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ESTATE PLANNING
VOLUME I

WILLS ***PROBATE***

JOINT TENANCY ***LIVING WILLS***

POWERS OF ATTORNEY

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ESTATE PLANNING

VOLUME I

ESTATE PLANNING

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INTRODUCTION

The ultimate in estate planning is cryogenics. Cryogenics is freezing the body of a dead person so it can be brought back to life sometime in the future when the technology to do so is developed. In fact, it is possible to do a lay-away plan where a person has his head cut off and frozen. This is done with the hope that in the future an entire new body can be cloned and the head attached to it. The person first has to be declared dead. The question becomes: What will happen to the body? Whether we believe we come back in another form or pass to a higher plane of existence, we will nevertheless travel to a realm where no one ever returns. We cannot take it with us. That is not to say that people have not tried to do so. The Pharaohs of Ancient Egypt, the Mayans in Central America and the Celtic tribes in Europe all attempted and failed to take their worldly goods with them.

So what then is left for us to do? Lacking a philosophical bent, we can only offer practical and pragmatic answers for the living. The only answer that makes sense is that if a person cannot take the estate with him, it should be given to those for whom the person cared. For most people that means simply giving the estate to family members and loved ones. If the estate is going to be given away, it makes sense to give it to loved ones

rather than to the government in the form of avoidable taxes.

The purpose of estate planning is to help a person build a large estate during life and to pass as much of it as possible to the loved ones upon death. This book attempts to present the various types of available estate planning for the average estate.

An estate plan is the procedure by which a person attempts to preserve the assets of his estate during life and distribute them after death. The main considerations in estate planning are avoiding probate, reducing estate and inheritance taxes and quickly distributing the estate to the designated heirs.

A complete estate plan will consider methods for preservation of the estate during life by maximizing income while reducing income taxes that must be paid. The costs of probating a will are large. An old joke: If the person was not already dead, the cost to probate his estate would kill him.

Probate costs include court fees, appraisal fees, attorney fees and executor fees. Court costs and appraisal fees are modest: a couple of hundred dollars for an average estate. The real costs are the attorney and executor fees. The maximum amounts of attorney and executor fees are set by statute and approved by the court. They are based upon the size of the estate (value of the property to be probated) and increase as the estate increases. In California, for example, attorney and executor fees are as follows:

1. 4% of the first $100,000; maximum $4,000.
2. 3% of the next $100,000; maximum $3,000.

3. 2% of the next $800,000; maximum $16,000.

4. 1% of the next $9,000,000 maximum $90,000.

For example, a $100,000 estate probated in California the maximum attorney and executor fees would be $8,000: ($4,000). The attorney and executor can agree to take less or no fee at all.

Avoidance of probate fees is a major inducement for implementing an estate plan. When a revocable trust is used, there are no probate fees. The estate passes immediately to the designated beneficiaries of the trust. No court proceeding is needed to transfer the property of a trust, so no attorney is needed. There are several means to avoid having to probate property. The most common probate avoidance vehicles are:

1. Summary probate proceedings in the decedent's state. A summary probate is an abbreviated procedure for small estates or for transferring the entire estate to a surviving spouse. Many states have adopted special procedures to by-pass the expense and long delay in probating such estates.

2. Giving the estate away while alive.

3. Placing the property into joint tenancy with the proposed heirs. Upon death, title for the property passes immediately without probate to the surviving joint tenants. Real property held in joint tenancy passes to the survivors without a probate by recording a notice of the death of a joint tenant.

4. Placing the estate into a revocable trust that passes the estate to the designated beneficiaries immediately upon the decedent's death. This is the most popular form of estate planning. It is fast and bestows the maximum amount of control and property over the estate.

To determine the best type of estate plan, one needs to know the size of his estate, how he wishes to distribute it and the amount of control he is willing to relinquish to create the estate plan.

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CHAPTER 1

COMMON PROBATE QUESTIONS

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This chapter is devoted to the questions most frequently asked concerning probate. Nearly everyone has a basic understanding as to what a probate is all about. Few people, however, really understand the mechanics of a probate unless they have been compelled to go through one.

A probate is overall name given to the judicial proceeding whereby a court distributes an estate of a deceased person who had not made arrangements for the passing of the estate without court supervision prior to death. In short, if a person dies with property in excess of $60,000 in value for which he had not made arrangements for its passage outside of probate after death (such as through a revocable trust or joint tenancy), then the property must be probated in order to have it distributed to the deceased person's heirs. All property that passes to heirs by virtue of a Will or by intestacy must be probated.

Probate law is the only field of law that is gradually fading out of existence. Summary Probates, Joint Tenancies and Revocable

Trusts have been steadily reducing the number of probate filings each year. The reason for this reduction is that such probate avoidance alternatives avoid the need to need for a probate as they pass title to the heirs or beneficiaries in the subject property immediately upon death. Since the only real function of a probate court is to decide who gets a deceased person's estate, following death, if the decedent has already done that then there is nothing left for the court to do.

Probate law is one of the most technically precise and regulated areas of law. Nearly everything that is done in a probate is subject to judicial review. The acts of the personal representative are, themselves, strictly regulated and reviewed by the courts.

This chapter is designed to familiarize the reader with the problems and procedures faced in probating an estate. The questions contained herein cover most of the problems faced in an average sized probate.

Generally, everyone having an estate over $60,000 should consider some type of probate avoidance vehicle. The reason or this is that when an estate exceeds $60,000 it is almost always more expensive to probate the estate, given attorneys fees and the fees of the personal representative, than it would to create a revocable trust for estate planning purposes. However, in the event that a person elects to have his or her estate probated, for whatever reason, the questions in this chapter and their answers will help

the user better understand the problems and procedures that await. This chapter will be very useful in helping the reader identify and focus on the areas of most concern in their decision to have their estate probated.

1. **WHAT IS PROBATE?**

"Probate" is the name for the entire legal proceeding in a probate court to determine how to distribute the estate of a deceased. Probate is the legal mechanism whereby a court states who gets the estate. Probate of a deceased's estate is necessary when the decedent did not plan his final affairs beyond preparing a Will. Appropriate estate planning avoids probate altogether while providing for the immediate transfer of the estate to the designated heirs.

Probate proceedings are long, cumbersome and expensive. They are avoidable with proper estate planning. In recognition of the difficulties and expense of probate many states have enacted laws waiving probate or streamlining procedures for small estates (usually under $60,000). These summary probates usually involve nothing more than filing petitions with the court stating that the estate is too small to be managed effectively and that it should be distributed without administration to the heirs. Summary probate procedure is available only for small estates. Above a certain value, usually $60,000, a regular probate is required. A person whose estate exceeds $60,000 should develop a simple estate plan

and avoid probate.

2. WHAT ARE THE FUNCTIONS OF A PROBATE COURT?

The probate of a deceased person's estate is handled through a probate court. It is a special department or court under a court of general jurisdiction. The probate court oversees the administration of the probate estate. The probate court is responsible for performing the following functions:

1. Appointing the legal representative of the estate.
2. Supervising the representative.
3. Receiving and evaluating the inventories, accountings and other reports of the representatives.
4. Assuring that all bills, taxes and claims against the estate are paid by the representative.
5. Overseeing the distribution to the heirs.
6. Closing the estate and releasing the representatives from further responsibility.

The estate remains under the control of the personal representative until the probate court issues the final order of distribution. It can take years for an estate to be closed and the assets distributed to the heirs.

3. WHAT IS A LAST WILL AND TESTAMENT?

A Will is the final testament a person makes to ensure his earthly possessions go to whom he wants them to go. A Will is

totally revocable during one's life. A Will usually must be in writing and witnessed by two or more adult persons. The witnesses usually cannot be heirs mentioned in the Will.

In some states an oral Will made in immediate contemplation of death may be valid to distribution of the estate. The creator of the Will (testator) must be legally competent to make the Will and not be insane or otherwise mentally impaired.

Unless a clause of the testator's last Will specifically revokes all prior Wills, all of the Wills of the testator must be read together. The probate court then will determine how the estate will be distributed. Therefore, all Wills should have a simple clause revoking all of the testator's prior Wills.

A Will must be signed, dated and, unless typed, be written entirely in the handwriting of the testator or be an approved Statutory Will (a pre-printed Will authorized by statute in the testator's state of residence).

4. **WHAT IS A HOLOGRAPHIC WILL?**

A Holographic Will is a Will that is written entirely in the handwriting of the testator. Some states, such as Colorado and California, do not require a Holographic Will to be witnessed. Most states require a Holographic Will to be witnessed. Many states will not accept a Holographic Will as valid if there are any pre-printed or typed portions of the Will. Some states will permit pre-printed language in the Will if the material provisions are

entirely in the testator's own handwriting. To be safe a Holographic Will should have two or more witnesses. That means, however, that it is no longer a Holographic Will, but an ordinary Will. Generally, Holographic Wills should not be used because they raise the potential issue of forgery. A case in point was the alleged Holographic Will of HOWARD HUGHES. The distribution of his estate of several billion dollars hinged on a purported unwitnessed Holographic Will. After years of legal wrangling, the court ruled that the Will was a forgery, but there are still some experts who believe it wasn't. If it was real, however, the issue of competency then exists because most sane people would not give away millions to strangers.

5. **WHAT IS A STATUTORY WILL?**

Many states have created Statutory Wills. These Statutory Wills comply with all of the terms for a valid Will in the state. They are pre-printed blank Wills on which the testators simply fill the blanks, sign and have notarized. Nearly all states have approved Statutory Wills for their citizens which will be sold in stationery and office supply stores. A Statutory Will still has to be probated the same as any other Will.

It is important that whenever a pre-printed do-it-yourself Will is used that the person pay particular attention to detail. A telling example of this is an actual case where a woman used a pre-printed Will. She was unmarried and had lived for 30 years

with a man. She had a child whom she had not seen for over 30 years. She left everything to her male companion in the Will. Unfortunately, the Will she had bought and used was titled "Single Without Children." Her son filed a claim as a pretermitted heir and was awarded her entire estate. The man who had been with the decedent for 30 years received nothing because the woman chose the wrong pre-printed Will.

6. **WHAT HAPPENS IN A PROBATE IF A WILL IS LOST?**

If a deceased person's Will cannot be found, the general presumption in law is that the person destroyed it. The estate will be distributed in accordance with the state's laws of intestacy. It is next to impossible to prove the existence of a missing Will and what it contained to the satisfaction of a court. If an heir can do so and also convince the court that the Will was inadvertently destroyed, the court might possibly distribute the estate as intended. Example: George made a Will and gave a copy to a friend and placed the original Will in his son's house, which was destroyed by fire. The court might distribute the estate according to the copy. The evidence needed to prove to the court that the deceased did not destroy a missing Will is overwhelming.

The better tactic is for the person to sign two duplicate Wills with a general provision stating, "I have executed this last Will and testament in duplicate with one copy being held by my attorney. On my death if the Will in my possession cannot be

found, it is not to be presumed that I revoked it. The Will in the possession of my attorney can be admitted in probate and treated as though it was the Will in my possession."

Because a lost Will is presumed to have been revoked, a probate court will not accept a copy of a Will into probate unless it can be shown to its satisfaction that the original Will was not destroyed by the deceased. The general presumption is that the decedent revoked the Will if it is missing. Producing a copy of the Will proves the contents of what was in it but does not prove that the deceased did not revoke it. Example: A fire kills the testator and destroys the Will at the same time. It then falls upon the heirs to prove that the testator did not destroy the Will prior to the fire. Therefore, execute the Will in duplicate with a clause that if the Will is not found in the deceased person's possessions, it is not to be presumed to have been destroyed.

7. **WHAT IS LEGAL COMPETENCY TO MAKE A WILL?**

In order to create a Will that is valid, the testator must be legally competent to do so. The issue of competency is critical when determining the validity of a Will. Will contests based upon competency are the most difficult cases in the law to win. The creator of the Will is dead, and the intent of a deceased testator has to be proven by extraneous and parol evidence that:

1. The testator was an adult or emancipated minor.
2. The testator knew the nature and quality of his estate.

3. The testator knew those who were the natural objects of his bounty (must have known his or her family).

4. The testator was mentally competent and not suffering from any insane delusions as pertained to the members of his family.

5. The testator was not on mind-altering drugs or alcohol when the Will was executed.

6. The testator knew that he was making a Will.

If these elements are not met, the Will is invalid no matter how many witnesses were present when it was executed. Competency is interesting because it does not have to be permanent. A person can be insane, have a temporary return to sanity, sign the Will and relapse into insanity with the effect that the Last Will and Testament will be valid.

The issue of competency most commonly arises when an elderly person creates a Will close to the time of death or while under some type of medical treatment that might cloud judgment. Most Will contests arise by someone claiming the decedent was tricked into signing a Will.

8. **WHAT IS INTESTACY?**

A person is said to have died intestate if that person died without having executed a valid Will. The estate of a decedent whose Will is declared invalid will be treated as if he died without a Will. An unemancipated deceased minor's estate will be

treated as though the minor died intestate. Minors cannot write a valid Will. If a Will is declared invalid for any reason (failure to be witnessed, having improper witnesses, being under age, lacking mental capacity, etc.), the decedent's estate will be distributed as though he died without creating a Will.

9. **HOW IS AN INTESTATE ESTATE DISTRIBUTED?**

When a person dies intestate, the estate usually is divided among the immediate family as follows:

1. If there is a spouse and a child, the estate is divided evenly between the two.
2. If there is a spouse and more than one child, one third of the estate goes to the spouse, and the rest is divided among the children.
3. If there is a spouse and parents and no children, the estate is split between the spouse and parents.
4. If there are parents and no spouse or children, it goes to the parents.
5. If there are no parents, spouse or children, the estate goes to any brothers and sisters.

The probate court will keep searching for heirs until it finds someone to receive the estate. To find an heir to Howard Hughes' estate the court ultimately found a distant cousin by adoption several times removed.

10. **WHEN IS A WILL DECLARED INVALID?**

A probate court will declare a person's Last Will and Testament invalid when:

1. The testator was an unemancipated minor, usually under eighteen years of age.
2. The testator did not sign it or have enough witnesses, or the witnesses were heirs and thus disqualified, or the witnesses were minors. In most states people named in a Will as receiving property cannot be witnesses. Their signatures are invalid. If there are not two, and in some cases three, good witnesses, the Will is declared invalid.
3. The testator was mentally incompetent at the time the Will was executed.
4. The testator was forced to make the Will as a result of fraud, duress or undue influence of another.
5. The oral Will was found invalid because it exceeded the statutory amount that can be passed by an oral Will.
6. A Holographic Will was not entirely in the handwriting of the testator or not signed or not dated.

When a Will is declared invalid, the last valid Will of the decedent will be admitted into probate. If there is no valid previous Will, the decedent's estate will be distributed in accordance with the decedent's state laws.

11. **WHAT ARE THE CONSIDERATIONS IN MAKING A WILL?**

A Will is a final statement of a person about how his estate is to be distributed. A probate court will not employ a Ouija board or seance to determine the testator's intent on issues not covered in the Will. The court will apply the state's law and general equitable principles. One should consider the following factors before making a Will:

1. What specific bequests (gifts) are to be made?
2. How should the remainder of the estate be distributed?
3. Who should be the executor of the estate?
4. Should a bond be required on the executor?
5. What powers should be given the executor? How much should the court supervise the executor?
6. Should adopted or step-children inherit from the estate?
7. Should a testamentary trust be established?
8. Who should be nominated as guardian for minor children?
9. Should any debts be canceled that are owed by heirs, or will they be deducted from the inheritances?
10. If assets are to be sold to pay debts, is there a priority as to how they will be sold?

It simply makes no sense to leave such important matters to be decided by a judge who has no understanding of the decedent or his wishes.

13. **WHAT IS COMMUNITY PROPERTY?**

A small minority of states (California, Arizona, Idaho, Louisiana, New Mexico, Texas, Nevada, Washington, Wisconsin and to an extent Oklahoma) have laws that state all property acquired by either spouse during a marriage (except by gift, devise or bequest) is jointly and equally owned by both spouses. Earnings by both spouses for their work during the marriage along with retirement benefits earned during the marriage also belong equally to both spouses. Upon death only one half of the community property is placed in the deceased spouse's estate. The other half of the community property remains the sole property of the surviving spouse and is not included in the decedent's probate.

When a spouse dies intestate in some community property states, such as California, the surviving spouse automatically acquires title in the community property without probate. Since community property is considered by law to be owned equally by both spouses, a spouse's estate consists of only one-half of the property. Either spouse can direct through a Will how his half of the community property will be distributed. A surviving spouse is not automatically entitled to the deceased spouse's share of the community property. Example: George and Ellen are married in a community property state. George gives his half of the community property and all of his separate property by Will to his children, not to his wife, Eileen.

If the deceased spouse does not have a Will, his half of the community property will be distributed by state laws. California

has a special provision that requires all community property to pass automatically to the surviving spouse if a spouse dies intestate. In the example above, if George died without a Will, then Eileen would inherit automatically, with no probate, all of George's interest in the community property. A probate would still be needed for all of George's separate non-community property.

14. **WHAT IS STEPPED-UP BASIS FOR PROPERTY RECEIVED FROM DECEDENT?"**

The basis (value for tax purposes) of property received from a decedent through a trust or through probate is its fair market value on the date of the decedent's death. Example: A person bought a home for $10,000. On his death it was worth $40,000. The basis of the property when heirs receive it will be $40,000. If the heirs sell it for $40,000, there will be no capital gains taxes due. If the heirs sell the house for $60,000, they will have to pay capital gains taxes on $20,000 (selling price $60,000 minus stepped-up basis $40,000).

Community property is considered owned by both spouses and is given special tax treatment. Under federal law when one spouse dies, the basis of both halves of the community property will be increased to fair market value. This is a great tax advantage. Example: A couple bought a home for $20,000 that had increased to $500,000 upon the husband's death. The basis for the husband's share in the community property is increased to fair market value

$250,000. Under the special treatment for community property, the wife's share is also increased to fair market value $250,000. The surviving wife can sell the house for $500,000 without having to pay any capital gains taxes. If, however, the spouses held the house as joint tenants, only the husband's half would have been increased to fair market value. The wife's basis for her half would have remained at $10,000. If the wife later sold the house for $500,000, she would have to pay capital gains tax on $240,000 ($500,000 - $260,000 total basis).

The stepped-up basis for community property is a great tax advantage over mere jointly-held property between spouses.

15. **WHO ARE HEIRS?**

An heir is someone who succeeds by operation of law to the estate of a person who died intestate. Each state identifies those persons that can be heirs under its laws. A living person has no heirs, only "heirs apparent." Heirs must survive a decedent.

Generally, heirs are the spouse, parents, children, brothers and sisters (immediate family) of the decedent. If none survive the decedent, the laws will extend heirship to the next-of-kin closest in relationship to the decedent.

Generally step-children have no greater rights in a step-parent's estate than those of a total stranger. Unless the step-children were adopted, which legally makes them the same as biological children, step-children are viewed as strangers for

inheritance purposes.

If an heir is to receive property from an estate but can't be found, the probate court will order the property of the heir to be delivered to the county treasurer, county administrator or other designated agent. The agent will hold the property for the missing heir until the heir or a person acting for the heir or his estate applies for release of the property. Payment to the designated agent relieves the personal representative of further responsibility to the heir.

When the property consists of real or personal property other than cash, the court may order the property to be sold, converted to cash and kept in an interest-bearing account. If the money in the bank account is not claimed within a fixed statutory period, it is transferred to the state as "escheated property."

16. **WHO IS A PERSONAL REPRESENTATIVE?**

The person appointed by the court to act for the estate of a deceased person is the personal representative. There are two types of personal representatives: (1) the executor or executrix and (2) the administrator. The executor (a man) or the executrix (a woman) is appointed by the court to represent the estate when the trustor (creator) of the will dies. A person nominates an executor or executrix in the Will, but it is the court that does the actual appointment. If the court is not satisfied with the decedent's chosen representative, it will appoint another. An

administrator is a man (administratrix, if a woman) appointed by a court to administer the estate of a decedent who died intestate.

The personal representative is given statutory powers to handle the affairs of the estate in most transactions without court approval. Through his Will the decedent can give the executor more powers and authority to act than are normally contained in the statutory powers conferred by the court. Usually court approval must be sought before real estate can be sold. A testator, however, may require in his Will that the real property be sold. If he does, court approval is not necessary.

The personal representative, whether the executor or the administrator, is responsible for performing the following duties in the probate:

1. Marshals (assembles and inventories) the assets of the estate.
2. Establishes a checking account in the name of the estate.
3. Arranges for appraisal of the assets of the estate, both real and personal property.
4. Seeks payment on any insurance policies owed on the life of the deceased person.
5. Substitutes as the representative of the deceased person in any litigation pending at the time of death.
6. Files any litigation needed to collect debts owed to the estate or to maintain and preserve the estate.
7. Pays all bills, including funeral bills and medical bills

for the last illness.

8. Prepares tax returns and pays all federal and state taxes for the estate and the decedent.

9. Submits accounting to the court for review.

10. Petitions the court for authority to distribute to heirs.

11. Distributes to heirs.

12. Applies to the court for final discharge, terminating his authority to act and releasing him from liability.

It usually takes a minimum of six months for a personal representative to do all this. It can take significantly longer. Some estates have been open for years. This is the prime factor in favor of a revocable trust, which can transfer property immediately subject only to the payment of appropriate estate and income taxes.

The personal representative appointed by the court is responsible for the payment of all taxes owed by the estate from the assets in the estate. If the personal representative distributes the estate before payment of all taxes due and owing, the representative may become personally liable for the taxes to the extent of the property transferred. Example: The representative distributes $50,000 to the heirs, and the IRS then determines that an additional $60,000 is owed in taxes. The personal representative may be responsible for any portion of the $50,000 not recovered from the heirs.

17. **WHAT IS AN ACCOUNTING?**

The personal representative is required to file an inventory with the court when the estate is opened. An inventory is a complete listing of every asset in the estate and its value. While the estate is open, the representative is required to keep track of every penny received or spent by the estate.

Before the estate can be closed, the representative is required to account for every penny that entered and left the estate. There must be a complete accounting for the estate. All of the heirs can agree to waive an accounting. That might be done when the accounting is unnecessary because the heirs trust the executor, or when it will be too costly given the difficulty or expense in performing it. Unless the accounting is waived, the estate cannot be closed.

18. **WHAT ARE LETTERS OF PROBATE?**

In a probate the court appoints a personal representative. The appointment of a representative is manifested by a court document. The court order appointing an executor in an estate where there is a Will is called "letters testamentary." The court order appointing an administrator in an estate where there is no will is called "letters of administration."

The letters are the official appointment of the personal representative to act for the estate. Once these letters have been issued, the personal representative is legally entitled and indeed obligated to undertake the management of the affairs of the probate

estate. No one should ever deal with a person claiming to be the personal representative of an estate without first seeing the letters of appointment.

19. **WHAT IS A WIFE'S DOWER'S RIGHT?**

Some states still have the ancient common law right of "dower." Under the concept of dower the law gives an interest to the wife in the real property of the husband owned by him at any time during the marriage. The wife's right (dower) was contingent upon her surviving him, and it became an absolute right after she did so. The dower interest was a life estate in one-third of the real property that the husband owned during the marriage.

The wife's dower could not be defeated by the husband during his life or by his Will, and her interest was not subject to the claims of her husband's creditors. The dower terminates upon divorce. Many states have abolished dower and replaced it with statutory shares in the deceased husband's estate.

20. **WHAT IS A HUSBAND'S CURTESY RIGHT?**

Some states still have the ancient common law doctrine of "curtesy" governing the husband's statutory share of his wife's estate. Curtesy grants the husband an interest in the real property of the wife owned by her during the time of the marriage. The husband's curtesy was contingent upon him surviving her, and it became an absolute right when he did so, provided a child was born

during the marriage.

Curtesy entitles the husband to a life estate in all of the wife's real property owned by her during the marriage. The husband's curtesy could not be defeated by the wife during her life or by her Will and was not subject to the claims of her creditors. Curtesy terminates upon a divorce. Most states have replaced the doctrine of curtesy with statutory shares for the surviving husband in the deceased wife's estate (between a third and a half).

21. **WHAT ARE COMMON LAW STATES?**

The following are the states that follow the common law marital property rules. In these states a person owns separately and apart from the spouse everything titled solely in his name and everything purchased by his own property, income, or salary. The titles to property actually control who owns. This is different from the law in community property states, which hold that all property acquired by gift, devise, or bequest belongs to both husband and wife. The common law states are:

ALABAMA	ALASKA	ARKANSAS	COLORADO
CONNECTICUT	DELAWARE	FLORIDA	GEORGIA
HAWAII	ILLINOIS	INDIANA	IOWA
KANSAS	KENTUCKY	MAINE	MARYLAND
MASSACHUSETTS	MICHIGAN	MINNESOTA	MISSISSIPPI
MISSOURI	MONTANA	NEBRASKA	NEW JERSEY
NEW HAMPSHIRE	NEW YORK	N. CAROLINA	N. DAKOTA
OHIO	OKLAHOMA	OREGON	S. CAROLINA
PENNSYLVANIA	RHODE ISLAND	S. DAKOTA	UTAH
TENNESSEE	VERMONT	VIRGINIA	W. VIRGINIA
WYOMING			

Every common law state has its own laws determining the

statutory share that a surviving spouse receives from a deceased spouse's estate. In the following states the surviving spouse receives a one-third life estate. This is the right to use the property to obtain income but not the right to sell it:

Connecticut Kentucky Rhode Island Vermont

In the following states, the surviving spouse's percentage varies, depending on whether the deceased spouse had children. The surviving spouse usually gets at least one-half of the estate, one-third if there are children.

Alabama	one-third of the augmented estate.
Alaska	one-third of the augmented estate.
Colorado	one-half of the augmented estate.
Delaware	one-third of the estate.
Dist. of Columbia	one-half of the estate.
Florida	30% of the estate.
Hawaii	one-third of estate.
Iowa	one-third of estate.
Maine	one-third of the augmented estate.
Minnesota	one-third of estate.
Montana	one-third of augmented estate.
Nebraska	one-third of augmented estate.
New Jersey	one-third of augmented estate.
New York	one-third of augmented estate.
North Dakota	one-third of augmented estate.
Oregon	one-fourth of the estate.
Pennsylvania	one-third of the estate.
South Dakota	one-third of the augmented estate.
Tennessee	one-third of the estate.
Utah	one-third of the estate.
W. Virginia	up to one-half of the augmented estate.

In the following states, the surviving spouse's percentage varies depending on whether the deceased had children. If there are no children the surviving spouse usually gets one-half of the estate but only one-third if there are children.

Arkansas	Illinois	Indiana	Kansas
Maryland	Massachusetts	Michigan	Missouri
New Hampshire	N. Carolina	Ohio	Oklahoma
S. Carolina	Virginia	Wyoming	

Georgia is unique. Instead of a fixed share, Georgia requires the deceased spouse's estate to support the surviving spouse for one year. This might or might not exceed the one-third of the estate usually given in other states.

Most states base the statutory share on the augmented estate of the deceased spouse. The augmented estate consists of everything owned by the decedent: joint-tenancy property, trust property, etc. The amount of the statutory share is calculated from the augmented estate. The probate court has the power to cancel joint tenancies and trusts created by the deceased spouse in order to give the surviving spouse a statutory share.

The purpose of using the augmented estate is to ensure the deceased spouse passes a statutory share of the estate to the surviving spouse. Not all states, however, use the augmented estate. Instead, other states simply rely on the property actually undergoing probate.

22. **WHAT IS THE ROLE OF AN ATTORNEY IN A PROBATE?**

An attorney is not required to probate an estate. In a simple probate a representative with normal intelligence and no legal training can handle the probate procedures quite well. There are a number of do-it-yourself probate manuals on the market that can assist a non-lawyer in the probate. An attorney will be needed if there is any type of lawsuit against the estate by third parties, such as a creditor's claim or a will contest. Most states have laws stating that only attorneys can bring or defend a lawsuit in court for another. Therefore, the personal representative cannot act as an attorney in a court unless he is a licensed attorney.

23. **WHAT ARE ESTATE AND INHERITANCE TAXES?**

A common misconception is that probate exists as a means for the state or federal government to collect taxes. That is not the case. Estate and inheritance tax rates are based on the size of the estate and the relationship of the heirs to the deceased. It is irrelevant to the taxing entities whether or not a probate is conducted when determining the tax liability.

For example, assume that a person gives $800,000 at his death to his children. It makes no difference if the $800,000 comes to the children from probate or through a revocable trust. There is greater cost if the estate is probated rather than passing it through a trust, but the tax rates are the same. The tax is on the money and property distributed after death, not whether or not it

comes from probate.

Some states will freeze jointly-held property (such as bank accounts, real estate and brokerage accounts) until the taxing entities have time to assess the value of the decedent's interest in the property. In particular, New Jersey and South Carolina require 10 day's written notice to taxing agencies before securities, deposits or assets of a decedent may be transferred outside of probate. In the states that freeze the assets pending a tax determination, a limited amount may none-the-less be transferred to a spouse or children without having to give the required notice. New Jersey permits $5,000 to be transferred to the surviving spouse without having to wait the required 10 days.

The purpose of permitting limited transfer for use by the family is to keep the spouse and family from destitution while the taxing authorities determine what amount of tax is owed. It is markedly unfair to seize the joint property of one person merely because the other joint tenant died. Consequently, the notice period is usually small.

There is a lifetime federal unified credit for gift and estate taxes of $1,000,000 through 2004. Then for estates it rises to an unlimited amount in 2010 and then reduces to $1,000,000. For gifts, the exemption remains at $1,000,000. This means that no federal estate taxes will be owed unless an estate exceeds the unused portion of the unified credit (the unified credit amount minus the value of lifetime gifts). Under the Internal Revenue Code, a

personal representative can file a request with the IRS (and sometimes the state taxing agency) for a final assessment of the taxes owed by the estate. The IRS has three years in which to assess additional taxes. If the personal representative makes a request for a prompt assessment, the IRS has to complete the assessment within 18 months. After the assessment is done, the personal representative can pay the tax, distribute the remaining estate to the heirs and be discharged without any liability for future taxes.

24. **SHOULD JOINT WILLS BE USED IN ESTATE PLANNING?**

Joint Wills are trouble and should usually be avoided. The problems are obvious. A married couple makes a Joint Will; one spouse dies; the survivor wished to change the Will; the ultimate beneficiaries, usually the children, object. Whether the surviving spouse can alter a Joint Will depends both on the language of the Will and the state law where the Will is probated. If the Will states that after the death of one spouse the survivor cannot amend or revoke, most states would enforce that provision on contractual grounds. These states take the position that the deceased spouse would not have executed the Joint Will had he known that it could be changed after death.

If the Joint Will does not have the language making it irrevocable and unamendable, the court Will try to decide the intent of the parties when they drafted it and base its decision on

that determination. There simply is not any real justification for running this type of risk. Individual Wills are relatively cheap, especially statutory Wills, so cost should not be the determinative factor in deciding upon use of a Joint Will.

25. **HOW IS A WILL CHANGED?**

A "codicil" is an amendment to a Will. It does not revoke the entire Will, but it does change certain provisions. The probate court will read the Will and all codicils together to determine the final intent of the deceased. A codicil is, in essence, a mini-Will. It is prepared, signed and witnessed in the same manner as an ordinary Will. Particular care must be taken in writing a codicil to define just what changes are to be made in a Will. If an heir is to be removed or added, it must be clearly stated. A codicil should be kept together with the Will to assure that it will not be overlooked when the estate is probated. A codicil is governed by the same rules as a Will. Therefore, if a codicil is missing, it will be presumed to have been previously revoked unless conclusively proven otherwise.

All changes to the Will must comply to the same formalities used in making a codicil or new Will. A person who simply deletes old provisions or inserts new clauses brings the validity of the Will into question. A person can revoke his Will at any time by another Will or simply by destroying the old Will. Some states would consider the writing of the new clauses an effective

revocation of the old Will yet ineffectual in creating a new Will.

A person should never write a change on the face of a Will. All changes to a Will should be by a valid codicil or a new Will in accordance with the requirements of the state of domicile. Given the ease with which new Wills can be created, especially Statutory Wills, there is no reason to risk invalidation of an existing Will by writing on it. Just prepare a new Will or a codicil.

26. **WHEN SHOULD A WILL BE CHANGED?**

Unless changed, once a will is drafted, it is valid forever. As time passes, a person's needs and circumstances change. A will drafted years earlier may no longer fulfill the current needs and desires of the person. A will should be changed to reflect the true intent of the person.

The following changes in a person's life should immediately cause a review of the person's will:

1. A change in marital status. Marriage makes the new spouse a pretermitted heir. A divorce might not cut the ex-spouse out of the will.

2. Children are born or adopted. State laws allow unmentioned children to claim a portion of an estate as pretermitted heirs. These children, however, might not receive under state law what the decedent would have given them.

3. Step-children. In most states, step-children of a

deceased have no rights to inherit under a step-parent's estate. Therefore, if a step-parent wishes to make dispositions to a step-child, that intent must be specifically stated in a Will.

4. The value of the estate changes and the earlier gifts were too much, too little or there is now enough to give to others as well.

5. The intended heirs, executors, guardians or trustees have died.

6. Changes in estate or inheritance tax laws that make changing the will advisable to save on taxes.

7. The necessity for testamentary trusts for surviving spouse and children no longer exists.

A Will should be reviewed every few years for possible changes. Tax laws change frequently, and wills should be reviewed to ascertain their effect on the estate.

27. **CAN A CHILD BE DISINHERITED?**

Most states permit a parent to disinherit a child: prevent the child from receiving anything from the parent's estate. While possible, the intent to specifically disinherit a child must be detailed in writing. The laws of all states presume that a parent does not intend to disinherit a child unless specifically stated in the will. If a child is simply not mentioned in the will, the court will presume it was an error and award the child his

intestate share of the estate.

Louisiana has several probate laws different from the rest of the nation. While the rest of the nation derived its basic law from English Common Law, Louisiana derived its law from French Napoleonic Code. Louisiana permits the disinheriting of a child only on one of 12 different grounds. Therefore, in Louisiana a parent cannot disinherit a child, no matter how specifically the intent to do so is stated in the will, unless one of the 12 grounds are met. These grounds run from a minor marrying without consent to planning to murder a parent.

28. **WHAT ARE PRETERMITTED HEIRS?**

A probate court will presume that a parent did not intend to disinherit a child unless the intent is specifically stated in the will. This comes into play in the pretermitted heir situation. A pretermitted heir is an heir, usually a child, who is not mentioned in the will, but who would have inherited under a state law if there had been no will. When the court finds the existence of a pretermitted heir, the court will award that heir his intestate share of the estate. For example, assume that Mary wrote a will leaving her estate to her three children. Mary later had a child out of wedlock and died shortly thereafter. Mary's will did not mention the new baby. The court, however, will find the baby a pretermitted heir and award the baby her intestate share of the estate which is one-fourth.

A step-child is not a pretermitted heir and has no right of inheritance under the law. California has created a novel statutory provision that permits a person to claim a defacto adoption if certain elements are met. California requires there be a parent-child relationship between the people and that an adoption was not possible because of some legal impediment. If these elements are met, the court will treat the person the same as an adopted child and award him an intestate share of the estate.

As with a pretermitted heir, a court will presume that a deceased spouse did not intend to disinherit a surviving spouse unless it is specifically stated in the will. A pretermitted spouse is a surviving spouse who is not mentioned in the deceased spouse's will. In all states a surviving spouse will inherit from a deceased spouse's estate, under each state's laws. It matters not that the surviving spouse is pretermitted or disinherited by a clause in the will, the state law will provide for inheritance. When the court finds a pretermitted spouse, it will award that spouse the intestate share of the estate. Example: Mary wrote a will leaving her estate to her three children. Mary then remarried and died 20 years later. Mary's will did not mention the husband. The court will find the new husband a pretermitted spouse and award him his intestate share of the estate, usually a third.

29. **WHAT IS THE EFFECT OF A DIVORCE ON A TESTATOR'S WILL?**

A few states, like California, have enacted laws that

specifically prevent an ex-spouse from inheriting under a deceased ex-spouse's will that had been drafted at the time of their marriage. In most states, however, an ex-spouse will be entitled to share in the estate where the decedent failed to rewrite the will after the divorce. Most states take the view that the decedent must have wanted to make gifts to the ex-spouse because the will was not changed. Those courts will honor that perceived intention.

No one should ever assume that a divorce removes the rights of the ex-spouse to inherit under a will. In cases of divorce, a new will or a codicil should be drafted to state that the ex-spouse is not inheriting under the will. A new will should be written as soon as the divorce papers are contemplated and should certainly be in place when the divorce is filed. Some die during a divorce (in fact its been the basis of many mystery movies). The marriage is still legal. Thus the surviving spouse receives property under the deceased spouse's old will even though granting the divorce would have invalidated the will. Example: An attorney defended a woman charged with the murder of her wealthy husband. The woman had shot her husband six times. He defended her successfully. Because it was not murder, she inherited his estate of $26 million.

30. **WHAT IS AN ANCILLARY PROBATE?**

An ancillary probate is a proceeding conducted in a state other than the state that was the decedent's permanent residence.

Every state is responsible for probating the real and personal property located within it. If a deceased owned property in more than one state, a probate may be required in each such state in addition to the state of the decedent's domicile. Example: Robert died with a home in Georgia and another in Alabama. Probates must be opened in both Georgia and Alabama for the house in each state. If a decedent owns oil and gas leases in six states, there will be ancillary probates in five of the states plus a probate of the majority of the decedent's estate in the state of domicile.

Additional problems arise if the states have differing requirements for a valid will. Example: The domicile state requires two witnesses, but the state with the ancillary probate requires three witnesses. The will may be invalid in the ancillary probate state, and the property located therein will be distributed by its law of intestacy.

31. **WHAT IS A WILL CONTEST?**

A Will contest is a legal proceeding whereby someone, usually an heir or beneficiary, attacks or contests the validity of a will or a distribution made under it. A will contest results in a trial before the court to determine if the will was validly executed and should be enforced. The main contentions for contesting a will are:

1. Improper execution.
2. Lack of competency.
3. Lack of intent to make a will.

4. Pretermitted spouse.

5. Pretermitted heir.

6. Fraud, duress or undue influence.

Generally, only two witnesses are needed for a will, but a few states have rather eccentric requirements. Vermont requires three witnesses; Louisiana follows the Napoleonic Code requiring three witnesses, one of whom must be a notary public. These factors are important if there is a possibility of an ancillary probate. If the will might be probated in another state, it must comply with that state's and the decedent's home state's requirements for a valid will. In the case of an ancillary probate, if the will does not comply with the ancillary state's requirements for a valid will, it will be declared invalid and the estate distributed by the laws of intestacy.

All states require that proof be submitted that the decedent actually signed the will. Some states actually require some or all of the witnesses to come before the court and testify about the signing of the will. Other states, such as California, permit the witnesses to sign a declaration called a proof of subscribing witnesses in which the witness swears under penalty of perjury that he actually saw the testator sign the will.

A few states, like Louisiana, permit witnesses to sign the will before a notary public. When this is done, the will is said to be self-authenticating, and the witnesses need not appear in court to validate their signatures. When the witnesses are dead or

unavailable and their signatures were not notarized, some states, California for instance, permit handwriting experts to testify that the decedent signed the will. This is a last resort and is difficult if the decedent had a long illness that affected his signature. It is a good idea to use witnesses who are younger and in better health than the testator.

If the will is successfully contested, the probate court may invalidate the entire will or only the challenged portion of it. If the entire will is invalidated, the last valid will is reinstated. If there is no such valid prior will, the estate will be distributed pursuant to the laws of intestacy.

32. **WHAT ARE CREDITOR CLAIMS?**

After a probate is opened a notice of the probate proceeding is published in a newspaper of general circulation in the area where the decedent lived. This publication informs creditors of the decedent that a death has occurred. The publication also informs the creditors that they have a fixed period of time ranging from four to six months to file claims with the probate court for the amounts they are owed.

If any creditor that was given valid notice, directly or by publication, fails to file a claim within the statutory period of time, he is barred from recovery. The reason for having a cut-off period is to close the estate on a certain date. Otherwise, the probate would be open forever while old unpaid claims were being

submitted. Once filed, the executor must approve or reject the claim. If the claim is approved, it will be paid from the estate at the closing. If the claim is rejected, the creditor has a fixed time to file a lawsuit to collect the claim. After that time, collection is permanently barred.

This creditor period is the main reason for the delay in closing a probate and distributing the estate. The advantage of a revocable trust is that the property is transferred immediately. The disadvantage is that the creditor claims follow the estate. The claims will be paid. Still it makes better sense to pay them immediately through a trust rather than wait months for the action to work its way through the courts.

Funeral expenses are paid out of the estate. They are granted a priority over other bills. They are among the first bills paid once the estate has been marshaled (assembled). Many people today make their own funeral arrangements by paying for the service ahead of time. Many states, such as Ohio, Nevada, South Dakota and Washington require money paid under a pre-need plan to be placed in a trust fund. In the event the funeral home goes out of business, the money is returned to the client. Sometimes a person purchases a funeral policy to pay the funeral expenses, and the insurance company can pay insurance proceeds directly to the funeral home. Some states, such as Maryland and Tennessee, require all payments on funeral policies to be made to the estate and forbid funeral homes being named beneficiaries on such policies.

If the estate is not large enough to pay all of the creditors, the personal representative will sell the secured property. The representative will apply the proceeds from the sale of the secured property to the secured creditors: those holding loans secured by designated property. If the proceeds are not enough to cover the claims, the secured creditors will have an unsecured claim for the unpaid balance. Any amount received in the sale that exceeds the amount of the claims is paid to the estate.

After claims of the secured creditors are satisfied, all the unsecured creditors divide the remaining estate according to their percentage of claims against the estate. Example: Ed dies owing George $50,000 secured by a printing press. The executor of the estate sells the press for $30,000 and pays it to George. The remaining $20,000 becomes an unsecured debt of George against the estate. Ed's estate totals $100,000 with $200,000 in unsecured claims. George's $20,000 unsecured claim is 10% of the total unsecured claims. Therefore, George receives 10% of the unsecured estate, which is $10,000.

33. **WHAT IS A FAMILY ALLOWANCE?**

Many states, like California, permit a surviving spouse or minor children to claim a fixed amount from decedent spouse or decedent parent's estate free from all creditor claims. This family allowance can be in addition to anything bequeathed in the will. In some states if an heir elects to take a family allowance,

the heir cannot take under the will.

The family allowance can also be taken despite the terms of the will. The will may specifically give the wife nothing, but the wife may still be entitled to the family allowance under state law. A family allowance was one of the means used by the states to replace dower and curtesy. In a small estate the family allowance is the only way that the family may receive anything from the decedent's estate.

34. **WHAT HAPPENS WHEN BOTH SPOUSES DIE SIMULTANEOUSLY?**

A simultaneous death occurs when both the husband and wife die together so close in time that it cannot be ascertained with certainty who died first. When there is simultaneous death, each spouse's estate is distributed as though the other spouse has died first. The husband's estate passes to his heirs in the manner it would have passed had the husband actually died first. Jointly held property is divided equally among the two estates. Every state except Alaska and Louisiana have adopted the Uniform Simultaneous Death Act, which covers this situation.

Many Wills avoid this problem altogether by simply containing clauses that require the spouse or other heir to survive the testator by a fixed period of time in order to inherit, usually 60 days.

35. **HOW LONG DOES IT TAKE TO PROBATE AN ESTATE?**

The time required to settle an estate varies from state to state. It depends on whether there is litigation or creditor claims. In California it takes a minimum of six months to close an estate. Four months is the statutory creditor claims period, and the other two are the general period of public notice for opening and closing an estate.

Some states require that an executor actually close the estate within a fixed period of time. In Kansas the mandatory time to close an estate is nine months. In Wyoming, one year is the time period. Where litigation is involved years may pass before an estate can be closed. If a revocable trust is used, there is no estate to close because the trust estate passes immediately upon death to those next entitled to receive it under the terms of the trust.

36. **WHAT IF THE FINAL JUDGMENT OF DISTRIBUTION?**

After the accounting has been performed and either accepted by the court or waived by the heirs, the court will order which creditor claims are to be paid and how the final distribution to the heirs is to be made. The final judgment acts as a deed for real property. Recording the final judgment is the same as having received a deed from the personal representative for the real property distributed under the final judgment.

37. **HOW IS AFTER-DISCOVERED PROPERTY TREATED?**

An estate can always be reopened if property not covered by the terms of the final judgments have what is called an omnibus clause that states how such after-discovered property is to be distributed, thereby avoiding reopening the estate. Generally such an omnibus clause states, "The remainder of the estate along with any undiscovered property shall be distributed as follows:..."

When an omnibus clause is used in the final judgment of the probate court, there is usually no reason to reopen the probate because of after-discovered property. Finding after-discovered property may result in additional estate or inheritance taxes. The taxes go with the property. If additional taxes are owed because of the existence of this newly discovered property, the heirs receiving the property will be responsible for the taxes to the extent of the value of the assets received from the estate.

TABLE OF CONSANGUINITY

FIGURES INDICATE THE DEGREE OF RELATIONSHIP TO THE DECEASED PERSON.

The estate normally goes to children, grandchildren or great-children under a state's law of intestacy before the Table of Consanguinity is utilized.

