust; (2) take whatever action is reasonable to prevent a co-trustee from committing a breach of trust; and (3) take whatever action is reasonable to compel a co-trustee to redress a breach of trust. I.C. § 30-4-3-8. If that situation presents itself, the “good Co-Trustee” may maintain an action against the “bad Co-Trustee” to compel the “bad Co-Trustee” to (1) perform his/her duties under the Trust; (2) enjoin the “bad Co-Trustee” from committing a breach of trust; or (3) compel the “bad Co-Trustee” to redress a breach of trust committed by him/her. I.C. § 30-4-3-16. Keep in mind that I.C. § 30-4-3-4 requires two (2) Co-Trustees to act jointly unless the terms of the Trust require joint decision-making.

If the Co-Trustees must act jointly, this puts you as the attorney in a difficult position. Because you represent the Co-Trustees, can you take action on behalf of the “good Co-Trustee” against the “bad Co-Trustee”? If the Co-Trustees are required to make decisions jointly, can the “good Co-Trustee” hire another attorney at the Trust’s expense to take action against the “bad Co-Trustee” so that you avoid a conflict of interest situation? Conversely, can the “bad Co-Trustee” hire another attorney to defend him/her at the Trust’s expense? If they must act jointly, the answer is “no”. In this scenario, it would be advisable for you to instruct the Co-Trustees to hire their own attorney in their capacity as beneficiaries to discuss their rights and remedies.

**G. A third party who is not a Trust beneficiary is squatting in the residence owned by the Trust, will not provide the Trustee with access to the residence, or has possession of Trust property and will not return it. What can the Trustee do?** Far too often, a third party will not vacate the residence owned by the Trust, allow the Trustee to enter the premises, or has removed tangible personal property owned by the Trust from the premises. The Trustee has a duty to take possession of and maintain control over the Trust property, preserve the Trust property, and make the Trust property productive for the income and remainder

beneficiaries. I.C. § 30-4-3-6(b)(2)-(4). What options are available to the Trustee?

i. A Trustee may maintain, in his/her representative capacity, a civil action for any legal or equitable remedy against a third person that he/she could maintain in his/her own right if he/she were the owner. I.C. § 30-4-3-15. The Trustee could initiate an eviction action against the squatter in order to remove him/her from the premises and take possession of the residence and tangible personal property. However, the better course of action may be to file a Complaint/Petition under I.C. § 30-4-6-5 (a “TR” action in a designated probate court, if at all possible) to remove the occupant from the premises and recover any tangible personal property on the premises or removed from the premises.

**H. A Trust beneficiary is squatting in the house owned by the Trust, will not provide the Trustee with access to the house, or has possession of Trust property and will not return it. What can the Trustee do?** Similar to G above, a Trust beneficiary (family member) will not vacate the residence owned by the Trust, allow the Trustee to enter the premises, or has removed tangible personal property owned by the Trust from the premises. As stated above, the Trustee has a duty to take possession of and maintain control over the Trust property, preserve the Trust property, and make the Trust property productive for the income and remainder beneficiaries. I.C. § 30-4-3-6(b)(2)-(4). What options are available to the Trustee?

i. As state above, a Trustee may maintain, in his/her representative capacity, a civil action for any legal or equitable remedy against a third person that he/she could maintain in his/her own right if he/she were the owner. I.C. § 30-4-3-15. The Trustee could initiate an eviction action against the Trust beneficiary in order to remove him/her from the premises and take possession of the residence and tangible personal property. However, the better course of action may be to file a Complaint/Petition under I.C. § 30-4-6-5 (a “TR” action in the probate court) to remove the Trust beneficiary from the premises and recover any tangible personal property on the premises or removed from the premises.

ii. Additionally, a Trustee can pursue a Trust beneficiary under I.C. § 30-4-3-20 for loss to the Trust estate. It is recommended that a Complaint/Petition be filed under I.C. § 30-4-6-5 (a “TR” action in a designated probate court, if at all possible) to address these issues. A Trust beneficiary who has misappropriated or otherwise wrongfully

dealt with the Trust property is liable. There are other grounds in the statute to pursue a beneficiary for loss to the Trust estate. However, keep in mind that unless the terms of the Trust provide otherwise, a Trust beneficiary is liable only up to the value/amount of his/her Trust interest for any debt owed to the Trust estate by him/her. I.C. § 30-4-3-20(b).

**I. A Trust beneficiary cannot be located or will not provide any contact information for distribution purposes. What can the Trustee do?** Sometimes you are confronted with a missing beneficiary or a beneficiary who will not provide any information in order to distribute Trust assets. So as to not hold up the Trust distribution and completion of the administration, there is an option available to the Trustee. I.C. § 30-4-3-37 provides a mechanism for the Trustee to file a petition with the Court and obtain an Order directing the Trustee to pay the beneficiary's share to the Clerk of the Court. A reasonable search must be conducted before the petition can be filed. If the Court orders the Trustee to pay the beneficiary's share to the Clerk of the Court, a receipt must be filed by the Trustee with the Court after that occurs. Once the receipt is filed, it serves as a discharge of the Trustee to the same extent that the Trustee had paid or distributed the appropriate share of the Trust to the unlocated beneficiary. I.C. § 30-4-3-37(b). It is recommended that a Petition be filed under I.C. § 30-4-6-5 (a "TR" action in a designated probate court, if at all possible) in order to obtain the Order.

**V. CONCLUSION.** The days of a "simple" Trust administration are long gone. More often than not, you and your client encounter issues and obstacles that you must address. The Trust terms and the Trust Code provide you and the Trustee with a roadmap and the necessary tools to address these common, and sometimes uncommon, fact patterns that arise during Trust administrations. Having a good grasp of the Trust Code and what rights and remedies are available to the Trustee is paramount.

# **Section Three**

# **TRUST ADMINISTRATION FROM START TO FINISH**

## **Section 3**

### **Beneficiary Rights and Remedies Dealing with a Difficult/Non-Responsive Trustee**

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**ICLEF Virtual Webcast**

**March 18, 2021**

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## Section Three

### **Beneficiary Rights and Remedies-Dealing with a Difficult/Non-Responsive Trustee..... James W. Martin and Benjamin T. Ballou**

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**I. INTRODUCTION.** “The Trustee won’t respond to my calls, texts or emails.” “My brother still lives in the house and it’s been three years since dad died.” “We haven’t received a distribution from the Trust since mom died over 2 years ago. Does he have to pay rent?” “Does the Trustee have to provide me with an accounting or documents that I would like to see?” “What are my rights as a beneficiary?” “How do I sue the Trustee?” Unfortunately, these are common questions that a new client asks you when a Trust administration has gone sideways. It is incumbent on you as the attorney to advise your client of the rights and remedies available under the Trust Code and to review the Trust and any amendments thereto to determine your next steps. Note that several statutes in the Trust Code begin with the phrase “Unless the terms of the trust provide otherwise....” The purpose of these materials is to provide you with guidance and statutory authority to address common, and not so common, issues that you may encounter when representing a Trust beneficiary in a Trust administration involving a difficult/non-responsive Trustee.

**II. DUTIES OF A TRUSTEE.** In order to properly advise your client regarding his/her rights and remedies as a Trust beneficiary, you need to be quite familiar with what duties are imposed on a Trustee under the terms of the Trust and the Trust Code. I.C. § 30-4-3-6 sets forth twelve (12) statutory duties that a trustee must adhere to, subject to the terms of the Trust. More often than not, the beneficiary is concerned with the lack of communication and transparency by the Trustee. In addition, issues come about regarding conflicts of interest, loyalty and prohibition on self-dealing, investments and management decisions, and the like. Issue spotting and knowing what statutes are available to you and your client to enforce your client’s rights is the precursor to a successful cause of action.

**III. COMMON, AND NOT SO COMMON, ISSUES ENCOUNTERED BY A BENEFICIARY.**

**A. The Trustee will not respond to my requests for information and documentation, now what?** As a result of family strife or other unrelated issues, communication between a Trustee and its beneficiaries can become fractured to a point of non-existent. Your client tells you that he/she has tried to communicate with the Trustee regarding the Trust administration to no avail. What, if anything, can you do on behalf of the beneficiary?

i. First, find out the specific details of your client’s attempts to communicate with the Trustee. Establish a chronology of events. Review any emails, correspondence, text messages, etc. to get a sense of the tone of the communications. Is your client texting and emailing the Trustee every day? Are the communications respectful or derogatory towards the Trustee? If the latter, it would be understandable that the Trustee chose not to engage in such communications with your client. Nevertheless, in the end, you will

need to send written correspondence to the Trustee or his/her legal counsel setting forth the requests being made and the statutory basis which allows you to make the requests on behalf of the beneficiary.

As discussed in Section 2 of this seminar, a Trustee has a duty to keep **certain beneficiaries** reasonably informed about the administration of the trust and of the material facts necessary for the beneficiaries to protect their interests. I.C. § 30-4-3-6(b)(7). A determination of the type of beneficiary who is making the request must be made. The statute requires the Trustee to keep a **current income beneficiary** reasonably informed. The Trustee's duty also extends to **a beneficiary who will become an income beneficiary upon the expiration of the term of the current income beneficiary, if the trust becomes irrevocable by the terms of the trust instrument or the death of the Settlor**. In other words, not all beneficiaries can avail themselves of the rights provided under this statute (e.g., a "specific distribute" entitled only to a specific gift or asset, a remainder beneficiary who is not a current income beneficiary, etc.). **Make sure your client fits into one of these categories before sending your letter to the Trustee or the Trustee's legal counsel.**

The Trustee satisfies this duty by providing a beneficiary, or upon a beneficiary's written request, access to the Trust's accounting and financial records concerning the administration of Trust property and the administration of the Trust. However, what is required to be disclosed? All source documents? Tax returns and tax documentation? Invoices? Bills? Monthly bank statements? Quarterly financial statements? Where is the line drawn? The authors believe it is a case-by-case determination and fact sensitive.

ii. If you receive a response and there is hope of resolution and you would like an enforceable document signed by the Trustee and the beneficiaries regarding these issues, propose a nonjudicial settlement agreement pursuant to I.C. § 30-4-5-25. The resolution of a dispute arising out of the administration of the Trust is a matter that can be resolved by a nonjudicial settlement agreement. I.C. § 30-4-5-25(d) (8).

iii. If no response is received or the response you did receive is not adequate and there is no chance of resolution, your next option would be to file a Petition/Complaint with the Court under I.C. § 30-4-6-5<sup>1</sup> (a "TR" action in a designated probate court, if at all possible)<sup>2</sup>. A

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<sup>1</sup> Docketing a Trust is not required to bring a Trust-related issue before the Court. See *Schrage v. Audrey R. Seberger Living Trust*, 52 N.E.3d 54 (Ind. Ct. App. 2016).



beneficiary of a Trust may maintain an action (1) to compel the Trustee to perform his/her duties; (2) to enjoin the Trustee from committing an act which may be a breach of trust; (3) to compel the Trustee to redress a breach of trust; or (4) to remove a trustee for cause and to appoint a successor trustee. I.C. § 30-4-3-22. Your pleading would request the Court to enter an Order directing the Trustee to provide the information and documentation requested, along with access to the Trust's accounting and financial records. Depending on the severity of the breach, you could also seek the Trustee's removal (although the authors believe it would take additional and more egregious breaches of fiduciary duty to convince a court to remove a Trustee). More importantly, you would allege that the Trustee's failure to comply with I.C. § 30-4-3-6(b) (7) is a breach of fiduciary duty which authorizes the beneficiary to recover attorney's fees under either I.C. § 30-4-3-11(a) (4) and I.C. § 30-4-3-22.

**B. My brother, who is a Trust beneficiary and the Trustee, will not vacate the residence and it's been three years since my dad died? How do we get him out and move this along?** The Trustee has a duty to make the residence productive for both the income and remainder beneficiaries. I.C. § 30-4-3-6(b) (4). "Productive" includes the production of income. *Id.* If the Trustee remains in the residence, he/she should pay fair market rent to the Trust or vacate the residence and rent the same to a third party for fair market rent (assuming there is not intent in the near future to clean out and sell the residence). Moreover, remaining in the residence violates the Trustee's duty of neutrality and loyalty. A trustee's fundamental duty of complete loyalty to the interests of the beneficiaries requires the Trustee to forego all selfish interests in the administration of the Trust. See *Massey v. St. Joseph Bank and Trust Co.*, 411 N.E.2d 751 (Ind. Ct. App. 1980). In addition, the Trust Code's conflict of interest statute is also at play here. I.C. § 30-4-3-5. Here are your options.

i. Send a demand letter to the Trustee or his/her legal counsel demanding that the Trustee vacate the premises or pay fair market rental until the residence is sold. Allege that the failure to do so constitutes a breach of fiduciary duty by the Trustee and a conflict of interest.

ii. If you receive a response and there is hope of resolution and you would like an enforceable document signed by the Trustee and the beneficiaries regarding these issues, propose a nonjudicial settlement agreement pursuant to I.C. § 30-4-5-25. The resolution of a

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<sup>2</sup> Jurisdiction in this state for all matters arising under this article shall be with the court exercising probate jurisdiction. I.C. § 30-4-6-1.

dispute arising out of the administration of the Trust is a matter that can be resolved by a nonjudicial settlement agreement. I.C. § 30-4-5-25(d) (8).

iii. If no response is received or the response you did receive is not adequate and there is no chance of resolution, your next option would be to file a Petition/Complaint with the Court under I.C. § 30-4-6-5 (a “TR” action in a designated probate court, if at all possible). A beneficiary of a Trust may maintain an action (1) to compel the Trustee to perform his/her duties; (2) to enjoin the Trustee from committing an act which may be a breach of trust; (3) to compel the Trustee to redress a breach of trust; or (4) to remove a trustee for cause and to appoint a successor trustee. I.C. § 30-4-3-22. Your pleading would request the Court to enter an Order directing the Trustee to vacate the premises or pay fair market rental from date-of-death to the present. Depending on the severity of the breach, you could also seek the Trustee’s removal (although the authors believe it would take additional and more egregious breaches of fiduciary duty to convince a court to remove a Trustee). More importantly, you would allege that the Trustee’s failure to make the residence productive for both the income and remainder beneficiaries per I.C. § 30-4-3-6(b)(4) and remaining in the residence without paying fair market rental from date-of-death to the present in violation of the Trustee’s duty of neutrality and loyalty and I.C. § 30-4-3-5 authorizes the beneficiary to recover attorney’s fees under either I.C. § 30-4-3-11(a)(4) and I.C. § 30-4-3-22.

**C. I have requested an accounting of the Trust administration from the Trustee but the Trustee will not respond. What are my options?** Unless the terms of the Trust provide otherwise or unless waived in writing by an adult, competent beneficiary, the Trustee is required to deliver a written statement of accounts to each **income beneficiary or the income beneficiary’s personal representative annually**. I.C. § 30-4-5-12(a). The statement must 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. *Id.* You will need to review the terms of the Trust to determine whether there is language governing the provision of accountings to the beneficiaries. Trusts typically have language related to the Trustee **not** having to account to the Court. However, it is not very common to see a Trust state that **no** accountings are to be provided to the Trust beneficiaries. Yet, see *Penner vs. Penner*, 22 N.E.3<sup>rd</sup> 593 (Ind. Ct. App. 2014) (holding that the trustee was not required to provide a disgruntled beneficiary with an accounting because the trust terms stated that “No accountings or reports shall be required of the trustee.”). If such language is not included in the Trust in your case, the following options are available:

i. Send a demand letter to the Trustee or his/her legal counsel requesting an accounting and the supporting materials pursuant to I.C. § 30-4-5-12 and I.C. § 30-4-3-6(b) (7). Allege that the failure to provide accounting and supporting documentation constitutes a breach of the Trustee's fiduciary duty.

ii. If no response is received or the response you did receive is not adequate and there is no chance of resolution, your next option would be to file a Petition/Complaint with the Court under I.C. § 30-4-6-5 (a "TR" action in a designated probate court, if at all possible). A beneficiary of a Trust may maintain an action (1) to compel the Trustee to perform his/her duties; (2) to enjoin the Trustee from committing an act which may be a breach of trust; (3) to compel the Trustee to redress a breach of trust; or (4) to remove a trustee for cause and to appoint a successor trustee. I.C. § 30-4-3-22. Your pleading would request the Court to enter an Order directing the Trustee to prepare and file an accounting with the Court in the format prescribed by I.C. § 30-4-5-13. You could also cite to I.C. § 30-4-5-12(c)<sup>3</sup> in support of your request for an accounting. Depending on the severity of the breach, you could also seek the Trustee's removal (although the authors believe it would take additional and more egregious breaches of fiduciary duty to convince a court to remove a Trustee). More importantly, you would allege that the Trustee's failure to comply with I.C. § 30-4-5-12 and I.C. § 30-4-3-6(b) (7) is a breach of fiduciary duty which authorizes the beneficiary to recover attorney's fees under either I.C. § 30-4-3-11(a) (4) and I.C. § 30-4-3-22.

**D. A third party owes money to the Trust but the Trustee will not pursue payment? Is there anything I can do to pursue the debt on behalf of the Trust?** What if there exists a Promissory Note payable in favor of the Trust by a third party (e.g., the Settlor's neighbor). The Trustee does not want to pursue the third party because he/she helped the Settlor during lifetime and looked after the Settlor on behalf of the family. The debt owed is \$50,000.00. The Trustee refuses to take action against the third party pursuant to I.C. § 30-4-3-21. What can the beneficiary do?

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<sup>3</sup> (c) Upon petition by the settlor, a beneficiary or the beneficiary's personal representative, a person designated by the settlor to have advisory or supervisory powers over the trust, or any other person having an interest in the administration or the benefits of the trust, including the attorney general in the case of a trust for a benevolent public purpose, the court may direct the trustee to file a verified written statement of accounts showing the items listed in section 13(a) of this chapter. The petition may be filed at any time; however, the court may not, in the absence of good cause shown, require the trustee to file a statement more than once a year.

i. I.C. § 30-4-3-21 authorizes a beneficiary to pursue the claim on behalf of the Trust beneficiaries if the Trustee is unable, unwilling or neglects to commence an action under I.C. § 30-4-3-15 within a reasonable time not to exceed thirty (30) days. You would first need to send a written demand to the Trustee or his/her legal counsel requesting that the Trustee commence an action within thirty (30) days. If no action is taken, the beneficiary, on behalf of the Trust and its beneficiaries, can file suit to recover on the Promissory Note. It is recommended that you file a Petition/Complaint with the Court under I.C. § 30-4-6-5 (a “TR” action in a designated probate court, if at all possible).