DECEASED PERSON	---->PARENTS 1	---->GRANDPARENTS 2	----->GREAT GRANDPARENTS 3	----->GREAT GREAT GRANDPARENTS 4
CHILDREN	BROTHERS SISTERS 2	UNCLES AUNTS 3	GREAT AUNTS UNCLES 4	GREAT GRAND UNCLES AND AUNTS 5
GRAND CHILDREN	NIECES NEPHEWS 3	FIRST COUSINS 4	FIRST COUSIN ONCE REMOVED 5	FIRST COUSIN TWICE REMOVED 6
GREAT GRAND CHILDREN	GRAND NIECES NEPHEWS 4	FIRST COUSIN ONCE REMOVED 5	SECOND COUSINS 6	SECOND COUSIN ONCE REMOVED 7
	GREAT GRAND NIECES AND NEPHEWS 5	FIRST COUSIN TWICE REMOVED 6	SECOND COUSINS ONCE REMOVED 7	THIRD COUSINS 8
		FIRST COUSIN THRICE REMOVED 7	SECOND COUSINS TWICE REMOVED 8	THIRD COUSINS TWICE REMOVED 9
			SECOND COUSINS THRICE REMOVED 9	THIRD COUSINS TWICE REMOVED 10
				THIRD COUSINS THRICE REMOVED 11

CHAPTER 2

COMMON ESTATE PLANNING QUESTIONS

Death is the great equalizer. The only other thing that cannot be avoided is taxes. Even the Ancient Egyptians were unable to conquer the "hereafter." Since we cannot avoid taxation, we must live with it and hopefully die in a manner that will minimize the taxation following our deaths.

There are few people who believe that the government should take all of a decedent's property upon death. Unfortunately, the government does not always feel that way. Not so many years ago, a Democrat representative stated on the floor of the House of Representatives that the people were only entitled to keep that money and property that the government says that they can keep. In that vein, the Democrats have proposed in 1992 House Resolution 4848 which called for taxing all estates over $200,000 in value. If HR 4848 had passed, a $600,000 estate would have had to pay nearly $60,000 in additional taxes. Fortunately, HR 4848 never became law and in the 2001 Tax Act, the unified credit was actually increased to $1,000,000 through 2004 and increases to unlimited in 2010 before dropping back to $1,000,000 in 2011.

Estate planning is a legal term of art. It covers anything that a person deliberately does to manage his estate while living and which oversees its distribution after death. Wills, trusts, joint tenancies, gifts and summary probates are the main

instruments used in estate planning. The questions in this chapter serve to educate and guide the reader to the form of estate planning that is most useful to his given circumstance.

In order to present as full a discussion as possible, questions regarding revocable trusts as estate planning tools are discussed even though this volume does not address revocable trusts. The second volume on estate planning specifically deals with the use of revocable trusts for estate planning. In the second volume are the following full, complete and easy-to-use revocable trusts along with all of their necessary supporting documents:

(a) Individual trusts.

(b) Joint trusts for married couples.

© A-B By-pass trusts.

(d) QUIP trusts.

The ESTATE PLANNING II is designed to be the most complete and user-friendly self-help revocable trust book on the market. Any person with an estate of $60,000 or more should consider the use of a revocable trust for estate planning purposes.

This chapter deals with the most common questions asked by people when contemplating whether they need to implement an estate plan. The questions, herein, cover the general field of estate planning and help inform the reader of the various options available.

1. WHAT IS AN ESTATE PLAN?

An estate plan is a general term for the procedure by which a person intends to preserve the assets of his estate during life and distribute them after death.

The main considerations in estate planning are the avoidance of probate, reduction of estate and inheritance taxes and the quick distribution of the estate to the designated heirs.

A complete estate plan considers the various methods for the preservation of the estate during life by maximizing income while reducing to the extent possible, given the circumstances of the individual, the amount of income taxes that must be paid.

2. WHAT ARE THE COSTS OF PROBATING A WILL?

The costs incurred in probating a will are large. A probate is usually one of the most expensive expenditures made by a person. An old joke which is wryly true is that if the person weren't already dead, the cost to probate his estate would kill him.

Probate costs include court fees, appraisal fees, attorney fees and executor fees. Court costs and appraisal fees are modest: usually a couple of hundred dollars for an average estate. The real cost is for the attorney and executor fees.

The maximum amount of attorney and executor fees are set by statute and approved by the court. They are based upon the size of the estate (value of the property to be probated) and increase as the estate increases.

In California, for example, attorney and executor fees are calculated as follows:

(1) Four per cent (4%) of the first $15,000; maximum $600.00,

(2) Three per cent (3%) of the next $85,000; maximum $2,550.00,

(3) Two per cent (2%) of the next $900,000; maximum $18,000.00, and

(4) One per cent (1%) of the next $15,000,000, and one-half per cent (.5%) thereafter.

An estate of $100,000 probated in California would pay maximum attorney and executor fees of $6,300.00: $3,150 each to the executor and attorney. This is a maximum fee. The attorney and executor can agree to take less or no fee at all.

The avoidance of probate fees is a major inducement for implementing an estate plan. With a revocable trust there are no probate fees because the estate passes immediately to the designated beneficiaries in the trust. No court proceeding is needed to transfer the property of a trust so as such no attorney s needed.

3. HOW CAN PROBATE BE AVOIDED?

There are several means available for a person to utilize in order to avoid having to probate an estate. These probate avoidance vehicles are:

(1) Summary probate proceedings, if available in the

decedent's state. A summary probate is an abbreviated procedure for clearing and transferring small estates or entire estates to a surviving spouse. Many states have adopted special procedures to by-pass the expense and long delay in probating such estates.

(2) Giving the estate away while alive.

(3) Placing the property in joint tenancy with the proposed heirs. Upon death, title for the property passes immediately without probate to the surviving joint tenants. Real property held in joint tenancy passes to the survivors without a probate by the recordation of a notice of the death of a joint tenant.

(4) Placing the estate into a revocable trust that passes the estate to the designated beneficiaries immediately upon the decedent's death. This is the most popular form of estate planning because it is fast and bestows the maximum amount of control over the estate in the hands of the present owner.

In order to determine the best type of estate plan best suited to an individual's circumstances, the person must understand the size of the estate, how he wishes to distribute it and the amount of control he wishes to relinquish in order to create the estate plan.

4. WHAT ARE THE DISADVANTAGES OF USING JOINT TENANCIES FOR AVOIDING PROBATE?

There are three main disadvantages in forming a joint tenancy:

(1) Putting the property into joint tenancy is an immediate gift of half or more of the property. This means that property placed into joint tenancy becomes attachable to satisfy the debts of the other joint tenants upon the creation of the joint tenancy. For example, assume a house was placed in joint tenancy with a child. A creditor of the child gets a judgment. The creditor can seize and sell the child's half interest in the house.

(2) There may be gift taxes due on the gift if the value of the gift exceeds $10,000 and the unified credit has been used by previous gifts. By the way, there is no federal gift tax on gifts to a spouse if the spouse is an American citizen.

(3) There is no stepped-up basis for property placed in joint tenancy. The basis of the property for the donee is the same as for the person who made the gift. On the other hand, property obtained through a probate or a revocable trust has its basis raised to fair market value and can be immediately sold with no income gain and thus no capital gain tax.

The main disadvantage in creating a joint tenancy is that half or more of the property is relinquished immediately. Example: A parent puts a house in joint tenancy with a married son. The son gets a divorce. The wife might, in some states, be awarded the son's

interest in the house which was something the parent never intended to do.

5. WHAT IS A DURABLE POWER OF ATTORNEY?

A general power of attorney is a written document that gives a person (called the attorney in fact) the authority to act on the principal's behalf. A general power of attorney lapses (becomes invalid) when the principal becomes incompetent or dies. At the time it is needed most, when the principal is no longer able to act for himself, a general power of attorney lapses, and the right of the attorney in fact to act for the principal ceases.

To address this situation, most states have adopted the Uniform Durable Power of Attorney Act. Under the Act, a durable power of attorney will continue in full force and effect even though the principal subsequently becomes incompetent. A durable power of attorney must contain specific language stating the intent of the principal for the power of attorney to continue during the period of incompetency and incapacity.

A durable power of attorney has the effect of eliminating and replacing the necessity of a voluntary conservatorship. A durable power of attorney can also give the attorney in fact the power to make all decisions or just specific health care decisions for the principal in the event the principal becomes unable to do so.

Because of their importance to estate planning, durable powers of attorney have been given their own chapter in this book.

6. WHAT IS A LIVING WILL?

A living will is not a Will for probate purposes. Rather, it is a document that serves as a directive to a treating physician and the world at large that the person executing it does or does not want to be kept alive using extraordinary means. A living will is used to ascertain the intent of the person when he is unable to make the health care decisions at the time it is necessary to do so. Living Wills, including samples, are discussed in the durable power of attorney chapter.

Without the existence of a living will stating a contrary intent, a court will presume a person wanted extraordinary means used to be kept alive. The court will order extraordinary means to be used to keep the person alive, even over family objections.

Living Wills should be used in addition to durable powers of attorney for health care in order to assure that a person's wishes are most likely fulfilled in this most dire of situations.

7. WHAT IS A POUR-OVER WILL?

A pour-over will is a special will used in conjunction with a revocable trust. After the trustor dies, the pour-over will places all property into the trust that the decedent forgot or failed to place while alive. Unfortunately, property not placed into the trust prior to the trustor's death may require a probate if the size of the assets is large enough that summary procedures cannot be used.

In a real case, the trustor forgot to place a piece of property which he owned in Hawaii into a California trust which the trustor had created. The executor of the Pour-Over Will was required to open a Hawaiian probate in order to get permission to put the property into the trust. Having to probate the non-trust property needlessly cost the estate $11,000. The trustor could have done it during his life for the cost of recording a deed into the trust usually about $10.

A simple example of the need of a Pour-Over Will would be if a person hits a lottery for $50,000,000 and drops dead in the excitement. The Pour-Over Will operates to place the money into the trust after it has been probated. Once placed in the trust, the money will be managed in accordance with the trust terms.

8. WHAT IS A MARITAL DEDUCTION?

Under federal law, there is no federal gift or estate taxes on property transferred between spouses. This is an unlimited credit that has only two exceptions:

(1) It must be an actual gift. If the gift is in trust, then all of the income must go to the spouse.

(2) The spouse receiving the gift must be an American citizen.

Gifts to a non-citizen spouse are not eligible for the unlimited deduction but are eligible for a $110,000 annual exclusion under Section 2523 of the Internal Revenue Code. Property passing from an American spouse to

an alien spouse, after death, does not qualify for an unlimited marital deduction either. Special tax rules apply for such transfers, and a tax consultant should be consulted if the estate of the American spouse exceeds $675,000.

Therefore, a person can generally pass his entire estate to a surviving spouse without incurring any federal estate taxes. This may not ultimately be the best estate planning. If the property given to the surviving spouse boosts the surviving spouse's estate over the unified credit amount, the surviving spouse's estate will have to pay estate taxes. No gift to a surviving spouse that boosts his estate over the available unified credit should be made until the decedent's unified credit is depleted as discussed below.

9. WHAT IS THE UNIFIED CREDIT?

Every person is permitted to transfer assets totaling $1,000,000, which gradually rises to an unlimited amount in 2010 and back to $1,000,000 in 2011 under the Tax Relief and Reconciliation Act of 2001 by death without incurring an estate tax under federal law. There is imposed a gift tax through 2010 equal to the estate tax for gifts made during that period.

Under the Tax Act of 2001, Congress imposes a gift tax to restrict the transfer of income producing property from high income to low income taxpayers after the estate tax is eliminated. The gift tax exemption beginning in 2010 is $1,000,000. So even though transfers of property after death can be made tax free in 2010 for at least one year, unless made the estate tax elimination is made permanent by Congress, a gift tax on the transfer of property while alive will remain. The gift tax rate imposed in 2010 under the 2001 Tax Act is equal to the top individual tax rate at the time of the gift.

About half of the states impose their own estate and inheritance taxes. These taxes should also be considered in estate

planning. The Internal Revenue Code permits a small credit for state death taxes to be applied against the federal estate.

The significance of the unified credit is that it permits a husband and wife to give to their children a total combined estate of $2,000,000 through 2003 before incurring any estate taxes. A person giving his entire estate to a surviving spouse is not taking advantage of the unified credit. Not using the unified credit is ill-advised when making the gift to the surviving spouse pushes the value of that estate over the unified credit amount and subjects it to the payment of federal estate taxes on the surviving spouse's death.

10. WHAT IS THE ANNUAL EXCLUSION?

Under federal tax law, every individual may make an annual gift of $11,000 per year per person without incurring a gift tax or having the gift applied towards the available unified credit. A parent having four children could give each of them $11,000 for a total of $44,000 free of gift taxes. The advantage of making these gifts is that they provide a means to reduce the size of the estate to below the unified credit thereby reducing or eliminating federal estate taxes.

An alien spouse does not qualify for the unlimited marital deduction. In place of the unlimited marital deduction, an alien spouse is permitted to receive, as a gift from the other spouse, $110,000 per year tax free.

11. WHAT IS THE ESTATE TAX RATE?

The federal estate tax is graduated and increases as the size of the estate increases over the unified credit. The Tax Act of 2001 is a bizarre creation which gradually phases out the federal estate tax by 2009 but only for one year 2010. In 2011, the federal estate tax is reinstated at a maximum rate of 55% with a unified credit amount of only $1,000,000. The estate tax is discussed in

detail in the Estate and Inheritance Taxes chapter.

For example, a taxable estate of $100,000 has a tax of $23,800. A taxable estate of $250,000 has a tax of $70,000. A taxable estate of $500,000 has a tax of $155,800. A taxable gift of $2,500,000 has a tax of $1,025,800.

12. WHAT ARE GIFT TAXES?

The federal gift tax is graduated and increases as the size of the gift increases over the unified credit. The federal gift tax rate is the same as the federal estate tax rate up through 2009 then they change. In terms of saving taxes, the same tax rate applies whether the property is given away during life or passes to the heirs after death.

For example, a taxable gift of $100,000 has a tax of $23,800. A taxable gift of $250,000 is taxed $70,800. A taxable gift of $500,000 has a tax of $155,800. A taxable gift of $2,500,000 has a tax of $1,025,800.

Under the Tax Act of 2001, Congress imposes a gift tax to restrict the transfer of income producing property from high income to low income taxpayers after the estate tax is eliminated in the year 2010. The gift tax exemption beginning in 2010 is $1,000,000. So even though transfers of property after death can be made tax free in 2010 for at least one year, unless made the estate tax elimination is made permanent by Congress, a gift tax on the transfer of property while alive will remain. The gift tax rate imposed in 2010 under the 2001 Tax Act is equal to the top individual tax rate at the time of the gift.

13. DOES A TAX RETURN HAVE TO BE FILED FOR A GIFT?

A gift tax return is required to inform the IRS of any gifts

in excess of the annual per person exclusion ($11,000). In other words, if a gift of $12,000 is made to a son, a gift tax return must be filed to show that a taxable gift of $1,000 was made. The gift tax on the taxable gift of $1,000 (the amount over the $11,000 annual exclusion) will either be deducted from the unused portion of the donor’s unified credit or the tax will be paid by the donor. Sometimes the donor will pay the gift tax rather than deplete the unified credit. The reason is that the donor may wish later to give appreciating property in order to keep the appreciation out of his estate for federal estate tax purposes.

14. WHAT IS THE INCOME TAX EFFECT OF MAKING A CHARITABLE GIFT?

Under the federal tax code, a person, while living, can make gifts to a qualified charity and receive an income tax deduction for the gift. Gifts made by a decedent's estate do not qualify for a charitable income tax deduction, but they can qualify for an estate gift deduction.

The maximum deduction is 50% of the taxpayer's adjusted income for the year with the balance of the gift being carried forward for the next five years.

Where the gift is appreciated property instead of cash, the amount of the deductible is reduced to 30% rather than the 50% unless special elections are made. Because of the complexity of the tax law in this area, any large gifts to a charity should only be made after consulting a tax professional.

15. HOW MUCH IS THE CHARITABLE DEDUCTION FOR GIFTS MADE AFTER DEATH?

Charitable gifts made by a decedent after death, regardless of whether they were made through a will or trust, are allowed full deductions of fair market value from the decedent's estate for federal estate tax purposes. As a result, federal estate taxes are reduced when charitable gifts are made (as opposed to gifts to ordinary persons or entities).

For example, if a decedent had an estate worth $1,000,000 and gave $400,000 to a charity, the decedent's estate would deduct that $400,000 gift leaving an estate of $600,000. The remaining $600,000 of the gift’s value would be covered by the decedent's unified credit; so there would be no federal estate tax owed.

16. HOW MUST A FEDERAL ESTATE TAX RETURN BE FILED?

The federal estate tax return Form 706 is required to be filed whenever the decedent has an estate greater than $600,000. The federal tax rate schedule is covered in detail in the Estate and Inheritance Taxes chapter.

The requirement to file the estate tax return does not depend on whether there will be any taxes due or if a probate is necessary. As long as the estate is greater than $600,000, the tax return has to be filed.

For example, a tax return would still have to be filed even if

the entire estate was going to the surviving spouse under a trust and was entirely exempt from estate tax as a result of the unlimited marital credit. Likewise, a federal estate tax return would have to be filed even if the entire estate was being given to charities exempt from tax under the Internal Revenue Code.

17. WHAT ARE TAX-FREE MUNICIPAL BONDS?

One of the most popular investments is that of tax-free municipal bonds. Most states and many of their counties and agencies issue bonds at relatively low rates (around 6%) to help pay for their government services; hence the name municipal bonds.

Most such state and local bonds are both federally and state tax exempt. Because they are tax exempt, they can be an excellent investment for a person that is paying taxes. For example, a tax-free bond at 6% bought by a person in a 33% total tax bracket would be equivalent to a 9% taxable bond. Given the fact that most municipal bonds are backed by the full force and credit of a government entity and have low risk, they may be safer than private bonds. The buyer, however, should consult with a broker before buying such bonds.

Municipal bonds may be bought directly from the government through a bond fund operated by a brokerage house. Tax-free bonds are assets of the estate of their owner. Therefore, upon the owner's death, the value of the bonds is added to the owner's estate for the calculation of federal estate tax and state

inheritance tax.

18. WHAT IS A ZERO COUPON BOND?

A popular investment is zero coupon bonds. A zero coupon bond is a "Strip Bond" issued by the Treasury or by a corporation, state or municipality at a deep discount. This bond can only be redeemed at a specified date in the future for a specified amount. For example, a $60,000 corporate zero coupon bond might mature in 15 years. It would be sold for $17,000.

The purchaser of the bond pays tax each year on the accrued but unpaid appreciation in the bond unless the bond is a tax-free zero coupon municipal bond. Zero coupon bonds are assets of a decedent's estate. Their value is added to the owner's estate for the calculation of federal estate taxes and state inheritance taxes.

19. WHAT IS THE EXCLUSION FOR SALE OF A HOUSE?

An excellent asset for estate planning is a home that has appreciated greatly over the years.

The Budget Act of 1997 added a Home Sale Tax Exclusion. Under the act a couple can exclude up to $500,000 on the sale of their principal residence, $250,000 for an individual. This exclusion is good once every three years. The home must have been lived in two of the previous five years. This gain can help provide for the retirement of the owner or help start a new business. This is one

of the few tax benefits that remains in the Internal Revenue Code that permits a sizeable amount of capital gain to be realized without incurring capital gain taxes.

20. CAN COMMUNITY PROPERTY BE CHANGED INTO SEPARATE PROPERTY?

Community property is property acquired by a husband and wife during a marriage in a manner other than by gift, devise or bequest. Community property is considered to be owned jointly and equally by each spouse. Each spouse can pass their interest in the community property by deed or will.

In a community property state, the spouses may enter property settlement agreements whereby the community property is divided among them as separate property. There may be reasons for doing this other than a divorce, such as one spouse wishing to borrow against his share of the property while the other spouse does not wish to do so.

California allows spouses to change separate property into community property and vice versa. This is called transmutation of the property. The ability to change the status of property is beneficial for acquiring the stepped-up basis in the surviving spouse's share of community property upon the death of the first spouse. It permits the changing of joint tenancy property to community property and thus gives the surviving spouse the tax advantage of a stepped-up basis in the property.

Community property, in the absence of a will, usually, as in

California, will pass to the surviving spouse without a probate. Unfortunately, title companies will not insure community property passing to a surviving spouse unless it has gone through a probate or a trust. To address this matter, California created a spousal property petition procedure wherein a spouse petitions the probate court for confirmation of the property being distributed under a will or under its intestacy laws. This is a simpler, faster and cheaper summary probate proceeding, adopted by California, to pass property easily to a surviving spouse.

21. WHAT IS A REVOCABLE TRUST?

Estate Planning II, the second volume of the estate planning series, deals with the use of revocable trusts as estate planning tools. That volume contains several complete, user-friendly, understandable revocable trusts. No estate planning decision should be made without at least considering the possibility of using a revocable trust. In order to present the advantages of the revocable trust in estate planning, questions hereafter are intended to cover the most common concerns that normally arise when considering the use of revocable trusts.

A revocable trust is usually the best means of estate planning. The creator of the trust, called the trustor or the grantor, places his entire estate into the revocable trust. The trustor usually is also the trustee: the person who manages the estate and the prime beneficiary of the trust.

Upon the trustor's death, the person named in the trust document as the successor trustee takes over immediately without court approval being needed. Then depending on the terms of the trust, the new trustee either dissolves the trust and distributes the assets immediately in the manner designated in the trust document or continues to operate the trust in the manner directed by the trust document.

Since there is no probate, there are no probate costs incurred. The savings for the estate when a revocable trust is used will usually be several times the cost of the creation of the trust.

Because the trust is revocable, the trustor can at any time alter, amend or revoke it. If the trust is revoked, the trust assets immediately return to the trustor.

There are several types of revocable trusts. As such, there is a trust to fit the specific needs of any person. Generally a person who wishes to give everything to a surviving spouse (or a person without a spouse) would use the traditional grantor trust. A grantor trust provides for the passage of the trust assets to the designated beneficiary (usually the grantor's children, parents or siblings) upon the grantor's death. Should a grantor wish to provide for both a spouse and children, there are two other types of revocable trust which give the income of the trust to the spouse upon the grantor's death. After the death of the spouse, the trust assets are distributed to grantor's children. These are known as

the A-B Bypass Trust and the QTIP Trust. Specific questions regarding how each of these trusts operate follows. The second estate planning volume deals specially with revocable trusts and contains several easy-to-use forms for each of these revocable trusts.

22. HOW IS A TRUST CREATED?

A trust is created very easily. The trust document is drafted, usually by an attorney, and directs how the trust estate will be administered and distributed. The trustee acts in accordance with the terms of the trust.

The trustor and trustee must both sign the trust document. If the trustor is also the trustee, he signs the trust agreement twice, in both capacities.

The final requirement is that the trust be funded. Funding the trust requires that the trustor place into the trust all of the property the trustor wishes to be in the trust.

Personal property that does not have a title, such as a television or furniture, is transferred automatically by a statement in the trust document that the trustor's intent is to put into the trust all personal property wherever located. Property that has a title, such as a house, must have the title specifically changed to make the trust the owner. Merely stating an intent to place the house or other property that has a title into the trust is insufficient. The only way to put property that has a title

into a trust is to change the title on the property so that the trust is listed on the title documents as the owner.

23. CAN BOTH SPOUSES CREATE A REVOCABLE TRUST TOGETHER?

A common estate plan is for both spouses to create one joint revocable trust. Both spouses place all of their property into the joint trust. The spouses' property is listed on schedules marked "his," "hers," and "theirs." On the death of the first spouse, the trust is divided into separate trusts for the surviving spouse and his children or heirs, if any.

This joint trust is usually the most economical estate plan because it plans for both estates. The cost for doing the joint estate plan is almost always less than what it would cost to do a separate estate plan for each spouse.

The trust is revocable totally during the joint lifetimes of the spouses. Either spouse may terminate it at any time. Upon the death of the first spouse, the trust usually becomes irrevocable as to the property of the deceased spouse, but the surviving spouse usually retains full power to revoke the trust as to the property that he contributed into it. This type of trust gives the spouse maximum control over his assets and is accommodating to future changes in the survivor's life following the death of the first spouse.

24. WHAT IS AN A-B TRUST?

The A-B Trust is the common name given to the general type of revocable trust used by a married person with children when the trustor's estate exceeds the unified credit. It is also called a marital trust or a by-pass trust.

The trust exists for the benefit of the trustor during his life. At the trustor's death, the trust is divided into two parts. The unused portion of the unified credit is placed into the B Trust, and the rest is placed in the A Trust.

The sole beneficiary of the A Trust is the surviving spouse. The surviving spouse has ownership of the A Trust and usually has the power to terminate it and receive the assets. Since assets in the A Trust go to the surviving spouse, there is an unlimited marital deduction if the spouse is a U.S. citizen. Therefore, the A Trust is not subject to federal estate taxes. Upon the surviving spouse's death all of the property in Trust A will be included in the surviving spouse's estate for calculation of estate taxes. For example, assume that upon the trustor's death, his $2,000,000 estate was divided $600,000 to Trust B and $1,400,000 to Trust A. Upon the surviving spouse's death, Trust A had grown to $1,700,000. The A Trust beneficiary also had an additional estate of $500,000. Therefore the A Trust beneficiary's taxable estate is $2,200,000.

The beneficiaries of the B Trust are the children. Income may be applied for the surviving spouse, but the trust does not qualify for a marital deduction. It will qualify for a deduction to the extent of any unused portion of the trustor's unified credit. Thus

there is no federal estate tax for this trust either. In the above example, if the assets in Trust B increase to $1,000,000 at the time of the surviving spouse's death, no estate taxes are due because the property placed into the trust was originally tax free. If $800,000 was originally placed into Trust B, the excess $200,000 would be taxable. After the taxes are paid, no additional estate taxes will be charged against it upon the death of the surviving spouse.

25. WHAT IS A QTIP TRUST?

A QTIP Trust is a special trust whereby the trustor's spouse is given all of the income from the trust with the principal being distributed to others, usually the children or grandchildren, upon the surviving spouse's death. QTIP stands for Qualified Terminal Interest Property and is a fancy name for property given to a spouse in a certain type of trust.

A QTIP Trust gives the option to the surviving spouse to have the trust property treated as a gift to the surviving spouse for estate tax purposes. If the election is made, the value of the trust will be treated as a spousal gift and be exempt from tax under the unlimited marital deduction. On the surviving spouse's death, the value of the trust assets will be included in the surviving spouse's estate for determination of the surviving spouse's estate tax.

Depending on the size of the surviving spouse's estate, it may

or may not be good financial planning to make the QTIP election and have the value of the trust included in the surviving spouse's estate. For example, if the surviving spouse's estate was $100,000 and the QTIP Trust was $1,000,000 and the unified credit of the deceased spouse had previously been used, making the election would save the trust from paying federal estate taxes until the surviving spouse dies. Meanwhile, the surviving spouse could draw a higher interest from the investment of the pre-taxed $1,000,000. Disadvantage: If the surviving spouse's estate grows after making the election, more tax may ultimately be paid, on the death of the surviving spouse, than would have been paid if no election had been made.

26. WHAT IS A GENERATION-SKIPPING TRUST?

A generation-skipping trust is a trust that, as the name implies, skips one or more generations. A trust by a grandparent for grandchildren that by-passes the parents is a generation-skipping trust. The main exception is when there are no parents surviving the grandchildren: then it is treated as a direct trust.

A generation-skipping trust is complicated tax-wise. It is easy to create, but because of the inherent tax consequences, a generation-skipping trust should not be created without first consulting a tax advisor. Generally, $1,000,000 can be placed in a generation-skipping trust without incurring an estate or gift tax provided the uniform credit has not been used previously.

27. HOW IS A GENERATION-SKIPPING TRUST TREATED?

One million dollars may be transferred in a generation-skipping trust tax free. Any amount placed in the trust over $1,000,000 is taxed at a rate of 50% whenever a distribution is made. A taxable distribution is deemed to have been made when the parents of the grandchildren die or the grandchildren receive money from the trust. The purpose of this law is to avoid amassing huge estates by not paying taxes. These trusts affect only very wealthy people.

The tax consequences of a generation skipping trust are so great that no one should consider funding one with over the unused portion of the unified credit amount without first speaking with a tax advisor.

28. CAN A TRUST BE IRREVOCABLE?

A trust can be made irrevocable, and sometimes it is wise estate planning to do so. In order for assets in a trust not to be included in trustor's estate, the trustor must not have control over the trust nor the reasonable expectation that the trust will revert back to him. The two main types of irrevocable trusts are life insurance trusts and charitable trusts, both of which are discussed below.

If the trust is revocable, the trustor has a great deal of control over the trust. For that reason, the fair market value of the assets of the trusts will be included in the trustor's estate

upon death for estate tax calculations.

If the trust is made irrevocable, the trustor has no control over the trust. Therefore upon his death the assets in the trust, including appreciation in value, will not be included in his estate. This could pass a great deal of appreciation to the trustor's heirs without having it taxed. It is because a life insurance trust is irrevocable that the proceeds of the insurance on the deceased are not included in his estate.

Gifts made within three years of a person's death will normally not be included in the donor's estate for tax purposes except for life insurance and the value of retained interests by the donor in the gift. If gift taxes have been paid on the gift, credit will be given for the gift taxes if the gift must be included in the donor's estate.

29. WHAT IS A LIFE INSURANCE TRUST?

A typical vehicle used in estate planning is the creation of an insurance trust. The trustor creates an irrevocable trust with someone else as the trustee and takes insurance policies out on his life. The ownership of insurance policies on the trustor's life is given to the trust, and the trust is made the beneficiary of the insurance policies.

When the trustor dies, the insurance proceeds will be paid into the trust, but the value of the insurance proceeds will not be included in the trustor's estate for estate tax purposes if the trustor lived more than three years after placing the policies into

the trust.

Creating an insurance trust could save many thousands of dollars in estate taxes by keeping the insurance proceeds out of the decedent's estate for tax purposes. Example: If the decedent had a $200,000 estate and a $1,000,000 insurance policy, the estate would be worth $1,200,000 upon the decedent's death. Since the federal government taxes any estate over unused portion of the unified credit, if at the time of death the unused portion was $600,000, then the remaining $600,000 in the estate will be taxable. If an insurance trust had been used, the $1,000,000 in insurance proceeds would not be included in the decedent's estate and thus not be taxable. The $200,000 would not be taxable. Since it is less than the unused portion of the unified credit, it can be passed tax-free.

30. WHAT IS A CHARITABLE REMAINDER TRUST?

A charitable remainder trust is an inter vivos (living) trust made during the lifetime of the trustor. Property is placed into an irrevocable trust with a charity as a beneficiary. The trustee, who is usually the charity, is instructed to pay a fixed percentage of the trust assets to the trustor for the life of the trustor.

The trustor is given a tax deduction for the value of the gift to the charity. The trustor pays ordinary income tax on the payments received from the trust.

The gift to the charity is tax free. Since the charity is tax exempt, it can sell the appreciated property without having to pay

capital gains. The charity can reinvest the proceeds of the sale and pay the trustor from the interest on the investment. The charity can generate more interest income from the sale than the person who transferred it to the trust: the charity can invest the whole amount without paying capital gains. For this reason, it is better to place highly appreciated property that is not earning a great deal of income, such as idle land, into the trust. The return that the trustor gets from the trust is higher than if the assets had been sold and reinvested by the trustor: capital gains taxes would have had to be paid on the trustor's sale of the highly appreciated property.

This is an excellent vehicle for estate planning for well-to-do people. Life insurance policies can be bought with the trust payments that will replace the value of the property transferred to the trust.

31. ARE REVOCABLE TRUSTS VALID ELSEWHERE?

All 50 states and the federal government accept as valid a revocable trust. If the trust was validly created in the original state, then all the other states will honor and enforce it.

Provisions can also be placed into a trust document stating that the terms of the trust are to be administered by the laws of a certain designated state. All states will apply the laws of the designated state in administrating the trust. Even if the trustor moves to another state, the trust will still remain valid and in

effect.

32. WHAT PROPERTY CAN BE PLACED INTO A REVOCABLE TRUST?

All of the property of the trustor can and should be placed into the trust. Anything left out of the trust will have to be probated unless it is joint tenancy property, insurance policies with designated beneficiaries other than the decedent's estate, or property that otherwise qualifies for summary probate proceedings.

Any property that has a title must have the title specifically changed over into the name of the trust. Merely stating in the trust agreement that such titled property is to be placed into the trust is insufficient to legally put the property into the trust.

A common example is when the trustor owns a home. Since a home has a title document, the title must be changed to make the trust the owner. A quitclaim deed by the trustor to himself as trustee of the trust must be executed and recorded. This is simple to do and usually is done when the trust is created.

33. WHAT ARE THE INCOME TAX EFFECTS ON THE TRUST?

A revocable trust is considered a grantor trust for tax purposes. A grantor trust under the Internal Revenue Code is a type of trust created for the benefit of the person creating it. All of the income from the trust is attributed to the grantor for tax purposes.

Since all of the income is attributed to the grantor, the grantor remains liable for the income taxes as long as he lives.

A revocable trust does not save the grantor any money on income taxes because it is not designed to do that.

A revocable trust exists to avoid probate and save estate taxes, not income taxes.

34. CAN A CONSERVATOR CREATE A REVOCABLE TRUST FOR THE CONSERVATEE?

Some states, like California, have statutes that permit a conservator to make a revocable trust for the conservatee. Such states usually require that the distribution of the trust be the same as the terms of the last will and testament previously drafted by the conservatee.

The purpose behind the revocable trust must be to avoid probate and not to change the distribution of assets that the conservatee had decided upon when he was competent. The situation may be different if the conservatee did not have a will: the trust must be in accordance with the state's laws of intestacy. The estate must be distributed in the same manner that it would have been distributed if a probate had occurred.

35. WILL PUTTING REAL PROPERTY INTO A REVOCABLE TRUST TRIGGER A REASSESSMENT OF PROPERTY TAXES?

Placing a piece of real property into a trust should not trigger a reassessment of property taxes because the transfer is not really a sale or conveyance of the property.

The property is put into a revocable trust that the owner can terminate at any time and receive back. California law specifically states that merely placing real property into a revocable trust for estate planning purposes does not trigger reassessment as long as the grantor is alive.

This is just common sense. Reassessment occurs when there is a change of ownership. Placing the real property into a revocable trust is not really a change in ownership because the trustor still controls it and can have the property returned to him at any time.

36. CAN CREDITORS ATTACH A TRUST FOR PAYMENT OF THE TRUSTOR'S DEBTS?

Most states will allow creditors to attach any revocable trust for the payment of debts or other obligations owed by the trustor. The rationale for allowing the attachment is that the trustor has effective ownership of the trust assets by the fact that he can revoke the trust and receive the property in his own name. A court has the power to order the trustor to terminate the trust and receive the assets back so that the trustor's creditors can be paid.

37. CAN CREDITORS OF A BENEFICIARY ATTACH ASSETS OF THE TRUST?

Most trusts have clauses stating that the interest of the trust beneficiaries cannot be attached to pay the debts or obligations of any beneficiary. This provision is called a

spendthrift clause.

Courts will enforce spendthrift provisions and deny any attachments, except in a revocable trust where the trustor is also the beneficiary whose trust interest is being attached. If there is no spendthrift clause, the trust can be attached to pay a beneficiary's debts. Moreover, most states permit a beneficiary's share of a trust to be attached to pay spousal or child support obligations even if there is a spendthrift clause in the trust.

California has recently passed legislation stating that a spendthrift clause will not shield a trust from attachment for payment of a tort judgment against a beneficiary.

38. CAN A TRUST REPLACE A STATE'S DOWER OR CURTESY LAWS?

If the provisions of a trust are in conflict with a state's law regarding how much of a decedent's estate goes to the surviving spouse, the surviving spouse has an election of whether to take the share of the trust or to insist on receiving a statutory share of the estate.

If the spouse elects to take the statutory share, the trust will pay assets as necessary and distribute the remainder of the trust in accordance with the terms of the trust. To avoid this problem in such states that have statutory provisions for providing for a surviving spouse, the spouse should disclaim statutory rights and agree to take only the disposition given under the trust on the date executed.

If the trust does not give the surviving spouse a statutory share, the beneficiary should consult with an attorney for advice on the legal consequences before proceeding.

39. IS THERE A GIFT TAX FOR FORMING A TRUST?

If the trust is revocable, there is no gift tax because the trustor can always revoke it. All income is still taxed to the trustor.

If the trust is irrevocable but the trustor is the beneficiary, there is no gift tax because the trust is still for the trustor's benefit. Such a trust is called a grantor's trust, and all trust income is taxed to the trustor.

If the trust is for the benefit of the grantor's spouse, there is no gift tax because of the unlimited marital deduction.

If the trust is for the benefit of someone other than the trustor or the trustor's spouse, the general rule is that a gift tax is owed. The gift tax must either be paid or deducted from the unified credit or annual exclusion.

40. IS IT DIFFICULT TO SELL OR TRANSFER PROPERTY IN A TRUST?

Property in a trust is sold like any other property that is not in the trust. All that is needed to sell, transfer or convey real property from a trust is a deed executed by the trustee. The trustee merely signs the deed as the representative for the trust and title is passed upon recordation. For example, the deed from

the trustee will read: "John Doe, Trustee of the John Doe Revocable Trust, hereby deeds, conveys, sells, and transfers to John Smith all right, title and interest in the following property."

41. WHEN DOES THE TRUST HAVE TO FILE AN INCOME TAX RETURN?

As long as the grantor of the revocable trust is the trustee and treated as the owner of the trust, no tax return for the trust should be filed. The income and deductions for the trust should be listed on the grantor personal tax return.

A Form 1041 should be filed by the trust when the grantor is not considered the owner. This return should list to whom any distributions of income were made and pay the trust income tax on any income not distributed.

When the grantor is no longer the trustee, a trust tax return on Form 1041 should be filed.

42. CAN A TRUST'S ADMINISTRATION BE REVIEWED BY A COURT?

A common fear that many people have is that the trust will be mismanaged, and no one will be able to stop it. There is little to worry about on that score. All states permit concerned persons to petition the court for review of the administration of a trust.

A trustee is a fiduciary and owes both the trust and the beneficiaries a fiduciary duty to act reasonably and responsibly. If the court finds that a trustee has breached his duty of care, it will remove the trustee and surcharge (find the trustee liable) for

all of the damages caused by the trustee's misconduct.

Even if the trust document states otherwise, probate courts will always have the power to review the actions of a trustee. The court will never permit a trustee to misuse the faith and power of his position and hide behind the trust document to avoid judicial scrutiny. Anyone, not just the beneficiaries, can take their suspicions of abuse to the court, and the court will investigate. In Bakersfield, California, an attorney conspired with a trustee to raid an elderly woman's trust. Concerned neighbors expressed their concern to the court, which ordered an investigation. Ultimately the attorney was charged, convicted and sentenced to seven years in prison. The attorney's defense that everything was done in accordance with the terms of the trust was not persuasive.

43. CAN ACCOUNTINGS BE ORDERED BY A COURT FOR THE TRUST?

Most trust documents contain clauses which require annual accountings to be made by the trustee unless the grantor is the trustee or all the trust beneficiaries waive them. In addition, any concerned person, not just a beneficiary, who feels that the trust is being mismanaged, can seek a court order directing the trustee to perform an accounting. The court can order an accounting even if the trust agreement waives them.

A major concern that many people have about a trust is that the trustee may take and otherwise mismanage the trust assets after their death, and the beneficiaries will be helpless. Such is never

the case. The probate court always has jurisdiction to oversee every trust, whether or not such jurisdiction is spelled out in the trust document. No court will ever let a trustee intentionally mismanage or steal trust assets. Anyone, not just beneficiaries, can raise their concerns to the court, which will order a hearing to investigate the matter.

44. CAN A TRUSTEE RESIGN?

A trustee can always resign. In such a case, the trustee is replaced just as though the trustee had died. Most trust agreements contain a list of proposed successor trustees to replace dying or resigning trustees. If the trust does not provide for a successor trustee and the trustor is dead or did not retain the right to amend or revoke the trust, the probate court will appoint a trustee. No trust will ever fail just because the trustee died or resigned.

Before a trustee can resign, the trustee, unless the trustor is the trustee, will be required to provide a full accounting of the trust business during the time he managed it. All of the beneficiaries may together waive the accounting.

45. HOW IS THE TRUSTEE REPLACED IF THE TRUSTOR BECOMES INCOMPETENT?

Most trusts have language for a successor trustee to take responsibility when the trustee becomes unable to perform the duties of the trustee. This may cause problems when the trustee is

the trustor and does not believe himself to be incompetent.

To alleviate the problem, many agreements permit a trustee to be replaced when two competent doctors determine the trustee to be incompetent. Moreover, a court can adjudge a person incompetent and appoint a successor trustee to take over.

46. IS THERE A REQUIRED BOND FOR A TRUSTEE?

Normally, the trustor waives the bond for any trustee or successor trustee named in the trust document. After all, such a bond would be paid by the trust and thus diminish the trust estate. If the trustor did not have faith in the named trustees, he should not have named them.

In the case of a court appointed trustee, the court will require a bond unless all of the beneficiaries agree to waive it.

47. WHEN DOES THE TRUST TERMINATE?

A trust must terminate within 21 years after the death of someone alive and mentioned in the trust when it was created. In other words, the trust must be totally distributed within 21 years of the death of the last person alive when the trust was created. This is known as the Rule Against Perpetuities and is the law in all 50 states.

If it appears that the trust would continue after the death of the beneficiary mentioned in the trust document, then the trust will be declared invalid. Clauses are usually inserted in the

trust document to guarantee that the trust will not violate the Rule Against Perpetuities.

Except for the Rule Against Perpetuities, a trust terminates at the time the trustor specified in the terms of the trust agreement. Usually it terminates on the death of the surviving spouse or the death of the trustor's last child.

48. HOW IS A TRUST REVOKED?

If a trust is revocable, all that is needed for an effective revocation is for the trustor to notify the trustee in writing that the trust is terminated as of a certain date and to demand the trust assets be paid over to the trustor.

When the trustor is also the trustee, he simply affixes a letter to the trust document revoking the trust and then executes new deeds from the trust back to himself as an individual.

Revocation is simple and quick which is one of the prime advantages of the trust over any other form of estate planning, Ease of revocation means that the trustor's control over the assets of the trust is never truly lost. Until the trustor actually dies, he retains the ability to revoke and terminate the trust merely by stating that the trust is revoked.

49. MUST A TRUST BE RECORDED?

A revocable trust does not ever need to be recorded. Unlike a Will, it is a private document. The only documents that always

need recordation are the deeds transferring real property into the trust. In some states, a revocable trust is required to be registered with the probate court. To register, a short statement is filed listing the trustee and giving some basic information. Registration gives the court jurisdiction to oversee the trust. There are no penalties, however, for failure to register.

The states requiring registration are Alaska, Colorado (after the death of the grantor but no registration is required if there is an immediate distribution to the beneficiaries), Hawaii, Idaho, Maine, Michigan, New Mexico and North Dakota. Florida and Nebraska do not require registration with the probate court, but both states allow it and suggest it.

50. SHOULD BANK ACCOUNTS BE IN A TRUST OR IN JOINT TENANCY?

A person may have his bank accounts placed in joint tenancy with the spouse or children or all. The problem is the same as with all joint tenancy property (as stated before). The opening of joint bank accounts is a legal gift of a large portion of all money placed into the account: the account may be attached to pay the other joint tenant's debts.

If a revocable trust is used, all that is needed to avoid probate is just to retitle the bank account so that the trust is the new holder. The trustor controls the trust which controls the account. The bank will want to see the trust document to ensure that the trust exists and to identify the successor trustee. The

use of a trust as the owner of the bank account assures that it will not be attached to pay any one's debts but the trustor's.

51. HOW MUCH IS THE STANDARD ESTATE PLAN?

The standard estate which includes the revocable trust, durable power of attorney, living will, and pour-over will is usually between $500 and $1,100, depending on the type of trust used. There are different types of trusts depending on the type of trust needed to accomplish the trustor's intent.

Different trusts are used depending on whether or not the grantor is single or married with or without children and whether the trust is a joint trust between the spouses. Special trusts such as life insurance trusts, generation-skipping trusts or charitable trusts can also be part of an estate plan and obviously will increase its cost.

CHAPTER 3

DURABLE POWERS OF ATTORNEY AND LIVING WILL DECLARATIONS

I. DURABLE POWERS OF ATTORNEY

A general power of attorney is a written document wherein a person, called the principal, gives to another person, called the attorney in fact, the authority to act on the principal's behalf. A general power of attorney lapses and becomes invalid at the moment that the principal becomes incompetent or dies. At the time it is needed most, a general power of attorney becomes invalid, and the right of the attorney in fact to act for the principal ceases, lapses and terminates at the moment that it is most needed.

To address this situation, the Uniform Durable Power of Attorney Act was drafted and adopted in some form by most states. In addition, Section Five of the Uniform Probate Code reads as follows:

POWERS OF ATTORNEY

Section 5-501. When Power of Attorney Not Affected by Disability.

> Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representative as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent,

during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the powers of attorney or agency.

Section 5-502. Other Powers of Attorney Not Revoked Until Notice of Death or Disability.

(a) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than power described in Section 5-501, does not revoke or terminate the agency as to the attorney in fact, agent or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees and personal representatives.

(b) An affidavit, executed by the attorney in fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

© This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

The Uniform Durable Power of Attorney Act is set forth in this chapter in its entirety. A durable power of attorney is a special power of attorney which contains specific language stating the intent of the principal that the power of attorney is deliberately intended to continue in full force and effect during the period of incompetency and incapacity.

A durable power of attorney has the effect of eliminating and replacing the necessity of a voluntary conservatorship. A durable power of attorney can also give the attorney in fact the power to make all or just specific health care decisions if the principal becomes unable to do so.

Many states have approved a statutory form for durable powers

of attorney. Following this chapter is the statutory form in California for a durable power of attorney for health care and the statutory form in California for business affairs. Also following this chapter is a combined durable power of attorney for both health and business affairs for use in most of the states that have adopted the Uniform Durable Power of Attorney Act. This form should only be used after verifying that it complies with the user's particular state law. Forms of those states that have approved statutory durable power of attorney forms will usually be sold in stationery and office supply stores for about $2.00 each.

II. LIVING WILLS

A living will is not a will for probate purposes. Instead, a living will is a declaration by a person that serves as a directive to a treating physician, hospital and the world at large that the person executing it wants or does not want to be kept alive through the use of extraordinary means. A living will declaration is the only way to ascertain the intent of the person in the event that the person is or becomes unable to make a decision at the time it is necessary to do so.

Most states presume a person wants extraordinary means used to be kept alive and will order it employed unless the person has made a living will stating the opposite intent.

A few states will not recognize a living will unless it is executed close in time to the incompetency and with informed consent. In such states, the living will would have to be executed in a hospital or with a doctor shortly before the surgery or treatment that subsequently rendered the person incompetent. The fact that some states will not recognize a living will executed some time before the incompetency does not mean that it should not be executed. If it is later ruled invalid under state law, there is no harm. In such an instance, the Living Will Declaration will be treated as though it had never been executed. It is the recommendation of most estate planners that everyone create a living will specifying their wishes and directives to their

physicians and that the living will should be restated and redone, if possible, before any surgery or major treatment is undertaken. A living will declaration follows this chapter.

Most states require a living will declaration to have at least two witnesses over the age of 21 years. A few states accept witnesses of 18 years of age. Some states require the living will declaration to be notarized. The living will declaration included in this book calls for two witnesses and a notary acknowledgment. Having a living will declaration notarized is a good idea even if it might not be required in most states. The notary is an impartial licensed official of a state. Testimony as to capacity and intent from such a person carries more weight with a court in the event of a dispute over a person's intent or capacity when creating a living will declaration. It is suggested that both witnesses be over the age of 21 years of age but not so elderly or in poor health that they might predecease the person utilizing the living will declaration.

Furthermore, most states require that the witnesses not be blood relatives or anyone who would share in the estate of the person utilizing a living will declaration. In other words, anyone who would benefit from a person's death should not be a witness. Using such a person as a witness will usually invalidate the declaration. The reason behind this exclusion: the states do not want to give a witness an incentive, however improbable, to have the person creating the living will declaration put to death.

Some states do not permit doctors, medical personnel or nursing home personnel to be witnesses because of the concern that they may exert an undue influence on the person using the living will declaration. To avoid raising this issue, none of the above persons should be used as a witness, even if permitted under state law.

After a living will declaration is executed, a copy should be given to the person's physician. In fact, several states have laws that require the declaration to be delivered to such physicians

before the patient becomes incompetent if the order is to be effective. The rationale for this is so that physician can consult with the patient and verify that the declaration truly expresses the person's intent. It really does not do any good to have the declaration tucked away in a safety deposit box when it is most needed. The existence of the living will declaration should be widely publicized so that if something happens, such as an auto accident, someone will know to tell the treating physicians and hospital that a living will declaration is in existence. In fact, copies of the living will declaration should be given to those persons named as agents in it. If the need arises, they will be able to produce the living will declaration to assure that the creator's intent is fulfilled.

A very sad example for the need of such a living will declaration recently received national attention. An unmarried woman who was pregnant suffered brain death. Her partner, who was the father of the child, wanted the child and would raise it. The woman's parents, however, did not want the child, their grandchild, born. Since the woman did not have a living will declaration in effect, the decision on whether or not to stop the life support machine rested with the parents. The father of the child and partner of the woman filed a lawsuit seeking to prevent the parents from stopping the life support machine and killing his child, which his former partner was carrying. Various women's rights groups sided with the parents arguing that no man should force a woman to have a child, even if she was brain dead. The matter was settled out of court with the parents relenting and agreeing for the child to be born provided the father would raise it.

In the living will declaration used in this book, a woman is called upon to state whether she wants or does not want life support to be withdrawn if doing so would cause an abortion. Even with a woman's stated intention on this matter, there is no guarantee that a court would follow it if an abortion would result. In such a situation a court will look at her intention and apply it

against appropriate state and federal law. If such intention is not violative of either, then it will be given effect.

A woman might also attempt to define the circumstances under which she would permit a child to be born. For example, if the child was seriously deformed or handicapped, she might state in the section for other instructions, that, under those circumstances, she would want the life support removed with the knowledge that an abortion would occur. In this situation, there is no guarantee that a court would approve the removal of life support, but, at least, the intention was made clear for the court and all concerned to consider.

UNIFORM DURABLE POWER OF ATTORNEY ACT OF CALIFORNIA

(The form of the California Act is very similar to the uniform acts adopted in other states. All references are to the Civil Code of California.)

SECTION 2400. DURABLE POWER OF ATTORNEY DEFINED.

A durable power of attorney is a power of attorney by which a principal designates another attorney in fact in writing, and the writing contains the words "This power of attorney shall not be affected by subsequent incapacity of the principal," or "This power of attorney shall become effective upon the incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity.

SECTION 2400.5 PROXY BY ATTORNEY IN FACT IS NOT A DURABLE POWER OF ATTORNEY.

Where a durable power of attorney gives an attorney in fact the power to exercise voting rights, a proxy given by the attorney in fact to another to exercise the voting rights is subject to all the provisions of law applicable to such proxy and is not a durable power of attorney subject to this Article.

SECTION 2401. ACTS OF ATTORNEY IN FACT BINDING ON PRINCIPAL AND SUCCESSORS IN INTEREST.

All acts done by the attorney in fact pursuant to a durable power of attorney during any period of incapacity of the principal have the same effect and inure to the benefit of and

bind the principal and his or her successors in interest as if the principal were competent.

SECTION 2402. PRIOR NOMINATION OR SUBSEQUENT APPOINTMENT OF GUARDIAN, CONSERVATOR, OR OTHER FIDUCIARIES.

(a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator of the estate, or other fiduciary charged with the management of all of the principal's property or all of his or her property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he or she were not incapacitated; but if a conservator is appointed by a court of this state, the conservator can revoke or amend the power of attorney only if the court in which the conservatorship is pending has first made an order authorizing or requiring the fiduciary to revoke or amend the durable power of attorney and the revocation or amendment is in accord with the other. This subdivision does not apply to a durable power of attorney to the extent that the durable power of attorney authorizes the attorney in fact to make health care decisions, as defined in Section 2430 for the principal.

(b) A principal may nominate, by a durable power of attorney, a conservator of the person or the estate or both, or a guardian of the person or estate or both, for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. If the protective proceedings are conservatorship proceedings in this state, the nomination shall have the effect provided in Section 1810 of the Probate Code, and the court shall give effect to the most recent writing executed in accordance with Section 1810 of the Probate Code, whether or not such writing is a durable power of attorney.

SECTION 2403. EFFECT OF DEATH OR INCAPACITY OF PRINCIPAL -- ALL POWERS OF ATTORNEY, DURABLE OR OTHERWISE.

(a) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

(b) The incapacity of a principal who has previously executed a written power of attorney that is not a durable power of

attorney does not revoke or terminate the agency as to the attorney in fact or other person who, without actual knowledge of the incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his or her successors in interest.

SECTION 2404. ACTS OF ATTORNEY IN FACT IN GOOD FAITH RELIANCE OF POWER-AFFIDAVIT SHOWING LACK OF ACTUAL KNOWLEDGE AS CONCLUSIVE PROOF OF NONREVOCATION OR NONTERMINATION.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he or she did not have at the time of the exercise of the power actual knowledge of the termination of the power by revocation or by the principal's death or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

SECTION 2405. APPLICATION AND CONSTRUCTION OF ACT TO EFFECTUATE UNIFORMITY.

This Article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it.

SECTION 2406. TITLE.

This Article may be cited as the UNIFORM DURABLE POWER OF ATTORNEY ACT.

SECTION 2407. PROVISIONS SEVERABLE ON INVALIDITY.

If any provision of this Article or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable.

The following Durable Power of Attorney is a combined form for

both Health Care and Financial Affairs which can be used in the following states and territory which have not adopted a statutory Durable Power of Attorney form for Health Care or do not require use of their form (New Mexico, New York and Virginia have adopted a statute but do not require use of their form):

Alabama	Arkansas	Arizona	Colorado
Delaware	Florida	Hawaii	Iowa
Indiana	Louisiana	Maryland	Maine
Michigan	Missouri	Mississippi	Montana
Nebraska	New Jersey	New Mexico	New York
Oklahoma	Pennsylvania	South Dakota	Virginia
Washington	Wyoming	Virgin Islands	

The states not mentioned and the District of Columbia have adopted a statutory durable power of attorney form for health care. The forms for these states are sold in most office and stationery stores. The forms are also available in the book Powers of Attorney for Everyone by Michael Lynn Gabriel.

To illustrate the use of Durable Power of Attorney and Living Will Declarations, completed samples for the following forms succeeded by the blank pull-out forms are set forth:

1. Durable Power of Attorney for Health Care and Financial Affairs.
2. California Statutory Durable Power of Attorney for Health Care.
3. California Uniform Statutory Power of Attorney.
4. Living Will Declaration.

DURABLE POWER OF ATTORNEY
FOR BOTH HEALTH CARE AND FINANCIAL AFFAIRS

KNOW ALL PEOPLE BY THESE PRESENTS, that I, MICHAEL LYNN GABRIEL residing at 504 C LOW GAP ROAD, UKIAH, MENDOCINO COUNTY, STATE OF CALIFORNIA, phone number (707) 468-0268 do declare this to be a Durable Power of Attorney.

This Durable Power of Attorney shall not be affected by subsequent incapacity of the principal.

This Durable Power of Attorney shall become effective:

(X) Immediately upon the execution of this Durable Power of Attorney.

( ) Only after certification by two licensed physicians that I have been determined to lack the capacity to make health care and financial decisions for myself.

I hereby revoke all prior powers of attorney regardless of the type or to whom they may have been given.

I hereby nominate, constitute and appoint LYDIA ANN STINEMEYER GABRIEL, whose address and telephone number are: 504 C LOW GAP ROAD, UKIAH, CALIFORNIA (707) 468-0268, as my true and lawful Attorney in Fact, for me and in my name, place and stead, and for my use and benefit, to exercise the following powers:

(1) To make health care decisions on my behalf. Health care decisions means decisions on my care, treatment, or procedures to be utilized in order to maintain, diagnose or treat my physical condition. This Durable Power of Attorney, as it relates to health

care decisions, does not carry with it the power to authorize any of the following acts:

(A) Any commitment or placement in a mental health facility,

(B) Any convulsive treatment, or

© Any psychosurgery.

Furthermore, I hereby expressly authorize any physician, hospital, and any other person or organization, to release and disclose to my agent any information any of them may have concerning my physical condition and any health care, counsel, treatment, or assistance provided to me either before or after the execution of this power of attorney, any privilege hereby being expressly waived to such disclosures. This waiver shall extend to communications to my agent only and shall not be deemed a general waiver of the privilege. My agent may, however, authorize release of such information to such third persons as my agent deems to be reasonable or necessary in the exercise of the powers granted in this instrument.

(2) Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(A) Authorize an autopsy,

(B) Make a disposition of a part or parts of my body under the Uniform Anatomical Gift Act, and

© Direct disposition of my remains in accordance with state law.

(3) Subject to any limitations in this document, I hereby grant to my agent full power and authority to act for me in my

name, in any way which I myself could act, with respect to the following matters as each of them to the extent that I am permitted to act through an agent:

(A) Real estate transactions,
(B) Tangible personal property transactions,
(C) Bond, share and commodity transactions,
(D) Financial institution transactions,
(E) Business operating transactions,
(F) Insurance transactions,
(G) Retirement plan transactions,
(H) Estate transactions,
(I) Claims and litigation,
(J) Tax matters,
(K) Personal relationships and affairs,
(L) Benefits from military service,
(M) Records, reports and statements,
(N) Full and unqualified authority to my agent to delegate any and all of the foregoing powers to any person or persons whom my agent shall delegate.

(4) To ask, demand, sue for, recover, collect, and receive such sums of money, debts, dues accounts, legacies, bequests, interest, dividends, annuities, and demands whatsoever as are now or shall hereafter become due, owing payable or belonging to me and have, use and take all lawful ways and means in my name or otherwise, and to compromise and agree for the acquittance or other sufficient discharge of the same.

(5) For me in my name, to make, seal, and deliver, to bargain, contract, agree for, purchase, receive, and take lands, tenements, hereditaments and accept the possession of all lands, and deeds of assurances, in the law therefor, and to lease, let, demise, bargain, sell, remise, release, convey, mortgage, and hypothecate lands, tenements and hereditaments upon such covenants as they shall think fit.

(6) To sign, endorse, execute, acknowledge, deliver, receive, and possess such applications, contracts, agreements, options, covenants, deeds, conveyances, trust deeds, security agreements, bills of sale, leases, mortgages, assignments, insurance policies, bills of lading, warehouse receipts, documents of title, bills, bonds, debentures, checks, drafts, bills of exchange, notes, stock certificates, proxies, warrants, commercial paper, receipts, withdrawal receipts and deposit instruments relating to accounts or deposits in or certificates of deposits of banks, savings and loans or other such institutions or associations, proof of loss, evidences of debts, releases and satisfaction of mortgages, judgments, liens, security agreements, and other debts and obligations, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the exercise of the rights and powers herein granted.

(7) Also to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares and merchandise, choices in action, and to make, do and transact all business of whatever nature and kind.

(8) Also for me and in my name, and as my act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, leases, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, notes, receipts, evidences of debt, releases and satisfaction of mortgages, judgments and other debts, and other such instruments in writing of whatever kind and nature as may be necessary and proper.

(9) To have access at any time or times to any safe deposit box rented by me, wheresoever located and to remove all or any part of the contents thereof, and to surrender or relinquish said safe deposit box, and any institution in which such safe deposit box is located shall not incur any liability to me or to my estate as a result of permitting my agent to exercise this power.

(10) I hereby expressly authorize any attorney of mine, past or present, to release and disclose to my agent any information any of them may have concerning my legal affairs or other facts, which they may have concerning my personal affairs and any legal service, counsel or assistance provided to me either before or after the execution of this power of attorney, any privilege hereby being expressly waived as to such disclosures. This waiver shall extend to communications to my agent only and shall not be deemed to authorize a release of information to third parties and shall not be deemed a general waiver of the privilege. My agent may, however, authorize release of such information to such third persons as my agent deems to be reasonable or necessary in the exercise of the powers granted in this instrument.

(11) Giving and granting unto said attorney in fact full power and authority to do and perform every act necessary, requisite or proper to be done in and about my property as fully as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming that my said attorney shall lawfully do or cause to be done by virtue hereof.

The attorney in fact under this durable power of attorney is

specifically not given and does not have the authority or power to revoke, amend or alter any revocable or irrevocable trust that I have created or may create in the future.

The Attorney in Fact (x) is ( ) is not granted reasonable compensation for services rendered under this Power of Attorney.

The Attorney in Fact ( ) is ( ) is not permitted to engage in self-dealing with my estate.

Special instructions or authority:_____

_____

_____

If LYDIA ANN STINEMEYER GABRIEL is not available or becomes ineligible or unable for any reason to act as my agent and to make decisions for me, or if I revoke appointment or authority to act as my agent, then I designate and appoint PAUL THOMAS GABRIEL, address: 3336 LOVELAND ROAD, YOUNGSTOWN, OHIO 44502, phone: (213) 445-7846 as my alternative, true and lawful attorney in fact with all of the powers enumerated above, including the power to make health care decisions on my behalf.

IN WITNESS WHEREOF, I have hereunto signed my name on this _____ day of _____, 2003, at _____.

MICHAEL LYNN GABRIEL

I am aware that I have the following rights regarding this Durable Power of Attorney.

1. This document gives to the person whom I designate as my attorney in fact the power to make health care decisions for me subject to the limitations and statement of my desires that I have

included in this Document. The power to make health care decisions for me may exclude consent, refusal of consent, or withdrawal of consent to any treatment, service or procedure to maintain, diagnose or treat physical or mental condition. I may state in this document any type of treatment or placements that I do not desire.

2. The person whom I designated in this document has a duty to act consistent with my desires as stated in this document or otherwise made known or, if my desires are unknown, to act in my best interests.

3. Except as I have otherwise specified in this document, the power of the person whom I have designated to make health care decisions for me may include the power to consent to my doctor not to give treatment or to stop treatment which could keep me alive.

4. Unless I specify a shorter period in this document, this power will exist for seven (7) years from the date I execute this document, and if I am unable to make health care decisions for myself at the time the seven (7) year period ends, this power will continue to exist until the time I become able to make health care decisions for myself.

5. Notwithstanding this document, I have the right to make medical and other health care decisions for myself so long as I give informed medical consent with respect to the particular decision. In addition, no treatment may be given to me over my objection, and health care to keep me alive may not be stopped if I object.

6. I have the right to revoke the appointment of the person

designated in this document by notifying that person of the revocation in writing.

7. I have the right to revoke the authority granted to the person designated in this document to make health care decisions for me by notifying the treating physician, hospital, or other health care provider orally or in writing.

8. The person designated in this document to make health care decisions for me has the right to examine my medical records and to consent to their disclosures unless I limit this right in this document.

Dated:_____ MICHAEL LYNN GABRIEL

ATTESTATION

I declare under penalty of perjury under the laws of the State of CALIFORNIA that MICHAEL LYNN GABRIEL, the person who signed this document is personally known to me or proven to me on the basis of convincing evidence to be the Principal, that the Principal signed or acknowledged to this Durable Power of Attorney in my presence, that the Principal appears to be of sound mind and under no duress, fraud, or undue influence; that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider, the operator of a community care facility, nor an employee of an operator of a community care facility, nor the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

I further declare under penalty of perjury under the laws of the State of CALIFORNIA that I am not related to the Principal by blood, marriage, or adoption, and to the best of my knowledge I am not entitled to any part of the estate of the Principal upon the death of the Principal under a will now existing or by operation of law.

DATED:_____

_____ _____

_____

_____ _____

_____

_____ _____

_____

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF _____

COUNTY OF _____

On _____ before me, _____

personally appeared _____personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS MY HAND AND OFFICIAL SEAL.

_____

DURABLE POWER OF ATTORNEY
FOR BOTH HEALTH CARE AND FINANCIAL AFFAIRS

KNOW ALL PEOPLE BY THESE PRESENTS, that I, _____ _____ residing at _____ _____, phone number _____ do declare this to be a Durable Power of Attorney.

This Durable Power of Attorney shall not be affected by subsequent incapacity of the principal.

This Durable Power of Attorney shall become effective:

( ) Immediately upon the execution of this Durable Power of Attorney.

( ) Only after certification by two licensed physicians that I have been determined to lack the capacity to make health care and financial decisions for myself.

I hereby revoke all prior powers of attorney regardless of the type or to whom they may have been given.

I hereby nominate, constitute and appoint _____ _____, whose address and telephone number are: _____ _____, as my true and lawful Attorney in Fact, for me and in my name, place and stead, and for my use and benefit, to exercise the following powers:

(1) To make health care decisions on my behalf. Health care decisions means decisions on my care, treatment, or procedures to be utilized in order to maintain, diagnose or treat my physical

condition. This Durable Power of Attorney, as it relates to health care decisions, does not carry with it the power to authorize any of the following acts:

(A) Any commitment or placement in a mental health facility,

(B) Any convulsive treatment, or

(C) Any psychosurgery.

Furthermore, I hereby expressly authorize any physician, hospital, and any other person or organization, to release and disclose to my agent any information any of them may have concerning my physical condition and any health care, counsel, treatment, or assistance provided to me either before or after the execution of this power of attorney, any privilege hereby being expressly waived to such disclosures. This waiver shall extend to communications to my agent only and shall not be deemed a general waiver of the privilege. My agent may, however, authorize release of such information to such third persons as my agent deems to be reasonable or necessary in the exercise of the powers granted in this instrument.

(2) Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(A) Authorize an autopsy,

(B) Make a disposition of a part or parts of my body under the Uniform Anatomical Gift Act, and

(C) Direct disposition of my remains in accordance with state law.

(3) Subject to any limitations in this document, I hereby grant to my agent full power and authority to act for me in my name, in any way which I myself could act, with respect to the following matters as each of them to the extent that I am permitted to act through an agent:

(A) Real estate transactions,
(B) Tangible personal property transactions,
(C) Bond, share and commodity transactions,
(D) Financial institution transactions,
(E) Business operating transactions,
(F) Insurance transactions,
(G) Retirement plan transactions,
(H) Estate transactions,
(I) Claims and litigation,
(J) Tax matters,
(K) Personal relationships and affairs,
(L) Benefits from military service,
(M) Records, reports and statements,
(N) Full and unqualified authority to my agent to delegate any and all of the foregoing powers to any person or persons whom my agent shall delegate.

(4) To ask, demand, sue for, recover, collect, and receive such sums of money, debts, dues accounts, legacies, bequests, interest, dividends, annuities, and demands whatsoever as are now or shall hereafter become due, owing payable or belonging to me and have, use and take all lawful ways and means in my name or otherwise, and to compromise and agree for the acquittance or other sufficient discharge of the same.

(5) For me in my name, to make, seal, and deliver, to bargain, contract, agree for, purchase, receive, and take lands, tenements, hereditaments and accept the possession of all lands, and deeds of assurances, in the law therefor, and to lease, let,

demise, bargain, sell, remise, release, convey, mortgage, and hypothecate lands, tenements and hereditaments upon such covenants as they shall think fit.

(6) To sign, endorse, execute, acknowledge, deliver, receive, and possess such applications, contracts, agreements, options, covenants, deeds, conveyances, trust deeds, security agreements, bills of sale, leases, mortgages, assignments, insurance policies, bills of lading, warehouse receipts, documents of title, bills, bonds, debentures, checks, drafts, bills of exchange, notes, stock certificates, proxies, warrants, commercial paper, receipts, withdrawal receipts and deposit instruments relating to accounts or deposits in or certificates of deposits of banks, savings and loans or other such institutions or associations, proof of loss, evidences of debts, releases and satisfaction of mortgages, judgments, liens, security agreements, and other debts and obligations, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the exercise of the rights and powers herein granted.

(7) Also to bargain and agree for, buy, sell, mortgage, hypothecate, and in any and every way and manner deal in and with goods, wares and merchandise, choices in action, and to make, do and transact all business of whatever nature and kind.

(8) Also for me and in my name, and as my act and deed, to sign, seal, execute, deliver, and acknowledge such deeds, leases, mortgages, hypothecations, bottomries, charter parties, bills of

lading, bills, notes, receipts, evidences of debt, releases and satisfaction of mortgages, judgments and other debts, and other such instruments in writing of whatever kind and nature as may be necessary and proper.

(9) To have access at any time or times to any safe deposit box rented by me, wheresoever located and to remove all or any part of the contents thereof, and to surrender or relinquish said safe deposit box, and any institution in which such safe deposit box is located shall not incur any liability to me or to my estate as a result of permitting my agent to exercise this power.

(10) I hereby grant all of the following powers to my attorney in fact that may be necessary I order to make me eligible for nursing home assistance if it is deemed in my best interests.

A. Make gifts from any revocable trust I have created to the remainder beneficiaries in the trust to the extent needed to qualify the myself for nursing home assistance even if this means terminating the trust for lack of assets.

B. Declare any revocable trust I have created irrevocable and renounce all future interests in the trust for me.

C. In any community property joint trust created between myself and my spouse, the attorney in fact may transmute all or any part of my community property interests into separate property and give that property in fee to my spouse.

I specifically agree to this provision _____

(11) I hereby expressly authorize any attorney of mine, past or present, to release and disclose to my agent any information any of them may have concerning my legal affairs or other facts, which they may have concerning my personal affairs and any legal service, counsel or assistance provided to me either before or after the execution of this power of attorney, any privilege hereby being expressly waived as to such disclosures. This waiver shall extend to communications to my agent only and shall not be deemed to authorize a release of information to third parties and shall not be deemed a general waiver of the privilege. My agent may, however, authorize release of such information to such third persons as my agent deems to be reasonable or necessary in the exercise of the powers granted in this instrument.

(11) Giving and granting unto said attorney in fact full power and authority to do and perform every act necessary, requisite or proper to be done in and about my property as fully as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming that my said attorney shall lawfully do or cause to be done by virtue hereof.

The attorney in fact under this durable power of attorney is specifically not given and does not have the authority or power to revoke, amend or alter any revocable or irrevocable trust that I have created or may create in the future.

The Attorney in Fact ( ) is ( ) is not granted reasonable compensation for services rendered under this Power of Attorney.

The Attorney in Fact ( ) is ( ) is not permitted to engage in self-dealing with my estate.

Special instructions or authority: _____

_____

_____

If _____ is not available or becomes ineligible or unable for any reason to act as my agent and to make decisions for me, or if I revoke appointment or authority to act as my agent, then I designate and appoint _____ _____, address: _____, phone: _____ as my alternative, true and lawful attorney in fact with all of the powers enumerated above, including the power to make health care decisions on my behalf.

IN WITNESS WHEREOF, I have hereunto signed my name on this _ ____ day of _____, 200__, at _____.

_____

I am aware that I have the following rights regarding this Durable Power of Attorney.

1. This document gives to the person whom I designate as my attorney in fact the power to make health care decisions for me subject to the limitations and statement of my desires that I have included in this Document. The power to make health care decisions for me may exclude consent, refusal of consent, or withdrawal of consent to any treatment, service or procedure to maintain, diagnose or treat physical or mental condition. I may state in this document any type of treatment or placements that I do not desire.

2. The person whom I designated in this document has a duty to act consistent with my desires as stated in this document or otherwise made known or, if my desires are unknown, to act in my best interests.

3. Except as I have otherwise specified in this document, the power of the person whom I have designated to make health care decisions for me may include the power to consent to my doctor not to give treatment or to stop treatment which could keep me alive.

4. Unless I specify a shorter period in this document, this power will exist for seven (7) years from the date I execute this document, and if I am unable to make health care decisions for myself at the time the seven (7) year period ends, this power will continue to exist until the time I become able to make health care decisions for myself.

5. Notwithstanding this document, I have the right to make medical and other health care decisions for myself so long as I give informed medical consent with respect to the particular decision. In addition, no treatment may be given to me over my objection, and health care to keep me alive may not be stopped if I object.

6. I have the right to revoke the appointment of the person designated in this document by notifying that person of the revocation in writing.

7. I have the right to revoke the authority granted to the person designated in this document to make health care decisions for me by notifying the treating physician, hospital, or other health care provider orally or in writing.

8. The person designated in this document to make health care decisions for me has the right to examine my medical records and to consent to their disclosures unless I limit this right in this document.

Dated: _____

_____

ATTESTATION

I declare under penalty of perjury under the laws of the State of _____ that _____, the person who signed this document is personally known to me or proven to me on the basis of convincing evidence to be the Principal, that the Principal signed or acknowledged to this Durable Power of Attorney in my presence, that the Principal appears to be of sound mind and under no duress, fraud, or undue influence; that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider, the operator of a community care facility, nor an employee of an operator of a community care facility, nor the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

I further declare under penalty of perjury under the laws of the State of _____ that I am not related to the Principal by blood, marriage, or adoption, and to the best of my knowledge I am not entitled to any part of the estate of the Principal upon the death of the Principal under a will now existing or by operation of law.

DATED:_____

_____ _____

_____

_____ _____

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF _____

COUNTY OF _____

On _____ before me _____

personally appeared _____
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS MY HAND AND OFFICIAL SEAL.

_____

STATUTORY FORM DURABLE POWER OF ATTORNEY
FOR HEALTH CARE
(California Civil Code Section 2500)

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important document which is authorized by the Keene Health Care Agent Act. Before executing this document, you should know these facts:

This document gives the person you designate as your agent (the attorney in fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise made known.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself as long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection at any time, and health care necessary to keep you alive may not be stopped or withheld if you object any time.

This document gives your agent authority to consent, to refuse to consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of your desires and any limitations that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if the agent (1) authorizes anything that is illegal, (2) acts contrary to your known desires, or (3) where your desires are not known, does anything that is

clearly contrary to your best interests.

The powers given by this document will exist for an indefinite period of time unless you limit the duration in this document.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

Unless you otherwise specify in this document, this document gives your agent the power to (1) authorize an autopsy, (2) donate your body or parts thereof for transplant or therapeutic or educational or scientific purposes, and (3) direct the disposition of your remains.

This document revokes any prior durable power of attorney for health care.

You should carefully read and follow the witnessing procedure described at the end of this form. The document will not be valid unless you comply with the witnessing procedure.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

Your agent may need this document immediately in the case of an emergency that requires a decision concerning your health care. Either keep this document where it is immediately available to your agent and alternate agents or give each of them an executed copy of this document. You may also want to give your doctor an executed copy of this document.

Do not use this form if you are a conservatee under the Lanterman-Petris-Short Act and you want to appoint your conservator as your agent. You can only do that if the appointment document

includes a certificate of your attorney.

1. Designation of Health Care Agent. I, _____

_____

do hereby designate and appoint _____

_____

(Insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as your agent: [1] your treating health care provider, [2] a nonrelative employee of your treating health care provider, [3] an operator of a community care facility, [4] a nonrelative employee of an operator of a community care facility, [5] an operator of a residential care facility for the elderly or [6] a nonrelative employee of an operator of a residential care facility for the elderly.)

as my attorney in fact (agent) to make health care decisions for me as authorized in this document. For the purposes of this document "health care decision" means consent, refusal to consent, or withdrawal of consent to any care, treatment, service or procedure to maintain, diagnose or treat any of the individual's physical or mental condition.

2. Creation of Durable Power of Attorney for Health Care. By this document, I intend to create a durable power of attorney for health care under Sections 2430 to 2443 inclusive of the California Civil Code. This power of attorney is authorized by the Keene Health Care Agent Act and shall be construed in accordance with the provisions of Section 2500 to 2506 inclusive of the California Civil Code. This power of attorney shall not be affected by my subsequent incapacity.

3. General Statement of Authority Granted. Subject to any

limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including but not limited to, my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services or procedures. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4, "Statement of Desires, Special Provisions, and Limitations," below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. Statement of Desires, Special Provisions and Limitations. (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services or procedures. You can also include a statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any way the authority given your agent by this document, you should state the limits in the space below. If you do not want any limits, your agent will have broad powers to make health care decisions for you except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated below:

(a) Statement of desires concerning life-prolonging care, treatment, services and procedures: _____

_____

(b) Additional statement of desires and special provisions, and limitations: _____

_____

_____

(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign EACH of the additional pages at the same time you date and sign this document.)

5. Inspection and Disclosure of Information Relating to My Physical and Mental Health. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Request, review, and receive any information, verbal or written, regarding my physical or mental health, including but not limited to medical and hospital records.

(b) Execute on my behalf any releases or other documents that may be required in order to obtain this information.

(c) Consent to the disclosure of this information.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4, "Statement of Desires, Special Provisions, and Limitations," above.)

6. Signing Documents, Waivers and Releases. Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

(a) Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice."

(b) Any necessary waiver or release from liability required by a hospital or physician.

7. Autopsy: Anatomical Gifts: Disposition of Remains. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Authorize an autopsy under Section 7113 of the Health and Safety Code.

(b) Make a disposition of a part or parts of my body under the Uniform Anatomical Gift Act (Chapter 3.5 [commencing Section 7150] of Part 1 of Division 7 of the Health and Safety Code).

(c) Direct the disposition of my remains under Section 7100 of the Health and Safety Code. (If you want to limit the authority of your agent to consent to an autopsy, make an anatomical gift or direct the disposition of your remains, you must state the limitations in paragraph 4, "Statement of Desires, Special Provisions, and Limitations," above.)

8. Duration. (Unless you specify otherwise in the space below, this power of attorney will exist for an indefinite period of time.)

This durable power of attorney for health care expires on _____ _____.

(Fill in this space ONLY if you want to limit the duration of this power of attorney.)

9. Designation of Alternate Agents. (You are not required to designate any alternate agents, but you may do so. Any alternate agent you designate will be able to make the same health care decisions for you as the agent you designated in paragraph 1 above in the event that agent is unable or ineligible to act as your agent. If the agent you designated is your spouse, he becomes ineligible to act as your agent if your marriage is dissolved.)

If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make health care decisions for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent, I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

A. First Alternate Agent: _____

_____

(Insert name, address, and telephone number of First Alternate Agent.)

B. Second Alternate Agent: _____

_____

(Insert name, address, and telephone number of Second Alternate Agent.)

10. Nomination of Conservator of Person. (A conservator of the person may be appointed for you if a court decides that one should be appointed. The conservator is responsible for your physical care, which under some circumstances includes making health care decisions for you. You are not required to nominate a conservator, but you may do so. The court will appoint the person you nominate unless that would be contrary to your best interests.

You may, but are not required to, nominate as your conservator the same person you named in paragraph 1 as your health care agent. You can nominate an individual as your conservator by completing the space below.)

If a conservator of the person is to be appointed for me, I nominate the following individual to serve as conservator of the person _____

(Insert the name, address and telephone number of person nominated as conservator of the person.)

11. Prior Designations Revoked. I revoke any prior durable power of attorney for health care.

DATE AND SIGNATURE OF PRINCIPAL

(You must Date and Sign this Power of Attorney)

I sign my name to this Statutory Form Durable Power of Attorney for Health Care on the _____ day of _____, _____,at _____.

_____

(This power of attorney will not be valid unless it is signed by two qualified witnesses who are present when you sign or acknowledge your signature. If you have attached any additional pages to this form, you must date and sign each of the additional pages at the same time you date and sign this power of attorney.)

(This document must be witnessed by two qualified adult witnesses. None of the following may be used as a witness: [1] a person you designate as your agent or alternate agent, [2] a health care provider, [3] an employee of a health care provider, [4] the operator of a community care facility, [5] an employee of an operator of a community care facility, [6] the operator of a residential care facility for the elderly, or [7] an employee of an

operator of a residential care facility for the elderly. At least one of the witnesses must make the additional declaration set out following the place where the witnesses sign.)

(Read Carefully Before Signing. You can sign as a witness only if you personally know the principal or the identity of the principal is proved to you by convincing evidence.)

(To have convincing evidence of the identity of the principal, you must be presented with and reasonably rely on any of the following:

1. An identification card or driver's license issued by the California Department of Motor Vehicles that is current or has been issued within five years.

2. A passport issued by the Department of State of the United States that is current or has been issued within five years.

3. Any of the following documents if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, and bears a serial or other identifying number:

a. A Passport issued by a federal government that has been stamped by the United States Immigration and Naturalization Service.

b. A driver’s license issued by a state other than California or issued by a Canadian or Mexican public agency authorized to issue drivers' licenses.

c. An identification card issued by a state other than California.

d. An identification card issued by any branch of the armed forces of the United States.

4. If the principal is a patient in a skilled nursing facility, a witness who is a patient advocate or ombudsman may rely

upon the representations of the administrator or staff of the skilled nursing facility, or family members, as convincing evidence of the identity of the principal if the patient advocate or ombudsman believes that the representations provide a reasonable basis for determining the identity of the principal. Other kinds of proof of identity are not allowed.)

I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of convincing evidence) to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, the employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

Signature: _____

Print Name:_____Date:_____

Residence Address: _____

_____

Signature: _____

Print Name:_____Date:_____

Residence Address: _____

_____

(AT LEAST ONE OF THE ABOVE WITNESSES MUST ALSO SIGN THE FOLLOWING DECLARATION)

I further declare under the penalty of perjury under the laws of California that I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge I am not entitled to any part of the estate of the principal upon the death of the principal under the will now existing or by operation of law.

Signature:_____

Signature:_____

STATEMENT OF PATIENT ADVOCATE OR OMBUDSMAN

(If you are a patient in a skilled nursing facility, one of the witnesses must be a patient advocate or ombudsman. The following statement is required only if you are a patient in a skilled nursing facility, a health facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. The patient advocate or ombudsman must sign both parts of the "Statement of Witnesses" above AND must also sign the following statement.)

I further declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and that I am serving as required by subdivision (f) of Section 2432 of the Civil Code.

Signature: _____

(Include if warning statement at the beginning of form was omitted.)

CERTIFICATE OF PRINCIPAL'S LAWYER

I am a lawyer authorized to practice in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client of his rights in connection with this power of attorney and

the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney.

(Signature of Attorney) _____

_____
Typed/Printed name of attorney

CALIFORNIA'S HEALTH CARE DIRECTIVE

In an attempt to further clarify California's health care directives, the legislature attempted to put all law regulating them in one division of the California Probate Code.

Effective as of July 2000, California added a ***Uniform Health Care Decisions Act***, beginning in Section 4660 of the California Probate Court. The California legislature enacted a statutory Advance Care Directive which is quite similar to the statutory power of attorney of health Care.

The best explanation of what the legislature was attempting to do is set forth in Section 4665 of the **California Probate Code** wherein it explains the Division of the Probate Code dealing with Health Care Directives.

Section 4665 APPLICATION OF DIVISION

Except as otherwise provided buy statute:

(a) On and after July 1, 2000, this division applies to all advance health care directives, including, but not limited to, durable powers of attorney for health care and declarations under the **Natural Death Act** (former Chapter 3.9 (commencing with Section 7185) of Part 1 of **Division 7 of the Health and Safety Code**), regardless of whether they were given or executed before or after July 1, 2000

(b) This division applies to all proceedings concerning health care directives commenced on or after July 1, 2000

(c) This division applies to all proceedings concerning written advance health care directives commenced before July 1, 2000, unless the court determines that application of a particular provision of this division would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of this division does not apply and prior law applies.

(d) Nothing in this division affects the validity of an advance health care directive executed before July 1, 2000, that was effective under prior law.

(e) Nothing in this division affects the validity of a

durable power of attorney for health care executed on a printed form that was valid under prior law, regardless of whether execution occurred before, or after July 1, 2000.

Now the law on Health Care Directives is contained in one Probate division rather than spread among various California Codes such as Health and Safety, Civil procedure and Probate.

All the statutes regulating health care directives is now concentrated in one area, it really has not changed. Pursuant to the subsection (e) of section 4665, statutory powers of attorney for health care executed under the old law still remain valid and the old statutory forms can still be used.

In addition as with statutory forms for ***Durable Powers of Attorney For Health Care***, the statutory form for **California Advance Health Care Directive**, which follows is also voluntary and can be edited to fit the needs and desires of the person executing it.

To summarize, a person wishing to execute a health care directive has several valid ways ro do so and with a great deal of flexibility in the drafting the documents. A person in California can still use the California Statutory Form for Durable Power of Attorneys for Health Care, that form is still approved under subsection (e) of section 4665 or the person can use the ***Statutory Advance Health Care Directive*** which is set forth below, or the person may use the ***Uniform Form for Durable Power of Attorney for Health and Financial Affairs*** contained in the book. The use of any form is voluntary and can be modified to fit the needs of the principal.

From the position of a legal challenge, to a health care directive, the closer the form is to the statutory form the harder it becomes for a third person to claim the principal did not intend the specific authority set forth in the form to given to the agent. The principal still must still have been legally competent to execute a health care directive so the only real issue is what authority the principal intended to bestow on the agent. Starting from a statutory form carries with it the presumption that the principal intended to bestow the authority contained therein, As such, a third person would be virtually estopped from arguing another intent. When using a nonstatutory form the principal’s intent is more open to challenge but as long as it is set forth in a clear fashion, it should prevail. So no trepidation should exist is editing a statutory form or using the uniform forms in the book as long as the principal’s intent is clearly set forth.

ADVANCE HEALTH CARE DIRECTIVE
(California Probate Code Section 4701)

Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part I of this form is a power of attorney for health care. Part I lets you name another individual as agent to make health care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. (Your agent may not be an operator or employee of a community care facility or a residential care facility where you are receiving care, or your supervising health care provider or employee of the health care institution where you are receiving care, unless your agent is related to you or is a coworker.)

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

(a) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition.

(b) Select or discharge health care providers and institutions.

(c) Approve or disapprove diagnostic tests, surgical procedures, and programs of medication.

(d) Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health

care, including cardiopulmonary resuscitation.

(e) Make anatomical gifts, authorize an autopsy, and direct disposition of remains.

Part 2 of this form lets you give specific instructions about any aspect of your health care, whether or not you appoint an agent. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes. If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out Part 2 of this form.

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. The form must be signed by two qualified witnesses or acknowledged before a notary public. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health care directive or replace this
form at any time.

PART 1
POWER OF ATTORNEY FOR HEALTH CARE

(1.1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health care decisions for me

_____

_____

_____

_____

[insert name, address, and telephone number of one individual as

your agent to make health care decisions for you].

OPTIONAL: If l revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent

_____

_____

_____

_____

[insert name, address, and telephone number of one individual as your first alternate agent] .

OPTIONAL: If l revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent

_____

_____

_____

_____

[insert name, address, and telephone number of one individual as your second alternate agent] .

(1.2) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including decisions to provide, **withhold, or withdraw artificial nutrition and hydration and all** other forms of health care to keep me alive, except as I state here:

[You can indicate your desires by including a statement here.]

(1.3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If l mark this box _____, my agent's authority to make health care decisions for me takes effect immediately.

(1.4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(1.5) AGENT'S POSTDEATH AUTHORITY: My agent is authorized to make anatomical gifts, authorize an autopsy, and direct disposition of my remains, except as I state here or in Part 3 of this form:

[if you want to limit the authority of your agent to consent to an autopsy, make an anatomical gift, or direct the disposition of your remains, you must state the limitations here.]

(1.6) NOMINATION OF CONSERVATOR: If a conservator of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as conservator, I nominate the alternate agents whom I have named, in the order designated.

PART 2
INSTRUCTIONS FOR HEALTH CARE

[If you fill out this part of the form, you may strike any wording you do not want.]

(2.1) END-OF-LIFE DECISIONS' I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

_____ **(a) Choice Not To Prolong Life.**

l do not want my life to be prolonged if (1) I have an incurable and irreversible condition that will result in my death within a relatively short time, (2) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (3) the likely risks and burdens of treatment would outweigh the expected benefits, **OR**

_____ **(b) Choice To Prolong Life**

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(2.2) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

[Add additional sheets if needed.]

(2.3) OTHER WISHES: I direct that: [If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.]

[Add additional sheets if needed.]

PART 3
DONATION OF ORGANS AT DEATH (OPTIONAL)

(3.1) Upon my death (mark applicable box):

_____ (a) I give any needed organs, tissues, or parts, OR

_____ (b) I give the following organs, tissues, or parts only:

(c) **My gift is for the following purposes**: *[strike any of the following you do not want]*

(1) Transplant

(2) Therapy

(3) Research

(4) Education

PART 4
PRIMARY PHYSICIAN (OPTIONAL)

(4.1) I designate the following physician as my primary physician:

[insert name, address, and telephone number of physician] .

OPTIONAL- If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician.

[insert name, address, and telephone number of alternate physician]

PART 5

(5.1) EFFECT OF COPY: A copy of this form has the same effect as the original.

(5.2) SIGNATURE.[Sign and date the form here]

Date: _____ _____

Signature

Typed Name

(5.3) STATEMENT OF WITNESSES. I declare under penalty of perjury under the laws of California that (1) the individual who signed or acknowledged this advance health care directive is personally known to me, or that the individual's identity was proven to me by convincing evidence, (2) the individual signed or acknowledged this advance directive in my presence, (3) the individual appears to be of sound mind and under no duress, fraud, or undue influence, (4) I am not a person appointed as agent by this advance directive, and (5) I am not the individual's health care provider, an employee of the individual's health care provider, the operator of a community care facility, an employee of an operator of a of a community care facility, the operator of a residential care facility for the elderly, or an employee of an operator of a residential care facility for the elderly.

[Typed name]	***[Typed name]***
[Address]	***[Address]***
[Signature]	***[Signature]***
[Date]	***[Date]***
First witness	**Second witness**

(5.4) ADDITIONAL STATEMENT OF WITNESSES: At least one of the above witnesses must also sign the following declaration.

I further declare under penalty of perjury under the laws of California that I am not related to the individual executing this advance health care directive by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the individual's estate upon his or her death under a will now existing or by operation of law.

_____ _____

[Signature of witness] ***[Signature of witness]***

PART 6
SPECIAL WITNESS REQUIREMENT

(6.1) The following statement is required only if you are a patient in a skilled nursing facility - a health care facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. The patient advocate or ombudsman must sign the following statement:

STATEMENT OF PATIENT ADVOCATE OR OMBUDSMAN

I declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and that I am serving as a witness as required by Section 4675 of the Probate Code.

Date: _____

_____

[Signature]

_____

[Typed name]

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RECORDING REQUESTED BY)
)
)
)
)
AND WHEN RECORDED MAIL TO)
)
)
)

Space above this line for recorder's use

UNIFORM STATUTORY FORM POWER OF ATTORNEY
(California Civil Code Section 2475)

NOTICE: The powers granted by this document are broad and sweeping. They are explained in the Uniform Statutory Form Power of Attorney Act (California Civil Code Sections 2475-2499.5, inclusive). If you have any questions about these powers, obtain competent legal advice. This document does not authorize anyone to make medical and other health care decisions for you. You may revoke this power of attorney if you later wish to do so.

I, QUINCY HARKIN MYERS appoint
(your name and address)

MARTIN LIERBAG of 3336 LOVELAND ROAD, YOUNGSTOWN, OHIO 44502
(NAME AND ADDRESS OF THE PERSON APPOINTED, OR OF EACH PERSON APPOINTED IF YOU WANT TO DESIGNATE MORE THAN ONE)

as my agent (attorney in fact) to act for me in any lawful way with respect to the following initialed subjects:

To Grant All of the Following Powers, initial the line in front of (N) and ignore the lines in front of the other powers.