**E. The Trustee refuses to distribute the Trust assets to the beneficiaries, even a partial distribution. Is there anything I can do?**

Where there is no question that a substantial portion of the trust corpus is ripe for distribution and the trustees are so aware, the trustees’ failure to distribute will sustain a probate court’s finding that the trustees breached their duty to administer. *Eiteljorg v. Eiteljorg*, 951 N.E.2d 565, 571 (Ind. Ct. App. 2011), transfer denied. As a matter of policy, beneficiaries should not be starved of distributions to which they are undisputedly entitled. *Id.* If substantial time has passed since the Settlor’s death and the Trustee refuses to make even a partial distribution, here are your options:

i. Send a demand letter to the Trustee or his/her legal counsel requesting at least a partial distribution citing *Eiteljorg* and that failing to make such distribution is a breach of fiduciary duty.

ii. If no response is received or the response you did receive is not adequate and there is no chance of resolution, your next option would be to file a Petition/Complaint with the Court under I.C. § 30-4-6-5. A beneficiary of a Trust may maintain an action (1) to compel the Trustee to perform his/her duties; (2) to enjoin the Trustee from committing an act which may be a breach of trust; (3) to compel the Trustee to redress a breach of trust; or (4) to remove a trustee for cause and to appoint a successor trustee. I.C. § 30-4-3-22. Your pleading would request the Court to enter an Order directing the Trustee to make at least a partial distribution in accordance with *Eiteljorg*. Depending on the severity of the breach, you could also seek the Trustee’s removal (although the authors believe it would take additional and more egregious breaches of fiduciary duty to convince a court to remove a Trustee). More importantly, you would allege that the Trustee’s failure to comply with *Eiteljorg* is a breach of fiduciary duty which authorizes the beneficiary to recover attorney’s fees under either I.C. § 30-4-3-11(a) (4) and I.C. § 30-4-3-22.

**F. I just received a Notice from the Trustee's attorney that I have 90 days to contest the Trust. What does that mean?** I.C. § 30-4-6-14 provides a mechanism for the Trustee and his/her counsel to “start the clock” on the 90-day time period to contest the Trust. The Trustee must provide the person (not necessarily a beneficiary) a trust certification and notice which includes the elements set forth in the statute.<sup>4</sup> The 90-day clock starts when the documents are “received” by the beneficiary/client. You will need to determine exactly when the documents were received and calendar the deadline accordingly. Also, please be aware of Indiana’s “no contest clause” statute (I.C. § 30-4-2.1-3). If the Trust contains such a provision, and your client is a named beneficiary (as opposed to a third party to which the statute does not apply), you will need to determine whether it makes sense to initiate a Trust Contest. A review of the current Trust and the Trust that would be effective if the current Trust is set aside is paramount. How would your client fare under each Trust? You may also have to initiate a Petition/Complaint under I.C. § 30-4-6-5 (a “TR” action in a designated probate court, if at all possible) to obtain copies of the current Trust and the prior Trust. Several procedural hoops lie ahead when representing a beneficiary that has received the 90-day notice and wants to initiate a Trust Contest.

**IV. CONCLUSION.** Being a Trust beneficiary certainly has its challenges when the Trustee is not cooperating or communicating with the beneficiaries. When representing a Trust beneficiary in these situations, utilizing the statutes available to your client to improve The Trust terms and the Trust Code provide you and the Trustee with a roadmap and the necessary tools to address these common, and sometimes uncommon, fact patterns that arise during Trust administrations. Having a good grasp of the Trust Code and what rights and remedies are available to the Trustee is paramount.

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<sup>4</sup> (a) A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:

(1) Ninety (90) days after the person receives from the trustee a copy of a trust certification required by IC 30-4-4-5 and a notice that:

(A) informs the person of the trust's existence;

(B) states the trustee's name and address;

(C) states:

(i) the person's interest in the trust, as described in the trust document; or

(ii) that the person has no interest in the trust; and

(D) states the time allowed for commencing the proceeding.

(2) Three (3) years after the settlor's death.

# Section Four

# ACCOUNTINGS

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An Elder Law & Estate Planning Firm

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## Section Four

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## **ACCOUNTINGS**

### **A. INTRODUCTION**

By the time you reach the stage of providing an accounting to the Beneficiaries, you should have a good handle on how well the Trust Administration has progressed. More importantly, you should know whether there is a good relationship between the Trustee and the Beneficiaries. That relationship dictates how you will handle the accounting requirement.

Everyone is entitled to an accounting. I am of course being a little facetious. Not “everyone” should receive an an accounting. Normally, only the current Beneficiaries should receive the accounting. However, I believe if you look hard enough, you’ll find a case that says even a remote, contingent beneficiary is entitled to one, IF they request one. I have never had one ask for an accounting. I might not provide it, depending on the circumstances of the case.

Since you must do an accounting in 99% of the trust administrations you will handle, how can you simplify that process.

Well, it begins at the beginning of the trust administration. You need to have instructed the Trustee to keep good records of Receipts (Deposits into the ONE account the Trustee has for paying bills and depositing income) and Disbursements. Today, most Trustees can do this on a spread sheet and provide it to you that way. That’s fine, but it probably will not satisfy the statutory accounting requirement.

There is another, even more important, (in my mind) factor in this process that needs to be addressed. You need to instruct, and insist, that your Trustee sends you copies of their monthly bank statements on that checking account. Even if the bank doesn’t send statements, the Trustee can request them, obtain them and send to them to you. They are important in this process.

In the process of gathering this information, you have learned from the Trustee that the Beneficiaries don't want an accounting. They are satisfied with everything and simply want to get done and finish the administration and distribute the assets. I would suggest you still gather the information for your informal accounting. You want this in your records. If something happens further down the road, you have material to refer to. You don't want to have to chase the Trustee down to gather the information.

You want something in your file to protect you about this no accounting business. Send a Memo to the Beneficiaries. Advise them of their option to receive an informal accounting, but they can also waive their right. They do so by signing a Waiver and return it to you. Everyone waives the accounting, you distribute and you are done.

**[See the Memo and Waiver that immediately follows this part of the material]**

**TO: BENEFICIARIES OF THE \_\_\_\_\_ LIVING TRUST**  
**FROM: JOHN M. O'DROBINAK**  
**SUBJECT: WAIVER OF ACCOUNTING**  
**DATE:**

---

As a Beneficiary, you have the option of requesting an informal accounting from the Successor Trustee. This accounting will show all receipts of income and disbursements from date of death through the current date. However, if you feel comfortable with the actions taken by

throughout the administration of the Trust and do not feel it necessary to see his accounting, you may waive same.

Enclosed are three (3) copies of Waivers. Please sign and return two (2) copies in the self-addressed, stamped envelope provided for your convenience. You may retain a copy for your file.

If all Beneficiaries agree to waive the accounting, we will then be in a position to move toward making a distribution of the Trust assets. However, if you wish to review the Trust accounting so that you are aware of how your distributive share is calculated, please call us immediately to request same.

Thank you for your prompt attention to this matter and if you have any questions, you may contact \_\_\_\_\_ or our Office.

In The Matter of the Trust Administration of the)  
\_\_\_\_\_ Living Trust, dated , “Trust” )  
\_\_\_\_\_, Decedent )

**WAIVER AND CONSENT**

\_\_\_\_\_, being sworn, states that:

1. I am a Residuary Beneficiary of the \_\_\_\_\_ Trust.
2. I am familiar with the performance of the duties of the Successor Trustee of the Trust, and hereby waive the requirement of receiving an informal 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 \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
**Residuary Beneficiary**

## **B. INFORMAL ACCOUNTING**

So, you have the spreadsheet and the bank statements and it has been a non-contentious trust administration.

It is time to do something with them and close the trust administration. I first try to use an informal process to close the administration. If everything has gone well and everyone is happy, why not try to close it as simply as possible. A lot depends upon how transparent you have been and how transparent the Trustee has been. Most of the times the beneficiaries are as interested in closing things as you and the Trustee are.

We put together the spreadsheet, and the bank statements, (usually just the last one) and send a Memo to all beneficiaries explaining the accounting situation.

In this Memo, I advise them of their rights regarding dealing with the Informal Accounting. I do not refer to it as informal, but the Memo addresses the formal accounting situation. I want to let the beneficiaries know their options. Why? Because I need to know what they are going to do ASAP. They can continue to deal nicely and sign the Consent we send to them with the Memo and the accounting information. They return that to me, we distribute and we are done.

**(See the Memo and Consent that immediately follows this part of the materials)**

**TO: BENEFICIARIES OF \_\_\_\_\_ LIVING TRUST**  
**FROM: JOHN M. O'DROBINAK**  
**SUBJECT: INFORMAL TRUST ACCOUNTING**  
**DATE:**

---

As a Residuary Beneficiary of the \_\_\_\_\_ Living Trust, you are entitled to review the enclosed accounting of the Successor Trustee evidencing all of the income and expenses from the date of death through the present date so that you are aware of how your distributive share is calculated. I am also enclosing a copy of the recent bank statement evidencing the cash on hand balance.

Please contact me immediately if you have questions regarding any entries. *IF* after you have received a response to your questions or concerns, you do not consent to the accounting, then you may request my Office to perform a 'formal' accounting. This will incur additional attorney fees as it is a lengthy process. You will then be provided with the formal accounting and asked again to consent to same. *IF* you still do not consent to the Trust accounting, we will then file it with the Court and ask for a hearing upon same. You will be notified of the hearing date and ordered to file your written objections in compliance with all applicable provisions of Law and Court Rules, as well as attend the hearing in person to testify. You may also retain the services of an Attorney to assist you, if you decide you need representation. Any Court action will result in a further increase of my attorney fees. The Court will make its determination whether to approve the accounting based on evidence heard at the hearing. If it is determined that the objections raised by a Beneficiary are frivolous, the Court may charge my attorney fees against that individual Beneficiary's final distributive share.

**PLEASE NOTE:** *IF* for any reason, you elect **NOT** to return your Consent or not respond in any manner regarding the enclosed accounting by the deadline date, you will leave us no alternative but to prepare a formal accounting and immediately file it with the Court. All Residuary Beneficiaries will then receive notice of the Court hearing thereon. The additional attorney fees incurred for preparation of the formal accounting and any Court action may be assessed against the individual(s) due to their failure to respond in a timely manner.

I am providing you with the steps outlined above so that you are aware of your options, and can make an informed decision regarding this matter. Please do not consider this to be a threat of any kind. It is merely an effort to advise you of your rights.

If this accounting is acceptable, please sign and return two (2) copies of the Consent form in the enclosed self-addressed, stamped envelope **no later than** \_\_\_\_\_. You may keep a copy of the Consent for your file.

Distributions will not be made until the accounting issues, if any, are resolved. If someone does request a formal accounting, then all Beneficiaries will receive it for review and consent.

Thank you for your prompt attention to this matter.

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

**WAIVER AND CONSENT TO INFORMAL ACCOUNTING**

The undersigned, being sworn, states that:

1. I am a Residuary Beneficiary of the \_\_\_\_\_ Living Trust.
2. I have reviewed the informal accounting submitted by the Successor Trustee and
  - a. \_\_\_\_\_ consent to all actions taken to date in the Trust Administration of \_\_\_\_\_, and hereby waive a formal, line-by-line accounting performed by the Law Office of O'Drobinak & Nowaczyk, P.C.
  - or (please check a or b)
  - b. \_\_\_\_\_ request the Law Office of O'Drobinak & Nowaczyk, P.C. to perform a formal, line-by-line accounting with the understanding that the \_\_\_\_\_ Living Trust will incur additional attorney fees as a result.

I affirm under penalties for perjury, the above and foregoing is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Residuary Beneficiary**



### **C. FORMAL ACCOUNTING**

In the rare case that the administration has not gone well, you will find that you will be faced with preparing a formal accounting. You will need all of the same material from the Trust and possibly more. You need to satisfy the Statutory requirements. See I.C. 29-1-16-4.

There has been some contentious situations, some complications, some family problems and the parties don't get along, etc. Many reasons can result in the need for a formal accounting. Not the least of which is that you tried for the informal one, and one of the Beneficiaries refused to sign the Consent and wanted a formal accounting.

You want to keep your time records for the preparation of this accounting. That information may come in handy in the future, if this matter ends up in Court.

When you have the formal accounting completed, you forward it to all of the Beneficiaries, not just the one who may have requested it. Send them a Memo, again explaining the process of how the trust administration will progress. It will either go smoothly to its conclusion, or it will end up in Court. Hopefully that doesn't happen.

**(See the Memo, Accounting and Consent that immediately follows this part of the materials)**

**TO: BENEFICIARIES OF THE \_\_\_\_\_ LIVING TRUST**

**FROM: JOHN M. O'DROBINAK**

**SUBJECT: FORMAL ACCOUNTING**

**DATE:**

---

Enclosed is the formal accounting of the \_\_\_\_\_ Living Trust, which includes the inventoried assets, additional assets, receipt of income, disbursements, specific distributions, residuary distributions, a recap of all categories showing the balance of assets on hand, and the known outstanding administrative expenses.

Once you have had an opportunity to carefully review the formal accounting, you may contact me if you have questions regarding any of the entries. *IF* after you have received a response to your questions or concerns, you do not consent to the formal accounting, we will then file it with the Court and ask for a hearing upon same. You will be notified of the hearing date and ordered to file your written objections in compliance with all applicable provisions of Law and Court Rules, as well as attend the hearing in person to testify. You may also retain the services of an Attorney to assist you, if you decide you need representation. The Court will make its determination whether to approve the accounting based on evidence heard at the hearing. If it is determined that the objections raised by a Beneficiary are frivolous, the Court may charge my attorney fees associated with this formal accounting and Court action against that individual Beneficiary's final distributive share.

Please date, sign and return two (2) copies of the enclosed Consent to the formal accounting **no later than** \_\_\_\_\_ in the self-addressed, stamped envelope. If I do not receive your signed Consent by the deadline date of \_\_\_\_\_, then I will have no other option but to file it with the Court and ask for a hearing date.

## Formal Accounting - \_\_\_\_\_ Living Trust dated

### I. Date of Death Values on Assets

Description of Asset		Date of Death Value
1	address appraisal	660,000.00
2	address appraisal	181,875.00
3	address appraisal	194,000.00
4	address appraisal	164,610.00
5	address appraisal	87,500.00
6	Household Furnishings/Pers Property estimated	5,000.00
7	bank checking acct #	3,412.00
8	Bank savings acct #	28,557.10
9	Bank CD acct #	<u>11,024.24</u>

**Total Inventoried Assets** **\$ 1,335,978.34**

### II. Additional Assets Due to Earned Interest OR Actual Value vs. DOD Value

Description of Asset		Acquistion Value	Change in Value
1	Bank checking	2,419.33	-992.67
2	Bank savings	37,557.66	9,000.56
3	Bank CD	11,133.20	108.96
4	Earned Interest	0.32	0.32
5	Net proceeds from Real Estate sale	1,268,323.92	-19,661.08
6	HHF/Pers Property Auction proceeds	18,350.00	<u>13,350.00</u>

**Total Additional Assets** **\$ 1,806.09**

### III. Receipt of Income

1	Rent	15,840.00	
		8,494.00	
		17,246.00	41,580.00
2	Times refund		4.21
3	Life insurance proceeds		1,056.67
4	Life insurance proceeds		5,513.20
5	Hicksgas refund		879.32
6	Utility/Gas refunds		<u>972.72</u>

**Total Receipt of Income** **\$50,006.12**

### IV. Payment of Expenses

1	Jane Doe	Funeral luncheon	157.97
2	Medical Supply	Medical bill	69.55
3	Nipsco	Electric/gas	126.87
4	Funeral home	Funeral	9,012.97
5	AT&T	phone	36.07
6	Lake County Treasurer	RE taxes	4,913.61

7	Indiana Insurance	homeowners/farm	225.33
8	Nipsco	Electric/gas	99.18
9	Nipsco	Electric/gas	5.31
10	Nipsco	Electric/gas	17.89
11	Nipsco	Electric/gas	118.71
12	AT&T	phone	30.82
13	Nipsco	Electric/gas	26.46
14	Nipsco	Electric/gas	6.06
15	Indiana Insurance	homeowners/farm	225.37
16	Indiana Insurance	homeowners/farm	225.33
17	AT&T	phone	31.33
18	Nipsco	Electric/gas	6.86
19	Nipsco	Electric/gas	133.63
20	AT&T	phone	69.88
21	Indiana Insurance	homeowners/farm	470.66
22	IN Dept of Revenue	state income taxes	134.00
23	AT&T	phone	31.27
24	Indiana Insurance	homeowners/farm	233.17
25	Title Ins Company	title work IN parcels	1,240.00
26	Title Ins Company	title work IL parcel	272.00
27	Nipsco	Electric/gas	56.62
28	AT&T	phone	34.95
29	Indiana Insurance	homeowners/farm	233.17
30	Lake County Treasurer	RE taxes	10,447.02
31	AT&T	phone	34.62
32	Nipsco	Electric/gas	74.64
33	Kankakee Co. Collector	IL RE taxes	4,084.02
34	Indiana Insurance	homeowners/farm	233.17
35	Caseys	farm gas	100.00
36	Lake County Treasurer	Inheritance tax	20,063.81
37	Attorney name	Attorney fees	5,000.00
38	Indiana Insurance	homeowners/farm	233.17
39	AT&T	phone	34.64
40	Nipsco	Electric/gas	67.98
41	Indiana Insurance	homeowners/farm	233.17
42	AT&T	phone	34.64
43	Nipsco	Electric/gas	75.27
44	Indiana Insurance	homeowners/farm	233.17
45	Appraisal company	Appraiser fee	200.00
46	Caseys	farm gas	100.00
47	AT&T	phone	34.64
48	Nipsco	Electric/gas	79.54
49	Indiana Insurance	homeowners/farm	233.17
50	AT&T	phone	34.70
51	Nipsco	homeowners/farm	64.83
52	Indiana Insurance	homeowners/farm	233.17
53	Nipsco	Electric/gas	81.13
54	AT&T	phone	34.70
55	Indiana Insurance	homeowners/farm	233.17
56	Nipsco	Electric/gas	135.11
57	AT&T	phone	34.70

58	Indiana Insurance	homeowners/farm	233.17
59	AT&T	phone	34.86
60	Nipsco	Electric/gas	154.31
61	Indiana Insurance	homeowners/farm	233.17
62	Nipsco	Electric/gas	166.33
63	AT&T	phone	34.85
64	Indiana Insurance	homeowners/farm	233.17
65	Accountant name	Accountant fees	150.00
66	Nipsco	Electric/gas	171.49
67	AT&T	phone	34.85
68	Indiana Insurance	homeowners/farm	233.13
69	Nipsco	Electric/gas	100.96
70	AT&T	phone	34.81
71	Indiana Insurance	homeowners/farm	241.50
72	Accountant name	Accountant fees	100.00
73	Nipsco	Electric/gas	108.89
74	AT&T	phone	38.54
75	Indiana Insurance	homeowners/farm	241.50
76	Caseys	farm gas	100.00
77	Nipsco	Electric/gas	89.68
78	AT&T	phone	38.19
79	Indiana Insurance	homeowners/farm	241.50
80	Nipsco	Electric/gas	87.85
81	AT&T	phone	38.91
82	Nipsco	Electric/gas	<u>77.37</u>

**Total Expenses** **\$63,912.25**

## **V Partial Distributions Paid on April 4, 2012**

<b>Beneficiary</b>	<b>Amount Paid</b>
John Doe	301,120.05
Mary Doe	301,120.05
Jane Doe	301,120.05
Jim Doe	<u>301,120.05</u>
<b>Total Partial Distributions</b>	<b>\$1,204,480.20</b>

## **VI Recapitulation**

Total Inventory	\$1,335,978.34
Total Additional Assets	\$1,806.09
Total Receipts of Income	<u>\$50,006.12</u>
<b>Total Chargeable Assets</b>	<b>\$1,387,790.55</b>
<b>Less Expenses</b>	<b>-\$63,912.25</b>
<b>Less Partial Distributions</b>	<b><u>-\$1,204,480.20</u></b>
<b>Residuary Assets Remaining Total</b>	<b>\$119,398.10</b>

## **VII Final Distributions**

John Doe	\$27,022.83
Mary Doe	\$25,522.84
Jane Doe	\$27,022.83
Jim Doe	<u>\$27,022.83</u>

**Total Final Distributions**

**\$106,591.33**

**Outstanding Administration Expenses - Paid**

Jim Doe - out of pocket expenses 306.77

Jim Doe - Successor Do Trustee Fee 4,000.00

Mary Doe- Succ Co Trustee Fee 3,500.00

Attorney name - Attorney Fees 5,000.00

**Total Outstanding Expenses-Paid**

**\$12,806.77**

**-\$119,398.10**

**Trust Checking Account Balance:**

**\$0.00**

**We each affirm, under the penalties of perjury, that the foregoing is true and correct.**

\_\_\_\_\_  
**Jim Doe, Succ Co-Trustee**

\_\_\_\_\_  
**Mary Doe, Succ Co-Trustee**

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

#### **D. COURT**

This will not happen very often. When it does, it may be a blood bath. This is especially true if the Trustee has not acted properly for some reason. Remember, if for some reason the Trustee has breached their fiduciary duty and you have spent time in defending him, you may not have your fees paid from the Trust. The Court will decide that and the Trustee may have to pay your fees from their own funds.