To Grant One or More, but Fewer than All, of the following powers, initial the line in front of each power you are granting.

To Withhold a Power, do not initial the line in front of it. You may, but need not, cross out each power withheld.

INITIAL

_____ (A) Real property transactions.

_____ (B) Tangible personal property transactions.

_____ (C) Stock and bond transactions.

_____ (D) Commodity and option transactions.

_____ (E) Banking and other financial institution transactions.

_____ (F) Business operating transactions.

_____ (G) Insurance and annuity transactions.

_____ (H) Estate, trust, and other beneficiary transactions.

_____ (I) Claims and litigation.

_____ (J) Personal and family maintenance.

_____ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs, or civil or military service.

_____ (L) Retirement plan transactions.

_____ (M) Tax matters.

QLM (N) ALL OF THE POWERS LISTED ABOVE.

You need not initial any other lines if you initial line (N).

SPECIAL INSTRUCTIONS:

On the following lines you may give special instructions limiting or extending the powers granted to your agent.

None.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney will continue to be effective even though I become incapacitated.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME INCAPACITATED.

EXERCISE OF POWER OF ATTORNEY WHERE MORE THAN ONE AGENT DESIGNATED

If I have designated more than one agent, the agents are to act Jointly

IF YOU APPOINTED MORE THAN ONE AGENT, AND YOU WANT EACH AGENT TO BE ABLE TO ACT ALONE WITHOUT THE OTHER AGENT JOINING, WRITE THE WORD "SEPARATELY" IN THE BLANK SPACE ABOVE. IF YOU DO NOT INSERT ANY WORD IN THE BLANK SPACE, OR IF YOU INSERT THE WORD "JOINTLY," ALL OF YOUR AGENTS MUST ACT OR SIGN TOGETHER.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this ____ day of _____, 200___.

QUINCY HARKIN MYERS
(your signature)
291-52-7868
(YOUR SOCIAL SECURITY NUMBER)

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF _____

COUNTY OF _____

On_____ before me, _____

personally appeared _____
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

BY ACCEPTING OR ACTING UNDER THIS APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

RECORDING REQUESTED BY)
)
)
)
)
AND WHEN RECORDED MAIL TO)
)
)
)
)

UNIFORM STATUTORY FORM POWER OF ATTORNEY
(California Civil Code Section 2475)

NOTICE: The powers granted by this document are broad and sweeping. They are explained in the Uniform Statutory Form Power of Attorney Act (California Civil Code Sections 2475-2499.5, inclusive). If you have any questions about these powers, obtain competent legal advice. This document does not authorize anyone to make medical and other health care decisions for you. You may revoke this power of attorney if you later wish to do so.

I, _____ appoint
(your name and address)

_____
(NAME AND ADDRESS OF THE PERSON APPOINTED, OR OF EACH PERSON APPOINTED IF YOU WANT TO DESIGNATE MORE THAN ONE)

as my agent (attorney in fact) to act for me in any lawful way with respect to the following initialed subjects:

To Grant All of the Following Powers, initial the line in front of (N) and ignore the lines in front of the other powers.

To Grant One or More, but Fewer than All, of the following powers, initial the line in front of each power you are granting.

To Withhold a Power, do not initial the line in front of it. You may, but need not, cross out each power withheld.

INITIAL

_____ (A) Real property transactions.

_____ (B) Tangible personal property transactions.

_____ (C) Stock and bond transactions.

_____ (D) Commodity and option transactions.

_____ (E) Banking and other financial institution transactions.

_____ (F) Business operating transactions.

_____ (G) Insurance and annuity transactions.

_____ (H) Estate, trust, and other beneficiary transactions.

_____ (I) Claims and litigation.

_____ (J) Personal and family maintenance.

_____ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs, or civil or military service.

_____ (L) Retirement plan transactions.

_____ (M) Tax matters.

_____ (N) ALL OF THE POWERS LISTED ABOVE.

You need not initial any other lines if you initial line (N).

SPECIAL INSTRUCTIONS:

On the following lines you may give special instructions limiting or extending the powers granted to your agent.

_____
_____
_____
_____
_____
_____
_____

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney will continue to be effective even though I become incapacitated.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME INCAPACITATED.

EXERCISE OF POWER OF ATTORNEY WHERE
MORE THAN ONE AGENT DESIGNATED

If I have designated more than one agent, the agents are to act _____

_____

_____

IF YOU APPOINTED MORE THAN ONE AGENT, AND YOU WANT EACH AGENT TO BE ABLE TO ACT ALONE WITHOUT THE OTHER AGENT JOINING, WRITE THE WORD "SEPARATELY" IN THE BLANK SPACE ABOVE. IF YOU DO NOT INSERT ANY WORD IN THE BLANK SPACE, OR IF YOU INSERT THE WORD "JOINTLY," ALL OF YOUR AGENTS MUST ACT OR SIGN TOGETHER.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this ___ day of _____, 200__.

_____
(your signature)

_____
(YOUR SOCIAL SECURITY NUMBER)

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF _____

COUNTY OF _____

On _____ before me, _____

personally appeared _____
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

BY ACCEPTING OR ACTING UNDER THIS APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

LIVING WILL DECLARATION

To My Family, Doctors and All Those concerned with my care:

I, MATILDA ALLEN WATKINS , being of sound mind, make this statement as a directive to be followed if I become unable to participate in decisions regarding my medical care.

If I should be in an incurable or irreversible mental or physical condition with no reasonable expectation of recovery, I direct my attending physician to withhold or withdraw treatment that merely prolongs my dying. I further direct that treatment be limited to measures to keep me comfortable and relieve pain.

In the event that at the time this declaration is being considered I am pregnant, then I specifically state that I

1. Want the treatment withheld even though it may result in an abortion. _____
2. Do not want such treatment withheld if it will result in an abortion. MATILDA ALLEN WATKINS

(CROSS OUT INAPPLICABLE LANGUAGE AND SIGN ON THE APPROPRIATE LINE.)

These directions express my legal right to refuse treatment. Therefore, I expect my family, doctors and everyone concerned with my care to regard themselves as legally and morally bound to act in accord with my wishes, and in so doing to be free of any legal liability for having followed my directives.

I DO (x) DO NOT ( ) desire that nutrition and hydration (food and water) be withheld or withdrawn when the application of such procedures would serve only to artificially prolong the process of dying.

I especially do not want: TO BE KEPT ALIVE THROUGH A HEART LUNG MACHINE IF I AM COMATOSE OR TO BE KEPT ALIVE IN AN UNCONSCIOUS BUT PAINFUL STATE

Other instructions or comments: None

Proxy Designation Clause: Should I become unable to communicate my instructions as stated above, I designate the following person to act in my behalf:

Name: KIMBERLY WALLACE COWER

Address: 57 HEINZ STREET, FAIRFLAX, OHIO

Phone: (213) 783-4568

If the person I have named above is unable to act in my behalf, I authorize the following person to do so:

Name: TIMOTHY ALLEN HOWARD

Address: 57 HEINZ STREET, FAIRFLAX, OHIO

Phone: (213) 783-4568

Dated: DECEMBER 23, 1995 MATILDA ALLEN WATKINS
Signature

STATE OF _____

COUNTY OF _____

On the 23RD day of December, 1995, before me _____ personally appeared MATILDA ALLEN WATKINS personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

STATEMENT OF WITNESS

I declare under penalty of perjury that the person who signed or acknowledged this document is personally known to me or proved to me on the basis of convincing evidence to be the principal, that the principal signed or acknowledged this Living Will Declaration in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the principal's attorney in fact, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, the employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

I further declare that I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge I am not entitled to any part of the estate of the principal upon the death of the principal under the will now existing or by operation of law.

Signature: _____

Print Name:_____Date:_____

Residence Address: _____

_____

Signature: _____

Print Name:_____Date:_____

Residence Address: _____

LIVING WILL DECLARATION

To My Family, Doctors and All Those concerned with my care:

I, _____ , being of sound mind, make this statement as a directive to be followed if I become unable to participate in decisions regarding my medical care.

If I should be in an incurable or irreversible mental or physical condition with no reasonable expectation of recovery, I direct my attending physician to withhold or withdraw treatment that merely prolongs my dying. I further direct that treatment be limited to measures to keep me comfortable and relieve pain.

In the event that at the time this declaration is being considered I am pregnant, then I specifically state that I

1. Want the treatment withheld even though it may result in an abortion._____
2. Do not want such treatment withheld if it will result in an abortion. _____

(CROSS OUT INAPPLICABLE LANGUAGE AND SIGN ON THE APPROPRIATE LINE.)

These directions express my legal right to refuse treatment. Therefore, I expect my family, doctors and everyone concerned with my care to regard themselves as legally and morally bound to act in accord with my wishes, and in so doing to be free of any legal liability for having followed my directives.

I DO ( ) DO NOT ( ) desire that nutrition and hydration (food and water) be withheld or withdrawn when the application of

such procedures would serve only to artificially prolong the process of dying.

I especially do not want: _____

_____

_____

_____

_____

_____

_____

Other instructions or comments:_____

_____

_____

_____

_____

Proxy Designation Clause: Should I become unable to communicate my instructions as stated above, I designate the following person to act in my behalf:

Name: _____

Address: _____

Phone: _____

If the person I have named above is unable to act in my behalf, I authorize the following person to do so:

Name: _____

Address: _____

Phone: _____

Dated: _____ _____

Signature

STATE OF _____

COUNTY OF _____

On the _____ day of _____, 200____, before me

_____ personally

appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the within instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

STATEMENT OF WITNESS

I declare under penalty of perjury that the person who signed or acknowledged this document is personally known to me or proved to me on the basis of convincing evidence to be the principal, that the principal signed or acknowledged this Living Will Declaration in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the principal's attorney in fact, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, the employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care

facility for the elderly.

I further declare that I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge I am not entitled to any part of the estate of the principal upon the death of the principal under the will now existing or by operation of law.

Signature: _____

Print Name:_____Date:_____

Residence Address: _____

_____

Signature: _____

Print Name:_____Date:_____

Residence Address: _____

CHAPTER 4

PROBATE AVOIDANCE VEHICLES

This chapter will discuss some of the most common means available to a person desiring to avoid having an estate probated. The advantages and disadvantages of each method will be compared and evaluated.

The most popular means of estate planning, the use of joint tenancies and revocable living trusts, will each be discussed in full detail in succeeding chapters. Some discussion, however, will be given here, and the reader can compare their use with that of the other probate avoidance vehicles.

I. SUMMARY PROBATES

Many states have adopted the Uniform Probate Code which provides for summary probate procedures in place of having to formally probate an estate. Below is Part 12 of the Uniform Probate Code which governs the summary administration of small estates.

PART 12

COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURES FOR SMALL ESTATES

SECTION 3-1201. COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.

(a) Thirty days after the death of the decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment on the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose of action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(1) The value of the entire estate, wherever located, less liens and encumbrances does not exceed $5,000,

(2) 30 days have elapsed since the death of the decedent,

(3) No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction, and

(4) The claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall charge the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

SECTION 3-1202. EFFECT OF AFFIDAVIT.

The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

SECTION 3-1203. SMALL ESTATES: SUMMARY ADMINISTRATIVE PROCEDURES.

If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in Section 3-1204.

SECTION 3-1204. SMALL ESTATES: CLOSING BY SWORN

STATEMENT OF PERSONAL REPRESENTATIVE.

(a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedure of Section 3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1) To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent,

(2) The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto, and

(3) The personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(b) If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

(c) A closing statement filed under this section has the same affect as one filed under Section 3-1003.

In those states which have adopted the Uniform Probate Code, estates worth less than $5,000 will not have to go through a full and complete probate. The property contained in such small estates can be passed by the use of affidavits. An affidavit is a sworn statement, made under penalty or perjury, that the estate is worth less than $5,000 and that the affiant (the person making the

affidavit) is the only person entitled to receive the property. Upon presentation of the affidavit to anyone holding the decedent's property requires him to deliver the ownership of the property to the affiant, and no liability will incur or attach to the person delivering such property in the event the affiant did not have the right to receive the property.

When the decedent's estate is worth over $5,000, the affidavit method for avoiding probate is no longer available. In its stead the Uniform Probate Code permits an abbreviated - summary probate procedure for small estates. The Uniform Probate Code permits an estate whose value does not exceed the total of the state's homestead exemption (which may in some states exceed $60,000) and the state's family allowance (which may be as much as another $40,000) to be passed to the heirs without having to institute a full probate. The personal representative, after the estate's inventory is prepared, simply files a statement with the court stating that the estate is a small estate under the state's probate code and that distribution should occur immediately to the entitled persons. If no one files any objections within a fixed time, usually ten days, the estate is closed, and the property distributed in accordance with the terms of the decedent's Will or, if there is no Will, then in accordance with the state's intestacy laws.

Most states have adopted versions of the Uniform Probate Code as it relates to small estates. California, for instance, defines

a small estate as being less than $60,000 and basically permits it to be passed by petition. In addition, California permits an estate less than $10,000, which does not include interest in land, to be passed by affidavit.

An estate consists of that property that must be probated. Property that does not need to be probated, such as joint tenancy property, insurance proceeds payable to named beneficiaries rather than the insured's estate and assets in a revocable trust are not considered in determining the size of the probate estate. For example, if George dies with $500,000 in joint tenancy with his wife, a $2,000,000 revocable trust and a bank account of $25,000. Only the bank account needs to be probated and it would, in most states, qualify for a small estate summary probate.

II. BANK ACCOUNTS

A common method of avoiding probate is for a person to entitle a bank account as a trust account for someone else. This is known in the trade as a Totten Trust.

A Totten Trust works as follows. The creator signs a bank card stating that the assets in the account are trust assets for the benefit of a certain individual. Upon death of the creator, the beneficiary of the trust obtains the right to take and keep the proceeds of the account. Up until that time, the beneficiary has no right to take or draw funds from the account. The bank account can be attached to pay the debts of the trust creator but cannot be attached to pay the debts of the beneficiary until after the death

of the trust creator.

A Totten Trust is viewed as a revocable trust for all purposes. Since the creator retains the right to withdraw all or any part of the funds at any time, the account is treated tax-wise as a grantor trust. The interest on the account is solely attributed to the creator.

Because the creator retains such complete control over the bank account, all of the funds in the bank account will be included in the creator's estate for federal and state inheritance and estate taxes.

A Totten Trust is different from a joint tenancy bank account. In a joint tenancy account each of the joint tenants owns an equal amount of the account. They also have equal management and control over the account. In a joint tenancy account a creditor of any joint tenant can attach the account to the extent of the debtor's joint tenancy interest. For example, if a mother established a joint account with her daughter for $15,000. The IRS can attach the bank account for $7,500 or less to pay the daughter's tax bill; even though the daughter may not have contributed any of the money to the bank account.

A Totten Trust is limited to bank accounts only. Totten Trusts are easy to create and cost no more than ordinary bank accounts. In addition, no fiduciary tax returns have to be filed as long as the creator is alive and on the account.

III. PENSION PLANS AND IRAS

Pension plans, IRAs, annuities and the like can be passed without a probate if the owner designates the person to whom it is to be distributed after death. If a beneficiary is not designated, the proceeds from the pension plan, IRA, annuity, etc. will be paid to the estate of the owner, and that will require a probate to distribute it to the decedent's heirs.

It should not be assumed that all pensions, retirement plans or annuities permit the designation of a beneficiary. The avoidance of probate in this area is not based upon probate law but contract law. For that reason the contract between the owner and the provider of the pension plan, IRA plan, annuity, etc. determines the right of the owner to designate payment to someone other than the owner's estate.

Generally, there are no prohibitions to naming beneficiaries other than the owner's relatives. Sometimes, however, such restrictions do exist. In such an event the proceeds will be paid into the estate. If the estate should not qualify for a small-estate summary probate, then a full probate will have to be instituted to pass the proceeds to the owner's heirs.

Regardless of whether the pension plan proceeds need to be probated, they will still be included in the owner's estate for federal and state inheritance and estate purposes.

IV. LIFE INSURANCE TRUSTS

Proceeds from a life insurance policy on the owner's life are included in the owner's estate for federal and inheritance tax

purposes. As with pension plan proceeds, insurance proceeds can be paid to designated beneficiaries without having to go through a probate.

It is possible, however, to structure an insurance trust in such a way that proceeds pass without a probate and also will not be included in the estate of the decedent. This can result in a significant tax savings to the heirs.

A life insurance trust is relatively easy to create. To ensure the proceeds will not be included in the insured's estate, the requirements are:

1. The life insurance trust must be irrevocable. The creator, the person whose life is insured, must not have the right to alter, amend or revoke the trust. If the insured retains any of these powers, the value of the insurance proceeds will be attributed to the insured's estate upon death: there would be no reason to have the policy held in an irrevocable trust.
2. An independent person, not the insured, must be the trustee. If the insured was the trustee, the trust would be a grantor trust as defined in the Internal Revenue Code and includable in the insured's estate on death.
3. The trust must be established and the insurance policy must be placed at least three years before the death of the insured.

An example of how this works is as follows: George, a widower, buys an insurance policy for $2,000,000 payable to his only child, a daughter. George's estate is valued at $1,000,000. George dies four years later. Under federal law, George's estate for tax purposes consists of $3,000,000. For probate purposes, the

estate consists of only $1,000,000 because the insurance proceeds pass outside the probate. The federal estate taxes are based upon $2,400,000 ($3,000,000 minus the unified credit, $600,000 at that time). The federal taxes will be $735,800.

If an insurance trust had been created and the life insurance policy placed in it four years before death, George's estate for tax purposes would have been $1,000,000, not $3,000,000. The probate estate would still be $1,000,000. The federal estate taxes would be based on $400,000 ($1,000,000 minus the $600,000 unified credit at that time). The federal estate taxes would be $86,800.

The difference between the two examples ($649,000) explains most eloquently the merits behind use of an insurance trust to pass property to the heirs.

Proceeds received from life insurance policies are exempt from federal income tax if paid in a lump sum. If the payments are made in installments and the payments also include interest, the interest portion of the payments is taxable to the beneficiary. In like manner most states do not tax insurance proceeds paid to a designated beneficiary as long as the payment does not include after-death interest.

V. JOINT TENANCY

A. DEFINITION

The most common probate avoidance vehicle is the use of joint tenancy. Everyone can recall someone who has mentioned that his estate planning has been accomplished through the use of joint

tenancies.

Joint tenancy is a statutorily created form of ownership of property which permits the concurrent ownership of property by two or more persons with the right of survivorship.

When a joint tenant dies, his interest in the property passes automatically to the surviving joint tenants without probate or judicial proceedings of any type.

An owner's interest in the joint tenancy passes without a probate and is not affected by the terms of the owner's will. A joint tenancy must be created expressly. A joint tenancy deed must have language similar to: "To A and B as Joint Tenants."

Anyone can be a joint tenant with someone else. Usually spouses or the children are the joint tenants so as to avoid a probate of the property when one of the owners dies.

A joint tenant owns an equal interest in the property regardless of whether that interest was purchased or acquired by a gift. As such, each joint tenant's interest can be attached by that joint tenant's creditors.

B. TERMINATION

A joint tenancy can be terminated and turned into a tenancy in common by the following acts:

1. Conveyance by one joint tenant of part or all of his interest. Any conveyance will terminate the joint tenancy. Reason? The other joint tenants did not agree to give a right of survivorship in their interest in the property to the new co-tenant.

2. Mortgaging by one joint tenant of his share of the joint tenancy property without the consent of the other joint tenants.
3. Leasing by one joint tenant of the joint tenancy property without the consent of the other joint tenants.
4. A few states permit the termination of a joint tenancy in a will. This is a minority view.

Only about 24 jurisdictions recognize, in some form, tenancy by the entirety which is a special joint tenancy estate between a husband and wife. The following jurisdictions permit all types of property to be owned in tenancy by the entirety: Arkansas, Delaware, District of Columbia, Florida, Hawaii, Maryland, Massachusetts, Mississippi, Missouri, Ohio, Oklahoma, Pennsylvania, Tennessee and Vermont. Whereas, the following states permit only real property to be owned in tenancy by the entirety: Alaska, Indiana, Kentucky, Michigan, New Jersey, New York, North Carolina, Oregon, Virginia and Wyoming.

Neither spouse can obtain a partition of the estate or defeat the right of survivorship of the other spouse. It cannot be terminated by the unilateral act of one spouse. A tenancy by the entirety is terminated only by:

1. Divorce, which changes the tenancy into that of tenants in common.
2. Mutual agreement whereby they agree to terminate the tenancy.
3. Execution against the property by a joint creditor of both spouses. A creditor of just one spouse cannot execute against property held in a tenancy by the entirety.

Not all states permit joint tenancy, and some that do have restricted its use. In particular Alaska, North Carolina, Pennsylvania, Tennessee and Texas have laws restricting its use. Anyone considering the use of joint tenancy in these states should consult an attorney before doing so.

Some of the community property states permit community property to be held by spouses in joint tenancy that is with a right of survivorship. Title to the property, in such instances, is taken by the specific use of the words "community property with the right of survivorship." The significance of these words is not to be dismissed. If the deed does not state that the character of the property is to remain as community property, the IRS will not treat it as such and will not permit the surviving spouse's half in the basis of the community property to be raised to fair market value. It is common practice for married couples in community property states to hold title in their community property as joint tenants, Unfortunately, the couple often fail to include the language in the deed that the property is to retain its character as community property. Upon the death of one of the spouses, it is only then discovered that the survivor will not get the stepped-up, increased, basis because of the manner in which the title was taken.

Whether the surviving spouse's share of the community property gets a stepped-up basis depends on whether the couple's community property state permits community property to be held by the spouses

in joint tenancy with a right of survivorship. The IRS follows state law. If the state law permits community property to be held by the spouses in joint tenancy, then the basis of both halves of the property will be raised to fair market value upon the death of either spouse. Conversely, if state law does not permit community property to be held by the spouses in joint tenancy, only the basis of the deceased spouse's half of the property will be raised to fair market value.

The following community property states permit community property to be held in joint tenancy and thus give both halves a raised basis:

Nevada under Nevada Revised Statutes Section 111.064
New Mexico under Section 40-3-2 and the case Swenk v. Sunwest Bank 113 Bank. 37
Texas under Probate Code Section 451
Washington under Section 64.28.040
Wisconsin under Section 766.60

The following community property states either hold that community property cannot be held in joint tenancy or they have no statutory law permitting it:

California holds that property cannot be both community property and joint tenancy at the same time, Siberell v. Siberell (1932) 214 Cal. 767. When community property is held in joint tenancy, the courts are split as to whether to give the surviving spouse's half a stepped-up basis. U.S. v. Pierotti (9th Cir. 1946) 154 F.2d 758 granted it. Bordenave v. U.S. (N.D. Cal 1957) denied it.

Arizona held that community property could not be held in joint tenancy: the property had to be one or the other. Collier v. Collier (1952) 73 Ariz. 405.

Neither Idaho nor Louisiana have statutes which define how community property held as joint tenancy will be treated. Taking property as "community property with the right of survivorship" will avoid probate but might not give a stepped-up basis to the surviving spouse's half. If the property has had little appreciation, the issue of a stepped up basis does not matter. Keeping the title to property in joint tenancy is not a good idea if the community property has experienced a great deal of appreciation and the surviving spouse might one day wish to sell it. It might pay to discuss the matter with an attorney or accountant if the property lies in Arizona, California, Idaho or Louisiana. Puerto Rico is also a community property jurisdiction. Puerto Rico does not have a statute specifically dealing with community property being held between the spouses with a right of survivorship: the discussion is the same as for Idaho and Louisiana.

C. TAX BASIS CONSIDERATIONS

There are significant tax matters to be considered before executing any joint tenancy documents. Under federal law, it is presumed that, except for married joint tenants, all of the joint tenancy was purchased by the decedent. Thus, the entire is all considered, by the IRS, as the deceased's property for estate tax

purposes unless it can be proven that the surviving joint tenant provided some of the purchase price. To the extent that the surviving joint tenant proves a contribution, the value of the joint tenancy property attributed to the deceased joint tenant's estate is proportionately reduced.

When the property is held in joint tenancy by a married couple, only one-half of the value of the joint tenancy property is placed into the deceased spouse's estate: it does not matter who actually paid for the property. This is a significant estate tax advantage for holding property in joint tenancy by married couples. The drawback is obvious in that if a divorce occurs then one-half of the joint tenancy property goes to each spouse regardless if the receiving spouse actually paid for it.

The basis (value for tax purposes) of property received from a decedent is its fair market value on the date of death, regardless of whether it comes from a trust or a probate. Example: Assume a person bought a home for $10,000, and upon death it was worth $40,000. The basis of the property to the heirs will be $40,000. If the heirs sell it for $40,000, there will be no capital gain taxes due.

Community property, unlike joint tenancy property, is considered owned by both spouses and is given special tax treatment. Under federal law when one spouse dies the basis of both halves of the community property will be increased to fair market value. This is a great tax advantage. Example: A couple

bought a home for $20,000, and its value had increased to $500,000 by the time of the husband's death. The basis for the husband's share in the community property is increased to fair market value: $250,000. Under the special treatment for community property the wife's share is also increased to fair market value: $250,000. As such, the surviving wife can sell the house for $500,000 without having to pay any capital gains taxes ($500,000 minus his $250,000 basis minus her $250,000 basis). If the spouses held the house as joint tenants, only the husband's half would have been increased to fair market value. The wife's basis for her half would have remained at $10,000. If the wife later sold the house for $500,000, she would have to pay capital gains tax on $240,000 ($500,000 selling price minus his $250,000 basis minus her $10,000). The stepped-up basis for community property is a great tax advantage over merely holding joint tenancy property between spouses.

D. GIFT TAX CONSIDERATIONS

As a rule, when a person changes title to property to create a joint tenancy and avoid probate, a taxable gift is created. The two major exceptions to this rule are joint tenancies between spouses and Totten Trust bank accounts.

There is an unlimited marital credit for all transfers between married spouses if both are American citizens. As a result, one spouse can give any amount of property to the other if the recipient is an American citizen without incurring any federal gift

tax. Likewise, the creation of a Totten Trust bank account is not a taxable transaction.

Except for the above instances, the creation of a joint tenancy is a gift of one-half of the property placed into the trust: the interest transferred is taxable as a gift. Unless the property is worth less than $11,000 (the annual gift exclusion amount), a gift tax will have to be paid, or the value of the gift must be used to reduce the unified credit available to pass property without estate or gift taxes.

VI. GIFTS AS ESTATE PLANNING

Another means of avoiding probate is to give the property while alive. Property given during life does not need to be probated after death.

Making gifts for estate planning poses its own unique problems. Most of these problems were addressed in the section above pertaining to joint tenancies. The creation of joint tenancies is a gift of the interest (portion of the property) conveyed in the joint tenancy.

The problems with gifts are as follows:

1. The property given away is lost. The donor no longer owns it, and the donee (person receiving the gift) now controls it.
2. The person receiving the gift gets the donor's basis in the property. This means that the appreciation of the property during the time the donor had the property would be subject to capital gain taxation upon any sale by the donee. This is a significant tax consideration.

3. In the event the donee dies before the donor, the donor might reinherit the property and have to pay inheritance taxes on the property previously given.
4. The property given to the donee may be lost in a divorce of the donee or taken by the donee's creditors.

A POINT OF CONCERN: It is not uncommon for an elderly parent to give the family home to a child, and the child sell it, forcing the parent to move into a retirement home. The parent has no legal right to stop the sale. The child thinks it is best to force the parent into the nursing home and uses the proceeds from the sale to pay for the nursing home. This is not an isolated instance.

A common tax problem arises where appreciated property is given away in life rather than upon death: the basis of the donated property in the hands of the donee remains the basis in the hands of the donor, not the property's fair market value. This lower basis requires the donee to pay a great deal of unnecessary capital gains taxes upon sale of the property. For example, a father gives the home that he owned for fifty years to his daughter a year before his death. The home cost $10,000 in 1940 and was worth $300,000 upon his death. The daughter, for tax purposes, got her father's basis of $10,000. When she sold the property for $300,000, her capital gain was $290,000. The taxes on the capital gain were $81,200. If the property had been passed by a revocable trust or probated, it would have received a stepped-up basis to fair market value upon the father's death. The daughter could have sold the property for $300,000 and paid no capital gain taxes. She

would have saved the $81,200 in taxes.

An unfair situation that once arose involved a father who gave a business worth $800,000 to his two sons. The basis of the business was $40,000. The sons paid $35,000 in gift taxes. Two years later after the father's death, they sold the business for $810,000. Since they had the father's basis of $40,000 and the additional taxes of $35,000, their basis was $75,000. They had to pay capital gains taxes of $150,700 on the gain of $735,000. If the property had been placed into a revocable trust, the property would have received a stepped-up basis on the father's death and total taxes after the sale would have been only $35,000, a savings of $150,000.

Another disastrous situation arising from a gift is that the property could be lost in a divorce, and the donor could find the property being owned by the ex-spouse. Many states still award alimony and property settlements based upon the assets of the spouses. In such states if a parent gives property to a married child, that property might ultimately be awarded to the child's spouse in a divorce. This could result in the loss of property which had been in the family for generations.

A disastrous situation also occurs when the donee dies before the donor. The donor reinherits the property, which could require a probate or the payment of estate taxes. For example, a parent gave his only child property worth $1,000,000, and the child died. If the property was not in joint tenancy with the parent, a probate

would be necessary to return the property to the parent. There may also be estate or inheritance taxes due on the reinheritance of the same property that the parent originally owned. This whole situation could be avoided if the parent had a revocable trust that would pass the property only if the child survived the parent.

VII. LIVING TRUSTS

A. DEFINITION

The most common form of estate planning is the use of the living trust, which is also known as an inter vivos trust or a revocable trust. The use of such trusts is an effective and efficient means of avoiding probate and transferring property quickly and easily upon death. Trusts are extremely flexible and can be drafted to accomplish almost every desired result.

The avoidance of probate with its hassles, delays and fees is a major inducement for implementing an estate plan. When a revocable trust is used, there are no probate fees; the estate passes immediately to the designated beneficiaries in the trust. No court proceeding is needed to transfer the property of a trust; no attorney is needed.

A revocable trust is usually the best means of estate planning for an estate of $100,000 or more. The creator of the trust, called the trustor, places his entire estate into the revocable trust. The trustor usually is also the trustee: both the manager the estate and the prime beneficiary.

Upon the trustor's death a successor trustee named in the

trust takes over immediately without court approval being needed. Depending on the terms of the trust, the new trustee either dissolves the trust and distributes the assets or continues to operate the trust.

Since there is no probate, no probate costs are incurred. The savings for the estate when a revocable trust is used will usually be several times the cost of the creation of the trust.

Because the trust is revocable, the trustor can at any time alter, amend or revoke it. If the trust is revoked, the trust assets immediately return to the trustor.

All states and the federal government accept as valid a revocable trust. If the trust was validly created in the original state, all the other states will honor and enforce it.

Provisions can also be placed into a trust document requiring the trust to be administered under the laws of a certain state. If so, all states will apply the laws of the designated state in administering the trust. Therefore, even if the trustor moves to another state, the trust will still remain valid.

A trust is created very easily. The trust document, usually drafted by an attorney, directs how the trust estate will be administered and distributed. The trustee acts in accordance with the terms of the trust.

The trustor and trustee must both sign the trust document. If the trustor is also the trustee he signs the trust agreement twice, in both capacities.

The final requirement is that the trust be funded: the trustor must place into the trust all of the property he wishes to be there.

B. TYPES OF REVOCABLE TRUSTS

1. A QTIP TRUST

A QTIP Trust is a special trust whereby the trustor's spouse is given all of the income from the trust. Upon the surviving spouse's death, the trust assets are then distributed to the remainder beneficiaries of the trust, usually the trust creator's children or grandchildren. QTIP stands for Qualified Terminal Interest Property: a fancy name for the use of property given to a spouse in this type of trust.

A QTIP Trust gives the surviving spouse the option of having the trust property treated as a gift to the surviving spouse for estate tax purposes. The alternative is to elect not to have the trust treated as a gift to the surviving spouse. If the election is made, the value of the trust will be treated as a spousal gift and be exempt from tax under the unlimited marital deduction. On the surviving spouse's death the value of the trust will be taxed in the surviving spouse's estate.

Depending on the size of the surviving spouse's estate, it may or may not be good financial planning to make the QTIP election and have the value of the trust included in the surviving spouse's estate. Assume the surviving spouse's estate was $100,000, the QTIP Trust was $1,000,000 , and the unified credit of the deceased

spouse had previously been used. The election would allow the trust to delay paying federal estate taxes until the surviving spouse dies. Meanwhile, the surviving spouse could draw a higher interest from the investment of the previously taxed and presently tax-free $1,000,000. The disadvantage is that if the surviving spouse's estate grows greatly after making the election, more tax may ultimately be paid, on the death of the surviving spouse, than would have been paid if no election had been made.

2. A-B MARITAL TRUST

The A-B Trust is the common name given to the general type of revocable trust used by a married person with children when the trustor's estate exceeds the unified credit. It is also called a marital trust or a by-pass trust.

The trust exists for the benefit of the trustor during his life. At the trustor's death the trust is divided into two parts. The unused unified credit is placed into the B trust for the children; the rest is placed in the A (marital) trust for the surviving spouse.

The sole beneficiary of the A trust is the surviving spouse. The surviving spouse has ownership of the A trust and usually has the power to terminate it and receive the assets. Since assets in the A trust go to the wife, there is an unlimited marital deduction (if the spouse is a U.S. citizen) not subject to federal estate taxes. Upon the surviving spouse's death all of the property in Trust A will be included in the surviving spouse's estate for

calculation of estate taxes. For example, assume that upon the husband's death, his $2,000,000 estate was divided $600,000 to Trust B and $1,400,000 to Trust A. Upon the wife's death, Trust A had grown to $1,700,000. The wife also had an additional estate of $500,000. Therefore the wife's taxable estate is $2,200,000.

The beneficiaries of the $600,000 B Trust are the children. Trust income may be directed to the surviving spouse, but the trust and its income do not qualify for a marital deduction. The trust principal does qualify for a deduction of the trustor's unused unified credit. Thus, there is no federal estate tax for this trust either. In the above example, if the assets in Trust B increase to $1,000,000 by the time of the wife's death, no estate taxes will be due because the property placed into the trust was originally tax-free as a result of the use of the unified credit. If $800,000 was originally placed into Trust B, the excess $200,000 would be taxable. After the taxes are paid no additional estate taxes will be charged upon the death of the wife.

C. ELEMENTS OF TRUST

1. PROPERTY PLACED INTO A REVOCABLE TRUST

All of the property of the trustor can and should be placed into the trust. Anything not in the trust must be probated unless it is joint tenancy property or insurance policies with designated beneficiaries outside the decedent's estate.

Any property that has a title must have the title specifically changed into the name of the trust. Merely stating in the trust

agreement that such titled property is to be placed into the trust is insufficient to put the property legally into the trust. It is an unfortunate disaster for the trustor not to record a deed placing property into the trust. Any forgotten property not placed into the trust must be probated unless it falls into an exception for probate under the state's probate code.

A common example is when the trustor owns a home. Since a home has a title document, the title must be changed to make the trust the owner. A quitclaim deed by the trustor to himself as trustee of the trust must be executed and recorded. This is simple to do and usually is done when the trust is created.

Personal property that does not have a title such as a television or furniture is transferred automatically by a statement in the trust document that the trustor's intent is to put all personalty wherever located into the trust. Property that has a title, such as a house, must have the title specifically changed to make the trust the owner. Merely stating an intent to place the house or other property that has a title into the trust is insufficient. The only way to put property that has a title into a trust is to change the title on the property so that the trust is listed on the title documents as the owner.

In one instance, a trustor forgot to place a piece of property into a trust in Wyoming. Years after the owner died, oil was discovered on the property. As a result, a probate was needed on the property when originally all that was needed was a quit-claim

deed into the trust. The development of the oil property was delayed while the probate was open, and the oil royalties were held in the probate.

Placing a piece of real property into a trust should not trigger a reassessment of property taxes because the transfer is not really a sale or conveyance of the property. Since the property is put into a revocable trust, the owner can terminate the trust at any time and receive the property back. California law specifically states that merely placing real property into a revocable trust for estate planning purposes does not trigger reassessment as long as the grantor is alive and a beneficiary of the trust. This is common sense. Reassessment occurs when there is a change of ownership. Placing the real property into a revocable trust is not really a change in ownership because the trustor still controls it and can have the property returned to him at any time.

2. INCOME TAX EFFECTS FOR THE TRUST

A revocable trust is considered for tax purposes a grantor trust. A grantor trust under the Internal Revenue Code is a type of trust created for the benefit of the person creating it. All of the income from the trust is attributed to the grantor for tax purposes.

Since all of the income is attributed to the grantor as long as he is alive, the grantor remains liable for the income taxes. A revocable trust does not save the grantor any money on income taxes. It is not designed to do that.

Property obtained through a probate or a revocable trust has its basis stepped-up to fair market value basis and can be immediately sold without having to pay a capital gain tax.

A revocable trust exists to avoid probate and save estate taxes. It does not save income taxes.

3. ESTATE TAXES ON THE TRUST

The federal estate tax return Form 706 is required to be filed whenever the decedent has an estate greater than $600,000.

The requirement to file the estate tax return does not depend on any taxes being due or a probate being required. As long as the estate is greater than $600,000 the tax return has to be filed. For example, a $600,000 estate tax return would still have to be filed even if the entire estate was going to the surviving spouse under a trust and was entirely exempt from estate tax as a result of the unlimited marital credit.

Likewise, a federal estate tax return would have to be filed even if the entire estate was being given to charities exempt from tax under the Internal Revenue Code.

4. LIABILITY FOR DEBTS

Most states will allow creditors to attach any revocable trust for the payment of debts or other obligations owed by the trustor.

The rationale of the attachment is that the trustor has effective ownership of the trust assets by the fact that he can revoke the trust and receive the property in his own name at any time. A court has the power to order the trustor to terminate the

trust and recover the assets so that the trustor's creditors can be paid.

Most trusts have clauses that state the interest of the trust beneficiaries cannot be attached to pay the debts or obligations of any beneficiary. This provision is called a spendthrift clause.

Courts will enforce spendthrift provisions and deny any attachments except in a revocable trust where the trustor is also the beneficiary whose interest is being attached.

If there is no spendthrift clause, the trust can be attached to pay a beneficiary's debts. In addition, most states permit a beneficiary's share of a trust to be attached to pay spousal or child support obligations despite any spendthrift clause in the trust.

California has passed legislation stating that a spendthrift clause will not shield a trust from attachment for payment of a tort judgment against a beneficiary.

5. TRANSFERRING PROPERTY FROM A TRUST

Property in a trust is sold, transferred and conveyed like any other property that is not in the trust.

All that is needed to sell real property from a trust is a deed executed by the trustee. The trustee merely signs the deed as the representative for the trust, and title is passed upon recordation. The only difference between a deed from a trust and from an individual is that the grantor (signer of the deed) signs it as the trustee of the revocable trust.

6. INCOME TAX RETURNS FOR THE TRUST

As long as the grantor of the revocable trust is the trustee and treated as the owner of the trust, no tax return for the trust should be filed. The income and deductions for the trust should be listed on the grantor's personal tax return.

When the grantor is no longer the trustee, a trust tax return, Form 1041, should thereafter be filed. Form 1041 should also be filed by the trust whenever the grantor is no considered the owner. This return should list to whom distributions of income were made and pay the trust income tax on income not distributed.

7. COURT REVIEW OF TRUST

A common fear that many people have is that the trust will be mismanaged, and no one will be able to stop it. There is little to worry on that score. All states permit concerned persons to petition the court for review of the administration of the trust.

A trustee is a fiduciary and owes both the trust and the beneficiaries a fiduciary duty to act reasonably and responsibly. If the court finds that a trustee has breached his duty of care, it will remove the trustee and surcharge (find the trustee liable) for all of the damages caused by the trustee's misconduct.

Even if the trust document states otherwise, probate courts have the power to review the actions of a trustee. The court will never permit a trustee to misuse the faith and power of his position and hide behind the trust document to avoid judicial scrutiny. Anyone, not just the beneficiaries, can take their

suspicions of abuse to the court; the court will investigate. In Bakersfield, California an attorney conspired with a trustee to raid an elderly woman's trust. Concerned neighbors expressed their concern to the court which ordered an investigation. Ultimately the attorney was sentenced to seven years in prison. The defense that everything was done in accordance with the terms of the trust was unpersuasive, and the attorney went to prison.

8. JOINT TRUSTS

A common estate plan is for both spouses to create one joint revocable trust. In a joint trust both spouses place all of their property into the trust. The spouses' properties are listed on schedules marked his, her and theirs. On the death of the first spouse the trust is divided into separate trusts for the surviving spouse and children or heirs.

This joint trust is usually the most economical estate plan because it plans for both estates. The cost for doing the joint estate plan is usually less than what it would cost to do a separate estate plan for each spouse.

The trust is totally revocable during the joint lifetimes of the spouses. Either spouse may terminate it. Upon the death of the first spouse the trust usually becomes irrevocable as to the property of that deceased spouse, but the surviving spouse usually retains full power to revoke the trust where it concerns the property that he contributed. This type of trust gives the spouses maximum control over their assets and accommodates future changes in the surviving spouse's life following the death of the first spouse.

9. REVOCATION

If a trust is revocable, all that is needed to revoke is for the trustor to notify the trustee in writing that the trust is terminated on a certain date and to demand the trust assets be paid over to the trustor.

When the trustor is also the trustee, the trustor simply affixes a letter to the trust document revoking the trust and executes new deeds from the trust back to the trustor as an individual. In other words, the Trustee executes a deed from the trust to himself and that terminates the trust.

The fact that revocation is simple and quick is a major advantage of the trust over other forms of estate planning. The right to revoke the trust means that control over the assets of the trust is never lost. Until the trustor actually dies, he retains the ability to revoke and terminate the trust merely by stating that the trust is revoked.

IMPORTANT NOTICE

All of the trusts in the second volume, Estate Planning II, will avoid probate. The only question is what trust to use to minimize estate taxes. If married with children from the marriage and none from a prior marriage and a joint estate less than the unified credit, a joint trust is best. Otherwise, the individual, by-pass, QUIP or other trusts are better.

The nice thing about a revocable trust is that nothing is final until death. Until that time the grantor has complete power and ability to alter, amend or revoke the trust to keep pace with changing tax laws. Therefore, a joint trust should be used as long as the value of the assets in the joint trust do not exceed the unified credit amount. If the unified credit is later reduced, the joint trust can be terminated, and individual by-pass or QUIP trusts (included in Estate Planning II) can be substituted for it.

CHAPTER 5

JOINT TENANCY

I. DEFINITION

Joint tenancy is a statutorily created form of property ownership which permits co-ownership by two or more persons with the right of survivorship. Upon the death of one of the owners, called a joint tenant, his interest passes automatically to the surviving joint tenants without the need of any probate or judicial proceeding. This automatic passage of property outside of probate is the reason joint tenancies have become a popular tool of estate planning.

A joint tenancy in real property must be expressly created by a written instrument: the title or deed for the property. The instrument must contain language which reads substantially "To A and B as Joint Tenants with the Right of Survivorship."

Anyone can be a joint tenant with any other person. Usually spouses or parents and their children are joint tenants to avoid a probate of the property when one spouse or parent dies. Assume a father has a piece of property. The father executes a joint tenancy deed that places his four children on the deed with him as joint tenants. Upon the father's death the father's remaining share of the property is divided automatically, without probate, among the four children. Upon the father's death each of the children would own an undivided one-fourth of the property.

A joint tenant owns an equal and undivided interest in the property regardless of whether that interest was purchased or acquired by a gift. Each joint tenant's interest can be attached by the creditors of that joint tenant. A young woman visited an estate planning attorney and stated that her mother had placed the maternal home in joint tenancy with her. The young woman subsequently had an auto accident and did not have insurance. She was sued for damages and had a judgment taken against her. The creditor was executing against the mother's house to sell it and get the sale value of the daughter's half interest. The woman was desperate to save her mother from losing her house. A payment plan was arranged, and her mother was allowed to remain in her home until her death. Then it would be sold, and the balance of the judgment paid off. This is the main drawback of a joint tenancy: the passing of the interest to each joint tenant is a legally completed gift.

Not all states permit property to be held in joint tenancy. Other states have laws that severely restrict its use. The following states have implemented laws regulating the use of joint tenancy property:

ALASKA does not permit the use of joint tenancies except between husbands and wives.

NORTH CAROLINA permits joint tenancies only on bank accounts. It is not permitted otherwise even between spouses.

PENNSYLVANIA has a series of court decisions that

question whether there can be joint tenancy in real property. Personal property joint tenancy still appears to be valid.

TENNESSEE does not permit the use of joint tenancies for any property except between husbands and wives.

TEXAS does not permit the use of joint tenancies for any property except between husbands and wives.

II. TERMINATION

A joint tenancy can be terminated and turned into a tenancy in common (a co-ownership of the property without a right of survivorship) by any of the following acts:

1. Conveyance by one joint tenant of part or all of his interest. Any conveyance will terminate the joint tenancy because the other joint tenants did not initially agree to the new co-tenant participating with the right of survivorship in their interest in the property. In most states, such as California, a joint tenancy can be terminated by a joint tenant executing a deed covering his interest in the property to himself as a tenant in common. For example, George is a joint tenant with Ed. George can terminate the joint tenancy by executing a deed from himself to himself with the language "From George to George as tenant in common." In such an event, George and Ed will then become tenants in common. When George dies his interest in the property will not pass automatically to Ed under any right of survivorship.

2. Mortgaging by one joint tenant of his share of the joint tenancy property without the consent of the other joint tenants: if George takes a loan on his share of the property, the joint tenancy terminates.
3. Leasing by one joint tenant of the joint tenancy property without the consent of the other joint tenants.
4. A few states permit the termination of a joint tenancy by a statement to that effect in a will. This, however, is a minority view not followed by the majority of states.

Once a joint tenancy is terminated, the right of survivorship also terminates. After the owner's death the property must undergo a probate in order to be passed to deceased owner's heirs.

About 20 states recognize a special form of joint tenancy between a husband and wife called "tenancy by the entirety." When property is held as tenants by the entirety, neither spouse may obtain a partition of the property or do anything that will defeat the right of survivorship of the other. A tenancy by the entirety cannot be terminated unilaterally by the act of just one spouse. A tenancy by the entirety can only be terminated by the following:

1. A divorce, which changes the ownership of the property into that of tenants in common.
2. A mutual agreement in writing where the spouses agree to terminate the tenancy by the entirety.
3. An execution against the property by a joint creditor of both spouses. A creditor of just one spouse cannot

execute against property held in tenancy by the entirety.

The main advantage of a tenancy by the entirety over that of a joint tenancy is that creditors of just one spouse cannot take and execute against the property. In contrast, creditors can take and execute against ordinary joint tenancy property when they have a judgment against only one spouse.

Some community property states permit community property to be held in joint tenancy. In such a case, title is taken with the words "community property with the right of survivorship." The significance of these words is not to be ignored. By stating that the property remains community property even though it is held in joint tenancy means the property will still retain its community property status for tax purposes for those community property states which permit community property to be held with a right of survivorship (in joint tenancy).

III. TAX BASIS CONSIDERATIONS

Joint tenancy property is treated differently for tax purposes based upon whether the joint tenants are married. Under federal tax law, it is presumed, except for married joint tenants, that all of the joint tenancy property was purchased by the decedent. Thus, all of the joint tenancy property is placed into the deceased joint tenant's estate for estate tax purposes; unless it can be proven that the surviving joint tenant provided some of the purchase price. To the extent that the surviving joint tenant proves a contribution, the value of the joint tenancy property attributed to

the deceased joint tenant's estate is reduced proportionally. When the property is held in joint tenancy by a married couple, only one-half of the value of the joint tenancy property is placed in the deceased spouse's estate regardless of who actually paid for the property.

The basis (value for tax purposes) of the property received from a decedent through a trust or probate is its fair market value as of the date of death. For example, a person bought a home for $10,000, and upon death it was worth $40,000. The basis of the property when the heirs receive it will be $40,000. If the heirs sell it for $40,000, there will be no capital gains taxes due. If the heirs subsequently sell the home for $50,000, the heirs will have to pay capital gain on $10,000 ($50,000 minus the $40,000 stepped-up basis).

Community property, unlike separate property held in joint tenancy, is considered owned by both spouses and is given special tax treatment. Under federal tax law when one spouse dies, the basis of both halves of the community property will be stepped-up to fair market value. For example, a couple bought, as community property, a home for $20,000 that had increased to $500,000 at the time of the husband's death. The basis of the husband's share of the community property interest in the house is increased to $250,000. Under the special treatment rules for community property the surviving wife's share is also increased to fair market value of $250,000. The surviving spouse can thereafter sell the house

for $500,000 without having to pay any capital gains taxes. If the spouses had held the property as joint tenants but not with language that it was community property, then only the husband's half would be increased to fair market value. The wife's basis for her half interest in the house would remain $10,000. If the wife later sold the house for $500,000, she would have to pay capital gains taxes on $240,000 ($500,000 selling price minus $250,000 husband's basis minus $10,000 wife's basis).

The stepped-up basis for community property is a great tax advantage over merely holding joint tenancy property between spouses. If the joint tenancy property deed does not state that the property is community property, then upon either spouse's death, the IRS will not treat the property as community property but rather as separate property owned equally by each spouse. As such, the IRS will not permit the surviving spouse's half of the basis in the property to be stepped-up to its fair market value. It is not uncommon for married couples to take community property as joint tenants but not to include language in the deed that it was community property merely being held in joint tenancy. Only upon death of one of the spouses is it discovered for the first time that the surviving spouse will not get a stepped-up basis solely because of how the title was taken.

IV. GIFT TAX CONSIDERATIONS

As a rule, when a person changes title to property so as to create a joint tenancy in order to avoid probate, a taxable gift is

created. The major exception to this rule is the use of joint tenancies between spouses. There is an unlimited marital credit for all transfers between married spouses if the recipient spouse is an American citizen. One spouse may give any amount of property to the other if the recipient is an American citizen without incurring a federal gift tax.

The creation of a joint tenancy is a gift of one-half of the property placed into the joint tenancy. The interest transferred to someone other than a spouse may be subject to a gift tax if the other joint tenant has the power to sever the joint tenancy (cancel it): I.R.S. Reg. Section 25.2511(h)(5). Therefore, unless the property is worth less than $11,000 (the annual gift exclusion amount per recipient), a gift tax probably would have to be paid, or the value of the gift will be used to reduce the donor's unified credit. Then the property will pass free of gift or estate taxes.

V. DANGERS

Besides the tax considerations, there are significant dangers in creating joint tenancies. A person should be aware of these considerations before creating a joint tenancy. When someone is creating a joint tenancy in order to avoid probate, that person is making a complete transfer of that interest to the other joint tenant. The interest transferred to the other joint tenant is a full and completed gift. The person creating the joint tenancy has forever divested all control and ownership of the property interest transferred to the other joint tenant.

Once property is placed into joint tenancy, creditors of the other joint tenant can take and attach that joint tenant's share of the property to pay judgments. For example, a mother places her

home worth $200,000 into joint tenancy with her son. The son subsequently has a judgment taken against him for $80,000 for business losses. The son, by virtue of his mother's joint tenancy gift, owns one-half of the home, which is an interest worth $100,000. The son's creditors can force the sale of the mother's home and attach $80,000 of the son's share of the sale proceeds to apply to their judgment. The mother will get $100,000 of the proceeds, but she will be forced out of her home and be $100,000 poorer as well.

Another problem that might arise with the use of joint tenancies could be where the son gets a divorce. In many states a divorce court will divide all of the property owned by the spouses, even that property acquired by gifts or bequests, in order to make an equitable settlement. In such an event the joint tenancy property may be ordered sold so the son's $100,000 share can be divided in the manner the court ordered. The property may also be sold to satisfy the son's obligations for alimony or child support. In any event, the mother will lose $100,000 of assets during her life and be forced from her home.

It usually does not make good sense for a person, particularly a parent, to place property into joint tenancy with someone other than a spouse. The risks and potential liability for the debts and obligations of the joint tenant to whom the property is being given usually outweigh the small advantage of avoiding probate. A revocable trust is usually a better solution.

VI. CREATION

A. REAL PROPERTY

The creation of a joint tenancy in real property is relatively simple and painless. The deed for the real property must state that the owners are taking title as joint tenants. The person transferring the property, usually the seller, states in the deed that the property will be received by the new owners as joint tenants. For example, George Smith in a sale may transfer the

property to the buyers Adam Quick and William Hauser as joint tenants. Likewise, George Smith may change the title of real property which he owns so as to place his daughter Alice Smith on it as a joint tenant. Thereafter, upon his death, the interest held by George Smith will pass to his daughter Alice Smith without a probate.

It makes no difference what type of deed is used to create a joint tenancy. A quitclaim deed, warranty deed, grant deed or even an installment sales contract can all be used to create joint tenancies as long as the operative language is included in them. A joint tenancy is created by specific language to the effect that the recipients are receiving the property "As joint tenants with right of survivorship." Example: George Smith would create a joint tenancy with Alice Smith with the language, "From George Smith to George Smith and Alice Smith as Joint Tenants with right of survivorship." The effect of such language is to give Alice Smith one-half of the property plus a right of survivorship in George Smith's remaining share in the property.

Both sample Grant and Joint Tenancy deeds are included at the end of this chapter for reference purposes.

B. PERSONAL PROPERTY

Personal property, having no title, needs a written document that states it is intended to be joint tenancy property in order to be so treated. Common sense dictates that without such a document it is impossible to prove that the property was intended to be held in joint tenancy. For example, a person dies with a valuable ring worth hundreds of thousands of dollars. As personal property, the ring does not have a title. If the decedent had not previously executed a joint tenancy document placing the ring into joint tenancy with his children, the ring would have to be probated (assuming the ring was not put into a revocable trust).

A joint tenancy document for personal property is included at chapter's end for reference.

SAMPLE DEED FOR SELLER CREATING
JOINT TENANCY AMONG BUYERS

RECORDING REQUESTED BY)
)
)
)
)
WHEN RECORDED MAIL TO)
)
)
)
)
_____)_____

(SPACE ABOVE FOR RECORDER'S USE)

INDIVIDUAL GRANT DEED

Documentary Transfer Tax $_____
___ Computed on Full Value of Property, or
___ Computed on Full Value less Liens and Encumbrances Remaining Thereon at Time of Sale
___ Unincorporated Area ___ City of_____
_____
Tax Parcel Number_____

For valuable consideration, the receipt of which is hereby acknowledged:

GEORGE SMITH hereby GRANTS to ADAM QUICK and WILLIAM HAUSER as Joint Tenants with the Right of Survivorship the real property in the County of Mendocino, State of California described as:

1245 Skyplace Drive, Willits, California as described in Book 1, Page 1487 of the County Recorder's Office, Assessor's Parcel Number 1-14-782.

Dated:_____ _____
George Smith

RECORDING REQUESTED BY)
)
)
)
)
WHEN RECORDED MAIL TO)
)
)
)
_____)_____

(SPACE ABOVE FOR RECORDER'S USE)

INDIVIDUAL GRANT DEED

Documentary Transfer Tax $_____
___ Computed on Full Value of Property, or
___ Computed on Full Value less Liens and Encumbrances Remaining Thereon at Time of Sale
___ Unincorporated Area ___ City of_____
_____
Tax Parcel Number_____

For valuable consideration, the receipt of which is hereby acknowledged:

_____ hereby GRANTS to

_____

_____ as joint tenants with right of survivorship.

the real property in the County of_____ State of

_____ described as:

Dated: _____ _____

STATE OF _____

COUNTY OF _____

On _____ before me _____

personally appeared _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

SAMPLE DEED FOR PARENT CREATING
JOINT TENANCY WITH DAUGHTER

RECORDING REQUESTED BY)
)
)
)
)
WHEN RECORDED MAIL TO)
)
)
)
)
_____)_____
(SPACE ABOVE FOR RECORDER'S USE)

INDIVIDUAL GRANT DEED

Documentary Transfer Tax $ 0
___ Computed on Full Value of Property, or
___ Computed on Full Value less Liens and Encumbrances Remaining Thereon at Time of Sale
___ Unincorporated Area X City of _____
Ukiah
Tax Parcel Number 30015-004-002

For valuable consideration, the receipt of which is hereby acknowledged:

GEORGE SMITH hereby

GRANTS to

GEORGE SMITH and ALICE SMITH as Joint Tenants with the Right of Survivorship

the real property in the County of Mendocino, State of California described as:

534 Peyton Drive, Willits, California as described in Book 1, Page 1567 of the County Recorder's Office, Assessor's Parcel Number 1-34-782.

Dated: _____ _____
George Smith

STATE OF _____

COUNTY OF _____

On _____ before me, _____

personally appeared _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

SIGNATURE

SAMPLE

JOINT TENANCY DOCUMENT FOR PERSONAL PROPERTY

The personal property identified below is hereby transferred from MARK CLIFFORD to MICHAEL CRIER AND HANSEN FILLER as joint tenants with right of survivorship.

The property transferred into joint tenancy is described as follows:

1. Pablo Picasso's CRYING WOMAN

2. Fifteen-foot Sailboat

3. Panasonic Word Processor

Dated: _____ _____
Mark Clifford

STATE OF CALIFORNIA
COUNTY OF LAKE

On _____ before me, _____

personally appeared MARK CLIFFORD personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

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JOINT TENANCY DOCUMENT FOR PERSONAL PROPERTY

The personal property identified below is hereby transferred from _____

to _____

as joint tenants with right of survivorship.

The property transferred into joint tenancy is described as follows:

1.

Dated:_____ _____

STATE OF _____

COUNTY OF _____

On _____ before me, _____

personally appeared _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

SIGNATURE

CHAPTER 6

WILLS

I. NEED

Everyone should have a will regardless of the type of estate plan for which they ultimately opt. Parents with minor children especially have need of a Will to nominate the guardians of the children in the event both parents die early. In addition a Last Will guarantees that any property not included in the estate plan will ultimately pass to the person that the decedent wants to get it. If a Last Will is not created and there is property not otherwise disposed by the decedent, that property will be distributed under the probate laws of the state where the property is located. The property may be distributed in a manner that would not have been approved by the decedent.

A Last Will is the final testament of a person stating how he wishes his assets to be distributed after death. A Last Will is totally revocable during the person's life.

A Last Will usually must be in writing and witnessed by two or more persons. The witnesses usually cannot be heirs under the Last Will. An exception to this rule is that in some states an oral Will made in immediate contemplation of death before competent witnesses may be valid. In addition, some states permit a holographic Will, one written entirely by the testator, dated and signed to be valid.

To be valid, the testator (creator) of the Last Will must be

legally competent to make a Last Will. Unless the last will specifically revokes all prior wills, all of the wills of the testator will be read together by the probate court to determine how the estate will be distributed. To avoid this problem, all Last Wills should have a simple clause revoking all prior wills.

A Last Will must be signed, dated and typed or written entirely in the handwriting of the testator. A general fill-in-the-blank will for individuals follows this chapter. If a person needs greater detail in a Last Will than this one, this will should not be used, and the person should consult an attorney. Should a more sophisticated will be needed, the cost is well worth it. An attorney usually charges $50 to $100 to prepare a will.

II. STATUTORY WILLS

In order to aid its citizens, many states have created statutory wills. These statutory wills comply with all of the terms for a valid will in the particular state authorizing their use. Each state has its own requirements for a statutory will. Such statutory wills are preprinted blank forms in which the testators simply fill in the blanks, sign and have them witnessed or notarized.

Following this chapter is a copy of the Statutory Will used in California. If a state has a statutory will, it can usually be obtained in stationary or office supply stores for between two dollars and ten dollars.

III. POUR-OVER WILLS

A Pour-Over Will is a special Will used in conjunction with a revocable trust. It places all property into the trust that the decedent forgot to place into the trust while alive. Unfortunately, property not placed into the trust prior to the trustor's death may require a probate if the size of the assets is so large that summary procedures cannot be used. For example, if the trustor forgot to place a piece of property in Hawaii into the California Trust, the executor of the pour-over will must open a Hawaiian probate in order to get permission to put it into the trust. Having to probate the non-trust property would needlessly cost thousands of dollars when the trustor could have done it during his life for just the cost of recording a deed into the trust, usually about ten dollars.

Another example of the use of the pour-over will. A person hits a lottery for $50,000,000 and drops dead in the excitement. The pour-over will places the money into the trust after it has been probated. Once placed in the trust, the money will be managed in accordance with the trust terms.

A Pour-Over Will is basically an insurance policy to insure that any forgotten property is placed into the trust after death. Following this chapter are several pour-over wills. There are pour-over wills for spouses who create a joint revocable trust. There is also a pour-over will for an individual who might be married but has executed a separate, revocable trust. The pour-over will simply puts in the trust any property not previously

placed in the trust following the trustor's death. The will also nominates a guardian for existing minor children of the testator.

IV. NOTARIZING A WILL

A few states, such as Louisiana, require a Last Will to be notarized. By requiring a notary the state makes it easier to authenticate (prove) that the Last Will was actually signed by the decedent. A person can determine very easily if a state requires a Last Will to be notarized by simply calling an attorney and asking. Most attorneys will state over the phone whether a Last Will must be notarized. The Last Wills in this book contain a notary acknowledgment for use in any state where it is required.

In states that do not require a notary the heirs under the will must obtain from a witness an affidavit, called "Proof of Subscribing Witness," declaring that the deceased executed the will.

Most states do not require a notary's acknowledgment and thus will not accept a notary's acknowledgment in place of a signed witness statement by the two to three legally competent witnesses required under state law.

If all the witnesses are dead or unavailable to authenticate the Last Will, handwriting analysis must be undertaken to get that proof.

There are situations where notarizing a Last Will is a good idea even though the acknowledgment cannot be used in place of a witness statement. A notary is an officially licensed and

independent person. If a decedent's Last Will is contested, a notary's testimony to the effect that the creator of the will appeared competent would carry a great deal of weight.

Whenever Wills are changed within a year of death, the question often arises that the deceased person may have been incompetent or that undue influence was employed to get the new will executed. This, unfortunately, is a somewhat common scenario. For that reason, having a notary sign a will, when there is a marked change in distribution of the estate, can certainly be of value.

V. VIDEOTAPING A WILL

Videotaping a Will is an excellent idea, but it does not replace the need to have the will written. If the Will is not written, the intent of the decedent regarding the disposition will not be given effect, even with the videotaping. The exception is that some states do permit nuncupative wills (oral wills) to pass a small amount of property. For a large estate, oral wills should not be used because there are usually limitations on the amount that could be passed by such a Will.

The real value of videotaping a Will is that it proves the testator to be competent, sane and not under any undue influence. An elderly or sick person making a new Will that greatly changes the disposition of the estate can result in a will contest. There is case law in California wherein a marriage was set aside because the court found that the man had been incompetent and unable to

understand that he was getting married. As a result, the woman, whose marriage had been annulled, received nothing from the estate.

The most common will contest comes from the situation wherein an heir ignored a relative for years until shortly before that relative's death. Then the heir suddenly became the relative's best friend. The relative, shortly before death, rewrites the will to replace other heirs and friends who have cared for the person during all the years that the new heir was absent. The issue is whether the new heir played upon the decedent's fear of impending death to get a larger share of the estate.

Videotaping is an excellent means of preventing a will contest from greedy relatives. The testator can read the will to the camera, state his intent to create a new will and answer questions that show a detailed understanding of that intent. If any heir thereafter seeks to set aside the will, the tape would be excellent proof of the testator's competence. Most Wills contain a clause that disinherits heirs who try to break a Will and fail. The videotape would give the heirs something to consider before starting a Will contest.

CALIFORNIA STATUTORY WILL

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. It may be in your best interests to consult with a California lawyer because this statutory will has serious legal effects on your family and property.

2. This will does not dispose of property which passes on your death to any person by operation of law or by any contract. For example, the will does not dispose of joint tenancy assets or your spouse's share of community property, and it will not normally apply to proceeds of life insurance on your life or your retirement plan benefits.

3. This will is not designed to reduce death taxes or any other taxes. You should discuss the tax results of your decisions with a competent tax advisor.

4. You cannot change, delete, or add words to the face of this California statutory will. If you do, the change or the deleted or added words will be disregarded, and this will may be given effect as if the change, deletion, or addition had not been made. You may revoke this California Statutory Will, and you may amend it by codicil.

5. If there is anything in this will that you do not understand, you should ask a lawyer to explain it to you.

6. The full text of this California statutory will, the definitions and rules of construction, the property disposition clauses, and the mandatory clauses following the end of this will are contained in the probate code of California.

7. The witnesses to this will should not be people who may receive property under the will. You should carefully read and Follow the witnessing procedure described at the end of this will. All of the witnesses must watch you sign the will.

8. You should keep this will in your safe deposit box or other safe place.

9. This will treats most adopted children as if they are natural children.

10. If you marry or divorce after you sign this will, you should make and sign a new will.

11. If you have children under 21 years of age, you may wish

to use the California Statutory Will with trust or another type of will.

12. Refer to the information sheet which contains additional information regarding the California probate code relating to wills.

CALIFORNIA STATUTORY WILL

_____

(Insert your name here)

CALIFORNIA STATUTORY WILL OF

SHERRIL JOHNSON

(Print your full name here)

ARTICLE 1
Declaration

This is my will, and I revoke all prior wills and codicils.

ARTICLE 2
Disposition of My Property

2.1 PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, and personal items to my spouse, if living; otherwise, they shall be divided equally among my children who survive me.

2.2 CASH GIFT TO A PERSON OR CHARITY. I make the following cash gift to the person or charity in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. No death tax shall be paid from this gift.

FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT (Name only one. Please print).	AMOUNT OF GIFT $100,000 AMOUNT WRITTEN OUT
UNITED WAY OF LOS ANGELES	ONE HUNDRED THOUSAND DOLLARS

SHERRIL JOHNSON
Signature of Testator

2.3 ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box, the property will be distributed as if I did not make a will.

PROPERTY DISPOSITION CLAUSES (Select one.)

(a)	TO MY SPOUSE IF LIVING: IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD.	HARROLD JOHNSON

(b) TO MY CHILDREN AND THE DESCENDANT OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE, IF LIVING. _____

© TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL. _____

ARTICLE 3
Nominations of Executor and Guardian

3.1 EXECUTOR (Name at least one.)

I nominate the person or institution named in the first box of this paragraph 3.1 to serve as executor of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST EXECUTOR HOWARD CLINTON

SECOND EXECUTOR MELISSA JOHNSON

THIRD EXECUTOR MANDY JOHNSON

3.2 GUARDIAN. (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can only serve as guardian of the property.)

If the guardian is needed for a child of mine, then I nominate the individual named in the first box of this paragraph 3.2 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.2 to serve as guardian of the property of that child. If that person or institution does not serve, then the others shall serve in the order I list them in the other boxes.

FIRST GUARDIAN OF THE PERSON DANIEL GLEASON

FIRST GUARDIAN OF THE PROPERTY DANIEL GLEASON

SECOND GUARDIAN
OF THE PERSON JEROLD CLINTON

SECOND GUARDIAN
OF THE PROPERTY JEROLD CLINTON

THIRD GUARDIAN
OF THE PERSON MEARA TYLER

THIRD GUARDIAN
OF THE PROPERTY MEARA TYLER

3.3 BOND.

My signature in this box means that a bond is not required for any individual named in this will as executor or guardian. If I do not sign in this box, then a bond is required for each of these persons as set forth in the Probate Code. (The bond provides a fund to pay those who do not receive the share of your estate to which they are entitled, including your creditors, because of improper performance of duties of the executor or guardian. Bond premiums are paid out of your estate.)

_____

I sign my name to this California Statutory Will on _____ (Date) at _____ (City), _____ (State),

SHERRILL JOHNSON
Signature of Testator

STATEMENT OF WITNESSES
(You must use two adult witnesses and three would be preferable.)

Each of us declare under penalty of perjury under the laws of the State of California that the testator signed this California Statutory Will in our presence, all of us being present at the same time, and we now at the testator's request in the testator's presence and in the presence of each other sign below as witnesses, declaring that the testator appears to be of sound mind and under no duress, fraud, or undue influence.

Signature

Residence address:_____

Print Name Here:_____

Signature

Residence address:_____

Print Name Here:_____

Signature

Residence address:_____

Print Name Here:_____

CALIFORNIA STATUTORY WILL

NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. It may be in your best interests to consult with a California lawyer because this statutory will has serious legal effects on your family and property.

2. This will does not dispose of property which passes on your death to any person by operation of law or by any contract. For example, the will does not dispose of joint tenancy assets or your spouse's share of community property, and it will not normally apply to proceeds of life insurance on your life or your retirement plan benefits.

3. This will is not designed to reduce death taxes or any other taxes. You should discuss the tax results of your decisions with a competent tax advisor.

4. You cannot change, delete, or add words to the face of this California statutory will. If you do, the change or the deleted or added words will be disregarded, and this will may be given effect as if the change, deletion, or addition had not been made. You may revoke this California Statutory Will, and you may amend it by codicil.

5. If there is anything in this will that you do not understand, you should ask a lawyer to explain it to you.

6. The full text of this California statutory will, the definitions and rules of construction, the property disposition clauses, and the mandatory clauses following the end of this will are contained in the probate code of California.

7. The witnesses to this will should not be people who may receive property under the will. You should carefully read and Follow the witnessing procedure described at the end of this will. All of the witnesses must watch you sign the will.

8. You should keep this will in your safe deposit box or other safe place.

9. This will treats most adopted children as if they are natural children.

10. If you marry or divorce after you sign this will, you should make and sign a new will.

11. If you have children under 21 years of age, you may wish to use the California Statutory Will with trust or another type of Will.

12. Refer to the information sheet which contains additional information regarding the California probate code relating to Wills

CALIFORNIA STATUTORY WILL

_____

(Insert your name here)

CALIFORNIA STATUTORY WILL OF

[ ]

(Print your full name here)

ARTICLE 1
Declaration

This is my will, and I revoke all prior wills and codicils.

ARTICLE 2
Disposition of My Property

2.1 PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishings, household items, and personal items to my spouse, if living; otherwise, they shall be divided equally among my children who survive me.

2.2 CASH GIFT TO A PERSON OR CHARITY. I make the following cash gift to the person or charity in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. No death tax shall be paid from this gift.

FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT (Name only one. Please print).	AMOUNT OF GIFT $_____ AMOUNT WRITTEN OUT
_____	_____ DOLLARS

_____
Signature of Testator

SIGNATURE OF TESTATOR

2.3 ALL OTHER ASSETS (MY "RESIDUARY ESTATE"). I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box, the property will be distributed as if I did not make a will.

PROPERTY DISPOSITION CLAUSES (Select one.)

(a) TO MY SPOUSE IF LIVING: IF NOT LIVING, THEN TO MY CHILDREN AND THE [ ]

DESCENDANTS OF ANY DECEASED CHILD.

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE, IF LIVING. [ ]

© TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL. [ ]

ARTICLE 3
Nominations of Executor and Guardian

3.1 EXECUTOR (Name at least one.)

I nominate the person or institution named in the first box of this paragraph 3.1 to serve as executor of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST EXECUTOR [ ]

SECOND EXECUTOR [ ]

THIRD EXECUTOR [ ]

3.2 GUARDIAN. (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can only serve as guardian of the property.)

If the guardian is needed for a child of mine, then I nominate the individual named in the first box of this paragraph 3.2 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.2 to serve as guardian of the property of that child. If that person or institution does not serve, then the others shall serve in the order I list them in the other boxes.

FIRST GUARDIAN
OF THE PERSON

FIRST GUARDIAN
OF THE PROPERTY

SECOND GUARDIAN
OF THE PERSON

SECOND GUARDIAN
OF THE PROPERTY

THIRD GUARDIAN
OF THE PROPERTY

THIRD GUARDIAN
OF THE PERSON

3.3 BOND.

My signature in this box means that a bond is not required for any individual named in this will as executor or guardian. If I do not sign in this box, then a bond is required for each of these persons as set forth in the Probate Code. (The bond provides a fund to pay those who do not receive the share of your estate to which they are entitled, including your creditors, because of improper performance of duties of the executor or guardian. Bond premiums are paid out of your estate.)

I sign my name to this California Statutory Will on _____ at _____, _____,
Date City State

SIGNATURE OF THE TESTATOR

STATEMENT OF WITNESSES
(You must use two adult witnesses and three would be preferable.)

Each of us declare under penalty of perjury under the laws of the State of California that the testator signed this California Statutory Will in our presence, all of us being present at the same time, and we now at the testator's request in the testator's presence and in the presence of each other sign below as witnesses, declaring that the testator appears to be of sound mind and under no duress, fraud, or undue influence.

Signature

Residence address:_____

Print Name Here:_____

Signature

Residence address:_____

Print Name Here:_____

Signature

Residence address:_____

Print Name Here:_____

SAMPLE POUR-OVER WILL FOR SPOUSE PUTTING INTO A REVOCABLE TRUST ANY PROPERTY NOT IN IT

LAST WILL AND TESTAMENT
(POUR-OVER WILL)
OF

AGNES MILICENT HOWARD

I, AGNES MILICENT HOWARD, a resident of MENDOCINO County, CALIFORNIA, declare this to be my LAST WILL AND TESTAMENT.

Paragraph One: I revoke all wills and codicils that I have previously made.

Paragraph Two: I am married to JASON HOWARD and all references in this will to my spouse are to JASON HOWARD. I have the following children: FELICITY HOWARD, ALLEN HOWARD and ALICE HOWARD. The terms "my child" and "my children" as used in this will shall include any other children born to or adopted by me.

Paragraph Three: I confirm to my spouse full interest in our community and marital property.

Paragraph Four: I give my entire estate, including all of my real and personal property to the trustee then in office under the trust designated as the HOWARD REVOCABLE TRUST of which AGNES MILICENT HOWARD AND JASON HOWARD are grantors and AGNES MILICENT HOWARD AND JASON HOWARD were designated as trustees. I direct that my entire estate shall be added to,

administered, and distributed as part of that trust, according to the terms of the trust and any amendment made to it before my death. To the extent permitted by law it is not my intention to create a separate trust by this will or to subject the trust or the property added to it to the jurisdiction of the probate court.

Paragraph Five: If the disposition in Paragraph Four is inoperative or is invalid for any reason, or if the trust referred to in Paragraph Four fails or is revoked, I incorporate here by reference the terms of the trust, as originally executed without giving effect to any amendments made subsequently, and I bequeath and devise my entire estate to the trustee named in the trust as trustee to be held, administered and distributed as provided in this instrument.

Paragraph Six: Except as provided in this will, I have intentionally omitted to provide herein for any of my heirs living at the date of my death.

Paragraph Seven: If any beneficiary under this will in any manner, directly or indirectly, contests or attacks this will or any of its provisions, any share or interest in my estate given to that contesting beneficiary under this will is revoked and shall be disposed in the same manner provided herein as if that contesting beneficiary had predeceased me without issue.

Paragraph Eight: I nominate JASON HOWARD as executor of my estate to serve without bond. If for any reason,

shall fail to qualify or cease to act as my executor, then I nominate FELICITY HOWARD as alternate executor of my estate to serve without bond. The term "executor" as used in this will shall include any personal representative of my estate.

Paragraph Nine: I direct that all inheritance, estate, or other death taxes that may by reason of my death be attributable to my probate estate or any portion of it, including any property received by any person as a family allowance or homestead, shall be paid by my executor from the residue of my estate disposed by this will, without adjustment among the residuary beneficiaries, and shall not be charged against or collected from any beneficiary of my probate estate.

Paragraph Ten: I grant my executor the following powers under the terms of this will:

1. To retain any such property without regard to the proportion such property or similarly held property may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

2. To sell any such property upon such terms and conditions as may be deemed proper at either public or private sale, either for credit for such period of time as may be deemed proper or for cash and with or without security, and the purchaser of such property shall have no obligation to see to the use or application

of the proceeds of sale. To exchange, lease, sublease, mortgage, pledge or otherwise encumber any such property upon such terms and conditions as may be deemed advisable. To grant options for any of the foregoing and to make any lease or sublease, including any oil, gas or mineral lease, for such period of time and to include therein any covenants or options for renewal as may be deemed proper without regard to the duration of any trust, subject only to such confirmation of court as may be required by law.

3. To invest and reinvest and to acquire by exchange property of any character, foreign or domestic, or interests or participations therein, including by way of illustration but not of limitation, real property, mortgages, bonds, notes, debentures, certificates of deposit, capital, common and preferred stocks, and shares or interests in investment trusts, mutual funds or common trust funds, without regard to the proportion any such property or similar property held may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

4. To hold any personal property in any state; to register and hold any property of any kind, whether real or personal, at any time held hereunder in the name of a nominee or nominees; and to take and keep any stocks, bonds or other security unregistered or in such condition as to pass by delivery.

5. To employ in the exercise of absolute discretion investment counsel, accountants, depositaries, custodians, brokers,

attorneys and agents, irrespective of whether any person so employed shall be a fiduciary hereunder or a firm or corporation in which a fiduciary hereunder shall have an interest and to pay them the usual compensation for their services out of the principal or income of the property held hereunder in addition to and without diminution of or charging the same against the commissions or compensation of any fiduciary hereunder, and any fiduciary who shall be a partner in any such firm shall nevertheless be entitled to receive his share as part of the compensation paid to such firm.

6. To continue the operation of any business belonging to my estate for such time and in such manner as my executor may deem advisable and for the best interests of my estate, or to sell and liquidate the business at such time and on such terms as my executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my executor, in good faith, shall be at the risk of my estate and without liability on the part of my executor for the resulting losses.

Paragraph Eleven: This Last Will and Testament shall be construed, regulated, and governed in all respects not only as to administration but also as to its validity and effect by the laws of the State of CALIFORNIA .

Paragraph Twelve: As used in this will, the term "issue" shall refer to lineal descendants of all degrees, and the terms "child," "children," and "issue" shall include adopted persons.

Paragraph Thirteen: This Last Will and Testament has been

executed in duplicate. Upon my death, either duplicate original will may be offered for probate. If upon my death the will in my possession cannot be found, it is not to be presumed that I destroyed or revoked the will.

Paragraph Fourteen: If at my death any of my children is a minor, I nominate my brother, HAROLD LYDON CRIER as guardian of both the person and estate of my minor child to serve without bond. If for any reason HAROLD LYDON CRIER shall fail to qualify or cease to act as such guardian, then I nominate my sister, HELEN FAYE MASON as alternate guardian to serve without bond.

I subscribe my name to this will on this date January 15, 2002 at Ukiah, California.

_____

AGNES MILICENT HOWARD

On the date last written above, AGNES MILICENT HOWARD declared to us the undersigned that the foregoing instrument consisting of six (6) pages including the page signed by us as witnesses, was the testator's LAST WILL AND TESTAMENT and requested us to act as witnesses to it. The testator thereupon signed the will in our presence, all of us being present at the same time. We now at the testator's request in the testator's presence and in the presence of each other subscribe our names as witnesses.

_____

Residing at _____

_____

Residing at _____

_____

Residing at _____

STATE OF _____

COUNTY OF _____

On _____, before me,_____

personally appeared _____

_____ (Name(s) of Signer(s)) personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

LAST WILL AND TESTAMENT
(POUR-OVER WILL)
OF

_____

I, _____, a resident of _____ _____ County, _____, declare this to be my LAST WILL AND TESTAMENT.

Paragraph One: I revoke all wills and codicils that I have previously made.

Paragraph Two: I am married to _____ and all references in this will to my spouse are to _____. I have the following children: _____ _____. The terms "my child" and "my children" as used in this will shall include any other children born to or adopted by me.

Paragraph Three: I confirm to my spouse full interest in our community and marital property.

Paragraph Four: I give my entire estate, including all of my real and personal property to the trustee then in office under the trust designated as the _____ of which

_____ are grantors and _____ were designated as trustees. I direct that my entire estate shall be added to, administered, and distributed as part of that trust, according to the terms of the trust and any amendment made to it before my death. To the extent permitted by law it is not my intention to create a separate trust by this will or to subject the trust or the property added to it to the jurisdiction of the probate court.

Paragraph Five: If the disposition in Paragraph Four is inoperative or is invalid for any reason, or if the trust referred to in Paragraph Four fails or is revoked, I incorporate here by reference the terms of the trust, as originally executed without giving effect to any amendments made subsequently, and I bequeath and devise my entire estate to the trustee named in the trust as trustee to be held, administered and distributed as provided in this instrument.

Paragraph Six: Except as provided in this will, I have intentionally omitted to provide herein for any of my heirs living at the date of my death.

Paragraph Seven: If any beneficiary under this will in any manner, directly or indirectly, contests or attacks this will or any of its provisions, any share or interest in my estate given to that contesting beneficiary under this will is revoked and shall be disposed in the same manner provided herein as if that contesting beneficiary had predeceased me without issue.

Paragraph Eight: I nominate _____ as executor of my estate to serve without bond. If for any reason, _____ shall fail to qualify or cease to act as my executor, then I nominate _____ as alternate executor of my estate to serve without bond. The term "executor" as used in this will shall include any personal representative of my estate.

Paragraph Nine: I direct that all inheritance, estate, or other death taxes that may by reason of my death be attributable to my probate estate or any portion of it, including any property received by any person as a family allowance or homestead, shall be paid by my executor from the residue of my estate disposed by this will, without adjustment among the residuary beneficiaries, and

shall not be charged against or collected from any beneficiary of my probate estate.

Paragraph Ten: I grant my executor the following powers under the terms of this will:

1. To retain any such property without regard to the proportion such property or similarly held property may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

2. To sell any such property upon such terms and conditions as may be deemed proper at either public or private sale, either for credit for such period of time as may be deemed proper or for cash and with or without security, and the purchaser of such property shall have no obligation to see to the use or application of the proceeds of sale. To exchange, lease, sublease, mortgage, pledge or otherwise encumber any such property upon such terms and conditions as may be deemed advisable. To grant options for any of the foregoing and to make any lease or sublease, including any oil, gas or mineral lease, for such period of time and to include therein any covenants or options for renewal as may be deemed

proper without regard to the duration of any trust, subject only to such confirmation of court as may be required by law.

3. To invest and reinvest and to acquire by exchange property of any character, foreign or domestic, or interests or participations therein, including by way of illustration but not of limitation, real property, mortgages, bonds, notes, debentures, certificates of deposit, capital, common and preferred stocks, and shares or interests in investment trusts, mutual funds or common trust funds, without regard to the proportion any such property or similar property held may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

4. To hold any personal property in any state; to register and hold any property of any kind, whether real or personal, at any time held hereunder in the name of a nominee or nominees; and to take and keep any stocks, bonds or other security unregistered or in such condition as to pass by delivery.

5. To employ in the exercise of absolute discretion investment counsel, accountants, depositaries, custodians, brokers, attorneys and agents, irrespective of whether any person so

employed shall be a fiduciary hereunder or a firm or corporation in which a fiduciary hereunder shall have an interest and to pay them the usual compensation for their services out of the principal or income of the property held hereunder in addition to and without diminution of or charging the same against the commissions or compensation of any fiduciary hereunder, and any fiduciary who shall be a partner in any such firm shall nevertheless be entitled to receive his share as part of the compensation paid to such firm.

6. To continue the operation of any business belonging to my estate for such time and in such manner as my executor may deem advisable and for the best interests of my estate, or to sell and liquidate the business at such time and on such terms as my executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my executor, in good faith, shall be at the risk of my estate and without liability on the part of my executor for the resulting losses.

Paragraph Eleven: This Last Will and Testament shall be construed, regulated, and governed in all respects not only as to administration but also as to its validity and effect by the laws of the State of _____ .

Paragraph Twelve: As used in this will, the term "issue" shall refer to lineal descendants of all degrees, and the terms "child," "children," and "issue" shall include adopted persons.

Paragraph Thirteen: This Last Will and Testament has been executed in duplicate. Upon my death, either duplicate original will may be offered for probate. If upon my death the will in my possession cannot be found, it is not to be presumed that I destroyed or revoked the will.

Paragraph Fourteen: If at my death any of my children is a minor, I nominate _____as guardian of both the person and estate of my minor child to serve without bond. If for any reason _____shall fail to qualify or cease to act as such guardian, then I nominate _____ as alternate guardian to serve without bond.

I subscribe my name to this will on this date _____ _____at _____.

_____

Attestation

On the date last written above, _____ declared to us the undersigned that the foregoing instrument consisting of _____ ( ) pages including the page signed by us as witnesses, was the testator's LAST WILL AND TESTAMENT and requested us to act as witnesses to it. The testator thereupon signed the will in our presence, all of us being present at the same time. We now at the testator's request in the testator's presence and in the presence of each other subscribe our names as witnesses.

_____

Residing at _____

_____

Residing at _____

_____

Residing at _____

STATE OF _____
COUNTY OF _____

On _____, before me,_____

personally appeared _____

_____(Name(s) of Signer(s)) personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

SAMPLE POUR-OVER WILL FOR HUSBAND PUTTING INTO HIS REVOCABLE TRUST ANY PROPERTY NOT PREVIOUSLY PLACED INTO IT

LAST WILL AND TESTAMENT

(SPOUSAL POUR-OVER WILL)

OF

JASON HOWARD

I, JASON HOWARD, a resident of MENDOCINO County, CALIFORNIA, declare this to be my LAST WILL AND TESTAMENT.

Paragraph One: I revoke all wills and codicils that I have previously made.

Paragraph Two: I am married to AGNES MILICENT HOWARD and all references in this will to my wife are to her. I have the following children: FELICITY HOWARD, ALLEN HOWARD and ALICE HOWARD. The terms "my child" and "my children" as used in this will shall include any other children born to or adopted by me.

Paragraph Three: I confirm to my wife her interest in our community and marital property.

Paragraph Four: I give my entire estate, including all of my real and personal property to the trustee then in office under the

trust designated as the HOWARD REVOCABLE TRUST of which AGNES MILICENT HOWARD AND JASON HOWARD are grantors and AGNES MILICENT HOWARD AND JASON HOWARD were designated as trustees. I direct that my entire estate shall be added to, administered, and distributed as part of that trust, according to the terms of the trust and any amendment made to it before my death. To the extent permitted by law it is not my intention to create a separate trust by this will or to subject the trust or the property added to it to the jurisdiction of the probate court.

Paragraph Five: If the disposition in Paragraph Four is inoperative or is invalid for any reason, or if the trust referred to in Paragraph Four fails or is revoked, I incorporate here by reference the terms of the trust, as originally executed without giving effect to any amendments made subsequently, and I bequeath and devise my entire estate to the trustee named in the trust as trustee to be held, administered and distributed as provided in this instrument.

Paragraph Six: Except as provided in this will, I have intentionally omitted to provide herein for any of my heirs living at the date of my death.

Paragraph Seven: If any beneficiary under this will in any manner, directly or indirectly, contests or attacks this will or any of its provisions, any share or interest in my estate given to that contesting beneficiary under this will is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me without issue.

Paragraph Eight: I nominate AGNES MILLICENT HOWARD as executor of my estate to serve without bond. If for any reason AGNES MILLICENT HOWARD shall fail to qualify or cease to act as my executor, then nominate FELICITY HOWARD as alternate executor of my estate to serve without bond. The term "executor" as used in this will shall include any personal representative of my estate.

Paragraph Nine: I direct that all inheritance, estate, or other death taxes that may by reason of my death be attributable to my probate estate or any portion of it, including any property received by any person as a family allowance or homestead, shall be paid by my executor from the residue of my estate disposed by this will, without adjustment among the residuary beneficiaries, and

shall not be charged against or collected from any beneficiary of my probate estate.

Paragraph Ten: I grant my executor the following powers under the terms of this will:

1. To retain any such property without regard to the proportion such property or similarly held property may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

2. To sell any such property upon such terms and conditions as may be deemed proper at either public or private sale, either for credit for such period of time as may be deemed proper or for cash and with or without security, and the purchaser of such property shall have no obligation to see to the use or application of the proceeds of sale. To exchange, lease, sublease, mortgage, pledge or otherwise encumber any such property upon such terms and conditions as may be deemed advisable. To grant options for any of the foregoing and to make any lease or sublease, including any oil, gas or mineral lease, for such period of time and to include therein any covenants or options for renewal as may be deemed

proper without regard to the duration of any trust, subject only to such confirmation of court as may be required by law.

3. To invest and reinvest and to acquire by exchange property of any character, foreign or domestic, or interests or participations therein, including by way of illustration but not of limitation, real property, mortgages, bonds, notes, debentures, certificates of deposit, capital, common and preferred stocks, and shares or interests in investment trusts, mutual funds or common trust funds, without regard to the proportion any such property or similar property held may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

4. To hold any personal property in any state; to register and hold any property of any kind, whether real or personal, at any time held hereunder in the name of a nominee or nominees; and to take and keep any stocks, bonds or other security unregistered or in such condition as to pass by delivery.

5. To employ in the exercise of absolute discretion investment counsel, accountants, depositaries, custodians, brokers, attorneys and agents, irrespective of whether any person so

employed shall be a fiduciary hereunder or a firm or corporation in which a fiduciary hereunder shall have an interest and to pay them the usual compensation for their services out of the principal or income of the property held hereunder in addition to and without diminution of or charging the same against the commissions or compensation of any fiduciary hereunder, and any fiduciary who shall be a partner in any such firm shall nevertheless be entitled to receive his share as part of the compensation paid to such firm.

6. To continue the operation of any business belonging to my estate for such time and in such manner as my executor may deem advisable and for the best interests of my estate, or to sell and liquidate the business at such time and on such terms as my Executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my executor, in good faith, shall be at the risk of my estate and without liability on the part of my executor for the resulting losses.

Paragraph Eleven: This Last Will and Testament shall be construed, regulated, and governed in all respects not only as to administration but also as to its validity and effect by the laws of the State of CALIFORNIA .

Paragraph Twelve: As used in this will, the term "issue" shall refer to lineal descendants of all degrees, and the terms "child," "children," and "issue" shall include adopted persons.

Paragraph Thirteen: This Last Will and Testament has been executed in duplicate. Upon my death either duplicate original will may be offered for probate. If upon my death the will in my possession cannot be found, it is not to be presumed that I destroyed or revoked the will.

Paragraph Fourteen: If my spouse does not survive me and at my death any of my children is a minor, I then nominate my father, PATRICK JAMES HOWARD as the guardian of both the person and the estate of my minor child or children to serve without bond. If for any reason PATRICK JAMES HOWARD shall fail to qualify or cease to act as such guardian, then I nominate my brother, THOMAS CALVIN HOWARD as alternate guardian to serve without bond.

I subscribe my name to this will on this date January 15, 2002 at Ukiah, California.

JASON HOWARD

On the date last written above, JASON HOWARD declared to us the undersigned that the foregoing instrument consisting of six (6) pages including the page signed by us as witnesses, was the testator's LAST WILL AND TESTAMENT and requested us to act as witnesses to it. The testator thereupon signed the will in our presence, all of us being present at the same time. We now at the testator's request in the testator's presence and in the presence of each other subscribe our names as witnesses.