You will file a petition to docket the Trust and approve the accounting. It may no longer be necessary to formally docket the trust. I still do it that way. You docket and file the accounting. You ask the Court for a hearing date. It is extremely important that you request the date by which ALL objections must be filed in writing. I always include the date in my OPF. I want to know what the objections are. You may just be hearing them for the first time if it has been contentious. More importantly, you need time to be able to defend against the objections. So, you need to give yourself enough time to prepare your defense against the objections. Incidentally, this is where you may be able to ask for your fees to be assessed against the Objector's share, if they lose. Don't be faint hearted, ask for them. Also, if no written objections are made but during the hearing the Court lets someone speak and raise objections, when they finish move to strike their comments because they have violated the Court Order requiring written objections to be filed prior to the Hearing. I have done this and have always been successful.

This will be a war if it goes to trial. Try to heal the wounds. If that doesn't work, remember this: **The Good Lord said to turn the other cheek, BUT He did not say to let them beat the hell out of you**

**(See the Petition, et al., that follows this part of the materials)**

STATE OF INDIANA )

) SS:

COUNTY OF LAKE )

IN THE \_\_\_\_\_ COURT

SITTING AT

CROWN POINT, INDIANA

IN THE MATTER OF THE TRUST OF )

) TRUST NO.

\_\_\_\_\_, DECEASED )

**PETITION TO DOCKET TRUST AND**  
**FOR APPROVAL OF FORMAL ACCOUNTING**

\_\_\_\_\_, as Successor Trustee of the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, being sworn, shows the Court that:

1. \_\_\_\_\_ entered into a written Trust Agreement on \_\_\_\_\_, which is known as the \_\_\_\_\_ Living Trust, "Trust". The Trust was restated on \_\_\_\_\_, and a copy is attached hereto and made a part hereof. Petitioner became the Successor Trustee upon the death of \_\_\_\_\_ on \_\_\_\_\_.
2. The Residuary Beneficiaries of the Trust and their relationship to the Trustor and place of residence are:  
  
All of the Beneficiaries are competent adults.
4. All Beneficiaries should be given notice with regard to this Petition by certified mail/return receipt.
5. On \_\_\_\_\_, a memorandum and the Successor Trustee's informal accounting were forwarded to the Residuary Beneficiaries with Waiver and Consent forms to sign and return if the informal accounting was acceptable. Correspondence dated \_\_\_\_\_, from \_\_\_\_\_ requested a proper accounting. Waiver and Consent forms were executed and returned by \_\_\_\_\_.
6. \_\_\_\_\_, a Formal Accounting was sent to all Residuary Beneficiaries, along with another Waiver and Consent form. Waiver and Consent forms were executed and returned by \_\_\_\_\_.



**TRUST OF \_\_\_\_\_, DECEASED**

**TRUST NO.**

7. On \_\_\_\_\_, upon receiving correspondence dated \_\_\_\_\_, from \_\_\_\_\_ advising that her copy of the Formal Accounting had not been signed by the Successor Trustee, a signed copy of the Formal Accounting was forwarded to her, with inserted transaction dates as requested by \_\_\_\_\_.
8. As of the date of this Petition, Lo Ann Lux had not consented to the Formal Accounting.
9. It is necessary to docket the Trust and to set a hearing on the Formal Accounting, a copy of which is attached hereto and made a part hereof, in order to proceed to make final distribution.
10. The name and business address of the counsel who will represent the Trustee is John M. O'Drobinak, 1806 Robinhood Blvd., Suite A, Schererville, IN 46375, Phone (219) 865-2285, Indiana Attorney No. 9729-45.
11. Attorney fees incurred in the filing of this Petition due to the lack of consent by the individual Beneficiary should be charged against and payable out of the Beneficiary's final distributive share in the event the Formal Accounting is accepted by the Court. The amount of such fees should be determined by the Court.

**WHEREFORE**, Petitioner prays for an Order of the Court setting this matter for hearing to docket the \_\_\_\_\_ Living Trust, dated \_\_\_\_\_; for approval of the Formal Accounting of the Trust; and for all other just and proper relief in the premises.

I affirm under the penalties of perjury that the above and foregoing is true and correct on \_\_\_\_\_.

\_\_\_\_\_  
**Successor Trustee**

STATE OF INDIANA )

) SS:

COUNTY OF LAKE )

IN THE LAKE CIRCUIT COURT

SITTING AT

CROWN POINT, INDIANA

IN THE MATTER OF THE TRUST OF )

) TRUST NO.

\_\_\_\_\_, DECEASED )

**ORDER SETTING HEARING ON PETITION TO DOCKET TRUST**  
**AND FOR APPROVAL OF FORMAL ACCOUNTING**

\_\_\_\_\_, as Successor Trustee of \_\_\_\_\_ Living Trust, dated \_\_\_\_\_, submits Petition to Docket Trust and For Approval of Formal Accounting.

The Court having examined the Petition and being advised, finds that the Petition should be set for hearing and that notice should be given to all interested parties, namely all Residuary Beneficiaries,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Petition to Docket Trust and For Approval of Formal Accounting is set for hearing on \_\_\_\_\_, 2021, at \_\_\_\_\_ a.m./p.m. That notice shall be given by certified mail/return receipt, and an Affidavit of Service is to be filed.

All of which is found and recommended this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Probate Commissioner, Lake Circuit Court

IN THE LAKE CIRCUIT COURT  
SITTING AT  
CROWN POINT, INDIANA

**WAIVER OF NOTICE OF HEARING AND  
CONSENT TO DOCKETING OF TRUST**

NAME BENEFICIARY

STATE OF INDIANA       )  
                                      ) SS:  
COUNTY OF LAKE        )

IN THE LAKE \_\_\_\_\_ COURT  
SITTING AT  
CROWN POINT, INDIANA

IN THE MATTER OF THE TRUST OF        )  
  ) TRUST NO.  
\_\_\_\_\_, DECEASED                        )

**PETITION TO DOCKET TRUST, REQUEST TRUST ACCOUNTING  
AND REMOVAL OF SUCCESSOR TRUSTEE**

Petitioner, \_\_\_\_\_, as a Beneficiary of the \_\_\_\_\_ Trust Agreement, dated \_\_\_\_\_, being sworn, shows the Court that:

1. \_\_\_\_\_ entered into a written Trust Agreement on \_\_\_\_\_, known as the \_\_\_\_\_ Trust Agreement, "Trust", a copy of which Trust Agreement is attached to and made a part of this Petition.

2. Upon the death of \_\_\_\_\_ on \_\_\_\_\_, and pursuant to the terms of the Trust, \_\_\_\_\_, "Successor Trustee", became the Successor Trustee of the Trust.

3. Petitioner advises the Court that the Successor Trustee failed to advise Petitioner of his right to contest the Trust as provided in I.C. 30-4-6-14. As a result, he did not receive the Trust Certification as required under I.C. 30-4-4-5, which combined with the prior statute, details the times to contest the validity of the Trust. This amount to be a failure by the Successor Trustee to perform her duties properly.

4. The Beneficiaries of the Trust and their relationship to the Trustor and place of residence are:

and all of the Beneficiaries are competent adults.

**TRUST OF \_\_\_\_\_, DECEASED**

**TRUST NO.**

4. All Beneficiaries should be given notice with regard to this Petition by First Class U.S. Mail, and Petitioner should file his Affidavit of Service with the Court.

5. Petitioner herein advises the Court that the Successor Trustee has made distributions in the amount of \$5,000.00 each to twelve (12) grandchildren of the Decedent, totaling \$60,000.00, from the Trust assets; although there are a total of fourteen (14) grandchildren of the Decedent.

6. Petitioner further advises the Court that the Successor Trustee made those distributions without having authority to do so, as there are no terms or provisions of the Trust which allow her to make such distributions. In addition, it has been alleged all Beneficiaries consented to this illegal distribution. Petitioner denies having given such consent. Such illegal distribution is grounds for removal of the Successor Trustee, is a major breach of her Fiduciary duty and amounts to a conversion of Trust assets to her own use, which is illegal and totally violates the law.

7. The Successor Trustee has failed to provide annual accountings of her activities as required by I.C. 30-4-5-12, notwithstanding any provision of the Trust to the contrary. As a result, Petitioner request the Successor Trustee file her Accounting, in the format required by law, pursuant to the laws of Indiana, from the date of death through the present date within thirty (30) days from the date of this Court's Order.

8. Petitioner further requests that no distribution of any nature or kind be made by the Successor Trustee, to anyone, until these matters are resolved.

9. Petitioner believes the Successor Trustee can no longer administer the Trust properly as required by law, as shown by her above illegal acts, and should be removed instantner.

10. The name and business address of the counsel who represents the Petitioner is John M. O'Drobinak, O'Drobinak & Nowaczyk, P.C., 1806 Robinhood Blvd, Suite A, Schererville, IN 46375; Phone (219) 865-2285; and Indiana Attorney No. 9729-45.

**WHEREFORE**, Petitioner prays for an Order of this Court docketing the \_\_\_\_\_ Trust Agreement, dated \_\_\_\_\_; determining whether the Successor Trustee should be removed instantner; determining whether the illegal distribution should be charged against Successor Trustee's share of the Trust assets; ordering the Successor Trustee to file her Accounting in proper form pursuant to the laws of Indiana within thirty (30) days of the Court's Order; to allow Petitioner's Attorney thirty (30) days from the filing date of the Accounting to review and file any objections thereto; to set this matter for a ½ day hearing thereafter; and for all other relief that is proper in the premises.

I affirm under the penalties of perjury that the above and foregoing is true and correct on

\_\_\_\_\_.

## **AUTHORIZATION TO RELEASE AND DISCLOSE PROTECTED HEALTH INFORMATION BY MY HEALTH CARE PROVIDERS TO MY ATTORNEY**

Pursuant to the Health Insurance Portability and Accountability Act, "HIPAA," as it exists today, and as it may be amended hereafter, the undersigned hereby authorizes any and all of my Health Care Providers, including those in existence today and those that may provide me with health care in the future, to release and/or disclose any and all Protected Health Information, "PHI," relevant to the diagnosis and treatment of any physical, mental, and/or emotional condition of mine to:

- A. The Agent(s) and Successor Agent(s) appointed under my Advance Health Care Directive or Durable Power of Attorney for Health Care.
- B. My Attorneys, O'Drobinak & Nowaczyk, and/or any employee of their Law Office, or any Successor thereto;
- C. My Court appointed Guardian, if any;
- D. My Co-Trustee of my Living Trust, if any;
- E. My designated Successor Trustee of my Living Trust, if any;
- F. My designated Attorney-in-Fact, whether under a Property Power of Attorney or an Advance Medical Directive;
- G. Anyone else in a similar position permitted by law to request such information.

The requesting Party under "B" above, is designated "Attorney" herein. The requesting Party under "A, C, D, E, F, and G" above is designated "Fiduciary" herein. Anyone making such a request shall designate their capacity in making such a request and shall be deemed to be a Personal Representative, with all of the authority and power granted to such individuals under HIPAA.

This Release and Disclosure Agreement shall extend to and include, but not be limited to:

- a. My medical history, including specific progress notes regarding any problems that would impact any surgery or procedure's progress or outcome, as well as any problems that would affect my ability to handle my own affairs and make financial, personal and/or medical decisions for myself;
- b. Results of relevant diagnostic or laboratory tests;
- c. My entire medical record; and
- d. Such other information as may be requested by my Attorney, or my Fiduciary.

This PHI will be used by my Attorney for the purpose of carrying out the terms of my Estate Plan as it pertains to my ability to handle my own affairs and make financial, personal and/or medical decisions for myself, and by my Fiduciary as they deem necessary in my best interests

This Authorization shall be in force and effect from and after its execution, until it is revoked. I understand that I have the right to revoke this Authorization, in writing, at any time by sending written notification to my Attorney, my Fiduciary, and any HCP that has received this Authorization. I understand that a revocation is not effective to the extent that any HCP has relied on this Authorization and disclosed any PHI of mine. I understand that information used or disclosed pursuant to this Authorization may be subject to re-disclosure by my Attorney, or my Fiduciary, and may no longer be protected by federal or state law. I understand that I have the right to inspect or copy my health information to be used or disclosed as permitted under federal law or state law to the extent the state law provides greater access rights.

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

\_\_\_\_\_

Date: \_\_\_\_\_

# **Section**

# **Five**



**Trust Contest Litigation:**  
***“IGITUR QUI DESIDERAT PACEM,  
PRAEPARET BELLUM.”***

**By**

**Gregg S. Gordon**

**TRUST PLANNING AND ADMINISTRATION FROM  
START TO FINISH**

Presented March 18, 2021

Indiana Continuing Legal Education Forum  
230 E. Ohio St., Suite 300  
Indianapolis, IN 46204

## Section Five

### Trust Contest Litigation:

***“IGITUR QUI DESIDERAT PACEM,  
PRAEPARET BELLUM.”*** .....

**Gregg S. Gordon**

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These seminar materials and the seminar presentation are intended to stimulate thought and discussion, and to provide those attending the seminar with useful ideas and guidance in the areas of probate litigation. The materials and the comments of Mr. Gordon do not constitute, and should not be treated as, legal advice or other legal technique, device or suggestion, or any of the consequences associated with them. Although we have made every effort to ensure the accuracy of these materials and the seminar presentation, neither Mr. Gordon or Gordon Law Office, LLC assumes any responsibility for any individual's reliance on the written or oral information presented during the seminar. Each seminar attendee should verify independently all statements made in the materials and during the seminar presentation before applying them to a particular fact pattern, and should determine independently the consequences of using any particular device, technique or suggestion before recommending the same to a client or implementing the same on a client's or his or her own behalf.

## I. INTRODUCTION

The phrase "Igitur qui desiderat pacem, praeparet bellum" comes from the book *Epitoma Rei Militaris* written by the Roman general Vegetius and means "if you want peace, prepare for war." It is the author's opinion that this phrase is of particular importance when it comes to trust contest litigation. Preparations for a potential trust contest should begin the moment a trust is prepared. Waiting until the matter has moved into a contested judicial setting will place everyone (other than perhaps the person(s) initiating the contest), at a distinct disadvantage. Evidence supporting the settlor's intent in creating the trust may no longer be available. The trustee's action in administering the trust before the onset of litigation may subsequently place the trustee in peril of being removed as part of the judicial relief being sought. Conversely, if adequate preparation is taken long before the war clouds begin to loom on the horizon, those preparations may very well preclude the filing of litigation. At worst, they may provide a swift and efficient resolution to the litigation.

This presentation is focused primarily on avoiding trust contests and similar contested judicial proceedings. Once litigation ensues, engaging litigation counsel familiar with such matters will probably be necessary and the costs and expenses will increase exponentially. From a legal standpoint, the Indiana Trust Code (Ind. Code § 30-4 *et seq.*) sets out the standards for establishing and administering a trust as well as setting forth the rights and remedies of those persons connected to the trust. From a practical standpoint, it is the author's experience that when the specter of litigation begins to loom, it oftentimes does so because there is either a breakdown in communications or because perceived "wrongs" that have lain dormant for years suddenly take on a new life. Admittedly, litigation can also arise because someone did

do something that was improper. But the likelihood of the latter should diminish significantly if steps are taken, at the onset, to prepare for war.

## **II. IN THE BEGINNING**

Your client comes to you and wants to establish a trust. What do you do?

Today, trusts are marketed as the “solution” to probate. Avoid the expense of an estate, keep your affairs private, etc. etc. etc. And while some of these points are valid *in some settings*, the author would suggest that the first two questions that should be asked are 1) Why does the client desire a trust? and 2) Is a trust really the most efficient method to accomplish the client’s estate planning? These two questions lead to the first point of this presentation – the initial actions taken by the drafting attorney.

### **A. The Drafting Attorney’s File**

If a trust contest erupts, you are virtually guaranteed that the first discovery request that will hit the table is for the drafting attorney’s file. That that file will not be shielded by the attorney-client privilege. The attorney-client privilege “survives even after the death of the client.” *Gast v. Hall*, 858 N.E.2d 154, 163 (Ind. Ct. App. 2006). But it is also established precedent that “an exception to the posthumous survival of the privilege exists when “a controversy arises concerning the validity of the will or between the claimants under the will[.]” *Id.* As the *Gast* court held:

Stated succinctly, the “testamentary exception” is as follows:  
“[C]ommunications by a client to the attorney who drafted his or her will, concerning the will and transactions leading to its execution, generally are not, after the client’s death, protected as privileged communications in a suit between the testator’s heirs, devisees, or other parties who claim under him or her[.]” (quoting 81 Am.Jur.2d *Witnesses* § 374 (2004)).