_____

Residing at _____

_____

Residing at _____

_____

Residing at _____

STATE OF _____

COUNTY OF _____

On _____, before me,_____

personally appeared _____

_____(Name(s) of Signer(s))

personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

Notary Public

LAST WILL AND TESTAMENT

(SPOUSAL POUR-OVER WILL)

OF

_____

I, _____, a resident of _____ _____ County, _____, declare this to be my LAST WILL AND TESTAMENT.

Paragraph One: I revoke all wills and codicils that I have previously made.

Paragraph Two: I am married to _____ and all references in this will to my wife are to her. I have the following children: _____. The terms "my child" and "my children" as used in this will shall include any other children born to or adopted by me.

Paragraph Three: I confirm to my wife her interest in our community and marital property.

Paragraph Four: I give my entire estate, including all of my real and personal property to the trustee then in office under the trust designated as the _____ of which _____ are grantors and

_____ were designated as trustees. I direct that my entire estate shall be added to, administered, and distributed as part of that trust, according to the terms of the trust and any amendment made to it before my death. To the extent permitted by law it is not my intention to create a separate trust by this will or to subject the trust or the property added to it to the jurisdiction of the probate court.

Paragraph Five: If the disposition in Paragraph Four is inoperative or is invalid for any reason, or if the trust referred to in Paragraph Four fails or is revoked, I incorporate here by reference the terms of the trust, as originally executed without giving effect to any amendments made subsequently, and I bequeath and devise my entire estate to the trustee named in the trust as trustee to be held, administered and distributed as provided in this instrument.

Paragraph Six: Except as provided in this will, I have intentionally omitted to provide herein for any of my heirs living at the date of my death.

Paragraph Seven: If any beneficiary under this will in any manner, directly or indirectly, contests or attacks this will or

any of its provisions, any share or interest in my estate given to that contesting beneficiary under this will is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me without issue.

Paragraph Eight: I nominate _____ as executor of my estate to serve without bond. If for any reason _____ shall fail to qualify or cease to act as my executor, then I nominate _____ as alternate executor of my estate to serve without bond. The term "executor" as used in this will shall include any personal representative of my estate.

Paragraph Nine: I direct that all inheritance, estate, or other death taxes that may by reason of my death be attributable to my probate estate or any portion of it, including any property received by any person as a family allowance or homestead, shall be paid by my executor from the residue of my estate disposed by this will, without adjustment among the residuary beneficiaries, and shall not be charged against or collected from any beneficiary of my probate estate.

Paragraph Ten: I grant my executor the following powers under the terms of this will:

1. To retain any such property without regard to the proportion such property or similarly held property may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

2. To sell any such property upon such terms and conditions as may be deemed proper at either public or private sale, either for credit for such period of time as may be deemed proper or for cash and with or without security, and the purchaser of such property shall have no obligation to see to the use or application of the proceeds of sale. To exchange, lease, sublease, mortgage, pledge or otherwise encumber any such property upon such terms and conditions as may be deemed advisable. To grant options for any of the foregoing and to make any lease or sublease, including any oil, gas or mineral lease, for such period of time and to include therein any covenants or options for renewal as may be deemed proper without regard to the duration of any trust, subject only to such confirmation of court as may be required by law.

3. To invest and reinvest and to acquire by exchange property of any character, foreign or domestic, or interests or participations therein, including by way of illustration but not of limitation, real property, mortgages, bonds, notes, debentures, certificates of deposit, capital, common and preferred stocks, and shares or interests in investment trusts, mutual funds or common trust funds, without regard to the proportion any such property or similar property held may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

4. To hold any personal property in any state; to register and hold any property of any kind, whether real or personal, at any time held hereunder in the name of a nominee or nominees; and to take and keep any stocks, bonds or other security unregistered or in such condition as to pass by delivery.

5. To employ in the exercise of absolute discretion investment counsel, accountants, depositaries, custodians, brokers, attorneys and agents, irrespective of whether any person so employed shall be a fiduciary hereunder or a firm or corporation in which a fiduciary hereunder shall have an interest and to pay them

the usual compensation for their services out of the principal or income of the property held hereunder in addition to and without diminution of or charging the same against the commissions or compensation of any fiduciary hereunder, and any fiduciary who shall be a partner in any such firm shall nevertheless be entitled to receive his share as part of the compensation paid to such firm.

6. To continue the operation of any business belonging to my estate for such time and in such manner as my executor may deem advisable and for the best interests of my estate, or to sell and liquidate the business at such time and on such terms as my Executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my executor, in good faith, shall be at the risk of my estate and without liability on the part of my executor for the resulting losses.

Paragraph Eleven: This Last Will and Testament shall be construed, regulated, and governed in all respects not only as to administration but also as to its validity and effect by the laws of the State of _____ .

Paragraph Twelve: As used in this will, the term "issue" shall refer to lineal descendants of all degrees, and the terms

"child," "children," and "issue" shall include adopted persons.

Paragraph Thirteen: This Last Will and Testament has been executed in duplicate. Upon my death either duplicate original will may be offered for probate. If upon my death the will in my possession cannot be found, it is not to be presumed that I destroyed or revoked the will.

Paragraph Fourteen: If my spouse does not survive me and at my death any of my children is a minor, I then nominate _____ _____as the guardian of both the person and the estate of my minor child or children to serve without bond. If for any reason _____ shall fail to qualify or cease to act as such guardian, then I nominate _____as alternate guardian to serve without bond.

I subscribe my name to this will on this date _____ at _____.

_____

On the date last written above, _____ declared to us the undersigned that the foregoing instrument consisting of _____ ( ) pages including the page signed by us as witnesses, was the testator's LAST WILL AND TESTAMENT and requested

us to act as witnesses to it. The testator thereupon signed the will in our presence, all of us being present at the same time. We now at the testator's request in the testator's presence and in the presence of each other subscribe our names as witnesses.

_____

Residing at _____

_____

Residing at _____

_____

Residing at _____

_____

STATE OF _____

COUNTY OF _____

On _____, before me,_____

personally appeared _____

personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

STRAIGHT WILL TO SURVIVING SPOUSE OR, IF NOT ALIVE, TO CHILDREN

LAST WILL AND TESTAMENT

(SPOUSAL WILL)

OF

MARILYN CRUBBER

I, MARILYN CRUBBER, a resident of MENDOCINO County, CALIFORNIA, declare this to be my LAST WILL AND TESTAMENT.

Paragraph One: I revoke all wills and codicils that I have previously made.

Paragraph Two: I am married to LESTER CRUBBER to whom I refer in this will as my spouse. I have two (2) children. Their names and dates of birth are HORACE CRUBBER, October 31, 1952 and MARJORY CRUBBER, June 14, 1960. The terms "my child" and "my children" as used in this will shall include any other children born to or adopted by me.

Paragraph Three: I confirm to my spouse, my spouse's interest in our community and marital property. This will disposes of my separate property along with my interest in our community and marital property.

Paragraph Four: I give my entire estate, both my real and personal property to my spouse if my spouse survives me for sixty (60) days, and if my spouse does not survive me for sixty (60) days, then I give my entire estate to my children in equal shares, share and share alike, per stirpes. The executor shall divide my estate into as many parts or shares as there are children and descendants of deceased children surviving me, the shares of the children surviving to be equal and the shares of the descendants of each deceased child to be in the aggregate the amount that would have been set aside for the benefit of such deceased child had he or she survived and to be equal among themselves, per stirpes and not per capita.

Paragraph Five: If any beneficiary under this will in any manner, directly or indirectly, contests or attacks this will or any of its provisions, any share or interest in my estate given to that contesting beneficiary under this will is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me without issue.

Paragraph Six: I nominate my spouse as executor of my estate to serve without bond. If for any reason my spouse shall fail to

qualify or cease to act as my executor, then I nominate HORACE CRUBBER, my son as alternate executor of my estate to serve without bond. The term "executor" as used in this will shall include any personal representative of my estate.

Paragraph Seven: I direct that all inheritance, estate, or other death taxes that may by reason of my death be attributable to my probate estate or any portion of it, including any property received by any person as a family allowance or homestead, shall be paid by my executor from the residue of my estate disposed by this will, without adjustment among the residuary beneficiaries, and shall not be charged against or collected from any beneficiary of my probate estate.

Paragraph Eight: If my spouse does not survive me and at my death any of my children are minors, I then nominate JACOB CRUBBER, my brother as the guardian of both the person and the estate of my minor child or children to serve without bond. If for any reason JACOB CRUBBER shall fail to qualify or cease to act as such guardian, then I nominate ALICE CRUBBER HASKELL, my sister as alternate guardian to serve without bond.

Paragraph Nine: I grant my executor the following powers under the terms of this will:

1. To retain any such property without regard to the proportion such property or similarly held property may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

2. To sell any such property upon such terms and conditions as may be deemed proper at either public or private sale, either for credit for such period of time as may be deemed proper or for cash and with or without security, and the purchaser of such property shall have no obligation to see to the use or application of the proceeds of sale. To exchange, lease, sublease, mortgage, pledge or otherwise encumber any such property upon such terms and conditions as may be deemed advisable. To grant options for any of the foregoing and to make any lease or sublease, including any oil, gas or mineral lease, for such period of time and to include therein any covenants or options for renewal as may be deemed proper without regard to the duration of any trust, subject only to such confirmation of court as may be required by law.

3. To invest and reinvest and to acquire by exchange property of any character, foreign or domestic, or interests or participations therein, including by way of illustration but not of limitation, real property, mortgages, bonds, notes, debentures, certificates of deposit, capital, common and preferred stocks, and shares or interests in investment trusts, mutual funds or common trust funds, without regard to the proportion any such property or similar property held may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

4. To hold any personal property in any state; to register and hold any property of any kind, whether real or personal, at any time held hereunder in the name of a nominee or nominees; and to take and keep any stocks, bonds or other security unregistered or in such condition as to pass by delivery.

5. To employ in the exercise of absolute discretion investment counsel, accountants, depositaries, custodians, brokers, attorneys and agents, irrespective of whether any person so employed shall be a fiduciary hereunder or a firm or corporation in which a fiduciary hereunder shall have an interest and to pay them

the usual compensation for their services out of the principal or income of the property held hereunder in addition to and without diminution of or charging the same against the commissions or compensation of any fiduciary hereunder, and any fiduciary who shall be a partner in any such firm shall nevertheless be entitled to receive his share as part of the compensation paid to such firm.

6. To continue the operation of any business belonging to my estate for such time and in such manner as my executor may deem advisable and for the best interests of my estate, or to sell and liquidate the business at such time and on such terms as my executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my executor, in good faith, shall be at the risk of my estate and without liability on the part of my executor for the resulting losses.

Paragraph Ten: This Last Will and Testament shall be construed, regulated, and governed in all respects not only as to administration but also as to its validity and effect by the laws of the State of CALIFORNIA .

Paragraph Eleven: As used in this will, the term "issue" shall refer to lineal descendants of all degrees, and the terms

"child," "children," and "issue" shall include adopted persons.

Paragraph Twelve: This Last Will and Testament has been executed in duplicate. Upon my death either duplicate original will may be offered for probate. If upon my death the will in my possession cannot be found, it is not to be presumed that I destroyed or revoked the will.

Paragraph Thirteen: No interest shall be paid on any gift, legacy or right to income under this will or any codicil to it.

Paragraph Fourteen: If any provision of this will is declared unenforceable, the remaining provisions shall nevertheless be carried into effect.

I subscribe my name to this will on this date January 15, 2002 at Ukiah, California.

MARILYN CRUBBER

On the date last written above, MARILYN CRUBBER declared to us the undersigned that the foregoing instrument consisting of EIGHT (8) pages including the page signed by us as witnesses, was the testator's LAST WILL AND TESTAMENT and requested us to act as witnesses to it. The Testator thereupon signed the Will in our presence, all of us being present at the same time. We now at the testator's request in the testator's presence and in the presence of each other subscribe our names as witnesses.

_____

Residing at _____

_____

Residing at _____

_____

Residing at _____

STATE OF _____

COUNTY OF _____

On _____ before me, _____

personally appeared _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

LAST WILL AND TESTAMENT

(SPOUSAL WILL)

OF

_____

I, _____, a resident of _____ _____ County, _____, declare this to be my LAST WILL AND TESTAMENT.

Paragraph One: I revoke all wills and codicils that I have previously made.

Paragraph Two: I am married to _____ to whom I refer in this will as my spouse. I have ( ) children. Their names and dates of birth are _____ _____. The terms "my child" and "my children" as used in this will shall include any other children born to or adopted by me.

Paragraph Three: I confirm to my spouse, my spouse's interest in our community and marital property. This will disposes of my separate property along with my interest in our community and

marital property.

Paragraph Four: I give my entire estate, both my real and personal property to my spouse if my spouse survives me for sixty (60) days, and if my spouse does not survive me for sixty (60) days, then I give my entire estate to my children in equal shares, share and share alike, per stirpes. The executor shall divide my estate into as many parts or shares as there are children and descendants of deceased children surviving me, the shares of the children surviving to be equal and the shares of the descendants of each deceased child to be in the aggregate the amount that would have been set aside for the benefit of such deceased child had he or she survived and to be equal among themselves, per stirpes and not per capita.

Paragraph Five: If any beneficiary under this will in any manner, directly or indirectly, contests or attacks this will or any of its provisions, any share or interest in my estate given to that contesting beneficiary under this will is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me without issue.

Paragraph Six: I nominate my spouse as executor of my estate

to serve without bond. If for any reason my spouse shall fail to qualify or cease to act as my executor, then I nominate _____ _____ as alternate executor of my estate to serve without bond. The term "executor" as used in this will shall include any personal representative of my estate.

Paragraph Seven: I direct that all inheritance, estate, or other death taxes that may by reason of my death be attributable to my probate estate or any portion of it, including any property received by any person as a family allowance or homestead, shall be paid by my executor from the residue of my estate disposed by this will, without adjustment among the residuary beneficiaries, and shall not be charged against or collected from any beneficiary of my probate estate.

Paragraph Eight: If my spouse does not survive me and at my death any of my children are minors, I then nominate_____ _____as the guardian of both the person and the estate of my minor child or children to serve without bond. If for any reason _____ shall fail to qualify or cease to act as such guardian, then I nominate _____ _____ as alternate

guardian to serve without bond.

Paragraph Nine: I grant my executor the following powers under the terms of this will:

1. To retain any such property without regard to the proportion such property or similarly held property may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

2. To sell any such property upon such terms and conditions as may be deemed proper at either public or private sale, either for credit for such period of time as may be deemed proper or for cash and with or without security, and the purchaser of such property shall have no obligation to see to the use or application of the proceeds of sale. To exchange, lease, sublease, mortgage, pledge or otherwise encumber any such property upon such terms and conditions as may be deemed advisable. To grant options for any of the foregoing and to make any lease or sublease, including any oil, gas or mineral lease, for such period of time and to include therein any covenants or options for renewal as may be deemed proper without regard to the duration of any trust, subject only to

such confirmation of court as may be required by law.

3. To invest and reinvest and to acquire by exchange property of any character, foreign or domestic, or interests or participations therein, including by way of illustration but not of limitation, real property, mortgages, bonds, notes, debentures, certificates of deposit, capital, common and preferred stocks, and shares or interests in investment trusts, mutual funds or common trust funds, without regard to the proportion any such property or similar property held may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

4. To hold any personal property in any state; to register and hold any property of any kind, whether real or personal, at any time held hereunder in the name of a nominee or nominees; and to take and keep any stocks, bonds or other security unregistered or in such condition as to pass by delivery.

5. To employ in the exercise of absolute discretion investment counsel, accountants, depositaries, custodians, brokers, attorneys and agents, irrespective of whether any person so employed shall be a fiduciary hereunder or a firm or corporation in

which a fiduciary hereunder shall have an interest and to pay them the usual compensation for their services out of the principal or income of the property held hereunder in addition to and without diminution of or charging the same against the commissions or compensation of any fiduciary hereunder, and any fiduciary who shall be a partner in any such firm shall nevertheless be entitled to receive his share as part of the compensation paid to such firm.

6. To continue the operation of any business belonging to my estate for such time and in such manner as my executor may deem advisable and for the best interests of my estate, or to sell and liquidate the business at such time and on such terms as my executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my executor, in good faith, shall be at the risk of my estate and without liability on the part of my executor for the resulting losses.

Paragraph Ten: This Last Will and Testament shall be construed, regulated, and governed in all respects not only as to administration but also as to its validity and effect by the laws of the State of _____.

Paragraph Eleven: As used in this will, the term "issue"

shall refer to lineal descendants of all degrees, and the terms "child," "children," and "issue" shall include adopted persons.

Paragraph Twelve: This Last Will and Testament has been executed in duplicate. Upon my death either duplicate original will may be offered for probate. If upon my death the will in my possession cannot be found, it is not to be presumed that I destroyed or revoked the will.

Paragraph Thirteen: No interest shall be paid on any gift, legacy or right to income under this will or any codicil to it.

Paragraph Fourteen: If any provision of this will is declared unenforceable, the remaining provisions shall nevertheless be carried into effect.

I subscribe my name to this will on this date _____ _____ at _____.

_____

On the date last written above, _____ declared to us the undersigned that the foregoing instrument consisting of _____( ) pages including the page signed by us as witnesses, was the testator's LAST WILL AND TESTAMENT and requested us to act as witnesses to it. The Testator thereupon signed the Will in our presence, all of us being present at the same time. We now at the testator's request in the testator's presence and in the presence of each other subscribe our names as witnesses.

_____

Residing at _____

_____

Residing at _____

_____

Residing at _____

STATE OF _____

COUNTY OF _____

On _____ before me, _____

personally appeared _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

Signature

SAMPLE WILL FOR AN UNMARRIED PARENT WITH SURVIVING CHILDREN OR HEIRS

LAST WILL AND TESTAMENT
(SINGLE PARENT WILL)
OF

MALCOLM WINDER

I, MALCOLM WINDER, a resident of MENDOCINO County, CALIFORNIA, declare this to be my LAST WILL AND TESTAMENT.

Paragraph One: I revoke all wills and codicils that I have previously made.

Paragraph Two: I am unmarried. I have three children. Their names and dates of birth are KAREN WINDER, JUNE 12, 1983; MARY BETH WINDER, OCTOBER 15, 1975; JILL WINDER, MAY 23, 1987. The terms "my child" and "my children" as used in this will shall include any other children born to or adopted by me.

Paragraph Three: I give the sum of FIFTY THOUSAND DOLLARS ($50,000.00) to KAREN WINDER provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days then the gift shall lapse and become part of the residue of my estate.

Paragraph Four: I give the sum of FIFTY THOUSAND DOLLARS ($50,000.00) to JILL WINDER provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days then the gift shall lapse and become part of the residue of my estate.

Paragraph Five: I make the following gifts of money or property: MY HOME AT 2467 HOPPER AVENUE, WILLITS, CALIFORNIA to MARY BETH WINDER if the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, I give the property to JILL WINDER provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, the gift shall lapse and become part of the residue of my estate.

Paragraph Six: I make the following gifts of money or property: MY SUMMER HOME AT 1450 KELLOG, VACAVILLE, CALIFORNIA to JILL WINDER if the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, I give the property to KAREN WINDER provided the person so named survives me for sixty (60) days. If

the named person does not survive me for sixty (60) days, the gift shall lapse and become part of the residue of my estate.

Paragraph Seven: I give the rest and residue of my estate, both real and personal property, wheresoever located to my children in equal shares, share and share alike, by right of representation, per stirpes. The executor shall divide my estate into as many parts or shares as there are children and descendants of deceased children surviving me, the shares of the children surviving me to be equal, and the shares of the descendants of each deceased child to be in the aggregate the amount that would have been set aside for the benefit of such deceased child had he or she survived and to be equal among themselves, by right of representation, per stirpes and not per capita.

Paragraph Eight: I have intentionally omitted and failed to provide herein for NOT APPLICABLE. Except as provided in this will, I have intentionally omitted to provide herein for any of my heirs living at the date of my death.

Paragraph Nine: If any beneficiary under this will in any manner, directly or indirectly, contests or attacks this will or any of its provisions, any share or interest in my estate given to

that contesting beneficiary under this will is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me without issue.

Paragraph Ten: I nominate KAREN WINDER as executor of my estate to serve without bond. If for any reason, KAREN WINDER shall fail to qualify or cease to act as my executor, then I nominate MARY BETH WINDER as alternate executor of my estate to serve without bond. The term "executor" as used in this will shall include any personal representative of my estate.

Paragraph Eleven: I direct that all inheritance, estate, or other death taxes that may by reason of my death be attributable to my probate estate or any portion of it, including any property received by any person as a family allowance or homestead, shall be paid by my executor out of the residue of my estate disposed of by this will, without adjustment among the residuary beneficiaries, and shall not be charged against or collected from any beneficiary of my probate estate.

Paragraph Twelve: If at my death any of my children are minors, I nominate my brother, WILLIAM WINDER

_____ as guardian of both the person and the estate of my minor child or children to serve without bond. If for any reason _____ WILLIAM WINDER shall fail to qualify or cease to act as such guardian, then I nominate _____ my sister, CRYSTAL WINDER ELLIOT as alternate guardian to serve without bond.

Paragraph Thirteen: I grant my executor the following powers under the terms of this will:

1. To retain any such property without regard to the proportion such property or similarly held property may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds;

2. To sell any such property upon such terms and conditions as may be deemed proper at either public or private sale, either for credit for such period of time as may be deemed proper or for cash and with or without security, and the purchaser of such property shall have no obligation to see to the use or application of the proceeds of sale. To exchange, lease, sublease, mortgage, pledge or otherwise encumber any such property upon such terms and

conditions as may be deemed advisable. To grant options for any of the foregoing and to make any lease or sublease, including any oil, gas or mineral lease, for such period of time and to include therein any covenants or options for renewal as may be deemed proper without regard to the duration of any trust, subject only to such confirmation of court as may be required by law.

3. To invest and reinvest and to acquire by exchange property of any character, foreign or domestic, or interests or participations therein, including by way of illustration but not of limitation, real property, mortgages, bonds, notes, debentures, certificates of deposit, capital, common and preferred stocks, and shares or interests in investment trusts, mutual funds or common trust funds, without regard to the proportion any such property or similar property held may bear to the tire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

4. To hold any personal property in any state. To register and hold any property of any kind, whether real or personal, at any time held hereunder in the name of a nominee or nominees; and to take and keep any stocks, bonds or other security unregistered or

in such condition as to pass by delivery.

5. To employ in the exercise of absolute discretion investment counsel, accountants, depositaries, custodians, brokers, attorneys and agents, irrespective of whether any person so employed shall be a fiduciary hereunder or a firm or corporation in which a fiduciary hereunder shall have an interest and to pay them the usual compensation for their services out of the principal or income of the property held hereunder in addition to and without diminution of or charging the same against the commissions or compensation of any fiduciary hereunder, and any fiduciary who shall be a partner in any such firm shall nevertheless be entitled to receive his share as part of the compensation paid to such firm.

6. To continue the operation of any business belonging to my estate for such time and in such manner as my executor may deem advisable and for the best interests of my estate, or to sell and liquidate the business at such time and on such terms as my executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my executor, in good faith, shall be at the risk of my estate and without liability on the part of my executor for the resulting losses.

Paragraph Fourteen: This Last Will and Testament shall be construed, regulated, and governed in all respects not only as to administration but also as to its validity and effect by the laws of the State of CALIFORNIA .

Paragraph Fifteen: As used in this will, the term "issue" shall refer to lineal descendants of all degrees, and the terms "child," "children," and "issue" shall include adopted persons.

Paragraph Sixteen: This Last Will and Testament has been executed in duplicate. Upon my death either duplicate original will may be offered for probate. If upon my death the will in my possession cannot be found, it is not to be presumed that I destroyed or revoked the will.

Paragraph Seventeen: No interest shall be paid on any gift, legacy or right to income under this will or any codicil to it.

Paragraph Eighteen: If any provision of this will is declared unenforceable, the remaining provisions shall nevertheless be carried into effect.

I subscribe my name to this will on this date January 15, 2002 at Ukiah, California .

MALCOLM WINDER

On the date last written above, MALCOLM WINDER declared to us the undersigned that the foregoing instrument consisting of nine (9) pages including the page signed by us as witnesses, was the testator's LAST WILL AND TESTAMENT and requested us to act as witnesses to it. The testator thereupon signed the will in our presence, all of us being present at the same time. We now at the testator's request in the testator's presence and in the presence of each other subscribe our names as witnesses.

_____

Residing at _____

_____

Residing at _____

_____

Residing at _____

STATE OF _____
COUNTY OF _____

On _____ before me, _____
personally appeared_____
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

LAST WILL AND TESTAMENT
(SINGLE PARENT WILL)
OF

_____

I, _____, a resident of _____ County, _____, declare this to be my LAST WILL AND TESTAMENT.

Paragraph One: I revoke all wills and codicils that I have previously made.

Paragraph Two: I am unmarried. I have _____ children. Their names and dates of birth are _____ _____.

The terms "my child" and "my children" as used in this will shall include any other children born to or adopted by me.

Paragraph Three: I give the sum of _____ _____ to _____ provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days then the gift shall lapse and become part of the residue of my estate.

Paragraph Four: I give the sum of _____

_____ to _____ provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days then the gift shall lapse and become part of the residue of my estate.

Paragraph Five: I make the following gifts of money or property: _____ ___ to _____ if the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, I give the property to _____ _____ provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, the gift shall lapse and become part of the residue of my estate.

Paragraph Six: I make the following gifts of money or property: _____to _____ if the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, I give the property to _____ provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, the gift

shall lapse and become part of the residue of my estate.

Paragraph Seven: I give the rest and residue of my estate, both real and personal property, wheresoever located to my children in equal shares, share and share alike, by right of representation, per stirpes. The executor shall divide my estate into as many parts or shares as there are children and descendants of deceased children surviving me, the shares of the children surviving me to be equal, and the shares of the descendants of each deceased child to be in the aggregate the amount that would have been set aside for the benefit of such deceased child had he or she survived and to be equal among themselves, by right of representation, per stirpes and not per capita.

Paragraph Eight: I have intentionally omitted and failed to provide herein for _____. Except as provided in this will, I have intentionally omitted to provide herein for any of my heirs living at the date of my death.

Paragraph Nine: If any beneficiary under this will in any manner, directly or indirectly, contests or attacks this will or any of its provisions, any share or interest in my estate given to that contesting beneficiary under this will is revoked and shall be

disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me without issue.

Paragraph Ten: I nominate _____ as executor of my estate to serve without bond. If for any reason, _____ shall fail to qualify or cease to act as my executor, then I nominate _____ as alternate executor of my estate to serve without bond. The term "executor" as used in this will shall include any personal representative of my estate.

Paragraph Eleven: I direct that all inheritance, estate, or other death taxes that may by reason of my death be attributable to my probate estate or any portion of it, including any property received by any person as a family allowance or homestead, shall be paid by my executor out of the residue of my estate disposed of by this will, without adjustment among the residuary beneficiaries, and shall not be charged against or collected from any beneficiary of my probate estate.

Paragraph Twelve: If at my death any of my children are minors, I nominate _____ ___ as guardian of both the person and the estate of my minor child

or children to serve without bond. If for any reason _____ _____ shall fail to qualify or cease to act as such guardian, then I nominate _____ _____ as alternate guardian to serve without bond.

Paragraph Thirteen: I grant my executor the following powers under the terms of this will:

1. To retain any such property without regard to the proportion such property or similarly held property may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds;

2. To sell any such property upon such terms and conditions as may be deemed proper at either public or private sale, either for credit for such period of time as may be deemed proper or for cash and with or without security, and the purchaser of such property shall have no obligation to see to the use or application of the proceeds of sale. To exchange, lease, sublease, mortgage, pledge or otherwise encumber any such property upon such terms and conditions as may be deemed advisable. To grant options for any of the foregoing and to make any lease or sublease, including any oil,

gas or mineral lease, for such period of time and to include therein any covenants or options for renewal as may be deemed proper without regard to the duration of any trust, subject only to such confirmation of court as may be required by law.

3. To invest and reinvest and to acquire by exchange property of any character, foreign or domestic, or interests or participations therein, including by way of illustration but not of limitation, real property, mortgages, bonds, notes, debentures, certificates of deposit, capital, common and preferred stocks, and shares or interests in investment trusts, mutual funds or common trust funds, without regard to the proportion any such property or similar property held may bear to the tire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

4. To hold any personal property in any state. To register and hold any property of any kind, whether real or personal, at any time held hereunder in the name of a nominee or nominees; and to take and keep any stocks, bonds or other security unregistered or in such condition as to pass by delivery.

5. To employ in the exercise of absolute discretion

investment counsel, accountants, depositaries, custodians, brokers, attorneys and agents, irrespective of whether any person so employed shall be a fiduciary hereunder or a firm or corporation in which a fiduciary hereunder shall have an interest and to pay them the usual compensation for their services out of the principal or income of the property held hereunder in addition to and without diminution of or charging the same against the commissions or compensation of any fiduciary hereunder, and any fiduciary who shall be a partner in any such firm shall nevertheless be entitled to receive his share as part of the compensation paid to such firm.

6. To continue the operation of any business belonging to my estate for such time and in such manner as my executor may deem advisable and for the best interests of my estate, or to sell and liquidate the business at such time and on such terms as my executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my executor, in good faith, shall be at the risk of my estate and without liability on the part of my executor for the resulting losses.

Paragraph Fourteen: This Last Will and Testament shall be construed, regulated, and governed in all respects not only as to

administration but also as to its validity and effect by the laws of the State of _____.

Paragraph Fifteen: As used in this will, the term "issue" shall refer to lineal descendants of all degrees, and the terms "child," "children," and "issue" shall include adopted persons.

Paragraph Sixteen: This Last Will and Testament has been executed in duplicate. Upon my death either duplicate original will may be offered for probate. If upon my death the will in my possession cannot be found, it is not to be presumed that I destroyed or revoked the will.

Paragraph Seventeen: No interest shall be paid on any gift, legacy or right to income under this will or any codicil to it.

Paragraph Eighteen: If any provision of this will is declared unenforceable, the remaining provisions shall nevertheless be carried into effect.

I subscribe my name to this Will on this date _____ _____ at _____.

_____

On the date last written above, _____ declared to us the undersigned that the foregoing instrument consisting of_____ ( ) pages including the page signed by us as witnesses, was the testator's LAST WILL AND TESTAMENT and requested us to act as witnesses to it. The testator thereupon signed the will in our presence, all of us being present at the same time. We now at the testator's request, in the testator's presence and in the presence of each other subscribe our names as witnesses.

_____

Residing at _____

_____

Residing at _____

_____

Residing at _____

STATE OF_____

COUNTY OF _____

On _____ before me, _____

personally appeared _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

Signature

SAMPLE WILL FOR A PERSON WITH NO SPOUSE, CHILDREN OR SURVIVING HEIRS

LAST WILL AND TESTAMENT

(SINGLE PERSON, NO HEIRS)

OF

TYLER HANSON AMES

I, TYLER HANSON AMES, a resident of MAHONING County, OHIO, declare this to be my LAST WILL AND TESTAMENT.

Paragraph One: I revoke all wills and codicils that I have previously made.

Paragraph Two: I am unmarried and have no children.

Paragraph Three: I give the sum of FIFTY THOUSAND DOLLARS ($50,000.00) to my nephew, JOHN RICHARD AMES provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, the gift shall lapse and become part of the residue of my estate.

Paragraph Four: I give the sum of FIFTY THOUSAND DOLLARS ($50,000.00) to my sister, HARRIET ELLEN AMES CARTER provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, the gift shall lapse and become part of the residue of my estate.

Paragraph Five: I make the following gifts of money or property: my home at 3336 LOVELAND ROAD, YOUNGSTOWN, OHIO to my sister, HARRIET ELLEN AMES CARTER if the person so named survives me for sixty (60) days then I give the property to my nephew, JOHN RICHARD AMES provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, the gift shall lapse and become part of the residue of my estate.

Paragraph Six: I make the following gifts of money or property: my professional books and computer system

to my friend and colleague, MARTIN JAMES HOWARD if the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, I give the property to my nephew, JOHN RICHARD JAMES provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, the gift shall lapse and become part of the residue of my estate.

Paragraph Seven: I give the sum of TWENTY THOUSAND

DOLLARS ($20,000) to SALVATION ARMY OF MAHONING COUNTY. If this gift shall be held wholly or partially invalid by reason of any statute restricting or prohibiting gifts to charity, to the extent that the gift is held invalid, I give it to GOODWILL INDUSTRIES OF MAHONING COUNTY.

Paragraph Eight: I give my real property situated in WILLITS, MENDOCINO County, CALIFORNIA and commonly known as 472 DELLA AVENUE, WILLITS, CALIFORNIA together with any insurance on the property to MY NEPHEW, JOHN RICHARD AMES provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, I give the property to MY SISTER, HARRIET AMES CARTER if the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, the gift shall lapse and become part of the residue of my estate.

I give the property subject to any encumbrances on it at the time of my death, including any mortgage, deed of trust, and real property taxes and assessments.

Paragraph Nine: I give the rest and residue of my estate, both real and personal property, wheresoever located to MY

SISTER, HARRIET ELLEN AMES CARTER if the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, I give the property to my nephew, JOHN RICHARD JAMES provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, I give the rest and residue of my estate, both real and personal property, wheresoever located to MARTIN JAMES HOWARD, IF HE SURVIVES ME FOR SIXTY (60) DAYS. IF NOT, I GIVE MY ESTATE EQUALLY TO BOTH THE SALVATION ARMY AND GOODWILL INDUSTRIES.

Paragraph Ten: I have intentionally omitted and failed to provide herein for NOT APPLICABLE. Except as provided in this will, I have intentionally omitted to provide herein for any of my heirs living at the date of my death.

Paragraph Eleven: If any beneficiary under this will in any manner, directly or indirectly, contests or attacks this will or any of its provisions, any share or interest in my estate given to that contesting beneficiary under this will is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me without issue.

Paragraph Twelve: I nominate JOHN RICHARD AMES as executor of my estate to serve without bond. If for any reason, JOHN RICHARD AMES shall fail to qualify or cease to act as my executor, I nominate HARRIET AMES CARTER as alternate executor of my estate to serve without bond. The term "executor" as used in this will shall include any personal representative of my estate.

Paragraph Thirteen: I direct that all inheritance, estate, or other death taxes that may by reason of my death be attributable to my probate estate or any portion of it, including any property received by any person as a family allowance or homestead, shall be paid by my executor from the residue of my estate disposed of by this will, without adjustment among the residuary beneficiaries, and shall not be charged against or collected from any beneficiary of my probate estate.

Paragraph Fourteen: I grant my executor the following powers under the terms of this will:

1. To retain any such property without regard to the proportion such property or similarly held property may bear to the entire amount held and whether or not the same is of the class in

which fiduciaries are authorized by law or any rule of court to invest funds.

2. To sell any such property upon such terms and conditions as may be deemed proper at either public or private sale, either for credit for such period of time as may be deemed proper or for cash and with or without security, and the purchaser of such property shall have no obligation to see to the use or application of the proceeds of sale. To exchange, lease, sublease, mortgage, pledge or otherwise encumber any such property upon such terms and conditions as may be deemed advisable. To grant options for any of the foregoing and to make any lease or sublease, including any oil, gas or mineral lease, for such period of time and to include therein any covenants or options for renewal as may be deemed proper without regard to the duration of any trust, subject only to such confirmation of court as may be required by law.

3. To invest and reinvest and to acquire by exchange property of any character, foreign or domestic, or interests or participations therein, including by way of illustration but not of limitation, real property, mortgages, bonds, notes, debentures, certificates of deposit, capital, common and preferred stocks, and

shares or interests in investment trusts, mutual funds or common trust funds, without regard to the proportion any such property or similar property held may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

4. To hold any personal property in any state; to register and hold any property of any kind, whether real or personal, at any time held hereunder in the name of a nominee or nominees; and to take and keep any stocks, bonds or other security unregistered or in such condition as to pass by delivery.

5. To employ in the exercise of absolute discretion investment counsel, accountants, depositaries, custodians, brokers, attorneys and agents, irrespective of whether any person so employed shall be a fiduciary hereunder or a firm or corporation in which a fiduciary hereunder shall have an interest and to pay them the usual compensation for their services out of the principal or income of the property held hereunder in addition to and without diminution of or charging the same against the commissions or compensation of any fiduciary hereunder, and any fiduciary who shall be a partner in any such firm shall nevertheless be entitled

to receive his share as part of the compensation paid to such firm.

6. To continue the operation of any business belonging to my estate for such time and in such manner as my executor may deem advisable and for the best interests of my estate, or to sell and liquidate the business at such time and on such terms as my executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my executor, in good faith, shall be at the risk of my estate and without liability on the part of my executor for the resulting losses.

Paragraph Fifteen: This Last Will and Testament shall be construed, regulated, and governed in all respects not only as to administration but also as to its validity and effect by the laws of the State of OHIO .

Paragraph Sixteen: This Last Will and Testament has been executed in duplicate. Upon my death either duplicate original will may be offered for probate. If upon my death the will in my possession cannot be found, it is not to be presumed that I destroyed or revoked the will.

Paragraph Seventeen: No interest shall be paid on any gift, legacy or right to income under this will or any codicil to it.

Paragraph Eighteen: If any provision of this will is declared unenforceable, the remaining provisions shall nevertheless be carried into effect.

I subscribe my name to this will on this date January 15, 2002 at YOUNGSTOWN, OHIO.

_____

TYLER HANSON AMES

On the date last written above, TYLER HANSON AMES declared to us the undersigned that the foregoing instrument consisting of nine (9) pages, including the page signed by us as witnesses, was the testator's LAST WILL AND TESTAMENT and requested us to act as witnesses to it. The testator thereupon signed the will in our presence, all of us being present at the same time. We now at the testator's request in the testator's presence and in the presence of each other subscribe our names as witnesses.

_____

Residing at _____

_____

Residing at _____

_____

Residing at _____

STATE OF _____

COUNTY OF_____

On _____ before me, _____

personally appeared _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

LAST WILL AND TESTAMENT

(SINGLE PERSON, NO HEIRS)

OF

_____

I, ____, a resident of _____ County, _____, declare this to be my LAST WILL AND TESTAMENT.

Paragraph One: I revoke all wills and codicils that I have previously made.

Paragraph Two: I am unmarried and have no children.

Paragraph Three: I give the sum of _____ _____ to _____ provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, the gift shall lapse and become part of the residue of my estate.

Paragraph Four: I give the sum of _____ _____to _____ provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, the gift shall lapse and become part of the residue of my estate.

Paragraph Five: I make the following gifts of money or property: _____ _____ to _____ if the person so named survives me for sixty (60) days then I give the property to _____ provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, the gift shall lapse and become part of the residue of my estate.

Paragraph Six: I make the following gifts of money or property: _____ _____ _____to_____ if the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, I give the property to _____ _____ provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, the gift shall lapse and become part of the residue of my estate.

Paragraph Seven: I give the sum of _____ _____ to _____. If

this gift shall be held wholly or partially invalid by reason of any statute restricting or prohibiting gifts to charity, to the extent that the gift is held invalid, I give it to _____ _____.

Paragraph Eight: I give my real property situated in _____ _____ County, _____ and commonly known as _____ together with any insurance on the property to _____ provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, I give the property to _____ if the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, the gift shall lapse and become part of the residue of my estate.

I give the property subject to any encumbrances on it at the time of my death, including any mortgage, deed of trust, and real property taxes and assessments.

Paragraph Nine: I give the rest and residue of my estate, both real and personal property, wheresoever located to _____ _____ if the person so named survives

me for sixty (60) days. If the named person does not survive me for sixty (60) days, I give the property to _____ _____ provided the person so named survives me for sixty (60) days. If the named person does not survive me for sixty (60) days, I give the rest and residue of my estate, both real and personal property, wheresoever located to _

_____

_____

_____

_____

Paragraph Ten: I have intentionally omitted and failed to provide herein for _____. Except as provided in this will, I have intentionally omitted to provide herein for any of my heirs living at the date of my death.

Paragraph Eleven: If any beneficiary under this will in any manner, directly or indirectly, contests or attacks this will or any of its provisions, any share or interest in my estate given to that contesting beneficiary under this will is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me without issue.

Paragraph Twelve: I nominate _____ as executor of my estate to serve without bond. If for any reason, _____ shall fail to qualify or cease to act as my executor, I nominate _____ as alternate executor of my estate to serve without bond. The term "executor" as used in this will shall include any personal representative of my estate.

Paragraph Thirteen: I direct that all inheritance, estate, or other death taxes that may by reason of my death be attributable to my probate estate or any portion of it, including any property received by any person as a family allowance or homestead, shall be paid by my executor from the residue of my estate disposed of by this will, without adjustment among the residuary beneficiaries, and shall not be charged against or collected from any beneficiary of my probate estate.

Paragraph Fourteen: I grant my executor the following powers under the terms of this will:

1. To retain any such property without regard to the proportion such property or similarly held property may bear to the entire amount held and whether or not the same is of the class in

which fiduciaries are authorized by law or any rule of court to invest funds.

2. To sell any such property upon such terms and conditions as may be deemed proper at either public or private sale, either for credit for such period of time as may be deemed proper or for cash and with or without security, and the purchaser of such property shall have no obligation to see to the use or application of the proceeds of sale. To exchange, lease, sublease, mortgage, pledge or otherwise encumber any such property upon such terms and conditions as may be deemed advisable. To grant options for any of the foregoing and to make any lease or sublease, including any oil, gas or mineral lease, for such period of time and to include therein any covenants or options for renewal as may be deemed proper without regard to the duration of any trust, subject only to such confirmation of court as may be required by law.

3. To invest and reinvest and to acquire by exchange property of any character, foreign or domestic, or interests or participations therein, including by way of illustration but not of limitation, real property, mortgages, bonds, notes, debentures, certificates of deposit, capital, common and preferred stocks, and

shares or interests in investment trusts, mutual funds or common trust funds, without regard to the proportion any such property or similar property held may bear to the entire amount held and whether or not the same is of the class in which fiduciaries are authorized by law or any rule of court to invest funds.

4. To hold any personal property in any state; to register and hold any property of any kind, whether real or personal, at any time held hereunder in the name of a nominee or nominees; and to take and keep any stocks, bonds or other security unregistered or in such condition as to pass by delivery.

5. To employ in the exercise of absolute discretion investment counsel, accountants, depositaries, custodians, brokers, attorneys and agents, irrespective of whether any person so employed shall be a fiduciary hereunder or a firm or corporation in which a fiduciary hereunder shall have an interest and to pay them the usual compensation for their services out of the principal or income of the property held hereunder in addition to and without diminution of or charging the same against the commissions or compensation of any fiduciary hereunder, and any fiduciary who shall be a partner in any such firm shall nevertheless be entitled

to receive his share as part of the compensation paid to such firm.

6. To continue the operation of any business belonging to my estate for such time and in such manner as my executor may deem advisable and for the best interests of my estate, or to sell and liquidate the business at such time and on such terms as my executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my executor, in good faith, shall be at the risk of my estate and without liability on the part of my executor for the resulting losses.

Paragraph Fifteen: This Last Will and Testament shall be construed, regulated, and governed in all respects not only as to administration but also as to its validity and effect by the laws of the State of _____ .

Paragraph Sixteen: This Last Will and Testament has been executed in duplicate. Upon my death either duplicate original will may be offered for probate. If upon my death the will in my possession cannot be found, it is not to be presumed that I destroyed or revoked the will.

Paragraph Seventeen: No interest shall be paid on any gift, legacy or right to income under this will or any codicil to it.

Paragraph Eighteen: If any provision of this will is declared unenforceable, the remaining provisions shall nevertheless be carried into effect.

I subscribe my name to this will on this date _____ _____ at _____.

_____

On the date last written above, _____ declared to us the undersigned that the foregoing instrument consisting of _____ ( ) pages, including the page signed by us as witnesses, was the testator's LAST WILL AND TESTAMENT and requested us to act as witnesses to it. The testator thereupon signed the will in our presence, all of us being present at the same time. We now at the testator's request in the testator's presence and in the presence of each other subscribe our names as witnesses.

_____

Residing at _____

_____

Residing at _____

_____

Residing at _____

STATE OF _____

COUNTY OF_____

On _____ before me, _____

personally appeared _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

_____

CHAPTER 7

ESTATE PLANNING QUESTIONNAIRE

Before anyone starts on the creation of an estate plan it is important, indeed it is critical, that the person be aware of both the size of the estate and how it ultimately is to be distributed. There are a variety of available ways to accomplish the desired result, but they should all begin with the person knowing what the desired result. The purpose of this questionnaire is to assist the reader in marshalling (assembling) the assets for the twin purposes of evaluating the size of the estate and also to avoid missing or overlooking assets. Assets left out of an estate plan, regardless of the reason, will have to be probated unless they fall into a state's exemptions from probate such as being in joint tenancy or in a trust of some type.

The use of such an estate planning questionnaire cannot be over-stressed. It is not uncommon for a person to forget a piece of property inherited years earlier from old Uncle Bill in Tulsa or Aunt Emily in Maine. Then after death, the person's heirs discover

the existence of the forgotten property. Thereafter, the heirs are forced to spend thousands of dollars needlessly to probate the property to place the title in their names.

Unless a person knows the size of his estate, it is difficult to make an accurate estate plan. If gifts figure in the estate plan, the person must know how much to give to reduce the estate's value below the value of the unified credit.

This questionnaire is structured to help recall to mind any forgotten assets and serves as a guide to the executor, trustee or heirs as to where property is located. This questionnaire is needed even if the person knows the extent of his property, and where it is going. In any event, this form does make decisions easier for the heirs when they use it. Use of the questionnaire also tends to prove the competency of the person to make an estate plan. In any Will or trust contest, use of this schedule would be evidence demonstrating that the person used deliberate care in drafting the estate plan. Such evidence, in any competency challenge, would be beneficial.

ESTATE PLANNING QUESTIONNAIRE

A. BACKGROUND INFORMATION

1. Name (include all other names once used, i.e. maiden) _____
2. Address and phone number (home and business) _____ _____
3. Employer's name, address and phone number: _____ _____
4. Spouse's employer's name, address and phone number: _____ _____
5. Occupation:_____
6. Spouse's occupation:_____
7. Social security number:_____
8. Spouse's social security number:_____
9. Former military service (branch and dates of service): _____ _____ _____
10. Date and place of birth:_____
11. Name of spouse:_____
12. Date and place of spouse's birth: _____ _____
13. Date and place of marriage: _____ _____
14. Length of residency in the state: _____ _____
15. Previous marriages for each spouse: _____ _____ _____ _____
16. Children:_____ _____ _____
17. Children of spouse (step-children):_____

_____
_____

18. Deceased children: _____
_____

19. Grandchildren:_____
_____

20. Grandchildren of spouse: _____
_____

21. Parents and address: _____
_____
_____
_____

22. Parents of spouse and address: _____
_____
_____
_____

23. Last will:

a. Date executed:_____

b . Location of original: _____
_____

c. Attorney who prepared will, address, phone: _____
_____
_____

B. PROPERTY

1. Real property (for each piece of real property state):

a. (1) Type of property: _____
_____

(2) Location of property: _____
_____

(3) Holder and amount of liens on the property:_____
_____

(4) Fair market value of the property not deducting for the liens: _____

(5) Date of purchase and original amount: _____
_____

(6) How is title to the property taken? (What does it say on the deed? separate property, joint tenancy, tenancy in the entirety, tenancy in common):
_____

b. (1) Type of property: _____

(2) Location of property: _____
_____
_____

(3) Holder and amount of liens on the property:
_____

(4) Fair market value of the property not deducting for the liens: _____
_____

(5) Date of purchase and original amount:_____
_____

(6) How is title to the property taken? (What does it say on the deed? separate property, joint tenancy, tenancy by the entirety, tenancy in common):
_____
_____

c. (1) Type of property: _____
(2) Location of property:_____
_____

(3) Holder and amount of liens on the property: _____
_____

(4) Fair market value of the property not deducting for the liens: _____

(5) Date of purchase and original amount: _____
_____

(6) How is title to the property taken? (What does it say on the deed? separate property, joint tenancy, tenancy by the entirety, tenancy in common):
_____

2. Bank Accounts (including savings and loans and credit unions):

a. Name, address, account number: _____
_____
_____

b. Name, address, account number: _____
_____
_____

c. Name, address, account number: _____
_____
_____

3. Stocks and bonds:

a. Type and company issuing:_____
_____
_____

b. Amount: _____

c. Date and manner of acquisition (purchase, gift, or inheritance):_____

d. Fair market value: _____

e. Basis (purchase price or basis on date of gift or inheritance):_____

4. Insurance:

a. Type: _____

b. Group, term or whole life: _____

c. Company and policy number: _____
_____

d. Amount: _____

e. Beneficiaries: _____
_____

5. Safe deposit boxes:

a. Location: _____
_____
_____

b. Box number: _____
_____

c. Contents: _____
_____
_____

6. Tangible personal property (list all property worth over $100.00, such as jewelry, tools, cars, boats, etc.):
_____
_____
_____
_____
_____
_____

7. Intangible personal property (list all intangible property, such as money owed, royalties, copyrights and other interests not previously listed):

a. Loans:

(1)(a) Name and address of debtor: _____
_____

(b) Amount of loan outstanding: _____

© Security for loan (deed of trust, mortgage, collateral):_____
_____

(2)(a) Name and address of debtor:_____
_____

(b) Amount of loan outstanding: _____

(c) Security for loan (deed of trust, mortgage, collateral): _____
_____

(3)(a) Name and address of debtor:_____
_____

(b) Amount of loan outstanding: _____

(c) Security for loan (deed of trust, mortgage, collateral): _____
_____
_____

b. Other interests:

(1) Type of interest: _____

(2) Date and manner of acquisition (gift, purchase or inheritance): _____

(3) Basis (purchase price or value of basis at time of gift or inheritance):
_____

8. Pensions, IRA's, SEP's, death and retirement benefits (list location, account number and amount of each plan or account): _____
_____
_____

_____
_____
_____
_____

9. Expectancies (list any property that is expected to be received in the future along with the source, for instance: inheritances, property settlements or insurance proceeds): _____
_____
_____
_____

10. Debts and liabilities (list all debts and liabilities along with whether the obligation is secured):

a. Secured debts:

(1)(a) Creditor and address: _____
_____

(b) Account number and outstanding balance:
_____

(c) Nature of collateral: _____
_____

(2)(a) Creditor and address: _____
_____

(b) Account number and outstanding balance:
_____

(c) Nature of collateral: _____
_____

(3)(a) Creditor and address: _____
_____

(b) Account number and outstanding balance:
_____

(c) Nature of collateral:_____
_____

b. Judgment creditor:

(1) Case number and amount of lien: _____
_____

(2) Property which lien attaches: _____
_____

c. Unsecured debts:

(1) Debts owed under contractual or leasehold agreements: _____
_____
_____

(2) Pending lawsuits:_____
_____

(3) Unsecured loans: _____
_____

(4) Damages caused to others: _____
_____

(5) Other liabilities_____
_____

C. ESTATE PLAN

1. Guardian for children:

a. Name of children: _____
_____

b. Name of guardian: _____

c. Address of guardian _____
_____

d. Guardian of person____ estate____ or both____

e. Bond waived____ bond required____

f. Name of alternate guardian: _____

g. Address of alternate guardian: _____
_____

h. Guardian of person____ estate____ or both____

I. Bond waived____ bond required____

2. Executor:

a. Name:_____

Address:_____

b. First alternate:_____
Address:_____

c. Second alternate:_____
Address:_____

3. Establishment of a trust:

a. General intended distribution _____
_____
_____
_____
_____

b. Property included in the trust:_____
_____

c. Beneficiaries of the trust: _____
_____
_____

d. Name and address of trustee: _____
_____
_____

D. SPECIAL INSTRUCTIONS

1. Persons to be excluded and disinherited from the will and/or trust:

a. Name: _____
Address: _____
_____

b. Name: _____
Address: _____
_____

2. Payment of all taxes to come from residual of estate (after specific bequest made? (This is normal)
Yes____ No____

3. Specific instructions (funeral wishes, anatomical gifts, etc.): _____
_____
_____
_____
_____

E. PROPOSED DISPOSITION

1. Specific gifts of personal property:

a. Description:_____
To: _____

b. Description:_____
To: _____

c. Description:_____
To: _____

d. Description:_____
To: _____

2. Specific gifts of real property:

a. Description:_____
To: _____

b. Description:_____
To: _____

c. Description:_____
To: _____

d. Description:_____
To: _____

3. Charitable gifts:

a. Description:_____
To: _____

b. Description:_____
To: _____

4. Remainder of estate:
   a. Single heir:
      Name: _____
      Address: _____

   b. Multiple heirs:
      Name: _____
      Address: _____

      Name: _____
      Address: _____

F. OTHER CONSIDERATIONS

1. Are your intended heirs deeply in debt?_____
2. Are the financial affairs of your heirs so bad that they may file for bankruptcy protection? _____
3. Has a spendthrift trust for the heirs been considered? _____

G. BANKRUPTCY

1. Date and court where filed: _____
   _____

2. Type of bankruptcy: Chapter 7____ Chapter 13____

3. If a Chapter 13, has the plan been completed? If not, what remains to complete the plan?
   _____
   _____
   _____

4. If a Chapter 7, are there any debts being redeemed, ratified or affirmed in the bankruptcy action? _____
   _____

_____

5. If married, has your spouse filed a bankruptcy petition?
_____

H. DURABLE POWER OF ATTORNEY (DPA)

1. Health care
   a. Do you want a DPA? _____
   b. How long do you want it to last? _____
   c. Who would be your attorney in fact?
   _____
   _____

   d. Who would be your alternate attorney in fact?
   _____

   e. What special medical care do you want if you are unable to make your wishes known? _____
   _____
   _____
   _____

   f. Are there some types of medical decisions that you do not want to give the attorney in fact authority to make on your behalf _____
   _____
   _____

   g. Do you want your agent to be able to order an autopsy or make organ donations? _____

   h. Do you want your agent to be able to make the decision to place you in a retirement or nursing home? _____

2. Business affairs

   a. Do you want a DPA? _____
   b. How long do you want it to last? _____

c. Who would be your attorney in fact? _____
_____

d. Who would be your alternate attorney in fact?
_____
_____

e. How do you want your business affairs handled if you are unable to make your wishes known? _____
_____
_____

f. Are there any special business affairs that you do not want the attorney in fact to handle or become involved in any manner? _____
_____
_____

g. Are there certain acts that you do not wish to give the attorney in fact the authority to do on your behalf _____
_____
_____
_____

I. LIVING WILL DECLARATION

1. Do you want a living will declaration?_____
2. Do you want extraordinary means to keep you alive if you are unable to make your wishes known? _____
_____
3. Would you consent to the withholding of food and water if you were "brain dead" or in an unrecoverable coma?
_____
4. What types of medical treatment would you want and accept if unable to make a decision for yourself? _____
_____
5. Who would you want to make decisions for you if you cannot make them for yourself? _____
_____
_____

CHAPTER 8

ESTATE AND INHERITANCE TAXES

One of the main reasons for doing estate planning is to eliminate or minimize estate and inheritance taxes, both on the state and federal side. To effectively plan an estate, a person must know how the Internal Revenue Code and his own state's tax laws affect the property in the estate.

The purpose of this chapter is to appraise the reader of the federal and state inheritance and estate taxes to which estates are subject. Given that each state's taxing provisions are different, the most that can be done here is to give the taxing schedule for the state. Hopefully, the reader will be able to employ it in calculating taxes under whatever estate planning scheme is adopted.

I. ANNUAL EXCLUSION

Under federal law every person can give $11,000 per year to an unlimited number of individuals without incurring a federal gift tax or having his unified credit reduced for the gifts. For example, assume a man has two children and five grandchildren. As such, he can give each child and grandchild $11,000 each every

year. This means that the man can give $77,000 or less per year tax-free: without having to pay any gift taxes.

By making such gifts it is possible to reduce an estate substantially over a period of years. Such gifts are not included in the estate of the donor after his death. For this reason, gifts are an excellent means of reducing the size of the estate for federal estate tax purposes provided the donor lives long enough to give away enough property.

II. UNLIMITED MARITAL CREDIT

The Internal Revenue Code authorizes an unlimited marital credit for all transfers of property between spouses if they are American citizens. If the recipient of the transfer is not an American citizen (Internal Revenue Code Section 2523), there is no unlimited marital credit for gifts. Instead, the marital credit for gifts from an American citizen to an alien spouse is only $110,000 per year. This means that an American citizen can only give $110,000 per year or less to an alien spouse without having to pay federal gift taxes. If the spouse were an American citizen, any amount of property could be given away each year tax-free.

The unlimited marital deduction is also not available for a

trust established by an American citizen for an alien spouse. Section 2056 of the Internal Revenue Code requires that such gifts are immediately taxable to the estate of the American spouse, unless it was placed in a qualified domestic trust. In such case the tax is delayed until distribution to the alien spouse. The tax is delayed: it is not forgiven as it would be if the receiving spouse was an American citizen. Therefore, if a couple wishes to use a joint trust, they should both be American citizens or consult a tax attorney or other tax professional to determine how the reduced marital credit will affect them. This problem can be cured by the non-citizen spouse becoming a citizen.

If a husband gives $1,000,000 to his wife, an American citizen, the unlimited marital credit ensures there will be no federal estate gift taxes on the transfer.

III. UNIFIED CREDIT

Under federal law, everyone can pass upon death a total of $1,000,000 of property, which gradually rises to an unlimited amount in 2009 and then reduces again to $1,000,000 under the Tax Relief Act Reconciliation Act of 2001. As bizarre as it may seem, Congress did not make the elimination of the estate tax permanent.

It is eliminated for only one year and is reinstated at the top rate of 55% with a $1,000,000 unified credit unless Congress by another tax act makes the elimination of the estate tax permanent.

Under the Tax Act of 2001, Congress imposes a gift tax to restrict the transfer of income producing property from high income to low income taxpayers. The gift tax exemption beginning in 2010 is $1,000,000. So even though transfers of property after death can be made tax free in 2010 for at least one year, unless made the estate tax elimination is made permanent by Congress, a gift tax on the transfer of property while alive will remain. The gift tax under the 2001 Tax Act is equal to the top individual tax rate at the time of the gift.

The Tax Act of 2001 changed the annual exclusion of $11,000 per year per person (up from $10,000) for gifts made during life. So taxpayers can still give $11,000 per year per person away without having it reduction the unified credit amount of the donor.

V. STATE ESTATE AND INHERITANCE TAXES

A. PICKUP TAXES

Most states do not impose a direct estate or inheritance tax on an estate. Instead, many states employ what is called a "pickup

tax." Under federal law, a decedent is permitted to take a statutory credit for a fixed amount of state death taxes. These states having pickup taxes require the estate of the decedent, that must file and pay federal estate taxes, to deduct the maximum allowable state credit for death taxes and pay it to the state.

Prior to the Tax Act of 2001, the ultimate tax was still the same of the decedent’s estate for tax purposes. The total tax owed and paid remained the same it was just split between the IRS and the state taxing agency. If the estate did not pay the pickup tax, it would remain liable for the taxes along with interest. A claim for a refund on the overpayment of any estate tax could be sought from the IRS, along with interest, if it is filed within three years of the overpayment of the estate tax.

The 2001 Tax Act made the area much murkier. The Act instituted the State death tax credit. Under the Act the credit will be phased out by 2005 and replaced by a deduction for death taxes actually paid.

Year	**REDUCTION IN TAX CREDIT**
2002	**25%**
2003	**50%**

2004	**75%**
2005	**Credit eliminated replaced with deduction for taxes actually paid**

For example, if a decedent in one of the following states died with an estate of less than $1,000,000, there would be no federal or state estate taxes. Assume however that the decedent died in one of those states and he had a large estate which generated a federal estate tax of $23,000. If the state death credit in effect then is $5,000, the state gets $5,000 and the IRS gets the remaining $18,800.

The states with the pickup tax are:

ALABAMA	**ALASKA**	**ARIZONA**	**ARKANSAS**	**CALIFORNIA**
COLORADO	**DIST. OF COLUMBIA**		**FLORIDA**	**GEORGIA**
HAWAII	**ILLINOIS**	**MAINE**	**MINNESOTA**	**NEVADA**
NEW MEXICO	**NORTH DAKOTA**		**OREGON**	**PUERTO RICO**
RHODE ISLAND	**SOUTH CAROLINA**		**TEXAS**	**UTAH**
VERMONT	**VIRGINIA**		**WASHINGTON**	**W. VIRGINIA**
WISCONSIN	**WYOMING**			

B. STATE TAX SCHEDULES

Below are the state estate and inheritance tax rate schedules. These rates are applied to estates in probate in that state. In

these states the inheritance taxes usually apply to the recipient of decedent's property. In most states property distributed to spouses and children is taxed at lower rates than property distributed to others. For this reason each state's tax rate is different. The reader must calculate his taxes using the particular state schedule where probate and any ancillary probate is conducted.

The reader should also be aware that tax laws frequently change. In the last few years several states have repealed their inheritance and estate taxes. In the future such taxes may again be reimposed or raised.

CONNECTICUT

CLASS AA	Surviving spouse
CLASS A	Parent, grandparent, adoptive parent or natural or adopted descendant
CLASS B	Son or daughter-in-law of child (both natural or adopted) who has not remarried. Step-child, brother or sister (full, half or adopted). Brother's or sister's children or descendants (both natural and adopted)
CLASS C	All other heirs

	TAXABLE AMOUNT			TAX RATE
CLASS AA	-0-			-0-
CLASS A	50,000	to	150,000	3%
	150,000	to	250,000	4%
	250,000	to	400,000	5%
	400,000	to	600,000	6%

	600,000	to	1,000,000	7%
	1,000,000		and over	8%
CLASS B	6,000	to	25,000	4%
	25,000	to	150,000	5%
	150,000	to	250,000	6%
	250,000	to	400,000	7%
	400,000	to	600,000	8%
	600,000	to	1,000,000	9%
	1,000,000		and over	10%
CLASS C	1,000	to	25,000	8%
	25,000	to	150,000	9%
	150,000	to	250,000	10%
	250,000	to	400,000	11%
	400,000	to	600,000	12%
	600,000	to	1,000,000	13%
	1,000,000		and over	14%

EXEMPTIONS:

1. Class AA All property is exempt
2. Class A First $50,000 is exempt
3. Class B First $6,000 is exempt
4. Class C First $1,000 is exempt

The state has an estate tax equal to the federal state death tax credit.

DELAWARE

CLASS A Spouse
CLASS B Parent, grandchild (both natural and adoptive), son-in-law and daughter-in-law, lineal descendant or step-child
CLASS C Brother, sister, their descendants, aunts and uncles and their descendants
CLASS D All others

TAXABLE AMOUNT	TAX RATE

CLASS A	70,000	to	100,000	2%
	100,000	to	200,000	3%
	200,000		and over	4%
CLASS B	25,000	to	50,000	2%
	50,000	to	75,000	3%
	75,000	to	100,000	4%
	100,000	to	200,000	5%
	200,000		and over	6%
CLASS C	5,000	to	25,000	5%
	25,000	to	50,000	6%
	50,000	to	100,000	7%
	100,000	to	150,000	8%
	150,000	to	200,000	9%
	200,000		and over	10%
CLASS D	1,000	to	25,000	10%
	25,000	to	50,000	12%
	50,000	to	100,000	14%
	100,000		and over	16%

EXEMPTIONS:

1. Class A First $70,000 is exempt
2. Class B First $25,000 is exempt
3. Class C First $5,000 is exempt
4. Class D First $1,000 is exempt

The state has an estate tax equal to the federal state death tax credit.

INDIANA

CLASS A Spouse, children, grandchildren and parents
CLASS B Brothers, sisters, nieces, nephews, sons and daughters-in-law
CLASS C All others

TAXABLE AMOUNT	TAX RATE

CLASS A	0	to	25,000	0%
	25,000	to	50,000	2%
	50,000	to	200,000	3%
	200,000	to	300,000	4%
	300,000	to	500,000	5%
	500,000	to	700,000	6%
	700,000	to	1,000,000	7%
	1,000,000	to	1,500,000	8%
	1,500,000		and over	10%
CLASS B	0	to	100,000	7%
	100,000	to	500,000	10%
	500,000	to	1,000,000	12%
	1,000,000		and over	15%
CLASS C	0	to	100,000	10%
	100,000	to	1,000,000	15%
	1,000,000		and over	20%

EXEMPTIONS:

1. Spouse: All property to spouse exempt from tax
2. $10,000 to a child under 21 years of age is exempt
3. $5,000 to a child over 21 years of age is exempt
4. $5,000 to parents is exempt
5. Class A members, not covered above, first $2,000 is exempt
6. Class B members, first $500 is exempt
7. Class C members, first $100 is exempt

IOWA

CLASS 1 Spouse
CLASS 2 Parent, Child, Lineal-Descendant
CLASS 3 Sibling, Son-In-Law, Daughter-In-Law
CLASS 4 All Others

	TAXABLE AMOUNT	TAX RATE
CLASS 1	NO TAX	

CLASS 2	0	to	5,000	1%
	5,000	to	12,000	2%
	12,000	to	25,000	3%
	25,000	to	50,000	4%
	50,000	to	75,000	5%
	75,000	to	100,000	6%
	100,000	to	150,000	7%
	150,000		and over	8%
CLASS 3	0	to	12,500	5%
	12,000	to	25,000	6%
	25,000	to	75,000	7%
	75,000	to	100,000	8%
	100,000	to	150,000	9%
	150,000		and over	10%
CLASS 4	0	to	50,000	10%
	50,000	to	100,000	12%
	100,000		and over	15%

EXEMPTIONS:

1. All transfers to a spouse are exempt
2. Son and daughter $50,000
3. Each parent $15,000
4. Lineal descendant, except son or daughter $15,000

KANSAS

CLASS A Lineal ancestors, descendants, step-parents, step-children, adopted children, spouse of child or step-child
CLASS B Brothers and sisters
CLASS C All others

	TAXABLE AMOUNT			TAX RATE
CLASS A	0	to	25,000	1%
	25,000	to	50,000	2%
	50,000	to	100,000	3%

	100,000	to	500,000	4%
	500,000		and over	5%
CLASS B	0	to	25,000	3%
	25,000	to	50,000	5%
	50,000	to	100,000	7.5%
	100,000	to	500,000	10%
	500,000		and over	12.5%
CLASS C	0	to	100,000	10%
	100,000	to	200,000	12%
	200,000		and over	15%

EXEMPTIONS:

1. Spouse: All transfers to a spouse are tax exempt
2. Class A (not including a spouse): $30,000 per individual
3. Class B: $5,000 per individual
4. Qualified real estate up to $750,000 if used in family business or farm and left to a family member.

The state has an estate tax equal to the federal state death tax credit.

KENTUCKY

CLASS A	Parent, spouse, child, step-child, adopted child or grandchild
CLASS B	Brothers, sisters, nieces, nephews, sons and daughters-in-law, aunts or uncles
CLASS C	All others

	TAXABLE AMOUNT			TAX RATE
CLASS A	0	to	20,000	2%
	20,000	to	30,000	3%
	30,000	to	45,000	4%
	45,000	to	60,000	5%
	60,000	to	100,000	6%
	100,000	to	200,000	7%

	200,000	to	500,000	8%
	500,000		and over	10%
CLASS B	0	to	10,000	4%
	10,000	to	20,000	5%
	20,000	to	30,000	6%
	30,000	to	45,000	8%
	45,000	to	60,000	10%
	60,000	to	100,000	12%
	100,000	to	200,000	14%
	200,000		and over	16%
CLASS C	0	to	10,000	6%
	10,000	to	20,000	8%
	20,000	to	30,000	10%
	30,000	to	45,000	12%
	45,000	to	60,000	14%
	60,000		and over	16%

EXEMPTIONS:

1. Spouse: All inherited property exempt
2. Minor child $20,000
3. Mentally disabled child $20,000
4. Parent $5,000
5. Adult child $5,000
6. Grandchild $5,000
7. Class B members $1,000
8. Class C members $500

LOUISIANA

CLASS 1 Spouse, lineal ancestors and descendants
CLASS 2 Brother, sister
CLASS 3 All others except government
CLASS 4 State of Louisiana

TAXABLE AMOUNT				TAX RATE

CLASS 1	0	to	20,000	2%
	20,000		and over	3%
CLASS 2	0	to	1,000	0%
	500	to	21,100	5%
	21,100		and over	7%
CLASS 3	0	to	500	0%
	500	to	5,000	5%
	5,000		and over	10%
CLASS 4		ON EVERYTHING		0%

EXEMPTIONS:

1. Spouse: All property tax-free
2. Class 1 members, except for spouse, first $25,000 exempt
3. Class 3 members, first $1,000 exempt
4. Class 4, all exempt

MARYLAND

CLASS 1 Spouse, parent, child, grandparent, descendant, step-child, step-parent
CLASS 2 All others

	TAXABLE AMOUNT	TAX RATE
CLASS 1	ON EVERYTHING	1%
CLASS 2	ON EVERYTHING	10%

EXEMPTIONS:

Spouse: First $100,000 of personal property and all real property

The state has an estate tax equal to the federal state death tax credit.

MASSACHUSETTS

TAXABLE AMOUNT			TAX RATE		
0	to	50,000		5%	
50,000	to	100,000	$2,500 +	7% OVER	$50,000
100,000	to	200,000	$6,000 +	9% OVER	$100,000
200,000	to	400,000	$15,000 +	10% OVER	$200,000
400,000	to	600,000	$35,000 +	11% OVER	$400,000
600,000	to	800,000	$57,000 +	12% OVER	$600,000
800,000	to	1,000,000	$81,000 +	13% OVER	$800,000
1,000,000	to	2,000,000	$107,000 +	14% OVER	$1,000,000
2,000,000	to	4,000,000	$247,000 +	15% OVER	$2,000,000
4,000,000	and over		$547,000 +	16% OVER	$4,000,000

EXEMPTIONS:

If the net estate is worth less than $600,000, then the state's exemption will equal the net estate. Otherwise, there is no exemption.

The state has an estate tax equal to the federal state death tax credit.

MICHIGAN

CLASS 1 Spouse, parent, grandparent, brother, sister, child, son or daughter-in-law, adopted child, step-child

CLASS 2 All others

	TAXABLE AMOUNT			TAX RATE
CLASS 1	0	to	50,000	2%
	50,000	to	250,000	4%
	250,000	to	500,000	7%
	500,000	to	750,000	8%
	750,000		and over	10%

CLASS 2	0	to	50,000	12%
	50,000	to	500,000	14%
	500,000		and over	17%

EXEMPTIONS:

1. Spouse: $65,000 and another $5,000 for each minor child
2. Class 1 members (except spouse): first $25,000 is exempt (becomes $50,000 on January 1, 1995)

The state has an estate tax equal to the federal state death tax credit.

MONTANA

CLASS 1 Spouse, descendants and lineal ancestors
CLASS 2 Brother, sister, niece, nephew, son-in-law, daughter-in-law
CLASS 3 Uncle, aunt and first cousin
CLASS 4 All others

	TAXABLE AMOUNT			TAX RATE
CLASS 1	0	to	25,000	2%
	25,000	to	50,000	4%
	50,000	to	100,000	6%
	100,000		and over	8%
CLASS 2	0	to	25,000	4%
	25,000	to	50,000	8%
	50,000	to	100,000	12%
	100,000		and over	16%
CLASS 3	0	to	25,000	6%
	25,000	to	50,000	12%
	50,000	to	100,000	18%
	100,000		and over	24%

CLASS 4	0	to	25,000	8%
	25,000	to	50,000	16%
	50,000	to	100,000	24%
	100,000		and over	32%

EXEMPTIONS:
1. Property to spouse and lineal descendant is tax free
2. Property to ancestors, first $7,000 is exempt
3. Class 2 members, first $1,000 is exempt

MISSISSIPPI

TAXABLE AMOUNT			TAX RATE
0	to	60,000	1%
60,000	to	100,000	1.6%
100,000	to	200,000	2.4%
200,000	to	400,000	3.2%
400,000	to	600,000	4.0%
600,000	to	800,000	4.8%
800,000	to	1,000,000	5.6%
1,000,000	to	1,500,000	6.4%
1,500,000	to	2,000,000	7.2%
2,000,000	to	2,500,000	8.0%
2,500,000	to	3,000,000	8.8%
3,000,000	to	3,500,000	9.6%
3,500,000	to	4,000,000	10.4%
4,000,000	to	5,000,000	11.2%
5,000,000	to	6,000,000	12.0%
6,000,000	to	7,000,000	12.8%
7,000,000	to	8,000,000	13.6%
8,000,000	to	9,000,000	14.4%
9,000,000	to	10,000,000	15.2%
10,000,000		and over	16.0%

EXEMPTIONS:

First $600,000 of an estate is exempt

NEBRASKA

CLASS 1 Spouse, parent, child, son or daughter-in-law
CLASS 2 Uncle, aunt, niece, nephew and their descendants
CLASS 3 All others

	TAXABLE AMOUNT			TAX RATE
CLASS 1	0	to	1,000	0%
	1,000		and over	1%
CLASS 2	0	to	2,000	0%
	2,000	to	60,000	6%
	60,000		and over	9%
CLASS 3	0	to	5,000	6%
	5,000	to	10,000	9%
	10,000	to	20,000	12%
	20,000	to	50,000	15%
	50,000		and over	18%

EXEMPTIONS:

1. Spouse: All property tax-free
2. Class 1 members, not including spouse, $10,000
3. Class 2 members $2,000
4. Class 3 members $500.00

NEW HAMPSHIRE

CLASS 1 Spouse, ancestor, descendant, adopted children, step-children
CLASS 2 All others

	TAXABLE AMOUNT	TAX RATE
CLASS 1	ON EVERYTHING	0%

CLASS 2	ON EVERYTHING	18%

EXEMPTIONS:
CLASS 1 No tax
CLASS 2 No exemptions

NEW JERSEY

CLASS A Parent, spouse, grandparent, child, step-child, descendant
CLASS B Brothers, sisters, sons and daughters-in-law
CLASS C All others

	TAXABLE AMOUNT			TAX RATE
CLASS A	ON EVERYTHING			0%
CLASS B	0	to	1,100,000	11%
	1,100,000	to	1,400,000	13%
	1,400,000	to	1,700,000	14%
	1,700,000		and over	16%
CLASS C	0	to	10,000	15%
	700,000		and over	16%

EXEMPTIONS:

1. Class A members: All property is exempt
2. Class B members: First $25,000 is exempt

NEW YORK

TAXABLE AMOUNT			TAX RATE
0	to	50,000	2%
50,000	to	150,000	3%
150,000	to	300,000	4%
300,000	to	500,000	5%

500,000	to	700,000	6%
700,000	to	900,000	7%
900,000	to	1,100,000	8%
1,100,000	to	1,600,000	9%
1,600,000	to	2,100,000	10%
2,100,000	to	2,600,000	11%
2,600,000	to	3,100,000	12%
3,100,000	to	3,600,000	13%
3,600,000	to	4,100,000	14%
4,100,000	to	5,100,000	15%
5,100,000	to	6,100,000	16%
6,100,000	to	7,100,000	17%
7,100,000	to	8,100,000	18%
8,100,000	to	9,100,000	19%
9,100,000	to	10,100,000	20%
10,100,000 and over			21%

TAX CREDITS:

1. Taxes from 0 to $2,750: There is a credit equal to the full tax (no tax will be owed).
2. Taxes from $2,750 to $5,000: There is a tax credit equal to the difference between the tax and $5,000.
3. For taxes over $5,000 there is a $500 tax credit.

NORTH CAROLINA

CLASS A Spouse, descendant, ancestor, step-child, adopted child, son and daughter-in-law
CLASS B Brother, sister, niece, nephew, aunt or uncle
CLASS C All others

	TAXABLE AMOUNT			TAX RATE
CLASS A	0	to	10,000	1%
	10,000	to	25,000	2%
	25,000	to	50,000	3%
	50,000	to	100,000	4%

100,000	to	200,000	5%
200,000	to	500,000	6%
500,000	to	1,000,000	7%
1,000,000	to	1,500,000	8%
1,500,000	to	2,000,000	9%
2,000,000	to	2,500,000	10%
2,500,000	to	3,000,000	11%
3,000,000		and over	12%

CLASS B	0	to	5,000	4%
	5,000	to	10,000	5%
	10,000	to	25,000	6%
	25,000	to	50,000	7%
	50,000	to	100,000	8%
	100,000	to	250,000	10%
	250,000	to	500,000	11%
	500,000	to	1,000,000	12%
	1,000,000	to	1,500,000	13%
	1,500,000	to	2,000,000	14%
	2,000,000	to	3,000,000	15%
	3,000,000	and over		16%

CLASS C	0	to	10,000	8%
	10,000	to	25,000	9%
	20,000	to	50,000	10%
	50,000	to	100,000	11%
	100,000	to	250,000	12%
	250,000	to	500,000	13%
	500,000	to	1,000,000	14%
	1,000,000	to	1,500,000	15%
	1,500,000	to	2,500,000	16%
	2,500,000	AND OVER		17%

EXEMPTIONS:

1. Spouse: All property is tax-free
2. Class A members (except spouse) $26,150 tax credit
3. Class B members: none
4. Class C members: none

The state has an estate tax equal to the federal state death tax

credit.

OHIO

TAXABLE AMOUNT			TAX RATE
0	to	40,000	2%
40,000	to	100,000	3%
100,000	to	200,000	4%
200,000	to	300,000	5%
300,000	to	500,000	6%
500,000		and over	7%

EXEMPTIONS:

1. There is an unlimited marital deduction for property passing to a spouse.
2. There is a tax credit equal to $500 or the lesser of the actual tax.

OKLAHOMA

CLASS 1 Parent, child, step-child, adopted child, descendant
CLASS 2 All others

	TAXABLE AMOUNT			TAX RATE
CLASS 1	0	to	10,000	0%
	10,000	to	20,000	1.0%
	20,000	to	40,000	1.5%
	40,000	to	60,000	2.0%
	60,000	to	100,000	2.5%
	100,000	to	250,000	3.0%
	250,000	to	500,000	6.5%
	500,000	to	750,000	7.0%
	750,000	to	1,000,000	7.5%
	1,000,000	to	3,000,000	8.0%
	3,000,000	to	5,000,000	8.5%
	5,000,000	to	10,000,000	9.0%
	10,000,000	and over		10.0%

CLASS 2	0	to	10,000	1%
	10,000	to	20,000	2%
	20,000	to	40,000	3%
	40,000	to	60,000	4%
	60,000	to	100,000	5%
	100,000	to	250,000	6%
	250,000	to	500,000	13%
	500,000	to	1,000,000	14%
	1,000,000	and over		15%

EXEMPTIONS:

1. Spouse: All property is tax-exempt
2. Class 1 members, except spouse, $175,000
3. Class 2 no exemption

The state has an estate tax equal to the federal state death tax credit.

PENNSYLVANIA

CLASS A Spouse, parent, grandparent, descendant, son or daughter-in-law, adopted child

CLASS B All others

	TAXABLE AMOUNT	TAX RATE
CLASS A	ON EVERYTHING	6%
CLASS B	ON EVERYTHING	15%

EXEMPTIONS:

1. There is an exemption for all jointly held property with a spouse
2. There is a family exemption of $2,000
3. Insurance benefits, social security benefits and employment benefits are exempt

The state has an estate tax equal to the federal state death tax credit.

SOUTH DAKOTA

CLASS 1 Child and adopted child
CLASS 2 Ancestors and descendants
CLASS 3 Brother, sister, niece, nephew, son-in-law, daughter-in-law
CLASS 4 Uncle, aunt and first cousins
CLASS 5 All others

	TAXABLE AMOUNT			TAX RATE
CLASS 1	0	to	30,000	0%
	30,000	to	50,000	3.75%
	50,000	to	100,000	6.00%
	100,000		and over	7.50%
CLASS 2	0	to	3,000	0%
	3,000	to	15,000	3.00%
	15,000	to	50,000	7.50%
	50,000	to	100,000	12.00%
	100,000		and over	15.00%
CLASS 3	0	to	500	0%
	500	to	15,000	4.00%
	15,000	to	50,000	10.00%
	50,000	to	100,000	16.00%
	100,000		and over	20.00%
CLASS 4	0	to	200	0%
	200	to	15,000	5.00%
	15,000	to	50,000	12.50%
	50,000	to	100,000	20.00%
	100,000		and over	25.00%
CLASS 5	0	to	100	0%

100	to	15,000	6.00%
15,000	to	50,000	15.00%
50,000	to	100,000	24.00%
100,000		and over	30.00%

EXEMPTIONS:

1. Spouse: All property is tax-free
2. Class 1 members first $30,000 exempt
3. Class 2 members first $3,000 exempt

TENNESSEE

TAXABLE AMOUNT	TAX RATE
$440,000	$30,200 + 9.5% over $440,000

EXEMPTIONS:

First $600,000 of the estate is exempt

The state has an estate tax equal to the federal state death tax credit.

IMPORTANT NOTICE:

TAX CHANGES BY THE JOB & GROWTH TAX RELIEF RECONCILIATION ACT OF 2003, THE ECONOMIC GROWTH AND TAX RELIEF ACT OF 2001 AND THE BUDGET ACT OF 1997

The **JOB & GROWTH TAX RELIEF RECONCILIATION ACT OF 2003**, the **ECONOMIC GROWTH AND TAX RELIEF ACT OF 2001** along with the **BUDGET ACT OF 1997** together have resulted in the most sweeping tax changes as affecting individuals' estate and financial planning since President Reagan's first term. The major changes are as follows:

(A) CHANGE IN THE UNIFIED CREDIT

The federal unified credit which is the amount that a person can give away tax free while alive or after death which was $675,000 was raised immediately to $1,000,000 and will continue to rise to the year 2009 when it is abolished for one year then reinstated at $1,000,000 unless Congress votes to make the elimination of estate taxes permanent. The rate of unified credit schedule is as follows:

YEAR	EXEMPTION AMOUNT	TOP ESTATE TAX RATE

2002	**$1,000,000**	**50%**
2003	**$1,000,000**	**49%**
2004	**$1,500,000**	**48%**
2005	**$1,500,000**	**47%**
2006	**$2,000,000**	**46%**
2007	**$2,000,000**	**45%**
2008	**$2,000,000**	**45%**
2009	**$3,500,000**	**45%**
2010	**ESTATE TAX REPEALED FOR ONE YEAR UNLESS MADE PERMANENT**	**NONE**
2011	**$1,000,000**	**55% IF REPEAL NOT MADE PERMANENT**

GIFT TAX NOT REPEALED

The gift tax is not repealed in 2009 along with the Estate Tax. To prevent taxpayers transferring property which generates income tax from higher to lower rate taxpayers, the 2001 Tax Act retains a modified gift tax. Beginning in 2010, total gifts made in excess of a lifetime $1,000,000 exemption would be subject to a gift tax equal to the top individual income tax rate at that time.

(B) CHANGE IN STEPPED-UP BASIS OF INHERITED PROPERTY.

Prior to the 2001 ACT, property inherited from a decedent was given a stepped up basis to fair market value. This meant that it could immediately be sold without incurring any capital gain taxes.

Now once estate taxes are fully repealed in 2010, the basis of assets received from a decedent will carry over from the decedent, rather than be stepped up to fair market value at the date-of- death or alternate valuation date as is now the law. Two exceptions to the rule will be available to help many estates:

a. $1.3 million of basis will be allowed to be added to certain assets; and
b. $3 million of basis will be permitted to be added to assets transferred to a surviving spouse.

However, to further complicate the matter, not all property is eligible for an increase in basis. Property acquired by a decedent by gift from a non-spouse less than three years before death is excluded (to prevent “gifts” of low basis assets in anticipation of stepped-up bequests). Similarly, property that constitutes a right to receive income in respect of a decedent is excluded. Stock in foreign investment arid personal holding companies also is ineligible for an increase in basis.

C REDUCTION IN THE CAPITAL GAIN RATE

The federal capital gain rate was cut under the Budget Act of 1997. The new rates are:

Prior to Jan 1, 2001, the following were the capital gain rates:

1. 28% maximum on collectibles
2. 25% maximum on real estate gains attributable to depreciation
3. 10%/20% rate on stock, bonds and real estate. The rate is 10% on gains falling in the 15% bracket and 20% for gains above this.

Beginning in January 1, 2001, for assets held more than five (5) years:

4. 8%/20% rate on stocks, bonds and real estate held more than five years. The rate is 8% on gains falling in the 15% bracket and 20% for gains above this.

Beginning on January 2, 2006, there is another rate:

5. 8%/18% on stock, bonds and real estate held for more than five years and acquired after 12/31/00. The rate is 8% on the 15% bracket and $18% for gains above this. There is a special election possible after Jan 2, 2006 to “convert” property acquired before 12/31/00 into property acquired afterward.

UNDER THE 2003 ACT

Reduction in tax rates on dividends and capital gains.

Under the 2003 Tax Act, the maximum tax rate on dividends distributions by corporations to individuals and on individual capital gains is reduced to 15% in 2003 through 2008.

For Taxpayers in the 10% and 15% ordinary income tax rate brackets, the rate on dividends and capital gains is reduced to 5% in 2003 through 2007, and to zero(0) in 2008.

The new rates apply to capital gains realized on or after May 6, 2003, and to dividend income received in 2003 and after.

INCOME TAX RATE CUTS

Under the 2001 Tax Act, there was a ***$958*** billion consolidation and reduction of the marginal tax rates for individuals. Under the 2001 Act was created a new 10 percent rate bracket. The other individual income tax rates (except the 15 percent rate) were also cut for 2001, effectively by 0.5 percent across the board.

There will now be six rate brackets for individuals. The new 10 percent rate is carved out of the existing 15 percent bracket .

Under the 2003 TAX ACT, the 10% bracket will apply to the first $14,000 of income for couples, $7,000 for singles, and

$10,000 for heads of household, and adjusted for inflation thereafter).

UNDER THE 2003 TAX ACT

Under the 2003 tax act, reductions in income tax rates in excess of 15% for 2004 and 2006 are accelerated to 2003 which resulted in new rates of 25, 28, 33 and 35% respectively.

These reductions benefit married couples with taxable income greater than $47450 and single taxpayers with taxable income greater than $28,400.

E. REDUCTION OF THE MARRIAGE PENALTY

The 2001 and 2003 Tax Acts reduced but could not eliminate the marriage penalty under Federal Tax Law. The marriage penalty will not change until 2005. Then in 2005 partial relief will be given in two form:

(1) Joint filers will be given a standard deduction that is twice the amount of standard deduction provided to single filers, phased in 2003 and 2004, and

(2) The high-end of the income level falling under the 15 percent tax rate bracket will be expanded to an amount equal to twice that of single taxpayers.

These changes will not help married taxpayers above the 25%

tax bracket who do not take the standard deduction. Likewise the change does not impact taxpayers in the 15% bracket of the pre-2001 ACT. As such both groups of taxpayers will continue to subject to the full marriage penalty.

ALTERNATIVE MINIMUM TAX RELIEF

To ensure that the benefits of the marriage penalty relief are not subject to the alternative minimum tax, AMT, the exemption amount for the AMT is increased by $9,000 for married taxpayers and by $4,500 for single taxpayers in 2003 and 2004.

(F) HOME SALE TAX CUT

Under the Budget Act of 1997, the first $500,000 in a couple’s profit from the sale of a principal residence and $250,000 for an individual will be excluded from taxation. This credit can be used every three years. The home must be the principal residence for 2 of the previous 5 years. This replaces the previous credit of to $125,000 and available once to taxpayers over the age of 55.

(G) IRA CHANGES

(1) FOR HOME PURCHASES

Penalty free withdrawals of up to $10,000 are now permitted pursuant to the Budget Act of 1997 for home purchase expenses by

first time home buyers or their children or spouses if the person was without ownership interest in a home within 2 years of the purchase.

(2) FOR TUITION EXPENSES

Penalty free withdrawals from IRA’s are now permitted for the payment of tuition expenses for the person, child, spouse or grandchild.

(3) IRA ACCOUNTS

A new type of IRA was created in the Budget Act of 1997 called the IRA Plus (ROTH) Account. Contributions to these accounts are not tax-deductible and count toward the $2,000 per year limit but the interest, dividends and capital gains earned are tax free until withdrawn as an IRA distribution.

Under the 2001 Tax Act, the contribution limits for both traditional and Roth IRAs rise from a $2,000 annual cap to $5,000 as follows: $3,000 for the years 2002- 2004; $4,000 for 2005-2007; and $5,000 for 2008 and thereafter along with annual adjustments for inflation after 2008.

A special catchup provision was created for taxpayers who are age 50 and above. Such taxpayers will be permitted to contribute

what has been termed as “catchups” to their IRA accounts. Such catchup taxpayers can contribute to an IRA an additional $500 in 2002- 2005; $1 ,000 in 2006 and all years thereafter. These “catchup” payments can either be deductible or made to a Roth IRA, if the base-line AGI limits are met for regular contributions for the year.

(H) CREDITS FOR PARENTS

(1) CHILD TAX CREDIT

The 2003 Tax Act eliminated the phase in period of the $1,000 child tax credit and granted it immediately for 2003 and 2004. The $400 per child increase in the credit for 2003 will be paid immediately. Advance payments will be sent beginning inn mid-July 2003 to parents based on their 2002 return.

2. ADOPTION CREDIT

The 2001 TAX ACT increases the credit for adoptions to $10,000 for both special needs adoptions (currently at $6,000) and non-special needs adoptions (currently at $5,000). Starting in 2002, the ACT also doubles the income phase-out range*s starting point from $75,000 to $150,000.

3. DEPENDENT CARE TAX CREDIT

The 2001 Tax Act increases the dependent care credit rate from 30 to 35 percent. It also increases the amount of eligible employment-related expenses from $2,400 to $3,000 (from $4,800 to $6,000 for more than one qualifying individual), and increases the beginning point of phase-out income to $15,000 of adjusted gross income, starting in 2002.

(4) EDUCATION SAVINGS ACCOUNT

Under the Budget Act of 1997, a married couple with an income less than $150,000 or single parents with income less than $95,000 can establish education savings accounts similar to IRAs for children and contribute. Contributions are not deductible on the parents' tax return but earnings are tax free IRC Section 530(b).

The 2001 Tax Act raised the limit on contributions from $500 to $2,000. The new law also exempts special needs beneficiaries from the prohibition against contributions being made after a beneficiary turns 18. Starting in 2002, contributions will be allowable not only from individuals but also from corporations, tax-exempt organizations and other entities. Contributions counted toward any tax year will be permissible until April 15 of the following year, rather than being cut off on December 31.

Under 2001 Tax Act more taxpayers are eligible to contribute to an education savings account by raising the phase out limits. The 2001 Tax Act doubled the contribution phase-out range for joint filers of $ 150,000—$ 160,000 to double that of single filers ($ 190,000— $220,000).

The 2001 Tax Act also permits proceeds in education savings accounts to be used to pay for elementary and secondary school tuition, both public and private, as well as the costs of higher education. Permitted expenses covered under the 2001 ACT include tutoring, computer equipment, room and board, uniforms and extended day program costs.