*Id.* While the author is unaware of precedent directly applying the testamentary exception to a trust contest, given the use of trusts to replace wills as the primary estate

planning documents, the exception will undoubtedly apply to trusts. See *In re Est. of Meyer*, 747 N.E.2d 1159, 1166, fn. 4 (Ind. Ct. App. 2001) (“The parties agree that there is a testamentary exception to the posthumous survival of the attorney client privilege in regard to communications respecting the execution of the Will *or other similar documents*. *Swidler & Berlin v. United States*, 524 U.S. 399, 405, 118 S.Ct. 2081, 141 L.Ed.2d 379 (1998); see also *Kern v. Kern*, 154 Ind. 29, 33, 55 N.E. 1004 (1900).”) (emphasis added). This point is further underscored by the fact that oftentimes with a trust, the settlor will also contemporaneously execute a pour-over will naming the trust as the beneficiary. And the person(s) challenging the trust will more than likely also challenge the will.<sup>1</sup>

So what should the drafting attorney’s file contain? One word: Everything. In the past, a drafting attorney file would typically include some handwritten notes by the attorney, maybe an intake questionnaire, and perhaps a draft or two of the instrument(s) in question. In today’s hi-tech environment, however, this should no longer be the case. Drafts of documents are kept electronically, and these should be preserved including the imbedded metadata.<sup>2</sup> Clients oftentimes utilize electronic communications with their attorney. These e-mails and text should be saved along with digital copies of voicemails. Most video conferencing is also capable of being recorded. The drafting attorney should develop a practice of retaining all these types of communications and

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<sup>1</sup> PRACTICE TIP: If you are representing a person challenging a trust, it is imperative that you also review the settlor’s Last Will and Testament admitted to probate. It is not uncommon for such a will to include a provision which provides that if the Settlor’s trust is found to be invalid for any reason, then the settlor’s estate is to be administered pursuant to the terms of the trust. If this is the case, then filing a trust contest without challenging the validity of the will can result in a pyrrhic victory if the trust is successfully overturned.

<sup>2</sup> PRACTICE TIP: Most word processing programs can be set so that once saved, an electronic document is always opened in a “read only” format requiring it to be saved to a different file. This setting is very useful to allow a practitioner to utilize an existing electronic document as a form while preserving the metadata of the original.

files especially if there is even a suggestion that the proverbial wheels may fall off the wagon when the settlor passes away.

Back in October of 2012, the author did an ICLEF presentation entitled *Avoiding Litigation: Legal Capacity of the Settlor*. As part of that presentation, the author offered suggestions on identifying litigation red flags. Those suggestions bear repeating now.

## **B. Identify Litigation Red-Flags**

Certain situations can signal early on that there may be possible litigation regarding a trust you prepare. In particular:

- 1) Is the Trust a Substantial Departure from the Client's Existing Estate Plan?

Obviously, the only way you can answer this question is to determine if the client already has an existing estate plan and to review that plan. If the proposed trust is a substantial change, then it is incumbent on the drafting attorney to know why by having the settlor explain the change.

- 2). Does the Client Have a Blended Family or a Subsequent Spouse?

Today, it is extremely common for clients to have blended families and/or have children with someone other than the current spouse. These situations oftentimes provide the basis for a subsequent trust contest if the trust results in certain family (or non-lineal family) members being treated differently. This is not to say that a settlor is not entirely free to dispose of his or her property in any manner the settlor sees fit. What is being said is that any disposition of the settlor's property in this setting should also be accompanied by detailed notes as to why the disposition was created in the manner that it was. And again, the settlor should explain the disposition to the drafting attorney.

### 3) Does the Client Give Any Indication of Diminished Capacity?

This question, much like the question regarding an existing estate plan or the unusual disposition of assets, can only be answered if you take the time to learn the answer. Simply asking the client if he or she has any health problems affecting their memory is not enough. Almost no one will readily volunteer that their mental faculties are anything less than perfect. The better approach, in the author's opinion, is to take the time to get to know your client by engaging in social conversations each time you meet with the client. At the initial meeting ask the client where they live, where they work(ed), how long they have lived at their current residence, have they ever been in the military, whether they attend church and other similar questions appropriate to the setting. Take copious notes. At subsequent meetings, double check the answers by asking similar questions tailored to the initial answers. If a client is unable to recall a matter that was discussed in earlier conversation or gives a conflicting answer in a subsequent conversation, then this may indicate that follow-up testing by a professional may be appropriate to verify that the client is competent to execute a trust. In this setting, an ounce of prevention is well worth a pound of cure.

In the same vein, it is oftentimes prudent to explore with the client exactly how and why they sought your services. This is especially true if this is a new client who was previously using the services of a different attorney who is still in practice. If this is the case, you should satisfy yourself that someone is not "encouraging" your client to make a trust for that person's benefit by using a new attorney. Trust contests can arise not only from allegations that the settlor lacked capacity but also because the settlor was unduly influenced.

4) Can the Client Articulate the Rational for the Terms of the Trust?

Your client should be able to explain to you the rational for the specific terms that are to be included in the trust. An answer of “None of your business” or “I’m not sure” is not acceptable. Ind. Code § 30-4-2-10 sets forth the standards for mental capacity regarding trusts. A copy of this code provision is included with these materials.

Pursuant to this code provision, there are two standards for mental capacity embodied in this statute. The first is testamentary capacity.

Under Indiana law, testamentary capacity means that a testator knows:

1. The extent and value of their property;
2. The number and names of those who are the natural objects of their bounty;
3. Those persons’ just desserts with respect to their treatment of and conduct toward the testator during his lifetime, and hold all of this knowledge in the testator's mind long enough to have the will prepared and executed.

*See Irwin Union Bank & Trust Co. v. Springer*, 137 Ind. Ct. App. 293, 295, 205 N.E.2d 562, 564 (1965).

The second standard for mental capacity found in Ind. Code § 30-4-2-10 is commonly referred to as the capacity to contract. This has been defined as:

The test for determining a person's mental capacity to contract is whether the person was able to understand in a reasonable manner the nature and effect of his act. ... In order to avoid a contract, the party must not only have been of unsound mind, but also must have had no reasonable understanding of the contract's terms due to his instability.

*Gallagher v. Central Indiana Bank, N.A.*, 448 N.E.2d 304, 307 (Ind. Ct. App. 1983).

While it is beyond the scope of this paper to discuss the differences in the two



standards<sup>3</sup>, the point remains that the drafting attorney must take steps to ensure that if a subsequent trust contest is filed, there is evidence that the settlor possessed the requisite capacity to establish and fund the trust.

### **C. No Contest Provisions**

In 2003, Ind. Code § 30-4-2.1-3 was added to Indiana Trust Code and provided:

A provision in a trust that provides, or has the effect of providing, that a beneficiary forfeits a benefit from the trust if the beneficiary contests the trust is void.

In 2018, this provision was dramatically changed so that no contest provisions were enforceable in certain instances:

- (a) Except as provided in subsection (b), a no contest provision is enforceable according to the express terms of the no contest provision.
- (b) Subsection (a) does not apply to the following proceedings:
  - (1) An action brought by a beneficiary if good cause is found by a court.
  - (2) An action brought by a trustee or other fiduciary serving under the terms of the trust that incorporates a no contest provision, unless the trustee or other fiduciary is a beneficiary against whom the no contest provision is otherwise enforceable.
  - (3) An agreement, including a nonjudicial settlement agreement, among beneficiaries and any other interested persons to settle or resolve any other matter relating to a trust.

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<sup>3</sup> Decisions addressing the capacity to contract, however, suggest that the distinction between the two capacities may be nominal:

The mental capacity required to enter a contract “is whether the person was able to understand in a reasonable manner the nature and effect of his act” on the date of the agreement. *Wilcox Mfg. Group, Inc. v. Mktg. Servs. of Ind., Inc.*, 832 N.E.2d 559, 562, 563 (Ind.Ct.App.2005). Evaluating mental capacity to contract for the sale of real property is closely akin to evaluating the mental capacity necessary to make a will.

*Nichols v. Estate of Tyler*, 910 N.E.2d 221, 227 (Ind.Ct.App. 2009)

- (4) An action to determine whether a proposed or pending motion or proceeding constitutes a contest.
- (5) An action brought by or on behalf of a beneficiary to seek a ruling regarding the construction or interpretation of a trust.
- (6) An action or objection brought by a beneficiary, executor, or other fiduciary that seeks a ruling on proposed distributions, fiduciary fees, or any other matter where a court has discretion, including actions under IC 30-4-3-22.
- (7) An action brought by the attorney general that:
  - (A) seeks a ruling regarding the construction or interpretation of:
    - (i) a charitable trust or a trust containing a charitable interest; or
    - (ii) a no contest provision contained in a trust that purports to penalize a charity or charitable interest; or
  - (B) institutes any other proceedings relating to a trust if good cause is shown to do so.

This provision presented a substantial change in Indiana law and it is the author's opinion that the change signals an implicit recognition that litigation often arises simply because people don't like, and are not willing to respect, a settlor's wishes when it came to the disposition of their property. While there are no published opinions regarding this provision, it is the author's opinion that practitioners should take note of two aspects of this section.

First, a no contest provision remains enforceable *unless* "good cause" is found by the court. The term "good cause" is not defined by either Indiana's Probate or Trust Codes. So what constitutes good cause? In an employment setting, "good cause" to justify voluntary termination of employment has been defined as demonstrating "that the reasons for terminating the employment are of such character as would impel a

reasonably prudent person to take like action under similar circumstances.” *Lofton v. Rev. Bd. of Indiana Emp. Sec. Div.*, 499 N.E.2d 801, 802 (Ind. Ct. App. 1986). A very similar term, “probable cause,” has been defined in regard to a claim of malicious prosecution as entailing a reasonable belief “in the existence of the facts upon which the claim is based.” *Wong v. Tabor*, 422 N.E.2d 1279, 1287, fn 8 (Ind. Ct. App. 1981) (quoting Section 675 of the Restatement (Second) of Torts (1977)). See also *Indianapolis Traction & Terminal Co. v. Henby*, 178 Ind. 239, 97 N.E. 313, 317 (1912) (“In the abstract, probable cause is a pure question of law, but its existence in a given case is a mixed question of law and fact, when one or more of the elementary facts thereof relied upon is controverted. In such case the court must hypothetically state to the jury the material facts which the evidence tends to prove, and positively direct, as to the law, upon the assumed state of facts. Where the facts are uncontroverted, the court must determine the existence or nonexistence of probable cause.”)

Second, these definitions seem to suggest that a determination of “good cause” is a question of fact that will be made at the conclusion of litigation. Therefore, if the intent of including a no contest provision is an effort to conserve the assets of the trust by avoiding litigation, such a provision will not do so. These two points bring to the forefront when a no contest provision can be effective.

Currently, there is little guidance on what language can and cannot be used in a no contest provision. One such provision provided that any beneficiary who challenged the validity of the trust would forfeit their bequest, and any non-beneficiary who successfully claimed an interest in the Trust would only receive one (1) dollar. A provision could also provide for a complete forfeiture of a beneficiary’s interest if they challenge the trust or that the beneficiary’s interest will be surcharged with the

attorneys' fees incurred by the trust in defending against the challenge.<sup>4</sup> But these provisions only have effect if the beneficiary's interest is such that they stand to lose a substantial amount if they unsuccessfully challenge the trust. Providing a nominal bequest to a beneficiary will render a no contest provision essentially meaningless. But if the would be challenger stands to lose a significant amount (either through direct forfeiture or by payment of fees to defend a challenge) such a provision takes on meaning by elevating the risk to a would be challenger.

### **III. TRUST ADMINISTRATION**

The settlor has passed away and the trust now moves into the post-settlor administration. Depending on the terms of the trust, this may simply be distributing the assets. Or it may be moving forward with an administration that will last for years. So, as the practitioner tasked with assisting the trustee(s), what is your first step? From a litigation standpoint, that is an easy answer: Give Notice.

#### **A. Limit the Time to File a Trust Contest**

Over the years, a trend that seems to be well entrenched is to avoid giving notice in a probate setting. Why this trend exists is unknown. But following such a trend should be avoided. The fact is that failing to give notice to a person who is entitled to receive notice can be construed as a violation of a trustee's fiduciary duty. The failure to properly give notice also has constitutional implications in that failure to properly give notice can be in violation of the person's rights to due process. In short, if a person is entitled to notice, then *give them notice*.

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<sup>4</sup> See Sara C. Jenkins, *How Testators Can Leverage Indiana's Repeal of The Prohibition on No Contest Clauses*, 61 *Re Gestae* 26, 26 (May 2018)

From a litigation perspective, notice can also be highly effective to curtail litigation before it begins by imposing a limited time period in which to initiate a trust contest. Ind. Code § 30-4-6-16(a) provides:

A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death *within the earlier of the following*:

- (1) Ninety (90) days after the person receives from the trustee a copy of a trust certification required by IC 30-4-4-5 and a notice that:
  - (A) informs the person of the trust's existence;
  - (B) states the trustee's name and address;
  - (C) states:
    - (i) the person's interest in the trust, as described in the trust document; or
    - (ii) that the person has no interest in the trust; and
  - (D) states the time allowed for commencing the proceeding.
- (2) Three (3) years after the settlor's death.

Ind. Code § 30-4-4-5 provides:

- (a) A trustee may furnish to a person other than a beneficiary a certification of trust instead of a copy of the trust instrument. The certification of trust must contain the following information:
  - (1) That the trust exists and the date the trust instrument was executed.
  - (2) The identity of the settlor.
  - (3) The identity and address of the currently acting trustee.
  - (4) The powers of the trustee.
  - (5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.

- (6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all the cotrustees are required in order to exercise the powers of the trustee.
- (7) The manner of taking title to trust property.
- (b) A certification of trust may be signed or authenticated by any trustee.
- (c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.
- (d) A certification of trust may contain the dispositive terms of a trust.
- (e) A recipient of a certification of trust may require the trustee to furnish copies of excerpts from the original trust instrument and later amendments that:
  - (1) designate the trustee; and
  - (2) confer on the trustee the power to act in a pending transaction in which the recipient has an interest.

The term “beneficiary” is not defined by the Trust Code. Finally, Ind. Code § 30-4-3-6 provides, in relevant part, that:

- (b) Unless the terms of the trust<sup>5</sup> or the provisions of section 1.3 of this chapter provide otherwise, the trustee also has a duty to do the following:
  - (8) Upon:
    - (A) the trust becoming irrevocable:
      - (i) by the terms of the trust instrument; or

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<sup>5</sup> See Ind. Code § 30-4-3-6(d): “During any period of time that the trust instrument restricts or eliminates the right of a beneficiary to be informed of the beneficiary's interest in a trust, a designated representative for the beneficiary:

- (1) shall represent that beneficiary and bind that beneficiary's interests for purposes of any judiciary proceeding or nonjudicial matter involving the trust unless the court finds, after a hearing upon notice, that a conflict of interest exists between the beneficiary and the designated representative; and
- (2) has the authority to initiate or defend and participate in any proceeding relating to the trust under this article or under IC 30–2 on behalf of the beneficiary; and
- (3) shall not disclose to the beneficiary the information provided by the trustee unless the court orders disclosure or the trustee agrees to the disclosure.”

- (ii) by the death of the settlor; and
- (B) the written request of an income beneficiary or remainderman;

promptly provide a copy of the complete trust instrument to the income beneficiary or remainderman. This subdivision 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.

Under these code provisions, the first action a trustee should take is to give proper notice and act to limit the time for filing a trust contest to ninety (90) days. The question presented by Ind. Code § 30-4-6-14(a), however, is whether a trust certificate can be tendered to a beneficiary. The answer to this question rests on the only two decisions addressing this provision.

In *Schrage v. Seberger*, 52 N.E.3d 45 (Ind. Ct. App. 2016) (“Schrage I”), the trustee, in response to a written request for the trust, provided the settlor’s granddaughter a “Notice to Beneficiary” which identified that the settlor’s granddaughter was to receive the sum of \$25,000.00 and included the language of Ind. Code 30-4-6-14(a)(1) as well as a trust certification pursuant to Ind. Code § 30-4-4-5 and a redacted copy of the trust. *Id.* at 46-47. The trial court denied the granddaughter’s request for a complete copy of the trust. On appeal, the trial court’s decision was affirmed and the Court of Appeals held that Ind. Code § 3-4-4-5(e) “contemplates that simply because a person has an interest in the trust *does not necessarily make that person a beneficiary* of the trust and that such persons are entitled to excerpts of the trust related to their interest.” *Id.* at 53 (emphasis added).

In *Schrage v. Audrey R. Seberger Living Tr.* 52 N.E.3d 54, 65 (Ind. Ct. App. 2016) (“Schrage II”), the Court of Appeals addressed the same fact pattern and held that Ind. Code § 30-4-6-14(a) “required [settlor’s granddaughter] to commence her action to contest the validity of the Trust within ninety days of receiving the trust certification.”

Returning to *Schrage I*, the Court of Appeals also held:

the Trust Code “shall be interpreted and applied to the terms of the trust so as to implement the intent of the settlor and the purposes of the trust,” and, when conflicts arise, “the terms of the trust shall control unless the rules of law clearly prohibit or restrict the article which the terms of the trust purport to authorize.” Ind. Code § 30–4–1–3. Here, [settlor’s granddaughter] is not listed as a remainder beneficiary in the Trust. She is not entitled to Trust principal, which is to be disbursed when the trust terminates, because there is no indication that the Trust would terminate based upon her specific distribution contained in Article 6. There is no division of assets called to take place in Article 6; rather, the distributions contemplated in that Article are a preamble for the subsequent asset division and Trust termination. *Schrage received a certification of trust from the Trustee as a recipient of a specific distribution. Based on that interest alone, she is entitled to nothing further from the Trustee.*

*Schrage I*, 52 N.E.3d at 54.

The takeaway from the *Schrage* decisions is that notice and a trust certification in accordance with Ind. Code § 30-4-6-14 is sufficient for persons who have no interest in the trust to initiate the 90 day window to file a trust contest. Notice and a trust certification coupled with portions of the trust which pertain to an individual’s specific bequest should likewise be sufficient for persons who do have a specific interest in the trust to initiate the 90 day window. For income beneficiaries and remaindermen, notice, a trust certification and a complete copy of the trust should initiate the 90 day window.