(5) COLLEGE TAX CREDIT

There is a $1,500 a year tax credit for the first two years and $1,000 per year thereafter. This credit begins to phase out for couples earning $80,000 to $100,000 and individuals earnings $40,000 to $50,000.

(6) STUDENT LOAN DEDUCTION

The Budget Act of 1997 created two education related credits. The Hope Scholarship Credit : The first $1,000 of tuition and $500 of the second $1,000 of tuition. The Life Earning Credit: 20% of

qualified tuition for any year the Hope Scholarship is not used. It is 20% if the first $5000 to the year 2003 which thereafter raises to $10,000.

The 2001 Tax Act extended the credits as follows:

(1) HOPE and Lifetime Learning tax credits can be claimed in the same year as education IRA distributions, as long as the IRA distribution is not used to pay for the same costs used to claim the education credit.

(2) Penalty-free contributions to education IRAs and qualified state tuition programs to be made in the same year.

The 2001 Tax Act raises the amount of student loan interest which can ve deducted. The prior tax law only permitted taxpayers to deduct up to *$2,500* in student loan interest above-the-line. The deduction also had been severely limited by the requirement that a taxpayer*s adjusted gross income must fall under a certain threshold and the interest must be attributable to payments made during the first 60 months in which interest payments are required.

The 2001 Tax Act removed the above restrictions. The 2001 Tax Act raises the income phase-out thresholds (to *$55,000 - $65,000,* from $40,000-$50,000, for single taxpayers, and to $100,000-$130,000, from $60,000-$75,000, for joint taxpayers). The 2001 Tax

Act also repeals completely both the annual dollar limit on the amount of the deduction and the 60-month limit.

7. COLLEGE TUITION DEDUCTION

The 2001 Tax Act creates an above-the-line deduction for qualified higher education expenses. For 2002-2003, a single taxpayer with adjusted gross income below $65,000 ($130,000 if married) will be entitled to an above-the-line tuition deduction of $3 ,000 each year. The deduction will increase, for the years of 2005 and 2005, to $4,000 for single taxpayers with incomes falling below $65,000 and for married taxpayers filing jointly with incomes below $130,000. The Act gives both single taxpayers with incomes up to $80,000 along with for joint filers with incomes up to $160,000 a maximum deduction of $2,000 in 2004 and 2005. This deduction cannot be claimed for the same student in the same year as a HOPE or Lifetime Learning credit is claimed for the student.

8. EMPLOYER-PROVIDED CHILD CARE CREDIT

The 2001 ACT allows employers a credit equal to 25 percent of qualified expenses for employee child care and 10 percent of qualified expenses for child care resource and referral services, to a maximum $150,000 per year credit. Effective beginning after 2001.

I. PENSION PLAN CONTRIBUTIONS

Under the 2001 Tax Act, the limits on contributions to pension plans rise considerably.

Beginning in in 2002, the limit on annual addi**tions to a defined contribution plan will** rise to $40,000.

For defined benefit plan, the annual limit on benefits will rise from $140,000 to $160,000.

For 401(k) plans, the limit on salary reduction contributions to IRC §401(k)-type plans (including 403(b) annuities and salary reduction SEPs) will rise from $10,500 to $15,000 by 2006 (scheduled to rise to $11,000 in 2002, and increase by an additional $1,000 each year until 2006).

J. SMALL BUSINESS EXPENSES AND DEDUCTIONS

The 2003 Tax Act made two significant tax changes which help small businesses.

1. The 2003 Tax Act increased the amount of investment that may be immediately deducted by small businesses from $25,000 to $100,000. The amount of investment qualifying for this immediate deductions begins to phase out at $400,000.

2. The additional first year bonus depreciation is increased for 30% to 50% for investments placed in service after May 5, 2003 and before January 1, 2005.

CHAPTER 9

CONSIDERATIONS IN DECIDING WHETHER TO USE A WILL OR REVOCABLE TRUST FOR ESTATE PLANNING

Deciding upon a type of estate plan that a person or a couple will employ is one of the most important personal decisions will ever be made. Use of a trust or Will in an estate plan should only be done after careful deliberation. In most instances, a revocable trust will be superior to probate of a will.

Probate actions are the only legal proceedings in which fewer number each year are being instituted. Revocable trusts were designed to replace probates and they do it very well. A probate action exists solely to determine who gets a person's estate when no provision had been made by the decedent to provide for its immediate passing upon death. More people are turning to revocable trusts to avoid probate and time-consuming hassles, hearings and delays which it entails. Some of the prime advocates for revocable trusts are judges themselves. Most judges, handling probate matters, view the basic exercise of probate jurisdiction as unnecessary in view that revocable trusts can do the job faster and

cheaper.

Although revocable trusts are, however, generally superior to probate, there are estate situations where probate may be advantageous. A general rule is good but with every rule there is an exception. Before deciding on a trust, each person should review his personal situation to determine if it is an exception to the rule and that therefore a probate should be used.

This chapter deals with the major disadvantages commonly cited by estate planners as grounds for not using a revocable trust. They are presented here for the reader to apply them to his own fact pattern to determine if a trust is warranted.

This book is written for the average person with an average estate equal to no more than the unified credit which is $1,000,000 individually or $2,000,000 per couple through 2004 and rises to unlimited in 2010 and then reduces down again to $1,000,000 each under the 2001 Tax Act.

Persons with estates significantly over these amounts should go to a tax advisor and spend a few dollars for the expert estate planning needed by virtue of having a larger estate. Someone with assets significantly above these limits should consider charitable

contributions, charitable trusts, life insurance trusts and a myriad of other estate devices that are far beyond the scope of this book. The trusts contained in Estate Planning II are for people who have already made up their minds to use a revocable trust or are considering it and have assets close to the limits stated above. According to IRS estimates, those trusts apply to 90% of the American people.

It is impossible to address every tax consideration that could arise from the use of a trust. Bearing that in mind, here presented are the most important ones. Nonetheless, the reader should be able to make a knowledgeable and informed decision as to whether to execute a will or use a revocable trust as his main estate planning tool after reading this book and the second volume, Estate Planning II.

I. EFFECTS OF DIVORCE ON PROBATE AND REVOCABLE TRUSTS

In many states a divorce automatically revokes all gifts made to a former spouse in a will. In some states the validity of the gifts still remains in effect until the will is changed.

A revocable trust is a nonprobate transfer, and the property

contained therein passes by contract. Therefore, a divorce will not affect a divorcee's right to receive a distribution from the ex-spouse's revocable trust unless the divorce decree specifically terminates that right. Thus, unless a revocable trust is amended after a divorce to remove the former spouse as a beneficiary, that former spouse will still receive the original share of the trust even though now divorced from the deceased ex-spouse.

A difficult situation exists when an incompetent trustor (creator of the trust) is divorced. An incompetent trustor cannot revoke or amend a trust that was validly created during a time when the trustor was competent. The conservator or guardian of the incompetent trustor must seek court permission to revoke the trust in the divorce proceeding or in a separate petition.

While divorce is always a consideration in any relationship, amending a revocable trust is extremely easy. All the trustor must do is deliver a written statement to the trustee, who is usually himself, stating that the former spouse is not to receive anything under the trust. The trustor notifies the trustee that the trust is either terminated or that the former spouse's share goes to someone else. It is that simple. Although the revocation does not

need to be witnessed, it should be to avoid having its execution challenged by the former spouse.

II. CREDITOR CLAIMS AGAINST THE ESTATE

Under probate law, the decedent's creditors are given a statutory period of time, usually four months, after the probate is opened to present their claims against the estate (debts owed by the decedent) for payment. Claims filed after that period normally are disallowed and cannot be paid no matter how meritorious. This can be quite an advantage to an estate. Should large creditors happen to be late in presenting their claims, they won't be paid. As such, the heirs will receive the estate free of any potential creditor claims not presented during the statutory period.

In addition, a probate also permits a certain amount of property to pass to the family as a family allowance. This property is exempt from all creditor claims. The amount of the family allowance varies from state to state, but it can exceed $40,000.

On the other hand, a revocable trust does not cut off any creditor claims. A creditor can sue the trust or the beneficiary

receiving the trust property for a period of four years (depending on the state's statute of limitations) for debts owed by the decedent. The beneficiaries of the estate are responsible to pay any judgment awarded that is within the value of the trust property they received.

A decedent cannot avoid his debts by transferring property into a trust for the trustor's benefit. All states have laws which prevent transfers designed strictly to avoid or defraud creditors. So a revocable trust established by a trustor would be liable for the trustor's debts.

Generally, if use of a trust will pass more to the beneficiaries after all the creditors have been paid than if a Will had been used, then the trust should be the estate planning vehicle employed. Usually this is the case because once an estate exceeds the state limits for a summary probate, it will cost more to probate the estate than it would to create the trust and thereby avoid the probate.

III. STATUTORY SHARE OF SURVIVING SPOUSE

A revocable trust cannot deprive a surviving spouse of a

statutory share of the deceased spouse's estate. If state law gives a spouse a mandatory one-third share of the other spouse's estate, the surviving spouse can insist on that one-third share regardless of the amount the trust document purports to give the surviving spouse.

In community property states there usually are no statutory shares in a spouse's estate because the community property interest replaces the need for a statutory share. Most states, however, do have mandatory statutory shares. Therefore, in order for the trust to work the surviving spouse must elect to take the share given under the trust and waive the statutory share.

As a practical matter, this is usually not a problem. A husband and wife usually create a joint trust which establishes how they want the property distributed upon both of their deaths. The most common joint trust gives everything to the surviving spouse with the remainder, if any, going to their children. In the usual joint trust, the surviving spouse is receiving far more property than the statutory share. The bottom line is that if one spouse feels that the other spouse will challenge the trust, don't bother with it.

IV. WILL OR TRUST CONTESTS

Both wills and trusts can be challenged by heirs, beneficiaries or disinherited family members. The challenges are the same for each: lack of capacity, mistake, fraud, duress, insane delusion, pretermitted heirs, etc.

There is no difference as to how a court will treat a will contest or a trust contest. The probate court has the same jurisdiction to determine trust contests as it does will contests.

All wills and trusts should have a protective clause to limit challenges. The no-contest clause states that should any heir or beneficiary challenge a trust and lose, the challenger also loses all right to receive property under the will or trust. For example, a beneficiary due to inherit $1,000,000 seeks to inherit $2,000,000 by overturning the will or trust. If he loses the challenge, the beneficiary also loses the $1,000,000 that was to pass under the Will or trust. It is amazing to contemplate the amount of litigation avoided by the No-Contest Clause in Wills and Trusts.

V. TIME IT TAKES TO PROBATE A WILL OR TRANSFER PROPERTY IN TRUST

Assets in probate can be held for quite a while before final distribution to the heirs. Partial distributions based on need can be made under court approval prior to the close of the estate. Generally, a normal probate (assets over $60,000 that are not going to a surviving spouse) takes a minimum of six months.

Under the Uniform Probate Code, adopted by many states including Colorado, the personal representative may take possession of the decedent's assets within five days of death. In addition, there are special provisions for summary probates when the estate is small or going primarily to the surviving spouse. Such summary proceedings are fast, usually no more than two months.

Revocable trusts are the fastest way to transfer assets following the trustor's death. Upon the trustor's death, the trustee or successor-trustee immediately transfers the property in accordance with the terms of the trust, subject only to whatever delays exist in paying required federal and inheritance taxes. Since the same delay for payment of taxes exists for probates, trusts clearly have the advantage of speed.

VI. EFFECT OF REVOCABLE TRUST ON MEDICAID ELIGIBILITY

A revocable trust has an unfair effect on the beneficiary spouse's ability to claim Medicaid benefits if institutionalized. For this reason elderly couples with small estates should give particular attention to this matter if they feel that they might one day have to seek institutionalized Medicaid assistance.

Under 42 U.S.C. Section 1396(a)(k), assets and income from a revocable trust for a surviving spouse institutionalized as a Medicaid recipient will be counted as available for the surviving spouse's use in determining eligibility for Medicaid assistance. The assets and income will be attributed to the surviving spouse even though the trust has placed an independent trustee in control. This is not the case when the trust was created for the surviving spouse in the deceased spouse's will. The assets and income of a testamentary trust (trust created by a will) will not be counted toward the institutionalized spouse in determining Medicaid eligibility.

This is an important consideration and should be reviewed with the Social Security Administration if Medicare is an important consideration for a person. Democrats in Congress have proposed changing the law to include assets from a testamentary trust into

a surviving spouse's estate as well as those of a revocable trust created by a deceased spouse.

VII. GIFTS WITHIN THREE YEARS OF DEATH

Nowadays gifts made by an individual within three years of death are no longer brought back into the estate for tax purposes. There are exceptions: those transfers involving life insurance or those transfers in which the decedent retained control over the property. Therefore, a parent, for example, could give $10,000 to a child within three years of death without having the money return to the parent's estate for estate tax purposes.

A different situation exists when the parent makes the gift directly from a revocable trust. The IRS holds that gifts made directly from a revocable trust within three years of the trustor's death are included in the trustor's estate for tax purposes. In other words, if the parent's revocable trust makes a $10,000 gift to the child, the gift will be brought back into the estate for tax purposes (Revenue Ruling 75-553, 1975-2 C.B. 477).

This is a result of incompetent tax writing by Congress. The problem, however, is easily avoided if the trustor first takes the $10,000 out of the trust in the parent's own name before making the

gift. In other words, the transaction goes through two steps rather than one to avoid having the money brought back into the estate.

VIII. TAX I.D. NUMBERS

Everyone fears the IRS. No one wants to have anything to do with the IRS any more than the average person looks forward to going to a dentist for a root canal. The thought of having to get a Federal Identification Number scares most people. Getting an I.D. number means that the person has become a cipher in the IRS machine, and secrecy and privacy have been lost to the taxing behemoth.

Once a probate is opened and a tax return due, the personal representative is required to file for a Federal Identification Number. This I.D. number must be placed on all income tax and estate tax returns for the estate.

In a revocable trust, no federal tax identification number is required and no separate tax return for the trust need be filed as long as the grantor is the trustee. The trust, however, will need a federal identification number and must start filing annual

federal fiduciary tax returns (Form 1041) if the grantor is replaced as trustee.

IX. EFFECT OF TRUST ON HOMESTEADS

A potential drawback in a trust is that homestead exemptions are not available in some states for homes placed into a revocable trust. A homestead exemption is an exemption from attachment on the equity of a person's home by a creditor's judgment. For example, if a state's homestead exemption is $45,000 and the equity in a debtor's home is $46,000, a judgment creditor can only keep $1,000 if the home is taken and sold to pay off a judgment. The remaining $45,000 in equity is returned to the debtor to start over.

If the home is placed into a trust, the homestead exemption will not apply, and the creditor can take the entire $46,000 of equity to reduce the trustor's debts.

The loss of the homestead exemption can be a significant concern in deciding to create a trust. If a person is in a business with a potential for a great deal of liability or lawsuits, it might be advisable not to form a trust. The average

person will, however, have enough insurance to guard against judgments for normal negligence, and thus the loss of the homestead is not that important. Hopefully all states will eventually extend homestead protection to homes placed into a trust.

X. TRANSFER TAXES

Some states or territories, such as the District of Columbia, impose transfer taxes for property placed in a revocable trust. Most states do not impose a transfer tax as long as the grantor is a beneficiary in the trust. The rationale for not applying the tax is obvious: there really is no change of ownership until the grantor dies. Until the death of the grantor, the grantor has the power and ability to terminate the trust and receive the property back. As such, the transfer is at best tentative. Neither Colorado or California charge a transfer tax for property placed into a revocable trust if the grantor is a beneficiary.

In any event the transfer taxes are a small amount compared to the savings in probate fees.

XI. REAPPRAISAL OF REAL PROPERTY PLACED INTO TRUST

Some states reappraise real property to determine tax value when the property is placed in a revocable trust. Most states will not reappraise real property placed into a revocable trust as long as the grantor is a beneficiary in the trust. The rationale for not reappraising the real property is obvious: there really is no change of ownership until the grantor dies. Until the death of the grantor, the grantor has the power and ability to terminate the trust and receive the property back. The transfer is at best tentative. Neither Colorado nor California will reappraise real property placed into a revocable trust where the grantor is a beneficiary.

In any event, the additional taxes in those states where reappraisal occurs usually is a small amount when compared to the savings in probate fees. If not, then the transfer of the property into the trust might be delayed, or the trust may not be formed at all.

XII. TAX EXEMPTIONS

There is a slight difference in the tax exemptions available for trusts and those tax exemptions available for estates. A

revocable trust has a personal exemption of $300 while an estate has a personal exemption of $600. This means that an income tax return need not be filed for a probate until its income exceeds $600 while a trust must file the return when its income exceeds $300.

There are expensive probate fees involved a the probate of a Will transfers large income-producing property as opposed to the use of a trust. Although a trust only has an exemption of $300, as compared to a probate, use of the trust avoids having to probate a large estate and thereby offers significant savings by avoiding having to pay the large probate fees.

XIII. S CORPORATION STOCK

One area where a probate has a distinct advantage over a revocable trust is where the decedent owned stock in an S Corporation (a corporation treated as a partnership). A trust may hold the stock for two years following the grantor's death. At the end of the two-year period the stock loses its S Corporation status, and the corporation is then taxed as a normal corporation. In contrast, the probate estate may hold the stock until completion of the probate, and the stock will always remain S Corporation

stock. This means that the estate can hold the S Corporation stock for years and receive the tax benefits of the S status for the corporation.

An estate may be kept open for as long as 15 years if an installment payment election under Code 6166 was made. It might prove worthwhile to keep the estate open for that long just to keep the S Corporation status.

XIV. DEPRECIATION DEDUCTIONS

There is a tax difference as to how losses for the distribution of depreciated property made to satisfy bequests in a probate and those made by a trust are handled. A probate may deduct such losses whereas a trust may not deduct the losses.

XV. STOCK OPTIONS

A stock option exercised by a revocable trust is taxable. If a stock option exercised by probate estate, it is not taxable. The difference in the taxability of the exercise of valuable stock options is important. Generally, most people do not die with large amounts of unexecuted stock options. Those, however, who have such options should discuss this matter with tax professionals to

determine the effect on their estate plan.

XVI. PASSIVE ACTIVITIES

Internal Revenue Code Section 469 limits trust deductions for losses from passive activities to the amount of passive income received. An exception under Section 469(I)(4) permits an estate which closes within two years of the decedent's death to be treated as an active participant in rental real estate. An estate, but not a trust, may offset its losses with non-passive income up to $25,000 if the decedent was an active participant in real estate at the time of death.

XVII. DISTRIBUTION OF INCOME

An advantage available to a trust, but not an estate, is the sixty-five (65) day distribution rule under Internal Revenue Code Section 663(I). A trust is permitted to distribute income within 65 days of the close of its tax year and treat the distribution as made at the close of the previous tax year.

Thus under this tax rule there is an opportunity not available to a probate estate to reallocate income to a lower income tax

bracket of a beneficiary by treating the distribution as made the prior year.

XVIII. NURSING HOME CONSIDERATIONS

One of the considerations in any estate plan is the possibility of needing long term nursing care. If payment is sought for the nursing home care from the government, it may become necessary for the person to divest himself of all his assets before seeking government assistance for nursing home care.

This is an obvious concern for people who have worked all their lives to make a little nest egg to pass to their children. Such people find themselves penalized for being frugal and preparing for the future. In comparison, people who were in essence wastrels and spendthrifts with nothing to show for their lives work can get government assistance for nursing home care. This really is unequal treatment.

In such instances, government rules usually require the person to divest himself of all assets before becoming eligible to nursing home assistance. That can usually be done by making gifts of the estate property a certain period of time before seeking nursing home assistance. This period will vary between the states and

social security as well.

This is a straightforward proposition for a competent person seeking nursing home care. The person would ascertain the appropriate waiting period after making the gifts to reduce the size of the estate to become eligible for the nursing home care and then act accordingly. After the waiting period following the gifts has run, the person can apply for the government assistance in obtaining nursing home assistance.

The problem arises when the person is incompetent and unable to make the gifts necessary to reduce the estate so as to become eligible in time for nursing home assistance. Unless such a person has prepared an estate plan covering such a contingency, then that person will not become eligible for governmental nursing home assistance until his or her estate has been virtually depleted.

It is possible to draft an estate plan so as to offer flexibility in disposing of assets through gifts to make the principal eligible for nursing home assistance. This can be done in two ways neither of which is exclusive.

DURABLE POWER OF ATTORNEY FOR FINANCIAL AFFAIRS

The first method is a durable power of attorney. In this case, if the principal becomes incompetent and needs nursing home care, rather than spend down the s estate to become eligible for nursing home assistance, the agent is given the power in the durable power of attorney document to make gifts of the principal's property in the estate. The gifts of property are to be made to the heirs designated in the principal's will or trust created under an estate plan as long as the sole purpose is to make the principal eligible for long tern nursing home care.

This is a voluntary provision is not present in most statutory or preprinted forms. It should be added if desired to a durable power of attorney form, such as in the sample in this book or contained in our course of Powers of Attorneys.

REVOCABLE TRUST

Many people use revocable trusts as their main estate planning device. Revocable trusts avoid probate and pass property immediately to the beneficiaries upon the grantor's death. Revocable trusts do not, however, take property out of the grantor's control until the grantor dies.

Thus if a grantor creates a revocable trust and subsequently

becomes incompetent then the assets of the trust will be considered by the government as available for the grantor in determining eligibility for nursing home assistance.

To keep the assets of a revocable trust out of incompetent grantor's estate for nursing home eligibility, a clause can be inserted into the trust to the effect that if the grantor becomes incompetent, the holder of the grantor's power of attorney can do any or all of the following in order to make the grantor eligible for nursing home assistance:

1. Make gifts from the trust to the remainder beneficiaries in the trust to the extent needed to qualify the grantor for nursing home assistance even if this means terminating the trust for lack of assets.
2. Declare the trust irrevocable and renounce all future interests in the trust for the grantor
3. In a community property joint trust, the agent may transmute all or any part of the principal's community property interests into separate property and give that property in fee to the principal's spouse.

IT MUST BE REMEMBERED THAT MAKING OF THESE GIFTS TO REDUCE THE

PRINCIPAL'S ESTATE FOR NURSING HOME ELIGIBILITY USUALLY WILL NOT MAKE THE PRINCIPAL IMMEDIATELY ELIGIBLE FOR ASSISTANCE. USUALLY AFTER MAKING THE GIFTS, THERE WILL BE A WAITING PERIOD PERHAPS AS LONG AS THREE YEARS BEFORE BENEFITS WILL GRANTED. SO IN SUCH CASES, THE PRINCIPAL'S FAMILY OR INSURANCE WILL HAVE TO PAY FOR THE NURSING HOME THEMSELVES UNTIL THE PERIOD HAS RUN.

FOR EXAMPLE IF THE GRANTOR'S HOME WAS WORTH $250,000 AND THE NURSING HOME CARE IS $2,500 PER MONTH, $$30,000 PER YEAR, IF THE WAITING PERIOD AFTER THE GIFTS WERE MADE WAS THREE YEARS. THE COST WOULD BE $90,000 TO THE FAMILY BUT THEY WOULD SALE THE REMAINING $160,000 WHICH WOULD OTHERWISE HAVE TO USED UP BEFORE QUALIFYING FOR NURSING HOME CARE.

Because of the varying limits on nursing home assistance, the state welfare agency and social security administration should be contacted before the decision is made to begin making gifts from an incompetent person's estate to see if it is worthwhile to do it as opposed to simply spending down the estate.

CHAPTER 10

ASSET PRESERVATION THROUGH THE USE OF SELF-SETTLED SPENDTHRIFT TRUSTS

Probably the most interesting and controversial changes to estate planning to occur within the last 50 years have been the adoption in a minority of states of spendthrift trusts for the asset protection of the trust grantor and not just the beneficiaries' interests in the trust. This is such a major departure from the asset protection law of the majority of states that it may have, in the future, a profound effect as to how people hold title to their property in the United States.

A spendthrift trust has always been a special type of trust, the assets of which, by its own terms, could not be attached by creditors of the trust beneficiary. The history behind the spendthrift trust extends far back into English common law under which assets, primarily land, were kept intact for passage down through a family line.

By definition under the **RESTATEMENT (SECOND) OF TRUST SECTION**

152(2) (1959), a spendthrift trust is “a trust in which by the terms of the trust or by statute a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed.” This has been taken to mean by all state courts that beneficiaries of a spendthrift trust cannot in any way transfer, sell or alienate their interest in the trust. Likewise, creditors of a beneficiary of a spendthrift trust, which in the past did not include a grantor if also a trust beneficiary, could not force the trustee to pay the debts of a beneficiary from the beneficiary’s interest in the trust.

HISTORY OF SPENDTHRIFT TRUSTS

The validity of a spendthrift trust as a shield from a beneficiary’s creditors was recognized by the United Supreme Court in its decision ***NICHOLS VS. EATON*** 91 U.S. 716 (1875). The case involved a trust provision calling for the termination of a trust beneficiary’s right to require the trustee to pay income to the beneficiary upon the beneficiary’s bankruptcy followed by the beneficiary’s income interest being replaced by a purely discretionary trust. Under the terms of the newly created discretionary trust, the trustee would not be under any requirement

to make any payments to or for the benefit of the beneficiary. Such payments would be at the sole unfettered discretion of the beneficiary. Since such payments were discretionary and not mandatory, the Court held that the creditors of the beneficiary could not attach the assets of the trust or compel the trustee to make a distribution of the trust assets to the beneficiary so they, the creditors, could attach them. In rendering its holding the Supreme Court made clear its reasoning that a creator of trust can make arrangements to assure that the property transferred to a trust would be used for the benefit of a beneficiary and not be taken first by the creditors of the beneficiary. The Court stated:

> "[T]he doctrine that the owner of property cannot dispose of [that property], but that [the beneficiaries sought to be benefitted by the gifts in trust]....must hold [the property given into the trust for their benefit] subject to the debts due his creditors...is one which we are not prepared to announce as a doctrine of this court."

Following the United State Supreme Court's decision all of the states subsequently adopted the rationale set forth in ***Nichols*** and have held that spendthrift trusts are valid and protect the trust assets from attachment by the creditors of the trust beneficiary.

So complete has been this judicially created bar from a

spendthrift trust's attachment by the creditors of a trust beneficiary, that when attachment has been permitted, it has only been by legislative act. The most important and pervasive exception to rule that creditors of a spendthrift trust may not attach the trust is for claims of child or spousal support against a debtor parent or spouse who is the beneficiary of a spendthrift trust. Virtually all states have by legislation enacted laws permitting such creditor claims against a spendthrift trust for which the debtor parent or spouse is a beneficiary. Also both the states and federal government are usually able to attach a beneficiary's interest in a spendthrift trust to satisfy that beneficiary's tax obligations. California has gone even farther and permitted a spendthrift trust to be attached to pay the damage award of a beneficiary convicted of sexual assault. These are all limited exceptions to the general rule which remains firmly entrenched that absent a legislative acts stating otherwise, the assets of a spendthrift trust are not attachable by the creditors of a trust beneficiary.

By trust beneficiary, it had always been taken to mean someone other than the Grantor. It was always understood that while a

grantor could be one of the beneficiaries or even the sole beneficiary of a spendthrift trust, the assets attributed to the Grantor in the Trust would remain attachable by the Grantor's creditors. To do otherwise, the courts have always believed would give the Grantor a means to avoid paying his or her lawful debts by simply transferring his or her assets into a trust for himself or herself. The law in virtually all states permits creditors of a trust grantor to attach the assets of the trust when the trustee has the authority to transfer the assets of the trust back to the grantor. As such, when the grantor is a beneficiary the trustee has authority to transfer some or all of the trust assets to the grantor and thus the grantor's creditors can attach the trust assets which can be transferred to the Grantor whether the Grantor wants those assets or not.

Most states have completely and totally rejected the concept of the "self-settled" spendthrift trust. This is the name given to a spendthrift trust where the grantor is a beneficiary. While the trust itself is valid, it will not protect the trust from creditors of the grantor. This is why living trusts also known as revocable trusts are not protected from the grantor's creditors while the

grantor is alive. As long as the grantor of a typical revocable trust is alive, he or she may revoke the trust and reacquire the assets. For that reason, the grantor's creditors may attach the trust assets.

The majority rationale against recognition of self-settled spendthrift trusts as a means of a grantor to avoid his or her creditors arise squarely from the belief that no one should be permitted to shield his or her property from existing creditors and yet have, at the same time, effective control and use of that property.

USE OF THE SELF-SETTLED SPENDTHRIFT TRUSTS TODAY

Until 1997, it was impossible for a person to shield his or assets from existing creditors through the use of a self-settled spendthrift trust. That has changed to an extent. As of April 2000, four states, have enacted legislation which permits self-settled spendthrift trusts in one form or another. These states are:

1. Alaska (See H.B. 101, 2Oth Leg.Sess (Alaska. Apr.1, 1997) Alaska Stat Sec. 34.40.110 (1999) and 34.050(1)(3) (Michie.1999)
2. Delaware (See Del. Code Ann., tit 12, Sec 3573 (1998)

3. Missouri (See Mo.Rev.Stat Sec. 456.080, (1998)

4. Nevada (See Nev Rev Stat. 166 (1999)

For a grantor to qualify for asset protection under a self-settled spendthrift trust in any of the above jurisdictions, he must strictly comply with the statutory requirements for the state involved.

NEVADA'S ACT

The self-settled spendthrift trust law of Nevada will be discussed as an example as how the concept works. Prior to implementing its self-settled spendthrift trust legislation, Nevada followed the majority of states wherein a spendthrift would only protect someone other than the grantor of the trust. If a grantor was among the beneficiaries of a spendthrift trust, the creditors of the other beneficiaries could not attach the trust but the creditors of the grantor were permitted to attach the trust for claims against the grantor.

As of April 2000, a person can create a self-settled spendthrift trust in one of the above four states in which a grantor is also a beneficiary and which will be safe from attachment by creditors of the grantor except under very specific

exceptions. To create a valid self-settled spendthrift trust in Nevada, the following requirements must be met:

1. There must be a Trustee who is
   (a) a Nevada resident
   (b) a qualified bank trust department with an office in Nevada, or
   © a qualified trust company with an office in Nevada
2. The Trust must be in writing
3. The trust must be irrevocable
4. The Trust must have a spendthrift provision wherein the trustee is not required to distribute any of the income or principal to the grantor, and
5. The Trust may not be formed with the intent to hinder, delay or defraud ***known*** creditors of the grantor.

Once the trust is properly created, the grantor may be the primary beneficiary of the trust and receive virtually all of the distributions of income and principal while at the same time having the trust assets shielded from his or her creditors. For this to work, care must be taken to assure that all statutory requirements are met. While the trust must be irrevocable, the grantor can still retain some operative rights such as the right to order the trustee not to make a distribution. The grantor cannot order a distribution to be made but can order one not to be made. A Trustee other than

the grantor can have discretion to make distributions of income and principal to the grantor Nev.Rev Stat. Sec. 166.040(2)(b) (Supp. 1999).

Nevada is very broad in its definition of a self-settled spendthrift trust. Under section 166.015(1) of the Nevada Revised Statutes, a self-settled spendthrift trust will be governed and enforced by Nevada law whether made in or outside Nevada if:

(a) all or a part of the land, rents, issues or profits in the trust are located in Nevada, or

(b) all or part of the personal property, money, dividends upon stock, and other intangible personal property in the trust are in Nevada, or the declared domicile of the creator of a spendthrift trust affecting personal property is in Nevada, or

(d) at least one qualified trustee has powers that include maintaining records and preparing income tax returns for the trust, and all or part of the administration of the trust is performed in Nevada.

In addition to the above, a trust will be governed by Nevada if the trust document itself states that it is to be governed by Nevada law.

If the self-settled spendthrift trust has been properly drafted then attachments for the creditor claims of the grantor are

strictly limited. Under Nevada Revised Statute 166.170, creditors of a grantor in existence at the time property is transferred into a self-settled spendthrift trust must commence action within two years after the property transfer or six months after they discovered or should have discovered the transfer which ever occurs first. Creditors of the grantor arising after the transfer of the property into the trust must commence their action within two years of the transfer. Anyone becoming a creditor of a grantor more than two years after the transfer of the property into the trust should be forever barred from attaching the property, with the exception of tax liens or claims for child or spousal support as discussed above.

ALASKA'S ACT

Alaska was the first state to enact a self-settled spendthrift trust act. Alaska's legislation is effective only for spendthrift trusts created after April 2, 1997. For trusts created prior to that date the settlor's interest may still be attached for payment of claims against the settlor.

The pertinent part of legislation as it relates to a grantor's interest in a trust, Alaska Stat. 34.40.110 states that the

“transfer restriction prevents a creditor existing when the trust is created, a person who subsequently becomes a creditor or another person from satisfying a claim out of the beneficiary’s interest, unless the

(1) transfer was intended in whole or part to hinder, delay, or defraud creditors under AS 34.40.010;

(2) trust provides that settlor may revoke or terminate all or part of the trust without consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the power held by the settlor to revoke or terminate all or part of the trust; in this paragraph “revoke or terminate” does not include a power to veto a distribution from the trust, a testamentary special power of appointment or similar power, or the right to receive a distribution of income, corpus, or both in the discretion of a person, including a trustee, other than the settlor.”

(3) trust requires that all or a part of the trust’s income or principal, or both, must be distributed to the settlor”

The above Alaskan law is quite similar to Nevada in several important respects as it relates to creditor of the grantor’s attachment of the grantor’s beneficiary interest in the trust. As in Nevada, a grantor’s interest in the trust can not be attached

if:

(1) the trust is irrevocable but the grantor can maintain a veto power over distributions

(2) the grantor cannot terminate all or part of the trust without the consent of the other affected beneficiaries.

(3) the trust does not mandate or order distributions be made to the grantor of income and/or principal, and

(4) the settlor if acting as trustee cannot have the discretion of making distributions of income or principal to himself as beneficiary.

As these issues are the same as Nevada, the Nevada discussion on them above would apply here as well.

Where Alaska law and Nevada law differ is in what is referred to as the period of contestability. This is the period of time set forth under the statute wherein a creditor may bring an action to in effect, pierce the trust for payment of the grantor’s claims. In Nevada the contestability period is two years whereas in Alaska it is four years. What this means is that a creditor of the grantor at the time the trust is created has four years after property is transferred into the trust or one year after discovery of the transfer or when he should have discovered it, whichever is later, to bring an action against the trust as a fraudulent transfer.

Likewise a creditor of the grantor who becomes one after the trust is created must bring an action within four years of the transfer of property into the trust in order to attach it. Once property is in the property for more than four years, subsequent creditors of the grantor cannot attach it.

DELAWARE'S ACT

Delaware's law regarding spendthrift trusts and their applicability is in essence the same as Alaska's. Under Del. Code.Ann.tit 12, Sec 3570, a spendthrift trust is valid as to a grantor if the trust instrument:

"a. Expressly incorporates the law of this State to govern the validity, construction and administration of the trust;

b. Is irrevocable, but a trust instrument shall not be deemed revocable on account of its inclusion of 1 or more of the following:

1. A transferor's power to veto a distribution from the trust.

2. A testamentary special power of appointment or similar power held by the transferor.

3. The transferor's potential or actual receipt of income, including rights to such income retained in the trust instrument income; or

4. The transferor's potential or actual receipt of

> principal is such potential or actual receipt of principal is either in the sole discretion of a qualified trustee or qualified trustees or is pursuant to an ascertainable standard in the trust instrument."

As discussed in Nevada and Alaska above, a spendthrift trust for a grantor must be irrevocable. In addition to giving a trustee sole discretion to make distributions to a grantor, Delaware permits the trust agreement to specify a specific formula for distributions to a grantor and still have the trust be a spendthrift one. Use of a specific formula, however, defeats the purpose of a spendthrift clause because even if the assets cannot be attached directly, creditors will know how much and when such distributions will be made pursuant to the formula and thereby prepare for their attachment once the distributions are paid. While the grantor may retain the right to veto a distribution of the trust, it is unclear that the veto would actually be permitted in a situation where the distribution is mandated by the trust instrument and the only reason the grantor has for vetoing it is to prevent the grantor's creditors from seizing it.

The period of contestability of a transfer of property into

the trust is same as for Alaska, four years after the transfer or one year from when discovery of the transfer was made or should have been made. Persons who become creditors of the grantor more than four years after transfer of property to the trust are barred form attaching the property. The Delaware Act applies to spendthrift trusts created after July 1, 1997.

MISSOURI'S ACT

The Missouri spendthrift law is the broadest of any of the states. Mo.Rev Stat. Sec 456/080(3) states as follows:

> "(3) A provision restraining the voluntary or involuntary transfer of beneficial interests in a trust will prevent the settlor's creditors from satisfying claims from the trust assets, except:
>
> (1) Where the conveyance if assets to the trust was intended to hinder, delay, or defraud creditors or purchasers,
>
> (2) To the extent of the settlor's beneficial interest in the trust assets, is at the time the trust was established or amended;
>
> (A) The settlor was the sole beneficiary of either the income or principal of the trust or retained the power to revoke or amend the trust, or

(B) The settlor was one of a class of beneficiaries and retained the right to receive a specific portion of the income or principal of the trust that was determined solely from the provisions of the trust instrument."

Missouri does not have a period of contestability as long as the transfer was not made to defraud creditors. This is a vague standard which has always been taken to mean a transfer of property done at a time when the settlor was insolvent and unable to pay his obligations and for inadequate consideration. It is a tenuous concept and requires affirmative proof by the creditor of the financial distress of the grantor at the time the trust was created or that the transfer was part of a pre-designed scheme to defraud creditors. Transferring property to a trust and then subsequently developing a plan to defraud creditors shields the assets from subsequent judgments by defrauded creditors so timing is important as to when a suit is made.

Missouri like Delaware permits a specific formula to be used for determining distributions to the grantor in addition to the option of giving sole discretion to the trustee. As in the Delaware discussion, the use of specific formula assures the creditors of

the grantor that the fixed determined amount of distributions will be available for attachment once made to the grantor. There is no provision under Missouri law for the grantor to veto the distribution and therefore the amount could possibly be attached by the grantor's creditors once it has been actually paid.

CONSTITUTIONAL QUESTIONS AND CONFLICTS

While a state has the authority to implement laws for its citizens and those doing business within its borders, there may be conflicts with the laws of other states when person creating self-settled spendthrift trust crosses into other states or does business in other states. As stated above, 46 states and District of Columbia do not recognize self-settled spendthrift trusts as protecting the assets of the grantor who is also a beneficiary of such a trust. The question then arises what will happen if a grantor of such trust is sued in such a state.

Because the concept of using a self-settled spendthrift trust to protect the assets of the settlor is new, no case law has developed yet to see how non-self-settling states would view suits against the grantor. However, it is extremely likely that in such an event that the non-self-settling jurisdiction (one of the 46

states and the District of Columbia majority) would disregard the trust and order payment of any judgment from the trust assets. This is consistent with the long established treatment of spendthrift trusts and was in fact how the minority states handled the issue prior to their enactment of their self-settled spendthrift trusts legislation.

The Constitutional argument is very complicated. If a non-self settling jurisdiction were to give full faith and credit to a self-settled spendthrift trust created in another state, it would be giving rights to a trust not permitted to trusts formed under its own laws. There would be an immediate conflict between the rights afforded its own citizens and those of citizens coming in from another state. The public policy determination, long settled, that no one should be able to protect or hide their assets from just judgments obtained as a result of their acts would be set aside through the use of out-of-state self-settled spendthrift trusts.

It would seem very unlikely that the majority of states would accept a self-settled spendthrift trust as protecting the grantor’s assets in the trust from judgments in that state against the grantor.

However, even if a non self-settling spendthrift trust jurisdiction disregarded the trust, it still could only enforce a judgment against the trust if either the trustee or trust assets were in the state. The only person or entity who could transfer assets in the trust to pay any judgment is the trustee. If the trustee is not subject to state jurisdiction because the trustee is not in the state, then there is no way to obtain jurisdiction over the trustee so as to order the trustee to pay the judgment. Likewise, if no trust assets are in the non-self-settling state, the court of such a state could not assume in-rem jurisdiction over such property to and apply it to satisfying the judgment.

All of this assumes that under the terms of the trust document that the grantor does not have the power to replace the trustee. As long as the Grantor cannot replace the trustee, he would not be able to order the trustee to make a distribution to the grantor. Therefore, the court would not be able to order the grantor to replace the trustee with someone who would make the distribution to the grantor in order to pay off the judgment. This is very important because in the recent past individuals have been using offshore assets protection trusts known as APL’s to protect their

interest. These are trusts formed in other countries over which the American courts have no jurisdiction. In such instances, American courts have held the trusts invalid and punished the creators as violating American law.

In ***FTC V. AFFORDABLE MEDIA, LLC.*** 179 F.3D 1228 (9th Cir. 1999) the grantors of self-settled offshore APT were jailed for contempt pending repatriation of the assets. In the case of ***IN RE PORTNOY***, 201 B.R. 685 (1996) a transfer to an APT was found in violation of public policy when a foreign trust was created to shield the grantor's assets from a personal guarantee that was to be called. Both of these APT cases were prior to the enactment of the self-settled spendthrift acts of Alaska, Delaware, Missouri or Nevada but there is no reason to believe given the reasoning of those court's that their outcome would be different today. Generally it is better to assume that federal courts, state courts and federal agencies are more apt to regard a self-settled spendthrift formed under a valid state law as more legitimate and enforceable than one established under the laws of foreign country and thereby exempt from review under American law.

CONCLUSION-LICENSE TO STEAL?

It may seem to many that the new asset protection laws which permit self-settled spendthrift trusts are thinly disguised licenses to steal. Certainly, an argument can be made for that position. Now, under the laws of Alaska, Delaware, Missouri and Nevada, that if a person properly creates a self-settled spendthrift trust in a state that allows them, then after a certain period of time, the trust will become exempt from attachment for any judgment against the grantor. The time limit for this period varies among the states from two years in Nevada to four years in Delaware and Alaska and immediately in Missouri but it will happen in time. What this means is that a person can transfer assets into the trust and if no lawsuit or liability against the grantor arises during this period of contestability that at its conclusion the assets are automatically free from attachment at a later date.

The rights of the creditors under self-settled spendthrift trusts in states permitting them are different depending on status. The creditors are separated into two classes: those in existence when the trust was created and those arising after the trust was created.

1. For the second class of the creditors the treatment is

rather straight forward if the creditors become so after the period of contestability has run, then they cannot bring suit to attach the trust assets. State law will determine if they can seize the trust assets by attachment during the period of contestability which they usually can if they can show an intent to avoid creditors.

2. For creditors in existence at the time the trust was created their treatment is more complicated. Generally, a current creditor in order to protect his or her interest must bring a suit against the trust as soon as the transfer is known even if the debtor is not yet in default in order avoid the period of contestability from running. In Nevada for instance, such a suit must be brought within two years of the transfer into the trust or six months after discovering the trust of facts that would leading a person to discovering the existence of the transfer to the trust which ever occurs later. If the suit is not timely brought, the assets in the trust cannot be attached for payment of the grantor's debts.

In short, assets transferred into a self-settled spendthrift trust will be totally exempt from subsequent creditors after the contestability has run whatever it is for the state being used. There is no other provision in American law which permit people to

create such a complete shield for their assets.

In order to create a self-settled spendthrift trust, the revocable trusts in the Estate Planning Two book published by ***LAWYER AT LARGE LLC.*** and ***ATTORNEY ET AL, LLC***. can be used with the following simple changes:

1. Delete the Article making the trust revocable. Instead insert a new article stating something to the effect: **"THIS TRUST SHALL BE IRREVOCABLE. THE GRANTOR HAS THE INTENT OF MAKING CREATING AN IRREVOCABLE SELF-SETTLED SPENDTHRIFT TRUST UNDER THE LAWS OF THE STATE OF _____"** (insert the name of the state in which self-settled spendthrift trusts are permitted)
2. Insert in the Article of the trust which calls for the name of the state whose governing law will be used the name of the state which permits self-settled spendthrift trusts which is the same state as in number one above.
3. Designate a trustee other than the grantor and it would be best to even state that the grantor cannot be the trustee. It is best that the trustee be a resident of the state named in number 1 and 2 above. In fact Nevada requires it.
4. You must state that the trustee has absolute discretion to make distributions of income and principal to the grantor as beneficiary but the beneficiary may not require or force the beneficiary to do make such

distributions.

5. You may also insert language limiting the grantor’s power to remove a trustee, but there is no guarantee that it will work as it has never been tested, something to the effect that:

"The grantor may not replace a trustee pursuant to a court order from a court outside of the state whose governing law is used if such replacement is done solely with the intent to have the new trustee make a distribution of assets of the trust for payment of the debts of the grantor if the current trustee could not be ordered by the such court to make the distribution directly under the governing state’s laws. In such an event, it should be left to a court of the governing state to determine if the trustee replacement is proper or if it violates the law or public policy of the governing state."

There is no way to determine if such a clause would be enforceable but its intent is to make clear that of the grantor's intent that the trust assets should not be attached for the grantor's debts wherever located if the attachment would violate the law of the governing state.

You might circumvent this issue entirely by stating that the grantor cannot replace the replacement the trustee and that

replacement can only be a court of the governing state. As such only assets located the state, which does not have governing authority over the trust could be attached by one of its courts.

The use of self-settled spendthrift trusts will afford almost complete protection for a grantor’s assets if the assets are transferred into a state which permit such trusts and the trustee is a resident of such a state and the grantor cannot replace the trustee or order the trustee to make a distribution. If any of these elements are missing, then it becomes problematical whether a judgment obtained against a grantor in a state which does not permit self-settled spendthrift trusts can be enforced against the trust.

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