## **B. Limit the Time for Objections**

Invoking other deadlines can also be an effective way to avoid litigation on matters involving a trust administration. If the trust is terminating or partially terminating, then Ind. Code § 30-4-3-3(e) (Powers of Trustee) provides, in relevant part, that:

If the trust is terminated or partially terminated, the trustee may send to the beneficiaries a proposal for distribution. If the proposal for distribution informs the beneficiary that the beneficiary:

- (1) has a right to object to the proposed distribution; and
- (2) must object *not later than thirty (30) days after the proposal for distribution was sent*;

the right of the beneficiary to object to the proposed distribution terminates if the beneficiary fails to notify the trustee of an objection within the time limit set forth in subdivision (2). (emphasis added).

Closely aligned with this provision is Ind. Code § 30-4-5-14.5. Entitled *Nonjudicial settlement of trustee's accounts; when; statements and notices; written statement of no objection; limitations on liability; certain indemnification agreements prohibited; jurisdiction*, this section provides that:

- (a) A trustee may obtain a nonjudicial settlement of its accounts in accordance with subsection (b) when:
  - (1) a trust terminates pursuant to the terms of the trust;
  - (2) a trust terminates early pursuant to IC 30-4-3-24.5;
  - (3) a trustee resigns or is removed; or
  - (4) a trustee seeks discharge of an interim accounting period when the trust is continuing.
- (b) A trustee who elects to proceed under this section shall provide the following to the qualified beneficiaries of the trust and a successor trustee, if applicable, within a reasonable time after termination of the trust pursuant to its terms, the resignation or removal of the trustee, or the end of the period for which the trustee is seeking discharge:

- (1) A statement showing the fair market value of the net assets to be distributed from a terminating trust or to a successor trustee.
- (2) A trust accounting for the prior three (3) years showing all receipts and disbursements and inventory value of the net assets.
- (3) An estimate for any items reasonably anticipated to be received or disbursed.
- (4) The amount of any fees, including trustee fees, remaining to be paid.
- (5) Notice that the trust is terminating, or that the trustee has resigned or been removed, the time period for which the trustee seeks discharge of its accounts, and a statement providing that claims against a trustee under IC 30-4-6-12<sup>6</sup> and IC 30-4-6-14, if applicable, *shall be barred if no objections are received within the time period described in subsection (c).*
- (6) The name and mailing address of the trustee.
- (7) The name and telephone number of a person who may be contacted for additional information.

The trustee may also provide the statement and notice described in this subsection to any other person who the trustee reasonably believes may have an interest in the trust.

- (c) If, after receiving the notice and trust information described in subsection (b), a qualified beneficiary objects to a disclosed act or omission, the qualified beneficiary *shall provide written notice of the objection to the trustee not later than sixty (60) days after the notice was sent by the trustee. If no written objection is provided in the sixty (60) day time period, the information provided under subsection (b) shall be considered approved by the recipient.* The trustee shall, in the case of a trust terminating pursuant to the terms of the trust or the trustee's resignation or removal, within a

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<sup>6</sup> “Unless previously barred by adjudication, consent or limitation, any right against a trustee for breach of trust shall be barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the right is commenced within three (3) years after receipt of the final account or statement if, being an adult, it is received by him personally or if, being a minor or person with a disability, it is received by his personal representative. The rights thus barred do not include the rights to recover from a trustee for fraud, misrepresentation or inadequate disclosure related to the settlement of the trust.” (emphasis added).

reasonable period of time following the expiration of the sixty (60) day time period, distribute the assets as provided in the trust or to the successor trustee. If a qualified beneficiary gives the trustee a written objection within the applicable sixty (60) day time period, the trustee or the qualified beneficiary may:

- (1) submit the written objection to the court for resolution and charge the expense of commencing a proceeding to the trust; or
- (2) *resolve the objection by a nonjudicial settlement agreement under section 25 of this chapter, or otherwise.*

*Any agreement entered into pursuant to subdivision (2) may include a release, an indemnity clause, or both, on the part of the beneficiary against the trustee relating to the trust. If the parties agree to a nonjudicial settlement agreement under section 25 of this chapter, any related expenses shall be charged to the trust.* Upon a resolution of an objection under this subsection, within a reasonable period of time, the trustee shall distribute the remaining trust assets as provided in the trust or to the successor trustee.

- (d) The trustee may rely upon the written statement of a person receiving notice that the person does not object.
- (e) When a trustee distributes assets of a terminating trust or to a successor trustee after complying with the provisions of this article and having received no objections, each person who received notice and either consented or failed to object pursuant to this section is barred from:
  - (1) bringing a claim against the trustee or challenging the validity of the trust to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's final account; or
  - (2) bringing a claim against the trustee for the period of such interim accounts to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's interim accounts.
- (f) A trustee may not request that a beneficiary indemnify the trustee against loss in exchange for the trustee forgoing a request to the court to approve its accounts at the time that the trust terminates, or at the time the trustee resigns or is removed, except as agreed upon by the parties pursuant to subsection (c).

- (g) The court that exercises probate jurisdiction shall have exclusive jurisdiction over matters under this section.
- (h) IC 30-4-6-10.5<sup>7</sup> shall apply to this section.
- (i) Nothing in this section shall preclude a trustee from proceeding under IC 30-4-3-18(b) to have the trustee's accounts reviewed and settled by the court. (emphasis added).

Both statutes create deadlines by which a person must act or otherwise be prohibited from initiating litigation. Regarding a proposed distribution, the time period is 30 days. For other matters regarding the administration and/or termination of a trust, the time period is 60 days. Both code sections, however, are predicated on proper notice being given by the trustee. To do so, the trustee should follow each statute and ensure that any notice given includes the proper deadline for objections and the effect if no objections are filed.

Ind. Code § 30-4-5-14.5 is a new provision that was added to the trust code in July of 2019 and, to date, there is no case law addressing its provisions. Several aspects of this code section should be noted in the context of trust litigation.

First, subsection (b)(5) seems to suggest that a trustee can effectively limit the time period for a breach of trust claim to 60 days after filing an interim accounting. In the past, in order to obtain such a discharge, the trustee had to involve the Court and file a verified written statement of accounts. See Ind. Code § 30-4-5-13(a). Written approval was required by a beneficiary or his personal representative. See Ind. Code § 30-4-5-14(a). Otherwise, the filing was treated as a pleading and “any person

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<sup>7</sup> Ind. Code § 30-4-6-10.5 *Representation and binding* establishes who may bind others such as a parent may represent and bind the parent's minor, unborn, or not yet adopted child if a guardian for the child has not been appointed.

authorized by 30-4-5-12(c)<sup>8</sup>” could file a response “within the period of time after notice that a responsive pleading is required to be filed after service of a prior pleading under the Indiana Rules of Procedure.” Ind Code § 30-4-5-14(b).

As a practical matter, this could mean that a responsive pleading may not be filed, if extensions of time to respond are granted, for several months after the statement is filed. And then, if objections were filed, the court would conduct a trial to “determine the correctness of the statement and the validity and propriety of all actions of the trustee described in the statement.” The new statute appears to provide an effective method to avoid such litigation. This is especially true since Ind. Code § 30-4-5-14.5 incorporates Ind. Code § 30-4-5-25 which will be discussed in the next section. Moreover, if objections are filed, the trustee now can “submit the written objection to the court for resolution *and charge the expense of commencing a proceeding to the trust.*” Ind. Code § 30-4-5-14.5(c)(1).

Ind. Code § 30-4-5-14.5 also allows a trustee to obtain “a release, an indemnity clause, or both, on the part of the beneficiary against the trustee relating to the trust.” While the ability to obtain indemnification from a beneficiary is tempered by Ind. Code § 30-4-5-14.5(f) to when a trust terminates or the trustee resigns or is removed, the door remains open for indemnification if the matter is resolved pursuant to Ind. Code § 30-4-5-25(c) *or otherwise.*

Finally, it should be noted that Ind. Code § 30-4-5-14.5 only requires notice to “the *qualified* beneficiaries of the trust.” Returning to the *Schrage* decisions, the use of the term “qualified” appears to signal that persons who are to receive a specific

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<sup>8</sup> “the settlor, a beneficiary or the beneficiary's personal representative, a person designated by the settlor to have advisory or supervisory powers over the trust, *or any other person having an interest in the administration or the benefits of the trust*, including the attorney general in the case of a trust for a benevolent public purpose . . .” (emphasis added).

distribution are *not* qualified beneficiaries. Schrage I, 52 N.E.3d at 65 (“simply because a person has an interest in the trust *does not necessarily make that person a beneficiary* of the trust.” If this interpretation is accurate, then this is a noticeable deviation from Ind. Code § 30-4-5-14(b) and would limit both the need to give notice to, and have objections made, by persons who are neither an income beneficiary nor a remainderman.

#### **IV. TRUST LITIGATION**

##### **A. Docketing a Trust**

A question that often arises is whether a trust must be docketed. The short answer to that question is no. Under Indiana law, the jurisdiction for all matters arising under the Indiana Trust Code is in the court exercising probate jurisdiction. See Ind. Code § 30-4-6-1. The probate court, however, will only have continuing jurisdiction of a trust if the settlor expressly provides for such jurisdiction in the terms of the trust itself. Ind. Code § 30-4-6-2). Moreover, Ind. Code § 30-4-6-4(1) and (2) make clear that, unless otherwise provided for by the settlor, a trustee does not need to docket a trust nor does a court have continuing jurisdiction over a testamentary trust after it has been funded by the estate. Moreover, it is established precedent that docketing a trust is not a mandatory precursor to filing a trust contest. See Schrage II, 52 N.E.3d at 64 (Plaintiff was not statutorily required to first docket trust instrument before bringing a challenge to its validity). However, it is the author’s opinion that a trust should be docketed for contested matters to bring it under the Court’s jurisdiction and provide the ability to obtain relief from the Court. See Ind. Code § 30–4–3–18(a) (“If there is reasonable doubt with respect to any matter relating to the administration of the trust, the trustee is entitled to be instructed by the court.”); *Matter of Tr. Created Under Agreement Dated*

*Sept. 19, 1983, By Johnson*, 469 N.E.2d 768, 771 (Ind. Ct. App. 1984), 469 N.E.2d 768, 771 (Ind.Ct.App.1984) *trans denied* (“A trustee is not compelled to act at his peril in the administration of the trust. He need not act first and discover later whether his act was in breach of trust.” (quoting 3 A. Scott, *The Law of Trusts* § 259 (1967))).

If a decision is made to docket a trust, the next question is where the trust should be docketed. The proper venue to docket a trust is controlled by Ind Code § 30-4-6-3(b) provides that:

Unless the terms of the trust provide otherwise, venue in a proceeding brought by a party other than the attorney general for matters arising under this article shall be exclusively in the county in which the principal place of administration of the trust is located.

The statute goes on to identify that:

The principal place of administration of a trust is that usual place at which the records pertaining to the trust are kept or, if there is no such place, the trustee's residence. If there are cotrustees, the principal place of administration is either that of the corporate trustee, if there is only one (1); that of the individual trustee who has custody of the records, if there is but one (1) such person and there is no corporate cotrustee; or, if neither of these alternatives apply, that of any of the cotrustees.

The statute also provides that:

If the principal place of administration is maintained in another state, venue in this state for any matters arising under this article shall be in the county stipulated in writing by the parties to the trust or, if there is no such stipulation, in the county where the trust property, or the evidence of the trust property, which is the subject of the action is either situated or generally located.

Before concluding which venue is appropriate to docket a trust in order to initiate a trust contest, however, practitioners should also consider the holding of *Johnson*, 469 N.E.2d 768 (Ind. Ct. App. 1984).

In *Johnson*, the trustee of a trust filed a petition to docket a trust and obtain instructions regarding the validity of a purported revocation of the trust. The trustee filed the petition in Hamilton County (the county where the trustee resided and where the trustee maintained the records of the trust). Shortly thereafter the settlor died and the executrix of the settlor's estate, which was being administered in Lake County by a resident of that county, filed a motion to change the venue of the matter to Lake County. The trial court granted the motion and on appeal was reversed.

On appeal, the executrix raised two arguments that preferred venue did not lie in Hamilton County. First, the executrix argued that the trustee was seeking a declaratory judgment regarding the validity of the trust, not the administrative instructions allowed by Ind. Code § 30-4-3-18. The executrix also argued that Ind. Trial Rule 75 conflicted with, and was superior to, Ind. Code § 30-4-6-3. The Court of Appeals rejected both arguments.

As to the executrix's first argument, the appellate court agreed that "[t]he nature of Trustee's petition is critical because if it is a petition for instructions under § 30-4-3-18, another section of the trust code, § 30-4-6-3, places venue in Hamilton County." *Id.* at 771. The appellate court then concluded that the trustee's petition was:

not an action on the merits of the validity of the revocation. It is, instead, a request for the court to determine whether there is a genuine issue as to the validity of the revocation so as to authorize Trustee to proceed further. As such, Trustee's petition for instructions is an appropriate use of § 30-4-3-18 and qualifies Hamilton County as a county of proper venue under the provisions of § 30-4-6-3.

*Id.* at 771-772. The appellate court then went on to hold that both Lake and Hamilton County were counties of preferred venue under subsections (1) (residence of the



defendant) and (8) of Ind. Trial Rule 75(A) as well as Ind. Code § 30-4-6-3 (trust records are kept there and the trustee resides there). *Id.* at 772.

The holding in *Johnson* appears to indicate that the preferred venue for docketing a trust will be determined pursuant to Trial Rule 75 and regardless of the use of the term “exclusively” in Ind. Code § 30-4-6-3. See *also* Ind. Code § 30-4-6-13. As such, there may be several preferred venues depending on the residence of the defendants, the location of the trust property, the location of the trust records and/or the location of the trustee(s). This could be a critical point since, as held by the *Johnson* court:

Because the plaintiff Trustee brought suit in a county (Hamilton) in which preferred venue lay, the defendant could not challenge the venue except as she could obtain relief under T.R. 76. . . . The sole focus of the opinions interpreting T.R. 75 has been on whether the county in which the suit was filed was a county of preferred venue. Once this court determined the initial filing was in a county of preferred venue, the question was decided and the denial of transfer was affirmed.

*Id.* at 772 (emphasis added). Thus, a plaintiff in a trust contest may be able to bring the action in a venue preferable to the plaintiff and force the defendant(s) to defend in that forum. The defendants may be able to avoid this result pursuant to Ind. Trial Rule 76, but this appears to be the only avenue for relief pursuant to *Johnson*. *Id.* at 772-773 (Holding the forum non conveniens provision of Trial Rule 4.4(C) is inapplicable to an intrastate transfer of venue and case law precludes a discretionary transfer from one preferred venue to another, more convenient, preferred venue county.) Conversely, if multiple preferred venues exist, it may be preferable for the trustee to select the venue.

## **B. Resolving a Contested Matter**

An impasse arises between the trustee and a beneficiary over a matter. Or a trust contest looms. What can be done to resolve the matter without going to trial? In prior years, if a settlement of a contested matter could be reached, then parties utilized Ind. Code 30-4-7 *et seq.* to obtain a judicially approved compromise. This chapter of the trust code is devoted exclusively “. . . to the compromise of a contest or controversy with respect to the following:

- (1) The construction, validity, or effect of a trust instrument.
- (2) The identity, rights, or interests of a beneficiary of a trust.
- (3) The administration of a trust.

Ind. Code § 30-4-7-1. The terms of the compromise must be in writing and must be signed by *all* persons who have an interest in the trust or have a claim against the trust.

Ind. Code § 30-4-7-6. The trust must also be docketed with the probate court and the following documents submitted for the court's approval:

- (1) The executed settlement agreement.
- (2) A copy of the trust instrument.
- (3) Any other relevant documents.

Ind. Code § 30-4-7-7. Notice (in a manner directed by the probate court) is then required to be given to:

- (1) all interested persons;
- (2) the guardians or guardians ad litem of interested persons;
- (3) the personal representative of an estate affected by the agreement;  
and
- (4) the trustee of a trust affected by the agreement.

Ind. Code § 30-4-7-8. The probate court is then to conduct a hearing on the agreement and enter an order approving the agreement if the probate court concludes:

- (1) the contest or controversy is in good faith; and
- (2) the effect of the agreement on the interests of all the parties is just and reasonable.

Ind. Code § 30-4-7-9. The order should then direct the trustee and the parties to the agreement to carry out the terms of the agreement. Moreover, once this order is entered, then

all further disposition of the trust that is within the scope of the agreement shall be made under the terms of the agreement.

Ind. Code § 30-4-7-10.

In 2019, Ind. Code § 30-4-5-25 was added to the trust code. This section provides:

- (a) As used in this section, “interested person” means a person whose consent would be required to achieve a binding settlement were the settlement to be approved by the court.
- (b) Except as provided in subsection (c), an interested person may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust. This procedure is not intended to foreclose or limit any other procedure for settlement available under other applicable law.
- (c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this article or other applicable law. A nonjudicial settlement may not be used to produce a result not authorized by other provisions of this article, including but not limited to terminating or modifying a trust in an impermissible manner.
- (d) Subject to subsection (c), matters that may be resolved by a nonjudicial settlement agreement include the following:
  - (1) The interpretation or construction of the terms of a trust.
  - (2) The approval of a trustee's report or accounting or waiver of the preparation of a trustee's report or accounting.

- (3) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power.
  - (4) The resignation or appointment of a trustee and the determination of a trustee's compensation.
  - (5) Transfer of a trust's principal place of administration.
  - (6) Liability or release of a trustee for an action relating to a trust.
  - (7) The criteria for distribution to a beneficiary where a trustee is given discretion.
  - (8) The resolution of a dispute arising out of the administration or distribution of a trust.
  - (9) An investment action.
  - (10) The appointment of and powers granted to a trust director.
  - (11) Direction to a trust director to perform or refrain from performing a particular act or the grant of a power to a trust director.
- (e) Before or after the parties enter into a nonjudicial settlement agreement, an interested person may request the court to approve a nonjudicial settlement agreement to determine whether the representation under IC 30-4-6-10.5 was adequate and to determine whether the agreement contains terms and conditions the court would approve.

It is the author's opinion that this statute may be useful *in some instances*, but it should not automatically be used to replace an adjudicated compromise under Ind. Code § 30-4-7-1.

Instead, Ind. Code § 30-4-5-25 provides a mechanism to resolve individual claims and bind that specific claimant. Recall that a settlement under Ind. Code § 30-4-7-6(2) requires that a settlement be signed by all persons who either have an interest in the trust or a claim against a trust and, once it is approved, all further disposition of the trust that is within the scope of the agreement *shall* be made under the terms of the agreement." Ind. Code § 30-4-5-25 does not have either requirement. In fact, the door

is left wide-open for “an interested person” (which presumably would include the person settling) to ask a court to review the settlement to determine whether representation under Ind. Code § 30-4-6-10.5 was adequate or, more importantly, “whether the agreement contains terms and conditions the court would approve.” In other words, a settlement under Ind. Code § 30-4-6-13 may be nothing more than a temporary settlement subject to subsequent challenge *without a deadline being imposed*.

Presumably, the settlement agreement would become binding once it is disclosed in a subsequent accounting and is approved, but it is the author’s experience that people can experience what is tantamount to “buyer’s remorse” and may decide that their claim was worth more than what they received in settlement and decide to subsequently reject the settlement. This avenue is effectively closed if the settlement is judicially approved in accordance with Ind. Code 30-4-7 *et seq.*

The other option would be to mirror the requirements of Ind. Code § 30-4-7 *et seq.* short of submitting the settlement agreement to the court for approval. This would have the practical effect of binding all the parties and place the trustee (or any of the parties) in the position, if buyer’s remorse does occur, to simply tender the settlement for court approval.

# **Trust Contest Litigation**

***“Igitur qui desiderat pacem,  
praeparet bellum.”***

# Trust Contest Litigation

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# Trust Contest Litigation

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# **Trust Contest Litigation**

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## **The Drafting Attorney's File**

# **Trust Contest Litigation**

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## **The Drafting Attorney's File**

- ✓ **Probably the Most Important Collection of Evidence If a Trust Contest Is Initiated**

# Trust Contest Litigation

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## First Question:

Is this trust likely to be  
contested?

# **Trust Contest Litigation**

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## **Identify Litigation Red-Flags:**

Is the Trust a Substantial  
Departure from the Client's  
Existing Estate Plan?

# **Trust Contest Litigation**

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## **Identify Litigation Red-Flags:**

Does the Client Have a  
Blended Family or a  
Subsequent Spouse?

# **Trust Contest Litigation**

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## **Identify Litigation Red-Flags:**

Does the Client Give Any  
Indication of Diminished  
Capacity?

# **Trust Contest Litigation**

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## **Identify Litigation Red-Flags:**

Does the Client Give **Any**  
Indication of Diminished  
Capacity?

# **Trust Contest Litigation**

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## **Identify Litigation Red-Flags:**

Does the Client Give Any  
Indication of Being Unduly  
Influenced?



# Trust Contest Litigation

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## Identify Litigation Red-Flags:

Does the Client Give Any  
Indication of Being Unduly  
Influenced?

# **Trust Contest Litigation**

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## **Identify Litigation Red-Flags:**

Can the Client Articulate the  
Rational for the Terms of  
the Trust?

# **Trust Contest Litigation**

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## **Identify Litigation Red-Flags:**

Does the Proposed Estate  
Plan Make You Uneasy?

# **Trust Contest Litigation**

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**Identify Litigation Red-Flags:**

Question

Question

Question

# Trust Contest Litigation

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Testamentary capacity means that a settlor knows:

The extent and value of their property;

# Trust Contest Litigation

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Testamentary capacity means that a settlor knows:

The number and names of those who are the natural objects of their bounty;

# Trust Contest Litigation

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Testamentary capacity means that a settlor knows:

Those persons' just desserts with respect to their treatment of and conduct toward the testator during his lifetime

# Trust Contest Litigation

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**Testamentary capacity means that a settlor knows:**

- The extent and value of their property;
- The number and names of those who are the natural objects of their bounty;
- Those persons' just desserts with respect to their treatment of and conduct toward the testator during his lifetime, and hold all of this knowledge in the testator's mind long enough to have the will prepared and executed.

*See Irwin Union Bank & Trust Co. v. Springer*, 137 Ind. Ct. App. 293, 295, 205 N.E.2d 562, 564 (1965).



# Trust Contest Litigation

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Capacity to contract means that a settlor understands:

in a reasonable manner the nature and effect of his act

*See Gallagher v. Central Indiana Bank, N.A.*, 448 N.E.2d 304, 307 (Ind. Ct. App. 1983)

# Trust Contest Litigation

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## **Ind. Code § 30-4-2-10 :**

(a) If a trust is created by a will, the settlor's capacity that is required to create the trust is determined by the applicable probate law.

# Trust Contest Litigation

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## **Ind. Code § 30-4-2-10 :**

(b) The capacity of a settlor that is required to create, amend, revoke, or add property to a revocable trust is the same as the capacity of a testator that is required to make a will.

# Trust Contest Litigation

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## **Ind. Code § 30-4-2-10 :**

(b) The capacity of a settlor that is required to create, amend, revoke, or add property to a revocable trust is the same as the capacity of a testator that is required to make a will.

# Trust Contest Litigation

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## **Ind. Code § 30-4-2-10 :**

(c) To create or add property to an irrevocable trust, the settlor or transferor must be of sound mind and have a reasonable understanding of the nature and effect of the act and the terms of the trust.

# Trust Contest Litigation

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## **Ind. Code § 30-4-2-10 :**

(c) To create or add property to an irrevocable trust, the settlor or transferor must be of sound mind and have a reasonable understanding of the nature and effect of the act and the terms of the trust.

# Trust Contest Litigation

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## **Ind. Code § 30-4-2-10 :**

(d) To direct the actions of the trustee of a trust, the settlor or other person must:

- (1) have the capacity to hold and deal with property for the settlor's or person's own benefit;
- (2) be at least eighteen (18) years of age; and
- (3) be of sound mind.

# **Trust Contest Litigation**

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## **The Drafting Attorney's File**

- ✓ **Probably the Most Important Collection of Evidence If a Trust Contest Is Initiated**



# **Trust Contest Litigation**

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## **The Drafting Attorney's File** **Should Include:**

- ✓ **Notes which identify:**
  - ✓ **The date, time and location of the initial meeting;**
  - ✓ **Whether other persons were present and why;**
  - ✓ **Who referred the client (and why);**
  - ✓ **An affirmative observation of competency;**
  - ✓ **An affirmative observation that the client does not appear to be unduly influenced;**

# **Trust Contest Litigation**

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## **The Drafting Attorney's File** **Should Include:**

- ✓ **Notes which identify:**
  - ✓ The nature and extent of the client's property;
  - ✓ All intestate heirs;
  - ✓ Any other person the client desires to benefit/ exclude;
  - ✓ How the client wants to treat such heirs and other persons and why;
  - ✓ Why does the client desire a trust;

# **Trust Contest Litigation**

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## **The Drafting Attorney's File** **Should Include:**

- ✓ **Notes which identify:**
  - ✓ Any specific terms in the trust the client desires and why;
  - ✓ Whether the client has an existing estate plan and, if so, why does the client desire to change it; and
  - ✓ Each subsequent communication and meeting with the client and why the communication/meeting occurred

# **Trust Contest Litigation**

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## **The Drafting Attorney's File** **Should Include:**

- ✓ **Notes which identify:**
  - ✓ **Who was present when the trust was executed and why;**
  - ✓ **An affirmative observation of competency at execution;**
  - ✓ **An affirmative observation at execution that the client does not appear to be unduly influenced;**

# **Trust Contest Litigation**

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## **The Drafting Attorney's File** **Should Include:**

- ✓ **All drafts including electronic copies;**
- ✓ **All communications - paper and electronic; and**
- ✓ **All video recordings.**

# **Trust Contest Litigation**

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## **No Contest Provisions**

# Trust Contest Litigation

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Ind. Code § 30-4-2.1-3 now provides:

(a) Except as provided in subsection (b), a no contest provision is enforceable according to the express terms of the no contest provision.

(b) Subsection (a) does not apply to the following proceedings:

# Trust Contest Litigation

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- (1) An action brought by a beneficiary if good cause is found by a court.
- (2) An action brought by a trustee or other fiduciary serving under the terms of the trust that incorporates a no contest provision, unless the trustee or other fiduciary is a beneficiary against whom the no contest provision is otherwise enforceable.
- (3) An agreement, including a nonjudicial settlement agreement, among beneficiaries and any other interested persons to settle or resolve any other matter relating to a trust.
- (4) An action to determine whether a proposed or pending motion or proceeding constitutes a contest.



# Trust Contest Litigation

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- (5) An action brought by or on behalf of a beneficiary to seek a ruling regarding the construction or interpretation of a trust.
- (6) An action or objection brought by a beneficiary, executor, or other fiduciary that seeks a ruling on proposed distributions, fiduciary fees, or any other matter where a court has discretion, including actions under IC 30-4-3-22.
- (7) An action brought by the attorney general. . .

# Trust Contest Litigation

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An action brought by a beneficiary if **good cause** is found by a court.

# **Trust Contest Litigation**

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## **IMPOSE DEADLINES:**

- ✓ **Limit the Time to File a Trust Contest from Three (3) years to Ninety (90) Days; and**
- ✓ **Limit the Time for Objections.**

# Trust Contest Litigation

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**Ind. Code § 30-4-6-16(a) provides:**

A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of the following:

(1) Ninety (90) days after the person receives from the trustee a copy of a trust certification required by IC 30-4-4-5 and a notice that:

- (A) informs the person of the trust's existence;
- (B) states the trustee's name and address;
- (C) states:

# Trust Contest Litigation

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**Ind. Code § 30-4-6-16(a) provides:**

A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death **within the earlier of the following:**

(1) Ninety (90) days after the person receives from the trustee a copy of a trust certification required by IC 30-4-4-5 and a notice that:

- (A) informs the person of the trust's existence;
- (B) states the trustee's name and address;
- (C) states:

# Trust Contest Litigation

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**Ind. Code § 30-4-6-16(a) provides:**

- (i) the person's interest in the trust, as described in the trust document; or
    - (ii) that the person has no interest in the trust; and
  - (D) states the time allowed for commencing the proceeding.
- (2) Three (3) years after the settlor's death.

# Trust Contest Litigation

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**Ind. Code § 30-4-6-16(a) provides:**

- (i) the person's interest in the trust, as described in the trust document; or
    - (ii) that the person has no interest in the trust; and
  - (D) states the time allowed for commencing the proceeding.
- (2) Three (3) years after the settlor's death.

# Trust Contest Litigation

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## Ind. Code § 30-4-4-5 provides:

(a) A trustee may furnish to a person other than a beneficiary a certification of trust instead of a copy of the trust instrument. The certification of trust must contain the following information:

- (1) That the trust exists and the date the trust instrument was executed.
- (2) The identity of the settlor.
- (3) The identity and address of the currently acting trustee.



# Trust Contest Litigation

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**Ind. Code § 30-4-4-5 provides:**

- (4) The powers of the trustee.
- (5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.
- (6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all the cotrustees are required in order to exercise the powers of the trustee.

# Trust Contest Litigation

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## Ind. Code § 30-4-4-5 provides:

- (7) The manner of taking title to trust property.
- (b) A certification of trust may be signed or authenticated by any trustee.
- (c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.
- (d) A certification of trust may contain the dispositive terms of a trust.

# Trust Contest Litigation

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**Ind. Code § 30-4-4-5 provides:**

(e) A recipient of a certification of trust may require the trustee to furnish copies of excerpts from the original trust instrument and later amendments that:

- (1) designate the trustee; and
- (2) confer on the trustee the power to act in a pending transaction in which the recipient has an interest.

# Trust Contest Litigation

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The term “beneficiary” is not defined by the Trust Code.

# Trust Contest Litigation

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**Ind. Code § 30-4-3-6 provides, in relevant part, that:**

(b) Unless the terms of the trust or the provisions of section 1.3 of this chapter provide otherwise, the trustee also has a duty to do the following:

(8) Upon:

(A) the trust becoming irrevocable:

(i) by the terms of the trust instrument; or

(ii) by the death of the settlor; and

# Trust Contest Litigation

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**Ind. Code § 30-4-3-6 provides, in relevant part, that:**

(B) the written request of an income beneficiary or remainderman;

promptly provide a copy of the complete trust instrument to the income beneficiary or remainderman. This subdivision 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.

# Trust Contest Litigation

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- *Schrage v. Seberger*, 52 N.E.3d 45 (Ind. Ct. App. 2016)

“simply because a person has an interest in the trust does not necessarily make that person a beneficiary of the trust and that such persons are entitled to excerpts of the trust related to their interest.”

# Trust Contest Litigation

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- *Schrage v. Audrey R. Seberger Living Tr.* 52 N.E.3d 54, (Ind. Ct. App. 2016)

Ind. Code § 30-4-6-14(a) “required [settlor’s granddaughter] to commence her action to contest the validity of the Trust within ninety days of receiving the trust certification.”



# Trust Contest Litigation

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**Ind. Code § 30-4-3-3(e) (Powers of Trustee) provides, in relevant part:**

If the trust is terminated or partially terminated, the trustee may send to the beneficiaries a proposal for distribution. If the proposal for distribution informs the beneficiary that the beneficiary:

- (1) has a right to object to the proposed distribution; and
- (2) must object not later than thirty (30) days after the proposal for distribution was sent;

the right of the beneficiary to object to the proposed distribution terminates if the beneficiary fails to notify the trustee of an objection within the time limit set forth in subdivision (2).

# Trust Contest Litigation

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**Ind. Code § 30-4-3-3(e) (Powers of Trustee) provides, in relevant part:**

If the trust is terminated or partially terminated, the trustee may send to the beneficiaries a proposal for distribution. If the proposal for distribution informs the beneficiary that the beneficiary:

- (1) has a right to object to the proposed distribution; and
- (2) must object not later than thirty (30) days after the proposal for distribution was sent;

the right of the beneficiary to object to the proposed distribution terminates if the beneficiary fails to notify the trustee of an objection within the time limit set forth in subdivision (2).

# Trust Contest Litigation

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## Ind. Code § 30-4-5-14.5:

- (a) A trustee may obtain a nonjudicial settlement of its accounts in accordance with subsection (b) when:
- (1) a trust terminates pursuant to the terms of the trust;
  - (2) a trust terminates early pursuant to IC 30-4-3-24.5;
  - (3) a trustee resigns or is removed; or
  - (4) a trustee seeks discharge of an interim accounting period when the trust is continuing.

# Trust Contest Litigation

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## Ind. Code § 30-4-5-14.5:

(a) A trustee may obtain a nonjudicial settlement of its accounts in accordance with subsection (b) when:

- (1) a trust terminates pursuant to the terms of the trust;
- (2) a trust terminates early pursuant to IC 30-4-3-24.5;
- (3) a trustee resigns or is removed; or
- (4) a trustee seeks discharge of an interim accounting period when the trust is continuing.

# Trust Contest Litigation

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## Ind. Code § 30-4-5-14.5:

(b) A trustee who elects to proceed under this section shall provide the following to the qualified beneficiaries of the trust and a successor trustee, if applicable, within a reasonable time after termination of the trust pursuant to its terms, the resignation or removal of the trustee, or the end of the period for which the trustee is seeking discharge::

(5) Notice that the trust is terminating, or that the trustee has resigned or been removed, the time period for which the trustee seeks discharge of its accounts, and a statement providing that claims against a trustee under IC 30-4-6-12 and IC 30-4-6-14, if applicable, shall be barred if no objections are received within the time period described in subsection (c).

# Trust Contest Litigation

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## Ind. Code § 30-4-5-14.5:

(b) A trustee who elects to proceed under this section shall provide the following to the qualified beneficiaries of the trust and a successor trustee, if applicable, within a reasonable time after termination of the trust pursuant to its terms, the resignation or removal of the trustee, or the end of the period for which the trustee is seeking discharge::

(5) Notice that the trust is terminating, or that the trustee has resigned or been removed, the time period for which the trustee seeks discharge of its accounts, and a statement providing that claims against a trustee under IC 30-4-6-12 and IC 30-4-6-14, if applicable, shall be barred if no objections are received within the time period described in subsection (c).

# Trust Contest Litigation

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## Ind. Code § 30-4-5-14.5:

(c) If, after receiving the notice and trust information described in subsection (b), a qualified beneficiary objects to a disclosed act or omission, the qualified beneficiary shall provide written notice of the objection to the trustee not later than sixty (60) days after the notice was sent by the trustee. If no written objection is provided in the sixty (60) day time period, the information provided under subsection (b) shall be considered approved by the recipient.

# Trust Contest Litigation

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## Ind. Code § 30-4-5-14.5:

(c) If, after receiving the notice and trust information described in subsection (b), a qualified beneficiary objects to a disclosed act or omission, the qualified beneficiary shall provide written notice of the objection to the trustee not later than sixty (60) days after the notice was sent by the trustee. If no written objection is provided in the sixty (60) day time period, the information provided under subsection (b) shall be considered approved by the recipient.



# Trust Contest Litigation

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## Ind. Code § 30-4-5-14.5:

(e) When a trustee distributes assets of a terminating trust or to a successor trustee after complying with the provisions of this article and having received no objections, each person who received notice and either consented or failed to object pursuant to this section is barred from:

(1) bringing a claim against the trustee or challenging the validity of the trust to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's final account; or

(2) bringing a claim against the trustee for the period of such interim accounts to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's interim accounts.

# Trust Contest Litigation

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## Ind. Code § 30-4-5-14.5:

(e) When a trustee distributes assets of a terminating trust or to a successor trustee after complying with the provisions of this article and having received no objections, each person who received notice and either consented or failed to object pursuant to this section is barred from:

(1) bringing a claim against the trustee or challenging the validity of the trust to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's final account; or

(2) bringing a claim against the trustee for the period of such interim accounts to the same extent and with the same preclusive effect as if the court had entered a final order approving the trustee's interim accounts.

# Trust Contest Litigation

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## **Compare Ind. Code § 30-4-6-12:**

Unless previously barred by adjudication, consent or limitation, any right against a trustee for breach of trust shall be barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the right is commenced within three (3) years after receipt of the final account or statement if, being an adult, it is received by him personally or if, being a minor or person with a disability, it is received by his personal representative. The rights thus barred do not include the rights to recover from a trustee for fraud, misrepresentation or inadequate disclosure related to the settlement of the trust.”

# Trust Contest Litigation

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## Compare Ind. Code § 30-4-6-12:

Unless previously barred by adjudication, consent or limitation, any right against a trustee for breach of trust shall be barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the right is commenced within three (3) years after receipt of the final account or statement if, being an adult, it is received by him personally or if, being a minor or person with a disability, it is received by his personal representative. The rights thus barred do not include the rights to recover from a trustee for fraud, misrepresentation or inadequate disclosure related to the settlement of the trust.”

# **Trust Contest Litigation**

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## **Docketing A Trust**

# **Trust Contest Litigation**

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**Docketing A Trust:**  
**Is Not Mandatory**

# Trust Contest Litigation

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## Ind. Code § 30-4-6-2:

The court will have continuing jurisdiction to supervise the administration of the trust **only** if the settlor expressly directs in the terms of the trust that the court is to have that jurisdiction.

# Trust Contest Litigation

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***Schrage v. Audrey R. Seberger Living Tr.* 52 N.E.3d 54, 64 (Ind. Ct. App. 2016) (Plaintiff was not statutorily required to first docket trust instrument before bringing a challenge to its validity)**



# **Trust Contest Litigation**

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**Docketing A Trust:**  
**Is Not Difficult**

# Trust Contest Litigation

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## Ind. Code § 30-4-6-7:

- (a) If it is necessary to the determination of any issue of law or fact in a proceeding, the court may direct that a copy of the trust instrument, if any, be kept in its records.
- (b) The filing of the trust instrument under subsection (a) of this section shall not result in continuing supervisory jurisdiction by the court. Upon conclusion of the proceeding, the trust instrument shall be removed from the court's records.

# Trust Contest Litigation

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## Ind. Code § 30-4-6-7:

- (a) If it is necessary to the determination of any issue of law or fact in a proceeding, the court may direct that a copy of the trust instrument, if any, be kept in its records.
- (b) The filing of the trust instrument under subsection (a) of this section shall not result in continuing supervisory jurisdiction by the court. Upon conclusion of the proceeding, the trust instrument shall be removed from the court's records.

# **Trust Contest Litigation**

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**Docketing A Trust:**  
**Select the Venue**

# Trust Contest Litigation

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## Ind. Code § 30-4-6-3:

(b) Unless the terms of the trust provide otherwise, venue in a proceeding brought by a party other than the attorney general for matters arising under this article shall be exclusively in the county in which the principal place of administration of the trust is located. The principal place of administration of a trust is that usual place at which the records pertaining to the trust are kept or, if there is no such place, the trustee's residence. If there are cotrustees, the principal place of administration is either that of the corporate trustee, if there is only one (1); that of the individual trustee who has custody of the records, if there is but one (1) such person and there is no corporate cotrustee; or, if neither of these alternatives apply, that of any of the cotrustees.

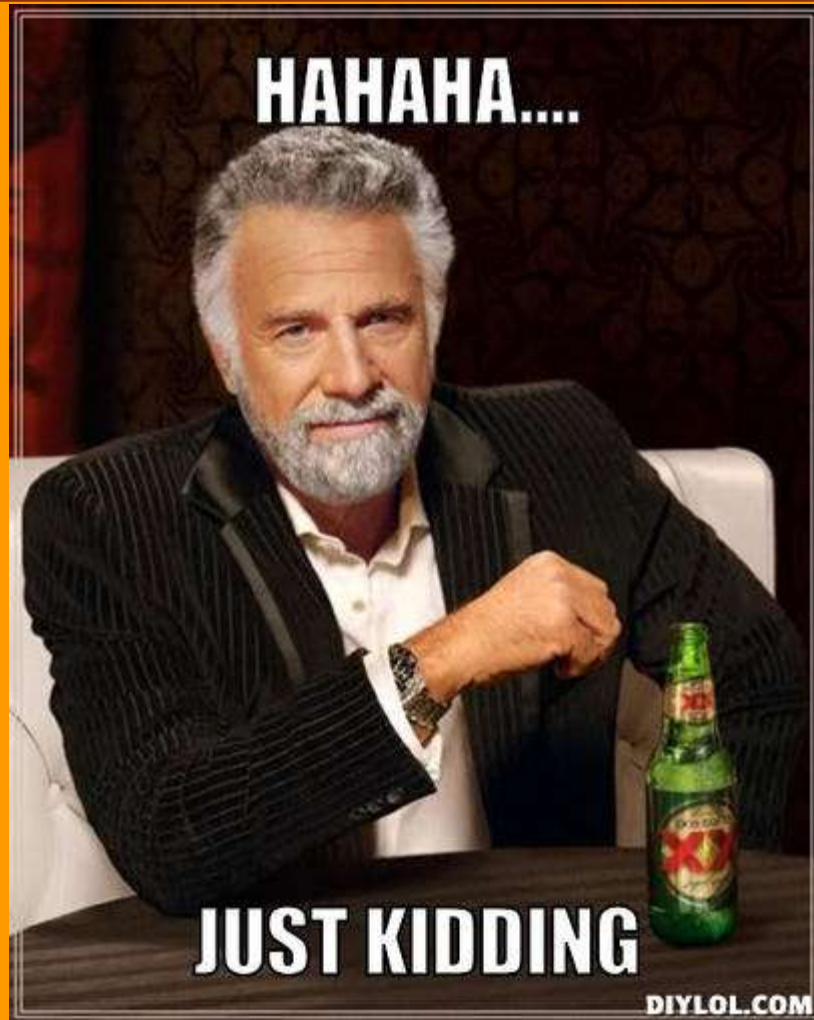
# Trust Contest Litigation

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## Ind. Code § 30-4-6-3:

(b) Unless the terms of the trust provide otherwise, venue in a proceeding brought by a party other than the attorney general for matters arising under this article shall be **exclusively** in the county in which the principal place of administration of the trust is located. The principal place of administration of a trust is that usual place at which the records pertaining to the trust are kept or, if there is no such place, the trustee's residence. If there are cotrustees, the principal place of administration is either that of the corporate trustee, if there is only one (1); that of the individual trustee who has custody of the records, if there is but one (1) such person and there is no corporate cotrustee; or, if neither of these alternatives apply, that of any of the cotrustees.

# Trust Contest Litigation



# Trust Contest Litigation

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*Matter of Tr. Created Under Agreement Dated Sept. 19, 1983, By Johnson, 469 N.E.2d 768, 771 (Ind. Ct. App. 1984), 469 N.E.2d 768, 771 (Ind.Ct.App.1984) trans denied*



# Trust Contest Litigation

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*Because the plaintiff Trustee brought suit in a county (Hamilton) in which preferred venue lay, the defendant could not challenge the venue except as she could obtain relief under T.R. 76. . . . The sole focus of the opinions interpreting T.R. 75 has been on whether the county in which the suit was filed was a county of preferred venue. Once this court determined the initial filing was in a county of preferred venue, the question was decided and the denial of transfer was affirmed.*

# **Trust Contest Litigation**

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## **Resolving a Contested Matter**

# Trust Contest Litigation

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## Ind. Code § 30-4-7-1:

This chapter applies to the compromise of a contest or controversy with respect to the following:

- (1) The construction, validity, or effect of a trust instrument.
- (2) The identity, rights, or interests of a beneficiary of a trust.
- (3) The administration of a trust.

# Trust Contest Litigation

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## Ind. Code § 30-4-7-1:

This chapter applies to the compromise of a contest or controversy with respect to the following:

- (1) The construction, validity, or effect of a trust instrument.
- (2) The identity, rights, or interests of a beneficiary of a trust.
- (3) The administration of a trust.

# Trust Contest Litigation

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## Ind. Code § 30-4-7-1:

This chapter applies to the compromise of a contest or controversy with respect to the following:

- (1) The construction, validity, or effect of a trust instrument.
- (2) The identity, rights, or interests of a beneficiary of a trust.
- (3) The administration of a trust.

# Trust Contest Litigation

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## Ind. Code § 30-4-7-1:

This chapter applies to the compromise of a contest or controversy with respect to the following:

- (1) The construction, validity, or effect of a trust instrument.
- (2) The identity, rights, or interests of a beneficiary of a trust.
- (3) The administration of a trust.

# Trust Contest Litigation

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## Ind. Code § 30-4-5-25 :

- (a) As used in this section, “interested person” means a person whose consent would be required to achieve a binding settlement were the settlement to be approved by the court.
- (b) Except as provided in subsection (c), an interested person may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust. This procedure is not intended to foreclose or limit any other procedure for settlement available under other applicable law.

# Trust Contest Litigation

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## Ind. Code § 30-4-5-25 :

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this article or other applicable law. A nonjudicial settlement may not be used to produce a result not authorized by other provisions of this article, including but not limited to terminating or modifying a trust in an impermissible manner.



# Trust Contest Litigation

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(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this article or other applicable law. A nonjudicial settlement may not be used to produce a result not authorized by other provisions of this article, including but not limited to terminating or modifying a trust in an impermissible manner.

# Trust Contest Litigation

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## Ind. Code § 30-4-5-25 :

(d) Subject to subsection (c), matters that may be resolved by a nonjudicial settlement agreement include the following:

- (1) The interpretation or construction of the terms of a trust.
- (2) The approval of a trustee's report or accounting or waiver of the preparation of a trustee's report or accounting.

# Trust Contest Litigation

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## Ind. Code § 30-4-5-25 :

(3) Direction to a trustee to refrain from performing a particular act or the grant of a trustee of any necessary or desirable power.

(4) The resignation or appointment of a trustee and the determination of a trustee's compensation.

(5) Transfer of a trust's principal place of administration.

# Trust Contest Litigation

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## Ind. Code § 30-4-5-25 :

- (6) Liability or release of a trustee for an action relating to a trust.
- (7) The criteria for distribution to a beneficiary where a trustee is given discretion.
- (8) The resolution of a dispute arising out of the administration or distribution of a trust.
- (9) An investment action.

# Trust Contest Litigation

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## Ind. Code § 30-4-5-25 :

(10) The appointment of and powers granted to a trust director.

(11) Direction to a trust director to perform or refrain from performing a particular act or the grant of a power to a trust director.

# Trust Contest Litigation

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## Ind. Code § 30-4-5-25 :

(e) Before or after the parties enter into a nonjudicial settlement agreement, an interested person may request the court to approve a nonjudicial settlement agreement to determine whether the representation under IC 30-4-6-10.5 was adequate and to determine whether the agreement contains terms and conditions the court would approve.

# Trust Contest Litigation

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## Ind. Code § 30-4-5-25 :

(e) Before or after the parties enter into a nonjudicial settlement agreement, an interested person may request the court to approve a nonjudicial settlement agreement to determine whether the representation under IC 30-4-6-10.5 was adequate and to determine whether the agreement contains terms and conditions the court would approve.

# **Section Six**



# **Ethical Matters in Representing the Trustee**

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## Section Six

### **Ethical Matters in Representing the Trustee..... Kristin Steckbeck Bilinski**

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## I. Introduction

On January 1, 2005, Indiana adopted the majority of the text of the American Bar Association's Model Rules of Professional Conduct.<sup>1</sup> The Indiana Rules of Professional Conduct (referred to herein collectively as “the Rules” or singularly as a “Rule”) set forth guidance on the ethical standards that govern all lawyers in Indiana.<sup>2</sup> Therefore, all potential ethical problems involved in the legal representation of fiduciaries in Indiana must necessarily be read in the context of the Rules.

Because the Rules are closely modeled on the ABA's Model Rules, the ABA's comments on the Model Rules can be quite helpful in interpreting and discussing Indiana's rules. Additionally, the American College of Trust and Estate Counsel publishes useful commentaries on the Model Rules.<sup>3</sup>

These materials will focus on the Indiana Rules of Professional Conduct and their application to the legal representation of trustees. Occasional references will be made to the Model Rules/comments, the ACTEC commentaries, and other sources when they are helpful in interpreting the Indiana Rules.

## II. Who Do You Represent?

In order to determine whether or not there is an ethical problem in your representation, you must first determine the identity of your client.

In the past, a great degree of confusion has reigned regarding the identity of the lawyer's client in an estate or trust administration. We Hoosiers are not alone in this – Comment 27 to Rule 1.7 of the American Bar Association's Model Rules of Professional Conduct acknowledges that “[i]n estate administration the identity of the client may be unclear under the law of a particular jurisdiction.”

However, somewhat recent legislation has made this issue much clearer in Indiana with respect to estate administrations. § 29-1-10-20 was added to the Indiana Code effective July 1, 2013. This code section states that “[e]xcept as otherwise provided in a written agreement between the estate lawyer and an interested person, an estate lawyer . . . represents and owes a duty only to the personal representative.”

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<sup>1</sup> Available at: [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/) (last visited March 6, 2021).

<sup>2</sup> Available at: [https://www.in.gov/courts/rules/prof\\_conduct/](https://www.in.gov/courts/rules/prof_conduct/) (last visited March 6, 2021).

<sup>3</sup> Available at: [http://www.actec.org/assets/1/6/ACTEC\\_Commentaries\\_5th.pdf](http://www.actec.org/assets/1/6/ACTEC_Commentaries_5th.pdf) (last visited March 6, 2021).

With respect to trust administrations, there is no comparable legislation to IC § 29-1-10-20, so it is less clear whether or not the lawyer represents the trustee, the trust entity itself, the beneficiaries, or some combination thereof. As will be discussed more extensively in Sections III and IV below, the best way to avoid any ambiguity in the identity of your client is a combination of a carefully prepared engagement letter and clear and consistent communication with the various parties involved in the estate administration.

### **III. Fees and the Scope of the Representation**

#### **1. Reasonable Fees**

Pursuant to Rule 1.5, a lawyer is ethically obligated to charge a reasonable fee for her trust administration services. What is ‘reasonable’ is highly subjective, and dependent on a laundry list of factors set forth in Rule 1.5(a):

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

As with so many things in the area of legal ethics – and as will be discussed further below – much can be solved by a clearly-worded engagement letter setting out the understanding between the lawyer and client regarding fees.

## **2. Engagement Letters**

Ethical issues can be difficult to foresee and, thus, difficult to avoid. Understanding the scope and breadth of the lawyer's responsibilities to the fiduciary is the first step in predicting and understanding the ethical issues that may arise. Engagement letters are also the best tool for clearly setting out your fees and avoiding future 'sticker shock' and client conflict. The best way a lawyer can protect himself from inadvertent violation of the Rules is by the preparation of a comprehensive engagement letter. As Rule 1.5 succinctly states:

The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

It is also advisable that the engagement letter set out the lawyer's intended course of action if a breach of fiduciary duty by the trustee client is discovered. As stated in the ACTEC commentaries to MRPC 1.2:

In jurisdictions that do not require or permit [disclosures of breach of fiduciary duty], a lawyer engaged by a fiduciary may condition the representation upon the fiduciary's agreement that the creation of a lawyer-client relationship between them will not preclude the lawyer from disclosing to the beneficiaries of the fiduciary estate or to an appropriate court any actions of the fiduciary that might constitute a breach of fiduciary duty. The lawyer may wish to propose that such an agreement be entered into in order better to assure that the intentions of the creator of the fiduciary estate to benefit the beneficiaries will be fulfilled.

Such language ensures that if a breach of fiduciary duty is discovered by counsel for the trustee, the lawyer can both disclose the breach and withdraw from the representation without violating the Rule 1.6 duty of confidentiality (discussed below).

## IV. Potential Conflicts of Interest

Rule 1.7 sets forth the “general rule” with respect to conflicts of interest. A lawyer cannot represent a client if such representation involves a “concurrent conflict of interest.” There are two types of concurrent conflicts of interest: 1.) the representation will be “directly adverse” to another of the lawyer’s clients; or 2.) the representation presents “significant risk” that it will be “materially limited” by the lawyer’s responsibilities to someone else.

Pursuant to Rule 1.7, concurrent conflicts of interest can be waived by the clients in certain circumstances, as long as the clients give written, informed consent to the nature and extent of the conflict. However, Rule 1.7(b)(3) makes it clear that conflict is not waivable in certain circumstances, namely, proceedings in court.

There is almost always a risk that co-fiduciaries or fiduciaries and beneficiaries will come into conflict. It is therefore a subjective judgment call whether or not that risk is “significant” enough under Rule 1.7 to prevent the lawyer’s initial engagement.

The most common situations giving rise to conflicts of interest in estate and trust administration are set forth below:

### 1. Co-Fiduciaries

Representing co-trustees does not automatically present a conflict. Such fiduciaries presumably share the goal of properly and legally administering the trust with which they have been charged. It is possible, however, that conflicts arise between the co-fiduciaries as the administration proceeds. Perhaps the co-fiduciaries are unequal beneficiaries of a trust estate. Or perhaps they disagree as to the application of a trust’s discretionary distribution standards. This does not automatically create a conflict necessitating the lawyer’s withdrawal. Comment [28] recognizes that clients can be “generally aligned in interest even though there is some difference in interest among them.” In such circumstances, the lawyer and the clients must work together to determine whether the differences can be resolved, and whether the expense of separate lawyers for each fiduciary can be avoided:

The lawyer seeks to resolve potentially adverse interests by developing the parties’ mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication, or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

As a practical matter, when faced with the significant increased cost and hassle of hiring separate counsel, many co-fiduciaries will feel compelled to resolve minor differences in a mutually beneficial manner.

However, the question remains – what is the nature of the duty of confidentiality when a lawyer represents co-fiduciaries? Pursuant to Comment [30] to Rule 1.7, “the prevailing rule is that, as between commonly represented clients, the privilege does not attach.” This is because, as stated by Comment [31] to Rule 1.7, the “lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client’s interests.” However, it behooves the attorney to make this clear to both co-fiduciaries at the onset of the representation in an engagement letter or similar communication. Therefore, if either co-fiduciary ever insists on individual confidentiality, he will not be shocked when the lawyer refuses to keep secrets from the other fiduciary or is forced to ultimately terminate the representation.

## **2. Beneficiaries as Current or Former Clients**

Estate planning is often a family affair, with the same lawyer preparing wills/trusts for parents and their children. This can eventually result in your representation of a third party fiduciary of a trust that benefits the decedents’ children, your current or former clients.<sup>4</sup> As with co-fiduciaries, this is not automatically a concurrent conflict of interest, but it can require some sensitivity and planning on the lawyer’s part. Upon any significant risk that the lawyer’s representation of the fiduciary could create a concurrent conflict with the children/clients, a meeting should be held with the fiduciary and the children/clients to discuss the perceived conflict and obtain the parties’ written consent thereto under Rule 1.7.

However, remember that conflict waivers are sometimes impermissible – especially in the context of a court proceeding. For example, a lawyer who represents a trustee cannot simultaneously represent a beneficiary in an action against that trustee, or represent a beneficiary’s interests at a hearing on a petition for instruction by the trustee.

## **3. Decedents as Former Clients**

Pursuant to Rule 1.9, a lawyer has ongoing duties to former clients. After termination of representation (by death or otherwise) a lawyer cannot represent a new client whose “interests are materially adverse to the interests of the former client.” One example of such a conflict with a former client is illustrated in Comment [1] to Rule 1.9: “Under this Rule,

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<sup>4</sup> Whether or not the attorney-client relationship terminates upon completion of an estate plan is somewhat unclear in the absence of an engagement letter clearly addressing this issue. *See, e.g., Report of the Special Study Committee on Professional Responsibility: Counseling the Fiduciary*, Real Property, Probate and Trust Journal Vol. 28, No. 4 (1994).

for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client.”

This Comment raises interesting questions in the context of estate planning – specifically, trust planning. If you draft a trust for a client that delays distributions to the trustor’s children for some number of years, what do you do when, after the trustor’s death, all of the trustor’s children come to you unanimously asking you to bring an action to rescind the trust because they are impatient to get their inheritance?

Indiana Code § 30-4-3-24.4 governs those situations in which modification or rescission of a trust can be granted by the court, and § 30-4-3-26 governs the court’s ability to direct deviation from the terms of a trust. Pursuant to § 30-4-3-24.4, the trust can be modified or rescinded if, “because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust,” and such modification must be undertaken “in accordance with the settlor’s probable intention.” Similar restrictions are placed on deviations pursuant to § 30-4-3-26.

It is an unfortunate fact that, faced with a well-drafted petition and unanimous consent among trustee and trust beneficiaries, some courts may modify or revoke a trust based more on the beneficiaries’ wishes rather than the trustor’s demonstrable intent. I would propose, however, that it is a violation of a lawyer’s obligations under Rule 1.9 to participate in such an action with respect to a trust that he or she drafted.

## **V. The Duty of Confidentiality**

Does lawyer-client confidentiality prevent the fiduciary’s lawyer from disclosing information to trust beneficiaries? In my opinion, the answer to this question is unclear. Rule 1.6 states that the lawyer may make such disclosure as is “impliedly authorized to carry out the representation.” It has been suggested that the “impliedly authorized” language of Rule 1.6 permits, but does not require, disclosures to the beneficiaries of past breaches of fiduciary duty in order to protect the beneficiaries.<sup>5</sup>

But what about a beneficiary who is reasonably requesting information in the case where the fiduciary has done nothing wrong? In such cases, it is best for the lawyer to strongly encourage the fiduciary to communicate more openly with the beneficiaries.<sup>6</sup> This is yet another area where open and honest (and sometimes blunt) client communication can save a lawyer much doubt and heartache.

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<sup>5</sup>ACTEC commentary to Model Rule 1.6. *See also Report of the Special Study Committee on Professional Responsibility: Counseling the Fiduciary*, Real Property, Probate and Trust Journal Vol. 28, No. 4 (1994).

<sup>6</sup> *See* ACTEC commentary to Model Rule 1.2, which states that it is primarily the fiduciary’s responsibility to communicate with beneficiaries, and not the lawyer’s.



In more extreme situations, Rule 1.6 governs in cases where the lawyer suspects that the fiduciary may be contemplating not just a breach of fiduciary duty, but a breach rising to the level of a criminal or fraudulent action. In such cases, the lawyer may disclose otherwise privileged information in order to prevent action that is “reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services.” If the criminal or fraudulent action has already taken place and is subsequently discovered by the lawyer, the lawyer may disclose privileged information if such disclosure will “prevent, mitigate, or rectify” any “substantial injury” that would otherwise result from the fiduciary’s actions.

As for the right or obligation of the lawyer to withdraw from representing a fiduciary who has or is going to commit a crime or fraud, please see VIII, below.

## **VI. Dealing with Beneficiaries**

Comment [11] to Rule 1.2 cryptically states that [w]here the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.” Sounds logical – but what does this sentence really mean?

The ACTEC commentary to Rule 1.2 may perhaps provide a bit more guidance. This comment states that:

The nature and extent of the lawyer’s duties to the beneficiaries of the fiduciary estate may vary according to the circumstances, including the nature and extent of the representation and the terms of any understanding or agreement among the parties (the lawyer, the fiduciary, and the beneficiaries). The lawyer for the fiduciary owes some duties to the beneficiaries of the fiduciary estate although he or she does not represent them. The duties, which are largely restrictive in nature, prohibit the lawyer from taking advantage of his or her position to the disadvantage of the fiduciary estate or the beneficiaries. In addition, in some circumstances the lawyer may be obligated to take affirmative action to protect the interests of the beneficiaries. The beneficiaries of a fiduciary estate are generally not characterized as direct clients of the lawyer for the fiduciary merely because the lawyer represents the fiduciary generally with respect to the fiduciary estate (emphasis added).

Some states (Indiana not included) have gone so far as to state that the lawyer for a fiduciary has privity or an affirmative duty vis-à-vis estate or trust beneficiaries.<sup>7</sup>

One state – Nevada – specifically enacted a statute in 2011 to supersede existing case law imposing an affirmative duty on trustees with respect to trust beneficiaries.<sup>8</sup> This statute states that “[a]n attorney who represents a fiduciary does not, solely as a result of such attorney-client relationship, assume a corresponding duty of care or other fiduciary duty to a principal.”<sup>9</sup>

The complex relationship with beneficiaries is perhaps one of the most commonly faced ethical issues when representing a trustee or a personal representative. Most often, estate or trust beneficiaries do not have their own counsel, and instead rely on the fiduciary’s honesty and judgment. When a beneficiary is thus unrepresented by counsel, it sometimes becomes necessary for the fiduciary’s lawyer to deal with her directly, whether it be providing distributions and receipts, providing a copy of the trust instrument, preparing tax returns, dealing with claims paperwork for life insurance or annuities, etc. When a beneficiary frequently communicates with the fiduciary’s lawyer, he can mistakenly gain the impression that the fiduciary’s lawyer is “his” lawyer too.

Rule 4.3 gives a lawyer some guidance in this situation. In such circumstances, a lawyer should never “state or imply that the lawyer is disinterested.” Rather,

[w]hen the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Make every effort to insure – preferably in writing – that the beneficiary completely understands the nature of your representation of the fiduciary. The ACTEC commentary to Model Rule 1.2 states that it is primarily the fiduciary’s responsibility (rather than that of the fiduciary’s lawyer) to communicate with the beneficiaries, so be sure to communicate through the fiduciary whenever possible. Additionally, the ACTEC commentaries suggest an initial meeting between the fiduciary, her lawyer, and all beneficiaries in order to give everyone the opportunity to discuss and understand the complex relationship between all parties in an estate or trust administration.

Rule 4.4 is also sometimes relevant in the lawyer’s dealings with the beneficiaries, especially those who are unrepresented. This rule states that “a lawyer shall not use means

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<sup>7</sup> See, e.g., *Elam v. Hyatt Legal Svcs.*, 541 N.E.2d 616 (Oh. 1989); *contra Goldberg v. Frye*, 217 Cal. App. 3d 1258, 1269 (1990) (“[P]articularly in the case of services rendered for the fiduciary of a decedent’s estate, we would apprehend great danger in finding stray duties in favor of beneficiaries.”)

<sup>8</sup> Nev. Rev. Stat. Ann § 162.310 (2021), superseding *Charleson v. Hardesty*, 839 P.2d 1303 (Nev. 1992).

<sup>9</sup> Nev. Rev. Stat. Ann. § 162.310 (2021).

that have no substantial purpose other than to embarrass, delay, or burden a third person.” Frequently, there is personal or family animosity between a lawyer’s fiduciary client and a ‘black sheep’ beneficiary. The lawyer must always be careful not to participate in any way in such animosity. For example, be careful of the wording of correspondence and court filings. Also be sure that your fiduciary client is making distributions in a timely and equal manner among trust beneficiaries, regardless of any strained relationships.

## VII. When Good Fiduciaries Go Bad

Being a trustee is a great deal of responsibility, frequently with respect to large sums of money. Unfortunately, it is all too common that temptation gets the better of a fiduciary and he starts using trust funds as his own personal piggy bank. In such situations, what is the fiduciary’s lawyer’s responsibility and ethical duty?

This discussion must necessarily start with a discussion of the *Colussi* case and its progeny, IC § 29-1-10-20. In February 2009, the estate of Dora Lee sued Colussi, the attorney formerly handling the estate administration, because one of the personal representatives had stolen nearly a quarter of a million dollars of estate funds. The estate alleged that Colussi had a duty to monitor the estate checking account. Colussi moved for summary judgment on the basis that the lawyer’s duty did not include the duty to monitor the checking account. The trial court granted summary judgment in Colussi’s favor, but on September 23, 2011 the Indiana Court of Appeals reversed the grant of summary judgment and remanded the case to the trial court.<sup>10</sup>

*Colussi* therefore created a great deal of concern among Indiana lawyers, among whom the common practice was not always to maintain or even closely monitor the estate checking account. Because of this concern, the Indiana General Assembly’s Probate Code Study Commission recommended legislation to clarify a lawyer’s duty of care vis-à-vis estate assets. This bill, now passed into law as IC § 29-1-10-20 and effective as of July 1, 2013, states that (unless otherwise agreed upon by the estate lawyer and an interested person) the estate lawyer:

(2) does not have a duty to collect, possess, manage, maintain, monitor, or account for estate assets, unless otherwise required by a specific order of the court; and

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<sup>10</sup> *In re: Estate of Lee v. Colussi and the Colussi Law Office*, 954 N.E.2d 1042 (Ind. Ct. App. 2011). Transfer was later denied on May 3, 2012 by the Indiana Supreme Court. *In re: Estate of Lee v. Colussi and the Colussi Law Office*, 967 N.E.2d 1034 (Ind. 2012).

(3) is not liable for any loss suffered by the estate, except to the extent the loss was caused by the estate lawyer's breach of a duty owed to the personal representative.

As stated before, however, it is not clear exactly what the application is of § 29-1-10-20 (if any) in the trust context. It is not beyond the realm of possibility that an aggressive trust beneficiary might try to use the *Colussi* holding to pursue the lawyer who represents a misbehaving trustee in the absence of a trust code statute analogous to IC § 29-1-10-20.

Additionally, a lawyer representing a trustee may face an ethical dilemma if she finds out that a trustee client is inappropriately using trust funds.

Pursuant to Rule 1.2, a "lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent." However, if a fiduciary is contemplating a course of action that the lawyer believes may be criminal or fraudulent, Comment [9] to Rule 1.2 states that the lawyer may "give an honest opinion about the actual consequences that appear likely to result from a client's conduct" without being deemed to have assisted the client in committing a crime or fraud.

If a fiduciary is contemplating illegal action, is a lawyer obligated to withdraw? Rule 1.16 gives the grounds under which a lawyer "shall" or "may" withdraw from representation. Comment [2] to Rule 1.16 states that a lawyer "must" withdraw from representation if a fiduciary client insists or "demands" that the lawyer engage in illegal conduct. The lawyer is not automatically "obliged to decline or withdraw simply because the client suggests such a course of conduct." However, according to Comment [2], if after receiving contrary advice from the lawyer, a client still "persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent," the lawyer has discretionary grounds for withdrawal from representation.

But what about a lawyer who only becomes aware of a fiduciary client's bad behavior after the fact? Comment [10] to Rule 1.2 states that "[a] lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter."

In fact, under Rule 4.1, withdrawal may even need to be 'noisy,' making beneficiaries and other interested parties aware of the fiduciary's misconduct, because a lawyer may not "fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting in a criminal or fraudulent act by a client." This can be a very difficult situation for a lawyer, and a very difficult decision to make. Comment [3] to Rule 4.1 provides a bit more guidance:

Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

As with all other ethical matters involving the Rules, whether or not a lawyer 'shall' or 'may' make a noisy withdrawal from representation is highly subjective, requiring a great deal of insight and factual analysis of the particular situation.

## **VIII. Communication with the Client**

It is unfortunate that Rule 1.3 is ever an issue for any lawyer, but busy days and heavy workloads mean that the duty to "act with reasonable diligence and promptness" is frequently compromised. It is not worth a lot of ink in these materials, but Rule 1.3 serves as a good reminder - it is always incumbent on the lawyer to act with reasonable diligence in representing the fiduciary client and to work hard to keep the fiduciary well-informed.

## **IX. The Lawyer as Fiduciary**

As a final matter, it is sometimes asked whether or not a lawyer can serve as fiduciary pursuant to documents that she drafted. This is not *de facto* impermissible, and Comment [8] to Rule 1.8 gives very specific guidance as to when a lawyer (or his partner or associate) may serve as fiduciary:

This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary.

Sometimes a client is truly at a loss as to whom she should appoint as fiduciary, and the same client has a long-standing relationship of trust with a particular lawyer. In this situation, provided there is no un-waivable conflict of interest problem, the lawyer may in fact be the most appropriate choice as fiduciary. It is advisable that the lawyer never suggest herself as fiduciary.<sup>11</sup> Furthermore, in order to ensure that the lawyer is not running afoul of Rule 1.8 by serving as fiduciary, the lawyer should obtain the client's written informed consent to "the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position."<sup>12</sup>

As a commonsense matter, I also recommend documenting in your notes the client's unique motivation for appointing you, the lawyer, as fiduciary. It is inadvisable to have a demonstrated pattern of appointing yourself as fiduciary in every client's documents – such can strengthen the argument that you are not giving objective advice to clients about the appointment of fiduciaries, or are potentially exercising undue influence over vulnerable clients.

Lawyers also need to carefully ensure that their malpractice insurance will cover situations in which the lawyer acts not only as lawyer, but as fiduciary. Frequently malpractice coverage does not include this type of coverage.<sup>13</sup>

## **X. Where to Turn for Guidance**

As should be readily apparent, there are very few bright-line rules in the arena of legal ethics. Situations can be complex and difficult to resolve. Therefore, turning to other legal professionals for guidance is advisable.

Comment [4] to Rule 1.6 states that "[a] lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved."

I therefore encourage you to seek 'hypothetical' guidance from your colleagues, whose input and experience can be invaluable. In addition to partners, associates, and friends, the Indiana State Bar Association provides two telephone ethics advisors for ISBA members in each county in the state.<sup>14</sup>

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<sup>11</sup> "[C]are should be taken to avoid even the appearance of impropriety . . . it is clear that an attorney should not suggest oneself as the person to be named as [fiduciary]. The client must be the one to take the initiative and ask you to serve in this capacity." Aline F. Anderson and Diane Kennedy, *Ethical Constraints on Appointing Attorney Who Drafted Will*, 3:289 Indiana Practice Series: Anderson's Wills, Trusts and Estate Planning (2012-2013).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> This list can be found at: [https://www.inbar.org/page/legal\\_ethics\\_opinion](https://www.inbar.org/page/legal_ethics_opinion) (last visited March 6, 2021).

# ETHICAL MATTERS IN REPRESENTING THE TRUSTEE

March 18, 2021



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# **SOURCES OF GUIDANCE**

**Indiana Rules of Professional Conduct**

**American Bar Association's Model Rules of  
Professional Conduct**

**ACTEC commentaries on the Model Rules**

**WHEN YOUR CLIENT IS A  
FIDUCIARY, WHO DO YOU  
REPRESENT?**

# WHO DO YOU REPRESENT?

- The answer is clear in the context of an estate administration:
  - IC 29-1-10-20: “An estate lawyer . . . represents and owes a duty only to the personal representative.”
- There is no analogous statute in the trust code.
- The best solution? PUT IT IN WRITING.

# **FEES AND THE SCOPE OF REPRESENTATION**

# RULE 1.5 – REASONABLE FEES

- What factors determine the reasonableness of a lawyer's fees? The list includes:
  - Time and labor required
  - Novelty and difficulty
  - Local custom
  - Time limitations imposed
  - Nature and length of relationship with client
  - Experience and reputation



# RULE 1.5 – REASONABLE FEES

How best to prevent a fee dispute?



**PUT IT IN WRITING!!!!**

# ENGAGEMENT LETTER BASICS

- **Basis for fees**
  - Hourly, fixed, or contingent?
- **Scope of representation**
- **Identity of client(s)**
  - Co-fiduciaries?
- **What the lawyer will do in the event of a breach of duty by the fiduciary client**

# CONFLICTS OF INTEREST



# **RULE 1.7 - CONFLICTS OF INTEREST**

## **■ Co-fiduciaries**

- **Comment 30** – privilege extends to both co-fiduciaries equally
- **Comment 31** – equal duty of loyalty to each client

## **■ PUT IT IN WRITING**

# RULE 1.7 - CONFLICTS OF INTEREST

## ■ Beneficiaries as current clients

- Estate planning – a multi-generational family affair
- Conflict waivers
  - Require full, informed disclosure
  - Impermissible in a court proceeding

## ■ PUT IT IN WRITING



# RULE 1.9 - CONFLICTS OF INTEREST

- **Deceased former clients**
  - **Comment 1** – “Under this rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client.”

# THE DUTY OF CONFIDENTIALITY

# RULE 1.6 – THE DUTY OF CONFIDENTIALITY

- Should the trustee's lawyer communicate directly with trust beneficiaries?
  - Rule 1.6 – is such disclosure “impliedly authorized”?
  - Model Rule 1.2 and accompanying ACTEC commentaries – it is always better for the fiduciary to communicate directly with the beneficiaries
  - If you must communicate with beneficiaries, limit it to simple facts, and confer with the trustee first
  - PUT IT IN WRITING

# RULE 1.6 – THE DUTY OF CONFIDENTIALITY

- Rule 4.3 – governs a lawyer's dealings with unrepresented persons
  - There is an affirmative duty to correct any misunderstandings about who the lawyer represents

# RULE 1.6 – THE DUTY OF CONFIDENTIALITY

- Does a lawyer have an affirmative duty towards the trust beneficiaries?
  - Indiana law = silent
  - ACTEC: Lawyer's duties to beneficiaries are "largely restrictive" in nature
    - Lawyer may not purposefully disadvantage the beneficiaries
  - Ohio: trustee has affirmative duty to beneficiaries
  - Nevada and California: trustee does NOT have an affirmative duty to beneficiaries

# FIDUCIARIES GONE WILD!





# IS THERE A DUTY TO MONITOR A TRUSTEE CLIENT?

- *Colussi* and IC 29-1-10-20
- IC 29-1-10-20 states that counsel for a personal representative “does not have a duty to . . .account for estate assets, unless otherwise required by a specific order of the court . . . and . . . is not liable for any loss suffered by the estate, except to the extent the loss was caused by the estate lawyer’s breach of a duty owed to the personal representative.”
- No analogue in the trust code

## RULE 1.2

“A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent.”

**Comment [9]** - the lawyer may “give an honest opinion about the actual consequences that appear likely to result from a client’s conduct” without being deemed to have assisted the client in committing a crime or fraud



## RULE 1.2

**“A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent.”**

**Comment [10]** - “[a] lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter.”

## RULE 1.16

“A lawyer may withdraw from representing a client if . . . The client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is criminal or fraudulent.”

**Comment [2]** - if after receiving contrary advice from the lawyer, a client still “persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is criminal or fraudulent,” the lawyer has discretionary grounds for withdrawal from representation.

**Comment [2]** - a lawyer “must” withdraw from representation if a fiduciary client insists or “demands” that the lawyer engage in illegal conduct . . .”

# THE LAWYER AS FIDUCIARY

# SHOULD YOU SERVE AS TRUSTEE?

- Rule 1.8 – not de facto impermissible
  - Beware Rule 1.7 conflicts of interest
- Professional liability coverage?
- Document the client's rationale
- Avoid a demonstrated pattern of appointing yourself
- PUT IT IN WRITING!
  - Client rationale
  - Client consent to your fees/fee structure

# **OTHER SOURCES FOR GUIDANCE**

# TWO HEADS ARE BETTER THAN ONE!

- Rule 1.6, comment [4] – use of the hypothetical
- Indiana State Bar Association telephone ethics advisors
- Indiana State Bar legal ethics advisory opinions



**QUESTIONS?**